

SAN FRANCISCO
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2022 JAN 18 P 4:43

DEPARTMENT OF ELECTIONS

**Submittal Form
For Proposed Initiative Measure(s)
Prior to Submittal to the Department of Elections
by 4 or more Supervisors or the Mayor**

I, hereby submit the following proposed initiative measure(s) for hearing before the Board of Supervisors' Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections (Proposition C, November 2007).

This matter is for the **June 7, 2022** Election.

Sponsor(s): Supervisor Peskin; Preston, Chan, Mar, *Walton*

Subject: [Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments]

The text is listed below or attached:

(See attached.)

Supervisor Peskin: *Caron Peskin*

Supervisor Preston: *Dean Preston*

Supervisor Chan: *Chan*

Supervisor Mar: *Mar*

Supervisor Walton: *Walton*

(Clerk of the Board's Time Stamp)

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**PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE
SUPERVISORS TO THE VOTERS AT THE JUNE 7, 2022 ELECTION**

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than 45 days prior to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Code to expand the prohibition on the solicitation of behested payments to include City contractors seeking the Board of Supervisors' approval and to require approval by the Ethics Commission and super-majority approval by the Board of Supervisors for future amendments to local behested payment restrictions.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman 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. The voters hereby re-authorize and re-enact Article III, Chapter 6 of the Campaign and Governmental Conduct Code, as follows: adding Section 3.600; renumbering existing Section 3.600 (as Section 3.610), existing Section 3.610 (as Section 3.620), existing Section 3.640 (as Section 3.630), and existing Section 3.650 (as Section 3.640); and revising the renumbered Sections 3.610 and 3.630, to read as follows:

CHAPTER 6: BEHESTED PAYMENT REPORTING

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.~~

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

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

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

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

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

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

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

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

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

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

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

~~“Interested party” shall mean:~~

~~(a) any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use, before (1) an officer, (2) any board or commission (including the Board of Supervisors) on which the officer sits, (3) the department of the officer, or (4) the department of the designated employee;~~

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

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

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

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

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

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

~~"Officer" shall mean any commissioner, department head, or elected official.~~

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

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

~~"Payment" shall mean a monetary payment or the delivery of goods or services.~~

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

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

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

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

~~SEC. 3.610. PROHIBITING ELECTED OFFICIALS, DEPARTMENT HEADS, COMMISSIONERS, AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED PAYMENTS FROM INTERESTED PARTIES.~~

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

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

~~(A) during the proceeding; and~~

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

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

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

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

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

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

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

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

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

~~(c) **EXCEPTION—PUBLIC APPEALS.** This Section 3.610 shall not apply to public appeals.~~

~~SEC. 3.640. REGULATIONS.~~

~~(a) The Ethics Commission may adopt rules, regulations, and guidelines for the implementation of this Chapter 6. The Ethics Commission shall adopt rules, regulations or guidelines defining and illustrating “interested party” and when a payment is made “at the behest of” a City officer or designated employee.~~

~~(b) The Ethics Commission may, by regulation, require persons to electronically submit information required to fulfill their obligations under this Chapter 6.~~

SEC. 3.650. PENALTIES.

~~Any party who fails to comply with any provision of this Chapter 6 is subject to the administrative process and penalties set forth in Section 3.242(d) of this Code.~~

SEC. 3.600. AMENDMENT OR REPEAL OF CHAPTER.

The voters may amend or repeal this Chapter 6. The Board of Supervisors may amend this Chapter 6 if all of the following conditions are met:

(a) The Ethics Commission approves the proposed amendment in advance by a majority vote of all its members;

(b) The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors;
and

(c) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

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.

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

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

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

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

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

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

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

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

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

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

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

“Interested party” shall mean:

(a) any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use, before (1) an officer, (2) any board or commission (including the Board of Supervisors) on which the officer sits, (3) the department of the officer, or (4) the department of the designated employee;

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

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

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

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

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

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

"Officer" shall mean any commissioner, department head, or elected official.

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

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

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

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

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

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

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

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

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

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

(A) during the proceeding; and

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

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

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

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

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

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

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

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

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

SEC. 3.630. REGULATIONS.

The Ethics Commission may adopt rules, regulations, and guidelines for the implementation of this Chapter 6. The Ethics Commission shall adopt rules, regulations or guidelines defining and illustrating “interested party” and when a payment is made “at the behest of” a City officer or designated employee.

SEC. 3.640. PENALTIES.

Any party who fails to comply with any provision of this Chapter 6 is subject to the administrative process and penalties set forth in Section 3.242(d) of this Code.

Section 2. Effective Date. The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors.

* * *

SUBMITTED.



Date:

1-18-22

Member, Board of Supervisors



Date:

1/18/22

Member, Board of Supervisors



Date:

1/18/22

Member, Board of Supervisors



Date:

1/18/2022

Member, Board of Supervisors

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Member, Board of Supervisors

Date:

1/18/2022