

May 13, 2019

Melinda Murray, Chair and Commissioners
Los Angeles City Ethics Commission
on behalf of the Los Angeles City Council
200 North Spring Street
City Hall, 24th Floor
Los Angeles, CA 90012

Via email to ethics.policy@lacity.org

Re: Ban on Behested Payments, Council File No. 19-0046

Dear City Ethics Commissioners and Councilmembers,

Thank you for the opportunity to provide input on the proposed ban of certain behested payments as approved by the City Ethics Commission and described in their February 27, 2019 transmittal to City Council. I am writing on behalf of Alliance for Justice (AFJ) to say **we oppose the proposed ban on behested payments and ask that the Council remove it from the overall Campaign Contributions and Behested Payments proposal.**

AFJ is a national association of 130 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. AFJ is the leading expert on the legal framework for nonprofit advocacy efforts, providing definitive information, resources, and technical assistance that encourages nonprofit organizations to fully exercise their right to be active participants in the democratic process. A nonprofit ourselves – we are not a law firm – we provide legal and capacity-building support to nonprofit organizations to empower them to advocate in line with their missions and in compliance with the law. Since 2004, we have worked with over 1,800 small, medium, and large nonprofit organizations in California. Having experienced a strong demand for our services in Southern California for years, we opened an office in Los Angeles in 2014.

A ban on behested payments would result in a severe and chilling impact on the ability of nonprofit organizations to fundraise for legitimate and worthy causes. We understand the good intentions behind this proposal, but banning behested payments goes too far and will have unintended consequences.

The proposed ban would diminish services and benefits available to all city residents. There is a long and important tradition of our elected officials making public appeals for contributions to charities from the Red Cross to the Food Bank to the Library. Public-private partnerships are a preferred way of

providing services and benefits and encouraging private investment in the city. Efforts like the LA Justice Fund where philanthropy has joined the city to help undocumented residents facing deportation, or community benefits agreements, where residents and city officials ask a developer to add affordable housing or other community benefits to their projects involve city officials asking private citizens, who are sometimes lobbyists, city contractors, or developers, to donate to nonprofits for the public good. The proposed ban means elected officials can no longer ask many civically engaged individuals and institutions to support bettering our City. And this may lead to them not asking anyone to support these worthy causes.

Disclosure of behested payments is the appropriate solution to concerns about corruption, not a ban. Existing state law already requires disclosure of behested payments in excess of \$5000, and Los Angeles elected officials are subject to these requirements. A list of behested payments is readily available to the public. We collectively support this approach to assure transparency and democratic process, including the enhanced disclosure requirements in the draft ordinance.

The proposed ban on behested payments is untested and goes further than state law or any other jurisdiction. We are not aware of any jurisdiction that bans behested payments.

Exceptions to the ban are unclear, insufficient, and cannot be adequately clarified to avoid a negative impact on city services. The City Ethics Commission acknowledges the importance of behested payments to nonprofit organizations by recommending certain exceptions for asks made by public officials to certain groups in specific ways. These exceptions leave a lot of ambiguity where all parties involved will be chilled from raising needed funds for worthy causes by the threat of criminal penalties. Concepts such as what counts as a “public gathering” cannot be adequately clarified to avoid this negative impact.

We urge the City Council to remove the ban on behested payments from the proposed ordinance in its entirety as follows:

~~SEC. 49.5.5.C. An elected City officer shall not solicit a behested payment from a restricted source.~~

- ~~1. The prohibition on soliciting a behested payment does not apply in the following scenarios:
 - ~~a. The solicitation is made because of a state of emergency declared by the City Council.~~
 - ~~b. The solicitation is communicated solely through mass media, a suggestion made to the entire audience at a public gathering, or written materials in which the name of the elected City officer is listed with other names. Attachment B Ethics Commission 1 of 2 February 27, 2019~~
 - ~~c. The solicitation is for services provided to the City.~~~~

~~d. The solicitation is made as a result of an elected official's participation in a grant application submitted on behalf of the City.~~

12. An elected City officer shall disclose behested payments in accordance with the Political Reform Act when one or more payments equal or exceed \$1,000 in the aggregate from the same source in the same calendar year.

23. When disclosing behested payments, an elected City officer shall identify in the comment section of the state's behested payment report whether the payor was one or more of the following when one or more payments were made: a lobbying entity under Section 48.02; a bidder, contractor, subcontractor, or principal under Section 49.7.35 or 49.7.36; or an applicant or principal under Section 49.7.38.

34. A member of an elected City officer's staff is an agent of the elected City officer when the staff member solicits a behested payment.

D. A person shall not induce or coerce or attempt to induce or coerce another person to engage in activity prohibited by Subsections A or B, ~~or C.~~

Thank you for your consideration. Please feel free to contact me at (213) 346-3288 if you have any questions.

Sincerely,

Nona Randois
California Director