



CITY COUNCIL STAFF REPORT

DATE: May 17, 2017 Unfinished Business

SUBJECT: INITIAL REPORT BY AD HOC CITY COUNCIL SUBCOMMITTEE ON ETHICS, TRANSPARENCY AND GOVERNMENT REFORM

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

The *ad hoc* Ethics, Transparency, and Governmental Reform Subcommittee, consisting of Mayor Robert Moon and Councilmember Geoff Kors (Subcommittee), formed a Task Force that includes eight (8) working subcommittees comprised by local residents. Each of these working subcommittees has tendered a final proposal to the Subcommittee. The Subcommittee has compiled, reviewed and posted the task force proposals, dated April 24, 2017 to the City's website. <http://www.palmspringsca.gov/government/mayor-city-council/ethics-transparency-government-reform-task-force-recommendations>. This staff report is the Subcommittee's second report back to the full City Council. After receiving input from Council at a prior meeting, this report states the Subcommittee's initial recommendations for City implementation of the task force proposals as well as additional proposals from the Subcommittee. The charges of the working subcommittees included ethics/conflicts of interest, transparency, city grants (economic, non-profit and event), communications, diversity/inclusive government, election reform, campaign finance reform, and board member/commissioner orientation. This report addresses the first two areas, ethics and transparency, and touches incidentally on campaign finance reform.

RECOMMENDATION:

Receive and file this report, and instruct the Subcommittee and/or City Attorney to undertake action consistent with its terms, and/or any additional Council direction agreed upon during discussion.

ITEM NO. 5.A.

STAFF ANALYSIS:

The Subcommittee opines that the City should take action consistent with the following points. In many instances the proposed action exceeds the requirements of State law.

- Palm Springs should update the City's Local Conflict of Interest Code (Local Code) to ensure that its provisions minimize the chance that any public official shall participate in, make decisions, or in any way attempt to use, his/her official position to influence a governmental decision in which he or she knows, or has reason to believe he or she has a financial interest. Local Code revisions and clarifications will emphasize the requirement that any conflicted official expressly disclose any such situation in public, and openly comport his/her conduct with the recusal guidelines set forth by California law.
- "Special Fiduciary Interests"¹ such as those of directors, attorneys, accountants will also result in a conflict of interest even if an official has no "financial" interest. This exceeds the requirements of State law.
- A new annual reporting form for Palm Springs officials identified in the Code should disclose Special Fiduciary Interests (SFIs) of that official. Again, this exceeds the mandate of State law.
- The City Attorney will be the point person for the City on ethics, conflict of interest, transparency and related legal issues within the task force's scope of work. It should be noted that duties with respect to ethics and conflict of interest rest with each public official, and that State law specifically provides that advice from a City Attorney or City Manager is not a defense to any violation by an official. The Fair Political Practices Commission is the only entity that can provide written advice upon which an official may rely.
- A Public Integrity City Council Standing Committee should be created and described in the Code. The standing committee should have quarterly public meetings to discuss new rules, facilitate implementation of existing rules, plan training for City officials to be provided, and take public testimony.
- Create a confidential public integrity "whistleblower" hotline to be managed by the City Attorney's office.²

¹ Reasonable minds might differ as to the definition of a "special fiduciary interest," and the Code should contain a concrete and simple statement that ensures the public that officials will not have more than one "master" entitled to a duty of loyalty and care with respect to governmental decisions. The ideal bright-line definition will transcend financial matters, and incorporate clearly identifiable professional responsibilities and duties of loyalty. For example, voting membership on the board of directors of a charitable organization would represent a special fiduciary interest.

² If there is a complaint about the City Attorney, that complaint will go directly to the Public

- Ethics and Transparency Training, including training on the Brown Act and the Public Records Act, must be completed every two (2) years by all officials listed pursuant to State law. Dates of any live trainings should be posted on the City Website and open to the public.
- Palm Springs' City Website should include a section on ethics and transparency where information is provided including campaign contributors, Form 700, and other relevant documents.
- Officials required to file Form 700 should also file an annual City of Palm Springs SFI Disclosure Form, concurrently with their Form 700.
- Changes and updates to the Form 700 or SFI Disclosure Form should be filed with the City Clerk within thirty (30) days of a new or materially changed financial or special fiduciary interest that would lead to a conflict of interest. This exceeds the requirements of State law.
- Each Palm Springs official's Form 700 and SFI Disclosure form will be posted on the City Website.
- If a staff report for a City Council meeting is not available to the Council and to the public 72 hours prior to the meeting, the agenda item related to the report in question will be removed from the agenda, or commenced but adjourned to a subsequent meeting without action taken absent a reasonable urgency that the report and agenda item in question be considered at that meeting. Any such reasonable urgency will be established by a 4/5 vote of the City Council.
- Every public City Council policy body, including Boards and Commissions and Standing Subcommittees, shall record, in their entirety, noticed meetings, study sessions or hearings open to the public and held in the Council Chamber or a City Hall conference room equipped with audio or video recording facilities. The only exceptions to this rule shall be when facilities and/or staff are not reasonably available, or in the event of technical or other logistic difficulties.
- *Ad hoc* status shall be reserved for any subsidiary body that is charged with accomplishing a specific task in a finite period of time. A subsidiary body with *ad hoc* status shall not have an expected duration longer than twelve (12) months. Ordinarily, each subsidiary body shall be decommissioned by formal action of the its creating policy body when the task of the subsidiary body is completed. Alternatively, a policy body that creates a subsidiary body shall justify and authorize additional time for completion of that subsidiary body's task by formal action at a public meeting.
- The City Clerk shall maintain, keep up to date and post in a reasonably accessible location on the City's official website a complete list of all subsidiary

bodies, whether standing or *ad hoc*. Each listing shall specify the purpose and members of the subsidiary body, the appointment date of members, whether the subsidiary body is standing or *ad hoc*. For each *ad hoc* subsidiary body, the listing shall state the body's specific task and estimated sunset date. The list shall indicate which subsidiary bodies are committees (*i.e.*, they were formed by the City Council, or a City board or commission), and which are subcommittees (*i.e.*, they were formed by a committee). In the case of subcommittees, the list shall specify what committee formed the subcommittee.

- Closed sessions are subject to detailed agenda requirements, including citation of the specific Brown Act subdivision authorizing the item to be discussed in closed session. Closed session decisions shall be reported out.
- No closed session item shall consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise, unless discussion in open session concerning those matters would likely impact the position of the City in pending litigation, or the City's exposure or risk in anticipated litigation. In each of those events, a closed session is permissible under the Brown Act and may take place upon notice in compliance with State law.
- The City Clerk's office shall endeavor to produce records pursuant to any Public Records Act request as quickly as practicable. The City's initial notice of determination as to records requested will always issue within the ten (10) calendar day period specified by State law.
- Members of the City Council including the Mayor, the City Manager, the City Clerk, and each Department Head shall keep a detailed daily calendar. Ordinarily, such calendars, subject to redaction in accord with applicable State law (*e.g.*, based upon privilege, or the public interest being served by non-disclosure) shall be public records subject to review.
- City council members and City employees should avoid the use of personal email accounts to conduct official City business whenever practicable. Officials should be mindful of law that states that the use of a personal account does not make a communication private. The Council should acknowledge that technological and logistic constraints sometimes make the use of external technology and/or devices necessary in the efficient conduct of the City business.
- The City Attorney should be directed to review the City's policies and procedures applicable to electronic devices and communication, technology in general, and records retention (digital and documentary), and report back to the Council with recommendations.
- Pursuant to task force input during development of the final proposal, the City of Palm Springs is in discussions with a reputable third party contractor to enhance the utility of the City's website

- Ordinarily, minutes of meetings or recordings of meetings of policy bodies shall be posted to the City's website within one week after they have been approved by the policy body.
- The City Attorney should research lobbyist registration ordinances applicable to any individual who is not a City employee, but contracts for economic consideration to communicate with the City to influence any legislative or administrative action. One example is Chapter 2.72 of the West Hollywood Municipal Code.
- Each lobbyist who represents the City in matters before any local, regional, state, or federal administrative or legislative body should file a report of his/her activities on behalf of the City of Palm Springs on a quarterly basis with the City Clerk's office. When, in an exercise of reasonable discretion by the City, disclosure of lobbyist work would adversely impact the interests of the City, the City may instruct a lobbyist to omit such activities from this report.
- Residents, not just property owners, should receive notice of any project, event, or other notice received by property owners pursuant to applicable State law or City practice/policy.
- Officials shall apply the same conflict of interest rules applicable to property interests that they own to all leased/rented interests, regardless of the term of the lease/rental agreement, or lack of any agreement.
- The City Attorney should prepare legislation for the Council to ensure that action by the Planning Commission does not become final until ten (10) days after *(i)* City Council receipt of written notice of the action in question, *and (ii)* posting of information regarding the action on the City Website.
- When an applicant for land use entitlements or for any City approval is a corporation, LLC or other legal entity apart from a natural person, officers and directors of corporations, members and managers of LLCs, and investors who have an ownership interest in the applicant entity with a value of two thousand dollars (\$2,000.00) or more should disclose that fact to the City prior to public officials acting or voting with respect to any project or other government decision; this disclosure will help ensure that public officials have knowledge that will allow them to properly determine whether they suffer from a conflict of interest.
- An applicant with a financial interest in a matter coming before the City Council or another public body, may not make a campaign contribution or donation of more than one thousand dollars (\$1,000.00) or more for six (6) months prior to, and six (6) months after a vote on that matter. The prohibition upon donations made prior to a vote shall only apply if the applicant/donor knew or reasonably should have known when the matter would come before the Council or public body. If an applicant/donor has made a donation contrary to this concept prior to the vote, the applicant/donor shall inform the public official receiving the contribution/donation, the City Attorney and the City Clerk of the

contribution/donation, and the public official in question must recuse himself/herself from the vote. If a contribution/donation is made after the vote in question, it shall be returned to the contributor/donor.

- All sales of City property, including without limitation Successor Agency property shall be put out for competitive bid.

This initial report does not address all of the work of the task force working subcommittees. The Council subcommittee will return to the full Council with additional recommendations at an upcoming meeting.

ALTERNATIVES:

Reject the report and take no action, or direct the Council Subcommittee and/or City Attorney to revise and resubmit the report.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION:

Not applicable.

FISCAL IMPACT:

Not analyzed.



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Attachments: None