

City of San Jose Board of Fair Campaign and Political Practices
Draft Scope of Work for the Independent Evaluator:
City Council July 2020 Policy Referrals
May 12, 2021

Background

At the Board's April 2021 regular meeting, the Board considered a proposal to use the Independent Evaluator/Investigator to assist with technical research and analysis data required to provide an adequate and complete response to City Council policy referrals.

The Board unanimously approved this motion for the Chair and City Attorney's Office to provide direction to the Independent Evaluator.

Summary of Proposals from the City Council

A summary of the proposed campaign finance and ethics amendments from the City Council's July 2020 referral is presented below:

- Campaign Contributions: Contribution Limits
Prohibit a Councilmember, including the Mayor, from accepting, soliciting, or directing a campaign contribution of more than \$250.00 from any party or participant while a proceeding involving a license, permit, or other entitlement for use is pending before the City and for three months following the date a final decision is rendered.
- Campaign Contributions: Conflicts of Interest
Prohibit a Councilmember, including the Mayor, from making, participating in the making, or in any way attempting to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use before the City if the member of the Council has willfully or knowingly received a campaign contribution in an amount of more than \$250.00 within the preceding twelve months.
- Campaign Contributions: Prohibited from Lobbyists
Registered Lobbyists are prohibited from making a campaign contribution to a candidate for City office.
- Gifts: Prohibited from Lobbyists, Contractors, Direct Beneficiaries
Registered Lobbyists, Contractors of the City, or any direct beneficiary of a City contract are prohibited from giving any gift, as defined under the Political Reform Act, to a City official.
- Revolving Door: Two Year Prohibition on Lobbyists
Prohibits any registered lobbyist from serving on a Board or Commission within two years of any lobbying activity and any person with a contract with the City from serving on a Board of Commission within two years of expiration or termination of the contract.

Research Method

The Board's proposed research methods and an inventory of data or documents needed to complete each task are summarized in the following table.

Outline of Research Methods

Proposed Measure	Questions to Resolve	Proposed Methodology	Materials Needed	Status
1. Campaign Contribution: Limits and Conflicts of Interest - Prohibits campaign contributions above \$250 from parties with business proceeding before the Council; and, prohibits councilmembers from influencing or participating in a decision if the councilmember has received more than \$250 in the past 12 months from an interested party.	To what extent are parties with interests before the council contributing to councilmembers? What is the range and average contribution? Are these contributions observable within a reasonable time frame from of a significant decision or vote?	Review a sampling of significant contracts, developments, or other policy matters voted on in recent past and research whether parties with vested interests in those contracts or decisions made contributions to councilmembers.	(1) Campaign Finance Reports, Forms 460, etc. from the City Clerk's Office (2) Judgmental sample of contracts or permits approved during election cycle (GILES).	Board referring analytical work to Independent Evaluator.
2. Campaign Contributions: Lobbyists - Registered lobbyists are prohibited from making a campaign contribution to a candidate for City office.	To what extent are lobbyists making campaign contributions to city candidates? What is the range and average contribution?	Cross reference the index of registered lobbyists with campaign finance disclosure reports to determine to what extent lobbyists are contributing to candidates.	(1) Campaign Finance Reports (2) List of Registered Lobbyists from City Clerk's Office. (3) Lobbyist Registration Form Schedule A - Contributions, Expenditures, etc. from City Clerk's Office.	Board referring analytical work to Independent Evaluator.
3. Gifts: Prohibited from Lobbyists, Contractors, Direct Beneficiaries - Registered lobbyists, city contractors, and any direct beneficiary of a city contract are prohibited from giving any gift to a city official.	To what extent are lobbyists or contractors giving gifts to city officials?	Cross reference the index of registered lobbyists with Statements of Economic Interest from all elected officials and sampling of other high level city officials. Determine whether disclosed gifts might be originating from contractors.	(1) List of Registered Lobbyists. (2) Lobbyist Registration Form Schedule A - Contributions, Expenditures, etc. (3) Form 700 Statements of Economic Interest. (4) An index of city contractors.	Completed – no significant findings of lobbyists or contractors gifting elected officials in 2019.
4. Revolving Door: Lobbyists and City Contractors , - Registered lobbyists are prohibited from serving on a board of commission within two years of any lobbying activity. Contractors are prohibited from serving within two years of an expiration of a contract.	To what extent are lobbyists or contractors serving on city boards and commission after previously lobbying or working with the city?	Evaluate the application files of new board and commission members from the past few years to determine to what extent applicants and appointees were former lobbyists or contractors.	(1) Board member applications from the City Clerk's Office. (2) List of Registered Lobbyists (3) An index of city contractors.	Pending – If time and budget permit, can refer to Independent Evaluator.

Draft Scope of Work for the Independent Evaluator

The Independent Evaluator will assist the Chair and city staff in completing the following assignment:

Campaign Contributions:

- City Council Proposal:
 - Prohibit councilmembers from accepting campaign contributions of \$250 or more from parties who are involved in a proceeding before the City Council, and for up to three months following the date of a final decision on that business matter. The proposal also stipulates that it is a conflict of interest for councilmembers to accept a contribution of \$250 or more from a party if the councilmember has participated in a decision impacting that party's license, permit, or other entitlement within the preceding twelve months.
 - In addition to this \$250 cap for parties with financial interests, the proposal also prohibits lobbyists from making any campaign contributions to city candidates.
- Research Objective: Determine to what extent lobbyists or parties with business proceeding before the Council are making campaign contributions.
- Research Barrier: The City Clerk's CampaignDocs eRetrieval reporting tool does not aggregate the variables reported in each form for the whole election cycle – only for the respective reporting period. Forms must be manually compiled, sorted, and cleaned to obtain aggregate data for an entire election cycle.
- Independent Evaluator Assignment: Compile campaign finance reports from the 2020 primary and general elections:
 - Compile campaign finance reports so that there is a single, aggregated report for all council candidates that aggregates all the same reporting fields in the Form 460s and related reports for the entire election cycle.
 - If time and budget permit, the Independent Evaluator should cross reference the donor occupations with the City Clerk's list of Registered Lobbyists to determine to what extent lobbyists are contributing to city candidates.
 - Each aggregated report should be presented to the Board in an Excel file or similarly accessible spreadsheet that can be analyzed and sorted by the Board and city staff.
 - If the Independent Evaluator notices any trends or notable observations related to this Research Objective while compiling and cleaning this data, the Independent Evaluator is encouraged to provide any such observations.
- Board's Assignment: The Board will review the aggregated reports from the Independent Evaluator, and work with city staff to identify trends in campaign contributions, such as whether large donors are coming from parties with significant business interests before the City Council. If time and budget do not permit for the Independent Evaluator to analyze contributions from lobbyists, the Board will work on this task. The Board may follow up with the Independent Evaluator based on capacity, need, and budget.