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## MEMORANDUM

TO: ALL CITY ELECTED OFFICERS  
 FROM: Jon Givner *JG*  
 Andrew Shen *AS*  
 Deputy City Attorneys  
 DATE: June 22, 2012  
 RE: Gift Rules Regarding the City's Distribution of Tickets and Passes

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In, this memorandum we reiterate and expand upon our prior advice about the rules that apply when City departments distribute tickets and passes for events to City employees and officials. Over the past several years, we have often advised City departments and many of your offices about the application of these rules. Also, this Office's Good Government Guide – publicly available through the "Resources" page on [www.sfcityattorney.org](http://www.sfcityattorney.org) – summarizes the applicable rules in this area.

This memorandum incorporates that past advice and includes information about amended rules recently adopted by the Fair Political Practices Commission ("FPPC").

### Summary

Generally, a ticket that you receive from a City department – even to an event held on City property, or that the City acquires under a lease – is a gift to you. You should always *presume* that such tickets are gifts subject to limits and reporting requirements, *unless* a specific exception applies. If you are using the ticket under an exception, you ultimately bear the burden of demonstrating that the exception properly applies and that the department and you follow the requirements for that exception.

There are four important exceptions most relevant here:

- **Public Purpose Exception.** Tickets from a City department are not gifts if: (a) the department has adopted a written ticket distribution policy, (b) the official responsible for distributing the tickets has determined that the distribution serves one of the "public purposes" listed in the department's policy, (c) the department timely reports the names of all ticket recipients (including the public purpose served by each ticket distributed) to the FPPC for its review, and (d) you use the tickets only for yourself and your immediate family (namely, your spouse or domestic partner and dependent children) or one accompanying guest who is not an immediate family member, if permitted by the department's policy.

If you accept and use a ticket under this exception, you should ensure that an appropriate public purpose applies in *every* instance in which it is invoked, *e.g.*, each game, if you are offered tickets to a series of games. If you delegate another City employee, official or agency to make that determination on your behalf, and the

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FPPC later deems the public purpose to be invalid, you alone would be subject to penalties for violating any gift limits or reporting requirements.

- Report as Income Exception. A ticket from a City department would not be a gift if you inform the department that you will report the ticket as income on your tax returns, and the department reports that ticket distribution to the FPPC.
- Ceremonial Role Exception. A ticket from a City department would not be a gift if you are playing a ceremonial role – such as throwing out the first pitch at a baseball game – at the event for which you received the ticket. The department still must report the ticket distribution to the FPPC.
- Return, Pay or Donate Exception. A ticket from a City department is not a gift if, before the event and within 30 days after receiving the ticket, you return it unused, pay for it or donate it to a 501(c)(3) nonprofit organization or government agency without taking a tax deduction.

Finally, none of these exceptions allow you to give away tickets to friends, coworkers or family members for their personal use, without treating the tickets as gifts. If you receive a ticket and give it away (except to a 501(c)(3) nonprofit organization or government agency without taking a tax deduction as mentioned above), then the ticket is a gift subject to applicable gift limits and reporting requirements.

**DISCUSSION**

The FPPC defines a "ticket or pass" as "admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose." 2 C.C.R. § 18944.1. For example, tickets and passes to a professional football or baseball game, golf tournament, concert, ballet performance or music festival would fall within the scope of this regulation, but a luncheon or dinner would not. Scott Adv. Ltr., CA FPPC Adv. I-09-104, 2009 WL 1395619 at \*4 (May 11, 2009).

Apart from the exceptions discussed below, you may be able to accept a ticket from a City department as a gift to you, subject to the limits, prohibitions, and Form 700 reporting requirements that normally apply to an individual's acceptance of gifts. Those rules are further explained in the City Attorney's Good Government Guide.

*1. Public Purpose Exception*

A ticket received from an outside source, including a ticket obtained by a City department under the terms of a contract for use of public property, is not a gift to you if each of the following applies:

- The department determines, in its sole discretion, who uses the ticket or pass, and the outside source does not earmark it for any particular official;
- The distribution of the ticket or pass complies with a written ticket distribution policy adopted by the department's governing body. Importantly, under all such policies, each ticket must fulfill a "public purpose," rather than personal entertainment. The ticket distribution policy must, at a minimum:
  - (i) list the public purposes for which tickets or passes may be distributed;

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(ii) require that the distribution of any ticket or pass accomplish a stated public purpose; and

(iii) prohibit the transfer of any ticket or pass, distributed under the policy, to any other person, except to members of the recipient's immediate family or no more than one guest.

- The department reports the use of those tickets to the FPPC, using FPPC Form 802, within 45 days of the ticket's distribution. The Form 802 requires the disclosure of the name of the recipient of the ticket, a description of the event, the date of the event, the value of the ticket, the number of tickets provided to each person, and the public purpose that the distribution of the ticket or pass fulfills.

2 C.C.R. § 18944.1(b)-(d). As stated above, to qualify for this exception, each ticket you receive must serve one of the public purposes listed in the applicable ticket distribution policy. Departments *cannot* distribute tickets to elected officials for the purpose of supporting morale or rewarding public service. *Id.* § 18944.1(a)(2).

We are currently aware of ticket distribution policies adopted by the Arts Commission, Asian Art Museum, Fine Arts Museums, Port Commission, Recreation and Park Commission, War Memorial Board of Trustees, and Treasure Island Development Authority. If you choose to use this exception, you should confirm with representatives of those departments that these policies are still in effect and comply with the requirements listed above.

#### 2. *Report as Income Exception*

A ticket or pass is not a gift if you treat the ticket or pass as income on your federal and state tax returns, and the department reports the ticket or pass on the FPPC Form 802 as income to you. *Id.* § 18944.1(a)(1). If you elect to accept tickets or passes as income, we recommend that you consult your own legal counsel to address any resulting tax reporting obligations.

#### 3. *Ceremonial Role Exception*

A ticket may not constitute a gift under a narrow exception for events at which an elected official performs a ceremonial role or function on behalf of the City. *Id.* § 18942(a)(12).

A "ceremonial role" is an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event or function where, for a period of time, the focus of the event is on the act performed by the official. *Id.* § 18942.3. Examples of a ceremonial role include: throwing out the first pitch at a baseball game; cutting a ribbon at an opening; making a presentation of a certificate, proclamation, award, or other item, such as the key to the city. *Id.* Tickets distributed for this purpose must be disclosed on the Form 802. *Id.* § 18942(a)(12). In addition to the official performing the ceremonial role, any other City employee assisting that official in performing the ceremonial role may receive a ticket – without considering the ticket as either a gift or income, although that employee's receipt and use of the ticket does not have to be separately reported on the Form 802. *Id.*

#### 4. *Return, Pay or Donate Exception*

The limits and prohibitions on receipt of gifts do not apply if you take any of the following three steps within 30 days of receiving the tickets or passes:

- Return the tickets or passes unused before the event;

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- Pay fair market value for the tickets or passes; or
- Donate the tickets or passes to a 501(c)(3) nonprofit organization or a government agency and do not take a tax deduction for the donation.

*Id.* § 18941(c); Givner Adv. Ltr. CA FPPC Adv. I-09-223, 2009 WL 5453038 (Nov. 5, 2009). If you take the third option and donate the tickets to a 501(c)(3) nonprofit organization, you should ensure that the department that provided the tickets reports the donation on the Form 802 within 45 days of when you received them. *See* 2 C.C.R. § 18944.1(d)(2). In any event, if you choose any of the three options under this exception, you should appropriately document your actions.

**Additional Information**

The FPPC has revised its Form 802 to reflect the recent changes to its policy. The current form is available at: [www.fppc.ca.gov/forms/802.pdf](http://www.fppc.ca.gov/forms/802.pdf). The FPPC also continues to issue guidance on the application of its regulations to the distribution of tickets and passes. We will review the FPPC's guidance and inform you of any changes in the law as appropriate.