



Behested Payments

GLOSSARY

Affiliate

An organization's directors, principle officers (including, but not limited to, its chairperson, chief executive officer, chief financial officer, chief operating officer, or any similar position), individuals or entities holding a share of the organization of ten percent or greater, and any subcontractor listed on the organization's bid for a City contract.

Contractor

Any person who contracts with, or is seeking a contract with, any department of the City and County of San Francisco, when the total anticipated or actual value of the contract(s) that the person is party to or seeks to become party to with any such entity within a fiscal year equals or exceeds \$100,000.

Designated Employee

Any employee of the City and County of San Francisco required to file a Statement of Economic Interest (Form 700) under [Article III, Chapter 1](#) of the Campaign and Governmental Conduct Code.

Lobbyist

A lobbyist is any contact or expenditure lobbyist, as defined in [Article II, Chapter 1](#) of the Campaign and Governmental Conduct Code.

Officer

Any commissioner, department head, or elected official.

Payment

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 Consultant

A permit consultant is anyone who receives or is promised compensation for permit consulting services and meets the definition of a permit consultant in Article III, Chapter 4 of the Campaign and Governmental Conduct Code.

What is a Behested Payment?

A behested payment is one made (for example, to a nonprofit) because of a request by a public official or employee directing 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.

Who is Affected?

If you are an officer or a designated employee 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.

Who is an Interested Party?

The definition of "Interested party" includes:

- A party or participant involved in administrative enforcement, a license, a permit, or other entitlement for use before any officer within the officer's or designated employee's board, commission, or department, or a party or participant in any other governmental decision regarding administrative enforcement, or a license, permit, or other entitlement for use, in which the officer or designated employee was personally and substantially involved. Any license, permit, or other entitlement for use that is issued on a purely ministerial basis does not make someone an interested party.
- City contractors or anyone seeking to contract with the officers' or employees' board, commission, or department, including the directors, officers, major shareholders, or any other affiliates of that organization, except for the purposes of any person providing a grant to the City or a City department.
- Anyone who attempted to influence the officer or designated employee regarding the approval, denial, extension, or amendment of a City contract.
- Lobbyists who are registered to lobby the department of the officer or employee. Any person on whose behalf a lobbyist has made a contact with the employee's or officer's department; or clients, or affiliates of clients, for whom they have contacted the department in the last 12 months also qualify as an "interested party."
- Permit consultants who are registered with the Ethics Commission and have reported any contacts with the officer's or employee's department during the prior 12 months.

Payments from Interested Parties

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?

- ☐ ☐ ☐ Caution! We need more information to determine if this action is allowed under behested payment rules. Mirabelle may be an *interested party*.
- ☒ ☐ ☐ Stop! If the permit that Mirabelle is seeking must go before any officer of Jim's department, Mirabelle would be considered an *interested party* for Jim and all officers or other designated employees of the department. In this case, Mirabelle is an interested party for Jim, and Jim cannot ask Mirabelle for a behested payment.
- ☒ ☐ ☐ Stop! If Jim needs to review and approve the permit Mirabelle is seeking, Jim is *personally and substantially* involved in granting the permit. In this case, Jim cannot ask Mirabelle for a behested payment.
- ☐ ☐ ☒ Proceed. If Mirabelle applies for a permit that is approved in a *ministerial manner* without significant review, she would *not* be an interested party, according to the law and Jim would be permitted to ask her for a behested payment.

Payments from Lobbyists

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 who has been lobbying Lily.

Can Lily solicit or accept a donation from ABC Poultry on behalf of the food bank in her district?

- ☐ ☐ ☐ Caution! There are some actions Lily is not permitted to take in this scenario. It is important for Lily to understand the behested payment rules around soliciting donations and act accordingly.
- ☒ ☐ ☐ Stop! Lily cannot ask ABC Poultry Inc., for a donation of 200 turkeys for the food bank. Lily cannot ask the lobbyist for a donation, either.
- ☐ ☐ ☒ Proceed. Lily may, however, make a *public appeal* for donations through *mass media* or to a gathering of *20 or more people*.

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



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.



Have questions about Behested Payments?

Contact the Ethics Commission.

Phone:
415-252-3100

Email:
ethics.commission@sfgov.org



City & County of San Francisco
Ethics Commission

Payments from Permit Consultants

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 in that department, is fundraising for their child's school. Is Jose permitted to ask the permit consultant to donate to his fundraiser?



Stop! This request is prohibited because the permit consultant is registered with the Ethics Commission and has contacted Jose's department in the previous 12 months.

Payments from Contractors

Susan is a City officer who also volunteers for a nonprofit. Acme, Inc. is a contractor with her department. Can Susan ask the CEO of Acme, Inc. to make a corporate donation to the nonprofit?



Stop! When a government official asks for something of value from someone with an interest in a decision the official could make or influence, a *real or perceived conflict of interest* can arise.

It could give the impression that the officer is basing their decision about the prospective contractor on whether or not that contractor makes a donation to the official's preferred nonprofit.

Acme, Inc. is a contractor with Susan's department, Acme, Inc. and any of its employees or affiliates are *interested parties*, therefore, Susan cannot ask for a donation.

Private Donations

An employee receives a flyer in the mail soliciting donations for the local animal shelter where the employee previously adopted a pet. Can the employee send a \$100 check to the shelter?



Proceed! There is nothing in the Behested payment rules that restrict your choice to make a personal charitable donation from your personal funds.