

1 Proposed Amendments - Commissioner Kopp

2
3 **AMENDMENT #1 - BEHESTED PAYMENTS**

4
5 **SEC. 3.203. DEFINITIONS.**

6 Whenever in this Chapter 2 the following words or phrases are used, they shall mean:

7 * * * *

8 "Public appeal" shall mean a request for a payment when such request is made by
9 means of television, radio, billboard, a public message on an online platform, the distribution
10 of 500 or more identical pieces of printed material, or a speech to a group of 50 or more
11 individuals.

12 * * * *

13
14 **SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE**

15 **OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.** [File No. 180280 - page 25,
16 lines 20-21]

17 (a) Prohibitions. In addition to the restrictions set forth in Section 3.206 and other provisions
18 of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and
19 members of boards and commissions:

20 (1) No City elective officer or member of a board or commission may use his or her
21 public position or office to seek or obtain anything of value for the private or professional benefit of
22 himself or herself, his or her immediate family, or for an organization with which he or she is
23 associated.

24 (2) No City elective officer or member of a board or commission may, directly or by
25 means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote

1 or influence, or promise to take or refrain from taking official action with respect to any proposed or
2 pending matter in consideration of, or upon condition that, any other person make or refrain from
3 making a contribution.

4 (3) No person may offer or give to an officer, directly or indirectly, and no City elective
5 officer or member of a board or commission may solicit or accept from any person, directly or
6 indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official
7 actions, or judgment, or could reasonably be considered as a reward for any official action or inaction
8 on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a
9 board or commission from engaging in outside employment.

10 (4) No City elective officer or member of a board or commission may, directly or
11 by means of an agent, solicit or otherwise request that a person give anything of value to a
12 third party if:

13 (A) the person who is the subject of the request has a matter pending
14 before the official, his or her agency, or the official has final approval authority over the matter,
15 or

16 (B) the person who is the subject of the request had a matter before the
17 official or his or her agency within the last 12 months.

18 (C) **Exception for public appeals.** This subsection (a)(4) shall not
19 prohibit any solicitations or requests made solely through a public appeal.

20
21 [NOTE: the following amendments would restore Article III, Chapter 6 to its current,
22 existing language.]

23 **CHAPTER 6: BEHESTED PAYMENT REPORTING ~~FOR COMMISSIONERS FOR~~**
24 **COMMISSIONERS**

25 **SEC. 3.600. DEFINITIONS.**

1 Whenever in this Chapter 6 the following words or phrases are used, they shall have
2 the following meanings:

3 ~~“Actively support or oppose” shall mean contact, testify in person before, or otherwise~~
4 ~~communicate in an attempt to influence an official or employees of a board or commission~~
5 ~~(including the Board of Supervisors), including use of an agent to do any such act.~~

6 “Agent” shall be defined as set forth in Title 2, Section 18438.3 of California Code of
7 Regulations, as amended from time to time.

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

11 ~~“Auctioneer” shall mean any person who is engaged in the calling for, the recognition of, and~~
12 ~~the acceptance of, offers for the purchase of goods at an auction.~~ “Auctioneer” shall mean any
13 person who is engaged in the calling for, the recognition of, and the acceptance of, offers for
14 the purchase of goods at an auction.

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

18 ~~“Behested Payment Report” shall mean the Fair Political Practices Commission Form 803, or~~
19 ~~any other successor form, required by the Fair Political Practices Commission to fulfill the disclosure~~
20 ~~requirements imposed by California Government Code Section 82015(b)(2)(B)(iii), as amended from~~
21 ~~time to time.~~ “Behested Payment Report” shall mean the Fair Political Practices Commission
22 Form 803, or any other successor form, required by the Fair Political Practices Commission to
23 fulfill the disclosure requirements imposed by California Government Code Section
24 82015(b)(2)(B)(iii), as amended from time to time.

1 ~~“Charitable Contribution” shall mean any monetary or non-monetary contribution to a~~
2 ~~government agency, a bona fide public or private educational institution as defined in Section 203 of~~
3 ~~the California Revenue and Taxation Code, or an organization that is exempt from taxation under~~
4 ~~either Section 501(e) or Section 527 of the United States Internal Revenue Code.~~ “Charitable
5 Contribution” shall mean any monetary or non-monetary contribution to a government agency,
6 a bona fide public or private educational institution as defined in Section 203 of the California
7 Revenue and Taxation Code, or an organization that is exempt from taxation under either
8 Section 501(c) or Section 527 of the United States Internal Revenue Code.

9 ~~“Commissioner” shall mean any member of a board or commission listed in Campaign and~~
10 ~~Governmental Conduct Code Section 3.1-103(a)(1); provided, however, that “Commissioner” shall not~~
11 ~~include any member of the Board of Supervisors.~~ “Commissioner” shall mean any member of a
12 board or commission listed in Campaign and Governmental Conduct Code Section 3.1-
13 103(a)(1); provided, however, that “Commissioner” shall not include any member of the Board
14 of Supervisors.

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

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

19 ~~“Interested party” shall mean (i) any party, participant or agent of a party or participant~~
20 ~~involved in a proceeding regarding administrative enforcement, a license, a permit, or other~~
21 ~~entitlement for use before an officer or any board or commission (including the Board of~~
22 ~~Supervisors) on which the officer sits, or (ii) any person who actively supports or opposes a~~
23 ~~governmental decision by an officer or any board or commission (including the Board of~~
24 ~~Supervisors) on which the officer sits, if such person has a financial interest in the decision.~~

1 "License, permit, or other entitlement for use" shall be defined as set forth in California
2 Government Code Section 84308, as amended from time to time.

3 ~~"Officer" shall mean the Mayor, City Attorney, District Attorney, Treasurer, Sheriff,
4 Assessor-Recorder, Public Defender, a Member of the Board of Supervisors, or any member
5 of a board or commission who is required to file a Statement of Economic Interests, including
6 all persons holding positions listed in Section 3.1-103(a)(1) of this Code.~~

7 ~~"Payment" shall mean a monetary payment or the delivery of goods or services.~~

8 "Participant" shall be defined as set forth in California Government Code Section 84308
9 and Title 2, Section 18438.4 of California Code of Regulations, as amended from time to time.

10 "Party" shall be defined as set forth in California Government Code Section 84308, as
11 amended from time to time.

12 ~~"Public appeal" shall mean a request for a payment when such request is made by
13 means of television, radio, billboard, a public message on an online platform, the distribution
14 of 500 or more identical pieces of printed material, or a speech to a group of 50 or more
15 individuals.~~

16 ~~"Relative" shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
17 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
18 relationship or relationship created by adoption.~~

20 **SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.**

21 (a) **FILING REQUIREMENT.** ~~If a Commissioner directly or indirectly requests or solicits
22 any Charitable Contribution(s), or series of Charitable Contributions, from any party, participant or
23 agent of a party or participant involved in a proceeding regarding administrative enforcement, a
24 license, a permit, or other entitlement for use before the Commissioner's board or commission, the
25 Commissioner shall file a Behested Payment Report with the Ethics Commission in the following~~

1 *circumstances:* If an officer directly or indirectly requests or solicits any behested payment(s)
2 from an interested party, the officer shall file the behested payment report described in
3 subsection (b) with the Ethics Commission in the following circumstances: If a Commissioner
4 directly or indirectly requests or solicits any Charitable Contribution(s), or series of Charitable
5 Contributions, from any party, participant or agent of a party or participant involved in a
6 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
7 use before the Commissioner's board or commission, the Commissioner shall file a Behested
8 Payment Report with the Ethics Commission in the following circumstances:

9 (1) *if the party, participant or agent makes any Charitable Contribution, or series of*
10 *Charitable Contributions, totaling \$1,000 or more while the proceeding is pending, the Commissioner*
11 *shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution*
12 *was made, or if there has been a series of Charitable Contributions, within 30 days of the date on*
13 *which a Charitable Contribution causes the total amount of the contributions to total \$1,000 or more; if*
14 *the interested party makes any behested payment(s) totaling \$1,000 or more during the*
15 *pendency of the matter involving the interested party, the officer shall file a behested payment*
16 *report within 30 days of the date on which the behested payment was made, or if there has*
17 *been a series of behested payments, within 30 days of the date on which the behested*
18 *payment(s) total \$1,000 or more; if the party, participant or agent makes any Charitable*
19 *Contribution, or series of Charitable Contributions, totaling \$1,000 or more while the*
20 *proceeding is pending, the Commissioner shall file a Behested Payment Report within 30*
21 *days of the date on which the Charitable Contribution was made, or if there has been a series*
22 *of Charitable Contributions, within 30 days of the date on which a Charitable Contribution*
23 *causes the total amount of the contributions to total \$1,000 or more;*

24 (2) *if the party, participant or agent makes any Charitable Contribution, or series of*
25 *Charitable Contributions, totaling \$1,000 or more during the three months following the date a final*

1 *decision is rendered in the proceeding, the Commissioner shall file a Behested Payment Report within*
2 *30 days of the date on which the Charitable Contribution was made, or if there has been a series of*
3 *Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the*
4 *total amount of the contributions to total \$1,000 or more; and if the interested party makes any*
5 *behested payment(s) totaling \$1,000 or more during the six months following the date on*
6 *which a final decision is rendered in the matter involving the interested party, the officer shall*
7 *file a behested payment report within 30 days of the date on which the behested payment was*
8 *made, or if there has been a series of behested payments, within 30 days of the date on*
9 *which the behested payment(s) total \$1,000 or more; and if the party, participant or agent*
10 *makes any Charitable Contribution, or series of Charitable Contributions, totaling \$1,000 or*
11 *more during the three months following the date a final decision is rendered in the proceeding,*
12 *the Commissioner shall file a Behested Payment Report within 30 days of the date on which*
13 *the Charitable Contribution was made, or if there has been a series of Charitable*
14 *Contributions, within 30 days of the date on which a Charitable Contribution causes the total*
15 *amount of the contributions to total \$1,000 or more; and*

16 (3) *if the party, participant or agent made any Charitable Contribution, or series of*
17 *Charitable Contributions, totaling \$1,000 or more in the 12 months prior to the commencement of a*
18 *proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date the*
19 *Commissioner knew or should have known that the source of the Charitable Contribution(s) became a*
20 *party, participant or agent in a proceeding before the Commissioner's board or commission. if the*
21 *interested party made any behested payment(s) totaling \$1,000 or more in the 12 months*
22 *prior to the commencement of a matter involving the interested party, the officer shall file a*
23 *behested payment report within 30 days of the date the officer knew or should have known*
24 *that the source of the behested payment(s) became an interested party. if the party,*
25 *participant or agent made any Charitable Contribution, or series of Charitable Contributions,*

1 totaling \$1,000 or more in the 12 months prior to the commencement of a proceeding, the
2 Commissioner shall file a Behested Payment Report within 30 days of the date the
3 Commissioner knew or should have known that the source of the Charitable Contribution(s)
4 became a party, participant or agent in a proceeding before the Commissioner's board or
5 commission.

6 ~~(b) **BEHESTED PAYMENT REPORT.** The behested payment report shall include the~~
7 ~~following:~~

8 ~~(1) name of payor;~~

9 ~~(2) address of payor;~~

10 ~~(3) amount of the payment(s);~~

11 ~~(4) date(s) the payment(s) were made;~~

12 ~~(5) the name and address of the payee(s);~~

13 ~~(6) a brief description of the goods or services provided or purchased, if any,~~
14 ~~and a description of the specific purpose or event for which the payment(s) were made;~~

15 ~~(7) if the officer or the officer's relative, staff member, or paid campaign staff, is~~
16 ~~an officer, executive, member of the board of directors, staff member or authorized agent for~~
17 ~~the recipient of the behested payment(s), such individual's name, relation to the officer, and~~
18 ~~position held with the payee;~~

19 ~~(8) if the payee has created or distributed 200 or more substantially similar~~
20 ~~communications featuring the officer within the six months prior to the deadline for filing the~~
21 ~~behested payment report, a brief description of such communication(s), the purpose of the~~
22 ~~communication(s), the number of communication(s) distributed, and a copy of the~~
23 ~~communication(s); and~~

24 ~~(9) if in the six months following the deadline for filing the behested payment~~
25 ~~report, the payee has created or distributed 200 or more substantially similar communications~~

1 featuring the officer, the officer shall file an amended payment report that discloses a brief
2 description of such communication(s), the purpose of the communication(s), the number of
3 communication(s) distributed, and a copy of the communication(s).

4 ~~(c) **AMENDMENTS.** If any of the information previously disclosed on a behested~~
5 ~~payment report changes during the pendency of the matter involving the interested party, or~~
6 ~~within six months of the final decision in such matter, the officer shall file an amended~~
7 ~~behested payment report.~~

8 ~~(d) **PUBLIC APPEALS.** Notwithstanding subsection (a), no officer shall be required to~~
9 ~~report any behested payment that is made solely in response to a public appeal.~~

10 ~~(e) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a~~
11 ~~public appeal, that any person make a behested payment, the official or his agent must notify~~
12 ~~that person that if the person makes any behested payment in response to the solicitation or~~
13 ~~request, the person may be subject to the disclosure and notice requirements in Section~~
14 ~~3.620.~~

15 ~~(b) (f) **(b) WEBSITE POSTING.** The Ethics Commission shall make available through~~
16 ~~its website all ~~Bb~~Behested ~~Pp~~Payment ~~Rr~~Reports it receives from ~~Commissioners~~ officers~~
17 ~~Commissioners.~~

18 ~~(e) **PENALTIES.** A Commissioner who fails to comply with this Section 3.610 is subject to the~~
19 ~~administrative process and penalties set forth in Section 3.242(d).~~ ~~(c) **PENALTIES.** A~~
20 ~~Commissioner who fails to comply with this Section 3.610 is subject to the administrative~~
21 ~~process and penalties set forth in Section 3.242(d).~~

22 ~~(d) **EXCEPTION.** A Commissioner has no obligation to file Behested Payment Reports, as~~
23 ~~required by subsection (a), if the Commissioner solicited Charitable Contributions by acting as an~~
24 ~~auctioneer at a fundraising event for a nonprofit organization that is exempt from taxation under~~
25 ~~Section 501(c)(3) of the United States Internal Revenue Code.~~ ~~(d) **EXCEPTION.** A Commissioner~~

1 has no obligation to file Behested Payment Reports, as required by subsection (a), if the
2 Commissioner solicited Charitable Contributions by acting as an auctioneer at a fundraising
3 event for a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the
4 United States Internal Revenue Code.

5
6 **~~SEC. 3.620. FILING BY DONORS.~~**

7 ~~(a) REPORT. Any interested party who makes a behested payment, or series of~~
8 ~~behested payments in a calendar year, of \$1,000 or more must disclose, within 30 days~~
9 ~~following the date on which the payment(s) totals \$1,000 or more:~~

10 ~~(1) the proceeding the interested party is or was involved in;~~

11 ~~(2) the decisions the interested party actively supports or opposes;~~

12 ~~(3) the outcome(s) the interested party is or was seeking in such proceedings or~~
13 ~~decisions; and~~

14 ~~(4) any contact(s) the interested party made in relation to such proceedings or~~
15 ~~decisions.~~

16 ~~(b) NOTICE. Any person who makes a behested payment must notify the recipient~~
17 ~~that the payment is a behested payment, at the time the payment is made.~~

18
19 **~~SEC. 3.630. FILING BY RECIPIENTS OF MAJOR BEHESTED PAYMENTS.~~**

20 ~~(a) MAJOR BEHESTED PAYMENT REPORT. Any person who receives a behested~~
21 ~~payment, or a series of behested payments, received during a calendar year, totaling~~
22 ~~\$100,000 or more that was made at the behest of any officer must do the following:~~

23 ~~(1) within 30 days following the date on which the payment(s) total \$100,000 or~~
24 ~~more, notify the Ethics Commission that the person has received such payment(s) and specify~~
25 ~~the date on which the payment(s) equaled or exceeded \$100,000;~~

1 ~~(2) within 13 months following the date on which the payment(s) or payments~~
2 ~~total \$100,000 or more, but at least 12 months following the date on which the payment(s)~~
3 ~~total \$100,000 or more, disclose:~~

4 ~~(i) all payments made by the person that were funded in whole or in part~~
5 ~~by the behested payment(s) made at the behest of the officer; and~~

6 ~~(ii) if the person has actively supported or opposed any City decision(s)~~
7 ~~involving the officer in the 12 months following the date on which the payment(s) were made:~~

8 ~~(A) the proceeding the person is or was involved in;~~

9 ~~(B) the decision(s) the person actively supported or opposed;~~

10 ~~(C) the outcome(s) the person is or was seeking in such~~
11 ~~proceedings or decisions; and~~

12 ~~(D) any contact(s) the person made in relation to such~~
13 ~~proceedings or decisions.~~

14 ~~(b) **EXCEPTION.** Subsection (a) does not apply if the entity receiving the behested~~
15 ~~payment is a City department.~~

16 ~~(c) **NOTICE REQUIRED.** If a recipient of a behested payment does not receive the~~
17 ~~notice, as required under Section 3.620, that a particular payment is a behested payment, the~~
18 ~~recipient will not be subject to penalties under Section 3.650, as regards that particular~~
19 ~~payment, for failure to file pursuant to subsection (a) unless it is clear from the circumstances~~
20 ~~that the recipient knew or should have known that the payment was made at the behest of an~~
21 ~~officer.~~

22
23 **SEC. ~~3.620~~ 3.640 **3.620.** REGULATIONS.**

24 (a) The Ethics Commission may adopt rules, regulations, and guidelines for the
25 implementation of this Chapter 6.

1 (b) The Ethics Commission may, by regulation, require persons *Commissioners*
2 Commissioners to electronically submit any ~~substantially the same~~ substantially the same
3 information ~~as~~ as required ~~by the Behested Payment Report~~ by the Behested Payment Report to
4 fulfill their obligations under ~~Section 3.610~~ this Chapter 6 Section 3.610.

5
6 **~~SEC. 3.650. PENALTIES.~~**

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

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 ATTORNEY'S NAME
14 Deputy City Attorney

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