



## STAFF REPORT

CITY OF YORBA LINDA

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City Attorney

DATE: ~~APRIL 7, 2009, MAY 5, 2009, MAY 19, 2009~~  
JUNE 2, 2009, JUNE 16, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: WILLIAM R. KELLY, INTERIM CITY MANAGER

PREPARED BY: CITY ATTORNEY

SUBJECT: ETHICS AND OPEN GOVERNMENT REGULATIONS

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### RECOMMENDATION

It is recommended that the City Council consider proposed regulations to further support ethics and open government practices and direct that an ordinance be prepared for introduction and first reading.

### BACKGROUND

At a previous City Council meeting the City Council discussed a desire to adopt a comprehensive ordinance establishing ethics and open government regulations. Council Member Anderson made a motion that was passed by the Council to direct the preparation of regulations to address a variety of issues. The goals of the regulations were stated as follows:

1. Establish prohibition against solicitation of campaign contributions from city contractors;
2. Establish prohibition against accepting a campaign contribution after approvals and disqualification from acting upon approvals if a campaign contribution was accepted within previous twelve month period;
3. Establish prohibition against seeking endorsements from city employees and commissioners;
4. Establish conduct guidelines for appointed and elected officials;
5. Establish a "whistleblower" procedure;
6. Establish mandatory in-person AB1234 training;
7. Establish prohibition against ad hoc committee meetings of the City Council and Commissions;

9. Establish prohibitions against the misuse of City resources or staff involvement in elections

### **DISCUSSION**

As discussed at a previous Council meeting, the proposed regulations sought by the Council are intended to establish practices consistent with the City Council's commitment to conduct the public's business in accordance with high ethical standards and in a manner consistent with open government practices. Each of the previously stated goals of the regulations are set forth below along with the proposed regulation or policy.

Staff seeks the Council's direction on whether the proposed regulations satisfy the Council's goals. Once the proposed regulations are approved in concept by the Council, the City Attorney will prepare the necessary Resolutions and Ordinances for the Council's final adoption of the regulations.

### **GOALS AND PROPOSED REGULATIONS:**

**Goal: Establish prohibition against solicitation of campaign contributions from city contractors**

#### **Proposed Regulation:**

It is unlawful for any City Official to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person, firm or entity that is under current contract to do business with the city or desires to contract to do business with the city, to make a campaign contribution to an individual, political action committee or association of citizens in connection with promoting or opposing any candidate for city council or any municipal initiative or referendum on the ballot for a City election. For purposes of this section, City Official shall mean a Council Member, a Commissioner or any other person required by the City's Conflict of Interest Code to file a Form 700 Statement of Economic Interest.

**Goal: Establish 90-day prohibition against accepting a campaign contribution after approving a permit or decision; require disqualification from acting upon a permit or decision if a campaign contribution was accepted within a previous twelve month period**

#### **Proposed Regulation:**

No Council Member or any campaign committee controlled by a Council Member shall solicit or accept any campaign contribution or loan of \_\_\_\_\_ dollars (\$\_\_\_\_\_) or more from any person for a period of three months following the date a final decision is

rendered in any proceeding before the Council involving a license, permit, contract or other land use entitlement, if the Council Member knows or has reason to know that the person was the applicant, the contractor or the direct recipient of the approval. For purposes of this section, members of the public, other than the applicant, the contractor or direct recipient of an approval, who expresses an opinion to the City Council through direct public comment, testimony at a public hearing or in writing shall not be affected by this section.

A Council Member shall not participate in, nor use his or her official position to influence, a decision of the city council if it is reasonably foreseeable that the decision will have a material financial effect, apart from its effect on the public generally or a general neighborhood, on a recent campaign contributor. A recent campaign contributor means any person, firm or entity who has made campaign contributions totaling \$\_\_\_\_\_ or more to the Council Member or to any campaign committee controlled by the Council Member in the twelve-month period immediately preceding the date of the decision. A material financial effect shall have the same meaning as provided for by the Fair Political Practices Commission regulations.

Note: In accordance with the FPPC definitions, a Council Member would not be permitted to vote on a decision where a campaign contributor owns property within 500 feet of the proposed decision. As proposed, this regulation would have a significant impact on Council Members and require them to plot out their respective campaign contributors in the same manner that staff plots out the Council Members' various economic interests in order to avoid a conflict of interest violation. Staff seeks direction on whether the scope of this regulation desired. If the amount of the disqualifying campaign contribution is set at a high level then the monitoring impacts would decrease assuming that the average campaign contribution made by citizens is below the threshold amount adopted.

**Goal: Establish prohibition against seeking endorsements from city employees and commissioners**

**Proposed Regulation:**

It is unlawful for any City Official, candidate for public office or person promoting or opposing a municipal initiative or referendum to solicit, directly or indirectly, a political endorsement from any City employee or City Commission. Notwithstanding the prohibition stated above this section shall not prohibit a City Official, a candidate for elective office or a person promoting or opposing a municipal initiative from soliciting an endorsement from City employees if the solicitation is part of a solicitation made to a significant segment of the public which may include City employees. City Official shall

include any Council Member, Commissioner, the City Manager, the City Attorney or Department Head.

**Goal: Establish conduct guidelines for appointed and elected officials**

**Proposed Regulation:**

The proposed conduct policy is attached as Exhibit A to this staff report-See Exhibit A. The proposed policy is identical to one adopted by the City of Sunnyvale.

**Goal: Establish a "whistleblower" procedure**

**Proposed Regulation:**

A proposed procedure like the one recommended by the National League of Cities is attached as Exhibit B to this staff report-See Exhibit B.

**Goal: Establish mandatory in-person AB1234 training for all city staff, executives and appointed and elected officials**

**Proposed Regulation:**

All department heads, managers, City Council Members, City Commissioners and the City Manager shall attend in-person AB1234 training as required by state law. The City Clerk shall coordinate training sessions with the City Attorney and the training shall be provided no less frequently than every other year. There may be valid reasons for a person to accomplish training outside of the City's official training sessions. City Council Members and Commissioners must inform the Mayor in writing as to the reason why the person cannot attend the City's in-person training date. Managers and Department Heads may only be excused by the City Manager.

**Goal: Establish prohibition against closed door ad hoc committee meetings of the City Council and Commissions**

**Proposed Regulation:**

The Mayor and Commissioner Chairs shall not appoint ad hoc committees for the purpose of permitting less than a quorum of the Council or Commission to meet behind closed doors, or otherwise in private, with members of the public, other officials or applicants to discuss official city business related to matters pending before the Council or Commissioner or matters which are to be brought forward to the Council or Commission. If the Mayor or a Commission Chair desires a committee to work on a particular matter the Mayor or Chair may appoint a committee and instruct the committee to comply with the noticing and meeting requirements of the Brown Act.

**Goal: Mandate the tape recording of all closed session meetings of the City Council**

**Proposed Regulation:**

The Brown Act authorizes the City Council to direct that closed session discussions of the City Council be recorded and maintained by a designated person. Beginning on \_\_\_\_\_, the [City Manager or City Attorney] is hereby directed to provide for the audio taping of all closed session meetings of the City Council. The audio tapes shall be maintained by \_\_\_\_\_ and shall remain at all times in a secure location accessible only to \_\_\_\_\_. The closed session audio tapes shall not be deemed a public record and shall only be accessed in accordance with the provisions of the Brown Act in connection with an official investigation or review as provided for in the Brown Act.

Note: Government Code Section 54957.2(a), which is part of California's open meeting law, the Ralph M. Brown Act ("the Brown Act"), provides that a legislative body may adopt an ordinance or resolution to require an officer or employee of the agency to keep a minute book of topics that are discussed and decisions that are made in closed session. That section states:

"(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such a minute book may, but need not, consist of a recording of the closed session. "

The City Attorney advises the Council to carefully consider that the keeping of closed session tapes will generate attempts to obtain minutes of closed sessions.

As stated in Section 54957.2(a), the minutes or tape recordings of closed session meetings are not public records and shall be kept confidential. However, Section 54957(a) also states that if someone alleges that a violation of the Brown Act occurs during a closed session, the minutes or tape recordings of the closed session can be required to be produced **to a court for review by a judge.** (See, *Kleitman v. Superior Court*, 74 Cal.App.4th 324 (1999).)

Requests for judicial review of closed session minutes have been made in lawsuits filed by city residents (*Id.*); lawsuits filed by newspapers (*Register Division of Freedom Newspapers, Inc., v. County of Orange*, 158 Cal.App.3d 893 (1984)), and lawsuits filed

by city council members (Hamilton v. Town of Los Gatos, 213 Cal.App.3d 1050 (1989)) Local agencies also have provided copies of minutes or recordings of closed sessions to the District Attorney's office pursuant to a confidentiality agreement when the District Attorney is investigating a claim of a Brown Act violation that allegedly occurred during a closed session. (See, County of Los Angeles v. Superior Court, 130 Cal.App.4th 1099 (2005).

Thus, the fact that the Statute states the minutes of closed sessions are not public records does not mean that someone will not try to use those minutes in litigation against the City.

**Goal: Establish prohibitions against the misuse of City resources or staff involvement in elections**

**Proposed Regulation:**

**Misuse of City Position or Resources**

(a) It is unlawful for any City Official or staff person to engage in campaign-related activities, such as fund-raising, the development of electronic or written materials, or research, for a campaign for any elective office using City facilities, equipment, supplies, or other City resources. It is unlawful for any person to induce or coerce, or attempt to induce or coerce any other person to engage in any activity prohibited by this section.

(b) It is unlawful for any current or former City Official to use or disclose to any person any confidential information he or she acquired in the course of his or her official duties, except when such disclosure is a necessary function of his or her official duties.

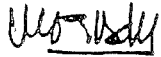
(c) Nothing in this section shall prohibit the use of City resources to provide information to the public about the possible effects of any bond issue or other ballot measure relating to City activities, operations, or policies, provided that: (1) the use of public resources is otherwise legally authorized; and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

**RECOMMENDATION**

Staff recommends that the City Council discuss the proposed regulations and provide specific direction so that an ordinance can be introduced for first reading.

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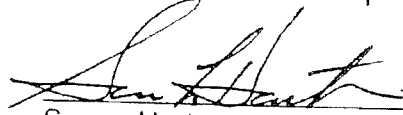
Approved by:



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William R. Kelly  
Interim City Manager

Certified as to Fiscal Impacts:



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Susan Hartman  
Finance Director

Exhibit A – Proposed Conduct Policy  
Exhibit B – Proposed Whistleblower Policy

## EXHIBIT A

### City of Yorba Linda Code of Conduct for Elected and Appointed Officials

**"Conduct is three-fourths of our life and its largest concern."  
-- Matthew Arnold**

#### **The Three R's of Yorba Linda Government Leadership: Roles, Responsibilities and Respect**

This Code of Conduct is designed to describe the manner in which Council members and Commissioners should treat one another, city staff, constituents, and others they come into contact with in representing the City of Yorba Linda

#### **Overview of Roles & Responsibilities**

**"Leadership is an action, not a word."  
-- Richard Cooley**

Another resource that is helpful in defining the roles and responsibilities of elected officials can be found in the Leadership Guide for Mayors and Council members published by the League of California Cities.

#### **Mayor**

- Serves at the pleasure of the Council
- Acts as the official head of the City for all ceremonial purposes
- Chairs Council meetings
- Calls for special meetings
- Recognized as spokesperson for the City
- Makes judgment calls on proclamations, Special Orders of the Day, Agenda organization in conjunction with the City Manager etc.
- Recommends subcommittees as appropriate for Council approval
- Leads the Council into an effective, cohesive working team
- Signs documents on behalf of the City
- Serves as official delegate of the City to the U.S. Conference of Mayors and other events and conferences

#### **Mayor Pro Tem**

- Serves at the pleasure of the Council
- Performs the duties of the Mayor if the Mayor is absent or disabled
- Chairs Council meetings at the request of the Mayor
- Represents the City at ceremonial functions at the request of the Mayor

#### **All Council Members**

All members of the City Council, including those serving as Mayor and Mayor Pro Tem, have equal votes. No Council member has more power than any other Council member, and all should be treated with equal respect.

All Council members should: Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others.

- Prepare in advance of Council meetings and be familiar with issues on the agenda
- Represent the City at ceremonial functions at the request of the Mayor
- Place activities and events on the Council's weekly activities calendar that invite official participation of all Council members. A list of the activities of individual Council members may also be submitted for public record at the option of the Councilmember
- Be respectful of other people's time. Stay focused and act efficiently during public meetings.
- Serve as a model of leadership and civility to the community
- Inspire public confidence in Yorba Linda government
- Provide contact information with the Council Executive Assistant in case an emergency or urgent situation arises while the Councilmember is out of town
- Demonstrate honesty and integrity in every action and statement
- Participate in scheduled activities to increase team effectiveness and review Council procedures, such as this Code of Conduct

### **Meeting Chair**

The Mayor will chair official meetings of the City Council, unless the Mayor Pro Tem or another Councilmember is designated as Chair of a specific meeting.

- Maintains order, decorum, and the fair and equitable treatment of all speakers
- Keeps discussion and questions focused on specific agenda item under consideration
- Makes parliamentary rulings with advice, if requested, from the City Attorney who acts as an advisory parliamentarian. Chair rulings may be overturned if a Councilmember makes a motion as an individual and the majority of the Council votes to overrule the Chair.

### **Former Council Members**

Past members of the City Council who speak to the current City Council about a pending issue should disclose who they are speaking on behalf of (individual or organization).

### **Policies & Protocol Related To Conduct**

**"Wherever there is a human being, there is an opportunity for kindness."  
-- Seneca**

### **Ceremonial Events**

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor will recommend which Councilmember should be asked to serve as a substitute. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Councilmembers at their homes are presumed to be for unofficial, personal consideration.

### **Correspondence Signatures**

Councilmembers do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor unless the Mayor requests that they be signed by another Councilmember or City staff. If correspondence is addressed only to one Council member, that Councilmember should check with staff on the best way to respond to the sender.

### **Endorsement of Candidates**

While Councilmembers and Commissioners may have the right to endorse candidates for political office it is inappropriate to mention endorsements during Council or Commission meetings or other official City meetings.

### **Intergovernmental Relations**

The Council will appoint specific Council members to take a leadership role on various boards and commissions in accordance with the applicable City ordinance.

### **Non-agenda Items**

During a designated period of the agenda, citizens, Council members and staff may bring forth issues or questions that are not on the meeting's agenda. Topics should be legislative items requiring action by the Mayor or the Council, study issues for future consideration, and requests for information. Each speaker, citizen or elected official, will be limited to five minutes.

### **Public Announcements in Council Meetings**

Council members who want to speak first during the Public Announcement portion of the Council meeting should notify the Chair in advance. Otherwise, Council members will be recognized when the Chair notices the light signal. Council members, like members of the public who use this portion of the agenda to recognize achievements or

promote an event, should keep the focus on matters of community-wide interest.

### **Public Meeting Hearing Protocol**

The applicant or appellant shall have the right to speak first. The Chair will determine the length of time allowed for this presentation. Speakers representing either pro or con points of view will be allowed to follow. The Chair will determine how much time will be allowed for each speaker, with 3 to 5 minutes the standard time granted. The applicant or appellant will be allowed to make closing comments. The Chair has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Council members will not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council members are not appropriate until after the close of the public hearing. Council members should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view. Main motions may be followed by amendments, followed by substitute motions. Any Councilmember can call for a point of order. Only Council members who voted on the prevailing side may make motions to reconsider. Council members who desire to make the first motion on issues which they feel strongly about should discuss their intention with the Chair in advance of the Council meeting.

### **Travel Expenses**

The policies and procedures related to the reimbursement of travel expenses for official City business by Council members are outlined in a Council Policy. All Council travel in excess of the allowed budget, in which the Councilmember expects to officially represent the City and/or be reimbursed by the City for travel costs, must be approved in advance by the Council. The travel policy and budget for Council should be reviewed at each budget cycle.

### **Council Conduct with One Another**

**"In life, courtesy and self-possession, and in the arts, style, are the sensible impressions of the free mind, for both arise out of a deliberate shaping of all things and from never being swept away, whatever the emotion, into confusion or dullness."**

**-- William Butler Yeats**

Councils and Commissions are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council or Commission may "agree to disagree" on contentious issues.

### **In Public Meetings**

- **Use formal titles**

The Council and Commissioners should refer to one another formally during public meetings as Mayor, Mayor Pro Tem, Councilmember or Commissioner followed by the individual's last name.

- **Practice civility and decorum in discussions and debate**

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council members or Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

- **Honor the role of the Chair in maintaining order**

It is the responsibility of the Chair to keep the comments of Council members or Commissioners on track during public meetings. Council members and Commissioners should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

- **Avoid personal comments that could offend other Council members**

If a Councilmember or Commissioner is personally offended by the remarks of another Councilmember or Commissioner, the offended Councilmember or Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Councilmember or Commissioner to justify or apologize for the language used. The Chair will maintain control of this discussion.

- **Demonstrate effective problem-solving approaches**

Councilmembers and Commissioners have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

### **In Private Encounters**

- **Continue respectful behavior in private**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

- **Be aware of the insecurity of written notes, voicemail messages, and e-mail**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this email message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

- **Even private conversations can have a public presence**

Elected officials are always on display – their actions, mannerisms, and language are

monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

### **Council Conduct with City Staff**

**"Never let a problem become an excuse."  
-- Robert Schuller**

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

#### **• Treat all staff as professionals**

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

#### **• Limit contact to specific City staff**

Questions of City staff and/or requests for additional background information should be directed only to the City Manager, City Attorney, Assistant City Manager, or Department Heads. The Office of the City Manager should be copied on any request, except those to the City Attorney. Requests for follow-up or directions to staff should be made only through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Council members or Commissioners should ask the City Manager for direction. Materials supplied to a Councilmember or Commissioner in response to a request will be made available to all members of the Council so that all have equal access to information.

#### **• Council questions/inquiries of City staff and contact thereof**

It is appropriate for Council or a Commission to contact any member of staff, including the City Manager and the City Attorney for a question and/or inquiry regarding a City related matter, so long as the item in question falls under the purview of that staff member and it is with the approval of either the City Manager, City Attorney or Department Director. Except during emergencies, any Council contact of staff must be conducted during the City's hours of operation. If the Council member is not sure if a situation is an emergency, the Council member should first contact the City Manager. If the City Manager is not reachable or available, the Council should contact the appropriate Department Director or City Attorney in the case of a legal matter. A Council member has the right to make an inquiry regarding operations in order to better understand current or future policy implications. Staff responses to operational or policy questions raised outside of normal business hours should be expected no earlier than the next business day. Moreover, any question concerning ongoing operations cannot be answered until it is safe and practical to do so and does not jeopardize operational integrity. Staff shall make every effort to document its responses and provide copies to the City Manager and all Council members.

- **Do not disrupt City staff from their jobs**

Councilmembers and Commissioners should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met

- **Never publicly criticize an individual employee**

Council and Commissions should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney should be made directly to the City Attorney.

- **Do not get involved in administrative functions**

Councilmembers and Commissioners must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

- **Check with City staff on correspondence before taking action**

Before sending correspondence, Councilmembers and Commissioners should check with City staff to see if an official City response has already been sent or is in progress.

- **Do not attend meetings with City staff unless requested by staff.**

Even if the Councilmember does not say anything, the Councilmember's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

- **Limit requests for staff support**

Routine secretarial support will be provided to all Councilmembers. The Executive Assistant opens all mail for Councilmembers, unless a Councilmember requests other arrangements. Mail addressed to the Mayor may be reviewed first by the City Manager who notes suggested action and/or follow-up items. Requests for additional staff support – even in high priority or emergency situations -- should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

- **Do not solicit political support from staff**

Councilmembers should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

### **Council Conduct with The Public**

**"If a man be gracious and courteous to strangers, it shows he is a citizen of the world, and that his heart is no island cut off from other lands, but a continent that joins to them."**

-- Francis Bacon

### **In Public Meetings**

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Councilmembers or Commissioners toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- **Be welcoming to speakers and treat them with care and gentleness**

"I give many public presentations so standing up in front of a group and using a microphone is not new to me. But I found that speaking in front of Council was an entirely different experience. I was incredibly nervous and my voice was shaking. I think the reason was because the issue was so personal to me. The Council was going to take a vote that would affect my family's daily life and my home. I was feeling a lot of emotion. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity."

- **Be fair and equitable in allocating public hearing time to individual speakers**

"The first thing the Mayor said to me was to be brief because the meeting was running late and the Council was eager to go home. That shouldn't be my problem. I'm sorry my item was at the end of the agenda and that there were a lot of speakers, but it is critically important to me and I should be allowed to say what I have to say and believe that the Council is listening to me." The Chair will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated five-minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers. No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Chair reopens the public hearing for a limited and specific purpose.

- **Give the appearance of active listening**

It is disconcerting to speakers to have Councilmembers or Commissioners not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

- **Ask for clarification, but avoid debate and argument with the public**

Only the Chair – not individual Councilmembers or Commissioners -- can interrupt a speaker during a presentation. However, a Councilmember can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the Councilmember finds disturbing. If speakers become flustered or defensive by Council questions, it is the responsibility of the Chair to calm and focus the speaker and maintain the order and decorum of the meeting. Questions by Councilmembers or Commissioners to members of the public testifying should seek to clarify or expand

information. It is never appropriate to belligerently challenge or belittle the speaker. Council members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- **No personal attacks of any kind, under any circumstance**

Councilmembers and Commissioners should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

- **Follow parliamentary procedure in conducting public meetings**

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. The Chair, subject to the appeal of the full Council makes final rulings on parliamentary procedure.

### **In Unofficial Settings**

- **Make no promises on behalf of the Council**

Councilmembers will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

- **Make no personal comments about other Councilmembers**

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Councilmembers, their opinions and actions.

- **Remember that despite its impressive population figures, Yorba Linda is a small town at heart**

Councilmembers are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Yorba Linda. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Councilmembers, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

### **Council Conduct with Other Public Agencies**

"Always do right. This will gratify some people and astonish the rest."  
-- Mark Twain

- **Be clear about representing the city or personal interests**

If a Councilmember appears before another governmental agency or organization to give a statement on an issue, the Councilmember must clearly state: 1) if his or her

statement reflects personal opinion or is the official stance of the City; 2) whether this is the majority or minority opinion of the Council. If the Councilmember is representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint. If the Councilmember is representing another organization whose position is different from the City, the Councilmember should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Councilmembers should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- **Correspondence also should be equally clear about representation**

City letterhead may be used when the Councilmember is representing the City and the City's official position. A copy of official correspondence should be given to the Council Executive Assistant to be filed in the Council Office as part of the permanent public record. It is best that City letterhead not be used for correspondence of Councilmembers representing a personal point of view or a dissenting point of view from an official Council position. However, should Councilmembers use City letterhead to express a personal opinion, the official City position must be stated clearly so the reader understands the difference between the official City position and the minor viewpoint of the Councilmember.

### **Council Conduct With Boards and Commissions**

**"We rarely find that people have good sense unless they agree with us."  
--Francois, Duc de La Rochefoucauld**

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- **If attending a Board or Commission meeting, be careful to only express personal opinions**

Councilmembers may attend any Board or Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer -- could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Board or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

- **Limit contact with Board and Commission members to questions of clarification**

It is inappropriate for a Councilmember to contact a Board or Commission member to lobby on behalf of an individual, business, or developer. It is acceptable for Councilmembers to contact Board or Commission members in order to clarify a position taken by the Board or Commission.

- **Remember that Boards and Commissions serve the community, not individual Councilmembers**

The City Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. But Board and Commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten Board and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board or Commission appointment should not be used as a political "reward."

- **Be respectful of diverse opinions**

A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Boards and Commissions, but must be fair and respectful of all citizens serving on Boards and Commissions.

- **Keep political support away from public forums**

Board and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

- **Inappropriate behavior can lead to removal** Inappropriate behavior by a Board or Commission member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council and the individual is subject to removal from the Board or Commission.

### **Council Conduct with the Media**

**"Keep them well fed and never let them know that all you've got is a chair and a whip."**

-- Lion Tamer School

Councilmembers are frequently contacted by the media for background and quotes.

- **The best advice for dealing with the media is to never go "off the record"**

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

- **The Mayor is the official spokesperson for the representative on City position.**

The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Councilmember is contacted by the media, the Councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.

• **Choose words carefully and cautiously**

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

**Sanctions**

"You cannot have a proud and chivalrous spirit if your conduct is mean and paltry; for whatever a man's actions are, such must be his spirit."  
-- Demosthenes

• **Public Disruption**

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

• **Inappropriate Staff Behavior**

Councilmembers should refer to the City Manager any City staff or to the City Attorney any City Attorney's staff who do not follow proper conduct in their dealings with Councilmembers, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions. (Please refer to the section on Council Conduct with City Staff for more details on interaction with Staff.)

• **Councilmembers and Commissioners Behavior and Conduct**

City Councilmembers and Commissioners who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments or have official travel restricted. Serious infractions of the State or local Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council. Councilmembers should point out to the offending Councilmember infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro Tem. It is the responsibility of the Mayor to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting. If violation of the Code of Conduct is outside of the observed behaviors by the Mayor or Councilmembers, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration. Videotaping of the complaint hearing should be used for a Council ad hoc subcommittee.

**Principles of Proper Conduct**

**Proper conduct IS ...**

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

**Proper conduct IS NOT ...**

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

**It all comes down to respect**

Respect for one another as individuals. Respect for the validity of different opinions. Respect for the democratic process. Respect for the community that we serve.

**Checklist for Monitoring Conduct**

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?

- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

### **Glossary of Terms**

**attitude** The manner in which one shows one's dispositions, opinions, and feelings

**behavior** External appearance or action; manner of behaving; carriage of oneself

**civility** Politeness, consideration, courtesy

**conduct** The way one acts; personal behavior

**courtesy** Politeness connected with kindness

**decorum** Suitable; proper; good taste in behavior

**manners** A way of acting; a style, method, or form; the way in which things are done

**point of order** An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration

**point of personal privilege** A challenge to a speaker to defend or apologize for comments that a fellow Councilmember considers offensive

**propriety** Conforming to acceptable standards of behavior

**protocol** The courtesies that are established as proper and correct

**respect** The act of noticing with attention; holding in esteem; courteous regard



## Exhibit B

### Proposed Whistleblower Regulations

#### 1.0 Purpose And Scope

It is the policy of the City of Yorba Linda to encourage reporting by its employees of improper governmental action taken by City of Yorba Linda officers or employees and to protect City of Yorba Linda employees who have reported improper governmental actions in accordance with the City of Yorba Linda's policies and procedures.

#### 2.0 Explanation Of Key Terms

##### 2.1 Improper Governmental Action

Any action by a City of Yorba Linda officer or employee that is a) undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and b) in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. It does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining or civil service laws, alleged violations of labor agreements or reprimands.

##### 2.2 Retaliatory Action

Any adverse change in the terms and conditions of a City of Yorba Linda employee's employment.

##### 2.3 Emergency

A circumstance that if not immediately changed may cause damage to persons or property.

#### 3.0 Procedures For Reporting

City of Yorba Linda employees who become aware of improper governmental actions should raise the issue first with their supervisor. If requested by the supervisor, the employee shall submit a written report to the supervisor, or to some person designated by the supervisor, stating in detail the basis for the employee's belief that an improper governmental action has occurred. Where the employee reasonably believes the improper governmental action involves his or her supervisor, the employee may raise the issue directly with the City Manager or such other person as may be designated by the City Manager to receive reports of improper governmental action. Where the employee reasonable believes the improper governmental action involves the City Manager, the City Attorney or an elected or appointed official the employee may raise the issue directly with the City Attorney, the Orange County District Attorney's Office, the

Fair Political Practices Commission and/or the California Attorney General's Office. In the case of an emergency and where the City Manager, City Attorney or an elected or appointed official is not involved and where the employee believes that damage to persons or property may result if action is not taken immediately, the employee may report the improper governmental action directly to the appropriate governmental agency with responsibility for investigating the improper action. The supervisor, the City Manager or the designee, as the case may be, shall take prompt action to assist the City of Yorba Linda in properly investigating the report of improper governmental action. The City of Yorba Linda officers and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of a summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

City of Yorba Linda employees may report information about improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action if the City of Yorba Linda employee reasonably believe that an adequate investigation was not undertaken by the City of Yorba Linda to determine whether an improper governmental action occurred, or that insufficient action has been taken by the City of Yorba Linda to address the improper governmental action or that for other reasons the improper governmental action is likely to recur.

City of Yorba Linda employees who fail to make a good faith attempt to follow the City of Yorba Linda procedures in reporting improper governmental action shall not receive the protection provided by the City of Yorba Linda in these procedures.

#### **4.0 Protection Against Retaliatory Actions**

City of Yorba Linda officials and employees are prohibited from taking retaliatory action against a City of Yorba Linda employee because he or she has, in good faith, reported an improper governmental action in accordance with these policies and procedures. Employees who believe that they have been retaliated against for reporting an improper governmental action should advise their supervisor, the City Manager or the City Manager's designee. City of Yorba Linda officials and supervisors shall take appropriate action to investigate and address complaints of retaliation. If the employee's supervisor, the City Manager, or the City Manager's designee, as the case may be, does not satisfactorily resolve a City of Yorba Linda employee's complaint that he or she has been retaliated against in violation of this policy, the City of Yorba Linda employee may obtain protection under this policy and pursuant to state law by providing a written notice to the City Council that a) specifies the alleged retaliatory action, and b) specifies the relief requested.

City of Yorba Linda employees shall provide a copy of their written charge to the City Manager, or where the alleged retaliation is from the City Manager the employee shall provide a copy of their written charge to the Mayor, no later than thirty (30) days after the occurrence of the alleged retaliatory action. The City of Yorba Linda shall respond within thirty (30) days to the charge of retaliatory action.

After receiving either the response of the City of Yorba Linda or thirty (30) days after the delivery of the charge to the City of Yorba Linda, the employee may request a hearing before a retired judge or other representative of a mediation services company to establish that a retaliatory action occurred and to obtain appropriate relief provided by law. The costs of the reviewer shall be borne by the City. An employee seeking a hearing should deliver the request for hearing to the City Manager or Mayor within the earlier of either fifteen (15) days of delivery of the City of Yorba Linda's response to the charge of retaliatory action, or forty-five (45) days of delivery of the charge of retaliation to the City of Yorba Linda for response.

Upon receipt of request for hearing, the City of Yorba Linda shall apply within five (5) working days to a mediation service for an adjudicative proceeding before a retired judge.

## 5.0 Responsibilities

### 5.1 City Manager

The City Manager is responsible for a) implementing the City of Yorba Linda's policies and procedures, b) reporting improper governmental action, and c) for protecting employees against retaliatory actions. The City Manager is also responsible for ensuring that this policy and these procedures are a) permanently posted where all employees will have reasonable access to them, b) are made available to any employee upon request, and c) are provided to all newly-hired employees.

### 5.2 Officers, Managers and Supervisors

Are responsible for ensuring the procedures are fully implemented within their area of responsibility.

Violations of this policy and these procedures may result in appropriate disciplinary action, up to and including dismissal.

## 6.0 Reference

- Agency List **IMPROPER GOVERNMENTAL ACTION AGENCY LISTING**

The following is a list of	Address	City	State	Zip	Phone
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agencies responsible for enforcing federal, state and local laws and investigating other issues involving improper governmental action. Employees having questions about these agencies or the procedures for reporting improper governmental action are encouraged to contact the City Manager. <b>Agency</b>					
Yorba Linda City Attorney					
Orange County District Attorneys Office					
Yorba Linda Police Department					
Attorney General's Office					
Fair Political Practices Commission					

ORDINANCE NO. 2009-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YORBA LINDA ADDING CHAPTER 2.44 OF TITLE 2 OF THE YORBA LINDA MUNICIPAL CODE ESTABLISHING ETHICS REGULATIONS**

**WHEREAS**, the City Council has directed staff to prepare a comprehensive ordinance establishing ethics and open government regulations to address a variety of issues; and

**WHEREAS**, the issues to be addressed include campaign contributions; endorsements from city employees and commissioners; guidelines for elected and appointed officials; protection for “whistleblowers;” mandatory in-person AB 1234 training for all staff members and City officials, whether elected or appointed; prohibiting ad hoc committee meetings of the City Council and Commission; tape recording of all closed session meetings of the City Council; and prohibiting the misuse of City resources or staff involvement in elections; and

**WHEREAS**, the proposed regulations sought by the Council are intended to establish practices consistent with the City Council’s commitment to conduct the public’s business in accordance with high ethical standards and in a manner consistent with open government practices.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YORBA LINDA DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Chapter 2.44 of the Yorba Linda Municipal Code is hereby stated to read as follows:

**“CHAPTER 2.44  
ETHICS REGULATIONS**

**Sections:**

- Sec. 2.44.010** No solicitation of campaign contributions from city contractors.
- Sec. 2.44.020** Prohibition against accepting campaign contributions for 90 days after approving a permit or decision.
- Sec. 2.44.030** Disqualification from acting upon a permit or decision if a campaign contribution was accepted within a previous twelve month period.
- Sec. 2.44.040** Prohibition against seeking endorsements from city employees and commissioners.
- Sec. 2.44.050** Adoption of a code of conduct for elected and appointed officials.
- Sec. 2.44.060** Adoption of a “whistleblower” procedure.
- Sec. 2.44.070** Mandatory in-person AB1234 training for all city staff, executives and appointed and elected officials.
- Sec. 2.44.080** Prohibition against closed door ad hoc committee meetings of the City Council and Commissions.
- Sec. 2.44.090** Tape recording of all closed session meetings of the City Council.
- Sec. 2.44.100** Prohibitions against the misuse of City resources or staff involvement in elections.

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**Sec. 2.44.010. No solicitation of campaign contributions from city contractors**

It is unlawful for any City Official to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person, firm or entity that is under current contract to do business with the city or desires to contract to do business with the city, to make a campaign contribution to an individual, political action committee or association of citizens in connection with promoting or opposing any candidate for city council or any municipal initiative or referendum on the ballot for a City election. For purposes of this section, City Official shall mean a Council Member, a Commissioner or any other person required by the City's Conflict of Interest Code to file a Form 700 Statement of Economic Interest.

**Sec. 2.44.020. Prohibition against accepting campaign contributions for 90 days after approving a permit or decision.**

No Council Member or any campaign committee controlled by a Council Member shall solicit or accept any campaign contribution or loan of \_\_\_\_\_ dollars (\$\_\_\_\_) or more from any person for a period of three months following the date a final decision is rendered in any proceeding before the Council involving a license, permit, contract or other land use entitlement, if the Council Member knows or has reason to know that the person was the applicant, the contractor or the direct recipient of the approval. For purposes of this section, members of the public, other than the applicant, the contractor or direct recipient of an approval, who expresses an opinion to the City Council through direct public comment, testimony at a public hearing or in writing shall not be affected by this section.

**Sec. 2.44.030 Disqualification from acting upon a permit or decision if a campaign contribution was accepted within a previous twelve month period.**

A Council Member shall not participate in, nor use his or her official position to influence, a decision of the city council if the decision involves an applicant, a contractor or a direct recipient who is also a recent campaign contributor. A recent campaign contributor means any person, firm or entity who has made campaign contributions totaling \$\_\_\_\_\_ or more to the Council Member or to any campaign committee controlled by the Council Member in the twelve-month period immediately preceding the date of the decision.

**Sec. 2.44.040. Prohibition against seeking endorsements from city employees and commissioners.**

It is unlawful for any City Official, candidate for public office or person promoting or opposing a municipal initiative or referendum to solicit, directly or indirectly, a political endorsement from any City employee or City Commission. Notwithstanding the prohibition stated above this section shall not prohibit a City Official, a candidate for elective office or a person promoting or opposing a municipal initiative from soliciting an endorsement from City employees if the solicitation is part of a solicitation made to a significant segment of the public which may include City employees. City Official shall include any Council Member, Commissioner, the City Manager, the City Attorney or a Department Head.

**Sec. 2.44.050. Adoption of a code of conduct for elected and appointed officials.**

The City Council shall adopt by resolution a "Code of Conduct for Elected and Appointed Officials" to describe the manner in which Council members and Commissioners should treat one another, city staff, constituents, and others they come into contact with in representing the City of Yorba Linda

**Sec. 2.44.060. Adoption of a "whistleblower" procedure.**

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The City Council shall adopt by separate ordinance a “whistleblower” procedure to protect City of Yorba Linda employees who have reported improper governmental actions in accordance with the City of Yorba Linda’s policies and procedures.

**Sec. 2.44.070. Mandatory in-person AB1234 training for all city staff, executives and appointed and elected officials.**

All department heads, managers, City Council Members, City Commissioners and the City Manager shall attend in-person AB1234 training as required by state law. The City Clerk shall coordinate training sessions with the City Attorney and the training shall be provided no less frequently than every other year. There may be valid reasons for a person to accomplish training outside of the City’s official training sessions. City Council Members and Commissioners must inform the Mayor in writing as to the reason why the person cannot attend the City’s in-person training date. Managers and Department Heads may only be excused by the City Manager.

**Sec. 2.44.080. Prohibition against closed door ad hoc committee meetings of the City Council and Commissions**

The Mayor and Commissioner Chairs shall not appoint ad hoc committees for the purpose of directing or authorizing less than a quorum of the Council or Commission to meet behind closed doors, or otherwise in private, with members of the public, other officials or applicants to discuss official city business related to matters pending before the Council or Commissioner or matters which are to be brought forward to the Council or Commission. If the Mayor or a Commission Chair desires a committee to work on a particular matter the Mayor or Chair may appoint a committee and instruct the committee to comply with the noticing and meeting requirements of the Brown Act.

**Sec. 2.44.090. Tape recording of all closed session meetings of the City Council.**

The Brown Act authorizes the City Council to direct that closed session discussions of the City Council be recorded and maintained by a designated person. Beginning on \_\_\_\_\_, the [City Manager or City Attorney] is hereby directed to provide for the audio taping of all closed session meetings of the City Council. The audio tapes shall be maintained by \_\_\_\_\_ and shall remain at all times in a secure location accessible only to \_\_\_\_\_. The closed session audio tapes shall not be deemed a public record and shall only be accessed in accordance with the provisions of the Brown Act in connection with an official investigation or review as provided for in the Brown Act.

*[Note: Government Code Section 54957.2(a), which is part of California’s open meeting law, the Ralph M. Brown Act (“the Brown Act”), provides that a legislative body may adopt an ordinance or resolution to require an officer or employee of the agency to keep a minute book of topics that are discussed and decisions that are made in closed session. That section states:*

*“(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such a minute book may, but need not, consist of a recording of the closed session. “*

*The City Attorney advises the Council to carefully consider that the keeping of closed session tapes will generate attempts to obtain minutes of closed sessions.*

*As stated in Section 54957.2(a), the minutes or tape recordings of closed session meetings are not public records and shall be kept confidential. However, Section 54957(a) also states that if someone alleges that a violation of the Brown Act occurs during a closed session, the minutes or tape recordings of the closed session can be required to be produced to a court for review by a judge. (See, *Kleitman v. Superior Court*, 74 Cal.App.4th 324 (1999).)*

*Requests for judicial review of closed session minutes have been made in lawsuits filed by city residents (*Id.*); lawsuits filed by newspapers (*Register Division of Freedom Newspapers, Inc., v. County of Orange*, 158 Cal.App.3d 893 (1984)), and lawsuits filed by city council members (*Hamilton v. Town of Los Gatos*, 213 Cal.App.3d 1050 (1989)) Local agencies also have provided copies of minutes or recordings of closed sessions to the District Attorney's office pursuant to a confidentiality agreement when the District Attorney is investigating a claim of a Brown Act violation that allegedly occurred during a closed session. (See, *County of Los Angeles v. Superior Court*, 130 Cal.App.4th 1099 (2005).)*

*Thus, the fact that the Statute states the minutes of closed sessions are not public records does not mean that someone will not try to use those minutes in litigation against the City.]*

**Sec. 2.44.100. Prohibitions against the misuse of City resources or staff involvement in elections.**

(a) It is unlawful for any City Official or staff person to engage in campaign-related activities, such as fund-raising, the development of electronic or written materials, or research, for a campaign for any elective office using City facilities, equipment, supplies, or other City resources. It is unlawful for any person to induce or coerce, or attempt to induce or coerce any other person to engage in any activity prohibited by this section.

(b) It is unlawful for any current or former City Official to use or disclose to any person any confidential information he or she acquired in the course of his or her official duties, except when such disclosure is a necessary function of his or her official duties.

(c) Nothing in this section shall prohibit the use of City resources to provide information to the public about the possible effects of any bond issue or other ballot measure relating to City activities, operations, or policies, provided that:

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(1) the use of public resources is otherwise legally authorized; and

(2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.”

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions might subsequently be declared invalid or unconstitutional.

Section 3. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment.

Section 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance or a summary thereof to be published in the manner required by law.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Yorba Linda on this \_\_\_\_ day of \_\_\_\_\_, 2009.

---

MARK SCHWING, MAYOR  
CITY OF YORBA LINDA

ATTEST:

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KATHIE M. MENDOZA, CITY CLERK  
CITY OF YORBA LINDA

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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STATE OF CALIFORNIA )

ss.

COUNTY OF ORANGE )

I, **KATHIE M. MENDOZA**, City Clerk of the City of Yorba Linda, California, **DO HEREBY CERTIFY** that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Yorba Linda held on the \_\_\_\_ day of \_\_\_\_\_, 2009, and was carried by the following roll call vote:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:

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KATHIE M. MENDOZA, CITY CLERK  
CITY OF YORBA LINDA