



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

March 17, 2020

Ethics Commission Compliance Information for San Francisco Board and Commission Members Raising Funds for the City's Emergency Give2SF Fund

On Friday, March 13, 2020, Mayor London Breed and City Administrator Naomi M. Kelly [announced the creation of a City and County of San Francisco Give2SF Fund](#), which allows the City to accept tax-deductible monetary contributions that can be spent on various City efforts to respond to the novel coronavirus (COVID-19) outbreak and support residents and small businesses. In a March 13 communication to City commissioners, the Mayor's Office reminded officials who may be soliciting donations to the City and to nonprofit organizations to assist with efforts to address the current public health emergency to keep in mind the public disclosure obligations established in City law that relate to behested payments, among other applicable provisions.

The information contained in this document has been prepared by the Ethics Commission to provide City Board and Commission members with detailed information and tools to comply with these obligations.

Background. In May 2018, the Ethics Commission, Board of Supervisors, and Mayor approved a series of amendments to the City's Campaign and Governmental Conduct Code to further the goals of preventing corruption and the appearance of corruption in local government by creating new restrictions and public disclosure requirements on certain city officials and the interests that benefit from actions by those officials. Among the provisions adopted in the new laws, which were in effect as of January 1, 2019, was a behested payments reporting requirement for members of City Boards and Commissions. Also adopted was a prohibition on using one's public position or office to fundraise for a nonprofit with which one is associated.

"Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust."

SF Charter Sec. 15.103

What are Behested Payments and When Must They be Disclosed?

A behested payment is a payment (both a monetary payment or delivery of goods or services) made at the request, or “behest,” of a government official to a third party.

Under City law, if a City Officer requests or solicits a behested payment from a person who is a party or participant in a proceeding (“interested party”) before the officer, the officer must file a disclosure report within 30 days of the date when the total of behested payments reaches \$1,000. A City officer includes any member of a board or commission who is required to file a Statement of Economic Interests.

Note: City officers are not required to file a behested payment report for any behested payment that is made solely in response to a “public appeal.”

Under the law, a “public appeal” is defined to mean a request for a payment when such request is made by the official by means of television, radio, billboard, a public message on an online platform, the distribution of 200 or more identical pieces of printed material, the distribution of a single email to 200 or more recipients, or a speech to a group of 20 or more individuals.

For behested payment reporting, the following definitions apply:

- “Behest” 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.
- An “interested party” is a person who is a party or participant to certain types of proceedings before the official in question. Under the law, these proceedings are **limited to administrative enforcement proceedings and proceedings regarding permits, licenses, or other entitlements for use.**
 - A *party* to such a proceeding is someone who files an application for a license, permit, or entitlement for use or is the subject of the administrative enforcement, while a *participant* in such a proceeding is someone who is not a party to the proceeding but who actively supports or opposes a particular decision in the proceeding and has a financial interest in the decision.

If an officer solicits or otherwise requests, in any manner other than a public appeal, 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 may be subject to the disclosure and notice requirements in Section [3.620](#). The Ethics Commission's website provides additional information about filing requirements that can apply to [donors and recipients of behested payments](#).

Behested Payment Filings - What to Keep in Mind



The filing deadline for a City Officer's Behested Payment Report, or Form SFEC-3610b, depends on the circumstances under which the behested payment was made. A report must be filed:

- **within 30 days of the payment that makes the total \$1,000 or more** - if the proceeding involving the "interested party" is pending at the time of the payment (or if the payment is made within the 6 months following the date a final decision in the proceeding was rendered) the disclosure is due within 30 days of the payment. *OR*
- **within 30 days of the date the officer knew or should have known that the source of the payment became an "interested party"** - if a payment is made and, within the following 12 months, the payor becomes an interested party, the report is due within 30 days of the date the officer knows or should know that the source of the payment became an "interested party."



As detailed below, officials must e-file a Behested Payment Report using [Form SFEC-3610b](#) with the Ethics Commission for certain payments of \$1,000 or more.

San Francisco voters created the Ethics Commission in 1993 with a mandate to effectively administer and enforce ethics, campaign finance, and lobbying laws for the City & County of San Francisco. Its broad duties include public disclosure, compliance guidance, advice, policy & legislation, assistance to agencies and employees, campaign and lobbying audits, whistleblower protection, independent investigations and administrative enforcement. We invite you to follow our work at sfethics.org.

How to File a Behested Payment Report

Behested payment reports are filed online at the Ethics Commission's website through the [Behested Payments by City Officers](#) page.

Filers can follow instructions there to submit all required information. Original filings can be amended if needed by using the same page to file an amended report.

Rectangular

File SFEC Form 3610b Behested Payments by City Officers

Name and Email Address of Person Completing Form SFEC-3610(b)

A name and email address is required to verify the identity of the city officer or authorized staff or representative completing the form. Note that this person will not be able to complete the signature verification portion of the form unless the person is the city officer.

Name

First & Last Name

Email address

name@domain.com

Name and Email Address of City Officer

A name and email address is required to verify the identity of the city officer that will sign the completed form. A request for signature will route to this person after the form has been completed.

Name

First & Last Name

Email address

name@domain.com



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 Phone: 415.252.3100 . Fax: 415.252.3112
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Received on:

CITY OFFICER BEHESTED PAYMENT REPORT

SFEC Form 3.610(b)
 A Public Document

San Francisco Campaign & Governmental Conduct Code [Section 3.610](#) may require a City Officer to file a Behested Payment Report. For more information, see www.sfethics.org.

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendments only)
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. INFORMATION REGARDING CITY OFFICER	
NAME OF CITY OFFICER	AGENCY NAME
DESIGNATED CONTACT PERSON (if different)	
CONTACT PERSON PHONE	CONTACT PERSON EMAIL (optional)

3. PAYEE INFORMATION		
PAYEE NAME		
STREET		
CITY	STATE	ZIP CODE

Behested Payment Reports received from City officers are public documents.

Information disclosed by Board and Commission members is made available through the Ethics Commission's website by following the Disclosures by City Officers links to the [Payments Made at the Behest of a City Officer page](#) and scrolling down the page to view "Form SFEC-3610b Filings by Elected Officials and Board and Commission Members."

Does the City’s Ban on Fundraising by a Board or Commission Member for their Appointing Authority Apply to Fundraising for the Give2SF Fund?

No. The ban on fundraising by City Commission and Board members for their appointing authority applies to campaign fundraising for political committees controlled by the appointing authority or by a candidate for election to the office of the appointing authority. See SF Campaign & Governmental Conduct Code [Section 3.231\(b\)](#).

Are there other conflict of interest restrictions that may apply to Board and Commission Member Give2SF Fundraising?

Yes. City law restricts Members of City Boards and Commissions from using their public position or office to engage in fundraising for non-profits with which the Commissioner is associated. See SF Campaign and Governmental Conduct Code Section [Sec. 3.207\(a\)\(1\)](#). A City officer may not use his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

- For example, a City Commissioner who is a member of a non-profit board may not use her public position to seek funds for the non-profit. She may, however, use her public position to fundraise generally to the Give2SF Fund. A commissioner, however, should not use her public position to fundraise for the fund and attempt to earmark or solicit funds for use or to be directed to a separate non-profit with which she is associated.

Importantly, a City officer also may not directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a campaign contribution.

The official also may not solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer’s vote, official actions, or judgment with respect to a particular pending legislative or administrative action, or could reasonably be considered as a reward for any official action or inaction on the part of the officer.

General Reminder: Recusal and Recusal Disclosure

Members of City boards or commissions who have a conflict of interest, including a financial conflict of interest under the law, must recuse themselves in the public meeting of their board or commission, identify the conflict of interest immediately prior to the consideration of the matter and do all of the following:

- publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;
- recuse themselves from discussing or acting on the matter; and
- leave the meeting until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

Each time the board or commission Member recuses him or herself from a matter being considered by the board or commission [a recusal disclosure form is required](#) to be filed with the Ethics Commission.

Recusal Disclosure Filings: What to Keep in Mind



The disclosure notice is due within 15 calendar days after the date of the meeting at which the recusal occurred.



The Member must provide information about the Board or Commission member's recusal, including member's name; the date of the meeting and agenda item number of the item for which the recusal occurred (or would have occurred had the Member been present); and a brief description of the matter.



The Board or Commission member must sign the notice and the filing must include a copy of the meeting agenda containing the item that triggered the recusal.

How to Submit a Recusal Disclosure Notification

Recusal disclosure notifications are filed online at the Ethics Commission’s website through the [Notification of Recusal compliance page](#). Filers can follow instructions there to submit all required information.

Original filings can be amended if needed by using the same page to file an amended report.

File SFEC Form 3209b – Notification of Recusal

The Notification of Recusal must be filed electronically through the City and County of San Francisco's DocuSign system.

To start a new filing, complete the fields below and click “Start Form”.

Name of City Board or Commission Member Completing the Form

First & Last Name

Email address

name@domain.com

Start Form



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CONTACT PERSON PHONE	CONTACT PERSON EMAIL <i>(optional)</i>

3. PAYEE INFORMATION		
PAYEE NAME		
STREET		
CITY	STATE	ZIP CODE

Recusal Notification filings received from City Board and Commission members are public documents.

Information disclosed is made available through the Ethics Commission’s website by following the Disclosures by City Officers links to the [Notification of Recusal disclosures](#) page and scrolling down the page to view “SFEC Form 3.209b – Notification of Recusal Filings.”

Departmental Statements of Incompatible Activities

All officers and employees of the City are subject to the provisions of their department, board or commission's Statement of Incompatible Activities (SIA). The SIA identifies activities that are deemed incompatible with their duties as a City officer -- including activities that conflict with official duties or are subject to the review of the department -- and that therefore are prohibited. Statements of Incompatible Activity are posted on departmental websites and can also be accessed by following the compliance tabs for City officers on the Ethics Commission's website to the [Departmental SIA page](#).

Are there sanctions for violating these City laws?

Yes. For filings not submitted by their deadlines, late fees can apply and can be sizeable. Failure to submit public disclosure filings required under City law can result in administrative penalties levied by the Ethics Commission. Under the City Charter, the Commission has authority to order violators pay a monetary penalty to the general fund of the City of up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

Where Can I find additional compliance guidance on laws that apply to members of City boards and Commissions?

Visit the [Ethics Commission website](#) or link directly to its [compliance for City Officers](#) page. In addition, Ethics Commission Staff are available to provide compliance guidance and assistance and can be reached at ethics.commission@sfgov.org or (415) 252-3100.

For additional information, see the City Attorney's [Good Government Guide](#) and a [March 15, 2019 City Attorney memo](#) to elected and appointed City officials regarding various conflict of interest laws generally.

Due to the shelter in place Public Health Order announced on March 16, 2020, the physical offices of the Ethics Commission will be closed from March 17 until April 7, unless otherwise noticed. To help support filers as much as possible with key government transparency obligations during this unprecedented emergency period, Ethics Commission Staff continue to be available to assist with filing guidance, online disclosure tools and resources, advice, and compliance assistance, in addition to performing other ongoing duties. During this period, those who contact the Commission may experience wait times for responses to their requests, and we appreciate your patience and understanding if you experience a delayed response.
