



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Miadich, Commissioners, Cardenas, Hatch, and Hayward

From: Dave Bainbridge, General Counsel,
Brian Lau, Assistant General Counsel,
Zachary W. Norton, Senior Counsel

Subject: Request to Adopt Amendments to Regulations 18944.1, 18946, 18946.1, & 18942

Date: May 6, 2019

Requested Action and Summary of Proposed Action

Staff presents amended Regulations 18944.1, 18946, 18946.1, and 18942 for adoption. The proposed amendments would provide clarification of the requirements for agency ticket distribution policies. The proposal provides some clarifying structural changes to the regulation, and attempts to limit the potential for abuse of these policies by requiring that an agency's ticket distribution policy must include a provision prohibiting the disproportionate use of tickets or passes by the governing body, the chief administrative officer, or department heads, as well as requiring an official to submit to the agency a written inspection report of findings and recommendations where the public purpose cited for the use of tickets involves the oversight or inspection of facilities.

The proposed amendments would also clarify the definition of "fair value" contained in Regulation 18946, where a ticket or pass for a luxury box or suite does not have a value indicated on its face, and make other changes to the existing regulations as discussed below.

The proposed regulations were presented for discussion at the February 21, 2019 Commission meeting. The Commissioner Hatch recommended including language for valuation of a ticket at "fair value" where a ticket or pass for a luxury box or suite does not have a value indicated on its face, and including "political appointees" to the list of officials who are subject prohibitions on disproportionate use in an agency's ticket distribution policy. There was no public comment. Those changes have been incorporated. Changes made in the attached regulations since the February Commission meeting are highlighted in yellow. The Commission's Law and Policy Committee then reviewed these regulations prior to their presentation to the Commission and recommended their approval.

Background/Overview

In an effort to reduce improper influences on public officials, the Political Reform Act (“Act”)¹ regulates the receipt of gifts by public officials. It does this in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$500 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency’s conflict-of-interest code, as adopted pursuant to Section 87300, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$500 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interest. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency’s conflict-of-interest code as specified in the code (Section 87302(b)).

Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$500 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18702.4.)

The term “gift” is defined in Section 82028(a) as:

“Any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

Current Regulation

Regulation 18944.1 sets up a procedure for agencies that provide tickets to their officials that, if utilized, will result in the tickets not qualifying as gifts under the Act, where the official may accept the ticket if there is a public purpose achieved through that official’s use of the ticket. In particular:

- The use of the ticket must further a governmental or public purpose;

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All further statutory references are to the Government Code. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations.

- The agency must adopt a distribution policy that contains provisions set forth in the regulation;
- The agency must complete a form for each distribution that must be maintained as a public record and subject to inspection and copying; and
- The form for each distribution must be forwarded to the FPPC for posting.

Tickets distributed under the policy, including tickets distributed at the behest of a public official, must be identified on a Form 802 and posted on the agency’s website to comply with this regulation. The form must be completed within 45 days of distribution of a ticket or pass. Where the distribution is made pursuant to the public purpose exception, that purpose must also be described on the form. An agency is free to make its own choice whether or not to adopt a policy conforming to the regulation or to treat the tickets as income or gifts to the official and not apply the regulation.

Potential for Misuse

A recent grand jury report² identified instances where elected officials used significant numbers of tickets to attend sporting events, while stating that the public purpose was “to inspect the facilities.” Although not a requirement under existing law, one local agency noted that no reports of findings are ever generated following such visits, and that citing inspection of facilities as a public purpose may be a means of attending games without having to declare ticket values as gifts or income.

In addition, the grand jury report noted instances where the same elected officials used tickets repeatedly without defined procedures or practices for offering tickets to worthy community organizations and individuals, or public employees other than those working directly for the officials who distribute them. In that instance, this led to overuse by elected or appointed officials, who used the most valuable tickets hundreds of times.

Commission staff consulted with local ethics agency staff around the state on this issue and while such abuse does not appear to be widespread, staff believes these problems can be addressed through regulatory amendments.

Proposed Changes

The proposed revisions to Regulation 18944.1 seek to further clarify what is required for agency provided tickets or passes to be exempt from qualification as gifts under the Act. The proposed version of Regulation 18944.1 does this in the following ways:

- Proposed subdivision (a) lays out the gift exception for agency tickets or passes that currently is in subdivision (d). Also, the language has been rewritten for clarification, and a reference to “equal or greater value” has been omitted.

² 2017-2018 Alameda County Grand Jury Final Report: “Coliseum Ticket Bonanza.”

- Proposed subdivision (b) provides the required provisions for a ticket policy that currently is in subdivision (e) and contains the additional requirement for the inclusion of a provision prohibiting the disproportionate use of tickets by members of the governing body, the chief administrative officer of the agency, or department heads.
- Proposed subdivision (c) lays out the provision requiring that the ticket policy be maintained as a public record subject to inspection and copying that currently is in subdivision (e)(4).
- Proposed subdivision (d) lays out the reporting requirements for tickets or passes distributed by an agency that currently is in subdivision (f) and contains the additional requirement that an official who uses tickets for the purpose of oversight or inspection of facilities provide a written report of findings and recommendations.
- Proposed subdivision (e) provides guidelines for the determination of a public purpose for use of tickets, as well as limits on the personal use of tickets, that currently is in subdivision (c).
- Proposed subdivision (f) provides a definition of the terms “ticket” and “pass” that currently is in subdivision (a). Some redundant language from the old definition has been omitted.
- Proposed subdivision (g) states that a ticket or pass is not subject to this regulation, and not a gift under the Act, if it is taxable income to the official, which currently is in subdivision (b). Some redundant language from the old definition has been omitted.
- Proposed subdivision (h) states that a ticket or pass is not subject to this regulation, and not a gift under the Act, if the official reimbursed the agency for the ticket, which currently is in subdivision (d).

The proposed revisions to Regulation 18946 change the term “face value” to “fair value” and add language clarifying the definition of “fair value,” by specifying that, where the price indicated on the ticket does not reflect the actual cost for a ticket in a luxury box or suite, the value is determined by dividing the total cost of the box or suite by the number of tickets available for that box or suite.

The proposed revisions to Regulation 18946.1 change the term “face value” to “fair value.”

The proposed revision to Regulation 18942 changes a cross reference from Regulation 18944.1, subdivision (f) to subdivision (d).

Summary

The proposed amendments would provide clarification of the requirements for agency ticket distribution policies. The proposal provides clarifying structural changes to the regulation. It attempts to limit the potential for abuse by requiring that an agency's ticket distribution policy include a provision prohibiting the disproportionate use of tickets or passes by the governing body, the chief administrative officer, or department heads. It also makes clear that where the public purpose cited for the use of tickets involves the oversight or inspection of facilities, the official must document the public purpose by submitting a written inspection report of findings and recommendations to the official's agency. The proposed amendments would also clarify the definition of "fair value" contained in Regulation 18946 where a ticket or pass for a luxury box or suite does not have a value indicated on its face.

Attachments:

Proposed Repeal of Regulation 18944.1

Proposed Regulation 18944.1

Proposed Regulation 18946

Proposed Regulation 18946.1

Proposed Regulation 18942