

November 12, 2019

Rules, Elections, and Intergovernmental Relations Committee
City Council of the City of Los Angeles
Room 340, City Hall
200 North Spring Street
Los Angeles, CA 90012

Via email to mandy.morales@lacity.org

Re: Ban on Behested Payments, 11/15/2019 Item No. 1, Council File No. 19-0046

Dear Committee Members,

Thank you for the opportunity to provide input on the Committee's consideration of a proposed ban on certain behested payments. I am writing on behalf of Alliance for Justice (AFJ) to **voice our opposition to the proposed ban on behested payments and urge the Committee to remove it from Draft Ordinance C.**

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 encourage nonprofit organizations to fully exercise their right to be active participants in the democratic process. A nonprofit ourselves – we are not a law firm – rather 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.

Because of our extensive work with progressive nonprofits engaging in advocacy work, we have identified a number of unintended consequences that will result from the proposed ban.

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. Elected officials in Los Angeles have a long and important tradition of making public appeals for contributions to charities from the Red Cross to food banks and libraries. Public-private partnerships are a preferred way to provide services and benefits and encourage private investment in the city. Efforts like the LA Justice Fund where philanthropy has partnered with 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 civically engaged individuals and institutions to support efforts to better our city. And this may lead elected officials not to ask anyone to support these worthy causes for fear of asking a restricted source unintentionally.

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 support disclosure to assure transparency and a 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 may be dissuaded from raising needed funds for worthy causes by the threat of criminal penalties. For example, the concept of a “public gathering” is vague and could have a negative impact on charities and beneficiaries if narrowly interpreted.

We urge the City Council to remove the ban on behested payments from Draft Ordinance C in its entirety as follows:

~~SEC. 49.5.5.C. An elected City officer and an agent of the 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.~~

~~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 or on behalf of a public agency or a non-profit and the City is participating in the grant funded program or the City will receive services through the grant funded program.~~

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, owner, or principal under Section 49.7.37.

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 on behalf of the elected City officer.

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