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 on the subject of accepting gifts, but should not be considered a substitute for the actual language contained in the Ethics Ordinance.

GENERAL RULES

- A "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.

- Note that "trading" reduces or eliminates the value of a gift only when both sides of the trade take place <u>at the same time</u>. For example, if a friend buys you lunch one day with the understanding that you'll return the favor next week (i.e., "trading lunches"), you have still obtained a gift based on the full value of the lunch you received. On the other hand, if your friend buys you lunch and you buy your friend a movie ticket <u>at the same outing,</u> then the value of the gift you received is reduced by the value of the ticket you purchased for your friend.

- You may not accept more than $420 in reportable gifts from the same source within the same calendar year. Note that the $420 dollar threshold is subject to change January 1 of every odd-numbered year. The threshold will likely be increased on January 1, 2011.

- If you accept one or more gifts valued at more than $420, you will not exceed the gift limits if within 30 calendar days you reimburse the donor of the gifts (i.e., "pay it down") in an amount that causes the value of the gifts to be $420 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 must be reported on your Statement of Economic Interests [Form 700], which must be filed before April 1 of each calendar 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 four $10 lunches 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 they

need not report the gift (unless they have also received other gifts from the same source in the same calendar year).

- If you receive a gift from someone other than the true source of the gift (e.g., the Chamber of Commerce provides tickets for you to attend its annual dinner, but a local business owner hands you the tickets), you must report both the intermediary (e.g., the business owner) and the actual donor (e.g., 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, San Diego Data Processing Corporation Board, Defined Contribution Plan Board, and the Ethics Commission.

- 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 engage in business with your department.

- Note that the residential or work address of the source of a gift is irrelevant. It does not matter whether a gift-giver lives in Oceanside, Sacramento, or New York. Any gifts from a person who falls within the scope of your conflict code are subject to gift limits and reporting obligations.

- Gifts from your friends might be reportable. If your conflict code states that you must report gifts from any person doing business in the City of San Diego, and your friend owns a San Diego business, then gifts from your friend may need to be reported (there are exceptions, as stated below, for gifts exchanged on birthdays and holidays).

- 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 "gift."

DISPOSING OF GIFTS

- Except for tickets and invitations (see below), 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 can, within 30 calendar days, return it unused to the donor, donate it to the City or any other public agency, 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, any item given to you under the following circumstances is not a "gift" under the Ethics Ordinance:

  - ✓ items you receive from your spouse, child, parent, grand-parent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse of any such person;
  - ✓ presents exchanged between you and anyone else (other than a lobbyist) on holidays, birthdays, and similar occasions so long as the presents exchanged are similar in value;
  - ✓ an inheritance;
  - ✓ a prize or award received in a bona fide competition (note that any prize in excess of $500 is reportable as income on your Form 700);
  - ✓ personalized plaque 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 to <u>large</u> groups of City employees, such as all employees of the Fire Department, when its clear that there is no intent to influence decisionmakers);
  - ✓ 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);
  - ✓ hospitality provided to you by someone in their home.

- The above list is not a complete list of gift exceptions under the Ethics Ordinance. Refer to San Diego Municipal Code section 27.3525 for a list of all applicable exceptions.

- 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. Keep in mind, however, that although some travel expenses

may be exempt from gift limits if you give a speech or if a governmental entity pays the costs, you still may have to report the payments on your Form 700. Please contact the Ethics Commission for assistance regarding the acceptance of travel payments.

- Wedding gifts are not subject to gift limits, but they must be reported on your Form 700 if they exceed $50 in value from the same source. When reporting the value of the gift, the general rule is to report one half of the gift's fair market value. If, however, the gift is particularly designated for your use and enjoyment (e.g., golf clubs, and your spouse does not golf), then you would report the full value. On the other hand, if the gift was particularly designated for your spouse (you don't golf, but your spouse does), then the wedding gift has no reportable value for you.

- Items of value (e.g., meals, jewelry) that you receive from another person in a bona fide dating relationship are not considered reportable gifts.

- 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.

GIFTS TO FAMILY MEMBERS

- If you and any other member of your immediate family (i.e., your spouse or registered domestic partner, or any dependent children) 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 (e.g., a television) given to both you and your spouse.

- The rule is different when it's clear that only part of a gift is intended for you. Suppose that two tickets are delivered to your home and the envelope is addressed to you and "spouse." In this example, one ticket would be a gift to you, and the other ticket would be a gift to your spouse.

- A gift that isn't given to you, but is instead given directly to a member of your immediate family is not subject to gift limits or reporting obligations unless the gift confers a "personal benefit" on you. For example, a television given as a gift to your daughter would confer a "personal benefit" on you when any of the following factors are present:

  - ✓ <u>Benefit</u>: you enjoy a direct benefit (more than a nominal benefit) from the gift. For example, the television is placed in the family room and you sit down to watch it at least occasionally.

  - ✓ <u>Use</u>: you use the gift, and your use is not nominal or incidental to the use by members of your immediate family. As in the above example, you would "use" the television if you occasionally watch it. On the other hand, this factor would not be present if the television was located in your daughter's bedroom where you see it only in passing.

  - ✓ <u>Discretion and control</u>: you exercise discretion and control over who will use the gift or dispose of the gift. For example, you take the television given to your daughter and only allow your son to watch it.

- Notwithstanding the above, a gift given to a member of your immediate family is <u>not</u> a gift to you if you can show that the donor did not intend to make the gift to you. In other words, even if you benefit from the gift, use the gift, or exercise control over the gift, it may not be a reportable gift to you if there are factors present indicating that the gift wasn't meant for you. Such factors include:

- ✓ the existence of a working or social relationship between the donor and your spouse or immediate family member (e.g., your daughter's boyfriend gives the television to your daughter);

- ✓ the nature of the gift clearly indicating that only your immediate family members can use or enjoy a direct benefit from the gift (using a different example, it is clear that baby clothes given to an official with an infant are intended to be a gift to the infant, not to the official);

- ✓ the gift is offered or delivered to a member of your immediate family and it is clear that there is no intent to make a gift to you. This would be the case, for example, when a television is delivered by mail and only your teenage daughter's name appears on package. (By contrast, if the package contains an expensive television and is addressed only to your infant daughter, this would instead be a factor suggesting that someone is trying to circumvent the gift regulations.)

REPORTABLE VALUE

- ❖ The reportable value of a gift is generally equal to its fair market or face value. If there is no face value, the reportable value is equal to the donor's cost. If the cost to the donor is unknown and can't be determined, you should make a reasonable approximation, taking into account the price of similar items. If similar items are not available as a guide, use a good faith estimate.

- ❖ 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 $420 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 or not 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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