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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: July 15, 2016
To: Members of the Ethics Commission
From: LeeAnn Pelham, Executive Director
Re: **AGENDA ITEM 5 – Ordinance introduced 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 staff analysis and recommendations to assist the Ethics Commission in developing its policy position on the proposed Ordinance

Action Requested That the Commission take a position in support of the Ordinance if it is amended with the recommendations proposed in this memo

Background

On May 3, 2016, Supervisor Aaron Peskin introduced File No. 160478, an ordinance ("Ordinance") that proposes to amend the San Francisco Campaign and Governmental Conduct Code ("SFC&GCC") to require members of City Boards and Commissions ("commissioners") to file behested payment reports regarding their solicitation of charitable contributions from other persons. The item has been referred for comment to City departments, including the Ethics Commission, and to the Board's Government Audit and Oversight Committee for hearing.

Overview of Proposal

Modeled after an existing state law that applies to elected officials throughout California, the Ordinance proposes to enable public scrutiny of charitable donations "behested," or made at the request of, members of City board and commissions.

CA Government Code Section 82015(b)(2)(B)(iii) provides that if an individual or entity, at the behest of an elected state or local officer, or member of the California Public Utilities Commission, or their agents, makes monetary or in-kind donations totaling \$5,000 or more in a calendar year for a legislative, governmental or charitable purpose, that officer or member must file a report detailing those donations with his or her public agency within 30 days after reaching the \$5,000 threshold and each 30 days thereafter for additional donations by the same donor. Regulations and advice of the Fair Political Practices Commission guide the interpretation of terms used in these requirements.

For purposes of behested payment reporting, “made at the behest of” means “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the elected officer...or his or her agent.” 2 CCR § 18215.3 (Attachment 1).¹ Behested payments are not considered campaign contributions or gifts.² While state law limits the amount of campaign contributions and gifts, there are no limits on behested donations.

Elected officials must report the behested payment by filing a Form 803 (See Attachment 3). 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.³

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 that is directly or indirectly requested or solicited by 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 does not provide funding for, the Ethics Commission to make available through its website all commissioner behested payment notices it receives

Attached for review are the Board of Supervisors’ Legislative Digest summary of the proposal (Attachment 4) and draft Ordinance as it was introduced (Attachment 5).

¹ In its *Filchev Advice (I-09-073)*, for example, the FPPC advised that “[A] donation to a charitable organization is not a reportable behested payment merely because a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of the organization. A payment to the organization is made at the behest of a member of the PUC only if the payment is solicited, requested, or suggested by the member or otherwise made to the organization in cooperation, consultation, coordination with, or with the consent of the member.” That advice also provided general guidelines on the reportability of donations to charitable organizations when an elected official’s name appears in a letter soliciting the donations. See Attachment 2.

² 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 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.”

³ Posted behested payments by elected officials reported to the Ethics Commission appear at <http://www.sfethics.org/ethics/2012/05/payments-made-at-the-behest-of-an-elected-officer.html>. Since January 2015, 84 such reports have been filed with the Commission.

At its June Regular Meeting, the Ethics Commission heard a presentation by Supervisor Peskin Legislative Aide, Lee Hepner, who outlined the purposes of the proposed Ordinance and the requirements it proposes to enact. He noted that goal of the proposal is not to discourage people from serving on City boards and commissions, but to “shed light on the ecosystem of charitable contributions” by providing transparency for those activities when engaged in by City board and commission members. He added the Supervisor is continuing to consider possible amendments to the language introduced, such as allowing reports to be filed online and in a format other than the state Form 803; changing the reporting deadline to quarterly rather than within 30 days; and exempting high-level staff at non-profits whose job it is to do fundraising activities.

Public comment received at the Commission’s June meeting included support for the idea of disclosure; a request that the Ethics Commission consider recommending an exemption for members of boards and commissions who are executive leaders in non-profit organizations whose job responsibilities include raising funds for the organization at which they are employed; and a suggestion that the Ethics Commission consider how the proposal could impact non-profits when donors who give have privacy concerns when making a charitable donation.

To enable its full consideration of the proposed Ordinance, the Ethics Commission requested that Staff report back at its July 25, 2016 Regular Meeting with analysis and recommendations for further discussion by the Commission.

Disclosure Requirements as Proposed in the Ordinance

As introduced, the Ordinance would require use of a “Behested Payment Report,” that is, Form 803 or any successor Form 803 promulgated by the state Fair Political Practices Commission. Disclosures therefore required under the proposed ordinance for board and commissioners would include:

- general identifying and contact information for the commissioner filing the report
- the name and address of the payor;
- the name and address of the payee; and
- payment information, including the date, amount type, and purpose of the payment.

Mirroring state law, the Ordinance as it was introduced would require reporting of donations requested, solicited, or suggested by the official, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of the official, and would include payments behested by the official’s agent or employee on the official’s behalf.

As currently envisioned by the Ordinance, reports would be required to be filed for behested payments 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.

Unlike state law, the Ordinance would require reports to be filed directly with the Ethics Commission, rather than first filing them with the commissioner’s agency. As with existing behested payment reports filed by elected officials, the Ethics Commission would be required to make reports filed by board and commission members also available through its website.

Discussion

Encouraging broad citizen engagement through volunteer public service and providing appropriate transparency about how the public's business is conducted are two critical goals for effective, representative local government. Achieving both in practice demands a continual balancing of the requirements placed on volunteer public service with the broader public benefit those requirements are designed to accomplish.

As introduced, the proposed Ordinance seeks to provide reporting by members of boards and commissions who file Statements of Economic Interests who "behest," or ask for donations to benefit charitable or educational organizations and that result in donations of \$5,000 or more by third parties to those organizations. Individuals are required to file those Statements, or Form 700s, because they are in positions to make or participate in making governmental decisions within the meaning of the Political Reform Act. Members of purely advisory bodies are not required to file Form 700s.

Creating a disclosure requirement under City law for such behested donations could take a tailored or broad approach depending on the on the public policy concerns it seeks to address. A disclosure requirement for City commissioners, for example, could apply to donations a commissioner solicits from any source, as the Ordinance introduced by Supervisor Peskin proposes. On the other hand, a disclosure requirement could be more tailored to disclose donations only from sources that have some nexus to the kinds of City decisions the commissioner has some authority to influence. A disclosure requirement, for example, could apply only to those charitable donations that a commissioner solicits from a source who has or has had a matter pending before the Commissioner's board; from a person who would be a disclosable source of income to the commissioner or board member as identified in his or her agency's Conflict of Interest Code (because those sources do business within the jurisdiction of the commission and could be affected by its decisions). Alternatively, to provide the fullest transparency for the public to assess whether and how commission and board members may be leveraging their role as public officials in ways that benefit non-governmental interests, a disclosure requirement for board and commission members may more broadly also include political fundraising for an appointing authority or other elective City officials.⁴

⁴ Separately, beyond disclosure, are prohibitions on certain activities. Los Angeles City law, for example, bans members of City boards and commission who are required to file Statements of Economic Interests (along with department heads of city departments) from certain political fundraising activities. LAMC Sec 49.7.11 C provides that these officials "shall not do either of the following: 1. Solicit, direct, or receive a contribution from a person who has or, in the preceding 12 months had, a matter involving City action pending before the board or commission member or general manager, or chief administrative officer. 2. Engage in prohibited fundraising on behalf of an elected City officer, a candidate for elected City office, or a City controlled committee. This prohibition does not apply to members of City boards or commissions or general managers, or chief administrative officers who are engaging in fundraising on behalf of their own candidacies for elected office." Under Los Angeles City law, LAMC Sec. 49.7.11 A 2 defines "prohibited fundraising" to mean any of the following:

- a. Requesting that another person make a contribution;
- b. Inviting a person to a fundraising event;
- c. Supplying names to be used for invitations to a fundraising event;
- d. Permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event;
- e. Permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event;

In general, transparency of commissioners' fundraising would enable public scrutiny of those practices and the parties that are responsive to those requests. It can draw attention to circumstances in which funds are raised from sources with interests within the orbit of the commissioner's official duties, or from those who may have had matters pending before an official. That public scrutiny can promote accountability regarding any real or perceived nexus between a commissioner's role on behalf of the public and benefits that may accrue to private interests through a commissioner's activities. In this way, disclosure can promote governmental integrity by highlighting where financial relationships or transactions may exist between those who govern and those who may be seeking governmental action.

Considerations

1. Should a Disclosure Requirement Apply to All Charitable & Educational Donations?

Staff proposes that the Commission foremost consider whether all types of charitable fundraising by members of boards and commissions pose the same level of potential concern that warrant broad disclosure. In other words, could an approach tailored to disclose only those behested donations from sources whose interests a volunteer board or commissioner could actually affect be equally effective in addressing the core goals of the proposed policy? The following scenarios illustrate these questions.

Example 1a: Commissioner Lu is the chair of the annual scholarship drive for her out-of-state alma mater. She sends letters and emails asking former classmates asking them to donate to the fund drive, noting several levels for donating to achieve the class fundraising goal. A former classmate of Lu's, who lives in and owns a successful garden supply company in upstate New York, donates \$5,000 as a result. Should Commissioner Lu be required to disclose that behested donation?

Example 1b: Commissioner Fernandez is the executive director of a national non-profit that conducts an annual fundraising campaign to benefit a variety of other non-profits around the country, some that operate locally. Her job as executive director requires her to raise funds for the organization. Should she be required to report all behested donations of \$5,000 or more that result from her ongoing fundraising duties as the group's director, only those that benefit locally-based non-profits, or none at all?

Example 1c: A new law that appears to be controversial in some areas is being debated in state legislatures across the country. Commissioner Jones is a nationally recognized expert with experience in implementing a similar law here in California, and he founded a 501c4 on the issue several years ago to raise awareness and conduct advocacy. He regularly solicits donations to support those activities, but recently several individuals who were large donors in the past expressed concerns about whether their donations would be disclosed as behested donations. Should Commissioner Jones be required to disclose those behested donations, or only if the donor could be affected by the work of Commissioner Jones' department?

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- f. Providing the use of one's home or business for a fundraising event;
 - g. Paying for at least 20 percent of the costs of a fundraising event;
 - h. Hiring another person to conduct a fundraising event;
 - i. Delivering a contribution, other than one's own, either by mail or in person to an elected City officer, a candidate for elected City office, or a City controlled committee; or
 - j. Acting as an agent or intermediary in connection with the making of a contribution.

2. What Provisions are Necessary in the Ordinance to Support Effective Compliance and Disclosure?

It is difficult to anticipate with any accuracy how many board and commission members might be required to file behested donation payments, or how frequently commissioner behested donations reports may be filed. At present, the City and County of San Francisco has approximately 420 board and commission members who are required to file Statements of Economic Interests. A review of these annual filings between 2014 and 2016 found approximately 30 board and commission members who reported some income from non-profit or educational institutions on their annual Statement – either due to their own employment or from their spouse’s employment.

What is more clearly known is the ongoing demand for public disclosure information that is easily accessible in an online environment. With any newly proposed disclosure requirements, therefore, expectations for effective compliance and disclosure should be spelled out in the law as clearly as possible. How will the disclosure requirements be established to ensure accessibility of the disclosure information to the public?

Absent a mechanism in place to enable the online filing of commissioner behested donation reports - for example, within the existing online Form 700 filing system – board and commission members would likely be required to complete statements in hard copy and send those filings to the Commission. To ensure meaningful public disclosure, this approach would then require personnel to prioritize and scan the filings into a pdf format and manually post them online, where the contents of the forms could not be searched. Generally, the State defines an electronic filing format for forms promulgated by the Fair Political Practices Commission. The “Behested Payment Report,” Form 803, however, does not have an electronic filing format.

As detailed in budget discussions before the Ethics Commission during 2016, the Commission will be undertaking as a priority this year work to contract out the building of the new e-filing components included in its E-filing Conversion Project and expenditure lobbyist ballot measure (Proposition C) program. As of the date of this memo, the Commission’s FY17 and FY18 budget for the E-filing Conversion Project is in the final stages of approval at the Board of Supervisors, and the expenditure lobbyist ballot measure appropriated funds for an electronic filing system. Funds to supplement electronic filing for a proposed expansion of a behested donations disclosure program were not anticipated as the scope of those projects was developed. Without a new funding source and additional funding, therefore, the Commission will not be able to include this proposal as part of the new contractual work now being developed.

3. Effective Date

As proposed, the Ordinance would take effect 30 days after its enactment. Presumably, from that date forward, board and commissioners would be required to disclose their behested charitable donations and the Ethics Commission would be required to make all submissions available through its website. As with any new law, however, it will be necessary to develop filing forms and instructions for filer compliance (should the state’s Form 803 not be used), as well as a process to operationalize the requirements of a filing system. While the proposed Ordinance provides that the Ethics Commission shall have the power to adopt rules, regulations, and guidelines for the implementation of its provisions, establishing in the Ordinance a timeframe for a transition period for implementing the new requirements would be reasonable and beneficial.

Recommendations

In developing its recommendations for the Commission, Staff considered how the Ordinance might best balance three key principles:

- (1) to promote and uphold the desirability and value of volunteering in service to the public;
- (2) to provide meaningful transparency with a clear nexus to that government service; and
- (3) to ensure a sufficient operational foundation to enable the law's effectiveness in practice.

With these goals, Staff therefore urges the Commission to recommend the following:

1. Amend the proposed Ordinance to require commissioners' reporting of behested charitable donations only where there is a nexus to the governmental duties of those volunteer officials.

Disclosures of behested payments, for example, could be tailored to donations made by persons who are a reportable source of income based on a commissioner's Conflict of Interest Code with a tie to the jurisdictional authority of the board or commission member.

2. Absent a sufficient appropriation to enable the building of an electronic filing system that enables effective compliance by filers and effective disclosure for the public for commissioner behested donation reports, the Commission should *not* recommend adoption of the proposed Ordinance at this time.

Instead, the disclosure requirements should be added contingent on sufficient resources to implement electronic filing for the new filings. With a public that has come to expect public disclosure information online in a searchable format, the ordinance should be amended to appropriate additional funds to support adding this form to the Commission's electronic filing system. The Ordinance should be amended to allow for the Commission to define an electronic filing format and add the new form to the Commission's electronic filing system, including use of a form other than Form 803, which would likely create unnecessary confusion for filings by City commissioners.

3. Should a sufficient appropriation be identified in the revised Ordinance, to allow the time it will require for contracting purposes and development of online filing and disclosure tools, Staff recommends establishing an effective and operative date of January 1, 2018.

This timeframe will also provide sufficient time to develop and implement a new disclosure form and filing instructions, rather than relying on the proposed "Behested Payment Report," Form 803.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18215.3. “Behested Payments” Reporting.

(a) Except as provided in subdivisions (b) and (c) below, for purposes of behested payment reporting as required by Sections 82015(b)(2) and (b)(3), “made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the elected officer, Public Utilities Commission (“PUC”) member, or his or her agent.

(b) A payment is not “made at the behest of” an elected officer under Section 82015(b)(2)(B)(iii) or a PUC member under Section 82015(b)(3) and is not subject to behested payment reporting if the payment is made in response to a fundraising solicitation from a charitable organization requesting a payment where the solicitation does not feature an elected officer or PUC member.

(1) For purposes of this regulation, “features an elected officer or PUC member” has the same meaning as found in Regulation 18901(c)(2): “‘Features an elected officer’ means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.”

(2) An elected officer or PUC member is also featured in a solicitation if the roster or letterhead listing the governing body contains a majority of elected officers (Section 82015(b)(2)(B)(iii)) or PUC members (Section 82015(b)(3)).

Note: Authority cited: Section 83112, Government Code. Reference: Section 82015, Government Code.

HISTORY

1. New section filed 4-10-2012; operative 5-10-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No. 15).
2. Change without regulatory effect amending subsections (b) and (c) filed 7-16-2012; operative 7-16-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No. 29).
3. Change without regulatory effect repealing subsection (c) filed 3-22-2016; operative 4-21-2016 operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).

April 21, 2009

Linda Filchev
Counsel III, Legal Division
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Your Request for Informal Assistance
Our File No. I-09-073

Dear Ms. Filchev:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ This letter should not be construed as assistance on any conduct that may have already taken place (see Regulation 18329(b)(8)(A)) and is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your questions are general in nature, we are treating your request as one for informal assistance.² Additionally, our advice is limited to obligations arising under the Act.

QUESTIONS

1. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made in response to a request by a member of the California Public Utilities Commission (the "PUC") made prior to January 1, 2009?
2. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made after a member of the PUC is appointed to office but in response to a request by the member made prior to the member's appointment?
3. If a member of the PUC is on the board of directors, an advisory council, or a fundraising committee of a charitable organization, is a donation to the organization a reportable behested payment?
4. Is a donation to a charitable organization in response to a letter soliciting the donation a reportable behested payment if the name of a member of the PUC holding a position with the organization is identified in the letterhead or text of the letter?

CONCLUSIONS

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

1. A payment for a legislative, governmental, or charitable purpose of \$5,000 or more (or payments aggregating to \$5,000 or more from the same source) made at the behest of a member of the PUC must be reported as a behested payment if the payment is made on or after January 1, 2009, even when the payment is in response to a request made by the member prior to January 1, 2009.

2. A payment for a legislative, governmental, or charitable purpose of \$5,000 or more (or payments aggregating to \$5,000 or more from the same source) made on or after January 1, 2009, at the behest of a member of the PUC, must be reported as a behested payment if the payment is made after the member is appointed to office even when the payment is in response to a request by the member made prior to the member's appointment.

3. A donation to a charitable organization is not a reportable behested payment merely because a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of the organization. A payment to the organization is made at the behest of a member of the PUC only if the payment is solicited, requested, or suggested by the member or otherwise made to the organization in cooperation, consultation, coordination with, or with the consent of the member.

4. As described below, the formatting and specific text of the solicitation letter, rather than the mere appearance of the PUC member's name, will determine whether or not a donation made in response to the letter is a payment made at the behest of the member subject to reporting.

FACTS

You are an attorney with the PUC and are requesting advice on behalf of the members of the PUC. In general, you seek informal assistance relating to the recently added provisions of Section 82015(b)(3), which requires members of the PUC to report payments made at their behest and was effective January 1, 2009. More specifically, you ask whether a payment is subject to reporting if the PUC member's request for the payment was made prior to January 1, 2009, or prior to the member being appointed to office. In addition, you ask that we clarify when donations to a charitable organization must be reported by a member of the PUC if the member serves on the board of directors, an advisory council, or a fundraising committee of the organization.

ANALYSIS

Effective January 1, 2009, Section 82015(b)(3) requires members of the PUC to report payments made at their behest (also known as a "behested" payment) exceeding a specified threshold. More specifically, Section 82015(b)(3) provides the following:

"A payment made at the behest of a member of the Public Utilities Commission, made principally for legislative, governmental, or charitable purposes, is not a contribution. However, payments of this type 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 same source in the same calendar year in which they are made."

A report filed by a member of the PUC under Section 82015(b)(3) is a public record subject to inspection and copying. The report must contain the "name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made." The PUC must forward a copy of the report to the Commission within 30 days of receiving the report.

1. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made in response to a request by a member of the PUC made prior to January 1, 2009?

Section 82015(b)(3) requires a member of the PUC to report a payment (or payments from the same source) of \$5,000 or more in the same calendar year within 30 days. In interpreting a statute, the Commission follows the same canons of statutory construction employed by the courts. "If the terms

of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.” (*Johnson Advice Letter*, No. A-08-032, citing *Britton v. Dallas Airmotive, Inc.* (2007) 153 Cal.App.4th 127, 132.) Under the plain language of Section 82015(b)(3), the actual payment triggers the reporting requirements, not the PUC member’s request for the payment. Accordingly, we do not find ambiguity in Section 82015(b)(3), which requires the reporting of all behested payments made on or after January 1, 2009, even if the requests for the payments were made prior to this date.

2. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made after a member of the PUC is appointed to office but in response to a request by the member made prior to the member’s appointment?

As stated above, the plain language of 82015(b)(3) triggers reporting on the date of the actual payment, not the date on which the request for the payment is made. Accordingly, we find that a payment made on or after January 1, 2009, at the request of a member of the PUC, is subject to reporting as a behested payment if the payment is made after the member’s appointment to office even if the request for the payment was made prior to the member’s appointment.

Moreover, this interpretation is the most consistent with the purposes of the Act. Section 82015(b)(3) helps to ensure that members of the PUC perform their duties in an impartial manner, free from bias caused by the financial interests of those persons who have supported them. (See Section 81001(b).) In order to ensure that all interests are fully disclosed, it is necessary that all behested payments made after the member has been appointed to office are reported even if the member’s request for the payment occurred prior to the member’s appointment.

3. If a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of a charitable organization, is a donation to the organization a reportable behested payment?

Under Section 82015(b)(3), a payment is subject to reporting only if it is made at the behest of a member of the PUC. A PUC member’s position with a charitable organization does not determine whether any particular payment has been made at the behest of the member. A payment is made at the behest of a member of the PUC if the payment is solicited, requested, or suggested by the member or otherwise made to the organization in cooperation, consultation, coordination with, or with the consent of the member. (See Regulation 18225.7(a).) Accordingly, a donation to a charitable organization is not a reportable behested payment merely because a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of the organization. If you need additional assistance determining whether any particular donation made to the charitable organization was made at the behest of a PUC member holding a position with the organization, you should seek further advice providing the factual context of the donation.

4. Is a donation to a charitable organization made in response to a letter soliciting the donation a reportable behested payment if the name of a member of the PUC holding a position with the organization is identified in the letterhead or text of the letter?

As stated above, a payment must be reported under Section 82015(b)(3) if it is made at the behest of a member of the PUC. You ask whether a donation to a charitable organization is a reportable behested payment when it is made in response to a letter from the organization soliciting the donation and containing the name of a PUC member who holds some position with the organization. Generally, whether or not the donation to the organization is a behested payment will depend on the specific formatting and text of the letter. Therefore, without examining the letter itself, we cannot give a definitive answer to this question.

Nevertheless, we provide the following general guidelines to assist your members in knowing whether they may have to report donations to a charitable organization as behested payments when their names appear in a letter soliciting the donations:

1. We think the general test for determining if a donation to a charitable organization made in response to a letter soliciting a donation and containing the name of a PUC member is a reportable behested payment is whether a reasonable person could conclude the letter is from or on behalf of the member.³

2. As a general rule, we do not believe a reasonable person would conclude the letter is from or on behalf of a PUC member if the member's name appears solely in a roster listing of a group of all officers or board members of the organization, the listed group does not consist of a majority of elected officers or PUC members who are subject to behested payment reporting under Section 82015(b)(2)(B)(iii) or 82015(b)(3), and the member's name is not highlighted or singled out from the group by use of format, type face or another similar method. Our conclusion would be the same if the member's name is similarly listed in a roster of all members of an "honorary," advisory, fundraising or similar committee or group of the organization assembled for the purpose of charitable fundraising. Thus, there would generally be no behested payment report in these circumstances.

3. However, we think a reasonable person could conclude the letter is from or on behalf of a PUC member, requiring the member to report donations to the charitable organization made in response to the communication as behested payments, under any of the following circumstances:

a. The communication is signed or clearly made by the PUC member.

b. Even though the PUC member's name appears in the type of roster listing described in 2 above, the listing in the roster meets any of the following criteria: (i) the group does not include all individuals who hold similar positions with the organization; (ii) the group consists of a majority of elected officers or PUC members who are subject to behested payment reporting under Section 82015(b)(2)(B)(iii) or 82015(b)(3)⁴; (iii) the PUC member is the only person listed under a particular roster heading; or (iv) the member's name is highlighted or singled out from the group by use of format, type face or another similar method.

c. The PUC member's name appears in some other part of the communication and one could reasonably conclude from the circumstances that the communication was from or on behalf of the member.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

³ Note that if the formatting and specific text of the letter could lead a reasonable person to conclude that the letter is from or on behalf of a PUC member identified in the letter, the payment by the charitable organization for the letter may be a reportable behested payment in addition to the any donations made in response to the letter.

⁴ In this situation, each elected officer and PUC member whose name appears in the roster listing and who is also subject to behested payment reporting under Section 82015(b)(2)(B)(iii) or 82015(b)(3) would be required to report the full value of each reportable donation received by the organization in response to the communication.

Behested Payment Report

A Public Document

Behested Payment Report

1. Elected Officer or CPUC Member *(Last name, First name)*

Date Stamp

California
Form 803
 For Official Use Only

Agency Name

Agency Street Address

Designated Contact Person *(Name and title, if different)*

Area Code/Phone Number

E-mail *(Optional)*☐ Amendment *(See Part 5)*Date of Original Filing: _____
*(month, day, year)*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 _____
DATEBy _____
SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

Behested Payment Report

CALIFORNIA
FORM **803**

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	Amount of Payment: (In-Kind FMV) \$	5,000
	(month, day, year)		(Round to whole dollars.)
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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Item 5 -- Attachment 5

[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.

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

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

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

CHAPTER 6: BEHESTED PAYMENT REPORTING FOR COMMISSIONERS

SEC. 3.600. DEFINITIONS.

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

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

“Charitable Contribution” shall mean any monetary or non-monetary contribution to a 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.

1
2 APPROVED AS TO FORM:
3 DENNIS J. HERRERA, City Attorney

4 By: _____
5 ANDREW SHEN
6 Deputy City Attorney

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