

Gift Policy**1.2.2****PURPOSE AND SCOPE**

The purpose of this policy is to establish policy and guidelines for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and all employees.

POLICY

Elected officials and City employees shall not accept money or other considerations or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts, gratuities, or favors of any kind which might be perceived or interpreted as an attempt to influence their actions with respect to City business. Gifts may not be accepted unless they are done so in accordance with this policy.

For the purposes of this Policy, the term “gift” is used as defined in San Jose Municipal Code Chapter 12.08 and all exceptions in that Chapter also apply to this Policy except where otherwise provided in a more stringent departmental or administrative policy. Employees are advised to check with their departments for such a policy.

As provided in Chapter 12.08 of the San Jose Municipal Code, the term “gift” has the same meaning as under the Political Reform Act, commencing at California Government Code §§81000, et seq. The Political Reform Act provides the basic rule that a gift is a payment made by any person of anything of value, whether tangible or intangible, real or personal property, a good or service that provides a personal benefit to an official when the official does not provide full consideration for the value of the benefit received. A gift includes the forgiveness of a debt or obligation and a rebate or a discount in the price of anything of value unless the rebate or discount is offered in the ordinary course of business without regard to official status.

No officer or employee of the City may accept any gift, directly or indirectly, from a Restricted Source, except as provided in the San Jose Municipal Code Chapter 12.08. “Restricted Source” is defined as any individual, firm or entity whose interest of whose employer’s or clients interest: has been materially affected by the work of such officer or employee of the City within two years prior to the time the gift is given; or in the future could reasonable be foreseen to be materially affected by the work of such officer or employee of the City.

The term “gift” does not include:

The acceptance or receipt of:

- A. Any gift, including meals and beverages, provided to an officer or employee in a business or social setting that has a value of fifty dollars or less, as long as the total value of all such gifts received from any Restricted Source does not exceed fifty dollars in any calendar year.
- B. Any gift that meets one of the exceptions under the Political Reform Act:

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1. Informational material as defined by 2 California Code of Regulations §18942.1.
2. Any payment that is not used and that, pursuant to 2 California Code of Regulations §18941 is returned, donated, for which reimbursement is paid.
3. A payment from: the official's spouse for former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grandnephew, grandniece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph.
4. A campaign contribution required to be reported under Chapter 4 of the Political Reform Act.
5. Any devise or inheritance.
6. A personalized plaque or trophy valued at less than \$250.
7. (A) The cost of home hospitality, as defined in 2 California Code of Regulations §18942.2, provided to an official by an individual in the individual's home when the individual is present, unless one of the following provisions applies:
 - i. Any part of the cost of the hospitality provided by the host is paid directly or reimbursed by another person.
 - ii. Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.
 - iii. There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home.(B) In determining the applicability of subparagraph (A), the following apply:
 - i. The cost of providing hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.
 - ii. An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.
8. (A) Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on a holiday, birthday, or other occasions, including reciprocal exchanges as identified in subparagraph (B) below where benefits are commonly exchanged, to the extent that the value of the benefits exchanged is not substantially disproportionate and includes food, entertainment, and nominal benefits

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provided to guests at an event, by an honoree or another individual, other than a lobbyist, hosting the event.

(B) Reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment that is equal to or greater than the amount specified in 2 California Code of Regulations §18940.2.

9. Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position except for donations of cash.
10. Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under [Section 501\(c\)\(3\) of the Internal Revenue Code](#) designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.
11. Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in 2 California Code of Regulations §18950 (b)(2)) is not a "payment" as defined in California Government Code §82044 so long as the admission is provided by the person who organizes the event. For purpose of this subdivision, nominal means an insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.
12. Payments for campaign activities as specified in 2 California Code of Regulations §18950.3.
13. A ticket provided to an official and one guest of the official for his or her admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a ceremonial role on behalf of his or her agency, as defined in 2 California

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Code of Regulations §18942.3, so long as the official's agency complies with the posting provisions set forth in 2 California Code of Regulations §18944.1, subdivision (f). Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event.

14. A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery.
15. Benefits received as a guest attending a wedding or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.
16. Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.
17. Acts of Neighborliness. A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances.
18. (A) Bona Fide Date or Dating Relationship. Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act's conflict of interest provisions if the value meets the amount specified in 2 California Code of Regulations §18940.2.

(B) Acts of Human Compassion. Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

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(C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(D) The limitations placed on the exceptions contained within this paragraph (18) apply to the following persons:

- i. A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.
- ii. A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.
- iii. A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

19. Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

The following gifts are exempt from the limitations on gifts described in California Government Code §89503:

1. Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by California Government Code §89506.
2. Wedding gifts.

The promise, receipt, acceptance, and return of gifts are governed by the Political Reform Act. In addition, per the San Jose Municipal Code 12.08.120, a gift is not considered accepted or received under this policy if:

- A. It is treated as and remains the property of the City or the Successor Agency.

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- B. It is received by an officer or designated employee in his or her official capacity or as a representative of the City or the Successor Agency, it is reported to the City Council or Successor Agency board, and the City Council or Successor Agency board, as applicable, approves of the official or designated employee retaining the gift.

*Approved by the City Council
April 24, 2018*

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

April 30, 2018
Date