

LEGISLATIVE DIGEST
(Revised 9/19/2022)

[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 1) excepting solicitations made under certain types of City programs to solicit, request, and contractually obligate charitable donations through competitively procured contracts; 2) narrowing the prohibition against soliciting from persons involved in administrative enforcement, licenses, permits, or other entitlements for use; 3) narrowing the prohibition against soliciting from persons who have attempted to influence legislative or administrative actions; 4) excepting solicitations made in connection with certain types of City contracts; 5) shortening the time periods for the prohibition as to solicitations from City contractors; 6) excepting payments less than \$1,000; 7) authorizing the Board of Supervisors to grant waivers by resolution; 8) expanding the prohibition against soliciting from registered lobbyists; and 9) 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; persons who have attempted to influence officers or employees in administrative or legislative actions; and registered lobbyists. This prohibition became effective January 23, 2022.

Amendments to Current Law

The ordinance modifies the behested payment prohibition in several respects:

- It exempts payments less than \$1,000.
- It exempts solicitations made under authorized programs for soliciting charitable donations to nonprofits or public schools through competitively procured contracts. Such programs would need to be authorized by ordinance. Departments that were already operating such programs on or before January 23, 2022 would need to cease doing so by January 31, 2023, unless those programs were extended by ordinance.
- It provides that officers and employees cannot solicit from persons involved in administrative enforcement matters, or in matters concerning licenses or permits or other entitlements for use, if (1) there was a proceeding regarding the matter before

any officer of the officer or employee's department; or (2) the officer or employee was personally and substantially involved in the matter.

- 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 a legislative or administrative action does not make a person an interested party, unless the person was attempting to influence the approval, denial, extension, or amendment of a City contract.
- It allows the prohibition on soliciting from City contractors to expire if five years have elapsed since the contract was last executed, amended, extended, or renewed.
- It states that the ordinance does not prevent the City from securing certain types of benefits through contracts such as development agreements, agreements for the development or use of public property, agreements for the City's acquisition of real property, and contracts for the acquisition of community benefits
- It authorizes the Board of Supervisors to waive the ordinance in individual cases, by resolution.
- It expands the prohibition against soliciting from lobbyists, to also prohibit officers and employees from soliciting a person on whose behalf the lobbyist has contacted the officer or employee's department.

The ordinance also directs the Ethics Commission to adopt regulations by January 1, 2023.

Background Information

Proposition E (2022) authorizes the City to amend the behested payments ordinance only if the amendments are approved by a majority of the Ethics Commission, and a supermajority of the Board of Supervisors. This digest corresponds to the version of the ordinance that the Ethics Commission approved on August 12, 2022.

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