

November 27, 2019

MEMORANDUM

To: Governance, Equity and Technology Committee
From: Tom Mikesell, Analyst
Subject: CB 119706 – Third Party Gifts

On December 3, 2019 the Governance, Equity and Technology Committee (Committee) will discuss and potentially vote on [Council Bill \(CB\) 119706](#). The bill changes restrictions on City departments' ability to accept and use monetary and in-kind gifts from third parties. The bill is proposed by the City Attorney's Office. The City Budget Office was not involved in the development of this legislation.

Background

Under current law, there are two ways that Executive departments can accept and spend financial donations from third parties:

- Include the amount, purpose, and name of the donor in a grant acceptance ordinance and include expenditure authority in a supplemental appropriation ordinance for review and approval by the City Council (this can be done as part of the City's quarterly supplemental budget ordinance or through a separate bill); or
- Include the amount and purpose in the City's "Gift Catalogue," which is a list of governmental purposes and projects eligible for donated monies. Monies received into and spent from these funds are not subject to Council-approved appropriation limits, but Council must approve the Gift Catalogue list by ordinance. Passed in 1988, Ordinance 114260 was the last comprehensive update of the Gift Catalogue; subsequent additions have been infrequent, with the most recent occurring through Ordinance 123184.

CB 119706 modifies the Gift Catalogue approach to donations that was established in 1985 by [Ordinance 112137](#) and codified in [Section 5.78](#) of the Seattle Municipal Code (SMC). Below is a summary of the account and the Gift Catalogue as referenced in code.

5.78.010 - Account established—Donations.

A. There is hereby established a Gift Catalogue account in the General Donations and Gift Trust Fund with subaccounts therein for the purposes set forth in the City's Gift Catalogue, and donations shall be credited to the appropriate subaccounts. The Director of Finance and Administrative Services is authorized and directed to accept donations for the purposes set forth in the Gift Catalogue and to give his or her receipt, and the Director of Finance and Administrative Services shall keep appropriate accounts and subaccounts therefor.

B. "City's Gift Catalogue," as used in this chapter, means the document attached to Ordinance 112137 and such supplemental catalogues as may be issued by the City, with the approval of the Mayor and the City Council by resolution, from time to time.

A complete list of the subaccounts in the Gift Catalogue account in the General Donations and Gift Trust Fund is included as Attachment A. Some examples of projects included in the Gift Catalogue include:

- [Ordinance 123184](#), passed in 2009, added the Prostituted Children Rescue Subfund under the authority of the Mayor's Office and provided for eligible uses for donated funds;
- [Ordinance 121079](#), passed in 2003, removed the specific parks projects originally listed in the Gift Catalogue and added park maintenance; park capital improvements; and park special programs as eligible purposes for which donations could be received and spent; and,
- [Ordinance 114260](#), passed in 1988, fully updated the Gift Catalogue attached to the original ordinance.

The attachment to Ordinance 114260 is the only place where staff was able to locate the full list of eligible projects.

Rationale for and Effect of CB 119706

Given infrequent updates to the Gift Catalogue, the City Attorney's Office indicates that the current process for donations established by SMC 5.78 may be hindering the City's ability to receive and spend donations. Anecdotal reports suggest that donations that would otherwise have been made to the City are foregone due to the lack of nexus with specific pre-approved uses in the Gift Catalogue. Further, the Gift Catalogue itself is difficult to locate through a standard internet search.

To address this, CB 119706 would change SMC 5.78 by:

- Replacing the Gift Catalogue Accounts in the General Donations and Gift Trust Fund with a separate donation fund for each department that is specifically referenced in SMC 5.78;
- Stating that donations may be received and spent for purposes prescribed in the City budget;
- Capping individual donations made under the provisions of SMC 5.78 at the same level as the competitive bidding threshold, which is \$52,000 for 2019 and grows with inflation;

- Allowing the Office of Intergovernmental Relations to receive donations for purposes in its budget and for travel expenses for City officials and exchanges of gifts to other governmental dignitaries;
- Deleting the subaccounts for the Georgetown Steam Plant, Public Health – Seattle King County, Department of Finance and Administrative Services, and the City Budget Office; and,
- Repealing Ordinance 120935, which established the Amy Wong Gift Giving Fund under the administration of the Human Services Department and codifying this fund in SMC 5.78. This is technical cleanup, to add the reference to this fund to Section 5.78 rather than through separate ordinance.

Policy Issues:

CB 119706 would expand departments' authority to accept donations and gifts from third parties, with significant trade-offs, including:

- **Reduced legislative oversight:** The bill removes the City Council's role in accepting gifts and donations that are not channeled through the grant acceptance/appropriation process. With the Gift Catalogue, Council pre-approves uses for all donations. Expanding eligible uses to anything in the City budget, as proposed in the bill, reduces the 'power of the purse' authority retained by the City Council. Donors could make financial contributions for any budgeted purpose, for example the City Navigation Team; and it would be at the discretion of the Human Services Department director as to whether to receive the funds and spend them for that purpose. Further, as departments would not need appropriations authority to spend the donated revenues, departments could engage in spending without any direct legislative oversight.
- **Potential for aggregation and influence on department decisions:** While the bill limits individual donations to \$52,000 per instance, there does not appear to be a mechanism to control or scrutinize aggregated donations. For example, a business could give \$52,000 to ten of its employees, who could each in turn make a \$52,000 donation to a City department's donation account. This could be a mechanism for outside influence on department policy and procurement decisions.
- **Donations for travel could result in outside influence:** The bill provides for the Office of Intergovernmental Relations to direct donated monies "to support official City functions, including but not limited to travel expenses for City officials and exchanges of gifts to other governmental dignitaries." This could have an appearance of a conflict of interest, because a third party could pay for travel expenses of City officials to conduct business that may benefit the donor.
- **Social equity:** The bill does not prohibit a donation of funds to a capital project in an affluent neighborhood for the purpose of providing a higher degree of finish or

enhancements above the level provided by budgeted capital funds. The decision of whether to accept and use funds for that purpose would be at the discretion of the department director. Also, there has not been a Racial Equity Toolkit evaluation of the potential implications of this proposed policy.

Potential Remedies: Staff-identified options to address policy concerns:

Option 1. Repeal Section 5.78 and make all donations subject to City Council appropriation

Section 5.78 could be repealed in full, and all donations could be deposited into City funds and appropriated in the budget. Departments that wish to accept donations for a specific purpose could do so through stand-alone legislation or through the annual budget process or one of the regular quarterly supplemental grant acceptance and appropriations ordinances. There is the possibility that some would-be donors would be unwilling to wait for the legislative process, but it is not clear how often (if ever) this might occur.

Option 2. Revise the Gift Catalogue and provide for more frequent updates

The Council could adopt a resolution to revise the Gift Catalogue in 2020 and provide for more regular updates to keep it current with City priorities and the needs of the donor community. Further, Council could amend SMC 5.78 to require that the Gift Catalogue be given greater visibility, for example through publishing on the City's website. This would retain the current level of legislative oversight and would make the Gift Catalogue process easier to use.

Option 3. Add a reporting requirement

Add a requirement that all donations received pursuant to Section 5.78 must be reported to the City Council on a regular basis and at a minimum prior to the budget process. This would add some legislative oversight. Having the report available prior to the budget process would inform the City Council of department resources in addition to those subject to appropriation.

Option 4. No changes

Pass CB 119706 as transmitted.

Please don't hesitate to contact me if you have any questions.

Attachment

cc: Kirstan Arestad, Exec Director
Dan Eder, Deputy Director

Attachment A. Subaccounts of the General Donations and Gift Trust Fund:

Seattle Center

Office of Arts and Culture

Seattle Department of Transportation

Office of Housing

Public Health – Seattle & King County

Seattle Public Utilities

Seattle Police Department

Seattle Fire Department

Georgetown Steam Plant Landmark Center

Seattle Parks and Recreation

Seattle Department of Human Resources

City Budget Office

Department of Finance and Administrative Services

Seattle Department of Construction and Inspections

City Clerk's Office; Department of Neighborhoods

Seattle Climate Action Now Program

Prostituted Children Rescue Program

Amy Wong Gift Giving Fund. This is not listed in SMC 5.78, but is referenced through [Ordinance 120935](#), which added the fund to the Gift Catalogue.