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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 16, 2013
To: Members, Ethics Commission
From: John St. Croix, Executive Director
Re: Expenditure Lobbyists

Commissioner Renne has asked staff to provide information regarding expenditure lobbyists so that the Commission may determine whether to propose legislative changes to the Lobbyist Ordinance, San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 2.100 et seq.

Background

Under prior law, a lobbyist could be any of the following:

- A contract lobbyist: This is an individual or entity that is hired to influence local legislative or administrative action on another's behalf, if the individual or entity earns \$3,200 or more in any consecutive three months in exchange for lobbyist services or if the individual or entity has at least 25 separate contacts with City officers in any two consecutive months for the purposes of influencing local or administrative action;
- A business and organization (B&O) lobbyist: This is an entity that lobbies on its own behalf. This may include for-profit and non-profit corporations and organizations, associations and unions. An entity qualifies as a B&O lobbyist if it pays its employees/members any amount to lobby on its behalf and the employees/members have at least 25 separate contacts with City officers within a 2-month period to influence legislative or administrative action. Individual employees and members of B&O lobbyists do not themselves qualify as lobbyists and are not subject to the registration and reporting requirements; or
- An expenditure lobbyist: This is any person who spends, directly or indirectly, more than \$3,200 within any three consecutive months to influence local legislative and administrative action. Payments made to contract lobbyists and other paid advocates do not count toward the \$3,200 threshold, nor do dues payments, donations, and other payments to any B&O lobbyist or expenditure lobbyist. The prior law did not require an expenditure lobbyist to make a contact with the City officer in order to be deemed an expenditure lobbyist.

Under **current** law, a lobbyist is any *individual* who receives or is promised \$3,000 or more in economic consideration over a three-consecutive month period, and on behalf of the person or persons providing economic consideration, makes *any* contact with an officer of the City. The Commission and the Board of Supervisors approved the changes to the law not only to simplify but also to tighten the law.¹ Any individual who meets the economic and one-contact thresholds must register as a lobbyist and must file monthly—instead of quarterly—reports.

Issues have arisen regarding whether under current law, certain expenditures that involve lobbying activities are not being reported. For example, let's say that ABC Corporation employs Adam, Betty and Charles to perform lobbying services. Adam, Betty and Charles each register as individual lobbyists and each submits monthly reports about his or her activities. Each lobbyist reports the following:

- Information of each person from whom the lobbyist received or expected to receive economic consideration;
- The name of each officer of the City with whom the lobbyist made a contact during the reporting period;
- The date on which each contact was made;
- The local legislative and administrative action that the lobbyist sought to influence;
- The client on whose behalf each contact was made;

¹ When the Commission considered changes to the Lobbyist Ordinance in March 2009, staff presented the following information:

“Lobbyist.” (these are substantive changes.) Currently, there are three types of lobbyists in San Francisco: contract lobbyists, business and organization lobbyists, and expenditure lobbyists, each with different qualifying thresholds. Staff believes this has led to confusion about who qualifies as a lobbyist under local law. Accordingly, staff recommends amending the Ordinance to adopt a single category of lobbyists. Under the proposed change, any individual who receives or is promised \$3,000 or more in economic consideration within three consecutive months for lobbyist services and makes at least one contact with a City officer would be a “lobbyist.” In contrast to current law, a person would not qualify as a lobbyist under staff’s proposal solely because the person receives payment; the person must also make at least one lobbying contact. Conversely, a person would not qualify as a lobbyist simply by making contacts; the person also must receive or be promised \$3,000 in consideration. Overall, the proposed definition will simplify the Ordinance while capturing all necessary information. Along those lines, staff proposes to reduce the economic threshold from \$3,200 to \$3,000 because \$3,000 is a round number that is easier to remember; and to lower the number of contacts from 25 to one because one contact is easier to track. The proposed definition of lobbyist places greater emphasis on compensation, rather than compensation and number of contacts, to focus on professional lobbyists rather than individuals who merely have many contacts with City officers.

Under current law, lobbying firms and organizations register as lobbyists, but under staff’s proposal, all registered lobbyists will be individuals. This simplifies the Ordinance: in the simplest terms, lobbyists are people who are paid to lobby. Under the proposal, those individual lobbyists would be required to disclose the names of their employers as well as their clients. To accommodate entities that employ more than one lobbyist, staff’s proposal would allow, in proposed section 2.110(d), a firm or organization employing multiple lobbyists to register and file required disclosures on behalf of its individual lobbyists.

The Commission voted 5-0 to amend the Ordinance so that there would be a single category of lobbyists; and 4-1 in favor of defining a lobbyist as any individual who receives or is promised \$3,000 or more in economic consideration within three consecutive months for lobbyist services and makes at least one contact with a City officer.

- The amount of economic consideration received or expected by the lobbyist or the lobbyist’s employer from each client during each reporting period;
- All activity expenses incurred by the lobbyist during the reporting period;²
- All political contributions of \$100 or more made by or delivered by the lobbyist or the lobbyist’s employer, or made by a client at the behest of the lobbyist or the lobbyist’s employer 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. This report shall include such political contributions arranged by the lobbyist, or for which the lobbyist acted as an agent or intermediary;
- The name, address, employer and area of expertise of any person providing purely technical data, analysis or expertise in the presence of the lobbyist during a contact;
- Any amendments to registration information; and
- Any other information required by the Ethics Commission consistent with the purposes and provisions of this Chapter.

C&GC Code § 2.110(c).

What is missing from the report is information regarding expenditures that Adam, Betty or Charles – or their employer, ABC Corporation – may have made to influence legislative or administrative action. For example, if ABC Corporation pays for technical experts to support the work of Adam, or spends \$10,000 to purchase a media ad to ask residents to contact their supervisors to support a building development, that information is not now required to be disclosed. Under the prior law, a business and organization lobbyist or an expenditure lobbyist was required to disclose “the total amount of payments to influence local legislative or administrative action made by the filer during the reporting period.”

Similarly, under current law, if XYZ Friends and Neighbors – a grassroots neighbor group – spends \$3,200 to purchase media to influence an action at the Board of Supervisors, that spending is not disclosed. Under the prior law, such information was required to be disclosed if XYZ Friends and Neighbors spent the \$3,200 within a three-month period.

The Commission may consider creating another category of lobbyists similar to expenditure lobbyists. However, because lobbyist registration and reporting are done online, staff believes there may be considerable costs involved in creating another category of filers. Based on a review of past filings under the former law, in 2007, three expenditure lobbyists were registered, reporting spending of \$47,400; two expenditure lobbyists were registered in 2008, reporting

² “Activity expenses” means any expense incurred or payment made by a lobbyist or a lobbyist’s client at the behest of the lobbyist, or arranged by a lobbyist or a lobbyist’s client at the behest of the lobbyists, which benefits in whole or in part any: officer of the City and county; candidate for City and County office; aide to a member of the Board of Supervisors; or member of the immediate family or the registered domestic partner of an officer, candidate, or aide to a member of the Board of Supervisors. An expense or payment is not an “activity expense” unless it is incurred or made within three months of a contact with the officer, candidate or Supervisor’s aide who benefits from the expense or payment, or whose immediate family member or registered domestic partner benefits from the expense or payment. “Activity expenses” include honoraria, consulting fees, salaries, and any other thing of value totaling more than \$25 in value in a consecutive three-month period, but do not include political contributions. C&GC Code § 2.105(a).

spending of zero; and three expenditure lobbyists were registered in 2009, reporting spending of \$427,162 to influence local legislative and administrative action. When the Commission considered the lobbyist amendments in 2009, the concern was trying to ensure that a person actually made at least one non-public contact with a public official to influence a legislative or administrative action before he or she could be deemed a lobbyist. Because expenditure lobbyists do not make contacts with public officials, their status as “lobbyists” was eliminated.

Rather than undergoing an expensive retooling of the lobbyist filing platform, if the Commission wishes to capture those activities previously described as “expenditure lobbying,” staff suggests a simple approach.

Staff can create a new local form expressly for the reporting of “expenditure lobbying.” The Commission can introduce a rule that any entity making expenditures for the purpose of influencing governmental decisions that currently fall outside the definition of lobbying must report those expenditures to the Commission using such form. Such entities need not register as lobbyists or pay fees; once reported, staff will upload these forms to the Commission website and also maintain the paper filings.

Such an approach should work for the foreseeable future. Keeping in mind that in the last three years when expenditure lobbying reporting was required, only eight entities filed in those three years. This indicates that the number of such filings will be minimal. At some point in the future, when it is more feasible, this reporting requirement can be folded into the electronic filing system. Such a new rule would require the approval of the Board of Supervisors.

Staff would appreciate any feedback the Commissioners wish to offer on this idea.