

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Deborah S. Traffenstedt, Administrative Services Director/City Clerk *DST*

DATE: January 13, 2010 (CC Meeting of 1/20/2010)

SUBJECT: Consider Adoption of Policy for Distribution, Use, and Reporting of Tickets or Passes

BACKGROUND AND DISCUSSION

To summarize, Section 18944.1 (Gifts: Tickets or Passes to Events) of the Regulations of the Fair Political Practices Commission (FPPC) in Title 2, Division 6, of the California Code of Regulations (hereinafter referred to FPPC Regulation), was amended to require a written policy to be adopted by the legislative or governing body for any distribution of tickets or passes by an agency under subdivision (b)(2) of the FPPC Regulation (see Attachment 1). The written policy is required to state the public purposes to be accomplished by the agency policy and is required to be posted on the agency website in a prominent fashion. A draft policy is included as Attachment 2 to this report.

The FPPC developed Form 802, which is included as Attachment 3, for use by public agencies for posting information about the distribution of tickets or passes pursuant to FPPC Regulation, and requires this form be made available on the City's website within 30 days after the distribution.

This policy pertains to tickets and passes distributed by the City of Moorpark (which is intended to include the City, Redevelopment Agency, and other affiliated agency created or activated by the City Council and any departments, boards, and commissions). The disclosure and reporting requirements of the policy would not be applicable to a ticket or pass provided by a source other than the City for an official's admission to an event at which the official performs a ceremonial role or function on behalf of the agency (and when there is a ceremonial role or function, such ticket or pass would not be considered a gift to the official). For example, presenting a certificate of appreciation or speaking at an event would be a ceremonial role or function, and just attending an event may not be considered a ceremonial role. In addition, the policy is not applicable to a ticket or pass given directly to a City official or that is "earmarked" by the original source for use by the City official who then uses the ticket, and if there is no

ceremonial role or function, then the FPPC disclosure and reporting requirements applicable to gifts apply.

If a City official is given a ticket by the City, there is an option to reimburse the City for the face value of the ticket, and there would then be no requirement to post the information on the City's website. Another example would be that If the City distributes a ticket or pass to a City employee or member of the City Council, and no reimbursement is paid to the City for such ticket or pass, then the City may be required to treat the value of the ticket or pass as income (if required by applicable federal and state income tax laws), and is required to post the distribution information on the City's website. As an example, if the City receives a donation from a local business owner of four Dodger tickets for employee recognition, and if a City employee then subsequently wins those tickets in a drawing, the City would need to post a Form 802 on the City website and would report the value of the tickets as income consistent with applicable state and federal income tax laws.

The City Attorney has reviewed the attached draft policy.

FISCAL IMPACT

No fiscal impact will result. This policy requires further documentation on distribution of tickets or passes by the City. Such distribution would only occur in accordance with the adopted City budget, existing contracts, or based on donations of tickets or passes to the City.

STAFF RECOMMENDATION

Approve new policy, consistent with attachment to agenda report, and direct staff to incorporate the new policy into the next update of the City Council Policies Resolution.

Attachments:

1. Section 18994.1
2. Draft Policy
3. FPPC Form 802

(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).

**INSERT TO CITY OF MOORPARK
CITY COUNCIL POLICIES RESOLUTION**

Policy 3.7: Distribution, Use, and Reporting of Tickets or Passes

1. Purpose.

The purpose of this policy is to establish a City of Moorpark procedure for the City's distribution, use, and reporting of tickets or passes for admission to a facility, event, show, or performance for an entertainment, amusement, recreational or similar purpose in compliance with Section 18944.1 of the Regulations of the Fair Political Practices Commission ("FPPC") in Title 2, Division 6, California Code of Regulations. Section 18944.1 sets forth 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 for admission to a facility, event, show, or performance for an entertainment, amusement, recreational or similar purpose, 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 or passes.

2. 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 section 81000, et seq., as the same may from time to time be amended) and the Regulations of the FPPC in Title 2, Division 6 of the California Code of Regulations (Sections 18110 et seq., as the same may from time to time be amended).

- A. "City" or "City of Moorpark" shall mean and include the City of Moorpark, the Redevelopment Agency of the City of Moorpark, any other affiliated agency created or activated by the Moorpark City Council, and any departments, boards, and commissions thereof.
- B. "City Official" means every member, officer, employee or consultant of the City of Moorpark, as defined in Government Code Section 82048 and FPPC Regulation 18701. Such term shall include, without limitation, any City Council member, City commission member, or other appointed official, employee, or consultant required to file an annual Statement of Economic Interests (FPPC Form 700) with the City.
- C. "City Venue" means and includes any facility owned, controlled, or operated by the City of Moorpark.
- D. "Event" means admission to a facility, event, show, or performance for an entertainment, amusement, recreational or similar purpose.
- E. "Immediate family" means the spouse and dependent children.

- F. "Ticket" shall mean any ticket or pass which provides any form of admission privilege to an Event.

3. Application of Policy.

- A. This policy applies to Tickets provided to a City Official by the City, which provide admission to an Event, which Tickets are:
 - 1) Gratuitously provided to the City by an outside source;
 - 2) Acquired by the City by purchase at fair market value;
 - 3) Acquired by the City as consideration pursuant to the terms of a contract for the use of a City Venue;
 - 4) Acquired by the City because the City controls the Event; or
 - 5) Acquired and distributed by the City in any other manner.
- B. This policy does not apply to any Ticket provided to a City Official by a source other than the City for admission to an event at which the City Official performs a ceremonial role or function on behalf of the agency; or which Ticket is earmarked by the original source for use by the City Official who uses the Ticket.
- C. This policy does not apply to any other item of value or benefits provided to the City or any City Official, regardless of whether received gratuitously or for which consideration is provided. (For example food, beverages, or other items provided to a City Official at an Event are subject to the disclosure and reporting requirements applicable to gifts.)
- D. This policy shall supersede any other inconsistent City written policy applicable to distribution, use, and/or reporting of Tickets.

4. General Provisions.

- A. Purpose: The purpose of this policy is to ensure that all Tickets provided to the City shall be distributed in furtherance of public purposes.
- B. No Right to Tickets: 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.
- C. Limitation on Transfer of Tickets: 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.
- D. Prohibition against Sale or Receiving Reimbursement for Tickets: No person who receives a Ticket pursuant to this policy shall sell or receive reimbursement for the value of such Ticket, and shall not

give such Ticket to anyone other than a member of such City Official's immediate family for their personal use.

5. Ticket Administrator.

- A. The City Manager or his/her designee(s) shall be the Ticket Administrator for purposes of implementing the provisions of this policy.
- B. The Ticket Administrator shall have the authority, in his or her sole discretion, to establish procedures for the distribution of Tickets in accordance with this policy. All requests for Tickets that fall within the scope of this policy shall be made in accordance with the procedures established by the Ticket Administrator.
- C. The Ticket Administrator shall determine the face value of Tickets distributed by the City for purposes of Sections 6.A, 6.B, and 8.A (subparagraph 4), of this policy.
- D. The Ticket Administrator, in his or her sole discretion, may revoke or suspend the Ticket privileges of any person who violates any provision of this policy or the procedures established by the Ticket Administrator for the distribution of Tickets in accordance with this policy.

6. Conditions under which Tickets May be Distributed.

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

- A. The City Official reimburses the City for the face value of the Ticket(s).
 - 1) Reimbursement shall be made at the time the Ticket(s) is/are distributed to the City Official.
 - 2) The Ticket Administrator shall, in his or her sole discretion, determine which Event Tickets, if any shall be available under this section.
- B. The City Official treats the Ticket(s) as income consistent with applicable federal and state income tax laws.
- C. The City distributes such Ticket(s) to or at the behest of, an official in order to accomplish a public purpose. The following is a list of public purposes the City may accomplish through the distribution of Tickets:
 - 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 one 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 one member of his or her immediate family.
 - 3) Economic or business development purposes on behalf of the City.
 - 4) Intergovernmental relations purposes, including but not limited to attendance at an Event with elected or appointed public officials from other jurisdictions, and/or their staff members.
 - 5) Attracting or rewarding volunteer public service.
 - 6) Supporting and/or showing appreciation for programs or services rendered by non-profit organizations benefiting Moorpark residents.
 - 7) Encouraging or rewarding significant academic, athletic, or public service achievements by Moorpark students, residents, or businesses.
 - 8) In support of the City's employee recognition program for the purpose of attracting and retaining highly qualified employees in City service, as special recognition or reward for meritorious service by a City employee, and/or in connection with a City employee competition or drawing, for which such employee may receive no more than four (4) Tickets per Event.

7.0 Tickets Distributed at the Behest of a City Official.

- A. Only the following City Officials shall have authority to behest Tickets: City Council Members, the City Manager, and Department Directors.
- B. Tickets shall be distributed at the behest of the City Official only for one or more public purposes set forth in Section 6.C, above.

8.0 Disclosure Requirements.

- A. Tickets distributed by the City to any City Official either for which the City Official treats as income pursuant to Section 6.B, above, or for one or more public purposes described in Section 6.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 and the name of the City Official who made the behest; and
 - 7) A description of the public purpose(s) under which the distribution was made, or alternatively, that the 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 6.A, above, shall not be subject to the income reporting provisions of Section 6.B and the City website disclosure provisions of Section 8.A.
- C. Following adoption, this policy shall be posted on the City's website in a prominent fashion.

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 18109-18997). 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.

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