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EXECUTIVE DIRECTOR

Date: February 24, 2016
To: Members of the Ethics Commission
From: LeeAnn Pelham, Executive Director
Subject: **AGENDA ITEM #4**
Proposed Revised Draft Implementing Regulations for Prop. C

Summary This memo provides the Ethics Commission with revised draft regulations to interpret and implement the provisions of Prop. C for consideration at its special meeting on February 29, 2016.

Action Requested That the Ethics Commission consider and approve the attached proposed regulations to interpret and implement the provisions of Prop. C.

Reasons for Proposed Regulations

Placed on the November 5, 2015, ballot by the Ethics Commission and approved by San Francisco voters with approximately 75% of the vote, Prop. C¹ established certain public disclosure requirements for persons who engage in communications to urge others to contact City and County officials in an attempt to influence matters defined under the law as local legislative or administrative action. The measure took effect on February 1, 2016.

Prop. C was designed to "protect public confidence in the responsiveness and representative nature of government officials and institutions" by furthering public disclosure about efforts designed to influence local decision making. Findings Sec. (1)(a). Specifically, it amended the City's existing lobbying law to re-establish a category of "indirect" lobbyists known as "Expenditure Lobbyists," who make payments in an attempt to encourage others to directly lobby City officials. Findings Sec. (1)(b). Effective February 1, the ordinance imposes registration and disclosure requirements on expenditure lobbyists similar to those that apply to contact lobbyists under existing law.

To better understand which terms used in Prop. C might benefit from clarifying regulations, Commission Staff held interested persons meetings on the measure's implementation on December 7, 2015, and on January 13, 2016. Based on Staff's review of Prop. C and feedback received from the Interested Persons meetings, initial draft regulations were provided to the Ethics Commission for consideration and possible action at its Regular Meeting on January 25, 2016.

¹ The text of Prop. C as approved by voters appears in Attachment 1.

Following the Commission's discussion on January 25th and public comment received at that meeting, on February 9, 2016 Staff circulated revised draft regulations for further public comment. Based on its review and consideration of written comments received in response to the February 9th draft regulations, Staff is providing proposed draft regulations for the Commission's discussion and possible action on February 29, 2016.

For reference, Staff's proposed regulations appear in Attachment 2. Public comments received in connection with the revised draft regulations circulated February 9th appear in Attachment 3. Draft registration and reporting forms for use pending implementation of an electronic filing system for filing those reports online appear in Attachment 4.

Background: Prop. C Expenditure Lobbyist Registration and Reporting Requirements

By way of background, Prop. C amended the City's lobbying law to include expenditure lobbyists as a category of lobbyists, and requires both registration and regular reporting by persons who qualify as an expenditure lobbyist.

Registration. Under the provisions of Prop. C, to qualify as an expenditure lobbyist a person must 1) make payments totaling \$2,500 or more, and 2) the payments must be for the purpose to "solicit, request, or urge other persons to communicate directly with an officer of the City and County in order to influence local legislative or administrative action." (See SF C&GCC § 2.105, definition of "Expenditure Lobbyist".) After a person qualifies as an expenditure lobbyist, the person must register with the Commission and begin complying with the monthly reporting requirements.

Reporting Expenditure Lobbyist Activity. After meeting the qualification threshold, an expenditure lobbyist must each month report 1) the legislative or administrative action that the Expenditure Lobbyist sought to influence; 2) the total amount of payments made during the reporting period to influence local legislative or administrative action; 3) each payment of \$1,000 or more, including the date of the payment, the name and address of the person receiving the payment, a description of the payment, and a description of the consideration for which the payment was made; and 4) all campaign contributions of \$100 or more along with certain disclosures related to the contributions.

In addition to reporting the payments of \$2,500 for expenditure lobbying activity at the time of registration, therefore, each subsequent month an expenditure lobbyist must report the total amount of expenditure lobbying activity payments and itemize each payment of \$1,000 or more. The amendments to the Lobbyist Ordinance approved by Prop. C contemplate that the reporting of expenditure lobbying will continue until expenditure lobbyists terminate their registration by ceasing all expenditure lobbying activity.

Overview of Proposed Regulations

Proposed Regulation 2.105-5. Expenditure Lobbyist Definition.

Under Proposition C, a person qualifies as an expenditure lobbyist once the person (1) "makes payments totaling \$2,500 or more in a calendar month," and (2) those payments aim to "solicit, request, or urge other persons to communicate directly with" City officials. Examples of these types of payments could include payments made to a printer to generate mailers to be delivered to City residents urging them to

contact their Supervisors regarding pending legislation, to a bus company to transport individuals to speak at public comment at a City Hall hearing on a proposed ordinance, or to an economic consultant to generate a study about potential impacts of a proposed ordinance that would be cited in those types of lobbying efforts.

Proposed Regulation 2.105-5(a) addresses a question regarding when a payment is “made” for the purpose of Proposition C. There are two alternative answers to this question.

First, a payment could be defined to be “made” on the date that the communication “to solicit, request, or urge other persons to communicate directly” with City officials is sent. Under this alternative, the payment date, for example, would be the date on which a mail piece was actually sent by the expenditure lobbyist to the printer, persons were actually transported to attend a public meeting by a bus company, or a payment was made to consultant or other third party.

Second, a payment could be defined to be “made” on the date that the expense for one of these activities is incurred: that is, the date on which a person requested the mailers to be printed, the buses to be sent, or the study to be drafted. In this case the date would likely be earlier than the actual payment date. Staff received public comment from several groups raising a question about the possible impact of this approach if the material or services paid for were never actually used. Would regulations require, for example, a person preparing to engage in expenditure lobbying who contracts with a printer to print \$10,000 mailers but never uses those mailers due to a change in strategy or other developments be required to register?

As proposed, Regulation 2.105-5(a) would not require such a person to register as an expenditure lobbyist because a *payment alone* does not render a person an expenditure lobbyist. In addition to making a payment, there must be “an activity to solicit, request, or urge other persons” to lobby a City officer; here, if the mailers were never used, no urging others to act has taken place.

Proposed Regulation 2.105-5(b) clarifies that an organization’s payments of \$2,500 to request, solicit, or urge other persons to communicate directly with an officer of the City and County in order to influence a local legislative or administrative action relates to a single legislative or administrative matter. As proposed, to determine whether a person has reached the \$2,500 qualifying threshold for registration, the regulation would not cumulate payments for all activities that urge others to lobby on all matters, rather it would count *all payments for a single matter* toward the \$2,500 registration threshold.

Proposed regulation 2.105-5(b)(i) addresses situations in which a potential expenditure lobbyist makes payments with the intent that such activities would encourage others to lobby City officials – but at a significantly later date. Consider the following hypothetical:

Corporation Z has a strong interest in an ordinance that it believes that the Board of Supervisors will consider in six months. Corporation Z has not yet engaged in any direct lobbying or indirect, expenditure lobbying – but it plans to do so when the Board takes up the proposed ordinance. To prepare for its lobbying efforts, Corporation Z hires a public affairs consultant to prepare a study that supports the Corporation’s position on the proposed ordinance, and the consultant completes that study three months before the Board considers the ordinance. Shortly before the Board holds its first hearing, Corporation Z sends out letters urging San Franciscans to contact their Supervisors to support Corporation Z’s position and the letters cite the consultant’s study and the data and arguments it contains.

In this hypothetical, proposed Regulation 2.105-5(b)(i) clarifies that Corporation Z would have to include its consultant payments in determining whether it has met the \$2,500 qualification threshold. This approach would provide more accurate reporting and transparency about Corporation Z's expenditure lobbying efforts. In short, it treats as qualifying expenses payments by Corporation Z for both the letters urging residents to contact the Board and for the study the lobbying communication uses in an attempt to persuade residents -- and ultimately, the Board.

Notably, the proposed regulation does propose two limitations on counting payments for materials or services made before actual lobbying commences. First, payments that occur more than 12 months before the lobbying efforts would generally not "count" towards the threshold, so potential expenditure lobbyists would not need to consider payments made years before lobbying actually begins. Second, the materials or services paid for must have a direct connection to the communication that urges others to lobby, that is, they must be "cited, incorporated, or quoted" in the communication. On balance, Staff believes that payments that meet these criteria are appropriate in determining qualification.

Regulation 2.105-5(d) is shown in the proposed regulations with two options. The first approach would define salary paid by an employer to an employee for activities to solicit, request or urge others to lobby *do not count* toward either the \$2,500 qualifying threshold or the monthly payment disclosures. Also included for the Commission's consideration is optional additional language that would result in an alternative approach: salary paid for an employee's activities to solicit, request, or urge others to lobby would count toward the employer's qualification as an expenditure lobbyist *if those activities in total account for 50 percent or more of the employee's time in any month*. Consider the following hypothetical:

Entity A decides to launch a lobbying campaign to urge San Franciscans to communicate with the Mayor and Board of Supervisors on a matter involving the use of local transit stops. Entity A is locally based corporation with a sizeable global staff that includes a large number of in-house communications and public affairs professionals. It chooses to conduct research, prepare advertising, and conduct public outreach for its transit-related lobbying campaign using in-house resources, exclusively.

The first approach shown under Regulation 2.105-5(d) would exclude all payments for employees' activities from determining qualification as an expenditure lobbyist. Under the hypothetical shown above, this would mean Entity A would not qualify as an expenditure lobbyist regardless of the amount of payments it made to in-house employees. Expenditures related to Entity A's lobbying campaign to urge San Franciscans to lobby City Hall on the use of local transit stops, therefore, would go unreported.

The second approach shown under this regulation would consider Entity A's payments for its employees' activities to solicit or urge communications with City Hall by others in determining qualification as an expenditure lobbyist. Using the optional additional language shown, this regulation would exclude payments for employees' time *unless* those activities in total account for 50 percent or more of the employee's time in any month. Under this approach, should an organization's employees engage in a substantial degree of these activities, there would be some public accounting of those payments.

If the Commission were to determine that some staff time for these activities should count toward qualification, bracketed language appears proposed Regulation 2.110-10(b)(iii) to provide for the disclosure of those activities.

Proposed Regulation 2.105-5(e), outlines that any payments that would otherwise count as a payment for an activity to solicit, request, or urge other persons to communicate directly with a City officer, but that were made prior to the February 1, 2016, effective date of the Prop. C amendments, would not be counted as payments for the qualification threshold.

Regulation 2.105-6. Payments for Communications with Members.

Proposed Regulation 2.105-6(a) address comments received about the need to more clearly define what constitutes a “member” of an organization, and what constitutes a “communication” to an organization’s members. The regulation proposes to clarify that a “member” is an employee, shareholder, or person who pays dues or fees to an organization. It further clarifies that any communication distributed solely to an organization’s members does not count toward the qualify threshold amount.

Some public comment received proposed that this regulation be interpreted broadly, while other public comments urged a narrow interpretation of these terms. Should the regulation, for example, result in all San Francisco tenants being treated as “members” of a tenants’ rights group, or would that interpretation be overly broad and effectively exempt an organization from any expenditure lobbyist disclosure? A “member” could be defined to include, for example, persons who simply take affirmative steps to receive an organization’s communications. This approach, however, could mean that a business with a large list of individuals who have used their company to locate or obtain goods or services could spend large amounts to urge those individuals to lobby city officials, and those expenditures would go unreported.

As proposed, Regulation 2.105-6(a) limits the scope of what constitutes a “member” to employees or shareholders of an organization, and any person who pays dues or fees to an organization. Shareholders and those who pay dues or fees to an organization typically have some right to vote or decide on an organization’s leadership or actions. Those activities indicate a level of engagement in an organization’s activities that suggests a reasonable nexus for including them in the exemption. This approach would not include in this exemption those who have only a minimal connection with an organization.

Proposed Regulation 2.105-6(b), recognizes that organizations regularly communicate through a newsletter or similar written periodical to members, employees, shareholders and other affiliated individuals, and those who request or purchase their publications. Substantially mirroring state law, proposed Regulation 2.105-6(b)(i) intends to clarify that an organization may communicate its positions on matters of legislative or administrative action with these persons without counting the cost of the production or distribution of those items toward the registration threshold or monthly reporting amounts, except when costs for the costs for publishing and distributing those items are beyond those regularly incurred.

Regulation 2.110-10. Registration and Reporting.

Proposed Regulation 2.110-10(a) and (b) requires that the information required to be reported by expenditure lobbyists must be disclosed using specific Ethics Commission forms. Attachment 4 provides copies of the draft forms. In addition, bracketed language is shown under subsection (iii) to reflect which approach the Commission may take with regard to whether employee salaries are exempted or not under proposed Regulation 2.105-5(d).

Proposed Regulation 2.110-10(c), clarifies that once a person has met the qualifying threshold and registered as an expenditure lobbyist, the Prop. C amendments contemplate that the expenditure lobbyist will report their activity each month until they terminate. Consistent with the reporting requirement of contact lobbyists, a monthly report must be filed (even if there is no reportable activity) until the expenditure lobbyist affirmatively indicates on the most recently filed report that they are terminating their registration and have ceased all expenditure lobbying activity.

Regulation 2.110-11. Fees.

Proposed Regulation 2.110-11 addresses public comments received about the registration fees of \$500 mandated in Section 2.110(e)(1) for “each lobbyist.” With “lobbyist” now defined to include “a contact lobbyist or expenditure lobbyist,” how the Ordinance treats the fee waiver established under Section 2.110(e)(3) has been raised as a question.

As proposed, Regulation 2.110-11 would apply the fee waiver for 501(c)(3) and 501(c)(4) employees to 501(c)(3) and 501(c)(4) organizations. While the Commission received public comment about narrowing the waiver or establishing a specific fee waiver review process to exclude waivers for large non-profits, Staff recommends applying the waiver process for expenditure lobbyists that is already provided for in the Ordinance.

Issues Not Addressed in Proposed Regulations

The Ethics Commission received some comments that advocated for outcomes that would require legislative amendment to change the Expenditure Lobbyist provisions. Existing language of Prop. C includes a provision allowing the Board of Supervisors to amend the Expenditure Lobbyists law if:

- the amendments further the purposes of the ordinance;
- the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
- the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board; and
- the Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

Key issues raised that would require legislative action to amend are the:

- *Registration threshold.* The Commission received comment that the \$2,500 registration threshold was too low and should be increased, for example, to \$5,000 per calendar

quarter. Any change to the expenditure threshold, however, would require a change by legislative amendment.

- *Exemptions for non-profits.* Comments at the Interested Persons meetings expressed some concern that nonprofits and unions, particularly those that are smaller, will not have sufficient administrative capacity to ensure full compliance with Prop. C, and thus might refrain from advocacy efforts in the City. As such, some sought an exemption was warranted from registration and reporting for non-profits, including for 501(c)(3), (c)(4), and (c)(5) organizations. Because the text of Prop C. does not support the existence of such an exemption, Staff's proposed regulations do not exempt them from registration or reporting.

ATTACHMENT 1

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

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

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

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

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman 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. Findings.

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

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 I, "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 I.

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;

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.
25

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

23 (2B) 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 (~~C~~iii) The full name of the payee of each activity expense if other
2 than the beneficiary;

3 (~~D~~iv) Whenever a lobbyist is required to report a salary of an
4 individual pursuant to this ~~S~~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 (~~8~~H) 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 (~~A~~i) The amount of the contribution;

19 (~~B~~ii) The name of the contributor;

20 (~~C~~iii) The date on which the contribution was made;

21 (~~D~~iv) The contributor's occupation;

22 (~~E~~v) The contributor's employer, or if self-employed, the name of
23 the contributor's business; and

24 (~~F~~vi) The committee to which the contribution was made.
25

1 (9I) 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 (10J) Any amendments to the lobbyist's registration information required
5 by Subsection (b).

6 (HK) 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

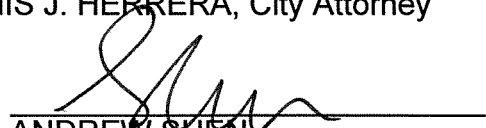
1 voters hereby declare that they would have passed this ordinance and each and every
2 section, subsection, sentence, clause, phrase, and word not declared invalid or
3 unconstitutional without regard to whether any other portion of this ordinance or application
4 thereof would be subsequently declared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

16 n:\legan\as2015\1500886\01023422.doc
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PROPOSED DRAFT PROP. C REGULATIONS

For discussion and possible action by the San Francisco Ethics Commission at its Special Meeting on February 29, 2016

Page 1

Regulation 2.105-5. Expenditure Lobbyist Definition.

Note: Section 2.105 of the Ordinance defines activities that count toward qualification as an Expenditure Lobbyist, and the level of those activities that trigger the requirement to register and file monthly reports. Based on inquiries and public comment the Ethics Commission has received, this regulation is proposed to clarify what counts, and how and when those activities are to be counted. Bracketed language shown in Subsection (d) shows optional additional language for the Commission's consideration.

(a) A person "makes payments" at the time an expense is incurred for an activity to solicit, request, or urge other persons to communicate directly with an officer of the City and County in order to influence a matter of local legislative or administrative action.

(b) For the purposes of qualifying as an Expenditure Lobbyist, a person must make payments totaling \$2,500 or more in a calendar month for activities to solicit, request, or urge other persons to communicate directly with an officer of the City and County in order to influence a single matter of local legislative or administrative action.

(i) Any payment made for these activities will count towards the \$2,500 threshold if within 12 months of the payment, the services or work product paid for are cited, incorporated, or quoted in any communication urging other persons to lobby a city official on a single matter of local legislative or administrative action.

(c) Charitable organizations that act as a fiscal sponsor to other charitable projects are not required to register as an expenditure lobbyist for the activities of those projects that it sponsors. Nothing in this regulation prevents a nonprofit organization that acts as a fiscal sponsor for charitable projects from qualifying as an expenditure lobbyist through its own activities.

(d) Salary paid by an employer to an employee for activities to solicit, request, or urge other persons to communicate directly with an officer of the City and County in order to influence a matter of local legislative or administrative action shall not constitute a payment toward the \$2,500 qualifying threshold [**Optional additional language:** unless those activities in total account for 50 percent or more of the employee's time in any month].

PROPOSED DRAFT PROP. C REGULATIONS

For discussion and possible action by the San Francisco Ethics Commission at its Special Meeting on February 29, 2016

Page 2

(e) No payments made by any person prior to the February 1, 2016 implementation date of the Proposition C amendments approved on November 3, 2015 shall be counted toward the \$2,500 qualifying threshold that requires registration as an expenditure lobbyist.

Regulation 2.105-6. Payments for Communications with Members.

Note: Section 2.105 of the Ordinance provides that certain types of payments shall not be considered for determining whether a person qualifies as an Expenditure Lobbyist, including "payments made to an organization for membership dues" and "payments made by an organization to distribute communications to its members." This regulation is designed to clarify the applicability of these exclusions.

(a) "Member" means an employee or shareholder of an organization, a person who pays dues or fees to an organization.

(b) A filer does not have to report any part of the costs of producing and distributing a regularly published newsletter or similar written periodical whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication.

(i) The exception in subsection (b) applies only to those costs regularly incurred in publishing and distributing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, is expanded in circulation, or is altered in style, size, or format for the purpose of influencing or attempting to influence legislative or administrative action or urging others to do so, such additional costs are reportable under San Francisco Campaign and Governmental Conduct Code, sections 2.105 and 2.110(b)(2) and (c)(2).

PROPOSED DRAFT PROP. C REGULATIONS

For discussion and possible action by the San Francisco Ethics Commission at its Special Meeting on February 29, 2016

Page 3

Regulation 2.110-10. Registration and Reporting.

Note: Section 2.110(a) of the Ordinance provides that persons who qualify as an Expenditure Lobbyist "shall register prior to making any additional payments to influence local legislative or administrative action." The Ordinance further sets out under Section 2.110 (b)(2) and (c)(2) the registration and reporting process for Expenditure Lobbyists. This proposed regulation is designed to provide guidance about the registration and reporting process. Bracketed language shown in Subsection (a)(iii) below provides two alternatives for the Commission's consideration in conjunction with proposed Regulation 2.105-5(d) above.

(a) For registration, Expenditure Lobbyists shall use SFEC Form 2110A.

(b) For monthly reports, Expenditure Lobbyists shall use SFEC Form 2110B.

(i) As used in Sec 2.110(c)(2)(B) and (C) "payments made" during the reporting period

means expenses that are incurred during the reporting period.

(ii) For purposes of disclosing campaign contributions, reportable contributions include

contributions that would be required to be disclosed under SFEC Regulation 2.110-4.

(iii) **Alternative A:** [Salary paid to an employee of an Expenditure Lobbyist shall not

constitute a payment for the purpose of reporting each payment of \$1,000 or more

made during a reporting period.]

or

Alternative B: [Salary paid to an employee of an Expenditure Lobbyist shall constitute a

payment for the purpose of reporting each payment of \$1,000 or more made during a

reporting period only if the activities of the employee to solicit, request, or urge other

persons to lobby a city official on a matter of local legislative or administrative action in

total account for 50 percent or more of the employee's time during the reporting

period.]

PROPOSED DRAFT PROP. C REGULATIONS

For discussion and possible action by the San Francisco Ethics Commission at its Special Meeting on February 29, 2016

Page 4

(c) Registered Expenditure Lobbyists must continue to file monthly reports until they cease all expenditure lobbying activity and affirmatively terminate their registration.

Regulation 2.110-11. Fees.

Note: Section 2.110 (e)(3) of the Ordinance provides that the Ethics Commission "shall waive all registration fees for any full-time employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)3 or 501(c)(4)." This regulation proposes to similarly apply a fee waiver to 501(c)3 and (c)(4) non-profit entities qualifying as Expenditure Lobbyists.

(a) The Ethics Commission shall waive the \$500 registration fee and the \$500 annual re-registration fee for 501(c)(3) and 501(c)(4) nonprofit organizations.

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Tuesday, February 16, 2016 4:11 PM
To: Petersen, Patricia (ETH)
Subject: Fw: Comments on Proposition C draft regulations to be considered at the February 22 meeting
Attachments: ltr to ethics 2 16 16 pdf final.pdf
Follow Up Flag: Follow up
Flag Status: Completed

From: Ethics Commission, (ETH)
Sent: Tuesday, February 16, 2016 3:20:16 PM
To: Pelham, LeeAnn (ETH)
Subject: FW: Comments on Proposition C draft regulations to be considered at the February 22 meeting

From: Rachel Richman [mailto:rrichman@ifpte21.org]
Sent: Tuesday, February 16, 2016 3:15 PM
To: Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Subject: Comments on Proposition C draft regulations to be considered at the February 22 meeting

Rachel Richman

Political and Policy Director
Professional and Technical Engineers, Local 21
1182 Market St. #425
San Francisco, CA 94102
415-864-2100 v 415-864-2166

*Solano County - Contra Costa County - Alameda County - Oakland - Richmond - Hayward -
San Leandro - EBMUD - Berkeley, West Contra Costa and SF USD - SF Courts - San Francisco - San Jose -
Santa Clara County - SCVWD - VTA - Contra Costa Water District*



PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21, AFL-CIO
An Organization of Professional, Technical, and Administrative Employees

February 16, 2016

Paul Renne, Chairman
San Francisco Ethics Commission
25 Van Ness Ave., Suite 220
San Francisco, CA 94102

RE: Implementation of Proposition C - - Expenditure Lobbyists

Dear Chairman Renne and Members of the Commission:

I am writing on behalf of Professional and Technical Engineers, Local 21 representing 4000 City and County of San Francisco and San Francisco School District employees. We appreciate that the revised regulations reflect some of what was addressed in the "interested parties" meetings and concerns raised by the Commissioners. Here are our comments on the proposed interim regulations

Accounting for Staff Time Spent on Expenditure Lobbying for Reporting Purposes

The revised draft regulations take a more practical approach to reporting by differentiating between internal staff activities and external expenditures. We support the proposed regulation to exclude all internal staff time as expenditure lobbying. A requirement to report would require complex tracking of every employee's time, minute by minute, across all functions of our union for everything from clerical assistance to outreach and administration to meetings as well as organizing, writing and research. In our organization, we often work as a team, making tracking time all the more difficult. We oppose the option to require reporting that account for minimum percentage of an employee's time because again, this would require minute by minute tracking. We appreciate the Ethics Commission recognition of this difference.

External activities like hiring a consultant, doing a mass mailing or purchasing radio ads are simpler to track and reflect a more intense level of advocacy. It ensures transparency in major advocacy efforts without burdening organizations with extensive tracking.

Triggering the \$2500 registration and reporting threshold

The intent of the ballot measure is to provide a window for the public regarding major lobbying efforts to influence legislative or administrative policy. Clearly there is a difference between an expenditure above \$2500 on a particular issue than below. In setting the \$2500 threshold, the legislation sees expenditures of less than \$2500 as too low to warrant concern of undue influence.

We may be involved in a number of issues but most of them include relatively little activity. Thus, trying to track numerous small advocacy efforts is not only much more burdensome, it does not address the intent of the law which is to make public significant efforts to influence administrative and legislative actions.

We ask that the \$2500 reporting level apply to each administrative or legislative activity, not the aggregate of several. This ensures that the public is fully aware of substantial efforts to influence policy.

Reporting Communications

While the overwhelming majority of our communications go to members and fee payers (who are not

members but who we are legally required to represent), we also send our publications to our International Union, the San Francisco Labor Council Executive Board, local elected officials, other labor organizations and community allies.

We encourage the commission to adopt regulations that allow communications to go to these groups and individuals as long as they constitute less than half of who is receiving the communication. The publications are the primary way that many of the recipients with whom we work are kept abreast of our activities, and us of theirs.

Proposition C exempts payments for member communications without reference to the timing or format. We are concerned with the proposed regulation that only "regular" publications be exempt. In addition to our "regular" publications we also send communications to our members cyclically, to give periodic updates on pending activity, alerts and bulletins on a range of topics including "late breaking news".

We urge the Commission not to differentiate between types of communications based on "regularity" and exempt all that are for our members and fee payers and which may incidentally be received by others.

Research and reports

The proposed regulations require reporting research, analysis and reports as a lobbying expenditure even if they are not lobbying communications but are "cited, Incorporated, quoted or relied upon" in later communications urging others to advocate for as long as 12 months later. This is confusing and will likely lead to unintended errors. The ballot measure defines expenditure lobbying as an expenditure of more than \$2500 within one month on an activity - - i.e. research - - that urges other persons to contact a city officer. It is unclear why a study or analysis that does not include a call to action should suddenly be considered lobbying, especially if the funding source and authors are known.

A more practical approach might be to require that research and analyses fully disclose funding sources, authors and not urge action by others toward city officials. This would reveal "dark money" funded research to lobby.

Registration, reporting forms and waiving the registration fee

We request that you include a box on registration and reporting forms for nonprofit organizations including unions. We do not fit any of the proposed categories. The Commission is proposing to exempt nonprofit 501c (3) and 501c (4) organizations from paying the \$500 registration fee. Unions are also nonprofit organizations - - 501c5. While there are a handful of large unions, most are small to medium in size and the fee may be a burden.

We look forward to working with you as additional interim and permanent regulations are crafted. Going forward, we hope the commission will allow adequate time for comment and additional "interested parties" meetings to broaden public participation in the discussions.

If you have any questions, please contact Rachel Richman, our Policy and Political Director at 415 - 864 - 2100.

Sincerely,



Bob Muscat
Executive Director

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Tuesday, February 16, 2016 4:12 PM
To: Petersen, Patricia (ETH)
Subject: Fw: Proposition C Implementation Regulations
Attachments: AFJ letter to Ethics Commission 2-16-16.pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: Sara Matlin <sara@afj.org>
Sent: Tuesday, February 16, 2016 4:08:57 PM
To: Pelham, LeeAnn (ETH)
Cc: Ethics Commission, (ETH); Shen, Andrew (CAT)
Subject: Proposition C Implementation Regulations

Dear Ms. Pelham,

We submitting comments regarding Proposition C Implementation Regulations. These comments incorporate public comments I made at the last Ethics Commission meeting. Please do not hesitate to contact us with any questions.

Best,
Sara Matlin

Sara Matlin
Bilingual Counsel/*Abogada Bilingüe*
Bolder Advocacy Initiative
Alliance for Justice

sara@afj.org
510-444-6070
bolderadvocacy.org
436 14th Street, Suite 425, Oakland



Free technical assistance for nonprofit advocacy organizations at 866-NP-LOBBY (866-675-6229) or advocacy@afj.org.
Asistencia técnica gratuita para organizaciones sin fines de lucro dedicadas a la defensa y promoción de causas al 510-444-6070 x2002 o a sara@afj.org.

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February 16, 2016

LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Sent via e-mail to leeann.pelham@sfgov.org

Re: Proposition C Implementation Regulations

Dear Ms. Pelham:

Thank you for the opportunity for Alliance for Justice's Bolder Advocacy program to offer input regarding Proposition C implementation. Alliance for Justice is a national association of more than 115 civil rights, environmental, and other social and economic justice organizations that strengthens the ability of community organizations to influence public policy. Through our nation-wide Bolder Advocacy Program, we provide training, learning resources and free technical assistance to nonprofit¹ organizations about tax, lobbying, and election laws so nonprofit advocates can confidently advocate for community change.

We join the Coalition led by San Francisco Human Services Network and Council of Community Housing Organizations in many of the Coalition's concerns and recommendations, as expressed in their memo dated February 16, 2016. Specifically, we concur with the coalition's concerns and recommendations in points I (Client services, advocacy, and representation), II (Specific legislative or administrative action, versus aggregate of all actions), IV (Staff time), VI (Termination of expenditure lobbyist registration), and VII (Registration report form, Attachment B). Alliance for Justice specifically would like to highlight concerns and recommendations regarding client services, advocacy, and representation.

It is reasonable for a lobbying disclosure ordinance to track lobbying about new legislation, or even new administrative policies or procedures. However, currently, the proposed regulations do not distinguish between new legislation, policies, or procedures on one hand, and enforcement of or community education about existing laws, policies, or procedures on the other. According to the

¹ Please note that we use the term "nonprofit organization" to refer to all tax-exempt organizations, including organizations qualifying under 26 U.S.C. §§ 501(c)(3), 501(c)(4), and 501(c)(5).

current draft, the definition of “local legislative or administrative action” is extremely broad. As defined in the current draft, local legislative or administrative action “includes, but is not limited to, the drafting...consideration...granting or denial by any officer of the City and County of any resolution, motion, appeal, application, petition, [...] ordinance [...], and] referral [...].” The definition “Officer of the City or County” is also extremely broad. Section 2.105 enumerates officers and includes Section 3.203 by reference, which defines “Officer” as “any person holding City elective office” or “any member of a ... commission required ... to file statements of economic interest.”

It appears that the current draft of the regulation could cover contracting an outside attorney to assist a client in a motion to set aside a denial of a restraining order in a domestic violence case. Appeals are included in the current definition of an administrative action. San Francisco Superior Court judges can be elected and, therefore, could be seen to be “holding City elective office.” Similarly, contracting an attorney to appeal an eviction order before a judge elected to San Francisco Superior Court could qualify as an administrative action before an officer of the City or County.

It appears that the law might also cover a temp worker referring a victim of employment discrimination to the San Francisco Human Rights Commission to file a claim against her private employer. Under the current draft definition, referrals are an administrative action. Members of the Human Rights Commission must file Statements of Economic Interests. Therefore, they would be considered Officers of the City or County. The temp is not an employee, so the temp’s time spent giving such a referral to a commissioner could be seen as an administrative action that would count towards an organization’s monthly \$2,500 reporting threshold.

This can’t be what the voters intended when they approved Prop C or what the Ethics Commission intended when it drafted Prop C. We need clear regulations that exclude enforcement of existing legislation or regulation.

The Ethics Commission should adopt the California lobbying disclosure law’s definition of legislative or administrative action², which excludes enforcement of existing legislation or regulation. The definition of expenditure lobbying should not include spending to assist specific individuals in requesting services or relief from a city agency under an existing law or regulation. Additionally, the definition should not count efforts to raise awareness of laws or regulations that are already on the books. If an organization contracts with someone to communicate with city officials to try to bring about enforcement or raise awareness of existing laws or regulations, and the contracted entity is not attempting to pass a new ordinance or put in place a new regulation, that communication should not count towards an organization’s expenditure threshold.

² Political Reform Act (PRA) §§ 82032 and 82002, respectively.

As mentioned above, Alliance for Justice supports the Coalition's concerns and recommendations regarding Client services, advocacy, and representation; Specific legislative or administrative action, versus aggregate of all actions; Staff time; Termination of expenditure lobbyist registration; and the Registration report form, Attachment B. We offer this specific recommendation regarding the definitions of "local legislative or administrative action" and "Officer of the City or County," to protect community organizations' valuable contribution to public policy. We are happy to discuss these suggestions with you.

Sincerely,

Sara Matlin

Bilingual Counsel
Bolder Advocacy Program
Alliance for Justice
sara@afj.org
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436 14th Street, Suite 425
Oakland, CA 94612

cc: ethics.commission@sfgov.org
Andrew Shen via e-mail to andrew.shen@sfgov.org

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Tuesday, February 16, 2016 5:32 PM
To: Petersen, Patricia (ETH)
Subject: FW: Friends of ethics Prop C comments
Attachments: Ethics Chair Renne.docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Important

-----Original Message-----

From: LARRY BUSH [mailto:sfwtrail@mac.com]
Sent: Tuesday, February 16, 2016 4:18 PM
To: Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>; [REDACTED]; [REDACTED]; Peter Keane <pkeane@ggu.edu>; [REDACTED]; Benedict Y. Hur <bhur@kvn.com>
Subject: Friends of ethics Prop C comments

Hello Commissioners and Director Pelham

I am attaching the comments by Friends of Ethics in response to your offer to accept further public comment on proposed regulations for Proposition C.

We will attend the upcoming Commission meeting and be able to answer any questions or to elaborate further if you would like.

Thank you again for your work.

Larry Bush
for Friends of Ethics

To: San Francisco Ethics Commission

From: Friends of Ethics

Subject: Comments on Proposed Proposition C Regulations

Date: February 16, 2016

Chair Renne, Commissioners, Director Pelham:

We are pleased to submit comments in response to the Invitation for Public Comment on proposed regulations to implement Proposition C on Expenditure Lobbying registration and reporting.

Our comments address these issues:

- Registration of Nonprofits and other legal entities
- Defining Membership
- Defining Expenditure Lobbying
- Research and other work product reporting
- Disclosing payments to or about Officeholders
- Disclosing Expenditure Lobbying and deadlines

To an extent, we have relied on existing San Francisco Ethics Commission regulations or policies as a basis for our recommendations.

We cannot emphasize strongly enough that the Expenditure Lobbying measure is about transparency to benefit the public, and does not inhibit or regulate the free expression of advocacy or first amendment rights. Lack of transparency affects the ability of the public to do its most important job, which is to understand and evaluate decision-making that affects its interest.

We cannot allow the tail to wag the dog by ignoring the purpose of Proposition C in order to accommodate claims that meeting the obligation to the public is inappropriately burdensome or over-

reaching. To a great extent, such claims are from narrow interests that fail to appreciate that voters already understood such claims and rejected them.

Expenditure lobbying, including grass roots lobbying, AstroTurf strategies, and related efforts to influence decision-makers by motivating others to advocate the interests of hidden interests, is not new.

William Shakespeare took note of it in Julius Caesar, Act One, Scene Two, where Cassius reflects on how to influence Brutus so that he will murder Caesar.

*““I will this night, in several hands, in at his windows throw,
As if they came from several citizens, Writings all tending to the
great opinion that Rome holds of his name; wherein obscurely
Caesar's ambition shall be glanced at...”*

Today's efforts may be through emails, television ads, mailers, robo-calls, mass meetings, petitions and other vehicles rather than throwing writings through the window, but the basic thrust of giving the appearance or even having the reality of others support in order to further the agenda of a sponsor is the same.

REGISTRATION

Friends of Ethics proposes the following changes to the Registration in SFEC Form 2110A:

- Part II “Type of Expenditure Lobbyist” should include the option of “nonprofit” organization in addition to the current categories of Corporation, Partnership or other Entity.
- The Registration form should be amended to include the names, titles and positions of the Board of Directors and chief officers, modeled on the disclosures for city contractors,
- The Registration form should be amended to disclose the

- names of any city elected official, commissioner or other officer or family members as defined in Ethics Commission conflict of interest statutes of those officials, who is a paid consultant, staff member, or member of a board, advisory committee or in other organizational capacity.
- The proposed regulation provides a waiver of registration fees for any full-time employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S. C. Section 501c3 and 501c4 nonprofit organization. Friends of Ethics advocates that for this waiver to be granted that the employee must present proof of employment as well as proof of the tax-exempt status of the organization. For a 501c4, Friends of Ethics advocates that eligibility for the waiver is confined to entities that is or is likely to be eligible to file its information return on Internal Revenue Service Form 990-N or Form 990-EZ.
 - Friends of Ethics opposes a waiver of registration fees for 501c3 or 501c4 tax exempt organizations. It is the opinion of the attorneys in our group that this is an impermissible expansion of the provisions approved by voters as Prop C through regulation, could be subject to a lawsuit, might jeopardize other Prop C requirements if it is permitted, and should only be implemented through a revision passed by 4/5 of the commission and a supermajority of the Board with a showing that it furthers the purposes of the act.
 - Friends of Ethics advocates that should Ethics proceed with this waiver, that it apply only for those organizations "whose most recent federal tax filing included an IRS Form 990-N or an IRS Form 990-EZ, or an organization whose next federal tax filing is reasonable likely to include an IRS Form 990-N or an IRS Form 990-EZ" This is the existing provision in San Francisco's lobbying ordinance waiver for certain nonprofit organizations.

The distinction is important. A tax-exempt organization filing

a 990-EZ has gross receipts less than \$200,000 and total assets at the end of the year less than \$500,000.

This extends the waiver to smaller nonprofits that have limited budgets but does not provide a waiver for well-funded tax-exempt organizations.

We urge that the Commission take special note that the connection between Proposition C on lobbying and 501c4 organizations is inescapable. Tax-exempt organizations with a 501c4 status exist at least in part to lobby. “A section 501c4 social welfare organization may further its exempt purposes through lobbying as its sole or primary activity without jeopardizing its exempt status.”

This is the status for such well-funded 501c4 groups as the National Rifle Association with revenues of \$347 million or Karl Rove’s Crossroads or GPS nonprofits. It is also the status of such well-funded local organizations as SPUR.

The intent and specific purpose of Proposition C is to register and require disclosures from those that engage in expenditure lobbying.

While the \$500 registration fee and annual re-registration fee is itself a collateral issue, its application may provide a basis for further changes to the ordinance to extend exemptions to other provisions in this ordinance.

It does not appear possible to show that a waiver of this fee for groups established in part to lobby can be deemed to further the purposes of the Act.

Friends of Ethics also believes the public would be outraged if San Francisco were to waive fees for organizations like Karl Rove’s nonprofits or the National Rifle Association while the city is seeking to cut budgets for city services.

- Friends of Ethics also advocates that no waiver should be provided to any tax-exempt organization, including both 501c3 and 501c4, that receives a payment from a donor with an interest in a city decision. We cite the list of nonprofit 501c3 and 501c4 tax-exempt organizations that are reported as receiving donations from Major Donors on the Ethics Commission filing.
- The Major Developer filings, however, only deal with Major Developers. It does not deal with contributions to organizations that also are involved in public advocacy for such activities as Waste Management's campaign for an EIR for the Recology contract or for any other contractors, or for those seeking to influence decision makers on other policies like sugary soft drinks. We note that the issue of sugary drinks in particular is poised to be revived as an issue at City Hall.

Therefore we cite the Major Developer filings as an example of payments, and not intended to be a limit on the relationship of nonprofits and funders.

We think the public would be equally outraged to see filings from Major Developers reporting donations of tens of thousands of dollars to a specific nonprofit that then has its registration fees waived

Friends of Ethics proposes the following regulation regarding a waiver for employees:

Proposed Regulation 2.110-11

Registration fee waiver for full-time employees of certain tax-exempt organizations.

"The registration fee imposed under Campaign and Governmental Conduct Code section 2.110 is waived for any full-time employee of a

tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4) that was eligible to file its Internal Revenue Service information return on Form 990-N or Form 990-EZ in the most recent reporting period, or that will likely be eligible to do so in the current reporting period.

(a) To qualify for the fee waiver, at the time of registration a full-time employee of an organization claiming that it is tax exempt under Section 501 (c) (3) shall file copies of the following documents with its registration form and on or before February 1st of each subsequent calendar year after registration:

(1) the organization's Form 1023, as filed with the Internal Revenue Service;

(2) the determination letter issued by the Internal Revenue Service and received by the organization confirming the organization's tax exemption under Section 501(c)(3);

(3) the organization's information return for the most recent reporting period, filed on Form 990-N or 990-EZ, together with all attached Schedules, as filed with the Internal Revenue Service; and

(4) SFEC Form __, signed under penalty of perjury by the organization's chief executive officer, secretary or treasurer, authenticating the documents identified in subdivisions (a) (1) through (a) (3), and stating that the organization's tax exempt status has not been revoked or suspended; she or he believes that the organization continues to qualify for the tax exempt status it claims and is eligible to file its information return on Form 990-N or 990-EZ; and that the fee-waiver applicant is a full-time employee of the organization.

(b) To qualify for the fee waiver, at the time of registration a full-time employee of an organization that is tax exempt under Section 501 (c) (4) shall file copies of the following documents with its registration

form and on or before February 1st of each subsequent calendar year after registration:

(1) the organization's Form 1024, as filed with the Internal Revenue Service;

(2) the determination letter issued by the Internal Revenue Service and received by the organization confirming the organization's tax exemption under Section 501(c)(4);

(3) the organization's information return for the most recent reporting period, filed on Form 990-N or 990-EZ, together with all attached Schedules, as filed with the Internal Revenue Service; and

(4) SFEC Form __, signed under penalty of perjury by the organization's chief executive officer, secretary or treasurer, authenticating the documents identified in subdivisions (a) (1) through (a) (3), and stating that the organization's tax exempt status has not been revoked or suspended; she or he believes that the organization continues to qualify for the tax exempt status it claims and is eligible to file its information return on Form 990-N or 990-EZ; and that the fee-waiver applicant is a full-time employee of the organization.

(c) The fee waiver shall be granted immediately when the requirements of subdivisions (a) and (b) of this regulation have been satisfied; provided, however, registration and the fee waiver may be revoked retroactively by majority vote of the Commission at a regularly or specially-scheduled hearing of the Commission. At the hearing, the registrant shall be given an opportunity to be heard and prove eligibility for the fee waiver, she or he shall have the burden to prove eligibility for the fee waiver by a preponderance of the evidence, and all evidence that reasonable people might rely in matters of import may be considered by the Commission. The Executive Director shall give at least 30-days notice of the hearing to the registrant.

(d) Any person who seeks a fee waiver pursuant to Campaign and Governmental Conduct Code section 2.110 may apply to the Commission to be exempted from any of the requirements of subdivisions (a) and (b). The application shall be in writing signed under of perjury and submitted to the Executive Director, stating the reason the exemption is necessary and proving eligibility for the fee waiver. An exemption may be granted by majority vote of the Commission at a regularly or specially scheduled hearing of the Commission. The Executive Director shall give at least 30-days notice of the hearing to the applicant.

(e) When a person granted a fee waiver pursuant to Campaign and Governmental Conduct Code section 2.110 ceases full-time employment by the organization for which the waiver was granted, or when the organization's tax exempt status has been suspended or revoked, the employee shall notify the Commission, and within seven days of ceasing full-time employment, the suspension or revocation, she or he shall pay the then-current registration fee. Failure to comply with the requirements this subdivision (c) shall result in revocation of the registration as of the end of the end of the seventh day after the registrant ceased full-time employment, the suspension, or revocation.

Derivation: Camp. & Govt. Code sec. 2.110.

Friends of Ethics proposes the following regulation should the Commission decide to waive registration fees for organizations that have a 501c3 or 501c4 tax exempt status, although we oppose such a waiver.

Proposed Regulation 2.110-12

Registration fee waiver for certain tax-exempt organizations.

"The registration fee imposed under Campaign and Governmental

Conduct Code section 2.110, subdivision (e) (1) is waived for any organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4) that was eligible to file its Internal Revenue Service information return on Form 990-N or Form 990-EZ in the most recent reporting period, or that will likely be eligible to do so in the current reporting period.

(a) To qualify for the fee waiver, an organization claiming that it is tax exempt under Section 501 (c) (3) shall file copies of the following documents with its registration form and on or before February 1st of each subsequent calendar year after registration:

(1) the organization's Form 1023, as filed with the Internal Revenue Service;

(2) the determination letter issued by the Internal Revenue Service and received by the organization confirming the organization's tax exemption under Section 501(c)(3);

(3) the organization's information return for the most recent reporting period, filed on Form 990-N or 990-EZ, together with all attached Schedules, as filed with the Internal Revenue Service; and

(4) SFEC Form __, signed under penalty of perjury by the organization's chief executive officer, secretary or treasurer, authenticating the documents identified in subdivisions (a) (1) through (a) (3), stating that the organization's tax exempt status has not been revoked or suspended; and she or he believes that the organization continues to qualify for the tax exempt status it claims and is eligible to file its information return on Form 990-N or 990-EZ.

(b) To qualify for the fee waiver, an organization claiming that it is tax exempt under Section 501 (c) (4) shall file copies of the following documents with its registration form and on or before February 1st of each subsequent calendar year after registration:

(1) the organization's Form 1024, as filed with the Internal Revenue Service;

(2) the determination letter issued by the Internal Revenue Service and received by the organization confirming the organization's tax exemption under Section 501(c)(4);

(3) the organization's information return for the most recent reporting period, filed on Form 990-N or 990-EZ, together with all attached Schedules, as filed with the Internal Revenue Service; and

(4) SFEC Form __, signed under penalty of perjury by the organization's chief executive officer, secretary or treasurer, authenticating the documents identified in subdivisions (a) (1) through (a) (3), stating that the organization's tax exempt status has not been revoked or suspended; and she or he believes that the organization continues to qualify for the tax exempt status it claims and is eligible to file its information return on Form 990-N or 990-EZ.

(c) The fee waiver shall be granted immediately when the requirements of subdivisions (a) and (b) of this regulation have been satisfied; provided, however, the registration and fee waiver may be revoked retroactively by majority vote of the Commission at a regularly or specially-scheduled hearing of the Commission. At the hearing, the registrant shall be given an opportunity to be heard and prove eligibility for the fee waiver, she or he shall have the burden to prove eligibility for the fee waiver by a preponderance of the evidence, and all evidence that reasonable people might rely in matters of import may be considered by the Commission. The Executive Director shall give the registrant at least 30-days notice of the hearing.

(d) Any organization that seeks a fee waiver pursuant to this regulation may apply to the Commission to be exempted from any of the requirements of subdivisions (a) and (b). The application shall be in

writing signed under of perjury and submitted to the Executive Director, stating the reason the exemption is necessary and proving eligibility for the fee waiver. An exemption may be granted by majority vote of the Commission at a regularly or specially scheduled hearing of the Commission. The Executive Director shall give the applicant at least 30-days notice of the hearing.

(e) When the tax exempt status of an organization granted a fee waiver is suspended or revoked, the organization shall notify the Commission, and within 7 days of the suspension or revocation shall pay the then-current registration fee. Failure to comply with the requirements this subdivision (e) shall result in revocation of the registration as of the end of the seventh day after the suspension or revocation.

Derivation: Camp. & Govt. Code sec. 2.110.

The proposed regulation from staff indicates that filers should mark the type of organization. The list does not include nonprofit organization. We recommend that the form also include a place to mark that the filer is a nonprofit organization.

MEMBERSHIP

The staff draft definition includes as member “any other person who has taken an affirmative step to regularly receive an organization’s communications.”

Friends of Ethics believe this is overly broad and defeats some of the purposes of the exemption for members. Would this include “members” of a credit card company who elect to receive their bills electronically? Would this include those people who enroll in a grocery store delivery program? It is not pure inventiveness to project that the grocery store may want to reach people to oppose a ban on plastic bags, or that a credit card company may want members to oppose restrictions on sharing credit information.

There is a difference between being an American Express cardholder and a member of AAA. One group votes on officers and pays an annual fee. The other group may well pay an annual fee, depending on the type of card issued to them, but cannot vote on officers.

It should be noted that the issue of the exemption actually hangs on what constitutes expenditure lobbying. Friends of Ethics believe that this is critical to the issue of exemptions for members for expenditure lobbying.

Also note that some entities, like Home Sharers, are both a membership organization and created to lobby. It is not a nonprofit but a mutual benefit corporation (<http://homesharersf.com>)

“We meet once a month to share, support, educate, discuss and disseminate information amongst ourselves on Home Sharing topics. In addition, we are hoping to present a united voice on issues that impact the Sharing Economy Movement and Home Sharing in particular, especially as they relate to policy formation and implementation in San Francisco.

Neither Home Sharers nor any of its officers is affiliated with, nor do they receive any financial support from any vacation rental website company.”

At the same time, Home Sharers requires that individuals join Airing in order to join Home Sharers:

You need to be a member of [Airbnb](#). Just click on “Sign Up” and follow the steps. Joining Airbnb is fast and free. You don’t need to list a property on Airbnb to join.”

* For these reasons, we believe Ethics should adopt the same definitions used in member communications for campaign filings in form SFEC 163

A “member communication” is any communication (e.g., a mailing) that is published, disseminated or communicated

only to an organization's members, employees, or shareholders, or to the families of the organization's members, employees or shareholders that supports or opposes a City candidate or City ballot measure. Excluded from this definition is any general public advertising such as broadcasting, billboards, and newspaper advertisements.

A "member" is any person who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers, on a disposition of all or substantially all of the assets of the organization, on a merger, or on a dissolution.

"Member" also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501, subdivision (c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

DEFINING EXPENDITURE LOBBYING

Friends of Ethics propose that the Ethics Commission adopt the standard in the Internal Revenue Service guidelines, as well as an exemption that is well expressed in guidance to grantees from the Charles Stewart Mott Foundation.

* Expenditure Lobbying is counted if it meets all three parts of a three-part test:

- Refers to a specific legislation or administrative decision

- Reflects a view on the legislation
 - Encourages the recipient to take action with respect to such legislation – that is, it includes a “call to action.”
- A “call to action” includes any one or more of the following:

The communication states that the recipient should contact (1) a member or employee of a legislative body, or (2) any other government official or employee who may participate in the formulation of legislation, if the principal purpose of the contact is lobbying (direct call to action).

The communication states the address, telephone number or similar information of a legislator or an employee of a legislative body.

The communication provides a petition, tear-off postcard or similar material for the recipient to communicate with any such individual (direct call to action).

The communication specifically identifies one or more legislators who will vote on the legislation as: (1) opposing the organization's view with respect to the legislation, (2) being undecided with respect to the legislation, (3) being the recipient's representative in the legislature, or (4) being a member of the legislative committee or subcommittee that will consider the legislation. However, merely naming the main sponsors of the legislation for purposes of identifying the legislation does not constitute encouraging the recipient to take action (indirect call to action).

This would include such “grass roots” lobbying as that undertaken by Waste Management urging the public to contact the Board of Supervisors about an EIR for a Recology contract. All three elements are present: it

identifies the decision-making body, it expresses a point of view on specific legislative action and it has a call to action.

The IRS considers some communications as exempt from the definition of grassroots lobbying, and we believe there is a sound basis to include this exemption in San Francisco:

* “Examination of Broad Social Issues is a communication regarding a general subject, which may also be the subject of specific legislation. The communication cannot address the merits of a specific legislative proposal. It also cannot involve a direct call to action.”

- Under this exemption, organizations that advocate on issues affecting the community, such as housing or social services, would not be engaged in expenditure lobbying should they provide information on the issue of housing needs, even if that issue may be the subject of specific legislation, if it does not address the specific legislative proposal’s merits or includes a call to action.
- We believe this language is much to be preferred over the exemption in the draft regulations regarding “any” newsletters or communications. Such a broad exemption makes the expenditure threshold meaningless, since it opens the way for the public at large, and not just members, to be approached to contact city officials on a specific issue with a call to action.
- They remain exempt, however, in communications with their members.
- Friends of Ethics also proposes that it be clarified that expenditure lobbying does not include advocacy, including outreach to others, for actions to implement existing laws

insofar as no new legislation or regulation is involved. Thus advocacy, including to a broad public audience, to ensure that an existing law be effectively administered is not reportable as expenditure lobbying.

- Examples could include enlisting support for implementation of the law on hotel taxes for vacation or other short term rentals, enlisting support for implementation of laws regarding health and safety requirements in housing (public, assisted or other housing in addition to market rate housing), or implementation of fair wages law and Davis-Bacon standards, among others.
- Friends of Ethics also proposes that it be clarified that expenditure lobbying does not include representing the interests of a single client or member in a proceeding with the city, even if the public is urged to also express support for the individual client or member's position. This includes but is not limited to representation before the Health Services System Board, Retirement Board, Rent Board, or other administrative body.

In that regard, Friends of Ethics proposes the following regulation to clarify the reporting requirements regarding member communications:

Proposed regulation 2.105- __

“Payments made by an organization to distribute communications to its members are excluded from the payments that may require an organization to register as an expenditure lobbyist.

“(a) ‘Payments made by an organization to distribute

Communications to its members' include payments made to maintain an email list of members, to send emails to members, for printing, and for postage.

“(b) ‘Payments made by an organization to distribute communications to its members’ do not include payments made to develop or draft communications that solicit, request, or urge persons to communicate directly with city officers.”

Derivation: Camp. & Govt. Code secs. 2.105 and 2.110.

Reporting Research and other Work Product

Friends of Ethics recommends the application of the Charles Stewart Mott guidance to grantees in determining whether some research is exempt from expenditure lobbying costs:

* Nonpartisan Analysis, Study or Research. The communication must be nonpartisan — contain a “sufficiently full and fair exposition of the pertinent facts to enable the recipient to form an independent opinion or conclusion.” The communication must also be widely distributed (not only to persons interested in one side of the issue). Finally, the communication may not include a “direct call to action.”

<http://www.mott.org/grantsandguidelines/ForGrantees/lobbying>

The IRS regulation explains this more fully:

*Reg. 56.4911-2(c)(1)(ii) provides that nonpartisan analysis, study, or research” means an independent and objective exposition of a particular subject matter, including any activity that is educational” within the meaning of Reg. 1.501(c)(3)-1(d)(3). Thus, nonpartisan analysis, study, or research” may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or

conclusion, as opposed to the mere presentation of unsupported opinion.

Under this IRS regulation, it is permitted to advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of facts so that an independent opinion can be made.

Reporting staff time and in house expenditures obviously is vital to the transparency of Proposition C. Large organizations, including corporate entities, nonprofit organizations, and even well funded individuals, are able to create, produce and distribute communications designed to influence the public to contact city officials. This can be anything from television commercials, radio commercials, persuasion polls, mailers, to mass meetings. Indeed, the possibilities are endless as Uber demonstrated in New York when it offered a ride discount if passengers would push a button to send a message to the mayor opposing some regulations on Uber.

We can foresee no substitute that can replace tracking costs, including costs based on staff time, for messaging and lobbying efforts. This captures such programs as Airbnb's decision to establish city-by-city organizations reputedly based on community sentiment to be advocates for or against Airbnb's corporate positions.

REPORTS

SFEC Form 2110B

This form is filed monthly by registered expenditure lobbyists. Friends of Ethics propose several additions to the proposed form.

- Payments to expenditure lobbyists from third parties with matters before the city should be disclosed, including the

source of the funds, the date of contribution, the issue and the amount.

Part III of the form should include copies of the expenditure-lobbying message, modeled on campaign finance report

Filing copies of the expenditure lobbying communication. Use an appropriately amended form SFEC 162. This will disclose how many copies, date of distribution, whether for or against, who approved it, any contributor of \$100 or more for the communication.

The monthly filing deadline would be augmented with a supplemental report in the event the lobbying takes place within 10 days of the vote or administrative decision at issue. This is the same standard as currently exists for electioneering communications.

This timeliness is an integral part of transparency that is in the public interest.

Friends of Ethics advocate that expenditure lobbyists file copies of communications that are identified in the filing. We advocate a variation of the form used for filing electioneering communications in general:

http://www.sfethics.org/files/sfec_form_162.pdf

Similarly, Friends of Ethics advocates that expenditure lobbyists file copies of member communications that meet the definition of expenditure lobbying. While member communications are exempt from qualifying as expenditure costs, they should not be exempt from disclosure.

We recommend using a variation of the form for member communications in electioneering:

http://www.sfethics.org/files/sfec_form_163.pdf

For this, it would list any donation of \$500 or more, once the total of \$1,000 is reached.

Part IV: Campaign Contributions

If the Commission is inclined to go beyond the stated language of the ordinance by waiving registration fees for organizations, Friends of Ethics then strongly recommends that Campaign Contributions be amended to include any gifts, including gifts of travel that accrue to an official who has a decision-related responsibility. This includes contributions to Sister City Committees or other nonprofits that in turn pay for travel or other expenses when the donor has reason to know that the gift will provide a benefit to the city officer.

Friends of Ethics further strongly recommend that this form be amended to include disclosure of any contributions made at the behest of a city elected official or to any city department.

Friends of Ethics would like to again express its appreciation to the Ethics Commission for placing the Expenditure lobbying measure on the ballot, and for the extensive outreach to the public and interested parties in drafting regulations to implement it.

We look forward to further developments and a response to the Friends of Ethics recommendations.

Sincerely,

Friends of Ethics

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Tuesday, February 16, 2016 5:29 PM
To: Petersen, Patricia (ETH)
Subject: FW: Comments and recommendations on Proposition C Expenditure Lobbyists revised Draft Regulations, 2/9/16
Attachments: Prop C memo re draft 2-16-16 regs - final.docx
Follow Up Flag: Follow up
Flag Status: Completed
Categories: Important

From: Debbi Lerman [mailto:debbilerman@sfhsn.org]
Sent: Tuesday, February 16, 2016 4:20 PM
To: Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>; Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Subject: Comments and recommendations on Proposition C Expenditure Lobbyists revised Draft Regulations, 2/9/16

Dear Director Pelham:

Please find attached comments and recommendations from nonprofit and labor organizations regarding draft regulations to implement Proposition C – Expenditure Lobbyists. We would be happy to discuss these further. Please let me know if you have any questions.

Thank you for your consideration of these recommendations.

-- Debbi Lerman, HSN

Debbi Lerman
S.F. Human Services Network
3310 Geary Blvd.
San Francisco, CA 94118
(415) 668-0444

To: San Francisco Ethics Commission
Paul Renne, Chair
Brett Andrews, Vice-Chair
Beverly Hayon
Benedict Hur
Peter Keane
LeeAnn Pelham, Executive Director

From: Alcohol Justice
Causa Justa :: Just Cause
Chinatown Community Development Center
Coleman Advocates for Children and Youth
Council of Community Housing Organizations
Haight Ashbury Neighborhood Council
San Francisco Human Services Network
San Francisco Tenants Union
Senior and Disability Action
Service Employees Union Local 1021
Unite HERE Local 2
United Educators of San Francisco

Date: February 16, 2016

Re: Comments and recommendations on Proposition C Expenditure Lobbyists revised Draft Regulations, 2/9/16

We write as a broad cross-section of community-based nonprofit and local labor organizations to express our continuing concerns regarding the implementation of Proposition C and specifically the most recent draft regulations. We recognize and appreciate that the revised draft regulations reflect some important and positive changes reflecting some of the previous comments by Commissioners and the public. However, there remain significant shortcomings and in some areas even greater ambiguity.

We therefore provide below specific recommended revisions to clarify Proposition C's requirements and minimize unintended negative impacts on the nonprofit sector's ability to inform residents of San Francisco about their rights under existing law and to support broader participation in the public policy process.

We first must point out that the rule making process since the last Commission hearing has itself made it difficult for an inclusive dialog with the public. The revised draft became available only one week ago without the benefit of an Interested Persons meeting to discuss concerns with the first draft. Moreover, the draft revisions contain no discussion explaining their rationale. As commentators, we can only speculate as to the purpose and guess about what

alternatives to propose. Next, staff will release its actual proposal to the Commission with likely only a couple of working days to inform other impacted stakeholders and get feedback.

Again, we recognize and appreciate that the revised draft regulations include some positive changes since the first draft. Nevertheless, we urge the Commission to move with additional care and deliberation on those regulations that may impose significant new burdens on organizations where the purposes of Proposition C can be achieved with less demanding or restrictive requirements. The Commission of course has the opportunity to revisit and impose stricter standards at a future time.

I. Client services advocacy and representation

The official arguments in favor of Proposition C focused attention on the legislative and rule making process. But nonprofits and unions often work with the community to advocate for enforcement of existing laws and policies, and to support client or member petitions for services, benefits or relief from government action. Examples include efforts to organize tenants living in a building that fails to meet habitability standards, or workers that are making less than minimum wage. Under a literal interpretation of Proposition C, these efforts could be construed as reportable grassroots lobbying expenditures that urge other persons to communicate with the City to influence administrative action. These types of communications surely fall outside Prop C's apparent intent to provide transparency around external expenditures in attempts to influence new legislation and rulemaking. The present regulations are silent on this question and leave unclear whether 'administrative action' shall be interpreted narrowly or broadly. The regulations need to clarify that these efforts do not count as lobbying under Proposition C.

Suggested language: To be included as part of 2.105-5. Expenditure Lobbyist Definition.
Expenditures to urge other persons to communicate with an officer of the City and County in order to enforce existing laws and policies, or to petition for services, benefits or relief from government action shall not count as a payment for registration and reporting purposes.

II. Specific legislative or administration action, versus aggregate of all actions

The purpose of Proposition C is to provide transparency for the public regarding major lobbying efforts to influence local legislative or administrative action, as evidenced by expenditures above the threshold. The legislation views expenditures below the threshold as insufficient to generate concern of inordinate influence. Nonprofits often weigh in on a broad range of issues, but their expenditures on each issue constitute relatively minor activity. Tracking across advocacy efforts on multiple issues is immeasurably more complex, and miring in relatively de minimis expenditures is surely not the intent of Prop C. Therefore, the implementing regulations should not apply to the aggregate total of expenditures for advocacy on multiple issues. The \$2500 threshold should apply to expenditures for each local or administrative action, not all actions combined.

Suggested language: To be included as part of 2.105-5. Expenditure Lobbyist Definition.
For the purposes of qualifying as an Expenditure Lobbyist, a person must make payments totaling \$2,500 or more in a calendar month... in order to influence any single specific matter of local legislative or administrative actions. A person that spends \$2,500 or more in aggregate to influence multiple legislative or administrative actions (but does not make payments totaling \$2,500 or more in a month to influence a specific local legislative or administrative action) does not qualify as an Expenditure Lobbyist.

III. Research and reports

The draft regulations include as a lobbying expenditure payment for services or work product that are not lobbying communications, but which are "*cited, incorporated, quoted or relied upon*" in subsequent communications urging others to lobby up to twelve months later. This provision is arbitrary and overly broad, and creates a trap for the unwary organization that conducts research or fact gathering at one point in time and later 'relies upon' that information later to urge the public to support some city action.

Example: A homeless advocacy organization conducts an annual survey of families living on the streets. At its own expense, the organization publishes the survey with the assistance of a writer and graphic designer at a cost of \$3000. The report released in February contains no specific call for public action. In July, a staff person for the organization speaks at a rally urging support of a new shelter under consideration at the Planning Commission and mentions data from the survey. The agency makes no expenditure in July on the issue. Under the draft regulations, the July reference to the February report transformed the organization into an expenditure lobbyist effective that month. The failure to register and any ongoing failure to file reports would be violations of the law and subject the organization to ongoing fines.

There is nothing in the explicit language of Proposition C that would justify such a result. A plain reading of Proposition C defines "expenditure lobbying" as an expenditure in excess of \$2500 within one month on an activity (which could include research) that solicits, requests, or urges other persons to contact an officer of the City. The proposed regulation separates the expenditure from the activity that solicits the communication with the city over a *twelve*-month period. Without an explanation from staff, we are left to wonder why a mere reference to data or analysis from a previous survey or study (which itself contained no call to action) should transform an activity that is not in itself expenditure lobbying into a reportable lobbying activity?

One possible justification for such a rule is the potential for purportedly 'nonpartisan' research, secretly funded by partisan or 'dark money' sources, to distort public opinion. As community serving and labor organizations we share such concerns, but the proposed rule would impact too many legitimate and important efforts at fact gathering and research.

An approach more consistent with logic and the purpose of Proposition C would be to provide a safe harbor for research that fully discloses its sources of funding and does not solicit, request, or urge others to lobby city officials. Such regulation would still expose anonymously funded research under its reporting requirements.

Finally, the draft regulations propose that payments for research and reports may count towards the \$2,500 threshold if "*cited, incorporated, quoted, or relied upon*" anytime "*within 12 months*." The phrase, "*relied upon*" is vague and unenforceable. The 12-month period is prolonged and arbitrary, while a maximum 6-month window would better reflect any possible connection between the report and the lobbying communication.

Therefore we propose the following alternative regulations, clearly identifying research that is not expenditure lobbying.

Suggested language: To be included as part of 2.105-5. Expenditure Lobbyist Definition.

(b) For the purposes of qualifying as an Expenditure Lobbyist, a person must:

1) Make payments totaling \$2,500 or more in a calendar month for activities to solicit request, or urge other persons to communicate directly with an officer of the City and County in order to influence a matter of local legislative or administrative action.

(i) Any payment made for these activities will count towards the \$2,500 threshold if within 6 months of the payment, the services or work product paid for are cited, incorporated, or quoted in communications urging other persons to lobby a city official on a matter of local legislative or administrative action.

(ii) Notwithstanding any other provisions of this definition, payments for research, reports and analyses do not count as lobbying expenditures if the publication of such work product clearly identifies the authors and its true sources of funding and does not solicit, request, or urge other persons to engage in lobbying activity.

(iii) In no case shall expenditures incurred before the effective date of Proposition C be counted toward the \$2,500 threshold.

IV. Staff time

Proposition C applies to *payments* to urge other persons to communicate with City officials to influence legislative action. Therefore, we support the current draft regulation to exclude all internal staff time as expenditure lobbying. Any requirement to report internal staff compensation would be overly burdensome because it would require complex tracking of every minute of every employee's time across all functions of an organization for all manner of duties including research, writing, organizing, meetings, clerical assistance, outreach and administration. Such a requirement of public disclosure also raises vexing issues about employee privacy. We oppose the optional suggestion to require reporting for activities that

account for a minimum percentage of an employee's time, as this would require no less an onerous level of tracking.

The Ethics Commission staff has recognized this burden. Differentiating between internal and external expenditures is a practical approach, and we agree with this decision. External activities, such as hiring a consultant or purchasing radio ads, are simpler to track and reflect a more intense level of advocacy. And surely it is those kinds of third party expenditure payments to influence legislative activity that Prop C is intended to focus on.

V. Member communications

The revised draft regulations propose new and ambiguous language on “regularly scheduled, produced and distributed” communications, but are silent about “irregularly” produced communications. It is unclear how to interpret the new rules and whether 2.105-6(b) is intended to govern all communications to members and how to treat communications that reach both members and others.

Proposition C clearly exempts payments for member communications without distinguishing between forms or timing of such communications. Furthermore nonprofits and labor organizations frequently send member communications that also reach community allies, prospective members, government officials and other interested members of the public. Such publications are the primary way that we keep these recipients abreast of our activities. The majority of recipients are members, and we would incur most of the production and dissemination costs regardless of the inclusion of some non-members.

The regulations should explicitly state that all communications primarily directed to members do not count as expenditure lobbying regardless of its regularity. Furthermore, this exemption should apply if other persons incidentally receive the communication.

We are also concerned with the regulations' language indicating that communications must be "regularly scheduled." Nonprofits that send publications to members and other incidental recipients should not have to differentiate between communications that are regular, occasional, cyclical, or one-time only.

Suggested language: To be added as part of 2.105-6. *(c) Payments for Communications with Members. Expenditures for communications primarily directed toward members of an organization are not expenditure lobbying regardless of regularity. Furthermore, this exemption applies to communications that are incidentally received by other persons.*

VI. Termination of expenditure lobbyist registration

The draft regulations state that registered expenditure lobbyists must continue to file monthly reports until they affirmatively terminate their registration. However, the regulations lack clarity on when one can terminate their registration. A lobbyist may reach the \$2,500 expenditure threshold only once, and spend only minor amounts in subsequent months. Must

the lobbyist file reports until they have a month with \$0 in expenditures? The regulations should specify that a lobbyist may terminate their registration in any month when they don't meet the \$2,500 threshold, and therefore no longer meet Prop C's definition of an expenditure lobbyist.

Suggested language: To be included as part of 2.110-10. Registration and Reporting. *Registered lobbyists may terminate their registration in any month when they do not meet the \$2,500 expenditure threshold.*

VII. Registration report form (Attachment B)

Under *Part II: Type of Expenditure Lobbyist*, the registration form includes a check box for individuals who are full-time nonprofit employees. The form should include a similar checkbox under the Entity section for 501(c)(3) and 501(c)(4) organizations. This box would inform Ethics staff that the entity is exempt from the \$500 fee, as per the draft regulations.

Petersen, Patricia (ETH)

From: Mayo, Anita D. Stearns <anita.mayo@pillsburylaw.com>
Sent: Tuesday, February 16, 2016 4:37 PM
To: Pelham, LeeAnn (ETH); Petersen, Patricia (ETH)
Subject: SF Ethics Commission Letter
Attachments: SF Ethics Commission Ltr.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Important

Leeann and Patricia:

Please find attached a letter which includes my written comments on the revised draft lobbying regulations regarding the implementation of Proposition C.

Thanks.

Anita D. Stearns Mayo | Special Counsel

Pillsbury Winthrop Shaw Pittman LLP

Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998

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anita.mayo@pillsburylaw.com | website bio

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February 16, 2016

The Honorable Paul Renne, Chair
The Honorable Brett Andrews, Vice Chair
The Honorable Beverly Hayon
The Honorable Benedict Hur
The Honorable Peter Keane
Ms. LeeAnn Pelham, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Proposed Regulations to Implement Proposition C

Dear Commissioners and Ms. Pelham:

Pursuant to a request from Commission staff, I am submitting written comments in response to the revised draft regulations to implement Proposition C. Please incorporate these comments into the record for the Commission's meeting on February 22, 2016.

Proposed Regulation 2.105-5, Expenditure Lobbyist Definition.

Subsection (a) provides that a person "makes payments" for purposes of the \$2,500 threshold at the time an expense is incurred for an activity to solicit, request, or urge other persons to communicate directly with a City officer for purposes of lobbying. As I testified last month, the time a person "makes payments" should not be when an expense for a qualifying activity is incurred, but rather at the time a communication is sent soliciting, requesting, or urging other persons to lobby City officers. A person could incur an expense for a lobbying communication but decide at a later date not to proceed with that communication. Under the current draft regulation, that person would be required to count any expenses incurred in preparing the communication towards the \$2,500 threshold, even though the communication is never sent. This result is not what the law was intended to regulate.

Subsection (b)(1) appears to provide that the \$2,500 threshold does not apply unless payments totaling \$2,500 or more in a calendar month are made to influence a single matter of local legislative or administrative action rather than the threshold applying when the payments aggregate \$2,500 or more in a calendar month for influencing one or more local legislative or administrative actions. If the former is correct, to avoid any ambiguity, this subsection should include the word “single” prior to the word “matter”.

Subsection (b)(1)(i) provides that a payment for activities will count towards the \$2,500 threshold if, within 12 months of the payment, the services or work product paid for are cited, incorporated, quoted, or relied upon in communications urging others to lobby. A 12 month period of time is too long and creates an undue accounting burden. The regulation could follow the same time period included in the definition of “activity expenses.” Under the lobbying law, an expense or payment will not qualify as a reportable “activity expense” unless the expense or payment is incurred or made within three months of a lobbying contact.

Subsection (d) provides that a salary paid by an employer to an employee for time spent on expenditure lobbying activities will not count towards the \$2,500 threshold. This is consistent with the intent of the law, and the optional language provided in the draft regulation should not be adopted.

Proposed Regulation 2.105-6, Payments for Communications with Members.

Subsection (b) exempts from the ordinance the costs associated with a regularly scheduled, produced, and distributed newsletter or similar communication. This provision is similar to an exemption provided in the state’s lobbying law. However, the state’s regulation provides the following additional clarification: “If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or altered in style, size, or format for the primary purpose of influencing or attempting to influence legislative or administrative action, such additional costs are reportable. . .” 2 Cal. Code Regs. Sec. 18616(g)(3). Language similar to the foregoing should be added to clarify that such additional costs incurred in distributing a newsletter or similar communication will count towards the \$2,500 threshold.

Proposed Regulation 2.110-10, Registration and Reporting.

Subdivision (b)(i) provides that “payments made” during a reporting period means expenses that are incurred during the reporting period. As noted above under

Proposed Regulation 2.105-5, payments should not count towards the \$2,500 threshold when incurred but rather when the communication has been sent.

Subsection (b)(iii) provides two alternatives regarding the reporting of internal staff time. To be consistent with Subsection 2.105-5(d) discussed above, I urge adoption of Alternative A (salary payments will not qualify as a payment requiring disclosure on the lobbying reports).

Thank you for considering my comments.

Very truly yours,

A handwritten signature in blue ink that reads "Anita D. Stearns Mayo". The signature is fluid and cursive, with the first name "Anita" and last name "Mayo" being more prominent than the middle initial "D.".

Anita D. Stearns Mayo

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Wednesday, February 17, 2016 1:07 PM
To: Petersen, Patricia (ETH)
Subject: FW: Ethics reform: Going after Astroturf lobbyists

-----Original Message-----

From: LARRY BUSH [mailto:sfwtrail@mac.com]
Sent: Wednesday, February 17, 2016 8:04 AM
To: sharyn saslafsky [REDACTED]; Hulda Garfalo [REDACTED]; Oliver Luby [REDACTED]; Joseph Kelly [REDACTED]; Charles Marsteller [REDACTED]; Elena Schmid [REDACTED]; bob dockendorff [REDACTED]; Paul H.Melbostad [REDACTED]; Marc Saloman [REDACTED]; Robert vanRavenswaay [REDACTED]; Bob Planthold [REDACTED]; Joe Julian <jjulian@sfsu.edu>; Zach Goldfine [REDACTED]; John Sinclair [REDACTED]
Subject: Fwd: Ethics reform: Going after Astroturf lobbyists

Some of those who believe they were blindsided by Prop C's inclusion of nonprofits are inaccurate.

Here is an article I authored that ran in April 2015 on the path forward for what became Prop C, and that specifically mentioned Prop C. It was put up on 48 Hills, whose advisory board of three people includes the founder and head of CCHO, Calvin Welch.

Importantly, this advised that there was time and opportunity to raise and address any concerns.

>
> Link: http://www.48hills.org/2015/04/26/ethics-reform-going-after-astroturf-lobbyists/?utm_campaign=shareaholic&utm_medium=email_this&utm_source=email
>
>
>
> --
> Shared via Shareaholic

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Wednesday, February 17, 2016 12:43 PM
To: debbilerman@sfhhsn.org
Subject: RE: Cancelled meeting and release date of final revised draft regulations for Prop C

Follow Up Flag: Follow up
Flag Status: Completed

Hello, Ms. Lerman, and thank you for your comments and additional follow up.

Yes, the Commission's original meeting date of 2/22 was rescheduled to Monday, Feb 29, due to a scheduling conflict of one of the Commission members.

We received a number of comments on the draft Prop. C regulations yesterday at close of business, and are reviewing them in order to finalize draft regs for the Commission's meeting, along with the staff memo. We're working to complete that process and hope to have them in circulation for public review by the first of next week.

Regards,
LeeAnn

From: Debbi Lerman [mailto:debbilerman@sfhhsn.org]
Sent: Wednesday, February 17, 2016 11:45 AM
To: Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>
Subject: Cancelled meeting and release date of final revised draft regulations for Prop C

Dear Director Pelham:

I understand that the next Ethics Commission meeting has been rescheduled from February 22 to the 29th. Although this could provide the staff with more time to finalize the draft regulations, we urge you to prioritize the community's opportunity for review by maintaining the goal of publicizing the final draft this week in order to allow more time for broad public review in preparation for the Commission hearing.

Would you verify whether it is still your intention to release the final draft regulations this week?

Sincerely,

Debbi Lerman, HSN

Debbi Lerman
S.F. Human Services Network
3310 Geary Blvd.
San Francisco, CA 94118
(415) 668-0444

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Monday, February 22, 2016 2:01 PM
To: Petersen, Patricia (ETH)
Subject: FW: Friends of Ethics comments on Local 21 position
Attachments: PropCUnionFoE.docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Important

-----Original Message-----

From: LARRY BUSH [mailto:sfwtrail@mac.com]
Sent: Monday, February 22, 2016 1:57 PM
To: [REDACTED]; [REDACTED]; [REDACTED]; Benedict Y. Hur
<bhur@kvn.com>; Peter Keane <pkeane@ggu.edu>; Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>
Subject: Friends of Ethics comments on Local 21 position

Chair Renne, Commissioners, Exec Dir Pelham:

We are providing you a copy of the comments we sent to Local 21 regarding their comments on Proposition C proposed regulations.

We think by providing this to you at this time it will save time at the Commission meeting.

While this is specifically to Local 21, it correlates closely to the issues raised in the letter from HSN signed by a number of organizations.

We look forward to moving forward consistent with Proposition C and transparency.

Best —

Larry Bush
for Friends of Ethics.

PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21, AFL - CIO

An Organization of Professional, Technical, and Administrative Employees

February 16, 2016

Paul Renne, Chairman

San Francisco Ethics Commission

25 Van Ness Ave., Suite 220 San Francisco, CA 94102

RE: Implementation of Proposition C - - Expenditure Lobbyists

Dear Chairman Renne and Members of the Commission:

I am writing on behalf of Professional and Technical Engineers, Local 21 representing 4000 City and County of San Francisco and San Francisco School District employees. We appreciate that the revised regulations reflect some of what was addressed in the "interested parties" meetings and concerns raised by the Commissioners. Here are our comments on the proposed interim regulations

Accounting for Staff Time Spent on Expenditure Lobbying for Reporting Purposes

The revised draft regulations take a more practical approach to reporting by differentiating between internal staff activities and external expenditures. We support the proposed regulation to exclude all internal staff time as expenditure lobbying. A requirement to report would require complex tracking of every employee's time, minute by minute, across all functions of our union for everything from clerical assistance to outreach and administration to meetings as well as organizing, writing and research. In our organization, we often work as a team, making tracking time all the more difficult. We oppose the option to require reporting that account for minimum percentage of an employee's time because again, this would require minute by minute tracking. We appreciate the Ethics Commission recognition of this difference.

External activities like hiring a consultant, doing a mass mailing or purchasing radio ads are simpler to track and reflect a more intense level of advocacy. It ensures transparency in major advocacy efforts without burdening organizations with extensive tracking.

(Friends of Ethics: We oppose excluding all internal staff time for expenditure lobbying. We believe that exempting staff costs defeats the intent of Proposition

C, which is to provide transparency to the public of money spent to influence the public on legislative or administrative decisions. An exemption of these costs fails to take into consideration the large corporations like Waste Management, Coca Cola, Comcast and PG&E as well as super-size nonprofits like the National Rifle Association, the American Red Cross, and billionaire individuals that have internal staff that can and do engage in expenditure lobbying.

Locally nonprofits like SPUR, the Bay Area Council and the San Francisco Parks Alliance have significant budgets, in house professionals and engage in efforts to persuade the public. These entities have in-house staff that draft persuasion polls, provide research, scripts for television, mailers, and even to produce and distribute them. Exempting this from reporting effectively guts Prop C's transparency.

Further, we note that nonprofit organizations, both 501c3 and 501c4, are required to report on their IRS 990 form staff time spent in lobbying.

The record shows that nonprofits like Public Advocates, whose President and CEO was at the time a Commissioner on the San Francisco Ethics Commission, reported down to the dollar "total lobbying expenditures to influence public opinion (grass roots lobbying)."

Clearly staff time and costs can be tracked and reported. Smaller nonprofits like the San Francisco Tenants Union also report on Form 990-EZ the value of their expenditure lobbying in each category.

We underscore the fact that the IRS exemption for 501c4 organizations allows them to spend their entire budget for lobbying, yet the suggestion is being made that the public should not see how much they spend, what they spend it for, and how they spend it.

The charitable organizations under 501c3 also are on record accepting contributions from Major Developers explicitly with the understanding that they will speak favorably before city agencies on behalf of their donor's projects. The Ethics web page lists Major Developers and the nonprofits that receive \$5,000 or more under this relationship.

We cannot support an exemption from reporting as Expenditure Lobbying costs while these same organizations accept money to lobby city agencies and elected officials on behalf of the donor's interests. Nor, in our view, would the public endorse such an exemption.

We further believe that at a time in our city that public trust is weak and the belief that the door is open for corrupt practices that the Ethics Commission must not engage in opening loopholes that allow lobbying and lobbyists to hide their agendas from the public while seeking to influence city actions. To do so endangers the reputation of the Ethics Commission at a time when it is intent on right-sizing its efforts to protect the public interest.

Opponents to the transparency and reporting in Proposition C argued to voters in the Voter Handbook, op-ed articles, and editorial board presentations and before endorsing groups that the reporting requirements would be burdensome and harm community efforts. The voters overwhelmingly voted for a measure that requires reporting and disclosure. No regulation that would allow a waiver..."

Triggering the \$2500 registration and reporting threshold

The intent of the ballot measure is to provide a window for the public regarding major lobbying efforts to influence legislative or administrative policy. Clearly there is a difference between an expenditure above \$2500 on a particular issue than below. In setting the \$2500 threshold, the legislation sees expenditures of less than \$2500 as too low to warrant concern of undue influence.

We may be involved in a number of issues but most of them include relatively little activity. Thus, trying to track numerous small advocacy efforts is not only much more burdensome, it does not address the intent of the law which is to make public significant efforts to influence administrative and legislative actions.

We ask that the \$2500 reporting level apply to each administrative or legislative activity, not the aggregate of several. This ensures that the public is fully aware of substantial efforts to influence policy.

(Friends of Ethics can agree to this suggestion)

Reporting Communications

While the overwhelming majority of our communications go to members and fee payers (who are not members but who we are legally required to represent), we also send our publications to our International Union, the San Francisco Labor Council Executive Board, local elected officials, other labor organizations and community allies.

We encourage the commission to adopt regulations that allow communications to go to these groups and individuals as long as they constitute less than half of who is receiving the communication. The publications are the primary way that many of the recipients with whom we work are kept abreast of our activities, and us of theirs.

(Friends of Ethics endorse the accepted definition of membership to include the International Union and the Labor Council Executive Board. Communications to local elected officials, even if they are copies of "call to action" messages to others, falls under "direct lobbying" and is not reported here.

Alerting “community allies” goes beyond these limits and should be regarded as part of an expenditure lobbying effort.

Consider for example the effort of Comcast to send a “call to action” to all the nonprofits it funds, or AT&T sending a similar message to community-based pro-business organizations regarding the placement of relay boxes and an EIR.

In fact, the Ethics Commission requires Major Developers to disclose and report the names of nonprofits it contributes \$5,000 or more and who agree to speak publicly at commission or other official meetings to support the position of the contributor.

Among those reported receiving thousands of dollars is SPUR, who may well be considered an ally of some unions. We do not think spending to contact these entities with a Call to Action should be exempted.)

Member Communications

Proposition C exempts payments for member communications without reference to the timing or format. We are concerned with the proposed regulation that only "regular" publications be exempt. In addition to our "regular" publications we also send communications to our members cyclically, to give periodic updates on pending activity, alerts and bulletins on a range of topics including "late breaking news".

We urge the Commission not to differentiate between types of communications based on "regularity" and exempt all that are for our members and fee payers and which may incidentally be received by others.

(Friends of Ethics agree that communications may not be on a regular basis and that timeliness of a Call to Action sent to members and fee payers is an essential part of the union’s outreach. We believe an exemption for communications that may be “incidentally” be received by others has to be clearly understood not to be a work-around to allow unreported lobbying.)

Research and reports

The proposed regulations require reporting research, analysis and reports as a lobbying expenditure even if they are not lobbying communications but are "cited, Incorporated, quoted or relied upon" in later communications urging others to advocate for as long as 12 months later. This is confusing and will likely lead to unintended errors. The ballot measure defines expenditure lobbying as an expenditure of more than \$2500 within one month on an activity - - i.e. research - - that urges other persons to contact a city officer. It is unclear why a study or analysis that does not include a call to action should suddenly be considered lobbying, especially if the funding source and authors are known.

A more practical approach might be to require that research and analyses fully disclose funding sources, authors and not urge action by others toward city officials. This would reveal "dark money" funded research to lobby.

(Friends of Ethics support the transparency that is the aim of this approach. We also are not opposed to a time frame that excludes research that was completed more than six months ago. We recognize, as one example, that a persuasion poll undertaken more than six months ago has historical value but is not necessarily a component in current lobbying efforts.

We have proposed a different but compatible approach based on existing practices: Friends of Ethics recommends the application of the Charles Stewart Mott guidance to grantees in determining whether some research is exempt from expenditure lobbying costs:

**** "Nonpartisan Analysis, Study or Research. The communication must be nonpartisan — contain a "sufficiently full and fair exposition of the pertinent facts to enable the recipient to form an independent opinion or conclusion." The communication must also be widely distributed (not only to persons interested in one side of the issue). Finally, the communication may not include a "direct call to action."***

<http://www.mott.org/grantsandguidelines/ForGrantees/lobbying>

Registration, reporting forms and waiving the registration fee

We request that you include a box on registration and reporting forms for nonprofit organizations including unions. We do not fit any of the proposed categories. The Commission is proposing to exempt nonprofit 501c (3) and 501c (4) organizations from paying the \$500 registration fee. Unions are also nonprofit organizations - - 501c5. While there are a handful of large unions, most are small to medium in size and the fee may be a burden.

(Friends of Ethics agree that the registration and reporting forms should include a box for nonprofit organizations as well as a box for unions.

Friends of Ethics oppose waiving registration fees for any expenditure lobbyist, including non-profits and unions. The plain language of Proposition C itself does not provide for a waiver or exemption for any registration fees except for employees in some cases.

No regulation that would allow a waiver that was not explicitly provided in the law can meet the test of "furthering the purposes of the Act."

Indeed, waiving a minimal registration fee upends the Ethics Commission's vote that it needs more, not less, funding to perform its mission. Providing an exemption to fees could well become a rationale for refusing the Commission's request for a funding increase.

In the event that any exemption is contemplated, it should not be applied to any nonprofit that receives contributions of \$5,000 or more to support the financial interests of a contributor as reported under the Major Developer filings.

We further believe that such contributions should not be limited to Major Developers but include contractors and others seeking City approvals for their interests.

However, in any event, we would limit such an exemption to nonprofits that file at Form 990-EZ or a form 900-N for small entities. We are not familiar with a similar form for unions, but would welcome further information.

We want to underscore that we believe that there are no circumstances for a waiver for 501c4 nonprofits, which are organized specifically to enable them to spend money lobbying. An exemption for organizations that specifically are engaged in lobbying and spending funds for that purposes is a direct effort to undo the will of the voters by regulation, and must be categorically rejected.

We look forward to working with you as additional interim and permanent regulations are crafted. Going forward, we hope the commission will allow adequate time for comment and additional "interested parties" meetings to broaden public participation in the discussions.

If you have any questions, please contact Rachel Richman, our Policy and Political Director at 415 - 864- 2100.

Sincerely

Bob Muscat

Executive Director

San Francisco Ethics Commission
25 Van Ness, Suite 220
San Francisco, CA 94102
Phone: (415) 252-3100
Fax: (415) 252-3112
Email: ethics.commission@sfgov.org
Web: www.sfethics.org



For SFEC use

Registration Report for Expenditure Lobbyists (SFEC Form 2110A)

S.F. Campaign & Governmental Conduct Code § 2.100 et seq.

File this form with the Ethics Commission. See also General Instructions attached.

☐ Check if this is an amendment. Date original registration report filed: _____

PART I: EXPENDITURE LOBBYIST CONTACT INFORMATION

Name: _____

Mailing Address: _____

Telephone Number: _____ Email Address: _____

PART II: TYPE OF EXPENDITURE LOBBYIST

☐ **Individual.** Description of business activities: _____

☐ **Entity.** Description of nature and purpose: _____

☐ Check if the entity is a 501(c)(3) or 501(c)(4) nonprofit organization.

Also, check the appropriate box below:

☐ **Corporation.** List below the names of your CEO, CFO, secretary, any officer who authorized payments to influence local legislative and administrative action, and any person owning more than 20 percent of the corporation.

☐ **Partnership.** List below the names of each partner (if the entity has fewer than 10 partners) or the partner with the greatest ownership interest (if the entity has 10 or more partners).

☐ **Other entity.** List below the names of each person with an ownership interest (if there are fewer than 10) or the person with the greatest ownership interest (if the entity has 10 or more persons with ownership interests).

_____	_____	_____
_____	_____	_____
_____	_____	_____

VERIFICATION

I have reviewed this Registration Report for Expenditure Lobbyists and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true, complete, and correct.

Signature of Person Filing Report

Date

Name of Person Filing Report (Please Print)

DRAFT

Registration Report for Expenditure Lobbyists (SFEC Form 2110A)

General Instructions

WHO IS REQUIRED TO FILE: An individual or entity that qualifies as an “expenditure lobbyist” under San Francisco law must register with the Ethics Commission by completing and filing this form. An expenditure lobbyist is an individual or entity that spends at least \$2,500 in a calendar month to solicit, request, or urge others to communicate directly with a City officer in order to influence local legislative or administrative action. City officers covered by this rule generally include elected City officials, members of City boards and commissions, and City department heads.

Examples of spending that counts toward the \$2,500 per month threshold include public relations, media relations, advertising, public outreach, research, investigation, reports, analysis, and studies to the extent those activities are used to solicit, request or urge other persons to communicate directly with a City officer.

Examples of spending that does **not** count toward the \$2,500 per month threshold include: payments made to a registered “contact” lobbyist who directly contacts City officers; payments made to an organization for membership dues; payments made by an organization to distribute communications to its members; payments made by a news media organization to develop and distribute its publications; and payments made by a client to a representative to appear on the client’s behalf in a legal proceeding before a City agency or department.

WHEN AND WHERE ARE REPORTS DUE: Each expenditure lobbyist must register by filing this form with the Ethics Commission no later than five business days after qualifying as such, **and** prior to making any additional payments to influence local legislative or administrative action.

HOW TO FILE: Through February 28, 2016, an expenditure lobbyist must file the registration reports with the Ethics Commission by sending a PDF copy of the **signed** forms to the Commission's email address: ethicscommission@sfgov.org.

Starting March 1, 2016, an expenditure lobbyist may file the registration reports with the Ethics Commission by uploading a PDF copy of the **signed** forms to the Commission’s website. Expenditure lobbyists filing in this manner should retain the original signed copies for at least five years. The Ethics Commission will also accept paper copies of this form delivered (e.g., by mail, etc.) directly to the Commissions’ office. Forms delivered by mail must be post marked by the due date to be timely filed. Registration statements must be accompanied by the registration fee, if necessary.

PAYING THE REGISTRATION FEE: Each expenditure lobbyist must pay a fee of \$500 at the time of registration. However, note that 501(c)(3) and 501(c)(4) nonprofit organizations that qualify as expenditure lobbyists do **not** have to pay the registration fee. Payments may be made on-line with a debit/credit card or e-check, or sending a check to the Ethics Commission made payable to the City and County of San Francisco.

FILING AMENDMENTS: If you are filing an amendment to a previously-filed registration report, check the appropriate box on page 1. Amendments can be filed at any time, including with a monthly report (SFEC Form 2110B).

REPORTING EXPENDITURE LOBBYIST INFORMATION (PART I): In Part I, you must list the filer’s name, mailing address, telephone number, and email address.

REPORTING THE TYPE OF EXPENDITURE LOBBYIST (PART II): In Part II, you must indicate whether the filer is an individual or an entity. If the filer is an individual, you must provide a description of his or her business activities. Also, indicate if the filer is a full-time employee of a 501(c)(3) and 501(c)(4) nonprofit organization. If the filer is an entity, you must provide a description of its nature and purpose, indicate whether it is a corporation, partnership, or other type of business entity, and list the names of the individuals indicated on the form.

TERMINATING STATUS AS AN EXPENDITURE LOBBYIST: When no longer paying for expenditure lobbying activity, a filer may terminate its status as an expenditure lobbyist by filing a final monthly SFEC Form 2110B and checking the appropriate box to indicate that that report is a termination statement. Also, please note that the Ethics Commission will automatically terminate the registration of an expenditure lobbyist that fails to pay the annual registration fee by February 1.

REVISED: 02/24/2016
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For SFEC use

Disclosure Report for Expenditure Lobbyists (SFEC Form 2110B)

S.F. Campaign & Governmental Conduct Code § 2.100 et seq.

File this form with the Ethics Commission. See also General Instructions attached.

Monthly report for (month/year): _____ Total number of pages: _____

- ☐ No activity this reporting period.
- ☐ This amends a report filed on _____.
- ☐ This is my final report and constitutes my termination statement.

PART I: EXPENDITURE LOBBYIST INFORMATION

Name: _____

Mailing Address: _____

Telephone Number: _____ Email Address: _____

PART II: TOTAL PAYMENTS AND MATTERS LOBBIED

Directions: Enter the total amount of payments made during the reporting period to influence local legislative or administrative action and identify those local legislative or administrative action (including any title and file number).

Total amount spent to influence: _____

Local legislative or administrative actions:

_____	_____
_____	_____
_____	_____
_____	_____

PART III: ITEMIZED PAYMENTS TO INFLUENCE OF \$1,000 OR MORE

Directions: For each payment of \$1,000 or more during the reporting period to influence local legislative or administrative action, enter the date of the payment, the name and address of the payee, a description of the payment (i.e., what it was for), and the amount.

Date	Name & Address of Payee	Description of Payment	Amount

☐ Additional sheets are attached.

PART IV: CAMPAIGN CONTRIBUTIONS

Directions: Enter the information below for each political contribution of \$100 or more made or delivered by the filer, or made at the behest of the filer, during the reporting period to:

- an elected official of the City and County,
- a candidate for such office,
- a committee controlled by such officer or candidate,
- 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

Date	Contributor	Occupation/Employer	Recipient	Amount

☐ Additional sheets are attached.

VERIFICATION

I have reviewed this Disclosure Report for Expenditure Lobbyists and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true, complete, and correct.

Signature of Person Filing Report

Date

Name of Person Filing Report (Please Print)

DRAFT

Disclosure Report for Expenditure Lobbyists (SFEC Form 2110B)

General Instructions

WHO IS REQUIRED TO FILE: This report must be completed and filed by an individual or entity that qualifies as an “expenditure lobbyist” under San Francisco law. An expenditure lobbyist is an individual or entity that spends at least \$2,500 in a calendar month to solicit, request, or urge others to communicate directly with a City officer in order to influence local legislative or administrative action. City officers covered by this rule generally include elected City officials, members of City boards and commissions, and City department heads.

Examples of spending that counts toward the \$2,500 per month threshold include public relations, media relations, advertising, public outreach, research, investigation, reports, analysis, and studies to the extent those activities are used to solicit, request or urge other persons to communicate directly with a City officer.

Examples of spending that does **not** count toward the \$2,500 per month threshold include: payments made to a registered “contact” lobbyist who directly contacts City officers; payments made to an organization for membership dues; payments made by an organization to distribute communications to its members; payments made by a news media organization to develop and distribute its publications; and payments made by a client to a representative to appear on the client’s behalf in a legal proceeding before a City agency or department.

WHEN AND WHERE ARE REPORTS DUE: Each registered expenditure lobbyist must file monthly reports with the Ethics Commission by the fifteenth day of the month following the calendar month covered by the report. For example, a report covering activity in the month of February must be filed by March 15. Deadlines falling on a weekend or holiday are extended to the next business day.

HOW TO FILE: An expenditure lobbyist may file the monthly report with the Ethics Commission by uploading a PDF copy of the **signed** forms to the Commission’s website. Expenditure lobbyists filing in this manner should retain the original signed copies for at least five years. The Ethics Commission will also accept paper copies of these forms delivered (e.g., by mail, etc.) directly to the Commissions’ office. Forms delivered by mail must be post marked by the due date to be timely filed.

DESCRIBING THE TYPE OF REPORT AND PERIOD COVERED: Indicate the applicable month covered. Also be sure to enter the calendar year.

INDICATING WHETHER THE REPORT IS A TERMINATION STATEMENT: If the filer no longer has any activity to report, the filer may terminate its status as an expenditure lobbyist by checking the appropriate box on page 1. Also, please note that the Ethics Commission will automatically terminate the registration of an expenditure lobbyist that fails to pay the annual registration fee by February 1.

FILING AMENDMENTS: If you are filing an amendment to a previously-filed quarterly report, check the appropriate box on page 1 and indicate the covered reporting period. Also, any amendments to information contained in the filer’s **registration statement** should be made by filing an amended SFEC Form 2110A with the Commission.

REPORTING EXPENDITURE LOBBYIST INFORMATION (PART I): In Part I, you must list the filer’s name, mailing address, telephone number, and email address.

REPORTING TOTAL PAYMENTS AND MATTERS LOBBIED (PART II): In Part II, the filer must report the total amount of payments made during the reporting period to influence local legislative or administrative action. Do **not** include any payments that would not count toward the \$2,500 registration threshold. Also, report each local legislative or administrative action that the lobbyist sought to influence during the period, including, if any, the title and file number of any resolution, motion, appeal, application, petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement, or contract.

REPORTING ITEMIZED PAYMENTS TO INFLUENCE OF \$1,000 OR MORE (PART III): In Part III, the filer must itemize each payment of \$1,000 or more during the reporting period to influence local legislative or administrative action, including the date of the payment, the name and address of the payee, a description of the payment (i.e., what it was for), and the amount. Again, do **not** include any payments that would not count toward the \$2,500 registration threshold.

REPORTING CAMPAIGN CONTRIBUTIONS (PART IV): In Part IV, the filer must report each campaign contribution of \$100 or more made or delivered by the filer, or made at the behest of the filer, during the reporting period to an officer of the City and County, a candidate for such office, a committee controlled by such officer or candidate, 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. Include those contributions arranged by the filer, or for which the filer acted as an agent or intermediary. For each campaign contribution, provide the name of the contributor and (if an individual) the contributor's occupation and employer, as well as the date, amount, and recipient of the contribution.

REVISÉD: 2/24/2016
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