

D-5.



CONSENT ITEM

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: SONIA CARVALHO, CITY ATTORNEY

VIA: F.M. DELACH, CITY MANAGER 

DATE: JULY 7, 2009

SUBJECT: ADOPTION OF A RESOLUTION APPROVING A DISTRIBUTION POLICY FOR TICKETS IN THE FURTHERANCE OF THE CITY'S REASONABLY DEFINED PUBLIC PURPOSES

RECOMMENDATION

It is recommended that City Council adopt the proposed Resolution titled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AZUSA, CALIFORNIA, ADOPTING A DISTRIBUTION POLICY FOR TICKETS IN THE FURTHERANCE OF THE CITY'S REASONABLY DEFINED PUBLIC PURPOSES

BACKGROUND

From time to time, the City receives tickets or passes from third party sources, both public and private. In order for the City to continue distributing these tickets or passes to public officials, without it constituting a gift to the receiving public official, the Fair Political Practice Commission ("FPPC") now requires the City to adopt a duly written policy that identifies the legitimate public purpose for which the ticket or pass was distributed. The policy must also contain a provision prohibiting public officials from transferring any ticket and/or pass distributed under this policy to any other person, except to members of the official's immediate family for their personal use.

The Resolution adopting the proposed ticket distribution policy, and the policy itself, are attached hereto as Exhibit "A".

*Approved
7/7/09
Sonia Carvalho*

DISCUSSION

The Fair Political Practice Commission ("FPPC") recently amended California Code of Regulations, Title 2, Section 18944.1 to clarify that tickets and passes may be gifts to the benefiting public official, when adequate consideration is not provided in return, or a statutory exception does not apply. (Gov. Code § 82028, subd. (a)). Public officials must report all gifts on their Statement of Economic Interest ("Form 700"), and are prohibited from accepting gifts from a single source during the calendar year exceeding four-hundred and twenty dollars (\$420.00). (Gov. Code § 89503, subd. (a); Code of Regs, tit. 2, §18940.2.).

Section 18944.1, as amended, provides methods by which public officials may continue to accept tickets and passes without the tickets or passes constituting a gift to the public official. Section 18944.1 provides that public officials may receive or use complimentary tickets and/or passes if they are disseminated in accordance with a duly written city policy that states the legitimate public purpose(s) for which the ticket and/or pass was distributed. Tickets and passes are defined as admission to a facility, event, show or performance for an entertainment, amusement, recreational, or similar purpose. In accordance with Section 18944.1, we have prepared a written policy and resolution for your review and consideration.

Furthermore, Section 18944.1 now prohibits public officials from transferring any ticket and/or pass distributed under the written policy to any other person, except to members of the official's immediate family for their personal use.

Failure to adopt or comply with the written policy or an amended policy will cause a public official to be subject to individual disclosure requirements for the purposes of an official's Form 700. The value of any such ticket and/or pass will be subject to annual gift limits.

FISCAL IMPACT

There is no significant financial impact associated with the adoption of the proposed resolution and policy.

ENVIRONMENTAL IMPACT

Not applicable.

Attachments : Exhibit "A" - Proposed Resolution and Policy

RESOLUTION NO. 09-C57

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AZUSA, CALIFORNIA, ADOPTING A DISTRIBUTION POLICY FOR TICKETS IN THE FURTHERANCE OF THE CITY'S REASONABLY DEFINED PUBLIC PURPOSES

WHEREAS, from time to time, the City of Azusa ("City") receives tickets or passes from third party sources, both public and private; and

WHEREAS, under Title 2 of the California Code of Regulations, Section 18944.1 ("Section 18944.1") these tickets and/or passes are defined as an admission to a facility, event, show or performance for an entertainment, amusement, recreational, or similar purpose; and

WHEREAS, the City finds that the receipt of all such discounted, free or purchased tickets and/or passes are public resources; and

WHEREAS, on December 11, 2008, the Fair Political Practices Commission ("FPPC") adopted new regulations that set up the circumstances under which the receipt of tickets and passes by a public official would need to be disclosed by the City and the circumstances under which they would be distributed to public officials and not trigger disclosure requirements on the public official's Statement of Economic Interests ("Form 700"); and

WHEREAS, the City desires to distribute these public resources in a manner that furthers the City's governmental and public purposes as reasonably described herein, such as the promotion of City events affecting or involving the City; and

WHEREAS, according to Section 18944.1 these tickets and/or passes are not gifts to "public officials" if these tickets and/or passes are disseminated in accordance with a duly adopted written policy written in compliance with Section 18944.1, subdivision (b)(2); and

WHEREAS, the FPPC has clearly stated that it recognizes the discretion of the legislative or governing body of an agency to determine whether the distribution of tickets and/or passes serves a legitimate public purpose of the City, provided that the determination is consistent with state law.

THE CITY COUNCIL OF THE CITY OF AZUSA, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Policy Adoption. The City Council hereby adopts the Ticket Distribution Policy attached hereto and incorporated herein as Exhibit A.

Section 2. Effective Date. This Resolution shall become effective upon its adoption.

PASSED, APPROVED AND ADOPTED this 7th day of July, 2009.

[Redacted Signature]

OR

CITY OF AZUSA

[Redacted Signature]

CITY OF AZUSA

STATE OF CALIFORNIA)

ss.

COUNTY OF ORANGE)

I, **VERA MENDOZA**, City Clerk of the City of Azusa, California, **DO HEREBY CERTIFY** that the foregoing Resolution No. 09-C57 was adopted at a regular meeting of the City Council of the City of Azusa held on the 7th day of July, 2009, and was carried by the following roll call vote:

AYES: COUNCILMEMBERS: GONZALES, CARRILLO, MACIAS, HANKS, ROCHA
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: NONE

[Redacted Signature]

CITY OF AZUSA

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

[Redacted Signature]

CITY ATTORNEY

EXHIBIT A

**CITY OF AZUSA
TICKET DISTRIBUTION POLICY**

1.0 Purpose of Policy.

1.1 The purpose of this Policy is to ensure that all Tickets the City receives from public and private entities and individuals are distributed in furtherance of governmental and/or public purposes.

2.0 Application of Policy.

2.1 Types of Tickets: This Policy applies to Tickets which provide admission to or use of a facility or event for an entertainment, amusement, recreational or similar purpose, and are either:

- a) gratuitously provided to the City by an outside source;
- b) acquired by the City by purchase;
- c) acquired by the City as consideration pursuant to the terms of a contract for the use of a city venue; or
- d) acquired and distributed by the City in any other manner.

2.2 Policy Applicable to Tickets Only: This Policy shall only apply to the City's distribution of Tickets to, or at the behest of, a City Official. This Policy does not apply to any other item of value provided to the City or any City Official, regardless of whether received gratuitously or for which consideration is provided.

2.3 This Policy, together with the procedures established pursuant to Section 4.4 below, shall supersede and replace any prior City policy governing Tickets to which this Policy applies.

3.0 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 Sections 81000, et seq., as the same may from time to time be amended) and the Fair Political Practices Commission ("FPPC") Regulations (Title 2, Division 6 of the California Code of Regulations, Sections 18110 et seq., as the same may from time to time be amended).

3.1 "City" or "City of Azusa" shall mean and include the City of Azusa, the Azusa Redevelopment Agency, any other affiliated agency created or activated by the Azusa City Council, and any departments, boards and commissions thereof.

3.2 "City Official" shall mean and refer to the City's "public officials," as that term is defined by Government Code Section 82048 and FPPC Regulation 18701. Such term shall include, without limitation, any City board, commission, or committee member or other appointed official or employee required to file an annual Statement of Economic Interests (FPPC Form 700).

3.3 "FPPC" shall mean and refer to the California Fair Political Practices Commission.

3.4 "Immediate family" shall mean and refer to the spouse and dependent children.

3.5 "Policy" shall mean and refer to this Ticket Distribution Policy.

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

4.0 **General Provisions.**

4.1 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.

4.2 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.

4.3 Prohibition Against Sale of 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.

4.4 Implementation of Policy: The City Manager 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 which fall within the scope of this Policy shall be made in accordance with the procedures established by the City Manager.

4.5 Designation of Agency Head: The City Manager or his/her designee shall be the "Agency Head" for purposes of implementing the provisions of this Policy and completing and posting the FPPC California Form 802.

4.6 No Earmarking of Ticket to City: No Ticket gratuitously provided to the City by an outside source and distributed to, or at the behest of, a City Official pursuant to this Policy shall be earmarked by the original source for provision to a particular City Official.

5.0 Conditions Under Which Tickets May be Distributed.

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

5.1 The City Official reimburses the City for the face value of the Ticket(s).

5.2 The City Official treats the Ticket(s) as income consistent with applicable federal and state income tax laws.

5.3 The distribution of the Ticket(s) to, or at the behest of, the City Official accomplishes a governmental and/or public purpose. The following list of governmental and/or public purposes the City may accomplish through the distribution of Tickets is illustrative rather than exhaustive:

- a) Facilitating the performance of a ceremonial role or function by a City Official on behalf of the City at an event.
- b) Facilitating the attendance of a City Official at an event where the job duties of the City Official require his or her attendance at the event.
- c) Promotion of intergovernmental relations and/or cooperation and coordination of resources with other governmental agencies, including, but not limited to, attendance at an event with or by elected or appointed public officials from other jurisdictions, their staff members and their guests.
- d) Promotion of City resources and/or facilities available to Azusa residents.
- e) Promotion of City-run, sponsored or supported community programs or events.
- f) Promoting, supporting and/or showing appreciation for programs or services rendered by charitable and non-profit organizations benefiting Azusa residents.

- g) Promotion of business activity, development, and/or redevelopment within the City.
- h) Promotion of City-owned businesses.
- i) Promotion of City tourism on a local, state, national or worldwide scale.
- j) Promotion of City recognition, visibility, and/or profile on a local, state, national or worldwide scale.
- k) Promotion of open government by City official appearances, participation and/or availability at business and/or community events.
- l) Increasing public exposure to, and awareness of, the various recreational, cultural, and educational venues and facilities available to the public within the City.
- m) Attracting or rewarding volunteer public service.
- n) Encouraging or rewarding significant academic, athletic, or public service achievements by Azusa students, residents or businesses.
- o) Attracting and retaining highly qualified employees in the City service.
- p) Recognizing or rewarding meritorious service by a City employee.
- q) Promoting enhanced City employee performance or morale.
- r) Recognizing contributions made to the City by former City Council Members or City employees.

6.0 Disclosure Requirements.

6.1 This Policy shall be posted on the City website in a prominent fashion.

6.2 Tickets distributed by the City to any City Official either i) which the City Official treats as income pursuant to Section 5.2 above, or ii) for one or more public purposes described in Section 5.3 above, shall be posted on the City website in a prominent fashion, within thirty (30) days after distribution. Such posting shall

incorporate the use of FPPC California Form 802, attached to and incorporated in this Policy as **Exhibit 1**, or such alternative form(s) as may from time to time be designated by the FPPC.

6.3 Tickets distributed by the City for which the City receives reimbursement from the City Official as provided under Section 5.1 above shall not be subject to the disclosure provisions of Section 6.2.

EXHIBIT 1
CALIFORNIA FORM 802

[Attached]

