


GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Memorandum 2015-001
August 21, 2015

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) (2014 Repl.), 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 (2014 Repl.), 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 and/or penalties imposed by the Board of Ethics and Government Accountability ("**BEGA**").

I. PURPOSE

The District of Columbia wishes to provide a prompt and transparent process that will facilitate the donation of goods and services to the District of Columbia, while guarding against donations made for an unethical purpose.

II. 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 in carrying out an authorized duty of that agency or office. Donations may 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 (2014 Repl.) (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. Throughout this Memorandum, the Mayor delegates her authority to accept donations under the Donations Approval Act to the General Counsel to the Mayor (“**OGC**”) who may further delegate this authority to subordinates under his or her jurisdiction. In addition, the Mayor delegates to the Director of the Office of Partnerships and Grant Services (“**OPGS**”) the authority to approve donations under the Donations Approval Act, and the Director may further delegate that authority to subordinates under his or her jurisdiction.
- D. Each donation to a District Government agency, including independent agencies, must be approved 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 Library, the District of Columbia Office of Advisory Neighborhood Commissions, 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 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. Except during or as a result of an emergency as described in Section II.J of this Memorandum, the process set forth in Section III of this Memorandum is required for the proper solicitation, acceptance, and use of a donation of goods, services, or property to the District of Columbia.
- G. Except during or as a result of an emergency as described in Section II.J. of this Memorandum, the OGC and Director of OPGS are the only officials who, on behalf of the Mayor, may approve the acceptance of donations to the District government, unless that authority has been delegated specifically and directly from the Director of OPGS or the OGC.
- 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, food, and services. Cash donations are prohibited.

- I. Directors of agencies that seek and receive donations must designate a Donations Point of Contact who will be responsible for attending donation trainings and keeping up with any other information provided by the Director of OPGS. OPGS shall maintain a current list of Donations Points of Contact.
- J. In an emergency affecting the District of Columbia declared by a Mayor's Order or by the President, agency directors and their designees are authorized to accept donations on behalf of the District to respond to, or address the effects of, the emergency. Serve DC is the principal agency in charge of volunteer and donations management in emergencies. All government officials shall make their best efforts to maintain a record of donors and their donations, to retroactively obtain the information and certifications that would have been required under Section III of this Memorandum had an emergency not existed, and to provide this information to OPGS promptly.

III. ACCEPTING AND SOLICITING DONATIONS

- A. Except as otherwise authorized in this Memorandum, before an agency solicits or accepts a donation for the District government, an application must be submitted to OPGS on a form prescribed by the Director of OPGS. The application form shall include:
 1. For requests to solicit donations, a description of the purpose for which the donation is sought as well as a certification from the applicant that the donation sought will be used by an agency to fulfill an authorized function or duty and will be used for the purposes for which it was solicited;
 2. A description of the effect (if any) of the donation on future budgets of the District government;
 3. For approval to accept donations, a certification from the applicant 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;
 4. For approval to accept donation, a certification from the donor that:
 - a. The donor does not have any pending litigation, business, or related matters before the District of Columbia government that could present a conflict of interest;

- b. The donor is not seeking special treatment from the District of Columbia government;
 - c. The donor agrees that the donation is bona fide and un-coerced, and that he or she will not receive anything in return.
- B. Except as provided in Section III.K of this Memorandum, the Mayor's Office of Legal Counsel ("MOLC") must review the submitted application and certify that the donation is consistent with this Memorandum (certification). If the MOLC is the recipient of a donation, the Mayor's Office of General Counsel ("OGC") must review the submitted application and provide the certification.
- C. Except as otherwise authorized in this Memorandum, before an agency directly solicits a donation for the District government, an application must be submitted to OPGS on a form, different than that required in III.A., prescribed by the Director of OPGS. For the purposes of this paragraph, an agency is considered to directly solicit a donation when it directly asks a specific individual or entity for a donation. General fundraising or donation campaigns, and general solicitation letters sent to a variety of recipients, are not considered direct solicitations of donations.
- D. Except as provided in Section III.K of this memorandum, the MOLC must review the submitted application and provide a certification. If the MOLC is soliciting a donation, the OGC must review the submitted application and and provide the certification.
- E. After OPGS has received the certification and approved the application to accept a donation, a written 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, that the donation is un-coerced such that the donor is making the donation of his or her own free will, and that the donor is not aware of any material transactions pending before the District government, or any litigation involving the donor.
- F. A donation of funds may be accepted, only if it is in the form prescribed in section II.H and made payable to the order of, or endorsed to, the District of

Columbia Treasurer. A donation of funds may be accepted by the District government recipient who must promptly notify OPGS about the receipt of the donation, and shall forward the donation and donation agreement 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.

- G. A non-monetary donation may be received directly by an agency. The agency shall promptly notify OPGS of the receipt of the donation. The agency must account for an asset under the same standards and procedures used to account for other similar government property.
- H. After the application and donation agreement have been approved and the donation has been received, the agency may use the donation for purposes that are consistent with applicable law and regulation and with the applicable donation agreement.
- I. An agency should not directly solicit a donation before the application for solicitation has been approved. If an agency does solicit a donation before the application has been approved, the agency must submit the application as soon as possible. The application must include a statement describing why the agency solicited the donation before the application was approved.
- J. An agency should not accept or use a donation before the application to accept a donation has been approved and the donation agreement has been signed. If an agency accepts or uses a donation before the application has been approved and the agreement has been signed, the agency must submit the application and/or signed agreement as soon as possible. The agency's submission should include a statement describing why the agency did not submit the application and/or agreement before the donation was accepted or used.
- K. The Attorney General ("AG") shall review applications submitted by the Office of the Attorney General ("OAG") to solicit or accept donations to OAG and, if warranted, certify that the donation, or proposed solicitation, is consistent with the requirements of this Memorandum.

IV. MAYOR'S FUND TO ADVANCE WASHINGTON, DC

- A. The Mayor's Fund to Advance Washington, DC is a one-step, automated, online crowdfunding platform designed to accept donations to particular and ongoing causes of the District government or District government agencies. Donations to the Mayor's Fund to Advance Washington, DC must be processed on an electronic form approved by the Director of OPGS.
- B. The value of a single donation made online through the Mayor's Fund to Advance

Washington, DC may not exceed one thousand dollars (\$1,000). The total value of donations made by an individual or organization through the Mayor's Fund to Advance Washington, DC may not exceed two thousand dollars (\$2,000) per quarter. A donation exceeding one thousand dollars (\$1,000) will be subject to the regular donations approval process described in section III and will be individually reviewed and approved by the Director of OPGS.

IV. SOLICITATION OF CEREMONIAL CONTRIBUTIONS

- A. The Mayor may perform a function at a ceremonial event including weddings, funerals or memorial services, and graduation ceremonies, including in the following circumstances:
 - 1. At least one (1) of the celebrants, or a close friend or relation to a celebrant, or the deceased if the event is a funeral or memorial service, provides or provided significant service to the community or to the benefit of the District government, such as through public service, volunteering, or philanthropy.
 - 2. The Mayor receives no personal compensation for her performance of a function at the ceremonial event.
 - 3. The celebrants confirm that they expect nothing else from the District government, other than the Mayor's performance of a function at the ceremonial event.
- B. In connection with the Mayor's performance of a function at a ceremonial event, celebrants may make a monetary contribution to a charity or other nonprofit organization serving residents of the District of Columbia in honor of the District of Columbia government. The suggested contribution is two hundred and fifty dollars (\$250).
- C. The Mayor may decline a request to perform a function at a ceremonial event, or may cancel a commitment to perform, given the press of District business, even when a monetary contribution has been made.

IV. REASONS TO DISAPPROVE SOLICITATION OR ACCEPTANCE OF DONATIONS

- A. The MOLC, OGC, Director of OPGS, or, in the case of donations to the OAG, the AG, shall disapprove the solicitation or acceptance of a donation if any of the following circumstances apply:

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 (other than performance of a ceremonial duty);
 2. Acceptance of the donation would create an apparent or actual conflict of interest for the recipient agency. A conflict of interest may be waived for good cause shown if the waiver is deemed appropriate by the MOLC or OGC or, in the case of donations to the OAG, the AG. Good cause may be found to exist whenever the MOLC or OGC or, in the case of donations to OAG, the AG, 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; or (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, the MOLC, OGC, or AG 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 from that source has been approved by the MOLC after the role of the District government employee has been disclosed. The requirement to receive the approval of the MOLC is in addition to the other requirements and standards established by this Memorandum.
- C. The Director of OPGS may, in his or her discretion, disapprove a donation if:
1. The donated item is not in usable condition;

2. Restoration of the donated item will create unreasonable cost to the District government;
3. A donation of real property will create unreasonable rehabilitation or maintenance costs or may create an unreasonable liability, such as environmental clean-up costs; or
4. The donation creates an appearance of impropriety, even in the absence of an actual conflict.

V. FOREIGN/INTERNATIONAL DONATIONS

- A. No employee, except the Chief of Staff to the Mayor (**"Chief of Staff"**), the Mayor, or an employee authorized in advance by the Chief of Staff or the Mayor, may authorize the solicitation or acceptance of 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, or an organization based outside the United States (**"foreign source"**).
- B. A gift or award 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 Chief of Staff for review and determination as to its disposition. Such a gift or award is deemed to be a gift 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 Chief of Staff 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 Chief of Staff is in addition to the other requirements and standards established by law, regulation, Mayor's Order, and this Memorandum. If a travel donation receives initial approval from the Chief of Staff, an application to accept a travel donation must be submitted to the Director of OPGS and a certification produced by the MOLC or OGC.
- D. A donation offered by a foreign source shall be coordinated with the Chief of Staff. The requirement to coordinate with the Chief of Staff is in addition to the other requirements and standards established by this Memorandum. Such a donation must receive initial approval from the Chief of Staff before the agency submits an application to 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 Approval 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 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, in consultation with the Chief Procurement Officer, 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 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.

VIII. ETHICAL CONDUCT

- A. Failure of a District government employee to follow a provision contained in this Memorandum may be considered evidence of a violation of the Code of Conduct (see 1-1162.01 *et seq.*) and may subject the employee to both adverse personnel action, referral to the District's Anti-Deficiency Board, and sanctions from the Board of Ethics and Government Accountability (BEGA).
- B. An employee who, without authorization pursuant to this Memorandum or other lawful authority, solicits funds, goods, or services 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 or sanctions imposed by BEGA 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* 6B DCMR 1803.2.)
- C. 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 action and criminal prosecution.

IX. RECOGNITION OF DONORS

- A. District employees may thank donors, by providing acknowledgements of their donations such as through letters of acceptance and appreciation, press releases, photo opportunities, certificates, and other items that commemorate the donation.
- B. The District may permit the display of donor logos if the display is incidental to the donation or if the display is unlikely to give the impression of commercialization. All permanent displays of logos must receive the advance clearance of the MOLC or the OGC.

X. RESCISSION

This Memorandum rescinds and replaces Mayor's Memorandum 2012-3, dated May 16, 2012.

XI. EFFECTIVE DATE

This Order shall be effective *nunc pro tunc* to July 31, 2015