

Policy for Accepting Gifts to the City**1.2.6****PURPOSE AND SCOPE**

The purpose of this procedure is to establish the process for accepting gifts to the City that would otherwise be gifts to individual employees, consistent with California Fair Political Practices Commission (FPPC) Regulation 18944.2¹.

Department Directors are authorized by the City Manager to accept gifts to the City up to a value of \$250. Gifts to the City valued at \$250 or more must be accepted by the City Manager.

CRITERIA FOR GIFTS TO THE CITY

A gift that would otherwise be considered a gift to a public official or employee because it provides a personal benefit to the official or employee may be accepted as a gift to the City instead, if and only if all of the following three requirements are met:

1. City Controls Use of Gift

The City Manager or his or her designee determine the City's use of the gift, but may not select himself or herself as the recipient of the gift. This means that although the donor may identify a purpose or recipient for the gift, the donor may not specify how the gift will be used or by whom.

Department Directors are hereby authorized by the City Manager to accept gifts to the City up to a value of \$250, pursuant to this Policy.

2. Official City Business

The gift must be used for official City business. This means that the gift must be used for a legitimate government purpose and must assist the City in carrying out its mission, programs, and goals. The gift may not be for an activity unrelated to official City business.

Under state law, gifts such as food, gift cards, and gift baskets are solely personal in nature and cannot be converted to official City business, thus these items cannot be accepted as gifts to the City. Examples of gifts that may be considered gifts to the City include admission for employees to a public works seminar valued at more than \$50 per employee for use by public works staff or specialized safety equipment or clothing valued at more than \$50 for use by public safety personnel.

3. City Reports the Gift

Within 30 days after a gift of any value is received, the City Manager or his or her designee must disclose it on [FPPC Form 801](#).

¹ [San José Municipal Code Chapter 12.08](#) and the City's [Gift Policy](#), City Policy Manual Section 1.2.2, establish the policy and guidelines for accepting gifts to individual City employees and officials.

Policy for Accepting Gifts to the City**1.2.6****PROCEDURE FOR ACCEPTING A GIFT TO THE CITY****1. Filing Requirements**

Department Directors are designated filers for gifts to the City valued at less than \$250. The Department Director must complete Parts 1-3 of [FPPC Form 801](#), sign it, and file it with the Office of the City Clerk. A copy of the completed form must be sent to the Office of the City Manager.

For gifts valued at \$250 or more, the City Manager will complete Parts 1-3 of [FPPC Form 801](#), sign it, and file it with the Office of the City Clerk.

The following information must be included in [FPPC Form 801](#):

- a. A description of the gift, date received, intended purpose and actual or estimated value.
- b. Name and address of the donor. If the donor is an entity, the business activity or the nature and interest of the entity must be reported.
- c. The City's use of the gift and the name, title and department of the public official who used the gift.

2. Posting Requirements

The City Clerk is required to post a copy of the form on the City Clerk's website. The City Clerk serves as the filing officer for the forms and is required to keep a log and maintain the forms, which are considered public records, for a period of four years.

INSTANCES WHERE THE GIFT DOES NOT QUALIFY AS A GIFT TO THE CITY**1. The Gift is Not for Official City Business**

If the purpose of the gift is solely personal in nature, the City cannot accept the gift and it will be attributed to the employee who receives it. Depending on the value of the gift, the employee who receives the gift may be required to report it on his or her [Statement of Economic Interest Form](#) (Form 700). Receipt of any gift is subject to the gift limitations set forth in the Political Reform Act, [San José Municipal Code Chapter 12.08](#), and the City's [Gift Policy](#), City Policy Manual Section 1.2.2.

2. No Employee Will Receive Personal Benefit

If a gift is strictly intended to benefit the City and will result in no personal benefit to a public employee, Regulation 18944.2 does not apply and [FPPC Form 801](#) is not required. An example would be a donation to the City of an artwork that is displayed in a public space.

3. The Gift is Covered by a Different Statute or Regulation

There are separate rules for tickets or passes given to the City as well as gifts in the form of payments for travel. For additional information, please refer to [Distribution of Tickets or](#)

Policy for Accepting Gifts to the City

1.2.6

[Passes to City/Agency Officials Policy](#), Council Policy Section 9-11 and the [Employee Travel Policy](#), City Policy Manual Section 1.8.2.

Approved:

/s/ Debra Figone
City Manager

May 3, 2010
Date

Policy for Accepting Gifts to the City**1.2.6****FREQUENTLY ASKED QUESTIONS****1. Can an employee accept a gift that is not intended for other employees?**

No. Gifts to an employee cannot be accepted if the gift is a prohibited gift under Chapter 12.08 of the San José Municipal Code and the City's [Gift Policy](#), City Policy Manual Section 1.2.2. For example, holiday gift baskets or gift cards cannot be accepted if the total value of gifts from any one donor exceeds \$50 or more in any calendar year. These gifts cannot be accepted as a gift to the City instead of one to an employee as an individual employee because they are personal in nature and are not used for official City business under Fair Political Practices Commission (FPPC) interpretations.

If it is a prohibited gift to an employee, the gift must be returned to the donor or delivered to a charitable organization without being claimed as a tax deduction within 30 days. Certain gifts may be treated as and remain the property of the City.

Some departments have gift policies which are stricter than the City's Policy which must be followed.

2. Can gifts for a Department or group of employees in the Department be accepted?

Yes. Gifts, such as holiday gift baskets or candy, which are intended to be shared by departmental employees, or are addressed to a group of employees in a department, may be accepted by the Department Director if the value of the gift to the employee on a pro rata basis is less than \$50. These gifts cannot be converted to City gifts because these are solely personal and cannot be used for official City business and are considered as gifts to an individual under the City's [Gift Policy](#).

3. Can a Department accept gifts to the City or Department to be used for employee recognition or departmental events?

No. Gifts such as gift certificates or vouchers for restaurants, gift cards and free passes to health clubs, which are provided to a Department or group of employees to be used for employee recognition or departmental events cannot be accepted as gifts to the City or Department. Under FPPC interpretations, these gifts are personal in nature and cannot be used for official City business and are therefore gifts to the employee recipient. Generally, gifts which are valued less than \$50 from a donor may be accepted by individual employees. Gifts in excess of \$50 cannot be accepted unless the gift falls within the strict exceptions in the City's [Gift Policy](#), City Policy Manual Section 1.2.2 or Gift Ordinance.

Remember that state law requires designated employees in the City's Conflict of Interest Code to report gifts valued at \$50 or more.