



June 2, 2022

City Attorney David Chiu
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Director LeeAnn Pelham
San Francisco Ethics Commission
25 Van Ness Ave, Suite 220
San Francisco, CA 94102

Dear City Attorney Chiu and Director Pelham,

Following the City's enactment of the new behested payments legislation (Campaign and Governmental Conduct Code Article III, Chapter 6), City departments have expressed uncertainty and confusion regarding its impacts. The legislation has broad and sweeping implications for the City's many public/private partnerships which rely on millions of dollars in philanthropic support. Departments are interpreting this legislation in a non-uniform manner and are eager to obtain clear and consistent advice regarding its application. Members of the Board of Supervisors have also issued public pronouncements directing Department Heads and City contractors on how it should be interpreted.

The City needs direct and uniform guidance from the City Attorney's Office and the Ethics Commission to navigate this new legislation. The need for guidance is urgent as many impacted programs are imminently threatened if the support on which they depend is restricted. Critically, this legislation creates personal liability for Department Heads and staff for failure to comply and subjects them to penalties and fines of up to \$5,000 per violation. In order to follow the law and avoid jeopardy for doing their jobs, department staff require advice from the City Attorney's Office and the Ethics Commission.

Accordingly, on May 16, 2022, I sent a letter to all Department Heads and Chief Financial Officers directing them to pause all programs that rely on philanthropic support and to seek advice from the City Attorney's Office and the Ethics Commission to ensure compliance with the ordinance. In order to expedite this process, my staff has compiled some of the most significant questions presented by the departments.

Some relate to proposed solicitations and some relate to potential scenarios that could arise regarding their programs. They are not intended to supersede individual inquiries you have received directly from the departments. I appreciate your prompt guidance on these questions. Specifically, please advise on the following:



1. Under the legislation, if a City Officer (as defined in the legislation) and a philanthropist have a meeting where the philanthropist attempts to influence the Officer by asking the Officer to implement a particular type of City program to pursue policy objectives favored by the philanthropist, may the Officer call the philanthropist a month later and solicit funding to the Officer's department for such a program?
 - a. If so, what particular section of the ordinance allows for this type of solicitation?
 - b. If permitted, why is this not barred by Section 3.610(a)(3) of the ordinance which prohibits an officer soliciting a behested payment from someone who attempted to influence the officer in any legislative or administrative action during the previous 12 months?
 - c. The ordinance's definition of "Interested party" includes "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." Does this exception from the Contractor category also apply to the interested party category of "any person who attempted to influence the employee or officer in any legislative or administrative action?"
 - d. Does it apply to the other three categories of interested party as well?
 - e. Under what theory of statutory construction could the exception from the Contractor category for providing a grant to the City apply to other categories of interested party?
 - f. Is there a grant exception from the interested party categories for a party providing a grant not to the City or a City department but to a third party?
2. In the example in Question 1, if the Officer asked the philanthropist to provide funding directly to the department's non-profit partners, instead of to the department, would the solicitation be permitted?
3. In the example in Question 1, if the philanthropist specifically asks that the Officer spend City funds to pursue policy objectives favored by the philanthropist, in addition to spending the grants funds provided by the philanthropist to pursue those objectives, would the Officer still be permitted to solicit the funding?



4. In the example in Question 1, if the philanthropist asks that the Officer implement a second program, unrelated to the first program, as a condition of funding the first program, would the Officer still be permitted to solicit the funding?
5. Tipping Point Community is a non-profit organization committed to fighting poverty in the Bay Area. Tipping Point engages in policy advocacy consistent with its mission, stating on its website “[W]e work across sectors—government, business, non-profit—to bring effective solutions to scale through better public systems and policies.” In 2021, Tipping Point advocated to the Department of Homelessness and Supportive Housing (HSH) that the City create a non-congregate cabin pilot program to provide dignified shelter for individuals experiencing homelessness. HSH solicited funding from Tipping Point to implement the program. HSH launched the site at 33 Gough Street in January of 2022, providing housing for at least 70 adults, at a total cost of \$2 million. Tipping Point provided approximately \$1 million in funding to the nonprofit HomeFirst Services, as opposed to providing a grant to the City directly. The rest of the funding was provided by the City and other philanthropic partners. Under the legislation, would an HSH Officer or designated employee (Form 700 filer) be permitted to solicit the funding from Tipping Point to HomeFirst Services now, if during the previous 12 months Tipping Point had attempted to influence the Officer or employee to create the pilot program?
6. Under the legislation, if an HSH Officer had a meeting with a Tipping Point director where the director had attempted to influence the Officer to implement the non-congregate cabin shelter pilot, could the HSH Officer meet with the same director a month later and solicit funding to the City for an unrelated affordable housing project?
7. In order to implement the cabin pilot program, HSH entered into an MOU contract with Tipping Point and the other partner entities. The contract outlines the duties of HSH, Tipping Point and the other parties. No grant funds are provided to the City under the MOU; Tipping Point provides the grant funds to HomeFirst Services. Is Tipping Point an interested party to HSH because of this agreement, such that an HSH Officer or designated employee may not solicit funding from Tipping Point for other projects during the life of the agreement?



8. The Housing Accelerator Fund (HAF) is an organization that invests in the preservation and expansion of quality affordable housing and community facilities for economically disadvantaged households, individuals, and communities by lending to, investing in, and directly acquiring real estate assets. HAF recently partnered with HSH to open a permanent supportive housing complex of 145 units at 833 Bryant Street called the Tahanan. HAF invested \$35 million of a larger philanthropic donation from Tipping Point to acquire the lot, fund project design and start construction. Additional private resources were raised to complete the project. No City funds were used to build the complex. The project used modular construction where components manufactured in a factory in Vallejo were transported to the site and assembled. HSH, with the authorization of the Board of Supervisors, now master leases the property and funds the onsite services.

- a. If an HAF director met with an HSH Officer to attempt to influence them to support modular construction for supportive housing throughout San Francisco, would the Officer be barred from soliciting funding from them a month later to fund the City's operation of the site?
 - b. If an HAF director met with an HSH Officer to attempt to influence them to support local legislation to streamline affordable housing approvals, would the Officer be barred from soliciting funding from them a month later to fund the site?
9. Crankstart is a philanthropic foundation that provides grants relating to housing, education, environmental justice and immigrant rights. Prior to the legislation, Crankstart advocated to HSH to launch a Flexible Housing Subsidy Pool, a supportive housing rent subsidy program that supports people exiting homelessness. HSH solicited a grant from Crankstart to help implement a Flexible Housing Subsidy Pool in San Francisco. HSH raised funds from Crankstart and other private partners totaling \$11.5 million which paid for the first 18 months of Flex Pool operations starting in 2020, providing 200 units to help people staying in COVID-19 emergency Shelter-in-Place hotels find permanent housing. Under the legislation, would an HSH designated employee be permitted to solicit this funding from Crankstart after Crankstart had advocated to the employee to implement the program?



10. The Department of Children Youth and their Families (DCYF) administers a Summer Together program to provide supplemental instruction to San Francisco students during the summer at designated learning hubs. The learning hubs are funded by a mix of private grants from various funders and public funding. An education foundation representative met with a DCYF Officer and attempted to influence the Officer to introduce a “good character” training program for all of the students at the learning hubs. The DCYF Officer declined to implement this training. If the DCYF Officer contacted the foundation representative a month later and solicited a behested payment from the foundation to support the Summer Together program, would this violate the ordinance?
11. Please consider the following hypothetical. An education foundation director meets with a DCYF Officer and attempts to influence her to promote an initiative to open charter schools in San Francisco. The DCYF Officer declines to promote the initiative. A month later the same DCYF Officer solicits a grant from the foundation director to support the Summer Together program. Would this violate the ordinance?
12. The Opportunities for All program is administered by the Human Rights Commission (HRC) and leverages public/private partnerships to create internships and job opportunities for youth from underserved communities. The program involves raising funds from corporate and nonprofit partners for training and paying interns and also working with the partners to identify internship opportunities, sometimes within the funders themselves and sometimes at other entities. HRC uses a fiscal sponsor to perform the fundraising and disburse the funds for the program. If a particular corporate partner meets with an HRC Officer and requests that HRC place more interns in jobs at the partner because it has a staffing shortage at a particular office and the Officer declines, can the HRC Officer solicit a donation from the partner to the fiscal sponsor during the next 12 months?
13. If a non-profit director met with an HRC designated employee to advocate that HRC implement a public safety initiative for marginalized communities, could the HRC employee contact the director during the next 12 months and ask the non-profit to serve as fiscal sponsor to disburse funds for an unrelated economic equity initiative?



14. The San Francisco Giants, through its Community Fund (a 501(c)(3) organization), has offered to partner with the Recreation and Parks Department (RPD) to renovate the Crocker Amazon baseball fields to modernize the park and expand access to local youth. The Giants Community Fund also provides in-kind support with coaches, equipment, uniforms and curriculum to the Department's Junior Giants youth baseball program and over the years has partnered with the Department to renovate neighborhood baseball fields. The Giants regularly apply for permits from the Department and have attempted to influence the Department's capital program policies by advocating for a youth baseball academy program and field renovation at Crocker Amazon. Assuming such permit requests and baseball program advocacy is continuous, would an RPD Officer or designated employee (Form 700 filer) be prohibited from soliciting or coordinating funding from the Giants to support the Crocker Amazon ballfields project? Would an RPD Officer or designated employee be prohibited from soliciting or coordinating in-kind support from the Giants for RPD's Junior Giants program?
15. RPD is undertaking an upgrade of the Japantown Peace Plaza and considering partnering with Japantown civic organizations for philanthropic support. These groups receive permits from RPD to use the Peace Plaza space for events. During the 12 months following such an organization receiving a permit, would an RPD Officer or designated employee be prohibited from soliciting or coordinating funding from the organization for the upgrade?
16. The Chinatown Community Development Center (CCDC) has a lease agreement with RPD for the Wo Hei Yuen Clubhouse, with rent of over \$100,000 in a fiscal year. In 2017, CCDC performed a sustainability study valued at \$48,000 to support the planning for a Portsmouth Square renovation and granted it to the City. Under the legislation, would an RPD Officer or designated employee be precluded from soliciting the study because of CCDC's lease contract with RPD?
17. RPD opened the new state of the art Goldman Tennis Center in Golden Gate Park, with \$27 million of the \$30 million cost raised by fundraising from private donors, through a friends group that is fiscally sponsored by the San Francisco Parks Alliance. If a donor were to apply for a permit from RPD to hold an event at the Goldman Tennis Center, would an RPD Officer or designated employee be precluded for 12 months following the award of the permit from soliciting or coordinating further donations from the donor to maintain the Center or support its youth tennis and tutoring program?



18. RPD has partnered with the San Francisco Parks Alliance, the Trust for Public Land (TPL) and the A. Philip Randolph Institute (APRI) to fundraise for the India Basin parks development with a goal of \$75 million dollars in private donations to support over \$75 million in public funding for this \$150 million community-driven effort. The Parks Alliance and APRI apply for permits from RPD to hold special events. The Parks Alliance is also a party to various contracts with RPD providing for the Parks Alliance to provide support in the form of funds and services for maintaining, developing and renovating parks properties, unrelated to India Basin. TPL occasionally attempts to influence the RPD on parks and open space issues and has partnership MOUs with RPD on this and other park projects. Is an RPD Officer or designated employee precluded from soliciting support or coordinating private donations from the Parks Alliance, TPL or APRI for India Basin?
19. The Hardly Strictly Bluegrass Festival applies for permits every year from RPD to conduct an outdoor music festival in Golden Gate Park. This permitting approval process requires discretionary review by RPD staff of the length, projected attendance, programming and infrastructure of the festival. The Festival has also partnered with RPD to contribute funds for Golden Gate Park beautification and maintenance. Over the past seven years the Festival has donated more than \$500,000 to support gardening work in Golden Gate Park, including irrigation projects and equipment requested by gardening staff to improve park maintenance. During the 12 months following the approval of the Festival's permit, may an RPD Officer or designated employee request funding from the Festival for an irrigation project in Golden Gate Park? During the 12 months following the approval of the permit, could an RPD Officer or designated employee solicit funding for the same irrigation project from a foundation that funds the permittee and submitted a letter in support of the permit application?
20. RPD is partnering with private partners to construct a new recreation center/gymnasium at Herz Playground, a site within John McLaren Park. Sunnydale Infrastructure LLC, a partnership between Related California and Mercy Housing, is the donating entity for the project. Related California has been a party to shadow review proceedings before RPD. Under the legislation, if any RPD Officer or designated employee solicited support directly from Related California for the Herz Playground project within 12 months following the conclusion of such a shadow review, would they have violated the ordinance? Would Sunnydale Infrastructure LLC itself become an interested party to RPD by virtue of Related California, one of its constituent partners, being a party to shadow review proceedings?



21. Please consider the following hypothetical. A company seeks a permit from RPD to hold their corporate summer party at a particular park. The permit application is submitted by the company CEO. The permitting approval process requires discretionary review by RPD staff of the length, projected attendance, and staging of the event. Six months after the permit is granted, an RPD designated employee who was not involved in reviewing the permit application, and is, in fact, unaware of it, asks the company CEO, who happens to be her neighbor, for a \$100 donation for a March of Dimes pledge drive. Has the employee violated the ordinance?
22. Please consider the following hypothetical. A restaurant owner seeks a Shared Spaces permit from the Department of Public Works to open a parklet on the sidewalk in front of his restaurant. Six months after the permit is granted, a DPW designated employee who was not aware the permit is granted, meets the restaurant owner at a PTA meeting and asks them for a \$100 donation to the Boys and Girls Club of America chapter of which the DPW employee is a board member. Has the employee violated the ordinance?
23. Under the legislation, can an RPD designated employee solicit a charitable donation from someone who had applied for a picnic table permit that the employee reviewed and issued six months earlier?
24. An individual applies for a permit from RPD to hold their child's birthday party in Golden Gate Park. They fill out the necessary paperwork and submit it to RPD. They also call an RPD designated employee and discuss a suitable location for the party that can accommodate a bouncy house. Under the legislation, has this individual become an interested party to every RPD Officer and designated employee?
25. Under the legislation, what is the criteria for determining what qualifies as a proceeding regarding a permit, a license or other entitlement for use?
26. If a non-profit held a lease with RPD and wanted to coordinate with RPD to create a new flower garden on RPD land, could an RPD Officer direct the non-profit to raise private funds and spend them to plant the garden and maintain it? If a community group met with an RPD designated employee and advocated for a neighborhood park to be renovated could the RPD designated employee direct them to raise private funds and spend them to undertake the proposed improvements? If the community group met with a member of the Board of Supervisors to advocate that rezoning legislation be passed to allow for the improvements, would the Supervisor be precluded from directing the group to raise private funds and spend them to undertake the improvements?



27. The Office of Economic and Workforce Development (OEWD) conducts regular communications with community coalitions and trade groups like SF Travel, the Chamber of Commerce and the Hotel Council to promote economic recovery, job growth and tourism in San Francisco. Hypothetically, if an OEWD Officer had a meeting with a trade group director and the director advocates that OEWD host a concert series downtown, may the OEWD Officer contact the director a month later and ask them to fund a job fair in an underserved community?
28. If OEWD posted a public appeal on its website to support various economic recovery initiatives, could designated employees of that department speak to potential funders answering the appeal and suggest that the funders give to one or more non-profits on a list created by the department, where the funders are also interested parties to OEWD?
29. The Human Services Agency (HSA) is considering participating in a State guaranteed income pilot project for all (200) young adults exiting extended care in San Francisco's child welfare and juvenile probation systems between January 1, 2023 and June 30th, 2025. Each youth would receive \$1,200 per month for 18 months. The income supplement would be paired with optional financial coaching and benefits counseling. The California Department of Social Services will provide \$2 million to a municipality that provides a dollar for dollar match. HSA has had discussions with Tipping Point Community and Crankstart about providing the matching funds. If a sponsoring foundation were to later advocate for institutionalizing a guaranteed youth income program state-wide and request that an HSA Officer assist them in seeking related state legislation, could the HSA Officer call the foundation a month later to solicit funding to HSA for another round of funding for a new youth guaranteed income pilot? Could the HSA Officer call the same foundation a month later to solicit funding for an unrelated pilot program for low income food relief?



30. HSA has partnered with Tipping Point, Bay Area Legal Aid (BALA) and Positive Resource Center (PRC) to support the implementation of a 3-year SSI Advocacy legal model pilot. The pilot was intended to test whether a legal advocacy plus social worker program model is able to serve people experiencing homelessness who are not currently reached by HSA's medical-based SSI advocacy model. BALA also advocates for individuals experiencing homelessness, including in challenging the City's policies with respect to tent encampment resolution and storing and tagging such individual's property left at such sites ("bag and tag"). Hypothetically, if a BALA director were to meet with an HSA Officer to advocate that the City change its bag and tag policy, could the HSA Officer contact the director during the following 12 months to solicit that BALA increase its funding for the SSI Advocacy legal model pilot?
31. As part of its Racial Equity Plan, the Port implements a program that partners with tenants to fund programs aimed at increasing access to Port resources among youth from marginalized communities. The Port has a tenant that leases land owned by the Port for office space at a cost of over \$100,000 in a fiscal year. During the term of the lease, may a Port Officer solicit from that tenant a donation to fund a youth sailing program as part of its Racial Equity Plan?
32. The Port leases land to a restaurant that pays rent in excess of \$100,000 in a fiscal year. The restaurant has a deck overlooking the bay which can be reserved by customers for events at an hourly rate. During the term of the lease, could a Port Officer ask the restaurant to allow free access to the deck for an afternoon so that the Port can hold a community meeting to discuss a waterfront development project? During the term of the lease, could a Port Officer request a tour of the space to learn more about how it was built out and used?
33. Assume that the Port is negotiating with a developer for a \$5 million development project contract. During the negotiations, could a Port Officer ask the developer to financially support a local non-profit in providing marine biology classes for youth as part of the project's community benefits package?



34. The Friends of the Library is a philanthropic organization that provides grants to the San Francisco Public Library to support Library operations and programs. Hypothetically, if the Friends of the Library met with a Library Officer to advocate that space used for adult literacy programs at certain library locations be converted to child literacy programs, could the Library Officer ask the Friends of the Library the following month for funding to support the transition? Could the Library Officer ask the Friends of the Library the following month for a new grant for an unrelated program to have author reading events at certain library locations?
35. San Francisco Animal Care and Control (ACC) is supported by the philanthropic organization Friends of San Francisco Animal Care and Control. If the Friends group met with an ACC Officer and asked them to expand ACC's training program for shelter dogs, could the ACC Officer ask the Friends group the following month for a donation to fund furnishings for ACC's new shelter?
36. The San Francisco Police Activities League (PAL) is a 501(c)(3) organization that builds community by organizing youth sports and healthy activities that develop personal character and foster positive relationships among police officers, youth, and dedicated volunteers. If a PAL director met with a San Francisco Police Department designated employee to advocate that the department increase police officer participation in training for PAL's youth law enforcement cadet program, during the next 12 months could the department employee solicit the director to ask that PAL provide uniforms for a youth baseball league?
37. The Guardians of the City (GOTC) is a 501(c)(3) organization dedicated to preserving and sharing the history of San Francisco's Fire, Police, Sheriff's Departments, and Emergency Medical Services. If a GOTC trustee met with a San Francisco Fire Department designated employee to advocate that the Fire Department convert a section of a historic fire station to a visitor museum, during the next 12 months could the department employee solicit the trustee to ask that GOTC provide a donation to SF Flame, the Fire Department's youth athletic program?



38. Please consider the following hypothetical. A City department posts on its website a link to the Give2SF COVID relief fund. A company that is also a contractor to the City department, as defined in the legislation, answers the public appeal by calling a designated employee (Form 700 filer) of that department to discuss a potential Give2SF donation to the City. The company initially offers to donate \$750,000 and suggests that the donation should be spent to open more COVID testing sites in a particular area of the City. The employee agrees but points out that the need is much greater and asks the company if they can provide more funding. In response, the company makes a \$1 million donation. Did the employee violate the ordinance?
39. In the Example of Question 38 above, if the designated employee instead suggests that the company makes a donation in the same amount to a non-profit providing food assistance to communities impacted by COVID, has the employee violated the ordinance?
40. Under the legislation, if a City department has a contract with a supplier for masks and other PPE that requires that the supplier provide 100 boxes of such materials every month, at a cost of \$150,000 per fiscal year, can an Officer of that department ask the supplier to provide an additional 10 boxes free of charge in a month where COVID cases are rising?
41. Under the legislation, if a City department has a contract with a consultant, at a cost of \$150,000 per fiscal year, with services billed at hourly rates, can an Officer of that department ask the consultant to “write off” \$5,000 worth of billable hours for a project where the consultant spent more time on the project than anticipated?
42. Please consider the following hypothetical. A non-profit that focuses on mental health policy meets with a City Officer and attempts to influence the Officer to support a local legislative change to expand conservatorships for those suffering from mental illness. A month later the City Officer solicits the non-profit to provide a grant to the Officer’s department to launch a pilot conservatorship program. Does this violate the ordinance?
43. Please consider the following hypothetical. A non-profit that focuses on mental health policy meets with a City Officer and attempts to influence the Officer to support a local legislative change to expand conservatorships for those suffering from mental illness. A month later the City Officer solicits the non-profit to provide a grant to the Officer’s department to renovate a voluntary mental health treatment center. Does this violate the ordinance?



44. Please consider the following hypothetical. A non-profit that advocates for drug law reform meets with a City Officer and attempts to influence the Officer to support legislation at the state and federal level that would facilitate San Francisco opening a supervised drug consumption site to prevent overdoses and offer addiction treatment services. A month later the City Officer solicits the non-profit to provide a grant to the Officer's department to do research regarding supervised drug consumption sites. Does this violate the ordinance?
45. Please consider the following hypothetical. A housing non-profit has both a 501(c)(4) arm that performs legislative advocacy for affordable housing policies and a 501(c)(3) arm that provides housing-related grants. A director of the organization serves for both arms. That director meets with a City Officer and attempts to influence the Officer to support legislation that would remove certain zoning requirements for 100% affordable projects and to oppose competing legislation that would remove those requirements for affordable and market rate projects. A month later the Officer solicits the director to provide a grant to the City to help build affordable housing. Does this violate the ordinance?
46. Please consider the following hypothetical. A director of a non-profit organization that advocates for voting rights protections for marginalized communities meets with a City Officer and attempts to influence the Officer to support legislation to expand voter outreach services. The director also serves on the board of a separate philanthropic foundation that provides grants to non-profits providing immigrant services. Within 12 months of their first meeting about the voting rights legislation, the City Officer calls the director and solicits them to provide a grant to a non-profit organization providing job training for immigrants. Does this violate the ordinance?
47. Please consider the following hypothetical. A corporation is a party to a permit proceeding before a department. The corporation has an affiliated 501(c)(3) charitable foundation. The foundation does not participate in the proceeding. During the 12 months following the conclusion of the proceeding, can a designated employee of the department solicit funding from the foundation for a charitable initiative?



48. Please consider the following hypothetical. A director of a homelessness advocacy non-profit meets with a City Officer and advocates that the City increase funding for drop-in services for youth experiencing homelessness. During the next 12 months can the City Officer contact the director to solicit the non-profit to provide coats to youth experiencing homelessness?

Thank you for your consideration in providing guidance on these issues. My staff is available to meet with you to provide more information and discuss these issues further.

Sincerely,

A handwritten signature in blue ink that reads "London N. Breed".

London N. Breed
Mayor
City and County of San Francisco