



San Francisco Ethics Commission

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ETHICS COMMISSION

NOTICE OF PROPOSED REGULATIONS CONCERNING BEHESTED PAYMENTS

11/28/22

Draft Regulations to San Francisco Campaign and Governmental Conduct Code – Campaign Finance and Conflict of Interest Section 3.600 et seq

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Regulation 3.610-1: Filing of Behested Payment Reports

Any officer who is required to file a behested payment report pursuant to section 3.610 shall do so by filing Form SFEC-3.610b with the Ethics Commission. The Commission may require that this form be filed in electronic format.

Regulation 3.620-1: Filing by Donors



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~~(a) Any interested party who is required to file a report pursuant to section 3.620 must do so by filing Form SFEC 3.620a with the Ethics Commission. The Commission may require that this form be filed in electronic format.~~

~~(b) If an interested party has previously filed a Form SFEC 3.620a and, during the same calendar year, subsequently makes an additional behested payment at the behest of the same officer, the interested party must file an additional Form SFEC 3.620a only if the interested party has become involved in additional proceedings or made additional contacts that were not disclosed pursuant to section 3.620(a)(1)-(3) on the initial Form SFEC 3.620a.~~

~~(c) Only behested payments subject to disclosure under section 3.610 may trigger the potential reporting required under section 3.620.~~

~~(d) An interested party shall file the disclosure required under section 3.620 only if the interested party has made behested payments totaling \$10,000 in a calendar year at the behest of a single officer or agents of that officer.~~

Regulation 3.620-2: Notice by Donors to Recipients

When a person making a behested payment notifies the recipient of the payment that the payment is a behested payment, as required by section 3.620(b), the person must notify the recipient of the name and title of the official at whose behest the payment is made.

Regulation 3.630-1: Filing by Recipients of Major Behested Payments

~~(a) Any person who is required under section 3.630(a)(1) or 3.630(a)(2) to disclose information about behested payments received shall do so by filing Form SFEC 3.630 with the Ethics Commission. The Commission may require that this form be filed in electronic format.~~

~~(b) When disclosing on the Form SFEC 3.630 how the funds received through behested payments were spent, a filer must retain records or documentation sufficient to substantiate such disclosure. If funds received through the behested payment(s) were not earmarked or otherwise used for a specific purpose, a filer may report such spending using last-in-first-out accounting from the time that the recipient received the behested payment(s).~~

Regulation 3.620-1: Soliciting Behested Payments

A behested payment is solicited by an officer or designated employee if the payment is, or would be, made at the behest of that officer or designated employee. Solicitation of a behested payment occurs regardless of whether a payment is actually made. A payment is made "at the behest of" an officer or designated employee if the payment is, or would be, made "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" the officer or designated employee.



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Regulation 3.620-2: Soliciting Behested Payments – Definition of “Under the control or at the direction of”

Payments made under the control or at the direction of a City officer or designated employee, include, but are not limited to, payments where the officer or designated employee has the authority to authorize, command, order, require, guide, or administer the payment.

Regulation 3.620-3: Soliciting Behested Payments – Definition of “In cooperation, consultation, coordination, or concert with”

Payments made in cooperation, consultation, coordination, or concert with a City officer or designated employee, include, but are not limited to, payments where the officer or designated employee is communicating about the value, amount, timing, uses, benefits, impacts, limitations, recipients, purposes, or logistics of the payment.

Regulation 3.620-4: Soliciting Behested Payments – Definition of “At the request or suggestion of”

Payments made at the request or suggestion of a City officer or designated employee, include, but are not limited to, payments where the officer or designated employee asks for the payment directly or suggests that the payment being made would be beneficial to the officer or designated employee or any other party.

Regulation 3.620-5: Soliciting Behested Payments – Definition of “With the express, prior consent of”

Payments made with the express, prior consent of a City officer or designated employee, include, but are not limited to, payments where the officer or designated employee is notified by the payor of their intention to make the payment and the officer or designated employee takes steps to encourage the prospect of the payment.

Regulation 3.620-6: Soliciting Behested Payments Valued at Less Than \$1,000

A City officer or designated employee may solicit a behested payment from an interested party, if the value of the payment is less than \$1,000, or less than \$1,000 in aggregate if spread over a series of solicitations within a twelve-month period. In order for the solicitation not to violate section 3.620, the officer or designated employee must explicitly solicit less than \$1,000, and the amount of any actual payment must also be less than \$1,000. When it is not clear from the context and facts of the solicitation, the City officer or designated employee claiming to have solicited a payment valued at less than \$1,000 bears the burden of proving that the amount solicited was less than \$1,000. This proof



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could be demonstrated, for example, through copies of emails or other written communications or other means. If an amount is solicited, but no actual payment is made, the value of the solicitation counts towards reaching the \$1,000 solicitation limit for that twelve-month period.

Illustration: In January, a City officer approaches an interested party and asks the interested party to donate \$750 dollars to a local charity the officer supports. The interested party does not respond to the officer and does not donate any money to the local charity. In July, that same City officer asks that same interested party to donate \$750 to a local charity (either the same charity or a different charity). Since the officer had already asked this interested party for \$750 earlier in the same twelve-month period, they would be prohibited from asking for another \$750 now, as this would make the aggregate total \$1,500, which is not less than \$1,000.

Regulation 3.620-7: Soliciting Behested Payments for Unspecified Amounts

If a City officer or designated employee solicits a behested payment from an interested party and the value of the payment solicited is not explicitly less than \$1,000, the value may be assumed to be \$1,000 or more, when it is not clear from the context and facts of the solicitation.

Regulation 3.620-8: Exceptions

The following actions are not solicitations of behested payments for the purposes of Section 3.620:

- (a) Applying for a competitively awarded grant with or directly from an interested party, if the City officer or designated employee is applying on behalf of their department. Negotiating the terms of, entering into, performing pursuant to, amending, and expanding such a grant agreement between the source of the grant, the interested party, and the City is also not soliciting a behested payment.
- (b) Negotiating the terms of, entering into, performing pursuant to, amending, or expanding a grant agreement between an interested party and the City, on behalf of the officer or designated employee's department, that was initiated by an interested party. Any City officer or designated employee using this exception bears the burden of proving that they did not initiate the grant offer or negotiations. This proof could be demonstrated, for example, through copies of emails or other written communications or other means.
- (c) Coordinating the acceptance of gifts or other payments to the City that have been initiated by an interested party. Any City officer or designated employee using this exception bears the burden of proving that they did not initiate the payment from the interested party. This proof could be demonstrated, for example, through copies of emails or other written communications or other means. Any gift or payment accepted using this exception cannot confer a personal benefit on any City officials. Gifts or payments that confer a personal benefit include, but are not limited to food, drinks, holiday parties, and items intended for employee appreciation or recognition.



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- (d) Soliciting payments from a nonprofit organization that is an interested party on behalf of the officer or designated employee's department, pursuant to the terms of a memorandum of understanding or similar agreement that has been approved by Office of the City Attorney and the Controller. The primary purpose of the nonprofit organization must be to support the City department that would be receiving the payment. Any payment accepted using this exception cannot confer a personal benefit on any City officials. A payment that confers a personal benefit includes, but is not limited to food, drinks, holiday parties, and items intended for employee appreciation or recognition. This exception does not apply if the nonprofit organization is an interested party because it is the client of a lobbyist who, on behalf of the nonprofit organization, has contacted the officer or designated employee's department within the last twelve months.
- (e) Responding to a request for information from an interested party regarding charitable or philanthropic giving with factual information. If a party asks a City officer or designated employee for whom they are an interested party for information related to charitable or philanthropic giving, the officer or designated employee can only respond with factual information, such as the contact information for an organization the City has worked with or information about the work done with that organization, but is not permitted to coordinate, facilitate, or otherwise encourage a payment. For example, if an interested party asked for a list of organizations that a City department has worked with regarding a specific policy issue, the officer or designated employee could provide that list of organizations but would be prohibited from encouraging or recommending payments be made. Any City officer or designated employee using this exception bears the burden of proving that the request for information was initiated by the interested party and that any response was limited to factual information. This proof could be demonstrated, for example, through copies of emails or other written communications or other means.
- (f) The solicitation of campaign contributions.

Regulation 3.620-9: Definition of "Interested Party"

There are multiple situations that make a party an interested party for a City officer or designated employee. See San Francisco Ethics Commission Regulations 3.620-10 through 3.620-20 for more information about the different prongs of what makes someone an interested party.

Regulation 3.620-10: Definition of "Interested Party" – Parties Involved in Administrative Proceedings

Any party, participant, or agent of a party or participant involved in a proceeding regarding either administrative enforcement, or a license, permit, or other entitlement for use, before any officer within a department, will be an interested party for all officers and designated employees of that department during the pendency of the proceeding and for twelve months following the date on which a final decision is rendered regarding the proceeding. A proceeding regarding either administrative



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enforcement, or a license, permit or other entitlement for use is not “before” an officer merely because a determination in the proceeding is appealable to the officer, unless an appeal has actually been filed or otherwise initiated.

Illustration: An entity applies for a permit from a City department, and the department head must review and approve or deny the permit. Since the permit is before the department head, who is a City officer, the entity seeking the permit is now an interested party for all of the officers and designated employees of that department.

Regulation 3.620-11: Definition of “Interested Party” – Parties Involved in Governmental Decisions

Any party, participant, or agent of a party or participant involved in any 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 is an interested party for that officer or designated employee.

Illustration: An entity applies for a permit from a City department, and the permit does not need to go before a City officer, but a designated employee must review, analyze, or approve the permit. Since this designated employee was personally and substantially involved in the governmental decision regarding the permit, the entity seeking the permit is now an interested party for that designated employee. Since the permit was not before an officer of the department, the party would not become an interested party for all of the officers and other designated employees of that department based on this permit application.

Regulation 3.620-12: Definition of “Interested Party” – Licenses, Permits, or Other Entitlements for Use Issued on a Ministerial Basis

Licenses, permits, and other entitlements for use are issued on a ministerial basis if they are issued on a first come, first served basis, involve little or no discretion, merely apply a checklist or objective criteria to the facts presented, or are issued as-of-right with little or no review, analysis, or discretion.

Illustration: A person applies for a permit to reserve space in a City park for a birthday party, and the application is processed by a City employee without substantial review or the use of discretion by the employee that issues the permit. Since this permit was issued on a ministerial basis, it would not cause the person reserving the space to become an interested party for the employee.

Regulation 3.620-13: Definition of “Interested Party” – City Contractors

Any City Contractor contracting with or seeking to contact with a City department is an interested party for the City officers and designated employees of that department, as are the affiliates of the contractor,



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until the termination of negotiations for the contract or twelve months following the end of the contract's term, unless five years have elapsed since the execution of the contract without any amendment, extension, or renewal.

Illustration: A company bids on a contract with a City department in January and is informed in March that they were not awarded the contract and negotiations had been concluded for the contract. In May, a City officer of that department solicits a behested payment from the chief executive officer of this company. If the company and its chief executive officer are not otherwise interested parties for the City officer, this solicitation would not be prohibited, since the negotiations for the contract the company was seeking had terminated prior to the solicitation.

Regulation 3.620-14: Definition of "Interested Party" – City Contractors – Contract Term

If the term of a City contract extends beyond five years and if five years have elapsed since the contract was executed, amended, extended, or renewed, the contractor is no longer an interested party for the officers and designated employees of the contracting department based on this contract. If at some point the contract is amended, extended, or renewed, the contract would again make the contractor an interested party for the officers and designated employees of contracting department.

Illustration 1: A department executes a contract in March of 2024 with a 20-year term and that contract is not amended, extended, or renewed after it is executed. In March of 2029, this contract would no longer make the contractor an interested party for the officers and designated employees of the contracting department.

Illustration 2: The contract from Illustration 1 is amended in June of 2032. The amendment would again make the contractor an interested party for the officers and designated employees of the contracting department until June of 2037.

Regulation 3.620-15: Definition of "Interested Party" – City Contractors – Grant Exception

City contracts that exist solely for the purpose of providing a grant to the City or a City department do not make the contractor an interested party, this includes memoranda of understanding and similar agreements entered into for the purpose of providing grants to the City or a City department.

Regulation 3.620-16: Definition of "Interested Party" – City Contractors – Those Attempting to Influence City Contracts

If a person other than the contractor has attempted to influence an officer or designated employee regarding the approval, denial, extension, or amendment of a City contract, that person is an interested



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party for that officer or designated employee for twelve months following the attempt to influence. However, an entity that is providing, or negotiating to provide, a grant to the City or a City department, may suggest contractors to work on their particular grant without becoming an interested party.

Except as provided below, “attempted to influence” as used in section 3.620(a)(2), means the person has contacted or appeared before the City officer or designated employee with an intent to influence a decision of the employee or officer, or the person otherwise has attempted to influence the officer or employee. The phrase “intent to influence” means any communication made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the approval, denial, extension, or amendment of a City contract. Notwithstanding the foregoing, the following shall not be deemed to be an intent to for the purposes of section 3.620(a)(2): communications that (a) involve only routine requests for information such as a request for publicly available documents; (b) are made as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding; (c) are made while attending a general informational meeting, seminar, or similar event; (d) are made to the press; (e) involve an action that is solely ministerial, secretarial, manual or clerical; (f) constitute oral or written public comment that becomes part of the record of a public hearing; (g) are made while speaking at a public forum or rally; or (h) are communicated via petition or social media.

Illustration: Prior to a Commission’s vote awarding a City contract, a person not associated with a party to the contract solicitation process privately urges one of the Commissioners to not award the contract to a certain company that is being considered. This person would be an interested party for that Commissioner for the next twelve months.

Regulation 3.620-17: Definition of “Interested Party” – City Contractors – Valuing Leases

For the purposes of determining if a party is a City Contractor and thus an interested party, the value of the contract within a fiscal year is relevant. If the City or a City department is the lessor of real property, the value of the lease shall be based on the market rent value of the property. “Market Rent” shall mean the most probable rent that a real property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement.

Regulation 3.620-18: Definition of “Interested Party” – Lobbyists

If a lobbyist is registered to lobby “All Departments” or has failed to disclose which departments the lobbyist expects to attempt to influence, as required by Section 2.110(b), the lobbyist will be considered an interested party for all City officers and designated employees for purposes of the behested payments provisions.



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Regulation 3.620-19: Definition of “Interested Party” – Lobbyist Clients and Affiliates of Lobbyist Clients

Any person, and any affiliate of such person, for whom a lobbyist has contacted a City officer or employee in the last twelve months is an interested party for all City officers and designated employees within the department of the officer or employee who was contacted.

Illustration: A lobbyist contacts an officer of a City department in March on behalf of ABC Inc. In July, a designated employee of that department wants to solicit a behested payment from someone who owns 25% of ABC Inc. Because the person being solicited is an affiliate of the company for whom the lobbyist contacted the department and twelve months have not elapsed since the contact, the person would be an interested party for the designated employee, who would be prohibited from soliciting the payment.

Regulation 3.620-20: Definition of “Interested Party” – Permit Consultants

Permit consultants who are registered with the Ethics Commission and have reported contacts to carry out permit consulting services during the last twelve months with a City department, are interested parties for the City officers and designated employees of that department.

Illustration: A registered permit consultant contacts a City department to try and get a permit issue resolved for their client in May. In December, a designated employee of this department wants to solicit a behested payment from the permit consultant. This solicitation would be prohibited because the permit consultant has registered and has contacted the designated employee’s department within the last twelve months.

Regulation 3.620-21: Indirect Solicitations

Directing or otherwise urging another person to solicit a behested payment from an identifiable interested party, includes, but is not limited to directing or otherwise urging another person to solicit an interested party by name, a group of parties the City officer or designated employee knows or has reason to know contain at least one interested party, or a group of parties based on criteria that the City officer or designated employee knows or has reason to know would likely result in at least one interested party being included. However, a group containing or likely containing an interested party or parties, may be solicited, if any interested parties are excluded from the solicitation.

Regulation 3.620-22: Indirect Solicitations – Soliciting Fiscally Sponsored Entities

If an entity is fiscally sponsored by an interested party, solicitations for behested payments from that entity may be prohibited based on certain factors present in the entity’s relationship to its fiscal sponsor. These factors include, but are not limited to, the level of autonomy and discretion the fiscally



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sponsored entity has regarding decisions to make payments. If the fiscal sponsor has little to no discretion over the entity's payments and is required to carry out the will of the fiscally sponsored entity, soliciting the entity would not be prohibited. If the fiscal sponsor retains control over the decision to make payments, the solicitation would be considered a solicitation of the fiscal sponsor and would thus be prohibited.

Regulation 3.620-23: Public Appeals

Following a public appeal, if an interested party initiates contact with a City officer or designated employee about potentially making the payment solicited through the public appeal, the level of engagement the officer or designated employee may have before the conduct rises to the level of soliciting a behested payment partially depends on who is the recipient of the solicited payment.

If the recipient of the payment solicited through the public appeal is not the City or a City department, the officer or designated employee can only respond with factual information, such as the recipient's contact information and may not otherwise coordinate, facilitate, or take steps to encourage the payment.

If the recipient of the payment solicited through a public appeal is the City or a City department, the officer or designated employee is permitted to coordinate, facilitate, negotiate, and otherwise encourage the payment, as though it were a grant or gift offer initiated by the interested party. See San Francisco Ethics Commission Regulations 3.620-8(b) and 3.620-8(c) for more information on grant and gift offers initiated by interested parties.