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MEMORANDUM

August 3, 2010

To: Members of the City Ethics Commission

From: Heather Holt, Director of Policy and Legislation

Re: **AGENDA ITEM 13**
Governmental Ethics Ordinance Review:
Impartiality and Fairness, Part B (continued)

A. BACKGROUND

Last month, as part of our comprehensive review of the Governmental Ethics Ordinance (GEO), we began a discussion regarding the provisions that regulate gifts to City officials. The staff recommended the following improvements to those provisions:

1. Use the state's definitions for gifts and travel expenses.
2. Prohibit City officials from soliciting or accepting gifts from persons they know or should know are restricted sources.
3. Prohibit restricted sources from giving gifts to elected officials or to other City officials in agencies with which they are actively engaged.
4. Exempt from the gift ban routine and nominal office courtesies provided at a restricted source's place of business.
5. Modify the list of restricted sources.
6. Extend to lobbyist employers the same gift ban that currently applies to lobbyists and lobbying firms.
7. Require elected officials, general managers, and commissioners to disclose tickets given to them for events at which they perform ceremonial functions and to maintain records substantiating the ceremonial functions.
8. Eliminate the exception for tickets received in exchange for performing ceremonial functions when the tickets are provided by restricted sources.

In response to a commission request made at the June meeting, the staff also provided draft language that would create a limited exception to the prohibition on misusing a City position for soliciting philanthropic donations under specific conditions.

During last month's discussion, the Commission determined that it would be helpful to have the state and City gift laws presented in a chart format. In response to that request, three separate charts are provided with this memo and explained below. The memo that was presented in July gives more detail regarding each of the recommendations and is provided again as Attachment 4 to this memo. These materials are designed to help you reach consensus regarding the recommendations made last month, pending a vote to officially approve language to implement the desired changes to the GEO.

B. CHARTS

1. Attachment 1: Gift Limits

Attachment 1 is a diagram that explains the current and proposed gift limits for City officials. The state limit of \$420 per year per source is noted in blue at the top of the page, because it applies regardless of any additional City restrictions. The current City limits are identified in red, and the City limits that were recommended last month (notably a prohibition on all gifts, other than office courtesies, from all restricted sources) are identified in green. *See* Attachment 4, pp. 7-11.

2. Attachment 2: Gift Definitions

Attachment 2 provides a side-by-side comparison of the state and City definitions of "gift". The state's definition and exceptions are identified in blue, and the City's current definition and exceptions are identified in green. Just as the state gift *limit* applies regardless of any additional City limits, the state *definition* also applies to City officials for state law purposes (such as disclosure and disqualification), regardless of whether the City defines the term differently for its own purposes.

The state and City definitions of "gift" are essentially the same. *See* Attachment 2, p. 1. The City's definition for "payment" is identical to the state's, because the GEO does not separately define it. *Id.*; *see also* Los Angeles Municipal Code (LAMC) § 49.5.2 (terms used but not defined in the GEO have the meanings specified in the Political Reform Act of 1974 and the related regulations).

As noted last month, we recommend that the state's definition of "gift" be used instead of maintaining a separate City definition. Doing so will eliminate the confusion that can result from inconsistencies in the laws and, as noted above, from the fact that state law applies regardless of whether the City has its own regulations. It will also help ensure that the GEO is never unintentionally out of sync with state law and is more clearly tied to the state's extensive body of advice, opinions, and case law. *See* Attachment 4, pp. 2-7.

If the state's definition is adopted for GEO purposes, three exceptions to the City's current definition will be eliminated (*see* Attachment 4, pp. 3-4):

- a. Informational material that does not exceed \$250. Exception A (Attachment 2, p. 1). *Under state law, informational material is not limited in value. We believe that the state's definition of "informational material" is narrow enough to avoid possible misuse and that the GEO's limit is unnecessarily low.*
- b. Hospitality provided in an individual's home when the individual is not present. Exception G (Attachment 2, p. 3). *Under state law, the donor must be present and other criteria must also be met. This more lenient provision of the GEO creates confusion, and we do not believe it is enforceable.*
- c. Gifts of \$100 or less given in connection with non-recurring ceremonial events. Exception H (Attachment 2, p. 3). *There is no corresponding exception in state law. This more lenient provision of the GEO creates confusion, and we do not believe it is enforceable.*

Exceptions B through F in Attachment 2 are essentially the same in both state and City law, except that the state provides an additional layer to Exception B for gifts that are donated to government agencies. Exceptions I through X exist only in state law and would be new to the GEO. *See* Attachment 4, pp. 4-6. The four unlimited gifts that are identified on the last page of Attachment 2 also exist only in state law and would be additions to City law. Like an exception, an unlimited gift of any value may be given to City officials. In contrast to an exception, however, an unlimited gift can trigger disclosure and disqualification requirements. *See* Attachment 4, pp. 6-7.

3. Attachment 3: Restricted Source Exemptions

Attachment 3 highlights the GEO's limit on gifts from restricted sources. As noted last month, lobbyists and lobbying firms are prohibited from giving gifts of any value to City officials. All other restricted sources are prohibited from giving gifts valued at more than \$100 per year per official. *See* Attachment 4, pp. 7-8; *see also* LAMC §§ 49.5.10(A)(3)-(4). We recommend that all restricted sources be treated the same for gift purposes and prohibited from giving gifts of any value to City officials. *See* Attachment 1; *see also* Attachment 4, pp. 7-9.

There are currently some exemptions to the City's restricted source gift limits, to which the gift ban and the \$100 limit do not apply. In other words, restricted sources (including lobbyists and lobbying firms) may give City officials the exempt items as long as their cumulative value does not exceed the state limit of \$420 per year. The exempt items are the following:

- a. Items that are turned over to the City within 30 days;
- b. Meals provided at an event at which the City official speaks, participates in a seminar, or provides a similar service;

- c. Travel and meals paid by a government agency;
- d. Items provided by a union that represents the City official;
- e. Food and beverages provided by any union, as long as the City official is a member of a City union;
- f. Travel paid by a campaign committee;
- g. Travel paid by a nonprofit organization of which the City official is a member;
- h. Travel paid by an organization of which an agency or the City official is a member acting in an official City capacity; and
- i. Gifts to non-elected City officials for legal expenses related to an ethics enforcement action.

LAMC § 49.5.10(A)(7). Attachment 3 notes that, if the state's definition of "gift" is adopted for GEO purposes, items a, b, c, f, g, and h would become unlimited, either as an exception to the general definition or as a gift that is not subject to the limits (but nevertheless remains subject to the applicable reporting and recusal requirements; *see* section B.2, above). Items d, e, and i would continue to be subject to the state's \$420 gift limit and, because they would no longer be exempt, would become subject to any City gift limit that applies to restricted sources.

C. ADDITIONAL CONSIDERATIONS

1. Travel Expenses

Travel expenses are a specific type of gift that the GEO currently treats separately. LAMC § 49.5.10(B). One nuance to note is that we recommend using the state's definitions for both gifts and travel expenses. *See* Attachment 4, p. 3. Using the state's definitions would mean that restricted sources would be able to provide travel expenses for City officials who travel within the United States to give a speech that is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international policy. Those travel expenses may include transportation, lodging, and subsistence and must be limited to the day before, the day of, and the day after the speech. *See* Attachment 2, p. 6 (Unlimited Gift 1). Currently, restricted sources are not permitted to provide travel expenses for these types of speeches. LAMC §§ 49.5.10(B)(2), 49.5.10(B)(5).

Using the state's definitions would also permit restricted sources that are nonprofit organizations to pay for domestic or international transportation and lodging that are reasonably related to a legislative or governmental purpose or an issue of state, national, or international public policy. *See* Attachment 2, p. 6 (Unlimited Gift 1). Currently, restricted sources that are nonprofit organizations may pay for that type of travel only if the recipient City official or a City agency is a member of the organization. LAMC §§ 49.5.10(B)(2), 49.5.10(B)(6).

The GEO prohibits restricted sources from providing these gifts of travel to guard against the actual or apparent corruption that could result when a person who has active business with the City donates travel to a City official. This is a legitimate consideration. However, we

believe the state's definition is sufficient to address that concern, because of the reporting and recusal requirements that apply to these types of gifts.

Travel expenses related to a domestic speech that is given for governmental purposes and travel expenses paid by a nonprofit organization for governmental purposes are not exceptions to the state's definition of "gift". They are, instead, unlimited gifts that remain subject to the reporting and recusal requirements that apply to gifts. *See* section B.2, above; *see also* Attachment 4, pp. 6-7. Travel expenses cumulatively valued at \$50 or more in a calendar year from a single source must be reported on the recipient City official's Form 700. Cal. Gov't Code § 87207(a)(1). And the City official would be disqualified during the reporting period from acting on matters that affect the donor if the donor gives travel expenses that exceed an applicable gift limit. Travel expenses paid by a non-restricted source would require recusal once they exceed the state's annual gift limit of \$420. Cal. Gov't Code §§ 87100, 87103(e). Similarly, travel expenses paid by a restricted source would require recusal if they exceed the City's limit on gifts from restricted sources. LAMC § 49.5.10.

We believe that any real or perceived corruption that might result from a restricted source paying the travel expenses of a City official is adequately curbed by these disclosure and disqualification requirements. Regular reporting informs the public of the financial connection between a source and a City official. More importantly, the possibility of undue influence or improper favor is eliminated when recusal is required and the City official cannot act on a matter involving the person who donated the travel expenses. The recommended ban on gifts from restricted sources would ensure that recusal would be required whenever a restricted source might provide travel for a City official.

2. Ceremonial Tickets

On August 12, 2010, the Fair Political Practices Commission (FPPC) will discuss the possibility of amending the regulation regarding admission tickets and passes that are given to City officials who perform ceremonial functions at entertainment or recreational events. *See* 2 Cal. Code Regs. § 18944.1. As noted last month, these tickets are exceptions to the state's definition of "gift" and, as a result, the state gift limit and reporting requirements do not apply. *See* Attachment 4, pp. 10-11; *see also* Attachment 2, p. 5 (Exception R).

The FPPC staff is proposing that a public official who accepts a ticket or pass in exchange for a ceremonial function be required to disclose that fact on a form created by the FPPC. The form would have to be posted online within 30 days. The disclosure would include the name of the recipient, a description of the event, the date of the event, the face value of the ticket, and a description of the public purpose for which the ticket was provided.

The August discussion will be simply that. The FPPC staff plans to present formal recommendations to the board for action on September 9.

3. Public Comment

Following the July meeting, we received written public comment regarding the gift ban that currently applies to lobbyists and lobbying firms. A copy of the letter is provided in Attachment 5.

4. Philanthropic Solicitations

Finally, one issue that is unrelated to gifts remains outstanding. In June, we recommended a number of improvements to the prohibition against misusing a City position to create an unwarranted private advantage or disadvantage. One of the recommendations was that solicitations for philanthropic donations be specifically exempt from the general prohibition, to make it clear that such activity does not constitute a misuse of a City position. Detailed exemption language was requested in June and provided in July. *See* Attachment 4, pp. 11-12. Last month's discussion seemed to favor a more generic exemption, but a formal decision has not yet been made.

D. NEXT STEPS

The next set of staff recommendations will continue to address the category of impartiality and fairness. It will focus on equity issues that are not currently part of the GEO, such as *ex parte* communications. We also plan to present recommendations regarding the third review category of compliance.

I look forward to discussing this item with you at the meeting and would be happy to answer questions at any time.

Attachment 1

Gift Limits for City Officials

Current State Limit: \$420

Cumulative
Per calendar year
Per source*

Gifts cumulatively valued at \$50+ must be reported.
Limits apply regardless of recipient's knowledge or intent.

Cal. Gov't Code § 87207
Cal. Gov't Code § 89503
2 Cal. Code Regs. § 18940.2

* Any source for elected officials, city treasurer, city administrative officer, and officials who manage public investments. For all other City officials, any source that must be disclosed pursuant to a conflict of interests code or the Political Reform Act.

CURRENT City Limits

- \$0** → Gifts intended to influence an official City act.
- \$0** → Gifts that City officials knowingly solicit from restricted sources.*
- \$0** → Gifts accepted from or offered/made by lobbyists and lobbying firms, regardless of donor's or recipient's knowledge or intent.
- \$100** → Gifts cumulatively accepted from or offered/made by any other restricted source* in a calendar year, regardless of donor's or recipient's knowledge or intent.

*Certain lobbying entities, contractors, bidders, persons with proceedings pending, and persons who attempted to influence the recipient.

Los Angeles Municipal Code § 49.5.10.

PROPOSED City Limits

- \$0** → Gifts intended to influence an official City act.
- \$0** → Gifts that City officials knowingly solicit or accept from restricted sources.*
- \$0** → Gifts offered/made by any restricted source*, regardless of donor's knowledge or intent.

Except for routine and nominal office courtesies provided at source's place of business.

*Certain lobbying entities, contractors, bidders, persons with matters pending, and intermediaries.

Attachment 2

State and City Definitions of "Gift"

The staff recommends that the state's definition be used for both state law purposes and City law purposes.

	STATE <i>Political Reform Act</i>	CITY <i>Governmental Ethics Ordinance</i>
Definition of "Gift"	<p>"[A]ny payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value."</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82028(a)</i></p>	<p>"[A]ny payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value."</p> <p style="text-align: right;"><i>LAMC § 49.5.2</i></p>
Definition of "Payment"	<p>"[A] payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible."</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82044</i></p>	<p>"[A] payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible."</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82044 (per LAMC § 49.5.2)</i></p>
Exceptions <i>(Payments that are not gifts.)</i>	<p>A. Informational material [any item that serves primarily to convey information and is provided to assist the recipient in performing official duties] such as books, reports, pamphlets, calendars, periodicals, informational conferences, seminars, on-site demonstrations, tours, and inspections. The exception does not apply to payments for travel and reimbursement of expenses.</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82028(b)(1)</i> <i>2 Cal. Code Regs. § 18942(a)(1)</i> <i>2 Cal. Code Regs. § 18942.1</i></p>	<p>A. Informational material such as books, reports, pamphlets, calendars, periodicals, seminars, or informational conferences that is exclusively for official use and valued at less than \$250** (or, if received from a government agency, unlimited in value). The exception does not apply to payments for travel and reimbursement of expenses.</p> <p style="text-align: right;"><i>LAMC § 49.5.2</i></p>

	STATE <i>Political Reform Act</i>	CITY <i>Governmental Ethics Ordinance</i>
Exceptions <i>continued</i>	<p>B. Gifts that are not used and, within 30 days of receipt, are:</p> <ul style="list-style-type: none"> i. Returned to the donor (or the recipient reimburses the donor for the gift); ii. Donated to a nonprofit 501(c)(3) entity without being claimed as a charitable contribution for tax purposes; or iii. Donated to a local, state, or federal government agency without being claimed as a deduction for tax purposes. <p style="text-align: right;"><i>Cal. Gov't Code § 82028(b)(2)</i> <i>2 Cal. Code Regs. § 18942(a)(2)</i> <i>2 Cal. Code Regs. § 18943</i></p>	<p>B. Gifts that are not used and, within 30 days of receipt, are:</p> <ul style="list-style-type: none"> i. Returned to the donor; or ii. Delivered to a charitable organization without being claimed as a charitable contribution for tax purposes. <p style="text-align: right;"><i>LAMC § 49.5.2</i></p>
	<p>C. Gifts from an individual's immediate family members, including spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild, sibling, sibling-in-law, nephew, niece, aunt, uncle, first cousin, and the spouse of any of those persons, unless the donor is acting as an agent for a person who is not listed here. Personal gifts received in a bona fide dating relationship are also exempt.</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82028(b)(3)</i> <i>2 Cal. Code Regs. § 18942(a)(3)</i> <i>2 Cal. Code Regs. § 18944</i> <i>FPPC Advice I-08-085</i></p>	<p>C. Gifts from an individual's spouse, registered domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, sibling-in-law, partner in a bona fide dating relationship, nephew, niece, aunt, uncle, first cousin, or the spouse of any of those persons, unless the donor is acting as an agent for a person who is not listed here.</p> <p style="text-align: right;"><i>LAMC § 49.5.2</i> <i>2 Cal. Code Regs. § 18229</i></p>
	<p>D. Campaign contributions that must be reported under the Political Reform Act.</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82028(b)(4)</i> <i>2 Cal. Code Regs. § 18942(a)(4)</i></p>	<p>D. Campaign contributions that must be reported under the Political Reform Act.</p> <p style="text-align: right;"><i>LAMC § 49.5.2</i></p>
	<p>E. A devise or inheritance.</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82028(b)(5)</i> <i>2 Cal. Code Regs. § 18942(a)(5)</i></p>	<p>E. A devise or inheritance.</p> <p style="text-align: right;"><i>LAMC § 49.5.2</i></p>

<p style="text-align: center;">STATE <i>Political Reform Act</i></p>	<p style="text-align: center;">CITY <i>Governmental Ethics Ordinance</i></p>
<p>Exceptions <i>continued</i></p> <p>F. A personalized plaque or trophy valued at less than \$250. <i>Cal. Gov't Code § 82028(b)(6)</i> <i>2 Cal. Code Regs. § 18942(a)(6)</i></p>	<p>F. A personalized plaque or trophy valued at less than \$250. <i>LAMC § 49.5.2</i></p>
<p>G. Hospitality (including food, beverages, and occasional lodging) provided in the donor's home when the donor is present, unless another person pays part of the costs or the donor deducts the hospitality as a business expense. <i>2 Cal. Code Regs. § 18942(a)(7)</i></p>	<p>G. Gifts of food, beverages, and occasional lodging provided in an individual's home.** <i>LAMC § 49.5.2</i></p>
<p>H. N/a.</p>	<p>H. Gifts valued at no more than \$100 from an individual to a City official or to a member of the official's immediate family in connection with a non-recurring ceremonial occasion.** <i>LAMC § 49.5.2</i></p>
<p>I. Gifts from an individual with whom the recipient exchanges gifts of substantially proportionate value on holidays, birthdays, and similar occasions. <i>2 Cal. Code Regs. § 18942(a)(8)</i></p>	<p>I. N/a.</p>
<p>J. Leave credits (including vacation, sick leave, and compensatory time off but not including cash) that are donated under a catastrophic or emergency leave program that is established by the recipient's employer and available to all employees in the same job classification or position. <i>2 Cal. Code Regs. § 18942(a)(9)</i></p>	<p>J. N/a.</p>
<p>K. Payments received through a government program or a charitable 501(c)(3) organization's program that is designed to provide disaster relief, food, shelters, or similar assistance to qualified recipients if the assistance is available to the general public. <i>2 Cal. Code Regs. § 18942(a)(10)</i></p>	<p>K. N/a.</p>

	<p style="text-align: center;">STATE <i>Political Reform Act</i></p>	<p style="text-align: center;">CITY <i>Governmental Ethics Ordinance</i></p>
<p>Exceptions <i>continued</i></p>	<p>L. Admission, refreshments, and similar non-cash, nominal benefits provided for an event at which the recipient gives a speech, participates in a panel or seminar, or provides a similar service. <i>2 Cal. Code Regs. § 18942(a)(11)</i></p>	<p>L. N/a.</p>
	<p>M. Transportation and necessary lodging and subsistence provided by a government entity for an official (excluding an elected official, the city treasurer, the city administrative officer, and an official who manages public investments) who makes a speech for official agency business in the regular course of duties. "Necessary" means the day before, the day of, and the day after the speech. <i>2 Cal. Code Regs. § 18942(a)(11)</i> <i>2 Cal. Code Regs. § 18950.3(b)</i></p>	<p>M. N/a.</p>
	<p>N. Travel paid with campaign funds or contributions. <i>Cal. Gov't Code § 89506(d)(1)</i> <i>Cal. Gov't Code § 89513(a)</i> <i>2 Cal. Code Regs. § 18950.1(c)</i></p>	<p>N. N/a.</p>
	<p>O. Travel provided by the recipient's employing agency. <i>Cal. Gov't Code § 89506(d)(2)</i> <i>2 Cal. Code Regs. § 18950.1(d)</i></p>	<p>O. N/a.</p>
	<p>P. Travel that is reasonably necessary for a bona fide business, trade, or profession and qualifies as a business expense for income tax purposes (unless the primary activity of the business is making speeches). <i>Cal. Gov't Code § 89506(d)(3)</i> <i>2 Cal. Code Regs. § 18950.1(e)</i></p>	<p>P. N/a.</p>
	<p>Q. Travel provided to an elected official or candidate in direct connection with campaign activities, including attendance at political fundraisers. <i>2 Cal. Code Regs. § 18950.4</i></p>	<p>Q. N/a.</p>

	<p style="text-align: center;">STATE <i>Political Reform Act</i></p>	<p style="text-align: center;">CITY <i>Governmental Ethics Ordinance</i></p>
<p>Exceptions <i>continued</i></p>	<p>R. A ticket or pass for admission to an entertainment event in either of the following scenarios:</p> <ul style="list-style-type: none"> i. The recipient performs a ceremonial role or function on behalf of an agency; or ii. The ticket or pass is provided by the recipient's agency in accordance with specific procedures and is treated as income. <p style="text-align: right;"><i>2 Cal. Code Regs. § 18944.1</i></p>	<p>R. N/a.</p>
	<p>S. A payment that creates a personal benefit for an official if the payment is made to and controlled by a government agency and the agency uses the payment for official agency business in accordance with specific procedures.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18944.2</i></p>	<p>S. N/a.</p>
	<p>T. A payment from an agency to an official in the agency if it is provided out of the agency's assets and is a lawful expenditure of public money.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18944.3</i></p>	<p>T. N/a.</p>
	<p>U. An item that is awarded in an employee raffle and was obtained with agency funds (and is a lawful expenditure of public money) or from an agency employee who is not acting as an intermediary for another donor.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18944.4(b)</i></p>	<p>U. N/a.</p>
	<p>V. An item that is received during an employee gift exchange from another agency employee and is not substantially disproportionate in value from the other gifts.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18944.4(c)</i></p>	<p>V. N/a.</p>
	<p>W. A prize or award that is received in a bona fide competition not related to the recipient's status as an official or candidate and is reported as income.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18946.5</i></p>	<p>W. N/a.</p>

	STATE <i>Political Reform Act</i>	CITY <i>Governmental Ethics Ordinance</i>
Exceptions <i>continued</i>	<p>X. Behested payments that are made for principally legislative, governmental, or charitable purposes (if cumulatively valued at \$5,000 per calendar year per source, the payments must be reported).</p> <p style="text-align: right;"><i>Cal. Gov't Code § 82015(b)(2)(B)(iii)</i></p>	X. N/a.
Unlimited Gifts <i>(May exceed \$420 per year but remain subject to the disclosure and disqualification requirements.)</i>	<p>1. Transportation and lodging that are reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy and is either of the following:</p> <ul style="list-style-type: none"> i. Connected to a speech made by the recipient, within the United States, and limited to the day before, the day of, and the day after the speech; or ii. Provided by a government (domestic or foreign), an educational institution, a 501(c)(3) organization, or certain persons domiciled outside the United States. <p style="text-align: right;"><i>Cal. Gov't Code § 89506(a)</i> <i>2 Cal. Code Regs. § 18942(b)(1)</i> <i>2 Cal. Code Regs. § 18950.1(a)</i> <i>2 Cal. Code Regs. § 18950.1(b)</i></p>	1. N/a.
	<p>2. Wedding gifts.</p> <p style="text-align: right;"><i>Cal. Gov't Code § 89503(e)(2)</i> <i>2 Cal. Code Regs. § 18942(b)(2)</i> <i>2 Cal. Code Regs. § 18946.3</i></p>	2. N/a.
	<p>3. A ticket or pass for admission or access to facilities, goods, services, or other benefits that is not used and is not given to another person.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18946.1</i></p>	3. N/a.
	<p>4. A ticket or pass for admission to a fundraiser for a campaign committee or candidate that is provided by the committee holding the fundraiser and is used only by the recipient.</p> <p style="text-align: right;"><i>2 Cal. Code Regs. § 18946.4(c)</i></p>	4. N/a.

** City exceptions A, G, and H are not included among the state exceptions.

Attachment 3

Exemptions: Restricted Source Gift Limit

LAMC § 49.5.10(A)(7) currently exempts certain gifts from the City's restricted source* gift limits, which means restricted sources can give those items up to the state's cumulative annual limit of \$420. If the state's definition of "gift" is adopted as recommended, restricted sources would be able to give unlimited amounts of some of these items. Other items, because they are not exempt from the state's definition of or limit on gifts, would continue to be subject to the \$420 limit.

Would Become Unlimited	Would Remain Subject to \$420 Limit
<p>A. Items that are turned over to the City within 30 days of receipt. <i>Unlimited under Exception B (Attachment 2, page 2) if the item is not claimed as a charitable contribution for tax purposes.</i></p> <p>B. Meals provided at an event at which the recipient speaks, participates in a seminar, or provides a similar service. <i>Unlimited under Exception L (Attachment 2, page 4).</i></p> <p>C. Travel expenses paid by a campaign committee. <i>Unlimited under Exception N (Attachment 2, page 4).</i></p> <p>D. Travel expenses and meals paid for by a local, state, federal, or foreign government. <i>Unlimited under the following:</i></p> <ul style="list-style-type: none"> • <i>Exception M (Attachment 2, page 4) if the expenses are necessary because the recipient is making a speech for official agency business; the expenses are limited to the day before, the day of, and the day after the speech; and the recipient is not an elected official, the city treasurer, the city administrative officer, or an official who manages public investments.</i> • <i>Exception O (Attachment 2, page 4) if the paying government is the recipient's employing agency.</i> • <i>Unlimited Gift 1 (Attachment 2, page 6) if the travel is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy.</i> <p>E. Travel expenses paid by a nonprofit organization of which the recipient is a member. <i>Unlimited under Unlimited Gift 1 (Attachment 2, page 6), if the travel is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy.</i></p> <p>F. Travel expenses paid by an organization of which a City agency or the recipient is a member acting in an official City capacity. <i>Unlimited under Unlimited Gift 1 (Attachment 2, page 6), if the organization is a 501(c)(3) organization and the travel is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy.</i></p>	<p>A. Items provided by a union that represents the recipient.</p> <p>B. Food and beverages provided by any union, as long as the recipient is a member of a City union.</p> <p>C. Gifts to non-elected City officials for legal expenses related to an enforcement action brought under City or state ethics laws.</p> <div style="border: 1px dashed black; padding: 10px; margin: 10px 0;"> <p><i>These items would also become subject to the City's limit on gifts from restricted sources.* Currently, gifts are banned from lobbyists and lobbying firms and limited to \$100 per year for all other restricted sources. The recommendation is that gifts from all restricted sources be banned.</i></p> </div>

*A "restricted source" is a person who has active business with the City. It is recommended that the term be updated to include certain lobbying entities, contractors, bidders, persons with pending City matters, and intermediaries for those sources.

Attachment 4

CITY OF LOS ANGELES
CALIFORNIA



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MEMORANDUM

July 7, 2010

To: Members of the City Ethics Commission

From: Heather Holt, Director of Policy and Legislation

Re: **AGENDA ITEM 9**
Governmental Ethics Ordinance Review:
Impartiality and Fairness, Part B

A. BACKGROUND

In January of this year, the staff began a comprehensive review of the Governmental Ethics Ordinance (GEO); and, over the past several months, we have been discussing specific recommendations for improving the ordinance. We divided the GEO into three categories, based on its underlying public policy goals: transparency; impartiality and fairness; and compliance. In April, the Commission reached consensus regarding the staff recommendations for transparency and public disclosure.

In June, the Commission began to discuss the second category of impartiality and fairness. Because of the fullness and complexity of the issues in that category, they have been spread out over several meetings. In June, the Commission reached consensus regarding the first set of staff recommendations in that category, regarding confidential information, misuse of position, and non-City employment.

This memo continues the discussion of impartiality and fairness by making recommendations regarding gifts to City officials and by revisiting an issue carried over from the June meeting regarding soliciting donations for philanthropic purposes. At the next meeting, we plan to address fairness and impartiality concepts that are not currently part of the GEO but may warrant inclusion, such as ex parte communications. We also plan to address the third category of compliance. As we have been doing through the course of this review, we suggest that you reach consensus on the recommendations made here, pending a vote to officially approve language to implement the desired changes to the GEO.

B. INTRODUCTION

As noted last month, four of the eight stated reasons for the GEO's adoption reflect the importance of fair and impartial government. The GEO is designed, among other things, "[t]o assure that individuals and interest groups in our society have a fair and equal opportunity to participate in the governmental process." Los Angeles Municipal Code (LAMC) § 49.5.1(C)(1).

Impartiality is critical to good government and helping to "restore public trust in governmental and electoral institutions." LAMC § 49.5.1(C)(7). Government decisions should be made in the best interests of the public—not based on bias for or against a particular citizen or based on a public servant's own, personal interests. The state also acknowledges this by declaring in its Political Reform Act that "government should serve the needs and respond to the wishes of all citizens equally ..." and that "[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner ..." Cal. Gov't Code §§ 81001(a)–(b).

To foster the important goal of fair and impartial government, we recommend a number of improvements to the GEO's regulations regarding gifts to City officials. This memo explains the suggested improvements, which are based on our experiences in administering and enforcing the law, the experiences that others have had in complying with the law, and changes in state law since the GEO was adopted. For reference purposes, the following documents are attached:

- Attachment A: Pertinent sections of the GEO, annotated with key conceptual changes.
- Attachment B: Pertinent sections of the Political Reform Act.
- Attachment C: Pertinent sections of the Political Reform Act regulations.

C. GIFTS

SEE PAGE 1 OF ATTACHMENT A

Gifts are a type of private benefit that can influence or appear to influence public officials. To help ensure that gifts to public servants are not and do not appear to be a factor in governmental decisions, the state has adopted a complex set of regulations regarding gifts to government officials. *See* Attachments B and C. In general, government officials may not accept gifts totaling more than \$420 per calendar year from any given source (the amount is adjusted biennially to accommodate changes in the Consumer Price Index). Cal. Gov't Code §§ 89503(a), 89503(c), 89503(f); 2 Cal. Code Regs. § 18940.2(a). Gifts include payments for travel expenses but do not include a number of other things that may be bestowed on government officials, such as informational materials, gifts from family members, and meals provided at events at which a public official speaks. *See, e.g.*, Cal. Gov't Code §§ 82028, 89506; 2 Cal. Code Regs. § 18942.

The GEO also regulates gifts to City officials. It prohibits gifts from lobbyists and lobbying firms to City officials who are employed by agencies that the lobbyists or lobbying firms must register to lobby. LAMC § 49.5.10(A)(4). It limits gifts from persons who are

engaged in specified activity with the City to a cumulative value of \$100 per calendar year. LAMC § 49.5.10(A)(3). And it creates its own set of exclusions. *See* LAMC §§ 49.5.2, 49.5.10(A)(7). When the GEO was first adopted in 1991, the state's gift rules did not address a number of the issues it now does. Changes at the state and City levels since 1991 have given rise to questions about the interplay between the two sets of laws. To promote clarity for those who must comply with the laws, as well as for those who must administer them, we recommend the following amendments to City law.

1. Use the State's Definitions

First, we recommend eliminating the GEO's definitions for "gift" and "travel expenses" and deferring to state law. Much in the GEO's definitions mirrors the state's, but the differences between them can create complexity and make it challenging to understand how the two laws work together in a particular scenario. Some confusion results because, as mentioned above, many of the state's regulations did not exist when the GEO was adopted. Additional confusion results because City officials are subject to the state's laws regardless of whether we have our own, and the provisions in the GEO that are more lenient than state law cannot substitute for state law. *See* Cal. Gov't Code § 81013 (local agencies may adopt additional requirements if they do not prevent public officials from complying with the PRA). Using the state's gift definitions will not only alleviate confusion, it will also more clearly tie the application of City law to the extensive body of state advice, opinions, and case law, which help guide understanding in this area and which we have long used for determining things such as the value of gifts.

By using the state's definitions, we would be forfeiting three components of the GEO's gift definition. *See* LAMC § 49.5.2. However, two of them are more lenient than state law, and we believe state law sufficiently limits the other:

- a. *A \$250 limit on informational materials.* The state does not place a limit on the value of informational materials that may be given to government officials, but the GEO caps them at \$250. Cal. Gov't Code § 82028(B)(1), LAMC § 49.5.2. We believe that the state's definition of "informational materials" is narrow enough to avoid possible misuse of the exception. The term includes only items that serve "primarily to convey information and [are] provided for the purpose of assisting the recipient in the performance of ... official duties" 2 Cal. Code Regs. § 18942.1. It covers things such as books, periodicals, videotapes, on-site demonstrations, and admission to informational conferences. *Id.* It does not cover travel expenses, meals, or other "extras" that may be provided at a demonstration or conference and could be seen as an attempt to curry favor with the official. *Id.*; Cal. Gov't Code § 82028(b)(1). Educational conferences and seminars can be very valuable to City officials and, by extension, to the public; but registration fees are typically well over \$250. We believe the existing limit is too low and should be eliminated in favor of the state's regulation in this area.

- b. *An exception for hospitality when the donor is not present.* Under state law, hospitality is not a gift when it is provided in the donor's home and, among other things, the donor or a member of the donor's family is present. 2 Cal. Code Regs. § 18942(a)(7). The GEO exempts gifts of food, beverages, and occasional housing provided in an individual's home, but it does not require the individual to be present and does not incorporate the additional criteria recently adopted by the state. Because the GEO is more lenient than state law in this circumstance, we do not believe that this exception is enforceable. *See* Cal Gov't Code § 81013.
- c. *An exception for up to \$100 in gifts connected with non-recurring ceremonial events.* There is no allowance in state law for gifts associated with non-recurring ceremonial events. Again, because this exception results in a City law that is more lenient than state law, we do not believe that it is enforceable. *Id.* It can also lead to confusion about whether these types of gifts are subject to the state's gift limit and reporting requirements.

We recommend relinquishing these exemptions to foster clarity, promote consistency, and improve compliance. Under state law, the definition of "gift" is, generally, "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received" Cal. Gov't Code § 82028; *see also* Cal. Gov't Code § 82044 (a payment is a "...rendering of money, property, services, or anything else of value, whether tangible or intangible"). The following specific items are excluded from the definition:

- | | <u>Citations</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| a. Informational material; | Cal. Gov't Code § 82028(b)(1)
2 Cal. Code Regs. § 18942(a)(1)
2 Cal. Code Regs. § 18942.1 |
| b. Gifts that are not used and, within 30 days of receipt, are either: | Cal. Gov't Code § 82028(b)(2)
2 Cal. Code Regs. § 18942(a)(2)
2 Cal. Code Regs. § 18943 |
| i. Returned to the donor; or | |
| ii. Given to a 501(c)(3) organization without being claimed as a charitable contribution for tax purposes; | |
| c. Gifts from an individual's immediate family members, including spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild, sibling, sibling-in-law, nephew, niece, aunt, uncle, first cousin, and the spouse of any of those persons (as long as the donor is not acting as an agent for a person who is not listed here); | Cal. Gov't Code § 82028(b)(3)
2 Cal. Code Regs. § 18942(a)(3)
2 Cal. Code Regs. § 18944 |
| d. Campaign contributions that must be reported under the Political Reform Act; | Cal. Gov't Code § 82028(b)(4)
2 Cal. Code Regs. § 18942(a)(4) |

Citations

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|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| e. | A devise or inheritance; | <i>Cal. Gov't Code § 82028(b)(5)
2 Cal. Code Regs. § 18942(a)(5)</i> |
| f. | A personalized plaque or trophy valued at less than \$250; | <i>Cal. Gov't Code § 82028(b)(6)
2 Cal. Code Regs. § 18942(a)(6)</i> |
| g. | Hospitality provided in the donor's home when the donor is present, unless another person pays part of the costs or the donor deducts the hospitality as a business expense. | <i>2 Cal. Code Regs. § 18942(a)(7)</i> |
| h. | Gifts from an individual with whom the recipient exchanges gifts of substantially proportionate value on holidays, birthdays, and similar occasions. | <i>2 Cal. Code Regs. § 18942(a)(8)</i> |
| i. | Leave credits, such as vacation or sick time, that are donated under a catastrophic leave program available to all similarly situated employees. | <i>2 Cal. Code Regs. § 18942(a)(9)</i> |
| j. | Payments received through a government or charity and available to the general public to provide disaster relief. | <i>2 Cal. Code Regs. § 18942(a)(10)</i> |
| k. | Admission, refreshments, and nominal benefits provided for an event at which the recipient gives a speech, participates in a panel, or provides a similar service. | <i>2 Cal. Code Regs. § 18942(a)(11)</i> |
| l. | Transportation and necessary lodging and subsistence provided by a government entity for certain officials who make a speech for official agency business in the regular course of their duties. | <i>2 Cal. Code Regs. § 18942(a)(11)
2 Cal. Code Regs. § 18950.3(b)</i> |
| m. | Travel paid with campaign funds or contributions. | <i>Cal. Gov't Code § 89506(d)(1)
Cal. Gov't Code § 89513(a)

2 Cal. Code Regs. § 18950.1(c)
2 Cal. Code Regs. § 18950.4</i> |
| n. | Travel provided by the recipient's employing agency. | <i>Cal. Gov't Code § 89506(d)(2)
2 Cal. Code Regs. § 18950.1(d)</i> |
| o. | Travel that is reasonably necessary for a bona fide business, trade, or profession and qualifies as a business expense for income tax purposes (unless the primary activity of the business is making speeches). | <i>Cal. Gov't Code § 89506(d)(3)
2 Cal. Code Regs. § 18950.1(e)</i> |

Citations

- p. A ticket or pass for admission to an entertainment event in either of the following scenarios:
i. The recipient performs a ceremonial role or function on behalf of an agency; or
ii. The ticket or pass is provided by the recipient's agency in accordance with specific procedures and is treated as income. 2 Cal. Code Regs. § 18944.1
- q. A payment that creates a personal benefit for an official if the payment is made to and controlled by a government agency and the agency uses the payment for official agency business in accordance with specific procedures 2 Cal. Code Regs. § 18944.2
- r. A payment from an agency to an official in the agency if it is provided out of the agency's assets and is a lawful expenditure of public money. 2 Cal. Code Regs. § 18944.3
- s. An item that is awarded in an employee raffle and was obtained with agency funds (and is a lawful expenditure of public money) or from an agency employee who is not acting as an intermediary for another donor. 2 Cal. Code Regs. § 18944.4(b)
- t. An item that is received during an employee gift exchange from another agency employee and is not substantially disproportionate in value from the other gifts. 2 Cal. Code Regs. § 18944.4(c)
- u. A prize or award that is received in a bona fide competition not related to the recipient's status as an official or candidate and is reported as income. 2 Cal. Code Regs. § 18946.5
- v. Behested payments that are made for principally legislative, governmental, or charitable purposes (if cumulatively valued at \$5,000 per calendar year per source, the payments must be reported). Cal. Gov't Code § 82015(b)(2)
(B)(iii)

In addition to carving out those specific exceptions, the state also treats several other items as unlimited gifts. In other words, the items are either not subject to the \$420 gift limit that applies to other gifts or they are deemed to have no value. However, in contrast to the exceptions listed above, these items are gifts that remain subject to the state's reporting and disqualification requirements (*see, e.g.*, Cal. Gov't Code § 87207(a)(1), requiring the reporting of gifts cumulatively valued at \$50 or more):

Citations

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|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. | Transportation and lodging that is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy and is either of the following:
i. Connected to a speech made by the recipient, within the United States, and limited to the day before, the day of, and the day after the speech; or
ii. Provided by a government (domestic or foreign), an educational institution, a 501(c)(3) organization, or certain persons domiciled outside the United States. | Cal. Gov't Code § 89506(a)
2 Cal. Code Regs. § 18942(b)(1)
2 Cal. Code Regs. § 18950.1(a)
2 Cal. Code Regs. § 18950.1(b)
2 Cal. Code Regs. § 18950.3 |
| b. | Wedding gifts. | Cal. Gov't Code § 89503(e)(2)
2 Cal. Code Regs. § 18942(b)(2)
2 Cal. Code Regs. § 18946.3 |
| c. | A ticket or pass for admission or access to facilities, goods, services, or other benefits that is not used and is not given to another person. | 2 Cal. Code Regs. § 18946.1 |
| d. | A ticket or pass for admission to a fundraiser for a campaign committee or candidate that is provided by the committee holding the fundraiser and is used only by the recipient. | 2 Cal. Code Regs. § 18946.4(c) |

These definitional standards are subject to change in the future, as the state continues to amend and improve the Political Reform Act and its related regulations. Another reason we recommend deferring to the state is that doing so will mean we are never out of sync with the state—as soon as a change at the state level becomes effective, it will also be effective at the City level. This compatibility will improve our partnership with the state as we help City officials comply with the gift laws. However, we will continue to monitor the interplay between state and City law and recommend changes to the GEO that we believe will help ensure that this area of the law remains clear and effective for City officials. In fact, we have a Charter mandate to do so. *See* Los Angeles City Charter § 702(f).

2. Modify the Gift Limit for “Restricted Sources”

Our next recommendation is to modify the GEO’s gift limits. As noted above in the first paragraph of section C, state law limits the cumulative value of gifts from a single source to \$420 per calendar year. Cal. Gov’t Code §§ 89503(a), 89503(f); 2 Cal. Code Regs. § 18940.2(a). However, the GEO further limits the value of gifts to City officials from certain sources. Lobbyists and lobbying firms are currently prohibited from giving a gift of any value to a City official if the lobbyist or lobbying firm is required to register to lobby the official’s agency.

LAMC § 49.5.10(A)(4). In addition, certain contractors, bidders, persons who have attempted to influence City officials, and persons who have proceedings pending with City agencies—otherwise known as “restricted sources”—may not give more than \$100 in gifts per calendar year to a City official. LAMC § 49.5.10(A)(3).

We recommend applying the voter-approved gift ban for lobbyists and lobbying firms to all restricted sources. The GEO’s gift limits exist to foster public confidence in the way City decisions are made. They set a bar that helps protect against the appearance of improper influence, regardless of the intent behind a particular gift. We believe that the best means of safeguarding the City’s decision-making processes is to ban gifts from all restricted sources.

A restricted source is a person who is actively engaged in business with the City and desires a favorable result in a City decision. If a City official receives a gift from a person who wants the official to decide a City matter in a particular way, the public’s perception of the integrity of that decision is likely to be compromised—even if the decision is made solely on the merits. We believe that this is true when the gift is given by any restricted source, not just by a lobbyist or lobbying firm.

In addition to improving and protecting public confidence in City decisions, we believe a ban on gifts from restricted sources is appropriate for several other reasons. Experience has shown us that the current \$100 limit can be unnecessarily confusing and difficult for City officials to track. If, for example, a City official attends and eats a meal at a reception held by a restricted source, the official must determine either the actual cost of the meal or his pro-rata share of the cost of the entire evening. Doing so can be difficult and awkward and, as a result, is often avoided. A ban on gifts from restricted sources is simpler to understand and, because no calculating or tracking is required, is easier to comply with and enforce.

Banning gifts from all restricted sources is also a more equitable approach. It treats all persons who have active business with the City the same way, regardless of whether they are registered as lobbying entities. It also eliminates an existing loophole by which a lobbyist’s client can give a gift even though the lobbyist cannot.

We do suggest an exception to the recommended ban on gifts from restricted sources. We believe that, just as the state exempts hospitality provided in the donor’s home, it is appropriate to exempt nominal and routine office courtesies that are provided to a City official in a restricted source’s office or place of business. A business entity may routinely provide things such as free parking or light refreshments to its guests, and we do not believe the gift ban should apply to those things. If a City official is a guest of that business, she is receiving no special or personalized benefit—those types of office courtesies have minimal value and are available to anyone who visits that business. As a result, we believe the City official may receive such items without generating concern about the way she makes City decisions.

Finally, to balance the value of a ban on gifts from restricted sources with the need for those affected to be able to comply, we believe that the bulk of the responsibility for the ban

should rest with the givers—those who know best whether they are restricted sources. It is often difficult, and sometimes impossible, for City officials to know whether potential donors are restricted sources who are limited in their gift giving (especially, as has been discussed, in the area of City contracts). Therefore, we recommend that City officials be prohibited from soliciting or accepting gifts from persons that they know or have reason to know are restricted sources (LAMC § 49.5.10(A)(2) currently prohibits them from knowingly soliciting gifts from restricted sources). And we recommend that restricted sources be flatly prohibited from offering or making a gift to elected City officials and to City officials in the agencies with which they are actively engaged.

3. Modify the Definition of “Restricted Source”

Third, we recommend modifying the list of sources that would be subject to the gift ban. At the June meeting, there was consensus that the sources of outside income that trigger Ethics Commission approval should be consistent for all City officials and should be agency-specific. Just as outside income is most likely to create a conflict (or the appearance of a conflict) when the source is actively engaged with the City official it employs or with that official’s agency, we also believe that gifts are more likely to generate concerns when the donor is actively engaged with the City official or the City official’s agency. The potential for actual or apparent corruption is greatest in that scenario. Therefore, we recommend that gifts to non-elected City officials be banned from the following persons:

- a. A lobbying entity that is required to register to lobby the City official’s agency;
- b. A person who has a contract with the City official’s agency;
- c. A person who has bid on a contract with the City official’s agency that has not yet been awarded;
- d. A person who has a City decision pending with the City official’s agency; and
- e. A person who is acting as an intermediary in giving a gift to the City official from one of the persons listed above.

For elected City officials, we recommend maintaining the GEO’s current approach and banning gifts from contractors, bidders, and persons with pending matters, regardless of the specific agency that is involved. Many City matters eventually reach the City Council or Mayor for action, and we believe that safeguarding the City’s decision-making processes is best served by prohibiting gifts to the City’s ultimate decision makers from sources that are actively engaged in business with any agency.

4. Treat All Lobbying Entities The Same

Fourth, we recommend applying to lobbyist employers (persons who employ in-house lobbyists) the gift restriction that applies to lobbyists and lobbying firms. As noted above in section C.2, only lobbyists and lobbying firms are currently banned from giving gifts to City officials. LAMC § 49.5.10(A)(4). During the review of the Municipal Lobbying Ordinance, however, the Commission determined that the gift regulations should also apply to lobbyist employers, for two reasons: to reflect the fact that they are as accountable to the public as lobbyists and lobbying firms are and to apply the City's lobbying laws equitably to all types of lobbying entities. For the same reasons, we again recommend extending the gift ban to lobbyist employers.

5. Add Requirements Regarding Certain Tickets

Finally, we recommend adopting additional requirements regarding admission tickets received by elected City officials, general managers, and commissioners for events at which they perform ceremonial functions on behalf of an agency. The state exempts from its definition of "gift" a ticket or pass to an entertainment or recreational event that is given to a public official who performs a ceremonial role or function on behalf of the official's agency at the event. 2 Cal. Code Regs. § 18944.1(a). The exception applies when the source of the ticket is a person other than the official's agency. *Id.* So, for example, the general manager for the Department of Recreation and Parks could accept a ticket to a baseball game at which he presents a certificate of appreciation on the department's behalf to the City's summer youth workers during the seventh inning stretch. The ticket would not be considered a gift, and the general manager would not have to report the ticket on his Form 700.

We have three recommendations regarding these types of tickets. First, we believe that the public has an interest in knowing when these events occur and the ceremonial functions that rise to the level of consideration for the ticket. Therefore, we recommend adding a section to the annual disclosure form that was approved at the April meeting. The section would require elected officials, general managers, and commissioners to disclose the following information when they accept this type of ticket:

- a. Date of the event;
- b. Location of the event;
- c. Description of the event;
- d. Description of the ceremonial role;
- e. Source of the ticket; and
- f. Face value of the ticket.

As with the other reporting required on the form, filers who did not receive any tickets in exchange for ceremonial functions during the reporting period would have to affirmatively declare that they did not. And disclosure would be required as part of their pre-confirmation

filings (for those who are being reappointed, for example), their annual statements of economic interests, and their leaving office statements.

Second, we recommend requiring the City officials who must disclose the tickets to maintain records substantiating their ceremonial functions for four years after the date of the event. Recordkeeping is required for lobbying and campaign finance purposes. *See, e.g.*, Cal. Gov't Code § 91011(a), LAMC §§ 49.7.12(E)(1) and 48.05, Los Angeles Administrative Code § 24.5(s)(4). And four years is the GEO's statute of limitations. LAMC §§ 49.5.19(A)(2), 49.5.19(B)(5), 49.5.19(E). To assist City officials in complying with the gift laws, we suggest making recordkeeping an affirmative requirement linked to the recommended disclosure.

Third, we recommend that the state exception not apply when these types of tickets are given to City officials by the restricted sources identified above in section C.3. Just as a gift from a person who has active business with the City can easily appear to create an improper influence on City decision makers (or an unfair advantage for the donor), an admission ticket to an entertainment or recreational event from such persons can also negatively affect the public's perception of the integrity and impartiality of the City's processes. This recommendation would not prevent City officials from performing ceremonial functions on behalf of the City. It would simply prevent them from staying for the entire entertainment event when admission is provided by a restricted source. We believe this is an appropriate way to balance the benefits of City officials engaging in public service with the importance of safeguarding against even the perception of undue influence.

D. PHILANTHROPIC SOLICITATIONS

SEE PAGE 1 OF ATTACHMENT A

One outstanding issue remains regarding a recommendation made at the June meeting. As discussed last month, the GEO prohibits the use of City positions to induce or coerce a person to create a private benefit for any person. *See* LAMC § 49.5.5. A number of improvements to that provision were approved. One of the recommended improvements was to carve out a limited exception to the general rule, to make it clear that solicitations for philanthropic purposes are not subject to the prohibition if they meet certain criteria. The general consensus in June was that such an exception is a good idea but that specific language would be helpful in determining the parameters within which such solicitations would be acceptable. The discussion focused on a desire to avoid the possibility that someone might feel improperly coerced to make a donation in response to a solicitation made, for example, by a supervisor.

With that in mind, and following further staff consideration, we propose the following amended version of LAMC § 49.5.5(A):

A City official, agency employee, appointee awaiting confirmation by the City Council, or candidate for elective City office may not use or attempt to use his or her position or prospective position to create for any person a private advantage or disadvantage, financial or otherwise, that does not result naturally from the lawful and proper

performance of City duties. This subsection does not prohibit the solicitation of donations for philanthropic purposes or agency-sponsored events when all of the following apply:

- 1. The solicitation is authorized by an elected City official or general manager who does not have a financial interest in and is not a member of the board of directors of the intended recipient;*
- 2. The solicitor does not have a financial interest in and is not a member of the board of directors of the intended recipient;*
- 3. The solicitation is disseminated broadly;*
- 4. The solicitation is not knowingly directed to either of the following:*
 - a. A person who has a contract with the solicitor's agency; or*
 - b. A person who has a municipal decision currently pending with the solicitor's agency;*
- 5. A donation is not mandatory, and a person's response to the solicitation has no effect on the person's employment or business with the solicitor's agency; and*
- 6. The solicitation activities do not interfere with the ability of the solicitor or the solicitor's agency to perform City duties.*

The exception is intended to apply to solicitations for philanthropic purposes (such as giving to the United Way) and to solicitations for agency-sponsored events (such as a retirement celebration). The goal of the six proposed limitations on the exception is to avoid situations in which a person feels undue pressure to contribute. For example, a solicitation must be authorized and made by a City employee who does not have too close an interest in the beneficiary, it cannot be targeted at a single person, and it cannot be knowingly directed to persons who have contracts or matters pending with the employee's agency. The fifth proposed condition makes it clear that contributions are voluntary and that any repercussion based on a person's decision to make or not make a contribution eliminates the exception. The sixth condition helps protect the public's interest in the good stewardship of public resources.

The proposed language resulted from extensive discussions by staff, during which it became clear that this is a difficult issue to regulate precisely. Feeling undue pressure is a subjective experience, which suggests that it is not possible to protect against every potential scenario—what feels oppressive to one may be a natural interaction to another. Nevertheless, there are some objective minimum standards that we believe are captured in the criteria identified above.

Another option would be to eliminate specific exception language, with the understanding that an employee's "lawful and proper performance of City duties" can include soliciting donations for charitable and agency-sponsored events. We look forward to hearing your thoughts and welcome further discussion about this at the meeting.

E. SUMMARY

We recommend that the GEO be amended as follows and that you reach consensus regarding these recommendations:

1. Amend the gift regulations:
 - Use the state's definition of "gift".
 - Prohibit City officials from soliciting or accepting gifts from persons they know or should know are restricted sources.
 - Prohibit restricted sources from giving gifts to elected officials or to other City officials in agencies with which they are actively engaged.
 - Exempt from the gift ban routine and nominal office courtesies provided at a restricted source's place of business.
 - Modify the list of restricted sources.
 - Extend to lobbyist employers the same gift ban that currently applies to lobbyists and lobbying firms.
 - Require elected officials, general managers, and commissioners to disclose tickets given to them for events at which they perform ceremonial functions and to maintain records substantiating the ceremonial functions.
 - Eliminate the exception for tickets received in exchange for performing ceremonial functions when the tickets are provided by restricted sources.
2. Create a limited exception to the prohibition on misusing a City position for solicitations for philanthropic donations that meet specific conditions.

F. NEXT STEPS

The next set of staff recommendations will continue to address the category of impartiality and fairness. It will focus on equity issues that are not currently part of the GEO, such as ex parte communications. We also plan to present recommendations regarding the third review category of compliance.

I look forward to discussing this item with you at the meeting and would be happy to answer questions at any time.

Attachment A

Los Angeles City Ethics Commission
Governmental Ethics Ordinance Excerpts
Impartiality and Fairness, Part B

CURRENT LAW

RECOMMENDATION

SEC. 49.5.5 Misuse of City Position or Resources

A. No City official, employee of any agency, appointee awaiting confirmation by the Council, or candidate for elective City office shall use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide, directly or indirectly, anything of value which shall accrue to the private advantage, benefit, or economic gain, of the City official or employee, or of any other person. As used in this section, the term "private advantage, benefit, or economic gain" means any advantage, benefit or economic gain, **distinct from that enjoyed by members of the public without regard to official status or not resulting naturally from lawful and proper performance of duties.** A City official or employee engages in a prohibited use of his or her official position or prospective position when he or she engages in activities other than in the lawful and proper performance of the person's City duties.

*See Definitions: Agency (page 3)
City official (page 3)*

In addition to improvements approved in June, exempt a solicitation for philanthropic purposes or agency-sponsored event if it is:

- 1. Authorized by an elected official or GM who does not have a conflict;*
- 2. Made by an employee who does not have a conflict;*
- 3. Disseminated broadly;*
- 4. Not directed to an agency contractor or person with a pending agency matter;*
- 5. Not mandatory (response has no effect on solicitee);*
- 6. Not an interference with City duties.*

SEC. 49.5.10 Restrictions on Gifts and Travel Expenses

A. Restrictions on Gifts.

1. No person shall offer or make, and no City official shall solicit or accept, any gift with the intent that the City official will be influenced thereby in the performance of any official act.
2. No City official shall **knowingly solicit** any gift from a restricted source.
3. Except in the case of a lobbyist or lobbying firm, no person who is a **restricted source** shall offer or make, and no City official shall accept, any gift from a restricted source which would cause the cumulative amount of gifts from such source to the City official to exceed **\$100 during any calendar year.**
4. No lobbyist or lobbying firm shall make, and no City official shall accept, **any gift from a lobbyist or lobbying firm** which is a restricted source as to that official.
5. No lobbyist or lobbying firm shall act as an agent or intermediary in the making of any gifts or arrange for the making of any gift by another person to any City official.
6. The provisions of Subdivision 3 of this subsection do not apply to foreign gifts made to an officer or employee of the City when representing the Department of Airports or the Harbor Department, which gift is disclosed by that official to the City Ethics Commission within 30 days after receipt on a form prescribed by the Commission.
7. For the purpose of this subsection, the term "gift" does not include:
 - (a) Items received by a City official which are not kept but which are turned over to the City within 30 days after their receipt.
 - (b) Meals provided to a City official at an event at which the official speaks, participates in a seminar or similar activity or provides a similar service.
 - (c) Travel expenses and meals paid for by a local, state, federal or foreign government agency.

Use the state's definition of "gift".

Prohibit City officials from soliciting or accepting gifts from persons they know or should know are restricted sources.

Prohibit restricted sources from offering or making gifts to elected City officials or to other officials in agencies with which they are actively engaged.

Redefine "restricted source" as:

- Lobbying entity required to register to lobby official's agency;*
- Contractor with official's agency (or any agency for elected officials);*
- Person who has bid on a contract with the official's agency (or any agency for elected officials);*

CURRENT LAW**RECOMMENDATION**

- (d) Items received by a bargaining unit member from a union representing that City official.
- (e) Food and beverages received from any union by a City official who is a member of a union representing a bargaining unit of City officials.
- (f) Payment for travel expenses from a campaign committee; a nonprofit organization of which the City official is a member; or an organization of which the City, an agency, or the official is a member acting in an official City capacity.
- (g) Gifts to non-elected City official for legal expenses related to an enforcement action brought under City or state ethics laws.

8. A City official may request the City Ethics Commission to provide that official with written advice concerning the legality of accepting any specific gift. Such request shall contain sufficient information to allow the Commission or its staff to properly consider the matter. The Commission or its staff shall provide written advice in response to such a request within 10 working days after the Commission's receipt of the request.

B. Restrictions on Travel Advances and Reimbursements.

1. No person shall offer or make, and no City official shall solicit or accept, any advance or reimbursement for travel expenses (including related lodging and reasonable subsistence expenses) with the intent that the City official will be influenced thereby in the performance of any official act.
2. No person who is a restricted source shall offer or make, and no City official shall accept from a restricted source as to that official, any advance or reimbursement for travel expenses (including related lodging and reasonable subsistence expenses).
3. No lobbyist or lobbying firm shall act as an agent or intermediary in the making of, or arrange for the making of, any advance or reimbursement for travel expenses (including related lodging and reasonable subsistence expenses) by another person, to any City official.
4. The payment for travel expenses of a City official traveling on government business shall not be prohibited by this section in any case where the payment is a gift or other payment to the City of Los Angeles or to any government agency for which the City Council is the code reviewing body with respect to that agency's conflict of interest code, rather than a gift or income to the official, within the meaning of the Political Reform Act of 1974, as amended, and the regulations of the Fair Political Practices Commission.
5. Travel expenses subject to the prohibitions of this subsection include expenses for intrastate travel and lodging related to a City official's speaking at an event, participating in a seminar or providing similar services, notwithstanding the provisions of Title 2, California Code of Regulations, Section 18728, or any successor section.
6. Travel expenses subject to the prohibitions of this subsection do not include any payment for travel expenses from a campaign committee; a nonprofit organization of which the City official is a member; or an organization of which the City, an agency, or the official is a member acting in an official City capacity.
7. This subsection does not limit travel expenses and meals paid for by a local, state, federal or foreign government agency.

See Definitions: City official (page 3)
 Foreign gift (page 3)
 Gift (page 3)
 Restricted source (page 4)

- Person with matter pending with official's agency (or any agency for elected officials); or
- Person acting as an intermediary for any of the above persons.

Extend to lobbyist employers the same gift ban that applies to lobbyists and lobbying firms.

Require elected officials, general managers, and commissioners to:

1. *Annually disclose tickets to entertainment events at which they perform a ceremonial function on behalf of an agency; and*
2. *Maintain for four years records substantiating the ceremonial function.*

Eliminate the exception for tickets received in exchange for ceremonial functions when the tickets are provided by restricted sources.

SEC. 49.5.2 Definitions [excerpts]

“Agency” means the City of Los Angeles or any department, bureau, office, board, commission, other agency of the City, or any other government agency, required to adopt a conflict of interest code subject to City Council approval. With respect to employees of a Councilmember's staff and employees of the Chief Legislative Analyst's office, "agency" means the City Council.

“City Official” means any elective City officer, member, officer, employee, commissioner or consultant of any agency required to adopt a conflict of interest code subject to City Council approval, and who is required to file statements of economic interests pursuant to the conflict of interest code of his or her agency.

“Doing Business with the City” means entering into or performing pursuant to a contract with the City of Los Angeles , an agency of the City or another local government agency required to adopt a conflict of interest code subject to City Council approval. Doing business with the City includes entering into or performing contracts for goods, equipment, services or financial assistance but does not include the receipt of or payment for services normally rendered by the City to residents and businesses such as sewer service, water and power, street maintenance and the like.

“Foreign gift” means a gift from an individual domiciled in a foreign country, a foreign government, or a business entity or other entity having its principal place of business located in a foreign country, which gift is accepted by a City official either while that official is traveling abroad or from the donor while that donor is visiting the United States. A foreign gift includes

- (1) an otherwise qualifying gift of food, beverages or customary business entertainment cumulatively valued at no more than \$250 during any calendar year accepted by an official during the course and scope of official business and
- (2) an otherwise qualifying gift which is accepted by the official on behalf of the City of Los Angeles and which gift is transmitted to and becomes the property of the City. A foreign gift does not include a gift from any corporation organized under the laws of the United States, or under the laws of any state or territory of the United States.

“Gift” means, except as otherwise provided in this definition, any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The term “gift” does not include:

- (1) Informational material such as books, reports, pamphlets, calendars, periodicals, seminars, or informational conferences, exclusively for official or office use and valued at less than \$250 (except that such dollar limit does not apply to informational material received from a government agency). No payment for travel or reimbursement of any expenses shall be deemed “informational material.”
- (2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

Use the state’s definition of “gift”.

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- (3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, partner in a bona fide dating relationship, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.
- (4) Campaign contributions required to be reported under Chapter 4 of the Political Reform Act of 1974, as amended.
- (5) Any devise or inheritance.
- (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).
- (7) Gifts of food, beverages or occasional lodging provided in an individual's home.
- (8) Gifts valued at no more than \$100 from an individual to a City official or to a member of the official's immediate family in connection with a non-recurring ceremonial occasion.

“Restricted source” means the following with regard to each of the following classes of City officials.

- (1) With regard to “high level filers” and “high level officials,” “restricted source” means:
 - (a) a lobbyist, lobbying firm, or lobbyist employer;
 - (b) a person doing or seeking to do business **with the City**;
 - (c) a person who, during the reporting period, knowingly attempted to influence the official in any legislative or administrative action which would have a direct material financial effect on such person; or
 - (d) a person who is a party to a proceeding involving a license, permit or other entitlement for use while a proceeding involving such matter is, or within the prior nine months was, pending before the official or before the City Council or a board, commission, committee, or other similar body of which the official is a voting member, and for nine months following the date a final decision is rendered in the proceeding.
- (2) With regard to filers other than “high level filers” and with regard to officials other than “high level officials,” “restricted source” means:
 - (a) a lobbyist, lobbying firm, or lobbyist employer, seeking to influence decisions of **the filer's agency**;
 - (b) a person doing or seeking to do business with **the filer's agency**;
 - (c) a person who, during the reporting period, knowingly attempted to influence the official in any legislative or administrative action which would have a direct material financial effect on such person;
 - (d) or a person who is a party to a proceeding involving a license, permit or other entitlement for use while a proceeding involving such matter is, or within the prior nine months was, pending before the official or before a board, commission, committee or other similar body of which the official is a voting member, and for nine months following the date a final decision is rendered in the proceeding.

With regard to all filers and all City officials, a “restricted source” does not include an individual (other than a lobbyist) who is employed by a restricted source, provided that the gift or income is neither paid for by the employer nor provided at the direction of the employer.

RECOMMENDATION

Apply gift restriction in LAMC § 49.5.10 to the following:

- *Lobbying entity required to register to lobby official's agency;*
- *Contractor with official's agency (or any agency for elected officials);*
- *Person who has bid on a contract with the official's agency (or any agency for elected officials);*
- *Person with matter pending with official's agency (or any agency for elected officials); and*
- *Person acting as an intermediary for any of the above persons.*

Attachment B

California Political Reform Act *Provisions Related to Gifts*

Gov't Code § 82007

"Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any officeholder who is the subject of a recall election. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. "Candidate" does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971.

Gov't Code § 82013

"Committee" means any person or combination of persons who directly or indirectly does any of the following:

- (a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.
- (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- (c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214.

Gov't Code § 82015

- (a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.
- (b)
 - (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.
 - (2) A payment made at the behest of a candidate is a contribution to the

candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

- (A) Full and adequate consideration is received from the candidate.
- (B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:
 - (i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.
 - (ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
 - (iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific

purpose or event for which the payment or payments were made. Once the five-thousand-dollar (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

Gov't Code § 82019

- (a) "Designated employee" means any officer, employee, member, or consultant of any agency whose position with the agency:
- (1) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.
 - (2) Is elective, other than an elective state office.
 - (3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.
 - (4) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.
- (b) (1) "Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.
- (2) "Designated employee" does not include a federal officer or employee serving in an

official federal capacity on a state or local government agency. The state or local government agency shall annually obtain, and maintain in its files for public inspection, a copy of any public financial disclosure report filed by the federal officer or employee pursuant to federal law.

Gov't Code § 82020

"Elected officer" means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer.

Gov't Code § 82028

- (a) "Gift" means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.
- (b) The term "gift" does not include:
- (1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."
 - (2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.
 - (3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.
 - (4) Campaign contributions required to be reported under Chapter 4 of this title.
 - (5) Any devise or inheritance.
 - (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

Gov't Code § 82044

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

Gov't Code § 82048

- (a) "Public official" means every member, officer, employee or consultant of a state or local government agency.
- (b) Notwithstanding subdivision (a), "public official" does not include the following:
 - (1) A judge or court commissioner in the judicial branch of government.
 - (2) A member of the Board of Governors and designated employees of the State Bar of California.
 - (3) A member of the Judicial Council.
 - (4) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.
 - (5) A federal officer or employee serving in an official federal capacity on a state or local government agency.

Gov't Code § 87100

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Gov't Code § 87103

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee,

employee, or holds any position of management.

- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Gov't Code § 87200

This article [regarding statements of economic interests] is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

Gov't Code § 87207

- (a) When income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):
 - (1) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.
 - (2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one

hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000).

- (3) A description of the consideration, if any, for which the income was received.
 - (4) In the case of a gift, the amount and the date on which the gift was received.
 - (5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.
- (b) When the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:
- (1) The name, address, and a general description of the business activity of the business entity.
 - (2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.
- (c) When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

Gov't Code § 87210

No person shall make a gift totaling fifty dollars (\$50) or more in a calendar year to a person described in Article 2 on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.

Gov't Code § 87313

No person shall make a gift of fifty dollars (\$50) or more in a calendar month on behalf of another, or while acting as the intermediary or agent of another to a person whom he knows or has reason to know may be required to disclose the gift pursuant to a conflict of interest code, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall

include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.

Gov't Code § 89503

- (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).
- (b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election, after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.
(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.
- (c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.
- (d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.
- (e) This section shall not prohibit or limit the following:
 - (1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Section 89506.
 - (2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

- (f) Beginning on January 1, 1993, the commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).
- (g) The limitations in this section are in addition to the limitations on gifts in Section 86203.

Gov't Code § 89506

- (a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:
 - (1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.
 - (2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
- (b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503.
- (c) Subdivision (a) applies only to travel that is reported on the recipient's statement of economic interests.
- (d) For purposes of this section, a gift of travel does not include any of the following:
 - (1) Travel that is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or that is a contribution.
 - (2) Travel that is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, an individual specified in Section 87200, or a designated employee.
 - (3) Travel that is reasonably necessary in connection with a bona fide business,

trade, or profession and that satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.

- (4) Travel that is excluded from the definition of a gift by any other provision of this title.
- (e) This section does not apply to payments, advances, or reimbursements for travel and related lodging and subsistence permitted or limited by Section 170.9 of the Code of Civil Procedure.

Gov't Code § 89513

This section governs the use of campaign funds for the specific expenditures set forth in this section. It is the intent of the Legislature that this section shall guide the interpretation of the standard imposed by Section 89512 as applied to other expenditures not specifically set forth in this section.

- (a) (1) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose.
- (2) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.
- (3) For the purposes of this section, payments or reimbursement for travel by the household of a candidate or elected officer when traveling to the same destination in order to accompany the candidate or elected officer shall be considered for the same purpose as the candidate's or elected officer's travel.
- (4) Whenever campaign funds are used to pay or reimburse a candidate, elected officer, his or her representative, or a member of the candidate's household for travel expenses and necessary accommodations, the expenditure shall be reported as required by Section 84211.

- (5) Whenever campaign funds are used to pay or reimburse for travel expenses and necessary accommodations, any mileage credit that is earned or awarded pursuant to an airline bonus mileage program shall be deemed personally earned by or awarded to the individual traveler. Neither the earning or awarding of mileage credit, nor the redeeming of credit for actual travel, shall be subject to reporting pursuant to Section 84211.

Attachment C

California PRA Regulations *Provisions Related to Gifts*

2 CCR § 18229.1. Definition of “Dependent Children.”

For purposes of the Act and Commission Regulations, “dependent child” or “dependent children” means a child, (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.

2 CCR § 18727.5. Travel Costs and Other Payments from Campaign Committees.

(a) Travel costs and reimbursements therefor paid by a “committee” as defined by Government Code Section 82013(a), including a “controlled committee,” shall be valued as follows:

- (1) A reimbursement, advance, or other payment for actual travel expenses (including meals and lodging) or for other actual and legitimate campaign expenses made by such a committee or controlled committee is neither income nor a gift to an official and need not be disclosed on the official's or candidate's Statement of Economic Interests if the expenditures are reported by the committee in accordance with the provisions of Government Code Sections 84100, et seq.
- (2) A reimbursement, advance, or other payment for personal travel expenses not covered by subsection (1) shall be reported by the recipient pursuant to Government Code Sections 87207 or 87302.

(b) Any other payment not covered by subsection (a), including a payment for personal services, such as salary, consulting fees, etc., from a committee is income or a gift (except as provided in Section 18950.3) and reported by the recipient pursuant to Government Code Section 87207 or 87302.

2 CCR § 18940.2. Gift Limit Amount.

- (a) For purposes of Government Code section 89503, the adjusted annual gift limitation amount in effect for the period January 1, 2009, to December 31, 2010, is \$420.
- (b) The gift limitation of \$250 in Government Code section 89503 shall be adjusted biennially by the Commission to reflect changes in the Consumer Price Index and rounded to the nearest ten dollars (\$10). The resulting figure shall be the adjusted gift limitation in effect until January 1 of the next odd-numbered year.
- (c) The adjustment shall be based upon the September forecast of U.S. Bureau of Labor Statistics California Consumer Price Index for All Urban Consumers for the calendar year

immediately preceding the year in which the adjustment is to take effect.

- (d) The adjusted gift limitation amount shall be calculated by the Commission as follows:
 - (1) The base dollar amount of \$250 shall be increased or decreased by the cumulative percentage change in the annual average California Consumer Price Index from 1990 to the end of the calendar year immediately preceding the year in which the adjustment will take effect.
 - (2) The dollar amount obtained by application of the calculation set forth in subdivision (b) shall be rounded to the nearest ten dollars (\$10).

2 CCR § 18941. Receipt, Promise and Acceptance of Gifts.

(a) Receipt or Acceptance of a Gift. Except as otherwise provided in this section or in California Code of Regulations, Title 2, Section 18943, a gift is “received” or “accepted” when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.

- (1) In the case of a rebate or discount which, based on Government Code Section 82028, would otherwise be a gift, the gift is “received” or “accepted” when the recipient knows that the rebate or discount is not made in the regular course of business to members of the public without regard to official status.
- (2) Except for passes or tickets as set forth in California Code of Regulations, Title 2, Section 18946.1(a), discarding a gift does not negate receipt or acceptance of a gift.
- (3) Turning a gift over to another person does not negate receipt or acceptance of a gift.

(b) Disqualification: Promise of a Gift. For the purposes of Government Code Sections 87100 and 87103, a gift is “promised” on the date an offer to give the gift is made if the recipient knows that a gift has been offered and ultimately obtains actual possession of the gift or takes any action exercising direction or control over the gift.

2 CCR § 18941.1. Payments for Food.

Except as provided in Government Code section 82028 and California Code of Regulations, Title 2, sections 18727.5, 18941, 18942, 18943, 18946.2, 18946.5, 18950.3, and 18950.4, a payment made to an elected officer or candidate for his or her food is a gift.

2 CCR § 18942. Exceptions to Gift and Exceptions to Gift Limits.

- (a) For purposes of Section 82028, none of the following is a gift and none is subject to any limitation on gifts:
- (1) Informational material as defined by Regulation 18942.1.
 - (2) Except for passes and tickets as provided in Regulation 18946.1, a gift that is not used and that, within 30 days after receipt, is returned or donated pursuant to Regulation 18943, or for which reimbursement is paid pursuant to said Regulation 18943.
 - (3) A gift from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person, unless the donor is acting as an agent or intermediary for any person not identified in this subdivision (a)(3).
 - (4) A campaign contribution required to be reported under Chapter 4 of the Act (commencing with Government Code section 84100).
 - (5) Any devise or inheritance.
 - (6) A personalized plaque or trophy with an individual value of less than two hundred fifty dollars (\$250).
 - (7) (A) The cost of hospitality (including food, beverages, or occasional lodging) 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 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) Gifts exchanged between an individual who is required to file a statement of economic interests and another individual, other than a lobbyist, on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. For purposes of this subdivision, and notwithstanding Regulation 18946.2(b), "gifts exchanged" includes food, beverages, entertainment, and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event.
 - (9) Leave credits, including vacation, sick leave, or compensatory time off, donated to an 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. This shall not include 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 such payments are available to members of the public without regard to official status.
 - (11) Free admission, and refreshments and similar non-cash nominal benefits provided to a filer at an event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and transportation and any necessary lodging and subsistence that is exempt under Regulation 18950.3. These items are not payments and need not be reported by the filer.
 - (12) The transportation, lodging, and subsistence specified by Regulation 18950.4.
- (b) The following items, if they are otherwise gifts, are exempt from the limitations on gifts described in Section 89503:
- (1) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Section 89506 and Regulations 18950, et seq.
 - (2) Wedding gifts.

2 CCR § 18942.1. Definition of “Informational Material.”

"Informational material" means any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks. Informational material may include:

- (a) Books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.
- (b) Scale models, pictorial representations, maps, and other such items, provided that where the item has a fair market value in excess of \$420, the burden shall be on the recipient to demonstrate that the item is informational material.
- (c) On-site demonstrations, tours, or inspections designed specifically for the purpose of assisting the recipient public officials or candidates in the performance of either their official duties or of the elective office they seek. No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in connection therewith, shall be deemed "informational material" except insofar as such transportation is not commercially obtainable.

2 CCR § 18943. Return, Donation, or Reimbursement of a Gift.

- (a) General Rule for Return, Donation, or Reimbursement of a Gift. A gift is neither accepted nor received if it is returned, donated, or reimbursed in any manner set forth below:
 - (1) The gift is returned to the donor, or to the donor's agent or intermediary, unused, within 30 days of receipt or acceptance. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense; or
 - (2) The gift is donated, unused, to a charitable organization within 30 days of receipt or acceptance, without being claimed as a charitable contribution for tax purposes. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense; or
 - (3) The gift is donated, unused, to a state, local, or federal government agency, within 30 days of receipt or acceptance, without being claimed as a deduction for tax purposes. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense; or
 - (4) The recipient, within 30 days of receipt or acceptance, reimburses the donor, or the

donor's agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement.

- (b) Relief from Disqualification by Return, Donation, or Reimbursement. In order to relieve the recipient of an otherwise disqualifying financial interest based upon the receipt or acceptance of a gift valued at \$420 or more pursuant to Government Code section 87100, the return, donation, or reimbursement of the gift pursuant to subdivision (a), above:
 - (1) Must occur within 30 days of receipt or acceptance and prior to the date the recipient makes, participates in making, or uses his or her official position to influence the government decision in question; or,
 - (2) If the return, donation, or reimbursement has not been made prior to the decision, the recipient must publicly disclose the receipt or acceptance of the gift on the public record, disclose its value, and declare that the return, donation, or reimbursement will occur within two working days following the decision. The subsequent return, donation, or reimbursement must be made within two working days, and within 30 days from receipt or acceptance, and must be documented in the public record.

2 CCR § 18944. Gifts to Members of an Official's or Candidate's Family.

- (a) Scope of Regulation. This regulation applies when determining whether a gift to a public official's or candidate's family member also constitutes a gift to the public official or candidate for purposes of the Act.
- (b) Definitions. For purposes of this regulation, the following definitions apply:
 - (1) "Official" means a public official as defined in Section 82048 or a candidate as defined in Section 82007.
 - (2) "Official's family" or "family member" includes any of the following individuals:
 - (A) An official's spouse.
 - (B) A "dependent child" of the official as defined in Regulation 18229.1.
 - (C) An official's child (including an adoptive child or stepchild) who meets all of the following criteria:
 - (i) Is at least 18 but no more than 23 years old and is a full-time or part-time student.
 - (ii) Has the same principal place of residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the

child resides for the purpose of attending school is not the child's "principal place of residence."

- (iii) Does not provide over one-half of his or her own support.
- (c) A single gift given to both an official and one or more members of the official's family is a gift to the official for the full value of the gift.
- (d) The following applies to a gift given solely to a member of an official's family.
 - (1) A gift given solely to a member of an official's family is a gift to the official when the gift confers a clear personal benefit on the official. A gift to an official's family member confers a clear personal benefit on the official in any of the following circumstances:
 - (A) It is reasonably foreseeable at the time the gift is made that the official will enjoy a financial benefit from the gift. A "financial benefit" from a gift includes, but is not limited to, a payment, other than occasional meals, lodging, or local transportation, to fulfill a commitment, obligation, or expense of the type normally paid by a family for the ordinary care and support of one of its members.
 - (B) It is reasonably foreseeable at the time the gift is made that the official will use the gift, except for a minimal use.
 - (C) The official exercises discretion and control over who will use or dispose of the gift. Exercising "discretion and control" includes, but is not limited to, when an official, or his or her agent, requests a gift for, or to be used by, the official's family member.
 - (2) A gift given solely to a member of an official's family and not covered under subdivision (1) is a gift to the official if the gift confers a presumed personal benefit on the official. A gift to an official's family member confers a presumed personal benefit on the official in any of the following circumstances:
 - (A) The gift is made to a family member of a state agency official who is subject to Section 87200 by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act.
 - (B) The gift is made to a family member of a local government agency official who is subject to Section 87200 by a donor who is or has been directly involved in a governmental decision, as defined in Regulation 18704.1(a),

in which the official will foreseeably participate or has participated in the prior 12-month period.

- (3) Exceptions
 - (A) There is no gift to an official under paragraph (1) if both of the following circumstances apply:
 - (i) The official can show there is an established working, social, or similar relationship between the donor and the official's family member independent of the relationship between the donor and the official.
 - (ii) The person who made the gift is not a donor identified in paragraphs (2)(A) or (2)(B).
 - (B) The official can rebut the presumption in paragraph (2) if he or she can show there is an established working, social, or similar relationship between the donor and the official's family member independent of the relationship between the donor and the official.
- (e) This regulation does not apply to the type of gift that, under the Act or other Commission regulations, would not be considered a gift if given directly to the official.

2 CCR § 18944.1. Gifts: Tickets or Passes to Events.

For purposes of this regulation "ticket or pass" means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

- (a) Ticket or pass provided by source other than official's agency. A ticket or pass provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the agency is not a gift to the official.
- (b) Ticket or pass provided to official by official's agency.
 - (1) When an agency provides a ticket or pass to an official of that agency, the ticket or pass is not subject to the provisions of this regulation, provided that the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income to the official in complying with the provisions of subdivision (d) below.
 - (2) When an agency provides a ticket or pass to a public official that otherwise meets the definition of gift under Section 82028 and is not exempt under applicable Commission regulations, the official will meet the burden under Section 82028 that equal or greater value has been provided

in exchange therefor, provided that all of the following requirements are met:

- (A) With respect to a ticket or pass from an outside source provided to an official by the official's agency:
 - (i) The ticket or pass is not earmarked by the original source for use by the agency official who uses the ticket or pass;
 - (ii) The agency determines, in its sole discretion, which official may use the ticket or pass.
 - (iii) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency in accordance with subdivision (c) below.
- (B) With respect to a ticket or pass provided by the official's agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below.
- (c) Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency that state the public purposes to be accomplished by the agency policy. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:
 - (1) a provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;
 - (2) a provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency; and
 - (3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family solely for their personal use.
- (d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or pass that is provided to the official under subdivision (b)(1) above, shall be posted, on a form provided by the Commission, in a prominent fashion on the agency's website, within 30 days after the distribution. If the agency does not maintain a website, the form shall be maintained as a

public record, be subject to inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website. The posting shall include the following:

- (1) the name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization outside the agency, the agency may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;
- (2) a description of the event;
- (3) the date of the event;
- (4) the face value of the ticket or pass;
- (5) the number of tickets or passes provided to each person;
- (6) if the ticket or pass is behested, the name of the official who behested the ticket or pass; and
- (7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.
- (e) The Commission recognizes the discretion of the legislative or governing body of an agency to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.
- (f) The provisions of subdivision (b) apply only to the benefits the official receives by the admission and are not applicable to any other benefits the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event.

2 CCR § 18944.2. Gifts to an Agency.

- (a) Applicability. This regulation sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.
- (b) Definitions.
 - (1) "Payment" means a payment as defined in Section 82044 and includes a monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or provision of, goods or services to an agency.
 - (2) "Agency head" means an individual in whom the ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for purposes of this regulation.

(c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as defined in Section 82028, shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met:

- (1) Agency Controls Use of Payment. The agency head, or his or her designee, determines and controls the agency's use of the payment. The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the agency head, or his or her designee, shall select the individual who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment.
- (2) Official Agency Business. The payment must be used for official agency business.
- (3) Agency Reports the Gift. Within 30 days after use of the payment, the agency reports the payment on a form prescribed by the Commission that includes the following information:
 - (A) A description of the payment, the date received, the intended purpose, and the amount of the payment (or the actual or estimated value of the goods or services provided).
 - (B) The name and address of the donor. If the donor is not an individual, the report shall also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from other persons for the specific purpose of making the payment to the agency, the report shall contain the names of and amounts given by these persons.
 - (C) The agency's use of the payment, and the name, title, and department of the agency official for whom the payment was used. The report shall include the date(s) and place(s) of travel, and a breakdown of the total expenses for transportation, lodging, meals and other related expenses.
 - (D) The form is signed by the agency head, or his or her designee, and maintained by the agency as a public record subject to inspection and copying under Section 81008(a).
 - (E) A state agency shall provide the completed form to the Commission (or in the case of the Commission to the office of the Attorney General), within 30 days after use of the payment, by mail, personal delivery,

electronic mail or facsimile. If the state agency maintains a website, the state agency shall also post a copy of the form or the information in the form on its website in a prominent fashion within 30 days after use of the payment. If the state agency does not maintain a website, the Commission shall post a copy of the form or the information in the form on its website.

- (F) A local agency shall provide the completed form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing officer shall post a copy of the form or the information in the form on its website, or if it does not maintain a website, shall provide a copy of the form to the Commission which shall post the information on its website.
 - (G) The individual in the agency who has official custody of these forms is the filing officer for the forms, keeps a log of the forms under both the name of the agency and official receiving the payment, and maintains the forms for a period of not less than four years.
- (d) Limitations on Application of this Regulation. The exception provided in subdivision (c) does not apply to the following payments:
- (1) A payment for travel, including transportation, lodging, and meals, for a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200.
 - (2) A payment for travel to the extent that it exceeds the agency's reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses, or if the agency has no standard policy or practice concerning reimbursement rates, the State per diem rates as set forth in applicable sections of the State Administrative Manual and Department of Personnel Administration regulations, or the Internal Revenue Service rates for reimbursement of these expenses as set forth in the U.S. General Service Administration's website under "Per Diem Rates" and Internal Revenue Service Publications 463 and 1542, or their successors.
 - (3) A payment for travel that the agency head, or his or her designee, has not preapproved in writing in advance of the date of the trip.
 - (4) Passes or tickets, as described in Regulation 18944.1, which shall be governed by that regulation.

- (e) Public Colleges and University Research Projects. Notwithstanding this regulation, a donation to a California public college or university for a specific research project that is received consistent with the requirements of Regulation 18702.4(c) or a meal received in the course of the college's or university's official fundraising activity, which qualifies under federal and state law for a deduction as a charitable contribution for educational purposes, will be deemed a gift to the college or university.
- (f) Payments from the Federal Government. Notwithstanding this regulation, a grant, reimbursement, funding, or other payment received by a state or local government agency from a federal government agency for education, training, or other inter-agency programs, will not be considered a gift to the public official who receives a personal benefit from the payment.

2 CCR § 18944.3. Gifts from a Government Agency to Officials in That Agency.

Except as provided in Regulation 18944.1 and 18944.2, a payment by a government agency from that agency's assets that provides food, beverage, entertainment, goods, or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys.

2 CCR § 18944.4. Agency Raffles and Gift Exchanges.

- (a) Applicability. This regulation identifies when a payment made by a state or local government agency in the form of an item awarded to an agency employee in a raffle open to all employees of the agency or the unit of the agency holding the raffle, or in an agency gift exchange, will be treated as a gift to the employee.
- (b) Agency Raffles.
 - (1) When an agency holds an employee raffle and the item awarded in the raffle has been received by the agency from a source other than an agency employee and the agency did not purchase the item from its funds, the payment is a gift to the employee from the source who provided the item to the agency, and the agency is the intermediary of the gift. The value of the gift is the fair market value less any consideration paid by the employee to participate in the raffle. If the value of the gift is \$50 or more and the employee is required to report the gift on his or her statement of economic interests, the agency and the employee shall comply with Section 87210 or Section 87313 as applicable.

- (2) When an agency holds an employee raffle and the item awarded in the raffle has been obtained with agency funds or is otherwise an asset of the agency and not donated to the agency by a non-agency source, the provisions of Regulation 18944.3 apply.
- (3) When an agency holds an employee raffle and the item awarded in the raffle has been received by the agency from an agency employee who is not acting as an intermediary for another donor, the item is not a gift to the employee who wins the raffle.
- (c) Agency Gift Exchanges. When an employee of an agency participates in an employee gift exchange, any item received by the employee in the gift exchange is not a gift so long as the item received is provided by another employee of the agency and the gifts are not substantially disproportionate in value.
- (d) This regulation does not apply to passes or tickets of the type described in Regulation 18944.1, which shall be governed by that regulation.

2 CCR § 18945. Source of Gifts.

- (a) General Rule. A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.
- (b) Gifts through an Intermediary.
 - (1) A person is the source of a gift, and a third party is an intermediary of the gift under Sections 87210 or 87313, if the person makes a payment to the third party and the payment is used directly or indirectly by the third party to make a gift to an official under any of the following conditions:
 - (A) The person directs and controls the payment at the time it is used by the third party to make a gift to the official.
 - (B) The person and third party have agreed that the payment will be used by the third party to make a gift to the official.
 - (C) The person identifies the official to the third party as the intended beneficiary of the payment prior to the third party making the payment to the official.
 - (D) The third party identifies the official to the person as the intended beneficiary of the payment prior to the person making the payment to the third party.
 - (E) The person knows or has reason to know that the sole or primary purpose of the payment is to make gifts to officials.

- (F) The official or the official's agent solicits the payment from the person to the third party for the purpose of making a gift to the official.
- (2) For purposes of subdivisions (b)(1)(C) and (b)(1)(D), a person or third party "identifies the official" if the person or third party identifies the official by name or any other designation of the official from which it is clear the person or third party is referring to the official, or if the person or third party identifies a group of officials from one or more specific state or local government agencies and the official is part of that group.
- (c) A person who pays dues or similar payments for membership in a bona fide association, including any federation, confederation, or trade, labor or membership organization is not the source of gifts made by the association to an official unless the sole or primary purpose of the dues or similar payments is to make gifts to officials.
- (d) **Presumption of Source by Officials.** An official may presume that the person delivering the gift or, if the gift is offered but has not been delivered, the person offering the gift to him or her is the source of the gift unless either of the following apply:
 - (1) The person delivering or offering the gift discloses to the official the actual source of the gift.
 - (2) It is clear from the surrounding circumstances at the time the gift is delivered or offered that the person delivering or offering the gift is not the actual source of the gift.
 - (3) The official solicits a payment pursuant to subdivision (b)(1)(F) and receives or is offered a gift responsive to the solicitation within 12 months of making the solicitation.
- (e) **Presumption of Source by Intermediaries.** A third party otherwise qualifying as an intermediary as a result of a payment solicited from an official pursuant to subdivision (b)(1)(F) may presume that he or she is the source of the gift, and is not required to disclose the actual source of the gift as required by Regulation 18945.3, when both of the following apply:
 - (1) The third party does not know or have reason to know of the official's solicitation.
 - (2) The third party does not qualify as an intermediary under subdivisions (b)(1)(A)-(b)(1)(E).

2 CCR § 18945.1. Cumulation of Gifts; "Single" Source.

For purposes of the limitations in Government Code Sections 89501 through 89506, two or more

gifts are cumulated as being from a "single" source if any of the following circumstances apply:

- (a) Gifts from an individual and an entity in which the individual has an ownership interest of more than 50 percent shall be cumulated as being gifts from a "single" source.
- (b) Except as provided in subdivision (a), gifts from an individual and an entity shall be cumulated as being gifts from a "single" source if the individual in fact directs and controls the decision of the entity to make the gifts.
- (c) If the same person or a majority of the same persons in fact directs and controls the decisions of two or more entities to make gifts to one or more public officials or candidates, gifts by those affiliated entities shall be cumulated as being gifts from a "single" source.
- (d) Business entities in a parent-subsidary relationship, or business entities with the same controlling (more than 50 percent) owner, shall be considered a "single" source unless the business entities act independently in their decisions to make gifts to one or more public officials or candidates. For purposes of this regulation, a parent-subsidary relationship exists when one business entity owns more than 50 percent of another business entity.

2 CCR § 18945.3. Intermediary of a Gift.

- (a) **Intermediaries of Gifts to Persons Required to File Under Title 9, Chapter 7, Article 2 of the Government Code**—No person shall make a gift totaling fifty dollars (\$50) or more in a calendar year to a person described in Article 2 on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.
- (b) **Intermediaries of Gifts to Persons Required to File Under Title 9, Chapter 7, Article 3 of the Government Code**—No person shall make a gift of fifty dollars (\$50) or more in a calendar month on behalf of another, or while acting as the intermediary or agent of another to a person whom he knows or has reason to know may be required to disclose the gift pursuant to a conflict of interest code, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of

the intermediary or agent and the actual donor.

- (c) Notwithstanding subdivisions (a) or (b) above, it shall be unlawful for a lobbyist or lobbying firm to act as an intermediary in the making of any gift aggregating more than \$10 per calendar month to a state candidate, elected state officer, legislative official or agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist.

2 CCR § 18945.4. A Gift from Multiple Donors.

A gift which is received from multiple donors must be reported if the gift's value equals or exceeds \$50. The name of any donor whose share of the gift is less than \$50 in value need not be separately reported; it is sufficient to describe in general terms those who gave the gift. If, however, the share of any donor or his or her [agent or] intermediary is \$50 or more in value, his or her name must be reported.

2 CCR § 18946. Reporting and Valuation of Gifts.

- (a) Scope of Section. Except as specified in 2 Cal. Code Regs. sections 18946.1 through 18946.5, inclusive, gifts shall be valued at fair market value as of the date of receipt or promise. Sections 18946.1 through 18946.5 provide for the valuation of specific types of gifts in the following situations:
- Passes and Season Tickets—Regulation 18946.1
 - Testimonial Dinners and Events, Invitation-Only Events, and Ceremonial Functions—Regulation 18946.2
 - Wedding Gifts—Regulation 18946.3
 - Tickets to Nonprofit and Political Fundraisers—Regulation 18946.4
 - Prizes and Awards From Bona Fide Competitions—Regulation 18946.5
- (b) General Rule for Valuation of Unique Gifts. Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable. If the cost to the donor is unknown and unascertainable, the recipient shall make a reasonable approximation. In making such an approximation, the recipient shall take into account the price of similar items. If similar items are not available as a guide, a good faith estimate shall be utilized.
- (c) Except as specified in 2 Cal. Code Regs. sections 18943, 18944, and 18946.1, a gift must be valued, for purposes of disclosure and disqualification, even if unused, discarded or given to another person.
- (d) Definitions: For purposes of this section and 2 Cal. Code Regs. sections 18946.1 through

18946.5 and section 18640, the following definitions apply:

- (1) "Face Value." The term "face value" means the price indicated on the ticket, or if no price is indicated, the price at which the ticket or similar pass would otherwise be offered for sale to the general public by the operator of the venue or host of the event who offers the ticket for public sale.
- (2) "Ticket/Pass." A "ticket" or "pass" means anything that provides an admission privilege to an event or function and for which similar tickets or passes are offered for sale to the public.
- (3) "Invitation." An "invitation" means a request to attend an event or function by the sponsor of the event or function, that is not a ticket or pass as defined above in subsection (d)(2) of this section and 2 Cal. Code Regs. section 18944.1, and where admission to the event is provided by such invitation only.
- (4) "Specific Item." The term "specific item" means a tangible item received by an official or candidate at an event that is not included among the non-cash nominal items presented to all attendees at the event.

2 CCR § 18946.1. Reporting and Valuation of Gifts: Passes and Tickets.

- (a) A pass or ticket that provides one-time admission or access to facilities, goods, services, or other incidental tangible or intangible benefits (including a pass to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, and also including a ticket for theater, opera, sporting, or similar event, but not including travel or lodging) shall be valued at the face value of the pass or ticket, provided that the face value is a price that was, or otherwise would have been, offered to the general public. A pass or ticket has no value unless it is ultimately used or transferred to another person.
- (b) A pass or ticket that provides repeated admission or access to facilities, goods, services, or other incidental tangible or intangible benefits (including a pass to motion picture theaters, amusement parks, parking facilities, country clubs and similar places or events, and also including a season ticket for theater, opera, sporting, or similar season events, but not including travel or lodging) shall be valued as follows:
- (1) For purposes of disclosure and the gift limits, the value shall be the fair market value of the actual use of the pass or ticket by the recipient, including guests who may accompany the recipient and who are admitted with the pass or ticket,

plus the fair market value of any possible use by any person or persons to whom the privilege of use of the pass or ticket is transferred.

- (2) For purposes of disqualification, the value shall be the actual use of the pass or ticket by the official, including guests who may accompany the official and who are admitted with the pass or ticket, plus the fair market value of any possible use by any person or persons to whom the official transfers the privilege of use of the pass or ticket, through the date of the governmental decision in question, plus the fair market value of the maximum reasonable use following the date of the decision. If the official returns the pass or any unused ticket prior to the decision, the value shall be determined pursuant to subdivision (b)(1).

2 CCR § 18946.2. Reporting and Valuation of Gifts: Testimonial Dinners and Events, Invitation-Only Events, and Ceremonial Functions.

- (a) Testimonial Dinners. When an official or candidate is honored at a testimonial dinner or similar event, at which campaign fundraising for the official or candidate does not occur, the value received is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific item that is presented to the official or candidate at the event.
- (b) Invitation-Only Events. Except as provided in subdivisions (d) through (f) of this regulation, when an official or candidate attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a nonprofit or political fundraiser as set forth in 2 Cal. Code Regs. section 18946.4, the value received is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific item that is presented to the official or candidate at the event.
- (c) "Pro-rata share of the cost of the event." The term "pro rata share of the cost of the event" means the cost of all food and beverages, rent of the facilities, decorations, entertainment, and all other costs associated with the event, divided by the number of acceptances or the number of attendees.
- (d) Official or Ceremonial Functions. When an official performs an official or ceremonial function at an invitation-only event, as set forth in subdivision (b) of this regulation, in which the official is invited to participate by the event's sponsor or organizer to perform an official or ceremonial function, the value received is the cost of any food or beverages provided to the official plus the value of any

specific item that is presented to the official at the event.

- (e) Drop-In Visit. Except as provided in subdivision (f) of this regulation, if an official attends an event referred to in subdivision (a) or (b) of this regulation and does not stay for any meal or entertainment otherwise provided at the event, and receives only minimal appetizers and drinks, the value of the gift received is the cost of the food and beverage consumed by the official and guests accompanying the official, plus the value of any specific item that is presented to the official at the event. For purposes of this subdivision, "entertainment" means a feature show or performance intended for an audience, and does not include music provided for background ambiance.
- (f) Lobbyists, Lobbying Firms, and Lobbyist Employers. Where an official attends an event referred to in subdivision (a) or (b) of this regulation, sponsored by any person required to file a periodic statement under Article 1 of Chapter 6 of this title, the value of the gift is determined pursuant to the provisions of 2 Cal Code Regs. section 18640.

2 CCR § 18946.3. Reporting and Valuation of Gifts: Wedding Gifts.

Notwithstanding the provisions of California Code of Regulations, Title 2, Section 18944, wedding gifts given to an official and his or her spouse or spouse-to-be are considered as gifts to both spouses equally, and the official is deemed to receive one-half of the value as determined pursuant to California Code of Regulations, Title 2, Section 18946, unless the gift is peculiarly adaptable to the personal use and enjoyment of one spouse or specifically and unequivocally intended exclusively for use and enjoyment by one spouse, in which event the full value of the gift is attributed to that spouse.

2 CCR § 18946.4. Reporting and Valuation of Gifts: Tickets Provided by Nonprofit and Political Organizations for Their Fundraising Events.

This regulation applies to a single ticket or other admission privilege to a specific fundraising event provided to a public official by a nonprofit or political organization holding its own fundraiser and used solely by the public official.

- (a) Nonprofit Fundraiser. Except as provided in subdivision (b), the value of a gift of a ticket, pass, or other admission privilege to a fundraising event for a nonprofit, tax-exempt organization that is not a committee covered by subdivision (c) is determined as follows:
- (1) Where the ticket clearly states that a portion of the ticket price is a donation to the organization, the value of the gift is the

face value of the ticket reduced by the amount of the donation.

- (2) If there is no ticket indicating a face value or the ticket or other admission privilege has no stated price or no stated donation portion, the value of the gift is the pro rata share of the cost of any food, and beverages, plus any other specific item presented to the attendee at the event.
- (b) 501(c)(3) Organization Fundraiser. Where the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the organization may provide one ticket per event to an official and that ticket shall be deemed to have no value so long as the cumulative value of the nondeductible portion of the ticket(s), as provided in subdivision (a), received by the official from the same organization during a calendar year, does not exceed the gift limits imposed under Section 89503 and Regulation 18940.2.
- (c) Political Fundraiser. For a gift of a ticket, pass, or other admission privilege to a fundraising event for a committee defined in Section 82013(a), or a comparable committee regulated under federal law holding an event in California, the committee or candidate may provide one ticket per event to an official and that ticket shall be deemed to have no value.

2 CCR § 18946.5. Prizes and Awards From Bona Fide Competitions.

A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income.

2 CCR § 18946.6. Reporting and Valuation of Gifts: Air Transportation.

Air transportation that is a gift to a public official shall be valued as follows:

- (a) For transportation on a "commercial aircraft," the value of the ticket or fare the carrier charges to a member of the public for the same transportation provided to the official. For purposes of this regulation, "commercial aircraft" means an aircraft used to transport the general public for compensation or hire on a regular basis, and for which a fare is charged on a per-passenger basis.
- (b) For all other air transportation, the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of all of the following persons that share the same flight:
 - (1) "Designated employees" as defined in Section 82019.
 - (2) Public officials specified in Section 87200.

- (3) Members of Congress, and officers and employees of the executive, legislative, or judicial branch of the United States government.

- (c) The actual cost or fair market value of any other personal benefits provided to the official during the air transportation, including food, beverages, or entertainment, shall be treated as a separate gift to the official unless the benefit is included as part of the fare determined in subdivision (a) or (b).

2 CCR § 18950.1. Gifts of Travel: Exceptions.

The following provisions shall apply to payments made for travel pursuant to Government Code Sections 89501 through 89506:

- (a) Travel In Connection With Speeches, Panels, and Seminars.
 - (1) Only a reportable payment is subject to the limitations on gifts specified in Government Code Section 89503. See California Code of Regulations, Title 2, Section 18950.3, to determine whether a payment in connection with a speech, panel, or seminar is reportable.
 - (2) A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:
 - (A) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and
 - (B) The travel, including actual transportation and related lodging and subsistence, is in connection with a speech given by the official or candidate; the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech; and the travel is within the United States.

Except as otherwise provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for travel specified in this subdivision (a)(2), shall be reported in accordance with Government Code Section 87207(c).

- (b) Travel Provided by Governmental Entity or Charity. A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:
 - (1) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and

- (2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Section 203 of the Revenue and Taxation Code, or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Except as provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for transportation, lodging, and subsistence, specified by subdivision (b), shall be reported in accordance with Government Code Section 87207(c).

- (c) **Travel Paid From Campaign Funds.** A payment made for transportation and necessary lodging and subsistence, which payment is made from campaign funds as permitted by Government Code Section 89513, or which is a contribution, is not an honorarium or a gift.
- (d) **Travel Provided By Official's Agency.** A payment made for transportation and necessary lodging and subsistence, which payment is made by the agency of an official, is not an honorarium or a gift.
- (e) **Travel In Connection With Bona Fide Business.** A payment made for transportation, lodging, and subsistence, which payment is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code, is not an honorarium or gift unless the sole or predominant activity of the business, trade or profession is making speeches.

2 CCR § 18950.3. Payments in Connection with Speeches.

- (a) Definitions: For the purposes of this regulation, the following definitions apply:
- (1) "Speech" means making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event.
- (2) Lodging, food or beverages are "necessary" only when provided on the day immediately preceding, the day(s) of, and the day immediately following the speech, panel, seminar, or similar service.
- (b) A payment made for admission to an event at which an official makes a speech, transportation, and necessary lodging, food, or beverages, and nominal non-cash benefits

provided to the official in connection with making the speech is not a "payment" as defined in Section 82044 and is not reportable if all of the following apply:

- (1) The speech is for official agency business and the official is representing his or her government agency in the course and scope of his or her official duties.
- (2) The payment is a lawful expenditure made only by a federal, state, or local government agency for purposes related to conducting that agency's official business. For purposes of this subdivision, a payment made to the agency by a nongovernmental source that is earmarked for use by or reimbursement of an official specified by the source is not a "payment by a federal, state, or local government agency."
- (3) The official making the speech is not a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200.

2 CCR § 18950.4. Payments for Travel in Connection with Campaign Activities.

- (a) Except as provided in Section 18727.5, a payment made to an elected officer or candidate for his or her transportation, lodging, or subsistence is a gift unless the transportation, lodging, or subsistence provided to the elected officer or candidate is in "direct connection" with campaign activities, including attendance at political fundraisers.
- (1) Any payment made to an elected officer or candidate for his or her transportation, lodging, or subsistence, during the six month period prior to an election in which the elected officer or candidate is to be voted upon shall be considered "in direct" connection with campaign activities if the payment is for necessary transportation, lodging, or subsistence, used specifically for the purpose of the elected officer's or candidate's:
- (A) Participation in candidate forums, debates or similar voter gatherings at which he or she makes a speech; or
- (B) Attendance at meetings with campaign staff or political consultants to develop or implement campaign strategy.
- (2) A payment made to an elected officer or candidate for necessary transportation to, or lodging and subsistence at, an event described in subdivision (a)(1)(A) or subdivision (a)(1)(B), but not made within the six month period prior to the election in which the elected officer or candidate is being voted upon, shall be considered gifts unless it is clear from the surrounding circumstances that the payment is made

directly in connection with campaign activities.

- (b) When a payment is made to an elected officer or candidate for his or her necessary lodging and subsistence or transportation in direct connection with attendance at a political fundraiser or an event listed in subdivision (a)(1)(A) or subdivision (a)(1)(B), which fundraiser event is conducted to benefit another elected officer or candidate, or to benefit a committee as defined in Government Code Section 82013(a), the payment is a contribution to the officer, candidate, or committee benefitting from the fundraiser.

Attachment 5

July 22, 2010

VIA EMAIL (zukin@kbla.com) AND REGULAR MAIL

Ms. Helen E. Zukin, President
CITY ETHICS COMMISSION
200 N. Spring Street
City Hall, 24th Floor
Los Angeles, CA 90012

Subject: Gifts

Dear President Zukin:

At the City Ethics Commission meeting on July 13, 2010, the Commission considered a staff report and took public testimony on the subject of gifts to city officials. At the hearing, I testified about how impractical the current restrictions on gifts are. For instance, as a lobbying firm, Psomas cannot offer popcorn or bottled water to our city official guests who are attending a training program at Psomas. In fact, technically speaking, a city official is precluded from plugging in his laptop to take notes during a Psomas visit because he/she would be using electricity without paying for it.

Of course, these are absurd examples of technical violations of the current gift policy, but the prohibition on buying a city official an occasional lunch is only modestly less absurd. So, too, is the prohibition on the giving of holiday candy.

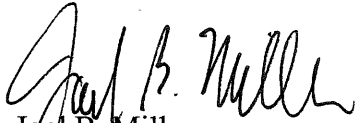
My recommendation to the Ethics Commission is that the City should allow lobbyists and lobbying firms to provide individual gifts to a city official with a cumulative annual cap. The dollar amounts are somewhat subjective, but assuming an average meal costs about \$25.00, I would suggest that the individual gift be limited to no more than \$25.00 with a cumulative annual cap of \$200.00. For holiday gifts (e.g., candy) meant for more than one city official, a limit of \$25.00 seems appropriate.

Ms. Helen E. Zukin, President
July 22, 2010
Page 2

My understanding is that the Ethics Commission will be taking up this matter on August 10, 2010. I urge you to amend the current regulations in order to make them more reasonable.

Sincerely,

PSOMAS



Joel B. Miller
Vice President/Principal

JBM:htn

Cc: Paul H. Turner, City Ethics Commission
Nedra Jenkins, City Ethics Commission
Valerie Vanaman, City Ethics Commission
Marlene Canter, City Ethics Commission
Heather Holt, City Ethics Commission