

# INDIAN WELLS CITY COUNCIL

## January 30, 2025



---

**To:** City Council  
**From:** City Attorney  
**Prepared by:** Todd Leishman, Best Best & Krieger LLP, City Attorney  
**Subject:** **Annual Review of FPPC Gift Restrictions, City Ticket Distribution Policy Reporting Requirement and Updates**

### RECOMMENDED ACTIONS:

Council **RECEIVES** and **FILES** information report; and

**FINDS** the action exempt from CEQA review under CEQA Guidelines section 15061(b)(3).

### BACKGROUND:

Resolution No. 2022-36 requires the Council to conduct a review of applicable law and City policies pertaining to (a) the acceptance of gifts and (b) the City's acceptance and distribution of tickets to sports, entertainment, charity, and similar events at the first meeting following the annual Council reorganization.

The City of Indian Wells ("City") and its officials occasionally receive free tickets and passes from outside organizations. Under the Political Reform Act of 1974 (the "PRA") and accompanying Fair Political Practices Commission ("FPPC") Regulations, these tickets and passes can be reportable gifts to the City, or to the officials, depending on the circumstances. The purpose of this memorandum is to guide City officials in determining how to classify and handle the tickets and passes under applicable law.

This memorandum begins with a discussion of how to handle tickets or passes given directly to the official and continues with a discussion of how to handle tickets or passes given to the City itself. It ends with an update on the Levine Act's campaign contribution rules.

## **I. Rules for Tickets or Passes Given Directly to an Official<sup>1</sup>**

### **1. Generally, when tickets or passes are given directly to an official, rather than to the City itself, the official must comply with FPPC regulations on gifts.<sup>2</sup>**

- a. The tickets/passes are subject to disclosure by the official on a Form 700 if the cumulative value is \$50 or more.
- b. Officials cannot accept a gift or gifts from a single source with an aggregate value of \$630 or more in a calendar year
  - i. To effectively refuse acceptance of or return a gift, the official must: (1) refuse the gift, (2) return the gift to the donor, (3) donate the gift, unused, to a 501(c)(3) with which the official or their immediate family holds no position, or to a government agency, without being claimed for tax purposes, or (4) reimburse the donor for the full value of the gift, or a portion thereof, but any unreimbursed portion of the value constitutes a gift. (FPPC Regulations § 18941.)
  - ii. Generally, to relieve an official of an otherwise disqualifying financial interest, the official must take the above actions within 30 days of receipt and before participating in the decision the official has a conflict in. (FPPC Regulations § 18941.)
- c. Any gift or combination of gifts from a single donor valued at \$630 or more received in the 12 months before the governmental decision affecting that donor is made creates a disqualifying conflict of interest under the PRA. (Gov. Code § 87103(e))

### **2. There are special rules for tickets to political or charitable fundraisers given directly to an official.<sup>3</sup>**

- a. Exception 1: 501(c)(3) Organization Fundraiser

---

<sup>1</sup> FPPC Regulations §§ 18940–18946.5

<sup>2</sup> FPPC Regulations §§ 18940, 18940.2

<sup>3</sup> FPPC Regulations § 18946.4

- i. An official may accept two tickets or invitations per event from a 501(c)(3) organization. *The tickets/invitations are deemed to have no value and are therefore not reportable.*
- ii. Additional tickets/invitations provided to or controlled by the official, and any tickets not provided directly by the 501(c)(3) organization to the official are valued as specified below.

b. Exception 2: Political Fundraiser

- i. An official may accept two tickets or invitations per event for a fundraising event from, and by, a political committee (as defined in Section 82013(a) or a comparable committee under federal law or laws of another state) or candidate; *these tickets/invitations are deemed to have no value and are therefore not reportable.*
- ii. Additional tickets/admissions by invitation provided to or controlled by the official and any tickets not directly provided by the committee/candidate to the official are valued as specified below.

c. Tickets to Nonprofit Fundraiser That Do Not Fall Into Above Exceptions

- i. Tickets to events held by nonprofits that do not fall within the above exceptions are gifts with special valuation rules. Such tickets are valued as follows:
  - 1. If the ticket clearly states a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the ticket price that constitutes a donation, the value of the ticket is the nondeductible portion of the admission.
  - 2. If there is no ticket or information provided by the organization indicating the nondeductible portion of the admission, the value of the admission is the official's pro rata share of the cost of food, catering services, entertainment, and any other item provided to the official which is available to all guests attending the event. Any other specific benefit provided to the official at the event (like golf green fees) is valued at fair market value.

### **3. There are also other common exceptions which are not reportable gifts to officials.<sup>4</sup>**

Some common exceptions include:

- a. Gifts given to the City itself, instead of directly to the official, as discussed below.
- b. Gifts returned unused to donor, or reimbursed to the donor, or donated unused, to a 501(c)(3) with which the official or their immediate family holds no position, or to a government agency, without being claimed for tax purposes, within 30 days, per FPPC Regulation 18941.
- c. Gifts from family members.
- d. Equivalent-value gifts exchanged on holidays, birthdays or similar occasions (other than lobbyists).
- e. Reciprocal exchanges in a social relationship between an official and another individual (other than lobbyists), so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official, and so long as the value of any single payment is less than \$630.
- f. Admission to a paid-admission event where the official makes a speech, and the admission is provided by the event organizer.
- g. Tickets to an official and one guest to an event for entertainment, recreational, or similar purpose where the official performs a ceremonial role on behalf of the City. In this situation, the City reports the distribution on FPPC Form 802 as discussed below.

## **II. Rules for Tickets/Passes Given to Directly to the City and Distributed to Officials by the City<sup>5</sup>**

Tickets or passes given directly to the City, which the City distributes to officials, may not be considered gifts to the official and may instead be reportable by the City, depending on the circumstances. The City has a ticket distribution policy ("Ticket Distribution Policy")

---

<sup>4</sup> FPPC Regulations § 18942

<sup>5</sup> FPPC Regulations § 18944.1

governing the distribution of tickets and passes to officials.

The following rules apply to tickets/passes given directly to the City, which the City distributes to officials:

1. Tickets or passes distributed to, or at the behest of, an official of the City are *not considered gifts to an official* under the PRA in the following three situations:
  - a. First: The tickets are distributed and used in accordance with the City's Ticket Distribution Policy, where:
    - i. The distribution serves a public purpose.
    - ii. The distribution is reported by the City on FPPC Form 802 pursuant to the Policy.
    - iii. The ticket or pass is not earmarked by an outside source for use by a specific official; and
    - iv. The City determines in its sole discretion who uses the ticket or pass.
  - b. Second: The public official claims the ticket as income for federal income tax purposes, and the City reports them as taxable income.
  - c. Third: The official reimburses the City for the face value of the ticket within 30 days of receipt.
2. **Ticket Transfers Are Not Allowed.** The official may not transfer tickets or passes distributed to them from the City under the City's Ticket Distribution Policy, except to the official's immediate family or to one guest solely for their attendance at the event
3. **A Public Purpose Is Required.** To avoid a gift to the receiving official, the City's distribution of tickets and passes pursuant to the Ticket Distribution Policy must serve a public purpose of the City.
  - a. These public purposes can be found in the City's Ticket Distribution Policy, which sets forth many specific public purposes served by distribution of tickets.

- b. Distributing a ticket or pass to an official – *other than a member of the City Council, the City Manager, a political appointee, or department head* – for the official’s personal use to support general employee morale, retention, or to reward public service is deemed to serve a public purpose.
    - i. “Personal use” is limited to the official and the official’s family, or no more than one guest.
- 4. **Other Incidental Benefits Are Still Gifts to the Official.** The gift exemption for officials receiving tickets from the City only applies to the benefits an official receives from the ticket or pass (those which are provided to all members of the public with the same class of ticket or pass). Benefits received by an official which are not included with admission, including food, beverages, and other items presented to the official at the event, are likely reportable gifts.
- 5. **City Reporting is Required.** When the Ticket Distribution Policy is used, the City must file a Form 802 with the FPPC within 45 days of distributing tickets or passes pursuant to its Ticket Distribution Policy. Otherwise, the official who received the tickets or passes must consider them a “gift” under FPPC rules and follow the separately applicable gift limit and reporting rules.
  - a. If an official received a ticket or pass for the oversight or inspection of facilities, the official must provide the City with a written inspection report of their findings and recommendations which the City must include with the Form 802.
  - b. If the ticket or pass is distributed to a department or other unit of the City, and is not used by a member of the City Council, the City Manager, any political appointees, or department heads, the City can simply report the name of the department or unit that received the ticket or pass (and the number of tickets/passes provided) instead of reporting the name of the individual employee.
  - c. Form 802s prepared in connection with the ticket policy must be maintained as public records and are subject to inspection and copying by the public.
  - d. The forms must be posted on the City’s website.

### **III. City Campaign Contribution Reporting**

The City has long required Councilmembers to report campaign contributions from donors who have an interest in items before the Council. Now state law requires reporting and recusal in some cases. (See Reso. No. 2022-36, sec. (K)(2); see also Council Policy Manuals prior to 2022.)

Senate Bill 1439 (2022) took effect on January 1, 2023, thereby extending California's Levine Act's conflict and recusal rules to members of the Council. As a result, a Councilmember must recuse herself or himself from any proceeding that involves someone who donated \$500 (increased from \$250 by AB 1243) or more to the Councilmember's campaign at any time during the 12 months before the proceeding.

To comply with SB 1439, please track all contributions to your campaigns after January 1, 2023, keep a list of donors, check your list against the potential stakeholders with an interest in items that come before the Council on future agendas, and be prepared to announce that you received a contribution of \$500 or more from that party or participant (if you did) and to recuse yourself in accordance with state law. Please also stay aware of which parties or participants have items pending before the Council (or who did, within the last three months) and be prepared to reject or return any campaign contribution in excess of the statutory limit.

A copy of a legal alert summarizing recent changes to the Levine Act is attached.

The City's own campaign-contribution reporting requirements remain unchanged. (See Reso. No. 2022-36, sec. (K)(2) ["All all meetings, each Council Member shall report any campaign contribution that the Council Member received from a person who is directly involved in an item on the agenda."].) Please note that this reporting-only policy applies regardless of amount or timing of donation.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

The action is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly; and that the action is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. (14 CCR 15061(b)(3).)

## **ATTACHMENTS:**

1. Resolution No. 2022-36
2. FPPC – Local Gift Fact Sheet
3. Legal Alert re Levine Act Updates