

LEGISLATIVE DIGEST

(12/06/2021, Amended in Committee)

[Campaign and Governmental Conduct Code - Behested Payments]

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

Existing Law

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

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

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

S.F. Campaign & Gov’tal Conduct Code § 3.610. These behested payment reports are not required for solicitations made through a “public appeal.” A “public appeal” is a broad request made through television, radio, billboards, a public message on an online platform, the distribution of 200 or more identical pieces of printed material, the distribution of a single email to 200 or more recipients, or a speech to a group of 20 or more individuals. S.F. Campaign & Gov’tal Conduct Code § 3.600.

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

Amendments to Current Law

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

- contractors and prospective contractors before an officer’s or employee’s department or commission;
- persons who attempted to influence officers and employees in any legislative or administrative action;
- contact lobbyists or expenditure lobbyists who have registered as lobbyists with the Ethics Commission; and
- permit consultants who have registered with the Ethics Commission, if the permit consultant has reported any contacts with the designated employee’s or officer’s department to carry out permit consulting services during the prior 12 months.

But “interested party” would not include either: (a) a nonprofit organization that the Charter has explicitly authorized to support one of the arts and culture departments established in Article V (i.e., the nonprofits that support the Asian Art Museum and the Fine Arts Museums); (b) any federal or State government agency; or an individual, solely because the individual is an uncompensated board member of a nonprofit organization that is an interested party.

Additionally, for the purposes of the “contractor and prospective contractor” category listed above, “interested party” would not include a person providing a grant to the City or a City department.

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

Under this prohibition, elected officials, department heads, commissioners, and designated employees could not solicit behested payments in the following instances:

- from a party, participant or agent of a party or participant in a proceeding while the matter is pending and for 12 months following the end of such a proceeding
- from contractors who are a party to or seeking a contract with their department, from the submission of a proposal until the later of either the termination of negotiations for the contract or the end of the contract’s term;

- from persons who attempted to influence them in any legislative or administrative action, for 12 months following the date of each attempt to influence;
- from a registered contact or expenditure lobbyist, if the contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or officer's department; or
- from a registered permit consultant, if the permit consultant has reported any contacts with the designated employee's or officer's department to carry out permit consulting services during the prior 12 months.

The proposed legislation would also delete the behested payment filing obligations that primarily apply to elected officials and commissioners, as the solicitation of such payments would largely be prohibited.

Background Information

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

n:\legana\as2020\2100014\01569468.docx