



Subject/Title
Gifts and Favors

Date Effective
December 15, 2010

Revision Date Effective

Code Number
HR 12

W. Curtis Wakefield Jr.

City Manager

Human Resources

Responsible Key Business

Objective:

The proper operation of government requires that public employees be independent, impartial, and responsible to the people, and that public positions not be used for personal gain. This policy establishes that no employee shall engage in any transaction which is incompatible with the proper discharge of his or her official duties in the public interest or would tend to impair independent judgment or action in the performance of official duties.

All employees should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, they will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding their action would conclude that the action was inappropriate.

Policy:

1. A gift means anything of economic value, including but not limited to money, discount, promise, favor, special privilege, service, or other property of any kind, except salary and other payment as authorized by appropriate City officials. This does not include food/lodging/travel/events attended in an employee's official capacity, or gifts from family members or friends where it is clear that it is that relationship which is the motivating factor for the gift.
 - A. No City employee shall allow a gift to influence the performance or nonperformance of his or her official duties.
 - B. Pursuant to North Carolina General Statute §14-234(a)(3), no City employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the City. Violation of this statute may result in a Class 1 misdemeanor.
 - C. No City employee shall directly or indirectly solicit or accept any gift with a value of more than fifty dollars (\$50.00) when the exchange is related to his or her job.
 - D. Some City employees are further restricted by North Carolina General Statute §133-32, which regulates gifts and favors in contracts for public works. A copy of that statute is attached.
2. Each Key Business Executive is authorized to adopt a separate administrative policy applying to that Key Business Unit that is more restrictive than this policy. Employees

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should seek advice from their Key Business Unit when in doubt about the policy or when a situation arises that may be a conflict of interest.

3. The Mayor and Members of City Council are governed by the Code of Ethics for the Mayor and City Council of the City of Charlotte, North Carolina, adopted May 24, 2010.
4. Each Key Business Executive is responsible for assuring that all employees in the department are aware of this policy.
5. Violations of this policy will be considered under the City policy governing employee misconduct, and appropriate action will be taken against the employee, up to and including termination.

FORMER POLICY AND CODE OF ETHICS REPEALED

Administrative Policy HR 12, dated May 5, 1999 and signed by the City Manager, entitled “Gifts and Favors” is hereby repealed.

ATTACHMENTS

- North Carolina General Statute §133-32
- For illustrative purposes, below is an Interpretive Application of the Gifts & Favors Policy, which contains examples of how the policy would apply in some situations.

INTERPRETIVE APPLICATION OF GIFTS & FAVORS

As stated above in the “Objective” portion of this policy, in each instance an employee must evaluate all relevant facts and circumstances to first determine if the action is inappropriate, even if the amount of the gift/favor is less than \$50.00.

Example 1

Vendor offers to take employee to a Panthers game and out to dinner. The value of the ticket is under \$50.00, and the value of the dinner is under \$50.00, but the value of the ticket and dinner together exceeds \$50.00.

Application of Policy

Employee may accept either the ticket or the dinner, but not both. Employee must pay for either the ticket or the dinner. Employee may not simply pay the difference between the total value of the ticket plus dinner and \$50.00. No matter what the value of the gift, employee may not allow a gift to influence the performance or nonperformance of his/her other job duties.

Example 2

Vendor offers employee a ticket to the Panthers game, and the face value of the ticket is over \$50.00.

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Employee must pay for the ticket in its entirety or decline the offer. Employee may not simply pay the difference in the ticket price and \$50.00.

Example 3

Vendor offers Employee Panthers ticket that has two prices written on the ticket - one price is a ticket price of \$60.00, and the other is an “amenities” price, which also exceeds \$50.00.

Application of Policy

Employee must pay the ticket price of \$60.00 for the ticket. Employee cannot pay \$10.00, which is the value of the ticket less \$50.00. Employee does not have to pay amenities price (this application is based on the City Attorney’s interpretation of North Carolina General Statute §14-344, which governs the sale of event tickets).

Example 4

Employee is asked to attend a conference and give a speech regarding an area of expertise related to her City job. The conference coordinator has offered to pay for all of Employee’s expenses at the conference, including musical entertainment in the evening which is set up as part of the conference, but costs conference attendees \$55.00 to attend.

Application of Policy

Because Employee is attending the conference in her official capacity, Employee may accept all of the expenses, including the musical entertainment. Whatever the City would reimburse under its business travel guidelines can be accepted and, in addition, employee may accept the musical entertainment because it is part of the conference package that she is attending in her official capacity as a City employee.

Example 5

Employee is asked to attend a conference and give a speech regarding an area of expertise related to his City job. While at the conference, Employee is invited by the conference sponsor to go to the local country club and play a round of golf.

Application of Policy

Employee must pay for the round of golf if it is over \$50.00. The golf would not be reimbursed by the City under its travel expense guidelines, and the golf is not part of the conference package.

Example 6

Vendor invites Employee to an all day seminar in Charlotte. The seminar is informative about the area of employee’s work and there is no cost associated with the seminar. A buffet lunch is included in the seminar and is offered to all seminar attendees.

Application of Policy

Employee may accept the lunch, no matter what the cost of the buffet. The City employee was asked to attend the lunch as part of his or her City employment - in employee’s official capacity. Because the lunch is provided as part of the “event” of the seminar, the lunch is not considered a “gift” under the Policy’s definition.

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Example 7

After a meeting at an uptown office, vendor invites Employee for lunch at the City Club.

Application of Policy

Employee may accept the lunch only if the value of the lunch is \$50.00 or less.

Example 8

Employee has been trying to get onto vendor's meeting calendar for several weeks and has been unable to do so. Vendor calls one afternoon and suggests that vendor and Employee meet at an expensive restaurant for dinner and, at that time, they can discuss Employee's issues. Vendor will pay for the meal. All meals at that restaurant are over \$50.00.

Application of Policy

Employee may not accept the meal.

Example 9

Employee goes to the paint supply store and orders paint for personal use. The store owner offers to discount the paint by 40%, which is the discount that the paint supply store gives to the City as a government agency.

Application of Policy

If the discount is offered to all City employees, then Employee may accept the discount regardless of value because the discount is likely part of a marketing effort and not likely to be offered because of or related to Employee's job duties. If the discount is only offered to City employees on the City's maintenance team, it appears that the offer is related to the employees' job duties and Employee could accept the discount only if the value of the discount does not exceed \$50.00. Even then, Employee may not allow the discount to affect the performance of his/her job.

Example 10

Employee is invited to attend the annual dinner of a non-profit community group (such as the Chamber of Commerce, Charlotte Trolley, Inc., or Northwest Corridor Community Development Corp.) with which Employee regularly interacts as part of his City employment. The invitation is to attend free, as the "guest" of the sponsoring organization, but the ticket price for others is \$65.00.

Application of Policy

Employee may accept the ticket and attend the dinner. Employee was asked to attend in his official capacity, and there is no "gift" to the employee.

*** These Policy interpretations do not apply to City employees who are subject to North Carolina General Statute §133-32, which regulates gifts and favors in contracts and procurement for public works contracts.

GENERAL STATUTES OF NORTH CAROLINA
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*** STATUTES CURRENT THROUGH THE 2010 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH JULY 30, 2010 ***

CHAPTER 133. PUBLIC WORKS
ARTICLE 3. REGULATION OF CONTRACTORS FOR PUBLIC WORKS

N.C. Gen. Stat. § 133-32 (2010)

§ 133-32. Gifts and favors regulated

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contract; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent a gift a public servant would be permitted to accept under *G.S. 138A-32*, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift.

HISTORY: 1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c); 2007-348, s. 18.

NOTES: EFFECT OF AMENDMENTS. --Session Laws 2007-348, s. 18, effective December 1, 2007, inserted "a gift a public servant would be permitted to accept under *G.S. 138A-32*" in the first sentence of subsection (d).

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Public Works Contracts