



San Francisco Ethics Commission

25 Van Ness Avenue, STE 220
San Francisco, CA 94102-6053
ethics.commission@sfgov.org
415-252-3100 | sfethics.org

Date: July 5, 2022

To: Members of the Ethics Commission

From: Michael Canning, Acting Senior Policy Analyst

Re: **AGENDA ITEM 8 – Presentation, discussion, and possible action on implementation of City behested payment rules enacted in December 2021 and recent legislative developments.**

Summary

This memo provides an update on the implementation of new behested payments rules enacted by the City in December 2021, and recent legislative developments regarding potential amendments to those rules.

Action Requested

Following the Commission's review of this informational report and the receipt of feedback during public comment on this item at its July 8 meeting, Staff recommends that the Commission schedule a subsequent Special Meeting in July to further consider and possibly act on proposed amendments to the City's behested payments provisions.

Implementation Background

On January 23, 2022, a new behested payments law took effect in San Francisco following its unanimous adoption by the Board of Supervisors on December 24, 2021. Behested payments are payments made at the behest of a government official to a third party.

The ordinance was adopted by the Board in the wake of public policy concerns raised by recent U.S. Department of Justice criminal corruption charges against multiple City officials, employees, and contractors. Among the charges were allegations of numerous instances in which individuals seeking favorable outcomes from City government provided things of value to City officials, or made payments to third parties at the officials' behest, in an attempt to influence the actions of those officials.

The Board's action followed the first phase of a comprehensive, multi-phased review by the Ethics Commission of the City's ethics laws to ensure that the types of conduct alleged in the criminal complaints are appropriately prohibited and deterred by City law. Where that policy review identified weaknesses in the laws, the Commission has sought to address those weaknesses by identifying ways to strengthen the laws. The first phase of the Commission's project addressed provisions regarding [behested payments](#). The [behested payments legislation enacted by the Board in December 2021](#) built on the Commission's recommendations to address demonstrated shortcomings and help

prevent future acts of corruption like those alleged in the ongoing federal corruption investigation. The legislation was also spurred by the Controller's September 24, 2020 report, which also recommended that behested payments be the subject of a new ethics law in light of the recent corruption allegations. The December 2021 legislation prohibits City officials and employees who are required to file the Form 700 Statement of Economic Interests from soliciting behested payments from those who have official business before their department or who have otherwise sought to influence them.

Separate legislation to address policy issues involving [gifts made directly to City officials](#), [gifts made through City departments](#), and [other essential ethics provisions](#) have been under consideration by the Ethics Commission as a ballot measure and regulation amendments based on work the Commission has conducted as part of the second and third phases of its ethics and conflict of interest review project. Consideration of proposals to strengthen those governing laws is addressed separately on the Commission's July 8, 2022 Meeting Agenda under Item 7.

City's December 2021 Law Created Ban on Solicitation of Behested Payments from "Interested Parties"

As adopted, [the new Behested Payments Ordinance \(Ordinance No. 20113\)](#) amended the San Francisco Campaign and Governmental Conduct Code to prohibit elected officials and other officials and employees specified in the law from soliciting behested payments from any person who is an "interested party" to them as local law defines that term. Prior to that legislation, City law allowed behested payments to be solicited from an "interested party" subject to specific public disclosure requirements. Effective January 23, 2022, City law prohibits elected officials, commissioners, department heads and other designated City employees with decision-making responsibilities from seeking behested payments from any of the following:

- a 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 City official or their board, commission, or department;
- an organization that is contracting or seeking to contract with the City official's board, commission, or department, including the directors, officers, and major shareholders of that organization;
- a person who has attempted to influence the City official in any legislative or administrative action;
- a contact lobbyist or expenditure lobbyist who has registered with the Ethics Commission to lobby the City official's board, commission, or department; or
- a permit consultant who has registered with the Ethics Commission, if the permit consultant has reported any contacts with the City official's board, commission, or department to carry out permit consulting services during the prior 12 months.

Behested Payments Guidance and Feedback Received

On January 24, the Commission distributed via email and social media a legislative [update and overview of the new behested payments law](#) to department heads, members of boards and commissions, elected officials, board and commission secretaries, departmental filing liaisons, and all employees designated to file Form 700s under the City's Conflict of Interest Code. An [additional](#)

[notice was shared on March 15](#) regarding the rule change. The notice highlighted that effective January 23, City law:

- ***prohibits the direct or indirect solicitation of behested payments from sources defined as “interested parties”*** by elected officials, department heads, members of boards and commissions, and specified City employees;
- ***expands the definition of interested party*** to include certain City contractors who were not previously covered by that definition, persons seeking to influence City officers and employees, registered lobbyists, and registered permit consultants; and
- ***eliminated the City’s behested payment disclosure filing that previously required officials to report behested payments solicited from interested parties.*** This disclosure report, which previously applied to elected officials, commissioners, board members, and donors and recipients of behested payments, was deleted from the law because the law now *prohibits* these kinds of behested payment solicitations.

In January, the City Attorney’s Office provided public advice to [the Airport Commission](#) and the [SF Public Utilities Commission \(SFPUC\)](#) that applied the new law to questions those offices had posed. This advice from the City Attorney’s Office summarized the recently approved legislation generally, discussed the public appeal exception, and addressed the impact of the legislation on the SFPUC’s Social Impact Program (SIP).

Over the course of the following months since, feedback has been received in communications with offices of members of the Board, Department Heads, and the Mayor’s Office about the new behested payments provisions. This feedback largely has relayed concerns about the impact of the new law and how provisions of the new law are interpreted. The questions and concerns posed are illustrated by the following:

Additional questions from the SFPUC regarding the SIP: Staff have met with officials from the SFPUC to discuss the impact of the behested payment rule changes on the SIP and changes the SFPUC has been making to its SIP following the [Controller’s recommendations](#) regarding the program.

Informal advice requests to Commission Staff: In January, in response to the Commission’s January 24 notice, one department requested informal advice from Staff on how part of their department’s work may be impacted by the rule change. Staff provided advice to that Department Head in January. (One other department asked a general, clarifying question about the legislation). Since April 21, Staff have received an additional seven requests for advice regarding the applicability of the new behested payments provisions. Of these seven requests, Staff provided advice to six requestors and advice to the seventh is being drafted. Most of this advice has been focused on helping department officials determine what entities may or may not be “interested parties” for them and explaining what types of solicitations are allowed.

Mayor’s May 16 Letter: On May 16, the Mayor [sent a letter](#) to all City department heads and departmental Chief Financial Officers (CFOs), directing “all departments to pause any solicitations or requests for philanthropic funding of any department programs or projects,

until such programs and projects have been vetted to ensure compliance with” the legislation on behested payments that took effect January 23rd.

Memo from the Department of Children, Youth, and Their Families (DCYF) Regarding Impact of Behested Payment Rules: On May 20, DCYF Director Maria Su shared [a memo](#) with the public that stated DCYF would no longer be able to solicit philanthropic funds to leverage DCYF’s investments in their Summer Together Initiative. This communication was [covered in the local press](#) and on June 1, Director Su issued [an additional memo](#) stating that based on advice from the City Attorney’s Office and the Ethics Commission, DCYF would be able to continue seeking the funding desired for the Summer Together Initiative.

Mayor’s June 2 Letter Requesting Guidance from City Attorney and Ethics Commission: On June 2, the Mayor [sent a letter](#) to the City Attorney’s Office and the Ethics Commission that asked for guidance on the City’s behested payments. The letter contained 48 questions regarding behested payments, based on questions presented by departments to the Mayor’s Office. Staff consulted with the City Attorney’s Office on this letter and on June 15, the City Attorney’s Office [sent an initial response](#) to the Mayor that relayed answers to 19 of the 48 questions posed that both offices worked on to develop.

Staff has been collecting this feedback, seeking to identify areas where the City’s behested payments rules could be clarified or strengthened, and looking to determine the best form for any potential improvements to take (that is, legislative changes to the Code, clarifying regulations, or additional compliance resources).

June Behested Payments Ballot Measure Approved by San Francisco Voters

As had been the case since they were first established in 2017, the City’s behested payments provisions could be legislatively amended by a simple majority vote of the Board of Supervisors. However, this changed following voter approval of Proposition E on the June 7, 2022 ballot. Prop. E was submitted to the Elections Department on January 18, 2022 by Supervisors Peskin, Chan, Walton, Preston and Mar. As noted in the [June Voter Information Pamphlet](#), the measure was proposed to prevent members of the Board of Supervisors from seeking behested payments from contractors if the Board had approved their contracts, and to change the legislative amendment process to require proposed amendments be approved by both a majority vote of the Ethics Commission and a two-thirds vote of the Board of Supervisors. These changes only impact legislative amendments and do not change the ability of voters to make changes through the ballot measure process. San Francisco voters passed Prop. E with 69 percent of the vote.

The passage of Prop. E means that all future legislative amendments to the behested payment rules must be approved by both a majority vote of the Ethics Commission and a two-thirds vote of the Board of Supervisors.

Recent Legislative Developments

Additional legislative proposals have been introduced since voters adopted Prop. E on the June 7 ballot. On June 14 two ordinances were introduced to address various issues regarding behested payments, some of which also have been the subject of ongoing guidance and advice.

Legislation from the Board of Supervisors ([File #220539](#)): This legislation would “modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City’s acquisition of real property; and making other clarifying changes.” This legislation is sponsored by Supervisors Peskin, Safai, Chan, Walton, Preston, and Mar. A copy of this legislation can be found in **Attachment 1**.

Legislation from the Mayor ([File #220733](#)): This legislation would “modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.”

The Mayor has also submitted similar versions of legislation as a ballot measure, one version that could be placed on the ballot by the Board of Supervisors ([File No. 220741](#)) and another version that the Mayor has already placed on the November 2022 ballot which does not require approval by the Board of Supervisors ([File No. 220748](#)). A copy of this legislation can be found in **Attachment 2**.

With passage of Prop E, as a prerequisite for enactment, both legislative ordinances are now subject to a vote of both the Ethics Commission and the Board of Supervisors consistent with SF Campaign & Governmental Conduct Code Sec. 3.600 as adopted by the voters on June 7th. This means any new legislative ordinances considered for action by the Board of Supervisors are “subject to approval in advance by the Ethics Commission, and must be approved by a supermajority of at least eight votes at the Board of Supervisors.”

Notably, the measure that the Mayor has acted to place on the November 2022 ballot as provided for in [Charter Sec. 3.100\(16\)](#), does not require a vote of the Ethics Commission would be required as a prerequisite to seeking voter approval of that ballot measure, nor would a ballot measure placed on the ballot by the Board of Supervisors.

Recommended Next Steps

As indicated by the recent overwhelming passage of Prop. E, San Francisco voters have expressed a desire that behested payments be the subject of a strong and meaningful ethics law and an expectation that the Ethics Commission will play a role in considering legislative amendments to that law going forward. Given this mandate by the voters, it is important to ensure the Commission has the opportunity to consider proposed changes to any behested payments provisions aligned with the voters’ expectations -- and particularly so given the law took effect only six months ago after a unanimous vote by the Board of Supervisors.

Staff recommends that the Commission should continue its work to support a strong and effective behested payments law by taking the following steps:

- 1) continue to provide timely and thorough responses to requests for advice and guidance received by the Ethics Commission;
- 2) continue to work in coordination with the City Attorney's Office to ensure timely, clear and consistent advice for City officials and employees whose actions are subject to regulation under the law; and
- 3) after the Commission has the opportunity to review this memo and attachments and receive any public comment on the matter at the July 8 meeting, Staff recommends that the Commission schedule a special meeting during the week of July 18 or July 25 to
 - a. be provided a more detailed analysis and recommendations by Staff regarding the recent legislative proposals,
 - b. receive further public input on proposed approaches, and
 - c. take action the Commission believes may be appropriate to resolve any policy issues in advance of the August 5 deadline for placing or removing any measure on the November 2022 ballot while also promoting the effectiveness of the City's behested payments laws.

Attachment 1

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: June 18, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 220539 (version 3)

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City's acquisition of real property; and making other clarifying changes.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc: Patrick Ford, Ethics Commission
Michael Canning, Ethics Commission



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220539	File Type: Ordinance	Status: Pending Committee Action
Enacted:		Effective:
Version: 3	In Control: Rules Committee	
File Name: Campaign and Governmental Conduct Code - Behested Payments Exceptions		Date Introduced: 06/14/2022
Requester:	Cost:	Final Action:
Comment:	Title: Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City's acquisition of real property; and making other clarifying changes.	
Sponsors: Peskin; Safai, Chan, Walton, Preston and Mar		

History of Legislative File 220539

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	05/10/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	06/09/2022	
1	Clerk of the Board	05/25/2022	REFERRED TO DEPARTMENT <i>Referred to the Department of Elections and Ethics Commission for informational purposes.</i>			
2	President	06/07/2022	SUBSTITUTED AND ASSIGNED UNDER 30 DAY RULE <i>Supervisor Peskin introduced a substitute Ordinance bearing a new title.</i>	Rules Committee	06/09/2022	
3	President	06/14/2022	SUBSTITUTED AND ASSIGNED <i>Supervisor Peskin introduced a substitute Ordinance bearing a new title.</i>	Rules Committee		

[Campaign and Governmental Conduct Code - Behested Payments Exceptions]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City's acquisition of real property; and making other clarifying changes.

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 ~~strikethrough 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. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is hereby amended by revising Sections 3.610 and 3.620, to read as follows.

SEC. 3.610. DEFINITIONS.

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

"Affiliate" shall be defined as set forth in Section 1.126 of this Code.

1 “Agent” shall mean any person who represents a party in connection with a
2 proceeding involving a license, permit, or other entitlement for use as set forth in Title 2,
3 Section 18438.3 of the California Code of Regulations, as amended from time to time.

4 “At the behest of” shall mean under the control or at the direction of, in cooperation,
5 consultation, coordination, or concert with, at the request or suggestion of, or with the
6 express, prior consent of.

7 “Behested payment” shall mean a payment that is made at the behest of an officer, or
8 an agent thereof, and that is made principally for a legislative, governmental, or charitable
9 purpose.

10 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except
11 only with respect to contracts with any department of the City and County of San Francisco.

12 “Commissioner” shall mean any member of a City board or commission, excluding
13 the Board of Supervisors, who is required to file a Statement of Economic Interests as set
14 forth in Section 3.1-103(a)(1) of this Code.

15 “Contact” shall be defined as set forth in Section 2.106 of this Code.

16 “Department head” shall mean any department head who is required to file a
17 Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

18 “Designated employee” shall mean any employee of the City and County of San
19 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this
20 Code.

21 “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney,
22 Mayor, Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

23 “Financial interest” shall be defined as set forth in the California Political Reform Act
24 (California Government Code Section 87100 et seq.), any subsequent amendments to these
25 Sections, and its implementing regulations.

1 “Grant” shall mean an agreement with a government agency, non-profit organization
2 or private entity to fund or provide goods or services to assist with City projects or programs,
3 under which the grantor imposes restrictions on the City’s spending of the grant ~~funds~~.

4 “Interested party” shall mean:

5 (a) any party, participant or agent of a party or participant involved in a proceeding
6 regarding administrative enforcement, a license, a permit, or other entitlement for use before
7 (1) an officer, (2) any board or commission (including the Board of Supervisors) on which the
8 officer sits, (3) the department of the officer, or (4) the department of the designated
9 employee; except for any license, permit, or other entitlement for use that is issued on a ministerial
10 basis;

11 (b) (1) any City Contractor contracting with or seeking to contract with the designated
12 employee’s or officer’s department, or any affiliate of such a City Contractor, except for any
13 person providing a grant to the City or a City department, and (2) as pertains to members of
14 the Board of Supervisors, any City Contractor, or any affiliate of such a City Contractor, if the
15 Board of Supervisors approves the City Contractor’s agreement with the City, except for any
16 person providing a grant to the City or a City department;

17 (c) any person who attempted to influence the employee or officer in any legislative
18 ~~or administrative~~ action, provided that “attempt to influence” shall be defined as set forth in
19 Section 3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing
20 Section 3.216(b)(1) with respect to legislative actions, and shall not include (1) oral or written
21 public comment that becomes part of the record of a public hearing; (2) speaking at a public
22 forum or rally, ~~or~~ (3) communications made via email, petition or social media; or (4)
23 communications with a City employee or officer regarding a grant from that person to the City,
24 including any communications with respect to the City’s use of the grant for a particular purpose;
25

1 (d) any contact or expenditure lobbyist, as defined under Article II, Chapter 1 of this
2 Code, who has registered as a contact or expenditure lobbyist with the Ethics Commission, if
3 the contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's
4 or officer's department; or

5 (e) any permit consultant, as defined under Article III, Chapter 4 of this Code, who
6 has registered as a permit consultant with the Ethics Commission, if the permit consultant has
7 reported any contacts with the designated employee's or officer's department to carry out
8 permit consulting services during the prior 12 months.

9 "Interested party" shall not include: (a) any nonprofit organization that Article V of the
10 Charter has authorized to support an arts and culture department; (b) any federal or State
11 government agency; (c) an individual, solely because the individual is an uncompensated
12 board member of a nonprofit organization that is an interested party; or (d) as pertains to
13 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
14 Board of Supervisors did not approve the City Contractor's agreement with the City.

15 "License, permit, or other entitlement for use" shall mean professional, trade, or land
16 use licenses, permits, or other entitlements to use property or engage in business, issued in the
17 discretion of the administering agency, including professional license revocations, conditional use
18 permits, rezoning of property parcels, zoning variances, tentative subdivision and parcel
19 maps, cable television franchises, building and development permits, private development
20 plans, and contracts (other than labor or personal employment contracts and competitively bid
21 contracts where the City is required to select the highest or lowest qualified bidder), as set
22 forth in California Government Code Section 84308, as amended from time to time. For
23 purposes of Section 3.620, "license, permit, or other entitlement for use" shall not include licenses,
24 permits, or other entitlements for use that involve little or no discretion, merely apply a checklist or
25 objective criteria to the facts as presented, and/or are issued over-the-counter or "as-of-right".

1 “Officer” shall mean any commissioner, department head, or elected official.

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

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

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

12 “Permit consulting services” shall be defined as set forth in Article III, Chapter 4 of
13 this Code.

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

15 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
16 18438.2, as amended from time to time, and shall not include a ministerial action such as the issuance
17 of a first-in-time/first-in-right license, permit, or other entitlement for use, as may be the case when a
18 member of the public seeks permission from a City department to use public space.

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

23 “Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
24 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
25 relationship or relationship created by adoption.

1
2 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
3 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
4 **PAYMENTS FROM INTERESTED PARTIES.**

5 (a) **PROHIBITION.** ~~Officers Elected officials, department heads, commissioners,~~ and
6 designated employees shall not directly or indirectly solicit any behested payment from an
7 interested party in the following circumstances:

8 (1) **Administrative proceedings.** If the interested party is a party, participant, or
9 agent of a party or participant in a proceeding before the ~~officer elected official's, department~~
10 ~~head's, commissioner's,~~ or designated employee's department regarding ~~either~~ administrative
11 enforcement, ~~or regarding~~ a license, ~~a permit,~~ or other entitlement for use, the prohibition set
12 forth in this subsection (a) shall apply:

13 (A) during the proceeding; and

14 (B) for ~~12 twelve~~ months following the date on which a final decision is rendered
15 in the proceeding.

16 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a City
17 Contractor, who is a party to or is seeking a contract with the ~~officer elected official's,~~
18 ~~department head's, commissioner's,~~ or designated employee's department, the prohibition set
19 forth in this subsection (a) shall apply from the submission of a proposal until the later of:

20 (A) the termination of negotiations for the contract; or

21 (B) ~~12 twelve~~ months following the end of the contract's term.

22 (3) **Persons seeking to influence.** If the interested party is a person who
23 attempted to influence the ~~officer elected official, department head, commissioner,~~ or designated
24 employee in any legislative ~~or administrative~~ action, the prohibition set forth in this subsection
25 (a) shall apply for 12 months following the date of each attempt to influence.

1 (4) **Lobbyists.** Officers ~~Elected officials, department heads, commissioners,~~ and
2 designated employees may not solicit any behested payment from a contact lobbyist or
3 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
4 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
5 officer's department.

6 (5) **Permit consultants.** Officers ~~Elected officials, department heads, commissioners,~~
7 and designated employees may not solicit any behested payment from a permit consultant
8 who has registered with the Ethics Commission, if the permit consultant has reported any
9 contacts with the designated employee's or officer's department to carry out permit consulting
10 services during the prior 12 months.

11 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
12 or employee is indirectly soliciting a behested payment when the City officer or employee
13 directs or otherwise urges another person to solicit a behested payment from an identifiable
14 interested party or parties.

15 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
16 appeals.

17 (d) **EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS.** This
18 Section 3.620 shall not apply to solicitations made under an authorized program for charitable
19 donations of time and/or money from interested parties to nonprofit 501(c)(3) organizations or public
20 schools. For purposes of this subsection (d), an authorized program is a process for soliciting
21 donations through a competitively procured contract, which program either (i) existed on or before
22 January 23, 2022, such as the San Francisco Public Utilities Commission Social Impact Partnership
23 program, or (ii) is authorized by the Board of Supervisors by ordinance. For a contract that includes
24 an authorized program excepted under this subsection (d), all solicitations under such program related
25 to the award, approval, execution, administration, modification, or enforcement of that contract by City

1 officers or employees are likewise excepted. Any program under (i) above may proceed as it existed on
2 or before January 23, 2022 until the earlier of (A) the Board of Supervisors adopts an ordinance
3 authorizing a program involving donations through a competitively procured contract, as provided by
4 (ii) above, or (B) December 31, 2024.

5 (f) **EXCEPTION – CITY PROPERTY.** Nothing in this Section 3.620 is intended to prevent
6 any officer or designated employee from discussing, negotiating, and/or securing the provision of
7 community benefits or other consideration in connection with the City’s acquisition of real property.

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. Prerequisites for Enactment; Super-Majority Vote Requirement. In the
15 event the People approve Proposition E at the June 7, 2022 election, the enactment of this
16 ordinance will be subject to the provisions of Proposition E that authorize amendments to
17 Article III, Chapter 6 of the Campaign and Governmental Conduct Code only if they are
18 recommended by the Ethics Commission and approved by a supermajority of at least eight
19 votes at the Board of Supervisors.

20
21 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3
4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

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7 By: /s/
8 MANU PRADHAN
9 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 6/14/2022)

[Campaign and Governmental Conduct Code - Behested Payments Exceptions]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City's acquisition of real property; and making other clarifying changes.

Existing Law

Under Campaign and Governmental Conduct Code Sections 3.600, *et seq.*, City officers and employees may not solicit behested payments from interested parties. The term "interested party" includes persons involved in proceedings for licenses, permits, or other entitlements for use; contractors and persons seeking to contract with City departments; and persons who have attempted to influence officers or employees in administrative or legislative actions. This prohibition became effective January 23, 2022.

Amendments to Current Law

This ordinance adds several exceptions to the behested payment prohibition:

- It allows officers and employees to solicit charitable donations from persons contracting or seeking to contract with their departments under authorized programs. A program is authorized if it (1) is approved by the Board of Supervisors (programs existing before the effective date of the behested payment prohibition would remain approved until December 31, 2024, but would then need to be reapproved); and (2) involves a process for the solicitation of donations through a public, competitive procurement that results in the award of a contract that includes an obligation to make donations, such as the San Francisco Public Utilities Commission Social Impact Partnership program.
- It provides that receiving a license or permit or other entitlement for use that was not discretionary (i.e., was issued on a ministerial basis) does not make the recipient an interested party.
- It provides that attempting to influence an administrative action does not make a person an interested party.

- It states that the ordinance does not prevent solicitations in connection with the City's acquisition of real property.

The ordinance also makes several clarifying changes, including that communicating with a City department regarding a grant that the person is providing to that department does not constitute an attempt to influence.

Background Information

The original version of this ordinance proposed an exception for contractually obligated solicitations made under authorized programs. The behested payment prohibition halted the San Francisco Public Utilities Commission Social Impact Partnership program and possibly other department programs. The proposed exception would allow officers and employees to proceed with administering certain types of programs as they were before the behested payment prohibition took effect, without further action by the Board.

On June 7, 2022, a substitute ordinance was introduced. The substitute ordinance further addresses the proposed exception for authorized programs for contractually obligated solicitations, and narrows the definition of who is an interested party.

On June 14, 2022, another substitute ordinance was introduced, to eliminate the prior reference to wholesale energy contracts, to provide a new exception for solicitations that occur in connection with the City's acquisition of real property, and to update the ordinance so that it incorporates language recently approved by the voters via Proposition E (2022).

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- ☐ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning : "Supervisor inquiries"
- ☐ 5. City Attorney Request.
- ☐ 6. Call File No. from Committee.
- ☐ 7. Budget Analyst request (attached written motion).
- ☒ 8. Substitute Legislation File No.
- ☐ 9. Reactivate File No.
- ☐ 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City's acquisition of real property; and making other clarifying changes.

Signature of Sponsoring Supervisor:

For Clerk's Use Only

From: [Pradhan, Manu \(CAT\)](#)
To: [BOS Legislation, \(BOS\)](#); [Angulo, Sunny \(BOS\)](#)
Subject: Re: PESKIN - Ordinance - Behested Payments substitute- file no 220539
Date: Wednesday, June 15, 2022 11:23:45 AM
Attachments: [image001.png](#)

Confirming approval as to form

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Wednesday, June 15, 2022 11:13:41 AM
To: Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Pradhan, Manu (CAT) <Manu.Pradhan@sfcityatty.org>
Subject: RE: PESKIN - Ordinance - Behested Payments substitute- file no 220539

Hi Sunny,

Thank you for the substitute legislation submission. Upon processing the substituted legislation, the previous version listed Supervisors Safai, Chan, Walton, Preston, and Mar as co-sponsors. If you would like to add co-sponsors to this substituted version, please resubmit a new intro form with co-sponsors listed.

Lastly, we are seeking the approval from Deputy City Attorney Manu Pradhan for use of his electronic signature and approval as to form on the legislation, by reply to this email.

Thank you.

Lisa Lew
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

From: Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>

Sent: Tuesday, June 14, 2022 3:16 PM

To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>

Cc: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; PRADHAN, MANU (CAT) <Manu.Pradhan@sfcityatty.org>

Subject: PESKIN - Ordinance - Behested Payments substitute- file no 220539

Good afternoon –

Please find Supervisor Peskin's subject Ordinance for introduction as a substitute to File No. 220539, along with Legislative Digest and Introduction Form.

I am copying DCA Pradhan to confirm that this Ordinance has been signed as to form.

Please let me know if you have any questions.

Thank you,
Sunny

Sunny Angulo

Supervisor Aaron Peskin, *Chief of Staff*

Sunny.Angulo@sfgov.org

415.554.7451 DIRECT

415.554.7450 VOICE

415.430.7091 CELL

[District 3 Website](#)

Sign up for our newsletter [here](#)!

[Campaign and Governmental Conduct Code - Behested Payments Exceptions]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; providing that the receipt of a non-discretionary license, permit, or other entitlement for use does not make a person an interested party; providing that attempting to influence an administrative action does not make a person an interested party; excepting solicitations made in connection with the City's acquisition of real property; and making other clarifying changes.

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 ~~strikethrough 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. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is hereby amended by revising Sections 3.610 and 3.620, to read as follows.

SEC. 3.610. DEFINITIONS.

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

"Affiliate" shall be defined as set forth in Section 1.126 of this Code.

1 “Agent” shall mean any person who represents a party in connection with a
2 proceeding involving a license, permit, or other entitlement for use as set forth in Title 2,
3 Section 18438.3 of the California Code of Regulations, as amended from time to time.

4 “At the behest of” shall mean under the control or at the direction of, in cooperation,
5 consultation, coordination, or concert with, at the request or suggestion of, or with the
6 express, prior consent of.

7 “Behested payment” shall mean a payment that is made at the behest of an officer, or
8 an agent thereof, and that is made principally for a legislative, governmental, or charitable
9 purpose.

10 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except
11 only with respect to contracts with any department of the City and County of San Francisco.

12 “Commissioner” shall mean any member of a City board or commission, excluding
13 the Board of Supervisors, who is required to file a Statement of Economic Interests as set
14 forth in Section 3.1-103(a)(1) of this Code.

15 “Contact” shall be defined as set forth in Section 2.106 of this Code.

16 “Department head” shall mean any department head who is required to file a
17 Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

18 “Designated employee” shall mean any employee of the City and County of San
19 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this
20 Code.

21 “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney,
22 Mayor, Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

23 “Financial interest” shall be defined as set forth in the California Political Reform Act
24 (California Government Code Section 87100 et seq.), any subsequent amendments to these
25 Sections, and its implementing regulations.

1 “Grant” shall mean an agreement with a government agency, non-profit organization
2 or private entity to fund or provide goods or services to assist with City projects or programs,
3 under which the grantor imposes restrictions on the City’s spending of the grant ~~funds~~.

4 “Interested party” shall mean:

5 (a) any party, participant or agent of a party or participant involved in a proceeding
6 regarding administrative enforcement, a license, a permit, or other entitlement for use before
7 (1) an officer, (2) any board or commission (including the Board of Supervisors) on which the
8 officer sits, (3) the department of the officer, or (4) the department of the designated
9 employee; except for any license, permit, or other entitlement for use that is issued on a ministerial
10 basis;

11 (b) (1) any City Contractor contracting with or seeking to contract with the designated
12 employee’s or officer’s department, or any affiliate of such a City Contractor, except for any
13 person providing a grant to the City or a City department, and (2) as pertains to members of
14 the Board of Supervisors, any City Contractor, or any affiliate of such a City Contractor, if the
15 Board of Supervisors approves the City Contractor’s agreement with the City, except for any
16 person providing a grant to the City or a City department;

17 (c) any person who attempted to influence the employee or officer in any legislative
18 ~~or administrative~~ action, provided that “attempt to influence” shall be defined as set forth in
19 Section 3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing
20 Section 3.216(b)(1) with respect to legislative actions, and shall not include (1) oral or written
21 public comment that becomes part of the record of a public hearing; (2) speaking at a public
22 forum or rally, ~~or~~ (3) communications made via email, petition or social media; or (4)
23 communications with a City employee or officer regarding a grant from that person to the City,
24 including any communications with respect to the City’s use of the grant for a particular purpose;
25

1 (d) any contact or expenditure lobbyist, as defined under Article II, Chapter 1 of this
2 Code, who has registered as a contact or expenditure lobbyist with the Ethics Commission, if
3 the contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's
4 or officer's department; or

5 (e) any permit consultant, as defined under Article III, Chapter 4 of this Code, who
6 has registered as a permit consultant with the Ethics Commission, if the permit consultant has
7 reported any contacts with the designated employee's or officer's department to carry out
8 permit consulting services during the prior 12 months.

9 "Interested party" shall not include: (a) any nonprofit organization that Article V of the
10 Charter has authorized to support an arts and culture department; (b) any federal or State
11 government agency; (c) an individual, solely because the individual is an uncompensated
12 board member of a nonprofit organization that is an interested party; or (d) as pertains to
13 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
14 Board of Supervisors did not approve the City Contractor's agreement with the City.

15 "License, permit, or other entitlement for use" shall mean professional, trade, or land
16 use licenses, permits, or other entitlements to use property or engage in business, issued in the
17 discretion of the administering agency, including professional license revocations, conditional use
18 permits, rezoning of property parcels, zoning variances, tentative subdivision and parcel
19 maps, cable television franchises, building and development permits, private development
20 plans, and contracts (other than labor or personal employment contracts and competitively bid
21 contracts where the City is required to select the highest or lowest qualified bidder), as set
22 forth in California Government Code Section 84308, as amended from time to time. For
23 purposes of Section 3.620, "license, permit, or other entitlement for use" shall not include licenses,
24 permits, or other entitlements for use that involve little or no discretion, merely apply a checklist or
25 objective criteria to the facts as presented, and/or are issued over-the-counter or "as-of-right".

1 “Officer” shall mean any commissioner, department head, or elected official.

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

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

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

12 “Permit consulting services” shall be defined as set forth in Article III, Chapter 4 of
13 this Code.

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

15 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
16 18438.2, as amended from time to time, and shall not include a ministerial action such as the issuance
17 of a first-in-time/first-in-right license, permit, or other entitlement for use, as may be the case when a
18 member of the public seeks permission from a City department to use public space.

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

23 “Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
24 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
25 relationship or relationship created by adoption.

1
2 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
3 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
4 **PAYMENTS FROM INTERESTED PARTIES.**

5 (a) **PROHIBITION.** ~~Officers Elected officials, department heads, commissioners,~~ and
6 designated employees shall not directly or indirectly solicit any behested payment from an
7 interested party in the following circumstances:

8 (1) **Administrative proceedings.** If the interested party is a party, participant, or
9 agent of a party or participant in a proceeding before the ~~officer elected official's, department~~
10 ~~head's, commissioner's,~~ or designated employee's department regarding ~~either~~ administrative
11 enforcement, ~~or regarding~~ a license, ~~a permit,~~ or other entitlement for use, the prohibition set
12 forth in this subsection (a) shall apply:

13 (A) during the proceeding; and

14 (B) for ~~12 twelve~~ months following the date on which a final decision is rendered
15 in the proceeding.

16 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a City
17 Contractor, who is a party to or is seeking a contract with the ~~officer elected official's,~~
18 ~~department head's, commissioner's,~~ or designated employee's department, the prohibition set
19 forth in this subsection (a) shall apply from the submission of a proposal until the later of:

20 (A) the termination of negotiations for the contract; or

21 (B) ~~12 twelve~~ months following the end of the contract's term.

22 (3) **Persons seeking to influence.** If the interested party is a person who
23 attempted to influence the ~~officer elected official, department head, commissioner,~~ or designated
24 employee in any legislative ~~or administrative~~ action, the prohibition set forth in this subsection
25 (a) shall apply for 12 months following the date of each attempt to influence.

1 (4) **Lobbyists.** Officers ~~Elected officials, department heads, commissioners,~~ and
2 designated employees may not solicit any behested payment from a contact lobbyist or
3 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
4 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
5 officer's department.

6 (5) **Permit consultants.** Officers ~~Elected officials, department heads, commissioners,~~
7 and designated employees may not solicit any behested payment from a permit consultant
8 who has registered with the Ethics Commission, if the permit consultant has reported any
9 contacts with the designated employee's or officer's department to carry out permit consulting
10 services during the prior 12 months.

11 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
12 or employee is indirectly soliciting a behested payment when the City officer or employee
13 directs or otherwise urges another person to solicit a behested payment from an identifiable
14 interested party or parties.

15 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
16 appeals.

17 (d) **EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS.** This
18 Section 3.620 shall not apply to solicitations made under an authorized program for charitable
19 donations of time and/or money from interested parties to nonprofit 501(c)(3) organizations or public
20 schools. For purposes of this subsection (d), an authorized program is a process for soliciting
21 donations through a competitively procured contract, which program either (i) existed on or before
22 January 23, 2022, such as the San Francisco Public Utilities Commission Social Impact Partnership
23 program, or (ii) is authorized by the Board of Supervisors by ordinance. For a contract that includes
24 an authorized program excepted under this subsection (d), all solicitations under such program related
25 to the award, approval, execution, administration, modification, or enforcement of that contract by City

1 officers or employees are likewise excepted. Any program under (i) above may proceed as it existed on
2 or before January 23, 2022 until the earlier of (A) the Board of Supervisors adopts an ordinance
3 authorizing a program involving donations through a competitively procured contract, as provided by
4 (ii) above, or (B) December 31, 2024.

5 (f) **EXCEPTION – CITY PROPERTY.** Nothing in this Section 3.620 is intended to prevent
6 any officer or designated employee from discussing, negotiating, and/or securing the provision of
7 community benefits or other consideration in connection with the City’s acquisition of real property.

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. Prerequisites for Enactment; Super-Majority Vote Requirement. In the
15 event the People approve Proposition E at the June 7, 2022 election, the enactment of this
16 ordinance will be subject to the provisions of Proposition E that authorize amendments to
17 Article III, Chapter 6 of the Campaign and Governmental Conduct Code only if they are
18 recommended by the Ethics Commission and approved by a supermajority of at least eight
19 votes at the Board of Supervisors.

20
21 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3
4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6
7 By: /s/
8 MANU PRADHAN
9 Deputy City Attorney

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Attachment 2

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: June 18, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 220733 Campaign and Governmental Conduct Code - Behested Payments

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc: Patrick Ford, Ethics Commission
Michael Canning, Ethics Commission



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220733	File Type: Ordinance	Status: 30 Day Rule
Enacted:		Effective:
Version: 1	In Control: Rules Committee	
File Name: Campaign and Governmental Conduct Code - Behested Payments		Date Introduced: 06/14/2022
Requester:	Cost:	Final Action:
Comment:	Title: Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.	
Sponsor: Mayor		

History of Legislative File 220733

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	06/14/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	07/14/2022	

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

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Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough 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. Background and Purpose.

(a) On December 24, 2021, the City enacted Ordinance No. 232-21 relating to behested payments, which prohibited City officers and designated City employees from

1 soliciting monetary payments or goods or services for legislative, governmental, or charitable
2 purposes from persons who qualify as “interested parties,” in order to prevent undue influence
3 and avoid actual or perceived “pay-to-play” relationships with contractors and other persons
4 having business before an officer’s department. Under Ordinance No. 232-21, the definition
5 of “interested party” includes, among other things, all persons who have received licenses or
6 permits from the City, and all persons who have attempted to influence the City regarding
7 legislative or administrative actions the City may be considering.

8 (b) On June 7, 2022, the voters approved Proposition E, which provides that the City
9 may amend Ordinance No. 232-21 if the amendments are made available to the public in
10 advance, and if they are approved by the Ethics Commission and by a two-thirds majority of
11 the Board of Supervisors.

12 (c) The amendments in this ordinance are intended to maintain the core protections of
13 Ordinance No. 232-21, while also allowing City departments to continue their work with
14 charitable donors, nonprofits, and community groups on vital City projects and programs. In
15 particular, this ordinance narrows the definition of “interested party” to ensure that City staff
16 can perform the regular work of coordinating and collaborating with these charitable donors,
17 nonprofits, and community groups – to improve how the City serves its residents – without
18 then subjecting City officers and employees to the threat of personal liability or endangering
19 millions of dollars of charitable giving on which the City and its community partners rely. City
20 law should prohibit pay-to-play, but should not inhibit the robust exchange of policy ideas
21 between the public and the City, or the joint work of public-private partnerships to fund and
22 implement these ideas.

23 (d) The ordinance also clarifies that issuance of a license, permit, or other entitlement
24 for use does not make the recipient an interested party if the license, permit, or other
25 entitlement for use was issued ministerially, or was issued to an individual or nonprofit for

1 recreational, cultural, or educational activities. Absent this clarification, potentially thousands
2 of individuals and entities could become interested parties by complying with day-to-day City
3 rules, which was not intended by Ordinance No. 232-21. The amendments also state that the
4 prohibition against soliciting a payment from persons involved in a proceeding for a license,
5 permit, or other entitlement use applies only to those City officers and employees who were
6 actually involved in the proceeding. This common-sense clarification avoids the unfair and
7 unintended result of penalizing officers and employees, who may have no connection to a
8 proceeding and may even be unaware of the proceeding, for seeking charitable solicitations
9 from parties to such proceedings.

10 (e) Further, the ordinance also allows solicitations directly to City departments. To
11 ensure transparency, the Board of Supervisors will continue to exercise oversight and control
12 over such payments pursuant to the accept-and-expend requirements of Chapter 10 of the
13 Administrative Code (including, without limitation, Sections 10.100-305 and 10.170-1). The
14 Board will retain the ability to exercise its judgment over when a direct payment may be
15 accepted.

16 (f) The ordinance also allows solicitations from nonprofits that have entered into
17 memoranda of understanding with the City that have disclosure, recordkeeping, and auditing
18 provisions approved by both the Controller and the City Attorney. Allowing solicitations
19 through this process increases transparency and accountability by incentivizing City
20 departments and partner organizations to enter into such agreements.

21 (g) Finally, the ordinance provides that City departments may take certain actions
22 without violating the behested payments law, such as implementing a department Racial
23 Equity Action Plan, negotiating for community benefits and other consideration with
24 contractors, securing property access for tours and meeting spaces from existing lessees, and
25 obtaining certain concessions like price discounts from existing contractors.

1 (h) This ordinance ensures that the City can continue to pursue critical functions and
2 partnerships with charitable organizations and other community partners, while maintaining
3 key restrictions against the improper solicitation of payments from contractors, parties to City
4 proceedings, lobbyists, and permit consultants, thereby preventing “pay-to-play” relationships
5 and upholding the public trust.
6

7 Section 2. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is
8 hereby amended by revising Sections 3.610 and 3.620, to read as follows:

9 **SEC. 3.610. DEFINITIONS.**

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

12 “Affiliate” shall be defined as set forth in Section 1.126 of this Code.

13 “Agent” shall mean any person who represents a party in connection with a proceeding
14 involving a license, permit, or other entitlement for use as set forth in Title 2, Section 18438.3
15 of the California Code of Regulations, as amended from time to time.

16 “At the behest of” shall mean under the control or at the direction of, in cooperation,
17 consultation, coordination, or concert with, at the request or suggestion of, or with the
18 express, prior consent of.

19 “Behested payment” shall mean a payment that is made at the behest of an officer, or
20 an agent thereof, and that is made principally for a legislative, governmental, or charitable
21 purpose.

22 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except only
23 with respect to contracts with any department of the City and County of San Francisco.
24
25

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

4 “Contact” shall be defined as set forth in Section 2.106 of this Code.

5 “Department head” shall mean any department head who is required to file a Statement
6 of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

7 “Designated employee” shall mean any employee of the City and County of San
8 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this
9 Code.

10 “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
11 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

12 “Financial interest” shall be defined as set forth in the California Political Reform Act
13 (California Government Code Section 87100 et seq.), any subsequent amendments to these
14 Sections, and its implementing regulations.

15 “Grant” shall mean an agreement with a government agency, non-profit organization
16 or private entity to fund or provide goods or services to assist with City projects or programs,
17 under which the grantor imposes restrictions on the City’s spending of the grant ~~funds~~.

18 “Interested party” shall mean:

19 (a) any party, participant, or agent of a party or participant involved in a
20 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
21 use before (1) an officer, (2) any board or commission (including the Board of Supervisors) on
22 which the officer sits, (3) the department of the officer, or (4) the department of the designated
23 employee; but this definition shall not include licenses, permits, or other entitlements for use that are
24 issued to individuals or nonprofit entities for recreational, cultural, or educational activities;
25

1 (b)(1) any City Contractor contracting with or seeking to contract with the
2 designated employee's or officer's department, or any affiliate of such a City Contractor,
3 except for *the purpose of any person* providing a grant to the City or a City department, and (2)
4 as pertains to members of the Board of Supervisors, any City Contractor, or any affiliate of
5 such a City Contractor, if the Board of Supervisors approves the City Contractor's agreement
6 with the City, except for *the purpose of any person* providing a grant to the City or a City
7 department;

8 ~~—(c) any person who attempted to influence the employee or officer in any legislative or~~
9 ~~administrative action, provided that “attempt to influence” shall be defined as set forth in Section~~
10 ~~3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing Section 3.216(b)(1),~~
11 ~~and shall not include (1) oral or written public comment that becomes part of the record of a public~~
12 ~~hearing; (2) speaking at a public forum or rally, or (3) communications made via email, petition or~~
13 ~~social media;~~

14 (cd) any contact or expenditure lobbyist, as defined under Article II, Chapter 1
15 of this Code, who has registered as a contact or expenditure lobbyist with the Ethics
16 Commission, if the contact lobbyist or expenditure lobbyist is registered to lobby the
17 designated employee's or officer's department; or

18 (de) any permit consultant, as defined under Article III, Chapter 4 of this Code,
19 who has registered as a permit consultant with the Ethics Commission, if the permit consultant
20 has reported any contacts with the designated employee's or officer's department to carry out
21 permit consulting services during the prior 12 months.

22 “Interested party” shall not include: (a) any nonprofit organization that Article V of the
23 Charter has authorized to support an arts and culture department; (b) any federal or State
24 government agency; (c) an individual, solely because the individual is an uncompensated
25 board member of a nonprofit organization that is an interested party; or (d) as pertains to

1 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
2 Board of Supervisors did not approve the City Contractor's agreement with the City.

3 "License, permit, or other entitlement for use" shall mean professional, trade, or land
4 use licenses, permits, or other entitlements to use property or engage in business, as follows:
5 *including*

6 ———(a) professional license revocations, conditional use permits, rezoning of
7 property parcels, zoning variances, tentative subdivision and parcel maps, cable television
8 franchises, building and development permits, private development plans, and contracts
9 (other than labor or personal employment contracts and competitively bid contracts where the
10 City is required to select the highest or lowest qualified bidder), as set forth in California
11 Government Code Section 84308, as amended from time to time; and

12 ———(b) licenses, permits, and entitlements for use that a department issues in its discretion,
13 as opposed to those that involve little or no discretion, are based on applying a checklist or objective
14 criteria to the facts as presented, and/or are issued over-the-counter or "as-of-right" or on a first-
15 come-first-serve basis, as is typically the case when a member of the public seeks permission from a
16 City department to use public space.

17 "Officer" shall mean any commissioner, department head, or elected official.

18 "Participant" shall mean any person who is not a party but who actively supports or
19 opposes (by lobbying in person, testifying in person, or otherwise acting to influence) a
20 particular decision in a proceeding involving a license, permit, or other entitlement for use and
21 who has a financial interest in the decision, as set forth in California Government Code
22 Section 84308 and Title 2, Section 18438.4 of the California Code of Regulations, as
23 amended from time to time.

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

4 “Payment” shall mean a monetary payment or the delivery of goods or services with a
5 value of \$1,000 or more, or a series of payments within a 12-month period that in the aggregate total
6 \$1,000 or more.

7 “Permit consulting services” shall be defined as set forth in Article III, Chapter 4 of
8 this Code.

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

10 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
11 18438.2, as amended from time to time.

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

16 “Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
17 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
18 relationship or relationship created by adoption.

19
20 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
21 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
22 **PAYMENTS FROM INTERESTED PARTIES.**

23 (a) **PROHIBITION.** ~~Elected officials, department heads, commissioners, Officers~~ and
24 designated employees shall not directly or indirectly solicit any behested payment from an
25 interested party in the following circumstances:

1 (1) **Administrative proceedings.** If the interested party is a party, participant,
2 or agent of a party or participant in a proceeding before ~~the elected official's, department head's,~~
3 ~~commissioner's, or designated employee's department~~ an officer or a designated employee regarding
4 administrative enforcement, a license, a permit, or other entitlement for use, the prohibition set
5 forth in this subsection (a) shall apply to such officer or designated employee, as follows:

6 (A) during the proceeding; and

7 (B) for 12~~twelve~~ months following the date on which a final decision is
8 rendered in the proceeding.

9 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a
10 City Contractor, who is a party to or is seeking a contract with the officer's ~~elected official's,~~
11 ~~department head's, commissioner's,~~ or designated employee's department, the prohibition set
12 forth in this subsection (a) shall apply from the submission of a proposal until the later of:

13 (A) the termination of negotiations for the contract; or

14 (B) 12~~twelve~~ months following the end of the contract's term.

15 ~~———(3) **Persons seeking to influence.** If the interested party is a person who attempted to~~
16 ~~influence the elected official, department head, commissioner, or designated employee in any~~
17 ~~legislative or administrative action, the prohibition set forth in this subsection (a) shall apply for 12~~
18 ~~months following the date of each attempt to influence.~~

19 (3)(4) **Lobbyists.** Officers ~~Elected officials, department heads, commissioners,~~ and
20 designated employees may not solicit any behested payment from a contact lobbyist or
21 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
22 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
23 officer's department.

24 (4)(5) **Permit consultants.** Officers ~~Elected officials, department heads,~~
25 ~~commissioners,~~ and designated employees may not solicit any behested payment from a permit

1 consultant who has registered with the Ethics Commission, if the permit consultant has
2 reported any contacts with the designated employee's or officer's department to carry out
3 permit consulting services during the prior 12 months.

4 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
5 or employee is indirectly soliciting a behested payment when the City officer or employee
6 directs or otherwise urges another person to solicit a behested payment from an identifiable
7 interested party or parties.

8 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
9 appeals and related communications following a public appeal. Examples of such communications
10 include responding to persons who have contacted the officer's or employee's department following a
11 public appeal, providing information to such persons about the potential uses for such donations, and
12 negotiating and entering into grant agreements with such persons.

13 (d) **EXCEPTION – DIRECT PAYMENTS TO CITY DEPARTMENTS.** This Section 3.620
14 shall not apply to solicitations of behested payments to be made directly to City departments; provided,
15 however, that this subsection (d) shall not affect the requirement that the acceptance and expenditure of
16 gifts and grants shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of
17 the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of
18 a solicitation from an interested party in determining whether to approve it. If the Board of
19 Supervisors does not approve a gift or grant, the department would not be permitted to accept and
20 expend it, but the solicitation would remain excepted from this Section 3.620.

21 (e) **EXCEPTION – PAYMENTS MADE UNDER AN APPROVED MEMORANDUM OF**
22 **UNDERSTANDING.** This Section 3.620 shall not apply to solicitations of behested payments from
23 nonprofit organizations, if the nonprofit has executed a memorandum of understanding or similar
24 agreement with the City that contains disclosure, recordkeeping, and auditing provisions approved by
25 the Controller and the City Attorney; provided, however, that this subsection (e) shall not affect the

1 requirement that the acceptance and expenditure of gifts and grants by the City shall require Board of
2 Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of
3 Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party
4 in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the
5 department would not be permitted to accept and expend it, but the solicitation would remain excepted
6 from this Section 3.620.

7 (f) **ADDITIONAL PROVISIONS.** Nothing in this Section 3.620 is intended to prevent any
8 officer or designated employee from:

- 9 (1) Implementing a department's approved Racial Equity Action Plan; or
10 (2) Discussing, negotiating, and/or securing the provision of community benefits or
11 other consideration in connection with a contract with the City, including but not limited to a
12 development agreement or an agreement for the development or use of public property; or
13 (3) Requesting a tenant's assistance with public outreach efforts, such as tours of the
14 property, participation at community meetings, open houses, and events open to the public; or
15 (4) Discussing, negotiating, and/or securing concessions or discounts with a
16 contractor in the course of managing or administering an existing contract, including, but not limited
17 to, negotiating a more favorable price for the City, negotiating to reduce the number of hours billed to
18 the City for a particular task, or requesting additional related purchase orders or services for the City
19 similar to the scope of services or work set forth in the contract.

20
21 Section 3. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Prerequisites for Enactment; Super-Majority Vote Requirement. Consistent with Campaign and Governmental Conduct Code Section 3.600, as adopted by the voters via Proposition E at the June 7, 2022 election, the enactment of this ordinance is subject to approval in advance by the Ethics Commission, and must be approved by a supermajority of at least eight votes at the Board of Supervisors.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
MANU PRADHAN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

Existing Law

Under the City's behested payments ordinance, City officers and employees may not solicit payments from persons who qualify as interested parties. The term "interested party" includes persons involved in proceedings before a City department for licenses, permits, or other entitlements for use; contractors and persons seeking to contract with a City department; and persons who have attempted to influence City officers or employees in administrative or legislative actions. If a person is an interested party for a City officer or employee, the officer or employee may not solicit payments from that person. The only exception is for solicitations via public appeals, such as mass-mailings or speeches.

Amendments to Current Law

The ordinance would modify the behested payment rules, as follows:

- A person would not become an interested party merely by receiving a license, permit, or other entitlement for use (hereafter, a "permit"), if the permit was 1) routine or ministerial, as opposed to one that the City chose to issue as a matter of discretion; or 2) issued to an individual or a nonprofit for recreational, cultural, or educational activities. If someone qualified as an interested party due to their receipt of a permit, the prohibition against soliciting payments from them would apply only to the officers and employees involved in the permit proceeding, rather than to all officers and employees in the entire City department.
- Attempting to influence a legislative or administrative action would no longer trigger interested party status.

- The public appeal exception would include related communications following the public appeal, such as responding to persons who have answered the public appeal and providing information.
- Payments under \$1,000 would be exempted.
- Payments directly to the City would be exempted.
- Payments from a nonprofit would be exempted, if the nonprofit had entered into an agreement that included recordkeeping, audit, and disclosure requirements approved by the City Attorney and Controller.
- City departments could implement their approved Racial Equity Action Plans; negotiate for community benefits and other consideration in connection with contracts and agreements for the development or use of public property; seek assistance from their tenants on public outreach efforts; and negotiate concessions and discounts from contractors in the course of managing or administering existing contracts.

The ordinance also makes various non-substantive changes and clarifications.

Background Information

Under Proposition E (2022), the ordinance requires approval by the Ethics Commission and a supermajority of eight votes at the Board of Supervisors.

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From: [Russi, Brad \(CAT\)](#)
To: [BOS Legislation, \(BOS\)](#); [Paulino, Tom \(MYR\)](#); [BOS Legislation, \(BOS\)](#)
Cc: [Heckel, Hank \(MYR\)](#); [PRADHAN, MANU \(CAT\)](#)
Subject: RE: Mayor - Ordinance - Behested Payments
Date: Tuesday, June 14, 2022 3:51:24 PM
Attachments: [image001.png](#)

Manu is out of the office today, so on his behalf I confirm approval as to form of the ordinance and use of his signature. Thank you.

Bradley Russi

Deputy City Attorney
Office of City Attorney David Chiu
(415) 554-4645 Direct
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102
www.sfcityattorney.org

Attorney-Client Communication - Do Not Disclose
Confidential Attorney Work Product - Do Not Disclose

This email may contain privileged or confidential information. If you are not the intended recipient, please reply to this email to inform me of your receipt and then destroy all copies.

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Tuesday, June 14, 2022 2:36 PM
To: Paulino, Tom (MYR) <tom.paulino@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Heckel, Hank (MYR) <hank.heckel@sfgov.org>; Russi, Brad (CAT) <Brad.Russi@sfcityatty.org>; Pradhan, Manu (CAT) <Manu.Pradhan@sfcityatty.org>
Subject: RE: Mayor - Ordinance - Behested Payments

Hi Tom,

Thank you for the submission. We are seeking the approval from DCA Manu Pradhan for use of his electronic signature and approval as to form for the attached.

Jocelyn Wong

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

From: Paulino, Tom (MYR) <tom.paulino@sfgov.org>
Sent: Tuesday, June 14, 2022 2:23 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Heckel, Hank (MYR) <hank.heckel@sfgov.org>; RUSSI, BRAD (CAT) <Brad.Russi@sfcityatty.org>
Subject: Mayor - Ordinance - Behested Payments

Dear Clerks,

I hope the week is going well!

Please find attached for introduction to the Board of Supervisors **an Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.**

Please let me know if you have any questions.

Cheers,

Tom Paulino

He/Him

Liaison to the Board of Supervisors

Office of the Mayor

City and County of San Francisco

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

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 ~~strikethrough 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. Background and Purpose.

(a) On December 24, 2021, the City enacted Ordinance No. 232-21 relating to behested payments, which prohibited City officers and designated City employees from

1 soliciting monetary payments or goods or services for legislative, governmental, or charitable
2 purposes from persons who qualify as “interested parties,” in order to prevent undue influence
3 and avoid actual or perceived “pay-to-play” relationships with contractors and other persons
4 having business before an officer’s department. Under Ordinance No. 232-21, the definition
5 of “interested party” includes, among other things, all persons who have received licenses or
6 permits from the City, and all persons who have attempted to influence the City regarding
7 legislative or administrative actions the City may be considering.

8 (b) On June 7, 2022, the voters approved Proposition E, which provides that the City
9 may amend Ordinance No. 232-21 if the amendments are made available to the public in
10 advance, and if they are approved by the Ethics Commission and by a two-thirds majority of
11 the Board of Supervisors.

12 (c) The amendments in this ordinance are intended to maintain the core protections of
13 Ordinance No. 232-21, while also allowing City departments to continue their work with
14 charitable donors, nonprofits, and community groups on vital City projects and programs. In
15 particular, this ordinance narrows the definition of “interested party” to ensure that City staff
16 can perform the regular work of coordinating and collaborating with these charitable donors,
17 nonprofits, and community groups – to improve how the City serves its residents – without
18 then subjecting City officers and employees to the threat of personal liability or endangering
19 millions of dollars of charitable giving on which the City and its community partners rely. City
20 law should prohibit pay-to-play, but should not inhibit the robust exchange of policy ideas
21 between the public and the City, or the joint work of public-private partnerships to fund and
22 implement these ideas.

23 (d) The ordinance also clarifies that issuance of a license, permit, or other entitlement
24 for use does not make the recipient an interested party if the license, permit, or other
25 entitlement for use was issued ministerially, or was issued to an individual or nonprofit for

1 recreational, cultural, or educational activities. Absent this clarification, potentially thousands
2 of individuals and entities could become interested parties by complying with day-to-day City
3 rules, which was not intended by Ordinance No. 232-21. The amendments also state that the
4 prohibition against soliciting a payment from persons involved in a proceeding for a license,
5 permit, or other entitlement use applies only to those City officers and employees who were
6 actually involved in the proceeding. This common-sense clarification avoids the unfair and
7 unintended result of penalizing officers and employees, who may have no connection to a
8 proceeding and may even be unaware of the proceeding, for seeking charitable solicitations
9 from parties to such proceedings.

10 (e) Further, the ordinance also allows solicitations directly to City departments. To
11 ensure transparency, the Board of Supervisors will continue to exercise oversight and control
12 over such payments pursuant to the accept-and-expend requirements of Chapter 10 of the
13 Administrative Code (including, without limitation, Sections 10.100-305 and 10.170-1). The
14 Board will retain the ability to exercise its judgment over when a direct payment may be
15 accepted.

16 (f) The ordinance also allows solicitations from nonprofits that have entered into
17 memoranda of understanding with the City that have disclosure, recordkeeping, and auditing
18 provisions approved by both the Controller and the City Attorney. Allowing solicitations
19 through this process increases transparency and accountability by incentivizing City
20 departments and partner organizations to enter into such agreements.

21 (g) Finally, the ordinance provides that City departments may take certain actions
22 without violating the behested payments law, such as implementing a department Racial
23 Equity Action Plan, negotiating for community benefits and other consideration with
24 contractors, securing property access for tours and meeting spaces from existing lessees, and
25 obtaining certain concessions like price discounts from existing contractors.

1 (h) This ordinance ensures that the City can continue to pursue critical functions and
2 partnerships with charitable organizations and other community partners, while maintaining
3 key restrictions against the improper solicitation of payments from contractors, parties to City
4 proceedings, lobbyists, and permit consultants, thereby preventing “pay-to-play” relationships
5 and upholding the public trust.
6

7 Section 2. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is
8 hereby amended by revising Sections 3.610 and 3.620, to read as follows:

9 **SEC. 3.610. DEFINITIONS.**

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

12 “Affiliate” shall be defined as set forth in Section 1.126 of this Code.

13 “Agent” shall mean any person who represents a party in connection with a proceeding
14 involving a license, permit, or other entitlement for use as set forth in Title 2, Section 18438.3
15 of the California Code of Regulations, as amended from time to time.

16 “At the behest of” shall mean under the control or at the direction of, in cooperation,
17 consultation, coordination, or concert with, at the request or suggestion of, or with the
18 express, prior consent of.

19 “Behested payment” shall mean a payment that is made at the behest of an officer, or
20 an agent thereof, and that is made principally for a legislative, governmental, or charitable
21 purpose.

22 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except only
23 with respect to contracts with any department of the City and County of San Francisco.
24
25

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

4 “Contact” shall be defined as set forth in Section 2.106 of this Code.

5 “Department head” shall mean any department head who is required to file a Statement
6 of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

7 “Designated employee” shall mean any employee of the City and County of San
8 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this
9 Code.

10 “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
11 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

12 “Financial interest” shall be defined as set forth in the California Political Reform Act
13 (California Government Code Section 87100 et seq.), any subsequent amendments to these
14 Sections, and its implementing regulations.

15 “Grant” shall mean an agreement with a government agency, non-profit organization
16 or private entity to fund or provide goods or services to assist with City projects or programs,
17 under which the grantor imposes restrictions on the City’s spending of the grant ~~funds~~.

18 “Interested party” shall mean:

19 (a) any party, participant, or agent of a party or participant involved in a
20 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
21 use before (1) an officer, (2) any board or commission (including the Board of Supervisors) on
22 which the officer sits, (3) the department of the officer, or (4) the department of the designated
23 employee; but this definition shall not include licenses, permits, or other entitlements for use that are
24 issued to individuals or nonprofit entities for recreational, cultural, or educational activities;
25

1 (b)(1) any City Contractor contracting with or seeking to contract with the
2 designated employee's or officer's department, or any affiliate of such a City Contractor,
3 except for *the purpose of any person* providing a grant to the City or a City department, and (2)
4 as pertains to members of the Board of Supervisors, any City Contractor, or any affiliate of
5 such a City Contractor, if the Board of Supervisors approves the City Contractor's agreement
6 with the City, except for *the purpose of any person* providing a grant to the City or a City
7 department;

8 ~~—(c) any person who attempted to influence the employee or officer in any legislative or~~
9 ~~administrative action, provided that “attempt to influence” shall be defined as set forth in Section~~
10 ~~3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing Section 3.216(b)(1),~~
11 ~~and shall not include (1) oral or written public comment that becomes part of the record of a public~~
12 ~~hearing; (2) speaking at a public forum or rally, or (3) communications made via email, petition or~~
13 ~~social media;~~

14 (cd) any contact or expenditure lobbyist, as defined under Article II, Chapter 1
15 of this Code, who has registered as a contact or expenditure lobbyist with the Ethics
16 Commission, if the contact lobbyist or expenditure lobbyist is registered to lobby the
17 designated employee's or officer's department; or

18 (de) any permit consultant, as defined under Article III, Chapter 4 of this Code,
19 who has registered as a permit consultant with the Ethics Commission, if the permit consultant
20 has reported any contacts with the designated employee's or officer's department to carry out
21 permit consulting services during the prior 12 months.

22 “Interested party” shall not include: (a) any nonprofit organization that Article V of the
23 Charter has authorized to support an arts and culture department; (b) any federal or State
24 government agency; (c) an individual, solely because the individual is an uncompensated
25 board member of a nonprofit organization that is an interested party; or (d) as pertains to

1 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
2 Board of Supervisors did not approve the City Contractor's agreement with the City.

3 "License, permit, or other entitlement for use" shall mean professional, trade, or land
4 use licenses, permits, or other entitlements to use property or engage in business, as follows:
5 *including*

6 ———(a) professional license revocations, conditional use permits, rezoning of
7 property parcels, zoning variances, tentative subdivision and parcel maps, cable television
8 franchises, building and development permits, private development plans, and contracts
9 (other than labor or personal employment contracts and competitively bid contracts where the
10 City is required to select the highest or lowest qualified bidder), as set forth in California
11 Government Code Section 84308, as amended from time to time; and

12 ———(b) licenses, permits, and entitlements for use that a department issues in its discretion,
13 as opposed to those that involve little or no discretion, are based on applying a checklist or objective
14 criteria to the facts as presented, and/or are issued over-the-counter or "as-of-right" or on a first-
15 come-first-serve basis, as is typically the case when a member of the public seeks permission from a
16 City department to use public space.

17 "Officer" shall mean any commissioner, department head, or elected official.

18 "Participant" shall mean any person who is not a party but who actively supports or
19 opposes (by lobbying in person, testifying in person, or otherwise acting to influence) a
20 particular decision in a proceeding involving a license, permit, or other entitlement for use and
21 who has a financial interest in the decision, as set forth in California Government Code
22 Section 84308 and Title 2, Section 18438.4 of the California Code of Regulations, as
23 amended from time to time.

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

4 “Payment” shall mean a monetary payment or the delivery of goods or services with a
5 value of \$1,000 or more, or a series of payments within a 12-month period that in the aggregate total
6 \$1,000 or more.

7 “Permit consulting services” shall be defined as set forth in Article III, Chapter 4 of
8 this Code.

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

10 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
11 18438.2, as amended from time to time.

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

16 “Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
17 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
18 relationship or relationship created by adoption.

19
20 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
21 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
22 **PAYMENTS FROM INTERESTED PARTIES.**

23 (a) **PROHIBITION.** ~~Elected officials, department heads, commissioners, Officers~~ and
24 designated employees shall not directly or indirectly solicit any behested payment from an
25 interested party in the following circumstances:

1 (1) **Administrative proceedings.** If the interested party is a party, participant,
2 or agent of a party or participant in a proceeding before ~~the elected official's, department head's,~~
3 ~~commissioner's, or designated employee's department~~ an officer or a designated employee regarding
4 administrative enforcement, a license, a permit, or other entitlement for use, the prohibition set
5 forth in this subsection (a) shall apply to such officer or designated employee, as follows:

6 (A) during the proceeding; and

7 (B) for 12~~twelve~~ months following the date on which a final decision is
8 rendered in the proceeding.

9 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a
10 City Contractor, who is a party to or is seeking a contract with the officer's ~~elected official's,~~
11 ~~department head's, commissioner's,~~ or designated employee's department, the prohibition set
12 forth in this subsection (a) shall apply from the submission of a proposal until the later of:

13 (A) the termination of negotiations for the contract; or

14 (B) 12~~twelve~~ months following the end of the contract's term.

15 ~~—— (3) **Persons seeking to influence.** If the interested party is a person who attempted to~~
16 ~~influence the elected official, department head, commissioner, or designated employee in any~~
17 ~~legislative or administrative action, the prohibition set forth in this subsection (a) shall apply for 12~~
18 ~~months following the date of each attempt to influence.~~

19 (3)(4) **Lobbyists.** Officers ~~Elected officials, department heads, commissioners,~~ and
20 designated employees may not solicit any behested payment from a contact lobbyist or
21 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
22 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
23 officer's department.

24 (4)(5) **Permit consultants.** Officers ~~Elected officials, department heads,~~
25 ~~commissioners,~~ and designated employees may not solicit any behested payment from a permit

1 consultant who has registered with the Ethics Commission, if the permit consultant has
2 reported any contacts with the designated employee's or officer's department to carry out
3 permit consulting services during the prior 12 months.

4 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
5 or employee is indirectly soliciting a behested payment when the City officer or employee
6 directs or otherwise urges another person to solicit a behested payment from an identifiable
7 interested party or parties.

8 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
9 appeals and related communications following a public appeal. Examples of such communications
10 include responding to persons who have contacted the officer's or employee's department following a
11 public appeal, providing information to such persons about the potential uses for such donations, and
12 negotiating and entering into grant agreements with such persons.

13 (d) **EXCEPTION – DIRECT PAYMENTS TO CITY DEPARTMENTS.** This Section 3.620
14 shall not apply to solicitations of behested payments to be made directly to City departments; provided,
15 however, that this subsection (d) shall not affect the requirement that the acceptance and expenditure of
16 gifts and grants shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of
17 the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of
18 a solicitation from an interested party in determining whether to approve it. If the Board of
19 Supervisors does not approve a gift or grant, the department would not be permitted to accept and
20 expend it, but the solicitation would remain excepted from this Section 3.620.

21 (e) **EXCEPTION – PAYMENTS MADE UNDER AN APPROVED MEMORANDUM OF**
22 **UNDERSTANDING.** This Section 3.620 shall not apply to solicitations of behested payments from
23 nonprofit organizations, if the nonprofit has executed a memorandum of understanding or similar
24 agreement with the City that contains disclosure, recordkeeping, and auditing provisions approved by
25 the Controller and the City Attorney; provided, however, that this subsection (e) shall not affect the

1 requirement that the acceptance and expenditure of gifts and grants by the City shall require Board of
2 Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of
3 Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party
4 in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the
5 department would not be permitted to accept and expend it, but the solicitation would remain excepted
6 from this Section 3.620.

7 (f) **ADDITIONAL PROVISIONS.** Nothing in this Section 3.620 is intended to prevent any
8 officer or designated employee from:

- 9 (1) Implementing a department's approved Racial Equity Action Plan; or
10 (2) Discussing, negotiating, and/or securing the provision of community benefits or
11 other consideration in connection with a contract with the City, including but not limited to a
12 development agreement or an agreement for the development or use of public property; or
13 (3) Requesting a tenant's assistance with public outreach efforts, such as tours of the
14 property, participation at community meetings, open houses, and events open to the public; or
15 (4) Discussing, negotiating, and/or securing concessions or discounts with a
16 contractor in the course of managing or administering an existing contract, including, but not limited
17 to, negotiating a more favorable price for the City, negotiating to reduce the number of hours billed to
18 the City for a particular task, or requesting additional related purchase orders or services for the City
19 similar to the scope of services or work set forth in the contract.

20
21 Section 3. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Prerequisites for Enactment; Super-Majority Vote Requirement. Consistent with Campaign and Governmental Conduct Code Section 3.600, as adopted by the voters via Proposition E at the June 7, 2022 election, the enactment of this ordinance is subject to approval in advance by the Ethics Commission, and must be approved by a supermajority of at least eight votes at the Board of Supervisors.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
MANU PRADHAN
Deputy City Attorney

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