

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

## MEMORANDUM

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

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: June 18, 2022

SUBJECT: LEGISLATION INTRODUCED

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

**File No. 220539 (version 3)**

**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.**

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](mailto: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

<b>File Number:</b> 220539	<b>File Type:</b> Ordinance	<b>Status:</b> Pending Committee Action
<b>Enacted:</b>	<b>Effective:</b>	
<b>Version:</b> 3	<b>In Control:</b> Rules Committee	
<b>File Name:</b> Campaign and Governmental Conduct Code - Behested Payments Exceptions	<b>Date Introduced:</b> 06/14/2022	
<b>Requester:</b>	<b>Cost:</b>	<b>Final Action:</b>
<b>Comment:</b>	<b>Title:</b> 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.	
<b>Sponsors:</b> Peskin; Safai, Chan, Walton, Preston and Mar		

### 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	Clerk of the Board	05/25/2022	REFERRED TO DEPARTMENT <i>Referred to the Department of Elections and Ethics Commission for informational purposes.</i>			
2	President	06/07/2022	SUBSTITUTED AND ASSIGNED UNDER 30 DAY RULE <i>Supervisor Peskin introduced a substitute Ordinance bearing a new title.</i>	Rules Committee	06/09/2022	
3	President	06/14/2022	SUBSTITUTED AND ASSIGNED <i>Supervisor Peskin introduced a substitute Ordinance bearing a new title.</i>	Rules Committee		

[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.**

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

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

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

**SEC. 3.610. 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 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 ~~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, (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;  
25

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.

1  
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.

8  
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.

13  
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.

20  
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  
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under  
2 the official title of the ordinance.

3  
4 APPROVED AS TO FORM:  
5 DAVID CHIU, City Attorney

6  
7 By: /s/  
8 MANU PRADHAN  
9 Deputy City Attorney

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**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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**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:

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.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only

**From:** [Pradhan, Manu \(CAT\)](#)  
**To:** [BOS Legislation, \(BOS\)](#); [Angulo, Sunny \(BOS\)](#)  
**Subject:** Re: PESKIN - Ordinance - Behested Payments substitute- file no 220539  
**Date:** Wednesday, June 15, 2022 11:23:45 AM  
**Attachments:** [image001.png](#)

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## Confirming approval as to form

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**From:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>  
**Sent:** Wednesday, June 15, 2022 11:13:41 AM  
**To:** Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>  
**Cc:** Pradhan, Manu (CAT) <Manu.Pradhan@sfcityatty.org>  
**Subject:** RE: PESKIN - Ordinance - Behested Payments substitute- file no 220539

Hi Sunny,

Thank you for the substitute legislation submission. Upon processing the substituted legislation, the previous version listed Supervisors Safai, Chan, Walton, Preston, and Mar as co-sponsors. If you would like to add co-sponsors to this substituted version, please resubmit a new intro form with co-sponsors listed.

Lastly, we are seeking the approval from Deputy City Attorney Manu Pradhan for use of his electronic signature and approval as to form on the legislation, by reply to this email.

Thank you.

**Lisa Lew**  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
T 415-554-7718 | F 415-554-5163  
[lisa.lew@sfgov.org](mailto:lisa.lew@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

**(VIRTUAL APPOINTMENTS)** To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

*Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.*



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

**Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

---

**From:** Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>

**Sent:** Tuesday, June 14, 2022 3:16 PM

**To:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>

**Cc:** Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; PRADHAN, MANU (CAT) <Manu.Pradhan@sfcityatty.org>

**Subject:** PESKIN - Ordinance - Behested Payments substitute- file no 220539

Good afternoon –

Please find Supervisor Peskin's subject Ordinance for introduction as a substitute to File No. 220539, along with Legislative Digest and Introduction Form.

I am copying DCA Pradhan to confirm that this Ordinance has been signed as to form.

Please let me know if you have any questions.

Thank you,  
Sunny

Sunny Angulo

Supervisor Aaron Peskin, *Chief of Staff*

[Sunny.Angulo@sfgov.org](mailto:Sunny.Angulo@sfgov.org)

415.554.7451 DIRECT

415.554.7450 VOICE

415.430.7091 CELL

[District 3 Website](#)

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[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.

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**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

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

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**SEC. 3.610. 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 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 ~~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, (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;  
25

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.

1  
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.

8  
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.

13  
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.

20  
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  
25



1 additions, and Board amendment deletions in accordance with the “Note” that appears under  
2 the official title of the ordinance.

3  
4 APPROVED AS TO FORM:  
5 DAVID CHIU, City Attorney

6  
7 By: /s/  
8 MANU PRADHAN  
9 Deputy City Attorney

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