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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: June 18, 2014
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director
Re: Pending Amendments to the City's Lobbyist Ordinance

This memorandum summarizes the key provisions of legislation amending the City's Lobbyist Ordinance, which was introduced by Board of Supervisors President David Chiu and passed by the Board on June 17, 2014 (the "Chiu legislation").¹ The Chiu legislation makes the following changes to the Lobbyist Ordinance:

1. Lobbyist qualification threshold. The Chiu legislation eliminates the current monetary threshold necessary to qualify as a City lobbyist (i.e., earning \$3,000 in a three-month period for lobbying services, including one lobbying contact), and imposes a bright-line "contacts" test. More specifically, an individual will qualify as a lobbyist by making either:

- One or more compensated lobbying contacts on behalf of a client, or
- Five or more compensated lobbying contacts within one calendar month on behalf of his or her employer (unless the individual owns 20 percent or more of the employing entity).

The intent behind this change is to make the lobbyist registration rules easier to enforce.

2. Covered City officials. The Chiu legislation expands the list of those City officials with whom contacts will trigger lobbyist registration and reporting.²

¹ Unlike CFRO, the Lobbyist Ordinance may be amended by the Board without approval by the Commission. The ordinance will take effect 30 days after the Mayor's signs it. The Mayor had not signed the ordinance as of the date of this memorandum.

² Those additional City officials include members of the First Five Commission, the Law Library Board of Trustees, the Local Agency Formation Commission, the Health Authority Board, the Housing Authority Commission, the Parking Authority, the Relocation Appeals Board, the Successor Agency to the former Redevelopment Agency and its Oversight Board, the Successor Agency Commission, and the Workforce Investment San Francisco Board. The Lobbyist Ordinance will also apply to any CEO appointed by any City board or commission.

3. Exemptions from lobbyist registration. The Lobbyist Ordinance currently exempts a number of communications with City officials from triggering lobbyist registration. In this regard, the Chiu legislation:

- Eliminates the exemption for communications by persons “performing a duty or service that can be performed only by an attorney.” However, the legislation also clarifies that attorneys contacting City officials while engaged in the “practice of law” does not constitute lobbying.
- Narrows the exemption for communications in connection with bidding on a City contract, negotiating the terms of a City contract, or administering a City contract. The exemption will no longer apply to a City contractor’s outside consultants or independent contractors.
- Adds an exemption for communications by officers and employees of 501(c)(3) non-profit organizations. The exemption also applies to communications by officers and employees of 501(c)(4) non-profit organizations that file either an IRS Form 990-N or an IRS Form 990-EZ (i.e., having annual gross receipts of less than \$200,000 and assets valued at less than \$500,000).

4. Commission mandates. In addition to requiring the Commission to process the registration and reporting of additional lobbyists under the new rules, the Chiu legislation imposes a number of new mandates on the Commission, some of which are not directly related to the Lobbyist Ordinance. More specifically, it requires the Commission to:

- Conduct random audits of at least one lobbyist per year.
- Post reports on the Commission’s website on April 10 and May 10 of each year listing those high-ranking City officials who fail to file their annual Statement of Economic Interests (FPPC Form 700) with the Commission.
- Make lobbyist training available online.³ (The Commission already provides such online training, but will have to update it to incorporate the Chiu legislation.)
- Publish a public guide regarding City contribution limits and prohibitions, reporting requirements, and other relevant campaign finance rules. (The Commission already makes such a guide available on its website.)

³ Lobbyists will also be required to file a statement with the Commission certifying that they have completed the training annually.

5. Enforcement provisions. The Chiu legislation contains provisions that will facilitate or otherwise impact enforcement of the Lobbyist Ordinance. The legislation:

- Requires any lobbyist, or person required to be registered as a lobbyist, to provide the Commission with any documentation required to be maintained under the Lobbyist Ordinance, within ten days of a request.
- Imposes a duty for City officers and employees to assist the Commission, the City Attorney, or the District Attorney with any investigations of violations of the Lobbyist Ordinance.
- Establishes that a lobbyist's client or employer is jointly and severally liable for any lobbyist violations of the Lobbyist Ordinance occurring in the course of the lobbyist's representation of that client or employer.

6. Permit expeditors. The Chiu legislation creates new registration and reporting requirements for permit expeditors effective in 2015. More specifically, permit expeditors for certain large projects will have to register and file quarterly reports with the Commission when they contact officers or employees of the Department of Building Inspection, the Entertainment Commission, the Planning Commission, or the Department of Public Works on behalf of a client. The reporting requirements differ somewhat from those of lobbyists. For example, permit expeditors 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 "activity expenses" (e.g., gifts) or the dates of their contacts. The Commission must report to the Board on the implementation of the permit expeditor reporting system in 2016 and 2017.

7. Developer disclosures. The Chiu legislation requires 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.

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