

Ethics Commission Agenda Item 9, Attachment 2

Summary of Draft Regulations on Behested Payments

11/28/22

Draft Regulations	Description and Rationale for Regulation
3.610-1, 3.620-1, 3.620-1, and 3.630-1 Obsolete Regulations on Reporting Requirements	These four regulations relate to the local behested payments reporting requirements that existed in the Code prior to January 2022. The Code no longer requires this reporting. These regulations are obsolete and should be removed.
3.620-1 Soliciting Behested Payments	This regulation clarifies a payment is solicited by a City officer or designated employee when made “at the behest of” that officer or employee. Draft Regulations 3.620-2 through 3.620-5 further define and illustrate when a payment is made “at the behest of” an officer or designated employee. This regulation also clarifies that a solicitation can occur regardless of whether a payment is actually made.
3.620-2 Soliciting Behested Payments – Definition of “Under the control or at the direction of”	As required by the Code, this regulation defines when a payment is made “at the behest of” a City officer or designated employee.
3.620-3 Soliciting Behested Payments – Definition of “In cooperation, consultation, coordination, or concert with”	As required by the Code, this regulation defines when a payment is made “at the behest of” a City officer or designated employee.
3.620-4 Soliciting Behested Payments – Definition of “At the request or suggestion of”	As required by the Code, this regulation defines when a payment is made “at the behest of” a City officer or designated employee.
3.620-5 Soliciting Behested Payments – Definition of “With the express, prior consent of”	As required by the Code, this regulation defines when a payment is made “at the behest of” a City officer or designated employee.
3.620-6 Soliciting Behested Payments Valued at Less Than \$1,000	The changes to the Code that went into effect in November 2022, included a change to the definition of the word ‘payment’ that exempted solicitations valued at less than \$1,000 from the prohibition in Section 3.620. This regulation clarifies and illustrates how this new \$1,000 limit functions in practice.
3.620-7 Soliciting Behested Payments for Unspecified Amounts	Similar to Draft Regulation 3.620-6, this regulation provides additional information on the new \$1,000 limit, specifically regarding situations where an interested party is being solicited for an unspecified amount.
3.620-8 Exceptions	This regulation, though its subsequent sub-sections, identifies several activities that could currently be considered to be prohibited by Section 3.620. However, as these activities pose little

	risk of abuse, they can be exempted from the Section 3.620 prohibition.
3.620-8 (a) Applying for competitively awarded grants from or with an interested party	This regulation would allow City officers and designated employees to apply for competitively awarded grants with or from an interested party, so long as they are doing so on behalf of their department. Applying for competitively awarded grants can be a valuable source of funding for City departments and as they are competitively awarded, there is little risk associated with such grants coming from an interested party.
3.620-8 (b) Negotiating and accepting grants offered by an interested party	Similar to Draft Regulation 3.620-8 (a) above, multiple departments communicated that it is important for them to be able to negotiate and accept grants that may be offered, unsolicited, by an interested party. In order to use this exception, the offer must not be initiated by the City officer or designated employee.
3.620-8 (c) Coordinating the acceptance of gifts or other payments to the City that have been initiated by an interested party	There can be situations where an interested party offers a gift or payment to the City. Without this regulation, coordinating the acceptance of such a payment could violate the City’s behested payment rules. This regulation would allow City officials to coordinate the acceptance of such gifts to the City, as long as 1) they are initiated by the interested party and 2) do not provide City officials with any personal benefits (such as paying for holiday parties or other employee appreciation activities).
3.620-8 (d) Soliciting payments from nonprofit organizations that are interested parties pursuant to a memorandum of understanding (MOU)	Several departments have nonprofit organizations, commonly known as “Friends Of” organizations that exist primarily to fundraise and support the department. These organizations are typically not interested parties, as past advice and Draft Regulation 3.620-15 specifies that the types of MOUs these organizations typically have do not make them interested parties due to the grant exception in the Code. However, it is possible that these organizations could become an interested party for other reasons (having a permit before a City officer of the department, for example). In such a situation, being an interested party could hinder the ability of the organization and the department to perform pursuant to their MOU, which is what this regulation is seeking to avoid by exempting solicitations made to these organizations pursuant to an MOU.
3.620-8 (e) Responding to request for information from an interested party regarding charitable or philanthropic giving	An interested party may ask a City officer or designated employee for information regarding charitable or philanthropic giving. This regulation specifies that in such situations, the City official should limit their responses to factual information and avoid encouraging or recommending specific payments be made.
3.620-8 (f) Soliciting campaign contributions	Soliciting campaign contributions has never been the intent of the City’s behested payment rules. This regulation clarifies that soliciting a campaign contribution is not soliciting a behested payment.

<p>3.620-9 Definition of “Interested Party”</p>	<p>Section 3.630 requires the Ethics Commission to adopt regulations defining and illustrating “interested party.” Draft Regulations 3.620-10 through 3.620-20 define and illustrate the various ways a party can become an interested party.</p>
<p>3.620-10 Definition of “Interested Party” – Parties Involved in Administrative Proceedings</p>	<p>This regulation clarifies how being party to a proceeding regarding administrative enforcement or a license, permit, or other entitlement for use before a City officer can make the party an interested party. This regulation also clarifies that a matter merely being appealable to an officer, does not mean the matter is currently “before” that officer.</p>
<p>3.620-11 Definition of “Interested Party” – Parties Involved in Governmental Decisions</p>	<p>This regulation clarifies how being party to a government decision regarding either administrative enforcement, or a license, permit, or other entitlement for use makes the party an interested party for all of the City officers and designated employees who were personally and substantially involved in that decision.</p>
<p>3.620-12 Definition of “Interested Party” – Licenses, Permits, or Other Entitlements for Use Issued on a Ministerial Basis</p>	<p>This regulation illustrates how the exception for licenses, permits, and other entitlements for use that are issued on a ministerial basis works in practice.</p>
<p>3.620-13 Definition of “Interested Party” – City Contractors</p>	<p>This regulation illustrates how being a City contractor or seeking a City contract makes the contractor an interested party. This regulation focuses on illustrating how if the contract is not awarded to the entity seeking the contract, they are only an interested party until the termination of negotiations over the contract.</p>
<p>3.620--14 Definition of “Interested Party” – City Contractors – Contract Term</p>	<p>This regulation focuses on illustrating how a City contractor will no longer be made an interested party by the contract, if five years have elapsed since the contract was last executed, amended, extended, or renewed.</p>
<p>3.620-15 Definition of “Interested Party” – City Contractors – Grant Exception</p>	<p>The Code states that contracts for the purposes of providing a grant to the City or a City department do not make the contractor an interested party for the purposes of Section 3.620. This regulation specifies that this includes memoranda of understanding and similar agreements that are entered into for the purpose of providing grants to the City or a City department, like those commonly entered into between departments and their “Friends Of” organizations.</p>
<p>3.620-16 Definition of “Interested Party” – City Contractors – Those Attempting to Influence City Contracts</p>	<p>This regulation defines “attempt to influence” for the contractor prong of what makes someone an interested party. This definition pulls from the similar definition already used for Section 3.216, with the inclusion of the other requirements included in Section 3.610. This regulation also specifies that this prong does not apply the City contractors who are seeking or awarded the contract.</p>
<p>3.620-17 Definition of “Interested Party” – City Contractors – Valuing Leases</p>	<p>In situations where the City or a City department are the lessors of real property, the value of that property is relevant to if the lessee is an interested party (if valued at \$100,000 or more per year, they would be considered a City contractor and thus an interested</p>

	party). This regulation borrows the definition of “Market Rent” from Section 23.2 of the City’s Administrative Code to provide guidance to departments for how to determine the value of their leases for the purposes of Section 3.620.
3.620-18 Definition of “Interested Party” – Lobbyists	This regulation clarifies that lobbyists who register to lobby “All Departments” or who fail to disclose which departments they expect to attempt to influence when they register, will be considered interested parties for the City officers and designated employees of all City departments.
3.620-19 Definition of “Interested Party” – Lobbyist Clients and Affiliates of Lobbyist Clients	This regulation illustrates how lobbyist clients and their affiliates are interested parties, if a lobbyist has contacted the City officer or designated employee’s department in the last 12 months on behalf of the client.
3.620-20 Definition of “Interested Party” – Permit Consultants	This regulation illustrates how registered permit consultants are interested parties for the City officers and designated employees of a department, if within the last twelve months they have reported contacts with their department to carry out permit consulting services.
3.620-21 Indirect Solicitations	This regulation clarifies what it means to indirectly solicit a behested payment from an identifiable interested party.
3.620-22 Indirect Solicitations – Soliciting Fiscally Sponsored Entities	This regulation specifies the factors used to determine when soliciting a payment from an entity that is fiscally sponsored by an interested party may be prohibited by Section 3.620.
3.620-23 Public Appeals	This regulation clarifies the level of communication that is allowed between a City officer or designated employee and an interested party, following a public appeal. In general, if the public appeal was soliciting a payment to a non-City entity, any subsequent communications between the City official and interested party should be limited to factual information, such as the recipient’s contact information. However, if the City is the recipient of the payment, the City official may be more involved in the coordination of the payment by the interested party.