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ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 12.08 OF TITLE 12 OF THE SAN JOSE
MUNICIPAL CODE TO AMEND THE CITY OF SAN JOSE
GIFT ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

12.08.010 Gifts prohibited.

A. No officer or designated employee of the city or its redevelopment agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this chapter.

B. "Person subject to the decision-making or recommending authority" means any individual, firm or entity whose interest or whose employer's or client's interest:

1. Has been materially affected by the work of such officer or employee within the two years prior to the time the gift is given; or
2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

12.08.015 Political Reform Act Requirements

A. The reporting and disclosure of gifts shall be done in accordance with the requirements of the Political Reform Act (Gov. Code Section 81000 et seq., as amended) and the requirements in this chapter.

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B. The gift limitations and disqualification requirements under the Political Reform Act are applicable to gifts which are not prohibited in this chapter.

12.08.020 Gift defined.

“Gift” means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

A. As used in this chapter, the term “gift” includes:

1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public. 2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.

3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.

B. As used in this chapter, the term “gift” does not include:

1. Campaign contributions which otherwise comply with Title 12 of the Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.

2. Any devise or inheritance.

12.08.030 Gifts not prohibited.

This chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

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A. Gifts less than fifty dollars: Gifts, including meals and beverages provided to an officer or employee in a business or social setting, which have a value of less than fifty dollars, as long as the total value of all such

gifts received from any one donor do not exceed fifty dollars or more in any calendar year.

B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.

C. Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual's primary residence.

D. Reciprocal gifts: Presents exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.

E Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.

F. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include admission to theatrical productions and art exhibits. Political events include political fundraisers. Admission to

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regularly scheduled athletic events such as tickets to professional sporting events are not included as an exception to prohibited gifts.

G. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty miles from San José and where the situs of the employment will be at least the same distance from the city.

H. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.

I. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the council or agency board or which is pursuant to a written city or agency policy for intrastate or interstate travel regardless of the source of payment.

J. City or agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the city or redevelopment agency, provided that such transportation is related to city or agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five miles one way. Nothing in this subsection shall be interpreted to limit the council's or agency board's discretion to approve travel under subsection I. above.

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K. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.

L. Prizes and Awards from Bona Fide Competitions: A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a City or Redevelopment Agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act.

M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.

12.08.040 Acceptance of gifts.

A gift shall be deemed to have been accepted except where:

A. It is not used, and, within thirty days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

B. It is treated as and remains the property of the city or agency.

C. It is received by an officer or designated employee in his or her official capacity or as a representative of the city or agency, is reported to the city council or agency board, and the council or board approves the retention.

(Ord. 24499.)

12.08.050 Reporting gifts to spouse and children.

A. At the time of filing the annual disclosure statement required by the political reform act or any applicable conflict-of-interest code, each city and redevelopment agency

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officer and designated employee shall file a family gift report on a form to be provided by the city clerk.

B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state.

(Ord. 24499.)

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PASSED FOR PUBLICATION of title this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES

Mayor

ATTEST:

LEE PRICE, CMC

City Clerk