

Town Hall Meeting: Behested Payments

May 14, 2019 | 9:00 a.m. | City Hall Room 1035

Background

The Ethics Commission spent a year reviewing the campaign finance laws and, on February 19, 2019, submitted recommendations to the City Council that would ban the solicitation of behested payments from restricted sources and enhance the disclosure of behested payments. The recommendations can be found in **Council File No. 19-0046**. The Rules Committee asked the Ethics Commission staff to conduct this town hall meeting and collect public comments for their consideration.

Public Comment

Comments may be provided today. Written comments may be submitted to ethics.policy@lacity.org until **May 21, 2019**. Comments may also be made directly to the Rules Committee.

State Law

Since 1997, the state's Political Reform Act has required elected officials to disclose behested payments when they cumulatively total at least \$5,000 per source per year. The state laws and the state's disclosure form are attached. More information is available from the **Fair Political Practices Commission** (fppc.ca.gov).

Details

Details about the Ethics Commission's recommendations are provided below.

Key Behested Payment Recommendations	
Recommendation	Proposed Language
Ban elected officials from soliciting behested payments from a restricted source: <ul style="list-style-type: none"> Lobbyist / Lobbying Firm / Bidder / Contractor In past 12 months: Party to an Entitlement / Attempted to Influence 	LAMC § 49.5.5(C)
Establish exemptions to the ban on elected officials soliciting behested payments from restricted sources: <ul style="list-style-type: none"> State of emergency Mass media Entire audience at a public gathering Written materials in which the elected official's name is listed with other names Services (not dollars) provided to the City Grant application on behalf of the City 	LAMC § 49.5.5(C)(1)
Lower the elected official's disclosure threshold for behested payments to \$1,000 per person per year.	LAMC § 49.5.5(C)(2)
Require elected officials to identify, when disclosing behested payments, whether the payor is a lobbying entity, a bidder or contractor, or a developer.	LAMC § 49.5.5(C)(3)

The recommendations **DO NOT** affect the state's definition of "behested payment" in any way.

The recommendations **DO NOT** limit or regulate nonprofits or donors in any way.

California Government Code § 82004.5

“Behested payment” means a payment that is made at the behest of a committee, an elected officer, a member of the Public Utilities Commission, or an agent thereof, under any of the following circumstances:

- (a) Full and adequate consideration is received from the committee or elected officer.
- (b) The payment is made to a different candidate or to a committee not controlled by the behesting candidate.
- (c) As to an elected officer, it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the officer’s seeking or holding of elective office. For purposes of this subdivision, a payment is made for purposes related to an elected officer’s seeking or holding of elective office if all or a portion of the payment is used for election-related activities, as defined in Section 82022.5. The following types of payments are presumed to be for purposes unrelated to an elected officer’s seeking or holding of elective office:
 - (1) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.
 - (2) A payment made by a state, local, or federal governmental agency.
 - (3) A payment made by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
 - (4) A payment made principally for charitable purposes.
 - (5) A payment made principally for legislative or governmental purposes by a person other than a state, local, or federal governmental agency.

California Government Code § 84224

- (a) A behested payment described in subdivision (b) shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the behesting officer or member of the Public Utilities Commission with the officer’s or member’s agency and is a public record subject to inspection and copying pursuant to Section 81008. The report shall contain all of the following information: name of payor; address of payor; amount of the payment or payments; date or dates the payment or payments were made; the name and address of the payee; a brief description of the goods or services provided or purchased, if any; and a description of the specific purpose or event for which the payment or payments were made. Once the five-thousand-dollar (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source shall be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies, including the Public Utilities Commission, shall forward a

copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

- (b) The reporting requirement imposed by this section applies to a behested payment that satisfies each of the following:
 - (1) The payment is made at the behest of an elected officer or member of the Public Utilities Commission.
 - (2) The behesting elected officer or member of the Public Utilities Commission does not provide full and adequate consideration in exchange for the payment.
 - (3) The payment is made principally for a legislative, governmental, or charitable purpose.
 - (4) If made principally for a legislative or governmental purpose, the payment is made by a person other than a state, local, or federal governmental agency.

2 Cal. Code Regs § 18215.

- (a) Except as provided in subdivision (b) below, for purposes of behested payment reporting as required by Sections 82015(b)(2) and (b)(3), “made at the behest of” means made 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 the elected officer, Public Utilities Commission (“PUC”) member, or his or her agent.
- (b) A payment is not “made at the behest of” an elected officer under Section 82015(b)(2)(B)(iii) or a PUC member under Section 82015(b)(3) and is not subject to behested payment reporting if the payment is made in response to a fundraising solicitation from a charitable organization requesting a payment where the solicitation does not feature an elected officer or PUC member.
 - (1) For purposes of this regulation, “features an elected officer or PUC member” has the same meaning as found in Regulation 18901(c)(2): “‘Features an elected officer’ means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.”
 - (2) An elected officer or PUC member is also featured in a solicitation if the roster or letterhead listing the governing body contains a majority of elected officers (Section 82015(b)(2)(B)(iii)) or PUC members (Section 82015(b)(3)).