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REPORT AND RECOMMENDATIONS OF THE INSPECTOR GENERAL

To: Richard M. Daley
Mayor

Bobby L. Ware
Commissioner
Chicago Department of Transportation

From: Joseph M. Ferguson 
Inspector General

Date: December 20, 2010

Subject: IGO Report and Recommendations Regarding Gifts from Contractors to
City of Chicago Employees

Enclosed is a Report detailing recommendations stemming from recent IGO investigations into gifts provided by City contractors to City of Chicago employees. Over the past year, the IGO has sustained allegations of gift related misconduct in seven cases involving six departments and numerous City employees, contractors and vendors. These investigations individually and collectively illustrate the inherent difficulties in promulgating and administering rules and regulations permitting the receipt of gifts by City employees.

As a result of these findings, and in order to encourage transparency and accountability, the IGO recommends that the Mayor institute a “no-gifts” policy City-wide, in order to remove any doubt or uncertainty by employees and contractors in an area that is fraught with possibilities for bribery at worst and the possible appearance of conflict of interest at best. Such a policy would comport with best practices in the public and private sector alike and enhance public confidence in the integrity of City operations.

In addition, as is set forth in the enclosed Report, the IGO recently completed an investigation into gifts given by City contractors to Chicago Department of Transportation (CDOT) employees. This investigation revealed that a wide range of CDOT employees regularly received gifts from CDOT

contractors in 2007 and 2008. Between January 2007 and mid-December 2008, a sampling of CDOT contractors reported that they spent at least \$10,100 on gifts specifically traceable to over forty CDOT employees, and an additional \$9800 on events which an unknown number of CDOT employees attended. Several other related findings and issues, including concerns regarding the clarity and workability regarding certain provisions of the City of Chicago Ethics Ordinance, are detailed in the accompanying report.

While the City studies the proposal to move to a no-gifts policy, the IGO recommends that CDOT itself institute its own no-gifts policy similar to policies that the Departments of Buildings, Procurement Services, Aviation, Public Health, and the Office of Compliance have implemented or are in the process of implementing. The IGO also recommends that CDOT institute a written policy requiring CDOT contractors and vendors to keep specific records of expenses related to CDOT employees, including the full names and positions of CDOT employees receiving gifts and those attending group events such as holiday parties that are sponsored by that contractor, for use in any future audit or investigation.

This Report and Recommendations does not reveal the identities of any specific individuals involved in this investigation either as subjects or witnesses and provides only that level of detail deemed necessary to inform ongoing concerns. Similarly, because of its investigative origin, it bears particular noting that this Report and Recommendations is not intended and should not be construed as a finding of misconduct against any individual. We intend to make this Report and Recommendations publicly available.

We ask that CDOT and the Mayor's Office follow the procedure set forth in Chicago Municipal Ordinance 2-56-065 – that is, department heads have 30 days, which in this matter falls on **January 19, 2011**, to respond to these recommendations by sending the IGO a written response describing any action taken. If the department takes no action, or takes a different action than the one recommended by the IGO, the department head should explain the reason for that action. Any response should be made via the most expedient means available, preferably email, to Donna O'Brien, Staff Assistant, do'brien@chicagoinspectorgeneral.org. She can also be reached by telephone at 773-478-8107.

We are simultaneously sending a copy of this report and the enclosed documents to the Corporation Counsel. Our contact person for this investigation is Assistant Inspector General Lucy Schwallie. Please contact her at (773) 478-5230, or lschwallie@chicagoinspectorgeneral.org, if you would like to discuss the investigation or our report and recommendations.

cc: Mara S. Georges, Corporation Counsel

**INSPECTOR GENERAL'S OFFICE REPORT AND RECOMMENDATIONS
REGARDING GIFTS FROM CONTRACTORS TO CITY OF CHICAGO EMPLOYEES
December 20, 2010**

I. INTRODUCTION

In response to a series of investigations concerning violations of the City's gift policy (Section 2-156-040 of the City of Chicago's Ethics Ordinance), the IGO recommends that the Mayor institute a City-wide "no-gifts" policy. Further, while the City studies this proposal, the IGO recommends that the Chicago Department of Transportation (CDOT) institute its own no-gift policy similar to policies that the Departments of Buildings, Procurement Services, Aviation, Public Health, and the Officer of Compliance have implemented or are in the process of implementing.¹

The IGO has, for years, investigated and found evidence of City of Chicago employees receiving impermissible gifts from contractors or other entities with an interest in City business. Over the past year, the IGO has sustained allegations of gift related misconduct in seven cases involving six departments and numerous City employees, contractors and vendors. These investigations individually and collectively illustrate the inherent difficulties in promulgating and administering rules and regulations permitting the receipt of gifts by City employees. Indeed, recent IGO investigations have prompted at least three City departments to move to a no-gift or zero-gift policy. As a result, the City now operates under two different standards respecting the receipt of gifts by its employees.

First is the no-gifts approach. That approach is clear and simple, and further removes doubt or uncertainty for employees, contractors and vendors alike. It also promotes transparency and accountability, and enhances public confidence in the integrity of City operations.

The second, that directed by Section 2-156-040 of the Ethics Ordinance, is anachronistic and, based on our investigations over the years, appears to be confusing to City employees, contractors, and vendors. Further, because it is ill-defined, it is immensely difficult and time consuming to enforce. The IGO has found that the terminology used by the Board of Ethics in its training for City employees has not always corresponded to the express terms of the Ethics Ordinance itself. While the Board of Ethics appears to have recognized the problem by bringing its training into greater correspondence with the terms of the Ordinance itself, such improvements have not cured the fact that certain critical terms of the Ordinance remain undefined after 23 years. Such shortcomings have served to further complicate the already difficult landscape regarding gifts for City employees. Accordingly, for the reasons detailed below, the IGO recommends that the City institute a City-wide no-gifts policy.

Most recently, the IGO concluded an investigation into gifts provided by City contractors to CDOT employees. We summarize that investigation here to bring into sharper relief some of the problems with the efficacy of the existing Ordinance provisions concerning receipt of gifts.

¹ As an example, the Department of Buildings policy is attached as Exhibit A.

This investigation involved analyzing records of expenses from a sampling of construction and engineering contractors which did business with CDOT (CDOT contractors) concerning expenses paid on behalf of CDOT employees related to any golf outings, sporting events, entertainment events, meals, lodging, or conferences in 2007 and 2008. In light of the Chicago Ethics Ordinance (Section 2-156 of the Municipal Code of Chicago), the investigation focused on determining whether any CDOT employee received a gift of over \$50.00 (or multiple gifts accumulating over \$100.00 in a calendar year) from a CDOT contractor for which the employee was in a position to substantially affect that contractor's business with CDOT.

The investigation revealed that a wide range of CDOT employees regularly received gifts from CDOT contractors in 2007 and 2008. Between January 2007 and mid-December 2008, these CDOT contractors reported that they spent at least \$10,100 on gifts directly attributable to over forty CDOT employees, and an additional \$9800 on events which an unknown number of CDOT employees attended. The apparent value of numerous gifts exceeded the acceptable thresholds set forth by the Ethics Ordinance. Equally troubling, however, is that CDOT employees appear to have accepted gifts without any consideration of their value or for the significance of their value in light of the Ethics Ordinance. In addition, the analysis showed that even where gifts did not seem to exceed the value thresholds, the sheer number of gifts provided and accepted suggests that this activity poses a significant risk for conflicts of interest – whether real or apparent. Of equal concern was the lack of consistent, accurate and thorough records maintained by the sampled CDOT contractors concerning these gifts. This poor record-keeping made it very difficult to accurately establish the value of many of the gifts or to accurately identify the City employees who received such gifts.

As such, while the City studies moving to a City-wide no-gifts policy, the IGO recommends that CDOT itself move to a no-gifts policy. IGO also recommends that CDOT contractors and vendors (i) be required by the terms of their contract to keep specific records of any expenses related to CDOT employees, including the full names and positions of CDOT employees receiving physical gifts and those attending events, as well as the specific type and full market value of any and all gifts given to employees and officials of the City of Chicago; and (ii) be informed via letter of any new no-gifts policy, as well as their continuing contractual duties to abide by the Ethics Ordinance and Departmental Policy.²

² CDOT contractors are required by the terms of their contracts to follow all governmental laws and regulations, including those at the municipal level, which includes the City of Chicago Ethics Ordinance excerpted below.

II. SUMMARY OF CITY OF CHICAGO ETHICS ORDINANCE

a. The Ethics Ordinance

Section 2-156-040 of the City of Chicago Ethics Ordinance deals with “Offering, Receiving and Soliciting Gifts or Favors.” For purposes of this investigation, subsections (b)-(d) are pertinent.³

(b) No person shall give or offer to give to any official, employee or City contractor, or to the spouse, domestic partner, minor child of any of them, or any immediate family member residing in the same residence with the official or employee, and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor, concerning the business of the City would be influenced thereby. It shall be presumed that a non-monetary gift having a value of less than \$50.00 does not involve such an understanding.

(c) No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction, or to the spouse, domestic partner, or minor child of such official or employee, or any immediate family member residing within the same residence with the official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than a gift with a value of less than \$50.00, as long as the items or services from any one source do not exceed a cumulative value of \$100.00 during any calendar year. Nothing herein shall be construed to prohibit such person from accepting gifts from relatives or from one’s own domestic partner.

(d) Except as prohibited in subsections (a) and (b), nothing in this Section 2-156-040 shall prohibit any person from giving or receiving: (i) an award publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

Other pertinent subsections of the Ethics Ordinance are the definitions of “gift,” “economic interest,” and “contract management authority.” The Ethics Ordinance provides that a Gift is

³ “Gift” subsections that are not relevant to this particular investigation include subsection (a), which prohibits anonymous gifts, subsection (e), which requires that any gift in violation of this section be turned over to the Comptroller, subsection (f), which allows for gifts to be accepted on behalf of the City, and subsection (g), which requires that any employee who receives any gift or money for participating in speaking engagements must report it to the Board of Ethics within five business days.

“any thing of value given without consideration or expectation of return.” § 2-156-010(m). “Economic interest” is defined as “any interest valued or capable of calculation in monetary terms.” § 2-156-101(i). Finally, “Contract Management Authority” is defined in the Ordinance as “personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.” § 2-156-010(g).

b. Application of Ethics Ordinance

For the purposes of the IGO’s investigations, in order to determine whether any gift that an employee accepts is considered a violation of the Ethics Ordinance, the gift must fall into one of the descriptions prohibited by Sections 2-156-040(b) or 2-156-040(c), without falling into any of the exceptions noted in Section 2-156-040(d). Based on a review of Board of Ethics published opinions, the Board has adopted the following rubric when analyzing inquiries about gifts.

First, it must be determined whether the thing received should be considered a gift to begin with. The Ethics Ordinance provides that a Gift is “any thing of value given without consideration or expectation of return.” § 2-156-010(m). The Board of Ethics has issued many advisory opinions advising that meals, tickets, and events constitute gifts within the meaning of the Ordinance. *See, e.g.*, Board of Ethics Advisory Opinion Case No. 09011.A, No. 91079.A, No. 87064.A, No. 88005.A.

Second, for purposes of evaluating possible violations of Section 2-156-040(b), it must be determined whether the gift “given was based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor, concerning the business of the City would be influenced thereby.” § 2-156-040(b). Any gift, regardless of value, given with the understanding that it is to influence City business constitutes a violation of the Ethics Ordinance and no further analysis is required. Where a violation determination hinges on an inference of quid pro quo, rather than evidence of an express agreement, a non-monetary gift having a value of less than \$50.00 is presumed to not involve such an understanding. If no evidence of a quid pro quo is uncovered, however, then the analysis continues.

Third, for purposes of evaluating possible violations of Section 2-156-040(c), it must be determined whether the gift was given by a person who has an “economic interest in a specific City business, service, or regulatory transaction.” § 2-156-040(c). “Economic interest” is defined in the Ordinance as “any interest valued or capable of calculation in monetary terms.” § 2-156-101(i). The Board of Ethics has advised that “City contractors or potential City contractors . . . have an economic interest in a specific City business – contracts with the Department.” Board of Ethics Advisory Opinion No. 90064.A.

Fourth, gifts are not prohibited unless they were received by a City employee “whose decision or action may substantially affect” the gift giver’s business with the City. § 2-156-040(c). “Substantially affect” is not defined more specifically in the Ordinance, nor has this critical term, central to the jurisdictional scope and the enforcement of the Ordinance, been

meaningfully defined by the Board of Ethics in a published advisory opinion. Without such definitive guidance regarding what official conduct, function or position meets the “substantially affect” element, this determination is less than certain. While an employee with “Contract Management Authority” over the gift giver—defined above in § II(a)—is certainly in a position to “substantially affect” the gift giver’s business, the standard is much less clear for those employees who may be able to affect the gift giver’s business in a less defined way presently or in the future.

Fifth, a gift may be permissible if valued at no more than \$50, or no more than a \$100 cumulative value during a calendar year, even if that contractor has an economic interest in City business and assuming the employee receiving the gift could substantially affect that contractors’ business.⁴ § 2-156-040(c). The Board of Ethics has advised that when determining valuations of tickets and events for the purposes of the Ethics Ordinance “the value of the gift corresponds to the market value of the benefits which are potentially afforded to the recipient.” City of Chicago Board of Ethics Advisory Opinion, Case No. 88005.A. Further, the Board of Ethics has said that this market value usually corresponds to the “stated ticket price.” Case No. 10021.A (fnt 3).

Finally, any otherwise prohibited gifts would not constitute a violation of the Ethics Ordinance if they fit into the exceptions detailed in § 2-156-040(d). City employees are able to receive “reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events,” where the hosting is provided by the “*sponsor of such public event*” and the event was “related to official City business.” § 2-156-040(d)(emphasis added). This is true even if the value of the event was over \$50, the sponsor has an economic interest in City business, and the employee attending the event is in a position to substantially affect such business. A gift-giver could only be considered a sponsor, however, if it has played a substantial role in organizing the event. “[C]ontributing money or buying tables for an event or being recognized as a ‘gold’ or ‘platinum’ sponsor of the event (regardless when that recognition is bestowed) do not themselves make a person the sponsor of an event.” City of Chicago Board of Ethics Advisory Opinion, Case No. 09011.A.

c. Penalties

Any employee who is found to have violated the provisions of the Ethics Ordinance “shall be subject to employment sanctions, including discharge.” § 2-156-410(a). Further, any person “who solicits, accepts, offers or makes a gift in a manner that would constitute a violation of Section 10-10 of the State Officials and Employees Act” could be fined up to \$5,000.00. § 2-156-410(c).⁵

⁴ A gift of cash is never permissible.

⁵ The State Act bans all gifts from prohibited sources, though it does make an exception for food or refreshments not exceeding \$75 a person.

d. Mandatory Ethics Training

The Mandatory Ethics Training, required for all City Employees and administered by the Board of Ethics, covers the gift limitations outlined in the Ethics Ordinance. The 2008 training reminded employees that (a) “[t]he Ordinance prohibits you from accepting any single gift worth \$50 or more from a person or entity with an interest in any City business transaction which you can affect as a City employee or official”; and (b) “[t]he Ordinance limits or ‘caps’ at \$100 in a calendar year the total value of gifts you may accept from any one person or entity with an interest in any City business transaction which you can affect as a City employee or official.” See 2008 Ethics Training, available at <http://webapps.cityofchicago.org/onlineTrainingWeb/>. The 2007 training similarly reminded employees that (a) “[t]he Ordinance prohibits you from accepting any single gift worth more than \$50 from a person who can gain or lose by your actions as a City employee or official” and (b) “[t]he Ordinance limits or ‘caps’ at \$100 in a calendar year the value of the total amount of gifts you may accept from a person who can gain or lose by your actions as a City employee or official.” See 2007 Ethics Training, available at <http://webapps.cityofchicago.org/onlineTrainingWeb/>.⁶

Both the 2007 and the 2008 trainings also offered the practical advice to “always consider appearances.” The trainings explain that “City employment is public employment, and it is a public trust. . . . Whenever you are offered any gift, you should consider not only whether the gift is permissible under the law, but whether acceptance of the gift might create the perception that your City judgment has been or would be compromised.” See 2007 & 2008 Ethics Training, *id.*

III. SUMMARY OF EVIDENCE IN CDOT GIFTS INVESTIGATION

a. Documentation from CDOT Contractors

⁶ We note that the express language utilized by the Board of Ethics in its 2007 and 2008 training of City employees did not correspond to the express terms of the Ethics Ordinance itself. The Ordinance requires an ability of the employee to “substantially affect” a “specific City business, service or regulatory transaction.” In 2007, the Ethics Training explained that gifts were prohibited “from a person who can gain or lose by your actions.” In 2008, the Ethics Training explained that gifts were prohibited “from a person . . . which you can affect as a City employee.” By omitting the modifier “substantially” both years, the Board of Ethics trained on a lower threshold, thereby signaling a broader scope than the Ordinance itself expressly prescribes. In possible recognition of the problems inhering in those deviations from the Ordinance, current Ethics training now expressly uses the Ordinance language “substantially affect.” But the problem does not end there. For 23 years and counting, that critical element of the Ordinance has not been meaningfully defined through a published advisory opinion or other guidance from the Board of Ethics. Numerous IGO investigations have revealed this shortfall as constituting a major impediment to effective training, compliance and enforcement of the gift provisions of the Ethics Ordinance. For purposes of our analysis of this matter, we operate from the more constrictive, albeit undefined “substantially affect” standard specified in the Ordinance. And, regardless, the portion of the training counseling mindfulness of appearance of conflict, especially in light of the fiduciary nature of public employment sweeps in the entirety of the conduct addressed in this report.

The IGO sent requests to a selection of twenty-six CDOT contractors seeking documentation regarding records of any and all expenses paid on behalf of any City of Chicago employees⁷ related to:

1. Golf outings with the company.
2. Sporting events or any other entertainment events (e.g. concerts, theatrical performances, etc.) with the company and any City of Chicago employee.
3. Meals with, or provided to, any City of Chicago employees.
4. Lodging paid for by the company for any City of Chicago employee.
5. Conferences and/or seminars attended by City of Chicago employees paid for by the company.

The requests sought records “including but not limited to expense reports, credit card statements, bills, cash advances, invoices, receipts, and requests for reimbursement for greens fees, meals, drinks, transportation, parking, cart rentals, tickets, entertainment expenses, lodging, car rentals, conferences and seminars” related to any of the five categories detailed above. The IGO requested any documents of pertinent expenses between January 1, 2007 and the date of the request (December 15, 2008.)

1. Overview of CDOT Contractor Responses

The IGO received a wide range of responses from the CDOT contractors. Some contractors reported having no record of any expenses paid for, or on behalf of, any CDOT employees.⁸ However, the majority of CDOT contractors indicated that they had provided some sort of gifts to CDOT employees. For the period of January 2007 through mid-December 2008, these firms reported that they spent at least \$10,100 on gifts specifically traceable to over forty CDOT employees, and an additional \$9800 on events which an unknown number of CDOT employees attended.⁹ This Report and Recommendations focuses on how the records received show a systemic problem with gift-giving and receiving between CDOT contractors and employees.

Some of these CDOT contractors reported nominal gifts, such as small meals and expenses (e.g. holiday platters or lunches), which did not manifestly appear to exceed the gift value threshold in the Ethics Ordinance. Other contractors reported expenses incurred on behalf of “CDOT employees,” but did not keep records more specific than this, making it impossible for IGO investigators to determine whether these expenses violated the Ethics Ordinance. Most critically, more than a quarter of the responding contractors reported gift expenses that appear to violate the value thresholds set forth in the Ethics Ordinance.

⁷ While the letters requested information regarding all City of Chicago employees, this investigation was focused on responses regarding CDOT employees.

⁸ A response of no records is not the same as a response indicating no gifts having been given, and in some instances gifts were acknowledged by CDOT employees although documentation from contractors was missing or lacking.

⁹ As noted previously, the records ranged in quality and accuracy. As such, these numbers are only estimates.

2. Sample Expenses

Below is a sampling of some of the categories of gifts that exceed the value thresholds of the Ethics Ordinance based on documentation received from CDOT contractors.

- **Meals/Holiday parties**

Records indicate that at least seven CDOT employees attended either the 2007 or 2008 Illinois Road and Transportation Builders Association (IRTBA) Holiday Event, with tickets purchased by various CDOT contractors who were not sponsors of the event as defined by the Board of Ethics. The ticket price of the event each year was \$205.00.¹⁰

In 2007, a CDOT employee accepted several meals throughout the year from one contractor and a private holiday function hosted by the same contractor, which had a cumulative value of more than \$100.

- **Golf Outings**

In 2007, a CDOT contractor paid for three CDOT employees to play golf. The round of golf was valued at \$79.00 a person.

In 2007, another CDOT contractor paid for two CDOT employees to participate in a University of Illinois at Chicago Engineering Alumni Association golf outing valued at \$96.00.

In 2007, a CDOT contractor paid for two CDOT employees to participate in the IRTBA golf outing, at a cost of \$250 per person.

In 2007, a CDOT contractor paid for a CDOT employee to attend the Western Society of Engineers golf outing at the Itasca Country Club at a cost of \$135.¹¹

- **Sporting Events**

In 2007, two CDOT employees attended a Chicago Bulls basketball game including a dinner prior to the game, paid for by a CDOT contractor at a total cost of approximately \$68.98 a person.

In 2007, a CDOT contractor paid for a CDOT employee to attend a Chicago Bears preseason game, including a tailgating party. The face value of this ticket was \$98.00, and total cost

¹⁰ One CDOT Contractor also included with its response a letter from IRTBA indicating that the organization's "actual" or out-of-pocket cost for the event was \$65.50 a head (still over the value threshold in the Ethics Ordinance), and everything else (\$139.50) was a required donation to the IRTBA. Any member of the public who wanted to attend the event, however, was required to pay the full ticket price of \$205.

¹¹ Records also show that a contractor invited multiple CDOT employees to participate in an Aldermanic golf fundraiser in 2007. The cost of the event was \$850.00 for a foursome, which equals \$212.50 per person. Notation on the expense form indicates that this event may have been rained out, however.

expensed on his behalf including tailgating expenses was \$120.44. After this IGO investigation began (in January 2009), this CDOT employee sent the contractor a check for \$85.00 for partial reimbursement of expenses from the game.

b. Summary of Interviews

IGO investigators interviewed eleven CDOT employees either because their names had been referenced in CDOT contractor documents or because they supervised employees whose names were referenced in these same documents. In addition, the IGO interviewed representatives from three CDOT contractors.

The CDOT employees interviewed who attended the IRTBA Holiday Event, discussed above, denied knowing the value of the tickets that they were given by the various CDOT contractors. Many opined that they thought the tickets were valued at forty or fifty dollars, and were shocked to hear that they were actually \$205. Most of these employees admitted that they had not inquired into the value of the tickets, and expressed regret for attending the event.

The CDOT employees who attended the golf outings discussed above similarly denied knowing the value of the tickets for such events. Some believed that there may have been some form of reduced fee for government employees, but admitted that they did not ask what the cost of the event was in order to know this for a fact.

Furthermore, some of the CDOT employees admitted to attending additional events with CDOT contractors about which the IGO did not receive documentation in response to its records request. These events include Cubs games, aldermanic golf outings, IRTBA golf outings, and the IRTBA Holiday Party.

The employees interviewed had varying degrees of authority over the contractors with whom they attended meals and events. Some of the CDOT employees interviewed admitted that they had Contract Management Authority over the same contractors from whom they accepted gifts. Some of the CDOT employees admitted that while they have not been assigned Contract Management Authority, they did have the ability to influence the contractors' CDOT work in some way, such as through audits, quality assurance and financial paperwork. Some of the CDOT employees stated that they had no ability to influence the contractors' work in any way, nor did they interact with contractors at all. None of the employees admitted that the gifts they received impacted their official duties.

All of the employees questioned admitted that they had completed the City's online ethics training and knew that the Ethics Ordinance placed limits on the value of gifts that could be accepted. Some indicated that they had changed their behavior recently because of the information they had learned from the online ethics training.

The representatives of CDOT contractors who were interviewed by the IGO had a variety of responses regarding the expense reports that had been requested. All of the representatives interviewed stated that they did not pay for meals or outings in order to gain preferential treatment from the CDOT employees. The representatives stated that they invited CDOT

employees to attend events because of “professional courtesy,” “personal relationships” and “networking.” All of the representatives indicated that they were aware of the Ethics Ordinance and that as a result of the IGO inquiry they had become more cognizant of making sure that they did not violate the Ordinance when sharing meals and attending events with government employees. One representative reported that in 2008, CDOT employees had begun refusing invitations to events more frequently. Further, as a result of issues brought up by the IGO investigation, at least one CDOT contractor has added to its employee handbook internal rules requiring its employees to follow the ethics rules of its government clients.

IV. SUMMARY OF EVIDENCE PERTAINING TO OTHER IGO IMPERMISSIBLE GIFT INVESTIGATIONS

Below is a sampling of other IGO investigations into gifts received by City employees of all departments that exceed the value thresholds of the Ethics Ordinance completed in the last year.

- IGO Case # 09-0056

A former employee in the Internal Audit section of the Office of Compliance accepted over \$3500 in gifts, including tickets to sporting events and meals, from three City vendors over whom he/she contract management authority in violation of the City’s Ethics Ordinance. In the course of the investigation, one of the vendors provided false and misleading responses to an IGO subpoena.

The IGO recommended that the former employee be placed on the do-not-rehire list. The IGO also recommended that the three City vendors be placed on deferred debarment for a period of two years and assessed fines for violating the City Ethics Ordinance. The IGO further recommended that four individual partners of the City vendors be permanently debarred from conducting future business with the City. DPS initiated debarment proceedings as recommended.

- IGO Case # 09-1503

An IGO investigation determined a senior City official in the Office of Compliance improperly received prohibited gifts from a consultant over whom the official had contract authority. The IGO recommended that the official be terminated, and that the consultant and the company he/she owns be debarred for 6 months. The official resigned subsequent to the issuance of the IGO’s report and prior to the imposition of discipline. DPS initiated debarment proceedings against the consultant as recommended.

- IGO Case #07-1684

An IGO investigation determined that employees of the Badging Office at the Department of Aviation (CDA) routinely accepted gifts—ranging from gift cards to wine, food and perfume—from companies that needed access badges for their employees. Companies also provided monthly lunches to CDA Badging Office employees. The IGO recommended that the

Badging Office move to a “no-gifts” policy and that a supervisor who had exercised exceedingly poor supervision by allowing an open and untracked stream of gifts to flow to his/her employees from companies that require access badges for their employees be suspended from City service for seven days. The CDA implemented a department-wide “no-gifts” policy in response to this IGO investigation.

- IGO Case # 07-0078

An IGO investigation determined that a senior equipment analyst in the Department of Fleet Management violated Section 2-156-040 of the Ethics Ordinance, and thus, the City’s Personnel Rules, by receiving over \$1,000 in food and beverages from a Fleet contractor. These meals often included alcoholic beverages, sometimes while the senior equipment analyst was on City time. The evidence also showed that the contractor purchased hotel accommodations for the senior equipment analyst and lent him/her a snow plow to clear alleys around the employee’s home. The senior equipment analyst had contract management authority over the contractor at the time the gifts were received. The IGO recommended that the employee be terminated and be ineligible for rehire by the City and that the contractor be debarred for at least two years. Fleet suspended the employee for 29 days and the contractor was debarred for two years.

- IGO Case # 06-0925

An IGO investigation found that several CDPH employees improperly accepted meals and other gifts from prospective vendors in excess of the amounts permitted by the City’s Ethics ordinance. Also, certain of the CDPH employees failed to comply with the City’s Dual Employment Policy and/or failed to properly complete their SFIs to reflect income from such secondary employment. The IGO recommended discipline ranging from written reprimands to five-day suspensions. CDPH imposed discipline for the employees, and subsequently implemented a “total gift ban” policy for the department.

- IGO Case # 05-1488

An IGO investigation found that a supervisory employee in the Mayor’s Office of Workforce Development (MOWD) accepted \$2,200 for an international trip, and failed to disclose the gift on his/her Statement of Financial Interest (SFI). The employee resigned from City employment prior to the conclusion of the IGO’s investigation.

V. ANALYSIS

The Code of Conduct in the Ethics Ordinance begins with the express imposition of a fiduciary duty on *all* City employees. Specifically, §2-156-020 provides “officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.” As such, City employees are keepers of a public trust. To ensure that City employees do not violate this trust, whenever an employee is offered any gift, they must consider not only whether the gift is permissible under the Ethics Ordinance, but also whether their acceptance of the gift might create the perception that their City judgment has been or could be compromised. It only takes one impermissible gift to give the public the perception that City employees give

preferential treatment to certain contractors in order to receive personal gain from those contractors.

The evidence gathered while conducting this CDOT investigation—both the expense documentation received from CDOT contractors and the interviews with CDOT employees—shows confusion at best, and willful violations at worst, regarding impermissible gifts and the Ethics Ordinance. The information received from CDOT contractors shows that many contractors do not keep detailed records of gifts, and none appear to monitor compliance with the Ethics Ordinance. IGO interviews show that CDOT employees are unclear as to value of events they attend, confused regarding whether they have to inquire into the value of these events, and generally do not know whether their job duties give them the ability to “substantially affect” CDOT contractors.

Given the large number of gifts from just a small sampling of CDOT contractors (at least \$10,100 on gifts directly attributable to over forty CDOT employees, and an additional \$9800 on events which an unknown number of CDOT employees attended), as well as the expressed ignorance of CDOT employees regarding appropriate gifts, the IGO recommends that CDOT move to a “no-gifts” policy, much like several other City departments have done. The hope is that this report will reiterate to both CDOT and contractors who work with CDOT the need for vigilance moving forward and the importance of maintaining, in fact and appearance, impartiality towards companies that have an economic interest in City business.

It is clear that the amount of gifts provided to CDOT employees exceeds the letter of the Ethics Ordinance and thereby presents a significant risk to CDOT and the City. Moreover, the pervasiveness and casualness of contractor and employee gift practices violates the spirit of the Ethics Ordinance. The events and meals listed above in Section III(a)(2) all fit the definition of a gift and were given by CDOT contractors who plainly have an “economic interest in a specific City business, service, or regulatory transaction.” § 2-156-040(c). Whether all of these employees had the ability to “substantially affect” the gifting contractors’ business is not definitive in all instances, due to the lack of guidance in the Ethics Ordinance regarding this provision, it is clear that almost all of the employees admitted to having the ability to influence the CDOT contractors’ business in some way. Further, the gifts detailed above in Section III(a)(2) of this report are clearly above the threshold indicated in Section 2-156-040(c). Finally, the gifts do not appear to fit into any of the reasonable hosting exceptions detailed in the Ethics Ordinance.

Many of the CDOT employees interviewed opined that the meals, tickets to events, and golf outings were acceptable because a) they did not know the value of the gifts, b) they believed procedures were in place to prevent any preferential treatment of contractors, and c) the gifts did not in fact influence their decisions regarding these contractors. However, whether or not the gift actually influences an employee’s actions is beside the point as far as § 2-156-040(c) is concerned. The City’s Ethics Ordinance clearly outlines appropriate gift limits, and does not base permissibility in after-the-fact determinations regarding whether a quid pro quo occurred.

Even if an employee may not appear to have the ability to immediately affect a contractor’s business, the employee may at some point in the future be in a position to affect that

business. A history of unchecked gift-giving in that circumstance creates a perception of partiality. If the purpose of the gifts provision in the Ethics Ordinance is to prevent even the appearance of preferential treatment of contractors, it is most effective if all employees within the department are held to the same standard. Moving to a no-gifts policy would circumvent the need to categorize these positions when their ability to influence, affect or substantially affect contractors may be fluid and uncertain.

Further, the fact that many of the CDOT employees claimed to have not known the value of the events does not mitigate against potential violations. It is incumbent upon the employee to seek out the information regarding whether the meal, event, or outing is beneath the threshold of the Ethics Ordinance before attending. Generally, prices for sporting events are written on the ticket, and information regarding ticket prices for charity events such as golf outings and holiday events are available through the invitation, sponsoring organization, or on the internet website for the event. As City employees must abide by the Ethics Ordinance, it is their duty to make sure that their behavior is permitted by the Ethics Ordinance by proactively seeking out the value of such events before attending. Again, if CDOT were to adopt a no-gifts policy, this uncertainty would be eliminated.

The gifts detailed in this report were provided to the CDOT employees because of their position with the City. The fact that many of these meals, events and golf outings were not held on City time is of no consequence.

CDOT is responsible for public way infrastructure, including planning, design, construction, maintenance and management. Because CDOT employees handle the planning and construction of such public assets as roads, sidewalks, bridges and streetlights, it is incumbent upon these employees to be cognizant that any acceptance of gifts could create a perception that their City judgment has been or could be compromised. CDOT employees are reminded during their annual Ethics Training that City service is public service and is based on maintaining public trust. This trust is undoubtedly strained when employees accept gifts, regardless of the employees belief as to whether the gifts fit under the Ethics Ordinance's value threshold.

The IGO is likewise concerned about the inadequate and in some instances non-existent record keeping amongst CDOT contractors. While some contractors provided clear records indicating the name of all CDOT employees who received any meal, event or ticket that was expensed through the company, many did not keep such detailed records. Further, when interviewed by the IGO, some CDOT employees admitted attending events with particular contractors when these events had not been documented by those same contractors. CDOT contractors are required by the terms of their contracts to follow all governmental laws and regulations, including the Ethics Ordinance, as well as cooperate fully in IGO investigations. Maintaining adequate records is the only way that both of these ends may be met.

As reflected in Section IV of this Report, the IGO has encountered many instances in recent years of City employees, not just within CDOT, receiving impermissible gifts. Some of these investigations uncovered evidence making it clear that the Ethics Ordinance had been violated, such as when an employee with Contract Management Authority over a small group of contractors accepted over \$3500 worth of gifts from those contractors. Other investigations,

however, uncovered evidence of gifts that may have not exceeded the Ethics Ordinance value threshold, but certainly opened the department up to the perception – and perhaps real possibility – of improper influence.

Moving forward, in order to encourage transparency and accountability, the IGO recommends that the Mayor institute a City-wide no-gifts policy in order to remove any doubt or uncertainty by employees, promote transparency and accountability, and enhance public confidence in the integrity of City operations. If such a City-wide policy is not implemented, the IGO recommends that at the very least CDOT move to a no-gifts policy.

The IGO also recommends that DPS require all City contractors and vendors be (i) required to keep specific records of all expenses related to City employees, including the full names and positions of City employees receiving gifts and who attends group events such as holiday parties that are sponsored by the contractor, as well as the specific type and full market value of any and all gifts given to employees and officials of the City of Chicago, to assure transparency and accountability around such practices, including assuring that such information is available for use in any future audit or investigation; (ii) be informed via letter of any new no-gifts policy, as well as their continuing contractual duties to abide by the Ethics Ordinance and Departmental Policy.

VI. RECOMMENDATIONS

- The IGO recommends that the Mayor institute a City-wide “no gifts” policy. Doing so would eliminate doubt and uncertainty for City employees and those that do business with the City. This is an area that is fraught with the possibility of bribery at worst and the appearance of impropriety at best. To be clear, any effective “no-gifts” policy minimally should have as a baseline and animating objective a total ban on City employees receiving anything of value from any person or entity that has or is seeking to have a business or regulatory relationship with the Department in which that employee works. Such a policy would comport with best practices in the public and private sectors alike and enhance public confidence in the integrity of City operations.
- If such a City-wide policy is not implemented, based on these findings and analysis detailed in this report, the IGO recommends that at the very least CDOT institute a no-gifts policy.
- The IGO also recommends that DPS require all City contractors and vendors be (i) required to keep specific records of all expenses related to City employees, including the full names and positions of City employees receiving gifts and those attending group events such as holiday parties that are sponsored by the contractor, as well as the specific type and full market value of any and all gifts given to employees and officials of the City of Chicago, to assure transparency and accountability around such practices, including assuring that such information is available for use in any future audit or investigation; (ii) be informed via letter of any new no-gifts policy, as well as their continuing contractual duties to abide by the Ethics Ordinance and Departmental Policy.

Department of Buildings

Policies and Procedures



Zero-Gift

Effective Date: November 16, 2007

Purpose (Reason for Policy):

A zero-gift policy has been established to ensure that Department of Buildings' staff do not accept any gifts from consultants, design professionals, contractors, expeditors, and/or customers, regardless of value.

Definition:

Gift: Any item received voluntarily without equivalent payment.

Examples include, but are not limited to: cash, food, cup of coffee, event tickets, discounts, gift certificates, services, products, etc.

Contact:

Office/Unit Name	Telephone Number
Managing Deputy Commissioner Marlene Hopkins	743-9021

Policy:

Department of Buildings' employees, spouses, domestic partners, minor children, and immediate family members living with them, are not allowed to accept any gifts from consultants, design professionals, contractors, expeditors, and/or customers of the Department of Buildings, regardless of value. This policy supersedes the City of Chicago's Gift Policy.

Violation of this policy, or failure to report violations of this policy by fellow employees, will lead to disciplinary actions up to and including termination.

Procedures:

The followings steps shall be taken if a gift is received:

1. Employees are to immediately notify his/her Deputy Commissioner if a gift is received and turn the gift over to the Deputy Commissioner.
2. The Deputy Commissioner will immediately notify the Executive Assistant to the Commissioner and provide him/her with the gift which was received.
3. The Executive Assistant to the Commissioner will:
 - a. Contact the sender; and
 - b. Acknowledge receipt of the gift; and
 - c. Thank the company for their gesture; and
 - d. Inform them of the Department's Zero Gift Policy; and
 - e. Request sender make arrangements to retrieve the gift within 7 calendar days.
4. Gifts not retrieved within 7 calendar days will be destroyed and discarded by the Executive Assistant to the Commissioner.
5. The Executive Assistant to the Commissioner will:
 - a. Keep a log of all gifts received including:
 - i. Recipient's name (if received by someone other than employee)
 - ii. Employee's name
 - iii. Deputy Commissioner's name
 - iv. Sender's name and contact information
 - v. Date received by recipient
 - vi. Date received by employee
 - vii. Date received by Deputy Commissioner
 - viii. Date received by Executive Assistant
 - ix. Date sender notified
 - x. Description of gift
 - xi. Date gift retrieved or destroyed and discarded.
6. The Executive Assistant to the Commissioner will provide (via email) a copy of the Gift Log to the Board of Ethics and Inspector General's Office the first Monday of every month.
7. The Executive Assistant to the Commissioner will provide (via email) gift receipt confirmation within 1 business day to:
 - a. Recipient (if received by someone other than employee)
 - b. Employee
 - c. Deputy Commissioner
 - d. Managing Deputy Commissioner of Administration.

Approved By:

Commissioner



on

11.15.07

Responsible Position/Department:

Marlene Hopkins

Managing Deputy Commissioner - Administration