

REPORT



FROM CITY ATTORNEY

11

January 31, 2007

THE HONORABLE CITY COUNCIL
Palo Alto, California

RE: Adoption of Potential New Council Protocol: No
Gift Policy

Dear Members of the Council:

1. Background

The City Attorney was directed by the Policy and Services Committee to prepare a draft "No Gift" Policy as an addition to the Council's protocols. A draft was presented to the Policy and Services Committee on November 14, 2006. The Committee made a number of changes and it was recommended for City Council passage on a 3 -1 vote with Council Member Morton voting no.

Staff originally prepared a version that is a copy of the personnel policy that all City employees are required to follow. The City Attorney revised that policy to include the FPCC exceptions to the gift rule along with some additional modifications. The end product is designed to be as simple as possible and practical. It is impossible to list every type of gift and then prohibit each type individually.

2. City Staff No Gift Policy

The policy that City staff must follow is as follows:

POLICY AND PROCEDURES 2-21/HRD

February 1995

GIFTS AND GRATUITIES

POLICY STATEMENT

It is contrary to the City of Palo Alto's ethical standards and merit system for any City employee to accept gifts or gratuities from any individual, business, or organization doing business, or seeking to do business, with the City or who is seeking permits or other entitlements from the City.

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Gift Policy

It is the City's policy to provide impartial and excellent customer service. To accept gifts can convey an appearance of favoritism and conflict of interest. Gifts can be perceived as attempts to influence City operations or as compensation for services rendered and can erode the public confidence in the impartiality of decisions made by City officials.

PROCEDURE

1. Gifts offered to a City employee by anyone doing business, or seeking to do business, with the City, or seeking a permit or other entitlement from the City, should be politely, but firmly, declined. "City employee" includes permanent, temporary and contract employees.
2. If a gift is delivered to a City employee, it should be returned to the sender with the appropriate thanks.
3. If a gift is of the sort that is infeasible to return (e.g. perishable), the gift shall be:
 - a. placed in a location where it can be enjoyed by all employees, or
 - b. donated to an appropriate non-profit organization in the name of the sender.
4. This policy is supplemental to the gift limitations of the Political Reform Act of 1974. Employees are advised to confer with the City Attorney's Office if questions arise concerning gifts or offers of gifts (including in-kind gifts such as travel) from persons not presently doing business with the City.

Notes

1. Additional policy references:

City of Palo Alto Merit System Rules and Regulations 1301

City of Palo Alto Purchasing Manual #PA-155

2. This prohibition on gifts to employees does not apply to gifts offered or given to the City. Refer to *Policy and Procedures 1-18*.

NOTE: Questions and/or clarification of this policy should be directed to the Human Resources Department and the Office of the City Attorney.

3. Fair Political Practices Commission Rules

The Fair Political Practices Commission ("F.P.P.C.") has extensive guidelines and opinions on gifts. Essentially the F.P.P.C. allows public officials to receive gifts with certain caveats. Any gift that exceeds \$50.00 must be reported on the individual Form 700. Any gift from a single source that exceeds \$390 (or gifts from a single source aggregating that amount over a calendar year) must be disclosed and then the Council Member must not participate in anything

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involving that gift giver for a period of one year. Essentially, accepting a gift that exceeds the F.P.P.C. limits causes a conflict of interest for the recipient.

4. Policy and Services Committee Changes

The Policy and Services Committee had a thoughtful discussion about the new Protocol. They Committee made a number of changes to the Protocol in order to make it easier to understand and practical. Those changes are shown on the attached draft.

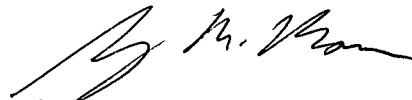
5. Enforcement

As with all City Council Protocols, the "No Gift" Protocols would be enforced directly by the City Council. All protocols are rules of conduct and do not have the force of ordinances behind them.

6. Recommendation

The City Attorney has no policy position or recommendation on adoption of the gift prohibition policy. This is solely a Council decision. The Council may adopt the policy as written, edit the policy or decline to adopt a policy. The Council may wish to carve out more workable exceptions. There is no legal requirement for the Council to adopt a gift policy. This draft is based upon the direction of a majority of the Policy and Services Committee. Feel free to make any changes you deem appropriate or reject the policy entirely.

Respectfully submitted,



GARY M. BAUM
City Attorney

GMB:cjs

Enc.

cc: Frank Benest, City Manager
Emily Harrison, Assistant City Manager
Sharon Erickson, City Auditor
Donna Rogers, City Clerk

Council Protocols

Gifts and Favors (Pg. 8)

It is contrary to the City of Palo Alto's ethical standards for any Council Member to accept gifts or gratuities from any individual, business, or organization doing business, or seeking to do business, with the City or who is seeking permits or other entitlements from the City.

The acceptance of gifts can convey an appearance of favoritism and conflict of interest. Gifts can be perceived as attempts to influence City operations or as compensation for services rendered and can erode the public confidence in the impartiality of decisions made by Council Members.

Council Members exercise good faith in carrying out this Protocol. It is impossible to list every situation and fact pattern, so it anticipates that Council Members will exercise their good judgment in determining whether the item is a gift or not.

This policy is supplemental to the gift limitations of the Fair Political Practices Commission's Limitations and Restrictions on Gifts, Honoraria, Travel and Loans.

The following are not considered gifts under this Protocol:

1. Gifts which the Council Member returns (unused) to the donor, or for which the Council Member reimburses the donor, within 30 days of receipt.
2. Gifts from a Council Member's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift.
3. Gifts of hospitality involving food or drink, that the Council Member receives in an individual's home or at another location or business.
4. Gifts approximately equal in value exchanged between the Council Member and another individual on holidays, birthdays, or similar occasions.
5. Informational material provided to assist the Council Member in the performance of their official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.
6. A bequest or inheritance.
7. Campaign contributions.

8. Personalized plaques and trophies with an individual value of less than \$250.
9. Tickets to attend fundraisers for campaign committees or other candidates, and tickets to fundraisers for organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
10. Free admission, refreshments, and similar non-cash nominal benefits provided to the Council Member at an event at which the Council Member gives a speech, participates in a panel or seminar, or provides a similar service. Transportation within California, and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or similar service, are also not considered gifts.
11. Passes or tickets which provide admission or access to facilities, goods, services, or other benefits (either on a onetime or repeated basis) that the Council Member does not use and does not give to another person.
12. Wedding gifts.
13. A prize or award received in a bona fide competition not related to official status.

(These exceptions are paraphrased from FPPC publications.)

14. Gifts from sister cities or other entities, other municipalities, if forwarded to the City.