

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Paulino, Liaison to the Board of Supervisors, Mayor's Office
Anne Pearson, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission

FROM: Victor Young, Assistant Clerk, Rules Committee *Victor Young*
Board of Supervisors

DATE: June 18, 2022

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
November 8, 2022 Election

The Board of Supervisors' Rules Committee has received following Initiative Ordinance for the November 8, 2022, Election. This matter is being **referred** to you in accordance with Rules of Order 2.22.4.

File No. 220741 Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments

Motion ordering submitted to the voters at an election to be held on November 8, 2022, an Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Andres Power, Mayor's Office
 Patrick Ford, Ethics Commission
 Michael Canning, Ethics Commission



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220741 **File Type:** Motion **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments **Date Introduced:** 06/14/2022

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Motion ordering submitted to the voters at an election to be held on November 8, 2022, an Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

Sponsor: Mayor

History of Legislative File 220741

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	06/14/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	07/14/2022	

1 [Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments]

2

3 **Motion ordering submitted to the voters at an election to be held on November 8, 2022,**
4 **an Ordinance amending the Campaign and Governmental Conduct Code to modify the**
5 **rules concerning behested payment solicitations, by 1) exempting payments less than**
6 **\$1,000; 2) providing that a person does not become an interested party due to the City**
7 **issuing them a license, permit, or other entitlement for use, if the issuance was**
8 **ministerial and in certain other situations; 3) providing that a person does not become**
9 **an interested party by attempting to influence a legislative or administrative action; 4)**
10 **authorizing the solicitation of payments directly to City departments, and from**
11 **nonprofits with agreements approved by the City Attorney and Controller; 5)**
12 **authorizing departments to solicit payments pursuant to their approved Racial Equity**
13 **Action Plans; 6) establishing that certain solicitations from tenants, contractors, and**
14 **parties to development agreements are not prohibited; and 7) making other clarifying**
15 **changes.**

16

17 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**
18 **voters of the City and County of San Francisco, at an election to be held on November 8,**
19 **2022.**

20

21 **Ordinance amending the Campaign and Governmental Conduct Code to modify the**
22 **rules concerning behested payment solicitations, by 1) exempting payments less than**
23 **\$1,000; 2) providing that a person does not become an interested party due to the City**
24 **issuing them a license, permit, or other entitlement for use, if the issuance was**
25 **ministerial and in certain other situations; 3) providing that a person does not become**

1 an interested party by attempting to influence a legislative or administrative action; 4)
2 authorizing the solicitation of payments directly to City departments, and from
3 nonprofits with agreements approved by the City Attorney and Controller; 5)
4 authorizing departments to solicit payments pursuant to their approved Racial Equity
5 Action Plans; 6) establishing that certain solicitations from tenants, contractors, and
6 parties to development agreements are not prohibited; and 7) making other clarifying
7 changes.

8 NOTE: **Unchanged Code text and uncodified text** are in plain font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in ~~italics Times New Roman font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
12 parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Background and Purpose.

15 (a) On December 24, 2021, the City enacted Ordinance No. 232-21 relating to
16 behested payments, which prohibited City officers and designated City employees from
17 soliciting monetary payments or goods or services for legislative, governmental, or charitable
18 purposes from persons who qualify as “interested parties,” in order to prevent undue influence
19 and avoid actual or perceived “pay-to-play” relationships with contractors and other persons
20 having business before an officer’s department. Under Ordinance No. 232-21, the definition
21 of “interested party” includes, among other things, all persons who have received licenses or
22 permits from the City, and all persons who have attempted to influence the City regarding
23 legislative or administrative actions the City may be considering.

24 (b) On June 7, 2022, the voters approved Proposition E, which provides that the City
25 may amend Ordinance No. 232-21 if the amendments are made available to the public in

1 advance, and if they are approved by the Ethics Commission and by a two-thirds majority of
2 the Board of Supervisors.

3 (c) The amendments in this ordinance are intended to maintain the core protections of
4 Ordinance No. 232-21, while also allowing City departments to continue their work with
5 charitable donors, nonprofits, and community groups on vital City projects and programs. In
6 particular, this ordinance narrows the definition of “interested party” to ensure that City staff
7 can perform the regular work of coordinating and collaborating with these charitable donors,
8 nonprofits, and community groups – to improve how the City serves its residents – without
9 then subjecting City officers and employees to the threat of personal liability or endangering
10 millions of dollars of charitable giving on which the City and its community partners rely. City
11 law should prohibit pay-to-play, but should not inhibit the robust exchange of policy ideas
12 between the public and the City, or the joint work of public-private partnerships to fund and
13 implement these ideas.

14 (d) The ordinance also clarifies that issuance of a license, permit, or other entitlement
15 for use does not make the recipient an interested party if the license, permit, or other
16 entitlement for use was issued ministerially, or was issued to an individual or nonprofit for
17 recreational, cultural, or educational activities. Absent this clarification, potentially thousands
18 of individuals and entities could become interested parties by complying with day-to-day City
19 rules, which was not intended by Ordinance No. 232-21. The amendments also state that the
20 prohibition against soliciting a payment from persons involved in a proceeding for a license,
21 permit, or other entitlement use applies only to those City officers and employees who were
22 actually involved in the proceeding. This common-sense clarification avoids the unfair and
23 unintended result of penalizing officers and employees, who may have no connection to a
24 proceeding and may even be unaware of the proceeding, for seeking charitable solicitations
25 from parties to such proceedings.

1 (e) Further, the ordinance also allows solicitations directly to City departments. To
2 ensure transparency, the Board of Supervisors will continue to exercise oversight and control
3 over such payments pursuant to the accept-and-expend requirements of Chapter 10 of the
4 Administrative Code (including, without limitation, Sections 10.100-305 and 10.170-1). The
5 Board will retain the ability to exercise its judgment over when a direct payment may be
6 accepted.

7 (f) The ordinance also allows solicitations from nonprofits that have entered into
8 memoranda of understanding with the City that have disclosure, recordkeeping, and auditing
9 provisions approved by both the Controller and the City Attorney. Allowing solicitations
10 through this process increases transparency and accountability by incentivizing City
11 departments and partner organizations to enter into such agreements.

12 (g) Finally, the ordinance provides that City departments may take certain actions
13 without violating the behested payments law, such as implementing a department Racial
14 Equity Action Plan, negotiating for community benefits and other consideration with
15 contractors, securing property access for tours and meeting spaces from existing lessees, and
16 obtaining certain concessions like price discounts from existing contractors.

17 (h) This ordinance ensures that the City can continue to pursue critical functions and
18 partnerships with charitable organizations and other community partners, while maintaining
19 key restrictions against the improper solicitation of payments from contractors, parties to City
20 proceedings, lobbyists, and permit consultants, thereby preventing “pay-to-play” relationships
21 and upholding the public trust.

1 Section 2. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is
2 hereby amended by revising Sections 3.610 and 3.620, to read as follows:

3 **SEC. 3.610. DEFINITIONS.**

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

6 “Affiliate” shall be defined as set forth in Section 1.126 of this Code.

7 “Agent” shall mean any person who represents a party in connection with a proceeding
8 involving a license, permit, or other entitlement for use as set forth in Title 2, Section 18438.3
9 of the California Code of Regulations, as amended from time to time.

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

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

16 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except only
17 with respect to contracts with any department of the City and County of San Francisco.

18 “Commissioner” shall mean any member of a City board or commission, excluding the
19 Board of Supervisors, who is required to file a Statement of Economic Interests as set forth in
20 Section 3.1-103(a)(1) of this Code.

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

22 “Department head” shall mean any department head who is required to file a Statement
23 of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

1 "Designated employee" shall mean any employee of the City and County of San
2 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this
3 Code.

4 "Elected official" shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
5 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

6 "Financial interest" shall be defined as set forth in the California Political Reform Act
7 (California Government Code Section 87100 et seq.), any subsequent amendments to these
8 Sections, and its implementing regulations.

9 "Grant" shall mean an agreement with a government agency, non-profit organization
10 or private entity to fund or provide goods or services to assist with City projects or programs,
11 under which the grantor imposes restrictions on the City's spending of the grant ~~funds~~.

12 "Interested party" shall mean:

13 (a) any party, participant, or agent of a party or participant involved in a
14 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
15 use before (1) an officer, (2) any board or commission (including the Board of Supervisors) on
16 which the officer sits, (3) the department of the officer, or (4) the department of the designated
17 employee; but this definition shall not include licenses, permits, or other entitlements for use that are
18 issued to individuals or nonprofit entities for recreational, cultural, or educational activities;

19 (b)(1) any City Contractor contracting with or seeking to contract with the
20 designated employee's or officer's department, or any affiliate of such a City Contractor,
21 except for *the purpose of any person* providing a grant to the City or a City department, and (2)
22 as pertains to members of the Board of Supervisors, any City Contractor, or any affiliate of
23 such a City Contractor, if the Board of Supervisors approves the City Contractor's agreement
24 with the City, except for *the purpose of any person* providing a grant to the City or a City
25 department;

1 ~~—(c) any person who attempted to influence the employee or officer in any legislative or~~
2 ~~administrative action, provided that “attempt to influence” shall be defined as set forth in Section~~
3 ~~3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing Section 3.216(b)(1),~~
4 ~~and shall not include (1) oral or written public comment that becomes part of the record of a public~~
5 ~~hearing; (2) speaking at a public forum or rally, or (3) communications made via email, petition or~~
6 ~~social media;~~

7 (c~~d~~) any contact or expenditure lobbyist, as defined under Article II, Chapter 1
8 of this Code, who has registered as a contact or expenditure lobbyist with the Ethics
9 Commission, if the contact lobbyist or expenditure lobbyist is registered to lobby the
10 designated employee’s or officer’s department; or

11 (d~~e~~) any permit consultant, as defined under Article III, Chapter 4 of this Code,
12 who has registered as a permit consultant with the Ethics Commission, if the permit consultant
13 has reported any contacts with the designated employee’s or officer’s department to carry out
14 permit consulting services during the prior 12 months.

15 “Interested party” shall not include: (a) any nonprofit organization that Article V of the
16 Charter has authorized to support an arts and culture department; (b) any federal or State
17 government agency; (c) an individual, solely because the individual is an uncompensated
18 board member of a nonprofit organization that is an interested party; or (d) as pertains to
19 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
20 Board of Supervisors did not approve the City Contractor’s agreement with the City.

21 “License, permit, or other entitlement for use” shall mean professional, trade, or land
22 use licenses, permits, or other entitlements to use property or engage in business, as follows:
23 *including*

24 ~~——(a)~~ professional license revocations, conditional use permits, rezoning of
25 property parcels, zoning variances, tentative subdivision and parcel maps, cable television

1 franchises, building and development permits, private development plans, and contracts
2 (other than labor or personal employment contracts and competitively bid contracts where the
3 City is required to select the highest or lowest qualified bidder), as set forth in California
4 Government Code Section 84308, as amended from time to time; and

5 (b) licenses, permits, and entitlements for use that a department issues in its discretion,
6 as opposed to those that involve little or no discretion, are based on applying a checklist or objective
7 criteria to the facts as presented, and/or are issued over-the-counter or “as-of-right” or on a first-
8 come-first-serve basis, as is typically the case when a member of the public seeks permission from a
9 City department to use public space.

10 “Officer” shall mean any commissioner, department head, or elected official.

11 “Participant” shall mean any person who is not a party but who actively supports or
12 opposes (by lobbying in person, testifying in person, or otherwise acting to influence) a
13 particular decision in a proceeding involving a license, permit, or other entitlement for use and
14 who has a financial interest in the decision, as set forth in California Government Code
15 Section 84308 and Title 2, Section 18438.4 of the California Code of Regulations, as
16 amended from time to time.

17 “Party” shall mean any person who files an application for, or is the subject of, a
18 proceeding involving a license, permit, or other entitlement for use, as set forth in California
19 Government Code Section 84308, as amended from time to time.

20 “Payment” shall mean a monetary payment or the delivery of goods or services with a
21 value of \$1,000 or more, or a series of payments within a 12-month period that in the aggregate total
22 \$1,000 or more.

23 “Permit consulting services” shall be defined as set forth in Article III, Chapter 4 of
24 this Code.

25 “Person” shall be defined as set forth in Section 1.104 of this Code.

1 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
2 18438.2, as amended from time to time.

3 “Public appeal” shall mean a request for a payment when such request is made by
4 means of television, radio, billboard, a public message on an online platform, the distribution
5 of 200 or more identical pieces of printed material, the distribution of a single email to 200 or
6 more recipients, or a speech to a group of 20 or more individuals.

7 “Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
8 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
9 relationship or relationship created by adoption.

10
11 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
12 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
13 **PAYMENTS FROM INTERESTED PARTIES.**

14 (a) **PROHIBITION.** ~~Elected officials, department heads, commissioners, Officers~~ and
15 designated employees shall not directly or indirectly solicit any behested payment from an
16 interested party in the following circumstances:

17 (1) **Administrative proceedings.** If the interested party is a party, participant,
18 or agent of a party or participant in a proceeding before ~~the elected official’s, department head’s,~~
19 ~~commissioner’s, or designated employee’s department~~ an officer or a designated employee regarding
20 administrative enforcement, a license, a permit, or other entitlement for use, the prohibition set
21 forth in this subsection (a) shall apply to such officer or designated employee, as follows:

22 (A) during the proceeding; and

23 (B) for ~~12~~^{twelve} months following the date on which a final decision is
24 rendered in the proceeding.

1 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a
2 City Contractor, who is a party to or is seeking a contract with the officer's ~~elected official's,~~
3 ~~department head's, commissioner's,~~ or designated employee's department, the prohibition set
4 forth in this subsection (a) shall apply from the submission of a proposal until the later of:

5 (A) the termination of negotiations for the contract; or

6 (B) 12~~twelve~~ months following the end of the contract's term.

7 ~~—— (3) **Persons seeking to influence.** If the interested party is a person who attempted to~~
8 ~~influence the elected official, department head, commissioner, or designated employee in any~~
9 ~~legislative or administrative action, the prohibition set forth in this subsection (a) shall apply for 12~~
10 ~~months following the date of each attempt to influence.~~

11 (3)(4) **Lobbyists.** Officers ~~Elected officials, department heads, commissioners,~~ and
12 designated employees may not solicit any behested payment from a contact lobbyist or
13 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
14 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
15 officer's department.

16 (4)(5) **Permit consultants.** Officers ~~Elected officials, department heads,~~
17 ~~commissioners,~~ and designated employees may not solicit any behested payment from a permit
18 consultant who has registered with the Ethics Commission, if the permit consultant has
19 reported any contacts with the designated employee's or officer's department to carry out
20 permit consulting services during the prior 12 months.

21 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
22 or employee is indirectly soliciting a behested payment when the City officer or employee
23 directs or otherwise urges another person to solicit a behested payment from an identifiable
24 interested party or parties.

1 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
2 appeals and related communications following a public appeal. Examples of such communications
3 include responding to persons who have contacted the officer’s or employee’s department following a
4 public appeal, providing information to such persons about the potential uses for such donations, and
5 negotiating and entering into grant agreements with such persons.

6 (d) **EXCEPTION – DIRECT PAYMENTS TO CITY DEPARTMENTS.** This Section 3.620
7 shall not apply to solicitations of behested payments to be made directly to City departments; provided,
8 however, that this subsection (d) shall not affect the requirement that the acceptance and expenditure of
9 gifts and grants shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of
10 the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of
11 a solicitation from an interested party in determining whether to approve it. If the Board of
12 Supervisors does not approve a gift or grant, the department would not be permitted to accept and
13 expend it, but the solicitation would remain excepted from this Section 3.620.

14 (e) **EXCEPTION – PAYMENTS MADE UNDER AN APPROVED MEMORANDUM OF**
15 **UNDERSTANDING.** This Section 3.620 shall not apply to solicitations of behested payments from
16 nonprofit organizations, if the nonprofit has executed a memorandum of understanding or similar
17 agreement with the City that contains disclosure, recordkeeping, and auditing provisions approved by
18 the Controller and the City Attorney; provided, however, that this subsection (e) shall not affect the
19 requirement that the acceptance and expenditure of gifts and grants by the City shall require Board of
20 Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of
21 Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party
22 in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the
23 department would not be permitted to accept and expend it, but the solicitation would remain excepted
24 from this Section 3.620.

1 (f) **ADDITIONAL PROVISIONS.** Nothing in this Section 3.620 is intended to prevent any
2 officer or designated employee from:

- 3 (1) Implementing a department’s approved Racial Equity Action Plan; or
4 (2) Discussing, negotiating, and/or securing the provision of community benefits or
5 other consideration in connection with a contract with the City, including but not limited to a
6 development agreement or an agreement for the development or use of public property; or
7 (3) Requesting a tenant’s assistance with public outreach efforts, such as tours of the
8 property, participation at community meetings, open houses, and events open to the public; or
9 (4) Discussing, negotiating, and/or securing concessions or discounts with a
10 contractor in the course of managing or administering an existing contract, including, but not limited
11 to, negotiating a more favorable price for the City, negotiating to reduce the number of hours billed to
12 the City for a particular task, or requesting additional related purchase orders or services for the City
13 similar to the scope of services or work set forth in the contract.

14
15 Section 3. Scope of Ordinance. In enacting this ordinance, the People of the City and
16 County of San Francisco intend to amend only those words, phrases, paragraphs, sections,
17 subsections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent
18 parts of the Municipal Code that are explicitly shown in this ordinance as additions or
19 deletions, in accordance with the “Note” that appears under the official title of the ordinance.

20
21 Section 4. Conflicting Ballot Measures. In the event that this measure and another
22 measure relating to behested payments shall appear on the same municipal election ballot,
23 the provisions of such other measure shall be deemed in conflict with this measure. In the
24 event that this measure shall receive a greater number of affirmative votes, the provisions of
25

1 this measure shall prevail in their entirety and each and every provision of the other measure
2 that conflicts, in whole or in part, with this measure shall be null and void in its entirety.

3

4

5 APPROVED AS TO FORM:
6 DAVID CHIU, City Attorney

7 By: /s/ _____
8 MANU PRADHAN
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

Existing Law

Under the City's behested payments ordinance, City officers and employees may not solicit payments from persons who qualify as interested parties. The term "interested party" includes persons involved in proceedings before a City department for licenses, permits, or other entitlements for use; contractors and persons seeking to contract with a City department; and persons who have attempted to influence City officers or employees in administrative or legislative actions. If a person is an interested party for a City officer or employee, the officer or employee may not solicit payments from that person. The only exception is for solicitations via public appeals, such as mass-mailings or speeches.

Amendments to Current Law

The proposed initiative ordinance would modify the behested payment rules, as follows:

- A person would not become an interested party merely by receiving a license, permit, or other entitlement for use (hereafter, a "permit"), if the permit was 1) routine or ministerial, as opposed to one that the City chose to issue as a matter of discretion; or 2) issued to an individual or a nonprofit for recreational, cultural, or educational activities. If someone qualified as an interested party due to their receipt of a permit, the prohibition against soliciting payments from them would apply only to the officers and employees involved in the permit proceeding, rather than to all officers and employees in the entire City department.
- Attempting to influence a legislative or administrative action would no longer trigger interested party status.

- The public appeal exception would include related communications following the public appeal, such as responding to persons who have answered the public appeal and providing information.
- Payments under \$1,000 would be exempted.
- Payments directly to the City would be exempted.
- Payments from a nonprofit would be exempted, if the nonprofit had entered into an agreement that included recordkeeping, audit, and disclosure requirements approved by the City Attorney and Controller.
- City departments could implement their approved Racial Equity Action Plans; negotiate for community benefits and other consideration in connection with contracts and agreements for the development or use of public property; seek assistance from their tenants on public outreach efforts; and negotiate concessions and discounts from contractors in the course of managing or administering existing contracts.

The ordinance also makes various non-substantive changes and clarifications.

Background Information

Under Proposition E (2022), the ordinance requires approval by the Ethics Commission and a supermajority of eight votes at the Board of Supervisors.

n:\legana\as2022\2200471\01607705.docx

From: [Pradhan, Manu \(CAT\)](#)
To: [BOS Legislation, \(BOS\)](#); [Paulino, Tom \(MYR\)](#)
Cc: [Heckel, Hank \(MYR\)](#); [RUSSI, BRAD \(CAT\)](#); [Conine-Nakano, Susanna \(MYR\)](#)
Subject: Re: Mayor - Initiative Ordinance - Behested Payments
Date: Tuesday, June 14, 2022 2:31:55 PM
Attachments: [image001.png](#)

Approved

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Tuesday, June 14, 2022 2:28:53 PM
To: Paulino, Tom (MYR) <tom.paulino@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Heckel, Hank (MYR) <hank.heckel@sfgov.org>; Russi, Brad (CAT) <Brad.Russi@sfcityatty.org>; Conine-Nakano, Susanna (MYR) <susanna.conine-nakano@sfgov.org>; Pradhan, Manu (CAT) <Manu.Pradhan@sfcityatty.org>
Subject: RE: Mayor - Initiative Ordinance - Behested Payments

Hi Tom,

Thank you for the submission. We are seeking the approval from DCA Manu Pradhan for use of his electronic signature and approval as to form for the attached.

Best regards,

Jocelyn Wong

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services



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From: Paulino, Tom (MYR) <tom.paulino@sfgov.org>
Sent: Tuesday, June 14, 2022 2:23 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Heckel, Hank (MYR) <hank.heckel@sfgov.org>; RUSSI, BRAD (CAT) <Brad.Russi@sfcityatty.org>; Conine-Nakano, Susanna (MYR) <susanna.conine-nakano@sfgov.org>
Subject: Mayor - Initiative Ordinance - Behested Payments

Dear Clerks,

I hope the week is going well!

Please find attached for introduction to the Board of Supervisors **a Motion ordering submitted to the voters at an election to be held on November 8, 2022 an Ordinance amending the Campaign and Governmental Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.**

Please let me know if you have any questions.

Cheers,

Tom Paulino

He/Him

Liaison to the Board of Supervisors

Office of the Mayor

City and County of San Francisco

1 [Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments]

2
3 **Motion ordering submitted to the voters at an election to be held on November 8, 2022,**
4 **an Ordinance amending the Campaign and Governmental Conduct Code to modify the**
5 **rules concerning behested payment solicitations, by 1) exempting payments less than**
6 **\$1,000; 2) providing that a person does not become an interested party due to the City**
7 **issuing them a license, permit, or other entitlement for use, if the issuance was**
8 **ministerial and in certain other situations; 3) providing that a person does not become**
9 **an interested party by attempting to influence a legislative or administrative action; 4)**
10 **authorizing the solicitation of payments directly to City departments, and from**
11 **nonprofits with agreements approved by the City Attorney and Controller; 5)**
12 **authorizing departments to solicit payments pursuant to their approved Racial Equity**
13 **Action Plans; 6) establishing that certain solicitations from tenants, contractors, and**
14 **parties to development agreements are not prohibited; and 7) making other clarifying**
15 **changes.**

16
17 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
18 voters of the City and County of San Francisco, at an election to be held on November 8,
19 2022.

20
21 **Ordinance amending the Campaign and Governmental Conduct Code to modify the**
22 **rules concerning behested payment solicitations, by 1) exempting payments less than**
23 **\$1,000; 2) providing that a person does not become an interested party due to the City**
24 **issuing them a license, permit, or other entitlement for use, if the issuance was**
25 **ministerial and in certain other situations; 3) providing that a person does not become**

1 an interested party by attempting to influence a legislative or administrative action; 4)
2 authorizing the solicitation of payments directly to City departments, and from
3 nonprofits with agreements approved by the City Attorney and Controller; 5)
4 authorizing departments to solicit payments pursuant to their approved Racial Equity
5 Action Plans; 6) establishing that certain solicitations from tenants, contractors, and
6 parties to development agreements are not prohibited; and 7) making other clarifying
7 changes.

8 NOTE: **Unchanged Code text and uncodified text** are in plain font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in ~~italics Times New Roman font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
12 parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Background and Purpose.

15 (a) On December 24, 2021, the City enacted Ordinance No. 232-21 relating to
16 behested payments, which prohibited City officers and designated City employees from
17 soliciting monetary payments or goods or services for legislative, governmental, or charitable
18 purposes from persons who qualify as “interested parties,” in order to prevent undue influence
19 and avoid actual or perceived “pay-to-play” relationships with contractors and other persons
20 having business before an officer’s department. Under Ordinance No. 232-21, the definition
21 of “interested party” includes, among other things, all persons who have received licenses or
22 permits from the City, and all persons who have attempted to influence the City regarding
23 legislative or administrative actions the City may be considering.

24 (b) On June 7, 2022, the voters approved Proposition E, which provides that the City
25 may amend Ordinance No. 232-21 if the amendments are made available to the public in

1 advance, and if they are approved by the Ethics Commission and by a two-thirds majority of
2 the Board of Supervisors.

3 (c) The amendments in this ordinance are intended to maintain the core protections of
4 Ordinance No. 232-21, while also allowing City departments to continue their work with
5 charitable donors, nonprofits, and community groups on vital City projects and programs. In
6 particular, this ordinance narrows the definition of “interested party” to ensure that City staff
7 can perform the regular work of coordinating and collaborating with these charitable donors,
8 nonprofits, and community groups – to improve how the City serves its residents – without
9 then subjecting City officers and employees to the threat of personal liability or endangering
10 millions of dollars of charitable giving on which the City and its community partners rely. City
11 law should prohibit pay-to-play, but should not inhibit the robust exchange of policy ideas
12 between the public and the City, or the joint work of public-private partnerships to fund and
13 implement these ideas.

14 (d) The ordinance also clarifies that issuance of a license, permit, or other entitlement
15 for use does not make the recipient an interested party if the license, permit, or other
16 entitlement for use was issued ministerially, or was issued to an individual or nonprofit for
17 recreational, cultural, or educational activities. Absent this clarification, potentially thousands
18 of individuals and entities could become interested parties by complying with day-to-day City
19 rules, which was not intended by Ordinance No. 232-21. The amendments also state that the
20 prohibition against soliciting a payment from persons involved in a proceeding for a license,
21 permit, or other entitlement use applies only to those City officers and employees who were
22 actually involved in the proceeding. This common-sense clarification avoids the unfair and
23 unintended result of penalizing officers and employees, who may have no connection to a
24 proceeding and may even be unaware of the proceeding, for seeking charitable solicitations
25 from parties to such proceedings.

1 (e) Further, the ordinance also allows solicitations directly to City departments. To
2 ensure transparency, the Board of Supervisors will continue to exercise oversight and control
3 over such payments pursuant to the accept-and-expend requirements of Chapter 10 of the
4 Administrative Code (including, without limitation, Sections 10.100-305 and 10.170-1). The
5 Board will retain the ability to exercise its judgment over when a direct payment may be
6 accepted.

7 (f) The ordinance also allows solicitations from nonprofits that have entered into
8 memoranda of understanding with the City that have disclosure, recordkeeping, and auditing
9 provisions approved by both the Controller and the City Attorney. Allowing solicitations
10 through this process increases transparency and accountability by incentivizing City
11 departments and partner organizations to enter into such agreements.

12 (g) Finally, the ordinance provides that City departments may take certain actions
13 without violating the behested payments law, such as implementing a department Racial
14 Equity Action Plan, negotiating for community benefits and other consideration with
15 contractors, securing property access for tours and meeting spaces from existing lessees, and
16 obtaining certain concessions like price discounts from existing contractors.

17 (h) This ordinance ensures that the City can continue to pursue critical functions and
18 partnerships with charitable organizations and other community partners, while maintaining
19 key restrictions against the improper solicitation of payments from contractors, parties to City
20 proceedings, lobbyists, and permit consultants, thereby preventing “pay-to-play” relationships
21 and upholding the public trust.

1 Section 2. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is
2 hereby amended by revising Sections 3.610 and 3.620, to read as follows:

3 **SEC. 3.610. DEFINITIONS.**

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

6 “Affiliate” shall be defined as set forth in Section 1.126 of this Code.

7 “Agent” shall mean any person who represents a party in connection with a proceeding
8 involving a license, permit, or other entitlement for use as set forth in Title 2, Section 18438.3
9 of the California Code of Regulations, as amended from time to time.

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

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

16 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except only
17 with respect to contracts with any department of the City and County of San Francisco.

18 “Commissioner” shall mean any member of a City board or commission, excluding the
19 Board of Supervisors, who is required to file a Statement of Economic Interests as set forth in
20 Section 3.1-103(a)(1) of this Code.

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

22 “Department head” shall mean any department head who is required to file a Statement
23 of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

1 "Designated employee" shall mean any employee of the City and County of San
2 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this
3 Code.

4 "Elected official" shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
5 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

6 "Financial interest" shall be defined as set forth in the California Political Reform Act
7 (California Government Code Section 87100 et seq.), any subsequent amendments to these
8 Sections, and its implementing regulations.

9 "Grant" shall mean an agreement with a government agency, non-profit organization
10 or private entity to fund or provide goods or services to assist with City projects or programs,
11 under which the grantor imposes restrictions on the City's spending of the grant ~~funds~~.

12 "Interested party" shall mean:

13 (a) any party, participant, or agent of a party or participant involved in a
14 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
15 use before (1) an officer, (2) any board or commission (including the Board of Supervisors) on
16 which the officer sits, (3) the department of the officer, or (4) the department of the designated
17 employee; but this definition shall not include licenses, permits, or other entitlements for use that are
18 issued to individuals or nonprofit entities for recreational, cultural, or educational activities;

19 (b)(1) any City Contractor contracting with or seeking to contract with the
20 designated employee's or officer's department, or any affiliate of such a City Contractor,
21 except for *the purpose of any person* providing a grant to the City or a City department, and (2)
22 as pertains to members of the Board of Supervisors, any City Contractor, or any affiliate of
23 such a City Contractor, if the Board of Supervisors approves the City Contractor's agreement
24 with the City, except for *the purpose of any person* providing a grant to the City or a City
25 department;

1 ~~—(c) any person who attempted to influence the employee or officer in any legislative or~~
2 ~~administrative action, provided that “attempt to influence” shall be defined as set forth in Section~~
3 ~~3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing Section 3.216(b)(1),~~
4 ~~and shall not include (1) oral or written public comment that becomes part of the record of a public~~
5 ~~hearing; (2) speaking at a public forum or rally, or (3) communications made via email, petition or~~
6 ~~social media;~~

7 (c~~d~~) any contact or expenditure lobbyist, as defined under Article II, Chapter 1
8 of this Code, who has registered as a contact or expenditure lobbyist with the Ethics
9 Commission, if the contact lobbyist or expenditure lobbyist is registered to lobby the
10 designated employee’s or officer’s department; or

11 (d~~e~~) any permit consultant, as defined under Article III, Chapter 4 of this Code,
12 who has registered as a permit consultant with the Ethics Commission, if the permit consultant
13 has reported any contacts with the designated employee’s or officer’s department to carry out
14 permit consulting services during the prior 12 months.

15 “Interested party” shall not include: (a) any nonprofit organization that Article V of the
16 Charter has authorized to support an arts and culture department; (b) any federal or State
17 government agency; (c) an individual, solely because the individual is an uncompensated
18 board member of a nonprofit organization that is an interested party; or (d) as pertains to
19 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
20 Board of Supervisors did not approve the City Contractor’s agreement with the City.

21 “License, permit, or other entitlement for use” shall mean professional, trade, or land
22 use licenses, permits, or other entitlements to use property or engage in business, as follows:
23 *including*

24 ~~——(a)~~ professional license revocations, conditional use permits, rezoning of
25 property parcels, zoning variances, tentative subdivision and parcel maps, cable television

1 franchises, building and development permits, private development plans, and contracts
2 (other than labor or personal employment contracts and competitively bid contracts where the
3 City is required to select the highest or lowest qualified bidder), as set forth in California
4 Government Code Section 84308, as amended from time to time; and

5 (b) licenses, permits, and entitlements for use that a department issues in its discretion,
6 as opposed to those that involve little or no discretion, are based on applying a checklist or objective
7 criteria to the facts as presented, and/or are issued over-the-counter or “as-of-right” or on a first-
8 come-first-serve basis, as is typically the case when a member of the public seeks permission from a
9 City department to use public space.

10 “Officer” shall mean any commissioner, department head, or elected official.

11 “Participant” shall mean any person who is not a party but who actively supports or
12 opposes (by lobbying in person, testifying in person, or otherwise acting to influence) a
13 particular decision in a proceeding involving a license, permit, or other entitlement for use and
14 who has a financial interest in the decision, as set forth in California Government Code
15 Section 84308 and Title 2, Section 18438.4 of the California Code of Regulations, as
16 amended from time to time.

17 “Party” shall mean any person who files an application for, or is the subject of, a
18 proceeding involving a license, permit, or other entitlement for use, as set forth in California
19 Government Code Section 84308, as amended from time to time.

20 “Payment” shall mean a monetary payment or the delivery of goods or services with a
21 value of \$1,000 or more, or a series of payments within a 12-month period that in the aggregate total
22 \$1,000 or more.

23 “Permit consulting services” shall be defined as set forth in Article III, Chapter 4 of
24 this Code.

25 “Person” shall be defined as set forth in Section 1.104 of this Code.

1 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
2 18438.2, as amended from time to time.

3 “Public appeal” shall mean a request for a payment when such request is made by
4 means of television, radio, billboard, a public message on an online platform, the distribution
5 of 200 or more identical pieces of printed material, the distribution of a single email to 200 or
6 more recipients, or a speech to a group of 20 or more individuals.

7 “Relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling,
8 parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step
9 relationship or relationship created by adoption.

10
11 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
12 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
13 **PAYMENTS FROM INTERESTED PARTIES.**

14 (a) **PROHIBITION.** ~~Elected officials, department heads, commissioners, Officers~~ and
15 designated employees shall not directly or indirectly solicit any behested payment from an
16 interested party in the following circumstances:

17 (1) **Administrative proceedings.** If the interested party is a party, participant,
18 or agent of a party or participant in a proceeding before ~~the elected official’s, department head’s,~~
19 ~~commissioner’s, or designated employee’s department~~ an officer or a designated employee regarding
20 administrative enforcement, a license, a permit, or other entitlement for use, the prohibition set
21 forth in this subsection (a) shall apply to such officer or designated employee, as follows:

22 (A) during the proceeding; and

23 (B) for ~~12~~^{twelve} months following the date on which a final decision is
24 rendered in the proceeding.

1 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a
2 City Contractor, who is a party to or is seeking a contract with the officer's ~~elected official's,~~
3 ~~department head's, commissioner's,~~ or designated employee's department, the prohibition set
4 forth in this subsection (a) shall apply from the submission of a proposal until the later of:

5 (A) the termination of negotiations for the contract; or

6 (B) 12~~twelve~~ months following the end of the contract's term.

7 ~~—— (3) **Persons seeking to influence.** If the interested party is a person who attempted to~~
8 ~~influence the elected official, department head, commissioner, or designated employee in any~~
9 ~~legislative or administrative action, the prohibition set forth in this subsection (a) shall apply for 12~~
10 ~~months following the date of each attempt to influence.~~

11 (3)(4) **Lobbyists.** Officers ~~Elected officials, department heads, commissioners,~~ and
12 designated employees may not solicit any behested payment from a contact lobbyist or
13 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
14 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
15 officer's department.

16 (4)(5) **Permit consultants.** Officers ~~Elected officials, department heads,~~
17 ~~commissioners,~~ and designated employees may not solicit any behested payment from a permit
18 consultant who has registered with the Ethics Commission, if the permit consultant has
19 reported any contacts with the designated employee's or officer's department to carry out
20 permit consulting services during the prior 12 months.

21 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
22 or employee is indirectly soliciting a behested payment when the City officer or employee
23 directs or otherwise urges another person to solicit a behested payment from an identifiable
24 interested party or parties.

1 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
2 appeals and related communications following a public appeal. Examples of such communications
3 include responding to persons who have contacted the officer’s or employee’s department following a
4 public appeal, providing information to such persons about the potential uses for such donations, and
5 negotiating and entering into grant agreements with such persons.

6 (d) **EXCEPTION – DIRECT PAYMENTS TO CITY DEPARTMENTS.** This Section 3.620
7 shall not apply to solicitations of behested payments to be made directly to City departments; provided,
8 however, that this subsection (d) shall not affect the requirement that the acceptance and expenditure of
9 gifts and grants shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of
10 the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of
11 a solicitation from an interested party in determining whether to approve it. If the Board of
12 Supervisors does not approve a gift or grant, the department would not be permitted to accept and
13 expend it, but the solicitation would remain excepted from this Section 3.620.

14 (e) **EXCEPTION – PAYMENTS MADE UNDER AN APPROVED MEMORANDUM OF**
15 **UNDERSTANDING.** This Section 3.620 shall not apply to solicitations of behested payments from
16 nonprofit organizations, if the nonprofit has executed a memorandum of understanding or similar
17 agreement with the City that contains disclosure, recordkeeping, and auditing provisions approved by
18 the Controller and the City Attorney; provided, however, that this subsection (e) shall not affect the
19 requirement that the acceptance and expenditure of gifts and grants by the City shall require Board of
20 Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of
21 Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party
22 in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the
23 department would not be permitted to accept and expend it, but the solicitation would remain excepted
24 from this Section 3.620.

1 (f) **ADDITIONAL PROVISIONS.** Nothing in this Section 3.620 is intended to prevent any
2 officer or designated employee from:

- 3 (1) Implementing a department’s approved Racial Equity Action Plan; or
4 (2) Discussing, negotiating, and/or securing the provision of community benefits or
5 other consideration in connection with a contract with the City, including but not limited to a
6 development agreement or an agreement for the development or use of public property; or
7 (3) Requesting a tenant’s assistance with public outreach efforts, such as tours of the
8 property, participation at community meetings, open houses, and events open to the public; or
9 (4) Discussing, negotiating, and/or securing concessions or discounts with a
10 contractor in the course of managing or administering an existing contract, including, but not limited
11 to, negotiating a more favorable price for the City, negotiating to reduce the number of hours billed to
12 the City for a particular task, or requesting additional related purchase orders or services for the City
13 similar to the scope of services or work set forth in the contract.

14
15 Section 3. Scope of Ordinance. In enacting this ordinance, the People of the City and
16 County of San Francisco intend to amend only those words, phrases, paragraphs, sections,
17 subsections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent
18 parts of the Municipal Code that are explicitly shown in this ordinance as additions or
19 deletions, in accordance with the “Note” that appears under the official title of the ordinance.

20
21 Section 4. Conflicting Ballot Measures. In the event that this measure and another
22 measure relating to behested payments shall appear on the same municipal election ballot,
23 the provisions of such other measure shall be deemed in conflict with this measure. In the
24 event that this measure shall receive a greater number of affirmative votes, the provisions of
25

1 this measure shall prevail in their entirety and each and every provision of the other measure
2 that conflicts, in whole or in part, with this measure shall be null and void in its entirety.

3

4

5 APPROVED AS TO FORM:
6 DAVID CHIU, City Attorney

6

7 By: /s/
8 MANU PRADHAN
9 Deputy City Attorney

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