



## 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 at the same time. 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 at the same outing, 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, 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.
- ❖ 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 large 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 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 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 (e.g., a hotel stay, a television) given to both you and your spouse.
- ❖ Whether a gift given solely to a member of your family is considered a gift to you depends on the circumstances surrounding the gift. If it provides you with a personal benefit, it may be a gift to you. The following rules contain guidelines for determining when you are receiving a personal benefit:
  - ✓ You are receiving a personal benefit (and therefore a reportable gift) when someone makes a payment that fulfills an obligation or expense for one of your family members such as a payment for housing, food, health costs, an automobile, or college tuition.
  - ✓ You are receiving a personal benefit (and therefore a reportable gift) if it is reasonably foreseeable at the time the gift is made that you will use the gift (except for a minimal use).
  - ✓ You are receiving a personal benefit (and therefore a reportable gift) if you exercise discretion and control over who will use or dispose of the gift. This includes making a request for a gift to be given to or used by a family member. If, for example, you request two tickets to the opera (one for you and one for your spouse), both tickets are gifts to you, even if your spouse's name is on the envelope containing the tickets. Similarly, if you request two tickets to a motocross event for two of your children, both tickets are gifts to you.
  - ✓ Notwithstanding these three “personal benefit” rules, an item will not be a gift to you if all of the following circumstances apply:

- You can show that there is an established working, social, or similar relationship between the donor and the family member that is independent of the relationship between you and the donor (e.g., your daughter receives a sweater from her boyfriend; your spouse receives a gift from his or her employer or co-workers); and,
  - The donor of the gift is not directly involved in a municipal decision that you are substantially likely to participate in or that you participated in during the previous 12 months.
- ❖ There is an additional gift rule for “high level filers” such as elected officials (see above, page 2) called the “presumed personal benefit” rule. According to this rule, a gift given to a member of your family is presumed to personally benefit you (even if you do not use the gift or control the gift) if the donor of the gift is or has been directly involved in a municipal decision in which it is foreseeable that you will participate or you did participate in the prior 12-month period.
- ✓ For example, if a donor with business pending before the City Council gives a Councilmember’s spouse a ticket to a sporting event, the Councilmember will have received a reportable gift even if the Councilmember does not use the ticket or exercise control over who uses the ticket.
  - ✓ The “presumed benefit” rule may be rebutted if you can show that there is an established working, social, or similar relationship between the donor and your family member.
- ❖ Baby Shower Gifts: Baby shower gifts typically include strollers, bassinets, cribs, clothes, diapers, and similar items intended for the child’s use. Such gifts provide the parents with a financial benefit when they eliminate the parents’ need to pay for things they ordinarily would purchase for the care and support of the child. When an official enjoys a financial benefit from a baby shower gift, he or she is receiving the full value of the gift. For example:
- ✓ Your co-workers, friends, and neighbors give gifts of baby clothes, diapers, and a stroller. Because you and your spouse no longer have to pay for these items, they are gifts to you. Even if the gifts were from your spouse’s co-workers (whom you may not even know), the fact that you enjoyed a financial benefit from the gifts means that they are gifts to you.
  - ✓ The result could be different if a baby gift is something that the parents would not ordinarily provide for the child. An item that is beyond the “ordinary care and support” of the child, e.g., a decorative pillow with the child’s name embroidered on it, would likely be considered a gift solely to the child, and not a gift to the official.

## **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.

Rev. 03/12/10