



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 23, 2014

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

Re: Adoption of Proposed Regulations Implementing Lobbyist Ordinance
and New Disclosure Requirements for Permit Consultants and Developers

Proposed Commission Action and Staff Recommendation

Staff recommends that the Commission approve the adoption and amendment of the regulations discussed below, which implement and otherwise interpret the City's Lobbyist Ordinance, found at San Francisco Campaign and Governmental Conduct Code section 2.100 et seq., and new disclosure requirements for permit consultants and developers.

Background and Reasons for Proposed Regulatory Action

On June 26, 2014, the Mayor signed legislation which amends the City's Lobbyist Ordinance and other provisions of the Campaign and Governmental Conduct Code. Most of these amendments go into effect on July 26, 2014.¹ Among other changes, the legislation changes the lobbyist qualification threshold, modifies certain exemptions from the lobbyist registration requirement, and requires reporting by certain permit consultants and developers.

Although the amendments were intended, in part, to clarify and simplify the Lobbyist Ordinance, staff believes that the public and the regulated community could benefit from further guidance with respect to certain key issues. The proposed regulations are intended to provide that guidance as well as TO codify existing Commission advice and further define certain terminology.

In short, the purpose of these regulations is to facilitate disclosure and to ensure the accuracy and integrity of the lobbyist disclosure data presented to the public via the Commission's website. The purpose of the regulations is *not* to overly burden

¹ The permit consultant provisions go into effect on January 1, 2015. For this reason, staff is setting forth only modest regulatory proposals for the permit consultant provisions at this time, and is soliciting comment and input from the permit consultant community with the intent of potentially proposing additional regulations at a future date.

lobbyists, who play a role in the public policy process by providing information to government decision-makers and who generally have incentives to comply with applicable rules.²

Staff has attempted to provide clear rules to guide persons subject to the lobbyist ordinance and the new disclosure requirements, and HAS included examples to demonstrate their real-world application.³ In this regard, the proposed regulations were informed by helpful public input provided at two interested person meetings and through communications by members of the public and the regulated community directly with staff. Such input is specifically discussed below where particularly relevant.

A copy of all proposed regulations is attached. Each regulation is discussed separately below, and the relevant page and line numbers on the attachment are specified so that the Commissioners and the public can easily reference the actual regulatory language.

Any regulation adopted by the Commission will become effective in 60 days unless two-thirds of all members of the Board of Supervisors vote to reject the regulation before the expiration of the 60-day period. (S.F. Charter § 15.102.)

Regulatory Proposals

1. Regulation 2.105-1: Construction of Lobbyist Ordinance and Regulations.

The Board of Supervisors has specifically found that lobbyist disclosure “is essential to protect public confidence in the responsiveness and representative nature of government officials and institutions.” (S.F. Camp. & Govt. Conduct Code § 2.100(a).)⁴ In order to promote such disclosure, Regulation 2.105-1 provides that the Lobbyist Ordinance and its implementing regulations shall be construed by the Commission in a manner that provides for the greatest disclosure of lobbyist activity.

See page 1, lines 2 through 4 of the attached draft regulations.

2. Regulation 2.105-2: Definition of Lobbyist Employer.

The Lobbyist Ordinance requires lobbyists to report various information on behalf of their employer, including payments received from clients and contributions made by the employer. The ordinance specifies that an employer is an entity required to provide the lobbyist

² See Nicholas W. Allard, *The Seven Deadly Virtues of Lobbyists: What Lawyer Lobbyists Really Do*, 13 Elec. L. Journal 1, 210 (2014).

³ The importance of simple, clear and intelligible regulations has been noted by legal scholars. (See, e.g., Cass Sunstein, *Simpler: the Future of Government* (2013).)

⁴ Indeed, disclosure of lobbying activity serves a variety of public purposes. Among other things, disclosure can inform both the general public and legislators of the identities of key interested parties, their interests, and the extent of their lobbying activities. It can also provide such information to competing parties and promote the “fair competition among interest groups in the ‘familiar Madisonian fashion of allowing factions to check factions in the service of the public good.’” (Richard Briffault, *Lobbying and Campaign Finance: Separate and Together*, 19 Stan. L. & Pol. Rev. 1, 117-18 (2008) [citation omitted].)

with an Internal Revenues Service Form W-2 wage and tax statement, but does not account for situations where the lobbyist is an owner, but not an employee, of a lobbying firm.

Regulation 2.105-2 thus interprets the term “lobbyist employer” to include an entity owned by a lobbyist and which performs and charges clients for lobbyist services so that contributions and client payments for that entity are reported, even if the lobbyist is not an employee of the entity. Staff believes that this comports with the intent of the Lobbyist Ordinance and that most lobbyist owners of lobbying firms already report client compensation and contributions for those entities.

See page 1, lines 5 through 10 of the attached draft regulations.

3. Regulation 2.105-3: Definition of Lobbyist Services.

The Lobbyist Ordinance requires lobbyists to report compensation received for performing “lobbyist services.” Regulation 2.105-3 clarifies that this term includes a variety of activities related to a lobbyist’s advocacy on behalf of a client, including not just contacts with City officers, but also preparing for such contacts, conducting analysis, performing research, providing advice, and recommending strategy.⁵ A clear definition of “lobbyist services” is important lest any lobbyist misconstrue the term to include only contacts with City officers.

See page 1, lines 11 through 15 of the attached draft regulations.

4. Regulation 2.105-4: Disclosure of Activity Expenses.

The Lobbyist Ordinance requires lobbyists to report “activity expenses” made, incurred, or arranged by the lobbyist or his or her client. “Activity expenses” are primarily gifts, but also include consulting fees paid to City officers. Regulation 2.105-3 clarifies that reportable activity expenses also include those which are made, incurred or arranged by a lobbyist's employer at the behest of the lobbyist.

See page 1, lines 16 through 18 of the attached draft regulations.

5. Regulation 2.106-1: Use of Intermediary to Make Contacts.

Only communications with a City *officer*⁶ trigger lobbyist registration and reporting. However, both the City Attorney’s Office and Commission staff have long advised that communications with a City officer’s staff member constitutes a lobbying contact when it is understood, or could be reasonably expected, that the staff member will transmit the terms of the communication to the officer. (Advice Letter to John Taylor, dated November 15, 1993.) Regulation 2.106-1 simply codifies this long-standing advice so that all lobbying contacts are reported, whether conducted via an intermediary or not.

⁵ This definition is based in part on language in a Fair Political Practices Commission (“FPPC”) regulation concerning the meaning of “Payments for Lobbying Services.” (See 2 Cal. Code of Regs. § 18614.)

⁶ “City officers” generally include City elected officials, members of certain City boards and commissions, and department heads. (See S.F. Camp. & Govt. Conduct Code §§ 2.105 & 3.203.)

The regulation provides two examples.

See page 1, line 19 through page 2, line 14 of the attached draft regulations.

6. Regulation 2.106-2: Modes of Communication to Make Contacts.

Lobbyist registration and reporting is triggered by “any [compensated] communication, oral or written” with City officers. In short, it is the act of communicating that triggers registration and reporting, not the medium. In this regard, Regulation 2.106-2 indicates that lobbying contacts can be made through a variety of media, including email and text messages.

The regulation includes two examples.

See page 2, lines 15 through 23 of the attached draft regulations.

7. Regulation 2.106-3: Determining Number the Number of Contacts.

Regulation 2.106-3 explains how to determine the *number* of lobbying contacts that are made by an individual who communicates with City officers. Determining the correct number of contacts is important for accurate lobbyist reporting, but also for determining whether an in-house employee has reached the five-contact threshold for becoming a lobbyist.

The regulation illustrates the following basic rule: a discussion or other communication with an official about one legislative or administrative matter constitutes one contact, but the number of contacts increases with each additional official involved and with each additional matter discussed. For example, a discussion with two officials about one matter is two contacts, while a discussion with one official about two matters also constitutes two contacts.⁷

Some members of the regulated community suggested that the number of contacts should be based solely on the number of City officers contacted, citing guidance from the FPPC with respect to the state lobbying reporting regime in effect in the 1990s. However, in addition to resulting in less disclosure of lobbying activity, such a rule is generally incompatible with the Ethics Commission’s online lobbyist reporting system, which requires a lobbyist to separately disclose each matter discussed with a City officer.

Nevertheless, in response to concerns from the regulated community, staff has included a provision and example indicating that a lobbyist may report as just *one* contact a discussion with an official about various matters concerning a single real estate project, as such projects often require a number of separate but related actions, but are also easily identified by referencing a single address or name of the project.

The regulation explains a few nuances of the above rule and gives three examples.

⁷ The text of the regulation was informed by lobbying rules in the City of San Diego, where determining lobbying contacts is also important both for registration and reporting reasons.

See page 2, line 24 through page 4, line 10 of the attached draft regulations.

8. Regulation 2.106-4: Contact Exemptions Generally.

The lobbyist ordinance exempts a number of communications from the definition of a “lobbying contact.” Regulation 2.106-4 clarifies that a discussion or other communication with a City officer about multiple legislative or administrative matters will not constitute a lobbying contact only if an exemption exists with respect to each matter mentioned. It is important to explicitly state this rule in a regulation so that lobbyists and other individuals do not interpret any given exemption as a “blanket exemption” that applies with respect to any matter they wish to discuss with a City officer.

The regulation provides two examples.

See page 4, lines 11 through 25 of the attached draft regulations.

9. Regulation 2.107-1: Determining if a Person is Practicing Law.

Recent amendments to the Lobbyist Ordinance make clear that an attorney making compensated lobbying contacts is required to register as lobbyist, except to the extent that he or she is engaged in the “practice of law,” as that term has been construed by statute and case law. This rule mirrors the California Supreme Court’s ruling in *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535. (*See also* Cal. Bus. & Prof. Code § 6009.)

However, staff believes that specifically defining “the practice of law” is too complex an issue to be handled comprehensively by an Ethics Commission regulation. (*See* L.A. County Office of the District Attorney; *Unauthorized Practice of Law: Manual for Prosecutors* (2004) [case law definition of practicing law “is broad and non-specific”].) Therefore, Regulation 2.107-1 instead sets forth the appropriate *analysis* for determining whether an activity falls under that definition.

Tracking language from the *Baron* opinion, the analysis in Regulation 2.107-1 turns on whether the activities at issue would constitute the unauthorized practice of law if performed by a layperson instead of a licensed attorney. (*See Baron, supra*, 2 Cal.3d at 543.)⁸ Thus, an individual is not exempt from lobbyist registration and reporting requirements simply because he or she is an attorney representing a client.

Some members of the regulated community have suggested that more “bright-line” guidance may be appropriate. However, as mentioned, staff is hesitant to attempt to address in a regulation the myriad of activities in which attorneys engage, particularly given the complexity of defining “the practice of law.” Instead, staff thinks such issues are better handled on a case-by-case basis by the Commission via informal or formal advice.

⁸ The relevant definition of practicing law does *not* “encompass[] all of the activities engaged in by attorneys in a representative capacity, including legislative advocacy.” (2 Cal.3d at 246.)

Nevertheless, staff does believe it is appropriate to address one evidently common activity: sending a legal analysis on behalf of a client to the City Attorney (or other City officer) urging a particular action regarding a proposed ordinance. In this regard, and contrary to the contentions of some in the regulated community, Example #3 indicates that this activity *does* constitute a lobbying contact, primarily because staff is not aware of anything that would indicate that a non-lawyer could not send a similar letter. Moreover, the City of San Diego Ethics Commission construes its own similar exemption for attorneys in the same fashion.⁹

Some members of the regulated community also believe that Regulation 2.107-1 should specifically exempt specific types of non-litigation representation by attorneys, particularly in the land use context. However, staff disagrees for at least four reasons:

- As mentioned, outside certain clear circumstances, determining what constitutes the practice of law can be a complicated issue that is heavily dependent on the facts of a particular situation and is thus better handled by the Commission via informal or formal advice.
- Many land use consultants evidently advise with respect to some of the same matters as attorneys, and thus it would appear that attorneys providing such advice would not be exempt under the *Baron* test.
- In the land use context, many contacts with planning and other *staff* members are already exempt from lobbying rules so long as the staff members are not acting as “intermediaries” for City officers. (See Regulation 2.106-1, above.)
- A blanket exemption for land use attorneys risks non-disclosure of important information given that “[a]t the local level, the real action (for lobbyists) is in land use.” (See Robert Wechsler; “Blog Spring Reading: Alan Rosenthal on Lobbying I”; May 15, 2014; <http://www.cityethics.org/content/spring-reading-alan-rosenthal-lobbying-i>; visited July 21, 2014.)

The regulation provides three examples.

See page 5, lines 1 through 20 of the attached draft regulations.

10. Regulation 2.110-1: Reporting Client Payments.

Regulation 2.110-1 is intended to provide guidance to lobbyists with respect to the reporting of client payments. The regulation clarifies that reportable payments from lobbying clients include not only payments for lobbyist services, but also reimbursements for travel costs

⁹ More specifically, the San Diego Ethics Commission has advised that: “the litigation exemption does not apply to other types of contentious matters, even if it is likely that the parties involved will eventually litigate their dispute. For example, an attorney who contacts a City Official to influence a controversial land use decision is engaging in lobbying even if litigation is inevitable. Similarly, an attorney is lobbying when he or she provides a legal analysis to the City Attorney’s Office concerning the wording of a proposed ordinance.” (City of San Diego Ethics Commission, Fact Sheet on Attorneys and the Lobbying Ordinance (10/3/13).)

and other expenses related to those services. The regulation also specifies that payments for other services not related to lobbying (e.g., litigation services provided by a law firm with lobbyist employees or partners) are *not* reportable.

See page 5, line 21 through page 6, line 2 of the attached draft regulations.

11. Regulation 2.110-2: Reporting Shared Client Payments.

Although many lobbyists work for lobbying firms, the Lobbyist Ordinance requires individual lobbyists to report client payments, even if such payments are normally made to their employer. This requirements has raised questions when two or more lobbyists work for the same lobbying firm (e.g., how should client payments be allocated among the lobbyists). Regulation 2.110-2 codifies staff's current advice that, in such cases, all client payments may be reported by just one lobbyist on his or her monthly disclosure report so long as that lobbyist discloses all such payments in that manner throughout the calendar year.

See page 6, lines 3 through 7 of the attached draft regulations.

12. Regulation 2.110-3: Reporting Employer Payments.

Regulation 2.110-3 is intended to provide guidance to in-house lobbyist employees with respect to reporting payments they receive for lobbying services. The regulation clarifies that reportable payments are calculated by multiplying the lobbyist's salary, plus any general bonuses or other incentive compensation, in a given month by the percentage of the lobbyist's time spent performing lobbyist services in that month. Reportable payments also include the full amount of any bonuses or other incentive compensation directly related to the lobbyist services.

The regulation provides two examples.

See page 6, lines 8 through 24 of the attached draft regulations.

13. Regulation 2.110-4: Reporting Contributions.

The Lobbyist Ordinance requires the disclosure of contributions of \$100 or more made, delivered, or arranged by the lobbyist or his or her employer to a City officer, a candidate for such office, a committee controlled by such officer or candidate, or a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco. However, the ordinance does not indicate how one "makes," "delivers," or "arranges" a contribution.

In this regard, Regulation 2.110-4 indicates the types of activities which result in reportable contributions, including requests that a person make a contribution, invitations to a fundraising event, and providing the use of one's home or business for a fundraising event.¹⁰

¹⁰ The regulation uses language which is nearly identical to the definition of "fundraising activity" in the Campaign Finance Ordinance of the City of Los Angeles, and which is substantially similar to the definition that term proposed by the American Bar Association's 2011 Task Force on Federal Lobbying Laws.

(See *Institute of Governmental Advocates v. Younger* (1977 2nd Dist.) 70 Cal. App. 3d 878, 882 [FPPC properly interpreted words “arrange for the making of a contribution” to include “action by a lobbyist designed and intended to cause his employer to make a contribution”].

This disclosure requirement is among the most important in the ordinance given the unique risk of corruption and the appearance of corruption inherent in the interplay between lobbying and campaign fundraising activity.¹¹ Indeed, the Board of Supervisors recently indicated their intent to underscore the importance of this requirement by amending the ordinance to specify that lobbyists are required to maintain copies of all of their fundraising solicitations in addition to other supporting documents. (See S.F. Camp. & Govt. Conduct Code § 2.135(b).)

In response to concerns that the proposed rule would lead to undue compliance burdens, staff drafted four examples to illustrate the limits of when a lobbyist “has reason to know” that a contribution has been raised. The main thrust of each example is that a lobbyist is responsible for those contributions he or she helps to solicit, and that the lobbyist may not rely on claims of plausible deniability of knowledge of the contribution to avoid disclosure. However, a lobbyist need not, for example, track down every attendee of a fundraiser who did not leave a check at the event to determine whether he or she ultimately contributed to a candidate.

One member of the regulated community contended that contributions should be reportable only when a lobbyist affirmatively and explicitly identifies himself or herself to the candidate as being responsible for the contributions, as is the rule in San Diego. Staff recognizes that many fundraisers in fact wish to explicitly “take credit” for contributions raised for a candidate or committee. However, staff believes that such a rule ignores the realities of fundraising, would lead to under-reporting, and could be subject to abuse. In short, staff sees no reason, either in the ordinance or otherwise, for limiting reportable contributions in this fashion.

A perhaps more persuasive proposal would be to require specific solicitations by a lobbyist unrelated to a fundraising event to be reported only when the candidate, committee or their agents are specifically aware of the solicitations. In this regard, one might argue that a contribution solicited by a lobbyist at, say, a neighborhood barbeque without the candidate or committee’s knowledge – to the extent this actually occurs – might be construed to lack the potential to facilitate undue influence and thus does not merit disclosure.

Of course, nothing in the law requires such a narrow interpretation; instead, this is a policy decision for the Commission. Indeed, on balance, staff believes that individual

¹¹ Numerous commentators have recognized this risk. See, e.g., Task Force of Fed. Lobbying Laws, ABA, *Lobbying Law in the Spotlight: Challenges and Proposed Improvements*, pp. 19-25 (2011) (“the interplay of lobbying and the political money machine inevitably creates the potential for special interest influence and governmental decisions based on inappropriate criteria”); Richard L. Hasen, *Lobbying, Rent-Seeking, and the Constitution*, 64 Stan. L. Rev. 191, 221 (2012) (describing how “[c]ampaign contributions are a key part of a culture of reciprocity” among lobbyists and elected officials); Richard Briffault, *The Anxiety of Influence: The Evolving Regulation of Lobbying*, 13 Elec. L. Journal 1, 178-79 (2014) (noting that it is “useful for public transparency and voter information to combine lobbying and campaign contribution information in a single place” and that “many experts with first-hand experience of the role of campaign contributions are convinced that there is something particularly toxic about the interaction of lobbying and campaign finance”).

contributions solicitations *should* be reportable, even if done without the knowledge of the candidate or committee, for at least five reasons:

- The lobbyist rules generally should be read in a manner that provides for the greatest disclosure of lobbyist activity, and if reporting were restricted, significant fundraising activity may not be disclosed. (*See* S.F. Camp. & Govt. Conduct code § 2.100(a); proposed SFEC Regulation 2.105-1.)
- Disclosing the interplay between lobbying and campaign fundraising activity is particularly important for transparency and accountability (see discussion above), and during the course of this regulatory process staff has been informed that lobbyist contributions may currently be under-reported.
- Disclosing all solicited contributions could reveal certain valuable public information, including those elected officials the lobbyist believes to be most receptive to his or her lobbying efforts and clients.
- Recent amendments to the ordinance indicate that lobbyists must retain “copies of all fundraising solicitations sent by the lobbyist or his or her agent for” a City officer, candidate or committee, suggesting the intent that such solicitations – whether or not coordinated with the candidate or committee – substantiate required reporting.
- If reporting were restricted, an elected City official would nevertheless likely deduce that many contributions from a well-known lobbyist’s clients or their employees, for example, were raised by that lobbyist. Alternately, the official would also likely deduce that many contributions from employees of a single employer were raised by the in-house lobbyist with whom the elected official is currently working.

In any case, staff certainly believes that actions generally construed to constitute *hosting, sponsoring or participating* in a fundraising event (as opposed to unrelated direct solicitations) should certainly trigger reporting because, in addition to the reasons cited above, a candidate or committee’s knowledge of the lobbyist’s participation in such public and coordinated events may be reasonably implied.

Otherwise, staff believes that the regulation’s four examples address most of the concerns raised by members of the regulated community to the extent necessary for effective guidance.

See page 7, line 1 through page 8, line 9 of the attached draft regulations.

14. Regulation 2.110-5: Reporting Contributions Arranged by Multiple Parties.

Staff understands that lobbyists often fundraise or otherwise arrange contributions for candidates, ballot measures and committees in concert with other lobbyists and individuals. Joint fundraising can pose challenges for lobbyists with respect to their contribution reporting requirements under the Lobbyist Ordinance. More specifically, a lobbyist may question which

contributions raised as a result of these joint fundraising activities are reportable. Regulation 2.110-5 seeks to provide a way to answer this question.

The regulation provides that when two or more lobbyists arrange contributions together, one lobbyist may report all contributions if both lobbyists work for the same employer. If the lobbyists do *not* work for the same employer, all such arranged contributions shall be reported either: (1) according to who bore primary responsibility for soliciting the contribution; or (2) in approximate proportion to each person's participation in the fundraising activity. Additionally, if a lobbyist arranges contributions with another individual who is not a lobbyist, all such contributions shall be reported by the lobbyist.

See page 8, lines 10 through 21 of the attached draft regulations.

15. Regulation 2.110-6: Reporting for Lobbyists and Permit Consultants.

Recent legislation also created new registration and reporting requirements for permit consultants working on certain large projects effective in 2015. The permit consultant reporting requirements differ from those of lobbyists, and the permit consultant reports will be accessible separately from the lobbyist database.

Regulation 2.110-6 indicates that an individual who qualifies as both a lobbyist and a permit consultant must register separately and may either: (1) file separate disclosure reports under each of the reporting regimes; or (2) file only lobbyist disclosure reports so long as the individual discloses all information required under the lobbying rules with respect to his or her permit consulting services. An individual electing to file as a lobbyist must continue filing as such through the end of the calendar year, or until he or she terminates her status as both a lobbyist and permit consultant, whichever is earlier.

This regulation originally called for requiring separate reporting, but was changed based on input from the public.

The regulation provides one example.

See page 8, line 22 through page 9, line 15 of the attached draft regulations.

16. Regulation 2.110-7: Lobbyist Registration Termination.

The Lobbyist Ordinance does not specifically indicate how a lobbyist terminates his or her status as a lobbyist (absent failing to pay the \$500 annual fee). Regulation 2.110-7 codifies staff advice in this regard: a lobbyist simply files his or her final monthly report and indicates (by checking where indicated) that the report constitutes his or her termination statement.

See page 9, lines 16 through 22 of the attached draft regulations.

17. Regulation 3.400-1: Construction of Permit Consultant Rules.

Like Regulation 2.105-1, which addresses *lobbyist* disclosure rules, this regulation provides that the permit consultant rules shall be construed by the Commission in a manner that provides for the greatest disclosure of their activity.

See page 9, line 24 through page 10, line 2 of the attached draft regulations.

18. Regulation 3.410-1: Disclosure of Officials Contacted by Permit Consultants.

As noted above, the permit consultant reporting requirements differ from those of lobbyists. For example, permit consultants will have to describe all permits they are seeking, the clients for whom they are seeking the permits, and each City official they contact in connection with each permit. However, they will *not* have to report the dates of their contacts.

Consistent with the intent of the recent legislation, Regulation 3.410-1 indicates that a permit consultant is not required on his or her quarterly report to repeat the name of any officer or employee contacted multiple times during the applicable quarter with respect to the same permit and on behalf of the same client. Instead, a single disclosure of that officer's or employee's name, along with the permit at issue and the client, would suffice.

See page 10, lines 3 through 7 of the attached draft regulations.

19. Regulation 3.410-2: Permit Consultant Registration Termination.

Like Regulation 2.110-8, this regulation indicates how a permit consultant terminates his or her registration. More specifically, a permit consultant simply files his or her final quarterly report and indicates (by checking where indicated) that the report constitutes his or her termination statement. A permit consultant electing to file as a lobbyist who wishes to terminate his or her status as a permit consultant must file a terminating quarterly report as indicated above, but need not disclose any reportable information on that report so long as that information is included on his or her monthly lobbyist report.

See page 10, lines 8 through 18 of the attached draft regulations.

20. Regulation 3.520-1: Developer Disclosure.

The recent amendments require developers of major City projects to file reports with the Commission disclosing donations of \$5,000 or more to nonprofit entities that have lobbied the City regarding the developers' projects. Regulation 3.520-1 states the information that must be included on these reports.

See page 10, line 20 through page 11, line 5 of the attached draft regulations.

21. Renumbered and titled regulations.

The Commission previously adopted five regulations implementing the Lobbyist Ordinance after that ordinance was passed in 2009. Staff proposes re-numbering the previously adopted regulations, as well as adding titles, so that they are consistent with the new regulations. The proposed re-numbering and titles are set forth in the table below:

Current Number	Authority	Proposed Title.	Proposed Number
Reg. 2.105(d)(1)(Q)-1	SFC&GC § 2.106.	Labor union lobbying.	Reg. 2.106-5
Reg. 2.110(b)-1	SFC&GC § 2.110.	Lobbyist registration; photograph required.	Reg. 2.110-7
Reg. 2.110(d)-1	SFC&GC § 2.110.	Reporting by firms for lobbyists.	Reg. 2.110-8
Reg. 2.140(a)-1	SFC&GC § 2.140.	Online filing requirement.	Reg. 2.140-1
Reg. 2.145(a)-1	SFC&GC § 2.145.	Calculating late fines; holidays and weekends.	Reg. 2.145-1

* * * * *

S:\Lobbyists\Regulations\2014\EC Mem 2014 Lobby Regs 7.23.14.docx

1 **PROPOSED S.F. LOBBYIST ORDINANCE REGULATIONS (7/23/14)**

2 **Regulation 2.105-1. Construction.** The provisions of Section 2.100 et seq. of the Campaign
3 and Governmental Conduct Code, as well as its implementing regulations, shall be construed
4 in a manner that provides for the greatest disclosure of lobbyist activity in the City and County.

5 **Regulation 2.105-2. Lobbyist Employer; Definition.** "Lobbyist employer" includes, but is
6 not limited to, a person that is: (a) required to provide an Internal Revenue Service Form W-2
7 wage and tax statement to an employee who performs lobbyist services; or (b) owned by a
8 lobbyist and which performs and charges clients for lobbyist services, even if the entity is not
9 required to provide an Internal Revenue Service Form W-2 wage and tax statement to an
10 employee who performs lobbyist services.

11 **Regulation 2.105-3. Lobbyist Services; Definition.** For purposes of Section 2.105,
12 "lobbyist services" include but are not limited to, contacting officers of the City and County and
13 preparing for such contacts, as well as conducting analysis, performing research, providing
14 advice and recommending strategy with respect to any pending, proposed or potential local
15 legislative or administrative action.

16 **Regulation 2.105-4. Activity Expenses; Disclosure.** Activity expenses made, incurred or
17 arranged by a lobbyist, a lobbyist's client at the behest of the lobbyist, or a lobbyist employer
18 at the behest of the lobbyist shall be reported pursuant to Section 2.110(c)(7).

19 **Regulation 2.106-1. Contacts; Use of Intermediary.** A "contact" for purposes of Section
20 2.106 includes but is not limited to any communication for the purposes of influencing local
21 legislative or administrative action with a member of the staff of an officer of the City and
22 County when it is understood, or could be reasonably expected, that the staff member will
23 transmit the terms of the communication to an officer of the City and County.

1 Examples of such staff members include, but are not limited to, the legislative aides of
2 members of the Board of Supervisors, the Mayor's Chief of Staff, and the deputy directors of
3 City departments.

4 Example #1: A lobbyist meets with the legislative aide of a member of the Board of
5 Supervisors to advocate on behalf of a client for an amendment of pending legislation
6 sponsored by the Board member. Although the Board member does not attend the meeting,
7 the lobbyist should presume that the aide will convey the substance of that meeting to the
8 Board member and thus the lobbyist has made a contact.

9 Example #2: Paid representatives of a real estate developer meet with staff at the Planning
10 Department to discuss to possible modifications to the draft Environmental Impact Report for
11 the developer's project. The staff members do not state or otherwise indicate, and the
12 representatives have no reason to believe, that they will have the substance of their
13 conversation conveyed to either the Planning Director or the Zoning Administrator. The
14 representatives have not made a lobbying contact.

15 **Regulation 2.106-2. Contacts; Modes of Communication.** A "contact" for purposes of
16 Section 2.106 includes, but is not limited to, an in-person meeting, telephone call, video
17 conference, letter, fax, e-mail, and text message.

18 Example #1. A lobbyist sends an e-mail to the personal e-mail address of a member of the
19 Board of Supervisors. The message includes a personal message about their pick-up
20 basketball game the night before as well as an attempt to influence the member's vote on an
21 upcoming resolution. The lobbyist has made a contact.

22 Example #2. A lobbyist sends a text message to a member of the Board of Supervisors in
23 order to urge the member to vote against an ordinance. The lobbyist has made a contact.

24 **Regulation 2.106-3. Contacts; Determining Number.** This regulation sets forth the rules
25 for determining the number of contacts an individual has with an officer of the City and

1 County. These rules are illustrative and the principles contained therein shall be applied to
2 other situations not directly addressed in this regulation.

3 (a) A meeting with an officer regarding a single local legislative or administrative action
4 constitutes one contact, a meeting regarding two local legislative or administrative actions
5 constitutes two contacts, etc.

6 (b) A meeting with an officer and a member of that officer's staff regarding a single local
7 legislative or administrative action constitutes one contact with that officer.

8 (c) A meeting with two officers regarding a single local legislative or administrative action
9 constitutes two contacts.

10 (d) Meeting or otherwise communicating multiple times in the same day with an officer to
11 discuss the same local legislative or administrative action discussed earlier in the day
12 constitutes one contact.

13 (e) Each letter, fax, e-mail, text message, or similar communication, or copies thereof sent to
14 other recipients, that pertains to a single local legislative or administrative action constitutes a
15 separate contact even if such letters, faxes, e-mails text messages, or other communications
16 are identical or substantially similar. However, multiple copies of the same communication
17 sent to the same officer shall constitute only one contact.

18 (f) For purposes of this regulation only, various matters concerning a single real estate project,
19 shall be considered a single local legislative or administrative action, and contacts regarding
20 these matters shall be reported by referencing that single project.

21 Example #1: A lobbyist sends an e-mail on behalf of a client to four of the seven members of
22 the SFMTA Board urging them to vote in support of a particular agenda item. The lobbyist
23 copies the Executive Director of the SFMTA on the e-mail. The lobbyist has made five
24 contacts.

1 Example #2: A lobbyist sends a text message on behalf of his employer to a member of the
2 Board of Supervisors and to her legislative aide urging the Board member to vote in favor of a
3 proposed ordinance. The lobbyist has made one contact.

4 Example #3: A lobbyist sends an e-mail on behalf of a client to a member of the Board of
5 Supervisors urging her to vote in favor of a proposed ordinance. The same day, the lobbyist
6 sends the same e-mail to the Board member's legislative aide regarding the same ordinance.
7 The lobbyist has made one contact.

8 Example #4: A lobbyist meets with a member of the Board of Supervisors on behalf of a client
9 to discuss various required permits and other regulatory and legislative actions in connection
10 with a single proposed real estate development project. The lobbyist has made one contact.

11 **Regulation 2.106-4. Contacts; Exemptions Generally.** A communication with an officer
12 regarding multiple local legislative or administrative actions is exempt from the definition of
13 "contact" for purposes of Section 2.106 only when an exemption exists with respect to each
14 local legislative or administrative action mentioned in the communication.

15 Example #1: A lobbyist and an engineer meet with a member of the Board of Supervisors.
16 The lobbyist urges the Board member to oppose a proposed ordinance on behalf of a client.
17 The engineer provides purely technical data and analysis related to that ordinance, and the
18 lobbyist will report that the engineer was present at the meeting when disclosing this contact.
19 Later in the meeting, the engineer urges the Board member at the behest of his employer to
20 support a different ordinance with respect to employment issues. The engineer has made one
21 lobbying contact.

22 Example #2: A paid representative of a City employee labor union meets with the Mayor's
23 Chief of Staff regarding the working conditions of the union's members. During the
24 conversation, the paid representative also asks that the Mayor support a particular land use
25 measure. The union representative has made one lobbying contact.

Regulation 2.107-1. Practice of Law; Determination. Any determination of whether communications with an officer of the City and County or other activities constitute the practice of law shall be based on analysis of whether those communications or activities would constitute the unauthorized practice of law if performed by a layperson instead of a licensed attorney, and shall not be based on whether the person engaging in that communication or those activities is in fact a licensed attorney.

Example #1: An attorney is representing a corporation that opposes a proposed ordinance. The attorney and the Chief Executive Officer of the corporation meet with the Mayor's Chief of Staff. The attorney begins the meeting by stating that he represents the corporation, and that he is acting in his capacity as an attorney for the corporation. Throughout the meeting, the attorney and the CEO urge that the Mayor should oppose the proposed ordinance because it would adversely affect the corporation and other companies in the same business sector. The attorney has made a contact.

Example #2: An attorney is representing a person involved in ongoing litigation with the City and County. The attorney contacts the City Attorney and urges him to dismiss the City's complaint against his client, arguing that the City's legal claims are not supported by existing law. The attorney has not made a contact.

Example #3: An attorney representing a trade association sends a letter to the City Attorney on behalf of her client urging a change to the wording of a proposed ordinance and provides a legal analysis in that letter supporting her position. The attorney has made a contact.

Regulation 2.110-1. Economic Consideration; Client Payments. A lobbyist shall report on his or her monthly disclosure reports economic consideration received or expected by the lobbyist or the lobbyist's employer from each client during the reporting period for the provision of lobbyist services, as defined in Section 2.105 and Regulation 2.105-3, as well as reimbursements for travel costs and other expenses related to lobbyist services. The lobbyist

1 is not required to report payments for other services provided by the lobbyist to the client that
2 are not related to lobbyist services.

3 **Regulation 2.110-2. Economic Consideration; Shared Client Reporting.** If two or more
4 lobbyists work for the same employer, all economic consideration received or expected from
5 the employer's clients for lobbyist services may be reported by a single lobbyist on his or her
6 monthly disclosure report so long as that lobbyist discloses all such economic consideration in
7 that manner throughout the calendar year.

8 **Regulation 2.110-3. Economic Consideration; Employer Payments.** The amount of
9 reportable economic consideration received or expected by a lobbyist from his or her
10 employer in a given month shall be calculated by multiplying the lobbyist's salary, plus any
11 bonuses or other incentive compensation not directly related to the lobbyist services, received
12 or expected by the lobbyist in that month by the percentage of the lobbyist's time spent
13 performing lobbyist services, as defined in Section 2.105 and Regulation 2.105-3, in that
14 month. It shall also include the full amount of any bonuses or other incentive compensation
15 directly related to the lobbyist services.

16 Example #1. A public policy expert at a social welfare organization is a registered lobbyist
17 and earns a salary of \$5,000 per month. He spends 20 percent of his time one month
18 performing lobbyist services for his employer. He must report \$1,000 in economic
19 consideration received or expected for lobbyist services.

20 Example #2. The Director of Governmental Affairs at a large corporation is a registered
21 lobbyist and earns a salary of \$10,000 per month. She spends 10 percent of her time in
22 December performing lobbyist services for her employer. She also earns a year-end bonus of
23 \$10,000 in December based on her overall work performance. She must report receiving
24 \$2,000 in economic consideration for lobbyist services in December.

Regulation 2.110-4. Contributions; Disclosure.

(a) Contributions that are reportable pursuant to Section 2.110 include, but are not limited to, those contributions that are made by the lobbyist and those contributions that the lobbyist knows or has reason to know were raised as a result of fundraising activity by the lobbyist, the lobbyist's agent, or the lobbyist's employer.

(b) "Fundraising activity" includes, but is not limited to:

- (1) Requesting that another person make a contribution;
- (2) Inviting a person to a fundraising event;
- (3) Supplying names to be used for invitations to a fundraising event;
- (4) Permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event;
- (5) Providing the use of one's home or business for a fundraising event;
- (6) Paying for at least 20 percent of the costs of a fundraising event;
- (7) Hiring another person to conduct a fundraising event;
- (8) Delivering a contribution, other than one's own, either by mail, by messenger, or in person; or
- (9) Acting as an agent or intermediary in connection with the making of a contribution.

Example #1. A lobbyist employer's name is listed as a co-host on the invitation to a campaign fundraiser for a candidate for the Board of Supervisors, which is paid for by the candidate's committee. Contribution checks totaling \$5,000 are collected by the campaign at the event from ten attendees. The lobbyist must disclose those ten contributions.

Example #2. A lobbyist invites 5 people to attend a campaign fundraiser held by a candidate for the Board of Supervisors. Contribution checks totaling \$10,000 are collected by the campaign at the event. The five persons invited by the lobbyist made contributions totaling \$1,000 at the event. The lobbyist must disclose those five contributions.

1 Example #3: A lobbyist hosts a fundraising event at his home for a candidate for the Board of
2 Supervisors. The event is attended by twenty guests. Contribution checks totaling \$5,000 are
3 collected by the campaign at the event from ten attendees. A few weeks later, five other
4 event attendees make contributions directly to the candidate without informing the lobbyist.
5 The lobbyist must disclose only the \$5,000 in contributions collected at the event.

6 Example #4: A lobbyist solicits a contribution from one person a candidate for the Board of
7 Supervisors. The solicited person specifically indicates that he will mail the contribution check
8 for \$500 to the candidate the next day. After confirming the next day that the contribution has
9 been made, the lobbyist must disclose that contribution.

10 **Regulation 2.110-5. Contributions; Multiple Parties.**

11 (a) If two or more lobbyists working for the same employer together arrange contributions, or
12 if the lobbyist's employer arranges such contributions, whether through a fundraising event or
13 otherwise, all such arranged contributions may be reported by a single registered lobbyist.

14 (b) If two or more lobbyists not working for the same employer together arrange contributions,
15 or if two or more lobbyist employers and/or lobbyists arrange such contributions, whether
16 through a fundraising event or otherwise, all such arranged contributions shall be reported
17 either: (1) according to which lobbyist or employer bore primary responsibility for soliciting the
18 contribution; or (2) in approximate proportion to each lobbyist's or employer's participation in
19 the fundraising activity.

20 (c) If a lobbyist arranges contributions with another individual who is not a lobbyist and is not
21 employed by the lobbyist's employer, all such contributions shall be reported by the lobbyist.

22 **Regulation 2.110-6. Lobbyists and Permit Consultants; Separate or Single**
23 **Registration/Reporting.**

24 (a) An individual who qualifies as both a lobbyist and a permit consultant must register as a
25 lobbyist pursuant to Section 2.110 and as a permit consultant pursuant to Section 3.410.

1 (b) An individual who qualifies as both a lobbyist and a permit consultant shall either (1) file
2 separate disclosure reports under Sections 2.110 and 3.410 or (2) file only monthly lobbyist
3 disclosure reports under Section 2.110 so long as the individual discloses all information
4 required under that section with respect to his or her permit consulting services.

5 (c) Any individual qualifying as both a lobbyist and a permit consultant who elects to file only
6 as a lobbyist under Section 2.110 must file in that manner through the end of the calendar
7 year, or until he or she terminates as both a lobbyist and a permit consultant, whichever is
8 earlier.

9 Example: A permit consultant decides to lobby members of the Board of Supervisors
10 regarding a land use ordinance on behalf of a client for whom the consultant is currently
11 providing permit consulting services. The consultant may register as a lobbyist and file
12 monthly lobbying reports in addition to filing quarterly reports as a permit
13 consultant. Alternatively, the consultant may register as a lobbyist and only file monthly
14 lobbying reports that disclose, among other things, the date of each contact in connection with
15 permit consulting activity.

16 **Regulation 2.110-7. Registration Termination.**

17 (a) A lobbyist's registration shall automatically terminate if the lobbyist fails to pay the annual
18 fee due on February 1.

19 (b) At other times of the year, a lobbyist who has ceased all activity requiring registration and
20 reporting shall terminate his or her lobbyist registration by filing a final monthly disclosure
21 report covering all activity through the date of termination and indicating on the report that it
22 constitutes the lobbyist's termination statement.

23 * * * * *

24 **Regulation 3.400-1. Construction.** The provisions of Section 3.400 et seq. of the Campaign
25 and Governmental Conduct Code, and its implementing regulations, shall be construed in a

1 manner that provides for the greatest disclosure of permit consulting activity in the City and
2 County.

3 **Regulation 3.410-1. Permit Consultants; Single Disclosure of Contacted Officials.** A
4 permit consultant is not required on his or her quarterly report to repeat the name of any
5 officer or employee contacted multiple times during the applicable quarter with respect to the
6 same permit and on behalf of the same client. A single disclosure of that officer's or
7 employee's name, along with the permit at issue and the client, shall suffice.

8 **Regulation 3.410-2. Permit Consultants; Termination.**

9 (a) A permit consultant who has ceased all activity requiring registration and reporting shall
10 terminate his or her permit consultant registration by filing a final quarterly disclosure report
11 covering all activity through the date of termination and indicating on the report that it
12 constitutes the permit consultant's termination statement.

13 (b) Any individual qualifying as both a lobbyist and a permit consultant who elects to file only
14 as a lobbyist under Section 2.110, and who wishes to terminate his or her permit consultant
15 registration, shall file the report referenced in subsection (a) and indicate that it constitutes the
16 permit consultant's termination statement, but the permit consultant is not required to report
17 any other reportable information on that report so long as such information is already
18 disclosed on the monthly lobbyist report.

19 * * * * *

20 **Regulation 3.520-1. Developer Disclosure.** A developer required to file quarterly reports
21 under Section 3.520(b) must disclose on each report the name, business address, business
22 e-mail address, business telephone number and website of any nonprofit organization: (a) to
23 which the developer or any affiliate of the developer made donations during the period which,
24 with any other donations made to that nonprofit organization since the date one year before
25 the Environmental Evaluation Application for the major project was filed, cumulatively total

1 \$5,000 or more; and (b) that, with regard to the developer’s major project, has had one or
2 more contacts with an officer of the City and County or has provided public comment at any
3 hearing before any board or commission of the City and County. The developer shall also
4 indicate on the quarterly report whether any donations were disclosed on prior reports filed
5 with the Ethics Commission with respect to the same major project.

6
7 * * * * *

[Campaign and Governmental Conduct Code - Lobbying and Ethics Regulations]

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of a lobbyist; expand the definition of an Officer of the City and County; expand the list of reportable lobbying contacts; hold employers and clients of lobbyists jointly and severally liable for violations of this Ordinance committed by the lobbyist on behalf of that employer or client; enhance lobbyist training, auditing, and record-keeping requirements; require public reports about City officials who fail to file Statements of Economic Interest; require a public guide to local campaign finance laws; require permit consultants to register with the Ethics Commission and file quarterly disclosure reports; and require major developers to disclose donations to nonprofits active in the City.

NOTE: Unchanged Code text and uncodified text are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code is hereby amended by revising Sections 2.105, 2.110, 2.116, 2.135 and 2.145, and adding Sections 2.106, 2.107, and 2.136, to read as follows:

SEC. 2.105. DEFINITIONS.

Whenever used in this Chapter, the following words and phrases shall have the definitions provided in this Section:

1 (a) "Activity expenses" means any expense incurred or payment made by a
2 lobbyist or a lobbyist's client at the behest of the lobbyist, or arranged by a lobbyist or a
3 lobbyist's client at the behest of the lobbyist, which benefits in whole or in part any: officer of
4 the City and County; candidate for City and County office; aide to a member of the Board of
5 Supervisors; or member of the immediate family or the registered domestic partner of an
6 officer, candidate, or aide to a member of the Board of Supervisors. An expense or payment is
7 not an "activity expense" unless it is incurred or made within three months of a contact with
8 the officer, candidate, or Supervisor's aide who benefits from the expense or payment, or
9 whose immediate family member or registered domestic partner benefits from the expense or
10 payment. "Activity expenses" include honoraria, consulting fees, salaries, and any other thing
11 of value totaling more than \$25 in value in a consecutive three-month period, but do not
12 include political contributions.

13 (b) "Candidate" shall have the same meaning as set forth in Section 1.104 of this
14 Code.

15 (c) "Client" means the person for whom lobbyist services are performed by a
16 lobbyist.

17 ~~(d) "Contact" means communication, oral or written, including communication made~~
18 ~~through an agent, associate or employee, for the purpose of influencing local legislative or~~
19 ~~administrative action.~~

20 ~~(1) The following activities are not "contacts" within the meaning of this Chapter.~~

21 ~~(A) A representative of a news media organization gathering news and information~~
22 ~~or disseminating the same to the public, even if the organization, in the ordinary course of business,~~
23 ~~publishes news items, editorials or other commentary, or paid advertisements, that urge action upon~~
24 ~~local legislative or administrative matters;~~
25

1 ~~—————(B) A person providing oral or written testimony that becomes part of the record of~~
2 ~~a public hearing; provided, however, that if the person making the appearance or providing testimony~~
3 ~~has already qualified as a lobbyist under this Chapter and is appearing or testifying on behalf of a~~
4 ~~client, the lobbyist's testimony shall identify the client on whose behalf the lobbyist is appearing or~~
5 ~~testifying;~~

6 ~~—————(C) A person performing a duty or service that can be performed only by an~~
7 ~~attorney, an architect, or a professional engineer licensed to practice in the State of California,~~
8 ~~including any communication by an attorney in connection with litigation involving the City and~~
9 ~~County or a claim filed pursuant to Administrative Code Section 10.20-1 et seq.;~~

10 ~~—————(D) A person making a speech or producing any publication or other material that~~
11 ~~is distributed and made available to the public, through radio, television, cable television, or other~~
12 ~~medium of mass communication;~~

13 ~~—————(E) A person providing written information in response to an oral or written request~~
14 ~~made by an officer of the City and County, provided that the written information is a public record~~
15 ~~available for public review;~~

16 ~~—————(F) A person providing oral or written information pursuant to a subpoena, or~~
17 ~~otherwise compelled by law or regulation;~~

18 ~~—————(G) A person providing oral or written information in response to a request for~~
19 ~~proposals, request for qualifications, or other similar request, provided that the information is directed~~
20 ~~to the department or official specifically designated in the request to receive such information;~~

21 ~~—————(H) A person submitting a written petition for local legislative or administrative~~
22 ~~action, provided that the petition is a public record available for public review;~~

23 ~~—————(I) A person making an oral or written request for a meeting, or any other similar~~
24 ~~administrative request, if the request does not include an attempt to influence local legislative or~~
25 ~~administrative action;~~

1 ~~———— (J) A person appearing before an officer of the City and County pursuant to any~~
2 ~~procedure established by law or regulation for levying an assessment against real property for the~~
3 ~~construction or maintenance of an improvement;~~

4 ~~———— (K) A person providing purely technical data, analysis, or expertise in the presence~~
5 ~~of a registered lobbyist;~~

6 ~~———— (L) A person distributing to any officer of the City and County any regularly~~
7 ~~published newsletter or other periodical which is not primarily directed at influencing local legislative~~
8 ~~or administrative action;~~

9 ~~———— (M) A person disseminating information or material on behalf of an organization or~~
10 ~~entity to all or a significant segment of the organization's or entity's employees or members;~~

11 ~~———— (N) A person communicating in connection with the administration of an existing~~
12 ~~contract between the person and the City and County of San Francisco. For purposes of this~~
13 ~~Subsection, communication, "in connection with the administration of an existing contract" includes,~~
14 ~~but is not limited to, communication regarding: insurance and bonding; contract performance and/or~~
15 ~~default; requests for in scope change orders; legislative mandates imposed on contractors by the City~~
16 ~~and County; payments and invoicing; personnel changes; prevailing wage verification; liquidated~~
17 ~~damages and other penalties for breach of contract; audits; assignments; and subcontracting.~~
18 ~~Communication "in connection with the administration of an existing contract" does not include~~
19 ~~communication regarding new contracts, or out of scope change orders;~~

20 ~~———— (O) A person negotiating the terms of a contract after being selected to enter into a~~
21 ~~contract with the City and County through a competitive bidding process, or as otherwise permitted~~
22 ~~under the Administrative Code;~~

23 ~~———— (P) A person appearing as a party or a representative of a party in an~~
24 ~~administrative adjudicatory proceeding before a City agency or department; and~~
25

1 ~~—— (Q) A person communicating, on behalf of a labor union representing City~~
2 ~~employees, regarding the establishment, amendment, or interpretation of a collective bargaining~~
3 ~~agreement or memorandum of understanding with the City, or communicating about a management~~
4 ~~decision regarding the working conditions of employees represented by a collective bargaining~~
5 ~~agreement or a memorandum of understanding with the City.~~

6 ~~—— (2) The following activities are not "contacts" for the purpose of determining whether a~~
7 ~~person qualifies as a "lobbyist," but are "contacts" for purpose of disclosures required by this Chapter:~~

8 ~~—— (A) A person providing oral information to an officer of the City and County in~~
9 ~~response to an oral or written request made by that officer;~~

10 ~~—— (B) A person making an oral or written request for the status of an action; and~~

11 ~~—— (C) A person participating in a public interested persons meeting, workshop, or~~
12 ~~other forum convened by a City agency or department for the purpose of soliciting public input.~~

13 ~~—— (e) "Economic consideration" means any payments, fees, reimbursement for~~
14 ~~expenses, gifts, or anything else of value, provided that "economic consideration" does not~~
15 ~~include salary, wages or benefits furnished by a federal, state or local government agency.~~

16 ~~"Employee" means any person who receives, reasonably expects to receive, or whose~~
17 ~~employer is obligated to provide, an Internal Revenue Service Form W-2 wage and tax statement.~~

18 ~~"Employer" means any person who provides an Internal Revenue Service Form W-2 wage~~
19 ~~and tax statement to an employee who performs lobbyist services on behalf of that person.~~

20 ~~—— (f) "Gift" shall be defined as set forth in the Political Reform Act, Government~~
21 ~~Code Section 81000 et seq., and the regulations adopted thereunder.~~

22 ~~—— (g) "Lobbyist" means any individual who—~~

23 ~~—— (1) receives or is promised economic consideration of \$3,000 or more within three~~
24 ~~consecutive calendar months for lobbyist services; and~~

1 ~~—(2) on behalf of the persons providing the economic consideration, makes any contact with an~~
2 ~~officer of the City and County. (1) makes five or more contacts in a calendar month with officers of the~~
3 ~~City and County on behalf of the individual's employer; or (2) makes one or more contacts in a~~
4 ~~calendar month with an officer of the City and County on behalf of any person who pays or who~~
5 ~~becomes obligated to pay the individual or the individual's employer for lobbyist services. An~~
6 ~~individual is not a lobbyist if that individual is lobbying on behalf of a business of which the individual~~
7 ~~owns a 20% or greater share.~~

8 ~~—(h)~~ "Lobbyist services" means services rendered for the purpose of influencing
9 local legislative or administrative action, including but not limited to contacts with officers of
10 the City and County of San Francisco.

11 ~~—(i)~~ "Local legislative or administrative action" includes, but is not limited to, the
12 drafting, introduction, consideration, modification, enactment, defeat, approval, veto, granting
13 or denial by any officer of the City and County of any resolution, motion, appeal, application,
14 petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement to
15 use or contract.

16 ~~—(j)~~ "Measure" shall have the same meaning as set forth in Section 1.104 of this
17 Code.

18 ~~—(k)~~ "Officer of the City and County" means any officer identified in *San Francisco*
19 ~~Administrative Code Section 1.50~~Section 3.203 of this Code, as well as any official body composed
20 of such officers. In addition, for purposes of this Chapter, "officer of the City and County"
21 includes (1) members of the Board of Education, Community College Board, First Five
22 Commission, Law Library Board of Trustees, Local Agency Formation Commission, Health Authority
23 Board, Housing Authority Commission, Parking Authority, Relocation Appeals Board, Redevelopment
24 Agency, and Successor Agency to the former Redevelopment Agency of the City and County of San
25 Francisco, Oversight Board of the Successor Agency, Successor Agency Commission, Transportation

1 Authority, Workforce Investment San Francisco Board as well as any official body composed of
2 such officers, and any person appointed as the chief executive officer under any such board or
3 commission; (2) the Zoning Administrator, (3) the City Engineer, (4) the County Surveyor, and
4 (5) the Bureau Chief of the Department of Public Works' Bureau of Street Use and Mapping.

5 —(L) "Person" means an individual, partnership, corporation, association, firm, labor
6 union or other organization or entity, however organized.

7 —(11) "Public hearing" means any open, noticed proceeding.

8 9 SEC. 2.106 LOBBYING CONTACTS

10 (a) Whenever used in this Chapter, "contact" means any communication, oral or written,
11 including communication made through an agent, associate or employee, for the purpose of influencing
12 local legislative or administrative action, except as provided in Subsections (b) and (c).

13 (b) The following activities are not "contacts" within the meaning of this Chapter.

14 (1) A representative of a news media organization gathering news and information or
15 disseminating the same to the public, even if the organization, in the ordinary course of business,
16 publishes news items, editorials or other commentary, or paid advertisements, that urge action upon
17 local legislative or administrative matters;

18 (2) A person providing oral or written testimony that becomes part of the record of a
19 public hearing; provided, however, that if the person making the appearance or providing testimony
20 has already qualified as a lobbyist under this Chapter and is appearing or testifying on behalf of a
21 client, the lobbyist's testimony shall identify the client on whose behalf the lobbyist is appearing or
22 testifying;

23 (3) A person performing a duty or service that can be performed only by an architect
24 or a professional engineer licensed to practice in the State of California.;

1 (4) A person making a speech or producing any publication or other material that is
2 distributed and made available to the public, through radio, television, cable television, or other
3 medium of mass communication;

4 (5) A person providing written information in response to an oral or written request
5 made by an officer of the City and County, provided that the written information is a public record
6 available for public review;

7 (6) A person providing oral or written information pursuant to a subpoena, or
8 otherwise compelled by law or regulation;

9 (7) A person submitting a written petition for local legislative or administrative
10 action, provided that the petition is a public record available for public review;

11 (8) A person making an oral or written request for a meeting, or any other similar
12 administrative request, if the request does not include an attempt to influence local legislative or
13 administrative action;

14 (9) A person appearing before an officer of the City and County pursuant to any
15 procedure established by law or regulation for levying an assessment against real property for the
16 construction or maintenance of an improvement;

17 (10) A person providing purely technical data, analysis, or expertise in the presence
18 of a registered lobbyist;

19 (11) A person distributing to any officer of the City and County any regularly
20 published newsletter or other periodical which is not primarily directed at influencing local legislative
21 or administrative action;

22 (12) A person disseminating information or material on behalf of an organization or
23 entity to all or a significant segment of the organization's or entity's employees or members;

24 (13) A person appearing as a party or a representative of a party in an administrative
25 adjudicatory proceeding before a City agency or department;

1 (14) A person communicating, on behalf of a labor union representing City
2 employees, regarding the establishment, amendment, or interpretation of a collective bargaining
3 agreement or memorandum of understanding with the City, or communicating about a management
4 decision regarding the working conditions of employees represented by a collective bargaining
5 agreement or a memorandum of understanding with the City;

6 (15) A party or prospective party to a contract providing oral or written information
7 in response to a request for proposals, request for qualifications, or other similar request, provided
8 that the information is directed to the department or official specifically designated in the request to
9 receive such information; negotiating the terms of the contract with the City after being selected to
10 enter into the contract; or communicating in connection with the administration of an existing contract
11 between the party and the City. For the purposes of this Subsection:

12 (A) A "party or prospective party" includes that party's officers or employees; a
13 subcontractor listed in the contract, bid, or proposal; or that subcontractor's officers or employees. A
14 "party or prospective party" does not include any other agent or associate, including any outside
15 consultant or independent contractor.

16 (B) Communication "in connection with the administration of an existing
17 contract" includes, but is not limited to, communication regarding: insurance and bonding; contract
18 performance and/or default; requests for in-scope change orders; legislative mandates imposed on
19 contractors by the City and County; payments and invoicing; personnel changes; prevailing wage
20 verification; liquidated damages and other penalties for breach of contract; audits; assignments; and
21 subcontracting. Communication "in connection with the administration of an existing contract" does
22 not include communication regarding new contracts, or out-of-scope change orders.

23 (16) An officer or employee of a nonprofit organization or an organization fiscally
24 sponsored by such a nonprofit organization communicating on behalf of their organization. For
25 purposes of this subsection only, "nonprofit organization" means either an organization with tax

1 exempt status under 26 United States Code Section 501(c)(3), or an organization with tax exempt status
2 under 26 United States Code Section 501(c)(4) whose most recent federal tax filing included an IRS
3 Form 990-N or an IRS Form 990-EZ, or an organization whose next federal tax filing is reasonably
4 likely to include an IRS Form 990-N or an IRS Form 990-EZ.

5 (c) The following activities are not "contacts" for the purpose of determining whether a
6 person qualifies as a lobbyist, but are "contacts" for purpose of disclosures required by this Chapter:

7 (1) A person providing oral information to an officer of the City and County in
8 response to an oral or written request made by that officer;

9 (2) A person making an oral or written request for the status of an action; and

10 (3) A person participating in a public interested persons meeting, workshop, or
11 other forum convened by a City agency or department for the purpose of soliciting public input.

12
13 **SEC. 2.107. NO CONFLICT WITH STATE BAR ACT.**

14 Nothing in this Chapter is intended to regulate attorneys engaged in the practice of law under
15 the California State Bar Act, Business and Professions Code sections 6000 et seq.

16
17 **SEC. 2.110. REGISTRATION AND DISCLOSURES; FEES; TERMINATION OF**
18 **REGISTRATION.**

19 (a) REGISTRATION OF LOBBYISTS REQUIRED. Lobbyists shall register with the
20 Ethics Commission and comply with the disclosure requirements imposed by this Chapter.
21 Such registration shall occur no later than five business days of qualifying as a lobbyist, but
22 the lobbyist shall register prior to making any additional contacts with an officer of the City and
23 County of San Francisco.

24 (b) REGISTRATION. At the time of initial registration each lobbyist shall report to the
25 Ethics Commission the following information:

1 (1) The name, business address, e-mail address, and business telephone number of
2 the lobbyist;

3 (2) The name, business address, and business telephone number of each client for
4 whom the lobbyist is performing lobbyist services;

5 (3) The name, business address, and business telephone number of the lobbyist's
6 employer, firm or business affiliation; and

7 (4) Any other information required by the Ethics Commission consistent with the
8 purposes and provisions of this Chapter.

9 (c) LOBBYIST DISCLOSURES. For each calendar month, each lobbyist shall submit
10 the following information no later than the fifteenth calendar day following the end of the
11 month:

12 (1) The name, business address and business telephone number of each person from
13 whom the lobbyist or the lobbyist's employer received or expected to receive economic
14 consideration to influence local legislative or administrative action during the reporting period;

15 (2) The name of each officer of the City and County of San Francisco with whom the
16 lobbyist made a contact during the reporting period;

17 (3) The date on which each contact was made;

18 (4) The local legislative or administrative action that the lobbyist sought to influence,
19 including, if any, the title and file number of any resolution, motion, appeal, application,
20 petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement, or
21 contract, and the outcome sought by the client;

22 (5) The client on whose behalf each contact was made;

23 (6) The amount of economic consideration received or expected by the lobbyist or the
24 lobbyist's employer from each client during the reporting period;

1 (7) All activity expenses incurred by the lobbyist during the reporting period, including
2 the following information:

3 (A) The date and amount of each activity expense;

4 (B) The full name and official position, if any, of the beneficiary of each activity
5 expense, a description of the benefit, and the amount of the benefit;

6 (C) The full name of the payee of each activity expense if other than the beneficiary;

7 (D) Whenever a lobbyist is required to report a salary of an individual pursuant to this
8 Subsection, the lobbyist need only disclose whether the total salary payments made to the
9 individual during the reporting period was less than or equal to \$250, greater than \$250 but
10 less than or equal to \$1,000, greater than \$1,000 but less than or equal to \$10,000, or greater
11 than \$10,000.

12 (8) All political contributions of \$100 or more made or delivered by the lobbyist or the
13 lobbyist's employer, or made by a client at the behest of the lobbyist or the lobbyist's employer
14 during the reporting period to an officer of the City and County, a candidate for such office, a
15 committee controlled by such officer or candidate, or a committee primarily formed to support
16 or oppose such officer or candidate, or any committee primarily formed to support or oppose a
17 ballot measure to be voted on only in San Francisco. This report shall include such political
18 contributions arranged by the lobbyist, or for which the lobbyist acted as an agent or
19 intermediary.

20 The following information regarding each political contribution shall be submitted to the
21 Ethics Commission:

22 (A) The amount of the contribution;

23 (B) The name of the contributor;

24 (C) The date on which the contribution was made;

25 (D) The contributor's occupation;

1 (E) The contributor's employer, or if self-employed, the name of the contributor's
2 business; and

3 (F) The committee to which the contribution was made.

4 (9) For each contact at which a person providing purely technical data, analysis, or
5 expertise was present, as described in ~~Section 2.105(d)(1)(K)~~ 2.106(ab)(10), the name, address,
6 employer and area of expertise of the person providing the data, analysis or expertise.

7 (10) Any amendments to the lobbyist's registration information required by Subsection
8 (b).

9 (11) Any other information required by the Ethics Commission consistent with the
10 purposes and provisions of this Chapter.

11 (d) REGISTRATION AND FILING OF DISCLOSURES BY ORGANIZATIONS. The
12 Ethics Commission is authorized to establish procedures to permit the registration and filing of
13 lobbyist disclosures by a business, firm, or organization on behalf of the individual lobbyists
14 employed by those businesses, firms, or organizations.

15 (e) FEES; TERMINATION OF REGISTRATION.

16 (1) At the time of registration each lobbyist shall pay a fee of \$500. On or before every
17 subsequent February 1, each registered lobbyist shall pay an additional fee of \$500.

18 (2) Failure to pay the annual fee by February 1 shall constitute a termination of a
19 lobbyist's registration with the Ethics Commission. The Ethics Commission is also authorized
20 to establish additional processes for the termination of a lobbyist's registration.

21 (3) The Ethics Commission shall waive all registration fees for any full-time employee
22 of a tax-exempt organization presenting proof of the organization's tax-exempt status under
23 26 U.S.C. Section 501(c)(3) or 501(c)(4).

24 (4) The Ethics Commission shall deposit all fees collected pursuant to this Section in
25 the General Fund of the City and County of San Francisco.

1
2 **SEC. 2.116. LOBBYIST TRAINING.**

3 (a) Each lobbyist must complete a lobbyist training session offered by the Ethics
4 Commission within one year of the lobbyist's initial registration. Thereafter, lobbyists shall
5 attend additional training sessions as required by the Executive Director, at his or her
6 discretion.

7 (b) *The Ethics Commission shall make lobbyist training sessions available on its website.*

8 (c) *On or before the deadline for completing any required lobbyist training session, each*
9 *lobbyist must file a signed declaration with the Ethics Commission stating, under penalty of perjury,*
10 *that the lobbyist has completed the required training session.*

11
12 **SEC. 2.135. FILING UNDER PENALTY OF PERJURY; RETENTION OF**
13 **DOCUMENTS; AUDITS.**

14 (a) All information required under this Chapter shall be submitted to the Ethics
15 Commission, in the format designated by the Commission. The lobbyist shall verify, under
16 penalty of perjury, the accuracy and completeness of the information provided under this
17 Chapter.

18 (b) The lobbyist shall retain for a period of five years all books, papers and documents
19 necessary to substantiate the registration and disclosure reports required by this Chapter.
20 *These records shall include, but not be limited to, copies of all fundraising solicitations sent by the*
21 *lobbyist or his or her agent for an officer of the City and County, a candidate for such office, a*
22 *committee controlled by such officer or candidate, or a committee primarily formed to support or*
23 *oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot*
24 *measure to be voted on only in San Francisco.*

1 (c) On an annual basis, the Executive Director shall initiate audits of one or more lobbyists
2 selected at random. At the request of the Executive Director, the Controller shall may assist in
3 conducting these audits. This requirement shall not restrict the authority of the Executive Director or
4 the Ethics Commission to undertake any other audits or investigations of a lobbyist authorized by law
5 or regulation. Within ten business days of a request by the Ethics Commission, a lobbyist or anyone
6 required to register as a lobbyist shall provide the Ethics Commission with any documents required to
7 be retained under this Section.

8
9 **SEC. 2.136 FALSE INFORMATION; DUTY TO COOPERATE AND ASSIST.**

10 (a) Prohibition. No person shall knowingly and intentionally furnish false or fraudulent
11 evidence, documents, or information to the Ethics Commission, District Attorney or City Attorney, or
12 knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or
13 information relevant to an investigation by the Ethics Commission, District Attorney or City Attorney of
14 an alleged violation of this Chapter.

15 (b) Duty to Cooperate and Assist. The Ethics Commission, District Attorney or City Attorney
16 may request and shall receive from every City officer and employee cooperation and assistance with an
17 investigation into an alleged violation of this Chapter.

18
19 **SEC. 2.145. ADMINISTRATIVE AND CIVIL ENFORCEMENT AND PENALTIES.**

20 (a) If any lobbyist fails to submit any information required by this Chapter after any
21 applicable deadline, the Ethics Commission shall, in addition to any other penalties or
22 remedies established in this Chapter, impose a late filing fee of \$50 per day after the deadline
23 until the information is received by the Ethics Commission. The Executive Director of the
24 Ethics Commission may reduce or waive a late filing fee if the Executive Director determines
25 that the late filing was not willful and that enforcement will not further the purposes of this

Chapter. If such reduction or waiver equals or exceeds \$500, the Executive Director shall notify the Commission of his or her determination. Thereafter, any two or more members of the Commission may cause the reduction or waiver to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a reduction or waiver be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. The Ethics Commission shall deposit funds collected under this Section in the General Fund of the City and County of San Francisco.

(b) Any person who knowingly or negligently violates this Chapter, including but not limited to, by providing inaccurate or incomplete information regarding lobbying activities, may be liable in an administrative proceeding before the Ethics Commission pursuant to Charter Section C3.699-13. In addition to the administrative penalties set forth in the Charter, the Ethics Commission may issue warning letters regarding potential violations of this Chapter both to the lobbyist and the person who pays or employs the lobbyist.

(c) Any person or entity which knowingly or negligently violates this Chapter may be liable in a civil action brought by the City Attorney for an amount up to \$5,000 per violation, or three times the amount not properly reported, or three times the amount given or received in excess of the gift limit, whichever is greater.

(d) In investigating any alleged violation of this Chapter the Ethics Commission and City Attorney shall have the power to inspect all documents required to be maintained under this Chapter. This power to inspect documents is in addition to other powers conferred on the Ethics Commission and City Attorney by the Charter or by ordinance, including the power of subpoena.

1 (e) Joint and Several Liability.

2 (1) Should two or more persons be responsible for any violation under this
3 Chapter, they may be jointly and severally liable.

4 (2) The client or employer of a lobbyist shall be jointly and severally liable for all
5 violations of this Chapter committed by the lobbyist in connection with acts or omissions undertaken on
6 behalf of that client or employer.

7 (3) If a business, firm or organization registers or files lobbyist disclosures on
8 behalf of its employees pursuant to Section 2.110(d), the business, firm or organization may
9 be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

10 (f) The City Attorney may also bring an action to revoke for up to one year the
11 registration of any lobbyist who has knowingly violated this Chapter.

12
13 Section 2. The Campaign and Governmental Conduct Code is hereby amended by
14 amending Section 3.1-104, to read as follows:

15 **SEC. 3.1-104. FILING OFFICER REPORTS.**

16 (a) On or before April 10th of each year, every filing officer shall submit a written
17 report to the Ethics Commission setting forth the names of those persons who are required to
18 file an annual statement with that filing officer under this Chapter but have failed to do so, or a
19 report stating that all such persons have filed.

20 (b) On or before April 10th of each year, the Ethics Commission shall prepare a report setting
21 forth the names of those persons who are required to file an annual statement with the Ethics
22 Commission under this Chapter but have failed to do so, or a report stating that all such persons have
23 filed. On or before May 10th of each year, the Ethics Commission shall prepare a supplemental report
24 setting forth the names of any persons who are required to file an annual statement with the Ethics
25 Commission under this Chapter but have failed to do so by May 1st, or a report stating that all such

1 persons have filed. The Ethics Commission shall make these reports publicly available, including by
2 posting the reports on its website.

3
4 Section 3. The Campaign and Governmental Conduct Code is hereby amended by
5 adding Section 3.302, to read as follows:

6 **SEC. 3.302. PUBLIC GUIDE FOR CONTRIBUTORS.**

7 The Ethics Commission shall prepare and distribute a public guide regarding campaign
8 contributions. The guide shall include a summary of local law regarding contribution limits, required
9 reporting by contributors and committees, and rules regarding who may contribute to committees. The
10 guide shall be for informational purposes only, and shall not have the force or effect of law or
11 regulation.

12
13 Section 4. The Campaign and Governmental Conduct Code is hereby amended by
14 adding Sections 3.400, 3.405, and 3.410, and 3.415, and 3.420 to read as follows:

15 **SEC. 3.400. FINDINGS**

16 The Board of Supervisors finds that bringing greater transparency to the City and
17 County's permitting process is essential to protect public confidence in the fairness and
18 impartiality of that process. It is the purpose and intent of this Chapter to impose reasonable
19 disclosure requirements on permit consultants to provide the public with information about
20 who is paying the consultants, the permits they are getting paid to obtain, the City employees
21 with whom they have had contact in the course of obtaining the permits, and the political
22 contributions they have made to City officials.

23
24 **SEC. 3.405. DEFINITIONS.**

1 "Contact" means any communication, oral or written, including communication made through
2 an agent, associate or employee. A "contact" shall not include a request for information, as long
3 as the request does not include any attempt to influence an administrative or legislative
4 decision.

5 "Client" means the person for whom permit consulting services are performed by a permit
6 consultant.

7 "Major project" means any project located in the City and County which has actual or
8 estimated construction costs exceeding \$1,000,000 and which requires a permit issued by the
9 Department of Building Inspection or the Planning Department. Estimated construction costs
10 shall be calculated in the same manner used to determine building permit fees under the
11 Building Code.

12 "Minor Project" means any project located in the City and County which requires a
13 permit issued by the Entertainment Commission.

14 "Permit consultant" is any individual who receives or is promised compensation to provide
15 permit consulting services to commence on or after January 1, 2015 on a Major Project or a
16 Minor Project. This includes any employee who receives compensation attributable to time spent on
17 permit consulting services. This does not include:

18 (1) The licensed architect or engineer of record for construction activity allowed or
19 contemplated by the permit, or an employee of the architect or engineer;

20 (2) The contractor who will be responsible for all construction activity associated with
21 the requested permit; or

22 (3) The employee or agent of an organization with tax exempt status under 26 United
23 States Code Section 501(c)(3) communicating on behalf of that organization regarding the development
24 of a project for that organization.
25

1 "Permit consulting services" means any contact with the Department of Building Inspection,
2 the Entertainment Commission, the Planning Department, or the Department of Public Works to help a
3 permit applicant obtain a permit.

4
5 **SEC. 3.410. PERMIT CONSULTANT REGISTRATION AND DISCLOSURES.**

6 (a) REGISTRATION OF PERMIT CONSULTANTS REQUIRED. Permit consultants shall
7 register with the Ethics Commission and comply with the disclosure requirements imposed by this
8 Chapter. Such registration shall occur no later than five business days after providing permit
9 consulting services, but the permit consultant shall register prior to providing any further permit
10 consulting services.

11 (b) REGISTRATION. At the time of initial registration each permit consultant shall report
12 to the Ethics Commission the following information:

13 (1) The name, business address, e-mail address, and business telephone number of the
14 permit consultant;

15 (2) The name, business address, e-mail address, and business telephone number of
16 each client for whom the permit consultant is performing permit consulting services;

17 (3) The name, business address, e-mail address, and business telephone number of the
18 permit consultant's employer, firm or business affiliation; and

19 (4) Any other information required by the Ethics Commission consistent with the
20 purposes and provisions of this Chapter.

21 (c) PERMIT CONSULTANT DISCLOSURES. Beginning on April 15, 2015, ~~Each~~
22 permit consultant shall file four quarterly reports, according to the following schedule: the permit
23 consultant shall file a report on April 15 for the period starting January 1 and ending March 31; on
24 July 15 for the period starting April 1 and ending June 30; on October 15 for the period starting July 1
25

1 and ending September 30; and on January 15 for the period starting October 1 and ending December

2 31. Each quarterly report shall contain the following:

3 (1) The name, business address, e-mail address, and business telephone number of
4 each person from whom the permit consultant or the permit consultant's employer received or expected
5 to receive economic consideration for permit consulting services during the reporting period, and the
6 amount of economic consideration the permit consultant received or expected to receive;

7 (2) For each contact with the Department of Building Inspection, the Entertainment
8 Commission, the Planning Department, or the Department of Public Works in the course of providing
9 permit consulting services during the reporting period;

10 (A) The name of each officer or employee of the City and County of San
11 Francisco with whom the permit consultant made contact;

12 (B) A description of the permit sought or obtained, including the application
13 number for the permit; and

14 (C) The client on whose behalf the contact was made.

15 (3) All political contributions of \$100 or more made by the permit consultant or the
16 permit consultant's employer during the reporting period to an officer of the City and County, a
17 candidate for such office, a committee controlled by such officer or candidate, a committee primarily
18 formed to support or oppose such officer or candidate, or any committee primarily formed to support
19 or oppose a ballot measure to be voted on only in San Francisco.

20 (4) Any amendments to the permit consultant's registration information required by
21 Subsection (b).

22 (5) Any other information required by the Ethics Commission consistent with the
23 purposes and provisions of this Chapter.

24
25 **SEC. 3.415. PENALTIES AND ENFORCEMENT.**

1 (a) If any permit consultant fails to submit any information required by this Chapter
2 after any applicable deadline, the Ethics Commission shall, in addition to any other penalties
3 or remedies established in this Chapter, impose a late filing fee of \$50 per day after the
4 deadline until the information is received by the Ethics Commission. The Executive Director of
5 the Ethics Commission may reduce or waive a late filing fee if the Executive Director
6 determines that the late filing was not willful and that enforcement will not further the purposes
7 of this Chapter. The Ethics Commission shall deposit funds collected under this Section in the
8 General Fund of the City and County of San Francisco.

9 (b) Any person who knowingly or negligently violates this Chapter may be liable in an
10 administrative proceeding before the Ethics Commission pursuant to Charter Section C3.699-
11 13. In addition to the administrative penalties set forth in the Charter, the Ethics Commission
12 may issue warning letters regarding potential violations of this Chapter to the permit
13 consultant.

14 (c) Any person or entity which knowingly or negligently violates this Chapter may be
15 liable in a civil action brought by the City Attorney for an amount up to \$5,000 per violation.

16 **SEC. 3.420. ETHICS COMMISSION REPORT.**

17 Between April 1 and April 15, 2016 and between April 1 and April 15, 2017, the Ethics
18 Commission shall provide a report to the Board of Supervisors regarding the implementation
19 of Sections 3.405 through 3.415. The report shall include, but not be limited to, the total
20 number of registered permit consultants, the total number of investigations commenced by the
21 Ethics Commission into possible violations of the registration and disclosure requirements,
22 and a summary of each settlement reached with permit consultants for violating the
23 registration or disclosure requirements.
24
25

1 Section 5. The Campaign and Governmental Conduct Code is hereby amended by
2 adding Article 3, Chapter 5, consisting of Sections 3.500, 3.510, and 3.520, to read as follows:

3
4 CHAPTER 5. DEVELOPER DISCLOSURES

5 <u>Sec. 3.500</u>	<u>Findings</u>
6 <u>Sec. 3.510</u>	<u>Definitions</u>
7 <u>Sec. 3.520</u>	<u>Required Disclosure</u>

8
9 SEC 3.500. FINDINGS.

10 The Board of Supervisors finds that public disclosure of the donations that developers make to
11 nonprofit organizations that may communicate with the City and County regarding major development
12 projects is essential to protect public confidence in the fairness and impartiality of City and County
13 land use decisions. The Board further finds that disclosure is essential to allow the public to fully and
14 fairly evaluate the City and County's land use decisions. It is the purpose and intent of this Chapter to
15 impose reasonable disclosure requirements on developers to provide the public with information about
16 these donations.

17
18 SEC 3.510. DEFINITIONS

19 "Affiliate" shall mean any individual or entity that directly or indirectly controls, is controlled
20 by or is under common control with, another entity, and for these purposes "control" means the power
21 to direct the affairs or management of another entity, whether by contract, operation of law or
22 otherwise.

23 "CEQA" shall mean the California Environmental Quality Act (Public Resources Code Section
24 21,000 et seq.), the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3,

1 Section 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code, as any of them may
2 be amended.

3 "Developer" shall mean the individual or entity that is the project sponsor responsible for filing
4 a completed Environmental Evaluation Application with the Planning Department (or other lead
5 agency) under CEQA for a major project. For any project sponsor that is an entity, "Developer" shall
6 include all of its constituent individuals or entities that have decision-making authority regarding any
7 of the entity's major decisions or actions. By way of example and without limitation, if the project
8 sponsor is a limited liability company, each of its members is considered a developer for purposes of
9 the requirements of this Chapter, and similarly if the project sponsor is a partnership, each of its
10 general partners is considered a developer for purposes of the requirements of this Chapter. If the
11 owner or agent that signs and submits the Environmental Evaluation Application will not be
12 responsible for obtaining the entitlements or developing the major project, then for purposes of the
13 requirements of this Chapter the developer shall be instead the individual or entity that is responsible
14 for obtaining the entitlements for the major project.

15 "Donation" shall mean any gift of money, property, goods or services.

16 "EIR" shall mean an environmental impact report prepared under CEQA. For purposes of this
17 Chapter, an EIR shall also include, without limitation, any CEQA determination that the Planning
18 Department or Planning Commission (or other appropriate lead agency) makes to allow consideration
19 of approval of a major project to proceed under an EIR, a previously certified program EIR, master
20 EIR or staged EIR.

21 "Entity" shall mean any partnership, corporation (including, but not limited to, any business
22 trust or nonprofit corporation), limited liability company, joint stock company, trust, unincorporated
23 association, joint venture or any other organization or association. "Entity" shall not include any state
24 or local government agency.

1 "Major project" shall mean a real estate development project located in the City and County
2 for which the City's Planning Commission (or any other local lead agency) has certified an EIR under
3 CEQA and which has estimated construction costs exceeding \$1,000,000. As used in the preceding
4 sentence, the term "real estate development project" includes any project involving construction of one
5 or more new structures or an addition to one or more existing structures, change of use within one or
6 more existing structures, or substantial rehabilitation of one or more existing structures, where, in any
7 such instance, the structure includes any occupiable floor area, excluding only a residential
8 development project with four or fewer dwelling units. Estimated construction costs shall be calculated
9 in the same manner used to determine building permit fees under the Building Code.

10 "Nonprofit organization" shall mean any corporation formed under California Corporations
11 Code Section 5000 et seq. for any public or charitable purpose, or any organization described in 26
12 United States Code Section 501(c), that, in either instance, has attempted to influence City and
13 County legislative or administrative action since the date one year before the Environmental
14 Evaluation Application for the major project was filed.

15 "Structure" shall have the same meaning as the Planning Code defines such term.

17 SEC 3.520. REQUIRED DISCLOSURE

18 (a) Any developer of a major project shall, within 30 days of the date the Planning Commission
19 (or any other local lead agency) certifies the EIR for that project or, for a major project relying on a
20 program EIR, within 30 days of the date that the Planning Department, Planning Commission, or any
21 other local lead agency adopts a final environmental determination under CEQA, report the following
22 information to the Ethics Commission:

23 (1) The name, business address, business e-mail address and business telephone
24 number of the developer, as well as those of any affiliates that made donations subject to this Chapter.

25 (2) The EIR case number and a description of the major project.

1 (3) The date the Planning Commission (or other local lead agency) certified the EIR or
2 adopted the final environmental determination.

3 (4) The name, business address, business e-mail address, business telephone number
4 and website of any nonprofit organization; ~~(1)~~ (A) to whom the developer or any affiliate of the
5 developer has made cumulative donations of \$5,000 or more since the date one year before the
6 Environmental Evaluation Application for the major project was filed; and ~~(2B)~~ that has attempted
7 to influence City and County legislative or administrative action with regard to the developer's
8 major project, with regard to the developer's major project, has had one or more contacts with
9 an officer of the City and County or has provided public comment at any hearing before any
10 board or commission of the City and County. For the purpose of this Subsection 3.520(a)(4),
11 the term "contact" shall have the same meaning as in Section 2.106 of this Code, except that
12 a "contact" shall also include a person providing oral or written testimony that becomes part of
13 the record of a public hearing; and the term "officer of the City and County of San Francisco
14 shall have the same meaning as in Section 2.105 of this Code.

15 (5) For each nonprofit organization reported under Subsection (a)(4), the date and
16 amount of each donation the developer or affiliate made to the nonprofit during the reporting period.

17 (6) Any other information required by the Ethics Commission consistent with the
18 purposes and provisions of this Chapter.

19 (b) After a developer files a report required by Subsection (a), the developer shall file a total of
20 four additional quarterly reports, according to the following schedule: The developer shall file a
21 report on April 15 for the period starting January 1 and ending March 31; on July 15 for the period
22 starting April 1 and ending June 30; on October 15 for the period starting July 1 and ending September
23 30; and on January 15 for the period starting October 1 and ending December 31. Each quarterly
24 report shall include:

1 (1) The name, business address, business e-mail address, and business telephone
2 number of the developer and any affiliates that made donations subject to this Chapter.

3 (2) The EIR case number and a description of the major project.

4 (3) The date the Planning Commission (or other local lead agency) certified the EIR or
5 adopted the final environmental determination.

6 (4) The name, business address, business e-mail address, business telephone number
7 and website of any nonprofit organization to which the developer has made cumulative donations of
8 \$5,000 or more since the date one year before the Environmental Evaluation Application was filed.

9 (5) For each nonprofit organization reported under Subsection (b)(4), the date and
10 amount of each donation the developer made to the nonprofit during the reporting period.

11 (6) Any other information required by the Ethics Commission consistent with the
12 purposes and provisions of this Chapter.

13 (e) At the time of filing the initial report required by subsection (a), the developer shall pay a
14 fee of \$500.

15 16 SEC. 3.530. PENALTIES AND ENFORCEMENT.

17 (a) If any developer fails to submit any information required by this Chapter after any
18 applicable deadline, the Ethics Commission shall, in addition to any other penalties or remedies
19 established in this Chapter, impose a late filing fee of \$50 per day after the deadline until the
20 information is received by the Ethics Commission. The Executive Director of the Ethics Commission
21 may reduce or waive a late filing fee if the Executive Director determines that the late filing was not
22 willful and that enforcement will not further the purposes of this Chapter. The Ethics Commission shall
23 deposit funds collected under this Section in the General Fund of the City and County of San
24 Francisco.

1 (b) Any person who knowingly or negligently violates this Chapter, including but not limited to,
2 by providing inaccurate or incomplete information, may be liable in an administrative proceeding
3 before the Ethics Commission pursuant to Charter Section C3.699-13. In addition to the administrative
4 penalties set forth in the Charter, the Ethics Commission may issue warning letters regarding potential
5 violations of this Chapter.

6 (c) Any person or entity which knowingly or negligently violates this Chapter may be liable in a
7 civil action brought by the City Attorney for an amount up to \$5,000 per violation, or three times the
8 amount not properly reported, whichever is greater.

9 (d) In investigating any alleged violation of this Chapter the Ethics Commission and City
10 Attorney shall have the power to inspect all documents required to be maintained under this Chapter.
11 This power to inspect documents is in addition to other powers conferred on the Ethics Commission
12 and City Attorney by the Charter or by ordinance, including the power of subpoena.

13 (e) Should two or more persons be responsible for any violation under this Chapter, they may
14 be jointly and severally liable.

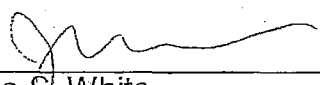
15
16 Section 6. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance.

20
21 Section 7. In enacting this ordinance, the Board intends to amend only those words,
22 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
23 or any other constituent part of the Campaign and Governmental Conduct Code that are
24 explicitly shown in this ordinance as additions, deletions, Board amendment additions, and
25

1 Board amendment deletions in accordance with the "Note" that appears under the official title
2 of the ordinance.
3
4
5
6

7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By:


10 Joshua S. White
11 Deputy City Attorney

12 n:\egana\as2014\1300406\00932890.docx
13
14
15
16
17
18
19
20
21
22
23
24
25