

# UNSPORTSMANLIKE CONDUCT

PACs are also considered to be lobbyists. Figure 1 lists PACs created by the 49ers on behalf of City Council Voting Bloc members Karen Hardy and Raj Chahal (running for reelection) and Anthony Becker (challenger to Mayor Lisa Gillmor) in the November 2022 General Election.

| Committees                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Names of Committees that matched your search criteria.                                                                                                                                                          |
| <a href="#">Concerned Citizens Opposing Christian Pellecchia for City Council District 3 2022, sponsored by DeBartolo Corp. &amp; Affiliated Entities, including 49ers Football Co. LLC</a>                     |
| <a href="#">Concerned Citizens Opposing Larry McColloch for City Council District 2 2022, sponsored by DeBartolo Corp. &amp; Affiliated Entities, including 49ers Football Co. LLC</a>                          |
| <a href="#">Frustrated Santa Clarans Opposing Gillmor for Mayor 2022, sponsored by DeBartolo Corp. &amp; Affiliated Entities, including 49ers Football Company, LLC</a>                                         |
| <a href="#">John Edwards (Jed) York and Affiliated Entities, including the San Francisco 49ers</a>                                                                                                              |
| <a href="#">Santa Clara Neighbors Supporting Karen Hardy for City Council District 3 2022, sponsored by and major funding from DeBartolo Corp. &amp; Affiliated entities, including 49ers Football Co., LLC</a> |
| <a href="#">Santa Clara Neighbors Supporting Raj Chahal for City Council District 2 2022 sponsored by and major funding from DeBartolo Corp. &amp; Affiliated Entities, including 49ers Football Co., LLC</a>   |

**Figure 1. Excerpt from the City of Santa Clara Public Portal for Campaign Finance Disclosure and Lobbyist Filings**

The [website](#) is clickable and searchable. For instance, clicking on “Santa Clara Neighbors Supporting Raj Chahal...” shows an \$81,309.04 contribution on September 20, 2022, from a 49ers PAC. At the time of the writing of this report, 49ers PACs have contributed \$1.7 million to support members of the City Council Voting Bloc in the upcoming election.

## City Councilmembers’ Standards for Governance

The Markkula Center for Applied Ethics at Santa Clara University employs government ethics experts who specialize in ethical dilemmas and analysis. The City worked closely with the Markkula Center for Applied Ethics in the past when it formulated its own Code of Ethics and Values. The Markkula Center for Applied Ethics detailed the nature of these ethical duties in an article entitled “*Public Officials as Fiduciaries.*” In describing the public official’s fiduciary relationship to the public, the article states:

The public delegates governing authority to public officials to exercise discretion over the public treasury and to create laws that will impact their lives. The public official, once elected, appointed, or hired, is in a superior position to that of the individual citizen due to specialized governmental knowledge and the ability to advise, deliberate, and participate in the representative process. And finally, the public trusts that the public official will act in the public’s best interest.

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The article describes the public officials' duties as care, loyalty, impartiality, accountability, and preserving the public's trust in government. The article details those duties as follows:

**The Duty of Care:** The duty of care requires that the public official competently and faithfully execute the duties of the office. Under duty of care fall such obligations as the duty to manage assets competently and be good stewards of the public treasury, to use due diligence in the selection and supervision of staff, to follow the rules and to uphold the constitution and laws of the jurisdiction...

**The Duty of Loyalty:** Public fiduciaries have an absolute obligation to put the public's interest before their own direct or indirect personal interests. The public fiduciary breaches this obligation when he or she benefits at the public expense...

**Duty of Impartiality:** Public officials have a duty to represent all of their constituents fairly. This means that the public fiduciary cannot favor those of his or her own party over other constituents, or let the fact that someone voted against him or her impact the ability to act fairly. They must overcome any inherent bias that they possess.

**Duty of Accountability:** Without a duty of accountability, the public's ability to monitor the behavior of public fiduciaries would be severely limited. From the duty of accountability flow the duty of transparency and the concepts of disclosure, open meetings, and accessibility of public records...

**Duty to Maintain Public Trust in Government:** Without public trust, government doesn't work. The public is willing to delegate authority and sacrifice some freedoms in exchange for an orderly and civilized society, but only if it believes that government is acting in the public's best interest...

These principles are the underpinning of a host of federal, state, and local laws that govern the conduct of public officials. For instance, as discussed further below, the Ralph M. Brown Act (Cal. Gov. Code §§ 54950-54963, referred to as the "Brown Act") is intended to provide public access to meetings of California local government agencies. Its purpose is described in the Brown Act: "The people of this State do not yield their sovereignty to the agencies which serve them. The people insist on remaining informed to retain control over the legislative bodies they have created." (Cal. Gov. Code § 54950.) Likewise, the Political Reform Act (Cal. Gov. Code § 81000, et seq.) places limitations on lobbying activities and was passed by California voters in June of 1974 (Proposition 9) to battle the culture of corruption that was thought to be pervasive in government in the pre-Watergate years.

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Further, the City has adopted its own ordinances and policies dictating the governance of the City and the conduct of its elected officials. For instance, as described above, the City has passed an ordinance on lobbying activities. Noteworthy to this report are the following additional City legislative or policy enactments.

## **Code of Ethics and Values**

In 2000, the City, after working with the Markkula Center for Applied Ethics, adopted “Santa Clara’s Code of Ethics & Values” that was designed to “provide clear, positive statements of ethical behavior reflecting the core values of the community. The Code includes practical strategies for addressing ethical questions and a useful framework for decision-making and handling the day-to-day operations of the municipality.” According to the City’s website, all elected officials are required to subscribe to the City’s Code, which includes among other things being ethical, professional, service-oriented, and communicative.

The City describes itself as a “national leader in incorporating community ethics and values into local government.” The City’s Ethics & Values Program has received national attention and has been used as a model for other cities. One standard the City has set addresses “Behavioral Standards for Council Members.” The document details positive and negative behaviors illustrative of the core value of ethics. Among the positive behaviors that are encouraged of councilmembers:

- Making careful decisions, advancing the best long-term interests of the City, after considering all available facts, City Staff recommendations, and public comment
- Treating the public and City Staff, at all times, the way I treat highly regarded colleagues in businesses or professions

Among the negative behaviors that are discouraged of councilmembers:

- Paying more attention to friends’ and supporters’ projects
- Giving special treatment to the companies that pay the most in taxes and to my largest campaign donors
- Making “back room” deals and decisions
- Criticizing or embarrassing the City Manager or other City Staff in public

## **Admonition and Censure Policy**

In May of 2018, the City adopted Policy 47, “Admonition and Censure Policy.” This policy applies only to the councilmembers. It states that the City Council is to abide by federal, state, and local laws, including the Code of Ethics & Values. It notes that violations of such laws or policy

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“tend to injure the good name of the City and undermine the effectiveness of the City Council as a whole.”

Under this Policy, admonition and censure are self-policing processes that may be initiated only by the councilmembers themselves. Further, since the process of initiating an admonition or censure requires a vote of the City Council, the policy is likely to be ineffective if the need for admonition or censure applies to anyone on the City Council Voting Bloc.

Policy 47 is included in [Appendix C](#).