

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

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3 **Ordinance amending the Campaign and Governmental Conduct Code to modify the**
4 **rules concerning behested payment solicitations, by excepting solicitations made**
5 **under certain types of City programs to solicit, request, and contractually obligate**
6 **charitable donations through competitively procured contracts; providing that the**
7 **receipt of a non-discretionary license, permit, or other entitlement for use does not**
8 **make a person an interested party; providing that attempting to influence an**
9 **administrative action does not make a person an interested party; excepting**
10 **solicitations made in connection with the City’s acquisition of real property; and**
11 **making other clarifying changes.**

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

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

21 Section 1. Article III, Chapter 6 of the Campaign and Governmental Conduct Code is
22 hereby amended by revising Sections 3.610 and 3.620, to read as follows.

23 **SEC. 3.610. DEFINITIONS.**

24 Whenever in this Chapter 6 the following words or phrases are used, they shall have
25 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 or provide goods or services to assist with City projects or programs,
3 under which the grantor imposes restrictions on the City’s spending of the grant ~~fun~~*ds*.

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, (3) the department of the officer, or (4) the department of the designated
9 employee; except for any license, permit, or other entitlement for use that is issued on a ministerial
10 basis;

11 (b) (1) any City Contractor contracting with or seeking to contract with the designated
12 employee’s or officer’s department, or any affiliate of such a City Contractor, except for any
13 person providing a grant to the City or a City department, and (2) as pertains to members of
14 the Board of Supervisors, any City Contractor, or any affiliate of such a City Contractor, if the
15 Board of Supervisors approves the City Contractor’s agreement with the City, except for any
16 person providing a grant to the City or a City department;

17 (c) any person who attempted to influence the employee or officer in any legislative
18 ~~or administrative~~ action, provided that “attempt to influence” shall be defined as set forth in
19 Section 3.216(b)(1) of this Code and the Ethics Commission’s regulations implementing
20 Section 3.216(b)(1) with respect to legislative actions, and shall not include (1) oral or written
21 public comment that becomes part of the record of a public hearing; (2) speaking at a public
22 forum or rally, ~~or~~ (3) communications made via email, petition or social media; or (4)
23 communications with a City employee or officer regarding a grant from that person to the City,
24 including any communications with respect to the City’s use of the grant for a particular purpose;
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1 (d) any contact or expenditure lobbyist, as defined under Article II, Chapter 1 of this
2 Code, who has registered as a contact or expenditure lobbyist with the Ethics Commission, if
3 the contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's
4 or officer's department; or

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

9 "Interested party" shall not include: (a) any nonprofit organization that Article V of the
10 Charter has authorized to support an arts and culture department; (b) any federal or State
11 government agency; (c) an individual, solely because the individual is an uncompensated
12 board member of a nonprofit organization that is an interested party; or (d) as pertains to
13 members of the Board of Supervisors, a City Contractor, or affiliate of a City Contractor, if the
14 Board of Supervisors did not approve the City Contractor's agreement with the City.

15 "License, permit, or other entitlement for use" shall mean professional, trade, or land
16 use licenses, permits, or other entitlements to use property or engage in business, issued in the
17 discretion of the administering agency, including professional license revocations, conditional use
18 permits, rezoning of property parcels, zoning variances, tentative subdivision and parcel
19 maps, cable television franchises, building and development permits, private development
20 plans, and contracts (other than labor or personal employment contracts and competitively bid
21 contracts where the City is required to select the highest or lowest qualified bidder), as set
22 forth in California Government Code Section 84308, as amended from time to time. For
23 purposes of Section 3.620, "license, permit, or other entitlement for use" shall not include licenses,
24 permits, or other entitlements for use that involve little or no discretion, merely apply a checklist or
25 objective criteria to the facts as presented, and/or are issued over-the-counter or "as-of-right".

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

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

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

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

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

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

15 “Proceeding” shall be defined as set forth in 2 California Code of Regulations Section
16 18438.2, as amended from time to time, and shall not include a ministerial action such as the issuance
17 of a first-in-time/first-in-right license, permit, or other entitlement for use, as may be the case when a
18 member of the public seeks permission from a City department to use public space.

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

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

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2 **SEC. 3.620. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS,**
3 **COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED**
4 **PAYMENTS FROM INTERESTED PARTIES.**

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

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

13 (A) during the proceeding; and

14 (B) for 12~~twelve~~ months following the date on which a final decision is rendered
15 in the proceeding.

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

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

21 (B) 12~~twelve~~ months following the end of the contract's term.

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

1 (4) **Lobbyists.** ~~Officers Elected officials, department heads, commissioners,~~ and
2 designated employees may not solicit any behested payment from a contact lobbyist or
3 expenditure lobbyist who has registered as a lobbyist with the Ethics Commission, if the
4 contact lobbyist or expenditure lobbyist is registered to lobby the designated employee's or
5 officer's department.

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

11 (b) **INDIRECT SOLICITATION.** For the purposes of this Section 3.620, a City officer
12 or employee is indirectly soliciting a behested payment when the City officer or employee
13 directs or otherwise urges another person to solicit a behested payment from an identifiable
14 interested party or parties.

15 (c) **EXCEPTION – PUBLIC APPEALS.** This Section 3.620 shall not apply to public
16 appeals.

17 (d) **EXCEPTION – COMPETITIVELY SECURED PROGRAM SOLICITATIONS.** This
18 Section 3.620 shall not apply to solicitations made under an authorized program for charitable
19 donations of time and/or money from interested parties to nonprofit 501(c)(3) organizations or public
20 schools. For purposes of this subsection (d), an authorized program is a process for soliciting
21 donations through a competitively procured contract, which program either (i) existed on or before
22 January 23, 2022, such as the San Francisco Public Utilities Commission Social Impact Partnership
23 program, or (ii) is authorized by the Board of Supervisors by ordinance. For a contract that includes
24 an authorized program excepted under this subsection (d), all solicitations under such program related
25 to the award, approval, execution, administration, modification, or enforcement of that contract by City

1 officers or employees are likewise excepted. Any program under (i) above may proceed as it existed on
2 or before January 23, 2022 until the earlier of (A) the Board of Supervisors adopts an ordinance
3 authorizing a program involving donations through a competitively procured contract, as provided by
4 (ii) above, or (B) December 31, 2024.

5 (f) **EXCEPTION – CITY PROPERTY.** Nothing in this Section 3.620 is intended to prevent
6 any officer or designated employee from discussing, negotiating, and/or securing the provision of
7 community benefits or other consideration in connection with the City’s acquisition of real property.

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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.

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14 Section 3. Prerequisites for Enactment; Super-Majority Vote Requirement. In the
15 event the People approve Proposition E at the June 7, 2022 election, the enactment of this
16 ordinance will be subject to the provisions of Proposition E that authorize amendments to
17 Article III, Chapter 6 of the Campaign and Governmental Conduct Code only if they are
18 recommended by the Ethics Commission and approved by a supermajority of at least eight
19 votes at the Board of Supervisors.

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21 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
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1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

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4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

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7 By: /s/ _____
8 MANU PRADHAN
9 Deputy City Attorney

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