



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Mayor John F. Cook
District Representatives
Joyce Wilson, City Manager
Deputy City Managers
Department Heads
Executive Assistants to the Mayor
City Board and Commission members (via posting on the City's website)

FROM: Elaine S. Hengen, Senior Assistant City Attorney

SUBJECT: Reporting of gifts under the new Ethics Ordinance, No. 17112

DATE: May 20, 2009

NEW ETHICS ORDINANCE ADOPTED APRIL 21, 2009

On April 21, 2009 the City Council adopted Ordinance No. 17112, which amended most provisions of the Ethics Ordinance. This ordinance can be found on the City's website—on the webpage for the Ethics Review Commission and on the City Attorney's ethics webpage. New provisions were included in the Ordinance regarding the acceptance and reporting of gifts. These specific provisions are attached for your convenience. The Ethics Review Commission will meet next week to revise the Reportable Gift form so as to conform to the recent changes. In the meantime, I have been asked to provide some information regarding the new gift provisions, the reporting requirements, and the use of the existing form to report gifts.

NEW RULES REGARDING ACCEPTING GIFTS

The provisions regarding gifts are now contained in section 2.92.040 of the Ethics Ordinance. The general rule is that no officer (elected officials and board and commission members) or employee of the City can accept a gift, of which the known or readily apparent value for each separate gift, exceeds \$75, and no officer or employee can

accept a gift of any amount which might reasonable tend to influence them to act improperly in the discharge of official duties, or reasonably tend to improperly reward official conduct.

Additionally, gifts with a value exceeding \$10 cannot be accepted from a person who is a registered lobbyist with the City pursuant to Chapter 2.94 of the Code. This is the provision that requires certain persons who lobby City officials to register. The City Clerk maintains a list of these registered lobbyists and a link to the list is at the bottom of the Municipal Clerk's webpage.

There are some exceptions to the \$75 limitation for gifts. The Ordinance should be consulted for the complete list of exceptions, which include things such as political contributions, awards and personalized mementos, personal gifts from relatives, friends and business associates, official tokens of recognition, ordinary loans, reasonable hosting in connection with certain public events, allowable honorariums, tickets to City sponsored events or events that are part of one's official duties or a spouse's or child's position or duties, and attendance at most charity events.

NEW RULES FOR REPORTING THE RECEIPT OF GIFTS

The Ordinance provisions relating to the reporting of gifts have been revised. All officers and the "designated employees" (City Manager, Deputy City Managers, Department Heads and Executive Assistants to the Mayor) must report the receipt of gifts (other than those within the exceptions noted in the ordinance) that have a value of more than \$10, including tickets or admission passes. However, awards, honorariums, and reasonable hosting (as such terms are defined in the Ordinance, and which can lawfully be accepted) do not need to be reported unless their value exceeds \$50.

Not every gift must be reported. Gifts with a value of \$10 or less do not need to be reported. Any gift that is on the list of exceptions ("excepted gift"), such as awards and personalized mementos, official tokens of recognition and tickets to City sponsored events do not have to be reported. Additionally, the value of such an excepted gift does not need to be specifically ascertained, as an excepted gift can be accepted even if the value exceeds \$75.

In the event that you would desire to list the receipt of such a excepted gift on the reportable gift form even though such listing is not required, you should note the applicable exception on the form, such as "official gift from a governmental dignitary" and state that it is excepted under Sections 2.92.040 B and 2.92.070 B 4 a.

FILING THE REPORTABLE GIFT FORM

As noted above, all officers and the "designated employees" must file the reportable gift form when they have a reportable gift. Other City employees are subject to the Ethics

Ordinance and the limitation on accepting gifts, but they are not required to report gifts received. When a reportable gift has been received, the form must be filed with the City Clerk no later than the 10th day of the following month for each month during which a reportable gift is received.

When filing the form, the filer must describe the gift, list the date received, identify the name of the person or organization who made the gift, state the value or estimated value of the gift and identify the immediate or intended disposition of the gift. The purpose for accepting a ticket or admission pass to an event must be stated on the report form.

All gifts reported on the Reportable Gift form must have a identified value which must be stated on the form. Under the prior ordinance, if the value of a gift was not known or could not be estimated, the reporter could state “unknown” on the form. However, this is no longer appropriate under the new Ordinance. Because it is often improper to accept a gift with a value of more than \$75, each and every gift (other than excepted gifts) must be valued and the value specifically identified. This specific value must be stated on the reportable gift form. If the value of a gift is not specifically known, the recipient is required by the Ordinance to ascertain its readily apparent value. In other words, the recipient of a gift must estimate the value of every gift and assign a specific dollar value to that gift.

The Ethics Review Commission will correct the form and remove the language on the form that states that a value can be listed as unknown. However, until the form is changed and implemented, please be aware of this issue, and do not list “unknown” for the value of any gift received after April 21st that must be reported.

NEW PROCESS FOR ACCEPTING A GIFT VALUED OVER \$75

Gifts with a value exceeding \$75 that are not on the list of exceptions should be returned to the sender within 72 hours of receipt or forwarded to the Office of the City Manager for acceptance as a gift to the City. In the latter case, the City Manager will determine the appropriate use or disposition of the gift in accordance with established City policies.

The City Manager has already set up a system in her office to record the receipt of any gifts that are turned over to her office under the Ordinance to be accepted as gifts to the City. Suzanne Tomlinson will enter all such gifts on a log, to include the City Manager’s designated disposition of the gift—describing where and how the City will utilize each of these gifts, which can include use by the initial recipient in his or her official capacity. Each month, the City Manager will utilize this log to prepare a report, which as required by the Ordinance, which will be available to the public.

Cc: Attorneys, City Attorneys Office
Leila Melendez, City Manager’s Office
Suzanne Tomlinson, City Manager’s Office

**ATTACHMENT
SELECTED PROVISIONS REGARDING GIFTS
ORDINANCE NO. 17112, ETHICS ORDINANCE**

2.92.020 Definitions.

“Gift” means any gift, benefit or other economic gain or economic advantage to an officer or employee or to a relative of an officer or employee.

2.92.040 Gifts.

A. General Rule. An officer or employee shall not solicit, accept, or agree to accept for themselves or a relative, the following:

1. any gift, of which the known or readily apparent value for each separate gift, exceeds seventy-five (\$75) dollars in value;
2. any gift that might reasonably tend to influence them to act improperly in the discharge of official duties, or reasonably tend to improperly reward official conduct; or
3. any gift from any lobbyist registered under chapter 2.94 of this code, of which the known or readily apparent value for each separate gift exceeds ten (\$10) dollars in value.

B. Special Applications. Subsection A above does not include:

1. Political contributions made or received and reported in accordance with law;
2. Awards, such as plaques, certificates, trophies or personalized mementos, which are reasonable in light of the occasion and publicly presented in recognition of public service;
3. A gift conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
4. Gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities which are accepted for the city or in conjunction with the officeholder duties of an elected official;
5. Commercially reasonable loans made to an officer or employee in the ordinary course of the lender’s business;
6. Complimentary copies of trade publications;
7. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with attending seminars or workshops, speaking engagements, teaching, or rendering other public assistance to an organization or another governmental entity;

8. An honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code;
9. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event that is sponsored or conducted by the City;
10. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event in which the officer or employee is participating in connection with official duties or in which the officer or employee is participating in connection with his spouse's or child's position or duties, provided that the receipt of such ticket is reported as a reportable gift if such reporting is required under section 2.92.070 B 2 of this code; and
11. Any solicitation for civic or charitable causes, or admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the officer or employee.

2.92.070 Reporting requirements.

A. Financial Disclosure

2. "Designated employee" for purposes under this section, means the city manager, deputy city managers, all city department heads or directors, and the executive assistants to the mayor.

B. Reporting of Gifts.

1. Each officer and designated employee shall keep a written record of all reportable gifts received during his or her term of office or employment.
2. Such record shall be made for each calendar month. The record shall include a description of the reportable gift received; the name of the person and organization giving the reportable gift; the relationship of the donor to the reporter; the value or estimated value of the reportable gift; and the immediate or intended disposition of the reportable gift. A reportable gift consisting of a certificate or admission ticket or pass to a future event or activity shall be deemed to have been received on the date on which the certificate or admission ticket or pass was received, and if such certificate or admission ticket or pass must be reported under subsection B 4 d, a statement as to the duties performed.
3. Such monthly record shall be submitted to the city clerk on the form she provides no later than the tenth day of the following month for each month during which a reportable gift is received.
4. "Reportable gifts" for purposes under this section shall mean the following:
 - a. Any gift that is not covered by the special applications under section 2.92.040 B of this code, has a value of more than ten (\$10) dollars, and was conferred on account of the official status of the recipient or in connection with official city business, except as provided below in subsections b, c and d;
 - b. Any hosting, such as travel and expenses, entertainment, meals or refreshments, that has a value of more than fifty (\$50) dollars, other than hosting provided on account of kinship or a personal, professional, or business relationship

- independent of the official status of the recipient;
- c. Any award presented in recognition of public service, or an honorarium, with a value of more than fifty (\$50) dollars; and
 - d. Any tickets or other admission passes to an event with an actual or face value of more than ten (\$10) dollars for all tickets or admission passes to the same event received at the same time, except for tickets or admission passes provided by the City for an event that is sponsored or conducted by the City.
5. Any gift, benefit, hosting, honorarium or other economic gain or economic advantage that is refused and returned to the sender within seventy-two hours of receipt shall not constitute a reportable gift under this section.
 6. Any gift which exceeds seventy-five (\$75) dollars in value, which is not covered by the special applications under Section 2.92.040 B of this code and which is turned over to the city manager within seventy-two hours of receipt for acceptance as a gift to the city, shall not constitute the acceptance of a gift in violation of section 2.92.050 A of this code, provided that the disposition of such gift is reported on a timely filed reportable gift form.
 7. The city manager, on a monthly basis, shall prepare a report which shall be made available to the public of all gifts that have been turned over to his office for acceptance as a gift to the City.
 8. For purposes of this section, “honorarium” shall mean a payment, other than reimbursement for meals, travel or lodging expenses, for services provided in connection with addressing an audience or engaging in a seminar.