

Behested Payments

San Francisco Ethics Commission

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SFEthics.org

AN OVERVIEW

What are “Behested Payments?”

A behested payment is one made (for example, to a non-profit) because of a request by a public official or employee to someone to make that payment. A “payment” can be cash, goods, or services.

Because these requests can raise ethical flags about fairness in governmental decision making, the practice is regulated by both state and San Francisco laws.

What kind of ethical problems can Behested Payments raise?

The answer to this question depends on the context of the request. Let’s look at an example:



City officer encourages a business associate to donate to the City officer’s favorite non-profit.

Assume this City officer has significant decision-making power for granting City contracts. And they are requesting a donation from someone who is a contractor looking to do work with the officer’s department.

Is there an ethical flag in this scenario? Yes! When a government official asks for something of value from someone who has an interest in a decision that official could make or influence, real or perceived conflicts of interest can arise. It can appear that the officer may be basing their decision about the prospective contractors depending on whether or not that contractor makes a donation to the official’s favorite non-profit.

An ethical flag also can arise when behested payments made to third parties at the direction of a public official are seen or used by the person making the payment as a tool to improperly influence the government or to secure personal gain.

For these reasons, City rules restrict certain City officials and employees from soliciting behested payments from interested parties.

To understand more, let’s look at some frequently asked questions about behested payments rules. (see next page).

Do behested payment rules apply to me?

If you are an elected official, member of a City board or commission, department head, or a designated employee who files a Statement of Economic Interests (commonly known as a “Form 700”), the City’s behested payments rules apply to you.

These City officers and designated employees are prohibited from asking “interested parties” to make contributions, with some limited exceptions. (We’ll define “interested party” later in this document.)

Does this mean I can no longer donate to my favorite charities?

You can donate! Behested payment rules don't restrict anyone’s choice to make a personal charitable donation from your personal funds.



What is an “interested party?”

City Officers and designated employees are prohibited from soliciting behested payments from interested parties. The law identifies four general categories for defining when someone is considered an “interested party” to you:

A participant in an administrative enforcement, license, or permit proceeding before an officer within your board, commission, or department, or that the officer or employee was personally and substantially involved in. However, if the license or permit is issued on a ministerial basis (with little to no discretion), it is exempted from the prohibition.

To better understand how this category applies, let’s review an example.

- Mirabelle is applying for a permit. Jim is a manager who files a Form 700. **Can Jim ask Mirabelle to donate to their favorite charity?**

It depends.

- If Mirabelle is seeking a permit that must be signed by the head of Jim’s department. Mirabelle is now an interested party for Jim and any other designated employee or officer of the department. Therefore, **neither Jim nor any other designated employee or officer can ask Mirabelle** for a behested payment.
- If Mirabelle is seeking a permit that Jim needs to review and approve, that means Jim is personally and substantially involved in granting the permit. Therefore, Jim **cannot** ask Mirabelle for a behested payment.
- If Mirabelle applies for a permit that is approved in a ministerial fashion, without significant review, Mirabelle would not be an interested party, according to the law. In this situation, Jim **could** ask Mirabelle for a behested payment.

There are exceptions highlighted on this webpage.

More examples of “Interested Parties”

An organization contracting (or seeking to contract) with your board, commission, or department. This includes affiliates of the organization as well as anyone trying to influence the approval, denial or extension, or amendment of a contract.

Example: Susan is a City officer who also volunteers for a nonprofit. Acme Inc. is a contractor with her department. Susan **cannot** ask Acme to contribute to the nonprofit’s annual fundraiser. Susan **cannot** ask Acme Inc.’s CEO or any other affiliates of the company to contribute, either.

Any lobbyist registered to lobby your department and the clients of the lobbyist on whose behalf they have contacted you or your department in the last 12 months.

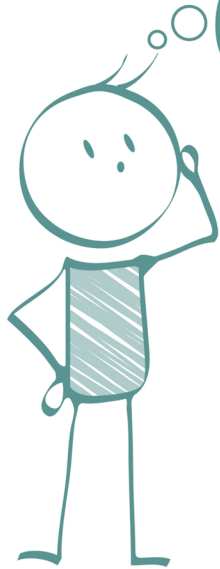
Example: Assume Lily is an elected official in San Francisco. Lily knows that a food bank operating in her district is in dire need of in-kind donations to make holiday meals for families in need. ABC Poultry, Inc. is a client of a registered lobbyist and the lobbyist has lobbied Lily on behalf of ABC Poultry, Inc. in the last 12 months.

- Lily **cannot** ask ABC Poultry Inc., for a donation of 200 turkeys for the food bank.
- Lily **cannot** ask the lobbyist, either.
- Lily **could**, however, make a public appeal for donations through mass media or to a gathering of 20 or more people.

Any permit consultant registered with the Ethics Commission who has reported contacts with your department in the last 12 months.

Example: A registered permit consultant contacts a City department in May to get a permit issue resolved for their client. In December, Jose, a designated employee at that department, is fundraising for their child's school. Jose **cannot** ask the permit consultant for a contribution to the school’s fundraiser. This ask is **prohibited** because the permit consultant is registered with the Ethics Commission and has contacted Jose’s department in the previous 12 months.

[Read more about the definition of “Interested Party” on the Ethics Commission’s website.](#)



Are there exceptions?

There are some exceptions to these rules to help City agencies and their programs collaborate with nonprofits and receive donations.

- Solicitations made under authorized programs for donations to nonprofits or public schools through competitively procured contracts are allowed **if** the program is authorized by an ordinance.
- Solicitations made in connection with the negotiation or administration of a City contract, which are directly related to the terms of, or performance under, the contract.
- Public appeals made through 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 people.

The Board of Supervisors may grant waivers to these rules under certain circumstances through a public decision-making process.

**Have questions? Want to know more?
The Ethics Commission's staff is here to help!**

Reach out to our team at any time:

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