



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Jeff Ruster, Director of
Strategic Partnerships

SUBJECT: PROPOSED CHANGES TO
COUNCIL POLICY #1-17

DATE: July 23, 2012

Approved

Date

7/26/12

RECOMMENDATION

Staff recommends that the Rules and Open Government Committee refer the review of the proposed revisions to Council Policy #1-17 Donation, Sponsorship, and Fundraising to the full Council for consideration.

BACKGROUND

At its meeting of February 15, 2012, the Rules Committee received a referral generated from a memorandum by Councilmember Constant, dated February 2, 2012, related to the San Jose Police Foundation, directing City Manager staff to develop a uniform policy based on best practices to handle all grants offered to the City by City-related foundations, regardless of what department or program they support.

Staff presented best practices information on City-related and community foundations' conflict of interest policies at the March 21, 2012 Rules Committee meeting, referencing guidance provided by City Library and Police Department conflict of interest policies and the Council on Foundations' Legal Services and Ethical Standards Group publication, *Conflict of Interest: IRS Sample Policy Annotated for Grantmakers*. The Internal Revenue Service Sample Policy provides the essential policy elements for foundations to avoid conflicts of interest.

This memo responds to a referral from the Rules and Open Government Committee meeting of March 21, 2012, directing City Manager staff to incorporate the Police Foundation's Conflicts of Interest Policy and the Library Department's "2004 Guidelines for Contributions to the City of San Jose and Recognition of Donors for the Library Fundraising Campaign" by reference into Council Policy #1-17. In addition, staff was directed to return to the Rules Committee with proposed revisions to the policy that address the "pay to play" issue, that is, the potential for foundation donors to expect a benefit in exchange for a donation or sponsorship relating to pending contracts, regulation activity or any other City business.

ANALYSIS

In addition to the IRS sample conflict of interest policy for foundations, staff reviewed various foundations' conflict of interest policies, as well as relying on guidance from the Council on Foundations' June 2006 publication, *Drafting a Conflict of Interest Policy: a Guide to Key Provisions*. A City-wide donation, sponsorship, and fundraising policy reflecting best practices will assist City staff to identify and address common and important conflicts of interest and provide general principles to apply in situations not directly addressed by the policy. A uniform fundraising policy setting forth the evaluation process for acceptance of donations from City-related foundations will also simplify and improve review of fundraising plans.

The key proposed revisions to #1-17 Donation, Sponsorship, and Fundraising Policy include the following:

- A minimum annual due diligence review of City-related foundations' conflict of interest policies to be performed by Directors or designees of beneficiary City Departments to ensure that donations and sponsorships provided by City-related foundations are accepted in a manner consistent with existing City-related foundations' conflict of interest policies;
- Guidance regarding staff's role to assist City-related foundations to develop conflict of interest policies that are timely and reflect best practices for foundations as identified by the IRS;
- Elements that, at a minimum, should be part of the Department's sponsorship, donation, and/or fundraising plan: the goal and timeframe of the sponsorship, donation, and fundraising activities; the target audience and method of outreach; and the procedure for acceptance and reporting of activities to ensure internal controls; and
- Incorporation by reference of the "Police Foundation's Conflicts of Interest Policy," the Library Department's "2004 Guidelines for Contributions to the City of San Jose and Recognition of Donors for the Library Fundraising Campaign," and the "San Jose Parks Foundation's Conflict of Interest Policy."

These proposed revisions seek to provide guidance and ensure a baseline level of due diligence on the part of City staff as they consider receiving financial assistance from City-related foundations. In addition, these changes also seek to streamline internal administrative procedures as City Departments coordinate their activities with City-related foundations, the City Attorney's Office, and the City Manager's Office.

Upon review of the proposed revisions to #1-17, the City Attorney's Office determined that the "pay to play" issue was already sufficiently addressed in the Disclaimer section of the existing policy.

COORDINATION

The proposed policy revisions to Council Policy #1-17 and this memorandum have been coordinated with the City Manager's Office; the City Attorney's Office; the Office of Economic Development; Department of Parks, Recreation, and Neighborhood Services; the Library Department; and the Police Department.

/s/
JEFF RUSTER
Director of Strategic Partnerships

For questions please contact Jeff Ruster, Director of Strategic Partnerships, at (408) 535-8176.

Attachment – Draft Revised Policy

City of San José, California

COUNCIL POLICY

TITLE DONATION, SPONSORSHIP AND FUNDRAISING POLICY	PAGE 1 of 9	POLICY NUMBER 1-17
EFFECTIVE DATE March 23, 2004	REVISED DATE June 23, 2009	
APPROVED BY COUNCIL ACTION 6/23/2004, Item_2.41(b)(2), Res. No. 75051;		3/23/2004, Item 10.2, Res. No. 72014;

PURPOSE

To encourage and support departments in the development of partnerships to aid in revenue generation, and Fundraising, and Sponsorship efforts that are consistent with existing City policies, procedures and applicable laws.

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BACKGROUND

The City of San José has a tradition of creative and innovative solutions that sustains ongoing services for our residents; the City continues to look for ways in which Public-Private Partnerships provide Donations, funding, and volunteer assistance to support and enhance City services.

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POLICY

It is the Policy of San José to encourage and support individual Departments and City-related foundations to pursue Donations, Sponsorships and other Fundraising activities with the purpose of creating opportunities for partnerships and enhancing revenue for department priorities. Individual Departments, through the approval of the City Manager and/or City Council, shall develop Sponsorship and Fundraising programs that meet the requirements set forth in this Policy.

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GENERAL PROVISIONS

1. This policy is intended to establish a framework to direct the City Departments and the City Manager in establishing Donation, Sponsorship, and Fundraising programs so that the Departments may properly consider and address the different economic, procedural and legal issues that may be associated with Donation and Sponsor solicitation and recognition, including those related to City-related foundations.
2. This policy is intended to support the City's ability to increase revenue and partnerships and does not limit the City's ability to apply for grant funding.
3. The City encourages the acceptance of Donations or Sponsorships if the Donation or Sponsorship provides a significant enhancement to the City, 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.
4. The City encourages Donations of materials with the understanding that such items have a useful life. Once a Donation is accepted, it becomes City property and the City may decide to maintain, replace or dispose of the item unless the Donation is explicitly accepted by the City subject to restrictions.

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5. Unrestricted Donations are preferable to restricted Donations.

6. Definitions of terms used in this policy are set forth below.

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AUTHORITY

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1. The Director of each Department shall submit to the City Manager for approval, written Sponsorship, Donation, and/or Fundraising programs to be implemented by Departmental staff.
2. The City Manager is hereby authorized to approve Sponsorship, Donation and/or Fundraising programs and to issue requests for proposals to engage in similar Donation or Sponsorship solicitation activity. City Council approval is required if any of the following conditions are met:

a. A proposed Donation or Sponsorship is of a value or term in excess of the City Manager's contract authority under Chapter 4.04 of the San Jose Municipal Code (including a fair market valuation of in-kind contributions);

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b. A proposed Grant of any Donor or Sponsorship recognition rights has a value in excess of amount the City Manager's contract authority as set forth in Chapter 4.04 of the San Jose Municipal Code; or

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c. Agreement to name any City property after any individual or entity unless expressly provided otherwise in the City Council Policy on Naming of City-Owned Land and Facilities (Policy 7-5).

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3. The City Manager may delegate authority to the Department Director to approve a Department's Sponsorship, Donation and/or Fundraising program which delegation may not exceed the City Manager's authority unless also approved by City Council.

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CITY-RELATED FOUNDATIONS

Some City-related foundations have been created to facilitate additional City services and resources through Public-Private Partnerships. The boards of the foundations have been developed by recruiting directors with specific expertise, business connections and fundraising ability. This section is intended to provide guidance to staff to evaluate whether to accept Donations, grants, or other forms of financial or in-kind assistance provided by City-related foundations in light of any actual or potential conflict of interest and the appearance of a conflict of interest.

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Guidelines

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1. City-related foundations should develop their Donation, Sponsorship, and/or Fundraising policies in consultation with the beneficiary City Department(s) and the City Attorney's Office in order to avoid any actual or potential conflict of interest or the appearance of a conflict of interest. The Library Department's 2004 "Guidelines for Contributions to the City of San Jose and Recognition of Donors for the Library Fundraising Campaign," the "San Jose Police Foundation Conflicts of Interest Policy," and the "San Jose Parks

Foundation Conflict of Interest Policy" are incorporated by reference as conforming to this policy.

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City staff shall ensure that City-related foundations develop conflict of interest policies that are timely and conform to the guidelines as set forth below for development of new Donation, Sponsorship, and/or Fundraising policies for City-related foundations.

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2. Directors or designees of City Departments that receive assistance from a City-related foundation shall conduct, at a minimum, an annual review of the following:

- a. The membership of the foundation's board to determine whether the addition of a particular person on the board raises an actual or perceived conflict;
- b. Annual signed statements from each foundation board member and principal officer affirming that such person has received, read, understands and agrees to comply with the conflict of interest policy; and
- c. The foundation's current conflict of interest policy to determine if any material change has been made to the policy that may affect the decision to accept funding or any other benefit from the City-related foundation.

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3. At a minimum, new Donation, Sponsorship, and/or Fundraising policies developed for City-related foundations should set forth the following elements relating to conflict of interest:

- a. The purpose of the policy;
- b. Procedures relating to an interested person's duty and opportunity to disclose an actual or possible conflict of interest, how the board will determine whether a conflict of interest exists, how a conflict of interest will be addressed, and how violations of the conflict of interest policy will be addressed;
- c. Annual signed statements from each foundation board member and principal officer affirming that such person has received, read, understands and agrees to comply with the conflict of interest policy; and
- d. Periodic reviews by the governing board of the City-related foundation and/or outside advisors regarding whether the foundation's transactions conform to the foundation's written policies, are properly recorded, reflect reasonable investment or payment for goods or services, further charitable purposes and do not result in an impermissible private benefit or excess benefit transaction.

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DEPARTMENT PROCESS

Guidelines

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- 1. Individual departments shall develop their Donation, Sponsorship, and/or Fundraising programs in consultation with the City's Attorney's Office and which shall be approved by the City Manager. In its simplest form, a Department program may consist of a memorandum to the City Manager indicating the following:

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- a. Goal of the sponsorship, donation, and/or fundraising activities;
- b. Timeframe for the program;
- c. Target audience and method of outreach; and
- d. Procedure for acceptance and reporting of activities, ensuring internal controls.

2. Where a more elaborate plan is needed, a Department program may set forth:

a. The types of Donor or Sponsor recognition that is available for specified value of Donorship or Sponsorship, subject to City Council approval if the value of recognition is beyond the contract authority of the City Manager;

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b. Individual Departments may offer official City endorsement of entity, product, or service based on the City Manager-approved Sponsorship program and Sponsorship Agreement, and further subject to City Council approval if the value of official City endorsement is beyond the contract authority of the City Manager;

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c. The Sponsorship level or range of Sponsorship levels for the naming of the City property if permitted by the City Council Policy on Naming of City-Owned Land and Facilities (Policy 7-5) or otherwise approved by City Council;

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d. Specified or maximum sizes and identification of location(s) of any signage in recognition of the Donation or Sponsorship and any restrictions on the text of the recognition signage; and

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e. A Net Benefit Analysis may be conducted which may only be utilized for the City's internal review of the proposed Donation or Sponsorship and is not intended to provide any information to third parties. This Net Benefit Analysis should include evaluation of factors such as:

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- i. The administrative costs of obtaining the Donation or Sponsorship;
- ii. The anticipated additional costs and/or anticipated savings in the following areas:
 - 1. Capital costs;
 - 2. On-going operational costs;
 - 3. On-going Maintenance costs;
 - 4. Repair costs;
 - 5. Clean-up costs;
- iii. Costs for compliance with any restriction on the Donation or Sponsorship or estimated reduction in value of benefit due to the restriction;
- iv. Any additional potential liability that the City may assume by accepting the Donation or Sponsorship including any requests for deviation from the City's typical standard requirements, such as the level of indemnification, insurance, bonding, or warranties requested. Requests for modification of an indemnification provision in relation to a Donation or Sponsorship would follow Administrative Policy regarding Mutual Indemnification in Donated Services;
- v. Costs of management of City's obligations of a Donation or Sponsorship;

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- vi. The financial ability of the donor or Sponsor if some of these costs are to be covered by the Sponsor or Donor; and
- vii. The City's ability to fund any uncovered costs set forth above.

3. The Department staff designated to oversee the Department's Donation, Sponsorship and/or Fundraising activities will ensure that the proposed Donation, Sponsorship and/or Fundraising program 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.(1)

4. The Department staff accepting items donated to the City will ensure that the items are safe and durable, and meet any applicable City design or quality specifications, standards, and policies.

5. Where applicable, the Department's Donation, Sponsorship and/or Fundraising program shall set forth the conditions for acceptance of funds. 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.

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6. Any Department considering acceptance of a Donation or Sponsorship that may impact or affect other Departments, shall consult with those Departments prior to acceptance of the proposed Donation or Sponsorship.(2)

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7. It shall be the goal of any Departmental Donation, Sponsorship and/or Fundraising program to find Donors or Sponsors providing the highest net benefit to the City, along with consideration of the quality of product or service to be received by the City.

8. All Donations in cash shall be deposited and recorded with the Finance Department and deposited within the current gift trust fund policies.

9. Unaccepted Donations will be returned to the Donor.

10. Donations, including unrestricted cash Donations, made directly to the City shall be recorded on the City's "Donation Acceptance Form."

Sponsorship Agreements

After the selection of a Sponsor by the City Council, City Manager or Department Head, as appropriate, the terms of the Sponsorship, including any expectation of a significant return or recognition, shall be set forth in a written Sponsorship Agreement approved as to form by the City Attorney.

City Manager may include renewals of a Sponsorship agreement at the City's option, provided that the aggregate of all of the renewals is within the City Manager's contract authority level under the Municipal Code. 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 term limitation of Section 1700 of

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the City Charter or the Municipal Code.

Costs, 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 and Sponsorships and the revenue, products, and services received shall be recorded and maintained for at least the expected life of the item or service, or for a specific time frame that has been established in the Donation Agreement or Sponsorship Agreement.
2. Donations or Sponsorships paid for with a monetary contribution shall not be paid to staff in cash unless approved, in advance, by the Department Director and receipt of cash is properly documented.
3. 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.
4. Departments shall report any Donations or Sponsorships received by the Department through reports to City Manager.

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¶ All funds generated by Donations or Sponsorships must be appropriated by City Council prior to being spent by City departments.¶

OTHER DONATIONS OR CONTRIBUTIONS

1. Real Property Contributions
 - a. Restricted Donations of real property may be offered to the City for specified purposes. The City will review the conditions of the restrictive Donations of real property and determine if the benefits to be derived warrant the acceptance of the Donation. All Donations of title to real estate, no matter how small, require City Council approval after proper investigation and due diligence is conducted by staff.
 - i. For any buildings and structures donated to the City, the City administration shall also conduct its net benefit analysis. It is the policy of the City of San José that the following apply to Donations of buildings or structures:
 1. The Donor may pay the cost for moving and/or construction of a donated structure and;

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a. The City may pay the insurance and/or bonding required or assume the liability risk under its current self-insurance provisions where appropriate.

b. It is preferred that costs for project-related architectural, engineering and inspection costs incurred by City, including staff time, ~~be paid by Donor but may be subject to mutual contribution by City and Donor if set forth in the Donation Agreement.~~ A Donation involving real estate is more complex than cash Donations and the Donation Agreement documenting a real estate-related Donation

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should be prepared by and approved by the City Attorney's Office.

ii. For buildings and structures which are donated and approved by City Council, affecting City parks, and accepted by the Director of the Parks, Recreation and Neighborhood Services Department:

1. If the approved Donation is anticipated during an upcoming fiscal year, and if the City Manager or Designee agrees that payment of the project-related architectural, engineering and inspection costs is to the City's benefit, these project-related estimates should be requested during the annual budget process and subject to appropriation by City Council. If the approved Donation is not anticipated during the annual budget process, the Director of PRNS will determine if any existing Capital funds are eligible and appropriate to be used to accept the donation. If there are no eligible and appropriate existing Capital funds, the Director of PRNS will return to Council with a funding recommendation.

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2. The cost allocation method stated here for PRNS projects should also be utilized by other City departments in the event that a donation of real property proposal is presented.

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2. 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 the proposed contribution of public art 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 and compliance with any policies adopted regarding donations of works of public art. 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.

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DEFINITIONS

• **Fundraising:** Any activity conducted with the intent of soliciting Donations, Sponsorships or other financial 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.

• **Sponsorship:** A "Sponsorship" typically means a person or entity that provides the City with financial support for an activity, City program or City facility, typically in exchange for the City providing more than nominal recognition of its financial support, which distinguishes a Sponsorship from a Donation. Financial assistance provided by a Sponsor may consist of

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cash and/or in-kind contributions.

• Donation: A Donation to the City means a person or entity providing the City with financial support or property of a value exceeding the City's payment for such item. Furthermore, a Donor typically does not expect to receive a substantial return or recognition from the City in return for the Donation. A Donation may consist of cash, real property (land) or an in-kind Donation. Donations may be unrestricted or restricted by the Donor.

• Stock Donations: Stocks are the proprietorship element in a corporation usually divided into shares and represented by transferable stock certificates. Current rules require the City to 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.

• Donor: A company, organization or individual who provides the City, or one of the City departments, an item or service without expectation of significant return or recognition.

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• 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 with funding support for a program, activity or facility in the form of a Sponsorship, and who expects significant recognition in return.

• Sponsorship Agreement: A negotiated agreement between the City and a company, organization or individual whereby the City makes a Sponsorship opportunity available and enters into an agreement with a company, organization or individual 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 company, organization or individual 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.

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• Unrestricted Donations: A Donation made to the City where the Donor has placed no limitation on its use.

• Amenity: An "Amenity" is an improvement located on City property which is less than the entire portion of a City property, such as a wall at a park, a plaza in front of a City building, a trail located along City property, an interior room or rooms in a building. A fully enclosed structure such as a City building with walls and roof (examples being a community center, stand-alone gym, warehouse, or stand-alone building housing a restroom and locker room) is more substantial than an Amenity, and City Council approval is required before granting naming rights. An Amenity may include any of the following if located on City property: plazas that constitute only a portion of a larger parcel of City property, gazebos, archways, paths, athletic facilities that are not fully enclosed structures, playing fields, portions of

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aquatic facilities that are not enclosed structures or City buildings, picnic areas, tot lots, play structures, hard courts, and trail segments. If the administration is unsure if a specific City improvement is an Amenity or more substantial than an Amenity, the City Manager shall seek direction from the City Council Rules and Open Government Committee.

• 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.

DISCLAIMERS

1. Different forms of contributions to the City present different opportunities and challenges. Therefore, it is not possible to establish blanket guidelines to cover all types of Donation or Sponsorship activity that the City may decide to pursue.
2. Unless expressly stated otherwise, the City does not intend to modify or change the non-public forum status of any City property by providing Donor recognition or Sponsorship recognition on City property.
3. The making of a Donation or Sponsorship to the City will not provide any extra consideration to the Donating or Sponsoring party in relation to any City procurement, any regulatory activities of the City, or other City business. No City employee or other City Official is authorized to offer any such extra consideration to a donating party.
4. Any Donation or Sponsorship which, if accepted, would obligate the City to enter into a service or procurement agreement should be reviewed under the City procurement process.
5. The City encourages Donations 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 unless the Donation is explicitly restricted.
6. 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.
7. City staff shall maintain the highest standard of ethics in Fundraising activities. All Donations or Sponsorships must directly enhance the City's ability to provide goods or services to the public or for another valid public purpose, and may not be used for personal financial gain of any City employee.
8. City employees who have primary responsibility for the procurement of services, supplies, materials and equipment or public works, should not engage in solicitation of Donations or Sponsorships.

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9. City employees may only solicit Donations or Sponsorships pursuant to the individual Department's Donation, Sponsorship, and/or Fundraising programs approved by the City Manager. City employees working in an enforcement or regulatory City position (i.e. Police and Fire, Code Enforcement, and Environmental Services) shall not solicit Donations or Sponsorships from the public while they are wearing a City uniform, unless they receive explicit permission from the City Manager via their Department's written Donation, Sponsorship, and/or Fundraising programs.

10. At any time, a Department, if approved by the City Manager, or the City Manager may reject any Donation or Sponsorship offered to the City.

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End Notes

(1) These could include, but are not limited to, Chapter 4.04 of the San José Municipal Code, the 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 the Long-term Use of City Parklands for Private Enterprise Purposes (Policy Number 7-8). 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.

(2) 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.