

RESOLUTION NO. 75051

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE RESCINDING CITY COUNCIL POLICY 1-8, AND APPROVING REVISIONS TO CITY COUNCIL POLICY 1-17, "DONATION, SPONSORSHIP AND FUNDRAISING POLICY"

WHEREAS, the City Council of the City of San José ("City") initially adopted City Council Policy 1-17, entitled "Revenue Generating Policy – Fundraising, Sponsorship and Contribution Guidelines" on March 23, 2004; and

WHEREAS, the City Council desires to rescind City Council Policy 1-8, entitled "City Fees for Community Projects for which Donations Have Been Received" and to incorporate key elements of Policy 1-8 into a revised City Council Policy 1-17 in order to advance public-private partnerships and help facilitate future public-private partnerships;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE THAT:

1. City Council Policy 1-8, entitled "City Fees for Community Projects for which Donations Have Been Received" is hereby rescinded.
2. The revised City Council Policy 1-17 entitled, "Donation, Sponsorship and Fundraising Policy," which revised policy is attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth herein, is hereby approved and shall, as of the date and time of adoption of this Resolution, replace City Council Policy 1-17, initially approved by the City Council on March 23, 2004.

ADOPTED this 23rd day of June, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor

EXHIBIT A

City of San José, California

COUNCIL POLICY

| | | |
|--|----------------|------------------|
| TITLE: DONATION, SPONSORSHIP AND FUNDRAISING POLICY | PAGE | POLICY NUMBER |
| | 1 of 11 | 1-17 |
| | EFFECTIVE DATE | REVISED DATE |
| | 00/00/00 | 01/XX/09 |
| APPROVED BY COUNCIL ACTION ON | | |

1. Purpose

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

2. Background

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

3. Policy

It is the Policy of San José to encourage and support individual Departments to pursue Donations, Sponsorships and other Fundraising activities with the purpose to create opportunities for partnerships and enhance 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.

4. 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 guidelines 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.

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.
5. Unrestricted Donations are preferable to restricted Donations.
6. Definitions of terms used in this policy are set forth in Section 7 of this Policy.

5. Authority

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 level which Donation or Sponsorship 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);
 - b. A proposed Grant of any Donor or Sponsorship recognition rights has 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; or
 - c. Agreement to name any City property after any individual or entity unless expressly provided otherwise in the City Council naming policy.

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. A Director may request the City Manager to delegate authority under this Policy and the City Manager's approval shall be in writing.

6. Department Process

Guidelines

1. Individual departments shall develop their Donation, Sponsorship, and/or Fundraising program in consultation with the City's Attorney's Office and which shall be approved by the City Manager, that shall 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 contracting authority of the City Manager;
 - b. Individual Department's 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 contracting authority of the City Manager;
 - c. The Sponsorship level or range of Sponsorship levels for the naming of the City property if permitted by the City Council Naming Policy or otherwise approved by City Council;
 - 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
 - e. A Net Benefit Analysis shall be conducted which may only to be utilized for the City's purposes for internal review of the proposed Donation or Sponsorship and is not intended to provide any third party benefit. This Net Benefit Analysis shall include evaluation of factors such as:
 - 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;
 - 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.
2. 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)
3. 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.
4. The Department's Donation, Sponsorship and/or Fundraising program 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. 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)
6. 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.

7. All Donations in cash shall be deposited and recorded with the Finance Department and deposited within the current gift trust fund policies.
8. Unaccepted Donations will be returned to the Donor.
9. 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 contracting 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 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. The City shall document and maintain records of the anticipated net benefit from the Donation or Sponsorship.
3. 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.
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 Donation, Sponsorship and/or Fundraising program or shall be used as specified in the Donation or Sponsorship Agreement or if not indicated, as directed by the City Manager. All funds, products, services, etc. resulting from a "citywide" Donation or Sponsorship not specified for a specific program, and over the City Manager's Donation or Sponsorship contract authority level under the Municipal Code 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 Council approval.
6. All funds generated by Donations or Sponsorships must be appropriated by City Council prior to being spent by City departments.
7. Departments shall report any Donations or Sponsorships received by the Department through reports to City Manager.

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 that:
 - 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. Costs for project-related architectural, engineering and inspection costs incurred by City, including staff time, should preferably 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 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 Donate 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.
 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 to them. It is hoped that this method of allocating costs will encourage future Donations of community projects to the City.

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 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 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.

7. 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 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 distinguished a Sponsorship from a Donation. Financial assistance provided by a Sponsor may consist of 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 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 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 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.
- Amenity: An "Amenity" is an improvement located which is less than the entire portion of a City property, such as a wall on a park, a plaza in front of a City building, a trail located along City property, an interior room or rooms in a building. An fully enclosed structure such as a City building with walls and roof (examples being community center, stand-alone gym, a 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 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 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.

7. 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 ability to provide 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.
8. City employees, whose primary responsibility is the procurement of services, supplies, materials and equipment or public works, should not engage in solicitation of Donations or Sponsorships.
9. City employees may only solicit Donation 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. No Donated materials nor any Sponsorship or Donor recognition may include obscene or pornographic material.
11. If, in the interests of public health, safety and welfare, a Department or the City Manager desires to prohibit certain types of Contributions, the Administration shall consult with the City Attorney's Office to determine whether the Donation guidelines may contain such prohibitions.

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.