

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: April 26, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 220539

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

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc: Patrick Ford, Ethics Commission
Michael Canning, Ethics Commission



City and County of San Francisco

Master Report

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

File Number: 220539 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

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

File Name: Campaign and Governmental Conduct Code - Behested Payments Exception **Date Introduced:** 05/10/2022

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

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

Sponsor: Peskin

History of Legislative File 220539

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	05/10/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	06/09/2022	

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

2

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

10

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

18

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

20

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

24

25 **SEC. 3.600. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “Interested party” shall mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (A) during the proceeding; and

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

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

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

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

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

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

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

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

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

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

1 (d) EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS. This

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

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

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

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

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

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Behested Payments Exception]

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

Existing Law

Under Campaign and Governmental Conduct (C&GC) Code Section 3.600, *et seq.*, behested payments by interested parties are prohibited. (Ordinance No. 232-21 (File No. 201132).) The prohibition became effective January 23, 2022.

Amendments to Current Law

This ordinance adds an exception to the behested payment prohibition. The exception allows City officers and employees to solicit charitable donations from interested parties – contractors contracting with or seeking to contract with the subject officer’s or employee’s department – under a program.

A program for purposes of the ordinance either (a) existed before the effective date of the behested payment prohibition (January 23, 2022) or (b) is authorized by the Board of Supervisors and involves a process for the solicitation of donations through a public, competitive procurement of a contract and results in the award of a contract that includes an obligation to make donations, such as the San Francisco Public Utilities Commission Social Impact Partnership program.

The exception would also allow City officers and employees to award, approve, execute, administer, and enforce a contract that includes excepted program obligations.

Background Information

The behested payment prohibition halted the San Francisco Public Utilities Commission Social Impact Partnership (SIP) program and possibly other department programs. By exempting solicitations made under a program as defined in this ordinance, the Board is allowing City officers and employees to proceed with administering a program as they were before the Board enacted the behested payment prohibition without further action by the Board.

FILE NO. 220539

Note that the ordinance does not authorize the SIP or any other program, it only exempts the program solicitation and related contract activities by City officers and employees from the behested payment prohibition.

The Board may also in the future authorize by ordinance a program like the SIP program. Such ordinance would not require further exception from the behested payment prohibition.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only

From: [Bregman, Sheryl \(CAT\)](#)
To: [Flynn, Ronald \(PUC\)](#); [Hepner, Lee \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [Peskin, Aaron \(BOS\)](#); [Scarpulla, John \(PUC\)](#)
Subject: RE: Peskin - Introduction Form - Ordinance - CGCC - Behested Payments Exception
Date: Tuesday, May 10, 2022 5:31:02 PM
Attachments: [image004.png](#)

Lee,

I will approve as to form.

Sheryl L. Bregman (she/her)
Utilities General Counsel
Office of City Attorney David Chiu
(415) 554-4296 Direct
www.sfcityattorney.org
Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

From: Flynn, Ronald P <RFlynn@sfgwater.org>
Sent: Tuesday, May 10, 2022 5:27 PM
To: Hepner, Lee (BOS) <lee.hepner@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Pearson, Anne (CAT) <Anne.Pearson@sfcityatty.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Scarpulla, John (PUC) <JScarpulla@sfgwater.org>; Bregman, Sheryl (CAT) <Sheryl.Bregman@sfcityatty.org>
Subject: RE: Peskin - Introduction Form - Ordinance - CGCC - Behested Payments Exception

Lee, I am no longer at the City Attorney so I will leave it to Sheryl to confirm.

Ron

Ronald P Flynn (he/him)
Chief of Staff, San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
(415) 551-4303
RFlynn@sfgwater.org

Assistant: Valerie Aguas VAguas@sfgwater.org



From: Hepner, Lee (BOS) <lee.hepner@sfgov.org>
Sent: Tuesday, May 10, 2022 4:48 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Scarpulla, John <JScarpulla@sfwater.org>; BREGMAN, SHERYL (CAT) <Sheryl.Bregman@sfcityatty.org>; Flynn, Ronald P <RFlynn@sfwater.org>
Subject: Peskin - Introduction Form - Ordinance - CGCC - Behested Payments Exception
Importance: High

CAUTION: This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please find attached the subject ordinance and corresponding introduction form.

DCAs Bregman and Flynn are copied here for purposes of confirming that the attached has been signed to form by counsel.

Thanks!
-Lee

Lee Hepner
Legislative Aide
Supervisor Aaron Peskin
(415) 554-7419 | *pronouns: he, him, his*

[District 3 Website](#)

Sign up for our newsletter [here!](#)

From: Scarpulla, John <JScarpulla@sfwater.org>
Sent: Tuesday, May 10, 2022 7:53 AM
To: Hepner, Lee (BOS) <lee.hepner@sfgov.org>
Cc: BREGMAN, SHERYL (CAT) <Sheryl.Bregman@sfcityatty.org>; Flynn, Ronald (PUC) <RFlynn@sfwater.org>
Subject: Legislation for Intro
Importance: High

Hi Lee,

Please see attached for the final signed version of the behested payment exception ordinance for today's introduction. I've also attached the legislative digest.

Cc'ing Sheryl Bregman, the drafting City Attorney, in case you have any questions, concerns, etc.

Thanks, all!

Best,
John

[Campaign and Governmental Conduct Code - Behested Payments Exception]

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

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SEC. 3.600. DEFINITIONS.

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5 consultation, coordination, or concert with, at the request or suggestion of, or with the
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8 an agent thereof, and that is made principally for a legislative, governmental, or charitable
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13 the Board of Supervisors, who is required to file a Statement of Economic Interests as set
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8 officer sits;

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11 person providing a grant to the City or City department;

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

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

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

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

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

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

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

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

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

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