

Item 7a - Staff Memorandum



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TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: January 28, 2022
RE: Draft Citywide Ticket Policy Ordinance

The Public Ethics Commission (PEC or Commission) is considering draft language for a new ordinance to update and codify the City’s policy for the distribution of City tickets, such as tickets to City-sponsored events, events at City facilities or pursuant to City contracts, and events for which tickets are provided to the City for promotional purposes.

Oakland’s existing City Ticket Policy consists of a City Council Resolution that is now outdated in relation to state and local law and that also created problems that the PEC identified in its report, *Ensuring Ethical and Transparent Distribution of City Tickets* in 2017. After publishing its report, the PEC drafted a new City Ticket Policy Resolution for City Council consideration, and staff engaged with City officials regarding both policy and process recommendations made by the Commission. In addition, the California Fair Political Practices Commission (FPPC) amended state regulations in 2019 to address some of the concerns that were raised in the PEC’s report as well as the Alameda County Civil Grand Jury’s report on Alameda County official use of tickets.

Following these discussions and state-level changes, Commission staff now brings a new draft policy in the form of an ordinance to the PEC for approval, for subsequent City Council review and potential adoption. The new ordinance will codify and update Oakland’s City Ticket Policy to both align with state law and ensure local compliance.

Background

Attached is a copy of the PEC’s report from 2017 that provides a description of the problem, discussion of the legal framework of state rules and local policy, a copy of the existing City Council resolution, and the PEC’s recommendations for policy and process improvements. In short, the report explained the significance of a City Ticket Policy that allows for the receipt of tickets by City officials and employees that otherwise may be prohibited by gift rules under the California Political Reform Act. A City Ticket Policy is required by state law if a local entity wants to be able to distribute tickets for public purposes and if local public officials want to be able to receive such tickets, distributed for public purposes, without the tickets triggering gift limits and reporting requirements. The City of Oakland has an existing policy in City Council Resolution 82032; however, that policy was drafted in 2009 and is now out of date with more recent changes made to state regulations by the California FPPC.

The PEC report went on to illustrate numerous practical problems with the disproportional use of tickets (especially high-value tickets) by elected officials claiming to be “reviewing the facilities” as part of their service to the City, as well as the PEC’s concern that tickets to Oakland Coliseum and Oracle Arena events, which are City resources since they are provided to the City as a joint

Item 7a - Staff Memorandum

partner/owner of the facilities, should be delivered directly to the City Administration instead of elected officials.

Commission Staff Education and Outreach

During and following the PEC's review, staff engaged with Councilmembers and their staff to highlight these issues and ensure that they were aware of distribution requirements and state rules, particularly as it relates to tickets that Councilmembers receive from the Oakland Coliseum and Oracle Arena, which is the origin of almost all the tickets that were reported in the City's ticket distribution database at that time. This continued upon the onboarding of newly elected Councilmembers in more recent years, where PEC staff provided education specific to the distribution and use of tickets under state and local rules, as well as the concerns the PEC had with past practices. Following this education campaign, ticket data shows that ticket use shifted significantly, with some Councilmembers distributing more tickets to third parties and some Council members opting out of using or distributing any tickets at all. At least one Councilmember proposed eliminating the practice of the City receiving tickets from the Coliseum and Arena during budget discussions in 2018-19.

Ticket Policy Should Apply Citywide

While the focus of the PEC's report in 2017 was on the distribution of Coliseum and Arena event tickets to Councilmembers and other elected officials, those are not the only tickets that are subject to the state gift rules. Any public servant who is a Form 700 filer is subject to the gift prohibition of \$250 per calendar year from a single source and the requirement that any gift of \$50 or more be disclosed on the public servant's Form 700. Form 700 filers generally include all elected officials, board and commission members, designated staff positions (roughly one-third of city staff who are in decision-making roles), and consultants to the City. When a public servant receives tickets to an event, they should review these gifts rules to determine whether it exceeds the gift limit and whether it must be reported. If the tickets are received by the City and then distributed by a "Ticket Administrator" under the City policy, the tickets are exempt from gift limits and Form 700 reporting requirements and are instead subject to the policy provisions and an alternate reporting process.

New State Regulations

In 2019, the California Fair Political Practices Commission (FPPC) amended state regulations¹ to limit the potential for abuse of agency ticket policies by requiring each agency policy to include a provision prohibiting the disproportionate use of tickets by elected officials and department heads, as well as requiring an official to submit to the agency a written inspection report of findings and recommendations if the public purpose is for oversight or inspection of facilities. The new regulations also clarified the definition of "fair value" where a dollar amount is not specified on the ticket, which is often the case with luxury box or suite tickets.

Conclusion and Proposed Ordinance

The existing City Council Resolution does not include any reference to these newer requirements under state law, such as the prohibition on disproportionate use of City tickets or the method for establishing ticket value if none is indicated on the ticket. Furthermore, the Council Resolution was drafted for the primary purpose of addressing those tickets coming from the Oakland Coliseum and

¹ Title 2, Division 6, Cal. Code of Regulations Sections 18944.1, 18946, 18946.1, and 18942. These regulations can be accessed on the FPPC's website here: <https://www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html>.

Item 7a - Staff Memorandum

Oracle Arena and does not provide a comprehensive City-wide policy that applies broadly to all City departments and all kinds of tickets that may be received and distributed by the City. Lastly, the Council Resolution was adopted in 2009, years before the creation and adoption of the Government Ethics Act in 2014, which provided the PEC with prevention and enforcement jurisdiction over ethics laws, and, specifically, rules regarding gifts and misuse of City resources.

To resolve the above concerns, Commission staff presents the attached draft ordinance to propose to City Council to rescind and supersede the existing Council Resolution and place the policy into an ordinance that provides Citywide guidance and authority. The new policy aims to provide clear instructions for the distribution and use of City tickets, an expanded list of public purposes for which City tickets may be distributed, and updates that align the policy with state rules, including incorporating a prohibition on disproportionate use of City tickets by elected and high-level officials and requiring reporting within 45 days. It also articulates the PEC's prevention and enforcement responsibilities consistent with other ordinances under the Commission's jurisdiction.

Recommended Action

Commission staff recommends the PEC approve the draft proposed ordinance for forwarding to City Council.

Attachment: Public Ethics Commission report, *Ensuring Ethical and Transparent Distribution of City Tickets*, 2017 (this report includes the existing policy, City Council Resolution 82032, in Appendix 1)