

SAN FRANCISCO
FILED
2022 JUN 21 PM 4:15
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 (per Proposition C, November 2007).

This matter is for the **November 8, 2022** Election.

Sponsor: Mayor London N. Breed

Subject: Behested Payments

The text is listed below or attached:

(See attached.)



Mayor: London N. Breed

(Clerk of the Board's Time Stamp)

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**PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY THE
MAYOR TO THE VOTERS AT THE NOVEMBER 8, 2022 ELECTION.**

[Under Charter Sections 3.100(16) and 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 Conduct Code to modify the rules concerning behested payment solicitations, by 1) exempting payments less than \$1,000; 2) providing that a person does not become an interested party due to the City issuing them a license, permit, or other entitlement for use, if the issuance was ministerial and in certain other situations; 3) providing that a person does not become an interested party by attempting to influence a legislative or administrative action; 4) authorizing the solicitation of payments directly to City departments, and from nonprofits with agreements approved by the City Attorney and Controller; 5) authorizing departments to solicit payments pursuant to their approved Racial Equity Action Plans; 6) establishing that certain solicitations from tenants, contractors, and parties to development agreements are not prohibited; and 7) making other clarifying changes.

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. Background and Purpose.

(a) On December 24, 2021, the City enacted Ordinance No. 232-21 relating to behested payments, which prohibited City officers and designated City employees from soliciting monetary payments or goods or services for legislative, governmental, or charitable purposes from persons who qualify as “interested parties,” in order to prevent undue influence and avoid actual or perceived “pay-to-play” relationships with contractors and other persons having business before an officer’s department. Under Ordinance No. 232-21, the definition of “interested party” includes, among other things, all persons who have received licenses or permits from the City, and all persons who have attempted to influence the City regarding legislative or administrative actions the City may be considering.

(b) On June 7, 2022, the voters approved Proposition E, which provides that the City may amend Ordinance No. 232-21 if the amendments are made available to the public in advance, and if they are approved by the Ethics Commission and by a two-thirds majority of the Board of Supervisors.

(c) The amendments in this ordinance are intended to maintain the core protections of Ordinance No. 232-21, while also allowing City departments to continue their work with charitable donors, nonprofits, and community groups on vital City projects and programs. In particular, this ordinance narrows the definition of “interested party” to ensure that City staff can perform the regular work of coordinating and collaborating with these charitable donors, nonprofits, and community groups – to improve how the City serves its residents – without then subjecting City officers and employees to the threat of personal liability or endangering millions of dollars of charitable giving on which the City and its community partners rely. City law should prohibit pay-to-play, but should not inhibit the robust exchange of policy ideas

between the public and the City, or the joint work of public-private partnerships to fund and implement these ideas.

(d) The ordinance also clarifies that issuance of a license, permit, or other entitlement for use does not make the recipient an interested party if the license, permit, or other entitlement for use was issued ministerially, or was issued to an individual or nonprofit for recreational, cultural, or educational activities. Absent this clarification, potentially thousands of individuals and entities could become interested parties by complying with day-to-day City rules, which was not intended by Ordinance No. 232-21. The amendments also state that the prohibition against soliciting a payment from persons involved in a proceeding for a license, permit, or other entitlement use applies only to those City officers and employees who were actually involved in the proceeding. This common-sense clarification avoids the unfair and unintended result of penalizing officers and employees, who may have no connection to a proceeding and may even be unaware of the proceeding, for seeking charitable solicitations from parties to such proceedings.

(e) Further, the ordinance also allows solicitations directly to City departments. To ensure transparency, the Board of Supervisors will continue to exercise oversight and control over such payments pursuant to the accept-and-expend requirements of Chapter 10 of the Administrative Code (including, without limitation, Sections 10.100-305 and 10.170-1). The Board will retain the ability to exercise its judgment over when a direct payment may be accepted.

(f) The ordinance also allows solicitations from nonprofits that have entered into memoranda of understanding with the City that have disclosure, recordkeeping, and auditing provisions approved by both the Controller and the City Attorney. Allowing solicitations through this process increases transparency and accountability by incentivizing City departments and partner organizations to enter into such agreements.

(g) Finally, the ordinance provides that City departments may take certain actions without violating the behested payments law, such as implementing a department Racial Equity Action Plan, negotiating for community benefits and other consideration with contractors, securing property access for tours and meeting spaces from existing lessees, and obtaining certain concessions like price discounts from existing contractors.

(h) This ordinance ensures that the City can continue to pursue critical functions and partnerships with charitable organizations and other community partners, while maintaining key restrictions against the improper solicitation of payments from contractors, parties to City proceedings, lobbyists, and permit consultants, thereby preventing “pay-to-play” relationships and upholding the public trust.

Section 2. 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.

“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 or provide goods or services to assist with 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; but this definition shall not include licenses, permits, or other entitlements for use that are issued to individuals or nonprofit entities for recreational, cultural, or educational activities;

(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 *the purpose of 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 *the purpose of 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;~~

(cd) 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

(de) 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, as follows:
including

———(a) 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; and

(b) licenses, permits, and entitlements for use that a department issues in its discretion, as opposed to those that involve little or no discretion, are based on applying a checklist or objective criteria to the facts as presented, and/or are issued over-the-counter or “as-of-right” or on a first-come-first-serve basis, as is typically the case when a member of the public seeks permission from a City department to use public space.

“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 with a value of \$1,000 or more, or a series of payments within a 12-month period that in the aggregate total \$1,000 or more.

“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.

“Proceeding” shall be defined as set forth in 2 California Code of Regulations Section 18438.2, as amended from time to time.

“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, Officers~~ 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~~ an officer or a designated employee regarding administrative enforcement, a license, a permit, or other entitlement for use, the prohibition set forth in this subsection (a) shall apply to such officer or designated employee, as follows:

(A) during the proceeding; and

(B) for ~~12~~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 ~~officer's 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) ~~12~~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.~~

(3)(4) **Lobbyists.** Officers ~~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.

~~(4)(5)~~ **Permit consultants.** *Officers 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 *and related communications following a public appeal. Examples of such communications include responding to persons who have contacted the officer's or employee's department following a public appeal, providing information to such persons about the potential uses for such donations, and negotiating and entering into grant agreements with such persons.*

(d) **EXCEPTION – DIRECT PAYMENTS TO CITY DEPARTMENTS.** This Section 3.620 shall not apply to solicitations of behested payments to be made directly to City departments; provided, however, that this subsection (d) shall not affect the requirement that the acceptance and expenditure of gifts and grants shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the department would not be permitted to accept and expend it, but the solicitation would remain excepted from this Section 3.620.

(e) EXCEPTION – PAYMENTS MADE UNDER AN APPROVED MEMORANDUM OF UNDERSTANDING. This Section 3.620 shall not apply to solicitations of behested payments from nonprofit organizations, if the nonprofit has executed a memorandum of understanding or similar agreement with the City that contains disclosure, recordkeeping, and auditing provisions approved by the Controller and the City Attorney; provided, however, that this subsection (e) shall not affect the requirement that the acceptance and expenditure of gifts and grants by the City shall require Board of Supervisors approval by resolution as set forth in Chapter 10 of the Administrative Code. The Board of Supervisors may consider whether a gift or grant is the result of a solicitation from an interested party in determining whether to approve it. If the Board of Supervisors does not approve a gift or grant, the department would not be permitted to accept and expend it, but the solicitation would remain excepted from this Section 3.620.

(f) ADDITIONAL PROVISIONS. Nothing in this Section 3.620 is intended to prevent any officer or designated employee from:

- _____ (1) Implementing a department's approved Racial Equity Action Plan; or
- _____ (2) Discussing, negotiating, and/or securing the provision of community benefits or other consideration in connection with a contract with the City, including but not limited to a development agreement or an agreement for the development or use of public property; or
- _____ (3) Requesting a tenant's assistance with public outreach efforts, such as tours of the property, participation at community meetings, open houses, and events open to the public; or
- _____ (4) Discussing, negotiating, and/or securing concessions or discounts with a contractor in the course of managing or administering an existing contract, including, but not limited to, negotiating a more favorable price for the City, negotiating to reduce the number of hours billed to the City for a particular task, or requesting additional related purchase orders or services for the City similar to the scope of services or work set forth in the contract.

Section 3. Scope of Ordinance. In enacting this ordinance, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs, sections, subsections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions or deletions, in accordance with the "Note" that appears under the official title of the ordinance.

Section 4. Conflicting Ballot Measures. In the event that this measure and another measure relating to behested payments shall appear on the same municipal election ballot, the provisions of such other measure shall be deemed in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and each and every provision of the other measure that conflicts, in whole or in part, with this measure shall be null and void in its entirety.

* * *

SUBMITTED.



Date:

6/21/22

MAYOR LONDON BREED
Mayor, City and County of San
Francisco

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