

1 [Campaign and Governmental Conduct Code - Behested Payments Exception]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to modify the**  
4 **rules concerning behested payments, by excepting solicitations made under programs**  
5 **to solicit, request, and contractually obligate charitable donations of volunteer time**  
6 **and/or money from interested parties to nonprofit organizations or public schools**  
7 **through public, competitively procured contract solicitations and/or program contract**  
8 **requirements, where the program was in existence as of January 23, 2022, or if the**  
9 **program is specifically authorized by ordinance.**

10

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

15

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

17

18 Section 1. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is  
19 hereby amended by revising Section 3.610, to read as follows. Section 3.600 is not amended,  
20 but is included here for context.

21 **SEC. 3.600. DEFINITIONS.**

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

24 "Affiliate" shall be defined as set forth in Section 1.126 of this Code.

25

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

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

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

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

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

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

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

18          “Designated employee” shall mean any employee of the City and County of San  
19 Francisco required to file a Statement of Economic Interests under Article III, Chapter 1 of this  
20 Code.

21          “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney,  
22 Mayor, Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

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

1           “Grant” shall mean an agreement with a government agency, non-profit organization  
2 or private entity to fund City projects or programs, under which the grantor imposes  
3 restrictions on the City’s spending of the grant funds.

4           “Interested party” shall mean:

5           (a) any party, participant or agent of a party or participant involved in a proceeding  
6 regarding administrative enforcement, a license, a permit, or other entitlement for use before  
7 (1) an officer (2) any board or commission (including the Board of Supervisors) on which the  
8 officer sits;

9           (b) any City Contractor contracting with or seeking to contract with the designated  
10 employee’s or officer’s department, or any affiliate of such a City Contractor, except for any  
11 person providing a grant to the City or City department;

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

18           (d) any contact or expenditure lobbyist, as defined under Article II, Chapter 1 of this  
19 Code, who has registered as a contact or expenditure lobbyist with the Ethics Commission, if  
20 the contact lobbyist or expenditure lobbyist is registered to lobby the designated employee’s  
21 or officer’s department; or

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

1           “Interested party” shall not include: (a) any nonprofit organization that Article V of the  
2 Charter has authorized to support an arts and culture department; (b) any federal or State  
3 government agency or (c) an individual, solely because the individual is an uncompensated  
4 board member of a nonprofit organization that is an interested party.

5           “License, permit, or other entitlement for use” shall mean professional, trade, or land  
6 use licenses, permits, or other entitlements to use property or engage in business, including  
7 professional license revocations, conditional use permits, rezoning of property parcels, zoning  
8 variances, tentative subdivision and parcel maps, cable television franchises, building and  
9 development permits, private development plans, and contracts (other than labor or personal  
10 employment contracts and competitively bid contracts where the City is required to select the  
11 highest or lowest qualified bidder), as set forth in California Government Code Section 84308,  
12 as amended from time to time.

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

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

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

23           “Payment” shall mean a monetary payment or the delivery of goods or services.

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

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

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

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

9           **SEC. 3.610. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,  
10 COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED  
11 PAYMENTS FROM INTERESTED PARTIES.**

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

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

20                   (A) during the proceeding; and

21                   (B) for twelve months following the date on which a final decision is rendered in  
22 the proceeding.

23           (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a City  
24 Contractor, who is a party to or is seeking a contract with the elected official’s, department  
25

1 head's, commissioner's, or designated employee's department, the prohibition set forth in this  
2 subsection (a) shall apply from the submission of a proposal until the later of:

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

4 (B) twelve months following the end of the contract's term.

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

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

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

19 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.610, a City officer  
20 or employee is indirectly soliciting a behested payment when the City officer or employee  
21 directs or otherwise urges another person to solicit a behested payment from an identifiable  
22 interested party or parties.

23 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.610 shall not apply to public  
24 appeals.

1                    (d) EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS. This  
2                    Section 3.610 shall not apply to solicitations made under a program for competitively secured  
3                    donations. For purposes of this subsection (d), a program is a process for soliciting voluntary  
4                    charitable donations of time and/or money from interested parties to nonprofit 501(c)(3) organizations  
5                    or public schools through a competitively procured contract, which program either (a) existed on or  
6                    before January 23, 2022, such as the San Francisco Public Utilities Commission Social Impact  
7                    Partnership program, or (b) is authorized by the Board of Supervisors by ordinance. For a contract  
8                    that includes a program excepted under this subsection (d), all solicitations under such program  
9                    related to the award, approval, execution, administration, modification, or enforcement of that contract  
10                   by City officers or employees are likewise excepted.

11                   Section 2. Effective Date. This ordinance shall become effective 30 days after  
12                   enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
13                   ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
14                   of Supervisors overrides the Mayor’s veto of the ordinance.

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

21                   APPROVED AS TO FORM:  
22                   DAVID CHIU, City Attorney

23                   By:     /s/  
24                               SHERYL L. BREGMAN  
25                               Deputy City Attorney

n:\legana\as2022\2200315\01600411.docx