

What is NOT considered a “GIFT”: The differences between the Exceptions in the City’s Gift Ordinance and State Law

STATE GIFT REGULATIONS	CITY GIFT ORDINANCE
<p><u>May accept any gift valued at \$470.00 or less.*</u> (Gov. Code § 89503.)</p> <p><i>*State requires gifts of \$50.00 or more to be reported on Form 700.</i></p> <p><i>Gifts aggregating to \$470.00 or more during any 12-month period may subject an official to disqualification with respect to the source.</i></p>	<p><u>May accept Gifts of less than \$50.00**</u> so long as it does not exceed \$50.00 or more in any calendar year. (SJMC § 12.08.030.A.)</p> <p><i>*If Gift is \$50.00 or more, cannot accept gift.</i></p>
<p><u>Informational material*</u> provided to assist in the performance of official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.**</p> <p>Also includes scale models, pictorial representations, maps, on-site demonstrations, tours, or inspections, including air flights over an area that is the subject of the information and designed specifically for public officials, and other such items.</p> <p><i>*Does not apply to meals, lodging, or transportation to the site, except for any portion of the transportation that is not commercially available. (Gov. Code § 82028(b)(1); Regulations 18942(a)(1) and 18942.1.)</i></p>	<p><u>Informational materials</u> such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. This does not include provision of educational trips including transportation, accommodation and food. (SJMC § 12.08.030.B.)</p> <p><i>**Gift Ordinance does not allow for free admission or discounts for informational conferences or seminars like the State Gift Regulations.</i></p>
<p>Free admission to a ticketed event (including any benefits included in the price of the ticket such as a free meal) <u>for the official and one guest</u> at an event where the official performs a ceremonial role so long as the official’s agency complies with the posting provisions set forth in Regulation 18944.1(d). (Regulation 18942(a)(13); Regulation 18942.3.)</p> <p><i>Note: State Gift Regulations would allow free admission to regularly scheduled athletic events for ceremonial role</i></p>	<p>Admission to ceremonial, political (e.g. political fund raisers), civic, cultural (e.g. theatrical productions and art exhibits) or community functions provided by a sponsor of the event for the personal use of the officer or employee.</p> <p>1. Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.</p> <p>2. A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets. (SJMC § 12.08.030.F.)</p>

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<p><i>Reciprocal Exchanges made in a social relationship between an official and another individual</i>, who is not a lobbyist who is registered to lobby the official's agency, <i>with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities</i>, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment that is equal to or greater than \$470.00. (Regulation 18942(a)(8)(B).)</p>	<p><i>No similar exception in Gift Ordinance.</i></p>
<p>Gifts commonly exchanged between an official and another individual on <u>holidays, birthdays, or similar occasions</u> to the extent that the gifts exchanged are <u>not substantially disproportionate in value.</u></p> <p>(Regulation 18942(a)(8)(A).)</p>	<p>Gifts exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, <u>on holidays, birthdays, baby showers, or similar occasions</u> provided that the presents exchanged are <u>not substantially disproportionate in value.</u></p> <p>(SJMC § 12.08.030.D.)</p>
<p>Benefits received from an individual where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official’s position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift. (Regulation 18942(a)(19).)</p>	<p><i>No similar exception in Gift Ordinance.</i></p>

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<p><i>No similar exception in State Gift Regulations.</i></p> <p><i>State law does not consider this type of transaction to be a gift.</i></p>	<p><u>Employment interview - government employer:</u> Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty miles from San José and where the situs of the employment will be at least the same distance from the city.</p> <p>(SJMC § 12.08.030.G.)</p>
<p><i>No similar exception in State Gift Regulations.</i></p> <p><i>State law does not consider this type of transaction to be a gift.</i></p>	<p><u>Employment interview - private employer:</u> Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bona fide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.</p> <p>(SJMC § 12.08.030.H.)</p>
<p><i>No similar exception in State Gift Regulations.</i></p> <p><i>*State would consider this gift, unless an exception applied. If no exception, it would be okay to accept if less than \$470.00.</i></p>	<p>Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.*</p> <p>(SJMC § 12.08.030.K.)</p>

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<u>Personalized plaques and trophies</u> with an individual value of less than \$250. (Gov. Code § 82028(b)(6); Regulation 18942(a)(6).)	<u>A prize or award</u> received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a city or redevelopment agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974, as amended. (SJMC § 12.08.030.L.)
<u>Gifts from your spouse</u> (or former spouse), child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift.* (Gov. Code § 82028(b)(3); Regulation 18942(a)(3).) <i>*This exception includes great grandparents, great uncles and aunts, great nieces and nephews, and first cousins once removed.</i>	<i>No similar exception in Gift Ordinance.</i>
Benefits received as a <u>guest attending a wedding reception</u> where the benefits are the same as those received by the other guests at the reception. (Regulation 18942(a)(15).)	<i>No similar exception in Gift Ordinance.</i>
<u>Bereavement offerings</u> typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official. (Regulation 18942(a)(16).)	<i>No similar exception in Gift Ordinance.</i>
Benefits received as an <u>act of neighborliness</u> such as the loan of an item, an occasional ride, or help with a repair where the act is consistent with polite behavior in a civilized society and would not normally be part of an economic transaction between like participants under similar circumstances. (Regulation 18942(a)(17).)	<i>No similar exception in Gift Ordinance.</i>

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<u>Leave credits</u> (e.g., sick leave or vacation credits) received under a bona fide catastrophic or emergency leave program established by your employer and available to all employees in the same job classification or position. (Regulation 18942(a)(9).)	<i>No similar exception in Gift Ordinance.¹</i>
Food, shelter, or similar assistance received in connection with a <u>disaster relief program</u> . The benefits must be received from a governmental agency or charity and must be available to the general public. (Regulation 18942(a)(10).)	<i>No similar exception in Gift Ordinance.</i>
Items awarded in an <u>employee raffle</u> , received by the agency from an agency employee who is not acting as an intermediary for another donor. This exception applies when an agency holds an employee raffle and the item awarded in the raffle has been obtained with agency funds, or is otherwise an asset of the agency and not donated to the agency by a non-agency source. This exception does not apply to passes or tickets of the type described in Regulation 18944.1. (Regulation 18944.2(a) and (b).)	<i>No similar exception in Gift Ordinance.</i> <i>Maybe:</i> <u>A prize or award</u> received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a city or redevelopment agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974, as amended. (SJMC § 12.08.030.L.)
Items received by an employee during an <u>employee gift exchange</u> , so long as the items received are provided by another employee of the agency and the gifts are not substantially disproportionate in value. (Regulation 18944.2(c).)	<i>No similar exception in Gift Ordinance.</i>
Personal benefits commonly received from a <u>dating partner</u> . (Regulation 18942(a)(18)(A).)	<i>No similar exception in Gift Ordinance.</i>

¹ See City Policy 4.210 (Time Donation Programs). Allows employees to received donated vacation or compensatory time from other employees if allowed by their applicable Memoranda of Agreement.

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<p><u>Acts of Human Compassion.</u> Assistance, financial or otherwise, to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance, or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach. (Regulation 18942 (a)(18)(B).)</p>	<p><i>No similar exception in Gift Ordinance.</i></p>
<p>Benefits received from a <u>long-time personal friend</u> where the gift is unrelated to the official’s duties. The exception does not apply if the individual providing the benefit to the official is involved in some manner with business before the official. (Regulation 18942(a)(18)(C).)</p> <p>This exception does not apply if the person providing the benefit to the official is an individual who otherwise has business before the official as set forth in Regulation 18942(a)(18)(D).</p>	<p><i>No similar exception in Gift Ordinance.</i></p>
<p>Travel payments provided to the official by any state, local, or federal government agency as part of the official’s employment with that agency or provided to the official by a bona fide non-profit, tax-exempt (501(c)(3)) entity for which the official provides equal or greater consideration. (Section 82030(b)(2).) Any person who claims to have provided consideration has the burden of proving that the consideration received is of equal or greater value.</p>	<p>Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the city council or redevelopment agency board or which is pursuant to a written city or redevelopment agency policy for intrastate or interstate travel* regardless of the source of payment. (SJMC § 12.08.030.I.)</p> <p><i>*Does not include international travel</i></p>

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<p>Travel for Official Agency Business (Regulation 18950.1). Certain payments made to an agency to cover the travel expenses of an employee who travels in the course of carrying out agency business are not gifts to the official. For this exception to apply, the agency must report the payment on a Form 801 and the amount and purpose for using the payments are restricted by the provisions set forth in Regulation 18950.1.</p>	<p>Transportation provided to an officer or designated employee by a contractor or other person doing business with the city or redevelopment agency, provided that such transportation is related to city or redevelopment agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that <u>such transportation is not in excess of one hundred twenty-five miles one way</u>. Nothing in this subsection shall be interpreted to limit the city council's or redevelopment agency board's discretion to approve travel under subsection I. (SJMC § 12.08.030.J.)</p>
<p>A payment for travel from another local, state, or federal government agency and related per diem expenses when the travel is for education, training or other inter-agency programs or purposes. (Regulation 18950(a) and (c)(2).)</p>	<p>Transportation provided to an officer or designated employee by a contractor or other person doing business with the city or redevelopment agency, provided that such transportation is related to city or redevelopment agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that <u>such transportation is not in excess of one hundred twenty-five miles one way</u>. Nothing in this subsection shall be interpreted to limit the city council's or redevelopment agency board's discretion to approve travel under subsection I. (SJMC § 12.08:030.J.)</p>
<p>A payment for travel provided to the official in a vehicle or aircraft owned by another official or agency when each official is traveling to or from the same location for an event as a representative of their respective offices. (Regulation 18950(a) and (c)(3).)</p>	<p><i>No similar exception in Gift Ordinance.</i></p>

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Free admission, and food and nominal items (such as a pen, pencil, mouse pad, note pad or similar item) available to all attendees, at the event at which the official makes a speech (as defined in Regulation 18950(b)(2)), so long as the admission is provided by the person who organizes the event. (Regulation 18942(a)(11).)	Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event. (SJMC § 12.08.030.E.)
<u>Campaign contributions</u> to an official, including rebates or discounts received in connection with campaign activities (Gov. Code § 82028(b)(4); Regulations 18942(a)(4), 18950(a) and 18950.3(a)) and permissible expenditures of campaign funds for campaign-related expenses, including payments for transportation, lodging or food (Regulations 18950(a) and 18950.3(b)), provided they comply and are properly reported in accordance with applicable campaign finance laws.	<u>Campaign contributions</u> which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended. (SJMC § 12.08.020.B.1)
A devise or inheritance. (Gov. Code § 82028(b)(5); Regulation 18942(a)(5).)	Any devise or inheritance. (SJMC § 12.08.020.B.2)
<u>Wedding gifts</u> are not subject to the \$460 gift limit. <i>Wedding gifts are reportable, but for purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse.</i> (Regulation 18946.3.)	<u>Wedding gifts</u> from an individual other than a lobbyist as defined in Chapter 12.12. (SJMC § 12.08.030.M.)

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<p>Reciprocal Gifts—Gifts commonly exchanged between an official and another individual on <u>holidays, birthdays, or similar occasions</u> to the extent that the gifts exchanged are <u>not substantially disproportionate in value</u>.</p> <p>(Regulation 18942(a)(8)(A).)</p>	<p>Reciprocal Gifts—Gifts exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, on <u>holidays, birthdays, baby showers, or similar occasions</u> provided that the presents exchanged are <u>not substantially disproportionate in value</u>.</p> <p>(SJMC § 12.08.030.D.)</p>
<p><u>Gifts of hospitality</u> including food, drink or occasional lodging that an official receives in an individual’s home when the individual or a member of his or her family is present. (Regulation 18942(a)(7).)</p> <p>For this exception to apply, the official must have a relationship, connection or association with the individual providing the in-home hospitality that is unrelated to the official’s position and the hospitality must be provided as part of that relationship. Generally, this means functions like children’s birthday parties, soccer team parties, neighborhood barbeques, etc., where other guests attend who are not part of the lobbying process.</p> <p>(Regulation 18942.2.)</p>	<p><u>Gifts of hospitality</u> involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual’s primary residence.</p> <p>(SJMC § 12.08.030.C.)</p>

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<p>Items that are returned (unused) to the donor, or for which you reimburse the donor, <i>within 30 days of receipt</i>. (Gov. Code § 82028(b)(2); Regulation 18941.)</p> <p>Items that are donated (unused) to a non-profit, tax-exempt (501(c)(3)) organization in which the official (or immediate family member) does not hold a position, or to a government agency, within 30 days of receipt without claiming a deduction for tax purposes. (Gov. Code § 82028(b)(2); Regulation 18941.)</p>	<p>Gifts Not Accepted:</p> <ul style="list-style-type: none"> • It is not used, and, <i>within 30 days after receipt</i>, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes (must be 501(c)(3)). (SJMC § 12.08.040.A.) • <u>It is treated as and remains the property of the city or the redevelopment agency.</u> (SJMC § 12.08.040.B.) • It is received by an officer or designated employee in his or her official capacity or as a representative of the city or redevelopment agency, is reported to the city council or agency board, and the council or board approves the retention. (SJMC § 12.08.040.C.)