

# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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Date: December 17, 2015

To: Members, Ethics Commission; Executive Director LeeAnn Pelham

From: Jesse Mainardi, Deputy Executive Director

Re: Proposition C Implementation – Interested Persons Meeting Comments

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Effective February 1, 2016, Proposition C, which the Ethics Commission placed on the ballot and the voters subsequently approved in the November 3, 2015 election, will impose registration and reporting requirements on “expenditure lobbyists” that urge the public to lobby City officials.<sup>1</sup>

Commission staff held an interested persons meeting on Monday, December 7, 2015 to discuss the implementation of Proposition C, including the promulgation of regulations to interpret the measure. Attendees generally agreed that more guidance will be needed as to how to comply with Proposition C and that certain terms need to be defined. The following specific issues were discussed:

1. Concern for nonprofits generally.<sup>2</sup> Most of the meeting concerned the perceived chilling effect that Proposition C may have on nonprofit and union<sup>3</sup> advocacy. Representatives of these entities were concerned that nonprofits and unions, particularly those that are smaller, will not have the administrative capacity to ensure full compliance with Proposition C and thus might refrain from advocacy efforts in the City for fear of exposing themselves to “gotcha” complaints by political adversaries.

Representatives of these groups indicated that their finances are already readily available through the IRS, and claimed that their operations were thus more transparent than those of their political adversaries. They also expressed concern that registering as expenditure lobbyists would invite undue scrutiny by the IRS as to whether they had exceeded their lobbying limits under federal tax law, and could jeopardize foundation support given the restrictions on foundation funding of lobbying activity.

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<sup>1</sup> A copy of the language of Proposition C is attached. Also attached are drafts of the registration and reporting forms to be used pending the implementation of an electronic filing system.

<sup>2</sup> A copy of email correspondence to the Commission from the San Francisco Human Services Network on November 23, 2015 is attached as well. It sets forth concerns specific to the nonprofit community.

<sup>3</sup> Although nonprofit organizations themselves, unions also appear to have some concerns that are distinct from those of charities and social welfare organizations.

Finally, the group also seemed to distinguish between “legitimate” nonprofits and those that are merely “front groups” for other interests. However, many individuals voiced concerns about attempting to draft regulations that distinguish between nonprofits based their type, focus, or funding. They also noted that any payment to a nonprofit specifically intended for expenditure lobbying would trigger reporting for the donor, not the nonprofit.

It was discussed that any exemption for nonprofits and unions would have to be accomplished via an ordinance approved by four of the Commission’s five members, and by a two-thirds vote of the Board of Supervisors.<sup>4</sup>

2. Nonprofit registration fee. Proposition C did not change the registration fee exemption for full-time employees of 501(c)(3) and 501(c)(4) organizations. While this exemption makes sense in the context of contact lobbyists (i.e., individuals), it does not clearly apply to the nonprofits themselves which are likely to trigger expenditure lobbyist rules. At the meeting, the clear consensus was to adopt regulations clarifying that this exemption extends to nonprofits.

3. Registration threshold. There was general agreement that the \$2,500 registration threshold was too low and should be increased. It was also noted that this threshold will not rise with inflation. Any change to the threshold would have to be accomplished via an ordinance approved by four of the Commission’s five members, and by a two-thirds vote of the Board.

4. Payments subject to the \$2,500 threshold. Most in the group agreed that “external” payments to public relations firms, mail houses, transportation companies, etc. should count towards the \$2,500 registration threshold. However, many believed that tracking an organization’s “internal” expenses for expenditure lobbying (e.g., staff time) could be confusing and burdensome. In this regard, there seemed to be a general consensus that expenses that would have been incurred regardless of an organization’s expenditure lobbying (e.g., administrative overhead) should not count towards the \$2,500 threshold.

Other issues were not so clear cut. For example, there were questions regarding the extent to which an organization would have to account for: (1) research and reports not originally undertaken for expenditure lobbying, but ultimately used for that purpose many months later; and (2) staff time spent on expenditure lobbying-related activity.

Both issues present complexities. For instance, an argument could be made that the costs of research and reports undertaken months or years prior a purpose other than expenditure lobbying is a cost that would have been incurred regardless of an organization’s expenditure lobbying. Moreover, how would the organization account for the cost of such research and reports, when only a portion is used for expenditure lobbying? Regarding staff time, the Commission will likely not want to capture de minimis staff time spent on lobbying. In this regard, the Commission might consider adopting the standard under state lobbying rules, which

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<sup>4</sup> In a similar vein, certain attendees suggested that expenditure lobbying with respect to certain matters or in particular instances be exempted (as is done for contact lobbying) from reporting. For instance, union representatives urged that labor negotiations, including discussions regarding “pre-labor” agreements, be exempted. Again, any such exemptions would have to be accomplished via an ordinance approved by four of the Commission’s five members, and by a two-thirds vote of the Board of Supervisors.

count employee compensation only if the employee spends 10 percent or more of his or her time in a given month on lobbying activities. (2 Cal. Code of Regs. § 18616(f)(1)).)

These can be difficult issues. Prior to adopting regulations, one potential option may be to take a “permissive” approach and issue guidance indicating that, during the interim period, staff time does not count towards the \$2,500 limit and only research and reports specifically undertaken for expenditure lobbying counts towards that limit.

5. Definition of “member.” Proposition C exempts from reportable activity “payments made by an organization to distribute communications to its members.” The group agreed that the Commission must adopt a regulation clearly defining the term “member” for purposes of this exemption. In this regard, there were many questions with respect to how this exemption would apply to:

- Communications with constituents, such as low income youth and families
- Communications with family members of “members”
- Unions whose missions include “organizing the unorganized” (i.e., non-members).
- Newsletters that are circulated to both members and non-members
- Newsletters and other information posted on an organization’s website
- Letters to donors and other supporters
- Discussions among various unions during labor negotiations

More broadly, many attendees of the meeting urged that the Commission adopt a broad definition of the term “member” in order to ease the reporting burden on nonprofits. In fact, nonprofit representatives fear the Commission will interpret this exemption too narrowly by, for example, adopting the state law definition of a member.<sup>5</sup> Moreover, the exemption in the City of Los Angeles for organizations that serve indigent residents was deemed too narrow to serve as a model for Proposition C. On the other hand, an overly broad definition could exempt activity that Proposition C was intended to capture.

A related issue is how to account for communications that go to both members and non-members. Under state law, the full amount of a communication is an exempt member communication so long as the amount attributable to non-members is under 5 percent of the cost of the communication or \$100, whichever is higher. (2 Cal. Code of Regs. § 18531.7(c)(2).) If the Commission were to adopt a similar test, will the full cost of any communication exceeding that amount count towards the \$2,500 threshold?

6. Fiscal sponsors. Certain persons expressed concern regarding Proposition C’s impact on “fiscal sponsors” and their projects. A fiscal sponsor is a large nonprofit that in essence shares its tax-exempt status with an individual or unincorporated group via a contractual agreement. A concern was raised that Proposition C requires a fiscal sponsor to register as an expenditure lobbyist if all of its projects cumulatively spend \$2,500 in a given month. This

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<sup>5</sup> Generally, state campaign rules define a “member” to include employees, shareholders, persons who pay dues or can vote in an organization’s elections, and their family members. (2 Cal. Code of Regs. § 18531.7(a).)

would obviously create significant tracking challenges. It was suggested that a regulation could clarify that, in these instances, the \$2,500 threshold would apply on a per project basis.

7. Triggering activity. The definition of “expenditure lobbyist” lists payments that count toward the \$2,500 registration threshold “to the extent those activities are used to further efforts to solicit, request or urge other persons to communicate directly with an officer of the City and County.” It is likely advisable to explicitly clarify via regulation that, as with independent expenditures under state law, payments in connection with communications that are never actually disseminated to the public do not trigger registration or reporting. For example, an organization may purchase mailers urging the public to contact a City official on a given issue, but ultimately decide against distributing them. The public has limited interest in costs for efforts not ultimately undertaken.

8. Additional issues. A number of other issues were raised at the meeting that might be addressed via regulation, including:

- Specifying that reports must be filed monthly even if there is no activity to report.<sup>6</sup>
- Determining what constitutes an “administrative action” for purpose of triggering the lobbying law (e.g., advocating that the City enforce existing law).
- Indicating whether notifying the public of their rights (e.g., to file certain petitions) is expenditure lobbying.
- Specifying that any triggering communication must be with respect to particular legislative or administrative actions.

### Next Steps

Certain of the issues discussed above (i.e., an exemption for nonprofits, an increase in the registration threshold, etc.) can only be addressed via an amendment to Proposition C. The other issues can and should be addressed via regulation. Per the direction of the Commission, staff has scheduled a second interested persons meeting for Wednesday, January 13, 2016 to get further input on addressing the above issues before returning to the Commission with proposed regulations. However, given the complexity of these issues, and the potential that regulations will not be approved by Proposition C’s effective date of February 1, 2016, the Commission may wish to issue some preliminary guidance pending its ultimate adoption of those regulations.

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<sup>6</sup> At a minimum, this will likely be a technical necessity under the electronic filing system.

To: San Francisco Ethics Commission  
From: San Francisco Human Services Network  
Date: November 23, 2015  
Re: Implementation of Proposition C – Expenditure lobbyists

The San Francisco Human Services Network (HSN) is an association of about 80 community-based health and human service nonprofits. HSN is a public policy organization dedicated to addressing issues critical to our sector and the people we serve. We provide a unique contribution to the City by educating service providers, elected officials and other policymakers, and the community on how policy decisions affect San Francisco's comprehensive array of social and health programs.

HSN and our members believe that Proposition C is well intentioned but flawed in its application to nonprofits. We share deep concerns about the impact of Proposition C on the ability of community organizations to advocate for the needs of vulnerable populations in San Francisco. Unfortunately, the Ethics Commission brought Prop C to the ballot without conducting outreach to our sector, and we were completely unaware of this effort until the measure was already set in stone.

As the Commission takes up the task of drafting implementing regulations, we ask that you **schedule a hearing on how Prop C impacts nonprofits, and consider an amendment to exempt nonprofits from Prop C's requirements as per the process specified in the ballot measure.** The reasons for this amendment include the following:

**1) Prop C will harm city policy-making by chilling the participation of nonprofits.**

San Francisco nonprofits have a long history of successful grassroots public interest advocacy for significant social, environmental, economic and cultural changes to address community needs in the areas of civil rights, homeless and safety net programs, health care, and more. Our City benefits from nonprofits' expertise, as well as from their role in ensuring a voice for the public, and particularly for low income and vulnerable populations who often lack the capacity to organize and advocate for themselves.

Nonprofits are already subject to complex federal and state lobbying rules, and misconceptions about nonprofits' right to advocate are widespread. Experience has shown that the more detailed, duplicative, confusing and burdensome the rules, the more they deter nonprofits from engaging in any lobbying or advocacy. This is especially the case for smaller community-based, faith-based and neighborhood organizations that cannot afford access to legal counsel.

Ultimately, this additional burden will drive many nonprofits out of public policy debates, or lead them to reduce their participation to avoid reaching the very low \$2500 threshold. Multiple layers of regulation become a trap for the unwary, with potential consequences including monetary fines, loss of foundation support due to restrictions on philanthropic funding of lobbying activity, and even jeopardizing their nonprofit status by triggering IRS scrutiny.

Based on these concerns, the San Francisco Board of Supervisors chose to exempt nonprofits from their regulation of contact lobbyists. Unlike Prop C, that legislation received unanimous approval after months of review and several public hearings before the City's most visible public body. San Jose, Fresno, Santa Rosa and a number of other California jurisdictions have adopted similar exemptions in their municipal lobbying ordinances.

Finally, Prop C's proponents have cited "astroturf" nonprofits – corporate-front organizations set up to create false credibility – as a primary target for Prop C. Sadly, without a nonprofit exemption, this measure instead will empower those efforts by undermining the public's ability to counter their misleading rhetoric. By sweeping in all nonprofits, the measure fails to draw a distinction between moneyed private sector interests and mission-driven, community organizations advocating for the public good. The drafters of this measure have the opportunity to correct this flaw by exempting nonprofits, while maintaining the requirement that corporations disclose large donations to nonprofits for lobbying purposes. This would achieve transparency goals without burdening and repressing the voices of nonprofit community groups who advocate in the public square.

## 2) Prop C has additional harmful impacts on nonprofit organizations.

- **\$500 registration fee:** The measure includes a poorly drafted provision waiving registration fees for any full-time nonprofit employee. This provision pertains to contact lobbying, and is vague and confusing in the context of an organization's lobbying expenditures. During the campaign, Prop C proponents often made deceptive claims about the fee's application to nonprofits. HSN believes that it is inappropriate to charge nonprofits a \$500 fee in order to exercise their First Amendment rights. Furthermore, the fee represents a significant hurdle for small organizations, and disempowers low income and vulnerable populations that cannot afford the cost of compliance.
- **Designation of reports as lobbying:** Prop C includes a broad list of typical nonprofit activities – such as reports, studies and analyses – that would fall under the definition of lobbying if they are used to urge others to contact policymakers. Prop C's requirements will discourage nonprofit investment in education, research and policy analysis. Even if a nonprofit prepares a report without any intent or effort to lobby, any later use of that research – even years later – could trigger reporting requirements for the entire cost of the underlying study and report.
- **Definition of members:** The measure exempts an organization's payments to distribute communications to its members, but fails to define members. Nonprofits fear the Commission will interpret this provision too narrowly, such as applying only to organizations with an elected Board of Directors. This would force nonprofits to register as lobbyists based on their regular newsletters and letters to donors.
- **Fiscal sponsorships:** Prop C creates a logistical and reporting nightmare for fiscal sponsors and their projects, a common practice for new and small organizations. Fiscal

sponsors generally establish a fee-based contractual agreement with unincorporated projects to share their legal tax-exempt status. For example, the Tides Center and Community Initiatives each sponsor close to 100 Bay Area organizations. In fact, HSN is a project of Community Initiatives.

As written, Prop C would require a fiscal sponsor to register as an expenditure lobbyist if its projects cumulatively spend \$2,500 in a single month. The fiscal sponsor must register within five days of reaching the threshold – which means they must track their projects' spending every week, and no more spending can occur until they register. From then on, they would need to report monthly on every dollar spent by all of their projects, regardless of the level of each individual project's activities.

Because the law applies to the fiscal sponsor rather than the individual project, the lobbying reports will be meaningless in tracking who is doing the actual lobbying. The law also creates a disincentive for fiscal sponsors to take on projects that engage in lobbying activities, particularly if their other projects resent the need to track their minimal expenditures and submit regular reports.

In conclusion, the application of Proposition C to nonprofits creates a barrier to civic engagement and the ability of City officials to hear from all sides in public policy debates. We ask that the Commission reconsider its applicability to nonprofit organizations through the amendment process laid out in the ballot measure – via the votes of four Ethics Commissioners and two-thirds of the Board of Supervisors.

1 [Initiative Ordinance - Campaign and Governmental Conduct Code - Expenditure Lobbyists]

2  
3 **Motion ordering submitted to the voters an ordinance amending the Campaign and**  
4 **Governmental Conduct Code to require expenditure lobbyists to register with the**  
5 **Ethics Commission and file monthly disclosures regarding their activities, at an**  
6 **election to be held on November 3, 2015.**

7  
8 MOVED, That pursuant to Charter section 15.102, the Ethics Commission hereby  
9 submits the following ordinance to the voters of the City and County of San Francisco, at an  
10 election to be held on November 3, 2015.

11  
12 **Ordinance amending the Campaign and Governmental Conduct Code to require**  
13 **expenditure lobbyists to register with the Ethics Commission and file monthly**  
14 **disclosures regarding their activities.**

15 NOTE: **Unchanged Code text and uncodified text** are in plain font.  
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
18 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or  
19 parts of tables.

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

21 Section 1. Findings.

22 (a) The City and County of San Francisco ("City") has a long-standing, compelling  
23 interest in furthering public disclosure of the identity of lobbyists and of their efforts to  
24 influence decision-making regarding local legislative and administrative matters. The City has  
25



1 required this disclosure to protect public confidence in the responsiveness and representative  
2 nature of government officials and institutions.

3 (b) For many years, the City has required lobbyists who directly contact City officials,  
4 referred to here as “contact lobbyists,” to register with the Ethics Commission and disclose  
5 their lobbying activities. But in addition to contact lobbyists, individuals, businesses, non-profit  
6 organizations, labor unions, and trade associations attempt to indirectly influence City officials  
7 by urging others to directly lobby those officials. These indirect lobbyists, referred to in this  
8 measure as “expenditure lobbyists,” make payments in an attempt to encourage others to  
9 directly lobby City officials by urging them to attend legislative hearings to speak on their  
10 behalf, by providing them with transportation to public meetings, by using advertising outlets  
11 to ask others to call or contact City officials’ offices to make their arguments, or by making  
12 donations in exchange for their direct lobbying efforts. Given these efforts, it is often difficult  
13 for City officials to know whether the individuals directly approaching them are truly voicing  
14 their own opinions or are doing so at the behest of expenditure lobbyists.

15 (c) For these reasons, and consistent with the City’s past efforts to further the goals of  
16 open government and transparency in decision-making, the voters enact this ordinance to  
17 impose registration and disclosure requirements on expenditure lobbyists. This approach is  
18 not unique to San Francisco. Several other California jurisdictions, including Los Angeles,  
19 Sacramento, San Diego, San Jose, and the State of California, have enacted similar  
20 expenditure lobbyist regulations.

21 (d) This ordinance imposes reasonable, narrowly tailored registration and disclosure  
22 requirements on expenditure lobbyists, obligating them to reveal information about their efforts  
23 to influence decision-making. Since expenditure lobbyists and direct, contact lobbyists both  
24 attempt to influence the City’s legislative process, this ordinance imposes the same sorts of  
25 registration and disclosure requirements on both types of lobbyists.

1  
2 Section 2. Article II, Chapter 1 of the Campaign and Governmental Conduct Code is  
3 hereby amended by adding Section 2.103 and revising Sections 2.105, 2.106, 2.110, 2.115,  
4 2.116, and 2.130, to read as follows:

5 **SEC. 2.103. AMENDMENT OR REPEAL.**

6 With respect to any provisions of this Chapter regarding regulation of expenditure lobbyists  
7 approved by the voters, the Board of Supervisors may amend those provisions if all of the following  
8 conditions are met:

9 (a) The amendment furthers the purposes of this Chapter;

10 (b) The Ethics Commission approves the proposed amendment in advance by at least a four-  
11 fifths vote of all its members;

12 (c) The proposed amendment is available for public review at least 30 days before the  
13 amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors;  
14 and

15 (d) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of  
16 all its members.

17  
18 **SEC. 2.105. DEFINITIONS.**

19 Whenever used in this Chapter 1, the following words and phrases shall ~~have the~~  
20 ~~definitions~~ be defined as provided in this Section 2.105:

21 "Activity expenses" means any expense incurred or payment made by a lobbyist or a  
22 lobbyist's client at the behest of the lobbyist, or arranged by a lobbyist or a lobbyist's client at  
23 the behest of the lobbyist, which benefits in whole or in part any: officer of the City and  
24 County; candidate for City and County office; aide to a member of the Board of Supervisors;  
25 or member of the immediate family or the registered domestic partner of an officer, candidate,

1 or aide to a member of the Board of Supervisors. An expense or payment is not an "activity  
2 expense" unless it is incurred or made within three months of a contact with the officer,  
3 candidate, or Supervisor's aide who benefits from the expense or payment, or whose  
4 immediate family member or registered domestic partner benefits from the expense or  
5 payment. "Activity expenses" include honoraria, consulting fees, salaries, and any other thing  
6 of value totaling more than \$25 in value in a consecutive three-month period, but do not  
7 include political contributions.

8 "Candidate" shall have the same meaning as set forth in Section 1.104 of this Code.

9 "Client" means the person for whom lobbyist services are performed by a lobbyist.

10 "Contact lobbyist" means any individual who (1) makes five or more contacts in a calendar  
11 month with officers of the City and County on behalf of the individual's employer; or (2) makes one or  
12 more contacts in a calendar month with an officer of the City and County on behalf of any person who  
13 pays or who becomes obligated to pay the individual or the individual's employer for lobbyist services.  
14 An individual is not a contact lobbyist if that individual is lobbying on behalf of a business of which the  
15 individual owns a 20% or greater share.

16 "Economic consideration" means any payments, fees, reimbursement for expenses,  
17 gifts, or anything else of value, provided that "economic consideration" does not include  
18 salary, wages or benefits furnished by a federal, state or local government agency.

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

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

25

1           "Expenditure lobbyist" means any person, other than any government entity, or officer or  
2 employee of a government entity acting in an official capacity, who, directly or indirectly, makes  
3 payments totaling \$2,500 or more in a calendar month to solicit, request, or urge other persons to  
4 communicate directly with an officer of the City and County in order to influence local legislative or  
5 administrative action. Examples of the types of activities the payment for which can count toward the  
6 \$2,500 threshold referred to in the previous sentence include but are not limited to public relations,  
7 media relations, advertising, public outreach, research, investigation, reports, analyses, and studies to  
8 the extent those activities are used to further efforts to solicit, request or urge other persons to  
9 communicate directly with an officer of the City and County. The following types of payments shall not  
10 be considered for the purpose of determining whether a person is an expenditure lobbyist: payments  
11 made to a registered contact lobbyist or the registered contact lobbyist's employer for lobbyist  
12 services; payments made to an organization for membership dues; payments made by an organization  
13 to distribute communications to its members; payments made by a news media organization to develop  
14 and distribute its publications; and payments made by a client to a representative to appear in an  
15 adjudicatory proceeding before a City agency or department.

16           "Gift" shall be defined as set forth in the Political Reform Act, Government Code  
17 Section 81000 et seq., and the regulations adopted thereunder.

18           "Lobbyist" means a contact lobbyist or expenditure lobbyist. ~~any individual who (1) makes~~  
19 ~~five or more contacts in a calendar month with officers of the City and County on behalf of the~~  
20 ~~individual's employer; or (2) makes one or more contacts in a calendar month with an officer of the~~  
21 ~~City and County on behalf of any person who pays or who becomes obligated to pay the individual or~~  
22 ~~the individual's employer for lobbyist services. An individual is not a lobbyist if that individual is~~  
23 ~~lobbying on behalf of a business of which the individual owns a 20% or greater share.~~

1 "Lobbyist services" means services rendered for the purpose of influencing local  
2 legislative or administrative action, including but not limited to contacts with officers of the City  
3 and County of San Francisco.

4 "Local legislative or administrative action" includes, but is not limited to, the drafting,  
5 introduction, consideration, modification, enactment, defeat, approval, veto, granting or denial  
6 by any officer of the City and County of any resolution, motion, appeal, application, petition,  
7 nomination, ordinance, amendment, approval, referral, permit, license, entitlement to use or  
8 contract.

9 "Measure" shall have the same meaning as set forth in Section 1.104 of this Code.

10 "Officer of the City and County" means any officer identified in Section 3.203 of this  
11 Code, as well as any official body composed of such officers. In addition, for purposes of this  
12 Chapter, "officer of the City and County" includes (1) members of the Board of Education,  
13 Community College Board, First Five Commission, Law Library Board of Trustees, Local  
14 Agency Formation Commission, Health Authority Board, Housing Authority Commission,  
15 Parking Authority, Relocation Appeals Board, Successor Agency to the former  
16 Redevelopment Agency of the City and County of San Francisco, Oversight Board of the  
17 Successor Agency, Successor Agency Commission, Transportation Authority, Workforce  
18 Investment San Francisco Board as well as any official body composed of such officers, and  
19 any person appointed as the chief executive officer under any such board or commission; (2)  
20 the Zoning Administrator, (3) the City Engineer, (4) the County Surveyor, and (5) the Bureau  
21 Chief of the Department of Public Works' Bureau of Street Use and Mapping.

22 "Person" means an individual, partnership, corporation, association, firm, labor union or  
23 other organization or entity, however organized.

24 "Public hearing" means any open, noticed proceeding.

25 **SEC. 2.106. LOBBYING CONTACTS.**

1 (a) Whenever used in this Chapter 1, "contact" means any communication, oral or  
2 written, including communication made through an agent, associate or employee, for the  
3 purpose of influencing local legislative or administrative action, except as provided in  
4 Subsections (b) and (c).

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

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

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

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

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

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

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

25

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

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

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

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

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

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

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

18 (14) A person communicating, on behalf of a labor union representing City  
19 employees, regarding the establishment, amendment, or interpretation of a collective  
20 bargaining agreement or memorandum of understanding with the City, or communicating  
21 about a management decision regarding the working conditions of employees represented by  
22 a collective bargaining agreement or a memorandum of understanding with the City;

23 (15) A party or prospective party to a contract providing oral or written  
24 information in response to a request for proposals, request for qualifications, or other similar  
25 request, provided that the information is directed to the department or official specifically

1 designated in the request to receive such information; negotiating the terms of the contract  
2 with the City after being selected to enter into the contract; or communicating in connection  
3 with the administration of an existing contract between the party and the City. For the  
4 purposes of this *Subsection (b)(15)*:

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

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

17 (16) An officer or employee of a nonprofit organization or an organization  
18 fiscally sponsored by such a nonprofit organization communicating on behalf of their  
19 organization. For purposes of this subsection only, "nonprofit organization" means either an  
20 organization with tax exempt status under 26 United States Code Section 501(c)(3), or an  
21 organization with tax exempt status under 26 United States Code Section 501(c)(4) whose  
22 most recent federal tax filing included an IRS Form 990-N or an IRS Form 990-EZ, or an  
23 organization whose next federal tax filing is reasonably likely to include an IRS Form 990-N or  
24 an IRS Form 990-EZ.



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

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

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

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

10 **SEC. 2.110. REGISTRATION AND DISCLOSURES; FEES; TERMINATION OF**  
11 **REGISTRATION.**

12 (a) **REGISTRATION OF LOBBYISTS REQUIRED.** Lobbyists shall register with the  
13 Ethics Commission and comply with the disclosure requirements imposed by this Chapter I.  
14 Such registration shall occur no later than five business days of qualifying as a lobbyist, ~~but~~  
15 ~~the~~ Contact lobbyists shall register prior to making any additional contacts with an officer of the  
16 City and County of San Francisco and expenditure lobbyists shall register prior to making any  
17 additional payments to influence local legislative or administrative action.

18 (b) **REGISTRATION.**

19 (1) Contact lobbyists. At the time of initial registration each contact lobbyist shall  
20 report to the Ethics Commission the following information:

21 (~~A~~) The name, business address, e-mail address, and business  
22 telephone number of the lobbyist;

23 (~~B~~) The name, business address, and business telephone number of  
24 each client for whom the lobbyist is performing lobbyist services;  
25

1                   (3C) The name, business address, and business telephone number of  
2 the lobbyist's employer, firm or business affiliation; and

3                   (4D) Any other information required by the Ethics Commission through  
4 regulation, consistent with the purposes and provisions of this Chapter.

5                   (2) Expenditure lobbyists. At the time of initial registration each expenditure lobbyist  
6 shall report to the Ethics Commission the following information:

7                   (A) The name, mailing address, e-mail address, and telephone number of the  
8 lobbyist;

9                   (B) Expenditure lobbyists that are entities shall provide:

10                   (i) a description of their nature and purpose(s);

11                   (ii) if the expenditure lobbyist is a corporation, the names of the  
12 corporation's chief executive officer, chief financial officer, and secretary, any officer who authorized  
13 payments to influence local legislative and administrative action, and any person who owns more than  
14 20 percent of the corporation;

15                   (iii) if the expenditure lobbyist is a partnership, the name of each partner  
16 if the entity has fewer than 10, or the name of the partner with the greatest ownership interest if the  
17 entity has 10 or more partners;

18                   (iv) for any other type of business entity, the name of each person with  
19 an ownership interest if the entity has fewer than 10 owners, or the name of the person with the greatest  
20 ownership interest in the entity, if the entity has 10 or more owners;

21                   (C) Expenditure lobbyists that are individuals shall provide a description of  
22 their business activities; and

23                   (D) Any other information required by the Ethics Commission through  
24 regulation, consistent with the purposes and provisions of this Chapter.

25

1 (c) **LOBBYIST DISCLOSURES.** For each calendar month, each lobbyist shall submit  
2 the following information no later than the fifteenth calendar day following the end of the  
3 month:

4 (1) Contact lobbyists. Each contact lobbyist shall report to the Ethics Commission the  
5 following information:

6 (1A) The name, business address and business telephone number of  
7 each person from whom the lobbyist or the lobbyist's employer received or expected to  
8 receive economic consideration to influence local legislative or administrative action during  
9 the reporting period;

10 (2B) The name of each officer of the City and County of San Francisco  
11 with whom the lobbyist made a contact during the reporting period;

12 (3C) The date on which each contact was made;

13 (4D) The local legislative or administrative action that the lobbyist sought  
14 to influence, including, if any, the title and file number of any resolution, motion, appeal,  
15 application, petition, nomination, ordinance, amendment, approval, referral, permit, license,  
16 entitlement, or contract, and the outcome sought by the client;

17 (5E) The client on whose behalf each contact was made;

18 (6F) The amount of economic consideration received or expected by the  
19 lobbyist or the lobbyist's employer from each client during the reporting period;

20 (7G) All activity expenses incurred by the lobbyist during the reporting  
21 period, including the following information:

22 (Ai) The date and amount of each activity expense;

23 (Bii) The full name and official position, if any, of the beneficiary of  
24 each activity expense, a description of the benefit, and the amount of the benefit;

25

1                    (Eiii) The full name of the payee of each activity expense if other  
2 than the beneficiary;

3                    (Div) Whenever a lobbyist is required to report a salary of an  
4 individual pursuant to this Subsection (c)(1), the lobbyist need only disclose whether the total  
5 salary payments made to the individual during the reporting period was less than or equal to  
6 \$250, greater than \$250 but less than or equal to \$1,000, greater than \$1,000 but less than or  
7 equal to \$10,000, or greater than \$10,000.

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

16                    The following information regarding each political campaign contribution  
17 shall be submitted to the Ethics Commission:

- 18                    ( Ai) The amount of the contribution;  
19                    ( Bii) The name of the contributor;  
20                    ( Eiii) The date on which the contribution was made;  
21                    ( Div) The contributor's occupation;  
22                    ( Ev) The contributor's employer, or if self-employed, the name of  
23 the contributor's business; and  
24                    ( Fvi) The committee to which the contribution was made.  
25

1                   (~~J~~) For each contact at which a person providing purely technical data,  
2 analysis, or expertise was present, as described in Section 2.106(b)(10), the name, address,  
3 employer and area of expertise of the person providing the data, analysis or expertise.

4                   (~~L~~) Any amendments to the lobbyist's registration information required  
5 by Subsection (b).

6                   (~~K~~) Any other information required by the Ethics Commission through  
7 regulation, consistent with the purposes and provisions of this Chapter.

8                   (2) Expenditure lobbyists. Each expenditure lobbyist shall report to the Ethics  
9 Commission the following information:

10                   (A) The local legislative or administrative action that the lobbyist sought to  
11 influence, including, if any, the title and file number of any resolution, motion, appeal, application,  
12 petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement, or  
13 contract.

14                   (B) The total amount of payments made during the reporting period to influence  
15 local legislative or administrative action.

16                   (C) Each payment of \$1,000 or more made during the reporting period,  
17 including the date of payment, the name and address of each person receiving the payment, a  
18 description of the payment, and a description of the consideration for which the payment was made.

19                   (D) All campaign contributions of \$100 or more made or delivered by the  
20 lobbyist or made at the behest of the lobbyist during the reporting period to an officer of the City and  
21 County, a candidate for such office, a committee controlled by such officer or candidate, or a  
22 committee primarily formed to support or oppose such officer or candidate, or any committee primarily  
23 formed to support or oppose a measure to be voted on only in San Francisco. This report shall include  
24 such campaign contributions arranged by the lobbyist, or for which the lobbyist acted as an agent or  
25 intermediary.

1                                    The following information regarding each campaign contribution shall be  
2 submitted to the Ethics Commission:

3                                    (i) The amount of the contribution;

4                                    (ii) The name of the contributor;

5                                    (iii) The date on which the contribution was made;

6                                    (iv) The contributor's occupation;

7                                    (v) The contributor's employer, or if self-employed, the name of the  
8 contributor's business; and

9                                    (vi) The committee to which the contribution was made.

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

12                                   (F) Any other information required by the Ethics Commission through  
13 regulation, consistent with the purposes and provisions of this Chapter 1.

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

18                                   **(e) FEES; TERMINATION OF REGISTRATION.**

19                                   (1) At the time of registration each lobbyist shall pay a fee of \$500. On or  
20 before every subsequent February 1, each registered lobbyist shall pay an additional fee of  
21 \$500.

22                                   (2) Failure to pay the annual fee by February 1 shall constitute a termination of  
23 a lobbyist's registration with the Ethics Commission. The Ethics Commission is also  
24 authorized to establish additional processes for the termination of a lobbyist's registration.  
25

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

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

6 **SEC. 2.115. PROHIBITIONS.**

7 (a) GIFT LIMIT. No lobbyist shall make gifts to an officer of the City and County that  
8 have a fair market value of more than \$25, except for those gifts that would qualify for one of  
9 the exemptions under Section 3.216(b) of this Code and its implementing regulations.

10 (b) FUTURE EMPLOYMENT. No lobbyist shall cause or influence the introduction or  
11 initiation of any local legislative or administrative action for the purpose of thereafter being  
12 employed or retained to secure its granting, denial, confirmation, rejection, passage or defeat.

13 (c) FICTITIOUS PERSONS. No contact lobbyist shall contact any officer of the City  
14 and County in the name of any fictitious person or in the name of any real person, except with  
15 the consent of such real person.

16 (d) EVASION OF OBLIGATIONS. No lobbyist shall attempt to evade the obligations  
17 imposed by this Chapter through indirect efforts or through the use of agents, associates or  
18 employees.

19 **SEC. 2.116. LOBBYIST TRAINING.**

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

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

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

4 **SEC. 2.130. EMPLOYMENT OF UNREGISTERED PERSONS.**

5 It shall be unlawful knowingly to pay any contact lobbyist to contact any officer of the  
6 City and County of San Francisco, if said contact lobbyist is required to register under this  
7 Chapter and has not done so by the deadlines imposed in this Chapter.

8  
9 Section 3. Scope of Ordinance. In enacting this ordinance, the voters intend to amend  
10 only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation  
11 marks, charts, diagrams, or any other constituent parts of the Municipal Code that are  
12 explicitly shown in this ordinance as additions or deletions, in accordance with the "Note" that  
13 appears under the official title of the ordinance.

14  
15 Section 4. Appropriation. There is hereby appropriated \$560,000 from the General  
16 Reserve to fund administrative and enforcement costs required to implement this ordinance.  
17 Any portion of this appropriation that remains unspent at the end of Fiscal Year 2015-16 shall  
18 be carried forward and spent in subsequent years for the same purpose. Additionally, it shall  
19 be City policy in all fiscal years following depletion of this original appropriation that the Board  
20 of Supervisors shall annually appropriate \$15,000 for this purpose.

21  
22 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word  
23 of this ordinance, or any application thereof to any person or circumstance, is held to be  
24 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
25 shall not affect the validity of the remaining portions or applications of the ordinance. The



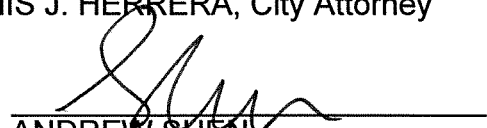
1 voters hereby declare that they would have passed this ordinance and each and every  
2 section, subsection, sentence, clause, phrase, and word not declared invalid or  
3 unconstitutional without regard to whether any other portion of this ordinance or application  
4 thereof would be subsequently declared invalid or unconstitutional.

5  
6 Section 6. Effective and Operative Dates. This ordinance shall become effective 10  
7 days after the Board of Supervisors declares the results of the November 3, 2015 election.  
8 This ordinance shall become operative on February 1, 2016.

9  
10 APPROVED AS TO FORM:

11 DENNIS J. HERRERA, City Attorney

12  
13 By:

  
14 ANDREW SHEN  
Deputy City Attorney

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