



REPORT TO COUNCIL 3

City of Sacramento

915 I Street, Sacramento, CA 95814-2604

CONSENT
May 19, 2009

Honorable Mayor and
Members of the City Council

Title: Policy on Distribution, Use and Reporting of Tickets and Passes

Location/Council District: City-Wide

Recommendation: Adopt a Resolution to establish a City policy on distribution, use and reporting of tickets and passes, pursuant to Fair Political Practices Commission (FFPC) Regulation 18944.1.

Contacts: Eileen Teichert, City Attorney, 808-5346, Richard Archibald, Assistant City Attorney, 808-5346, Patti Bisharat, Governmental Affairs, 808-9197.

Presenters: N/A

Department: Office of the City Manager

Division: N/A

Organization No: 02001011

Description/Analysis

Issue: The FPPC recently adopted amended regulations concerning the distribution, use and reporting of tickets and passes to City officials and City employees. Under the amended regulations, tickets and passes to a facility, event, show or performance distributed by or through the City and used by City officials and employees will generally be considered as gifts to those officials, subject to the gift limits and conflict of interest rules, unless the City has adopted a policy that satisfies certain requirements and tickets and passes are distributed, used and reported in conformance with the policy and the FPPC regulations.

The City previously adopted a policy on handling gifts made to the City, including gifts of travel, that are utilized by City officials and employees. This was in response

to certain amendments to the FPPC regulations effective July 1, 2008. In response to additional amendments to the FPPC regulations, which were approved in December 2008 and effective February 7, 2009, if the City wishes for tickets and passes to be considered something other than income or gifts to those who make use of the tickets and passes, the City Council needs to adopt a policy on the distribution, use and reporting of tickets and passes made available to City officials and employees.

Policy Considerations: This staff report presents for Council's consideration a proposed policy for the distribution, use and reporting of tickets and passes consistent with the requirements of FPPC regulation 18944.1. If the City Council does not adopt a policy consistent with the FPPC regulations, then tickets and passes distributed by or through the City and used by City officials and employees will be considered as either gifts or income to those who use or control the use of the tickets and passes, and the gift limits and conflict of interest rules of the Political Reform Act will apply.

Environmental Considerations: None.

Commission/Committee Action: N/A

Rationale for Recommendation: The recently amended FPPC regulations require that unless City officials and employees report the value of the tickets or passes they receive as income or gifts, the tickets may only be distributed in accordance with an adopted formal policy implementing the requirements of the amended regulation.

Financial Considerations: None.

Emerging Small Business Development (ESBD): No goods or services are being purchased.

Respectfully Submitted by: _____

Michelle Heppner, Special Projects Manager



Recommendation Approved:


Ray Kerridge, City Manager

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Attachment 1**BACKGROUND**

The Fair Political Practices Commission (FPPC) recently amended several regulations pertaining to gifts, including gifts of tickets and passes from an agency to its officers and employees. To allow for gifts of tickets and passes to be treated as something other than gifts or income, the City is required to adopt a formal policy to implement these regulatory amendments.

FPPC Regulations 18944.1, 18944.2, and 18944.3

In January 2009, effective February 7, 2009, the FPPC amended Regulation 18944.3 to read as follows:

Except as provided in Regulation 18944.1 and 18944.2, a payment by a government agency that provides food, beverage, entertainment, goods, or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys.

Regulation 18944.2 deals with the issue of "gifts to an agency" and how those gifts are treated in terms of who enjoys the benefit of the gift and how the gift is reported. This includes the gifts of travel that may be made to the City to fund the cost of one or more officials travelling while in the performance of governmental duties (e.g., City officials travelling to Japan to view waste-to-energy sites). The regulation establishes a number of requirements that, if satisfied, result in the gift being considered a gift to the City, rather than to the official or employee who makes use of the gift. The City has adopted a policy to implement this regulation, and that policy is currently in use. Regulation 18944.2 was amended in June 2008, effective July 2008, and the City adopted a policy at or about the time of the amendment of the regulation.

Regulation 18944.1 ("Gifts: Tickets or Passes to Events") was also amended in December 2008 and became effective February 7, 2009. This regulation, a copy of which is attached as **Exhibit A** hereto, deals with the issue of how tickets and passes furnished to City officials and employees, or furnished to others at the behest of City officials and employees, are to be treated and reported. This includes tickets and passes provided by the City as well as those provided by other sources. The amendment to the regulation was in response to a highly publicized practice in a Southern California jurisdiction that resulted in event tickets being distributed to members of the committee overseeing the event, who subsequently sold the event tickets for substantial sums of money. The purpose of the regulation is to set out the circumstances in which the distribution of tickets and passes to officials and employees of a public agency are not treated as gifts or income to those officials or employee.

Regulation 18944.1 distinguishes between tickets and passes provided by outside sources to the officials and employees of an agency, and tickets and passes provided by an agency to its own officials and employees.

1. Tickets or passes furnished by an outside source to City official or employee. If a ticket or pass is furnished to a specific City official or employee to an event where the official or employee will perform a ceremonial role or function on behalf of the city (e.g., Mayor of Sacramento throwing out first pitch at a Rivercats' game on a day designated as "City of Sacramento Day"), the ticket or pass is not considered a gift to the official or employee and is not reportable. If the official or employee is not performing a ceremonial role or function, then the ticket or pass would be treated as a gift.

2. Tickets or passes furnished by the City to official or employee. Tickets or passes given to the City by an outside source, or obtained by the City through purchase, as consideration pursuant to the terms of a contract, or because the City sponsors or controls the event, and furnished by the City to city officials or employees will not constitute as gifts to those officials or employees if the following requirements are met: the ticket or pass is not earmarked by the original source for use by a specific city official; the city determines, at its sole discretion, which official may use the ticket or pass; and the distribution of the ticket or pass is made in accordance with the adopted policy.

The policy must be adopted by the legislative or governing board of the public agency, which in this case is the City Council. The requirements of the policy that the Council must adopt are rather detailed, as set forth in subsection (c) of Regulation 18944.1. Generally, the policy must include a provision that identifies the public purposes to be accomplished by distribution of tickets or passes; a provision requiring that the distribution of any ticket or pass accomplish a public purpose; a provision prohibiting the transfer by an official of any ticket or pass distributed pursuant to the policy to any other person, other than members of the official's immediate family, and only then for their personal use.

In addition, Regulation 18944.1 requires that the distribution of tickets and passes pursuant to the adopted policy a policy must be documented in an FPPC form (FPPC form 802) and the form must be posted "in a prominent fashion on the agency's website within 30 days after the distribution." The form documents information concerning the person receiving the ticket or pass, the event, date of the event, face value of the ticket or pass, and other specified information. A copy of FPPC Form 802 is attached to the proposed policy.

RESOLUTION NO.

Adopted by the Sacramento City Council

ESTABLISHING CITY POLICY ON DISTRIBUTION, USE AND REPORTING OF TICKETS AND PASSES

BACKGROUND

- A. In December 2008, the Fair Political Practices Commission ("FPPC") amended Regulation 18944.1 pertaining to tickets and passes received by public agencies and distributed to public officials. The amended FPPC Regulation 18944.1 became effective February 7, 2009.
- B. FPPC Regulation 18944.1 now requires that unless city officials and employees report the value of the tickets or passes they receive as income or gifts, the tickets may only be distributed in accordance with a written policy adopted by the City Council. The written policy must be in compliance with the requirements set forth in FPPC Regulation 18944.1.
- C. Tickets or passes distributed pursuant to a written policy must be reported on a new FPPC Form 802, which tracks the number of tickets or passes, who they were distributed to, their value, and the public purposes served by the distribution and use of the tickets or passes. A copy of Form 802 is attached to the proposed policy.
- D. The written policy and the completed Form 802 are required to be prominently posted on the City's website.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Policy on Distribution, Use and Reporting of Tickets and Passes attached hereto as Exhibit A is hereby adopted.

Attachment 2 – Exhibit A

(Regulations of the Fair Political Practices Commission Title 2, Division 6, California Code of Regulations)

§ 18944.1. *Gifts: Tickets or Passes to Events.*

For purposes of this regulation "ticket or pass" means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

(a) Ticket or pass provided by source other than official's agency. A ticket or pass provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the agency is not a gift to the official.

(b) Ticket or pass provided to official by official's agency.

(1) When an agency provides a ticket or pass to an official of that agency, the ticket or pass is not subject to the provisions of this regulation, provided that 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 in complying with the provisions of subdivision (d) below.

(2) When an agency provides a ticket or pass to a public official that otherwise meets the definition of gift under Section 82028 and is not exempt under applicable Commission regulations, the official will meet the burden under Section 82028 that equal or greater value has been provided in exchange therefor, provided that all of the following requirements are met:

(A) With respect to a ticket or pass from an outside source provided to an official by the official's agency:

(i) The ticket or pass is not earmarked by the original source for use by the agency official who uses the ticket or pass;

(ii) The agency determines, in its sole discretion, which official may use the ticket or pass.

(iii) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency in accordance with subdivision (c) below.

(B) With respect to a ticket or pass provided by the official's agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below.

(c) Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency that state the public purposes to be accomplished by the agency policy. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:

(1) a provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

(2) a provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish 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.

(d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or pass that is provided to the official under subdivision (b)(1) above, shall be posted, on a form

provided by the Commission, in a prominent fashion on the agency's website, within 30 days after the distribution. If the agency does not maintain a website, the form shall be maintained as a public record, be subject to inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website. The posting shall include the following:

(1) the name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization outside the agency, the agency may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;

(2) a description of the event;

(3) the date of the event;

(4) the face value of the ticket or pass;

(5) the number of tickets or passes provided to each person;

(6) if the ticket or pass is behested, the name of the official who behested the ticket or pass; and

(7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.

(e) The Commission recognizes the discretion of the legislative or governing body of an agency to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.

(f) The provisions of subdivision (b) apply only to the benefits the official receives by the admission and are not applicable to any other benefits the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

HISTORY

1. Renumbering of former section 18726.7 to section 18944.1 with amendment of section heading filed 6-22-94; operative 6-22-94 (Register 94, No. 25).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of first paragraph and subsections (a)-(b) and (d)-(e) filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
4. Repealer and new section filed 1-8-2009; operative 2-7-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil 010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 2).

Attachment 2 – Exhibit B

**POLICY: DISTRIBUTION, USE AND REPORTING
OF TICKETS AND PASSES****A. Purpose**

This policy is to establish a city-wide procedure for the distribution, use and reporting of tickets or passes to a facility, event, show or performance for an entertainment, amusement, recreational or similar purposes (hereinafter the "Event") in compliance with section 18944.1 of the Fair Political Practices Commission Regulation (hereinafter "FPPC Regulation"¹). FPPC Regulation 18944.1 sets out the circumstances under which a public agency's distribution of tickets or passes for which no consideration of equal or greater value is provided by the public official or employee does not result in a gift to the public official or employee. Tickets or passes to an Event distributed and accounted for in compliance with this policy and FPPC Regulation 18944.1 will not be considered as gifts to the City officials and employees who make use of such tickets and passes.

The public and governmental purpose in distributing tickets and passes to Events is to enable City officials and employees to promote City businesses, resources, programs and facilities, to monitor and evaluate City venues and City-sponsored events, to promote cultural, recreational and educational facilities, services and programs available to the public within the City of Sacramento, and to enhance employee morale.

This policy is subject to all applicable FPPC Regulations and the Political Reform Act. Nothing in this policy is intended to alter, amend or otherwise affect the obligations of City officials and employees under the Political Reform Act and implementing regulations or under the City's Supplemental Conflict of Interest Code set forth in Chapter 2.16 of the Sacramento City Code.

B. Policy**1. Definitions.**

- a. "City Manager" means City Manager or his/her designee.
- b. "City official" means every member, officer, employee or consultant of the City of Sacramento, 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).
- c. "Immediate Family" means spouse and dependent children.

¹ The FPPC Regulations can be found in Title 2 of the California Code of Regulations.

- d. "Ticket" means "ticket or pass" as that term is defined in FPPC Regulation 18944.1, as amended from time to time, but which currently defines "ticket or pass" as admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

2. Applicability. This policy applies to tickets and passes that are: (i) gratuitously provided to the City by an outside source; or (ii) acquired by the City by purchase; or (iii) received by the City as consideration pursuant to the terms of a contract or because the City owns or controls the facility or venue at which the Event occurs or sponsors the Event.

3. Public Purpose. Any distribution of tickets or passes in accordance with this policy to a City official, or to an individual or organization outside the City at the request of a City official, must be in furtherance of a governmental and/or public purpose and be reported as provided in this policy.

C. Exemptions to Policy

1. Ceremonial Role or Function. Tickets or passes provided to a City official to carry out his or her job duties or where the City official will perform a ceremonial role or function on behalf of the City at the Event are not considered gifts to the City official and are exempt from the disclosure and reporting requirements of this policy.

2. Income. The City official treats the tickets or passes as income consistent with federal and state income tax laws and the City reports distribution of the tickets or passes as income to the City official on the FPPC Form 802.

3. Reimbursement. The City official purchases or reimburses the City for the face value of the tickets or passes.

D. Procedure for Distribution and Reporting

1. Distribution. The City has sole discretion to determine who shall receive the tickets or passes received or acquired by the City.

- a. Tickets or passes that are donated or provided by an outside source and are earmarked for use by a specific City official are considered gifts to the City official and are subject to the disclosure and reporting requirements applicable to gifts, unless one of the exemptions listed above apply.

- b. Tickets or passes received by the City from an outside source without designation as to the specific City official who may use the tickets or passes shall be forwarded to the City Manager. The City Manager shall determine the face value of the tickets or passes, the City official who may use them, and report their distribution as provided in Section D.2 below.

- c. For tickets or passes received by the City pursuant to the terms of a contract

or because the City owns or controls the facility or venue at which the Event occurs or the City sponsors the Event, a City official may request use of these tickets or passes, or for distribution to an individual or organization outside the City, by completing Parts 3 and 4 of FPPC Form 802 and submitting the request to the City Manager.

- d. Elected City Officials. For tickets or passes purchased or acquired by the City for use by an elected City official, or for distribution to an individual or organization outside the City at the request of an elected City official, the office of the elected City official shall be responsible for reporting the distribution of the tickets or passes as provided in Section D.2. below.
- e. If the tickets or passes do not have a face value stated or state something to the effect of "complimentary" or "promotional," the City Manager will determine the value of the tickets or passes based on the reasonable cost for attendance at such an Event.
- f. The City Manager may establish an internal procedure for distribution of tickets or passes in accordance with this policy.
- g. Any tickets or passes not distributed pursuant to this policy may be sold by the City to the public.

2. Reporting Requirement. Tickets or passes distributed by the City to a City official, or to an individual or organization outside the City at the behest of a City official, pursuant to this policy shall be documented in a completed FPPC Form 802 (see Attachment 1) or such other form(s) as the FPPC may designate. The completed Form 802 shall be filed with the City Clerk and posted on the City's website in a prominent fashion within 30 days after distribution of the tickets or passes.

3. Transfer Prohibition. A City official who receives tickets or passes distributed by the City according to this policy is prohibited from transferring or giving the tickets or passes to any other person except to members of the official's immediate family for their personal use. No person receiving a ticket or pass pursuant to this policy shall sell or receive reimbursement for the value of the ticket or pass.

4. Policy Limited to Just Tickets or Passes. If other benefits, such as food, beverages or other items, are provided to the City official at the Event and they are not included as part of the admission to the Event, those benefits will need to be accounted for as gifts to the City official.

E. Effective Date

This policy shall be effective upon City Council approval and shall be posted on the City website in a prominent fashion.

Attachment 2 – Exhibit C

Tickets Provided by Agency Report

A Public Document

TICKETS PROVIDED BY AGENCY REPORT

1. Agency Name		Date Stamp	California Form 802 For Official Use Only
Division, Department, or Region (if applicable)			
Street Address			
Area Code/Phone Number	E-mail	<input type="checkbox"/> Amendment (Must explain in Part 5.)	
Agency Contact (name and title)		Date of Original Filing: _____ (month, day, year)	

2. Event For Which Tickets Were Distributed

Date(s) of Event: ____/____/____ Description of Event: _____
 _____ Face Value of Ticket: \$ _____

Agency Event Yes No (Identify source of tickets below.)

Name of Outside Source of Ticket(s) Provided to Agency: _____

Number of Tickets Received: _____ Ticket(s) Provided to Agency: Gratuitously Pursuant to Contract

3. Agency Official(s) Receiving Ticket(s) (use a continuation sheet for additional names)

Name of Official (Last, First)	Number of Tickets	State Whether the Distribution is Income to the Official or Describe the Public Purpose for the Distribution

4. Individual or Organization Receiving Ticket(s) (Provided at the benefit of an agency official)

Name of Behesting Agency Official: _____

Name of Individual or Organization: _____ Number of Tickets: _____

Description of Organization: _____

Address of Organization: _____
Number and Street City State Zip Code

Purpose for Distribution: (Describe the public purpose for the distribution to the organization.)

5. Verification

I have determined that the distribution of tickets set forth above is in accordance with the provisions of FPPC Regulation 18944.1.

Signature of Agency Head or Designee	Print Name	Title	(month, day, year)
Comment: (Use this space or an attachment for any additional information including amendment explanation.)			

Tickets Provided by Agency Report

California
Form **802**

A Public Document

This form is for use by all state and local government agencies to disclose the distribution of tickets or passes that allow admission to facilities, events, shows, or performances for entertainment, amusement, recreational, or similar purposes. The agency must complete Form 802 identifying agency officials who receive tickets or passes from the agency as well as other individuals and organizations that receive tickets or passes at the behest of agency officials. Form 802 must be posted in a prominent fashion on the agency's website.

Gifts of Tickets or Passes to Public Officials

FPPC Regulation 18944.1 sets out the circumstances under which an agency's distribution of tickets or passes to or at the behest of an official in the agency does not result in a gift to the official. (Regulation 18944.1 is available on the FPPC website at www.fppc.ca.gov.) Even though the distribution of tickets or passes to a public official under the regulation is not a gift to the official, the agency must disclose the distribution on Form 802. The official does not have to disclose tickets or passes received or distributed under the regulation on his or her Statement of Economic Interests (Form 700), but tickets or passes received or distributed by the official that do not fall under the regulation may be subject to disclosure on the official's Form 700 and subject to gift limits.

Posting Form 802

The Form 802 must be posted on the agency's website within 30 days after the distribution. If the agency does not maintain a website, the form must be maintained by the agency as a public record, be available for public inspection and copying, and be forwarded to the FPPC for posting on its website.

Part 1. Agency Identification

List the agency's name, address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Event For Which Tickets Were Distributed

Provide the date(s) of the event, a description of the event, and the face value (i.e. the cost to the public) of the ticket or pass. Check the box indicating whether the event was an "agency event" (such as a county fair, or an event for which the agency purchased tickets). If the agency received the tickets from an outside source, identify the source, the number of tickets received, and check the box to identify whether the tickets or passes were provided to the agency:

- Gratuitously; or
- Pursuant to a contract.

Part 3. Agency Official(s) Receiving Ticket(s)

Disclose the name of each agency official that received a ticket or pass and the number of tickets or passes the official received. Also state whether the distribution is income to the official or describe the public purpose for which the official received the tickets or passes.

Part 4. Individual or Organization Receiving Ticket(s)

If tickets or passes were distributed to an individual or organization outside the agency, at the behest of an official of the agency, provide the name of the official. Disclose the name(s) of the individual(s) who received the tickets or passes and the number of tickets or passes provided. If the tickets or passes were provided to an organization, the agency may post the name, address, a description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the name of each individual that received a ticket or pass. Also, describe the public purpose for the distribution to the individual or organization.

Part 5. Verification

The agency head or his or her designee must sign the form.

Privacy Information Notice

Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Government Code Sections 81000-91014 and California Code of Regulations Sections 18100-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal, or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Act Notice, please contact the FPPC.

General Counsel

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