



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: June 19, 2007

Subject: Limitations on the Acceptance of Gifts

RECOMMENDATION

That the City Council consider an ordinance relating to limitations on the acceptance of gifts which parallels the provisions in State law.

BACKGROUND DISCUSSION

The City Council previously requested and received information concerning the City's limitations on the acceptance of gifts along with the parallel provisions in State law and examples from other cities. The Council expressed some interest in RCW 42.52.150 which allows state officers or state employees to accept gifts up to \$50 in a calendar year, with certain specified limitations. RCW 42.52.150 also includes a list of items presumed not to influence the recipient. These items include: unsolicited flowers, plants, and floral arrangement; unsolicited advertising or promotional items of nominal value, such as pens and note pads; unsolicited tokens or awards of appreciation; food and beverages consumed at hosted receptions related to the officer's or employees duties; and admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental or community organizations. (This is not the complete list.)

The proposed ordinance incorporates the foregoing State law provisions. A series of hypothetical questions and answers is appended to assist the Council in its consideration.

Please let me know if you have any questions.

Below are some questions and answers intended to help the City Council in its consideration of the ordinance relating to limitations on the acceptance of gifts.

Are there times when acceptance of a gift might appear to be allowed under KMC 3.80140, but still pose a problem?

Yes. Acceptance of a particular gift must be considered in light of the circumstances surrounding the giving. There is no substitute for asking oneself if acceptance of a particular gift is prudent, good public policy, or will create appearance problems. If the City has contractual relations with or is in the process of negotiating a contract with the person, organization, or entity offering the gift, the better course may be to refuse or return the gift.

Is there a problem under KMC 3.80.140(1) when a person gives a City officer or employee a ticket to a sporting event, concert or other performance and the officer or employee and the face price of the ticket is \$50.00 or less?

There may be if the event is sold out or the ticket entitles the officer or employee to special accommodations, such as entrance to a private suite that is not reflected in the price of the ticket. The value of a ticket to a sold out event may exceed the face price of ticket. Access to a private suite at sports or performing art venues may include better seating or complementary food and beverages that are not available to regular ticket holders. The event tickets provided to the suite holder normally have a face value that is tied to the price of a publicly available seat. In this case, the value of access to the private suite is greater than the face value of the ticket.

One exception to the fifty dollar limitation is set forth in KMC 3.80.140(2)(f) which provides that a City officer or employee may accept food and beverages consumed at events sponsored by or in conjunction with a civic, charitable, governmental, or community organization. Would a sit-down dinner at an Association of Washington Cities conference qualify?

Yes. The Association of Washington Cities which is comprised of Washington cities and towns meets the governmental exception under KMC 3.80.140(2)(f).

I have been offered a complementary ticket to a fundraising gala being sponsored by a civic organization? Under the proposed ordinance, may I accept the ticket even though the value of the ticket exceeds \$50.00?

Yes. Under KMC 3.80.140(2)(g), the \$50.00 limitation does not apply to admission to, and the cost of food and beverages consumed at events sponsored by or in conjunction with a civic, charitable, governmental, or community organization.

What if the same organization wants to provide me with a complementary ticket for my guest?

Under KMC 3.80.140(1) the value of gifts given to an officer's or employee's family member or guest is attributed to the official or employee for the purpose of determining whether the \$50.00 limit has been exceeded. If you want to take a guest, you or the guest should pay for the ticket.

I am unclear on the distinction between a gift from a “single source” and a “single gift” from multiple sources which has a value in excess of \$50.00. What is the real limitation?

There are two parts to the limitation. No officer may accept gifts:

- (1) with an aggregate value in excess from a single source in a calendar year, **nor**
- (2) a single gift from multiple sources with a value in excess of \$50.00.

May I accept an unsolicited gift, of a personal nature, which has a value in excess of \$50.00 from a dignitary from a foreign country?

Yes. KMC 3.80.140(h) specifically exempts such gifts.

If I can accept a gift from a foreign dignitary, may the City make a gift in return?

No. The making of gifts from the City to private parties is prohibited by the state Constitution, Article VIII, § 7, which provides, in pertinent part, that:

No county, city or town, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual association, company or corporation, except for the necessary support of the poor and infirm, . . .

What are some examples of unsolicited promotional items of nominal value that an employee could accept from a vendor?

An employee may keep items such as pens, note pads, refrigerator magnets and the like.

May we keep flowers, chocolates, or other gifts or treats delivered to our office from a customer or vendor?

Unsolicited flowers, plants, and floral arrangements **may** be accepted, but you need to look at the relationship of the giver. Again, if the gift was given by someone who is being regulated by the City or seeks to provide goods and services to the City, you may not want to keep it. The context within which a gift is offered or the way the acceptance of the gift might be perceived must always be taken into consideration.

ORDINANCE NO. 4108

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LIMITATIONS ON THE ACCEPTANCE OF GIFTS AND AMENDING SECTIONS 3.80.030 AND 3.80.140 OF THE KIRKLAND MUNICIPAL CODE.

WHEREAS, Washington State law limits the receipt of gifts by state officers and state employees; and

WHEREAS, the City Council finds that similar provisions should be included the Kirkland Municipal Code to apply to the officers and employees of the City of Kirkland; and

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 3.80.030 of the Kirkland Municipal Code is hereby amended to read as follows:

3.80.030 Definitions.

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them below:

- (1) "City" means the city of Kirkland.
- (2) "Doctor's certificate" means a form provided by the city and signed by a physician stating that the employee has been ill and is now able to return to work.
- (3) "Employee" means a person occupying a position and who is paid a salary or wage by the city. "Employee" shall not include any person retained by the city under a written personal service or consultant contract or agreement.
- (4) "Holiday" means the days designated as holidays with pay by this chapter.
- (5) "Immediate family" means wife, husband, son, daughter, mother, father, grandmother, grandfather, mother-in-law, father-in-law, domestic partner, brother, sister and other relatives as designated by approval of the city manager.
- (6) "Just cause" means cause, supported by evidence, for disciplinary action against an employee.
- (7) "LEOFF" means the Law Enforcement Officers and Firefighters Retirement System.
- (8) "Members of employee's household" means persons who reside in the same home who have reciprocal and natural or moral duties to and/or do provide support for one another. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.

(9) "Overtime" consists of any work performed by regular full-time or part-time employees required to be compensated as overtime by the Federal Fair Labor Standards Act.

(10) "Probationary employee" means any employee hired for a regular position who has not completed the probationary period.

(11) "Regular full-time employee" means any salaried employee, hired for an indefinite period of time, who works forty or more hours per week on a fixed, regular schedule and is compensated and accrues benefits based on full-time employment.

(12) "Regular part-time employee" means any salaried employee, hired for an indefinite period of time, who works less than forty hours per week on a fixed regular schedule.

(13) "Seasonal employees" means employees hired to work in positions which are cyclic in nature, begin at approximately the same time each year and last for a minimum of three months and a maximum of nine months in any consecutive twelve-month period.

(14) "Temporary employee" means an employee hired for a specific purpose or project and for a specific or definite period of time.

(15) "Uniformed employees" means employees hired as officers of the city's police and fire departments and who are under the LEOFF retirement system.

(16) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the city or with the recipient in connection with city matters;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a city officer or city employee for co-workers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items an official or employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within 30 days of receipt or donated to a charitable organization within 30 days of receipt;

(h) Campaign contributions reported under Chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group;

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(17) "Officer" means all elected and appointed officers of the city, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a city officer.

Section 2. Section 3.80.140 of the Kirkland Municipal Code is hereby repealed and reenacted to read as follows:

3.80.140 Limitations on gifts.

(1) No city officer or city employee may accept gifts, other than those specified in subsection (2) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, corporation, or entity, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under KMC 3.80.030(16). The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) The following items are presumed not to influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a city officer or city employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the city officer's or city employee's official duties;

(g) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;

(h) Unsolicited gifts from dignitaries from another state or a foreign country which are intended to be personal in nature; and

(i) Food and beverages on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2007.

Signed in authentication thereof this _____ day of _____, 2007.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4108

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LIMITATIONS ON THE ACCEPTANCE OF GIFTS AND AMENDING SECTIONS 3.80.030 AND 3.80.140 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Amends Section 3.80.030 of the Kirkland Municipal Code by adding definitions for the words "gift" and "officer".

SECTION 2. Repeals and reenacts KMC 3.80.140 relating to limitations on gifts to make the City's rules on the acceptance of gifts by City personnel parallel the limitations in Washington State law on the receipt of gifts by state officers and employees.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2007.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk