

3.4 Amendment to Title 12 (City Gift Ordinance) of the San José Municipal Code.

Recommendation:

Approve an ordinance amending Section 12.08.110 of Part 2 of Chapter 12.08 of Title 12 of the San José Municipal Code to align the annual gift limit City officers and designated employees can accept from restricted sources with the Political Reform Act's gift limit.

Approval of this item requires 8 or more affirmative votes (2/3) (City Charter Section 607).

CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Manager)

[Deferred from 2/27/2024 – Item 3.4 (24-73470)]



COUNCIL AGENDA: 2/27/24
FILE: 24-73470
ITEM: 3.4

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Sarah Zárata

SUBJECT: SEE BELOW

DATE: January 30, 2024

Approved

Date

2/14/24

SUBJECT: AMENDMENT TO TITLE 12 (CITY GIFT ORDINANCE) OF THE SAN JOSE MUNICIPAL CODE

RECOMMENDATION

Approve an ordinance amending Section 12.08.110 of Part 2 of Chapter 12.08 of Title 12 of the San José Municipal Code to align the annual gift limit City officers and designated employees can accept from restricted sources with the Political Reform Act's gift limit.

Please note: Approval of this item requires eight or more affirmative votes (2/3) (City Charter Section 607)

SUMMARY AND OUTCOME

Adopting this ordinance will align the City's annual gift limit that City officers and designated employees can accept from restricted sources with state law. The City's current annual gift limit is \$50 per year. California's annual gift limit is currently \$590 per year, effective through December 31, 2024, and adjusted for inflation every odd-numbered year.

BACKGROUND

City ordinance and state law currently establish different annual gift limits that employees can accept from a given single source. These are described in turn below.

1. City's Gift Ordinance Requirements

San José Municipal Code Section 12.08.100 prohibits City officers and employees from receiving gifts from “restricted sources.”¹ However, this prohibition does not apply to gifts “provided to an officer or employee in a business or social setting” with a value of fifty dollars or less, provided that the total value of all such gifts from any single restricted source does not exceed fifty dollars in any given calendar year.² This limit applies to all elected and appointed City officials, City officers—including Board and Commission members—and all City employees.³ The City’s [Gift Policy](#) (City Administrative Policy Manual section 1.2.2) provides additional detail.

The City has had its own gift ordinance since the 1980s. The current Gift Ordinance was adopted in 1993 (Ord. No. [24499](#)) as part of a comprehensive ethics ordinance establishing Title 12. In 2004, the Gift Ordinance was amended (Ord. No. [27258](#)) to clarify that the reporting and disqualification requirements of the Political Reform Act applied and to increase the gift limit exception from \$15 to \$50. While the Gift Ordinance was further revised in 2017 to align its definitions and exceptions to the Political Reform Act ([Ord. No. 30016](#)), the annual gift limit has not been changed since 2004.

2. State Law

State law established a different gift amount limit. The Political Reform Act requires the California Fair Political Practices Commission to set an annual gift limit that select public officials can accept from any given single source, which is adjusted for inflation on January 1 of each odd-numbered year.⁴ This limit is \$590 per year and is effective through the end of December 31, 2024.⁵ Unless a city has adopted stricter limits, the state annual gift limit applies to elected local government officials, planning commission members, the City Manager, the City Attorney, “other public officials who manage public investments,” and all other city employees required to file Form 700 disclosures, but does not apply to all city employees.⁶

¹ City ordinance defines “restricted sources” as “any individual, firm or entity whose interest or whose employer’s or client’s interest: (A) Has been materially affected by the work of such officer or employee of the City or Successor Agency within the two years prior to the time the gift is given; or (B) In the future could reasonably be foreseen to be materially affected by the work of such officer or employee of the City or Successor Agency.” San José Municipal Code § 12.08.040.

² See San José Municipal Code § 12.08.040. State law provides additional exceptions to this blanket prohibition, described in detail in the City’s [Gift Policy](#). See San José City Administrative Policy Manual, *Gift Policy 1.2.2* (revised April 24, 2018), pp. 1-5.

³ See San José Municipal Code Chapters 12.02, 12.08; San José City Administrative Policy Manual, *Gift Policy 1.2.2* (revised April 24, 2018), p. 1.

⁴ See California Government Code § 89503.

⁵ See California Code of Regulations, Title 2, Division 6, § 18940.2.

⁶ See California Government Code §§ 87200, 89503.

ANALYSIS

The proposed amended ordinance aligns the City Gift Ordinance's annual gift limit with the state's Political Reform Act. This would change the annual limit a City officer or employee could accept from any given restricted source from \$50 per year to \$590 for calendar year 2024. Following that, the City's annual limit would adjust with the limit set by the Fair Political Practices Commission

Aligning the City's Gift Ordinance annual gift limit offers three primary advantages. First, it simplifies compliance for City employees and elected officials. In previous years, having different City and state gift policies placed an additional burden on employees and elected officials who had to understand and comply with two separate sets of regulations. Aligning City and state gift limits will reduce this complexity and significantly streamline compliance. Second, it updates an outdated gift limit that does not currently account for the significant inflation over the past two decades. Finally, it links the City's gift limit to that set by the Fair Political Practices Commission, allowing for ongoing inflationary adjustments without requiring further change to the City ordinance.

These updates do not impact existing state or City gift disclosure requirements⁷ or disqualification requirements.⁸

EVALUATION AND FOLLOW-UP

No evaluation or follow-up is associated with this action.

COORDINATION

This memorandum and proposed ordinance were coordinated with the City Attorney's Office, the City Clerk's Office, the City Manager's Budget Office, and the Office of Employee Relations.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the February 27, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

⁷ California Government Code § 87207(a); San José Municipal Code No. 12.08.200.

⁸ See, e.g., California Government Code § 84308.

HONORABLE MAYOR AND CITY COUNCIL

January 30, 2024

Subject: Amendment to Title 12 (City Gift Ordinance) of the San José Municipal Code

Page 4

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

A handwritten signature in black ink that reads "Sarah Zárate". The script is cursive and fluid.

SARAH ZÁRATE

Director, Office of Administration, Policy, and
Intergovernmental Relations

For questions, please contact Tom Westphal, Deputy Director for Policy, Plans, and Strategic Support; Office of Administration, Policy, and Intergovernmental Relations; Office of the City Manager, at thomas.westphal@sanjoseca.gov.

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTION 12.08.110 OF CHAPTER 12.08 OF
TITLE 12 CLARIFYING THE ANNUAL GIFT LIMIT
AMOUNT ESTABLISHED BY THE CALIFORNIA FAIR
POLITICAL PRACTICES COMMISSION**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 12.08.110 of Part 2, Chapter 12.08 of Title 12 of the San José Municipal Code is amended to read as follows

12.08.110 Gifts Not Prohibited

This Chapter does not prohibit the acceptance or receipt of:

- A. Any gift that meets one of the exceptions under the Political Reform Act.
- B. Any gift, including meals and beverages, provided to an officer or employee in a business or social setting that has a value equal to or less than the annual gift limit amount established by the California Fair Political Practices Commission, in accordance with California Government Code Section 89503 and its implementing regulations, as may be amended. The total value of all such gifts received from any one Restricted Source shall not exceed that annual gift limit amount in any calendar year.

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT

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**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTION 12.08.110 OF CHAPTER 12.08 OF
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- B. Any gift, including meals and beverages, provided to an officer or employee in a business or social setting that has a value ~~of fifty dollars equal to~~ or less than the annual gift limit amount established by the California Fair Political Practices Commission, in accordance with California Government Code Section 89503 and its implementing regulations, as may be amended. ~~Tas long as~~ the total value of all such gifts received from any one Restricted Source ~~does~~ shall not exceed that annual gift limit amount~~fifty dollars~~ in any calendar year.

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

Public Comment - City Council 3/12 - Item 3.4. "Amendment to Title 12 (City Gift Ordinance) of the San José Municipal Code"

Jordan Moldow <[REDACTED]>

Tue 3/12/2024 10:14 AM

To: City Clerk <city.clerk@sanjoseca.gov>; Agendadesk <Agendadesk@sanjoseca.gov>

Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

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Public Comments from Jordan Moldow (speaking on behalf of himself) for Item 3.4. "Amendment to Title 12 (City Gift Ordinance) of the San José Municipal Code" - City Council 3/12

Why does the annual gift limit need to be increased? The memorandum provides a very weak justification for this. What made this an issue worth addressing?

Under what circumstances would an elected official and/or city staff need to accept gifts in excess of \$50 in order to perform their duties to the city?

The state annual limit of \$590, inflation-adjusted, seems excessive. If "one Restricted Source" were to give \$590 gifts to everyone in a city council office, or to everyone in a city department, that seems like it would be a pretty effective bribe. Do other provisions in the Municipal Code prevent this kind of abuse?

I don't understand the argument that this change somehow "simplifies compliance". The [Ordinance change clearly shows](#) [1] that the only thing changing is the limit itself. No other potential discrepancies between state and local law are being changed, only the dollar amount. Under current law, the \$50 limit is always going to be lower than the state limit, so that should be the only number that City staff and officials need to remember when accepting gifts. If the City really wanted to simplify compliance, then it would just get rid of its gift ordinance, and rely entirely on state law (Note: I am not suggesting that you do this. I'm just offering a hypothetical.)

P.S. It should also be noted that [San Francisco voters just overwhelmingly approved a ballot measure](#) [2], which was put on the ballot by the San Francisco Ethics Commission, which adds more city restrictions on receiving gifts, further beyond the restrictions set by state law.

Thanks,
Jordan Moldow (speaking on behalf of himself)
District 3
95112

[1] <https://sanjoseca.primegov.com/api/compilemeetingattachmenthistory/historyattachment/?historyId=4951a261-2eed-46ca-8ced-323785119fa4>

[2] [https://ballotpedia.org/San_Francisco_California_Proposition_D_Amend_City_Ethics_Laws_and_Expand_Restrictions_on_Gifts_to_City_Officers_and_Employees_Initiative_\(March_2024\)](https://ballotpedia.org/San_Francisco_California_Proposition_D_Amend_City_Ethics_Laws_and_Expand_Restrictions_on_Gifts_to_City_Officers_and_Employees_Initiative_(March_2024))