



## FACT SHEET ON GIFTS TO CITY OFFICIALS

The City's ethics ordinance includes City laws regarding the acceptance of gifts. This fact sheet is designed to offer general guidance to city officials about accepting gifts but should not be considered a substitute for the actual language contained in state and local law. (For detailed information concerning the gift rules for tickets and invitations to events, please refer to our separate fact sheet on accepting tickets and invitations, which is available on the ethics commission's website.)

### GENERAL RULES

- ❖ A reportable gift is generally defined in the ethics ordinance to include anything of value that confers a personal benefit on the recipient unless consideration of equal or greater value is given in exchange. In other words, if someone gives you something that you didn't pay for, work for, or trade for, you have received a gift.
- ❖ You may not accept more than \$630 in reportable gifts from the same source within the same calendar year. Note that the limit is subject to change January 1 of every odd-numbered year.
- ❖ If you accept one or more gifts valued at more than \$630, you will not exceed the gift limits if within 30 calendar days you reimburse the donor of the gifts (that is, pay it down) in an amount that causes the value of the gifts to be \$630 or less.
- ❖ You may not accept any gift with the understanding that you will perform an official act in exchange for accepting the gift.

### REPORTING REQUIREMENTS

- ❖ Gifts from the same source that have an aggregate value of \$50 or more are reportable on your statement of economic interests (Form 700), which must be filed before April 1 of each year.
- ❖ Gifts from the same source valued at less than \$50 within the calendar year do not need to be reported. In other words, you do not need to report two \$20 dinners paid for by the same source (as long as that source did not give you any other gifts during the same calendar year).
- ❖ If a gift is given to multiple city officials, divide the value of the gift by the number of officials. For example, if a \$50 box of cookies is delivered to a Council office and ten members of the staff each consume a few cookies, then each staff member has received a gift valued at \$5 (and need not report the gift unless the \$50 reporting threshold is triggered by other gifts).
- ❖ If you receive a gift from someone other than the true source of the gift (e.g., a local business owner hands you tickets to an event, but the Chamber of Commerce is the true source of the gift), you must report both the intermediary (for example, the business owner) and the actual donor (for example, the Chamber) as the source of the gift on your disclosure forms. The intermediary has a legal obligation to provide you with the donor's information.

- ❖ In addition to filing the annual Form 700, elected officials must disclose gifts received between January 1 and June 30. This disclosure is made in a report filed with the city clerk by July 31.
- ❖ For additional information regarding reporting requirements, please refer to the ethics commission's fact sheet on disclosing economic interests.

## REPORTABLE SOURCES

- ❖ When determining whether a gift is reportable, your first step should be to determine whether or not the source of the gift is a person or entity that you have to report on your Statement of Economic Interests.
- ❖ If you are an elected official or are otherwise a high level filer, then every gift you receive is from a reportable source and (unless an exception applies) subject to gift limits and reporting obligations. High level filers include the Mayor, the City Attorney, City Auditor, City Treasurer, and members of the City Council, Planning Commission, Funds Commission, Retirement Board, and the Defined Contribution Plan Board.
- ❖ If you are not a high level filer, then you are considered a local code filer because the City Council has adopted a conflict of interest code for your department or agency.
  - ✓ Only gifts from the reportable sources identified for your position in your conflict of interest code are subject to gift limits and reporting obligations.
  - ✓ For example, if your conflict code states that you only have to report gifts from entities that supply goods or services to your particular department, then you do not have to report any gifts you receive from an entity that does not supply goods or services to your department.
- ❖ Keep in mind that charitable organizations and governmental agencies (other than the City) are not exempt from the gift rules. If, for example, the County of San Diego pays for your lunch at a seminar, that lunch is a reportable gift.

## DISPOSING OF GIFTS

- ❖ Except for tickets and invitations, discarding a gift does not negate your acceptance of a gift. Similarly, accepting a gift and giving it to a friend or co-worker does not change the fact that you have received a gift. In other words, such actions do not eliminate your obligation to adhere to the Ethics Ordinance's reporting requirements and gift limits.
- ❖ There are special rules for tickets and invitations to events. For example, tickets and invitations are the only gifts that can be negated by being thrown away. Tickets and invitations that are not used or transferred to another person are not subject to gift limits or reporting obligations. For more information regarding the many rules pertaining to tickets and invitations, please refer to the ethics commission's fact sheet on accepting tickets and invitations, which is available on the commission's website.
- ❖ If you receive a gift and do not want to accept it, you may, within 30 calendar days, return it unused to the donor or donate it to a 501(c)(3) charitable organization (without taking a tax write-off for the donation). Under these circumstances, you will not have received a gift for purposes of the gift rules.

## EXCEPTIONS TO GIFT REGULATIONS

- ❖ Regardless of whether you are a high level filer or a code filer, there are some exceptions to the gift rules in the ethics ordinance that may apply to gifts you receive. For example, items given to you under the following circumstances are not a gift under the ethics ordinance:
  - ✓ items you receive from your spouse, former spouse, child, step-child, parent, grand-parent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, grand-nephew, niece, grand-niece, aunt, grand-aunt, uncle, grand-uncle, first cousin, first cousin once removed, or the spouse or former spouse of any such person;
  - ✓ items from someone, other than a lobbyist, with whom you have established a personal or business relationship unrelated to your City position, so long as you haven't participated in the types of City decisions that could financially impact the donor and there's no reason to believe you will do so in the future.
  - ✓ presents commonly exchanged between you and anyone other than a lobbyist on holidays, birthdays, and similar occasions so long as the presents exchanged are similar in value;
  - ✓ the benefits received as a guest attending a wedding (so long as the benefits are substantially the same as the benefits received by other guests at the wedding);
  - ✓ bereavement offerings concurrent with the passing of a spouse, child, sibling, or other close relative;
  - ✓ an inheritance; a prize or award received in a bona fide contest, competition, or game of chance; or a personalized plaque or trophy with a value of less than \$250;
  - ✓ rebates or discounts available in the regular course of business to members of the general public (this exception also applies when the discount is offered to all City employees);
  - ✓ attendance at a seminar that will assist you in the performance of your official duties (note that a meal served at the seminar is not included within this exception);
  - ✓ the cost of hospitality provided to you by someone in their home, so long as those costs are not reimbursed by another person or deducted as a business expense; and,
- ❖ When the donor is someone who does not have business before the City (for example, seeking a City contract, license, permit, etc.), there are additional exceptions for gifts received in a bona fide dating relationship and gifts received through acts of human compassion; contact the ethics commission for additional guidance.
- ❖ Gifts that involve the payment of travel expenses (transportation, lodging, and meals) by business entities, non-profit organizations, and governmental agencies involve special rules that are too lengthy to detail in this fact sheet. In some cases, travel payments may be exempt from gift limits (for example, when you give a speech or a governmental agency makes the payment) but are still reportable on a Form 700. Please see our fact sheet on accepting travel expenses for a public purpose. Also, feel free to contact the ethics commission for assistance regarding the acceptance of travel payments.
- ❖ Wedding gifts are not subject to gift limits but must be reported on your Form 700 if they exceed \$50 in value from the same source. The reportable value to the official is one half of the gift's fair market value.
- ❖ If you are involved in an ongoing social relationship in which you and another person take turns paying for meals, movie tickets, rounds of golf, or similar social activities, the payments made by the other person on your behalf will not be a gift to you so long as the amount of these

payments are substantially equal to the total payments you made for the other person (within the calendar year). Note that any single payment of \$630 or more does not fall within this reciprocal exchange rule.

- ❖ A charitable donation made in your name is not a gift to you. Note, however, that if someone makes a charitable donation valued at \$5,000 or more at the request of an elected city official, that donation (or any other payments totaling \$5,000 made at the behest of an elected city official for a legislative, governmental, or charitable purpose) must be reported to the City Clerk on a Form 803.

## **GIFTS TO FAMILY MEMBERS**

- ❖ Unless one of the above exceptions applies, a gift given to a member of your family could be considered a gift to you and subject to gift limits, reporting obligations, and disqualification concerns. For purposes of these rules, your “family” includes:
  - ✓ Your spouse or registered domestic partner;
  - ✓ Your dependent children under 18 years of age; and
  - ✓ Your children between 18 and 23 years of age who are full-time or part-time students, have the same principal place of residence as the official, and who do not provide over one-half of their own support.
- ❖ If you and any other member of your family receive a gift jointly, the reportable value of the gift is the gift’s full value. Do not report only half the value of a single gift (for example, a hotel stay, a television) given to both you and your spouse.
- ❖ Gifts given to members of your immediate family will not be treated as gifts to you if there is an established working, social, or similar relationship between the donor and the family member and there is no evidence to suggest that the donor intended to influence you regarding a municipal decision.
- ❖ Evidence suggesting that the donor intended to influence you exists if:
  - ✓ the donor is a lobbyist, a lobbying firm, or an organization lobbyist;
  - ✓ the donor is involved in a municipal decision in which it is reasonably foreseeable that you will participate or did participate within the past twelve months; or,
  - ✓ the donor engages in a business that regularly seeks City contracts or comes before the City for the purpose of receiving a license, permit, or other entitlements, and your role as a City Official involves participating in such decisions.

## **GROUP GIFTS**

- ❖ If a city official receives a gift valued at \$50 or more from a group of persons, the official need not report the gift unless:
  - ✓ a reportable source donated \$50 or more to the overall value of the gift; or
  - ✓ a reportable source’s donation to the overall value of the gift, combined with other gifts by that source to the official during the reporting period, collectively reached the \$50 reporting threshold.

- ❖ A gift from a single organization is not a group gift from the members of that organization.

## **REPORTABLE VALUE**

- ❖ The reportable value of a gift is generally equal to its fair market or face value. If the fair market value of a gift cannot be readily determined because the gift is unique or unusual, the official must make a reasonable approximation, taking into account the price of similar items. If similar items are not available as a guide, a good faith estimate must be made.
- ❖ It is the city official's responsibility to obtain information concerning the value of a gift before it is accepted and/or used. The ethics commission does not act as a finder of fact with regard to the value of gifts.

## **DISQUALIFICATION**

- ❖ This fact sheet pertains only to the valuation and reporting of gifts for acceptance and reporting purposes. There are additional rules that pertain to disqualification issues. You should know, however, that accepting gifts valued at \$630 or more from the same source within the previous 12 months will likely disqualify you from participating in municipal decisions involving that source.
- ❖ For more information regarding whether your acceptance of a gift may disqualify you from participating in a municipal decision, please refer to the ethics commission fact sheet entitled fact sheet on disqualification from municipal decisions – part 4: sources of gifts.

For additional information, please contact the ethics commission at (619) 533-3476.

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