

## City of San José, California

### COUNCIL POLICY

<b>TITLE:</b> <b>REVENUE GENERATING POLICY FUNDRAISING, SPONSORSHIP AND CONTRIBUTION GUIDELINES</b>	<b>PAGE</b> 1 of 11	<b>POLICY NUMBER</b> <b>1-17</b>
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APPROVED BY Council Action  
March 23, 2004, Item 10.2, Resolution No. 72014

## CITY OF SAN JOSÉ REVENUE GENERATING POLICY FUNDRAISING, SPONSORSHIP AND CONTRIBUTION GUIDELINES

This citywide policy is intended to provide a framework and a process to assist departments in revenue generation, fundraising, and sponsorship efforts that is consistent with existing City policies, procedures and applicable laws.

### DEFINITIONS

- **Fundraising:** Any activity conducted with the intent of soliciting contributions to the City or to a particular Department or activity of the City. Fundraising activities may include, but are not limited to, City grant proposals, City responses to Request for Proposals issued by other agencies, foundations or funding agencies, endowment programs, adoption or pledge drives, and contacting individuals, companies, foundations, or other entities with the primary purpose of receiving financial support for the City.
- **Contribution:** A "contribution" to the City may consist of a donation or a sponsorship. A donation may consist of cash, a grant, real property (land) or an in-kind donation.

Donations may be unrestricted or restricted by the donor.

- **Sponsorship:** A "sponsorship" typically includes the sponsor's financial contribution and involvement in a particular event, activity, or public structure, with associated recognition between the sponsor and the City for the financial contribution
- **Donation:** A contribution to the City that is made without expectation of a significant return or recognition.
- **Stock Donations:** Stocks are the proprietorship element in a corporation usually divided into shares and represented by transferable stock certificates. Per current rules the City must immediately sell stock donations upon receipt unless the stock was received through a gift or bequest with restrictions on its sale.
- **In-Kind Contributions:** A contribution of an item or object other than cash or real property, which would serve a useful purpose in the provision of City services. Examples of in-kind contributions may include equipment or materials or services.
- **Grant:** A donation typically awarded for a specific use and/or general program purpose, usually after a funding application has been submitted and approved. Grants are typically made to the City by the federal, state or county governments, private and community foundations, and corporations or businesses.
- **Donor:** A company or individual who provides the City, or one of the City departments or other agencies, an item or service without expectation of significant return or recognition.
- **Restricted Donation:** A donation made to the City where the donor has restricted its use to a specified purpose.
- **Sponsor:** A company, organization or individual who provides the City, or one of the City's departments or other agencies, and who provides funding support to the City in the form of a sponsorship, and expects recognition in return.
- **Sponsorship Agreement:** A negotiated agreement between the City and a corporate entity whereby the City makes a sponsorship opportunity available and enters into an agreement with a business to pay a fee in cash, products, services or a combination thereof, for recognition rights related to certain identified City owned commercial or marketable assets. A Sponsorship Agreement may, permit a limited form of advertising opportunity for a commercial entity in exchange for the fee paid to the City, subject to the

terms of this Policy and subject to the approval of the City Manager and the City Attorney's Office.

- **Unrestricted Donations:** A donation made to the City where the donor has placed no limitation on its use.
- **Works of Art:** Includes, but is not limited to, physical art that may be an integral part of a public site or building, or that may be integrated with the work of other design professionals. Examples of public works of art include sculptures, murals and paintings, earthworks, neon, glass, organic materials, mosaics, photographs, prints, film, any combination of media forms, or hybrids of any media.

### **GENERAL PROVISIONS**

1. Different forms of contributions to the City present different opportunities and challenges. For example, not all City-owned property will have the same practical or legal issues that should be considered when the City proposes to make a portion of that property available for contributor recognition or contributor acknowledgment. Therefore, it is not possible to establish blanket guidelines to cover all types of contributor activity that the City may decide to pursue. This policy is intended to establish a framework to guide the City Departments in establishing donation and sponsorship programs and donor and sponsor recognition policies so that the Department may properly consider and address the different economic, procedural and legal issues that may be associated with donation solicitation and donor recognition. Unless expressly stated otherwise, the City does not intend modify or change the non-public forum status of any City property by providing donor recognition or sponsorship recognition on City property.
2. The terms of any contributor solicitation program or any contributor recognition proposed by the City must be consistent with applicable laws and City ordinances, plans and policies. These could include, but are not limited to, naming of City owned land and facilities (See Policy Number 7-5, Naming of City-Owned Land and Facilities) and the Code of Ethics (Policy Number 0-15), the City's Zoning Code (Title 20 of the SJ Municipal Code) and Sign Ordinance (Title 23 of the SJ Municipal Code), City procurement requirements, the Prevailing Wage and Living Wage Policies, Uses of Public Property (Policy Number 6-16), the California Environmental Quality Act and Long-term Use of City Parklands for Private Enterprise Purposes (Policy Number 7-8).

3. Solicitation of Sponsorship and Donations by Departmental staff shall be under the supervision of the Department Director. The City Manager's office will provide City Council a year-end report on accomplished revenue generating activities by the departments.
4. Contributor recognition guidelines shall set forth the types of donor or sponsor recognition that are available for specified donorship or sponsorship levels. One example of property-specific issues to be considered when developing donor recognition guidelines and other contribution recognition guidelines is whether the property was funded through tax-exempt bonds. Donor recognition guidelines for such types of property shall take into account IRS regulations, among other factors specific to those properties. As a further example which is merely illustrative and not comprehensive, separate analysis may need to be conducted for proposed donation programs involving the following City property or City assets: the interior of a City-owned building with a specialized function such as a library or animal shelter, the interior of City buildings commonly used for public meetings such as City Hall or Community Centers, the exterior walls of City buildings, plazas or paseos owned by the City, City parks, City streets, sidewalks and other City public right of way, City publications and other City media productions.

Contributor solicitation programs and contributor recognition guidelines adopted by any Department shall set forth the conditions for acceptance of funds, which conditions shall be fair, impartial and shall not discriminate on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or political views of the proposed donor.

5. The Department staff designated to oversee the Department's donation activities will ensure that the proposed Donation or Sponsorship does not conflict with existing Municipal Code provisions, City policy or existing City Sponsorships. Department staff shall also ensure that the City property involved is not subject to restrictions that would limit or prohibit the proposed Donation or Sponsorship. Departmental staff shall also be responsible for consulting with the City Attorney's Office to prepare the donation program guidelines and materials.
6. Contributions to the City will NOT provide any extra consideration to the donating party in relation to City procurements (this does not apply to a contribution which lowers the bid price of the procurement), regulatory activities, or other business and operations. This includes, but is not limited to; making donations will not improve the donating party's status as a City vendor nor the

City's position with respect to regulatory issues that may involve the donating party.

7. Items contributed to the City must be safe and durable, and meet any applicable City design or quality specifications, standards, and policies.
8. The City encourages contributions of materials with the understanding that such items have a useful life, and that the City assumes no responsibility for replacement or upkeep. Once a donation is accepted, it becomes City property and the City may maintain, replace or dispose of the item consistent with any donor restrictions on a Restricted Donation. In the absence of donor restrictions, the City may maintain, replace or dispose of an item, as it deems appropriate.
9. The City cannot guarantee the tax deductibility of a Donation, but may provide the donating party with a letter of acknowledgement and a statement of the City's intended use. The City cannot validate the donor's estimate of the fair market value of a non-cash donation.
10. All Donations must be directly related to providing goods or services to the public or for another valid public purpose, and may not be used for financial personal gain of any City employee.
11. All donations in cash shall be deposited and recorded with the Finance Department and deposited in a special trust fund established by City Council or the Gift Trust Fund established pursuant to Section 4.80.700 of the San Jose Municipal Code. Currently City Council action is required to accept donations over the limit set forth in Chapter 4.04 of the San Jose Municipal Code, as it may be amended from time to time.
12. The City Manager is hereby authorized to approve Donation programs or Sponsorship Programs prepared on behalf of City Departments and to issue requests for proposals or to engage in similar donation or sponsorship solicitation activity, provided that City Council approval is required before the City (i) may accept any donation or sponsorship with a value in excess of donation or sponsorship amount that may be accepted by the City Manager under Chapter 4.04 of the San Jose Municipal Code (including a fair market valuation of in-kind contributions), (ii) grant any donor or sponsorship recognition rights with a value in excess of amount the City Manager's contracting authority as set forth in Chapter 4.04 of the San Jose Municipal Code, (iii) name any City property after any individual or entity, or (iv) has a term of more than one year.

**GUIDELINES OF NET BENEFIT OF CONTRIBUTIONS TO THE CITY.**

1. The City may accept contributions if the contribution enhances or reduces costs the City would incur in the absence of its acceptance, or if it otherwise benefits the City in a manner that provides a net savings to the City, as further provided below, or provides a significant enhancement to the city.
2. The City Manager shall write guidelines for establishing the net benefit to the City of a Donation or Sponsorship, including, without limitation, the administrative costs of obtaining the donation, maintenance, repair and clean-up costs reasonably likely to be associated with the donated item, compliance with any restriction on the donation, and any additional potential liability that the City may assume by accepting the donation.
3. If a Contribution of personal property or of a service does not result in the City receiving the indemnification, insurance, bonding or warranties that it would normally receive through procurement of the personal property or service, the absence of those factors, and the potential costs and liabilities associated therewith shall also be considered in evaluating the net benefit of the proposed Donation to the City.
4. Any contribution that, if accepted, would obligate the City to enter into a service or procurement agreement would not be considered a donation and would be subject to the City procurement process.
5. Any Department considering acceptance of a contribution shall consult with other Departments that will be affected by acceptance of the proposed Donation. A Department shall be deemed affected by a proposed Donation if it is likely that the Department would incur additional cost or staff time if the Donation were accepted. For example, other Departments may incur costs to provide management, support, maintenance, and repair or enforcement activity in relation to the Donation or Sponsorship.
6. Restricted Donations and Restriction on other contributions shall be evaluated to determine any cost or administrative burden the restrictions impose upon the City, throughout the anticipated useful life of the Donation or contribution.

**AUTHORITY TO ACCEPT CONTRIBUTIONS**

All contributions will be held or deposited within the current gift trust fund policies. Unaccepted donations will be returned to the donor.

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All donations made directly to the City (with the exception of grants) shall be recorded on the City's "Donation Acceptance Form."

It will be the responsibility of the respective Department Head to ensure that proper City officials are informed of Contributions, that Contributions are properly acknowledged, that timely reports are made, and that proper recognition is afforded the contributor.

City employees, whose primary responsibility is the procurement of services, supplies, materials and equipment or public works, should not engage in solicitation of Contributions. City staff shall maintain the highest standard of ethics in fundraising activities. No employee shall personally benefit from any fundraising activity on City time, and no employee shall engage in any solicitation where the employee, his or her spouse, has a conflict of interest, or the appearance of a conflict of interest would arise from the employee's involvement in the solicitation.

### **SOLICITATION OF CONTRIBUTIONS**

1. Contributions shall not be solicited under the guise, pretense, or presumption of receiving official City endorsement of the donating party, product, or activities.
2. City employees may only solicit Contributions pursuant to an approved Fundraising work plan approved by the Director of that department, and only if the purpose of the donation is directly related to providing a good or service to the public. City employees working in an enforcement or regulatory City position (i.e. Police and Fire Code Enforcement, and Environmental Services) shall not solicit Contributions from the public while they are wearing a City uniform, unless they receive explicit permission from the City Manager.

### **DONOR RECOGNITION**

Contributions should be acknowledged in a timely manner after formal acceptance of the donation has taken place.

Before engaging in solicitation of Contributions, each Department shall develop, in consultation with the City Attorney's Office, guidelines specifying the type of contributor recognition to be granted for different types of Contributions and for different contribution amount, that shall include the size and location(s) of any signage and the permitted text of the signage. The City Manager shall review and approve any Departmental guidelines regarding donor solicitation and donor recognition and shall seek to instill consistency among the departmental donation

guidelines.

The City department receiving the benefit of the contribution must review and approve any presentment of public recognition for that contribution. Recognition should be consistent with the Municipal Code and other laws and regulations, and with the City's current policies and Donation Guidelines.

If, in the interests of public health, safety and welfare, a Department desires to prohibit certain types of Contributions, the Department shall consult with the City Attorney's Office to determine whether the donation guidelines may contain such prohibitions.

Contributions and contributor recognition may not be comprised of obscene or pornographic material.

The following provisions shall also apply:

- **Real Property Contributions**

Restricted Contributions of real property may be made to the City for specified purposes. The City will review the conditions of the restrictive Contributions and determine if the benefits to be derived warrant the acceptance of the Contributions. All contributions of title to real estate, no matter how small, require City Council approval after proper investigation and due diligence is conducted by staff.

- **Works of Art Contributions**

If a contribution is proposed related to a work of public art covered by the City's Art in Public Places ordinance, currently found in Chapter 22.08 of the San Jose Municipal Code, the City's review and acceptance of public art the proposed contribution shall be conducted in accordance with the City's Art in Public Places ordinance, which shall include the review and recommendation of the City's Arts Commission. Any time a donation of a work of art or a contribution toward the acquisition of a work of art that would not ordinarily be covered by the City's Public Art Ordinance is proposed for the City, the City Department that operates or maintains the site of the proposed work of art shall submit the proposed donation to the Arts Commission for the Arts Commission's recommendation regarding acceptance of the proposed donation of public art.

- **Interior Naming Opportunities**

City Council Policy 7-5, "Naming of City-Owned land and Facilities" states that, "the City Council reserves the right, as part of a capital campaign, to make appropriate business arrangements in exchange for naming options of City facilities."

Naming opportunities for interior rooms or spaces may be an essential strategy for capital campaign fund raising. At the onset or during a capital campaign, staff in the respective department will work with City Attorney's Office in order to determine the restrictions, including without limitation federal tax law restrictions related to naming opportunities. Assuming that it is determined that naming opportunities may proceed, the Department will work with their constituencies to develop a list of the significant interior naming opportunities and corresponding giving levels. Interior naming opportunities may also be offered at existing facilities. The respective Department Head will submit the list to the City Manager, for approval.

### **Selection of the Appropriate Donor or Sponsor**

If a Department makes a sponsor or donor recognition opportunity available to outside persons or entities pursuant to these guidelines, the City department shall select the donor or sponsor providing the highest net benefit from the Contribution to the City, along with consideration of the quality of product or service to be received by the City.

- The selection shall be impartial, and compatible with other city Donation or Sponsorship relationships.
- All donation or sponsorship opportunities to be offered and solicitations sought by City Departments shall be reviewed by the City Manager's office or designee in advance of the offering to ensure consistency with these guidelines, and to ensure that the granting of a donation or sponsorship opportunity does not result in preferential treatment of the sponsor, and to avoid a conflict with existing contracts.
- No action shall be taken which gives the appearance that persons or entities that do not sponsor City programs, events, venues or activities are treated less favorably than those who do, or are at a competitive disadvantage in conducting their business with the City.

### **Sponsorship and Donation Agreements:**

After the selection of a donor or sponsor by the City Council, City Manager or Department Head, as appropriate, is complete, the respective obligations of the sponsor or donor and the City shall

be set forth in a written agreement approved as to form by the City Attorney with the exception that unrestricted cash donations do not require a formal written agreement.

Each sponsorship agreement and donor agreement shall not exceed a term of one-year unless approved by City Council. Annual renewals, at the City's option, are permissible provided the entire term of an agreement with all renewals does not exceed five (5) years except as provided below. Any renewal shall be subject to annual appropriation of City Council if City funding is involved. Sponsorship Agreements or donation agreements involving City parks may also be subject to the three-year term limitation of Section 1700 of the City Charter.

### **ACCOUNTING AND RECORD KEEPING:**

Departments shall maintain records that provide an audit trail for the receipt of all Sponsorships and Donations. Departments shall also comply with the following requirements:

1. All Donations or sponsorships and the revenue, products, donations and services received shall be recorded and maintained for at least the expected life of the donation item or service, or for a specific time frame that has been established.
2. The City's internal determination of the net benefit to the City is solely for the City benefit in evaluating whether to accept or reject a donation, and may not be used by or relied upon by outside parties. The City shall document and maintain records of the anticipated net benefit from the Contribution.
3. Sponsorships paid for with a monetary contribution, shall only be paid for by check payable to the City of San Jose. Acceptance of cash will only be allowed if approved, in advance, by the Department Director.
4. A record of all sponsorships and donations including name, type, contact name if a company, amount, and disposition of sponsorship shall be kept up-to-date and accurate.
5. All funds, products, services, etc. resulting from the Sponsorship program or donations shall be used within the sponsored department with the exception of cross departmental or "citywide" sponsorships or other citywide contributions, or as directed by the City Manager. All funds, products, services, etc. resulting from a "citywide" contribution not specified for a specific program shall be designated for use by City Council, which designation may be made by resolution, approval of an agreement or through City Council appropriation action or other appropriate means of Council approval.

6. All funds generated by Contributions, must be appropriated by City Council prior to being spent by City departments.
7. Departments shall include any donations or sponsorships received by the Department in their bi-monthly report to City Manager. On an annual basis, the City Manager shall prepare a report for City Council identifying (i) donation and sponsorship solicitation guidelines approved by the City Manager in the prior year, (ii) all donation agreements and sponsorship agreements signed by the City Manager in the prior year.