



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: October 5, 2020

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy and Legislative Affairs Counsel

Re: **AGENDA ITEM 6 – Discussion of Monthly Staff Policy Report**

Summary: This memorandum provides updates on ongoing policy projects, pending local legislation, and other operational projects involving the Policy Division to assist the Commission, the public, and Staff in engaging with the Commission's policy work. Recent legislation introduced by Supervisor Haney is included as Attachment 1.

Action Requested: That the Commission review the updates provided in this report.

Section I of this memorandum provides status reports about ongoing policy projects that the Commission has identified as policy priorities as part of its Policy Prioritization Plan (PPP). Section II provides information about ongoing operations and projects that, while not a part of the Commission's Policy Prioritization Plan, regularly require ongoing attention and resources of the Policy Division.

I. Policy Prioritization Plan – Summary of Current Projects and Proposed Projects

This section describes the two policy projects that the Commission identified as priorities at its September 2020 meeting.

A. Review of Conflict of Interest Code and Regulations

At its September 9, 2020 meeting, the Commission identified a review of the City's conflict-of-interest rules as a policy priority. This review is particularly timely in light of the ongoing investigations into alleged corrupt activity by City officials and contractors. The project will involve the review of various ethics rules, including those regarding gifts, behested payments, recusals, incompatible activities, and post-employment restrictions.

Upcoming Interested Persons Meetings

Since the September meeting, Staff has scheduled two interested persons meetings to be held on October 13th at 12pm and October 15th at 3pm. The meetings will be conducted remotely, and any member of the public who wishes to attend may visit the

Commission's website to request a link to the meetings.¹ The links will be shared prior to the meetings by email. The purpose of the meetings, each of which will follow the same agenda, is to solicit feedback from stakeholders as to which areas of the law are most important to review and what possible reforms might look like. The announcement, which was published on September 23rd, identified possible topics for discussion as:

- What concerns do you have about City officials and employees accepting gifts and the current rules that apply to gifts?
- What changes, if any, should be made to rules regarding City officials and employees accepting gifts? Possibilities might include broadening the definition of *gift* (or limiting exceptions to that definition), changing how gifts are reported, and changing what kinds of gifts are prohibited.
- What rules should apply regarding gifts made to City departments.
- What concerns do you have about conflicts of interest in City government, and how do you think the rules could be improved?
- What approaches taken in other jurisdictions should be considered to strengthen the effectiveness of San Francisco's government ethics laws?

These meetings will serve an important function in the project to begin an open process of stakeholder engagement and to utilize the skills and experiences and stakeholders to help inform the Commission's policy making process.

Behested Payments

On September 29th, Supervisors Haney and Peskin introduced legislation to amend San Francisco's local rules on behested payment reporting and to prohibit department heads from soliciting certain kinds of behested payments. The legislation, attached here as Attachment 1, would amend Article III, Chapter 6 of the Campaign and Governmental Conduct Code. This chapter first went into effect January 1, 2018. It was later amended by the Anti-Corruption and Accountability Ordinance (ACAO), which went into effect January 1, 2019. Because the chapter contains no language requiring that the Ethics Commission approve any amendments to the chapter, any legislation amending the chapter can be approved without Ethics Commission approval through a simple majority vote of the Board of Supervisors and the signature of the Mayor.

Supervisor Haney's office has solicited Staff's feedback on the ordinance. Staff will additionally seek the feedback of interested persons at the October 13th and 15th interested persons meetings and will make recommendations about the legislation to the Commission at its regularly scheduled November 13th meeting. Although the Commission's approval of the legislation is not required, the Commission could nonetheless vote on a version of the ordinance and recommend it to the Board of Supervisors.

Because of the timing of this legislation, and the fact that behested payments are a subject to be addressed in the ongoing conflict of interest project, Staff plans to proceed with the project in phases, with the subject of the first phase being behested payments and the legislation introduced by Supervisors Haney and Peskin.

Other Developments

¹ The meeting announcement is available at <https://sfethics.org/ethics/2020/09/announcement-of-interested-persons-meetings-to-discuss-strengthening-citys-government-ethics-laws.html>.

On September 24th, the Controller's office released the second of its reports as part of its Public Integrity Review.² The report contains information about the office's review of the use of non-City accounts by City departments and multiple policy recommendations to address problems that were identified. The Controller's office will present its findings to the Commission under Agenda Item 5 for this meeting. Staff are reviewing the report and will incorporate its findings and recommendations into the Commission's conflict of interest and ethics review project.

As also separately noted in this month's Executive Director's report, on September 24th the Mayor issued Executive Directive 20-02 that directs Department Heads to comply with the City's behested payment requirements that apply to City elected officials and members of boards and commissions that are contained in Article III, Chapter 6 of the Campaign and Governmental Conduct Code.³ This includes the filing of behested payment Form SFEC-3610(b). Information on the Commission's website has been updated to reflect this Executive Directive and Department Heads can use the Commission's existing online filing portal to file their disclosure reports.

B. Biennial Review of City's Designated Employee Form 700 Filers

As described in the September 2019 policy report, Staff is assisting the Clerk of the Board of Supervisors, the City Attorney, and the Department of Human Resources in the City's biennial review of the list of City employees who must file the Form 700 Statement of Economic Interests. State law requires that this review be done every two years by the "code reviewing body," which in San Francisco is the Board of Supervisors.⁴ Each department separately reviews its list of filers and submits changes to the Clerk of the Board.

At this stage, departments have submitted their changes, and the City Attorney's office is drafting a single ordinance that combines the various changes. Once the ordinance is introduced, it will be the subject of a meet and confer process led by DHR. Staff will participate in that process to provide subject matter expertise about the Form 700 filing.

II. **Miscellaneous Policy Administrative Projects**

Policy has been engaged on a number of items during the last month that do not fall within the policy projects identified under the Policy Prioritization Plan. This work includes: research and advice to Staff and the regulated community regarding the laws administered by the Commission, legislative affairs, and media relations. This section describes some of the more significant matters.

² The report is available at <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20Review%20-%20Non-City%20Organizations%2009.24.20.pdf>.

³ The Executive Directive is available at https://sfmayor.org/sites/default/files/Executive%20Directive%2020_02_Gifts%20to%20Departments%20Throug%20Non-City%20Organizations%20-%20Final%20for%20Website.pdf.

⁴ Cal. Gov. Code § 87306(b). *See also* Campaign & Gov. Conduct Code § 3.1-100 et seq. (containing lists of designated City positions that must file the Form 700).

A. Public Financing Program Support

Policy Staff also provided added analysis and support for the public financing program this month. As described in the Executive Director's report for this month, a request for an appeal of ineligibility for public financing by District 1 Supervisorial candidate Veronica Shinzato was received this month based on the eligibility determination the Executive Director issued to the candidate on September 9. In preparation for the requested appeal hearing, additional analysis and a secondary review was performed of the candidate's Qualifying Requests. As a result of that review, the Executive Director issued a revised final determination as detailed in the October Executive Director's report.

ATTACHMENT 1

1 [Campaign and Governmental Conduct Code - Behested Payments]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to expand the**
4 **definition of interested party, to prohibit appointed department heads from soliciting**
5 **certain behested payments, and to require department heads to report solicitation of**
6 **certain behested payments.**

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

11

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

13

14 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
15 revising Sections 3.600 and 3.610, and adding Section 3.605, to read as follows:

16 **SEC. 3.600. DEFINITIONS.**

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

19 "Agent" shall mean any person who represents a party in connection with a proceeding
20 involving a license, permit or other entitlement for use. be defined as set forth in Title 2, Section
21 18438.3 of California Code of Regulations, as amended from time to time.

22 "Appointed department head" shall mean any department head who is required to file a
23 Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code, except for the
24 Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer.

25 * * * *

1 “Commissioner” shall mean any member of a board or commission who is required to file a
2 Statement of Economic Interests as set forth in Section 3.1-103(a)(1) of this Code.

3 * * * *

4 “Elected department head” shall mean Assessor-Recorder, City Attorney, District Attorney,
5 Mayor, Public Defender, Sheriff, or Treasurer.

6 * * * *

7 “Interested party” shall mean either:

8 (a) any party, participant or agent of a party or participant involved in a
9 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
10 use, ~~before an officer or any board or commission (including the Board of Supervisors) on which the~~
11 ~~officer sits; or~~

12 (b) any person contracting with or seeking to contract with the officer’s department.

13 “License, permit, or other entitlement for use” shall mean professional, trade or land use
14 licenses, permits, or other entitlements to use property or engage in business, including professional
15 license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative
16 subdivision and parcel maps, cable television franchises, building and development permits, private
17 development plans, and contracts (other than labor or personal employment contracts and
18 competitively bid contracts where the City is required to select the highest or lowest qualified bidder).
19 be defined as set forth in California Government Code Section 84308, as amended from time to time.

20 “Officer” shall mean any commissioner, appointed department head or elected department
21 head. ~~the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public~~
22 ~~Defender, a Member of the Board of Supervisors, or any member of a board or commission who is~~
23 ~~required to file a Statement of Economic Interests, including all persons holding positions listed in~~
24 ~~Section 3.1-103(a)(1) of this Code.~~

25 “Payment” shall mean a monetary payment or the delivery of goods or services.

1 “Participant” shall means any person who is not a party but who actively supports or opposes
2 (by lobbying in person, testifying in person, or otherwise acting to influence) a particular decision in a
3 proceeding involving a license, permit, or other entitlement for use and who has a financial interest in
4 the decision. be defined as set forth in California Government Code Section 84308 and Title 2, Section
5 18438.4 of California Code of Regulations, as amended from time to time.

6 “Party” shall mean any person who files an application for, or is the subject of, a proceeding
7 involving a license, permit, or other entitlement for use. be defined as set forth in California
8 Government Code Section 84308, as amended from time to time.

9 “Payment” shall mean a monetary payment or the delivery of goods or services.

10 “Pending contract” shall mean a contract or prospective contract from the submission of a
11 proposal until either (1) the termination of negotiations for such contract; or (2) the term of the
12 contract has expired.

13 “Pending proceeding” shall mean a proceeding regarding administrative enforcement, a
14 license, a permit, or other entitlement for use, while it is before (1) an officer or any board or
15 commission (including the Board of Supervisors) on which the officer sits, if the officer is a
16 commissioner or (2) before the officer’s department, if the officer is an appointed department head or
17 elected department head.

18 “Person” shall be defined as set forth in Section 1.104 of this Code.

19 * * * *

20
21 **SEC. 3.605. PROHIBITING APPOINTED DEPARTMENT HEADS FROM SOLICITING**
22 **BEHESTED PAYMENTS.**

23 **(a) PROHIBITION.**

24 (1) Appointed department heads shall not solicit any behested payment from any party,
25 participant or agent of a party or participant involved in a pending proceeding:

1 (A) during the pending proceeding; and
2 (B) for six months following the date on which a final decision is rendered in the
3 pending proceeding.

4 (2) Appointed department heads shall not solicit any behested payment from any person
5 with a pending contract before their department.

6 **(b) EXCEPTIONS.**

7 (1) Elected department heads. This Section 3.605 shall not apply elected department
8 heads.

9 (2) Public appeals. This Section 3.605 shall not apply to public appeals made by
10 appointed department heads.

11 (3) City department. This Section 3.605 shall not apply to requests or solicitations for
12 behested payments made directly to a City department.

13

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

15 **(a) FILING REQUIREMENT - COMMISSIONERS AND ELECTED DEPARTMENT**
16 **HEADS.**

17 (1) Proceeding regarding administrative enforcement, a license, a permit, or other
18 entitlement for use. ~~If an officer~~ a commissioner or elected department head directly or indirectly
19 requests or solicits any behested payment(s) from ~~an interested party~~ any party, participant or
20 agent of a party or participant involved in a pending proceeding, the ~~officer~~ commissioner or elected
21 department head shall file ~~the~~ a behested payment report ~~described in subsection (b)~~ with the Ethics
22 Commission in the following circumstances:

23 (+) (A) if the interested party makes any behested payment(s) totaling
24 \$1,000 or more during the ~~pendency of the matter involving the interested party~~ pending proceeding,
25 the ~~officer~~ commissioner or elected department head shall file a behested payment report ~~within 30~~

1 *days of the date on which the behested payment was made, or if there has been a series of behested*
2 *payments, within 30 days of the date on which the behested payment(s) total \$1,000 or more;*

3 ~~(2)~~ (B) if the interested party makes any behested payment(s) totaling
4 \$1,000 or more during the six months following the date on which a final decision is rendered
5 in the ~~*matter involving the interested party pending proceeding*~~, the ~~*officer*~~ commissioner or elected
6 department head shall file a behested payment report ~~*within 30 days of the date on which the*~~
7 ~~*behested payment was made, or if there has been a series of behested payments, within 30 days of the*~~
8 ~~*date on which the behested payment(s) total \$1,000 or more;*~~ and

9 ~~(3)~~ (C) if the interested party made any behested payment(s) totaling
10 \$1,000 or more in the 12 months prior to the commencement of a ~~*matter involving the interested*~~
11 ~~*party pending proceeding*~~, the ~~*officer*~~ commissioner or elected department head shall file a behested
12 payment report within 30 days of the date the ~~*officer*~~ commissioner or elected department head
13 knew or should have known that the source of the behested payment(s) became an interested
14 party.

15 (2) Person contracting with or seeking to contract with department. If a commissioner
16 or elected department head directly or indirectly requests or solicits any behested payment(s) totaling
17 \$1,000 or more from any person who has a pending contract, the commissioner or elected department
18 head shall file a behested payment report.

19 **(b) FILING REQUIREMENT – APPOINTED DEPARTMENT HEADS.**

20 (1) Proceeding regarding administrative enforcement, a license, a permit, or other
21 entitlement for use.

22 (A) If an appointed department head directly or indirectly requests or solicits
23 any behested payment(s) totaling \$1,000 or more from any party, participant or agent of a party or
24 participant involved in a pending proceeding in the 12 months prior to the commencement of the
25 proceeding, the appointed department head shall file a behested payment report within 30 days of the

1 date the appointed department head knew or should have known that the source of the behested
2 payment(s) became an interested party.

3 (B) If an appointed department head directly or indirectly requests or solicits
4 any behested payment(s) from any party, participant or agent of a party or participant involved in a
5 pending proceeding, and if the direct recipient of the behested payment is a City department, the
6 appointed department head shall file a behested payment report under the following circumstances:

7 (i) if the interested party makes any behested payment(s) totaling \$1,000
8 or more during the pending proceeding; and

9 (ii) if the interested party makes any behested payment(s) totaling \$1,000
10 or more during the six months following the date on which a final decision is rendered in the pending
11 proceeding.

12 (2) **Person contracting with or seeking to contract with department.** If an appointed
13 department head directly or indirectly requests or solicits any behested payment(s) totaling \$1,000 or
14 more from any person who has a pending contract with the department head's department, and if the
15 direct recipient of the behested payment is a City department, the department head shall file a behested
16 payment report.

17 ~~(b)~~ (c) **BEHESTED PAYMENT REPORT.** The behested payment report shall include
18 the following:

- 19 (1) name of payor;
20 (2) address of payor;
21 (3) amount of the payment(s);
22 (4) date(s) the payment(s) were made,
23 (5) the name(s) and address(es) of the payee(s),
24 (6) a brief description of the goods or services provided or purchased, if any,
25 and a description of the specific purpose or event for which the payment(s) were made;

1 (7) if the officer or the officer's relative, staff member, or paid campaign staff, is
2 an officer, executive, member of the board of directors, staff member or authorized agent for
3 the recipient of the behested payment(s), such individual's name, relation to the officer, and
4 position held with the payee;

5 (8) if the payee has created or distributed 200 or more substantially similar
6 communications featuring the officer within the six months prior to the deadline for filing the
7 behested payment report, a brief description of such communication(s), the purpose of the
8 communication(s), the number of communication(s) distributed, and a copy of the
9 communication(s); and

10 (9) if in the six months following the deadline for filing the behested payment
11 report, the payee has created or distributed 200 or more substantially similar communications
12 featuring the officer, the officer shall file an amended payment report that discloses a brief
13 description of such communication(s), the purpose of the communication(s), the number of
14 communication(s) distributed, and a copy of the communication(s).

15 *(d) FILING A BEHESTED PAYMENT REPORT. Unless otherwise provided under this*
16 *Section 3.610, when an officer is required to file a behested payment report, the officer shall file the*
17 *behested payment report described in subsection (c) with the Ethics Commission within 30 days of the*
18 *date on which the behested payment was made, or if there has been a series of behested payments,*
19 *within 30 days of the date on which the behested payments total \$1,000 or more.*

20 ~~(e)~~ (e) **AMENDMENTS.** If any of the information previously disclosed on a behested
21 payment report changes during the pendency of the matter involving the interested party, or
22 within six months of the final decision in such matter, the officer shall file an amended
23 behested payment report.

24 ~~(f)~~ (f) **PUBLIC APPEALS.** Notwithstanding subsections (a) and (b), no officer shall be
25 required to report any behested payment that is made solely in response to a public appeal.

1 ~~(e)~~ (g) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a
2 public appeal, that any person make a behested payment, the official or his agent must notify
3 that person that if the person makes any behested payment in response to the solicitation or
4 request, the person may be subject to the disclosure and notice requirements in Section
5 3.620.

6 ~~(f)~~ (h) **WEBSITE POSTING.** The Ethics Commission shall ~~make available through its~~
7 ~~website~~ all behested payment reports it receives from officers on its website.

8
9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

13
14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Andrew Shen
24 ANDREW SHEN
25 Deputy City Attorney

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