

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 include City contractors, and persons seeking to**
5 **influence City officers and employees, registered contact lobbyists, permit consultants,**
6 **and to prohibit ~~appointed~~ elected officials, department heads, commissioners, and**
7 **designated employees from soliciting behested payments from interested parties.**

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

12

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

14

15 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
16 revising Sections 3.600, 3.610, ~~3.620, 3.630,~~ and 3.640, and adding Section 3.605, and
17 deleting Section 3.620 and 3.630, to read as follows:

18 **SEC. 3.600. DEFINITIONS.**

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

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

22 “Agent” shall mean any person who represents a party in connection with a proceeding
23 involving a license, permit, or other entitlement for use ~~be defined~~ as set forth in Title 2, Section
24 18438.3 of the California Code of Regulations, as amended from time to time.

25

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

5 * * * *

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

8 “Commissioner” shall mean any member of a City board or commission, excluding the Board
9 of Supervisors, who is required to file a Statement of Economic Interests as set forth in Section 3.1-
10 103(a)(1) of this Code.

11 * * * *

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

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

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

18 * * * *

19 “Interested party” shall mean:

20 (a) any party, participant or agent of a party or participant involved in a
21 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
22 use, before ~~an officer or any board or commission (including the Board of Supervisors) on which the~~
23 ~~officer sits~~ (1) an officer, (2) any board or commission (including the Board of Supervisors) on which
24 the officer sits, (3) the department of the officer, or (4) the department of the designated employee;
25

1 (b) any City Contractor contracting with or seeking to contract with the designated
2 employee's or officer's department, or any affiliate of such a City Contractor; or

3 (c) any person who attempted to influence the employee or officer in any legislative or
4 administrative action, provided that "attempt to influence" shall be defined as set forth in
5 Section 3.216(b)(1) of this Code and the Ethics Commission's regulations implementing
6 Section 3.216(b)(1), and shall not include oral or written public comment that becomes part of
7 the record of a public hearing;

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

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

16 "Interested party" shall not include: (a) any nonprofit organization that Article V of the Charter
17 has authorized to support an arts and culture department; or (b) any federal or State
18 government agency.

19 "License, permit, or other entitlement for use" shall mean professional, trade, or land use
20 licenses, permits, or other entitlements to use property or engage in business, including professional
21 license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative
22 subdivision and parcel maps, cable television franchises, building and development permits, private
23 development plans, and contracts (other than labor or personal employment contracts and
24 competitively bid contracts where the City is required to select the highest or lowest qualified bidder).
25

1 *be defined* as set forth in California Government Code Section 84308, as amended from time
2 to time.

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

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

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

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

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

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

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

21 * * * *

22 **SEC. 3.605 3.610. PROHIBITING ELECTED OFFICIALS, APPOINTED**
23 **DEPARTMENT HEADS, COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM**
24 **SOLICITING BEHESTED PAYMENTS FROM INTERESTED PARTIES.**

1 (a) **PROHIBITION.** Elected officials, ~~Appointed~~ department heads, commissioners, and
2 designated employees shall not directly or indirectly solicit any behested payment from any interested
3 party in the following circumstances:

4 (1) **Administrative proceedings.** If the interested party is a party, participant, or agent
5 of a party or participant in a proceeding before the ~~elected official's, appointed~~ department head's,
6 commissioner's, or designated employee's department regarding administrative enforcement, a license,
7 a permit, or other entitlement for use, the prohibition set forth in this subsection (a) shall apply:

8 (A) during the proceeding; and

9 (B) for ~~six~~ twelve months following the date on which a final decision is
10 rendered in the proceeding.

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

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

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

17 (3) **Persons seeking to influence.** If the interested party is a person who attempted to
18 influence the ~~elected official, appointed~~ department head, commissioner, or designated employee in
19 any legislative or administrative action, the prohibition set forth in this subsection (a) shall apply for
20 12 months following the date of each attempt to influence.

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

1 (5) Permit consultants. Elected officials, department heads, commissioners,
2 and designated employees may not solicit any behested payment from a permit consultant
3 who has registered with the Ethics Commission, if the permit consultant contacts the
4 designated employee's or officer's department to carry out permit consulting services.

5 ~~(b) EXCEPTIONS.~~

6 ~~(1) Elected department heads. This Section 3.605 shall not apply to elected~~
7 ~~department heads.~~

8 ~~(2) Public appeals. This Section 3.605 shall not apply to public appeals.~~

9 (b) INDIRECT SOLICITATION. For the purposes of this Section 3.610, a City officer
10 or employee is indirectly soliciting a behested payment when the City officer or employee
11 directs or otherwise urges another person to solicit a behested payment from an identifiable
12 person or set of persons.

13 (bc) EXCEPTION – PUBLIC APPEALS. This Section 3.610 shall not apply to public
14 appeals.

15 ~~SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS BY~~
16 ~~ELECTED OFFICIALS.~~

17 ~~(a) FILING REQUIREMENT.~~

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

24 ~~(1) (A) if the interested party makes any behested payment(s) totaling~~
25 ~~\$1,000 or more during the pendency of the matter involving the interested party proceeding,~~

1 or during the six months following the date on which a final decision is rendered, the officer
2 shall file a behested payment report within 30 days of the date on which the behested
3 payment was made, or if there has been a series of behested payments, within 30 days of the
4 date on which the behested payment(s) total \$1,000 or more; or

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

11 (3) (B) if the interested party made any behested payment(s) totaling
12 \$1,000 or more in the 12 months prior to the commencement of a matter involving the
13 interested party proceeding, in which case the officer elected official shall file a behested
14 payment report within 30 days of the date the officer elected official knew or should have
15 known that the source of the behested payment(s) became an interested party.

16 (2) **Contracts.** If an elected official directly or indirectly requests or solicits any
17 behested payment(s) from any City Contractor contracting with or seeking to contract with the
18 elected official's department, or any affiliate of such City Contractor, the elected official shall
19 file a behested payment report in the following circumstances:

20 (A) the interested party makes any behested payment(s) totaling \$1,000
21 or more after the submission of a proposal and before either the termination of negotiations
22 for the contract or the end of the contract's term;

23 (B) the interested party makes any behested payment(s) totaling \$1,000
24 or more during the six months after either the termination of negotiations for the contract, or
25 the end of the contract's term; or

1 (C) the interested party made any behested payment(s) totaling \$1,000
2 or more in the 12 months prior to the submission of a proposal, in which case the elected
3 official shall file a behested payment report within 30 days of the date the elected official knew
4 or should have known that the source of the behested payment(s) became an interested
5 party.

6 (3) ~~Persons seeking to influence.~~ If an elected official directly or indirectly
7 requests or solicits any behested payment(s) from any interested party who attempted to
8 influence the elected official in any legislative or administrative action, the elected official shall
9 file a behested payment report if, within the 12 months following the date of any attempt by
10 the interested party to influence the elected official, the interested party made any behested
11 payment(s) totaling \$1,000 or more.

12 (b) ~~BEHESTED PAYMENT REPORT.~~ The behested payment report shall include the
13 following:

- 14 (1) ~~name of payor;~~
- 15 (2) ~~address of payor;~~
- 16 (3) ~~amount of the payment(s);~~
- 17 (4) ~~date(s) the payment(s) were made;~~
- 18 (5) ~~the name(s) and address(es) of the payee(s);~~
- 19 (6) ~~a brief description of the goods or services provided or purchased, if any,~~
20 ~~and a description of the specific purpose or event for which the payment(s) were made;~~
- 21 (7) ~~if the officer elected official or the officer's elected official's relative, staff~~
22 ~~member, or paid campaign staff, is an officer, executive, member of the board of directors,~~
23 ~~staff member, or authorized agent for the recipient of the behested payment(s), such~~
24 ~~individual's name, relation to the officer elected official, and position held with the payee;~~

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

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

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

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

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

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

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

9 ~~**SEC. 3.620. FILING BY DONORS.**~~

10 ~~(a) **REPORT.** Any interested party who makes a behested payment, or series of~~
11 ~~behested payments in a calendar year, of \$10,000 or more must disclose, within 30 days~~
12 ~~following the date on which the payment(s) totals \$10,000 or more:~~

13 ~~(1) **Administrative proceedings.** If the interested party is a party, participant,~~
14 ~~or agent of a party or participant involved in a proceeding regarding administrative~~
15 ~~enforcement, a license, a permit, or other entitlement for use:~~

16 ~~(A) the proceeding(s) the interested party is or was involved in with the~~
17 ~~board, commission or department of the elected official who requested or solicited the~~
18 ~~behested payment(s);~~

19 ~~(2) (B) the outcome(s) the interested party is or was seeking in such~~
20 ~~proceedings before or decisions by the board, commission, or department of the elected~~
21 ~~official who requested or solicited the behested payment(s); and~~

22 ~~(3) (C) any contact(s) the interested party made in relation to such~~
23 ~~proceedings before or decisions by the board, commission, or department of the elected~~
24 ~~official who requested or solicited the behested payment(s).~~

1 ~~(2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a~~
2 ~~City Contractor:~~

3 ~~(A) the total value(s), description(s), and date(s) of the contract(s) with or~~
4 ~~proposal(s) submitted to the board, commission, or department of the elected official who~~
5 ~~requested or solicited the behested payment(s);~~

6 ~~(B) the name(s) of the City Contractor(s) or affiliate(s), and the~~
7 ~~contracting City department(s); and~~

8 ~~(C) any contact(s) the interested party made in relation to the contract(s)~~
9 ~~with or proposal(s) submitted to the board, commission, or department of the elected official~~
10 ~~who requested or solicited the behested payment(s).~~

11 ~~(3) **Persons seeking to influence.** If the interested party attempted to~~
12 ~~influence the elected official in any legislative or administrative action:~~

13 ~~(A) the legislative or administrative action(s) in which the interested party~~
14 ~~attempted to influence the elected official;~~

15 ~~(B) the outcome(s) the interested party is or was seeking in such~~
16 ~~legislative or administrative action(s); and~~

17 ~~(C) the dates of any contact(s) the interested party made with the elected~~
18 ~~official in relation to such legislative or administrative action(s).~~

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

21 ~~(c) **PUBLIC APPEALS.** An interested party has no obligation to disclose a behested~~
22 ~~payment made in response to an elected official's public appeal.~~

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

24 ~~(a) **MAJOR BEHESTED PAYMENT REPORT.** Any person who receives a behested~~
25 ~~payment, or a series of behested payments, received during a calendar year, totaling~~

1 \$100,000 or more from interested parties that was made at the behest of any officer elected
2 official must do the following:

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

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

9 (i) (A) all payments made by the person that were funded in whole or in
10 part by the behested payment(s) made at the behest of the officer elected official; and

11 (ii) (B) if the person was an interested party in any City decision(s)
12 involving the officer elected official in the 12 months following the date on which the
13 payment(s) were made:

14 (A) (i) the proceeding the person is or was involved in;

15 (B) (ii) the decision(s) the person actively supported or opposed;

16 (C) (iii) the outcome(s) the person is or was seeking in such
17 proceedings or decisions; and

18 (D) (iv) any contact(s) the person made in relation to such
19 proceedings or decisions.

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

22 (c) **NOTICE REQUIRED.** If a recipient of a behested payment does not receive the
23 notice, as required under Section 3.620, that a particular payment is a behested payment, the
24 recipient will not be subject to penalties under Section 3.650, as regards that particular
25 payment, for failure to file pursuant to subsection (a) unless it is clear from the circumstances

1 that the recipient knew or should have known that the payment was made at the behest of an
2 officer elected official.

3 (d) ~~PUBLIC APPEALS.~~ A recipient of behested payments has no obligation to
4 disclose payments received due to an elected official's public appeal.

5 **SEC. 3.640. REGULATIONS.**

6 (a) The Ethics Commission may adopt rules, regulations, and guidelines for the
7 implementation of this Chapter 6. The Ethics Commission shall adopt rules, regulations or
8 guidelines defining and illustrating "interested party" and when a payment is made "at the behest of"
9 a City officer or designated employee.

10 (b) The Ethics Commission may, by regulation, require persons to electronically submit
11 information required to fulfill their obligations under this Chapter 6.

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

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

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

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

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