



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Status Report on City's
Gift Ordinance and
Recommendations

DATE: March 3, 2006

RECOMMENDATION

Accept this report on the status of the City's revised Gift Ordinance. The Council may wish to have an ordinance come back revising the City's Gift Ordinance relating to valuation of gifts of tickets to nonprofit and political fundraisers and gifts of informational material to be consistent with state law.

BACKGROUND

On October 5, 2004, the City Council approved an ordinance which made revisions to the City's Gift Ordinance. The revisions were based on recommendations by the Blue Ribbon Task Force on Ethics. These revisions included:

1. An exception to prohibited gifts of gifts valued less than \$50
2. Clarifying the exception for admission to ceremonial, political, civic, cultural or community functions provided by the sponsor of an event.
3. Making changes to be more consistent with state law such as adding a wedding gift exception and deleting "honoraria" as an exception to prohibited gifts.
4. Clarifying that the reporting and disclosure of gifts must be done in accordance with the requirements of the Political Reform Act (Gov. Code Sections 81000 *et seq.* as amended).

Frequently, questions arise about the valuation of tickets to a ceremonial, political, civic, cultural or community function. The state Fair Political Practices Commission (FPPC) has amended and clarified certain rules in 2005 with regards to gifts and tickets to nonprofit and political fundraisers and gifts of informational material. This is one area where the City's Gift Ordinance is not consistent with state law.

ANALYSIS

A. Gift Ordinance -Tickets to Nonprofit and Political Fundraisers

The City's Gift Ordinance provides that gifts are prohibited unless the gift falls within one of the express exceptions in the Municipal Code. The Code provides for an exception to gifts valued at less than \$50 and an exception for admission to ceremonial, political, civic, cultural or community functions provided by the sponsor of the event. A "sponsor" does not include individuals, person or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets. The Ordinance does not provide an exception for tickets and admission to nonprofit or political functions when the tickets or admission is provided by someone other than the sponsor of the event as defined in the Ordinance. Thus, City officials may not accept such tickets or admission from a non-sponsor if the value of any food or beverages at the event is \$50 or more.

FPPC – Tickets to Nonprofit and Political Fundraisers

The state Fair Political Practices Commission (FPPC) amended its regulation in 2005 which clarified the reporting and valuation of gifts such as tickets to nonprofit and political fundraisers. (California Code of Regulations, Title 2, Div. 6, Section 18946.4).

1. Non-profit Fundraiser

Section 18946.4 provides that a ticket or other admission privilege to a fundraising event for a nonprofit, tax-exempt organization which is a donation, then the value of the ticket is the face value of the ticket reduced by the amount of the donation. For example, if admission to a fundraiser for a nonprofit, tax-exempt organization is a \$100 donation, there is no value of the ticket for purposes of reporting. According to the FPPC, meals and beverages at the event have no value for purposes of reporting.

If there is no ticket indicating a face value or the ticket or admission privilege has no stated value or no stated donation portion, then the FPPC values the gift at the pro rata share of the cost of any food and beverages, plus any other item to the attendee at the event.

2. 501(c)(3) Organization and Political Fundraiser

Tickets or admission privileges to political fundraisers and fundraising events for Internal Revenue Code Section 501(c)(3) organizations have no value for reporting and disclosure purposes. The FPPC has indicated that that meals and beverages for these events are also not valued. (See, Burns Advice Letter, FPPC File No. A-01-026).

Valuation of Tickets to Nonprofit and Political Fundraisers

In order to provide clarity and consistency to the treatment and valuation of tickets and admission provided to City officials to nonprofit and political fundraisers, the City Council may seek an amendment to the City's Gift Ordinance to clarify that valuation of such tickets and admission privileges be consistent with FPPC guidelines. An amendment would mean that invitations to nonprofit or political fundraisers provided by non-sponsors may be accepted under the City's Gift Ordinance if the value of the ticket or invitation is less than the current \$50 gift exception.

B. Gift Ordinance - Informational Material Exception

The City's Gift Ordinance provides an exception to prohibited gifts for "informational material" such as books, reports, pamphlets, or periodicals. The Ordinance does not include the provision of educational trips including transportation, accommodations and food as acceptable gifts.

On the other hand, FPPC Regulations include as "informational material" on site demonstrations, tours, or inspections designed specifically for the purpose of assisting the recipient public officials in the performance of their official duties. (FPPC Regulation, Title 2, Division 6, California Code of Regulations, Section 18942.1). No payment or gift of transportation to an inspection, tour or demonstration is allowed or deemed "informational material" except to the extent that commercial transportation is not obtainable. Food and accommodations are not included in the FPPC's "informational material" exception.

Informational Material Exception to Prohibited Gifts

The City's Gift Ordinance exception for "informational material" can be amended and clarified to be consistent the FPPC definition of "informational material."

PUBLIC OUTREACH

Not applicable.

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cc: Les White
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