

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to include City contractors and persons seeking to influence City officers and employees, and to prohibit appointed department heads, commissioners, and designated employees from soliciting behested payments from interested parties.

Existing Law

State law requires elected officials – but not City commissioners, department heads, or employees – to file “behested payment” reports when they solicit contributions of \$5,000 from a single source in a calendar year for legislative, governmental, or charitable purposes. Such reports must be filed with the Ethics Commission. See Cal. Gov. Code §§ 82004.5, 84224.

Local law additionally requires City commissioners and elected officials – but not appointed City department heads or employees – to file behested payment reports for solicitations of charitable contributions totaling \$1,000 or more from “interested parties” with certain matters before their commissions. These matters include proceedings regarding administrative enforcement, a license, a permit, or other entitlement for use before their boards and commissions. Commissioners and elected officials are required to file these reports when they solicit a behested payment from:

- a party, participant or agent of a party or participant in a proceeding while the matter is pending;
- a party, participant or agent of a party or participant in a proceeding during the six months following the date a final decision is rendered in the matter; and
- a party, participant or agent of a party or participant in the 12 months prior to the commencement of a proceeding, after the commissioner learns or should have learned that the source of the contribution became involved in a proceeding.

S.F. Campaign & Gov’tal Conduct Code § 3.610. These behested payment reports are not required for solicitations made through a “public appeal.” A “public appeal” is a broad request made through television, radio, billboards, 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 individuals. S.F. Campaign & Gov’tal Conduct Code § 3.600.

Local law also requires the donors and recipients of such contributions to file additional reports. These reports must also be filed with the Ethics Commission. S.F. Campaign & Gov'tal Conduct Code §§ 3.620, 3.630.

Amendments to Current Law

The proposed legislation would expand “interested parties” to include:

- contractors and prospective contractors before an officer’s or employee’s department or commission; and
- persons who attempted to influence officers and employees in any legislative or administrative action.

The proposed legislation would prohibit appointed department heads, commissioners, and designated employees from soliciting any behested payments from interested parties with matters before their departments or commissions. For the purposes of this legislation, a “designated employee” is any City employee required to file a Statement of Economic Interests (Form 700) under Article III, Chapter 1 of the Campaign and Governmental Conduct Code. This prohibition would not apply to solicitations made through a “public appeal.”

Under this prohibition, appointed department heads, commissioners, and designated employees could not solicit behested payments:

- from contractors who are a party to or seeking a contract with their department, from the submission of a proposal until the later of the termination of negotiations for the contract or the end of the contract’s term;
- from persons who attempted to influence them in any legislative or administrative action, for 12 months following the date of each attempt to influence.

This prohibition on soliciting behested payments would not apply to elected officials, including elected department heads. But these elected officials would be required to file behested payment reports with the Ethics Commission regarding this fundraising, if the behested payments are solicited from interested parties with matters before their departments or boards. This reporting would not be required for solicitations made through a “public appeal.”

Background Information

The behested payment reports required by existing law are available on the Ethics Commission’s website: <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer>.