



C O U N T Y A D M I N I S T R A T O R

SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

DONNA LINTON
ASSISTANT COUNTY ADMINISTRATOR

May 27, 2009

Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

Dear Board Members:

**SUBJECT: APPROVE THE COUNTY TICKET POLICY AND ADOPT THE
RESOLUTION IN COMPLIANCE WITH THE CALIFORNIA FAIR
POLITICAL PRACTICES COMMISSION'S REGULATION 18944.1**

RECOMMENDATIONS:

It is recommended that your Board approve the attached Ticket Policy and adopt the Resolution as prepared by the Office of the County Counsel in compliance with the California Fair Political Practices Commission's (FPPC) new regulation 18944.1 regarding event tickets and passes received by public officials which became effective February 7, 2009.

DISCUSSION:

The FPPC's new regulation is outlined in Section 18944.1 which requires that the County adopt a ticket policy that contains, at a minimum, the following:

- 1) A provision setting forth the governmental purposes of the County to be accomplished by the distribution of event passes or tickets;
- 2) A provision requiring that the distribution of any ticket or pass by the County to, or at the behest of, a County official accomplish a public purpose of the County; and
- 3) A provision prohibiting the transfer by any County official of any ticket or pass, distributed to such official pursuant to the County policy, to any other person, other than members of the official's immediate family solely for their personal use.

In order to fully implement the requirements of the new regulation, your Board is requested to approve the Policy on Distribution of Passes and Tickets attached as Exhibit A and adopt the Resolution attached as Exhibit B. In addition to including the provision outlined above, the policy acknowledges the obligation imposed by the new regulation that the County post certain information regarding the distribution of tickets and passes prominently on the County website.

FINANCIAL:

There are no fiscal impacts to the County to implement this new regulation outside of staffing that is needed to administer this ticket policy.

Very truly yours,



Susan S. Muranishi
County Administrator

SSM:CHG:sj

Attachment

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c: Auditor-Controller
County Counsel
Agency/Department Heads

POLICY ON RECEIPT AND DISTRIBUTION OF PASSES AND TICKETS
COUNTY OF ALAMEDA

I. INTRODUCTION

The purpose of this policy is to describe the “public purpose” to be achieved by way of the distribution of tickets or passes to County officials such that those tickets or passes will not be considered gifts under the Political Reform Act.

A. Certain Passes or Tickets Not Gifts

The Fair Political Practices Commission (the “FPPC”) in interpreting the Political Reform Act has established that, “ticket” or “pass” means “admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose,” and that such a ticket or pass that is provided to an agency official is not a gift to the official whenever received or distributed in compliance with Section 18944.1 of the FPPC Regulations (Title 2, Division 6, of the California Code of Regulations).

Passes or tickets received by the County or its officials may be used under conditions set forth in this policy to comply with Section 18944.1 of the FPPC Regulations. All County agencies, offices, departments, boards and commissions affected should appoint an individual responsible for maintaining records of the receipt and distribution of tickets or passes in order to meet the standards of this Policy.

B. Political Reform Act Definition of Gift

The Political Reform Act defines a gift, with certain enumerated exceptions as: “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.” (California Government Code, § 82028(a))

The enumerated exceptions to the gift definition of Section 82028(a) of the Government Code are found in Section 82028(b) of the Government Code, including:

- (1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed “informational material”.
- (2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.
- (3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such

person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

- (4) Campaign contributions required to be reported under Chapter 4 of this title.
- (5) Any devise or inheritance.
- (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

C. Political Reform Act Ceiling for Gifts

The Political Reform Act places a ceiling on the value of gifts that may be received by certain local officials, including elected and appointed officers of the County and candidates for elected County offices, as well as other appointed officials, such as those who manage public investments and members of the Planning Commission. All employees, consultants and members of boards or commissions included in the County's Conflict of Interest Code are subject to the gift ceiling as well.

The cumulative gift ceiling per single source is four hundred twenty dollars (\$420) each calendar year for the period January 1, 2009, through December 31, 2010. The Fair Political Practices Commission may adjust the gift ceiling, effective January 1, 2011 and annually thereafter.

II. EXEMPTIONS

According to the California Code of Regulations, Title 2, Division 6, Section 18944.1, tickets that are distributed under the following circumstances will not be classified as gifts:

A. Ticket or pass provided by source other than official's agency - Section 18944.1 (a)

Where a ticket or pass is provided directly to the official by a third-party, it will not be considered a gift where the ticket or pass is provided for the official's admission to an event at which the official performs a ceremonial role or function on behalf of the County. In this case, the distribution of the ticket or pass is not required to be posted on FPPC Form 802 (See Attachment 1) on the agency's website.

B. Ticket or pass provided to official by the County - Section 18944.1 (b)

A ticket or pass will not be considered a gift to the official when it is provided to the official from the County government (i.e., not from a third-party) under the following circumstances:

- (1) Where the official treats the ticket or pass as income consistent with applicable state and federal income tax laws, and the agency reports the distribution of the ticket or pass as income to the official;
- (2) Where the County obtained the ticket or pass pursuant to the terms of a contract for use of public property (such as the Oakland Coliseum);
- (3) Where the County controls the event;

- (4) Where the County purchased the ticket or pass at fair market value; or
- (5) Where the County receives the ticket or pass from a third party, and the ticket or pass is not earmarked by the third party for use by a particular official, and the County determines, in its sole discretion, which official may use the ticket or pass.

In each of the five cases above, the distribution of the ticket or pass must be made in furtherance of a "public purpose" listed in Section III of this Policy, and the County must post the ticket distribution information on an FPPC Form 802 (see Attachment 1) in a prominent fashion on the agency's website, within 30 days after the distribution.

III. PUBLIC PURPOSE

A. In accordance with Section 18944.1 of the FPPC Regulations, the distribution of any ticket or pass by the County to one of its officials, or distributed to a third-party at the request of a County official, must accomplish a "public purpose" of the County.

B. The "public purposes" of the County to be accomplished by the distribution of tickets or passes include:

- (1) To obtain oversight of facilities or events that have received County funding or support;
- (2) To review facilities or events that may require County funding or support in the near future or to gather information about the operation of a facility similar to one presently or potentially operated by the County;
- (3) To promote tourism as a form of economic development;
- (4) To evaluate the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
- (5) To review the ability of a facility or its operator to participate in the County's job creation goals or job training programs;
- (6) To evaluate the contribution of a facility or an event to the County's goals for fostering arts, culture and entertainment opportunities for County residents or in support of the County's economic development program, including the East Bay Economic Development Alliance;
- (7) To reward a County employee for his or her exemplary service to the public or to encourage staff development;
- (8) To reward a community volunteer for his or her service to the public;
- (9) To promote attendance at a County sponsored event or event held at a County facility in order to maximize potential County revenue from parking and concession sales;

- (10) To reward a school or nonprofit organization for its contributions to the community;
- (11) To reward a student for outstanding scholastic achievement;
- (12) To provide opportunities to those who are receiving services from County agencies consistent with the agency's goals for the particular population (i.e., for use by juvenile wards in the custody of the Chief Probation Officer or mental health clients and seniors receiving services from the Health Care Services Agency/Public Health); or
- (13) To promote health, motivate and provide expanded opportunities to vulnerable populations in the County such as the disabled, underprivileged, seniors and youth in foster care.

IV. PROHIBITED TRANSFERS

Once a ticket has been distributed by the County to one of its officials in accordance with this Policy, that official may not transfer that ticket to any other person other than members of the official's immediate family solely for their personal use. If more than one ticket is distributed to the official, the official may use the additional ticket(s) to bring a guest (or guests) to the ticketed event, if the official is also in attendance.

V. TICKETS AND PASSES THAT DO NOT MEET STANDARDS OF SECTION 18944.1

- A. A gift of a ticket or pass that does not meet the standards of or comply with the procedures of this Policy shall be subject to the disclosure, reporting and disqualification requirements of the Political Reform Act.
- B. Any such gifts must be declared by a County official on his or her Annual Statement of Economic Interests. The Political Reform Act limits gifts to elected local officials to a cumulative amount of \$420 from each donor per calendar year.
- C. Since 1993, the FPPC has adjusted the gift limitation on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the next nearest ten dollars (\$10). (California Government Code, § 89503.) The FPPC has adjusted the annual gift limitation amount to \$420 for the period January 1, 2009, to December 31, 2010. (Cal. Code of Reg. Tit 2, Div. 6, §18940.2.)

VI. CAVEAT

This Policy is not a substitute for legal advice. Only the FPPC can provide immunity from prosecution for the legal advice that it offers. Please consult the County Counsel with questions about reporting, disclosure and disqualification requirements regarding tickets and passes and the County Counsel will provide advice and assistance in obtaining advice from the FPPC.

COUNTY OF ALAMEDA BOARD OF SUPERVISORS

RESOLUTION NUMBER: R-2009-

RESOLUTION ENACTING A POLICY FOR THE RECEIPT AND DISTRIBUTION OF
PASSES AND TICKETS BY COUNTY OFFICIALS

WHEREAS, the Fair Political Practices Commission enacted a new section 18944.1 of Title 2, Division 6, California Code of Regulations, which defines circumstances when tickets and passes will not be treated as gifts to public officials pursuant to the Political Reform Act; and

WHEREAS, section 18944.1 provides that the distribution of tickets and passes by the County to County officials or to others at the behest of County officials will not be gifts to the County officials pursuant to the Political Reform Act if the tickets are distributed pursuant to a County policy adopted by the governing body in certain circumstances; and

WHEREAS, section 19844.1 mandates that specific provisions be included in a policy regarding the receipt and distribution of certain passes and tickets by and to County officials in order for tickets and passes not to be considered gifts; and

WHEREAS, "Attachment A" attached hereto includes the provisions set forth in section 18944.1 regarding the distribution and receipt of tickets and passes by County officials and sets forth the public purposes to be accomplished by the distribution of tickets and passes by the County;

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors hereby adopts "Attachment A" as its policy on the receipt and distribution of tickets and passes, and by this action repeals any prior policies regarding same.

BE IT FURTHER RESOLVED that the County Administrator's Office shall have the responsibility for distributing tickets on behalf of the County or at the behest of County Officials, and the County Administrator's Office may enact procedures for the purposes of implementing the policy as set forth in Attachment A.

THE FOREGOING was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this ____ day of June 2009, to wit:

AYES:

NOES:

EXCUSED:

Alice Lai-Bitker
PRESIDENT, BOARD OF SUPERVISORS


ATTEST:

Crystal Hishida Graff, Clerk
Board of Supervisors

By _____

Approved as to Form

Richard E. Winnie, County Counsel

By  _____
Donna R. Ziegler
Assistant County Counsel