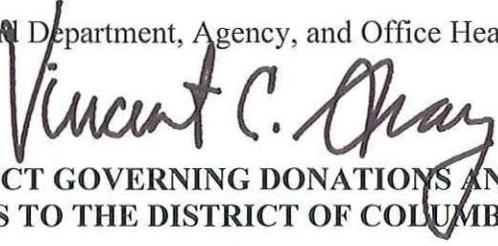


GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Memorandum 2012-3
May 16, 2012

TO: All Deputy Mayors and Department, Agency, and Office Heads

ORIGINATOR: Office of the Mayor 

SUBJECT: **RULES OF CONDUCT GOVERNING DONATIONS AND HONORARY GIFTS TO THE DISTRICT OF COLUMBIA GOVERNMENT**

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(11) (2010 Supp.), and section 115 of the District of Columbia Appropriations Act, 2003, approved February 20, 2003, 117 Stat. 123, Pub. L. 108-7, D.C. Official Code §1-329.01 (2010 Supp.), the following rules of conduct governing donations and honorary gifts to the District of Columbia government ("District government") are hereby issued. The rules of conduct shall apply to all employees of the District government. Any District government employee who does not comply with a rule set forth in this memorandum may be subject to adverse personnel action.

I. GENERAL

- A. As used in this Memorandum "donations" are funds, services, or property given to the District of Columbia government specifically to assist an agency or office to carry out an authorized duty of that agency or office. Donations can come from foreign or domestic sources. "Honorary gifts" are items of an honorary, celebratory, or commemorative nature given to the District government (and generally presented to the Mayor or a District employee) that are not intended to assist with official government business.
- B. Pursuant to section 115 of the District of Columbia Appropriations Act, 2003, approved February 20, 2003, 117 Stat. 123, Pub. L. 108-7, D.C. Official Code § 1-329.01 (2010 Supp.) (the "Donations Approval Act"), Congress has authorized the District to augment its budget through the acceptance and use of donations. Under the Donations Approval Act, the Mayor must approve the acceptance and use of donations of funds, services, and property.
- C. Pursuant to Mayor's Order 2011-170, dated October 5, 2011, the Mayor has delegated his authority under the Donations Approval Act to the Director of the

Office of Partnerships and Grant Services (OPGS). The Director of OPGS may further delegate that authority to subordinates under his jurisdiction.

- D. Each donation to any District Government agency, including independent agencies, must be approved in advance by the Director of OPGS or his or her designee. The only agencies that are exempt from the requirement to receive the approval of the Director of OPGS or his or her designee are the Council of the District of Columbia, the District of Columbia courts, the District of Columbia Public Libraries, and the District of Columbia State Board of Education. Although the District of Columbia State Board of Education is exempt, the District of Columbia Public Schools must receive prior approval from the Director of OPGS and follow the procedures established by this Memorandum.
- E. If a subordinate agency has statutory authority to accept and use donations under a statute other than the Donations Approval Act, the agency must still follow the rules set forth in this Memorandum to meet the requirements of the Donations Approval Act.
- F. In order for a donation to be legally authorized, the following requirements must be met:
 - 1. The solicitation (if any), acceptance, and use of the donation must be approved by the Director of OPGS or his or her designee;
 - 2. The donation must be used for an authorized function or duty of the District government and the agency receiving the donation; and
 - 3. Use of the donation must be accounted for through record-keeping that is auditable and accessible for public inspection as directed by the Director of OPGS and the Office of the Chief Financial Officer.
- G. The Director of OPGS is the only official who, on behalf of the Mayor, may approve the solicitation or acceptance of donations to the District government, unless that authority has been delegated specifically and directly from the Director of OPGS.
- H. Donations may come from individuals, organizations, foundations, corporations, businesses, associations, governments, and other entities and may be in the form of negotiable instruments, such as checks, money orders, and securities, and in-kind items such as real property (land and improvements), facilities, personal property, and services. Cash donations are prohibited.
- I. There are three steps required for the legal donation of goods, services, or property to the District of Columbia.

1. A District agency must submit to the Director of OPGS an application to solicit or accept a donation;
 2. The Office of the Attorney General ("OAG") must review the submitted application and certify its legal sufficiency;
 3. The District agency and the donor must enter into a donation agreement approved by the Director of OPGS.
- J. Each agency Director must delegate a Donations Point of Contact who will be responsible for attending donation trainings as required by the Director of OPGS.

II. APPLICATION TO SOLICIT DONATIONS

- A. Except as set forth in Section II. C., before an agency solicits a donation for the District government, the solicitation must be approved on a form prescribed by the Director of OPGS.
- B. The form shall include:
1. A description of the purpose for which the donation is sought;
 2. A certification that:
 - a. The donation will be used by an agency of the District government to fulfill an authorized function or duty;
 - b. The donation is directly related to, and will be expended solely for, programs or purposes described in the form;
 - c. The donation is consistent with applicable laws and policies; and
 3. A description of the effect (if any) of the donation on future budgets of the District government.
- C. Donations made online through the Mayor's Fund to Advance Washington D.C. must be processed on a form prescribed by the Director of OPGS.
1. The form shall include:
 - a. A description of the purpose of the donation;
 - b. A certification that:

- i. The donor does not have any pending matters before the District of Columbia Government that could present a conflict of interest;
 - ii. The donor is not seeking special treatment from the District of Columbia Government;
 - iii. The donor agrees that the donation is bona fide and he/she will not receive anything in return.
2. The value of individual proposals made online through the Mayor's Fund to Advance Washington D.C. must not exceed \$500.00 per donation and must not exceed \$2,000.00 per quarter. Individual proposals exceeding \$500.00 will be subject to the regular donations application process and will be individually reviewed and approved by the Director of OPGS.

III. ACCEPTANCE OF DONATIONS

- A. Acceptance of a donation to the District government must also be approved on a form prescribed by the Director of OPGS (which may be the same form as described above). A written donation agreement between the donor and the agency must be attached to the form.
- B. The donation agreement must be signed by authorized representatives of both the donor and the District government and include:
 1. A description of the donation;
 2. A statement of the planned use of the donation and any conditions placed on its use by the donor;
 3. A statement of the authority for the agency's use of the donation; and
 4. A statement by the donor that the donation is a *bona fide* donation such that the donor does not expect any special treatment from the District government as a result of the donation.
- C. A donation of funds may be accepted only if it is in the form prescribed in section I.H, and made payable to the order of, or endorsed to, the District of Columbia Treasurer. Donation of funds may only be accepted by the Director of OPGS and shall be forwarded immediately to the Office of the Chief Financial Officer. All monetary donations must be deposited in an appropriate account and maintained and disbursed under the same standards of accountability and the same safeguards as monies appropriated by Congress.

- D. A non-monetary donation may be received directly by an agency after the donation agreement has been approved by the Director of OPGS. The agency must account for an asset under the same standards and procedures used to account for other similar government property.

IV. REASONS TO DISAPPROVE SOLICITATION OR ACCEPTANCE OF DONATIONS

- A. The Director of OPGS shall disapprove the solicitation or acceptance of a donation if any of the following circumstances applies:
1. It appears that the donation is being offered with the expectation of obtaining advantage or preference in dealing with the District government or any of its agencies;
 2. Acceptance of the donation would create an apparent or actual conflict of interest for the recipient agency or entity to which authority to solicit or accept donations has been delegated. A conflict of interest may be waived for good cause shown if, in its sole discretion, the waiver is deemed appropriate by OAG. Good cause may be found to exist whenever OAG concludes that: i) the conflict is so remote or inconsequential that acceptance of the donation would not be deemed likely to affect the integrity of the government; and ii) the donation would be sufficiently helpful and important to the District that it would outweigh the risk of harm that might be caused by the conflicting interest. In granting such a waiver, OAG may include one or more provisions in a donation agreement intended to mitigate the effects, perceived or otherwise, of any conflict.
 3. The conditions placed on a donation are inconsistent with the authorized purposes, policies, or plans of the District government;
 4. The intended use of the donation is inconsistent with or otherwise seeks to circumvent laws, regulations, or policies;
 5. The donation is not in compliance with 18 U.S.C. § 209 (supplementation of salary);
 6. The acceptance of the donation will be used by the donor to state or imply the endorsement by the District government of a product, service, or entity; or
 7. The donation reasonably may be viewed as funding for a political activity.
- B. A donation from an organization in which a District government employee is an officer or director (including an *ex officio* director) or is otherwise engaged in a leadership or coordinating role may be accepted only if the donation has been

approved by the OAG. The requirement to receive the approval of the OAG is in addition to the other requirements and standards established by this Memorandum.

- C. Discretionary reasons to disapprove:
 - 1. The donated item is not in usable condition;
 - 2. Restoration of the donated item will create unreasonable cost to the District government.

V. FOREIGN/INTERNATIONAL DONATIONS

- A. No employee, except the Secretary of the District Columbia, the Mayor, or an employee authorized in advance by Secretary or the Mayor, may solicit, request, or encourage a gift, donation, or award from a foreign government, any unit of a foreign governmental authority, any international or multinational organization whose membership is composed of members of a foreign government, or any agent or representative of a foreign governmental organization, including, but not limited to, an embassy or affiliated organization, and organization based outside the United States ("foreign source").
- B. Gifts or awards of more than the minimal value established by the General Services Administration pursuant to 5 U.S.C. § 7342 presented to any employee from a foreign source must be presented to the Secretary of the District of Columbia for review and determination as to their disposition. Such gifts and awards are deemed to be gifts to the District of Columbia government.
- C. Any offer to an employee for a donation of travel or travel expenses for travel primarily taking place outside of the United States must be submitted to the Secretary of the District of Columbia by the Director of the employing agency for review and determination as to whether the gift is appropriate and consistent with the interests of the District government, permitted by the employing agency and consistent with the District of Columbia Municipal Regulations and appropriate statutes. The requirement to submit international travel requests to the Secretary of the District of Columbia is in addition to the other requirements and standards established by law, regulation, and this Memorandum. If a travel donation receives initial approval from the Secretary of the District of Columbia, an application to accept a travel donation must be submitted to the Director of OPGS and approved by the ethics counselor.
- D. A donation offered by a foreign source shall be coordinated with the Secretary of the District of Columbia. The requirement to coordinate with the Secretary of the District of Columbia is in addition to the other requirements and standards established by this Memorandum. Such a donation must receive initial approval

from the Secretary of the District of Columbia before the agency submits an application to solicit or accept a donation to the Director of OPGS.

VI. HONORARY GIFTS

- A. Gifts of an honorary, celebratory, or commemorative nature presented to the Mayor, or to the Mayor's staff in lieu of the Mayor, shall be considered donations to the District of Columbia appropriately accepted under the Donations Act. Such honorary gifts shall be promptly given to the Office of the Secretary along with an attached notation of who presented the gift and the date it was presented.
- B. Honorary gifts presented to any other employee from a foreign source shall be governed by the procedure established by the second paragraph of Section V. Honorary gifts presented to any other employee from a source other than a foreign source shall be promptly given to the Office of the Secretary with a notation of who presented the gift and the date it was presented.
- C. The Secretary of the District of Columbia shall record a physical description of each honorary gift, the date on which it was received, the donor, and any other information which is deemed to merit inclusion. The Secretary of the District of Columbia shall maintain a list of honorary gifts.

VII. DISPLAY AND DISBURSAL

- A. An honorary gift deemed by the Secretary to be worthy of public display may be displayed in a suitable location in a District-owned or District-leased building or in other appropriate public space. An honorary gift that is not on public display shall be appropriately stored until at least thirty (30) days have elapsed since the day the honorary gift was received.
- B. After thirty (30) days, an honorary gift deemed appropriate by the Secretary for use by a charitable organization operating in the District of Columbia may be granted to such organization to aid in the carrying out of the charitable organization's purposes.
- C. An honorary gift to the District government shall not be sold or auctioned by the District government, nor may an honorary gift be granted, given, or sold to an employee of the District government for personal use, or used by a District government employee outside of that employee's official duties and functions, unless approved in writing by the Secretary.

VIII. ETHICAL CONDUCT

- A. Failure of a District government employee to follow a provision contained in this Memorandum may be considered, at a minimum, as evidence of an official decision outside official channels in violation of the District government's

standards of conduct (*see* 6 DCMR B1803.1(a)(5)) and may subject the employee to adverse personnel action.

- B. An employee may not use his or her official title, position, or any authority associated with public office to solicit funds for a non-District government organization (such as a nonprofit organization) or otherwise further a donation to the non-District government organization, even if the organization subsequently donates the funds to the District government. (*See* 6 DCMR B1803.1(a) and 6 DCMR B1804.1(e)).
- C. An employee who, without delegated authority, solicits funds for the District government from a non-District government entity that interacts with the District government or is regulated by it, may be subject to adverse personnel action based on a finding that the employee violated the standard of conduct which prohibits a government employee from seeking, either directly or through the intercession of others, a gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with another:
 - 1. Has, or is seeking to obtain, contractual or other business or financial relations with the District government;
 - 2. Conducts operations or activities regulated by the District government; or
 - 3. Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities. (*See* 6 DCMR B1803.2.)
- D. The failure of a District government employee to follow the requirements of this Memorandum may be considered to adversely affect the confidence of the public in the integrity of government (*see* 6 DCMR B1803.1(a)(6)) and may subject the employee to adverse personnel action.
- E. The use of a donation by a District government employee in a manner inconsistent with this Memorandum may be a violation of either or both the District and Federal Anti-Deficiency Acts and may subject the employee to adverse personnel and criminal prosecution.
- F. Under the provisions of the Hatch Act, 5 U.S.C. § 7321 *et seq.* and D.C. Official Code §1-1106.51 (2010 Supp.), no employee may solicit funds for a political campaign for any office, either on duty or off duty.

IX. RECOGNITION OF DONORS

- A. Donors may be recognized for their donations through letters of acceptance and appreciation, press releases, certificates, and other items that commemorate the donation.

- B. Recognition of corporate donations must not give the impression of advertising or commercialization. At the discretion of the Director of OPGS, a short, discreet, unobtrusive donor credit line may be used as recognition, but no product names or logos may be used.

X. RESCISSION

This memorandum rescinds and replaces Mayor's Memorandum 2010-2, dated October 15, 2010.

XI. EFFECTIVE DATE

This Memorandum shall become effective immediately.