



San Francisco Ethics Commission

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Date: July 22, 2022

To: Members of the Ethics Commission

From: Michael Canning, Acting Senior Policy Analyst

Re: **AGENDA ITEM 3 – Presentation, discussion, and possible action on legislative proposals from the Board of Supervisors and the Mayor regarding City behested payment rules.**

Summary

This memo provides an analysis of the legislative proposals currently being considered by the Board of Supervisors and as a potential ballot measure from the Mayor regarding the City's behested payment rules that took effect earlier this year.

Action Requested

Staff recommends the Commission review the proposals and analysis outlined in this memo and attachments, hear public comment at its Special Meeting next week, and continue to engage legislatively to develop behested payments revisions to clarify and strengthen the effectiveness of the City's behested payments laws.

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 officers, 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 officers and employees who are required to file the From 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 the proposed ballot measure and regulation amendments is ongoing.

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.

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.

Consideration of Current Legislative Proposals

As detailed in **Attachment 1**, 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 2**.

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 3**.

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.

Summary and Analysis of Current Legislative Proposals

The legislative proposals made by the Board of Supervisors and the Mayor together contain 18 proposed changes to the City’s behested payment rules.

Following a review and analysis of each of these 18 proposals, Staff have summarized their recommendations for the Commission below in **Table 1**. As shown in the table below, of the 18 proposals, Staff recommends that the Commission support five as drafted and potentially support 10 others if they are modified following further engagement. Staff recommends against three other proposals to revise the City’s behested payments law. Further detail about the proposals and their impacts appears in **Attachment 1**.

Table 1: Summary of Staff Recommendations for Ethics Commission Action

Staff Recommendation:	Proposals:
Support	<p>Proposal #1: Changes to the definition of ‘grant’</p> <p>Proposal #2: Change to the definition of ‘interested party’ to exempt items issued on a ministerial basis</p> <p>Proposal #5: Change to the definition of ‘interested party’ to clarify that communications about grants to the City are exempt from the ‘attempt to influence’ prong</p> <p>Proposal #7: Change to the definition of ‘interested party’ regarding the exception for grants to the City</p> <p>Proposal #12: Minor formatting changes to Section 3.620 and changes to 3.620(a)(1) regarding administrative proceedings</p>
Support only if modified	<p>Proposal #6: Change to the definition of ‘interested party’ to exempt items issued to individuals and nonprofits for recreational, cultural, or educational activities</p> <p>Proposal #8: Change to the definition of ‘license, permit, or other entitlement for use’ to specify these items must be issued within the discretion of the administering agency and do not include items that involve little or no discretion</p>

	<p>Proposal #10: Restructuring of the definition of ‘license, permit, or other entitlement for use’ to specify these items must be issued within the discretion of the administering agency and do not include items that involve little or no discretion</p> <p>Proposal #11: Create a definition of ‘proceeding’ that uses state definition and exempts ministerial actions</p> <p>Proposal #13: Change to public appeals exception to exempt communications following the public appeal</p> <p>Proposal #14: Adding an exception for competitively secured program solicitations</p> <p>Proposal #15: Adding an exception related to the City’s acquisition of real property</p> <p>Proposal #16: Adding an exception for direct payments to City departments</p> <p>Proposal #17: Adding an exception for payments made under an approved memorandum of understanding</p> <p>Proposal #18: Adding additional provisions regarding the intent of Section 3.620</p>
Reject	<p>Proposal #3: Removal of administrative actions from the ‘attempt to influence’ prong</p> <p>Proposal #4: Removal of the ‘attempt to influence’ prong entirely</p> <p>Proposal #10: Change to the definition of ‘payment’ to narrow the rule so that it only applies to payments valued at \$1,000 or more in 12-month period</p>

Recommended Next Steps

Staff have invited representatives from the Mayor’s Office and Supervisor Peskin to provide comments on their respective proposals at the Ethics Commission special meeting on July 27. Staff from the SFPUC will also be present to provide information about that department’s Social Impact Partnership (SIP) program and the interaction between solicitations that occur in connection with that program and the new behested payments laws that took effect earlier this year. Additional public comment will also be taken.

The Rules Committee of the Board of Supervisors has also scheduled a hearing on the Mayor’s behested payments proposal at its next meeting on Monday July 25. Should any new legislative

developments occur as a result of that hearing, Staff and representatives from the Board and Mayor's Office will be available to provide those updates at the Commission's special meeting on Wednesday.

At this time Staff recommends continued engagement with the Mayor's office, the Board of Supervisors, and other stakeholders following this special meeting, and based on the Commission's assessment of the proposals and any policy direction it may formulate next week about approaches in the proposed legislation it believes should be supported, modified, or rejected. This engagement would continue with the goal of developing revised legislation that incorporates the Commission's policy direction into legislation to clarify and strengthen the City's rules regarding behested payments. Toward that end, we recommend the item be placed on the next regular commission meeting on August 12 for further discussion and possible action at that time.

Attachments

Attachment 1: Consideration of Current Legislative Proposals

Attachment 2: Legislation from the Board of Supervisors ([File #220539](#))

Attachment 3: Legislation from the Mayor ([File #220733](#))

Attachment 4: Excerpt from the Controller's Public Integrity Audit regarding the SFPUC's SIP Program

Attachment 1

Attachment 1: Consideration of Current Legislative Proposals

This attachment describes, analyzes, and provides Ethics Commission Staff recommendations on proposals contained in two ordinances regarding behested payments, one from Supervisor Peskin's office (see [File #220539](#) or **Attachment 2**) and another from the Mayor's office (see [File #220733](#) or **Attachment 3**).

PROPOSAL CATEGORY: SEC. 3.610. DEFINITIONS – 'Grant'

Proposal: #1

Change to the definition of 'grant'
Source: Both ordinances propose an identical change.
Description of Change: The definition of grant would be revised to specify that grants to the City can be to provide goods or services, as well as funds. The proposed definition is as follows: "Grant" shall mean an agreement with a government agency, non-profit organization or private entity to fund <u>or provide goods or services to assist with City</u> projects or programs, under which the grantor imposes restrictions on the City's spending of the grant <i>funds</i> .
Impact: This change would provide beneficial clarification to the definition of 'grant.'
Recommendation: Support as drafted in both ordinances.

PROPOSAL CATEGORY: SEC. 3.610. DEFINITIONS – 'Interested party'

Proposal: #2

Change to the definition of 'interested party' to exempt items issued on a ministerial basis
Source: Supervisor Peskin's Ordinance
Description of Change: Part (a) of the definition of 'interested party' would be revised to exempt proceedings regarding licenses, permits, or other entitlements for use that are issued on a ministerial basis. The revised part of the definition would read as follows: "Interested party" shall mean: (a) any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before (1) an officer, (2) any board or commission (including the Board of Supervisors) on which the officer sits, (3) the department of the officer, or (4) the department of the designated employee; <u>except for any license, permit, or other entitlement for use that is issued on a ministerial basis;</u>

Impact: This change would prevent a party from becoming an interested party based on a license, permit, or other entitlement for use that is issued on a ministerial basis. Items issued on a ministerial basis involve little or no discretion by City officers or designated employees. Given the nature of items issues on a ministerial basis, there is little risk associated with City officials soliciting behested payments from parties involved in a proceeding regarding a license, permit, or entitlement for use that is issued on a ministerial basis.

Recommendation: Support as drafted in Peskin Ordinance.

Proposal: #3

Removal of administrative actions from the ‘attempt to influence’ prong

Source: Supervisor Peskin’s Ordinance

Description of Change: Part (c) of the definition of ‘interested party’ would be revised to remove administrative actions from the ‘attempt to influence’ prong. This would mean that only attempts to influence City officials over legislative actions would make the person an interested party for the City official they have attempted to influence, whereas the current rule applies to both legislative and administrative actions. The revised part of the definition would read as follows:

“Interested party” shall mean:

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

Note: This change is also reflected in changes made to Section 3.620(a)(3), which would read as follows:

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

Impact: Removing administrative actions from the ‘attempt to influence’ prong would allow a City official to ask for a behested payment from person after that same person had attempted to influence the City official on an administrative action in the prior 12 months. This is problematic for several reasons.

Administrative actions comprise the majority of governmental decisions in the City and have been the focus of past quid pro quo schemes. With this change, only attempts to influence ‘legislative actions’ would be covered by the rule. However, ‘legislative action’ is narrowly defined in [Section 82037](#) of the Political Reform Act, and for the City’s purposes only covers actions by the Board of

Supervisors on legislation and the approval or veto of such legislation by the Mayor. This change would allow for situations where a City official could ask for a behested payment from someone who had recently attempted to influence them, which is the exact type of situation the City's behested payment rules are attempting to address: when people seek something from City government, which is their right to do, City officials should not then be able to ask them for something.

The 'attempt to influence' prong of what makes someone an interested party covers important relationships that are not addressed by the other four prongs. For example, the contractor prong makes anyone that is holding or seeking a contract with the City official's department an interested party. So, if that contractor were to attempt to influence an officer or designated employee in that department, it wouldn't matter since they are already an interested party under the contractor prong. However, if someone else were to attempt to influence a City official about that contract, they would not necessarily already be an interested party under the contractor prong. Without an 'attempt to influence' prong that covers administrative actions, a person could contact a City officer or designated employee and push them vote against awarding a competitor's contract or urge them to support a friend's contract, and then be asked by that official to make a behested payment to that City official's favored charity.

Additionally, the current 'attempt to influence' prong is important for ensuring that entities that hire lobbyists to influence City officials on their behalf are considered interested parties. The lobbyist prong in subsection (d) of the definition of 'interested party' makes any contact or expenditure lobbyist who is registered to lobby a City official's department an interested party for that official. However, the lobbyist prong does not make the person who hired the lobbyist an interested party; that is what is currently captured by the 'attempt to influence' prong of the definition. Having someone who has hired a lobbyist to attempt to influence a City official not be considered an interested party for that City official would severely weaken the City's behested payment rules and create opportunities for the type of quid pro quo exchanges the rules are intended to prevent.

Regarding lobbyists, it is also worth noting that business owners and officers or employees of nonprofit organizations are not required to register as lobbyists, even if engaging in activity that would otherwise be considered lobbying. Similarly, employees that make lobbying contacts on behalf of their employer do not need to register as lobbyists unless they make five or more lobbying contacts in a calendar month. These are all examples of persons who currently would be captured under the 'attempt to influence' prong but would no longer be if this change were enacted.

Recommendation: Do not support.

Proposal: #4

Removal of the 'attempt to influence' prong entirely

Source: Mayor Breed's Ordinance

Description of Change:

Part (c) of the definition of 'interested party' would be revised to remove the 'attempt to influence' prong entirely. The revised part of the definition would read as follows:

"Interested party" shall mean:

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

Note: This change is also reflected in changes made to Section 3.620(a)(3), which would read as follows:

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

Impact: Removing the 'attempt to influence' prong would create the potential for a person to attempt to influence a City official on a legislative or administrative action and then be asked for a behested payment from that same City official within the next 12 months.

This is problematic, since someone could request a City official take a specific governmental action (vote on a particular piece of legislation, change how a program operates, enter into a contract with friend's company, etc.), that City official could then solicit a behested payment from that person, and then take the action the person had requested.

The harmful impacts associated with removing administrative actions from the 'attempt to influence' prong also exist here, except to an even greater extent, as with this change attempts to influence legislative actions would also be removed. See the impact statement for Proposal #3 (above) for additional information on the impact of this change.

Recommendation: Do not support.

Proposal: #5

Change to the definition of ‘interested party’ to clarify that communications about grants to the City are exempt from the ‘attempt to influence’ prong
Source: Supervisor Peskin’s Ordinance
<p>Description of Change: Part (c) of the definition of ‘interested party’ would be revised to clarify that communications about grants to the City are exempt from the ‘attempt to influence’ prong. The revised part of the definition would read as follows:</p> <p>“Interested party” shall mean:</p> <p>(c) <u>...or (4) communications with a City employee or officer regarding a grant from that person to the City, including any communications with respect to the City’s use of the grant for a particular purpose;</u></p>
<p>Impact: Subsection (b) of the definition of ‘interested party’ exempts contracts that provide grants to the City from making a party an interested party. In order for this existing grant exception to be workable, City officials need to be able to communicate with potential grant providers about grants to the City and the potential uses for such grants. Through informal advice, Staff have previously stated that communications regarding grants to the City do not trigger the ‘attempt to influence’ prong, this change would codify this advice.</p>
Recommendation: Support as drafted in Peskin Ordinance.

Proposal: #6

Change to the definition of ‘interested party’ to exempt items issued to individuals and nonprofits for recreational, cultural, or educational activities
Source: Mayor Breed’s Ordinance
<p>Description of Change: Part (a) of the definition of ‘interested party’ would be revised to exempt proceedings regarding licenses, permits, or other entitlements for use that are issued to individuals or nonprofit entities for recreational, cultural, or educational activities. The revised part of the definition would read as follows:</p> <p>“Interested party” shall mean:</p> <p>(a) any party, participant, or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before (1) an officer, (2) any board or commission (including the Board of Supervisors) on which the officer sits, (3) the department of the officer, or (4) the department of the designated employee; <u>but this definition shall not include licenses, permits, or other entitlements for use that are issued to individuals or nonprofit entities for recreational, cultural, or educational activities;</u></p>

Impact: This change would allow individuals and nonprofit entities to be involved in proceedings regarding licenses, permits, or other entitlements for use without becoming an interested party, so long as the item is for recreational, cultural, or educational activities.

As this change pertains to nonprofit organizations, it does not seem to be problematic, and would help ensure the City's nonprofit entities can secure any non-ministerial licenses, permits, or other entitlements for use that are necessary for them to conduct their recreational, cultural, or educational activities.

Regarding individuals, it is less clear what benefit there is to exempting these activities. The proposals being considered already exempt licenses, permits, and other entitlements for use that are awarded on a ministerial basis. Exempting these ministerial items would likely cover the types of licenses, permits, or other entitlements for use that an individual would pursue for recreational, cultural, or educational activities. Also, while individuals certainly pursue recreational activities, it is unclear what sorts of educational activities are pursued by individuals that require licenses, permits, or other entitlements for use. Additionally, it does not appear to be the City's role to determine what individual activities may or may not be considered cultural, which is another reason why creating a general exception for ministerially awarded items is a preferable method for allowing this activity.

Recommendation: Support as it pertains to nonprofit entities, but do not support as written as to apply to individuals.

Additionally, Staff recommends the Commission hear more from the Mayor's Office regarding this proposal, which addresses the following:

1. If licenses, permits, and other entitlements for use that are awarded ministerially are excluded elsewhere in the legislation, what is the benefit to including individuals in this proposal?
2. If items awarded ministerially were exempt, what sort of cultural activities by individuals is this language intended to address?
3. If items awarded ministerially were exempt, what sort of educational activities by individuals is this language intended to address?

Proposal: #7

Change to the definition of 'interested party' regarding the exception for grants to the City

Source: Mayor Breed's Ordinance

Description of Change: Part (b) of the definition of 'interested party' would be revised so that the grant exception would be 'for the purpose of providing a grant to the City,' instead of being 'for any person providing a grant to the City.' The revised part of the definition would read as follows:

<p>(b)(1) any City Contractor contracting with or seeking to contract with the designated employee's or officer's department, or any affiliate of such a City Contractor, except for <u>the purpose of any person</u> providing a grant to the City or a City department, and (2) as pertains to members of the Board of Supervisors, any City Contractor, or any affiliate of such a City Contractor, if the Board of Supervisors approves the City Contractor's agreement with the City, except for <u>the purpose of any person</u> providing a grant to the City or a City department;</p>
<p>Impact: This change would clarify that a contract for the purpose of providing a grant to the City does not make the contractor an interested party. The current language of 'any person' could be broadly interpreted to mean that any person with a contract that provides a grant to the City cannot become an interested party, even if they met one of the other conditions for being an interested party (for example, they had another contract that was not for providing a grant to the City). This change would clarify that the giving a grant to the City does make someone an interested party, but that it also does not prevent them from becoming an interested party by another means. This change is in alignment with prior Staff interpretations provided through the Commission's advice function.</p>
<p>Recommendation: Support as drafted in Breed Ordinance.</p>

PROPOSAL CATEGORY: SEC. 3.610. DEFINITIONS – 'License, permit, or other entitlement for use'

Proposal: #8

<p>Change to the definition of 'license, permit, or other entitlement for use' to specify these items must be issued within the discretion of the administering agency and do not include items that involve little or no discretion</p>
<p>Source: Supervisor Peskin's Ordinance</p>
<p>Description of Change: This change would amend the definition of 'license, permit, or other entitlement for use' to specify these items must be issued within the discretion of the administering agency and do not include items that involve little or no discretion. The revised definition would read as follows:</p> <p style="padding-left: 40px;">"License, permit, or other entitlement for use" shall mean professional, trade, or land use licenses, permits, or other entitlements to use property or engage in business, <u>issued in the discretion of the administering agency</u>, including professional license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative subdivision and parcel maps, cable television franchises, building and development permits, private development plans, and contracts (other than labor or personal employment contracts and competitively bid contracts where the City is required to select the highest or lowest qualified bidder), as set forth in California Government Code Section 84308, as amended from time to time. <u>For purposes of Section 3.620, "license, permit, or other entitlement for use" shall not include licenses, permits, or other entitlements for use</u></p>

that involve little or no discretion, merely apply a checklist or objective criteria to the facts as presented, and/or are issued over-the-counter or “as-of-right”.

Impact: This change would further prevent a party from becoming an interested party based on a license, permit, or other entitlement for use that is issued on a ministerial basis. Items issued on a ministerial basis involve little or no discretion by City officers and designated employees. Given the nature of items issues on a ministerial basis, there is little risk associated with City officials soliciting behested payments from parties involved in a proceeding regarding a license, permit, or entitlement for use that is issued on a ministerial basis, involving little or no discretion.

Recommendation: Support as drafted in Peskin Ordinance and modify to also integrate elements from Breed Proposal #9 and Peskin Proposal #11 to read:

For purposes of Section 3.620, “license, permit, or other entitlement for use” shall not include licenses, permits, or other entitlements for use that involve little or no discretion, merely apply a checklist or objective criteria to the facts as presented, are issued over-the-counter or “as-of-right” or on a first-come-first-serve basis, as is typically the case when a member of the public seeks permission from a City department to use public space.

Proposal: #9

Restructuring of the definition of ‘license, permit, or other entitlement for use’ to specify these items must be issued within the discretion of the administering agency and do not include items that involve little or no discretion

Source: Mayor Breed’s Ordinance

Description of Change: Similar to the language proposed by Supervisor Peskin Proposal #8, this change would amend the definition of ‘license, permit, or other entitlement for use’ to specify these items must be issued within the discretion of the administering agency and do not include items that involve little or no discretion. However, the Mayor’s ordinance changes “including” to “it follows” and breaks the definition into two parts. The revised definition would read as follows:

“License, permit, or other entitlement for use” shall mean professional, trade, or land use licenses, permits, or other entitlements to use property or engage in business, as follows: including

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

(b) licenses, permits, and entitlements for use that a department issues in its discretion, as opposed to those that involve little or no discretion, are based on applying a checklist or objective criteria to the facts as presented, and/or are issued over-the-counter or “as-of-

right” or on a first-come-first-serve basis, as is typically the case when a member of the public seeks permission from a City department to use public space.

Impact: This change would further prevent a party from becoming an interested party based on a license, permit, or other entitlement for use that is issued on a ministerial basis and is similar to Proposal #8 from Supervisor Peskin’s legislation. However, this proposal is different in the way it is structured. This different structure raises two potential concerns.

1. Changing “including” to “as follows” potentially could be interpreted as indicating that the list in subsection (a) is exhaustive of all types of licenses, permits, or other entitlements for use. The current language of “including” more clearly indicates that there could be other types of licenses, permits, or entitlements for use that are covered by the definition, even if not explicitly listed.
2. The two-section structure is potentially more difficult to follow and could lead to confusion regarding what is and what is not part of this definition.

Recommendation: While supporting the intent of this language, Staff do not support the change as drafted in the Breed Ordinance but instead support the language recommended in Proposal #8 to avoid narrowing definition in unclear ways and to use a more straightforward structure while integrating some of the language from this proposal.

PROPOSAL CATEGORY: SEC. 3.610. DEFINITIONS – ‘Payment’

Proposal: #10

Change to the definition of ‘payment’ to narrow the rule so that it only applies to payments valued at \$1,000 or more in 12-month period

Source: Mayor Breed’s Ordinance

Description of Change: This change would amend the definition of ‘payment’ so that the rule is narrowed to only apply to payments valued at \$1,000 or more within a 12-month period. The revised definition would read as follows:

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

Impact: This change would allow City officer or designated employee to solicit a behested payment from an interested party, so long as the aggregate total value of such payment does not exceed \$1,000 in a 12-month period. Such solicitations are currently prohibited, regardless of the value of the payment.

This change would potentially unduly complicate compliance and generate confusion among City officials and the public. City officials would need to track these small dollar behested payment solicitations and monitor them to avoid crossing this \$1,000 threshold. For example, if a City

official were to solicit a \$500 behested payment from an interested party in late January, then come back to them in early January of the following year for another payment, if this second payment were to be increased to \$600, that City official would have now violated this rule. Having a clear prohibition on these types of solicitations, regardless of amount, is simpler for compliance. As feedback by City officials has repeatedly underscored, unnecessary recordkeeping requirements can be overly burdensome and do not always promote the goals the requirements are intended to achieve.

A clear line can also promote public trust. If a member of the public sees a City official asking a City contractor for a behested payment, it could raise concerns, regardless of the value of the payment.

It is also unclear how common or beneficial these lower value behested payments are, or what they are used for.

Recommendation: Do not support.

Staff recommends further engagement with the Mayor's office regarding this proposal to address the following:

1. What benefit is gained by allowing these lower value behested payments?
2. How common are behested payments of this size?
3. What are these payments typically used for?
4. How would City officials track these payments to avoid going the \$1,000 limit? Would these payments be disclosed to the public?

PROPOSAL CATEGORY: SEC. 3.610. DEFINITIONS – 'Proceeding'

Proposal: #11

Create a definition of 'proceeding' that uses state definition and exempts ministerial actions

Source: Both ordinances proposed a similar change.

Description of Change: This proposed change would create a definition of 'proceeding' as set forth in [Section 18438.2](#) of the state regulations from the Fair Political Practices Commission (FPPC). The term 'proceeding' is not currently defined for the City's behested payment rules in Chapter 6 of the Campaign and Governmental Conduct Code. The definition proposed by Supervisor Peskin also includes language specifying that proceedings are not ministerial actions. The proposed definitions would read as follows:

Supervisor Peskin's Ordinance:

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

Mayor Breed's Ordinance:

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

The definition set forth in 2 California Code of Regulations [Section 18438.2](#) reads as follows:

- (a) For purposes of Government Code Section 84308, a "proceeding involving a license, permit or other entitlement for use" includes any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use.
- (b) A proceeding involving a license, permit or other entitlement for use is "pending before" an agency:
 - (1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;
 - (2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision; and
 - (3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

Impact: Part (a) of the definition from Section 18438.2 would have little impact as it aligns with a common sense understanding of what should be considered a proceeding involving a license, permit, or other entitlement for use, specifically that it includes any proceeding to grant, deny, revoke, restrict, or modify the license, permit, or other entitlement for use. Similarly, the part of the definition in (b)(1) provides clarity regarding when the item becomes pending before an agency.

However, the language found in part (b)(2) would narrow the City's behested payment rule if applied. The City's behested payment rule currently applies to decisions made by designated employees, not just City officers. This change would define proceeding as only items where 'the officers of the agency' are required to make or are otherwise making the decision; this would exclude decisions made by City officials who are not elected officials, commissioners, or department heads. The language in part (b)(3) of Section 18438.2, specifies that proceedings exclude matters that are purely ministerial, which is not inherently problematic, but it again refers only to decisions made by an officer or officers.

Applying the state's definition of 'proceeding' would severely weaken the City's behested payment rules by making it possible for City officers and designated employees to be personally and substantially involved in the issuance of many types of City licenses, permits, or other entitlements for use, but, because those approvals were not issued by an "officer," the parties, participants, or agents involved would not be considered interested parties for these City officers and designated employees.

This change would re-open the door for the type pay-to-play corruption allegedly engaged in by former-Department of Building Inspection (DBI) official, Bernard Curran. In 2021, a [federal complaint](#) was filed alleging Curran solicited payments to his favored local non-profit athletic association from individuals who were seeking approvals from DBI. Under the current law that went into effect in January 2022, Curran would have been prohibited from soliciting these behested payments because the individuals were the subjects of building inspections. But, the proposed change would allow that conduct to continue. Curran was a designated employee, not a City officer, and many of his governmental actions would therefore not be considered a 'proceeding' under the newly proposed definition. This change would fail to address situations like Curran's, where City officials are meaningfully engaged in governmental decisions regarding licenses, permits, or other entitlements for use and are then able to solicit payments from the parties involved those decisions.

Recommendation: Support only if modified to specify that any party involved in a governmental decision regarding a non-ministerial license, permit, or other entitlement for use *in which an officer or designated employee was personally and substantially involved* is an interested party for that officer or employee. Draft language of this change to the definition of 'interested party' could read as follows:

"Interested party" shall mean:

(a) any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before (1) ~~the an~~-officer, (2) any board or commission (including the Board of Supervisors) on which the officer sits, (3) the department of the officer, or (4) the department of the designated employee; except that a party, participant, or agent involved in any governmental decision regarding a non-ministerial license, permit, or other entitlement for use in which an officer or designated employee was personally and substantially involved is an interested party for that officer or designated employee.

The language above would potentially need to be integrated with the other proposed changes to the definition of 'interested party' already covered in Proposal #2 and Proposal #6.

Staff recommends support of the definition of 'proceeding' in Mayor Breed's proposal over the definition in Supervisor Peskin's proposal, as the additional language the Peskin draft regarding ministerial action is better included with the definition of 'license, permit, or other entitlement for use' covered in Proposal #8.

PROPOSAL CATEGORY: SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS, COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED PAYMENTS FROM INTERESTED PARTIES. - Amendments

Proposal: #12

Minor formatting changes to Section 3.620 and changes to 3.620(a)(1) regarding administrative proceedings
Source: Both ordinances proposed similar changes.
<p>Description of Change: Both proposals include the following minor changes throughout Section 3.620:</p> <ol style="list-style-type: none"> 1. Replacing the term 'elected officials, department heads, and commissioners' with the term 'officers.' 2. Replacing the word 'twelve' with the number '12.' <p>Supervisor Peskin's ordinance makes a third change clarifying Section 3.620(a)(1), so that it reads as follows:</p> <p>(1) Administrative proceedings. If the interested party is a party, participant, or agent of a party or participant in a proceeding before the <u>officer</u> elected official's, department head's, commissioner's, or designated employee's department regarding <u>either</u> administrative enforcement, <u>or regarding</u> a license, a permit, or other entitlement for use, the prohibition set forth in this subsection (a) shall apply:</p> <p>Additionally, Mayor Breed's ordinance also makes changes to Section 3.620(a)(1), so that it reads as follows:</p> <p>(1) Administrative proceedings. If the interested party is a party, participant, or agent of a party or participant in a proceeding before the elected official's, department head's, commissioner's, or designated employee's department <u>an officer or a designated employee</u> regarding administrative enforcement, a license, a permit, or other entitlement for use, the prohibition set forth in this subsection (a) shall apply <u>to such officer or designated employee, as follows:</u></p> <p>Impact: The change from 'elected officials, department heads, and commissioners' to 'officers' should have no substantive impact on the rules, as an officer (as defined in Section 3.203) includes all of the roles currently listed out. The letter to number change is purely stylistic and also provides no substantive impact.</p> <p>The third change, found in Supervisor Peskin's ordinance, which adds the words 'either' and 'or regarding' provides additional clarity but does not substantively change the rule.</p> <p>The fourth change, found in Mayor Breed's ordinance would appear change the administrative proceedings prong so that it only applies to proceedings before 'an officer or designated employee,' instead of proceedings before 'the officer or designated employee's department.' This</p>

change seems at odds with the proposal regarding the creation of a definition of ‘proceeding’ and was potentially made in error.

Recommendation: Support as drafted in Peskin Ordinance.

Proposal: #13

Change to public appeals exception to exempt communications following the public appeal

Source: Mayor Breed’s Ordinance

Description of Change: This change would add language to the public appeals exception to exempt additional communications made following the public appeal. The revised exception would read as follows:

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

Impact: Allowing City officials to respond to questions asked following a public appeal would not necessarily create additional opportunities for inappropriate solicitations, however the language as written is overly broad and could be easily abused.

For example, the first sentence would allow ‘related communications following a public appeal,’ without specifying who could initiate such communications, leaving open the potential for the City official to initiate the communications. If a City official were to make a public appeal, perhaps during a radio station interview, this change would then allow them to call up any interested party and solicit behested payments from them, as long as the communication was related their earlier public appeal (which the interested party may or may not have heard). The examples provided in this exception reference ‘responding to persons...following a public appeal’ but as written this exception is not limited to only responding to such persons.

Additionally, the example listed regarding ‘negotiating and entering into grant agreements’ would be an expansion of the grant exception, by potentially allowing City officials to negotiate and enter into grants for organizations other than the City. The public appeals exception allows for City officials to make public solicitations for the benefit of non-City entities, however allowing City officials to negotiate and enter into agreements on behalf of non-City entities is a more troubling proposition. If a public appeal is made for the benefit of a non-City entity, it is reasonable for the City official to respond to questions about that public appeal, but not to negotiate or enter into a grant agreement for a non-City entity.

Recommendation: Support only if modified to:

1. Only allow related communications that are initiated by a member of the public in response to a public appeal;
2. Allow City officials to answer questions following the public appeal, including those that provide information to such persons about the potential uses of their donations and how to contact any non-City beneficiaries; and
3. Only allow City officials to negotiate and enter into grant agreements between such persons and the City.

PROPOSAL CATEGORY: SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS, COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED PAYMENTS FROM INTERESTED PARTIES. – New Exceptions

Proposal: #14

Adding an exception for competitively secured program solicitations

Source: Supervisor Peskin’s Ordinance

Description of Change: This change would create a new exception that would allow solicitations to interested parties, as long as they are ‘made under and authorized program for charitable donations...to nonprofit 501(c)(3) organizations and schools.’ This change is intended to allow the San Francisco Public Utilities Commission’s (SFPUC) Social Impact Partnership (SIP) program and similar programs to continue operating as they had prior to January 23, 2022. If the Board of Supervisors does not adopt an ordinance authorizing such programs before December 31, 2024, they would not be allowed to continue operating until they are authorized by the Board . The new exception would read as follows:

(d) EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS. *This Section 3.620 shall not apply to solicitations made under an authorized program for charitable donations of time and/or money from interested parties to nonprofit 501(c)(3) organizations or public schools. For purposes of this subsection (d), an authorized program is a process for soliciting donations through a competitively procured contract, which program either (i) existed on or before January 23, 2022, such as the San Francisco Public Utilities Commission Social Impact Partnership program, or (ii) is authorized by the Board of Supervisors by ordinance. For a contract that includes an authorized program excepted under this subsection (d), all solicitations under such program related to the award, approval, execution, administration, modification, or enforcement of that contract by City officers or employees are likewise excepted. Any program under (i) above may proceed as it existed on or before January 23, 2022 until the earlier of (A) the Board of Supervisors adopts an ordinance authorizing a program involving donations through a competitively procured contract, as provided by (ii) above, or (B) December 31, 2024.*

Impact: This exception is intended to allow the SFPUC's SIP program to continue, following [advice from the City Attorney's Office](#) that the new behested payment rules prevent SFPUC from continuing to operate the program. It is also important to note that the SFPUC's SIP program, was the subject of a substantial [public integrity audit](#) from the Controller's office last year, which identified numerous problems with the program (see **Attachment 4** for an excerpt of the Controller's report).

Preventing City officials from operating City programs, such as the SIP program, which generates charitable donations to nonprofit organizations and schools through competitively procured contracts is not the intent of the City's behested payment rules, which are focused on preventing quid pro quo corruption between City officials and those with business before the City. In concept, the continued operation of the SIP program, and similar programs, is not at odds with the City's behested payment rules. However, the language as written does raise several questions and potential concerns.

The language defines an 'authorized program' as 'a process for soliciting donations through a competitively procured contract' and states that such programs must be authorized by the Board of Supervisors. However, it is unclear what sort of processes for soliciting the donations would be allowed and what standards the Board of Supervisors would use when deciding to authorize such programs. Specifically, this language does not specify how program recipients (the nonprofit organizations and schools) would be identified and does not guarantee that City officials would not be able to potentially funnel money from the program to recipients the City official personally favors.

The language stating 'all solicitations under such program related to the award, approval, execution, administration, modification, or enforcement of that contract by City officers or employees are likewise excepted' is overly broad and potentially redundant to what is already described earlier in the exception.

Additionally, it is unclear why existing programs need to be excused from authorization by the Board of Supervisors until the end of 2024. The SIP program is currently paused, and it is unclear what harm would be associated with leaving it paused until the Board of Supervisors can pass an ordinance to authorize the program.

Recommendation: Support concept with modified language to:

1. Specify how recipients are selected to ensure the process is fair, transparent, and not susceptible to bias or favoritism from City officials;
2. Ensure the provision is not overly broad or redundant; and
3. Eliminate language that would allow the programs to continue without authorization by the Board of Supervisors.

Revised language that would address items #2 and #3 above:

(d) EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS. This Section 3.620 shall not apply to solicitations made under an authorized program for charitable donations of time and/or money from interested parties to nonprofit 501(c)(3) organizations or public schools. For purposes of this subsection(d), an authorized program is a process for soliciting

donations through a competitively procured contract, including the award, approval, execution, administration, modification, or enforcement of that contract by City officers or employees, which program is authorized by the Board of Supervisors by ordinance.

Proposal: #15

Adding an exception related to the City's acquisition of real property

Source: Supervisor Peskin's Ordinance

Description of Change: This change would create an exception for City officers or designated employees to discuss, negotiate, and/or secure community benefits connected with the City's acquisition of real property.

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

Impact: In concept, allowing City officials to discuss, negotiate, and secure community benefits through a City contract is not at odds with the City's behested payment rules. However, the language as drafted could be further clarified in several ways.

It is unclear what is unique about the acquisition community benefits when the City acquires real property, compared to acquiring community benefits in connection with other City contracts or exchanges.

No definition of 'community benefits' is included in this exception, leaving the full scope and implications of this change unclear.

Also, the language of 'nothing in this section...is intended to prevent' lacks clarity and is potentially overly broad, since it does specify exactly what activity is being exempt (presumably solicitations).

Recommendation: Do not support at this time, but continue engagement on following questions:

1. Does this exception need to be specific to only the City's acquisition of real property or would a more general exception that allows the acquisition of community benefits through any City contract address this issue?
2. Specifically, would more general language like that contained within the Mayor's ordinance as subsection (f)(2) regarding community benefits address what this exception is intending to address (see Proposal #18.2 below)?
3. Can Supervisor Peskin's office provide examples about the types of property acquisitions and community benefits this exception is intended to allow?

4. How would 'community benefits' be defined for this exception? Would they be limited to items secured through a contract with the City?
5. Clarification of what exactly is being exempt. For example, instead of using the 'intended to prevent' language, the exception could be stated as: 'This Section 3.620 shall not apply to solicitations of behested payments by an officer or designated employee made when discussing, negotiating, and/or securing the provision of community benefits....'

Proposal: #16

Adding an exception for direct payments to City departments

Source: Mayor Breed's Ordinance

Description of Change: This change would create an exception to allow behested payment solicitations for payments that are made directly to City departments. The new exception would read as follows:

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

Impact: In concept, payments made directly to the City or City departments involve little risk of pay-to-play corruption and are less likely to give rise to the types of issues the behested payment rules are designed to address. However, aspects of this exception could be strengthened to provide greater transparency and accountability.

The exception mentions that the Board's accept and expend requirement would still be in place for payments accepted using this exception. However, not all gifts or payments to City departments are required to go through the accept and expend process with the Board of Supervisors (for example, payments less than \$10,000 are exempt). Also, there are other disclosures regarding payments to the City that are not referenced as required here, such the website disclosures required by [Section 67.29-6](#).

This exception also states that it is for payments 'made directly to City departments,' however it is not explicitly stated that this does not include payments made to non-City accounts or subaccounts that are controlled, or partially controlled, by departments or City officials.

Recommendation: Support if modified by:

1. Adding a requirement that all behested payments solicited under this exception go through the Board's accept and expend process, even if the payment would otherwise not be required to go through that process.
2. Adding language that specifies payments solicited under this exception are subject to all other applicable public disclosures under City law, such as those required by Section 67.29-6 and any other local applicable disclosure rules.
3. Adding language that specifies what constitutes a payment 'made directly to City departments' and that it does not include payments made to non-City accounts or subaccounts.

Proposal: #17

Adding an exception for payments made under an approved memorandum of understanding

Source: Mayor Breed's Ordinance

Description of Change: This change would create an exception to allow behested payment solicitations for payments that are made under an approved memorandum of understanding (MOU) with the City. The new exception would read as follows:

(e) EXCEPTION – PAYMENTS MADE UNDER AN APPROVED MEMORANDUM OF UNDERSTANDING. *This Section 3.620 shall not apply to solicitations of behested payments from nonprofit organizations, if the nonprofit has executed a memorandum of understanding or similar agreement with the City that contains disclosure, recordkeeping, and auditing provisions approved by the Controller and the City Attorney; provided, however, that this subsection (e) shall not affect the requirement that the acceptance and expenditure of gifts and grants by the City shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the department would not be permitted to accept and expend it, but the solicitation would remain excepted from this Section 3.620.*

Impact: By allowing solicitations of behested payments from nonprofit organizations with an MOU with the City, such organizations, like the 'Friends Of' organizations that raise funds for City departments would still be able to be solicited for funds, even if they were considered an interested party for that department.

The exception mentions that the Board's accept and expend requirement would still be in place for payments accepted using this exception and specifies that the MOU must include 'disclosure, recordkeeping, and auditing provisions approved by the Controller and the City Attorney.'

However, there are other disclosures regarding payments to the City that are not referenced as required here, such as the website disclosure required by [Section 67.29-6](#).

This exception also does not specify that the exempt solicitations only be for payments made directly to City departments, which leaves open the potential that these solicitations could be for payments non-City accounts or subaccounts, or to entirely different non-City entities.

Recommendation: Support if modified by:

1. Adding language that specifies payments solicited under this exception are subject to all other applicable public disclosures under City law, such as those required by Section 67.29-6 and any other applicable local disclosure rules.
2. Adding language that specifies that this exception can only be used for payments made directly to City departments and that it does not include payments made to non-City accounts or subaccounts.

Proposal: #18 (1-4)

Adding additional provisions regarding the intent of Section 3.620

Source: Mayor Breed's Ordinance

Description of Change: This change would add a new subsection of 'additional provisions' that are 'not intended to prevent' officers or designated employees from: implementing a department's Racial Equity Action Plan, securing community benefits in connection with a City contract, requesting assistance from tenants, and negotiating City contracts.

The new subsection would read as follows:

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

- (1) Implementing a department's approved Racial Equity Action Plan;**
- (2) Discussing, negotiating, and/or securing the provision of community benefits or other consideration in connection with a contract with the City, including but not limited to a development agreement or an agreement for the development or use of public property; or**
- (3) Requesting a tenant's assistance with public outreach efforts, such as tours of the property, participation at community meetings, open houses, and events open to the public; or**
- (4) Discussing, negotiating, and/or securing concessions or discounts with a contractor in the course of managing or administering an existing contract, including, but not limited to, negotiating a more favorable price for the City.**

negotiating to reduce the number of hours billed to the City for a particular task, or requesting additional related purchase orders or services for the City similar to the scope of services or work set forth in the contract.

Impact: This change would create four additional exemptions, structured as one exception with four unrelated parts. It is unclear why these items should be lumped together, rather than being treated individually like other exceptions. Also, describing these items as not being 'intended to prevent' is not as clear as just describing each as exemptions. Structural issues aside, each item can be considered independently.

1. **Regarding implementation of departmental Racial Equity Action Plans:** It is unclear activities are this exception is intended to address. As written, this language is very broad and could be used to allow any behested payment solicitations, so long as there is some, potentially tenuous link to a department's Racial Equity Action Plan.
2. **Regarding the acquisition of community benefits:** As discussed above (see Proposal #15), allowing City officials to discuss, negotiate, and secure community benefits through a City contract is not at odds with the City's behested payment rules. However, as written there is a lack of clarity on what is meant by 'community benefits or other considerations.'
3. **Regarding tenant's assistance:** It is unclear what this exception is intending to address. It is also unclear what 'a tenant's assistance' means and how it is different from a payment.
4. **Regarding contractor negotiations:** Negotiating the terms of a City contract or securing concessions in the course of managing an existing contract is not soliciting a behested payment and the behavior captured in this exception is already allowed under the existing law. However, this exception could be beneficial for clarifying that for City officials.

Recommendation: Do not support as drafted, and instead continue to engage on these issues to address possible revisions to these proposals, as discrete, explicitly identified exceptions.

1. **Regarding implementation of departmental Racial Equity Action Plans:** Staff recommends the Commission learn more from the Mayor's office regarding this proposal, what types of situations it is intended to address, and how the language could be further clarified.
2. **Regarding the acquisition of community benefits:** Staff recommends the Commission support this proposal but explore language to clarify what is meant by 'community benefits or other considerations.'
3. **Regarding tenant's assistance:** Staff recommends the Commission not support this exception. Staff recommends the Commission hear more from the Mayor's office regarding the intent of this exception and why the tenant relationship necessitates a unique exception.
4. **Regarding contractor negotiations:** Staff recommends that the Commission support this exception as drafted, as its own, clearly labeled exception.

Attachment 2

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
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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	Rules Committee	06/09/2022	
	<i>Supervisor Peskin introduced a substitute Ordinance bearing a new title.</i>					
3	President	06/14/2022	SUBSTITUTED AND ASSIGNED	Rules Committee		
	<i>Supervisor Peskin introduced a substitute Ordinance bearing a new title.</i>					

[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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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
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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;
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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,
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25 objective criteria to the facts as presented, and/or are issued over-the-counter or "as-of-right".

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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.

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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 3

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
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Enacted:	Effective:	
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Version: 1	In Control: Rules Committee	
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File Name: Campaign and Governmental Conduct Code - Behested Payments	Date Introduced: 06/14/2022	
<hr/>		
Requester:	Cost:	Final Action:
<hr/>		
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.	
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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.

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

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

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

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

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

“Interested party” shall not include: (a) any nonprofit organization that Article V of the Charter has authorized to support an arts and culture department; (b) any federal or State government agency; (c) an individual, solely because the individual is an uncompensated 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.

n:\legana\as2022\2200471\01607705.docx

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



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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.

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

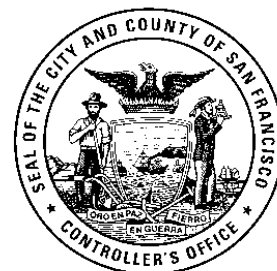
n:\legana\as2022\2200471\01607877.docx

Attachment 4

Public Integrity Audit:

Significant Changes Are Needed to the Design, Monitoring, and Control of the San Francisco Public Utilities Commission's Social Impact Partnership Program

San Francisco Public Utilities Commission (SFPUC)



December 9, 2021

City & County of San Francisco
Office of the Controller
City Services Auditor

About the Audits Division

The City Services Auditor (CSA) was created in the Office of the Controller through an amendment to the Charter of the City and County of San Francisco (City) that voters approved in November 2003. Within CSA, the Audits Division ensures the City's financial integrity and promotes efficient, effective, and accountable government by:

- Conducting performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of service delivery and business processes.
- Investigating reports received through its whistleblower hotline of fraud, waste, and abuse of city resources.
- Providing actionable recommendations to city leaders to promote and enhance accountability and improve the overall performance and efficiency of city government.

Team:

Mark Tipton, *Audit Manager*

Winnie Woo, *Senior Auditor*

Audit Consultant:

Sjoberg Evashenk Consulting, Inc.

Mark de la Rosa

Director of Audits

Office of the Controller

City and County of San Francisco

(415) 554-7574

For media inquiries, please contact

con.media@sfgov.org.



<http://www.sfcontroller.org>



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OFFICE OF THE CONTROLLER

CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller

Todd Rydstrom
Deputy Controller

December 9, 2021

San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

Mr. Dennis Herrera, General Manager
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

Dear Commission President, Commissioners, and Mr. Herrera:

The Office of the Controller, City Services Auditor (CSA), Audits Division, presents the report of the performance audit of the Social Impact Partnership (SIP) Program of the San Francisco Public Utilities Commission (SFPUC). CSA engaged Sjoberg Evashenk Consulting, Inc., (SEC) to conduct the audit, which had as its overall objective to assess the appropriateness and effectiveness of SFPUC's governance and oversight of the program. The audit was undertaken as part of the Office of the Controller's public integrity work at SFPUC.

The audit found that, although the SIP Program was established a decade ago, it lacks the infrastructure and policies that would be expected of a mature program and that are necessary for program sustainability. There were several problems with how SFPUC developed the SIP Program and how it has administered SIP-related contract provisions and contractor commitments. This includes inconsistencies in the design of the SIP Program that create an inherent risk that SFPUC could award contracts to contractors that would not, in the end, provide the greatest value to the City and its residents; internal control weaknesses that contribute to confusion in the solicitation and award process, and that results in unreliable and inconsistent recordkeeping, which impedes program monitoring and transparency; and the lack of a sustainable framework—including policies and procedures, systems, and resources—to ensure program success in the long term. The report discusses these three findings in detail.

The report's seven recommendations appear at the end of the report, and SFPUC's responses are attached as Appendix B. CSA will work with your department to follow up every six months on the status of the open recommendations made in this report.

CSA and SEC appreciate the assistance and cooperation of SFPUC staff involved in this audit. For questions about the report, please contact me at mark.p.delarosa@sfgov.org or 415-554-7574 or CSA at 415-554-7469.

Respectfully,

A handwritten signature in dark ink, appearing to read "Mark de la Rosa", is written over a horizontal line.

Mark de la Rosa
Director of Audits

cc: Board of Supervisors
Budget Analyst
Citizens Audit Review Board
City Attorney
Civil Grand Jury
Mayor
Public Library

City and County of San Francisco Office of the Controller

Performance Audit of San Francisco Public Utilities Commission's Social Impact Partnership Program



November 2021



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REPORT HIGHLIGHTS

RESULTS

Since 2011, the Social Impact Partnership (SIP) Program, created by the San Francisco Public Utilities Commission (SFPUC), has led to contractor commitments of nearly \$22 million, 82,000 person-hours, and nearly \$1 million in in-kind services to serve communities in SFPUC's service area. Although the SIP Program has evolved since its creation more than a decade ago, it continues to lack the infrastructure and policies necessary for its sustainability or which would be expected of a mature program. This includes inconsistencies that could result in contract awards that would not, in the end, provide the greatest value to the City and its residents; internal control weaknesses, unreliable and inconsistent recordkeeping, and insufficient program monitoring and transparency; and the lack of a sustainable framework—including policies and procedures, systems, and resources—to ensure program success in the long term. Roughly two-thirds of all contractor commitments made since 2011 are as yet unfulfilled, although many are scheduled to be provided over the next decade. Some commitments were not fulfilled before the relevant contracts expired. With substantial commitments already on the line, it is imperative that SFPUC address the weaknesses identified by the audit and implement the improvements needed to ensure the program's long-term success.

AUDIT PURPOSE

To assess the appropriateness and effectiveness of SFPUC's governance and oversight of the program, including evaluating the SIP criteria used in the selection process and reviewing SFPUC's SIP Program outcomes.

BACKGROUND

In January 2011, SFPUC adopted a Community Benefits Policy to foster partnerships with communities in all service areas and to ensure that public benefits are shared across all communities. As part of this effort, SFPUC created the SIP Program to invite contractors working on SFPUC projects "to be a good neighbor to the communities affected by SFPUC's service operations."

The SIP Program is intended to be a voluntary program encouraging its contractors to donate time, money, or in-kind services to nonprofit or other organizations that provide job awareness, education, small business support, housing and economic development, and environment and community health services to communities in areas impacted by SFPUC projects.

KEY FINDINGS

- SFPUC did not design and implement the SIP Program in a manner that always ensures the greatest value to the City and its residents.
 - SFPUC considers the value of SIP commitments made by contractors along with traditional criteria—cost, schedule, expertise, methodology, etc.—when awarding contracts, thereby choosing to award contracts to the contractor that offers the greatest value to SFPUC, the City, San Francisco residents, and communities impacted by certain SFPUC projects.
 - However, after contract award, some contractors have modified their commitments, in some cases lowering them by as much as half of the original committed value.
 - In several instances, SIP commitments remained unfulfilled after contracts expired.
 - By awarding contracts based, in part, on SIP commitments and allowing contractors to default on those commitments, SFPUC increases the risk that it will award contracts to contractors that ultimately will not deliver the greatest value to the City or its residents.
 - Allowing some contractors to default on their SIP commitments while others strive to (and do) meet their commitments, places contractors on unequal footing and jeopardizes the program's long-term sustainability.
- Two practices risk jeopardizing the voluntary nature of the SIP Program: (a) SFPUC sometimes directs contractor SIP commitments to specific community needs or ties them to other mandatory programs, reducing or eliminating discretion contractors should have in a voluntary program; and (b) the scoring criteria established for contractor selection, which incorporates SIP scores in the total possible points rather than providing bonus points for participating contractors, could signal to proposing firms that SIP Program participation is, in reality, required.
- The SIP Program lacks sufficient internal controls related to contract solicitations, commitment monitoring, and contract closeout. This is indicated by missing documentation on contractor solicitation and selection decisions; insufficient processes to receive and validate information reported by contractors relating to fulfilled commitments or to ensure accurate information in the program dashboard; and procedures, including conflict-of-interest forms, that do not adequately mitigate the risks posed by potential conflicts of interest.
- Since its inception, the SIP Program has been subject to inconsistent and/or insufficient guidance and policies. This includes, but is not limited to, policies that establish a sound approach to enforcing SIP contract provisions and to documenting program activities to ensure transparency.

SUMMARY OF KEY RECOMMENDATIONS

- Enforce SIP-related contract requirements. SFPUC should consider proactively reaching out to contractors that do not meet reporting requirements or have not fulfilled their SIP commitments, posting information on the SIP Program website related to contractor performance and defaults, including contractors' past SIP performance in future solicitation scoring, and/or applying liquidated damages if commitments are not fulfilled.
- Formalize standardized policies, procedures, and controls to provide clear, consistent guidance for program participants and SIP staff.
- Increase transparency into the SIP Program by implementing a publicly available SIP Performance Dashboard and implement internal controls to ensure the dashboard presents data that is accurate, reliable, and updated in a timely manner.

Introduction and Background





In January 2011, the San Francisco Public Utilities Commission (SFPUC) adopted the Community Benefits Policy with the adoption of Resolution 11-0008. The goal of this policy is to develop “an inclusive and comprehensive community benefits program to better serve and foster partnership with communities in all SFPUC service areas and to ensure that public benefits are shared across all communities.” Under the policy, SFPUC is directed to:

- ✓ Develop processes to effectively engage stakeholders and communities in all SFPUC service areas.
- ✓ Develop and update a budget and staffing plan to implement and sustain the Community Benefits Program.
- ✓ Develop an implementation strategy to review, analyze, and coordinate community benefits initiatives, and integrate these initiatives into an agency-wide Community Benefits Program.
- ✓ Implement the Environmental Justice Policy that SFPUC adopted on October 13, 2009.¹
- ✓ Develop and implement guidelines, metrics, and evaluation methodologies for existing and future community benefits initiatives.
- ✓ Develop diverse and culturally competent communication strategies to ensure that stakeholders can participate in decisions and actions that may impact their communities.
- ✓ Develop performance measures to evaluate the Community Benefits Program and report the results.
- ✓ Develop new and continue to implement existing initiatives to avoid or eliminate disproportionate impacts of SFPUC decisions and activities in all service areas.

To meet these objectives, SFPUC established a Community Benefits unit in its External Affairs Division. As part of its Community Benefits Program, SFPUC partners with local residents, leaders, and community organizations to “provide diverse communities with opportunities in workforce and economic development, the arts, urban agriculture and education.” These efforts include activities related to Project Learning Grants, art projects, education, and land use programs, as described in Exhibit 1.

¹ The Environmental Justice Policy was established with the goals to prevent, mitigate, and lessen disproportionate environmental impacts of SFPUC’s activities on communities in all SFPUC service areas and to ensure that public benefits are shared across all communities.

EXHIBIT 1. COMMUNITY BENEFITS PROGRAM FOCUS AREAS

COMMUNITY BENEFITS PROGRAM	
 PROJECT LEARNING GRANTS	SFPUC offers 15-25 Project Learning Grants, amounting to \$15,000-\$25,000 each, to local nonprofit organizations to fund projects providing youth and young adults from underserved communities with educational and employment programs. As of September 2021, SFPUC reported that its grants had supported 45 organizations and 3,702 youth.
 ART PROGRAMS	For each new aboveground capital improvement project, SFPUC strives to commission a new public art project connected to people and place. As of September 2021, SFPUC had worked with 96 artists commissioning 311 art projects.
 EDUCATION PROGRAMS	SFPUC partners with local school districts and city departments to teach youth about science, technology, engineering, and math (STEM). As of September 2021, SFPUC had worked with 228 schools and organizations to serve 80,350 youth.
 LAND USE PROGRAMS	Through the Frontyard Ambassador and Sidewalk Garden Programs, SFPUC offers local residents and organizations with funding to transform the pavement near their homes into low-maintenance green spaces. As of September 2021, SFPUC reported that the programs funded 517 gardens, diverted an estimated 618,000 gallons of stormwater, and removed 52,000 square feet of impervious surface.

Source: Auditor-generated from Community Benefits Program information published by SFPUC

SFPUC administers each program and supports educational institutions, artists, residents, and nonprofit organizations (nonprofits) directly using SFPUC resources. At the same time, SFPUC created the Social Impact Partnership (SIP) Program “as a way to invite private sector contractors working on SFPUC projects to be a good neighbor to the communities affected by SFPUC’s service operations.” In doing so, SFPUC encourages firms that profit from public projects to invest in the San Francisco community and communities impacted by SFPUC projects, just as SFPUC invests in the community. A premise of the SIP Program is that it would benefit affected communities without increasing SFPUC’s project costs.

The SIP Program, in which contractors’ participation is voluntary, was designed to provide an avenue for contractors competing for certain types of SFPUC contracts to pledge, as part of their formal project proposals, SIP commitments of donated money, in-kind goods and services, or volunteer hours to local schools or nonprofits aiding communities impacted by SFPUC’s work. As of December 31, 2020, SFPUC had executed 84 contracts in which firms made a total of \$21,983,056 in financial commitments, \$937,574 in in-kind commitments, and had pledged 81,573 volunteer hours.²

² Amounts for each category are subject to change because contractors can shift commitments between the three categories.

Contractors making such commitments receive extra points in the solicitation process. Those that choose not to participate in the program would not be deemed unresponsive to the solicitation, but would not receive any points for the SIP component of the evaluation and scoring criteria, which generally ranged from 3 to 5 percent of the total possible points. For instance, if a particular solicitation's scoring criteria was set at a maximum of 100 points, with a SIP element that equaled 5 points, a firm declining to participate in the voluntary SIP Program could only achieve a maximum of 95 points in the evaluation process. When developing their SIP proposals, contractors have the opportunity to make SIP commitments in the form of financial, in-kind, and/or volunteer hours (herein referred to as "commitment types") that they pledge to deliver during the term of the contract. Each commitment must be made to a school or non-profit specifically involved in at least one of five specified program areas: job awareness/exposure and internships, small business support, education, housing and economic support, and environment and community health. Each is summarized in Exhibit 2.

EXHIBIT 2. SIP PROGRAM AREAS

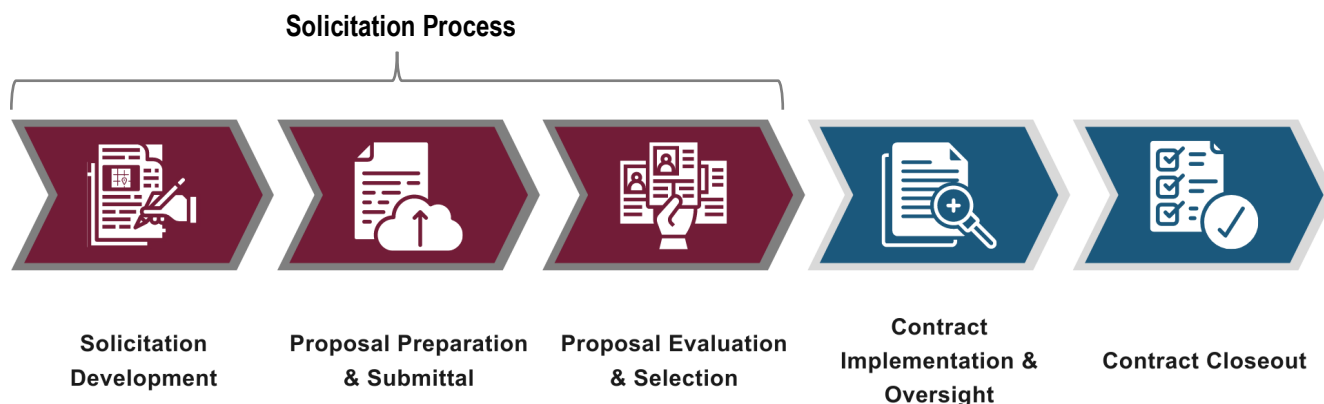
SOCIAL IMPACT PARTNERSHIPS PROGRAM		
	JOB AWARENESS/ EXPOSURE & INTERNSHIPS	Internships, career exposure and awareness, job training programs, and removing barriers to jobs (such as childcare, driver's license, etc.).
	EDUCATION	Providing in-classroom lessons, field trips, school supplies, school events, scholarships, and public-school teacher trainings with a goal of increasing students' interest in STEM.
	SMALL BUSINESS SUPPORT	Providing technical and legal assistance, marketing and promotions to support women- and BIPOC-owned businesses.
	HOUSING & ECONOMIC SUPPORT	Preventing displacement of low-income and long-term residents, including providing resources for food, housing counseling, generational housing preservation assistance, and safety net services.
	ENVIRONMENT & COMMUNITY HEALTH	Providing resources to support the mental health and wellness of the community, including through improvement of the local environment.

Source: Auditor-generated from SIP Program documentation provided by SFPUC

SIP Program Overview

Since the program's inception in 2011, the tools and processes for overseeing and managing the program have evolved; however, the core responsibilities, from contract solicitation through close-out, of SFPUC SIP staff have remained relatively consistent. The contract lifecycle can be divided into five core phases, as illustrated in Exhibit 3. The first three phases relate to the solicitation process, and the remaining two relate to contract management and close-out.

EXHIBIT 3. PROCESS OVERVIEW OF SOCIAL IMPACT PARTNERSHIPS IN CONTRACTS



Source: Auditor-generated from SIP Program Guidelines

During the solicitation process, SIP staff are responsible for working with SFPUC's Contract Administration Bureau (CAB) to develop SIP solicitation language, identifying and recommending SIP panelists, and providing general information regarding the SIP Program to proposers during pre-proposal bidder / proposer conferences during the solicitation process. We describe each phase in this process below:

- **Solicitation Development.** Generally, all professional service, alternative delivery construction, and power procurement Request for Proposals and Request for Offers ("RFP" or "RFO" or, collectively "solicitations") that have an anticipated contract amount of \$5 million or more will include a SIP component in the solicitation. During the solicitation development phase, SIP staff meet with the SFPUC Project Manager and assigned CAB contract analyst to determine the geographic scope of the project. Although SFPUC's operations extend from Hetch Hetchy Reservoir to San Francisco, as illustrated in Exhibit 4, the selected contractor's commitments must occur both where SFPUC operates and within communities directly impacted by the project. For example, contractors proposing for work on SFPUC's Southeast Treatment Plant, located in the Bayview Hunters Point District, would be encouraged to submit SIP commitments that are delivered to communities in Southeast San Francisco.

EXHIBIT 4. SERVICE AREA OF THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION



Source: SFPUC's Template Pre-Bid Community Benefits Contracts Professional Service Presentation

After the geographic scope of the project has been determined, SIP staff update the solicitation with SIP template language and add SIP geographic scope of work (or eligible geography) to the solicitation, and both the SFPUC Project Manager and CAB contract analyst review and approve the solicitation. CAB staff then upload the final solicitation documents to the City's requisition system, SFBid, to solicit proposals or offers.

- **Proposal Preparation and Submittal.** Once advertised, SIP staff participate in a Pre-Proposal/Bid Submittal Conference and provide an overview of SFPUC's Community Benefits and Social Impact Partnership programs. This conference provides potential respondents with information about SIP Program requirements and processes. SFPUC then identifies panelists to review and score proposals. Two panels are convened: a technical panel that evaluates project-specific criteria and a separate SIP panel that evaluates respondents' proposed SIP commitments. According to SFPUC, SIP panelists generally must meet the following criteria:

- Programmatic expertise related to SIP Program components,
- Experience serving the local community within the eligible geography,
- Have not participated in the development of the solicitation under consideration, and
- No conflicts of interest with proposing contractors or proposed beneficiaries.

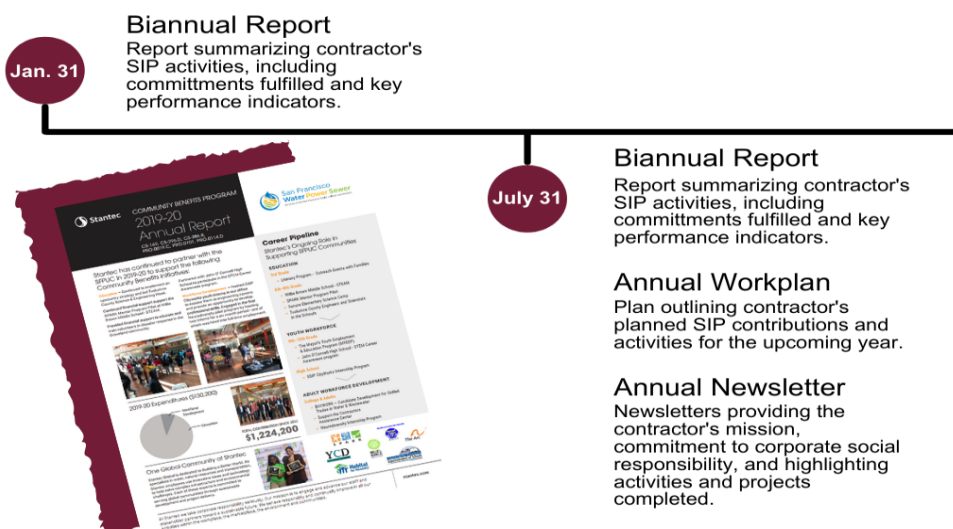
The City's Contract Monitoring Division within the City Administrator's Office, which is independent of SFPUC, also reviews panelist selections to ensure panelists are diverse in race and gender and that at least half of SIP panelists are not employed by SFPUC. Before final approval, panelists must conduct a preliminary review of the proposing contractors and proposed SIP beneficiaries. After this review, panelist must complete conflict of interest and confidentiality forms. CAB collects the completed forms and files them in formal solicitation records, which must be retained for a minimum of five years after the close of contract.

- **Proposal Evaluation and Selection.** CAB hosts orientation panels for both technical and SIP panels. The Contract Monitoring Division monitors the evaluation process and provides guidance to

panelists on the process and procedures proscribed by City ordinance. Both CAB and the Contract Monitoring Division monitor the process to ensure there is no undue influence on panelists when staff are communicating with the panelists. CAB provides panelists with a scoring rubric with SIP-specific evaluation criteria. According to SFPUC, both CAB and the Contract Monitoring Division review panelist scores. CAB tallies scores from the technical and SIP panelists to determine the highest-ranked proposal. After the protest period, CAB posts a notice of anticipated contract award and contractor rankings to the SFBid website. CAB also works with the SFPUC project team to draft the proposed contract, which will include the highest-ranked contractor's proposed SIP commitments. Staff then brings the recommended contract award to the SFPUC Commission for its consideration. Upon recommendation of the General Manager, the Commission awards the contract to the highest-ranked proposer (or the responsible contractor that submitted the lowest responsive bid, depending on the type of solicitation). Certain contracts are then subject to approval by the Board of Supervisors under the San Francisco Charter (Charter), Section 9.118. Following award, approval as to form by the Office of the City Attorney (City Attorney), and certification as to the availability of funds by the Office of the Controller (Controller), SFPUC staff executes the contract.

- **Contract Implementation and Oversight.** The assigned SFPUC contract manager is primarily responsible for overseeing contract compliance and deliverables; however, SIP staff are only responsible for overseeing all SIP-related contract requirements and for monitoring contractor compliance with SIP requirements. Upon contract execution, SIP staff meet with the contractor to discuss its SIP commitment, reporting requirements, required underlying support, and processes for submitting required information. Over the life of the contract, SIP staff are responsible for monitoring the contractor's delivery of SIP commitments by way of biannual and annual contractor reports and working with the contractor to encourage compliance and commitment fulfillment. SIP staff maintain and use a dashboard to track and report SIP commitments and contractors' progress in fulfilling those commitments.

EXHIBIT 5. SIP PROGRAM REPORTING REQUIREMENTS



Source: Auditor-generated from SIP Program documents provided by SFPUC

- **Contract Close-out.** SFPUC contract managers are responsible for maintaining most contract-related documents, but SIP staff are responsible for maintaining contract records demonstrating contractors' performance as it relates to the SIP commitments memorialized in the executed contract. Once a contractor has delivered all its proposed SIP commitments and submitted the corresponding reports and supporting documentation, SIP staff prepare a closeout letter and summary of SIP activities completed, email both to the contractor and key SFPUC personnel—i.e., SFPUC's Enterprise/Bureau Assistant General Manager, Project Manager, and SIP Manager—and retain a copy of the correspondence in Salesforce, SFPUC's system of record for all SIP Program activities and records.

In Fiscal Year 2020-21, SFPUC dedicated nearly \$261,000 to staff the SIP Program, which funded one full-time analyst, part-time management resources (approximately 70 percent of the manager's time), and a half-time intern. Although additional resources are dedicated to the SIP Program for general administrative and overhead costs, such as supplies, printing, postage, rent, and utilities, SFPUC does not allocate or track such costs specifically to the SIP Program.³

³ The audit did not review the funding sources for program costs.