

**DRAFT LANGUAGE  
FOR AMENDED BEHESTED PAYMENTS DISCLOSURE REPORTING**

**CHANGES TO EXISTING LAW**

Proposed for Inclusion in Ethics Commission's 2017 Anti-Corruption and Accountability Ordinance  
11/3/2017

**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:

"Agent" shall be defined as set forth in Title 2, Section 18438.3 of California Code of Regulations, as amended from time to time.

"At the behest of" means 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.

~~"Auctioneer" shall mean any person who is engaged in the calling for, the recognition of and the acceptance of offers for the purchase of goods at an auction.~~

"Behested Payment" shall mean a payment or series of payments that is made at the behest of an official, a committee controlled by an official, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose, as such purposes are defined under California Government Code Section 81000, et seq.

"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), or any successor provision, 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 the California Revenue and Taxation Code, or a nonprofit organization that is exempt from taxation under either Section 501(c) or Section 527 of the United States Internal Revenue Code.~~

~~"Commissioner" shall mean any member of a board or commission listed in Campaign and Governmental Conduct Code Section 3.1-103(a)(l), provided, however, that "Commissioner" shall not include any member of the Board of Supervisors.~~

~~"License, permit, or other entitlement for use" shall be defined as set forth in California Government Code Section 84308, as amended from time to time.~~

"Official" shall mean any individual holding City elective office, as such term is defined in Article I, Chapter One, Section 1.104 of this Code, or any member of a board or commission who is required to file a Statement of Economic Interest, including all persons listed in Campaign and Governmental Conduct Code Section 3.1-103(a)(l).

"Payment" shall mean a cash payment or the delivery of goods or services.

~~"Participant" shall be defined as set forth in California Government Code Section 84308 and Title 2, Section 18438.4 of California Code of Regulations, as amended from time to time.~~

~~"Party" shall be defined as set forth in California Government Code Section 84308, as amended from time to time.~~

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

(a) FILING REQUIREMENT. If a behested payment totaling \$1,000 or more is made at the behest of an official, the official shall file a Behested Payment Report with the Ethics Commission within 30 days of the payment.

~~If a Commissioner directly or indirectly requests or solicits any Charitable Contribution(s) or series of Charitable Contributions, from any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before the Commissioner's board or commission, the Commissioner shall file a Behested Payment Report with the Ethics Commission in the following circumstances:~~

~~(1) if the party, participant or agent makes any Charitable Contribution, or series of Charitable Contributions, totaling \$1,000 or more while the proceeding is pending, the Commissioner shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution was made, or if there has been a series of Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the total amount of the contributions to total \$1,000 or more.~~

~~(2) if the party, participant or agent makes any Charitable Contribution, or series of Charitable Contributions, totaling \$1,000 or more during the three months following the date a final decision is rendered in the proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution was made, or if there has been a series of Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the total amount of the contributions to total \$1,000 or more; and~~

~~(3) if the party, participant or agent made any Charitable Contribution, or series of Charitable Contributions, totaling \$1,000 or more in the 12 months prior to the commencement of a proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date the Commissioner knew or should have known that the source of the Charitable Contribution(s) became a party, participant or agent in a proceeding before the Commissioner's board or commission.~~

(b) NOTICE. If an official solicits or otherwise requests that any person make a behested payment, the official or his agent must notify that person that, if the person makes any behested payment in response to the solicitation or request, the person will be subject to the disclosure and notice requirements in Section 3.611 of this Chapter.

~~(b) (c) WEBSITE POSTING. The Ethics Commission shall make available through its website all Behested Payment Reports it receives from officials Commissioners.~~

~~(c) PENALTIES. A Commissioner who fails to comply with this Section 3.610 is subject to the~~

~~administrative process and penalties set forth in Section 3.242(d).~~

~~(d) **EXCEPTION.**— A Commissioner has no obligation to file Behested Payment Reports, as required by subsection (a), if the Commissioner solicited Charitable Contributions by acting as an auctioneer at a fundraising event for a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code.~~

### **SEC. 3.611. FILING BY DONORS**

(a) If a person who makes a behested payment totaling \$1,000 or more has or recently had a matter pending before the official who requests the behested payment, the person must disclose, within 30 days of the payment and in such form as may be prescribed by the Commission, what the matter is and what outcome the person is or was seeking.

(b) Any person who makes a behested payment must notify the recipient of such behested payment, at the time the payment is made, that the recipient is subject to the disclosure requirements in section 3.612 and 3.613 of this Chapter.

### **SEC. 3.612. FILING BY BEHESTED PAYMENT RECIPIENTS**

- (a) Any person who receives a behested payment totaling \$1,000 or more must disclose, within 30 days of receipt of the payment and in such form as may be prescribed by the Commission, the following:
1. Whether the official who requested that the behested payment be made, or such official's family member, staff member, or campaign staff member, is an officer, director, board member, staff member or authorized agent for the recipient of the behested payment; and
  2. Whether the recipient of the behested payment has hosted or supported an event or created or distributed literature featuring the official within the last twelve months; and
  3. Whether the recipient of the behested payment will host or support an event or create or distribute literature featuring the official during the twelve months following the date of the payment.
- (b) Any recipient of a behested payment who does not receive the notice required under Section 3.611 of this Chapter will not be subject to penalties under Section 3.630 of this Chapter for failure to file pursuant to Subsection (a), unless it is clear from the circumstances that the recipient had actual knowledge that the payment was made at the behest of an official.

### **SEC. 3.613. MAJOR BEHESTED PAYMENT RECIPIENTS**

- (a) Any person who receives, during any calendar year, behested payments totaling \$100,000 or more that were made at the behest of any single official must, in such form as may be prescribed by the Commission and within 30 days of the receipt of the behested payment that

makes the total amount of behested payments received by the person at the behest of the official, do the following:

1. report expenditures made by the person that were funded in whole or in part by the behested payments;
2. if the person is an organization, report the name, address, occupation, and employer of the organization's five largest contributors at the time the organization received the behested payment that caused the total amount of behested payments made to the organization at the official's behest to reach \$100,000; and
3. disclose whether the person has paid any other person to communicate with an official in an attempt to influence any matter pending before the City and, if so, what City matters it sought to influence and the outcomes sought.

(b) Subsection (a) does not apply if the organization receiving the payment is a City department.

(c) Any recipient of a behested payment who does not receive any notice required under Section 3.611 of this Chapter will not be subject to penalties under Section 3.630 of this Chapter for failure to file pursuant to Subsection (a), unless it is clear from the circumstances that the recipient had actual knowledge that the payments were made at the behest of an official.

#### **SEC. 3.620. REGULATIONS.**

(a) The Ethics Commission may adopt rules, regulations, and guidelines for the implementation of this Chapter 6.

(b) The Ethics Commission may, by regulation, require Commissioners to electronically submit substantially the same information to fulfill their obligations under this Chapter 6 as required by the Behested Payment Report to fulfill their obligations under Section 3.610.

#### **SEC. 3.630. PENALTIES.**

Any party who fails to comply with any provision of this Chapter 6 is subject to the administrative process and penalties set forth in Section 3.242(d).