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MEMORANDUM OF LAW

DATE: June 15, 2016
TO: Honorable Mayor and Members of the City Council
FROM: City Attorney
SUBJECT: Council Policy 700-22 and Gift of Public Funds

INTRODUCTION

The City of San Diego (City) receives 52 tickets for each event held in Qualcomm Stadium, and 26 tickets for each event held in Petco Park. Guidelines for distribution of these tickets are set forth in Council Policy 700-22 (see attachment A). The Council Policy sets forth the permissible use of the tickets, the City Officials who are entitled to tickets, and the number of tickets a City Official may use. Recently, a community member questioned whether the current ticket distribution policy amounts to a prohibited gift of public funds under article XVI, section 6 of the California Constitution. This memo analyzes whether the City's ticket distribution in Council Policy 700-22 amounts to a prohibited gift of public funds.¹

BACKGROUND

Title 2, section 18944.1 of the California Code of Regulations (CCRs) addresses how tickets for events for entertainment purposes can be distributed. The Fair Political Practices Commission (FPPC) is the state agency that adopts and enforces the CCRs implementing the Political Reform Act. Section 18944.1 states that tickets to an event for entertainment purposes distributed by an agency to its public officials will *not* be considered a gift if: (1) the public official uses or behests the tickets for a public purpose; or (2) the public official treats the tickets as income in accordance with applicable state and federal income tax laws. Tickets provided by an agency to its officials for which the agency is reimbursed are not subject to regulation.

Additionally, in order to avoid a distribution of tickets from an agency to its officials from being treated as a gift, section 18944.1 requires an agency to adopt a ticket policy which contains, at a minimum: (1) provisions setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes; (2) a provision requiring that distribution of any ticket or pass by the agency to, or at the behest of an official, accomplish

¹ Recently, at the Rules Committee Council Member Cate made a proposal to amend the ticket distribution policy. This memo does not address those proposed changes.

a public purpose of the agency; and (3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family, solely for their personal use.

Council Policy 700-22 meets the requirements set forth by section 18944.1², and requires that the City disclose on its website, all tickets distributed to its officials for a public purpose as well as those which the official will treat as income. This disclosure procedure is outlined under section III of the Policy. Such disclosure is to be made within 30 days after the distribution on a form provided by the FPPC, which shall include: (1) the name of the person or organization receiving the tickets; (2) a description of the event; (3) the date of the event; (4) the face value of the ticket; (5) the number of tickets provided to each person/organization; (6) if the ticket was behested, the name of the official who behested the ticket; and (7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket will be treated as income by the official.

QUESTION PRESENTED

Does distribution of tickets as authorized under the current City ticket distribution policy, in Council Policy 700-22, constitute a prohibited gift of public funds?

SHORT ANSWER

No. The prohibition against gifts of public funds does not preclude expenditures for public purposes. The City's ticket distribution policy clearly specifies the public purposes for ticket distributions and, therefore, distribution of tickets under the Policy is not a gift of public funds.

DISCUSSION

I. THE CITY'S TICKET DISTRIBUTION POLICY IS FOR A PUBLIC PURPOSE AND IS, THEREFORE, NOT A PROHIBITED GIFT OF PUBLIC FUNDS

The San Diego City Charter (Charter) prohibits the giving of "credit . . . to or in the aid of any individual, association or corporation." San Diego Charter § 93. This provision is consistent with the prohibition in article XVI, section 6 of the California Constitution on the gift of public funds. Generally, there must be a public purpose established by the legislative body to justify the use of public resources in a specified manner. *See Tevis v. City & County of San Francisco*, 43 Cal. 2d 190, 197 (1954) (charter provision defining gift of public funds prevails over constitutional provision); *City & County of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 103-104 (1988).

The prohibition against gifts of public funds does not preclude expenditures and disbursements for public purposes, even if a private person incidentally benefits. *Redevelopment Agency of the City of San Pablo v. Shepard* 75 Cal. App. 3d 453, 457 (1977); *Schettler v. County*

² Council Policy 700-22 was updated in 2009 to meet the new guidelines of title 2, section 18944.1 of the California Code of Regulations related to public agency distribution of tickets.

of *Santa Clara*, 74 Cal. App. 3d 990, 1003 (1977). The determination of a public purpose lies with the legislative body; the concept is liberally construed and the legislative action is upheld unless it is totally arbitrary. *Mannheim v. Superior Court*, 3 Cal. 3d 678, 691 (1970); *Community Memorial Hosp. v. County of Ventura*, 50 Cal. App. 4th 199, 207 (1996). In determining whether a public purpose exists, only the legal propriety of the expenditure should be examined, not economic or governmental wisdom. *City of Oakland v. Oakland Raiders* 32 Cal. 3d 60, 73 (1982).

Council Policy 700-22 specifies the public purposes of the ticket distribution policy under section I.C., Categories 1, 2, and 3. These categories detail under three different priority levels the public purpose accomplished by different distribution of tickets. Category 1 includes City officials using tickets to complete ceremonial or job duties. As section 18942(a)(13) states "Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event." Therefore, the tickets provided for this purpose are not gifts under the Act.

Council Policy 700-22 Category 2 and Category 3 include the distribution of tickets for the purposes of promoting and rewarding public service, non-profits, and retaining highly qualified employees in City service. Section 18944.1(c) specifies that "Any ticket or pass . . . distributed to an official for his or her personal use . . . to support general employee morale, retention, or to reward public service is deemed to serve a public purpose." Therefore tickets distributed under the Council Policy to reward public service meet the public purpose requirements of section 18944.1.

This brief analysis of some of the different categories for distribution under Council Policy 700-22 illustrates that this Policy is in compliance with section 18944.1, and a distribution made consistent with the Council Policy would not constitute an illegal gift of public funds.

CONCLUSION

Distributions consistent with the City's current ticket distribution policy would not be gift of public funds prohibited by article XVI, section 6 of the California Constitution or Charter section 93. The ticket distribution policy clearly specifies the public purposes achieved by the different distributions of tickets, consistent with requirements of FPPC regulations.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Monica Willian
Monica Willian
Deputy City Attorney

MW:hm
ML-2016-9
Doc. No. 1271210
Attachment

ATTACHMENT “A”

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: TICKET POLICY FOR QUALCOMM STADIUM, PETCO PARK AND
OTHER TICKETS PROVIDED TO THE CITY FOR
ENTERTAINMENT PURPOSES
POLICY NO.: 700-22
EFFECTIVE DATE: July 21, 2009

PURPOSE:

To establish a policy in conformance with title 2, section 18944.1 of the California Code of Regulations, as amended by the Fair Political Practices Commission to guide the City of San Diego in the distribution of tickets provided to the City for entertainment purposes.

POLICY:

This policy applies to tickets which provide admission to a facility or event for an entertainment, amusement, recreational or similar purpose, and are either:

1. gratuitously provided to the City by an outside source;
2. acquired by the City by purchase;
3. acquired by the City as consideration pursuant to the terms of a contract for the use of a City venue; or
4. acquired and distributed by the City in any other manner.

This policy does not apply to any other item of value provided to the City or any City Official, regardless of whether received gratuitously or for which consideration is provided.

This policy, together with the ticket procedures established herein, shall supersede and replace Council Policy 700-22 relating to tickets for Qualcomm Stadium and Council Policy 700-47 relating to Petco Park.

DEFINITIONS:

Unless otherwise expressly provided herein, words and terms used in this policy shall have the same meaning as that ascribed to such words and terms in the California Political Reform Act of 1974 (Government Code Sections 81000, *et seq.*, as the same may from time to time be amended) and the Fair Political Practices Commission [FPPC] Regulations (title 2, sections 18110 *et seq.*, of the California Code of Regulations, as the same may from time to time be amended).

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“City” or “City of San Diego” shall mean and include the City of San Diego, any other affiliated agency created or activated by the San Diego City Council, and any departments, boards and commissions thereof.

“City Official” means every member, officer, employee or consultant of the City of San Diego, as defined in Government Code Section 82048 and FPPC Regulation 18701. Such term shall include, without limitation, any City board or commission member or other appointed official or employee required to file an annual Statement of Economic Interests (FPPC Form 700).

“City Venue” means and includes Qualcomm Stadium, Petco Stadium, or any other facility owned, controlled or operated by the City of San Diego.

“Immediate family” means the spouse and dependent children.

“Ticket” means and includes any form of admission privilege to a facility, event, show or performance.

“Ticket Coordinator” means the individual(s) selected to coordinate requests for tickets.

GENERAL PROVISIONS:

The use of complimentary tickets is a privilege extended by the City and not the right of any person to which the privilege may from time to time be extended.

Tickets distributed to a City Official pursuant to this policy shall not be transferred to any other person, except to members of such City Official’s immediate family solely for their personal use.

No person who receives a ticket pursuant to this policy shall sell or receive reimbursement for the value of such ticket.

DISTRIBUTION OF TICKETS:

The Mayor shall select a Ticket Coordinator to coordinate the requests made by the Mayor and the Mayor’s designees. The Council President shall select a Ticket Coordinator to coordinate the requests made by Councilmembers. The City Attorney shall select a Ticket Coordinator to coordinate the requests made by the City Attorney and City Attorney’s designees. The Ticket Coordinator shall not be a new funded position.

Each Ticket Coordinator shall determine the face value of tickets distributed by the City for purposes of Sections I.A., I.B. and III.A., subparagraph 4., of this policy.

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Each Ticket Coordinator shall establish procedures governing the timing and form of the request for tickets consistent with this Policy. The Ticket Coordinators shall consult with each other to determine a mutually agreeable procedure for the consolidation of all requests and distribution of tickets.

Each Ticket Coordinator shall be responsible for completing FPPC Form 802 and complying with the posting requirement set forth in Section III A.

I. Conditions Under Which Tickets may be Distributed.

Subject to the provisions of this policy, tickets may be distributed to City Officials under the following conditions:

- A. The City Official reimburses the City for the face value of the ticket(s). Reimbursement shall be made at the time the ticket(s) is/are distributed to the City Official.
- B. The City Official treats the ticket(s) as income consistent with applicable federal and state income tax laws and makes disclosures pursuant to Section III below.
- C. The City Official uses, or behests, such ticket(s) for one or more of the following public purposes, within the following three (3) categories:

Category 1 – First Priority:

- 1. Performance of a ceremonial role or function representing the City at the event, for which the City Official may receive enough tickets for the City Official and each member of his or her immediate family.
- 2. The job duties of the City Official require his or her attendance at the event, for which the City Official may receive enough tickets for the City Official and each member of his or her immediate family.
- 3. Promotion of education and understanding of facility operations, capacities, and interactions between citizens, tenants and contractors for individuals who provide recommendations to the Mayor and City Council on stadium actions and policies.
- 4. Promotion of local and regional businesses, economic development and tourism activities within the City, including conventions and conferences.
- 5. Promotion of City-controlled or sponsored events, activities, or programs.

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6. Promotion of growth and development, including economic development and job creation opportunities.
7. Promotion of the City of San Diego on a local, state, national or worldwide scale.
8. Intergovernmental relations purposes, including but not limited to attendance at an event with or by elected or appointed public officials from other jurisdictions, their staff members and their guests.

Category 2 – Second Priority:

1. Promotion of community programs and resources available to City residents, including nonprofit organizations and youth programs.
2. Marketing promotions highlighting the achievements of local residents and businesses.
3. Promotion and marketing of private facilities available for City resident use, including charitable and nonprofit facilities.
4. Promotion of public facilities available for City resident use.
5. Attracting or rewarding volunteer public service.
6. Supporting and/or showing appreciation for programs or services rendered by non-profit organizations benefiting San Diego residents.
7. Encouraging or rewarding significant academic, athletic, or public service achievements by San Diego students, residents or businesses.

Category 3 – Third Priority:

1. As special recognition or reward for special civic guests, such as Flag Officers, Members of Congress, State Senators, and Members of the State who perform exceptional service to the City.
2. Attracting and retaining highly qualified employees in City service, for which such employee may receive no more than four tickets per event.
3. As special recognition or reward for meritorious service by a City employee, for which such employee may receive no more than four tickets per event.

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4. For use in connection with a City employee competition or drawing, for which there shall be made available no more than four tickets per event.
5. Recognition of contributions made to the City by former City Council Members, Mayors, City Attorneys or City Managers, for which such former City Council Member, Mayor, City Attorney or City Manager may receive no more than four tickets per event.

II. Tickets Distributed at the Behest of a City Official.

The following City Officials shall have authority to behest tickets: City Council members, the Mayor and the Mayor's designees, the City Attorney and the City Attorney's designees.

Tickets shall be distributed at the behest of a City Official only for one or more public purposes set forth in Section I.C. above.

If tickets are distributed at the behest of a City Official, such City Official shall not use any of the tickets so distributed to attend the event.

The Ticket Coordinators shall consolidate their lists of ticket requests at a mutually agreeable time prior to the event. The Ticket Coordinators shall work together to distribute tickets based upon the following priorities:

1. Priority shall be given with the public purposes in Category 1 being first priority, Category 2 being second priority and Category 3 being third priority.
2. Requests shall next be considered based upon time the initial request was delivered to the Ticket Coordinator; and,
3. Requests shall also be considered based upon whether the City Official has made prior requests with priority given to those City Officials with the least amount of requests.

Where there are limited or no requests for tickets to an event, each Ticket Coordinator may request the extra tickets be distributed to a qualifying 501 (c)(3) charitable organization. Where more than one Ticket Coordinator requests the extra tickets be distributed to a qualifying organization, the extra tickets shall be divided as equally as possible between the requesting Ticket Coordinators for distribution to the qualifying organization.

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III. Disclosure Requirements.

- A. Tickets distributed by the City to any City Official either: (i) which the City Official treats as income pursuant to Section I.B. above; or (ii) for one or more public purposes described in Section I.C. above, shall be posted on a form provided by the FPPC in a prominent fashion on the City's website within thirty (30) days after distribution. Such posting shall include the following information:
1. The name of the recipient, except that if the recipient is an organization, the City may post the name, address, description of the organization and number of tickets provided to the organization in lieu of posting the names of each recipient;
 2. a description of the event;
 3. the date of the event;
 4. the face value of the ticket;
 5. the number of tickets provided to each person;
 6. if the ticket was distributed at the behest of a City Official, the name of the City Official who made such behest; and
 7. a description of the public purpose(s) under which the distribution was made, or, alternatively, that City Official is treating the ticket as income.
- B. Tickets distributed by the City for which the City receives reimbursement from the City Official as provided under Section I.A. above shall not be subject to the disclosure provisions of Section III.A.

HISTORY:

“Qualcomm Stadium City Suite”

Adopted by Resolution R-191907 10/24/1967

Amended by Resolution R-209693 01/17/1974

Amended by Resolution R-211379 08/22/1974

Amended by Resolution R-289609 12/16/1997

Amended by Resolution R-289889 03/24/1998

Amended by Resolution R-302876 08/01/2007

“Ticket Policy for Qualcomm Stadium, Petco
Park and Other Tickets Provided to the City
for Entertainment Purposes”

Amended and Retitled by Resolution R-305031 07/21/2009