



# City of Santa Clara

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## Agenda Report

18-1263

Agenda Date: 9/11/2018

### INFORMATIONAL REPORT TO COUNCIL

#### SUBJECT

Informational Report regarding the November 2018 Election, including Background Information on the Code of Ethics and Values, Previous Consultant Services and Candidate Forums

#### EXECUTIVE SUMMARY

Due to inquiries from the Council and the public, and in light of misinformation and false accusations in several media outlets, this report is being provided in an effort to set the record straight. The City is committed to conducting a fair, ethical and impartial election this November. Further, the City is committed to adhering to Council policy and the thousands of regulations, statutes and best practices related to successfully conducting elections. The ability of public employees to participate in campaign related activities is restricted by the legal prohibition on the expenditure of public funds in support or opposition to political campaigns.

There are a number of items attached to this agenda report for consideration, including excerpts of Minutes, including:

1. Written statements, dated August 30, 2018 and September 4, 2018, issued by the Acting City Clerk, Jennifer Yamaguma
2. A written statement dated September 5, 2018, issued by City Manager, Deanna J. Santana, which includes the Council Policy 028, *Televised Candidate Forum*, as well as her emails on the topic
3. Excerpts of Council Meeting Minutes related to the vote ethics program, and consultant services from prior election years

The City Clerk, City Manager, and City Attorney fully support and understand the importance of having the City conduct an ethical, fair and impartial election this November; however, contrary to what has been reported, none of them made a decision to disallow candidate forums to be conducted. **Such a decision was not even discussed at any time, by or between, the City Clerk, City Manager and/or City Attorney. Additionally, there was no discussion at any time with Mayor Lisa Gillmor by or between the City Clerk, City Manager, and/or City Attorney other than her inquiry about a media call on the matter, in which she expressed her support for these candidate forums.**

The following information is provided in an effort to have complete transparency about the City administration's activities with respect to the November 2018 election.

### Election Regulations and Policy

Both state law and city policy provide regulations and policy for local elections. Below is a matrix that provides an inventory of these regulations and policies and the public department of office responsible for enforcement:

Regulation or Policy	Enforcement
Political Reform Act and Regulations	FPPC
City Campaign Finance Ordinance / Dark Money	City Clerk/City Attorney
Campaign sign regulations	Code Enforcement
Code of Ethics and Values	City Council

## **Election Education and Voter Engagement**

As has previously been communicated to the Council, there will be various levels of voter information and outreach on district elections and the two ballot measures for the November 2018 election. This will include:

- The City's website at [www.santaclaraca.gov/electioninfo](http://www.santaclaraca.gov/electioninfo)
- Social media posts
- Posting of flyers/maps at City facilities (i.e., City Hall, libraries, community rooms, etc.)
- Mailers (it is expected that there will be four mailers in the mid-September - October timeframe)
- A Frequently Asked Questions (FAQs) is available on the City's website
- Articles are included in the fall edition of Inside Santa Clara
- Utility bill inserts/bill comment
- Press releases

## **City's Code of Ethics and Values and the State's Code of Fair Campaign Practices**

Providing information to candidates, the media and the public on ethical campaigning has occurred for decades; and, contrary to the statements made in the article, this year's election is no different. As was previously stated, every candidate was issued the City's Code of Ethics and Values and the state's Code of Fair Campaign Practices. Per state law, the Code of Fair Campaign Practices is voluntary; however, all but one candidate (Mario Bouza, District 2 candidate), pledged that they would adhere to the "basic principles of decency, honesty, and fair play" (Elections Code 20440-20444).

Additionally, November 2018 will be the first election cycle with the newly adopted "Dark Money" Ordinance in place, which is intended to shed light on the origin of financial contributions expended in favor and against local election candidates and measures. With this in place, voters may be fully informed of sources of contributions in support or opposition to city candidates and local ballot measures.

## **Candidate Forums**

Much of the misinformation circulating about the candidate forums appears to have been generated by an email response to a member of the public. In an attempt to respond promptly, the answers provided were brief and casual; but, then more complete answers were provided via a direct email response to the requestor. Unfortunately, only the first email was published by a media outlet, igniting a series of misstatements by several media outlets.

As the Elections Official, I responded to the member of the public and, at no time, did I refer to decisions made by the Mayor, City Manager or City Attorney on disallowing candidates forums; however, the media, on its own made false conclusions and falsely attributed decisions and/or actions never taken by me, the Mayor, City Manager, or City Attorney. In my first response, I could have been more clear in my response to the member of the public that the 1996 City Council Policy, "Televised Candidate Forum" (Policy) remains in place and supports a neutral organization's ability to organize and conduct a candidate forum while recognizing that it is legally problematic for City staff to participate in these political activities-allowing only "minimal assistance" for *the organizing entity*. This could have avoided false attributions and provided clearer reference to City policy on the matter of candidate forums (included with Attachment 2).

In response to an article which misrepresented the facts, I issued a public statement to the community. Since that time, an additional statement was issued and the City Manager also issued a written statement on the topic (Attachments 1 and 2).

In accordance with the Policy, a neutral organization may host a candidate forum and the staff participation may include:

- Reserving the Council Chambers on the designated night;
- Arranging set-up and clean-up as provided for other groups;
- Providing logistical information and minimal assistance for the organizing entity;
- Arranging for the televising of the Forum, the re-broadcasting, and placement of tapes for checkout at each City library;
- Providing notification and accepting RSVPs from candidates their participation;
- Placing an announcement on the Municipal Cable Channel providing public notice about the event and other media notification.

The City will also live-stream the forum and archive on the City's website and the City's Facebook and YouTube channels.

This year, the Council did not direct the City administration to repeat the decision to engage in a consultant at taxpayer expense for the facilitation of candidate forums, nor was funding included for such an effort in this year's budget. The matter was discussed in early 2017 by the City Council's Ethics Committee and at that time, there was concern regarding the selection of the consultant hired for the November 2018 election, and concern was raised over the use of public funds for a hired consultant as it is legally problematic and also extremely unusual for a city to have a hired consultant to facilitate candidate forums. The Committee did not take action to discontinue the practice of conducting candidate forums and left the Policy in place whereby any neutral organization can contact the City to organize a forum, which could be held in the Council Chambers and would be televised/video-streamed, as the policy allows.

## **BACKGROUND**

The below information is intended to provide a review of the evolution of the City's Code of Ethics and Values, candidate forums and prior use of consultant services as they relate to the ethics program and candidate forums. It is not intended to be all-inclusive but rather to provide as much information as could be verified from the record over the past few days to meet the timeline for the production of the agenda packet. As needed, additional information may be provided through the City Manager's Blog, direct publications from the City Clerk and/or posted to the City's website. The City Clerk leaves open the opportunity to provide a Supplemental Report if deemed necessary to issue additional information to the City Council on Tuesday, September 11, 2018.

## **Code of Ethics and Values**

The City of Santa Clara first adopted a Code of Ethics in the 1960s and periodically updated it. In 1998, then Council Member Aldyth Parle proposed that the City establish a Committee to study the feasibility of creating a new ethics ordinance - the Council Ethics Ordinance Committee. The previous Code of Ethics had last been approved in December 1988. By unanimous Council vote in 1999, the Ethics Ordinance Committee was formed and was comprised of three Council Members (Council Members Diridon, McLemore and Council Member Parle), the City Manager and the City Attorney. In addition, the Council approved an agreement with Santa Clara University to facilitate the development of core values and a code of conduct. Through the approved agreement, the Committee worked with two individuals from Santa Clara University Markkula Center for Applied Ethics, Dr. Thomas Shanks and Neil Quinn, to develop the next steps for a new code of conduct for Santa Clara.

Objectives of the Ethics Program had two long-range goals: 1) to make Santa Clara a better community, built on mutual respect and trust; and 2) to promote and maintain the highest standards of personal and professional conduct in the City's government. The challenge was to create a code of ethical conduct that would be effective in influencing the behavior and actions of city officials, employees, volunteers, and residents.

Further, objectives of the Ethics Program included:

- Provide practical strategies for addressing ethical questions
- Heighten awareness of ethics and values as critical elements in local government
- Improve ethical decision-making by elected officials in setting policy and by City staff and volunteers in handling day-to-day tasks

As mentioned, the City of Santa Clara formed a partnership with the Markkula Center for Applied Ethics at Santa Clara University to develop a unique approach to ethics in municipal government. Based on the recommendation of the University Ethics Center, the City of Santa Clara approached its consideration of ethics in two ways: 1) a new written Code of Ethics designed to provide clear, positive statements of ethical behavior reflecting the core values of the community; and 2) a series of workshops to help City representatives, staff and volunteers incorporate the identified core values into the operating culture and everyday routines of the City.

The Ethics Ordinance Committee met over several months, under the guidance of Dr. Thomas Shanks to consider what values were needed to have a city be considered "ethical" in attitudes and

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actions.

The Committee convened a Working Group of its members, nine representatives of City Boards and Commissioners, and interested citizens. The group developed a list of 70 values and worked in small groups to select those that participants felt were critical as standards of conduct for City representatives. These eight values - ethical, professional, organized, progressive, fiscally responsible, communicative, service-oriented, and collaborative - became the foundation for the Committee to write a new Code of Ethics and Values that would describe the positive behavior desired among city representatives.

Using the methodology devised by the Markkula Center to help businesses, healthcare and other organizations define ethical standards, the Committee explored each value to find agreement on what it is ... and is not. Out of this intensive study of core values, the Committee drafted the new Code of Ethics and Values that lists the eight core values and outlines how each value "looks in practice."

Council unanimously approved the Code of Ethics and Values, as recommended by the Ethics Ordinance Committee in 2000. Council added a provision that the Code would be reviewed as part of the Council Goal Setting sessions and also approved the Committee recommendation to develop a "Standards for Code of Ethics and Values" guidebook. At the City Council meeting, the Council Candidates Program for those seeking elected office was discussed, including the concept of a similar program for seated elected officials who participate in elections.

Under the next phase of the Ethics Program, the City embarked on a series of training workshops for different segments of city government to familiarize them with the new Code of Ethics and Values and to show participants how to use the code in ethical decision-making in their day-to-day environment. Separate workshops were held for elected officials, members of commissions, and senior staff.

City Council adopted goals for 2005-2007, which included "elevating the City's Ethics & Values Program to the next level." The development and the execution of a 2006 Vote Ethics Campaign was a major undertaking to help meet the goal. In 2006, the Council endorsed a City staff and Ethics Committee recommendation for an innovative 2006 Vote Ethics Campaign in order to: 1) increase public confidence in City government and community pride; 2) educate voters about how to evaluate the ethics and values of candidates; 3) inspire candidates and their supporters to campaign ethically; and 4) increase public awareness of the City's Code of Ethics and Values.

At its goal-setting session in June, 2014, the City Council asked the City Clerk to "Develop a plan and program for the Democracy Santa Clara concept," which was presented to the Council on February 3, 2015. In turn, program models and costs for the Democracy Santa Clara concept were discussed at the Ethics Committee level. The Democracy Santa Clara program included five different concepts: 1) Neighborhood Engagement/Board and Commission Recruitment; 2) Citizenship Outreach; 3) Voter Registration/Board and Commission Recruitment; 4) Santa Clara Votes; and 5) Overall Ongoing Support. More specifically, S.C. Votes was defined as having the same main focus similar to the voter engagement seen in previous Vote Ethics programs but noted that in years since the initial Vote Ethics program was launched in 2004, the dialogue in Santa Clara had matured to focus on transparency, openness and education rather than primarily on the concept of ethics. As such, the program would become 'Santa Clara Votes' with a renewed emphasis on engaging residents to be more informed and educated voters. It was noted that the Code of Ethics and Values would continue

to be a foundational element on which many of the overall Democracy Santa Clara programs are based, but would play a supportive role rather than primary role. The Ethics Committee approved the Democracy Santa Clara project concept as presented by the City Clerk and in Fiscal Year 2016-17, the Democracy Santa Clara projected was funded, in the amount of \$150,000 within the City Clerk's Office budget.

In 2017, the Ethics Committee (comprised of Council Members, Caserta, Davis and Watanabe) created a Workplan, which included an item to potentially review the Code of Ethics and Values since it had not been updated since 2000. The Committee reviewed a draft Request for Proposals (RFP), which, due to various conflicting work priorities of staff, was not issued. The Ethics Committee has not met since December 2017.

### **Consultant Services**

Beginning with the November 2002 election, Dr. Shanks served as the City's "Ethics Consultant" and continued in that capacity until 2015 through the execution of agreements authorized by former administration. It appears that all of the agreements were approved by former City Managers and that the City Manager's Office held responsibility of the services provided, as well as the management of the ethics program and some elements were coordinated with the City Clerk, acting as the Elections Official, where appropriate. No record could immediately be found as to whether or not the contracts with Dr. Shanks were competitively bid.

In November 2014, former City Manager Fuentes approved an agreement with Mr. Shanks, DBA The Ethics Company, serving as the City's Ethics Consultant, assisting with the effectiveness assessment of the 2012 Ethical Campaigning and Vote Ethics Programs; planning and developing the strategy for the 2014 election, including revising the Candidate's Guide to Public Trust; planning and executing workshops, coaching and study sessions relating to the City's Code of Ethics and Values; serving as a regular participant of the Ethics Committee; and participating with the City on programs highlighting the Ethics Program, as requested by the City Manager's Office.

In addition to Mr. Shanks' agreement, former City Manager Fuentes also approved an agreement with consultant Fred Keeley to work collaboratively on the City's ethics program, voter outreach, community engagement, democracy building and other programs under and managed by the City Clerk's Office. A record of whether or not this agreement was competitively bid could not immediately be confirmed.

In 2015, through a competitively bid Request for Proposals (RFP) process, former City Manager Fuentes executed an agreement with Letra, Inc., to retain Mr. Keeley as a Democracy Consultant." Under this agreement, services included support of the Democracy Santa Clara program and other voter, community engagement and good government efforts.

In 2016, Council approved Amendment No. 1 to Letra Inc.'s agreement, in the amount of \$45,000, for Democracy Consultant services in support of community and voter engagement programs and the 2016 general municipal election cycle. Under this agreement, Mr. Keeley continued his service as the City's "Democracy Consultant" and presented his workplan to Council, which included training, candidate forums, the role of ombudsman, and general consulting.

There were many questions raised about the selection of the previous consultant and whether the

consultant was vetted for the appearance of a conflict and whether they should have been a designated Form 700 filer. And most importantly, having an individual acting as an "ombudsman" was not adequately defined or analyzed. To the extent that this role includes the pronouncement of a determination on whether a candidate or campaign has violated the law or ethical policy, there should have been a transparent discussion of the competency of an individual consultant to perform this role. Enforcement of campaign laws was taken up by the Ethics Committee who identified the merits of having an impartial panel to adjudicate alleged violations of City regulations and policies. The Ethics Committee did not complete its examination of how best to assign this function.

The Fair Political Practices Commission (FPPC) has jurisdiction over most campaign-related activities, not the City Clerk and certainly not an outside consultant. Complaints about FPPC violations must be made directly to the FPPC. If a member of the public wishes to allege a violation of the City Code or City policy, past practice has been to contact the Elections Official who in turn coordinates with the City Attorney's Office, City Manager's Office, Code Enforcement, and, depending upon the nature of the complaint. We have attached a matrix of the various regulations together with and identification who could enforce violations.

## Candidate Forums

Although the record doesn't indicate exactly who hosted and/or facilitated all previous candidate forums, it appears that forums have been held by the Citizen Advisory Committee, the League of Women Voters, Santa Clara University, and the Chamber of Commerce - often, if not always, with the assistance and support of Dr. Shanks (until November 2014). For the November 2016 election, candidate forums were conducted and facilitated by Mr. Keeley.

In 1996, the Council adopted Policy and Procedure 028 - Televised Candidate Forums, which states that, *"It is the policy of the City of Santa Clara to allow the holding of a Candidates Forum in City Council Chambers, to be broadcast live on the Municipal Cable Channel and re-broadcast four times. The League of Women Voters or another neutral outside organization will organize the Forum. The Forum will be held approximately four weeks prior to a municipal election, upon determination of the availability of City Council Chambers. The Forum will be for candidates for City of Santa Clara elected office only."* When this policy was adopted, the League of Women Voters hosted the Candidate Forums for the 1996 Election.

It is important to note that the Policy only covers the use of City facilities. It in no way directs the administration to hire outside consultants to conduct forums. Nor does it authorize the engagement of a consultant to be the arbiter of accusations of campaign violations.

The public discussion of consultant efforts from the November 2016 election has conflated the two roles that he apparently played: asker of questions to be debated at the forum and answerer of questions about whether violations occurred.

As to the first role, issues and concerns were raised following the use of tax dollars to fund a consultant to facilitate the candidate forums following the November 2016 election and the stated Council policy identifies the League of Women Voters and other neutral organizations as the appropriate parties to conduct the debates. The payment of an individual with tax dollars adds an even more serious requirement to ensure complete neutrality and to avoid even the appearance of partisan influence, because of legal prohibitions on the use of tax dollars in support of campaign

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activities.

The performance of the second role as “ombudsman” raises even more serious legal and policy questions. Ombudsman is defined as “a government official who hears and investigates complaints by private citizens against other officials or government agencies.” This role would require setting up rules of procedure to ensure due process and an examination of the ombudsman’s qualifications and capacity to perform this role. And as a “government official” it would require an analysis of whether the consultant would be subject to inclusion in the City’s conflict of interest code.

It is not clear how the previous consultant performed these two roles, but it certainly would have been entirely inappropriate to perform them at the same time in a live debate.

While it is entirely appropriate for Council to consider finding an individual to conduct a neutral candidate forum using City facilities, as the Elections Official, the City Clerk would not recommend that the same individual be tasked with an “ombudsman” role without adequate public discussion of the rules governing such a role.

## **COORDINATION**

This report was coordinated with the City Manager’s Office and City Attorney’s Office.

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) or at the public information desk at any City of Santa Clara public library.

Reviewed by: Jennifer Yamaguma, Acting City Clerk

Approved by: Deanna J. Santana, City Manager

## **ATTACHMENTS**

1. Written statements, dated August 30, 2018 and September 4, 2018, issued by the Acting City Clerk, Jennifer Yamaguma
2. A written statement dated September 5, 2018, issued by City Manager, Deanna J. Santana, which includes the Council Policy 028, *Televised Candidate Forum*, as well as her emails on the topic
3. Excerpts of Council Meeting Minutes related to the vote ethics program and consultant services from prior election years