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## MEMORANDUM

TO: Sean Elsbernd, Mayor's Chief of Staff  
 CC: Leeann Pelham, Ethics Commission Executive Director  
 FROM: Ana Flores  
 Andrew Shen  
 Jon Givner  
 Deputy City Attorneys  
 DATE: June 15, 2022  
 RE: Guidance regarding behested payment restrictions

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### INTRODUCTION

On June 2, 2022, the Mayor sent to the City Attorney and Ethics Commission a letter posing a series of questions and hypothetical scenarios regarding the application of the City's behested payment ordinance, codified in Campaign & Governmental Conduct Code ("C&GCC") Article III Chapter 2, sections 3.600 et seq. In the letter, the Mayor asked 48 separate questions, and requested that the City Attorney and the Ethics Commission respond promptly to provide guidance to City departments to help them comply with the ordinance. The Mayor's letter noted that City departments need uniform guidance regarding the ordinance, especially because employees who violate the ordinance could face personal liability, including financial penalties up to \$5,000 per violation. Several of the questions in the letter involve complicated factual scenarios that require additional facts before we can answer.

In response to the Mayor's request for a prompt reply, we respond here to 19 questions in the letter that we can answer based on the plain language of the ordinance without additional factual information or analysis. The City Attorney's Office has worked with the Ethics Commission's staff to develop answers to these questions. The two agencies anticipate continuing to work together to evaluate other questions in the letter, and we may reach out to your office to gather additional information about them.

In the meantime, we encourage individual City officials who would like advice from the City Attorney or the Ethics Commission to reach out to our agencies directly with specific questions and the facts relevant to those questions.

The Ethics Commission in the future may promulgate regulations clarifying some of the terms in the ordinance, including the definitions of "proceeding," "permit," and "legislative or administrative action." And there are two pending proposals to amend the ordinance. Those potential regulations and proposed ordinances could change the responses to some of the questions below, or facilitate answers to additional questions that we have not addressed in this

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initial set. If the regulations or ordinances change our responses in any significant way, we will provide additional written responses at that time.

**QUESTIONS AND RESPONSES**

**Question 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?**

Response to Question 6: No, the officer may not solicit the funding. For the HSH Officer, the Tipping Point director is an "interested party" due to the director's "attempt to influence" the HSH Officer on a potential legislative or administrative action, i.e., the implementation of a new non-congregate cabin shelter pilot program. C&GCC § 3.600. Because the Tipping Point director is an "interested party," the HSH Officer may not solicit a "behested payment" from the director within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 11: Yes, that conduct would violate the ordinance. For the DCYF Officer, the education foundation director is an "interested party" due to the director's "attempt to influence" the DCYF Officer on a potential legislative or administrative action, i.e., a new initiative to open charter schools. C&GCC § 3.600. Because the education foundation director is an "interested party," the DCYF Officer may not solicit a "behested payment" from the director within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

The City Attorney's Office and the Ethics Commission recently advised that DCYF's solicitation of funding from Crankstart for the Summer Together program did not implicate the behested payment ordinance. That situation was different from this hypothetical scenario because Crankstart was not an interested party that contracted with DCYF or attempted to influence DCYF regarding potential legislative or administrative action.

**Question 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?**

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Response to Question 15: Yes, that conduct would be prohibited. For the RPD Officer or RPD designated employee, the Japantown civic organizations are "interested parties" because they are "parties" to a "proceeding" regarding a "permit" before their department, i.e., the permits to use the Japantown Peace Plaza. C&GCC § 3.600. Because the Japantown civic organizations are "interested parties," the RPD Officer or RPD designated employee (Form 700 filers) may not solicit a "behested payment" from those organizations for 12 months after RPD issued them permits. C&GCC § 3.610(a)(1).

**Question 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?**

Response to Question 17: Yes, that conduct would be prohibited. For the RPD Officer or RPD designated employee, the donor is an "interested party" because the donor is a "party" to a "proceeding" regarding a "permit" before their department, i.e., the permit to hold an event at the Goldman Tennis Center. C&GCC § 3.600. Because the donor is an "interested party," the RPD Officer or RPD designated employee may not solicit a "behested payment" from the donor for 12 months after RPD issued the donor a permit. C&GCC § 3.610(a)(1).

**Question 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?**

Response to Question 21: Yes, the employee would have violated the ordinance. For the RPD designated employee, the company's CEO is an "interested party" because the company CEO is a "party" to a "proceeding" regarding a "permit" before the designated employee's department, i.e., the permit for a party at a park. C&GCC § 3.600. Because the company's CEO is an "interested party," the RPD designated employee may not solicit a "behested payment" from the company's CEO for 12 months after RPD granted the company's CEO a permit. C&GCC § 3.610(a)(1).

Under the ordinance, the restriction on behested payments applies even though the RPD designated employee solicited a donation unrelated to the designated employee's City duties.

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Further, the RPD designated employee's lack of awareness regarding the company CEO's acquisition of a permit is not a defense to a violation of the ordinance. C&GCC §§ 3.650, 3.242(d). Lastly, the designated employee's request in this scenario violates the ordinance even though the amount of the donation is relatively small; the ordinance does not set a dollar threshold for the value of a prohibited "behested payment."

**Question 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?**

Response to Question 23: No, that solicitation would be prohibited. For the RPD designated employee, the permittee is an "interested party" because that person is a "party" to a "proceeding" regarding a "permit" before the designated employee's department, i.e., the picnic table permit. The definition of "permit" in the ordinance does not include an exception for ministerial permits like picnic table permits. C&GCC § 3.600. Because the permittee is an "interested party," the RPD designated employee may not solicit a "behested payment" from the permittee for 12 months after RPD granted the company's CEO a permit. C&GCC § 3.610(a)(1).

**Question 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?**

Response to Question 24: Yes, the individual would have become an interested party to every RPD Officer and designated employee, because the individual is a "party" to a "proceeding" regarding a "permit" before the department. C&GCC § 3.600. Under the behested payment ordinance, such a permittee is an "interested party" for all RPD Officers and designated employees, even if those Officers and designated employees had no personal involvement in the permit issuance and had no knowledge of the permit. C&GCC § 3.600. Because the permittee is an "interested party," the RPD Officer or designated employee may not solicit a "behested payment" from the permittee for 12 months after RPD granted the permit. C&GCC § 3.610(a)(1).

**Question 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?**

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Response to Question 27: No, that solicitation would be prohibited. For the OEWD Officer, the trade group director is an "interested party" due to the director's "attempt to influence" the OEWD Officer on a potential legislative or administrative action, i.e., the hosting of a new concert series. C&GCC § 3.600. Because the trade group director is an "interested party," the OEWD Officer may not solicit a "behested payment" from the director within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 30: No, that solicitation would be prohibited. For the HSA Officer, the BALA director is an "interested party" due to the director's "attempt to influence" the HSA Officer on a potential legislative or administrative action, i.e., changes to the City's bag and tag policy. C&GCC § 3.600. Because the BALA director is an "interested party," the HSA Officer may not solicit a "behested payment" from the director within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 31: No, that solicitation would be prohibited. For the Port Officer, the tenant is an "interested party" as a "City Contractor" due to its lease with the Port with a value of over \$100,000 in a fiscal year. C&GCC § 3.600. Because the tenant is an "interested party," the Port Officer may not solicit a "behested payment" from the tenant until 12 months after the lease has expired. C&GCC § 3.610(a)(2).

**Question 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**

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**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?**

Response to Question 36: No, that solicitation would be prohibited. For the SFPD designated employee, the PAL director is an "interested party" due to the director's "attempt to influence" the SFPD designated employee on a potential administrative action, i.e., an increase in police officer participation in the non-profit organization's training program. C&GCC § 3.600. Because the PAL director is an "interested party," the SFPD designated employee may not solicit a "behested payment" from the director within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 37: No, that solicitation would be prohibited. For the Fire Department designated employee, the GOTC trustee is an "interested party" due to the trustee's "attempt to influence" the Fire Department designated employee on a potential administrative action, i.e., the conversion of a historic fire station. C&GCC § 3.600. Because the GOTC is an "interested party," the designated employee may not solicit a "behested payment" within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 38: Yes, the designated employee would have violated the ordinance, because the employee solicited additional funding from an interested party outside of a public appeal. The behested payment ordinance allows solicitations made through public appeals.

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C&GCC § 3.610(c). The ordinance defines a public appeal as “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.”

C&GCC § 3.600. In this scenario, the department's initial request for donations through its website was a public appeal, but the designated employee's separate request for additional funding no longer fits within the public appeal exception because the designated employee made the request through a later, separate telephone call directly with the interested party.

**Question 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?**

Response to Question 39: Yes, the employee would still have violated the ordinance. The company is an “interested party” due to its contract with the department. C&GCC § 3.600. Because the company is an “interested party,” the designated employee may not solicit a “behested payment” until 12 months after the termination of the contract. C&GCC § 3.610(a)(2).

**Question 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?**

Response to Question 42: Yes, that solicitation would violate the ordinance. For the City Officer, the non-profit is an “interested party” due to the non-profit's “attempt to influence” the City Officer on proposed new legislative action to expand conservatorships. C&GCC § 3.600. Because the non-profit is an “interested party,” the City Officer may not solicit a “behested payment” from the non-profit within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

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Response to Question 43: Yes, solicitation would violate the ordinance. For the City Officer, the non-profit is an "interested party" due to the non-profit's "attempt to influence" the City Officer on legislative action to expand conservatorships. C&GCC § 3.600. Because the non-profit is an "interested party," the City Officer may not solicit a "behested payment" from the non-profit within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 44: Yes, that solicitation would violate the ordinance. For the City Officer, the non-profit is an "interested party" due to the non-profit's "attempt to influence" the City Officer on administrative or legislative action to open a supervised drug consumption site. C&GCC § 3.600. Because the non-profit is an "interested party," the City Officer may not solicit a "behested payment" from the non-profit within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

Response to Question 46: Yes, that solicitation would violate the ordinance. For the City Officer, the non-profit director is an "interested party" due to the non-profit's "attempt to influence" the City Officer on legislative action to expand voter outreach services. C&GCC § 3.600. Because the non-profit is an "interested party," the City Officer may not solicit a "behested payment" from the non-profit director within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).

**Question 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?**

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Response to Question 48: No, that solicitation would be prohibited. For the City Officer, the director is an "interested party" due to the non-profit's "attempt to influence" the City Officer on administrative or legislative action to increase funding for drop-in services for youth experiencing homelessness. C&GCC § 3.600. Because the non-profit is an "interested party," the City Officer may not solicit a "behested payment" from the non-profit within 12 months of the attempt to influence. C&GCC § 3.610(a)(3).