
CITY OF SAN MATEO



330 West 20th Avenue
San Mateo, CA 94403-1388

December 14, 2015

Chair Jodi Remke and Commissioners
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

RE: Agenda Item 26; Gifts: Agency Provided Tickets or Passes

Dear Chair Remke and Commissioners:

As chair of the League of California Cities City Attorneys Department FPPC Committee, I submit this letter for comment on the above-referenced agenda item. In its report, staff explains that the proposed regulation amendments are intended to (1) increase compliance with the requirement to report an agency's distribution of tickets or passes to its employees by establishing a deadline for such reports, and (2) to provide for greater transparency for ticket distribution by requiring agencies to post their distribution policy and any ticket distributions on their website. In general, our committee supports the proposed amendments. With one exception, the comments and suggestions offered below are in the nature of technical edits intended to clarify the regulation proposed by staff.

Regulation 18944.1(c)

[Page 1, line 18.]

Staff proposes to slightly revise the term "for the official's personal use" (see lines 19 and 20) and to relocate the revised phrase "for his or her personal use" between the word "official" and the phrase "other than an elected official or member of the legislative or governing body of the agency." We have no concerns with the revision to the phrase; however, we would recommend against the proposed relocation of the phrase within the sentence. The phrase "other than an elected official or member of the legislative or governing body of the agency" modifies "official" in the sentence. Placing the term "for his or her personal use" between the "official" and this modifying phrase makes the sentence confusing and more difficult to interpret.

[Page 1, line 23 through page 2, line 2.]

Our committee received input from two city attorneys that the added text seems to say that the governing body must approve each distribution of a ticket to any individual employee. Staff confirms that this is not the intent of this language. We believe replacing “a ticket or pass” with “tickets or passes” would clear up this concern.

18944.1(f)

[Page 3, line 14.]

Our committee would request that the time period for reporting the distribution of a ticket or pass be set at 45 days. FPPC has prepared form 802 to be used to report distribution of tickets and passes. According to the instructions to the form, 45 days is described as the “general business practice” for the filing of these forms. Establishing the deadline as consistent with existing business practice would help avoid inadvertent violations.

In addition, an employee who receives tickets might choose to pay for them to avoid either reporting as a gift, or reporting under this regulation. An employee has 30 days to make this election. Allowing 15 additional days allows the agency to be sure there is a need to file the form.

Reorganization of the Regulation

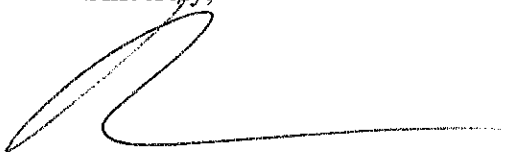
Finally, we offer a suggestion that is not related to any change proposed by staff. Our committee found the existing organization of this regulation to be confusing. The regulation is made up of six subdivisions (a) through (f). Subdivision (a) describes the scope of the regulation, and subdivision (b) provides that the regulation does not apply to the distribution of tickets when the value of the tickets is treated as income to the recipient. Subdivision (d) establishes the rule that tickets distributed pursuant to an agency policy will not be deemed gifts to the employee receiving the tickets. Subdivision (e) describes the required provisions of the policy referenced in subdivision (d), and subdivision (f) describes the requirements for reporting the distribution of tickets. These provisions are straightforward. We believe what makes this regulation confusing is the placement of subdivision (c).

The regulation is intended to state that any policy authorizing the distribution of tickets to agency employees must serve a public purpose. Subdivision (c) is intended to declare the public purposes for which the distribution of tickets is permissible. However, the placement of the language in subdivision (c) is confusing because it appears before the text in subdivision (d) which establishes the exception for tickets distributed for a public purpose.

Our committee would recommend addressing this confusion by relocating the text of subdivision (c) by adding it to what is now subdivision (e)(1). Subdivision (e)(1) provides that an agency policy for the distribution of tickets to its employees must set forth the public purposes for which tickets may be provided. Placing the language from subdivision (c) here makes sense, because it lists the public purposes for which tickets may be provided, and states that each agency is to determine for which purposes it will authorize the distribution of tickets.

I hope you find these comments helpful in your deliberations on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Mason". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Shawn M. Mason
City Attorney of San Mateo
Chair, League of California Cities, City Attorneys Department, FPPC Committee

CC: Hyla Wagner, General Counsel
Val Joyce, Commission Counsel