Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: SEE BELOW

DATE: July 28, 2017

SUBJECT

CONSIDERATION AND DIRECTION RELATED TO BOARD OF FAIR CAMPAIGN
AND POLITICAL PRACTICES RECOMMENDATIONS FOR CHANGES TO THE
CITY’S GIFT ORDINANCE.

RECOMMENDATION

1) Consider the recommended revisions of the Board of Fair Campaign and Political
Practices to the City’s Gift Ordinance.

2) Provide direction to the City Attorney to draft an ordinance amending Title 12 of
the San José Municipal Code to align the City's Gift Ordinance with the gift
regulations under the California Political Reform Act.

BACKGROUND

In the Mayor's 2015 Biennial Ethics Review and Recommendations, the Board of Fair
Campaign and Political Practices (“BFCPP”), then Ethics Commission, was directed “to
recommend revisions to the Gift Ordinance [SJMC Chapter 12.08] to better align with
the State gift rules and simplify the compliance with conflicting rules” because “the City’s
current Gift Ordinance does not align with State-level rules and can be confusing to
interpret.”

Following this direction, the BFCPP recommended the changes discussed below that
were incorporated into a draft Gift Ordinance for Council consideration. The draft
ordinance was presented to Council on June 20, 2017. Before the Council meeting,
Mayor Liccardo and Councilmember Diep both submitted memoranda proposing a
change to BFCPP’s recommendations. Mayor Liccardo proposed adopting the BFCPP’s
recommendations, but rejecting any increase to the gift dollar limit. Councilmember Diep
proposed repealing the Gift Ordinance and following only State law related to gifts.

At the June 20, 2017 meeting, the Council adopted Councilmember Diep’s proposal and
passed for publication an ordinance to repeal the Gift Ordinance. However, when the
repeal ordinance came before the Council for final adoption on June 27, 2017, the
Council deferred the item to August 8, 2017 for further discussion. The Council also requested a presentation from the City Attorney on gift regulations under the Gift Ordinance, State law, and the BFCPP’s recommendations.

**ANALYSIS**

The City Attorney’s office requests direction from Council as to what policies to implement when revising the Gift Ordinance. To assist in providing direction, the analysis will discuss the requirements of the City’s Gift Ordinance, the requirements of the gift regulations in the Political Reform Act, the BFCPP recommended revisions to the City’s Gift Ordinance, and reporting considerations if the BFCPP recommendations were adopted.

1. **City’s Gift Ordinance Requirements**

The City has had its own gift regulations since the 1980’s. The current Gift Ordinance was adopted in 1993 (Ord. 24499) as part of a comprehensive ethics ordinance establishing Title 12. In 2004, the Gift Ordinance was amended (Ord. 27258) to clarify that the reporting and disqualification requirements of the Political Reform Act applied; and to increase the gift limit exception from $15.00 to $50.00 and to make clarifying and technical changes. No revisions have been made since 2004.

Under the Gift Ordinance, City officials and designated employees (e.g. Form 700 filers) cannot “accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in [the Gift Ordinance].” Exceptions to this rule include, among others, gifts valued at less than $50.00, informational materials, and wedding gifts.

Approximately 1681 officials, employees, and consultants are subject to the Gift Ordinance. In addition, the City Employee Gift Policy, section 1.2.2, extends the limitations on gift acceptance in the Gift Ordinance to all employees.

2. **Political Reform Act Gift Regulations**

In contrast to the City’s Gift Ordinance, the Political Reform Act does not impose a ban on accepting gifts. Instead, it prohibits public officials, candidates for local elective office, and designated employees (e.g. Form 700 filers) from accepting gifts from a single source with a value totaling more than $470.00 in a calendar year. If the gift or gifts have a value of $470.00 or less, it can be accepted. But, all gifts with a value totaling $50.00 or more must be disclosed in a Form 700 report.

Although there have been no revisions to the Gift Ordinance since 2004, the Political Reform Act has been revised in that time; specifically, to increase the dollar limit with
inflation and to expand the exceptions for what is not considered a "gift." These exceptions apply to a range of activities, including:

- gifts exchanged between dating partners,
- gifts from long-time personal friends when the gift is unrelated to the official's duties, and
- free admission to a ticketed event for the official and one guest where the official performs a ceremonial role.

Generally, when an exception applies the gift does not need to be reported and does not count against the $470.00 gift limit. However, even though an exception applies, there are circumstances where public officials may have to recuse themselves from any decision involving the donor if the gift or gifts have a value of $470.00 or more.

Although the City has its own Gift Ordinance, it is important to note that compliance with the Political Reform Act is also required.

3. **BFCPP Recommended Revisions to Gift Ordinance**

The draft Gift Ordinance that was presented to Council in June 20, 2017 included the following BFCPP recommendations:

a. **Revise the definition of “gift” to be consistent with the definition in the Political Reform Act.**

This recommended revision would align the City’s definition of “gift” with the definition in the Political Reform Act. It also would incorporate the exceptions in the Political Reform Act. A chart comparing the Political Reform Act’s exception with the exceptions in the Gift Ordinance can be found in Attachment 1.

Other jurisdictions with gift ordinances follow a similar approach. For example, San Diego and Oakland, in their gift ordinances, incorporate the definition for gift and the gift exceptions in the Political Reform Act.

b. **Strike Exceptions (SJMC 12.08.030.B-J, L, and M and 12.08.040.A) as redundant or inconsistent with the Political Reform Act.**

To align the Gift Ordinance with the Political Reform Act, this recommended revision would eliminate most of the exceptions currently in the Gift Ordinance as redundant or inconsistent with the Political Reform Act.

c. **Refer to a “person subject to the decision-making or recommending authority,” in SJMC 12.08.010, as a “Restricted Source.”**
This recommended revision would not make any substantive change to when the City's Gift Ordinance applies. Rather, it follows the example of other jurisdictions in referring to the donor of a gift who is subject to the decision-making or recommending authority of the City official or designated employee as a "Restricted Source."

d. Increase the gift exception limit to allow the acceptance of gifts with a value of $250.00 or less, and beginning January 1, 2019 biennially adjust the gift limit to reflect any changes in the Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics.

The gift limit in the Political Reform Act is presently $470.00 or less, which adjusts every odd-numbered year to reflect changes in the Consumer Price Index. The amount in 2015-2016 was $460.00.

The City’s current Gift Ordinance allows officials and designated employees to accept gifts that are less than $50.00. The dollar limit has not increased since 2004.

Increasing the gift limit to allow the acceptance of gifts valued at $250.00 or less recognizes that the value of things has increased with inflation since 2004. Biennially adjusting this limit for inflation is also modeled after the Political Reform Act, which contains a similar biennial adjustment for inflation.

Of the top 20 largest cities in California, Los Angeles, San Diego, San Francisco, and Oakland have gift ordinances. Each city’s dollar limit is as follows:

<table>
<thead>
<tr>
<th>City (ranked by pop.)</th>
<th>Dollar Limit</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles</td>
<td>Cannot accept gifts of more than $100.00 from a &quot;Restricted Source&quot; in a calendar year.</td>
<td>LAMC § 49.5.8(C)(4)</td>
</tr>
<tr>
<td>San Diego</td>
<td>Cannot accept gifts of more than $470.00 from a &quot;Restricted Source&quot; in any calendar year.</td>
<td>SDMC § 27.3520</td>
</tr>
<tr>
<td>*Same limit as State law. Adjusts for inflation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>San José</td>
<td>May accept gifts valued at less than $50.00.</td>
<td>SJMC § 12.08.030(A)</td>
</tr>
<tr>
<td>San Francisco</td>
<td>May accept non-cash gifts worth $25.00 or less, up to four times per year.</td>
<td>SF Campaign and Governmental Code § 3.216(b)(1)</td>
</tr>
<tr>
<td>EC Regulations § 3.216(b)-5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City (ranked by pop.)</td>
<td>Dollar Limit</td>
<td>Section</td>
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<tr>
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<td>---------</td>
</tr>
<tr>
<td>Oakland</td>
<td>Cannot accept gifts of more than $50.00 in calendar year from &quot;Restricted Source&quot;</td>
<td>OMC § 2.25.060(C)(3)</td>
</tr>
</tbody>
</table>

Other large California cities, such as Sacramento, Fresno, and Long Beach, have no gift ordinance and defer to State law. Accordingly, the dollar limit in those cities is $470.00 or less.

e. Modify SJMC 12.08.030.K to allow for “commemorative gifts.”

The Gift Ordinance allows officials and designated public employees to accept “flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.”

The BFCPP’s recommended revision would change the exception to “commemorative gifts, such as flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.” Although the Political Reform Act exceptions cover a broad range of gifts, keeping this exception would ensure that San José’s long-standing exception allowing the acceptance of these types of commemorative gifts remains intact. However, unless otherwise covered by an exception in the Political Reform Act, a commemorative gift valued at $50 or more would need to be reported on a Form 700.

f. Make technical changes and reorganize Chapter 12.08.

The draft Gift Ordinance recommended by the BFCPP would also make technical changes to reflect the dissolution of the redevelopment agency and reorganizes the sections into parts.

4. Reporting Considerations

a. Form 700 Reporting

Increasing the dollar limit to allow the acceptance of gifts valued at $250.00 or less, as recommended by the BFCPP, will require City officials and designated employees to be mindful of Form 700 reporting requirements. Under State law, gifts generally must be reported on a Form 700 when it is valued at $50.00 or more. As the City’s current Gift Ordinance prohibits City officials and designated employees from accepting most gifts that are valued at $50.00 or more, compliance with the City’s Gift Ordinance eliminates the need to report gifts on the Form 700. If the Council increases the gift limit to allow acceptance of gifts valued at $250.00 or less, then it is possible that the number of gifts
that have a value between $50.00 and $250.00 would increase with the corresponding need to report such gifts on the recipient’s Form 700.

b. Family Gift Reporting

Under the Gift Ordinance, City officials and designated employees are required to file a family gift report with the City Clerk. This report discloses any gifts that a spouse or dependent child receives that would have been prohibited had the City official or designated employee received it. Increasing the dollar limit to allow the acceptance of gifts with a total value of $250.00 or less would mean that City officials and designated employees would only need to report gifts received by family members when the value of the gift is more than $250.00.

In conclusion, the City Attorney’s office requests Council direction on the policy considerations discussed above and presented under Policy Alternatives. This direction will guide the City Attorney in drafting an ordinance revising the City’s Gift Ordinance for the Council to consider.

POLICY ALTERNATIVES

Alternative #1: Adopt BFCPP recommendations with an increase in the dollar limit to allow the acceptance of gifts with a total value of $250.00 or less, adjustable every odd-numbered year for inflation.

Pros: Adopting this policy would align the State and City exceptions and remove any inconsistencies. It would also bring the City’s gift limit closer to the State’s $470.00 limit. It would further increase the gift limit to keep pace with inflation without needing Council approval.

Cons: This policy change would reduce restrictions on accepting gifts by increasing the number of exceptions and increasing the dollar limit. Reporting obligations to California’s Fair Campaign and Political Practices Commission could also increase because gifts with a value between $50.00 and $250.00 would need to be reporting on the Form 700.

Alternative #2: Adopt BFCPP recommendations with no increase in the dollar limit.

Pros: Adopting this policy would align the State and City exceptions and remove any inconsistencies. Further, because the dollar limit would not change, reporting obligations likely would not increase.

Cons: This policy would reduce restrictions on accepting gifts, but only with regard to the number of exceptions. The dollar limit would remain the same.
Alternative #3: Repeal the Gift Ordinance

Pros: Adopting this policy would completely align the City’s gift rules with State law by making the gift regulations in California’s Political Reform Act the default rule for accepting gifts in the City of San José.

Cons: This policy would reduce restrictions on accepting gifts. City officials and designated employees would be allowed to accept gifts up to a total of $470.00. This dollar limit would also increase every odd-numbered year with the Consumer Price Index. Reporting obligations could also increase because City officials and designated employees would be required to report any gift they might receive that has a value between $50.00 and $470.00.

Alternative #4: Make no change to the Gift Ordinance

Pros: Making no change to the Gift Ordinance would maintain the status quo. The City’s ethical standards regarding gifts would also continue to remain stricter than State law.

Cons: Making no change to the Gift Ordinance would not align the City’s gift regulations with State regulations, thus leaving in place any inconsistencies.

PUBLIC OUTREACH

The Board of Fair Campaign and Political Practices discussed the Gift Ordinance and potential revisions on June 8, 2016, January 11, 2017, and February 8, 2017. The Council discussed the Gift Ordinance on June 20, 2017 and June 27, 2017. This memo has been posted on the City Clerk’s website as a part of the August 8, 2017 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the Office of the City Clerk.

COMMISSION RECOMMENDATION

The recommendations discussed above were approved at the February 8, 2017 Board of Fair Campaign and Political Practices meeting.
HONORABLE MAYOR AND CITY COUNCIL  
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