

San Joaquin County Grand Jury



San Joaquin County Municipality Ethics Policies

“It takes 20 years to build a reputation and 5 minutes to ruin it. If you think about that, you’ll do things differently.” -- Warren Buffett¹

2017-2018 Case No. 0917

Summary

The 2017-2018 San Joaquin County Civil Grand Jury (Grand Jury) investigated the ethics policies of San Joaquin County and the cities within its geographical boundaries. The Grand Jury interviewed 33 officials for this investigation, representing 8 municipalities located in San Joaquin County. This report is a compilation of the facts, findings and recommendations developed by the 2017-2018 San Joaquin County Civil Grand Jury. In summary, four of the eight municipalities did not have a written and approved ethics policy for elected officials and a majority did not have a policy for appointed officials and senior staff.

¹ <http://www.fool.com/investing/general/2014>

The table below is a matrix of the facts that were developed through those interviews.

Matrix of Facts Developed for the Ethics Policy Investigation

	Tracy							
HR Policy f								
Frequency								
Ethics Trai								

Legend

Y - Yes N - No NA - Not Applicable UNK - Unknown

The findings of this investigation centered around whether the municipalities had ethics policies for their elected and appointed officials and whether they had ethics policies for their senior staff. The recommendations were directed towards the writing of ethics policies for elected and appointed officials and senior staff. Most of the recommendations asked the municipality’s governing body to bring the developed ethics policies to a vote by October 31, 2018.

Background

The City of Tracy, with a population of 82,900, is centered in a triangle formed by Interstates 5, 205, and 580. Tracy is conveniently situated an hour from Sacramento, San Francisco, and San Jose by automobile. Approximately 68% of the citizens of Tracy commute daily over the Altamont Pass. Tracy has established itself as a remote suburb to the Bay Area region and has a solid base of new and recently-built housing, small businesses, national retailers, and restaurants.

In April 2017, a conflict of interest policy was brought before the Tracy City Council which would have required council members to recuse themselves if a family member would benefit by a decision of the council. This policy was rejected by a 3-2 vote.

The Grand Jury received a complaint alleging a conflict of interest by a member of the Tracy City Council. The Grand Jury decided to not only investigate the specific allegation of conflict of interest in Tracy, but also to look at ethics policies for all municipalities in the county.

Reason for Investigation

The Grand Jury was presented with a complaint describing a perceived conflict of interest in the City of Tracy. The conflict was ultimately determined to be unfounded, based on an analysis and opinion issued by the California Fair Political Practices Commission (FPPC), specifically that a self-recusal did occur, separating the involved councilmember from the decision-making process. Further, the Grand Jury learned of additional complaints made to the FPPC that sought to bring discredit to the City of Tracy and several of its elected officials. These also lacked merit.

The Grand Jury decided to investigate and determine if the adoption of an Ethics Policy could provide the necessary guidance to help avoid such missteps, real or perceived, from occurring in the future. The Grand Jury expanded the scope to include all municipalities within the county.

Method of Investigation

The Grand Jury reviewed the complaint and interviewed the complainant. It requested each municipality provide copies of their conflict of interest and ethics policies and reviewed them. The Grand Jury then reviewed documentation on the websites of the Institute for Local Government² and the California Fair Political Practices Commission³ to research information about municipal ethics policies. Lastly, 33 officials representing each of the eight San Joaquin County municipalities were interviewed, including representatives from the County Board of Supervisors.

The Grand Jury found that there was a consensus among those interviewed that the following were important principles which should be included in an ethics policy:

- Integrity and honesty
- Respect for elected or appointed officials, staff, and the public
- Avoidance of conflict of interest
- Protection of the public interest
- Proper use of public resources
- Nondisclosure of closed session and confidential information
- Fairness and accountability
- Consequences for violating ethics policies

Discussions, Findings, and Recommendations

“California has a complex set of ethics laws to guide local officials in their service to their communities. Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even though public officials may feel at times that some of these high standards of conduct are unduly burdensome or intrusive of their private

² <http://www.ca-ilg.org/>

³ <http://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html>

lives, they must accept that adhering to these standards, including broad financial disclosure rules for gifts and income is simply part of the process of public service.”⁴

Ethics policies are not based upon the rule of law. They are based on moral concepts of acceptable conduct. They help individuals who are governed by them to understand how best to handle a given situation, how to be transparent in their actions, and how to avoid even a perception of a problem. These policies assist the users to understand that their reputation and the City’s reputation are based upon integrity and honesty and that respect is not easily given but earned. They hold officials accountable for their actions, especially when it comes to the proper use of public resources. Ethics policies are designed to help those covered by them understand how best to represent themselves, the city, commission, or position they represent to the public they serve.

City attorneys and the county counsel are guided by the Rules of Professional Conduct. Those rules may conflict with guidelines developed for other officials. The potential conflict should be considered when developing ethics policies.

Below are the findings and recommendations for each of the municipalities within San Joaquin County:

1.0 City of Tracy

A complaint was presented to the San Joaquin County Civil Grand Jury claiming a member of the Tracy



Tracy CA City Hall

City Council had a conflict of interest between the member’s job as an employee of a housing company and his or her role as a council member.

The member of the City Council had recused him or herself from discussing and making decisions about a housing project. Senior Counsel for the California Fair Political Practice Commission rendered an opinion which the council member followed. The council member did correspond with city

staff and did attend meetings concerning the project. The Grand Jury determined there was a perception but not an actual conflict of interest.

Tracy does not have an ethics policy. Many of the individuals interviewed believe that the city would benefit from an ethics policy. The Grand Jury learned that the Tracy City Council has requested the city attorney provide the framework for a code of conduct policy and lead a seminar for council members about how to move forward. The Grand Jury reviewed an excerpt from an agenda item dated March 20, 2018. The council was to discuss a code of conduct for boards, commissions, and the city council.⁵ The

⁴ <http://www.ca-ilg.org/ethics-fundamentals>

⁵ https://www.ci.tracy.ca.us/documents/20180320_CC_AP.pdf

council was considering items for its code of conduct that are very similar to the important principles of an ethics policy. (See page 5, above)

The executive summary for the proposed code of conduct states, “Councilmembers have raised concerns regarding the civility and fundamental fairness of procedures and activities of the City Council and various City Commissions. A further concern has been raised regarding actions by Councilmembers and/or Commissioners that may reflect adversely on the City in the eyes of some in the public.”⁶ Ethics policies can address conflicts of interest, nepotism, cronyism, prejudicial conduct, and financial impropriety. Officials are encouraged to recuse themselves in matters where they believe a conflict exists. In April 2017, a conflict of interest policy was brought before the council which would have required council members to recuse themselves if they have a family member who would benefit by a decision of the council. This policy was rejected by a 3-2 vote.

The majority was concerned about establishing an ethics policy for the same reason that they previously rejected the conflict of interest policy, namely that the following items would not be included:

- Insuring that roles and responsibilities are clearly identified
- Clarifying the language to make sure that the policy is understood by all
- Developing the policy that avoids any political or personal retribution

Most officials understand they are required to complete ethics training every two years as required by AB1234.⁷ They also believe that the ethics training they receive is comprehensive.

Finding

F1.1 The City of Tracy does not have an ethics policy for its elected officials, appointed officials, and senior staff (city manager, city attorney, city clerk and their subordinate employees not represented by a bargaining unit). The lack of a policy has resulted in conflict, mistrust, and allegations of misconduct.

Recommendations

R1.1 By October 31, 2018, the Tracy City Council develop and adopt an ethics policy that governs the behavior of its elected officials, appointed officials, and senior staff.

⁶ https://www.ci.tracy.ca.us/documents/20180320_CC_AP.pdf

⁷ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html>

2.0 San Joaquin County

The county has a written ethics policy from 2015. The Grand Jury interviewed members of the Board of Supervisors (BOS). Most are aware of the policy.

The current ethics policy only governs the BOS. Often, recommendations, executive summaries, and insights are provided to the BOS by the senior staff (county administrator, legal counsel, clerk, and their subordinate employees). Decisions are made based upon information received. It is imperative these employees be held to the same ethical standards as the BOS.

Findings

F2.1 The San Joaquin County Board of Supervisors ethics policy does not include dependent boards and commissions. This could cause policy inconsistency across the county's boards and commissions leading to a perception of differing values for each board in the county.

F2.2 The ethics policy for the County of San Joaquin does not cover the county administrator, county counsel, county clerk or their subordinate employees not represented by a bargaining unit.

These officials require the same guidelines as elected officials to ensure they are acting ethically.



San Joaquin County Administrative Building

Recommendations

R2.1 By October 31, 2018, the San Joaquin County Board of Supervisors develop and adopt an ethics policy that governs the behavior of dependent board and commission members.

R2.2 By October 31, 2018, The San Joaquin County Board of Supervisors develop and adopt an ethics policy that governs the behavior of the county senior staff.

3.0 City of Escalon



Escalon CA Welcome Sign

Several elected and appointed officials were interviewed for the city of Escalon concerning a written ethics policy. All are aware that the city has a written ethics policy focused on staff, not on elected or appointed officials. A majority believe there should be one. Overall there is a measure of trust and respect between members of the city council who in turn have trust and respect for city boards and commissions.

All are aware of the biannual requirement for ethics training and have completed it. They receive notices when it is time for the training. They feel that it is important to have guidelines

for all elected and appointed officials and all employees. They are unaware of any ethics violations. All agree that ethics principles are very important and synonymous with their community values.

Finding

F3.1 The City of Escalon does not have an ethics policy for its elected and appointed officials and senior staff such as the city administrator, city attorney, city clerk and their subordinate employees not represented by a bargaining unit. Failure to have an ethics policy could lead to poor judgement, public misconception and lack of trust.

Recommendation

R3.1 By October 31, 2018, the Escalon City Council develop and adopt an ethics policy that governs the behavior of its elected and appointed officials.

4.0 City of Lathrop



Lathrop CA City Hall

The Grand Jury interviewed several elected officials of the City of Lathrop to determine if the city had a written ethics policy and whom it governed. None were aware of a policy. They all believe

a written ethics policy is necessary and that it should cover elected and appointed officials as well as senior staff and most other employees.

All interviewed have completed ethics training, but some are unsure as to how often the training occurs. All are unaware of any ethics violations by officials in Lathrop.

Finding

F4.1 The City of Lathrop does not have an ethics policy for its elected and appointed officials and senior staff such as the city manager, city attorney, city clerk and their subordinate employees not represented by a bargaining unit. Failure to have an ethics policy could lead to poor judgement, public misconception and lack of trust.

Recommendation

R4.1 By October 31, 2018, the Lathrop City Council develop and adopt an ethics policy that governs the behavior of its elected and appointed officials and senior staff.

5.0 City of Lodi

Lodi has an ethics policy. Officials are aware of the policy and the standards that it sets. Elected city officials consistently recuse themselves from matters when a potential conflict arises. Overall, members of the city council have trust and respect for each other and for members of city boards and commissions.

All officials understand they are required to complete ethics training every two years as required by AB1234. They also believe the ethics training they receive is comprehensive. All officials are not aware of violations of the city ethics policy during their tenure.

The Lodi ethics policy does not cover members of the city management team. The city management team is made up of the city manager, city legal counsel, city clerk, and their subordinates. Often, recommendations, executive summaries, and insights are provided to the city council by these employees, and decisions are made based upon this information.



Lodi Mission Arch

Finding

F5.1 The ethics policy for the City of Lodi does not cover the city manager, city attorney, city clerk or subordinate employees not represented by a bargaining unit. These officials require the same guidelines as elected officials to ensure they are acting ethically.

Recommendation

R5.1 By October 31, 2018, The Lodi City Council develop and adopt an ethics policy that governs the city management team.

6.0 City of Manteca



Manteca CA Transit Center

Several elected and appointed officials of the city of Manteca were interviewed concerning any existing ethics policy. Not all are aware that the city does not have a written ethics policy for elected and appointed officials. Manteca does have a conflict of interest policy. Most are amenable to considering the adoption of a written ethics policy. City officials believe that if an ethics policy were developed, it should cover all employees as well as elected and appointed officials. All agree that the important principles listed in the Grand Jury's Methods of Investigation should be included.

All are aware of the biannual requirement for ethics training and have completed it. They are unaware of any ethics violations. Overall, there is a high level of trust and mutual respect between members of the city council. All emphasized that policy disagreements were handled in a professional way, an important factor that helps the City of Manteca be successful.

Finding

F6.1 The City of Manteca does not have an ethics policy for its elected and appointed officials and senior staff such as the city manager, city attorney, city clerk and their subordinate employees not represented by a bargaining unit. Failure to have an ethics policy could lead to poor judgement, public misconception and lack of trust.

Recommendations

R4.1 By October 31, 2018, the Manteca City Council develop and adopt an ethics policy that governs the behavior of its elected and appointed officials and senior staff.

7.0 City of Ripon

Several elected and appointed officials were interviewed for the City of Ripon concerning a written Ethics Policy. None know if the city has a written ethics policy, but most feel it is a necessary document. Most hold that an ethics policy should include elected officials, appointed commissioners, senior staff, and most other employees. None know if the human resources department has an ethics policy for employees.



Gateway to Ripon CA Arch

All have completed ethics training and are unaware of any violations in their city by elected officials, appointed commissioners, and senior staff. Many are unsure of the requirements for ethics training but believe their city attorney is knowledgeable and makes sure all laws are adhered to.

Several documents were provided by city officials. They include the following:

- Code of ethics for members of the Ripon City Council, boards and commissions,
- Code of conduct for elected officials,
- Roles and responsibilities for staff and City Council

Finding

F7.1 The ethics policy for the City of Ripon does not cover senior staff (city administrator, city attorney, city clerk or subordinate employees not represented by a bargaining unit). These officials require the same guidelines as elected officials to ensure they act ethically.

Recommendation

R7.1 By October 31, 2018, The Ripon City Council develop and adopt an ethics policy that governs the city senior staff.

8.0 City of Stockton



Stockton CA City Hall

The City of Stockton has an extensive and comprehensive ethics policy. Stockton's code of ethics for employees and city officials was last updated November 2, 2017. The policy is written to include elected officials, appointed staff, appointed board and commission members, and employees.

In addition to the mandatory Statement of Economic Interest Form 700, financial disclosure, the policy covers many topics such as the following:

- Incompatible outside activities
- Employee's outside employment or activities
- Restrictions on city employment for elected officials after leaving office

Some city officials are uncertain of the existence of an ethics policy. All know they are required to complete periodic ethics training but are uncertain about the frequency of the training. They rely on appointed staff to remind them and to organize the training. City officials characterized the city council as functional, unified, objective, and collegial.

Finding

F8.1 Not all individuals are aware of the ethics policy. Lack of awareness of the city ethics policy could lead to misunderstandings that violate the policy

Recommendation

R8.1 By October 31, 2018, city council members receive a copy of the ethics policy and attend a briefing about its contents.

Conclusion

Supreme Court Associate Justice Potter Stewart once said ethics is, “Knowing the difference between what you have the right to do, and what is right to do.”⁸ A written ethics policy is a tool to help city and county officials understand the difference between right and wrong and how to avoid even the perception of an ethics violation. A city receiving only one complaint of conflict of interest or an ethics violation can tarnish the reputation of both the member and the entire city council. It could take years for citizens to regain trust in their public servants. Ethics policies are designed to preserve the public’s trust in government and those who serve by setting a framework to guide conduct and behavior.

The Institute for Local Government website⁹ has a collection of very good documents that can assist municipalities in the development of an ethics policy. The California Fair Political Practices Commission website¹⁰ has a series of guidelines that detail conflict of interest rules.

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911. 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

The Tracy City Council shall respond to all applicable findings and recommendations in Section 1.0.

The San Joaquin County Board of Supervisors shall respond to all applicable findings and recommendations in Section 2.0.

The Escalon City Council shall respond to all applicable findings and recommendations in Section 3.0.

The Lathrop City Council shall respond to all applicable findings and recommendations in Section 4.0.

⁸ https://www.brainyquote.com/quotes/potter_stewart_390058

⁹ <http://www.ca-ilg.org/>

¹⁰ (<http://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html>)

The Lodi City Council shall respond to all applicable findings and recommendations in Section 5.0.

The Manteca City Council shall respond to all applicable findings and recommendations in Section 6.0.

The Ripon City Council shall respond to all applicable findings and recommendations in Section 7.0.

The Stockton City Council shall respond to all applicable findings and recommendations in Section 8.0.

Mail or hand deliver a hard copy of the response to:

Hon. Linda Lofthus, Presiding Judge
San Joaquin County Superior Court
180 East Weber Avenue, Room 1306J
Stockton, CA 95202

Also, please email the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org