



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE  
CHAIRPERSON

**Date:** July 15, 2016

PETER KEANE  
VICE-CHAIRPERSON

**To:** Members of the Ethics Commission

**From:** LeeAnn Pelham, Executive Director

BEVERLY HAYON  
COMMISSIONER

**Re:** **AGENDA ITEM 4 – Proposals for November 2016 Ballot Measure to Restrict Lobbyist Gifts, Campaign Contributions and Bundled Contributions**

DAINA CHIU  
COMMISSIONER

VACANT  
COMMISSIONER

LEEANN PELHAM  
EXECUTIVE DIRECTOR

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**Summary** This item presents two initiative ordinances with alternative approaches for a possible November 2016 ballot measure to enact new restrictions on lobbyist gifts, campaign contributions, and bundled contributions.

**Action Requested** That at its July 25, 2016 regular meeting the Ethics Commission take final action regarding language it wishes to include in an initiative ordinance to submit for the November 2016 ballot pursuant to its authority under Charter Sec. 15.102

### Background

At its last three monthly meetings, the Ethics Commission has examined a possible set of restrictions on lobbyist gifts, campaign contributions, and bundled contributions for a potential ballot measure to be placed before San Francisco voters on the November 2016 ballot.<sup>1</sup> Proposed to the Commission by Represent.Us and Friends of Ethics, the restrictions are designed to increase public confidence in the fairness and responsiveness of governmental decision making by reducing the role that lobbyist gifts and political contributions play, or are perceived to play, in influencing government decisions.

San Francisco Charter Section 15.102, in part, provides authority for the Ethics Commission to place measures on the ballot by a four-fifths vote of all its members:

“Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members.”

The deadline for the Ethics Commission to submit a measure for the November 2016 ballot is August 5, 2016.

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<sup>1</sup> For reference, see memos presented at the [April 25](#), [May 23](#), and [June 27](#), 2016 meetings.

As initially proposed, the new restrictions would further limit gifts from lobbyists to city officers, impose a \$50 limit on campaign contributions from lobbyists, and ban the bundling of campaign contributions by lobbyists. At its meeting in June, the Commission considered an approach that would further limit gifts from lobbyists; impose a \$100 contribution limit for lobbyists (and apply it in the aggregate to contributions to any and all committees a candidate or officeholder controls, to the extent permitted by state law); and enact a limit on lobbyist bundling to no more than \$100 (including the lobbyist's own contribution, and applied in the aggregate to all committees controlled by the candidate or officeholder).

At the conclusion of its June discussion, the Commission directed Staff to bring to its July meeting two alternative initiative ordinances for its consideration and possible action: the proposal discussed in June ("June approach") and an approach that would ban lobbyist contributions and bundling for any candidate or officeholder of an office the lobbyist is registered to lobby ("July alternative"). In addition, based on public comment received, the Commission indicated a desire to see language that would continue to permit City officials to receive some *de minimis* level food and beverages provided by 501(c)(3) organizations that may qualify as expenditure lobbyists in connection with public events held by those organizations. Language to create an exception for this purpose has been added to both approaches and is discussed in the following section.

A draft initiative ordinance reflecting the June approach appears at Attachment 1, and a draft for the July alternative appears at Attachment 2. Attachment 3 provides a side-by-side comparison of the new language in each ordinance that would be added to City law. Public comment received by the Commission since the June meeting appears at Attachment 4. An overview of the ordinances follows in the next section.

### **Approaches Contained in Both Draft Ordinances**

**Application.** Both ordinances would apply new lobbyist restrictions to (1) individuals who receive compensation to communicate with City officers and have the required level of contact in attempts to influence legislative or administrative action ("contact lobbyists"), and (2) persons who spend a threshold amount of funds on certain activities to urge others to communicate with City officers to influence those actions ("expenditure lobbyists").

**Findings.** In each draft ordinance, new findings are added at Sec. 2.100 to reflect the general basis for the proposed new restrictions.

**Ability to Amend.** To ensure any new gift, contribution, or bundling restrictions enacted by the voters remain strong and effective, future amendments would be permitted by action of the Board of Supervisors using same approach voters adopted in November 2015 for the expenditure lobbyist amendments of Proposition C. That language provides that the Board may amend expenditure lobbyist provisions if all of the following conditions are met:

- (a) The amendment furthers the purposes of this Chapter;
- (b) The Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
- (c) 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 of Supervisors; and

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

In each draft ordinance, Section 2.103 would be revised to make reference to lobbyist gifts, campaign contributions and bundling restrictions. (In the case of the July alternative, the ordinance would further reference registration requirements and amendments of registration information and monthly disclosures, as those provisions are amended in that version of the ordinance).

**Lobbyist Gifts.** Both ordinances ban gifts, as that term is currently defined, from lobbyists. Both ordinances define “gift” as having the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq., and the regulations adopted thereunder, including any subsequent amendments. As indicated in the Commission’s prior discussions, however, both ordinances reflect two specific carve outs: all gifts of travel by lobbyists would be banned; and the receipt of a *de minimis* amount of food and beverage by City officers would continue to be allowed when provided by a lobbyist that is a non-profit organization and in connection with a public event that organization holds.

*Travel.*

Both ordinances would ban lobbyists from making any gifts, including a gift of travel, to an officer of the City and County. The prohibition also applies to a gift of travel from a lobbyist to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County.

In addition, a lobbyist would be prohibited from making or acting as an intermediary for any payment to a third party that is earmarked for use in making gifts, including gifts of travel, to an officer of the City and County, or parent, spouse, domestic partner, or child of an officer of the City and County.

At the same time, a City and County officer would not be permitted to accept or solicit any gift, including any gift of travel, from any lobbyist for the officer’s benefit or the benefit of the officer’s parent, spouse, domestic partner registered under state law, or dependent child. In addition, no officer of the City and County would be allowed to accept or solicit any such gift from a third party if the officer knows or has reason to know that the third party is providing the gift or gift of travel on behalf of a lobbyist.

Sec. 2.105 would define a “gift of travel” to mean a payment, advance or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

*Food and Beverage.*

City officials would be permitted to receive food and beverages provided by 501(c)(3) organizations that qualify as expenditure lobbyists in connection with public events held by those organizations. In both draft ordinances, a new Sec. 2.115 (a)(3) is added to provide that lobbyists may offer gifts of food or refreshment worth less \$25 or less per occasion, and officers of the City and County may accept such gifts, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501(c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event.

**Aggregation of Contributions.** To prevent circumvention of contribution limits, existing City law requires the aggregation of contributions from certain affiliated entities. Sec. 1.114(c)(1) of the City’s Campaign Finance Reform Ordinance (“CFRO”) provides, as a general rule, that for purposes of contribution limits, contributions of an entity whose contributions are directed and controlled by any individual must be aggregated with contributions made by that individual, and any other entity whose contributions are directed and controlled by the same individual. Subsections (c)(2) and (c)(3) address when aggregation is required for multiple entities whose contributions are controlled by the same person, and for majority-owned entities and their majority owners. Section 1.114 (c) provides the following:

(c) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section and Section 1.120 the contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50 percent.

In both draft initiative ordinances, a new Sec. 2.115(g) has been added to reference this section. It would clarify that for purposes of the lobbyist contribution limits, the contributions of an entity whose contributions are directed and controlled by any lobbyist shall be aggregated with contributions made by that lobbyist as set forth in Section 1.114(c).

### How the Two Draft Ordinances Differ

**Lobbyist Contributions and Bundling – a Limit, or a Ban?** SF Campaign & Governmental Conduct Code Sec. 1.114(a) limits contributions to a candidate, including those from lobbyists, to a maximum of \$500:

“[n]o person other than a candidate shall make, and no campaign treasurer for a candidate committee<sup>2</sup> shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed \$500.”

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<sup>2</sup> A “candidate committee” is defined to mean one controlled by a candidate and primarily formed to support that candidate’s election to City elective office, where “candidate” is defined as in state law (Government Code Section 81000 *et seq*) “but shall include only candidates for City elective office,” and “City elective office” is defined to mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sherriff, Assessor, Public Defender, Member of the Board of Education of the SF Unified School District, and member of the Governing Board of the SF Community College District.

Under its current language, the lobbying ordinance requires lobbyists to disclose certain contributions of \$100 or more they make, deliver, or arrange, or which the lobbyist knows or has reason to know were raised as a result of fundraising activity by the lobbyist, the lobbyist's agent, or the lobbyist's employer.<sup>3</sup> There is not, however, a limit or ban on the practice of lobbyists transmitting or delivering others' contributions.

The two ordinances attached for further public input and consideration by the Commission differ with regard to the methods they would use to further restrict lobbyist contributions and lobbyist contribution bundling.

**June Approach – New Limits.** As discussed at the Commission's June meeting, this approach would lower the limit for lobbyist contributions to an elective City officer or candidate to no more than \$100 per election cycle.<sup>4</sup> Contributions made to any committee controlled by an elective city officer or candidate for elective City office, to the extent allowed under current state law, would be included for purposes of the \$100 limit. A parallel restriction would be created for the recipient of those contributions, as elective city officers and candidates would be prohibited from accepting or soliciting any contribution that would cause the total amount contributed by that lobbyist to that official or candidate to exceed \$100 in an election cycle.

Under this approach, a limit on bundling would be enacted. It would limit a lobbyist from delivering or transmitting, or delivering or transmitting through a third party, any contribution(s) made by others that that exceeds the \$100 per election limit to any elective City officer or candidate. For purposes of this limit, any bundled contributions would be counted along with any contribution the lobbyist makes. The limit would also include contributions bundled to any and all committees controlled by the elective City officer or candidate to the extent allowed under current state law.

**July Alternative – Tailored Bans.** Modeled generally on an approach taken at the state level<sup>5</sup> and in the City of Los Angeles, the July approach would require lobbyists to pre-register the agencies or

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<sup>3</sup> See Sec. 2.110(c)(1)(H), Sec. 2.110(c)(2)(D), and Ethics Commission Regulation 2.110-4(a) and 4(b).

<sup>4</sup> The ordinance would define "election cycle" to mean the period beginning when a candidate forms a committee for election to City elective office and concluding (a) if the candidate was elected, either at the end of the candidate's term in office or on the date on which the candidate forms a committee for election to another City elective office, whichever is earlier, or (b) if the candidate was not elected, the date of the election.

<sup>5</sup> An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer. California Government Code § 85702. In part, 2 CCR Sec. 18572 further provides that a lobbyist "makes a contribution prohibited by Sec. 85702 when any of the following occur: (1) he or she mails, delivers or otherwise transmits to an elected state officer, a candidate for elective state office or his or her controlled committee, or to a committee primarily formed to support or oppose such a candidate, that the lobbyist is registered to lobby, a contribution ... and the contribution is made from the lobbyist's personal funds or assets. A contribution will be deemed to be made from a lobbyist's personal funds or assets when the contribution is made from assets which are the personal property of the lobbyist, unless pursuant to 2 Cal. Code Regs. section 18533 the contribution is attributed to another person. (2) the contribution is made by a business entity, including a lobbying firm, owned in whole or in part by a lobbyist, and the lobbyist participates in the decision to make the contribution. (3) the contribution is made from funds of a committee comprised in part of personal funds or resources of a lobbyist and the lobbyist participates in the decision to make the contribution. (b) Nothing in this regulation shall be construed to prohibit a lobbyist from advising his or her client or lobbyist employer regarding the making of a contribution.

offices they will lobby. A lobbyist contribution ban and a bundling ban would then apply for contributions to any elective City officer or candidate if the lobbyist is registered to lobby the agency of the officer or the agency for which the candidate is seeking election. The bans would extend to committees controlled by any elective city officer or candidate for elective City office, to the extent allowed under current state law, for any agency a lobbyist is required to register. A parallel ban on receiving impermissible contributions made or bundled by lobbyists would also apply for elective city officers and candidates, and to the committees they control.

Should a lobbyist fail to disclose which agencies or offices the lobbyist attempts to influence as required under this approach, the proposal would ban that lobbyist from making any contributions to any City elective officer or candidate and their controlled committees, and from delivering or transmitting, or delivering or transmitting through a third party, any others' contributions to City officers or candidates and their committees.

To ensure compliance with the bans and help prevent circumvention, the ordinance also includes a new duty for lobbyists to amend registration information within five days of the changed circumstances (such as a new agency that will be lobbied).

To implement a contribution and bundling ban using this framework, the Ethics Commission's existing online system used for lobbyist registration would require modification. Going forward, lobbying registrations would be required to include identification of the agencies or offices lobbyists are registering to lobby, and a registration amendment process that captures the history of lobbyist registrations and de-registrations would need to be built. Determining how narrowly or broadly the agencies or offices should be identified for lobbyist registrations will be important for implementing a law that clearly supports the intended purpose and scope of the proposed ban. State law, for example, refers to the "government agency" a lobbyist is registered to lobby, not individual legislative districts. Lobbyists in Los Angeles indicate whether they are authorized to register the "City Council," among other agencies, not individual Council offices; once that is indicated, lobbyist are banned from contributing to any City Councilmember or candidate.

**Appropriation.** In the June approach, costs for the new law would be absorbed by existing staff and agency resources. This would include administrative and compliance costs for the new laws – such as the development of materials to help lobbyists, candidates, and officials understand and comply with the new restrictions – as well as auditing costs, and enforcement costs when there is a failure to comply.

Due to the online filing system components that would need to be developed to implement a contribution and bundling ban tied to lobbyists' registrations, the July alternative includes a specific appropriation amount based on estimates of the costs to make those changes to the Commission's existing lobbying disclosure system. To implement a more robust registration and registration amendment process, \$100,000 would be appropriated and made available after 30 days of certification of the election results, with an annual \$5,000 appropriation following depletion of that initial funding.

**Effective and Operative Dates.** As proposed, both ordinances would become effective 10 days after the Board of Supervisors declares the results of the November 8, 2016 election, however their proposed operative dates differ. The proposed operative date for the contribution and bundling limits proposed in the June approach would be January 1, 2017. Due to a longer implementation phase needed to develop and deploy the online systems changes required for the contribution and bundling bans, the proposed operative date for the July alternative is January 1, 2018.

**Item 4 -- Attachment 1**

1 [Initiative Ordinance - Campaign and Governmental Conduct Code - Restricting Gifts and  
2 Contributions from Lobbyists]

3

4 **Motion ordering submitted to the voters, at an election to be held November 8, 2016, an**  
5 **ordinance amending the Campaign and Governmental Conduct Code to restrict gifts**  
6 **and campaign contributions from lobbyists.**

7

8 MOVED, That pursuant to Charter Section 15.102, the Ethics Commission hereby  
9 submits the following ordinance to the voters of the City and County of San Francisco, at an  
10 election to be held on November 8, 2016.

11

12 **Ordinance amending the Campaign and Governmental Conduct Code to restrict gifts**  
13 **and campaign contributions from lobbyists.**

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

17

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

19 Section 1. Article II, Chapter 1 of the Campaign and Governmental Conduct Code is  
20 hereby amended by revising Sections 2.100, 2.103, 2.105, and 2.115, to read as follows:

21 **SEC. 2.100. FINDINGS.**

22 (a) The Board of Supervisors finds that public disclosure of the identity and extent of  
23 efforts of lobbyists to influence decision-making regarding local legislative and administrative  
24 matters is essential to protect public confidence in the responsiveness and representative  
25 nature of government officials and institutions. It is the purpose and intent of the Board of

1 Supervisors to impose reasonable registration and disclosure requirements to reveal  
2 information about lobbyists' efforts to influence decision-making regarding local legislative and  
3 administrative matters.

4 (b) To increase public confidence in the fairness and responsiveness of governmental decision  
5 making, it is the further purpose and intent of the people of the City and County of San Francisco to  
6 restrict gifts, campaign contributions, and bundled campaign contributions from lobbyists to City  
7 officers so that governmental decisions are not, and do not appear to be, influenced by the giving of  
8 personal benefits to City officers by lobbyists, or by lobbyists' financial support of City officers'  
9 political interests.

10 ~~(b)(c)~~ Corruption and the appearance of corruption in the form of campaign consultants  
11 exploiting their influence with City officials on behalf of private interests may erode public  
12 confidence in the fairness and impartiality of City governmental decisions. The City and  
13 County of San Francisco has a compelling interest in preventing corruption or the appearance  
14 of corruption which could result in such erosion of public confidence. Prohibitions on  
15 campaign consultants lobbying current and former clients will protect public confidence in the  
16 electoral and governmental processes. It is the purpose and intent of the people of the City  
17 and County of San Francisco in enacting this Chapter to prohibit campaign consultants from  
18 exploiting or appearing to exploit their influence with City officials on behalf of private  
19 interests.

20 **SEC. 2.103. AMENDMENT OR REPEAL.**

21 With respect to any provisions of this Chapter regarding regulation of expenditure  
22 lobbyists, or restrictions on gifts, campaign contributions, or bundled campaign contributions from  
23 lobbyists, approved by the voters, the Board of Supervisors may amend those provisions if all  
24 of the following conditions are met:

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



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

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

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

8 **SEC. 2.105. DEFINITIONS.**

9 Whenever used in this Chapter 1, the following words and phrases shall be defined as  
10 provided in this Section 2.105:

11 \* \* \* \*

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

13 \* \* \* \*

14 "Committee" shall be defined as set forth in the California Political Reform Act, California  
15 Government Code section 81000, et seq.

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

23 "Contribution" shall have the same meaning as set forth in the California Political Reform Act,  
24 California Government Code Section 81000, et seq.

1           “Controlled committee” shall have the same meaning as set forth in Section 1.104 of this Code,  
2 but shall not include any state committees.

3           “Dependent child” shall mean a child or stepchild of a public official, who is under 18 years  
4 old and whom the official is entitled to claim as a dependent on his or her federal tax return.

5           \* \* \* \*

6           “Election cycle” shall mean the period beginning when a candidate forms a committee for  
7 election to City elective office and concluding (a) if the candidate was elected, either at the end of the  
8 candidate’s term in office or on the date on which the candidate forms a committee for election to  
9 another City elective office, whichever is earlier, or (b) if the candidate was not elected, the date of the  
10 election.

11           \* \* \* \*

12           "Expenditure lobbyist" means any person, other than any government entity, or officer  
13 or employee of a government entity acting in an official capacity, who, directly or indirectly,  
14 makes payments totaling \$2,500 or more in a calendar month to solicit, request, or urge other  
15 persons to communicate directly with an officer of the City and County in order to influence  
16 local legislative or administrative action. Examples of the types of activities the payment for  
17 which can count toward the \$2,500 threshold referred to in the previous sentence include but  
18 are not limited to public relations, media relations, advertising, public outreach, research,  
19 investigation, reports, analyses, and studies to the extent those activities are used to further  
20 efforts to solicit, request or urge other persons to communicate directly with an officer of the  
21 City and County. The following types of payments shall not be considered for the purpose of  
22 determining whether a person is an expenditure lobbyist: payments made to a registered  
23 contact lobbyist or the registered contact lobbyist's employer for lobbyist services; payments  
24 made to an organization for membership dues; payments made by an organization to  
25 distribute communications to its members; payments made by a news media organization to

1 develop and distribute its publications; and payments made by a client to a representative to  
2 appear in an adjudicatory proceeding before a City agency or department.

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

5 "Gift of travel" shall mean payment, advance, or reimbursement for travel, including  
6 transportation, lodging, and food and refreshment connected with the travel.

7 "Lobbyist" means a contact lobbyist or expenditure lobbyist.

8 \* \* \* \*

9 "Public event" shall mean an event or gathering that any member of the public may attend, has  
10 been publicly announced and publicized in advance, and for which there is no admission cost or fee.

11 \* \* \* \*

12 "State committee" shall mean a committee formed to support or oppose candidates for state  
13 office or state ballot measures.

14 \* \* \* \*

15 **SEC. 2.115. LIMITS AND PROHIBITIONS.**

16 (a) **GIFT LIMIT PROHIBITION.**

17 (1) No lobbyist shall make any gifts, including any gift of travel, to an officer of the  
18 City and County, or to a parent, spouse, domestic partner registered under state law, or dependent  
19 child of an officer of the City and County that have a fair market value of more than \$25, except for  
20 those gifts that would qualify for one of the exemptions under Section 3.216(b) of this Code and its  
21 implementing regulations. No lobbyist shall make any payment to a third-party for the purpose of  
22 paying for a gift or any part of a gift, including any gift of travel, to an officer of the City and County,  
23 or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of  
24 the City and County.

1                   (2) No officer of the City and County may accept or solicit any gift, including any gift of  
2 travel, from any lobbyist for the officer's personal benefit or for the personal benefit of the officer's  
3 parent, spouse, domestic partner registered under state law, or dependent child. No officer of the City  
4 and County may accept or solicit any gift, including any gift of travel, from a third-party if the officer  
5 knows or has reason to know that the third-party is providing the gift or gift of travel on behalf of a  
6 lobbyist.

7                   (3) Exception for gifts of food or refreshment provided by 501(c)(3) nonprofit  
8 organizations. Notwithstanding the prohibitions set forth in subsections (1) and (2), lobbyists may offer  
9 gifts of food or refreshment worth less \$25 or less per occasion, and officers of the City and County  
10 may accept such gifts, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or  
11 refreshment is offered in connection with a public event held by the 501(c)(3) nonprofit organization,  
12 and the same gift of food or refreshment is made available to all attendees of the public event.

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

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

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

22                   **(e) CAMPAIGN CONTRIBUTION LIMITS.**

23                   (1) No lobbyist shall make any contribution which will cause the total amount  
24 contributed by that lobbyist to any candidate, including the candidate's controlled committees, to  
25 exceed \$100 in an election cycle.

1                   (2) No candidate may accept or solicit any contribution from a lobbyist which will  
2 cause the total amount contributed by that lobbyist to the candidate, including the candidate's  
3 controlled committees, to exceed \$100 in an election cycle.

4                   (f) **BUNDLING OF CAMPAIGN CONTRIBUTIONS - LIMITS.** No lobbyist shall deliver or  
5 transmit, or deliver or transmit through a third party, any contribution made by another person to any  
6 candidate, or the candidate's controlled committees, if the total combined amount of the contributions  
7 delivered or transmitted by the lobbyist and contributions made by the lobbyist to the candidate exceeds  
8 the amount of the contribution limit established in subsection 2.115(e).

9                   (g) **AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.** For purposes of the  
10 contribution limits imposed by subsections (e) and (f), the contributions of an entity whose  
11 contributions are directed and controlled by any lobbyist shall be aggregated with contributions made  
12 by that lobbyist as set forth in Section 1.114(c).

13                   (h) **REGULATIONS.** The Ethics Commission may adopt regulations implementing this  
14 Section 2.115, but such regulations may not establish any exceptions from the limits and prohibitions  
15 set forth therein.

16  
17                   Section 2. Scope of Ordinance. In enacting this ordinance, the People of the City and  
18 County of San Francisco intend to amend only those words, phrases, paragraphs,  
19 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other  
20 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions  
21 or deletions, in accordance with the "Note" that appears under the official title of the  
22 ordinance.

23  
24                   Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word  
25 of this ordinance, or any application thereof to any person or circumstance, is held to be

1 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
2 shall not affect the validity of the remaining portions or applications of the ordinance. The  
3 voters hereby declare that they would have passed this ordinance and each and every  
4 section, subsection, sentence, clause, phrase, and word not declared invalid or  
5 unconstitutional without regard to whether any other portion of this ordinance or application  
6 thereof would be subsequently declared invalid or unconstitutional.

7  
8 Section 4. Effective and Operative Dates. This ordinance shall become effective 10  
9 days after the Board of Supervisors declares the results of the November 8, 2016 election.  
10 This ordinance shall become operative on January 1, 2017.

11  
12 APPROVED AS TO FORM:  
13 DENNIS J. HERRERA, City Attorney

14  
15 By: \_\_\_\_\_  
16 ANDREW SHEN  
Deputy City Attorney  
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1 [Initiative Ordinance - Campaign and Governmental Conduct Code - Restricting Gifts and  
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15 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
16 **Deletions to Codes** are in ~~italics Times New Roman font~~.  
17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or  
18 parts of tables.

17

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

19 Section 1. Article II, Chapter 1 of the Campaign and Governmental Conduct Code is  
20 hereby amended by revising Sections 2.100, 2.103, 2.105, 2.110, and 2.115, to read as  
21 follows:

22 **SEC. 2.100. FINDINGS.**

23 (a) The Board of Supervisors finds that public disclosure of the identity and extent of  
24 efforts of lobbyists to influence decision-making regarding local legislative and administrative  
25 matters is essential to protect public confidence in the responsiveness and representative

1 nature of government officials and institutions. It is the purpose and intent of the Board of  
2 Supervisors to impose reasonable registration and disclosure requirements to reveal  
3 information about lobbyists' efforts to influence decision-making regarding local legislative and  
4 administrative matters.

5 (b) To increase public confidence in the fairness and responsiveness of governmental decision  
6 making, it is the further purpose and intent of the people of the City and County of San Francisco to  
7 restrict gifts, campaign contributions, and bundled campaign contributions from lobbyists to City  
8 officers so that governmental decisions are not, and do not appear to be, influenced by the giving of  
9 personal benefits to City officers by lobbyists, or by lobbyists' financial support of City officers'  
10 political interests.

11 ~~(b)~~(c) Corruption and the appearance of corruption in the form of campaign consultants  
12 exploiting their influence with City officials on behalf of private interests may erode public  
13 confidence in the fairness and impartiality of City governmental decisions. The City and  
14 County of San Francisco has a compelling interest in preventing corruption or the appearance  
15 of corruption which could result in such erosion of public confidence. Prohibitions on  
16 campaign consultants lobbying current and former clients will protect public confidence in the  
17 electoral and governmental processes. It is the purpose and intent of the people of the City  
18 and County of San Francisco in enacting this Chapter to prohibit campaign consultants from  
19 exploiting or appearing to exploit their influence with City officials on behalf of private  
20 interests.

21 **SEC. 2.103. AMENDMENT OR REPEAL.**

22 With respect to any provisions of this Chapter regarding regulation of expenditure  
23 lobbyists, registration requirements, amendment of registration information and monthly disclosures,  
24 or restrictions on gifts, campaign contributions, or bundled campaign contributions from lobbyists,  
25



1 approved by the voters, the Board of Supervisors may amend those provisions if all of the  
2 following conditions are met:

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

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

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

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

11 **SEC. 2.105. DEFINITIONS.**

12 Whenever used in this Chapter 1, the following words and phrases shall be defined as  
13 provided in this Section 2.105:

14 \* \* \* \*

15 "Agency" shall mean a unit of City government that submits its own budget to the Mayor and  
16 Board of Supervisors pursuant to Article IX of the City Charter.

17 \* \* \* \*

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

19 \* \* \* \*

20 "Committee" shall be defined as set forth in the California Political Reform Act, California  
21 Government Code section 81000, et seq.

22 "Contact lobbyist" means any individual who (1) makes five or more contacts in a  
23 calendar month with officers of the City and County on behalf of the individual's employer; or  
24 (2) makes one or more contacts in a calendar month with an officer of the City and County on  
25 behalf of any person who pays or who becomes obligated to pay the individual or the

1 individual's employer for lobbyist services. An individual is not a contact lobbyist if that  
2 individual is lobbying on behalf of a business of which the individual owns a 20% or greater  
3 share.

4 "Contribution" shall have the same meaning as set forth in the California Political Reform Act,  
5 California Government Code Section 81000, et seq.

6 "Controlled committee" shall have the same meaning as set forth in Section 1.104 of this Code,  
7 but shall not include any state committees.

8 "Dependent child" shall mean a child or stepchild of a public official, who is under 18 years  
9 old and whom the official is entitled to claim as a dependent on his or her federal tax return.

10 \* \* \* \*

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

25

1 develop and distribute its publications; and payments made by a client to a representative to  
2 appear in an adjudicatory proceeding before a City agency or department.

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

5 "Gift of travel" shall mean payment, advance, or reimbursement for travel, including  
6 transportation, lodging, and food and refreshment connected with the travel.

7 "Lobbyist" means a contact lobbyist or expenditure lobbyist.

8 \* \* \* \*

9 "Public event" shall mean an event or gathering that any member of the public may attend, has  
10 been publicly announced and publicized in advance, and for which there is no admission cost or fee.

11 \* \* \* \*

12 "State committee" shall mean a committee formed to support or oppose candidates for state  
13 office or state ballot measures.

14 \* \* \* \*

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

17 (a) **REGISTRATION OF LOBBYISTS REQUIRED.** Lobbyists shall register with the  
18 Ethics Commission and comply with the disclosure requirements imposed by this Chapter 1.  
19 Such registration shall occur no later than five business days of qualifying as a lobbyist.  
20 Contact lobbyists shall register prior to making any additional contacts with an officer of the  
21 City and County of San Francisco and expenditure lobbyists shall register prior to making any  
22 additional payments to influence local legislative or administrative action.

23 (b) **REGISTRATION.**

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

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

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

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

7 (D) Each agency that the contact lobbyist has attempted or will attempt to  
8 influence on behalf of any client; and

9 ~~(D)~~(E) Any other information required by the Ethics Commission through  
10 regulation, consistent with the purposes and provisions of this Chapter.

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

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

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

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

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

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

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

4 (C) Expenditure lobbyists that are individuals shall provide a description  
5 of their business activities; ~~and~~

6 (D) Each agency that the expenditure lobbyist has made or will make payments  
7 to influence; and

8 ~~(D)~~(E) Any other information required by the Ethics Commission through  
9 regulation, consistent with the purposes and provisions of this Chapter.

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

13 (1) **Contact lobbyists.** Each contact lobbyist shall report to the Ethics  
14 Commission the following information:

15 (A) The name, business address and business telephone number of  
16 each person from whom the lobbyist or the lobbyist's employer received or expected to  
17 receive economic consideration to influence local legislative or administrative action during  
18 the reporting period.

19 (B) The name of each officer of the City and County of San Francisco  
20 with whom the lobbyist made a contact during the reporting period.

21 (C) The date on which each contact was made.

22 (D) The local legislative or administrative action that the lobbyist sought  
23 to influence, including, if any, the title and file number of any resolution, motion, appeal,  
24 application, petition, nomination, ordinance, amendment, approval, referral, permit, license,  
25 entitlement, or contract, and the outcome sought by the client.

1 (E) The client on whose behalf each contact was made.

2 (F) The amount of economic consideration received or expected by the  
3 lobbyist or the lobbyist's employer from each client during the reporting period.

4 (G) All activity expenses incurred by the lobbyist during the reporting  
5 period, including the following information:

6 (i) The date and amount of each activity expense;

7 (ii) The full name and official position, if any, of the beneficiary of  
8 each activity expense, a description of the benefit, and the amount of the benefit;

9 (iii) The full name of the payee of each activity expense if other  
10 than the beneficiary;

11 (iv) Whenever a lobbyist is required to report a salary of an  
12 individual pursuant to this subsection (c)(1), the lobbyist need only disclose whether the total  
13 salary payments made to the individual during the reporting period was less than or equal to  
14 \$250, greater than \$250 but less than or equal to \$1,000, greater than \$1,000 but less than or  
15 equal to \$10,000, or greater than \$10,000.

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

24 The following information regarding each campaign contribution shall be  
25 submitted to the Ethics Commission:

- 1 (i) The amount of the contribution;
- 2 (ii) The name of the contributor;
- 3 (iii) The date on which the contribution was made;
- 4 (iv) The contributor's occupation;
- 5 (v) The contributor's employer, or if self-employed, the name of
- 6 the contributor's business; and
- 7 (vi) The committee to which the contribution was made.

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

11 ~~(J) Any amendments to the lobbyist's registration information required by~~  
12 ~~Subsection (b).~~

13 ~~(K)(J)~~ Any other information required by the Ethics Commission through  
14 regulation consistent with the purposes and provisions of this Chapter.

15 (2) **Expenditure lobbyists.** Each expenditure lobbyist shall report to the Ethics  
16 Commission the following information:

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

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

23 (C) Each payment of \$1,000 or more made during the reporting period,  
24 including the date of payment, the name and address of each person receiving the payment, a  
25

1 description of the payment, and a description of the consideration for which the payment was  
2 made.

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

10 The following information regarding each campaign contribution shall be  
11 submitted to the Ethics Commission:

- 12 (i) The amount of the contribution;
- 13 (ii) The name of the contributor;
- 14 (iii) The date on which the contribution was made;
- 15 (iv) The contributor's occupation;
- 16 (v) The contributor's employer, or if self-employed, the name of  
17 the contributor's business; and
- 18 (vi) The committee to which the contribution was made.

19 ~~(E) Any amendments to the lobbyist's registration information required by~~  
20 ~~Subsection (b).~~

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

23 (d) DUTY TO UPDATE INFORMATION. Lobbyists shall amend any information submitted  
24 to the Ethics Commission through registration and monthly disclosures within five days of the changed  
25 circumstances that require correction or updating of such information.



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

5           ~~(e)~~(f) **FEES; TERMINATION OF REGISTRATION.**

6           (1) At the time of registration each lobbyist shall pay a fee of \$500. On or  
7 before every subsequent February 1, each registered lobbyist shall pay an additional fee of  
8 \$500.

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

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

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

17           **SEC. 2.115. LIMITS AND PROHIBITIONS.**

18           (a) **GIFT ~~LIMIT~~ PROHIBITION.**

19           (1) No lobbyist shall make any gifts, including any gift of travel, to an officer of the  
20 City and County, or to a parent, spouse, domestic partner registered under state law, or dependent  
21 child of an officer of the City and County that have a fair market value of more than \$25, except for  
22 those gifts that would qualify for one of the exemptions under Section 3.216(b) of this Code and its  
23 implementing regulations. No lobbyist shall make any payment to a third-party for the purpose of  
24 paying for a gift or any part of a gift, including any gift of travel, to an officer of the City and County,  
25

1 or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of  
2 the City and County.

3 (2) No officer of the City and County may accept or solicit any gift, including any gift of  
4 travel, from any lobbyist for the officer's personal benefit or for the personal benefit of the officer's  
5 parent, spouse, domestic partner registered under state law, or dependent child. No officer of the City  
6 and County may accept or solicit any gift, including any gift of travel, from a third-party if the officer  
7 knows or has reason to know that the third-party is providing the gift or gift of travel on behalf of a  
8 lobbyist.

9 (3) Exception for gifts of food or refreshment provided by 501(c)(3) nonprofit  
10 organizations. Notwithstanding the prohibitions set forth in subsections (1) and (2), lobbyists may offer  
11 gifts of food or refreshment worth less \$25 or less per occasion, and officers of the City and County  
12 may accept such gifts, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or  
13 refreshment is offered in connection with a public event held by the 501(c)(3) nonprofit organization,  
14 and the same gift of food or refreshment is made available to all attendees of the public event.

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

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

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

24 (e) **CAMPAIGN CONTRIBUTIONS - PROHIBITIONS.**

1                   (1) A City elective officer or candidate for City elective office may not accept a  
2 contribution from a lobbyist, and a lobbyist may not make a contribution to a City elective officer or  
3 candidate for City elective office, if that lobbyist is registered to lobby the agency of the City elective  
4 officer or the agency for which the candidate is seeking election.

5                   (2) If a lobbyist has failed to disclose which agencies the lobbyist attempts to influence,  
6 as required by Section 2.110(b), the lobbyist may not make a contribution to any City elective officer or  
7 candidate for City elective office, or any City elective officer's or candidate's controlled committees.

8                   **(f) BUNDLING OF CAMPAIGN CONTRIBUTIONS - PROHIBITIONS.**

9                   (1) No lobbyist shall deliver or transmit, or deliver or transmit through a third party,  
10 any contribution made by another person to any City elective officer or candidate for City elective  
11 office, or any City elective officer's or candidate's controlled committees, if that lobbyist is registered  
12 to lobby the agency for which the candidate is seeking election or the agency of the City elective officer.

13                   (2) If a lobbyist has failed to disclose which agencies the lobbyist attempts to influence,  
14 as required by Section 2.110(b), the lobbyist may not deliver or transmit, or deliver or transmit through  
15 a third party, any contribution made by another person to any City elective officer or candidate for City  
16 elective office, or any City elective officer's or candidate's controlled committees.

17                   **(g) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.** For purposes of the  
18 contribution limits imposed by subsections (e) and (f), the contributions of an entity whose  
19 contributions are directed and controlled by any lobbyist shall be aggregated with contributions made  
20 by that lobbyist as set forth in Section 1.114(c).

21                   **(h) REGULATIONS.** The Ethics Commission may adopt regulations implementing this  
22 Section 2.115, but such regulations may not establish any exceptions from the limits and prohibitions  
23 set forth therein.

1           Section 2. Scope of Ordinance. In enacting this ordinance, the People of the City and  
2 County of San Francisco intend to amend only those words, phrases, paragraphs,  
3 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other  
4 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions  
5 or deletions, in accordance with the “Note” that appears under the official title of the  
6 ordinance.

7  
8           Section 3. Appropriation. There is hereby appropriated \$100,000 from the General  
9 Reserve to fund administrative and enforcement costs required to implement this ordinance.  
10 Any portion of this appropriation that remains unspent at the end of Fiscal Year 2016-17 shall  
11 be carried forward and spent in subsequent years for the same purpose. Additionally, it shall  
12 be City policy in all fiscal years following depletion of this original appropriation that the Board  
13 of Supervisors shall annually appropriate \$5,000 for this purpose, to be adjusted annually to  
14 reflect changes in the California Consumer Price Index and rounded off to the nearest \$100.

15  
16           Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word  
17 of this ordinance, or any application thereof to any person or circumstance, is held to be  
18 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
19 shall not affect the validity of the remaining portions or applications of the ordinance. The  
20 voters hereby declare that they would have passed this ordinance and each and every  
21 section, subsection, sentence, clause, phrase, and word not declared invalid or  
22 unconstitutional without regard to whether any other portion of this ordinance or application  
23 thereof would be subsequently declared invalid or unconstitutional.

1 Section 5. Effective and Operative Dates. This ordinance shall become effective 10  
2 days after the Board of Supervisors declares the results of the November 8, 2016 election.  
3 This ordinance shall become operative on January 1, 2018.

4  
5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7 By: \_\_\_\_\_  
8 ANDREW SHEN  
9 Deputy City Attorney

10 n:\legana\as2016\1600736\01113030.docx

**Attachment 3**  
**Comparison of Proposed New Language**  
**for City Lobbying Law in Each Draft Initiative Ordinance**

<b>JUNE APPROACH</b> <i>(Attachment 1)</i>	<b>JULY ALTERNATIVE</b> <i>(Attachment 2)</i>
<p>SEC. 2.100. FINDINGS. <u><i>(b) To increase public confidence in the fairness and responsiveness of governmental decision making, it is the further purpose and intent of the people of the City and County of San Francisco to restrict gifts, campaign contributions, and bundled campaign contributions from lobbyists to City officers so that governmental decisions are not, and do not appear to be, influenced by the giving of personal benefits to City officers by lobbyists, or by lobbyists' financial support of City officers' political interests.</i></u></p>	<p>SEC. 2.100. FINDINGS. <u><i>(b) To increase public confidence in the fairness and responsiveness of governmental decision making, it is the further purpose and intent of the people of the City and County of San Francisco to restrict gifts, campaign contributions, and bundled campaign contributions from lobbyists to City officers so that governmental decisions are not, and do not appear to be, influenced by the giving of personal benefits to City officers by lobbyists, or by lobbyists' financial support of City officers' political interests.</i></u></p>
<p>SEC. 2.103. AMENDMENT OR REPEAL. With respect to any provisions of this Chapter regarding regulation of expenditure lobbyists, <u><i>or restrictions on gifts, campaign contributions, or bundled campaign contributions from lobbyists,</i></u> approved by the voters, the Board of Supervisors may amend those provisions if all of the following conditions are met: ...</p>	<p>SEC. 2.103. AMENDMENT OR REPEAL. With respect to any provisions of this Chapter regarding regulation of expenditure lobbyists, <u><i>registration requirements, amendment of registration information and monthly disclosures, or restrictions on gifts, campaign contributions, or bundled campaign contributions from lobbyists,</i></u> approved by the voters, the Board of Supervisors may amend those provisions if all of the following conditions are met: ...</p>
<p>SEC. 2.105. DEFINITIONS.</p> <p><i>[no definition of "agency"]</i></p> <p><u><i>"Committee" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.</i></u></p> <p><u><i>"Contribution" shall have the same meaning as set forth in the California Political Reform Act, California Government Code Section 81000, et seq.</i></u></p> <p><u><i>"Controlled committee" shall have the same meaning as set forth in Section 1.104 of this Code, but shall not include any state committees.</i></u></p>	<p>SEC. 2.105. DEFINITIONS.</p> <p><u><i>"Agency" shall mean a unit of City government that submits its own budget to the Mayor and Board of Supervisors pursuant to Article IX of the City Charter.</i></u></p> <p><u><i>"Committee" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.</i></u></p> <p><u><i>"Contribution" shall have the same meaning as set forth in the California Political Reform Act, California Government Code Section 81000, et seq.</i></u></p> <p><u><i>"Controlled committee" shall have the same meaning as set forth in Section 1.104 of this Code, but shall not include any state committees.</i></u></p>

**Attachment 3**  
**Comparison of Proposed New Language**  
**for City Lobbying Law in Each Draft Initiative Ordinance**

“Dependent child” shall mean a child or stepchild of a public official, who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.

“Election cycle” shall mean the period beginning when a candidate forms a committee for election to City elective office and concluding (a) if the candidate was elected, either at the end of the candidate’s term in office or on the date on which the candidate forms a committee for election to another City elective office, whichever is earlier, or (b) if the candidate was not elected, the date of the election.

“Gift of travel” shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

“Public event” shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

“State committee” shall mean a committee formed to support or oppose candidates for state office or state ballot measures

[no registration amendments process]

“Dependent child” shall mean a child or stepchild of a public official, who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.

[no definition of “election cycle”]

“Gift of travel” shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

“Public event” shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

“State committee” shall mean a committee formed to support or oppose candidates for state office or state ballot measures.

SEC. 2.110. REGISTRATION AND DISCLOSURES; FEES; TERMINATION OF REGISTRATION.

(b) REGISTRATION.

(1) Contact lobbyists.

(D) Each agency that the contact lobbyist has attempted or will attempt to influence on behalf of any client; and...

(2) Expenditure lobbyists.

(D) Each agency that the expenditure lobbyist has made or will make payments to influence; and...

(d) DUTY TO UPDATE INFORMATION. Lobbyists shall amend any information submitted to the Ethics Commission through registration and monthly disclosures within five days of the changed circumstances that require correction or updating of such information.

**Attachment 3**  
**Comparison of Proposed New Language**  
**for City Lobbying Law in Each Draft Initiative Ordinance**

SEC. 2.115. LIMITS AND PROHIBITIONS.

(a) GIFT ~~LIMIT~~ PROHIBITION.

(1) No lobbyist shall make any gifts, including any gift of travel, to an officer of the City and County, or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County that have a fair market value of more than \$25, except for those gifts that would qualify for one of the exemptions under Section 3.216(b) of this Code and its implementing regulations. No contact lobbyist shall make any payment to a third-party for the purpose of paying for a gift or any part of a gift, including any gift of travel, to an officer of the City and County, or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County.

(2) No officer of the City and County may accept or solicit any gift, including any gift of travel, from any lobbyist for the officer's personal benefit or for the personal benefit of the officer's parent, spouse, domestic partner registered under state law, or dependent child. No officer of the City and County may accept or solicit any gift, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the gift or gift of travel on behalf of a lobbyist.

(3) Exception for gifts of food or refreshment provided by 501(c)(3) nonprofit organizations. Notwithstanding the prohibitions set forth in subsections (1) and (2), lobbyists may offer gifts of food or refreshment worth less \$25 or less per occasion, and officers of the City and County may accept such gifts, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501(c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event.

SEC. 2.115. LIMITS AND PROHIBITIONS.

(a) GIFT ~~LIMIT~~ PROHIBITION.

(1) No lobbyist shall make any gifts, including any gift of travel, to an officer of the City and County, or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County that have a fair market value of more than \$25, except for those gifts that would qualify for one of the exemptions under Section 3.216(b) of this Code and its implementing regulations. No contact lobbyist shall make any payment to a third-party for the purpose of paying for a gift or any part of a gift, including any gift of travel, to an officer of the City and County, or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County.

(2) No officer of the City and County may accept or solicit any gift, including any gift of travel, from any lobbyist for the officer's personal benefit or for the personal benefit of the officer's parent, spouse, domestic partner registered under state law, or dependent child. No officer of the City and County may accept or solicit any gift, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the gift or gift of travel on behalf of a lobbyist.

(3) Exception for gifts of food or refreshment provided by 501(c)(3) nonprofit organizations. Notwithstanding the prohibitions set forth in subsections (1) and (2), lobbyists may offer gifts of food or refreshment worth less \$25 or less per occasion, and officers of the City and County may accept such gifts, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501(c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event.



**Attachment 3**  
**Comparison of Proposed New Language**  
**for City Lobbying Law in Each Draft Initiative Ordinance**

(e) CAMPAIGN CONTRIBUTION LIMITS.

(1) No lobbyist shall make any contribution which will cause the total amount contributed by that lobbyist to any candidate, including the candidate's controlled committees, to exceed \$100 in an election cycle.

(2) No candidate may accept or solicit any contribution from a lobbyist which will cause the total amount contributed by that lobbyist to the candidate, including the candidate's controlled committees, to exceed \$100 in an election cycle.

(f) BUNDLING OF CAMPAIGN CONTRIBUTIONS - LIMITS.

No lobbyist shall deliver or transmit, or deliver or transmit through a third party, any contribution made by another person to any candidate, or the candidate's controlled committees, if the total combined amount of the contributions delivered or transmitted by the lobbyist and contributions made by the lobbyist to the candidate exceeds the amount of the contribution limit established in subsection 2.115(e).

(g) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS. For purposes of the contribution limits imposed by subsections (e) and (f), the contributions of an entity whose contributions are directed and controlled by any lobbyist shall be aggregated with contributions made by that lobbyist as set forth in Section 1.114(c).

(e) CAMPAIGN CONTRIBUTIONS - PROHIBITIONS.

(1) A City elective officer or candidate for City elective office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to a City elective officer or candidate for City elective office, if that lobbyist is registered to lobby the agency of the City elective officer or the agency for which the candidate is seeking election.

(2) If a lobbyist has failed to disclose which agencies the lobbyist attempts to influence, as required by Section 2.110(b), the lobbyist may not make a contribution to any City elective officer or candidate for City elective office, or any City elective officer's or candidate's controlled committees.

(f) BUNDLING OF CAMPAIGN CONTRIBUTIONS - PROHIBITIONS.

(1) No lobbyist shall deliver or transmit, or deliver or transmit through a third party, any contribution made by another person to any City elective officer or candidate for City elective office, or any City elective officer's or candidate's controlled committees, if that lobbyist is registered to lobby the agency for which the candidate is seeking election or the agency of the City elective officer.

(2) If a lobbyist has failed to disclose which agencies the lobbyist attempts to influence, as required by Section 2.110(b), the lobbyist may not deliver or transmit, or deliver or transmit through a third party, any contribution made by another person to any City elective officer or candidate for City elective office, or any City elective officer's or candidate's controlled committees.

(g) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS. For purposes of the contribution limits imposed by subsections (e) and (f), the contributions of an entity whose contributions are directed and controlled by any lobbyist shall be aggregated with contributions made by that lobbyist as set forth in Section 1.114(c).

**Attachment 3**  
**Comparison of Proposed New Language**  
**for City Lobbying Law in Each Draft Initiative Ordinance**

(h) REGULATIONS. The Ethics Commission may adopt regulations implementing this Section 2.115, but such regulations may not establish any exceptions from the limits and prohibitions set forth therein.

[no appropriation]

Section 4. Effective and Operative Dates.

This ordinance shall become effective 10 days after the Board of Supervisors declares the results of the November 8, 2016 election. This ordinance shall become operative on January 1, 2017.

(h) REGULATIONS. The Ethics Commission may adopt regulations implementing this Section 2.115, but such regulations may not establish any exceptions from the limits and prohibitions set forth therein.

Section 3. Appropriation. There is hereby appropriated \$100,000 from the General Reserve to fund administrative and enforcement costs required to implement this ordinance. Any portion of this appropriation that remains unspent at the end of Fiscal Year 2016-17 shall be carried forward and spent in subsequent years for the same purpose. Additionally, it shall be City policy in all fiscal years following depletion of this original appropriation that the Board of Supervisors shall annually appropriate \$5,000 for this purpose, to be adjusted annually to reflect changes in the California Consumer Price Index and rounded off to the nearest \$100.

Section 5. Effective and Operative Dates.

This ordinance shall become effective 10 days after the Board of Supervisors declares the results of the November 8, 2016 election. This ordinance shall become operative on January 1, 2018.

## Item 4 -- Attachment 4

**From:** LARRY BUSH  
**To:** [sharyn saslafsky](#); [Hulda Garfalo](#); [Oliver Luby](#); [Joseph Kelly](#); [Charles Marsteller](#); [Elena Schmid](#); [bob dockendorff](#); [Paul H.Melbostad](#); [Marc Saloman](#); [Robert vanRavenswaay](#); [Bob Planthold](#); [Joe Julian](#); [Paul Ryan](#); [John](#); [Alex Kaplan](#); [Zach Goldfine](#); [REDACTED]; [REDACTED]  
**Cc:** [Pelham, LeeAnn \(ETH\)](#); [REDACTED]; [REDACTED]; [Peter Keane](#)  
**Subject:** What a convicted lobbyist says about small gifts  
**Date:** Tuesday, July 05, 2016 10:31:12 AM

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A DC lobbyist convicted of corruption tells the story of what a little amount of money can do. Its why Represent US and Friends of Ethics seek to have the Commission put a measure on the November ballot banning gifts and contributions and bundling by lobbyists.

<http://www.nytimes.com/2016/07/06/us/politics/is-the-supreme-court-clueless-about-corruption-ask-jack-abramoff.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&r=0>

“When somebody petitioning a public servant for action provides any kind of extra resources — money or a gift or anything — that affects the process,” Mr. Abramoff said.

He should know.

Once a man with gold-plated Republican connections and easy access to the White House and Capitol leadership suites, Mr. Abramoff and his partners were masters of spreading favors around Washington. They parceled out tickets to major sporting events, escorted influential officials on all-expenses-paid golf junkets, paid the tabs for lavish dinners and cozied up to politicians at Signatures, a restaurant Mr. Abramoff once owned on Pennsylvania Avenue.

All the while they were soliciting and obtaining help on issues ranging from gambling to wages to tax policy.

Dear Chair Renne and Executive Director Pelham:

On behalf of Friends of Ethics, we want to extend our appreciation to the Commission and staff for the careful consideration at the June 27 Commission meeting on the proposal for a ballot measure dealing with lobbyist contributions, gifts and bundling.

We respect and appreciate the Commission's serious and weighty consideration, in particular those approaches that can meet the objective of reducing undue influence while complying with constitutional guarantees.

Friends of Ethics strongly urges the Commission to vote to place a measure on the November ballot that seeks to address perceived and perhaps actual undue influence by lobbyists on those city officials they lobby or candidates for offices they lobby.

In light of the current discussion, Friends of Ethics concurs with the proposal being made by Represent US that the Commission strive to produce a new draft Motion by close of business Friday, July 15, for inclusion in the final proposed Motion to be released by close of business on Wednesday, July 20.

While Friends of Ethics will enthusiastically support whichever option the Commission deems best meets the public need, our strong preference is for Option One relying on existing state law with adaptations for San Francisco circumstances.

At the June 27<sup>th</sup> meeting, the Commission asked for two options to be presented at the July Commission meeting in order to complete its decision and to place a measure on the November ballot.

Friends of Ethics respectfully offer our views on the two options outlined to staff by the Commission.

## **OPTION ONE: STATE LAW SPECIFIC TO SAN FRANCISCO'S APPLICATION**

Adapting the State of California law to San Francisco circumstances makes this potential measure easy to explain to the public, has the advantage that registered lobbyists who also are registered in Sacramento (or in Los Angeles) are familiar with its provisions, requires minimal adjustments, and provides an existing body of regulatory law and opinions that address issues that may arise under the measure.

The state law also applies in cases that carry the greatest potential for pay-to-play politics in ways that the staff draft does not.

It should be noted that the San Francisco city lobbyist in Sacramento is bound by these same state law provisions.

**Friends of Ethics Recommendation:** Using those parts of the state law that are applicable to San Francisco provides a strong and simpler platform for this potential measure.

### **Rationale for our recommendation:**

#### **1. State law covers additional committees:**

Under the state law, as described in the FPPC Lobbyist Manual, registered lobbyists may not mail, deliver or otherwise transmit a campaign contribution, including a monetary contribution, from their own assets to:

- An elected state official
- A candidate for elective state office
- A candidate-controlled committee including a legal defense fund committee, a ballot measure committee, or other committee controlled by the officeholder.
- A committee primarily formed to support or oppose such a candidate if the candidate is seeking an office with, or the official is an elected officeholder of an agency the lobbyist is registered to lobby.

It is this last prohibition – contributions to a committee formed to support or oppose a candidate or officeholder – that holds the greatest promise to curtail undue influence. This is because there is no limit on contributions to these committees and there is no restriction on the source of the contribution, including bidders and contractors with the City and County of San Francisco.

Examples of such committees in San Francisco since 2011:

- *“Committee for a Progressive and Affordable San Francisco Opposing Peskin for Supervisors 2015” that raised \$447,649.*

- *“San Franciscans to Hold Jane Kim Accountable, Vote No on Kim”*
- *“Educating Voters for Jobs Against Avalos and Adachi for Mayor, a committee opposed to Avalos 2011.”*
- *“Friends of Julie Christensen Committee” organized to support Christensen and defeat Peskin*
- *Cunnie for Sheriff 2011 Committee” funded by the Police Officers Association*
- *“Committee for Effective City Management — A Committee in Support of Ed Lee for Mayor 2011”*
- *San Franciscans for Safe Streets and Sound Government — a committee for Lee Mayor 2011, Gascon District Attorney 2011 and Cunnie for Sheriff 2011”*
- *“City Resident Opposing Ed Lee for Mayor 2011, sponsored by American Federation of State, County and Municipal Employees and AFSCME”*
- *“San Franciscans for Jobs and Good Government, Supporting Ed Lee for Mayor 2011”*
- *“Committee for a Safer San Francisco, Sharmin Bock for District Attorney, 2011”*
- *“SEIU United Healthcare Workers West, Supporting Ed Lee for Mayor”*
- *“Committee for a Safer California” operating as a state committee but whose expenditures was exclusively to elect Ed Lee as Mayor in 2011*

The description of a committee primarily formed to elect or defeat a candidate should also include a Recall Committee (either for or against)(Sec. 14.103) and a “Draft Committee” as enacted into San Francisco law that seeks to encourage a specific person to file as a candidate for office (Section 1.160)

**State law is similar to Current Draft:** State law also defines a candidate committee in the same comprehensive manner as the current staff draft. It would apply to a legal defense fund committee, a ballot measure committee, and a committee controlled by the candidate.

The prohibition applies to the lobbyist and to a lobbying firm if it is owned in whole or in part by a lobbyist and the lobbyist participated in the decision to make the contribution.

## **2 Inclusion of specific 'state' committees**

The Current Draft notes that the ban on contributions may not, under state law, apply to committees to elect to a state office or to a state partisan office. These

“state committee” prohibitions do not preclude the Commission from incorporating in the ban other types of state committees, notably state general purpose committees to the extent that they are active in San Francisco elections or state slate mailer organizations.

**Recommendation re: additional state committees:** Friends of Ethics recommends that State committees that are not specifically exempted by the state law from local oversight should be included in this legislation:

**Rationale:** Both state general purpose committees and state slate mailer committees are a back door to unlimited contributions from otherwise prohibited sources in San Francisco. In some cases, these committees spend funds exclusively in San Francisco but are organized as state committees for the advantage of more lax reporting schedules.

As state entities, these committees disclose their donors and spending on a different reporting schedule – at times months or even a year after an election. Because of this, it is not possible for the Ethics Commission to monitor the contributors in a timely manner during the election season.

As one example, the Committee for a Safer California is a state committee that spent its entire budget for a San Francisco election. A quirk of California law exempts the committee from having to file Pre-election reports in odd-numbered years (2009, 2011, etc). Thus, the public could be completely deprived of disclosure about this committee’s financial backers until after the election

### **3. Fundraising/Bundling**

There is an important distinction between state law and the proposal for a San Francisco adapted version in that the state law does not prohibit bundling.

**Recommendation:** Friends of Ethics recommends that under the proposal to adapt the state law to San Francisco, the existing San Francisco regulations defining fundraising should be applied as prohibitions.

**Rationale:** The San Francisco Ethics Commission’s previously adopted regulations that spell out in detail what constitutes lobbyist fundraising in Regulation 2.110-4. Under the current San Francisco law, these fundraising disclosures are not prohibitions.

The definition of bundling is well covered under “fundraising” in the City’s

Regulation 2.110-4. If the Commission decides to include a ban on bundling which Friends of Ethics strongly recommends, the list of activities in Regulation 2.110-4 provides a structure and an approach that can be further defined in future regulations.

**Recommendation:** Friends of Ethics strongly urges that the regulations, if not the law itself, specify that a lobbyist may not serve on the Finance Committee or as a fundraiser for a candidate or officeholder.

## 5. Lobbyist Categories in state law and proposal for San Francisco

A critical difference between the state law (and as adopted in Los Angeles) is that the ban on contributions is based on a lobbyist's registration indicating which offices they are authorized to lobby. San Francisco does not have a similar registration system.

**Recommendation:** Friends of Ethics acknowledges the difference between state law and San Francisco in terms of certifying who is lobbied, but in the absence of this specific authorization, the presumption must be that the lobbyist is authorized to lobby all of the City and County agencies and so this difference should not inhibit the use of state law.

**Rationale:** In practice in Los Angeles, if a lobbyist does not indicate a specific office or, as is the case in Los Angeles indicates it is authorized to lobby "all" offices, then the ban on contributions applies to all officers and candidates.

The Current Draft does ban contributions to any office holder or candidate, so it could be interpreted that San Francisco draft is an across-the-board ban.

Since San Francisco is largely unified city government, it often happens that decisions made by commissions are subject to review and approval by the mayor and the Board of Supervisors. Thus lobbying a commission or the mayor implicitly involves lobbying the Board of Supervisors.

The Board's own proposed ordinances and decisions are required by law to be sent to city departments for their comments and input before being heard in committee and adopted or defeated.

This same unified approach applies to decisions made by other city elected officials, including the Treasurer, Assessor, City Attorney, Sheriff, Public Defender, and District Attorney. In each case, their budget and decisions on



priorities is ultimately reviewed and approved by the mayor and the Board of Supervisors, making it inherently the business of the lobbyist to ensure the client's interests are carried through the full process.

There are two potential exceptions: the School Board and the Community College Board. While both these agencies have a connection to the City, they are not linked or unified with city government in the way that the city's executive and legislative branches are.

## **6. Lobbyist Gifts/Earmarked Gifts**

The Current Draft proposes a ban on gifts to include gifts earmarked through third parties to pay for an official's travel.

The original proposal from Represent US included a ban to any third party entity earmarked for the benefit of an official or candidate. Friends of Ethics supported that provision, and urges that it be restored to the Commission's final language.

**Recommendation:** Friends of Ethics urges the Commission to prohibit lobbyist contributions and bundling to any third party entity earmarked to benefit a candidate or officeholder, or that are made by lobbyists at the behest of a city official.

**Rationale:** Inaugural Expenses (Regulation 1.108-1) may, but are not required, to be paid from a candidate's campaign expenses. An inaugural committee can be a nonprofit public benefit corporation "that is not created or under the control of an elected officeholder, and is not subject to the CFRO."

Other nonprofits can operate as a virtual arm of a candidate's campaign, providing get-out-the-vote services from transportation to collecting absentee ballots. In some cases, they do so selectively by neighborhoods targeted to be the largest support votes for the candidate they favor.

As a nonprofit entity, the donors are not publicly disclosed and the nonprofit files annually as much as a year or two years after the inaugural celebration. These committees are intended to benefit the officeholder, do not provide a public benefit equal to the potential benefit of travel to a conference or to meet with other officials, and in some cases are never reported in any document. Because the expenditure is not considered to be a gift to the official, contributions also do

not fall within the gift limits.

**Recommendation:** Friends of Ethics urges the Commission to consider including a prohibition of contributions by lobbyists made at the behest of a city official. The record of behest payments (<http://www.sfethics.org/ethics/2012/05/payments-made-at-the-behest-of-an-elected-officer.html>) discloses contributions by registered lobbyists that pay for additional staff for the official, for upgraded office furniture, and for researchers and equipment.

Behest payments by registered lobbyists include \$608,000 from sf.citi at the behest of Supervisor Mark Farrell, \$10,000 from the San Francisco Association of Realtors, \$5,000 from Recology, \$6.8 million from Google requested by Mayor Lee, \$5,000 from AT&T behested by Supervisor Mark Farrell, \$25,000 from Lennar Community at the behest of District Attorney George Gascon, \$5,000 from Golden State Warriors at the behest of Supervisor Farrell (partial list).

The purpose of the contributions that are often laudable is not an issue. Elected officeholders asking registered lobbyists to make significant contributions for a specific purpose is a significant issue similar in all respects to lobbyist contributions for an official's travel.

It deserves a review by Ethics and consideration for inclusion in the proposed lobbyist ordinance.

## **7. Exemptions for Nonprofits**

Friends of Ethics recognizes that nonprofits are vital partners with the official city efforts to meet the needs of the community, and particularly the vulnerable members of our community

San Francisco enjoys the strong support of many community members who contribute to efforts that improve city government and that recognize the contribution of city employees. In some cases, these events are hosted and funded by registered lobbyists.

While Friends of Ethics opposed the proposals submitted to the Commission by two organizations in a May 20 letter, we believe that the restriction on lobbyist contributions would rarely apply to events that are public and where city officials are not provided any considerations that exceed the \$25 limit.

## 8. Implementation Steps

Represent US outlines updated amendments to ensure the careful application of these new provisions and a series of coordinated steps to be undertaken. Friends of Ethics concurs and supports in all respects the points recommended to the Commission by Represent US. They will enhance the transition to the new provision that will take into consideration the need for the regulated community to adapt and for the Commission to prepare for the implementation.

### **OPTION TWO: CAPPING, NOT BANNING, LOBBYIST CONTRIBUTIONS AND BUNDLING**

The Commission asked for a second option to be drafted that builds on the staff draft and the comments from Represent US.

Its main features are a cap on lobbyist contributions of \$100, which is aggregated both in terms of candidate-controlled committees and contributions bundled by a lobbyist.

The proposal also includes extending the ban on gifts to include gifts to a third party that pays for an official's travel expenses.

Friends of Ethics support the thrust of these recommendations while recommending Option One based on the state law remains the preferred option.

Friends of Ethics do have some additional recommendations as noted above:

- the ballot measure include the state provision cited above on contributions to committees that oppose or support a candidate even if not controlled by the candidate.
- lobbyist contributions to nonprofits and third party entities that are earmarked for a specific officeholder or are made at the behest of a city official needs to be treated the same as a contribution that pays for travel.
- the contribution cap would apply to all lobbyists regardless of whether the lobbyist seeks to influence officials at the School District, College District, or the city's executive or legislative departments. A lobbyist who only

lobbies city departments and the board would be restricted to a \$100 contribution cap and bundling cap with regards to candidates for the school board or community college district.

In other respects, including the provisions providing for amending the law, enacting regulations, the Intent and Purpose of the law, and penalties, Option One and Option Two are the same.

Larry Bush for Friends of Ethics

Friday, July 8, 2016

To: San Francisco Ethics Commission

From: Alex Kaplan – Policy Director, Represent.Us

**Re: Final edits to proposed San Francisco lobbyist restrictions ballot measure**

Dear Commissioners and Director Pelham,

On behalf of Represent.Us, I want to thank you for your continued dedication to the thoughtful development of the proposed lobbyist gift, contribution, and bundling restrictions for San Francisco. These reasonable restrictions will significantly enhance voter confidence in City government and ensure that lobbyists can focus on the provision of information expertise and not feel pressured to make gifts or make or bundle campaign contributions.

I would like to request that the Ethics Commission staff strive to produce the new draft Motion by close of business Friday, July 15. This will allow interested persons to submit suggestions for small yet necessary changes by close of business Monday, July 18, for inclusion in the final proposed Motion to be released by Wednesday, July 20.

Below I include three recommendations that I hope the Commission and staff find useful in updating the Motion draft to reflect the discussion at the June Commission meeting.

**Recommendation 1: Shift the lobbyist contribution restriction from a “blanket” low limit to a “tailored” ban.**

Much of the discussion at the June Commission meeting focused on whether to structure the lobbyist contribution restriction either as a low limit that applies to all recipients (whether or not the lobbyist has registered to contact those recipients) or as a ban that applies only when the lobbyist has registered to contact those recipients. Various court opinions have upheld both structures.

As you are aware, Represent.Us originally suggested that the restriction be structured as a low limit that applies to all lobbyist contributors giving to all City-level recipients. While we believe that a “blanket” low limit is beneficial in its simplicity and avoids the need for the Commission to preemptively address the problematic tactics of swift “post-contribution registration” or “pre-contribution de-registration” (see below under “E”), we agree with the Commissioners and Friends of Ethics members that modeling the restriction after state law is useful and acknowledge that a tailored ban is also beneficial in its simplicity.

Therefore, we support the shift to a tailored ban, but urge the Commission staff to draft the updated Motion to amend Sec. 2.115(a) to ensure that:

- A. The ban does not take effect until currently-registered and newly-registering lobbyists can indicate which elected City offices they want to register to lobby.

- B. Lobbyists have the option on the registration form to simply indicate that they want to register to lobby *all* elected City office.
- C. A reasonable timeframe is set by which the Commission staff must update the lobbyist registration forms to allow for this selection.
- D. The contribution ban applies when the recipient is not just a person holding a City elected office that the lobbyist is registered to lobby, but also when the person is a *candidate for* a City elected office that the lobbyist is registered to lobby.
- To include candidates who may assume the office the lobbyist is registered to lobby is sensible foremost because the lobbyist is preemptively registered to lobby the candidate upon the assumption of office. Moreover, the United States District Court for the Eastern District of California recognized that “the threat of contributing to a legislator's challenger can supply as powerful an incentive as contributing to that legislator himself” – this was in the 2001 case that upheld as constitutional the current California state-level tailored lobbyist contribution ban that the Commissioners have asked that this Motion be modeled after (*Inst. of Governmental Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183, 1190 (E.D. Cal. 2001), quoting the Fourth Circuit Court of Appeals).
- E. The staff has considered whether and how to address the problematic scenarios of “pre-contribution de-registration” and “post-contribution registration.”
- The scenario of “pre-contribution de-registration” – where a lobbyist contacts a City elected official, soon after updates their registration to no longer be registered to lobby that official’s office, and then makes a contribution to that official – is problematic. Commission staff should consider adding a “de-registration buffer,” where the ban continues to apply for a reasonable time after the lobbyist updates their registration to no longer be registered to lobby the City office. In lieu of, or in addition to, the use of a static period of time, the Commission may want to extend the contribution ban throughout the calendar year of an election year if the lobbyist was registered to lobby the City office any time within that calendar year.
  - The related scenario of “post-contribution registration” – where a lobbyist makes a contribution to an official or candidate whose office or target office the lobbyist is not registered to lobby, and then soon after registers to lobby that office – is more difficult to preemptively address than pre-contribution de-registration because of the practical difficulty of requiring a lobbyist to predict who they may need to register to lobby.
  - Note: However, the significance of the problems presented by these scenarios is substantially diminished if the lobbyist gift and bundling bans are *not* similarly “tailored” to the registration targets of the lobbyist (as is discussed and recommended below in Recommendation 2). If Recommendation 2 is followed, the “worst case” situation of post-contribution registration is one in which a lobbyist contributes the current \$500 maximum to an elected official and then

immediately registers to lobby that office. While this would reasonably read as a circumvention tactic and appear disingenuous to the public, as a problem it pales in comparison to what could happen if the gift and bundling bans are also tailored to registration targets: a lobbyist seeking to circumvent the bans could, in addition to making the \$500 maximum contribution, also make significant gifts and deliver unlimited amounts in bundled contributions to the official (recall that we have seen over \$80,000 bundled by one lobbyist in recent history) and then immediately register to lobby their office.

- Therefore, we recommend that Commission staff draft the Motion to prevent swift pre-contribution de-registration, forego for the time being language to prevent post-contribution registration, and ensure that the gift and bundling bans apply regardless of lobbyist registration targets (as discussed immediately below in Recommendation 2).

### **Recommendation 2: Ensure that the lobbyist gift ban and bundling ban apply regardless of lobbyist registration targets.**

The quantitative and qualitative data compiled by the Ethics Commission staff and interested persons demonstrate that the status quo with regard to lobbyist travel gifts and contribution bundling very reasonably gives rise to a perception of corruption. Lobbyists registered in San Francisco have funded the extensive travel of City elected officials, and subsequently accompanied them on those trips. And in bundling contributions, lobbyists seeking legislative and administrative outcomes are able to take advantage of the contributions of others by delivering to an elected official far more than they themselves are allowed to contribute; one lobbyist delivered a bundle of contributions (almost all of which were of the maximum legal amount) that totaled over 160 times what the lobbyist himself could have donated on his own.

The actions of making a gift to an elected City official or bundling other persons' campaign contributions for an elected City official (or candidate for elected City office) are afforded at most very little constitutional protection, especially as compared to the demonstrated protection afforded to the making of a political contribution. And where the person making the gift or contribution, or bundling contributions, is a lobbyist, the higher risk of corruption or its appearance inherent to the lobbying profession is a strong justification for restrictions on such activity.

Because of the difference in demonstrated constitutional protection, "registration target tailoring" as encouraged above in Recommendation 1 is an important mechanism to carefully ensure the constitutionality of a lobbyist *contribution ban*, but such tailoring is not necessary to justify a lobbyist gift ban or lobbyist bundling ban. Moreover, as discussed above in sub-point "E" under Recommendation 1, ensuring that the lobbyist gift and bundling bans apply regardless of registration targets will prevent the substantial gift giving and bundling that presents a severe appearance of corruption and avoid the need to impractically and awkwardly address the situations in which gift giving or bundling occur immediately before lobbyist registration or immediately after deregistration.

**Recommendation 3: Define “bundled contribution” in the Motion’s definitions and further mirror state law.**

We recommend that Commission staff define “bundled contribution” in the definitions section of the Motion for simplicity in drafting subsection (f). Staff may want to consult North Carolina’s lobbyist contribution and bundling ban, located at N.C.G.S.A. § 163-278.13C. Note: North Carolina’s lobbyist contribution ban was upheld in 2011 by the Fourth Circuit Court of Appeals in *Preston v. Leake*, 660 F.3d 726 (4th Cir. 2011).

Furthermore, given the shift to mirror California law in the lobbyist contribution ban language, staff may want to seek to mirror California law in other areas of the draft Motion as appropriate. The state-level lobbyist contribution ban statute is located at Cal. Gov. Code § 85702, and the FPPC regulation implementing that statute is located at 2 CCR § 18572.

Thank you for your consideration of these recommendations. Please do not hesitate to contact me if I may provide any clarification.

Sincerely,

Alex Kaplan  
Policy Director, Represent.Us

