

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO.125

February 22, 2013

TO: All Departments, Boards, Agencies and Commissions
FROM: Andrew D. Kopplin, First Deputy Mayor/ Chief Administrative Officer
SUBJECT: DONATIONS TO THE CITY OF NEW ORLEANS



I. PURPOSE

This policy establishes a process and methodology to be used in order for the City to receive donations.

II. POLICY

The City of New Orleans welcomes donations from philanthropic, commercial, and private entities. It is the policy of the City to facilitate such donations pursuant to all applicable legal and ethical guidelines.

III. LEGAL AUTHORITY

A. Constitutional Authority

The Louisiana Constitution authorizes the City of New Orleans to accept donations as part of its governmental functions:

1. Article VI, Section 44(2) defines a political subdivision as "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." The City of New Orleans is a political subdivision, and as such, it possesses all authority and powers conferred on political subdivisions by Louisiana's Constitution and statutes.
2. Article VI, Section 23 provides that "Subject to and not inconsistent with this constitution and subject to the restrictions provided by general law, political subdivisions may acquire property for any public purpose by purchase, **donation**, expropriation, exchange, or otherwise (emphasis added)."

B. Home Rule Charter Authority

The Home Rule Charter of the City of New Orleans provides additional authority:

1. Section 4-206 authorizes the Mayor to sign contracts, bonds and other instruments requiring the assent of the City.

2. Section 4-1802 authorizes the Board of City Trusts to make recommendations to Mayor and Council regarding acceptance or rejection of any trust or conditional donation offered to the City. Such recommendation is not required where the donation is for movable property where the only condition is that it be used for designated purpose or by designated agency.
3. Section 6-205 defines moneys acquired by donation which are to be invested or held intact as Nonexpendable Trust Funds.
4. Section 6-206 defines moneys derived from interest, dividends, or other earnings of trust fund assets as Expendable Trust Funds.
5. Section 6-207 authorizes the Mayor, with the approval of the Council, to establish other funds when necessary and no other appropriate fund exists.
6. Section 6-308(1) requires the Mayor to execute all contracts to which the City is a party, and requires all such contracts to be approved by the Law Department as to form and legality.

IV. GUIDELINES

A. Definition of Donation

Under Louisiana law, a donation is a contract by which a person, called the donor, gratuitously divests himself, at present and irrevocably, of the thing given in favor of another, called the donee, who accepts it. Louisiana Civil Code Article 1468. A donation is a conditional donation when the donor imposes on the donee certain charges or conditions, provided they contain nothing contrary to law or good morals. Louisiana Civil Code Article 1528.

B. Types of Donations:

The City may accept donations in a number of forms, including the following:

1. **Funds for Investment.** A donor may donate funds to the City, to be held in trust for purposes of investment. Funds donated for investment are defined as Nonexpendable Trust Funds by the Home Rule Charter, and shall be administered in accordance with Section 6-205 thereof. Any interest, dividends, or other earnings from such trust accounts are defined as Expendable Trust Funds and shall be administered in accordance with Section 6-206 of the Home Rule Charter. Moreover, note that if the donation establishes a trust, Section 4-1802 of the Home Rule Charter requires that the Board of City Trusts make recommendations to Mayor and Council regarding its acceptance or rejection.
2. **Funds for a Designated Purpose.** A donor may donate funds to the City for a designated purpose (e.g., to purchase certain equipment, or to improve a City-owned

park). Funds donated for designated purposes shall be deposited in, and administered in accordance with, the Miscellaneous Donations Fund, established by the City Council pursuant to Chapter 70, Article III, Division 26 of the City of New Orleans Code of Ordinances. If a separate fund has been established for the particular donation or type of donation at issue, the funds shall be administered in accordance with the provisions of such fund.

3. **Sponsorship.** A donor may donate funds to support certain City programs or events; in return for support, the donor may be given recognition in connection with the program or event. Funds donated for sponsorship purposes shall be deposited and administered in the same manner as funds donated for designated purposes, above.
4. **Moveable Property.** A donor may donate materials, supplies or equipment for use by the City. Note that if the donation of moveable property is conditional, Section 4-1802 of the Home Rule Charter requires that the Board of City Trusts make recommendations to Mayor and Council regarding its acceptance or rejection, unless the only condition is that it be used for designated purpose or by designated agency.
5. **Immoveable Property.** A donor may donate real estate or other forms of real property. Note that if the donation of immoveable property is conditional, Section 4-1802 of the Home Rule Charter requires that the Board of City Trusts make recommendations to Mayor and Council regarding its acceptance or rejection.
6. **Services.** A donor may donate professional or non-professional services (e.g. donation of landscape design services or volunteer labor in connection with the improvement of a City-owned park).

C. Potential Donors

The City may accept donations from any potential donor, including without limitation the following:

1. **Philanthropic Organizations.** A nongovernmental organization, which (a) is created and operated for charitable purposes, (b) employs all of its resources to those charitable activities, and (c) does not distribute any part of the income generated for the benefit of any member or private individual. Examples include foundations, non-profit organizations and civic organizations.
2. **Commercial Entities.** A for-profit company, of any form of governance (i.e., business corporation, limited liability company, limited partnership, etc.), donating from their company resources.
3. **Community/Neighborhood Organizations.** A nongovernmental, community- or neighborhood-based organization which can operate either as a formally incorporated non-profit or as an unincorporated association.

4. **Government Entities.** This includes local, State, Federal and international. Note, however, that Article 7, Section 14 of the Louisiana Constitution prohibits the State of Louisiana and any political subdivision thereof from donating things of value.

5. **Citizens and Private Individuals.**

D. Donation Mechanisms

1. **Act of Donation**

Donations shall generally be made pursuant to an Act of Donation. An Act of Donation is a contract pursuant to which the donor agrees to donate, and the donee agrees to accept, the donated thing. It also includes a description of the donated thing, as well as an explanation of any conditions placed on the donation. A sample Act of Donation is attached to this memorandum as Attachment "A". Note that under Louisiana law, acts of donations must be in authentic form in order to be valid -- i.e., they must be notarized and executed before two witnesses. Like all contracts, such acts shall be routed through ECMS, reviewed by the Law Department, and executed by the Mayor in accordance with CAO Policy Memorandum 122(R).

Conditional Donations of immovable property must be reviewed by the Board of City Trusts. The Mayor may agree to follow such recommendations only upon the affirmative vote of a majority of the members of the Board. The Mayor may decline to follow such recommendations, only upon the affirmative vote of two-thirds of the members of the Board.

Donation of movable property may or may not need to be reviewed by the Board of City Trusts. If the only condition of a donation of a movable is that the movable be used for a designated purpose or by a designated agency, such conditional donations of movables need not be reviewed by the Board of City Trusts.

2. **Manual Gift**

Under Louisiana law, a donation of a corporeal immovable¹ may be made by the delivery of the thing to the donee without any other formality. For example, a citizen could make a small donation to contribute to park improvements simply by writing a check and delivering it to the appropriate City official -- no Act of Donation would be necessary to make it valid. While manual gifts may be appropriate for certain small gifts, however, it is the policy of the City that Acts of Donation shall be used for large donations, and for donations which include conditions or give rise to legal obligations. The Law Department should be consulted if there are questions as to whether a formal Act of Donation is necessary. Manual gifts shall be promptly reported to the appropriate Deputy Mayor for approval, and shall be deposited in the Miscellaneous Donations Fund, or other appropriate fund, in accordance with the provisions of such fund.

¹ Money is a corporeal movable. See Yiannopoulos, Louisiana Civil Law Treatise, Property §148, n. 2, (1991).

3. Cooperative Endeavor Agreement

In certain circumstances, contributions to the City may be made through the use of a Cooperative Endeavor Agreement ("CEA"). Although use of a CEA may not technically be a donation, CEAs may appropriate in circumstances where a contribution is made in return for the City assuming certain ongoing obligations. For example, in return for a contribution towards improvements to a City-owned park, the City may agree to perform ongoing maintenance of the improvements or to conduct certain programming in connection with the improvements.

The City is authorized to enter into CEAs for a "public purpose" pursuant to Article 7, Section 14(c) of the Louisiana Constitution. Section 9-314(1) of the Home Rule Charter also authorizes the City to enter into CEAs as follows:

The City of New Orleans may enter into cooperative endeavors with the state or its political subdivisions or political corporations, with the United States or its agencies, or with any public or private association, corporation, or individual with regard to the procurement and development of immovable property, joint planning and implementation of public works, joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes.

The Louisiana Attorney General, in Opinion Nos. 87-587 and 83-1044 set forth the following requisites for CEAs: (a) the endeavor must serve a public purpose, (b) the City must receive a direct benefit, and (c) the value given by the City must be commensurate with the benefit received.

The Law Department shall determine whether the use of a CEA is appropriate in a particular case. Pursuant to Section 9-314(c) of the Home Rule Charter, the Mayor is authorized to execute CEAs on behalf of the City. However, if the term of a CEA exceeds one year, City Council approval is also required.

A sample Cooperative Endeavor Agreement is attached to this memorandum as Attachment "B". Such acts shall be routed through ECMS, reviewed by the Law Department, and executed by the Mayor in accordance with CAO Policy Memorandum 122(R)

E. Process for Evaluation and Approval of Proposed Donations

1. Negotiation of Donation

In cases where the receipt of a donation involves negotiation with the donor, the department shall coordinate such negotiation with the appropriate Deputy Mayor.

2. Routing and Approval

Acts of Donation and Cooperative Endeavor Agreements shall be routed through ECMS, reviewed by the Law Department, and executed by the Mayor in accordance with CAO Policy Memorandum 122(R). Manual Gifts shall be promptly reported to the appropriate Deputy Mayor for approval.

3. Acceptance/Acknowledgement of Donation

Acceptance of a donation shall be a part of the Act of Donation or Cooperative Endeavor Agreement, and shall be effective upon its execution. Upon such execution the user department shall execute and deliver a letter to the donor acknowledging the donation. A sample acknowledgement letter is attached to this memorandum as Attachment "C". Acceptance of a manual gift is made upon delivery of the donation, provided however, if acceptance of a manual gift is not approved by the appropriate Deputy Mayor, it must be immediately returned.

4. Record Keeping

Copies of all acts of donation or CEAs will be kept by the Law Department. When a document is entered into the ECMS System, all supporting documents (acceptance letters, acknowledgment of donation letters, etc.) should be entered into ECMS and an electronic copy will be stored there.

The Department of Finance will issue a summary form for cash donations which will be processed in conjunction with a receiving warrant.

V. SPECIAL ISSUES

A. Vendors

In order to avoid any appearance of impropriety, ethical conflict or violation of law, efforts must be taken to ensure that proposed donations from any potential or current City vendor are evaluated and administered separately from any procurement or contract. In no case shall any donation be considered as connected to, or inducement for, favorable treatment by the City in connection with any such procurement or contract.

Whenever a document is used to effectuate a donation to the City, such document should contain a statement that affirms that the donor has no expectation of benefit or special treatment with

regard to other contracts or potential contracts with the City. If a document is not used (a manual donation) the donor should sign an affidavit that states that the donor has no expectation of benefit or special treatment with regard to other contracts or potential contracts with the City.

B. Procurement and Contracting

Unless authorized by the Chief Administrative Officer, with concurrence by the City Attorney, all procurements, purchases, contracts resulting from any donation shall be undertaken in compliance with the applicable City, State and Federal regulations, policies or procedures. City employees that have a primary responsibility for the procurement of services, supplies, materials, equipment, or public works shall not engage in solicitation of donations.

C. Tax Implications

The City does not provide guidance relative to the tax consequences of the donation to the donor. If the donor is concerned about such tax consequences, the donor should be advised to consult with a tax professional of the donor's choosing. The City may provide the donor with a letter of acknowledgement and a statement of the City's intended use for the donation.

D. Donations that should not be accepted

The City shall decline acceptance of donations in the following circumstances:

1. It appears that the donation is being offered with the expectation of obtaining advantage, preference, or favor in dealing with the City, its boards, commissions, or public benefit corporations.
2. Acceptance of the donation would create the appearance of or actual conflict of interest for the City, its employees or officials.
3. The donation or conditions placed upon such donation are inconsistent with the authorized policies or procedures of the City.
4. The intended use of the donation is inconsistent with or otherwise seeks to circumvent laws, regulations, or policies of the City or other applicable entity.
5. The donation is for the personal use of a City employee or official.
6. The donation will be used by the donor to state or imply endorsement by the City, its boards, commissions, and/or public benefit corporations.
7. The donation is or may be interpreted to be funding for political activities.

VI. WAIVERS.

Requests to waive any of these provisions must be approved by the Chief Administrative Officer in writing.

VII. INQUIRIES.

Questions regarding this memorandum should be forwarded to the First Deputy Mayor-Chief Administrative Officer Andrew D. Kopplin at (504) 658-8900.

Andrew D. Kopplin
First Deputy Mayor and
Chief Administrative Officer