

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: July 20, 2011
ATTENTION: Committee on Rules, Open Government and Intergovernmental Relations
Agenda of July 27, 2011
ORIGINATING DEPARTMENT: Mayor's Office
SUBJECT: Amendments to Council Policy 100-02 (Donation Acceptance)
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER: Stephen Lew, 619-236-7174

REQUESTED ACTION: Approve the recommended amendments to Council Policy 100-02

STAFF RECOMMENDATION: Approve the requested action

EXECUTIVE SUMMARY:

The City receives a variety of donations including monetary contributions, personal property, real property, securities, equipment, and in-kind goods and services for which the donor has not received any goods and services in return.

In nearly 17 years since Council Policy 100-02 was last amended, the City's procedures for receiving and processing donations have not kept pace with the numerous changes that have occurred in the field of contemporary philanthropy. Today, donors and their legal and financial advisors are diverse, sophisticated business people who seek philanthropic partners to provide highly competent, exacting and responsive services in the complex and competitive world of philanthropic giving.

City Council's approval of the requested actions outlined above is anticipated to result in:

- Improved customer service for donors;
- An increase in the quality and, therefore, the value of the assets the City acquires through donation or loan;
- Improved accuracy in the documentation and management of City-owned assets;
- City resources and labor saved through streamlined and standardized review processes and the elimination of duplicated efforts by City staff;
- Verification that proposed donations and loans meet both City-wide and departmental needs;

FISCAL CONSIDERATIONS:

The proposed amendments will lead to improved fiscal accountability and resource conservation.

Many proposed donations will include stipulations that require evaluation whether a donation obligates the City to make an immediate or initial City expenditure which has not been included in the approved City budget or if the donation creates a new, onetime or an on-going, annual general maintenance obligation for the City.

If the donations require expenditures in excess of the beneficiary department head's approved annual budget, it will seek City Council approval to accept, appropriate, and expend the donation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Council Policy 100-02 was amended:

- by Resolution R-284389 08/01/1994
- by Resolution R-283002 11/15/1993
- by Resolution R-223033 03/12/1979
- by Resolution R-216051 05/26/1976
- was adopted by Resolution R-178999 02/18/1964

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include:

- | | |
|--|--|
| <ul style="list-style-type: none">▪ Mayor▪ City Council▪ City Attorney▪ Chief Operating Officer▪ Chief Financial Officer▪ City Treasurer▪ Various Department Heads | <ul style="list-style-type: none">▪ City Clerk and staff▪ Commission for Arts and Culture and staff▪ Library Department's Visual Arts Program staff▪ Donors |
|--|--|



Stephen Lew
Director of Community Outreach &
Business Relations
Mayor's Office

Attachment(s):
Council Policy 100-02

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT: ~~CITY RECEIPT OF DONATIONS~~
DONATION ACCEPTANCE

POLICY NO.: 100-02

EFFECTIVE DATE: ~~August 1, 1994~~
TBD (formerly August 1, 1994)

BACKGROUND:

~~From time to time, private individuals and agencies make donations to the City for general or specific purposes. General unwritten procedures exist for receiving gifts, but specific policies and procedures have not heretofore been written. The program of seeking community contributions for the Community Concourse highlighted the desirability of written policies and procedures.~~

Donations of every type are offered to the City of San Diego (City) for general or specific purposes. Uniform criteria and procedures guide the review and acceptance of such donations, confirm that the City has relevant and adequate resources to administer such donations, and ensure that the City appropriately acknowledges the generosity of the donor.

PURPOSE:

~~To formalize the conditions and procedures to be followed by the City in accepting donations:~~

To provide guidelines for accepting gifts and donations in a responsible, transparent, and accountable manner that is consistent with the City's strategic goals.

SPECIFIC OBJECTIVES:

1. To establish and guide relationships with donors who share the City's commitment to provide a high quality civic environment;
2. To enrich our community by responsibly and efficiently managing donations;
3. To generate revenue to fund new and existing facilities, projects, programs and activities for the benefit of the City and its residents; and
4. To work with non-profits whose mission supports the City's strategic goals.

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DEFINITIONS

~~Donation—A contribution to the City which may consist of a cash grant, real property (land), or an in-kind contribution (any item or object other than cash or real property which would serve a useful purpose in the provision of City Services).~~

~~Unrestricted Donation—A donation to the City without any limitation being placed upon its use.~~

~~Restricted Donation—A donation to the City for a specified purpose.~~

~~Works of Art—Includes, but is not limited to, physical art that may be an integral part of a public site or building, or that may be integrated with the work of other design professionals. Public works of art may be permanent, fixed, temporary or portable. Examples of public works of art include:~~

- ~~1.——Sculpture which may be made of any material or combination of materials: may be free-standing, wall-supported or suspended, kinetic, electronic, or mechanical.~~
- ~~2.——Murals and paintings which may be made of any material or variety of materials with or without collage and which may be made with traditional or non-traditional means.~~
- ~~3.——Earthworks, neon, glass, organic materials (for example fiber, clay, or wood), mosaics, photographs, prints, literary arts, calligraphy, any combination of media forms (for example sound, film, holographic, video, or computer systems), or hybrids of any media.~~

Defined terms used in this Council Policy appear in italics. For purposes of this Council Policy:

Beneficiary Department Head shall mean the Director of the City department, agency, board, or commission for which a *donation* is designated or intended. The Chief Operating Officer or designee shall act as the *Beneficiary Department Head* if no department, agency, board, or commission is designated or intended.

Donation or Gift shall mean a monetary contribution, personal property, real property, securities, equipment, and in-kind goods or services that the City has accepted and for which the *donor* has not received any goods or service in return. For purposes of this Council Policy, the terms “*donation*” and “*gift*” shall be synonymous.

Donor shall mean a person or other legal entity that proposes or provides a *donation* to the City.

COUNCIL POLICY

GENERAL PRINCIPLES

1. The City has no obligation to accept any *donation* proposed by a *donor*.
2. *Donations* do not become the property of the City until accepted by the City consistent with this Council Policy.
3. Only City officials authorized by this Council Policy may accept *donations*.
4. Only the Mayor or Mayor's designee may solicit *donations*.
5. All *donations* will be evaluated prior to acceptance to determine whether the *donation* is in the City's best interest and is consistent with applicable City laws, policies, ordinances, and resolutions.
6. The City does not provide legal, accounting, tax or other such advice to *donors*. Each *donor* is ultimately responsible for ensuring the *donor's* proposed *donation* meets and furthers the *donor's* charitable, financial, and estate planning goals. As such, each *donor* is encouraged to meet with a professional advisor before making any *donation* to the City.
7. The City must determine whether an expenditure of City funds, either a direct outlay of City funds or the use of City forces and materials, is associated with or required by acceptance of the *donation* prior to acceptance.
8. The *donation* must be used for official City business, and not for political activities or other personal business.
9. A *donor* may identify a purpose for the *donation* but not designate the City official who may use the *donation*.
10. If required, the City will report a *donation* made to a City official to the Fair Political Practices Commission in accordance with the timelines and directives described in title 2, section 18944.2 of the California Code of Regulations.
11. The *Beneficiary Department Head* is responsible for acknowledging receipt of and thanking, on behalf of the City, the *donors* for such *donations*.
12. The City shall comply with all applicable laws and regulations of the Internal Revenue Service regarding the acceptance of *donations*.
13. Proposed *donations* of artworks and artifacts are exempt from this Council Policy. Artworks are defined and governed by San Diego Municipal Code sections 26.0701 through 26.0728. The Library Department processes *donations* of artworks proposed specifically for the use of the Library Department's Visual Arts Program pursuant to San Diego Administrative Regulation 95.00. Artifacts are items with a fair market value of less than \$5,000 offered to the City for unrestricted use and accepted by the Mayor or Council President on behalf of the City from representatives of foreign or domestic governments, business leaders, Sister Cities and their affiliates, private citizens, organizations, or other parties intending to express appreciation or foster diplomatic exchange and goodwill and/or to symbolize a significant event or relationship with the City. The City Clerk processes and administers *gifts* of artifacts, including those that meet the definition of artworks.

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COUNCIL POLICY

POLICY:

1. ~~Real property donations shall be reviewed and a legal opinion rendered thereto by the City Attorney before acceptance by the City. The City Council shall be responsible for the acceptance of all real property donations.~~

2. ~~Unrestricted personal property donations, except for works of art, do not require City Council approval for acceptance. Cash donations are a revenue to the General Fund and may be made directly to the City Treasurer. In kind donations may be made directly to the using department. All donations of \$250 or greater are to be reported to the Endowment Officer. It will be the Endowment Officer's responsibility to insure that proper City officials are informed of the donations; that the donation is acknowledged; that timely reports are made; and that suitable recognition is afforded the donor.~~

3. ~~Single restricted personal property donations may be made to the City for specific purposes. Such donations may be restricted for city wide projects such as: Centre City, Mission Bay recreation facilities, Balboa Park development, or the San Diego Yokohama Friendship Commission. They may also be restricted to projects on City property which would benefit only limited groups, such as a community park or recreation center facility, improvements and landscaping in median strips, or shuffleboard courts. These donations may be cash or in kind contributions. The City will review the conditions of the restrictive donations and determine if the benefits to be derived warrant the acceptance of the donations. Responsibility for such review and acceptance is as follows:~~
 - a. ~~The City Council shall be responsible for accepting all restricted donations which:~~
 - (1) ~~Create an immediate or initial City expenditure of \$5,000 or more which has not been included in the approved City budget. This pertains both to a direct outlay of City funds or to the use of City forces and materials.~~
 - (2) ~~Create an annual City maintenance obligation of \$5,000 or more which has not been included in the approved City budget.~~
 - (3) ~~Materially affect or change any aspect of City operations.~~

 - b. ~~City departments or their appointed agents such as Community Recreation Councils, shall be responsible for accepting those restricted donations not covered by item 3a.~~

~~Accepted cash donations will be deposited in the appropriate fund for future expenditure on the restricted purpose. Unaccepted donations will be returned to the donor.~~

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- e. — ~~Restricted donations of works of art are addressed under item 5 of this policy.~~

- 4. — ~~Multiple restricted donations are cash donations made to the City for a special purpose or project by more than one individual or agency. The City Council shall be responsible for accepting all such donations. All accepted multiple donations restricted to the same purpose or project will be limited by the following:~~
 - a. — ~~Uniform conditions will apply to all donations.~~
 - b. — ~~A limited time will be established for accepting these donations.~~
 - c. — ~~A complete release must be granted upon acceptance by the City if the donor desires benefit of Federal income tax deduction.~~
 - d. — ~~The City will maintain detailed trust records.~~

~~Upon acceptance of multiple restricted cash donations by the City, the donations will be deposited in the appropriate fund for future expenditures on the specified project.~~

- 5. — ~~Donations of works of art~~
 - a. — ~~Any time a donation of a work of art is proposed for the City of San Diego, the City agency or department (if applicable) that operates or maintains the site of the proposed work of art shall consult the Commission for Arts and Culture regarding the procedures for its review and acceptance by the City. Upon learning of the prospective donation of a work of art, the Commission shall also meet with the donor.~~
 - b. — ~~Under the guidance of the Commission for Arts and Culture, prospective donors and the department head of the particular City department or agency that operates and maintains the proposed site of the work of art (if applicable) shall meet and prepare written and visual documents for review by the Commission. The required documents are listed and described in "Guidelines for the Donation of Works of Art to the City of San Diego" available from the Commission. The Commission shall be responsible for assisting in the process of obtaining these guidelines, assembling materials, and submitting them for review.~~
 - c. — ~~If a City department or agency has jurisdiction over the proposed site of the work of art, the department or agency head shall:~~
 - (1) — ~~Inform the Commission of the relationship of any advisory boards to the department or agency.~~
 - (2) — ~~Refer proposals for donations of works of art to the advisory board which shall in turn make recommendations to the department or agency head.~~

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- (3) — Convey the department or advisory board's recommendations to the Commission in writing.
- d. — The Commission, with the aid of an advisory board made up of practicing artists and other professionals associated with the arts, shall review donation proposals and determine whether they will recommend to accept or reject the donation. The Commission may attach conditions to its recommendations for acceptance or rejection of donations. Proposals shall be reviewed according to criteria outlined in "Guidelines for the Donation of Works of Art to the City of San Diego," which are on file with the City Clerk's Office as document RR-284389-2.
- e. — If a specific site is recommended for placement of the donated work of art, either by donor or the department or agency under whose management the site belongs, the Commission shall review the site recommendation according to the criteria outlined in "Guidelines for the Donation of Works of Art to the City of San Diego." If the proposed property falls under the jurisdiction of a specific City department or agency, the Commission and the department or agency must reach an agreement regarding the installation and placement of the work of art on the specific site.
- f. — Upon reviewing the donation proposal, the Commission shall recommend either acceptance, with or without conditions, or rejection of donations of works of art to the City Council.
- g. — If the City chooses to accept donations of works of art, the donation shall be accompanied by a legal instrument of conveyance of title. Any conditions the City or donor places on a donation of a work of art shall be stated in writing and attached to the legal conveyance of title.
- h. — Once the City accepts the donation of a work of art and becomes its legal owner, the Commission shall coordinate all processes relating to the installation, maintenance, removal, or relocation of works of art in City-owned public places. If a specific City department or agency operates and maintains the site of the work of art, the Commission shall consult with the department or agency head to discuss the financial and practical responsibilities of its upkeep.
- i. — Works of art loaned to the City for temporary exhibition (up to one year) and gifts of state shall not be subject to the review process outlined above.
6. — All donations shall become City property upon formal acceptance by the City Council or appropriate City department.

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POLICY

The procedure for accepting donations shall be as follows:

- **Donations of Trust and Perpetuity Funds:** Donations of trust and perpetuity funds shall be administered by the City of San Diego Funds Commission when placed under its custody pursuant to San Diego Charter section 41(a).
- **Donations of Publicly Traded Equity and Debt Securities:** Once the Office of the City Treasurer has been notified, donations of publicly-traded equity and debt securities will be immediately sold upon receipt in the City's designated brokerage account. The sales proceeds are then transferred from the City's brokerage account to its depository bank account for appropriation and expenditure by the Chief Financial Officer consistent with the Annual Appropriation Ordinance.
- **Donations of Real Property:** Donations of real property may be accepted upon completion of the following process:
 1. The Real Estate Assets Department shall determine the approximate value of the donation.
 2. The Real Estate Assets Department shall seek City Council approval to accept a donation if the Real Estate Assets Department determines that the donation is in the City's best interest and acceptance is consistent with applicable City laws, policies, ordinances, and resolutions. When seeking such approval, the Real Estate Assets Department shall report to the City Council regarding:
 - the appraised value of the donation;
 - any expenditures or maintenance obligations for the City associated with the donation;
 - potential liabilities associated with the donation, such as hazardous conditions or environmental concerns;
 - whether the donation has any special restrictions, and if so, if those restrictions are acceptable to the City; and
 - any recommendations for conditions of acceptance.
 3. The Real Estate Assets Department shall administer the donation.
- **Other Donations Valued at \$99,999 or Less:** All other donations with an aggregate value of \$99,999 or less may be accepted by the Beneficiary Department Head upon completion of the following process:

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1. The Beneficiary Department Head shall evaluate whether the donation:

- Is in the City's best interest and is consistent with applicable City laws, policies, ordinances, and resolutions;
- Has any special restrictions and if so, if those restrictions are acceptable to the City;
- Obligates the City to make an immediate or initial City expenditure which has not been included in the approved City budget; and
- Creates a new, one-time or an on-going, annual general maintenance obligation for the City.

2. The Beneficiary Department Head shall seek City Council approval to accept, appropriate, and expend the donation if the donation requires expenditures in excess of the Beneficiary Department Head's approved annual budget.

- **Other Donations Valued at \$100,000 to \$249,999:** All other donations with an aggregate value of \$100,000 to \$249,999 may be accepted by the Mayor upon completion of the following process:

1. The Beneficiary Department Head shall evaluate whether the donation:

- Is in the City's best interest and is consistent with applicable City laws, policies, ordinances, and resolutions;
- Has any special restrictions and if so, if those restrictions are acceptable to the City;
- Obligates the City to make an immediate or initial City expenditure which has not been included in the approved City budget; and
- Creates a new, one-time or an on-going, annual general maintenance obligation for the City.

2. The Beneficiary Department Head shall seek approval to accept the donation from the Chief Operating Officer or his or her designee if the donation does not require expenditures that exceed the Beneficiary Department Head's approved annual budget. The Mayor may formally accept the donation upon receipt of such approval.

3. The Beneficiary Department Head shall seek City Council approval to accept, appropriate, and expend the donation if the donation requires expenditures in excess of the Beneficiary Department Head's approved annual budget.

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- **Other Donations Valued at \$250,000 or Greater:** All other *donations* with an aggregate value of \$250,000 or greater may be accepted by City Council upon completion of the following process:
 1. The *Beneficiary Department Head* shall evaluate whether the *donation*:
 - Is in the City’s best interest and is consistent with applicable City laws, policies, ordinances, and resolutions;
 - Has any special restrictions and if so, if those restrictions are acceptable to the City;
 - Obligates the City to make an immediate or initial City expenditure which has not been included in the approved City budget; and
 - Creates a new, one-time or an on-going, annual general maintenance obligation for the City.
 2. The *Beneficiary Department Head* shall seek approval from The City of San Diego Chief Operating Officer or his or her designee to accept the *donation*. Upon receipt of such approval, the *Beneficiary Department* shall initiate a Request for Council Action in which the *Beneficiary Department Head* describes whether the *donation*:
 - Is in the City’s best interest and is consistent with applicable City laws, policies, ordinances, and resolutions; and
 - Has any special restrictions and if so, if those restrictions are acceptable to the City; and
 - Obligates the City to make an immediate or initial City expenditure which has not been included in the approved City budget; and
 - Creates a new, one-time or an on-going, annual general maintenance obligation for the City which will affect future City expenditures.
 3. The *Beneficiary Department Head* shall give notice of the City Council’s decision to the *donor* within 10 business days following the City Council’s decision to accept or reject the proposed *donation*.

HISTORY:

Adopted by Resolution R-178999	02/18/1964
Amended by Resolution R-216051	05/26/1976
Amended by Resolution R-223033	03/12/1979
Amended by Resolution R-283002	11/15/1993
Amended by Resolution R-284389	08/01/1994
<u>Revised by Resolution R-</u>	

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RELATED AUTHORITIES:

Code of Ethics and Ethics Training, Council Policy No. 000-04

City of San Diego Ethics Ordinance, San Diego Municipal Code §§ 27.3501 to 27.3595

City Charter §41(a) Funds Commission

San Diego Municipal Code §§ 26.0701 to 26.0728

Cal. Code Regs. title 2, § 18944.2

San Diego Admin. Reg. 95.00