

Appendix 1 – Recommended Policy on Donations to the City for Community Benefits

OBJECTIVE AND PURPOSE

City building is a collective and ongoing endeavour. Seeking or obtaining voluntary donations for community benefits provides valuable contributions to city building. Partnership opportunities for donations for community benefits should respect relevant legislative and policy provisions and occur within an ethical framework that preserves the integrity of municipal decision making processes.

The purpose of this policy is to:

- i. establish guidelines that ensure donations occur at arm's length from any City decision-making process;
- ii. provide criteria and process for the acceptance of donations, and
- iii. confer upon Division Heads the delegated authority to accept and spend donations, within the parameters contained herein.

SCOPE

The policy on voluntary donations to the City for community benefits includes donations made to the City and its agencies, boards and commissions, and donations requested or encouraged by Councillors or staff which are directed to other organizations or community agencies.

POLICY

(1) Donations in Relation to City Decision Making Processes:

General:

1.1 Conditions, contributions and community benefits may only be requested from an applicant seeking an approval, permit or license from the City or its agencies, boards or commissions if such requests are permitted or required by that decision making process.

1.2 In the case of an applicant seeking an approval, permit or license from the City or its agencies, boards or commissions, beyond matters permitted or required as part of the decision making process, voluntary donations from the applicant or their representative may only be requested or accepted at arms length from the decision making process:

1.2.1 applicants seeking an approval, permit or licence shall not concurrently offer or make voluntary donations to the City or an agency, board or commission for community benefits;

1.2.2 voluntary donations for community benefits shall not be solicited or accepted, for any purpose or community beneficiary, from applicants with a concurrent application for an approval, permit or license.

1.3 (Section deleted – see Amendment to the Donations to the City for Community Benefits Policy, September 24, 2012)

Planning Approvals:

1.4 Voluntary donations for community benefits that fall outside the scope of a planning approval may not be solicited and offers may not be accepted from an applicant or their representative concurrent to a planning approval or from a party proposing to make a planning application.

1.5 There is a blackout period in planning approval processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. For Councillors and staff, the blackout period commences when they receive information, formally or informally, that an individual, organization or company has an interest or intent in submitting an application for planning approval. For specific types of planning applications, the end of the blackout period is as follows:

1.5.1 for official plan amendments, zoning by-law amendments and combined applications is the date of expiry of the appeal period after Council makes its decision on the by-law(s) and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;

1.5.2 for plans of subdivision and condominium is the date of expiry of the appeal period after the City makes its decision on draft plan approval and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;

1.5.3 for site plan control is the date the site plan agreement is executed; or, if appealed, is the date the Ontario Municipal Board makes its decision;

1.5.4 for part lot control exemption by-laws is the date Council adopts or refuses to adopt the by-law;

1.5.5 for minor variance and consent to sever is the date of expiry of the appeal period after the Committee of Adjustment makes its decision and there is no appeal; or, if appealed, is the date the appeal body makes its decision.

Procurement Decisions:

1.6 Voluntary donations for community benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent or applicant to procurement, or their representative, concurrent to the procurement solicitation and award process.

1.7 There is a blackout period in procurement decision making processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. The blackout period for procurements commences when the request or call for a bid, quote, proposal, etc. is formally issued, and it ends at the time the procurement is awarded.

1.8 The City shall not accept donations that are conditional upon the endorsement of any product, service or supplier.

1.9 Current and prospective suppliers to the City that decline solicitations for donations shall not be penalized in procurement decisions of the City.

Other:

1.10 No advantage is to accrue to the donor or to any person not dealing at arm's length to the donor as a result of the donation.

1.11 Donations cannot confer a personal benefit to any City employee or City Official.

1.12 Donations that violate City By-laws or City policies, or the laws, conventions and treaties of the other orders of government will not be accepted by the City.

1.13 Donors are required to advise the City if a donation to the City or an agency, board or commission of the City is concurrent with a planning approval or procurement process in which the donor, or the donor's organization or company, is involved.

(2) Donations of Real Property:

2.1 Donations of real property to the City or its agencies, boards and commissions may only be accepted with the prior approval of Council, which is to include approval of the budget for any future or ongoing obligations arising from the donation.

2.2 Where appropriate, approval of a donation of real property is to include the use and disposition of the real property including the net proceeds arising from a property transaction.

2.3 Donations of real property to the City or its agencies, boards and commissions, whether designated for specific purposes or not, will be held in the name of the City.

2.4 Donations of real property designated for specific purposes are exempt from the City's property management process.

(3) Accepting Donations

3.1 The City may elect to accept or decline any donation. If the gift is not accepted, the donor shall be advised of the reason.

Eligible Uses

3.2 Eligible donations are those that support approved programs and services, durable assets; capital facilities or projects; asset improvement, restoration or capital maintenance; or cash for such purposes.

3.3 Donations must be for purposes consistent with the receiving Division's mandate, programs, services and activities and must be deemed to be in the public interest of the City.

3.4 Donations are only to be accepted if the receiving Division has the capacity to meet the initial and ongoing costs and obligations associated with the gift.

3.5 Donors who wish to make donations that support special purposes to be provided by an organization independent of the City should be directed, where possible, to the intended organization.

Ineligible Donors

3.6 The City may decline donations from any donor who in the opinion of the Council, or of a Division Head under delegated authority, represents a reputational risk to the City through involvement in activities that are contrary to the values of the City. Examples of ineligible donors include but are not limited to:

- arms manufacturers;
- proven or suspected criminal organizations; and
- organizations that promote hatred against individuals or groups.

3.7 The City may not accept donations from individuals or organizations currently in litigation against the City.

Authority to Accept and Spend

3.8 Subject to Section 3.9, donations of cash designated for specific purposes will only be accepted by the City where Council has authorized the specific purpose or a fundraising campaign (whether conducted by staff or third parties), and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted.

Instructional information on how to make a donation that is provided by a Division in its website or in its printed general information brochures is not considered to be a fundraising campaign.

3.9 Despite section 3.8, a Division Head has delegated authority to accept and spend unsolicited donations where:

- a) the donation has a current value that does not exceed \$50,000 and cumulative donations from the same donor for the same purpose does not exceed \$50,000 in a fiscal year;
- b) the donation is not in the form of real property;
- c) the donation does not involve a proposal to name; and
- d) the donation is in compliance with this policy.

3.10 Where donations are being accumulated for a major project or fundraising campaign, the funds will be held in an appropriate account or reserve until sufficient funds for the proposed project have been obtained. Funds from donations may not be released and the proposed project may not commence until sufficient funds to complete the project have been secured, and spending authority has been obtained. Where appropriate, sunset provisions should be identified at the outset for major projects and fundraising initiatives to provide guidance in the event funding targets are not attained.

3.11 Unsolicited donations that remain unspent at the end of the year may be carried over to the following budget year only upon Council approval (the request would be made through the fourth quarter preliminary budget variance report prior to the approval of the following year's budget).

(4) Managing and Reporting Donations

4.1 Offers or proposals for donations are to be referred to the appropriate Division either directly or via the Toronto Office of Partnerships.

4.2 In an effort to cultivate an ongoing relationship with donors, the receiving Division is to:

- i. treat individual donors' names and amounts given, and any other private or personal information, with respect and, except where the donor authorizes release of such information, with confidentiality to the extent provided by the law;
- ii. reasonably limit the frequency of solicitations; and
- iii. respond promptly to a donor's question or complaint.

Acknowledgements, Forms and Receipts

4.3 The City is committed to the highest standards of donor stewardship and accountability. This includes appropriate acknowledgement and recognition for donations. Accordingly, for donations valued at \$100 or more, a formal letter of acknowledgement and gratitude will be sent to the donor by the Division.

Documentation and Communication with Donors

4.4 All donations must be documented by the recipient division in the following form, and reported through the variance reporting for donations under \$50,000 and to City Council for donations above \$50,000:

- a. *Cash and in-kind donations of \$100 or more and under \$50,000 must be documented and the terms and requirements communicated to the donor.*
- b. *Cash and in-kind donations of \$50,000 or more must be documented through a legal agreement to the satisfaction of the City Solicitor.*
- c. *The donation communication to donors should:*
 - i. *Convey the terms and requirements of the donation, including donor contact information, the purpose of the donation, the value of the donation, information about the tax receipt, how unused funds will be dealt with and the responsibilities of the respective parties.*
 - ii. *A statement acknowledging that the donation may be subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.*
 - iii. *For in kind donations, include where necessary in the opinion of the City Solicitor a waiver of liability and an indemnity clause*
 - iv. *Include the following statement:*

“All donations and/or in-kind donations, made to the City of Toronto and its agencies must be given unconditionally and voluntarily without any expectation of benefit. A donation cannot be used to influence the outcome of an outstanding approval, permit or license application or award of a procurement call. You must advise the City in writing if you, your organization or company is currently involved in a planning approval or procurement process with the City or one of its agencies”

d. In addition, as part of its due diligence, prior to proceeding with a donation the recipient Division is responsible for consulting with the Lobbyist Register and relevant stakeholders, where necessary, and conducting a risk/benefit assessment.

4.5 When a gift is received from a donor, it is the responsibility of the recipient Division to determine whether or not the gift qualifies for an income tax receipt (see related policies below).

Appraisals

4.6 The Canada Revenue Agency requires satisfactory evidence of fair market value of an eligible gift-in-kind. The responsibility for providing this information rests with the donor. The responsibility for securing this information for the purposes of issuing a tax receipt rests with the Division that benefits from the gift.

4.7 In situations where a gift is not of direct benefit to a particular Division, the Toronto Office of Partnerships will be responsible for securing fair market value evidence from the donor.

4.8 With respect to in-kind gifts, the recipient Division may retain the donation or, with the donor's consent, sell the asset and apply the proceeds as necessary.

Accounts

4.9 Donations designated for specific purposes or for the general purpose of a specific program, including donations of real property and the net proceeds of any property transaction, are to be used by the program for the purpose specified by the donor.

4.10 For purposes of financial control and accountability, donations are to be credited to appropriate accounts of the City or its agencies, boards or commissions.

4.11 Donations may not be managed informally or held in personal or external accounts or trust funds. This would not apply to independent community fundraising campaigns until such time that campaign contributions are donated to the City or its agencies, boards or commissions.

4.12 Where projects or assets of the City or its agencies, boards or commissions are funded in whole or in part by donations, the donated funds for such projects or assets must come directly from an account of the City or agency, board or commission.

4.13 Donations of cash or property to the City or its agencies, boards and commissions, where the purpose is not specified and which are not part of an

approved fundraising initiative, are deemed to be undesignated and become contributions to general revenue of the City or assets of the City, unless the recipient Division seeks council approval for the requested purpose.

Reporting

4.14 As part of the quarterly budget variance reporting process, each Division shall disclose the amount of all donations received to date and report on how the donations were used in the form prescribed by the Deputy City Manager and Chief Financial Officer.

4.15 On an annual basis, The Toronto Office of Partnerships shall provide Council with a report summarizing the City's donation fundraising activity.

(5) Related Policies:

5.1 The criteria and process surrounding the issuing of tax receipts for eligible donations is available at:

http://insideto.toronto.ca/accounting_services/pdf/accountingdonations_citydivisions.pdf

5.2 Official gifts, public art or commemorations to the City are unique donations that require separate consideration. Such donations are governed by the Toronto Protocol Services' Guidelines:

http://www.toronto.ca/protocol/donation_guidelines.htm

5.3 Accounting for Donations to Council Member-Organized Community Events:

http://insideto.toronto.ca/accounting_services/pdf/accountingdonations.pdf