

RESOLUTION NO. 2351

A RESOLUTION ADOPTING A GIFT ACCEPTANCE POLICY FOR THE CITY OF WILSONVILLE.

WHEREAS, the City of Wilsonville appreciates current and deferred gifts from individuals, corporations, and foundations for future municipal growth and enhancements of current services and facilities; and

WHEREAS, the City of Wilsonville has previously adopted a gift acceptance policy for the Library which has provided a basis for this City-wide policy and the Library gift acceptance policy is intended to remain in effect as part of the City-wide policy; and

WHEREAS, accepting certain types of gifts may be inconsistent with the City's policies and mission due to the nature of the gift, administrative costs, or ethical considerations; and

WHEREAS, a City-wide policy will be useful in determining which gifts will best further municipal growth and service and facility enhancement.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council hereby incorporates all of findings in the recitals set out above.
2. The City Council adopts the City of Wilsonville Gift Acceptance Policy, Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.
3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16th day of April, 2012, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp - Yes

Council President Núñez - Yes

Councilor Hurst -Excused

Councilor Goddard - Yes

Councilor Starr - Yes

Attachments: Exhibit A - City of Wilsonville Gift Acceptance Policy

City of Wilsonville
Gift Acceptance Policy

The City of Wilsonville, Oregon, a municipal corporation organized under the laws of the State of Oregon, encourages gifts to the City for any purpose that will assist Wilsonville in providing a high level of service to its residents and encourage community growth. The following policies and guidelines govern acceptance of gifts made to the City or for the benefit of any of its programs, projects, or services.

I. Purpose

The City of Wilsonville appreciates current and deferred gifts from individuals, corporations, and foundations for future municipal growth and enhancement of current services and facilities. This policy and the guidelines it establishes shall govern the acceptance of gifts by the City and provide guidance to prospective donors and their advisors when making gifts to the City. The provisions of these policies shall apply to all gifts received by the City for any of its programs, projects, or services unless otherwise designated by the City Code or City Manager or preempted by State or Federal law. Provided, however, the Library gift acceptance policy is to remain in effect for the Library as part of this policy. Gifts shall be utilized by the City in accordance with the policies and guidelines and in accordance with the Fiscal Management Policies of the City.

II. Use of Legal Counsel

The City Manager, or designee, shall seek the advice of the City Attorney in matters relating to acceptance of gifts when appropriate. If deemed appropriate given the nature, size, or scope of the gift, the City may seek to consult specialized advice. Review should be sought for all gifts involving:

- a. Transfers subject to state law or contract restrictions—e.g. buy-sell agreements
- b. Gifts involving contracts or other documents requiring the City to assume an obligation
- c. Transactions with a potential conflict of interest
- d. Other instances in which the use of counsel or other specialized advice is deemed appropriate

III. Review by City Manager

Gifts made to the City shall be reviewed by the City Manager or designee, which in the case of the Library is the Library Director. The gift review process is intended to properly screen and accept gifts that are appropriate to the City's general mission of providing quality services and

community growth. The City Manager, or designee, shall request the review of the City Attorney or other appropriate professional to assist in the review of a gift when appropriate.

Gifts will be accepted only if they are consistent with the City's municipal purpose, Wilsonville Code, and state and federal law. Gifts deemed too restrictive in purpose, gifts which are difficult to administer, or which violate these guidelines, or which do not fulfill a municipal purpose cannot be accepted by the City.

When a gift is accepted, the City Manager, on behalf of the City, shall notify the donor and acknowledge receipt of the gift within ten days of acceptance. If appropriate, the City Manager may also issue a press release acknowledging receipt of the gift with any details deemed appropriate. The City will accept anonymous gifts.

IV. Types of Gifts

The following types of property will be considered for acceptance:

- a. Cash
- b. Tangible personal property
- c. Securities
- d. Real property
- e. Remainder interests in real property
- f. Life insurance
- g. Life insurance beneficiary designation
- h. Retirement plan beneficiary designation
- i. Bequests of any of the above property

It is highly recommended that the donor meet with City officials to discuss the gift, to review this policy, and to disclose any restriction or conditions upon the gift proposed by the donor.

V. Review Criteria

The following criteria govern the acceptance of each gift:

- a. **Cash:** Cash is acceptable in any form so long as there are no conflicts of interest as described below. Checks shall be made payable to the City of Wilsonville.
- b. **Tangible personal property:** Acceptance of gifts of tangible personal property shall be considered in light of the following criteria:

1. Does the property further an identifiable mission of the City?

2. Is the property marketable?
3. Are there restrictions on the use, display, or sale of the property?
4. Are there any carrying costs for the property?
5. Notwithstanding the above, would it be in the interest of the City to accept the gift?

The final determination on the acceptance of tangible property gifts shall be made by the City Manager, or designee, in his or her discretion based on the overall impact of the gift on the City. If the City intends to convert the property to cash upon receipt, the donor will be informed before the gift is finalized.

- c. **Securities:** The City may accept publicly traded securities as may be allowed under law. Marketable securities may be transferred to an account maintained at a bank or brokerage firm or delivered to the City with the Transferor's signature or stock power attached. As a general rule, all marketable securities shall be sold upon receipt unless otherwise directed by the City Manager in accordance with law. If a marketable security is restricted by applicable securities laws, the final determination of acceptance rests with the City Manager, or designee.

Close held and non-marketable securities will not be accepted by the City.

- d. **Real estate:** Gifts of real estate may include developed property, undeveloped property, or gifts subject to life interests. Prior to the acceptance of real estate, the City shall require an initial environmental review of the property to ensure that the property has no environmental damage and does not require remediation. Environmental inspection forms are attached as an appendix to this document. In the event that the initial inspection reveals a potential problem, the City shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall be an expense of the donor unless the City determines circumstances warrants it should be at the City's expense.

If real estate is not subject to environmental damage, it will be considered for acceptance. In deciding whether to accept real estate, the City Manager, or designee, shall consider:

1. Does the City have a use for the parcel(s) of property?
2. Is the property marketable?
3. Are there any restrictions, reservations, easements, or other encumbrances or limitations associated with the use or sale of the property?
4. Are there carrying costs associated with the property such as insurance, stewardship fees, mortgages, or other liens?

- e. **Remainder interests in real property:** The City will accept a remainder interest in real estate subject to the provisions of subsection d above. The donor or other occupants may occupy the real property for the duration of the stated life estate. At the death of the life estate holder(s), the City may use the property or sell it.

The City will not accept a gift of a remainder interest in real property unless the expenses of maintenance, repair, real estate taxes, reconstruction, property indebtedness, insurance, liens, and other related expenses shall be paid by the donor or life estate tenants. If the City determines that the fair market value exceeds any outstanding expenses and the public interest is better served by accepting, the City may accept a gift of such a remainder interest.

- f. **Life insurance:** The City must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy will be accepted as a gift. If the donor does not continue to pay the policy premium the City will either 1) convert the policy to paid-up insurance, or 2) surrender the policy for its cash surrender value.
- g. **Life insurance beneficiary designations:** Donors and supporters of the City are encouraged to name the City of Wilsonville as the beneficiary or contingent beneficiary of their life insurance policies.
- h. **Retirement plan beneficiary designations:** Donors and supporters of the City are encouraged to name the City of Wilsonville as beneficiary of their retirement plans.
- i. **Bequests:** Donors and supporters of the City of Wilsonville are encouraged to make bequests of property otherwise acceptable hereunder to the City of Wilsonville in their wills and trusts. Donors are strongly encouraged to discuss potential bequests with the City before making them. If the City is unable to accept the bequest because it will conflict with these policies and guidelines the City will disclaim its interest in the bequest.

VI. Valuation, outside expense, and IRS requirements

The City requires that the donor secure and pay for an appraisal if required. The donor will have sole responsibility of establishing value for income, gift, and/or estate tax purposes. The City is not qualified to appraise, value, or otherwise identify or catalog gifts and does not hold itself out to be so qualified.

The City will complete and file IRS Form 8282 upon the sale or disposition of any asset sold within two years of receipt by the City when the charitable deduction value of the item was more than \$5,000. This form will be filed within 125 days of the date of sale or disposition of the asset in compliance with IRS regulations.

VII. Acceptance or rejection

Once the City Manager, or designee, has determined whether to accept a gift, a letter will be sent to the donor notifying him or her of the decision and, if the gift must be rejected, containing a brief explanation of the City's reason for rejection.

VIII. Conflict of Interest

The City will urge all prospective donors to seek the assistance of personal, legal, and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences. The City will comply with all provisions of ORS 244.010 through 244.400 prohibiting gifts of more than \$50 per donee to council members, officers, and employees of the City as individuals.

The City will not engage in quid-pro-quo exchanges with donors whereby the donor is given a benefit because of their donation to the City when the benefit would not otherwise be available to them. The City will consider all the facts and circumstances surrounding any donation to determine whether there is the appearance of an improper quid-pro-quo exchange between the City and the donor. The City may reject any gift if there is the appearance of an improper quid-pro-quo exchange.

IX. Changes to the gift acceptance policy

These policies and guidelines shall be reviewed and amended as needed to reflect the City's overall goals of providing quality services to residents and encouraging community growth.

MEMORANDUM

To: Michael Kohlhoff, City Attorney
From: Melanie Rose, Legal Intern
Date: March 5, 2012
Re: Gift Acceptance Policy

I. Background Information

The City of Wilsonville appreciates current and deferred gifts from individuals, corporations, and foundations for future municipal growth and enhancement of current services and facilities. While the City appreciates gifts, it currently has no formal policy in place for accepting gifts. Recently, a Wilsonville citizen requested acknowledgement of his gift of a painting. The painting was hanging on the lower level of City Hall, but no one in City Hall could remember ever receiving the gift and no one approved acceptance of the gift. In making the decision to accept gifts, there are additional considerations to bear in mind such as whether the type of gift is beneficial, what administrative considerations should be taken into account, and what ethical considerations should also be taken into account. These areas are discussed below.

II. Issue

1. What should the City's Gift Acceptance Policy be?
2. What gifts should be accepted? Who will have the authority to decide what should be accepted? What ethical considerations need to be addressed in formulating a gift acceptance policy?

III. Conclusions

A draft Gift Acceptance Policy is attached following this memo.

IV. Library Policy

In September 2011, the Wilsonville Public Library Board adopted a Gift Acceptance Policy which establishes how and when gifts to the Library Foundation shall be accepted. The Policy breaks gifts into various categories and then describes how each category of gift will be considered and the conditions of acceptance. The Library Foundation's policy has provided a starting point for many of the provisions of the attached City-wide policy.

V. Types of gifts

The City should consider having different acceptance standards for different categories of gift based on the level of administration that would be required by the City. Categories of gifts could include:

- 1) Gifts of cash: unrestricted gifts of cash to the City are the most useful gifts the City can receive. Gifts of cash allow the City to apply the donation where the City needs it most and pose almost no administrative burden on City staff. Assuming there are no ethical conflicts, gifts of cash should be accepted (see Ethical Considerations below.)
- 2) Gifts of marketable securities: marketable securities are almost as useful as cash donations because they can easily be converted to cash. However, there are a few dangers to the donor related to timing of the gift. If the donor makes the gift at the wrong time, they may be subject to capital gains tax even after they no longer own the stock. Because the timing risks fall on the donor and not the City, the City should accept gifts of marketable securities but encourage all donors to seek the advice of their accountant/financial advisor before making the transfer.
- 3) Gifts of tangible personal property: tangible personal property includes art, furniture, antiques, collections, jewelry, equipment, cars, boats, clothing, and any other property items owned by the donor. There are several issues that must be kept in mind when considering accepting cash gifts. The donor will get a tax deduction for making a gift to the City. If the City will use the gift—that is, if it puts the gift to a use related to the City's operations or mission—the donor will be allowed a tax deduction of the fair market value of the item. Gifts that are sold or otherwise disposed of after receipt are considered to be unrelated use items. Donors of gifts that are not put to a related use receive a limited tax deduction and may only deduct their basis in the gift.
- 4) Gifts of closely held securities: closely held securities are not broadly or publicly traded and can include debt or equity interests in C and S corporations, LLCs, and LLPs. Lack of marketability can make it extremely difficult to turn closely held securities into cash. Also, closely held securities may be subject to restrictions that marketable securities are not such as buy-sell agreements. The City should not consider accepting closely held securities because they cannot readily be converted to cash and are unlikely to benefit the City.
- 5) Gifts of real property: gifts of real property can be extremely valuable, but the City must be weary of potential Comprehensive Environmental Response, Compensation, and

Liability Act (CERCLA) issues as well as potential problems with disposal of the property.

CERCLA creates a liability structure that can hold parties in the "chain of title" responsible for the clean-up of an environmentally damaged property. Liability exists without regard to the actual knowledge of the owner or the participation of the owner in the damage to the property. Costs for removal of hazardous material and cleanup of soil and groundwater can easily exceed the value of the property. If the City wishes to consider gifts of real property, it should first provide that the owner undergo an environmental inspection to determine whether CERCLA liabilities may exist. A sample environmental inspection form is attached.

Other practical concerns for accepting real property involve the marketability of the property. If the property is not useful to the City, the City will likely want to convert it to cash. Also, the property may be subject to restrictions, reservations, easements, or other limitations that make it difficult to sell. Finally, the City may be subjecting itself to carrying costs such as insurance, mortgages, notes, etc. that are associated with the property. All of these factors should be weighed against the benefit to the City before the City decides to accept real property.

The City's current Land Acquisition Policy requires that all land acquisitions must ultimately be approved by the City Council. Whether staff may be able to project a Council hearing date, donors should be made aware that they may not receive an immediate decision from the City regarding the acceptance or rejection of their gift. The protracted time line for final decisions may impact the donor's decision to give.

- 6) Gifts of remainder interests: the City may never know that it is the beneficiary of a remainder interests until the donor has already passed away. In these cases, the City should evaluate the gift based on the categories above. If it is determined that it is not in the best interest of the City to accept the gift, the City should disclaim its interest in the gift.

If a donor approaches the City about establishing a gift of a remainder interest, aside from the considerations above the City should be sure to agree with the donor that the City does not bear any of the economic responsibilities for the property during the life interest.

- 7) Gifts of life insurance: If the City accepts gifts of life insurance policies, it should require that the donor designate the City as the beneficiary and irrevocable owner of the policy. If the policy is a term or whole life policy on which premium payments are due, the City should require that the donor continue to pay the premiums. If the donor does not continue to pay premiums the City should either convert the policy to a paid-up policy or exchange the policy for its cash surrender value.
- 8) Charitable gift annuities, trustee appointments, and pooled income funds: these forms of gifts are common in private non-profit development programs but are inappropriate for the City. These forms of gifts involve complex planning and oversight and the burden of administering these gifts would be high to the City. Also, these gift forms may place the

City in the position of a fiduciary which would add an extra level of legal responsibility that would further increase administrative costs.

- 9) Beneficiary designations on retirement plans or life insurance policies: these gifts can result in lump-sum cash distributions or a stream of cash distributions and have very few administrative burdens associated with them. As with remainder interests, the City may not even know that it has been named a beneficiary since these designations do not require the approval or acceptance of the City.
- 10) Restricted gifts: donors may wish to place restrictions on the use of gifts made to the City. Certain restrictions may be reasonable—e.g. a cash donation specifically for the improvement of bicycle and pedestrian facilities—while others may be overly burdensome. The City should consider restrictions that a donor wishes to place on a gift as a factor in determining whether to accept the gift.

VI. Administrative Considerations

There are many costs that are potentially associated with accepting gifts of property other than cash. One big one, as discussed above, is an environmental investigation of real property to ensure there is no potential CERCLA liability. Other frequently encountered expenses are appraisals and legal or professional fees.

Gifts of value greater than \$5,000 must be professionally appraised for the donor to be able to take the full income tax deduction. The gift policy should make it clear that the donor is responsible for having property appraised before it is donated to the City. The City should specify that it is not qualified to appraise property and will not offer advice as to the value of property.

In determining whether or not to make a gift of property other than cash, the donor should seek the advice of a professional financial advisor. The gift policy should make it clear that even though the City encourages the donor to seek professional advice, all costs will be borne by the donor. The City should also make it clear that it is not qualified to provide and will not provide financial planning advice to donors.

VI. Ethical Considerations

Chapter 244 of the ORS governs government ethics. The Chapter applies to individual government officers, not to a government entity itself. The Chapter makes it illegal for government officers to accept gifts beyond a de minimis \$50 ceiling and requires government officers to declare any existing or potential conflicts of interest between themselves and City business.

While Chapter 244 does not apply to government entities as an entity, there could still be an appearance of impropriety if a business, or the owner of a business, gives a gift to the City and

then later is chosen to contract with the City. In determining whether to accept a gift, the City should always consider the possible appearance of a quid-pro-quo exchange. If it appears as though a gift is being given to extract some improper benefit to the donor the gift should be rejected. It is possible that the IRS could reclassify a gift has the appearance of a quid-pro-quo exchange as payment for goods or services. This would result in taxable income. The City should only accept gifts made from the donor's "detached and disinterested generosity"—the IRS standard for determining if a transfer is truly a gift.

VII. Sample Policy

The following pages are a sample Gift Acceptance Policy for the City which attempts to balance all of the considerations discussed above.