

Behested Payments

Overview of Definitions and Rules

Definitions

Behested Payment – a payment for a legislative, governmental, or charitable purpose made at the behest of a City elective officer or candidate for City elective office
(to be defined in C&GC Code § 1.104)

Made at the behest of – 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, a candidate for City elective office or City elective officer
(to be defined in C&GC Code § 1.104)

Contract – any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

- (1) the rendition of personal services,
- (2) the furnishing of any material, supplies or equipment,
- (3) the sale or lease of any land or building,
- (4) a grant, loan, or loan guarantee; or
- (5) a development agreement.

(defined in C&GC § 1.126)

Contract – shall not mean a collective bargaining agreement or memorandum of understanding between the City and a labor union representing City employees regarding the terms and conditions of those employees' City employment.

(defined in C&GC § 1.126)

Person who contracts with - includes any party or prospective party to a contract, as well any member of that party's board of directors or principal officer, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in a bid or contract.

(defined in C&GC § 1.126)

New Rule

No person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District shall do any of the following if the contract has a total anticipated or actual value of \$100,000 or more, or a combination or series of such

agreements or contracts approved by that same individual or board have a value of \$100,000 or more in a fiscal year of the City and County: ...

(1) Make any behested payment at the behest of:

(A) An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves; or

(B) A candidate for the office held by such individual.

(to be codified in C&GC § 1.126)

Explanation

Section 1.126 of the Campaign and Governmental Conduct Code currently prohibits a City contractor from making a campaign contribution to a City elective official who is in the approval path for the contractor's contract (or a candidate for that official's seat). The 2017 San Francisco Anti-Corruption and Accountability Ordinance (AAO) will extend this rule so that it will also apply to behested payments made by a City contractor to a third party at the behest of a City elective official who is in the approval path for the contractor's contract (or a candidate for that official's seat).

This change in the law will mean that a person who is currently prohibited under § 1.126 from making a contribution to a City elective official will also be prohibited from making a payment to a third party at the behest of that City elective official. For purposes of § 1.126, it does not matter to whom a behested payment is made.

A person who will be prohibited under § 1.126 from making a payment at the behest of a City elective official will not be prohibited from receiving a payment that is made at the behest of the City elective official. In other words, § 1.126 will only prohibit certain City contractors from making behested payments; it will not prohibit City contractors from receiving behested payments. Again, the identity of the party receiving a behested payment is not relevant for purposes of § 1.126. Only the identity of the person making a behested payment is relevant to determining whether that payment is prohibited under § 1.126.

Examples

For all of the following examples, Mayor Alice is the mayor of San Francisco, and Charity Org is a nonprofit organization that provides services to unhoused individuals.

1. Mayor Alice asks Bob to donate \$10,000 to Charity Org. Bob is a person who contracts with the City and County of San Francisco (CCSF), and Mayor Alice must approve Bob's contract. Bob donates \$10,000 to Charity Org.

This is a violation of § 1.126. Because Mayor Alice must approve Bob's contract with CCSF, Bob cannot make payments at the behest of Mayor Alice. Bob violated § 1.126.

2. Mayor Alice asks Bob to donate \$10,000 to Charity Org. Bob does not contract with CCSF. Charity Org recently received a grant from CCSF to provide certain services (making Charity Org a person who contracts with CCSF). Mayor Alice must approve Charity Org's grant. Bob donates \$10,000 to Charity Org.

This is not a violation of § 1.126. Because Bob is not a City contractor, he can make payments at the behest of Mayor Alice. It is irrelevant that Charity Org is a City contractor or that Mayor Alice must approve Charity Org's grant.

3. Mayor Alice asks Bob to donate \$10,000 to Charity Org. Bob is a person who contracts with CCSF; Bob's contract was approved by the Department of Public Health, and Mayor Alice's approval was not required for the contract to be awarded. Bob donates \$10,000 to Charity Org.

This is not a violation of § 1.126. Because Mayor Alice does not need to approve Bob's contract, Bob can make payments at the behest of Mayor Alice.

4. Mayor Alice asks Bob to donate \$10,000 to Charity Org. Bob is on the board of directors of Nonprofit Group, a nonprofit organization that provides free meals. Nonprofit Group recently received a grant from CCSF to provide certain services, and Mayor Alice must approve Nonprofit Group's grant. Bob donates \$10,000 to Charity Org.

This is a violation of § 1.126. Because Nonprofit Group's grant must be approved by Mayor Alice, Nonprofit Group cannot make payments at the behest of Mayor Alice. Because Bob is on Nonprofit Group's board of directors, Bob is also prohibited from making payments at the behest of Mayor Alice. Bob violated § 1.126.

5. Mayor Alice asks Bob to donate \$10,000 to Charity Org. Bob is on the board of directors of Nonprofit Group, a nonprofit organization that provides free meals. Charity Org recently received a grant from CCSF to provide certain services, and Mayor Alice must approve Charity Org's grant. Bob donates \$10,000 to Charity Org.

This is not a violation of § 1.126. Because Nonprofit Group is not a city contractor, Bob can make payments at the behest of Mayor Alice. It is irrelevant that Charity Org is a City contractor.

6. Mayor Alice asks Bob to donate \$10,000 to Charity Org. Bob is on the board of directors of Nonprofit Group, a nonprofit organization that provides free meals. Nonprofit Group recently received a grant from CCSF to provide certain services; Nonprofit Group's grant is approved by the Department of Public Health. Bob donates \$10,000 to Charity Org.

This is not a violation of § 1.126. Because Mayor Alice does not need to approve Nonprofit Group's grant, Nonprofit Group and its affiliated individuals can make payments at the behest of Mayor Alice.