



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: June 22, 2016

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director

Re: **AGENDA ITEM 7 – Proposal by Supervisor Peskin to require members of City Boards and Commissions to file behested payment reports regarding the solicitation of charitable contributions**

Summary This memo provides information about an ordinance introduced by Supervisor Peskin that would amend City law to require the reporting of behested payments by members of City Boards and Commissions

Action Requested That the Commission request staff analysis and recommendations on the proposed ordinance for its consideration and possible action at the Commission's next Regular Meeting on July 25, 2016

Background

On May 3, 2016, Supervisor Aaron Peskin introduced File No. 160478, an ordinance that proposes to amend the City's Campaign and Governmental Conduct Code to require members of City Boards and Commissions to file behested payment reports regarding their solicitation of charitable contributions from other persons. The item has been referred to the Board's Government Accountability Committee for hearing. Supervisor Peskin's office has requested input from the Ethics Commission in connection with hearings planned for later this summer.

Overview of Proposal

The ordinance proposes to enable greater public scrutiny of charitable donations "behested," or made at the request of members of City board and commissions. A behested payment is when a state or local elected official or a member of California's Public Utilities Commission solicits a donation to an organization, such as a 501(c)(3), that is used for legislative, governmental or charitable purposes. These types of payments are not considered campaign contributions or gifts. While state law limits the amount of campaign contributions and gifts, there are no limits on behested payments. State law requires the reporting of behested payments if they total \$5,000 or more per calendar year from a single source.¹

¹ In defining a "contribution" under state law, Government Code § 82015(b)(2)(B)(iii) defines certain payments as presumed to be for purposes *unrelated* to a candidate's candidacy for elective office, including payments "made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the

Officials must report the behested by filing a Form 803 (See Attachment 1). The official's local agency must receive Form 803 within 30 days of the date the behested payment is made. Within 30 days after receipt of the report, the agency must forward a copy to the filing officer who receives the official's original campaign statements, which for officers in the City and County of San Francisco is the Ethics Commission. All reports are public records.

In accordance with the California Government Code section 82015, behested payments currently required to be reported to the Ethics Commission appear at <http://www.sfethics.org/ethics/2012/05/payments-made-at-the-behest-of-an-elected-officer.html>.

As introduced, the Ordinance would:

- create a new requirement under City law that extends the behested donation reporting requirement to members of Boards and Commissions who are required to file Statements of Economic Interests ("SEI," or "Form 700")
- require reporting of any donation(s) totaling \$5,000 within a calendar year made by a third party at the behest of a commissioner to benefit a bona fide educational institution or organization exempt from federal taxation (501c)
- incorporate by reference and rely on existing state law definitions and disclosure requirements
- require a behested donations disclosure notice to be filed with the Ethics Commission within 30 days of the triggering donation
- require, but would not provide funding for, the Ethics Commission to make available on its website all commissioner behested payment notices it receives

Attached for the Commission's review are the Legislative Digest summary of the proposal (Attachment 2) and draft ordinance language, as introduced (Attachment 3).

Commission Staff met with Supervisor Peskin and his legislative staff in late May for an initial discussion on the proposed ordinance. Due to other competing policy matters on the Commission's immediate agenda, however, Staff has not yet had the opportunity to provide the Commission with its analysis or recommendations to support its development of a policy position on the proposed ordinance.

Recommendation

To support the Commission's full consideration of the proposed ordinance, Staff recommends reporting back to the Commission with its analysis and recommendations at the Commission's next Regular Meeting on July 25, 2016, including any preliminary issues or questions the Commission identifies during its discussion of the item at its meeting on June 27th.

same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to Section 81008."

Behested Payment Report

A Public Document

Behested Payment Report

| | | | |
|---|--------------------------|---|---|
| 1. Elected Officer or CPUC Member <i>(Last name, First name)</i> | | Date Stamp | California Form 803 For Official Use Only |
| Agency Name | | | |
| Agency Street Address | | | |
| Designated Contact Person <i>(Name and title, if different)</i> | | <input type="checkbox"/> Amendment <i>(See Part 5)</i> Date of Original Filing: _____ <i>(month, day, year)</i> | |
| Area Code/Phone Number | E-mail <i>(Optional)</i> | | |

2. Payor Information *(For additional payors, include an attachment with the names and addresses.)*

Name _____

Address _____ City _____ State _____ Zip Code _____

3. Payee Information *(For additional payees, include an attachment with the names and addresses.)*

Name _____

Address _____ City _____ State _____ Zip Code _____

4. Payment Information *(Complete all information.)*

Date of Payment: _____ *(month, day, year)* Amount of Payment: *(In-Kind FMV)* \$ _____ *(Round to whole dollars.)*

Payment Type: Monetary Donation or In-Kind Goods or Services *(Provide description below.)*

Brief Description of In-Kind Payment: _____

Purpose: *(Check one and provide description below.)* Legislative Governmental Charitable

Describe the legislative, governmental, charitable purpose, or event: _____

5. Amendment Description and/or Comments

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on _____ DATE By _____ SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

Behested Payment Report

Form 803 is used by elected officers and members of the California Public Utilities Commission (CPUC) to disclose payments made at their behest, principally for legislative, governmental, or charitable purposes. This form was prepared by the Fair Political Practices Commission (FPPC) and is available at www.fppc.ca.gov.

When to File

File Form 803 within 30 days following the date on which the payment(s) meets or exceeds \$5,000 in the aggregate from a single source in a calendar year. Once a single source has made a behested payment of \$5,000 or more during the calendar year, subsequent payments of any amount from that source must be reported.

Where to File

State Officials: The official's state agency must receive Form 803 within 30 days of the date the behested payment is made. Within 30 days after receipt of the report, the state agency must forward a copy to the FPPC at:

428 J Street, Suite 620, Sacramento, CA 95814
Fax: 916-322-0886 E-mail: Form803@fppc.ca.gov

Local Officials: The official's local agency must receive Form 803 within 30 days of the date the behested payment is made. Within 30 days after receipt of the report, the agency must forward a copy to the filing officer who receives the official's original campaign statements.

General Information: Behested payments are payments made principally for legislative, governmental, or charitable purposes under **Government Code Section 82015(b)(2)(B)(iii)**. These payments are not for personal or campaign purposes. Generally, a donation is made at the behest if it is requested, solicited, or suggested by the official, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of, the elected officer or CPUC member. This also includes payments behested by the official's agent or employee on the official's behalf.

Exception: If the behested payment is made by a state, local, or federal government agency and is principally for legislative or governmental purposes, the payment does not have to be reported.

Privacy Information Notice: Information requested by the FPPC is required by and used to administer and enforce the Political Reform Act. Failure to provide information may be a violation subject to administrative, criminal, or civil penalties. All reports and statements are public records available for inspection and reproduction. If you have any questions, please contact the FPPC's General Counsel at 428 J Street, Suite 620, Sacramento, CA 95814 or (916) 322-5660.

Instructions

Part 1 - Identification: Identify the official's name, agency, address, and contact information. Mark the amendment box if changing information on a previously filed Form 803 and include the date of the original filing.

Part 2 - Payor Information: Disclose the name and address of the person making the payment. A business address is acceptable.

Part 3 - Payee Information: Identify the name and address of the person receiving the payment, if applicable. A business address is acceptable.

Part 4 - Payment Information: Disclose the payment date and amount using the fair market value (FMV) for donated in-kind goods or services. Check one box to identify the type of payment and provide a description if the payment is an in-kind good or service. Check one box to identify the purpose and provide a description.

Part 5 - Amendment Description or Comments: Complete this section if amending a previously filed Form 803 or to provide additional or clarifying information.

Part 6 - Verification: Date and sign the form under penalty of perjury.

Example

On April 24, 20XX, at CPUC Member Tully's request, the ABC Corporation made a monetary donation of \$5,000 to the Boys and Girls Club.

| | | | |
|---|--|-------------------------------------|---|
| 2. Payor Information (For additional payors, include an attachment with the names and addresses.) | | | |
| ABC Corporation | | | |
| Name | | | |
| 1234 Alpha Ave., | Sacramento | CA | 95814 |
| Address | City | State | Zip Code |
| 3. Payee Information (For additional payees, include an attachment with the names and addresses.) | | | |
| The Boys and Girls Club | | | |
| Name | | | |
| 5678 Bravo Blvd., | Sacramento | CA | 95814 |
| Address | City | State | Zip Code |
| 4. Payment Information (Complete all information.) | | | |
| Date of Payment: | April 24, 20XX <small>(month, day, year)</small> | Amount of Payment: (In-Kind FMV) \$ | 5,000 <small>(Round to whole dollars.)</small> |
| Payment Type: | <input checked="" type="checkbox"/> Monetary Donation or <input type="checkbox"/> In-Kind Goods or Services (Provide description below.) | | |
| Brief Description of In-Kind Payment: | | | |
| | | | |
| Purpose: (Check one and provide description below.) <input type="checkbox"/> Legislative <input type="checkbox"/> Governmental <input checked="" type="checkbox"/> Charitable | | | |
| Describe the legislative, governmental, charitable purpose, or event: Donation to children's community service organization | | | |

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Requiring Commissioners to File Behested Payment Reports]

Ordinance amending the Campaign and Governmental Conduct Code to require members of City boards and commissions to file behested payment reports regarding the solicitation of charitable contributions.

Existing Law

Under state law, when a payment of \$5,000 or more from a single source is made at the “behest” of a local elected official for a governmental or charitable purpose, that official must file a “behested payment report.” See Cal. Gov. Code § 82015(b)(2)(B)(iii). This reporting requirement applies when there has been a single payment of \$5,000 or more, or a series of payments over the course of a calendar year, from a single source.

After reaching the \$5,000 threshold, elected officials subject to this requirement must file a behested payment report with their departments within 30 days. Within another 30 days, such reports must be forwarded from those departments to the Ethics Commission.

No “behested payment reporting” requirement applies to members of City boards and commissions, unless they are also elected officials.

Amendments to Current Law

The proposed amendments would require members of City boards and commissions listed in Campaign and Governmental Conduct Code Section 3.1-103(a)(1) to file behested payment reports when they similarly solicit contributions of \$5,000 or more for a governmental or charitable purpose. After such a payment is made, the board or commission member must file a behested payment report within 30 days of the date on which the payment was made, or if there has been a series of payments, within 30 days of the date on which they totaled \$5,000 or more. Members of City boards and commissions would be required to complete the same form that is currently required of elected officials. These reports must be filed with the Ethics Commission, and the Ethics Commission would be required to make them available through their website.

The proposed amendments would also provide that any member of a City board or commission who fails to comply with this reporting requirement would be subject to the administrative, civil or criminal remedies that generally apply to violations of local conflict of interest laws.

Background Information

The Fair Political Practices Commission requires elected officials to complete a Form 803 to comply with the existing behested payment reporting scheme. The Form 803 is available at: <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/behested-payment-report.html>.

The behested payment reports that have been submitted to the Ethics Commission under existing law are available at: <http://www.sfethics.org/ethics/2012/05/payments-made-at-the-behest-of-an-elected-officer.html>.

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1 [Campaign and Governmental Conduct Code - Requiring Commissioners to File Behested
2 Payment Reports]

3 **Ordinance amending the Campaign and Governmental Conduct Code to require**
4 **members of City boards and commissions to file behested payment reports regarding**
5 **the solicitation of charitable contributions.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
15 adding Chapter 6, Sections 3.600, 3.610, and 3.620, to read as follows:

16 **CHAPTER 6: BEHESTED PAYMENT REPORTING FOR COMMISSIONERS**

17 **SEC. 3.600. DEFINITIONS.**

18 *Whenever in this Chapter 6 the following words or phrases are used, they shall have the*
19 *following meanings:*

20 *“Behested Payment Report” shall mean the Fair Political Practices Commission Form 803, or*
21 *any other successor form, required by the Fair Political Practices Commission to fulfill the disclosure*
22 *requirements imposed by California Government Code Section 82015(b)(2)(B)(iii), as amended from*
23 *time to time.*

24 *“Charitable Contribution” shall mean any monetary or non-monetary contribution to a*
25 *government agency, a bona fide public or private educational institution as defined in Section 203 of*

1 the California Revenue and Taxation Code, or a nonprofit organization that is exempt from taxation
2 under Section 501(c) of the United States Internal Revenue Code.

3 “Commissioner” shall mean any member of a board or commission listed in Campaign and
4 Governmental Conduct Code Section 3.1-103(a)(1); provided, however, that “Commissioner” shall not
5 include any member of the Board of Supervisors.

6 **SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS**

7 (a) Any Commissioner who, directly or indirectly, requests or solicits any Charitable
8 Contribution, or series of Charitable Contributions, of \$5,000 or more from a single source in a
9 calendar year must file a Behested Payment Report with the Ethics Commission within 30 days of the
10 date on which the Charitable Contribution was made, or if there has been a series of contributions,
11 within 30 days of the date on which a Charitable Contribution causes the total amount of contributions
12 to total \$5,000 or more in a calendar year.

13 (b) The Ethics Commission shall make available through its website all Behested Payment
14 Reports it receives from Commissioners.

15 (c) A Commissioner who fails to comply with this Section 3.610 is subject to the administrative
16 process and penalties set forth in Section 3.242(d).

17
18 **SEC. 3.620. REGULATIONS.**

19 The Ethics Commission shall have the power to adopt rules, regulations, and guidelines for the
20 implementation of this Chapter 6.

21
22 Section 2. Effective Date. This ordinance shall become effective 30 days after
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
25 of Supervisors overrides the Mayor’s veto of the ordinance.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
ANDREW SHEN
Deputy City Attorney

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