



# Memorandum

**TO:** THE HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Councilmember Lan Diep

**SUBJECT:** AMENDMENT OF THE CITY'S  
GIFT ORDINANCE

**DATE:** 10/24/2017

Approved

*Lan Diep*

Date

*10/24/17*

## RECOMMENDATION

Approve final adoption of the amendment to the City's Gift Ordinance without further changes.

## BACKGROUND

The State of California and the City of San José take different approaches to the acceptance of gifts. The City essentially prohibits all gifts to city officials and designated employees by default and then carves out certain exceptions to the general rule. Thus, City officials can accept items valued at \$50 or less, or informational materials and tickets to events provided directly from event organizers, regardless of value, but not tickets to sporting events. By contrast, the State has a permissive stance towards accepting gifts, allowing government officials to accept anything valued at \$470 or below. Additionally, the State contemplates exceptions where the \$470 limit would not apply, such as gifts between spouses or dating partners.

At the June 20th council meeting, a supermajority of the Council agreed to eliminate the City's gift ordinance and default to the State's rules. When the item was brought back for final adoption, it was pulled from consent calendar and discussed anew. Concerns raised during that discussion include media coverage of the council action; public perception; the fact that 1,681 Form 700 filers at the City would be affected by the change in addition to the Council; onerous Form 700 reporting requirements might be triggered if the City's gift limit were raised above \$50; and that San José should set a more ethical example for the State and other cities.

Arguments made for raising the gift limit to match with the State include eliminating the confusion created by distinct rules governing gifts; lessening the burden on the City Attorney's office of having to learn two sets of gift laws; accounting for inflation since the City's gift ordinance was last amended in 2004; the additional resources available to help navigate State rules, such as the FPPC hotline; crossing the \$50 gift-reporting threshold to give the public a more accurate idea of what may be influencing decision-makers; and recognition that gifts can be rejected, thus truly testing the ethical mettle of city officials and designated employees.

## ARGUMENT

The Council voted on August 15th to maintain a \$50 gift limit, but align with the State's rules in all other regards, rejecting the State's \$470 gift limit and the Board of Fair Campaign and Political Practices' recommendation to raise the limit to \$250 or less. In doing so, the Council took a step towards simplicity, shifting our city's gift policy from a prohibitive gift regime with various exceptions carved out, to a permissive regime with a clear bright line limit.

Under the City's current gift ordinance, one of many exceptions allow councilmembers to exceed the \$50 gift limit and gain "admission to ceremonial, political, civic, cultural or community functions" when invited directly by the sponsor of the event.

The State's gift rules, in contrast, consider tickets to civic, cultural, or community functions to be gifts. By final adoption of this ordinance, the Council would limit itself to accepting tickets at \$50 or less. Anecdotally, most tickets to events are valued at over \$50 and so councilmembers would have to pay to attend the numerous community events we are expected to attend.

In placing this final adoption item on the regular agenda instead of the consent calendar, the City Attorney's office intends to warn the Council of the implications of its decision to keep the \$50 limit. In his memo on this item, he advises:

If the Council wants to maintain the status quo with respect to tickets, the Council may want to consider keeping the City's exception allowing acceptance of one free ticket given by a sponsor of an even to a ceremonial, political, civic, and cultural or community function, except sporting events. Alternatively, the Council could revisit increasing the dollar limit of gifts generally or specific to tickets to allow for greater flexibility when accepting tickets.

The Council should do neither, and instead adopt this final ordinance as is. The Council has opposed raising the gift limit, as it seems to equate a lower gift limit with higher ethical standards. But keeping the City's exceptions to the gift limit so that councilmembers and designated employees can accept tickets valued at over \$50 flies in the face of the prevailing arguments made to keep the gift limit firmly at \$50.

## CONCLUSION

The Council should be consistent in its reasoning and keep the gift limit at \$50. Under the State's rules, Councilmembers can still attend campaign or non-profit fundraisers, as these tickets are deemed to have no value. For everything else – civic, cultural, or community functions – Councilmembers can pay for tickets out of district funds.