



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

NOREEN AMBROSE  
CHAIR

December 9, 2020

YVONNE LEE  
VICE-CHAIR

Angela Calvillo, Clerk of the Board of Supervisors  
City Hall, Room 244

DAINA CHIU  
COMMISSIONER

1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

FERN M. SMITH  
COMMISSIONER

**Re: File 201132 – Ethics Commission Action on Proposed Legislation**

LARRY BUSH  
COMMISSIONER

Dear Ms. Calvillo:

LEEANN PELHAM  
EXECUTIVE DIRECTOR

At its November 13, 2020 Regular Meeting, the Ethics Commission voted unanimously to support legislation that would prohibit City officers and employees from soliciting behested payments from interested parties. The Commission's recommendation is briefly summarized in this letter and is more fully described in the attached staff report dated November 9, 2020. The Commission requests that this letter and the attached report be added to the file for File No. 201132, legislation sponsored by Supervisors Haney and Peskin that is similar to what the Commission recommends.

The Ethics Commission recommends that the Board of Supervisors amend File No. 201132 to conform it to the Commission's full recommendation as described below and that the ordinance as amended be scheduled for Committee hearing and consideration by the full Board at the earliest opportunity after the Board's winter recess.

### Background

Throughout 2020, the City has seen a number of officials, employees, and contractors charged with crimes of corruption by the federal government. Additionally, the Controller and City Attorney are conducting large scale inquiries into corrupt activities within the City, including to identify and prevent future violation of city laws and policies. Thus far, the following allegations have become public:

- In January 2020, the FBI announced a federal corruption case against Mohammed Nuru, then the Director of the Department of Public Works, and Nick Bovis, a local businessman. The pair were charged with fraud for multiple alleged schemes to rig City contracts, including a scheme to bribe an Airport commissioner.
- On March 10<sup>th</sup>, the City Attorney sent a report to the Mayor detailing allegations that the Director of the Department of Building Inspection, Tom Hui, violated state and local ethics laws. Hui subsequently resigned.

- On June 8<sup>th</sup>, the FBI charged Sandra Zuniga, director of the Mayor's Office of Neighborhood Services, with conspiracy to commit money laundering for allegedly helping Nuru launder bribes.
- On June 8<sup>th</sup>, the FBI also charged two City contractors, Balmore Hernandez and Florence Kong, with fraud and bribery, respectively, for allegedly attempting to bribe Nuru for favorable treatment on City contracting awards. Both have agreed to plead guilty, and Hernandez is cooperating with the federal investigation.
- On June 24<sup>th</sup>, Walter Wong, a permit expeditor, was charged with conspiracy to commit fraud and conspiracy to commit money laundering for his involvement with Nuru. Wong agreed to plead guilty and cooperate with the federal investigation.
- On September 17<sup>th</sup>, Alan Varela and William Gilmartin III were charged with bribery for their alleged attempts to secure City contracts by making gifts to Nuru.
- On November 18<sup>th</sup>, Paul Giusti, former Government & Community Relations Manager for Recology's San Francisco Group, was charged with bribery and money laundering for his alleged attempt to secure favorable treatment for Recology by bribing Nuru with behested payments and other benefits.
- On November 30<sup>th</sup>, Harlan Kelly, then-general manager of the Public Utilities Commission, was charged with fraud for allegedly taking bribes. Kelly subsequently resigned his position.

If true, the allegations against these individuals demonstrate an alarming level of unethical conduct in and around City government and its decision-making processes. In response, the Ethics Commission has undertaken a comprehensive review of the City's conflict of interest laws to ensure that the City's ethics laws and programs are strengthened so as to deter similar unethical conduct in the future.

The first phase of this project focusses on behested payments. Both the FBI and the Controller have found that City employees, including Mohammed Nuru, have routinely solicited behested payments from persons and entities that have official business before them. The FBI has produced evidence that these payments were in fact bribes intended to secure favorable treatment by the City for those making the payments. The Commission is deeply concerned about the practice of soliciting behested payments from interested parties, both for its inherent ethical risks and its ability to undermine existing laws restricting gifts and political contributions. The ethical risks associated with soliciting behested payments from interested parties are more fully discussed in Section II of the attached staff report.

### **Overview of Proposal**

To close the loophole in gift and contribution laws caused by unrestricted behested payments, the Commission unanimously supports the enactment of a new City ordinance that extends certain

existing gift and contribution laws to behested payments. In summary, the Commission recommends that the new law do the following:

1. Strengthen the existing behested payment rules by prohibiting City officials and employees from soliciting behested payments from interested parties;
2. Expand the list of *officials* subject to the prohibition to include all City elected officials, members of boards and commissions, and department heads;
3. Expand the list of employees subject to the prohibition to include to include all form 700 filers;
4. Expand the list of *interested parties* covered to include:
  - a. parties and participants to City proceedings involving permits, licenses, entitlements for use, and administrative enforcement
  - b. City contractors, including:
    - i. all City contractors who (a) are parties to a contract that was approved by the elected official in question, or (b) are parties to a contract with the department of the commissioner, board members, department head, or employee in question,
    - ii. all parties that have submitted a proposal for such a contract, and
    - iii. all affiliates of the contracting or bidding entity
  - c. registered lobbyists, and
  - d. all *restricted sources* under section 3.216 of the Campaign and Governmental Conduct Code, including persons who have sought within the last twelve months to influence the legislative or administrative action of the officer or employee in question;
5. Allow officers or department heads to solicit monetary payments from interested parties so long as they are solicited for a City fund established for such gifts under Administrative Code section 10.100 et seq.

In the second report of its public integrity review, the Controller's City Services Auditor Division recommended that a substantially similar rule be created. Supervisors Haney and Peskin have introduced File No. 201132 to apply this type of rule to appointed department heads. The Commission fully supports these efforts, but believes that to be truly effective the rule must apply uniformly to all officials and to certain designated employees. Thus, the Commission recommends that File No. 201132 be amended to include the provisions enumerated above and be enacted as soon as practicable.

If you have any questions for the Ethics Commission or would like any additional information from our office, please feel free to contact me or Senior Policy and Legislative Counsel Patrick Ford at (415) 252-3100.

Sincerely,

*LeeAnn Pelham*

LeeAnn Pelham  
Executive Director



# ETHICS COMMISSION

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: November 9, 2020  
To: Members of the Ethics Commission  
From: Pat Ford, Senior Policy and Legislative Affairs Counsel  
Re: **AGENDA ITEM 6 – Discussion and possible action on Staff report on Phase One of the Government Ethics and Conflict of Interest Review: Behested Payments**

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**Summary** This report presents Staff’s findings and recommendations for the first phase of the Commission’s review of the City’s government ethics laws. The first phase of the project addresses behested payment laws. Staff recommends that the City create two new rules regarding behested payments to prevent pay-to-play and other ethics problems.

**Action Requested** That the Commission discuss Staff’s recommendations and approve a motion approving the recommendations in Section III.

This report contains Staff’s initial findings and recommendations for the first phase of the Commission’s review of certain aspects of the City’s government ethics laws. The first phase addresses behested payment laws. Section I provides a general overview of the Commission’s review project. Section II presents the initial findings of Staff’s review, including an explanation of what behested payments are, an overview of existing laws on behested payments and gifts, and a discussion of the ethics issues presented by behested payments. Section III discusses Staff’s recommended improvements to the law to address the ethics issues outlined in Section II.

Staff recommends that the City create two new rules regarding behested payments to prevent pay-to-play and other ethics problems. The rules are designed to address the most urgent ethics issues involving behested payments while still allowing City officials and employees to engage in charitable and governmental fundraising.

### I. Overview of the Ethics Commission’s Review Project

In January of this year, the FBI announced a federal corruption case against Mohammed Nuru, then the Director of the Department of Public Works, and Nick Bovis, a local

businessman.<sup>1</sup> On March 10<sup>th</sup>, the City Attorney sent a report to the Mayor detailing allegations that the Director of the Department of Building Inspection, Tom Hui, also violated state and local ethics laws. Hui subsequently resigned.<sup>2</sup> On June 8<sup>th</sup>, the FBI charged three additional individuals with crimes related to the original complaint against Nuru and Bovis: Sandra Zuniga, director of the Mayor’s Office of Neighborhood Services, and Balmore Hernandez and Florence Kong, both City contractors. Hernandez and Kong have since pled guilty.<sup>3</sup> On June 24<sup>th</sup> Walter Wong, a permit expeditor, was also charged with related crimes.<sup>4</sup> Some of the conduct for which these individuals have been investigated and charged includes attempting to bribe a City commissioner, giving and receiving gifts in exchange for favorable treatment by the City, and laundering gifts to disguise their source and nature. If true, these allegations demonstrate an alarming level of unethical conduct in and around City government and its decision-making processes.

The Controller’s City Services Auditor Division and the City Attorney have also undertaken investigations of multiple City departments and private organizations in response to the federal allegations. On June 29<sup>th</sup>, the Controller’s office released the first in a series of reports as part of its public integrity review. The report reviews contracting practices at the Department of Public Works and includes a recommendation that San Francisco’s gift rules be tightened to eliminate loopholes.<sup>5</sup> On September 24<sup>th</sup>, the Controller’s office released its second report, which focuses on the use of non-City accounts by City departments. This report includes ethics recommendations, including the recommendation that certain requests for behested payments by City employees be prohibited.<sup>6</sup> On November 5<sup>th</sup>, the Controller released its third report, which focusses on the City’s contractor

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<sup>1</sup> U.S. v. Mohammed Colin Nuru and Nick James Bovis, Case No. 3 20 70028, Criminal Complaint and Affidavit of FBI Special Agent James A. Folger in Support of Criminal Complaint (N.D. Cal. 2020), *available at* <https://www.justice.gov/usao-ndca/press-release/file/1240101/download>.

<sup>2</sup> City Attorney of San Francisco, Herrera investigation Reveals Building Department Director Misconduct, March 10, 2020, *available at* <https://www.sfcityattorney.org/2020/03/10/herrera-investigation-reveals-building-department-director-misconduct/>.

<sup>3</sup> U.S. Attorney’s Office, Northern District of California, San Francisco Public Official and Contractors Charged with Crimes Related to Public Corruption and Money Laundering Scheme, June 8, 2020, *available at* <https://www.justice.gov/usao-ndca/pr/san-francisco-public-official-and-contractors-charged-crimes-related-public-corruption>. Hernandez pled guilty to conspiracy to commit honest services wire fraud and agreed cooperate with the investigation. Kong pled guilty to bribery and lying to the FBI.

<sup>4</sup> U.S. Attorney’s Office, Northern District of California, June 24, 2020, Contractor And Permit Expediter Charged With Corrupting San Francisco City Officials, *available at* <https://www.justice.gov/usao-ndca/pr/contractor-and-permit-expediter-charged-corrupting-san-francisco-city-officials>. Wong agreed to plead guilty to conspiracy to commit honest services wire fraud and conspiracy to commit money laundering.

<sup>5</sup> PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: PUBLIC WORKS CONTRACTING, City and County of San Francisco, Office of the Controller (June 29, 2020), *available at* <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20-%20Deliverable%201%2C%20Public%20Works%20Contracting%206.29.2020.pdf>.

<sup>6</sup> PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: GIFTS TO DEPARTMENTS THROUGH NON-CITY ORGANIZATIONS LACK TRANSPARENCY AND CREATE “PAY-TO-PLAY” RISK, City and County of San Francisco, Office of the Controller (June 29, 2020), *available at* <https://sfcontroller.org/gifts-departments-through-non-city-organizations-lack-transparency-and-create-%E2%80%9Cpay-play%E2%80%9D-risk> (hereinafter “Public Integrity Report 2”).

debarment process.<sup>7</sup> The Controller anticipates releasing additional reports as part of its public integrity review. The continued efforts of the Controller and the City Attorney may reveal additional unethical conduct aside from the allegations in the federal investigation. Subsequent phases of this review project will seek to address new information learned from those investigations.

In light of these developments, at its September 2020 meeting the Commission identified a review of the City's government ethics laws as its top policy priority. The purpose of the project is to assess whether current law adequately identifies and prohibits conduct that could give rise to a conflict of interest or otherwise undermine fair and objective government decision making. Where current laws and programs are insufficient, the project will seek to recommend and implement improvements. The project will principally focus on analyzing unethical conduct revealed through the multiple ongoing corruption investigations and identifying policy approaches to deter similar conduct in the future.

Staff is approaching the project in multiple phases. The current, initial phase of the project addresses behested payments and explores whether any changes to existing laws or programs are needed in order to address ethical issues surrounding this practice. Subsequent phases of the project will involve other aspects of government ethics law. Staff anticipates that the second phase will focus on gift rules, including gift prohibitions, limits, and disclosures.

During all phases of the project, Staff's methodology will encompass reviewing the findings of the ongoing corruption investigations, discussing the findings with the author agency (where possible), analyzing existing City laws and programs, and comparing approaches taken in other jurisdictions. Another core part of Staff's methodology will be engagement with stakeholders, including advocates, good government groups, members of the regulated community, and peer agencies. Staff held interested persons meetings on October 13<sup>th</sup> and 15<sup>th</sup> and will continue to hold such meetings periodically throughout the course of the project.

## **II. Findings**

This section provides Staff's findings regarding the use of behested payments in San Francisco and the state of current behested payment laws. The findings draw primarily from information revealed through the ongoing corruption investigations, local investigative journalism, and Staff's independent review of select behested payment filings. The section first explains the concept of behested payments and existing laws regulating them. The section then describes relevant ethics laws regarding gifts and contributions. This section then discusses ethics issues involving behested payments that have been identified in San Francisco.

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<sup>7</sup> PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: SAN FRANCISCO'S DEBARMENT PROCESS, City and County of San Francisco, Office of the Controller (November 5, 2020) available at <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20Review-%20San%20Francisco%27s%20Debarment%20Process%2011.05.20.pdf>.

A. Behested Payments - In General

A behested payment is a payment made at the behest of a government official. California law defines *at the behest of* to mean “under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.”<sup>8</sup> Most frequently, behested payments occur when government officials ask someone to make a payment to a nonprofit organization. Behested payments are not contributions to the government official because they are not used for the purpose of seeking or holding office.<sup>9</sup> They are not considered to be gifts to the official either because the official does not directly receive the payment.<sup>10</sup> Instead, behested payments are addressed separately by the California Political Reform Act and the San Francisco Campaign and Governmental Conduct Code.

The California Political Reform Act requires that elected officials publicly disclose all behested payments of \$5,000 or more made at their behest.<sup>11</sup> This disclosure requirement applies to all City elected officials. The disclosure is made on the FPPC Form 803.<sup>12</sup>

The San Francisco Campaign and Governmental Conduct Code additionally requires that all City elected officials and members of City boards and commissions publicly disclose all behested payments of \$1,000 or more made at their behest if the person making the behested payment is an interested party.<sup>13</sup> An *interested party* is a “party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before” the official in question.<sup>14</sup> This disclosure is made on the Form SFEC-3.610(b).<sup>15</sup>

In general, neither California nor San Francisco law restricts the ability of a City official or employee to ask for behested payments.<sup>16</sup>

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<sup>8</sup> Cal. Gov. Code § 82041.3. San Francisco Law contains an identical definition of *at the behest of*. S.F. Campaign & Gov. Conduct Code § 3.600. San Francisco law defines *behested payment* as “a payment that is made at the behest of an officer, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose.” *Id.* at § 3.600.

<sup>9</sup> Cal. Gov. Code § 82015(c)(4).

<sup>10</sup> *Id.* at § 82028 (“‘Gift’ means ... any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received ....”).

<sup>11</sup> Cal. Gov. Code § 84224.

<sup>12</sup> Form 803 filings in San Francisco are available at <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer>.

<sup>13</sup> S.F. Campaign & Gov. Conduct Code § 3.610.

<sup>14</sup> *Id.* at 3.600. This definition of *interested party* mirrors the language of California Government Code section 84308, which states that officials shall not “accept, solicit, or direct a contribution of more than two hundred fifty dollars” from an interested party. Cal. Gov. Code § 84308.

<sup>15</sup> Form SFEC-3.610(b) filings are available at <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer/behested-payment-filings-by-elected-officials-and-board-and-commission-members>.

<sup>16</sup> One law that does create some limitation on the ability of a City officer to ask for behested payments is S.F. Campaign & Gov. Conduct Code § 3.207(a)(1), which prohibits City officials from using their public offices to

B. Existing Laws Regarding Gifts and Contributions

Existing state and local laws prohibit certain gifts and political contributions from certain individuals to City officials and employees. These laws are intended to be prophylactic in nature, preventing conflicts of interest by prohibiting types of transactions that carry an inherent risk of corruption. However, existing laws fail to address these same concerns in the context of behested payments, and, as described in Section II.C below, this has given rise to ethics problems.

1. *Gift Rules: Restricted Sources and Lobbyists*

City officials and employees are prohibited from soliciting or accepting gifts from any known *restricted source*. A restricted source is a person who is (a) doing business with the officer or employee's department or is seeking to do business with the department, or (b) has sought within the last twelve months to influence the officer or employee's official actions.<sup>17</sup>

Similarly, City officials are prohibited from accepting gifts from registered lobbyists, and lobbyists are prohibited from giving such gifts.<sup>18</sup> Lobbyists cannot give gifts to an official's parent, spouse, registered domestic partner, or dependent child either.

Both rules prohibit certain gifts based on the identity of the person making the gift because such a transaction, by its very nature, carries the risk of pay-to-play. Pay-to-play is a form of political corruption whereby government officials or employees give favorable treatment to persons who provide things of value, sometimes at the request of the official or employee. Because restricted sources and lobbyists are, by definition, seeking favorable outcomes from government, they are prohibited from making gifts.

2. *Contribution Rules: City Contractors and Parties to City Proceedings*

In the campaign finance context, officials cannot solicit or accept political contributions from a City contractor, or any affiliate of the contractor, if the official has approval authority over the contractor's contract.<sup>19</sup> This rule also applies to contributions from persons who are seeking, but have not yet been awarded, a City contract. The rule applies to candidates for the office of the City official with contract approval authority as well. For example, if a contract was approved by the Board of Supervisors, neither the contractor nor any of its affiliates may make a contribution to a sitting Supervisor or any candidate for Supervisor.

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solicit things of value for organizations with which they are affiliated. However, this rule only applies to behested payments when the official affirmatively invokes his or her public position when making the request for the behested payment *and* is soliciting the behested payment for a recipient with which the official has some form of established relationship, such as membership on the organization's board of directors or advisory committee or a title such as *fundraising chair*.

<sup>17</sup> S.F. Campaign & Gov. Conduct Code § 3.216(b).

<sup>18</sup> *Id.* at 2.115(a)(1) & (2).

<sup>19</sup> *Id.* at 1.126(d). Affiliates of a contractor include the contractor's board of directors, officers, major shareholders, and subcontractors.

Similarly, the California Political Reform Act prohibits officials from soliciting contributions of \$250 or more from parties or participants in certain proceedings before the official.<sup>20</sup> This rule applies not only to contributions made to the official in question, but also any contribution to a third party that the official requests. If an official previously received a contribution from a person who subsequently becomes a party or participant in a proceeding before the official, the official must recuse from all participation in the proceeding.<sup>21</sup>

### 3. *Policy Rationales*

The gift and contribution rules described above were created to serve the same purposes. The primary purposes are (a) preventing those who are seeking favorable City decisions from using political contributions or gifts as a means to influence the decision making of a City official or to reward the official for past actions, (b) ensuring that government decisions are based on the merits, rather than the identity of the parties involved, (c) avoiding the appearance of inappropriate influence over government decisions by special interests, and (d) avoiding the perception that special payments are required from members of the public in order to secure favorable outcomes from the City. These policy goals were clearly stated when voters created the law prohibiting City elected officials and candidates from accepting contributions from City contractors. In his statement in support of the measure, Mayor Gavin Newsom explained that:

By banning contributions from those who seek major actions from the city, we help ensure a government that is more responsive to the needs of every resident—not just those who help fund campaigns. This measure increases confidence in government by decreasing special interest influence over government decisions. It also protects those many residents who are legitimately petitioning their government for action from feeling as if they must give to campaigns in order to be heard.<sup>22</sup>

### 4. *Not Applicable to Behested Payments*

Although ethics rules are relatively robust and well developed as regards gifts and political contributions, behested payments are not subject to them. Thus, officials and employees are generally free to solicit a behested payment from a person who is seeking some favorable outcome from the official or employee, including a contract, license, permit, or legislative or administrative action. This creates the risk that behested payments may be used as an alternative method to unduly influence a City official or employee. It also creates the risk that behested payments are a way for officials or employees to engage in “shakedowns,” requesting something of value from someone seeking their approval. These risks are now known to be significant and have resulted in

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<sup>20</sup> Cal. Gov. Code § 84308(b). The types of proceedings covered are “business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.” *Id.* at § 84308(a)(5).

<sup>21</sup> *Id.* at 84308(c).

<sup>22</sup> See S.F. Dept. of Elections, VOTER INFORMATION PAMPHLET: June 3, 2008 CONSOLIDATED STATEWIDE DIRECT PRIMARY ELECTION, Mayor Gavin Newsom, *Proponent’s Argument in Favor of Proposition H*, available at [https://webbie1.sfpl.org/multimedia/pdf/elections/June3\\_2008.pdf](https://webbie1.sfpl.org/multimedia/pdf/elections/June3_2008.pdf).

documented incidents of corrupt activity, as detailed in Section II.C. Staff recommends creating basic ethics rules regarding behested payments to avoid the most pressing ethics problems.

### C. Behested Payments – Identified Ethics Issues

As noted above in Section I, the Controller, City Attorney, and FBI are currently investigating allegations of unethical conduct by City officials and employees, City contractors, and certain non-City organizations. Documents released as part of the Controller’s and FBI’s investigations have revealed that behested payments have been a means for circumventing ethics laws. Additional incidents have been reported by Bay Area journalists that further indicate the presence of ethical issues surrounding behested payments. A federal corruption investigation in Los Angeles has revealed that behested payments have been used as channels for pay-to-play in that city as well. Notable instances involving state officials indicates that the same dynamics are at play in California government. These incidents show that the lack of regulation of behested payments creates a risk of pay-to-play and undermines existing laws regarding gifts and contributions.

#### 1. *Behested Payments – San Francisco FBI Investigation*

On January 15<sup>th</sup>, the FBI released a criminal complaint against then-director of the Department of Public Works Mohammed Nuru and local businessman and City contractor Nick Bovis on charges of honest services wire fraud.<sup>23</sup> The Department of Justice alleges that Nuru and Bovis engaged in multiple schemes to “defraud the public of its right to the honest services of public officials through bribery and kickbacks....” In at least one of the schemes, the defendants allegedly prepared to use a behested payment as a means to bribe a San Francisco Airport Commissioner to support a particular City contract for a restaurant concession at SFO. In a secretly recorded conversation in March 2018, Nuru told an undercover FBI agent that the three individuals seeking the airport contract should make a donation to one or more charitable organizations at the behest of the airport commissioner (“Airport Commissioner 1”) in exchange for the commissioner’s support of the contract. Nuru told the individuals seeking the contract “[w]e’ll let you know which groups she wants.”<sup>24</sup>

The defendants ultimately decided to offer Airport Commissioner 1 a direct cash bribe of \$5,000 instead. The commissioner appeared to decline the bribe during a meeting with the defendants, two confidential informants, and the undercover FBI agent.<sup>25</sup>

This recorded incident indicates a perception, likely based on an existing practice, that behested payments are a recognized means for securing the support of City officials. Bovis had referred to

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<sup>23</sup> U.S. v. Mohammed Colin Nuru and Nick James Bovis, Case No. 3 20 70028, Criminal Complaint and Affidavit of FBI Special Agent James A. Folger in Support of Criminal Complaint (N.D. Cal. 2020), *available at* <https://www.justice.gov/usao-ndca/press-release/file/1240101/download>.

<sup>24</sup> *Id.* at ¶ 62.

<sup>25</sup> *See id.* at ¶ 85. Regarding Airport Commissioner 1’s support of the City contract in question and the prospect of a cash payment in recognition of that support, the commissioner said “*You don’t need to do anything*. I mean, please. This is what we’re supposed to do... I’m only doing what I’m supposed to do, so I don’t have an issue, *you don’t even need to feed me*, this is what I’m supposed to do... this is exactly what I’m supposed to do” [emphasis added].

the prospect of a behested payment as a way for those seeking a contract to “giv[e] back to the community.” However, it is clear from the context that the primary purpose of such a behested payment would have been to secure a commissioner’s support for a valuable City contract that should have been awarded through established, merit-based contracting procedures.<sup>26</sup> This incident is a stark example of how behested payments can be used in a pay-to-play scheme if basic ethics rules are not in place.

## 2. *Public Works and Behested Payments*

Reports by the Controller’s office and investigative journalists have shown that employees of San Francisco Public Works, including former Director Nuru, had an established practice of soliciting payments from companies that do business with their department. Even more concerning, the employees behested the funds to accounts that they controlled, and in multiple instances the funds were used for the personal benefit of Public Works employees.

In the second report issued as part of its Public Integrity Review, the Controller’s office examined multiple non-City accounts maintained by the nonprofit organization Parks Alliance over which Public Works employees had control. During the five years covered by the review, \$980,000 was spent from the accounts.<sup>27</sup> The majority of this money was spent on employee events, including holiday parties, and on merchandise such as shirts and hats.<sup>28</sup> Nearly all of the funds in the Parks Alliance account were donated by seven entities that held contracts or permits with Public Works: SF Clean City Coalition, Recology, Pacific Gas & Electric, Clark Construction, Webcor Construction, Pankow Construction, and Laborers International Union.<sup>29</sup>

The Controller’s office found that in multiple instances, Nuru “personally solicited these funds and directed others in the department to do the same.”<sup>30</sup> A particularly egregious incident involves the 2019 holiday party for Public Works and City Administrator staff. The total cost of the party was approximately \$40,000, 82 percent of which was paid for through behested payments from Public Works contractors. Because these City contractors were doing business with Public Works, they were *restricted sources* and Public Works employees would have been prohibited from accepting any gifts from them.<sup>31</sup> But by directing the payments to a third party organization, rather than accepting them directly, Nuru and other Public Works employees apparently sought to circumvent the law prohibiting the solicitation or receipt of gifts from restricted sources. Three-hundred fifty

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<sup>26</sup> FBI Special Agent Folger stated in his affidavit in support of the criminal complaint that he believed that “Bovis and Nuru were describing a scheme to offer Airport Commissioner 1 a bribe of a free trip to another city and/or a donation to a designated charitable group in order to deprive the public of Airport Commissioner 1’s honest services in the selection of airport bids.” *Id.* at ¶ 62.

<sup>27</sup> Public Integrity Report 2, at slide 22.

<sup>28</sup> *Id.* at slide 23.

<sup>29</sup> *Id.* at slide 28.

<sup>30</sup> Public Integrity Report 2, at slide 31.

<sup>31</sup> See S.F. Campaign & Gov. Conduct Code § 3.216(b), Public Integrity Report 2, slides 28, 30 (finding that “[b]ased on information from the City Attorney’s Public Integrity Unit, Mr. Nuru solicited funds from companies with business or regulatory decisions before Public Works. These funds were then used to host the party and other employee appreciation events that benefitted those in the department. Together these acts create an acceptance of a gift from a “restricted source,” which is prohibited under city ethics laws.”)

guests attended the party, including City employees and representatives of the City contractors who paid for the party.<sup>32</sup> This creates the perception that by making behested payments that circumvented City gift rules, the contractors were able to secure special access to, and potentially preferential treatment by, City officials and employees.

Additionally, Parks Alliance was not the only nonprofit organization used by Nuru and other employees of Public Works as an intermediary to fund the department's holiday party. Investigative reporting by the *San Francisco Examiner* and *NBC Bay Area* indicates that in both 2017 and 2019 Public Works employees behested funds from Public Works contractors to the Lefty O'Doul's Foundation, a nonprofit organization headed by Nick Bovis. The behested funds were then used by the Lefty O'Doul's Foundation to pay for the Public Works holiday parties. Text messages obtained from Public Works by *NBC* indicate that Public Works Deputy Director Ron Alameida requested Public Works contractors Webcor Construction, Clark Construction, and Pankow Construction to make donations to the Lefty O'Doul's Foundation. On December 2, 2019, Alameida wrote to Bovis, stating "Nick – I have gotten commitments from Webcor, Clark, and Pankow for Lefty O'Doul's Foundation. Please confirm receipt. Thanks - Ron."<sup>33</sup> In an email from 2017, Bovis explained to a Lefty O'Doul's Foundation colleague that a \$15,000 check received by the foundation from Recology was "for the party we have to do for [Public Works] holiday party [sic]."<sup>34</sup>

Investigative reporting by the *San Francisco Chronicle* indicates that this practice by Public Works employees goes back to at least 2015. In a letter obtained by the *Chronicle*, Public Works Deputy Director for Operations Larry Stringer asked Recology Vice President Mark Arsenault to make a payment to Parks Alliance to fund a Public Works open house event and employee appreciation picnic. Stringer says that Public Works hopes "we can count on your support" for the event and refers to Parks Alliance as the event's "fiscal sponsor."<sup>35</sup> The Controller found that between July 2015 and January 2020, Recology received \$122 million in payments from the City under its City contracts, \$5.7 million of which was paid by Public Works.<sup>36</sup>

Most importantly, the Director of Public Works plays a key role in the process by which the City sets the rates paid for garbage collection.<sup>37</sup> According to the Public Works website, "[t]he Director of

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<sup>32</sup> Public Integrity Report 2, slide 31.

<sup>33</sup> See Attachment 1. This document is a public record obtained by NBC Bay Area from Public Works through a public records request.

<sup>34</sup> See Attachment 2, from SAN FRANCISCO EXAMINER, Joe Fitzgerald Rodriguez, *Lefty O'Doul's charity used city contractor donations to pay for Public Works party*, Feb. 5, 2020, available at <https://www.sfexaminer.com/news-columnists/lefty-odouls-charity-used-city-contractor-donations-to-pay-for-public-works-party/>. This document was obtained by the San Francisco Examiner from a confidential source.

<sup>35</sup> See Letter from Larry Stringer to Mark Arsenault, April 1, 2015, Attachment 3, available at <https://www.documentcloud.org/documents/6989365-Grand-Jury-Subpoena-CCSF-DPW.html>; SAN FRANCISCO CHRONICLE, Dominic Fracassa, *3 more SF city departments hit with subpoenas in expanding Nuru corruption probe*, July 12, 2020, available at <https://www.sfchronicle.com/bayarea/article/3-more-San-Francisco-city-departments-hit-with-15410491.php>.

<sup>36</sup> Public Integrity Report 2, slide 28.

<sup>37</sup> See San Francisco Refuse Collection and Disposal Ordinance, available at <http://www.sfpublishworks.org/sites/default/files/2063-1932%20Ordinance.pdf>.

San Francisco Public Works is charged with reviewing applications for adjustments in residential refuse rates, holding public hearings, and issuing a report and recommended order on whether rates are just and reasonable.”<sup>38</sup> Clearly, the actions of the Director of Public Works and his subordinates have a major financial impact on Recology, the City’s garbage collection contractor, and Recology seeks to influence the Director through applications for rate adjustments. Thus, any instance where a Public Works employee solicits a payment from Recology carries a significant ethics risk.

The use of behested payments to solicit money from contractors on multiple occasions, and using multiple nonprofit organizations as intermediaries, indicates that this was not an isolated incident nor the result of mere negligence on the part of Nuru or Public Works employees. Rather, these incidents indicate that behested payments are a known mechanism by which City officials and employees can solicit payments from persons with business before them. In a department where the “tone at the top” does not promote ethical conduct, this practice can become widespread.<sup>39</sup>

From the perspective of the individuals and companies being asked to make behested payments, this practice can appear to be a shakedown, in which the payment is expected as a cost of doing business with the City. This is the essence of a pay-to-play arrangement. Additionally, when the behested payments are ultimately used to benefit the officials or employees who ask for them, they circumvent long standing gift rules that were established to address the risk of pay-to-play. As contractors doing business with the Department of Public Works, the companies that funded the holiday parties, picnics, and Public-Works-branded merchandise would have been prohibited from giving gifts directly to Nuru or other department employees.<sup>40</sup> To close this loophole, behested payment laws should explicitly prohibit officials and employees from asking for behested payments in any situation where a gift would be prohibited. Rules should also restrict officials and employees from directing payments to organizations that will ultimately provide payments back to the officials or employees. These basic guardrails are needed to prevent the most egregious conduct while still allowing charitable and governmental fundraising to occur.

### 3. *Behested Payments and Restricted Sources*

City law prohibits officials from soliciting or accepting gifts from restricted sources or registered lobbyists.<sup>41</sup> A restricted source is any person doing or seeking to do business with the official’s department and any person who has sought in the last twelve months to influence the official’s administrative or legislative actions.<sup>42</sup> However, City law does not expressly prohibit officials from asking restricted sources or lobbyists to make behested payments. This creates a loophole in

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<sup>38</sup> San Francisco Public Works, Refuse Collection and Disposal Rates (Garbage Rates), *available at* <http://www.sfpublishworks.org/refuserates>.

<sup>39</sup> *See id.* at slide 30. “‘Tone at the top’ refers to the ethical atmosphere that is created in the workplace by the organization’s leadership. Failure to maintain such a workplace culture can result in the pressure, rationalization, and ability to carry out ethical violations.”

<sup>40</sup> *See* Campaign & Gov. Conduct Code § 3.216(b). Exceptions to this rule exist for gifts of \$25 or less, gifts of food and drink “to be shared in the office,” and “[f]ree attendance at a widely attended convention, conference, seminar, or symposium.” *See* Ethics Commission Regulation 3.216(b)-5(a)—(c).

<sup>41</sup> *Id.* at § 3.216(b), 2.115(a)(2).

<sup>42</sup> *Id.* at § 3.216.

existing gift laws, which can be demonstrated with an example that is apparent through public lobbyist and behested payment disclosures.

Staff reviewed a set of behested payment filings (FPPC Form 803) filed by then-District 2 Supervisor Mark Farrell. During the period reviewed by Staff, April 2015 to June 2018, Farrell behested \$882,500 to Parks Alliance.<sup>43</sup> Staff looked at this set of behested payments because of the involvement of Parks Alliance during the same time that Public Works is known to have directed payments to that some organization. Staff also reviewed public lobbyist disclosures filed during that time to determine whether any of the behested payments solicited by Farrell were made by persons that were restricted sources because of their attempts to influence Farrell. Although these solicitations would not necessarily have been prohibited, it would indicate a problematic feature of City ethics laws, since Farrell would have been prohibited from soliciting or accepting a gift from such persons.

Staff found four separate series of events that illustrate the problem surrounding behested payments solicited from restricted sources. The first incident involves AT&T. On October 18, 2016, registered lobbyist Boe Hayward contacted Farrell on behalf of AT&T to discuss the company's fiber optic network. Hayward was working for Lighthouse Public Affairs at that time.<sup>44</sup> That same day, Farrell introduced legislation to prevent landlords from interfering with a tenant's choice of internet service providers.<sup>45</sup> On November 14, 2016, Hayward again contacted Farrell on behalf of AT&T, this time to support the service provider ordinance.<sup>46</sup> That same day, Lighthouse Public Affairs made a \$5,000 payment at Farrell's request to Parks Alliance.<sup>47</sup>

A similar pattern occurred involving Facebook. On February 10, 2016, Boe Hayward contacted Farrell on behalf of Facebook to advocate for Farrell's support on issues regarding private employee shuttles.<sup>48</sup> Three months later, Facebook made a \$10,000 payment to Parks Alliance at Farrell's behest.<sup>49</sup>

Likewise, the same pattern occurred twice with the San Francisco Association of Realtors, first in 2015 and later in 2016. Between February 23, 2015 and May 26, 2015, lobbyists Jay Cheng and Mary Jung contacted Farrell on behalf of the Association a combined six times.<sup>50</sup> Less than four months later, on September 10, 2015, the Association made a \$10,000 payment to Parks Alliance at Farrell's behest.<sup>51</sup> This pattern was repeated in 2016. On January 12, 2016, Cheng contacted Farrell

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<sup>43</sup> See Chart 1, a spreadsheet created by Ethics Commission Staff using data from Mark Farrell's Form 803 disclosures during the review period.

<sup>44</sup> See Lobbyist Reports, Attachment 4.

<sup>45</sup> See File 161110, History, available at <https://sfgov.legistar.com/LegislationDetail.aspx?ID=2863893&GUID=E010FDC6-4024-4BA7-B282-C0F9DE32D9F4>.

<sup>46</sup> See Lobbyist Reports, Attachment 4.

<sup>47</sup> See Farrell Form 803 filed January 30, 2017, Attachment 5.

<sup>48</sup> See Lobbyist Reports, Attachment 4.

<sup>49</sup> See Farrell Form 803 filed January 30, 2017, Attachment 5.

<sup>50</sup> See Lobbyist Reports, Attachment 4.

<sup>51</sup> See Farrell Form 803 filed October 8, 2015, Attachment 5.

on the Association’s behalf regarding three separate issues.<sup>52</sup> Eight months later, on September 15, 2016, the Association made a \$10,000 payment to Parks Alliance at Farrell’s request. In each of these instances, the entity making the payment at Farrell’s behest had sought to influence his official actions within the twelve months prior to the payment. The entities were therefore restricted sources, and Farrell would have been prohibited from soliciting or accepting a gift from them. However, because of the existing gap in ethics laws, Farrell was not prohibited from asking the entities to make a payment to a third party. This is problematic because the same policy rationales that underly the restricted source rule (in particular, preventing pay-to-play and its appearance) also apply to behested payments. If officials or employees request payments from people seeking to influence, it can create a perception by those people and by the public that the payments are solicited in exchange for the official’s or employee’s support.

For that reason, this report recommends a rule prohibiting City officials and employees from asking restricted sources and other interested parties to make behested payments. This would extend the same basic ethics protections that exist for gifts into the realm of behested payments while still allowing officials to engage in fundraising. For example, of the \$882,500 Farrell solicited for Parks Alliance, only a small portion appears to have been from interested parties. The vast majority of his fundraising activity would still be allowed under the proposed rule.

#### 4. *Behested Payments – Los Angeles FBI Investigation*

A major, ongoing FBI corruption investigation in Los Angeles indicates that behested payments played a role in an alleged pay-to-play scheme discovered by the Justice Department. On June 23<sup>rd</sup>, FBI agents arrested Los Angeles City Councilmember Jose Huizar on a federal racketeering charge that includes allegations of bribery, extortion, money laundering, and honest services fraud.<sup>53</sup> The criminal complaint against Huizar states that he “operated a pay-to-play scheme in the City, utilizing and commodifying the powerful Council seat of CD-14, whereby he solicited and accepted financial benefits from ... developers with projects in the City in exchange for favorable official actions.”<sup>54</sup> Among other alleged crimes, Huizar, as chair of Los Angeles’ Planning and Land Use Management Committee, allegedly acted favorably toward parties that had given him gifts or made payments to third parties at his behest.<sup>55</sup> According to the FBI, one of the tactics used by Huizar and his associates to hide their activity was “directing payments to family members, associates, and entities to avoid creating a paper trail between the developers, their proxies, and public officials.”<sup>56</sup>

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<sup>52</sup> See *id.* The issues were in-law/secondary unit legislation, an inclusionary zoning ballot measure, and a housing density bonus.

<sup>53</sup> U.S. Attorney’s Office, Central District of California, *Los Angeles City Councilman Jose Huizar Arrested on Federal RICO Charge that Alleges He Agreed to Accept At Least \$1.5 Million in Illicit Benefits*, June 23, 2020, available at <https://www.justice.gov/usao-cdca/pr/los-angeles-city-councilman-jose-huizar-arrested-federal-rico-charge-alleges-he-agreed>.

<sup>54</sup> *U.S. v. Jose Luis Huizar*, Case No. 2:20-mj-02910, Criminal Complaint and Affidavit of FBI Special Agent Andrew Civetti in Support of Criminal Complaint (C.D. Cal. June 22, 2020), available at <https://www.justice.gov/usao-cdca/press-release/file/1287936/download> (hereinafter “Huizar Criminal Complaint”), ¶ 3.

<sup>55</sup> *Id.* at § 35(b).

<sup>56</sup> *Id.* at ¶ 35(c).

The complaint alleges that Huizar solicited behested payments from developers with business before the city, including those with matters before the Planning and Land Use Management Committee. Huizar directed the payments to a private high school that employed his wife as a fundraiser.<sup>57</sup> The Justice Department alleges that this practice was part of Huizar’s pay-to-play enterprise. According to the complaint, Huizar and his special assistant George Esparza solicited behested payments from multiple companies with matters pending before the Councilmember to Bishop Salesian High School.<sup>58</sup> In exchange, Huizar would help the donors with matters pending before the City. According to the Los Angeles Times, Huizar also solicited behested payments from billboard companies during the time that the Planning and Land Use Management Committee was considering regulations on digital billboards.<sup>59</sup> The Times also reported that Huizar and members of his staff asked for behested payments from multiple registered lobbyists.<sup>60</sup>

These allegations lay bare the potential ethical issues surrounding behested payments from interested parties. They also indicate that this problem is not unique to San Francisco. When government officials and employees are allowed to solicit behested payments from individuals or entities that have matters before them, or to entities that in turn make payments to the behesting official, this opens the door to the use of behested payments as a channel for pay-to-play schemes. Huizar allegedly requested payments from lobbyists and companies that sought favorable outcomes from him. Asking for behested payments from these interested parties carries an inherent risk of pay-to-play because it creates the perception that the payments are required in order to obtain favorable outcomes. Further compounding the unethical nature of the requests, Huizar’s wife received \$150,000 in compensation from the recipient of the behested payments.<sup>61</sup> This fact adds an element of personal benefit on Huizar’s part and further increases the risk of pay-to-play.

The FBI investigation in Los Angeles revealed ethics risks associated with behested payments that are equally present in San Francisco. To avoid a similar situation occurring in San Francisco, the City should create guardrails on fundraising by officials and employees that reduce the most serious risks of pay-to-play while still preserving the ability to engage in fundraising activities.

##### 5. *Behested Payments – Calderon FBI Investigation*

In 2014, California State Senator Ron Calderon was arrested by the FBI and indicted on multiple corruption charges including honest services fraud, bribery, and, money laundering.<sup>62</sup> In 2016,

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<sup>57</sup> Huizar Criminal Complaint at ¶¶ 310—312. *See also* LOS ANGELES TIMES, Adam Elmahrek, David Zahniser, Emily Alpert Reyes, L.A. *Councilman’s Wife Was a Paid Fundraiser. Ex-Aides Say He Assigned Them to Help*, Nov. 30, 2018, available at <https://www.latimes.com/local/lanow/la-me-ln-huizar-wife-fundraising-20181130-story.html> (hereinafter “Elmahrek, Zahniser, and Reyes”).

<sup>58</sup> *See* Huizar Criminal Complaint at ¶¶ 310—312.

<sup>59</sup> Elmahrek, Zahniser, and Reyes.

<sup>60</sup> *Id.*

<sup>61</sup> *See* Huizar Criminal Complaint at ¶ 15.

<sup>62</sup> Available at <https://archives.fbi.gov/archives/losangeles/press-releases/2014/california-state-senator-ronald-calderon-charged-with-taking-bribes-in-exchange-for-official-acts-on-behalf-of-hospital-owner-and-independent-film-studio-that-was-actually-an-fbi-front>.

Calderon pleaded guilty and was sentenced to forty-two months in prison.<sup>63</sup> Among other schemes, Senator Calderon had solicited a behested payment from undercover FBI agents to a nonprofit organization called Californians for Diversity. Calderon solicited the behested payment in exchange for his support of legislation enhancing film production tax credits. Calderon and his brother, former State Assemblymember Tom Calderon, controlled Californians for Diversity and used the behested funds to pay themselves.<sup>64</sup>

This incident represents the worst ethical risk that is present when officials are free to solicit payments to organizations from which they receive income. Such behested payments are circular in nature because the official requesting the payment ultimately benefits economically from the payment. Because of the personal financial benefit that is present, these behested payments carry a significant risk of pay-to-play and the circumvention of existing gift laws. In the worst cases, such behested payments can be a conduit for bribes, as was the case with Calderon. To avoid this pattern in San Francisco, a basic conflict-of-interest law is needed to prohibit officials from requesting donations to entities that pay them income.

### **III. Legislative Recommendations**

To address the ethics issues regarding behested payments identified in Section II, Staff recommends two new conflict-of-interest rules regarding behested payments. First, officials and employees should be prohibited from soliciting behested payments from interested parties. Second, they should be prohibited from soliciting behested payments to entities that pay them income. These rules will create basic guardrails on fundraising activities that prohibit the most problematic conduct while preserving the ability of officials and employees to engage in most fundraising activities.

Subsection A provides an overview of the recommendations in outline form. Subsection B explains the rationales for each recommendation. Subsection C recommends next steps for this phase of the project.

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<sup>63</sup> Available at <https://www.justice.gov/usao-cdca/pr/former-state-senator-ronald-calderon-sentenced-42-months-federal-prison-receiving-over>

<sup>64</sup> U.S. Attorney's Office, Central District of California, *Former State Senator Ronald Calderon Agrees to Plead Guilty to Federal Corruption Charge; Admits Receiving Tens of Thousands of Dollars in Bribes*, June 13, 2016, available at <https://www.justice.gov/usao-cdca/pr/former-state-senator-ronald-calderon-agrees-plead-guilty-federal-corruption-charge>.

A. Overview of Recommendations

Solicitation of Behested Payments from Interested Parties

1. Prohibit City officials and employees from soliciting behested payments from interested parties
2. *Define officials* to include all City elected officials, members of boards and commissions, and department heads
3. *Define employees* to include all form 700 filers
4. *Define interested parties* to include:
  - a. parties and participants to City proceedings involving permits, licenses, entitlements for use, and administrative enforcement
  - b. City Contractors, including:
    - i. all City contractors who (a) are parties to a contract that was approved by the elected official in question, or (b) are parties to a contract with the department of the commissioner, board members, department head, or employee in question
    - ii. all parties that have submitted a proposal for such a contract, and
    - iii. all affiliates of the contracting or bidding entity
  - c. registered lobbyists, and
  - d. all *restricted sources* under section 3.216, including persons who have sought within the last twelve months to influence the legislative or administrative action of the officer or employee in question
5. Create an exception to allow officers or department heads to solicit monetary payments from interested parties to an established city gift fund under Administrative Code section 10.100 et seq.

Solicitation of Behested Payments to an Entity that is a Source of Income for the Official

1. Prohibit officials and employees from soliciting behested payments from any source to an entity that is a source of income for the official or the official's spouse
2. *Define officials* to include all City elected officials, members of boards and commissions, and department heads
3. *Define employees* to include all form 700 filers
4. Define *income* to mean any economic interest reportable on the Form 700 Statement of Economic Interests

Miscellaneous

1. Expand reporting of behested payments under section 3.610 to require reporting by department heads when soliciting a behested payment from an interested party to a City gift fund
2. Make other minor changes to 3.600 et seq. consistent with these recommendations

B. Policy Rationales for Recommendations

1. *Solicitation of Behested Payments from Interested Parties*

City law currently prohibits City officials and employees from soliciting or accepting gifts or political contributions from certain sources. No official or employee may solicit or accept a gift from a person who does business or is seeking to do business with their department, nor any person who has sought to influence their official actions in the last twelve months.<sup>65</sup> No official may solicit or accept a gift from a registered lobbyist, nor a contribution over \$250 from a party to a proceeding before them.<sup>66</sup> And, no elected official may solicit or accept a contribution from a contractor whose contract they approved.<sup>67</sup>

Each of these rules serves the important purpose of preventing officials and employees from soliciting or accepting payments from those who seek favorable official actions from them. However, no such rule currently exists to address the same concern regarding behested payments. This creates a significant risk of behested payments being utilized to circumvent existing ethics laws. This problem is apparent in the way Mohammed Nuru and Nick Bovis discussed using a behested payment to secure the assistance of a commissioner in securing a City contract and in the way Public Works employees, including Nuru, sought behested payments from companies that do business with their department. Such behested payments were one of the ways Los Angeles City Councilmember Huizar enticed developers to make payments to his chosen organizations. And, disclosures show that at least one elected official in San Francisco has solicited behested payments from people and organizations that were seeking his support.

In its letter to the Commission dated November 6, 2020 (Attachment 6), Campaign Legal Center (CLC) states that “[t]he current behested payment rules in San Francisco ... create an exception to the gift law through behested payments. This becomes an exception that swallows the rule when a lobbyist or other restricted source can provide an official with unlimited donations to a third-party of the official’s choice.” CLC recommends that a rule against soliciting behested payments from interested parties be created to close this loophole.

As part of its public integrity review, the Controller’s office reviewed the relationship between Public Works and Parks Alliance. Based on what it found, the Controller’s office recommends that non-elected department heads and employees be prohibited from soliciting behested payments from interested parties.<sup>68</sup> With respect to Public Works, the Controller’s office concluded that “[w]hen city contractors or city building permit applicants or holders donate to non-city organizations, such as those maintained by the Parks Alliance for Public Works, it can create a ‘pay-to-play’ relationship.”<sup>69</sup> In the same vein, the behested payments solicited by Councilmember Huizar and the scheme by Nuru and Bovis to bribe an Airport commissioner with a behested payment indicate that the same concern is at play for elected officials and commissioners.

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<sup>65</sup> S.F. Campaign & Gov. Conduct Code § 3.216(b).

<sup>66</sup> *Id.* at § 2.115(a)(2); Cal. Gov. Code §84308(b).

<sup>67</sup> S.F. Campaign & Gov. Conduct Code § 1.126(d).

<sup>68</sup> Controller Report 2, slide 45.

<sup>69</sup> *Id.* at slide 29.

Other jurisdictions have already adopted such a rule. Drawing on reviews of behested payment laws performed by the California Fair Political Practices Commission and Campaign Legal Center, Staff found that Chicago, Philadelphia, Maryland, New York State, New Mexico, Alabama, the Federal Executive Branch, the United States House of Representatives, and the United States Senate each have a rule prohibiting the solicitation of behested payments from certain interested parties.<sup>70</sup>

It is important to note that this rule would only prohibit officials and employees from soliciting behested payments from interested parties. It would not affect their ability to ask for donations from anyone who is not an interested party. Thus, officials and employees would be free to raise funds for charities and other community organizations from the vast majority of the public. They would only have to refrain from asking for payments from interested parties. This tailoring of the rule ensures that the most problematic conduct is prohibited, while the vast majority of fundraising activity, which does not present the same ethics risks, can continue unaffected.

Lastly, the compliance burdens of this new rule would be low because the rule is based on existing ethics rules that are well developed and with which officials and employees should already be familiar. *Interested party* would be defined based on existing concepts defined in the law: City contractors and their affiliates,<sup>71</sup> restricted sources,<sup>72</sup> parties and participants to City proceedings,<sup>73</sup> and registered lobbyists.<sup>74</sup> Gift and contribution laws already apply to these categories of sources, so building the behested payment rule on top of them will make education and compliance easier.

The policy rationales for the recommended rule already underly longstanding rules regarding gifts and contributions. Other jurisdictions have already adopted some form of this rule, and the Controller has recommended that such a rule be created in San Francisco. The ethical issues that prevail without such a rule have become clear in the wake of two FBI corruption probes in California that involved behested payments from interested parties. The creation of a rule against soliciting behested payments from interested parties is warranted, timely, and necessary to create a basic ethical guidepost and prevent similar incidents in the future.

## 2. *Solicitation of Behested Payments to an Entity that is a Source of Income for the Official*

As discussed, gift laws prohibit officials and employees from accepting gifts from certain sources and limit the value of gifts that they can receive from a source in single year. However, existing laws do not adequately restrict officials and employees from soliciting payments to entities that are a source of income for the official or employee.

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<sup>70</sup> See CAL. FAIR POLITICAL PRACTICES COMMISSION, Summary of Behested Payment Related Provisions in other States and Local Jurisdictions, available at <http://fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/lawandpolicy/2020/august/Behested%20Payment%20Out%20of%20State%20Research.pdf>. See Campaign Legal Center Letter, Attachment 6.

<sup>71</sup> See Campaign & Gov. Conduct Code § 1.126.

<sup>72</sup> See *id.* at § 3.216.

<sup>73</sup> See Cal. Gov. Code § 84308.

<sup>74</sup> See Campaign & Gov. Conduct Code § 2.115.

In the case of Public Works, Nuru and other Public Works employees solicited behested payments to various Parks Alliance subaccounts. The employees were able to direct disbursements from the accounts, and many disbursements were made directly to Public Works employees.<sup>75</sup> The Controller concluded that the payments appeared to be reimbursements for departmental expenses but noted that, if any of the payments turned out to be gifts, this would raise ethical concerns.<sup>76</sup>

This would be problematic because the officer or employee in question would be indirectly receiving a personal financial benefit as a result of the behested payment. This potentially disguises the true source of a gift and the amount of money that the officer or employee is receiving from that source. A notable example is Councilmember Jose Huizar directing payments to the private high school for which his wife was a paid fundraiser. Huizar's wife received income from the school, and this income constituted a personal economic interest for Huizar.<sup>77</sup> Huizar's indirect personal benefit from the behested payments he directed to the school factored into his pay-to-play scheme involving developers. Likewise, Senator Ron Calderon utilized a behested payment to a nonprofit controlled by his brother to launder a bribe from an undercover FBI agent.

For this reason, this report recommends a rule that prohibits officials and employees from directing behested payments to organizations from which they or a spouse receive income. But, the rule would not apply if the official or employee or their spouse receives no income from the organization. For example, if an official served as an uncompensated volunteer board member for a nonprofit, the official could continue to raise funds for the organization. The rule would thus target the most problematic situations while still allowing officials and their spouses to engage in volunteer nonprofit opportunities, including fundraising for such organizations.

For example, the rule would not have prohibited Mark Farrell in general from directing behested payments to Parks Alliance even though Farrell's wife, Liz Farrell, was the chair of the Parks Alliance Board of Trustees during the time that Farrell solicited payments totaling \$882,500 to the organization.<sup>78</sup> However, assuming that board members of the nonprofit are not compensated, this fact would not create a financial interest in Parks Alliance on the part of Mark Farrell. Farrell would therefore have still been allowed to fundraise for Parks Alliance. (However, under the rule recommended in the previous subsection, Farrell would have been prohibited from soliciting behested payments from *interested parties* to Parks Alliance or any other recipient.)

The compliance burden of this rule would be minimal. The rule would only apply to officials and employees who are already required to file the Form 700 Statement of Economic Interests. The Form 700 requires filers to list all organizations from which they or their spouse receives income. Since the rule would only prohibit them from soliciting behested payments to organizations that are reportable sources of income for them, officials and employees will already have a list of organizations for which they cannot solicit behested payments.

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<sup>75</sup> Public Integrity Report 2, slide 2.

<sup>76</sup> *Id.* at slide 25.

<sup>77</sup> Cal. Gov. Code § 82030 (*income* includes "any community property interest in the income of a spouse").

<sup>78</sup> See Parks Alliance, Board of Trustees, available at <https://sanfranciscoparksalliance.org/board/>.

Other jurisdictions already have such a rule in place. New York City, New York State, Maryland, Alabama, the Federal Executive Branch, the United States House of Representatives, and the United States Senate have some form of this rule in effect.<sup>79</sup>

C. Next Steps for Phase I of the Project

Staff recommends that the Commission approve a motion approving the set of recommendations listed above.

Legislation that contains some of these recommendations has been introduced by Supervisor Matt Haney and is attached to this report as Attachment 7. Staff has been in close conversation with Supervisor Haney's Staff and will continue to collaborate on the legislation and support amendments that are in line with the Commission's policy decisions and at the guidance of the Chair. Because behested payment rules are located in Article III, Chapter 6 of the Code, Commission approval of legislation in this area is not required. Staff will continue to update the Commission on the status of the legislation as part of the ongoing project.

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<sup>79</sup> See Campaign Legal Center Letter, Attachment 6; CAL. FAIR POLITICAL PRACTICES COMMISSION, Summary of Behested Payment Related Provisions in other States and Local Jurisdictions, *available at* <http://fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/lawandpolicy/2020/august/Behested%20Payment%20Out%20of%20State%20Research.pdf>.

# ATTACHMENT 1

iMessage with +1 [redacted] Privacy

11/26/19, 1:46 PM

Nick thanks for the message return call Ron

12/2/19, 8:18 AM

Nick I have gotten commitments from Webcor, Clark, and Pankow for Lefty Odoul's Foundation. Please confirm receipt. Thanks Ron

Jes W. Pedersen

Bret Firebaugh

Marivic Chennault

Thx Nick!

I call Jes and bret and left them messages

Great thx!

12/4/19, 12:25 PM

Marivic's phone # is she just tried calling you

12/9/19, 8:18 AM

I talked to Vicki, she will check with Christopher on receipt of information. Did you mail or email the form?

12/9/19, 2:47 PM

Heard from Vicki sounds like you and Christopher connected today. Hope you were able to close the loop on information. I will be seeing Pankow later today

12/10/19, 8:10 AM

Nick, I pinged Vicki she has not received the form so stuck until it's returned

I never received one here's my email [redacted]  
Thank you

12/10/19, 10:06 AM

They sent it please confirm receipt

Yes

I filled it out and send it back to him

It was a six page form that was mainly for vendors so I filled out the best I could for a nonprofit donation

Thx

12/10/19, 2:24 PM

Process in progress when approved it will be overnighted to your foundation address

12/12/19, 9:30 AM

Nick let me know if you received anything. Any updates?

Not yet I will check mail today

Ok should be overnight service

Ok

12/12/19, 12:27 PM

I believe you will receive tomorrow

Ok

12/13/19, 12:55 PM

Receive anything?

Not yet

12/13/19, 3:02 PM

Sorry, I can't talk right now.

Delivered

No problem I was just letting you know I haven't seen anything come by yet I'm gonna leave here in an hour or so

# Redaction Log

Reason	Page (# of occurrences)	Description
Privacy	1 (1)	Due to privacy concerns, personal information, such as personal phone numbers, cell numbers and email addresses, has been redacted from the documents that we are making available to you. We redacted this personal information pursuant to Section 6254(c) and Section 6254(k) of the California Public Records Act and Article 1, Section 1 of the California Constitution.

# ATTACHMENT 2

Nick Bovis

October 30, 2017 at 3:29 PM

Re: Donation

To: [REDACTED]

That is for the party we have to do for Dpw holiday party

[REDACTED]

Re: Donation

October 30, 2017 at 3:23 PM

To: Nick Bovis

Wow! that's great 15K for the foundation.

[REDACTED]

Nick Bovis

October 28, 2017 at 1:05 PM

Donation

To: [REDACTED]

Check Image



RECOLOGY INC.  
50 CALIFORNIA ST 24TH FLOOR  
SAN FRANCISCO CA 941119796

Wells Fargo Bank, N.A.  
26-156  
531

VENDOR: 5070673

Check Date: 10/17/17

Check No: 11834223

PAY FIFTEEN THOUSAND AND 00/100\*\*\*\*\*

AMOUNT

\$\*\*\*\*15,000.00

PAID AFTER 10 DAY

PAY TO THE ORDER OF

LEFTY ODOULS FOUNDATION FOR KIDS

[REDACTED]

*Michael J. [Signature]*

*Mark R. Lomela*

[REDACTED]

# ATTACHMENT 3



April 1, 2015

Edwin M. Lee  
Mayor

Mohammed Nuru  
Director

Larry Stringer  
Deputy Director

Office of the Deputy Director  
for Operations

2323 Cesar Chavez St.  
San Francisco, CA 94124  
tel. 415-695-2003

[sfpublicworks.org](http://sfpublicworks.org)  
[facebook.com/sfpublicworks](https://facebook.com/sfpublicworks)  
[twitter.com/sfpublicworks](https://twitter.com/sfpublicworks)

Mark Arsenault, Vice President and General Manager  
Recology  
250 Executive Park Boulevard, Suite 2100  
San Francisco, CA 94134

Dear Mr. Arsenault:

San Francisco Public Works is recognizing National Public Works Week a little early this year by hosting a variety of event from April 20<sup>th</sup> through April 24<sup>th</sup>. These include our annual Operations Open House on Thursday, April 23<sup>rd</sup> and Employee Appreciation Picnic on Friday, April 24<sup>th</sup> from 3pm to 7pm at the Louis Sutter Playground in sunny McLaren Park.

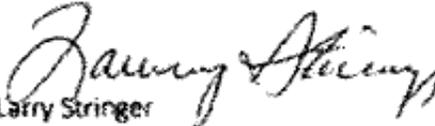
The picnic is management's opportunity to thank staff for all the hard work they have contributed throughout the year. We will recognize individuals and groups of employees that have gone beyond the call of duty to complete projects and provide exceptional service to the public. The Operations Open House is an opportunity for local students and participants in workforce development programs to learn about careers in the trades and crafts. The Open House provides a rich experience for students looking into alternative career paths; participants get to interact with our skilled labor staff on hands-on activities and discuss career options with union representatives.

Since Recology continues to be an outstanding partner, we hope that your management can join us at the celebrations. We also hope that we can count on your support to make the Open House and Employee Appreciation Picnic a success.

If Recology is able to help, your tax-deductable donation can be sent to San Francisco Public Works' fiscal sponsor, the San Francisco Parks Alliance, 1663 Mission Street, Suite 320, San Francisco, CA 94103. Their tax-id number is 23-7131784, and you can reference "Public Works Week" with your donation.

If you have any questions, please call us at (415) 695-2003. To RSVP for the picnic, email Jerad Weiner of my staff at [Jerad.Weiner@sfdpw.org](mailto:Jerad.Weiner@sfdpw.org). I look forward to seeing you at one of these events.

Sincerely,

  
Larry Stringer  
Deputy Director for Operations

# CHART 1

# CHART 1 - Payments Made to Parks Alliance at the Behest of Mark Farrell

Date	Payer	Amount	City	State	Zip
10/24/2017	1634 PINE STREET, LLC	5,000.00	SAN FRANCISCO	CA	94111
10/17/2017	ANONYMOUS	10,000.00			
10/6/2016	Anonymous	5,000.00			
10/15/2015	AT&T	15,000.00	San Francisco	CA	94103
9/26/2017	AVG LLC	5,000.00	SAN FRANCISCO	CA	94111
9/30/2015	Bay Club San Francisco	5,000.00	San Francisco	CA	94111
10/2/2015	BCSF, Inc.	5,000.00	San Francisco	CA	94103
10/14/2016	BCSF, Inc.	5,000.00	San Francisco	CA	94103
	CALIFORNIA PACIFIC MEDICAL				
6/2/2017	CENTER	5,000.00	SAN FRANCISCO	CA	94107
9/28/2015	ClearRock Capital	10,000.00	San Francisco	CA	94111
9/22/2015	CVS Pharmacy	5,000.00	Woonsocket	RI	2895
2/16/2017	DIANE B. WILSEY	100,000.00	SAN FRANCISCO	CA	94115
8/23/2016	Diane B. Wilsey	10,000.00	San Francisco	CA	94115
10/1/2015	Diane Wilsey	10,000.00	San Francisco	CA	94115
9/17/2015	Dignity Health	5,000.00	San Francisco	CA	94109
9/7/2016	Dignity Health	5,000.00	San Francisco	CA	94107
10/2/2015	Donald Carmignani	10,000.00	San Francisco	CA	94123
5/12/2016	Facebook, Inc.	10,000.00	Menlo Park	CA	94025
9/24/2015	Firefighters Local 798	5,000.00	San Francisco	CA	94158
8/17/2016	Fisher Family Fund	10,000.00	San Francisco	CA	94111
10/20/2017	FIVEPOINT	5,000.00	SAN FRANCISCO	CA	94104
9/1/2016	Fivepoint,	5,000.00	San Francisco	CA	94104
10/13/2015	Golden State Warriors	5,000.00	Oakland	CA	94607
10/20/2016	Golden State Warriors	5,000.00	Oakland	CA	94607
12/7/2016	GOOGLE	10,000.00	MOUNTAIN VIEW	CA	94043
8/8/2017	GOOGLE, INC.	10,000.00	MOUNTAIN VIEW	CA	94043
10/2/2015	Grass Roots Non-Profit Collective	5,000.00	San Francisco	CA	94109
10/10/2015	Hallinan & Hallinan	5,000.00	San Francisco	CA	94109
12/16/2016	HOUSING NOT TENTS - YES ON Q	30,000.00	SAN FRANCISCO	CA	94114
9/26/2015	Joseph & Edith Tobin	5,000.00	San Francisco	CA	94109
9/13/2016	Kaiser Foundation Health Plan	5,000.00	San Francisco	CA	94105
6/14/2017	KAISER PERMANENTE	5,000.00	SAN FRANCISCO	CA	94102
12/7/2017	Katharine M. Albright	5,000.00	San Francisco	Califo	94118-20
1/11/2017	KATHLEEN S. ANDERSON	5,000.00	SAN FRANCISCO	CA	94123
10/13/2015	Lennar Urban	5,000.00	San Francisco	CA	94104
11/14/2016	Lighthouse Public Affairs	5,000.00	San Francisco	CA	94133
10/4/2017	LYFT	5,000.00	SAN FRANCISCO	CA	94107
10/13/2015	Mark Perry	10,000.00	Menlo Park	CA	94025
6/22/2017	MICROSOFT CORPORATION	10,000.00	MOUNTAIN VIEW	CA	94043
12/7/2017	Pacific Gas and Electric Company	25,000.00	San Francisco	Califo	94105
11/8/2016	Pacific Gas and Electric Company	25,000.00	San Francisco	CA	94105
10/3/2015	Prado Group	12,500.00	San Francisco	CA	94108
7/11/2017	RANDI FISHER	5,000.00	SAN FRANCISCO	CA	94115
9/14/2015	Recology	10,000.00	San Francisco	CA	94111
6/2/2017	RECOLOGY SAN FRANCISCO	15,000.00	SAN FRANCISCO	CA	94111

11/2/2016	Recology San Francisco	10,000.00	San Francisco	CA	94134
8/4/2016	Ron Conway	10,000.00	San Francisco	CA	94111
8/16/2017	SAN FRANCISCO ASSOCIATION OF REALTORS	10,000.00	SAN FRANCISCO	CA	94102
9/10/2015	San Francisco Association of Realtors	10,000.00	San Francisco	CA	94102
9/15/2016	San Francisco Association of Realtors	10,000.00	San Francisco	CA	94102
9/13/2016	San Francisco Forty Niners	10,000.00	Santa Clara	CA	95054
6/2/2017	SAN FRANCISCO FORTY-NINERS	10,000.00	SANTA CLARA	CA	95054
9/11/2017	SAN FRANCISCO POLICE OFFICERS ASSOCIATION	5,000.00	SAN FRANCISCO	CA	94103
9/14/2015	San Francisco Police Officers Association	5,000.00	San Francisco	CA	94103
9/26/2015	San Francisco Waterfront Partners	5,000.00	San Francisco	CA	94111
9/30/2015	Schwab Charitable	25,000.00	San Francisco	CA	94105
10/16/2015	Thomas Coates	125,000.00	San Francisco	CA	94111
7/25/2017	THOMAS J. COATES	125,000.00	SAN FRANCISCO	CA	94111
9/9/2015	TMG Partners	5,000.00	San Francisco	CA	94104
9/24/2015	Tom & Linda Coates	25,000.00	San Francisco	CA	94111
9/11/2015	Trumark Urban Partners (TUP Webster LLC)	5,000.00	San Francisco	CA	94105
8/25/2016	Trumark Urban Partners (TUP Webster LLC)	5,000.00	San Francisco	CA	94109
7/18/2017	U.A. LOCAL #38	5,000.00	SAN FRANCISCO	CA	94103
7/31/2017	WELLS FARGO FOUNDATION	5,000.00	SAN FRANCISCO	CA	94104
<b>TOTAL</b>		<b>882,500.00</b>			

# ATTACHMENT 4

## Contact of Public Official Details

Date	09/28/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	PRESIDIO BAY VENTURES, LLC
Client Address	185 BERRY STREET, SUITE 1200 SAN FRANCISCO, CA, 94107
Client Phone	(760) 214-8753
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Planning and Building Permits
Issue	2670 GEARY STREET
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	09/14/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	NICK PODELL COMPANY
Client Address	100 DRUMM STREET SAN FRANCISCO, CA, 94111
Client Phone	(415) 296-8800
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Planning and Building Permits
Issue	2070 BRYANT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	10/18/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Technology
Issue	FIBER OPTIC NETWORK
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	11/14/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	11/15/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	11/29/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	11/30/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	02/10/2016
Lobbyist	Hayward, Boe
Firm or Employer	GOODYEAR PETERSON HAYWARD & ASSOCIATES, LLC
Client	FACEBOOK
Client Address	1 HACKER WAY MENLO PARK, CA, 94025
Client Phone	(650) 543-4800
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Transportation
Issue	PRIVATE EMPLOYEE SHUTTLE
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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<a href="#">Employment of City Officers or Employees</a>
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## Contact of Public Official Details

Date	04/08/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	SHORT-TERM RENTAL LEGISLATION
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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<a href="#">Lobbyist Clients</a>
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## Contact of Public Official Details

Date	02/23/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	AFFORDABLE HOUSING AND EVICTIONS
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	04/20/2015
Lobbyist	Jung, Mary
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	415-431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	SHORT TERM RENTAL LEGISLATION
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	05/20/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Economic Development
Issue	NEIGHBORHOOD STABILIZATION PROGRAM
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	05/26/2015
Lobbyist	Jung, Mary
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	415-431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	AFFORDABLE HOUSING AND EVICTIONS
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	AFFORDABLE HOUSING AND EVICTIONS
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	01/12/2016
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	IN-LAW/SECONDARY UNIT LEGISLATION
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

Date	01/12/2016
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	INCLUSIONARY ZONING BALLOT MEASURE
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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## Contact of Public Official Details

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Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	HOUSING DENSITY BONUS
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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# ATTACHMENT 5

Behested Payment Report

A Public Document

Behested Payment Report

<b>1. Elected Officer or CPUC Member</b> (Last name, First name) FARRELL, MARK <b>Agency Name</b> SAN FRANCISCO BOARD OF SUPERVISORS <b>Agency Street Address</b> [REDACTED] SAN FRANCISCO, CA 94102 <b>Designated Contact Person</b> (Name and title, if different) [REDACTED]		FILED Date Stamp 17 JAN 30 AM 10:13 SAN FRANCISCO ETHICS COMMISSION	<b>California 803</b> <b>Form</b> For Official Use Only
<b>Area Code/Phone Number</b> [REDACTED]	<b>E-mail</b> (Optional) [REDACTED]	<input type="checkbox"/> <b>Amendment</b> (See Part 5) <b>Date of Original Filing:</b> _____ (month, day, year)	

**2. Payor Information** (For additional payors, include an attachment with the names and addresses.)

SEE ATTACHED FOR PAYOR AND PAYMENT INFORMATION

Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**3. Payee Information** (For additional payees, include an attachment with the names and addresses.)

SAN FRANCISCO PARKS ALLIANCE

Name \_\_\_\_\_

[REDACTED] SAN FRANCISCO CA 94103

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**4. Payment Information** (Complete all information.)

**Date of Payment:** \_\_\_\_\_ **Amount of Payment:** (In-Kind FMV) \$ \_\_\_\_\_  
 (month, day, year) (Round to whole dollars.)

**Payment Type:**  Monetary Donation or  In-Kind Goods or Services (Provide description below.)

**Brief Description of In-Kind Payment:** \_\_\_\_\_

**Purpose:** (Check one and provide description below.)  Legislative  Governmental  Charitable

**Describe the legislative, governmental, charitable purpose, or event:** 10/14/16 CHARITABLE FUNDRAISING  
 EVENT FOR THE SHARED SCHOOLYARDS PROJECT OF THE SAN FRANCISCO PARKS ALLIANCE

**5. Amendment Description or Comments**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**6. Verification**

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 1-13-17 By [REDACTED]  
 DATE SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

**Supervisor Mark Farrell – Form 803 – Additional Payors**

Date	Payor	Amount	Address
5/12/16	Facebook, Inc.	10,000	[REDACTED] Menlo Park, CA 94025
8/4/16	Ron Conway	10,000	[REDACTED] San Francisco, CA 94111
8/17/16	Fisher Family Fund	10,000	[REDACTED] San Francisco, CA 94111
8/23/16	Diane B. Wilsey	10,000	[REDACTED] San Francisco, CA 94115
8/25/16	Trumark Urban Partners (TUP Webster LLC)	5,000	[REDACTED] San Francisco, CA 94109
9/1/16	Fivepoint	5,000	[REDACTED] San Francisco, CA 94104
9/7/16	Dignity Health	5,000	[REDACTED] San Francisco, CA 94107
9/13/16	Kaiser Foundation Health Plan	5,000	[REDACTED] San Francisco, CA 94105
9/13/16	San Francisco Forty Niners	10,000	[REDACTED] Santa Clara, CA 95054
9/15/16	San Francisco Association of Realtors	10,000	[REDACTED] San Francisco, CA 94102
10/6/16	Anonymous	5,000	
10/14/16	BCSF, Inc.	5,000	[REDACTED] San Francisco, CA 94103
10/20/16	Golden State Warriors	5,000	[REDACTED] Oakland, CA 94607
11/2/16	Recology San Francisco	10,000	[REDACTED] San Francisco, CA 94134
11/8/16	Pacific Gas and Electric Company	25,000	[REDACTED] San Francisco, CA 94105
11/14/16	Lighthouse Public Affairs	5,000	[REDACTED] San Francisco, CA 94133

Behested Payment Report

A Public Document FILED

Behested Payment Report

1. Elected Officer or CPUC Member (Last name, First name)

SUPERVISOR MARK FARRELL

Agency Name

SAN FRANCISCO BOARD OF SUPERVISORS

Agency Street Address

ONE DR. CARLTON B. GOODLETT PL., RM. 244, SAN FRANCISCO, CA 94102

Designated Contact Person (Name and title, if different)

Date Stamp  
15 OCT -8 PM 2:13

SAN FRANCISCO  
ETHICS COMMISSION

California 803  
Form

For Official Use Only

Amendment (See Part 5)

Date of Original Filing: \_\_\_\_\_  
(month, day, year)

Area Code/Phone Number

(415) 554-7752

E-mail (Optional)

2. Payor Information (For additional payors, include an attachment with the names and addresses.)

SEE ATTACHED FOR PAYOR AND PAYMENT INFORMATION

Name

Address

City

State

Zip Code

3. Payee Information (For additional payees, include an attachment with the names and addresses.)

SAN FRANCISCO PARKS ALLIANCE

Name

Address

SAN FRANCISCO

City

CA

State

94102

Zip Code

4. Payment Information (Complete all information.)

Date of Payment: \_\_\_\_\_  
(month, day, year)

Amount of Payment: (In-Kind FMV) \$ \_\_\_\_\_  
(Round to whole dollars.)

Payment Type:  Monetary Donation or  In-Kind Goods or Services (Provide description below.)

Brief Description of In-Kind Payment: \_\_\_\_\_

Purpose: (Check one and provide description below.)  Legislative  Governmental  Charitable

Describe the legislative, governmental, charitable purpose, or event: CHARITABLE FUNDRAISING FOR THE SHARED SCHOOLYARDS PROJECT OF THE SAN FRANCISCO PARKS ALLIANCE

5. Amendment Description or Comments

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 10/6/15  
DATE

By \_\_\_\_\_  
SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

FORM 803  
PART 2 ATTACHMENT - ADDITIONAL PAYORS

<u>DATE</u>	<u>NAME</u>	<u>AMOUNT</u>	<u>ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP</u>
9/9/2015	TMG Partners	\$5,000.00		San Francisco	CA	94104
9/10/2015	San Francisco Association of Realtors	\$10,000.00		San Francisco	CA	94102
9/11/2015	Trumark Urban Partners (TUP Webster LLC)	\$5,000.00		San Francisco	CA	94105
9/14/2015	Recology	\$10,000.00		San Francisco	CA	94111
9/14/2015	San Francisco Police Officers Association	\$5,000.00		San Francisco	CA	94103
9/17/2015	Dignity Health	\$5,000.00		San Francisco	CA	94109
9/22/2015	CVS Pharmacy	\$5,000.00		Woonsocket	RI	2895
9/24/2015	Firefighters Local 798	\$5,000.00		San Francisco	CA	94158
9/24/2015	Tom & Linda Coates	\$25,000.00		San Francisco	CA	94111
9/26/2015	San Francisco Waterfront Partners	\$5,000.00		San Francisco	CA	94111
9/26/2015	Joseph & Edith Tobin	\$5,000.00		San Francisco	CA	94109
9/28/2015	ClearRock Capital	\$10,000.00		San Francisco	CA	94111
9/30/2015	Bay Club San Francisco	\$5,000.00		San Francisco	CA	94111
9/30/2015	Schwab Charitable	\$25,000.00		San Francisco	CA	94105
10/1/2015	Diane Wilsey	\$10,000.00		San Francisco	CA	94115
10/2/2015	BCSF, Inc.	\$5,000.00		San Francisco	CA	94103
10/2/2015	Donald Carmignani	\$10,000.00		San Francisco	CA	94123
10/2/2015	Grass Roots Non-Profit Collective	\$5,000.00		San Francisco	CA	94109
10/3/2015	Prado Group	\$12,500.00		San Francisco	CA	94108

# ATTACHMENT 6



November 6, 2020

Patrick Ford  
Senior Policy and Legislative Affairs Counsel  
City and County of San Francisco Ethics Commission  
25 Van Ness Ave.  
Suite 220  
San Francisco, CA 94102

Dear Mr. Ford:

Campaign Legal Center (“CLC”) respectfully submits these written comments to the City and County of San Francisco Ethics Commission (“Commission”) regarding the Commission’s consideration of changes to local rules governing behested payments.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening American democracy across all levels of government. We work toward a more transparent, accountable and inclusive democracy that is responsive to the people. In furtherance of that goal, we work to ensure ethics laws across the country adequately protect the public’s confidence in the integrity of democratic institutions.

We support the Commission’s participation in efforts to reform San Francisco’s behested payment rules. As public confidence in the federal government hits historic lows<sup>1</sup> and San Francisco’s government responds to a corruption scandal,<sup>2</sup> it has never been more important to reaffirm the commitment to public service at the local level. Our comments are intended to inform the Commission and other stakeholders engaging in reform efforts

<sup>1</sup> Pew Research Center, *Public Trust in Government: 1958-2019* (Apr. 11, 2019), <https://www.pewresearch.org/politics/2019/04/11/public-trust-in-government-1958-2019/>.

<sup>2</sup> See Press Release, U.S. Dep’t of Justice, U.S. Att’y’s Off. N. Dist. Cal., New Charges, Plea Deals in San Francisco City Hall Corruption Investigation (Sept. 17, 2020), <https://www.justice.gov/usao-ndca/pr/new-charges-plea-deals-san-francisco-city-hall-corruption-investigation>.

how similarly situated jurisdictions govern behested payments through ethics laws and legal interpretations.

### **Examples of Regulations Restricting Public Officials from Soliciting Donations for Third-Party Organizations**

Although jurisdictions outside of California do not commonly refer to “behested payments” in their ethics laws, many jurisdictions have restrictions on government officials soliciting gifts or donations from interested parties for third-party organizations. The scope of our survey is limited to a sample of large cities and states, as well as the federal government. As described in the table below, the jurisdictions generally regulate this activity in some combination of the following four ways:

- Reporting requirements
- Limits on donation amounts
- Ban on certain donors
- Ban on certain third-party recipients

<b>Jurisdiction</b>	<b>Reporting Requirement</b>	<b>Limit on Amount Donated</b>	<b>Ban on Certain Donors</b>	<b>Ban on Certain Third-Party Recipients</b>
San Francisco	X		X	
New York City	X		X	X
Austin			X	
Seattle			X	
Philadelphia		X	X	X
New York State		X	X	X
Maryland		X	X	X
Federal Executive Branch	X		X	
U.S. House of Representatives	X	X	X	X
U.S. Senate	X	X	X	X

### **Recommendations for Behested Payment Rules**

CLC reviewed reform recommendations from the Controller of the City and County of San Francisco,<sup>3</sup> as well as proposed changes offered by

<sup>3</sup> City and Cnty. Of San Francisco Off. of the Controller, *Public Integrity Review, Preliminary Assessment: Gifts to Departments Through Non-City Organizations Lack Transparency and*

Commissioners Matt Haney and Aaron Peskin.<sup>4</sup> We believe that all of the recommendations essentially fall into one of the four categories listed above, and are improvements to the current rules. We are offering recommendations below that go beyond the current proposals and should improve the overall effectiveness of any amendments.

Please note that our recommendations are intended to prevent the activities that occurred with the Public Works department<sup>5</sup> and protect against bad actors exploiting any unintended loopholes in new rules.

**Reporting Requirements:** The reporting requirements for solicitations of behested payments, as well as any restrictions on behested payments, should apply to all city employees who solicit donations in their official capacities. Disclosing the solicitations of all employees avoids the loophole of allowing subordinates of covered officials (e.g., elected officials, department heads) to solicit donations in lieu of their bosses. Covering all city employees should not create an undue burden for administering this rule, as there should not be many circumstances where a city employee solicits donations in their official capacity from an interested party. More importantly, the broad application of the rule is needed to prevent easy circumvention.

Examples of jurisdictions in the survey with restrictions that cover less senior employees are New York City, Philadelphia, the Federal Executive Branch, the House of Representatives, and the Senate.

**Limit on Amount Donated:** Any solicited donation should be limited to a dollar amount to avoid the appearance of corruption. Without a limit on the amount of the donation, any permitted solicitation will diminish the public's trust by raising the perception of pay-to-play.

For example, the Haney and Peskin proposal bans solicitations from a company that is seeking a contract. However, the potential loophole is that solicitations are permitted before a request for proposals is issued, i.e., before a company is technically seeking a contract. The proposal would require disclosure of the solicitation if the company began seeking a contract a few months later, but disclosure alone does not change the fact that the donations may diminish the public's trust, especially when one of those donors may ultimately receive the contract (i.e., the intent of the rule is not to

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Create "Pay-to-Play" Risk (Sept. 24, 2020), <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20Review%20-%20Non-City%20Organizations%2009.24.20.pdf>.

<sup>4</sup> Memorandum from Pat Ford, Senior Policy and Legislative Affairs Counsel to Members of the City and Cnty, of San Francisco Ethics Comm'n, <https://sfethics.org/wp-content/uploads/2s020/10/2020.10.09-Agenda-Item-6-Policy-Report-FINAL.pdf>.

<sup>5</sup> See Off. of the Controller, *supra* note 3.

disqualify donors from receiving contracts, but the rule must address the inevitable pay-to-play perception of a large donor receiving the contract).

The perception of a pay-to-play problem is exacerbated when the law permits officials to solicit particularly large donations for third parties, when only wealthy interests are able to pay the price requested by the official. In other words, disclosure is a first step to exposing the problem, but it will not remove the appearance of corruption if there is no limit on how much a prospective donor is permitted to give at an official's request.

Solicited donations in lieu of honoraria from members of the U.S. Congress are limited to \$2,000 per occasion. Other jurisdictions surveyed, including New York State and Philadelphia, prohibit officials from soliciting payments to third parties that the official could not accept themselves under the gift rule limitations, presumably making the behested payment threshold coextensive with the gift rule dollar limit (\$15 in New York State and \$99 in Philadelphia).

**Ban Certain Donors:** The rule should ban donors who are restricted under the state and local gift laws. Many of the jurisdictions in the survey that restrict behested payments do so in their gift laws, presumably to assuage concerns that officials will use behested payments to circumvent gift restrictions. The current behested payment rules in San Francisco essentially do just that: create an exception to the gift law through behested payments. This becomes an exception that swallows the rule when a lobbyist or other restricted source can provide an official with unlimited donations to a third-party of the official's choice. As a result, the behested payment rules should align with the state and local gift rules and apply to donations from lobbyists and other restricted sources.

Examples of jurisdictions in the survey that ban officials from soliciting donations from registered lobbyists are: New York State, Philadelphia, Maryland, the Federal Executive Branch, the House of Representatives, and the Senate.

**Ban Certain Third Parties Recipients:** The third-party recipients of the donations should not include organizations from which the individual or his or her immediate family (parent, sibling, spouse, child, or dependent relative) derives any financial benefit. A direct conflict of interest exists if a city official or employee solicits donations for an organization in which they or a relative have a financial interest.

Examples of jurisdictions in the survey that ban donations to third-parties affiliated with the official are: New York City, New York State, Maryland, Federal Executive Branch, the House of Representatives, and the Senate.

## **Conclusion**

CLC respectfully urges the Commission to consider and, where practicable, implement these recommendations for reforming San Francisco's behested payments rules. We appreciate the opportunity to participate in this important process, and CLC welcomes any questions that the Executive Director, Commissioners, or any other stakeholder may have regarding our comments.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Kedric L. Payne  
General Counsel and Senior Director,  
Ethics

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Delaney N. Marsco  
Legal Counsel, Ethics

# ATTACHMENT 7

1 [Campaign and Governmental Conduct Code - Behested Payments]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to expand the**  
4 **definition of interested party, to prohibit appointed department heads from soliciting**  
5 **certain behested payments, and to require department heads to report solicitation of**  
6 **certain behested payments.**

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

11

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

13

14 Section 1. The Campaign and Governmental Conduct Code is hereby amended by  
15 revising Sections 3.600 and 3.610, and adding Section 3.605, to read as follows:

16 **SEC. 3.600. DEFINITIONS.**

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

19 "Agent" shall *mean any person who represents a party in connection with a proceeding*  
20 *involving a license, permit or other entitlement for use. be defined as set forth in Title 2, Section*  
21 *18438.3 of California Code of Regulations, as amended from time to time.*

22 "*Appointed department head*" shall *mean any department head who is required to file a*  
23 *Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code, except for the*  
24 *Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer.*

25 \* \* \* \*

1           “Commissioner” shall mean any member of a board or commission who is required to file a  
2 Statement of Economic Interests as set forth in Section 3.1-103(a)(1) of this Code.

3           \* \* \* \*

4           “Elected department head” shall mean Assessor-Recorder, City Attorney, District Attorney,  
5 Mayor, Public Defender, Sheriff, or Treasurer.

6           \* \* \* \*

7           “Interested party” shall mean either:

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

12                   (b) any person contracting with or seeking to contract with the officer’s department.

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

20           “Officer” shall mean any commissioner, appointed department head or elected department  
21 head. ~~the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public~~  
22 ~~Defender, a Member of the Board of Supervisors, or any member of a board or commission who is~~  
23 ~~required to file a Statement of Economic Interests, including all persons holding positions listed in~~  
24 ~~Section 3.1-103(a)(1) of this Code.~~

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

1           “Participant” shall means any person who is not a party but who actively supports or opposes  
2 (by lobbying in person, testifying in person, or otherwise acting to influence) a particular decision in a  
3 proceeding involving a license, permit, or other entitlement for use and who has a financial interest in  
4 the decision. ~~be defined as set forth in California Government Code Section 84308 and Title 2, Section~~  
5 ~~18438.4 of California Code of Regulations, as amended from time to time.~~

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

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

10           “Pending contract” shall mean a contract or prospective contract from the submission of a  
11 proposal until either (1) the termination of negotiations for such contract; or (2) the term of the  
12 contract has expired.

13           “Pending proceeding” shall mean a proceeding regarding administrative enforcement, a  
14 license, a permit, or other entitlement for use, while it is before (1) an officer or any board or  
15 commission (including the Board of Supervisors) on which the officer sits, if the officer is a  
16 commissioner or (2) before the officer’s department, if the officer is an appointed department head or  
17 elected department head.

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

19           \* \* \* \*

20  
21           **SEC. 3.605. PROHIBITING APPOINTED DEPARTMENT HEADS FROM SOLICITING**  
22 **BEHESTED PAYMENTS.**

23           **(a) PROHIBITION.**

24           (1) Appointed department heads shall not solicit any behested payment from any party,  
25 participant or agent of a party or participant involved in a pending proceeding:

1 (A) during the pending proceeding; and  
2 (B) for six months following the date on which a final decision is rendered in the  
3 pending proceeding.

4 (2) Appointed department heads shall not solicit any behested payment from any person  
5 with a pending contract before their department.

6 **(b) EXCEPTIONS.**

7 (1) Elected department heads. This Section 3.605 shall not apply elected department  
8 heads.

9 (2) Public appeals. This Section 3.605 shall not apply to public appeals made by  
10 appointed department heads.

11 (3) City department. This Section 3.605 shall not apply to requests or solicitations for  
12 behested payments made directly to a City department.

13  
14 **SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.**

15 **(a) FILING REQUIREMENT - COMMISSIONERS AND ELECTED DEPARTMENT**

16 **HEADS.**

17 (1) Proceeding regarding administrative enforcement, a license, a permit, or other  
18 entitlement for use. ~~If an officer~~ a commissioner or elected department head directly or indirectly  
19 requests or solicits any behested payment(s) from ~~an interested party~~ any party, participant or  
20 agent of a party or participant involved in a pending proceeding, the ~~officer~~ commissioner or elected  
21 department head shall file ~~the~~ a behested payment report ~~described in subsection (b) with the Ethics~~  
22 Commission in the following circumstances:

23 (+) (A) if the interested party makes any behested payment(s) totaling  
24 \$1,000 or more during the ~~pendency of the matter involving the interested party~~ pending proceeding,  
25 the ~~officer~~ commissioner or elected department head shall file a behested payment report ~~within 30~~

1 *days of the date on which the behested payment was made, or if there has been a series of behested*  
2 *payments, within 30 days of the date on which the behested payment(s) total \$1,000 or more;*

3 *(2) (B) if the interested party makes any behested payment(s) totaling*  
4 *\$1,000 or more during the six months following the date on which a final decision is rendered*  
5 *in the ~~matter involving the interested party pending proceeding~~, the ~~officer~~ commissioner or elected*  
6 *department head shall file a behested payment report ~~within 30 days of the date on which the~~*  
7 *~~behested payment was made, or if there has been a series of behested payments, within 30 days of the~~*  
8 *~~date on which the behested payment(s) total \$1,000 or more;~~ and*

9 *(3) (C) if the interested party made any behested payment(s) totaling*  
10 *\$1,000 or more in the 12 months prior to the commencement of a ~~matter involving the interested~~*  
11 *~~party pending proceeding~~, the ~~officer~~ commissioner or elected department head shall file a behested*  
12 *payment report within 30 days of the date the ~~officer~~ commissioner or elected department head*  
13 *knew or should have known that the source of the behested payment(s) became an interested*  
14 *party.*

15 *(2) Person contracting with or seeking to contract with department. If a commissioner*  
16 *or elected department head directly or indirectly requests or solicits any behested payment(s) totaling*  
17 *\$1,000 or more from any person who has a pending contract, the commissioner or elected department*  
18 *head shall file a behested payment report.*

19 **(b) FILING REQUIREMENT – APPOINTED DEPARTMENT HEADS.**

20 *(1) Proceeding regarding administrative enforcement, a license, a permit, or other*  
21 *entitlement for use.*

22 *(A) If an appointed department head directly or indirectly requests or solicits*  
23 *any behested payment(s) totaling \$1,000 or more from any party, participant or agent of a party or*  
24 *participant involved in a pending proceeding in the 12 months prior to the commencement of the*  
25 *proceeding, the appointed department head shall file a behested payment report within 30 days of the*

1 date the appointed department head knew or should have known that the source of the behested  
2 payment(s) became an interested party.

3 (B) If an appointed department head directly or indirectly requests or solicits  
4 any behested payment(s) from any party, participant or agent of a party or participant involved in a  
5 pending proceeding, and if the direct recipient of the behested payment is a City department, the  
6 appointed department head shall file a behested payment report under the following circumstances:

7 (i) if the interested party makes any behested payment(s) totaling \$1,000  
8 or more during the pending proceeding; and

9 (ii) if the interested party makes any behested payment(s) totaling \$1,000  
10 or more during the six months following the date on which a final decision is rendered in the pending  
11 proceeding.

12 (2) **Person contracting with or seeking to contract with department.** If an appointed  
13 department head directly or indirectly requests or solicits any behested payment(s) totaling \$1,000 or  
14 more from any person who has a pending contract with the department head's department, and if the  
15 direct recipient of the behested payment is a City department, the department head shall file a behested  
16 payment report.

17 ~~(b)~~ (c) **BEHESTED PAYMENT REPORT.** The behested payment report shall include  
18 the following:

- 19 (1) name of payor;  
20 (2) address of payor;  
21 (3) amount of the payment(s);  
22 (4) date(s) the payment(s) were made,  
23 (5) the name~~(s)~~ and address~~(es)~~ of the payee(s),  
24 (6) a brief description of the goods or services provided or purchased, if any,  
25 and a description of the specific purpose or event for which the payment(s) were made;

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

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

10 (9) if in the six months following the deadline for filing the behested payment  
11 report, the payee has created or distributed 200 or more substantially similar communications  
12 featuring the officer, the officer shall file an amended payment report that discloses a brief  
13 description of such communication(s), the purpose of the communication(s), the number of  
14 communication(s) distributed, and a copy of the communication(s).

15 *(d) FILING A BEHESTED PAYMENT REPORT. Unless otherwise provided under this*  
16 *Section 3.610, when an officer is required to file a behested payment report, the officer shall file the*  
17 *behested payment report described in subsection (c) with the Ethics Commission within 30 days of the*  
18 *date on which the behested payment was made, or if there has been a series of behested payments,*  
19 *within 30 days of the date on which the behested payments total \$1,000 or more.*

20 ~~(e)~~ (e) **AMENDMENTS.** If any of the information previously disclosed on a behested  
21 payment report changes during the pendency of the matter involving the interested party, or  
22 within six months of the final decision in such matter, the officer shall file an amended  
23 behested payment report.

24 ~~(d)~~ (f) **PUBLIC APPEALS.** Notwithstanding subsections (a) and (b), no officer shall be  
25 required to report any behested payment that is made solely in response to a public appeal.

1            ~~(e)~~ (g) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a  
2 public appeal, that any person make a behested payment, the official or his agent must notify  
3 that person that if the person makes any behested payment in response to the solicitation or  
4 request, the person may be subject to the disclosure and notice requirements in Section  
5 3.620.

6            ~~(f)~~ (h) **WEBSITE POSTING.** The Ethics Commission shall ~~make available through its~~  
7 ~~website~~ all behested payment reports it receives from officers on its website.

8  
9            Section 2. Effective Date. This ordinance shall become effective 30 days after  
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
12 of Supervisors overrides the Mayor’s veto of the ordinance.

13  
14            Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
18 additions, and Board amendment deletions in accordance with the “Note” that appears under  
19 the official title of the ordinance.

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Andrew Shen  
24        ANDREW SHEN  
25        Deputy City Attorney

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