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2009 MAY 26 PM 2:11

APPROVED FOR FORM AND LEGALITY

  
CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION No. 82032 C.M.S.

**RESOLUTION ENACTING A POLICY FOR THE RECEIPT AND DISTRIBUTION OF PASSES AND TICKETS BY CITY OF OAKLAND OFFICIALS AND REPEALING RESOLUTION NUMBER 75052 C.M.S., ADOPTED JUNE 15, 1999**

WHEREAS, Resolution number 75052 C.M.S. was adopted June 15, 1999, enacting a policy to enable City of Oakland officials to receive certain passes and tickets without these passes and tickets being considered gifts pursuant to the Political Reform Act; and

WHEREAS, the Fair Political Practices Commission amended their regulation upon which the City's existing pass and ticket policy is based; and

WHEREAS, Resolution number 75052 C.M.S. should be repealed to provide for the adoption by new resolution of a revised policy for the receipt and distribution of passes and tickets by public officials that reflects the new regulation; now, therefore be it

RESOLVED: The Council of the City of Oakland hereby repeals Resolution number 75052 C.M.S., and enacts the policy attached hereto as "Attachment A" for the distribution and receipt of passes and tickets pursuant to state law (Gov. Code, 89503 and Cal. Code of Reg., Tit. 2, Div. 6 §§ 18940.2 and 18944.1); and be it

FURTHER RESOLVED: That the Council hereby adopts the City of Oakland Policy for Receipt and Distribution of Passes and Tickets attached hereto as Attachment A, which is incorporated by reference in its entirety in this Resolution as if fully set forth herein.

IN COUNCIL, OAKLAND, CALIFORNIA, **MAY 19 2009**

**PASSED BY THE FOLLOWING VOTE:**

AYES - KERNIGHAN, NADEL, ~~ROSEN~~ DE LA FUENTE, ~~BRASS~~, ~~WISN~~ KAPLAN, AND PRESIDENT BRUNNER - 5

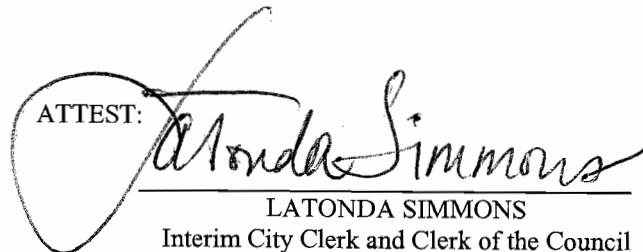
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Quan, Reid, Brooks - 3

ATTEST:

  
LATONDA SIMMONS  
Interim City Clerk and Clerk of the Council  
of the City of Oakland, California

## ATTACHMENT A

### CITY OF OAKLAND POLICY FOR RECEIPT AND DISTRIBUTION OF PASSES AND TICKETS

#### I. INTRODUCTION

The purpose of this policy is to describe the “governmental purpose” to be achieved by way of the distribution of tickets or passes to City officials, and to provide the procedures for distribution of tickets to and from the City and its officials, by which those tickets or passes will not be considered gifts under the Political Reform Act.

##### A. Certain Passes or Tickets Not Gifts

The Fair Political Practices Commission in interpreting the Political Reform Act has established that, “‘ticket or pass’ means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose,” and that such a ticket or pass that is provided to an agency official **is not a gift to the official whenever** they are received or distributed in compliance with Regulation 18944.1 of the Fair Political Practices Commission, Title 2, Division 6, of the California Code of Regulations.

Passes or tickets received by the City of Oakland (“City”) or City officials may be used under conditions set forth in this policy to comply with Fair Political Practices Commission Regulation 18944.1. All City agencies, offices, departments, boards and commissions affected should appoint an individual responsible for records management and for receipt and distribution of tickets or passes in order to meet the standards of this Fair Political Practices Commission regulation.

##### B. Political Reform Act Gift Definition

The Political Reform Act defines a gift, with certain enumerated exceptions as:

**“ 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.” (Gov. Code § 82028 subd. (a).)

The enumerated exceptions to the gift definition of Government Code section 82028, subdivision (a) are found in subdivision (b) and include:

- “(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. 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 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).”

**C. Political Reform Act Gift Ceiling**

The Political Reform Act places a ceiling on the value of gifts that may be received by certain local officials, including: the Mayor, City Council members, the City Attorney, and the City Auditor, and candidates for those offices; City Manager, City Treasurer, employees who manage public investments and the Planning Commission. All employees, consultants and members of boards or commissions included in the City’s Conflict of Interest Code are subject to the gift ceiling as well.

The cumulative gift ceiling per single source is four hundred twenty dollars (\$420) each calendar year for the period January 1, 2009, through December 31, 2010. The Fair Political Practices Commission effective may adjust the gift ceiling effective January 1, 2011, and annually after that.

**II. EXEMPTIONS**

According to the California Code of Regulations, Title 2, Division 6, Section 18944.1, tickets that are distributed under the following circumstances will not be classified as gifts:

**A. Ticket or pass provided by source other than official's agency - Section 18944.1 (a)**

Where a ticket or pass is provided **directly to the official by a third party**, it will not be considered a gift where the ticket or pass is provided for the official’s admission to an event at which the official performs a ceremonial role or function on behalf of the agency. In this case, the distribution of the ticket or pass is **not required** to be posted on FPPC Form 802 (See Attachment 1) on the agency's website.

**B. Ticket or pass provided to official by official's agency - Section 18944.1 (b)**

A ticket or pass will not be considered a gift to the official when it is provided to the official **from the City of Oakland** (i.e., not from a third party) under the following circumstances:

- (1) Where 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;
- (2) Where the City obtained the ticket or pass pursuant to the terms of a contract for use of public property (such as the Oakland Coliseum);
- (3) Where the City controls the event;
- (4) Where the City purchased the ticket or pass at fair market value;
- (5) Where the City receives the ticket or pass from a third party, and the ticket or pass is not earmarked by the third party for use by a particular official, and the City determines, in its sole discretion<sup>1</sup>, which official may use the ticket or pass.

In all five cases above, the distribution of the ticket or pass must be made in furtherance of a “governmental purpose” listed in Section III herein, and the City must post the ticket distribution

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<sup>1</sup> The “City” for this purpose includes the Mayor, The City Administrator, or the Council President.

information on an FPPC Form 802 (see Attachment 1) in a prominent fashion on the agency's website, within 30 days after the distribution. See Section V herein for the procedures to be followed.

### **III. “GOVERNMENTAL PURPOSE”**

In accordance with FPPC Regulation 18944.1, the distribution of any ticket or pass by the City to one of its officials, or distributed to a third party at the request of one of its officials, must accomplish a “governmental purpose” of that agency. The “governmental purposes” of the City to be accomplished by the distribution of tickets or passes include:

- Oversight of facilities or events that have received City funding or support;
- Oversight of facilities or events that may require City funding or support in the near future;
- Reviewing a facility’s contribution to blight abatement within a Redevelopment Area;
- Reviewing the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
- Reviewing the ability of a facility or its operator to participate in the City’s job creation goals or job training programs;
- Reviewing the contribution of a facility or an event to the City’s goals for fostering arts and culture opportunities for City residents;
- Rewarding a City of Oakland employee for his/her exemplary service to the City;
- Rewarding a community activist for his or her service to the City of Oakland;
- Rewarding a school or nonprofit organization for its contributions to the community; and
- Rewarding an Oakland student for outstanding scholastic achievement.

### **IV. PROHIBITED TRANSFERS**

Once a ticket has been distributed by the City to one of its officials in accordance with FPPC Regulation 18944.1, that official may not transfer that ticket to any other person other than members of the official’s immediate family solely for their personal use. If more than one ticket is distributed to the official, the official may use the extra ticket(s) to bring a guest (or guests) to the ticketed event, if the official is also in attendance. Please see Section V(B) below for the procedures by which the City may transfer a ticket to a third party at the request of a City official.

### **V. PROCEDURES AND GUIDELINES**

#### **A. When the City Distributes Tickets to a City Official.**

The following procedures will be followed when the City distributes a ticket or pass to a City official:

- (1) Upon distribution of the ticket or pass on behalf of the City, the public official who receives the ticket or pass (“Recipient Official”) will sign for the ticket or pass and acknowledge that the ticket is for use by herself or himself, his or her spouse or immediate family.
- (2) Within twenty-five (25) calendar days of receiving the ticket or pass, the Recipient Official will complete the City’s online form that is similar to FPPC Form 802, which may be found at: <http://www.oaklandnet.com>. The completed online form will include all of the following information:
  - (a) the name of the official receiving the ticket or pass;
  - (b) a description of the event;
  - (c) the date of the event;
  - (d) the face value of the ticket or pass;

- (e) the number of tickets or passes provided to each person;
  - (f) a description of the public purpose under which the distribution was made, in accordance with Section III herein, or, alternatively, that the ticket or pass was distributed as income to the official.
- (3) Upon completing the online form, the Recipient Official will submit it to the Executive Assistant to the City Council (“Distributing Official”) for his/her approval.
  - (4) Within five (5) days of receiving the completed online form, the Distributing Official will approve the completed form and post it in a prominent fashion on the City’s website.

**B. Distributing Tickets to a Third Party on Behalf of a City Official.**

No City official may transfer a ticket or pass distributed to such official pursuant to this policy, to any other person, except to members of the official's immediate family solely for their personal use. However, a ticket or pass may be distributed to any person or organization by the City at the request of a City or Agency official if the distribution of the ticket or pass accomplishes one of the public purposes listed in Section III herein and where the following procedures are followed:

- (1) The City official requesting the distribution (“Requesting Official”) will make a written (or emailed) request that the Distributing Official distribute the ticket to a third party.
- (2) The Distributing Official will distribute the ticket or pass to the third party, either in person or by mail.
- (3) Within twenty-five (25) calendar days of making the written request for the distribution of a ticket or pass to a third party, the Requesting Official will complete the City’s online form that is similar to FPPC Form 802, which may be found at: <http://www.oaklandnet.com>. The completed online form will include all of the following information:
  - (a) the name of the person to receive the ticket or pass, except that if the ticket or pass is distributed to an organization, the requesting official will provide 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;
  - (b) a description of the event;
  - (c) the date of the event;
  - (d) the face value of the ticket or pass;
  - (e) the number of tickets or passes provided to each person;
  - (f) the name of the official who requested that the ticket or pass be distributed to the third party; and
  - (g) a description of the specific public purpose under which the distribution was made, in accordance with Section III herein.
- (4) Upon completing the online form, the Recipient Official will submit it to the Executive Assistant to the City Council (“Distributing Official”) for his/her approval.
- (5) Within five (5) days of receiving the completed online form, the Distributing Official will approve the completed form and post it in a prominent fashion on the City’s website.

**VI. TICKETS AND PASSES THAT DO NOT MEET THE STANDARDS OF SECTION 18944.1**

A gift of a tickets or pass which does not meet the standards of section 18944.1 is subject to the disclosure, reporting and disqualification requirements of the Political Reform Act. Such gifts must be declared by a City Official on his or her Annual Statement of Economic Interests. The Political Reform Act limits gifts to elected local officials to a cumulative amount of \$420 from each donor per calendar year. Since 1993, the Fair Political

Practices Commission adjusts the gift limitation on January 1, of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the next nearest ten dollars (\$10). (Gov. Code § 89503.) The Fair Political Practices Commission has adjusted the **annual gift limitation amount to \$420** for the period **January 1, 2009, to December 31, 2010**. (Cal. Code of Reg. Tit 2, Div. 6, §18940.2.)

**VII. CAVEAT**

These policies and guidelines are not a substitute for legal advice. Only the Fair Political Practices Commission can provide immunity from prosecution for the legal advice that it offers. Please consult the City Attorney's Office if you have questions about reporting, disclosure and disqualification requirements regarding tickets and passes and the City Attorney and his staff can provide advice and assist you in obtaining advice from the Fair Political Practices Commission.