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Sent: Wednesday, October 24, 2018 9:42 AM
To: CM; SEC; SS
Cc: Hughes, Brian - Mayor's Office Chief of Staff; Mousa, Sam; Russell, Marlene; Johnson, Camille; Elsbury, Jordan; Krieg, Leeann; Moore, Chiquita; Sidman, Margaret; Johnston, Paige; Rondinelli, Mellissa; Lahmeur, Merriane; Oberdorfer, Kirby; Miller, Carla; Pollock, Cherry
Subject: Jaguars London Trip & Gifts
Attachments: GC-#1240369-v1-Memo_re_Travel_and_Gifts_-_Jaguar_Trip_Final.pdf
Follow Up Flag: Follow up
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Dear Honorable Council Members –

Per direction from the Council President, please see the attached memo regarding gift laws and their applicability to the upcoming Jaguars trip.

While this memo was drafted with a focus on the Jaguar trip to London, the rules apply to any type of circumstance where third parties are sponsoring events, conveying items or goods and the like.

If you have any questions or concerns, please do not hesitate to contact either myself or Carla Miller.

Thank you,

-Jason G.

Jason R. Gabriel

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MEMORANDUM

TO: The Honorable Council President Aaron L. Bowman

**CC: Brian Hughes, Chief of Staff
Sam Mousa, Chief Administrative Officer**

FROM: Jason R. Gabriel, General Counsel *JRG*

RE: Travel and Gift Requirements; City/Jaguar Trip to London, England

DATE: October 19, 2018

I. BACKGROUND & ISSUE

This memo is intended to provide summary guidance with respect to travel and gifts regarding the forthcoming City/Jaguar-related trip to London, England where both the Council President and the Mayor are anticipated to attend on behalf of the City.

In particular, this memo discusses certain necessary procedures to follow in light of the fact that such City officials will be traveling alongside individuals who may be considered lobbyists for purposes of state and local law.

It should be noted at the outset that some of the gift-giving prohibitions described here do not apply to gifts given by certain governmental entities and direct support organizations, relatives, and non-prohibited parties¹; such parties *may* give gifts to the City or to individual Council Members (subject to registry and/or reporting requirements² under certain circumstances).

Based on the information provided and our understanding, this trip is anticipated to take place between the approximate dates of October 25, 2018 through October 28, 2018 with game day being October 28, 2018, and to consist of the following events, to which this memo seeks to provide guidance:

¹ See Section 112.3148, Fl. Stat.

² Council Members and the Mayor must file a Commission on Ethics Form 9 which lists gifts worth over \$100 accepted by them, except for gifts from relatives, gifts required to be disclosed on other forms and prohibited gifts. The filing must occur on or before the last day of each calendar quarter following the calendar quarter in which the gift was received. Council Members and the Mayor must file a Commission on Ethics Form 10 for gifts over \$100 received from a government entity (for which a public purpose must be shown) or from a direct-support organization. Lobbyists have forms they are required to file for gifts they give, including a Commission on Ethics Form 30 for gifts between \$25 and \$100. There are registry requirements for gifts given to the City, accepted on behalf of the City, as well.

- Lodging (hotel stay; we understand that the City will be directly paying for this expense)
- Transportation (airfare; we understand that this could take place via an aircraft owned, leased or chartered by the Jaguars organization)
- Tickets (tickets to the Jaguars game; we understand that tickets may be provided by the Jaguars)
- Meals (breakfast, lunch and dinners)
- Miscellaneous charges (e.g., ground transportation, entrance fees to other events)

II. QUESTIONS PRESENTED

- A. What are the limitations on gifts to individual City officials for the forthcoming events?
- B. What are the requirements for gifts given to and accepted on behalf of the City?

III. SHORT ANSWER

A. Gifts to individual City officials are subject to a \$100 (\$250 aggregate per calendar year) cap from certain restricted donors and are subject to proper valuation.

B. The requirements for gifts given to the City and accepted on behalf of the City with respect to the above-referenced Jaguar-related items is as set forth below in the “Analysis.”

IV. ANALYSIS

(A) No solicitation from certain donors. Certain public officers (who are defined in the Florida Statutes as reporting individuals or procurement employees, together referred to as a “RIPE”³ – including of course, City Council members and the Mayor) are prohibited from *soliciting* anything of value including a gift⁴ from (1) a vendor doing business with the RIPE’s agency, (2) political committee, (3) lobbyist⁵ or (4) a partner, firm, employer, or principal of a lobbyist (together, for ease of reference, these parties are referred to throughout this memo as “Restricted Donors”).⁶ This prohibition is comprehensive; there is no valuation threshold, and it applies to food and beverages.⁷

(B) Gift to the RIPE (e.g., individual Council Member or the Mayor). Gifts given by Restricted Donors directly to an individual Council Member or the Mayor are subject to specific rules which apply

³ See Section 112.3148(2)(d) and (e), Fl. Stat.

⁴ See Section 112.312(12), Fl. Stat., and Section 602.201(q), Ord. Code.

⁵ See Section 112.3148(2)(b), Fl. Stat., and Section 602.201(v) and (w), Ord. Code.

⁶ City law adds parties to the “Restrictive Donor” list as it prohibits gifts from persons or entities doing business with, or who have made application within the past six months with any agency, to do business, or who are subject to the permit approval of an agency of which that person is an officer or employee. Accordingly, “Restricted Donor” includes references to these additional parties when in the context of the City’s Ordinance Code requirements. See Section 602.701, Ord. Code.

⁷ See Section 112.3148(3), Fl. Stat. Also see Section 112.313(2), (4) and (6) Fl. Stat. for other prohibitions.

as to valuation such that the Mayor or any individual Council Member cannot accept a gift from a Restricted Donor exceeding \$100, or in the aggregate of \$250 for all gifts from that person or entity in any calendar year.

Gifts given by Restricted Donors and accepted by Council Members or the Mayor may be accepted only under the following circumstances, and in any event are subject to a \$100 (\$250 aggregate per calendar year) cap:

(1) *Acceptance by individual Council Members or the Mayor.* In the event that Restricted Donors provide gifts directly to the Mayor or any Council Members (as RIPLEs), then special attention should be given to the nature, method and amount or value of such gift (depending on the circumstances). For example, it is obvious enough to know that a monetary gift that exceeds \$100 from a Restricted Donor is prohibited – and conversely such a gift may be accepted if it's \$100 or less. Further, gifts from a relative (even if they are a lobbyist) or a non-Restricted Donor, may be accepted as well. However, depending on the type of gift or the way it is donated by a Restricted Donor, a proper valuation of the gift may be required.

(2) *Valuation of gift.* There are various valuation rules and regulations⁸ for gifts, depending on the type of gift. If it's a monetary donation, than that is obviously quantifiable. However, if it's in *non-monetary* form, then there are certain valuation rules and regulations as follows:

- Food and beverages⁹ which are *not* consumed at a single sitting or meal and which are provided on the same calendar day are considered a single gift, and the total value of all food and beverages provided on that date is considered the value of the gift. Food and beverages consumed at a single sitting or meal is considered a single gift, and are valued together.

The value of a gift provided to several individuals may be attributed on a pro rata basis among all of the individuals. For example, if the gift is food, beverage and entertainment or similar items, provided at a function for *more than 10 people*, the value of the gift to each individual is the total value of the items provided, divided by the number of persons invited to the function, unless the items are purchased on a *per person* basis, in which case the value of the gift to each person is the *per person* cost.

- Transportation¹⁰ is valued on a round-trip basis unless only one-way transportation is provided. Round-trip transportation expenses are considered a single gift. Transportation provided in a private conveyance shall be given the same value as transportation provided in a comparable commercial conveyance. *Comparable commercial conveyance*¹¹ means a similar mode and class of transportation which is available commercially in the community. Where the donor provides transportation for more than one person in a single conveyance at the same time, each person's transportation is valued as if such transportation had been provided in a comparable commercial conveyance. Where the gift is transportation in a private aircraft, the transportation shall be given the same value as an unrestricted coach fare.

⁸ See Rule 34-13.500, Fl. Admin. Code., and Section 112.3148(7), Fl. Stat.

⁹ See Section 112.3148(7)(f), Fl. Stat.

¹⁰ See Section 112.3148(7)(d), Fl. Stat.; See also Florida Commission on Ethics Opinion – CEO 13-03

¹¹ See Rule 34-13.500(4), Fl. Admin. Code., and Section 112.3148(7)(d), Fl. Stat.

• Entrance fees, admission fees, or tickets¹² are valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater. An "event" includes a series of related functions happening on consecutive days. If a series of tickets are given at the same time, such as a football season ticket, the value of the gift is the face value of all the tickets combined. If a fee, fee waiver, or other expense such as a booster contribution, is a condition precedent to buying a ticket or multiple tickets, the value of the ticket includes the amount of that fee, fee waiver, or other expense prorated among the maximum number of tickets that could be purchased.

-Where a ticket to an event involves seating in a skybox, the actual annual cost of leasing the skybox is included in the value of the ticket to the event. The annual cost of the lease is divided by the number of persons which can be seated in the skybox, and further divided by either:

1. the number of events held annually at the stadium, if known; or
2. the number of events held during the preceding year.

-The value of a ticket to a charitable event where a portion of the proceeds go to charity is the value expressed on the face of the ticket.

-A ticket where no value is expressed on the face of the ticket should be valued on a daily or per event basis, whichever is greater, i.e., the cost of admission to persons with similar tickets, regardless of the cost to the donor.

-"Per occurrence" means each separate occasion in which a donor gives a gift to a donee.

-Where the donor is required to pay additional expenses as a condition precedent to being eligible to purchase or provide the gift, and where the expenses are for the primary benefit of the donor, or where the expenses are of a charitable nature, such expenses will not be included in determining the value of a gift provided to a donee.¹³

(3) *Valuation of gift from multiple donors.* If multiple donors are involved in giving one gift, the value of the gift provided by any one donor is equal to the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift.¹⁴

Accordingly, in this context, where the gift is being given and accepted by individual Council Members or the Mayor, rather than on behalf of the City generally, careful attention would need to be paid to from whom the gifts are coming, the value of the gifts, and in the case of multiple donors and multiple recipients, a careful accounting of the donation in accordance with Florida law. One must also be cognizant of any intention attached to such a gift – including, but not limited to, any understanding of favoritism or other forms of influence, in which case such a conditioned gift must not be accepted or should be avoided.

V. TRAVEL RULES AND PROCEDURES

¹² See Section 112.3148(7)(h), Fl. Stat.

¹³ See Rule 34-13.500(5), Fl. Admin. Code.

¹⁴ See Rule 34-13.510, Fl. Admin. Code., and Section 112.3148(7), Fl. Stat.

Chapter 112, Part III, Florida Statutes (Code of Ethics for Public Officers and Employees), as well as various parts of the City's *Ordinance Code* including, but not limited to, Chapter 106, Part 7 (Travel Expense Reimbursement), Chapter 113 (Gifts to City), and Chapter 602, Part 7 (Gifts and Honoraria) are all applicable to the review of travel-related expenses and gifts and must be followed.

The scope of the provided guidance here is based partly on the understanding that the referenced City officials are attending this trip in their official capacities as representatives of, and on behalf of the City, for public purposes inclusive of economic development and the overall promotion of Jacksonville.¹⁵

In line with proper valuation requirements and as summarized above, our understanding is as follows:

- **Lodging (hotel stay):** We understand that the City will be directly paying for this expense as part of the City travelers' official public duties and business. It is important that all State and City rules and policies are adhered to, including but not limited to the City's travel expense rules which, among other things, specify certain lodging requirements.

- **Transportation (airfare):** We understand that transportation is intended to take place via an aircraft owned, leased or chartered by the Jaguars organization. Accordingly, due to the fact that this expense will be valued at more than \$100 and considered a prohibited gift to the City traveler if the value is not paid to the donor in line with both State and City laws (inclusive of proper State-required valuation and the City's travel expense rules), this is an expense that the City should both confirm as to the value in line with State law, and pay for in advance of the date of the travel.

Accordingly, the precise method for third parties who wish to gratuitously donate travel (or travel costs) to the City on behalf of the City can be accomplished in one of two ways: (1) City Trust Fund Payment: The City can receive gratuitous donations from the private sector (transfer them into the appropriate trust fund¹⁶) and then utilize those funds to pay for official travel by the Mayor and other officials; those donations are viewed by the Florida Commission on Ethics¹⁷ as gifts to the City which are neither prohibited nor reportable, or (2) City Payment: The City official(s) traveling on an aircraft owned, leased or chartered by the Jaguars organization shall obtain from the organization an invoice that depicts the cost of the travel, and any other gifted components of the trip (valued pursuant to Florida law as referenced in this memo) which shall be immediately paid by the City.

- **Tickets (tickets to the Jaguars game):** We understand that tickets may be provided by the Jaguars to the City travelers, and accordingly if any such tickets exceed \$100 in value (when evaluated pursuant to the above-referenced State valuation requirements for entrance fees, skyboxes, tickets and the like), any amounts in excess of \$100 for each ticket must be paid back to the donor (i.e., the Jaguars) immediately.¹⁸ As in the case of transportation referenced above, the City should both confirm the value of each such ticket(s) in line with such State law, and pay for them prior to the event.

¹⁵ See Commission on Ethics Opinion - CEO 05-5.

¹⁶ See Section 111.405, Ordinance Code.

¹⁷ See Commission on Ethics Opinion – CEO 13-3.

¹⁸ In any event equal or greater consideration must be given within 90 days of their receipt of such gift. See Rule 34-13.210, Fl. Admin. Code., and Section 112.312(12)(a), Fl. Stat.

- Meals (breakfast, lunch and dinners): We understand that the City will be either directly paying for, or reimbursing the City traveler for most if not all of the meals anticipated for this trip. We also understand that in some cases the City traveler may pay for such items themselves. However, to the extent that any breakfasts, lunches or dinners are given by Restricted Donors – once again – consideration of the value of any such meals (in line with the above referenced State law valuation requirements) have to be adhered to – including, if necessary, immediate reimbursement if any such occurrence or event is valued at over \$100 per person.

- Miscellaneous charges (e.g., ground transportation, entrance fees to other events etc). We understand that the City will either directly pay for, or reimburse the City traveler for most if not all such charges. We also understand that in some cases the City traveler may pay for such items themselves. However, to the extent that any ground transportation, entrance fees to events or any other items are given by Restricted Donors – once again – consideration of the value of any such item(s) (in line with the above-referenced State valuation requirements) as well as City policies and rules will need to be adhered to, including, if necessary, immediate reimbursement to the donor if any such occurrence or event is valued at over \$100 per person.

- Most of the analysis set forth in this memo is focused on gifts from Restricted Donors. It should be noted that while gifts from non-Restricted Donors may be accepted by RIPLEs, consideration of the value of any such items (in line with the above-referenced State law valuation requirements) must also be adhered to, and all such gifts must be properly disclosed and/or reported pursuant to State law¹⁹.

- It should be noted that in line with guidance from the Florida Commission on Ethics,²⁰ after the transportation costs for the trip have been paid for *by the City* for the City officials to attend, and *after the trip* has concluded, the City itself may receive gratuitous donations from the private sector and then allocate those donations in accordance with City requirements for budgetary transfers and appropriations.²¹ The City’s Finance Department and Council Auditor’s Office should be consulted should this process be utilized.

VI. POLITICAL ACTIVITIES

Certain conveyances are not considered “gifts” as defined in the Ethics Code (both local and state) and are treated as political activities that are governed by the elections laws (including Chapter 106, Florida Statutes).

For example, §602.201(q)(2)(ii), Ordinance Code sets forth the following:

Gift does not include:

¹⁹ Council Members and the Mayor must file a Commission on Ethics Form 9 which lists gifts worth over \$100 accepted by them, except for gifts from relatives, gifts required to be disclosed on other forms and prohibited gifts. The filing must occur on or before the last day of each calendar quarter following the calendar quarter in which the gift was received. Council Members and the Mayor must file a Commission on Ethics Form 10 for gifts over \$100 received from a government entity (for which a public purpose must be shown) or from a direct-support organization. Lobbyists have forms they are required to file for gifts they give, including a Commission on Ethics Form 30 for gifts between \$25 and \$100. There are registry requirements for gifts given to the City as a whole as well.

²⁰ See Florida Commission on Ethics Opinions – CEOs 91-21, 92-12, and 13-03.

²¹ City Ordinance 2013-351-E also provides another process that allows for gratuitous private donations to the City for official City travel.

Contributions or expenditures reported pursuant to F.S. Ch. 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party;

There are times where a particular trip is reviewed and paid for by a Political Action Committee as a political activity, and appropriately reported to the Florida Division of Elections (see the link here: <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/>).

Similarly, Section 112.312(12)(b)(2), sets forth the following:

Gift does not include:

Except as provided in s. 112.31485, contributions or expenditures reported pursuant to chapter 106, contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party or affiliated party committee.

Accordingly, to the extent that certain contribution payments are political activity expenditures, such conveyances are not considered gifts and are analyzed pursuant to Chapter 106, Florida Statutes.

VII. CONCLUSION

In conclusion, due to the complexity of valuation, among other things, City travelers must be very attentive to the individual acceptance of gifts from parties. They may accept donations that are \$100 or less from a Restricted Donor (while also adhering to the \$250 aggregate cap for the year). As set forth above, the valuation of a large gift contributed for an event will be the amount of the gift divided by the number of persons invited. Furthermore, as set forth above, depending on the expense, the proper calculation of the value of a gift is imperative, as is the identification of what person or entity has given such gift.

We trust that this memo addresses the current issues with respect to the forthcoming City trip to London in support of the Jaguars and the City's public interests. This memo was intended to serve as a general primer on the matter of travel and gifts in light of the upcoming trip and its anticipated activities. Please let me know of any questions or concerns. Thank you.