

REVISED LEGISLATIVE DIGEST

(Substituted, 6/14/2022)

[Campaign and Governmental Conduct Code - Behested Payments Exceptions]

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

Existing Law

Under Campaign and Governmental Conduct Code Sections 3.600, *et seq.*, City officers and employees may not solicit behested payments from interested parties. The term "interested party" includes persons involved in proceedings for licenses, permits, or other entitlements for use; contractors and persons seeking to contract with City departments; and persons who have attempted to influence officers or employees in administrative or legislative actions. This prohibition became effective January 23, 2022.

Amendments to Current Law

This ordinance adds several exceptions to the behested payment prohibition:

- It allows officers and employees to solicit charitable donations from persons contracting or seeking to contract with their departments under authorized programs. A program is authorized if it (1) is approved by the Board of Supervisors (programs existing before the effective date of the behested payment prohibition would remain approved until December 31, 2024, but would then need to be reapproved); and (2) involves a process for the solicitation of donations through a public, competitive procurement that 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.
- It provides that receiving a license or permit or other entitlement for use that was not discretionary (i.e., was issued on a ministerial basis) does not make the recipient an interested party.
- It provides that attempting to influence an administrative action does not make a person an interested party.

- It states that the ordinance does not prevent solicitations in connection with the City's acquisition of real property.

The ordinance also makes several clarifying changes, including that communicating with a City department regarding a grant that the person is providing to that department does not constitute an attempt to influence.

Background Information

The original version of this ordinance proposed an exception for contractually obligated solicitations made under authorized programs. The behested payment prohibition halted the San Francisco Public Utilities Commission Social Impact Partnership program and possibly other department programs. The proposed exception would allow officers and employees to proceed with administering certain types of programs as they were before the behested payment prohibition took effect, without further action by the Board.

On June 7, 2022, a substitute ordinance was introduced. The substitute ordinance further addresses the proposed exception for authorized programs for contractually obligated solicitations, and narrows the definition of who is an interested party.

On June 14, 2022, another substitute ordinance was introduced, to eliminate the prior reference to wholesale energy contracts, to provide a new exception for solicitations that occur in connection with the City's acquisition of real property, and to update the ordinance so that it incorporates language recently approved by the voters via Proposition E (2022).

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