

CITY OF SOUTH SAN FRANCISCO INTEROFFICE MEMORANDUM

DATE: July 25, 2019

TO: Honorable Mayor and City Council

FROM: Jason Rosenberg, City Attorney

SUBJECT: Donations to the City of South San Francisco

This memo addresses whether any potential conflict of interest may exist for individual Councilmembers when donations are made to the City to be used to underwrite the cost of a City sponsored event or City facility.

The conflict-of-interest laws generally apply when a gift in the form of a donation is made to a particular councilmember. However, where such a donation is made to the public agency rather than to the public official, it does not qualify as a gift under the conflict of interest laws pursuant to California Code of Regulation Section 18944. Thus, under the limited circumstances of a gift to the public agency and provided that such gift is made consistent with the provisions of Section 18944, the gift does not create a conflict of interest should the donor of the gift be an individual or business that may at some point in the future have an item before the City Council for consideration.

Specifically, Regulation 18944 provides that a payment shall be deemed a gift to the public agency and not a gift to the public official if all of the following requirements are met:

- (1) The payment is used for official agency business.
- (2) The agency head controls use of the payment.
- (3) The agency reports the payment on FPPC Form 801 (Payment to Agency Report) that is maintained as a public record and includes the following information:
 - (a) A description of the payment, the date it was received, the intended purpose and the amount of the payment or the actual or estimated fair market value of the goods or services provided, if the amount is unknown.
 - (b) The name and address of the individual donor. If the donor is an entity, the report must also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from another person for the specific purpose of making the payment to the agency, the report must contain the name of each person and the amount given by each person.
 - (c) The use of the payment, and the name, title, and department of the agency official who used the payment.
 - (d) The signature of the agency head.
 - (e) For any quarter when payments aggregate to \$2,500.00 or more since the last filing, the local agency must submit a copy of the form(s) or a detailed summary of the information on the form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after the close of the quarter. The filing officer shall post a copy of the form or the information in the form on its website, in a prominent fashion within 30 days after the close of any quarter in which the agency receives payments aggregating to \$2,500.00 or more since the last filing.

Payment to Agency Report**A Public Document**

PAYMENT TO AGENCY REPORT

1. Agency Name

Division, Department, or Region (if applicable)

Street Address

Area Code/Phone Number

Email

Agency Contact (name and title)

Date Stamp

**California
Form 801**

For Official Use Only

☐ Amendment (explain in comment section)Date of Original Filing: _____
(month, day, year)**2. Donor Name and Address**☐ Individual _____
Last Name First Name ☐ Other _____
Name

Address _____ City _____ State _____ Zip Code _____

If "Other" is marked, describe the entity's business activity (if business) or its nature and interests.

→ If applicable, identify the name of each source and the amount(s) received by the donor for this payment:

Name \$ Amount Name \$ Amount**3. Payment Information (Complete Sections 3.1 (a or b), 3.2, 3.3)****3.1 (a) Travel Payment**_____
Location of Travel_____
Dates (month, day, year)_____
Transportation Provider ☐ Rail ☐ Air ☐ Bus ☐ Auto ☐ Other
Check Applicable Boxes_____
Name of Lodging Facility\$ _____ \$ _____ \$ _____ \$ _____ \$ _____
Lodging Expenses Meal Expenses Transportation Expenses Other Expenses Total Expenses**3.1 (b) Payment(s) not related to travel:**_____
Dates (month, day, year) \$ _____
Total Expenses**3.2. Payment Description. Provide a specific description of the payment and its agency purpose and use.****3.3. Identify the officials who used the payment in Section 3.1 (See instructions)**_____
Last Name First Name Position/Title Department/Division_____
Last Name First Name Position/Title Department/Division**4. Verification**

I authorized the acceptance of the reported payment(s) as in compliance with FPPC regulations.

Signature Print Name Title (month, day, year)

Comment:

(Use this space or an attachment for any additional information)

Payment to Agency Report Instructions

A Public Document

California
Form **801**

This form is used to report certain payments received by state and local government agencies. It includes:

- a payment for an official's travel expenses for the purpose of facilitating the public's business in lieu of a payment using agency funds; and
- a payment that would otherwise be considered a gift or income to the benefiting official, but is instead accepted on behalf of the agency.

FPPC Regulations 18944 and 18950.1 provide a procedure that state and local agencies may use to disclose payments used for agency purposes and paid by a third party. The regulations' reporting procedures provide an alternative means to disclose a payment that may otherwise be considered income or a gift to a benefiting employee and subject to reporting on a Statement of Economic Interest, Form 700.

When and Where to File

An agency accepting a payment pursuant to Regulation 18944 and 18950.1 must complete Form 801 for each payment received regardless of the amount. The form must be maintained as a public document. If payments aggregate \$2,500 or more in a calendar quarter, website posting is required.

Website Posting:

State Agencies

Within 30 days after the end of a calendar quarter if aggregated reported payments, for travel and non-travel purposes, total \$2,500 or more:

- the agency must post the reports (or a report summary) on the agency website; and
- forward the information to the FPPC which will also post the information.

Local Agencies

The website posting rules differ for travel and non-travel payments.

Travel

Within 30 days after the end of a calendar quarter if aggregated reported payments total \$2,500 or more:

- the agency must post the reports (or a report summary) on the agency website; and
- forward the information to the FPPC.

Payments Not Related to Travel

The agency's filing officer for Statement of Economic Interests, Form 700, must receive the report. Within 30 days after the end of a calendar quarter if aggregated reported payments total \$2,500 or more, the local agency must post the information on the local agency website. A report is not sent to the FPPC unless the agency does not have a website.

Postings must be displayed in a prominent manner and easily accessible. Reports may be posted earlier.

FPPC: Statements should be emailed to form801@fppc.ca.gov. Statements may also be mailed to 1102 Q Street, Suite 3000, Sacramento, CA 95811 or faxed to (916) 322-3711.

Part 1. Agency Identification

List the agency's name and address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Donor Information

Disclose the name and address of the donor. If the donor is not an individual, identify the business activity or nature and interests of the entity.

If the donor received funds from other sources that were used in connection with the payment, disclose the name and payment information for each source.

Part 3. Payment Information

Expenses may be rounded to whole dollars.

Section 3.1.a. Itemize travel payments including departure and return dates. Complete all fields, use "n/a" appropriately. Total the expenses for items such as taxi rides, gratuities, and rental cars in the "other" field and describe in the comments section.

Section 3.1.b. Report agency payments that are not travel related.

Section 3.2. Description

All payments must include a specific description of the use of the payment and the intended purpose for agency business. For example, a travel payment may read: Travel to attend an EPA co-sponsored solar energy seminar in Washington D.C.

Section 3.3. Identify Officials

Travel Payments: The name of the position/title and department of each official who used the payment is required. List the official's name if he/she is an elected or appointed official. It is not required to list the names of other officials, rather insert "n/a." Do not leave blank.

Non-Travel Payments: The name, position/title and department of the agency official who used the payment must be identified. All officials' names are required.

Part 4. Verification

Verification of travel payments must be signed by an authorized agency official. Such individuals are those who have the authority to approve similar travel payments when made with agency funds.

Verification of non-travel payments must be signed by the agency head.