Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; 2) narrowing the prohibition against soliciting from persons involved in administrative enforcement, providing that the receipt of a non-discretionary licenses, permits, or other entitlements for use does not make a person an interested party; 3) narrowing the prohibition against soliciting from persons who have provided that attempting to influence an legislative or administrative actions does not make a person an interested party; 4) excepting solicitations made in connection with certain types of City contracts the City’s acquisition of real property; 5) shortening the time periods for the prohibition as to solicitations from City contractors; 6) excepting payments less than $1,000; 7) authorizing the Board of Supervisors to grant waivers by resolution; and 8) 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, 3.620, 3.630, and 3.640, 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.

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

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

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

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

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

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

“Department head” shall mean any department head who is required to file a Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.
“Designated employee” shall mean any employee of the City and County of San Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this Code.

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

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

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

“Interested party” shall mean:

(a) any party, participant, or agent of a party or participant involved in (1) a proceeding regarding either administrative enforcement, or a license, a-permit, or other entitlement for use, before any officer within the department of the officer or designated employee; or (2) any other governmental decision regarding either administrative enforcement, or a license, permit, or other entitlement for use, in which the officer or designated employee was personally and substantially involved. This subsection shall not apply (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; except for to any license, permit, or other entitlement for use that is issued on a ministerial basis;

(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 purposes 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 purposes of any person providing a grant to the City or a City department; and (3) any person who attempted to influence the designated employee or officer regarding the approval, denial, extension, or amendment of a City contract, provided that “attempt to influence” shall be defined as set forth in the Ethics Commission’s regulations, and shall not include (A) oral or written public comment that becomes part of the record of a public hearing, (B) speaking at a public forum or rally, or (C) communications made via petition or social media;

c (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; 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;

c(d) 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; and any person on whose behalf a contact or expenditure lobbyist has made a contact with the employee’s or officer’s department in the last 12 months; or clients, or affiliates of clients, for whom they have contacted the department for in the last 12 months; or
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 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the Board of Supervisors did not approve the City Contractor’s agreement with the City.

“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, issued in the discretion of the administering agency, 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. 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, and/or are issued over-the-counter or as-of-right.

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

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

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

“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.

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

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

“Personally and substantially involved” shall be defined as set forth in the Ethics Commission’s regulations Section 3.234-5.

“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. For purposes of this Chapter 6, this definition shall also apply to proceedings regarding administrative enforcement actions.

“Public appeal” shall mean a request for a payment when such request is made by means of television, radio, billboard, a public message on an online platform, the distribution of 200 or more identical pieces of printed material, the distribution of a single email to 200 or more recipients, or a speech to a group of 20 or more individuals.
“Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step relationship or relationship created by adoption.

SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS, COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED PAYMENTS FROM INTERESTED PARTIES.

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

(1) Administrative proceedings. If the interested party is a party, participant, or agent of a party or participant involved in (i) a proceeding before the officer within the department of the officer elected official’s, department head’s, commissioner’s, or designated employee’s department regarding either regarding administrative enforcement, or regarding a license, permit, or other entitlement for use, or (ii) any other governmental decision regarding either administrative enforcement, or regarding a license, permit, or other entitlement for use, in which the officer or designated employee was personally and substantially involved, the prohibition set forth in this subsection (a) shall apply:

(A) during the pendency of the proceeding or governmental decision; and

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

(2) Contracts. If the interested party is a City Contractor, or an affiliate of a City Contractor, who is a party to or is seeking a contract with the officer elected official’s, department head’s, commissioner’s, or designated employee’s department or is a person who attempted to influence the officer or designated employee regarding the approval, denial,
extension, or amendment of a City contract, the prohibition set forth in this subsection (a) shall apply from the submission of a proposal until the later of:

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

(B) 12 months following the end of the contract’s term, if the interested party is a City Contractor, unless five years have elapsed since the execution of the contract without any amendment, extension, or renewal; or

(C) 12 months following the attempt to influence if the person is an interested party due to an attempt to influence regarding the City contract.

(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.

(4) Lobbyists. Officers, elected officials, department heads, commissioners, and designated employees may not solicit any behested payment from a contact lobbyist or expenditure lobbyist who has registered as a 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 from a person on whose behalf a contact or expenditure lobbyist has made a contact with the employee’s or officer’s department in the last 12 months.

(5) Permit consultants. Officers, elected officials, department heads, commissioners, and designated employees may not solicit any behested payment from a permit consultant who has registered 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.

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

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

(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, which program is authorized by the 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 by an ordinance authorizing a program involving donations through a competitively procured contract, as provided by (ii) above, or (B) December 31, 2024. A program which existed on or before January 23, 2022, such as the San Francisco Public Utilities Commission Social Impact Partnership program, is considered for the purposes of this subsection an authorized program under the following limitations: (i) only a department that implemented such program on or before January 23, 2022 may include the authorized program in its competitive solicitations; and (ii) the authorization granted under this subsection shall expire on January 31, 2023 unless the Board of Supervisors adopts an ordinance authorizing an extension of the program. If the authority under this subsection for a pre-
existing program expires, the department shall immediately stop including the program in its
solicitations but may continue to administer the pre-existing program for any contract where
proposals are received before the expiration date.

(f) EXCEPTION – CONTRACTED BENEFITS CITY PROPERTY. Nothing in this

This Section 3.620 shall not apply to solicitations made in connection with the negotiation or
administration of a City contract if the payment solicited directly relates to the terms of, or
performance under, the contract. For the purposes of this subsection (e), City contracts
include but are not limited to development agreements, agreements for the development or
use of public property, agreements for the City’s acquisition of real property, and contracts for
the acquisition of community benefits. 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.

(f) EXCEPTION – WAIVER. Upon request by a City department, the Board of
Supervisors may waive the requirements of this Section 3.620 by resolution, but may not
waive it for itself. A proposed resolution that seeks a waiver shall summarize the purpose of
the solicitation(s) and shall identify the type of interested parties or the specific interested
parties, when the identity is known, to whom the solicitation(s) would be directed, and a
statement as to why the department believes the parties are interested parties. The resolution
must include a finding that the waiver would not create an appearance of impropriety and
would be in the public interest. Waivers granted under this subsection (f) shall apply
prospectively for six months, unless the approving resolution specifies a shorter duration, and
shall have no effect as to past solicitations and may not be approved retroactively after the
solicitations have occurred. Within 30 days of the enactment of such a resolution, the Clerk of
the Board shall publish information regarding the resolution to a dataset of all approved waiver
resolutions on DataSF.
SEC. 3.630. REGULATIONS.

The Ethics Commission shall adopt rules, regulations, and guidelines for the implementation of this Chapter 6. The Ethics Commission shall adopt rules, regulations or guidelines, including with respect to defining and illustrating “interested party” and when a payment is made “at the behest of” a City officer or designated employee on or before January 1, 2023.

SEC. 3.640. PENALTIES.

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

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

Section 3. Prerequisites for Enactment; Super-Majority Vote Requirement. Consistent with the event the People approve Proposition E, which was approved at the June 7, 2022 election, the enactment of this ordinance will be subject to the provisions of Proposition E that authorize amendments to Article III, Chapter 6 of the Campaign and Governmental Conduct Code only if they are recommended by the Ethics Commission and approved by a supermajority of at least eight votes at the Board of Supervisors.
Section 4. 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