



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: April 7, 2009

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Supplemental Memo re Proposed Changes to Lobbyist Ordinance

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This memorandum supplements the March 4, 2009 staff memo regarding proposed changes to the Lobbyist Ordinance. Staff recommends that the Commission complete its consideration of decision points set forth in the March 4 memo before turning its attention to this memo.

**In general, the draft ordinance distributed to the Commission for its March 9, 2009 meeting does not include the new recommended changes discussed below (the six proposed amendments in Part I and the three modified technical changes in Part II (defining “candidate” and “measure” and recommending no change in the types of tax-exempt organizations whose employees are subject to fee waivers in section 2.110(e)(3)). Where staff's recommendations require text to be added to or deleted from the Lobbyist Ordinance, staff's suggested language is set forth in the appropriate sections.**

Part I of this memo sets out six proposed amendments that the Commission may wish to consider. Three of the proposals stem from the discussions at the March 9, 2009 meeting. The fourth proposal recommends the deletion of a provision requiring lobbyists to provide written notification of a gift to the recipient of the gift. The fifth proposal sets forth the effective date of the amendments. The sixth proposal recommends that the Commission urge the Board of Supervisors to consider promptly the proposed amendments.

Part II replicates the proposed technical amendments that appeared in the March 4, 2009 memo, as requested at the last meeting. Staff has made a few minor modifications to its prior recommendations, which are marked in underlined bold italic text. The Commission may take action on these technical items separately or as a whole.

Part III of this memo sets out the staff proposals that the Commission approved at its March 9, 2009 meeting.

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**Part I. New Proposed Amendments**

New Section 2.105(d)(1)(S): add on page 7 of the mark-up document, beginning on line 8 (after new section 2.105(d)(1)(R), which was approved with modification at the March 9 meeting): at the March 9 Commission meeting, Commissioners discussed whether an individual communicating on behalf of himself or herself is making a “contact” under the Ordinance. Under staff’s interpretation of its March 9 proposal, a lobbyist communicating with a City officer on behalf of herself, and not on behalf of a client is not making a contact. Staff believes that the exception is implicit in its proposal, based on the definition of a lobbyist as an individual who receives economic consideration and who, on behalf of the person providing economic consideration, makes any contact with a City officer to influence a legislative or administrative action. Requiring individuals to disclose their communications with public officials on their own behalf does not advance the public policy goals of the Lobbyist Ordinance. To avoid any confusion, staff proposes making this exception explicit in the law by adding the following exception to the definition of “contact,” beginning on line 8 on page 7:

*(S) An individual communicating on behalf of herself or himself, and not on behalf of the individual's client, employer or any other person.*

**Decision Point 40:** *Shall the Ordinance be amended to include an exception to state explicitly that an individual communicating on behalf of himself or herself with a City officer is not making a “contact” under the Ordinance?*

New Section 2.105(d)(2): add on page 7, beginning after proposed section 2.105(d)(1)(S) that starts on line 8: at the March 9 meeting, the Commission considered adding subsection 2.105(d)(2), which would list communications that are not “contacts” for the purpose of qualifying as a lobbyist, but are “contacts” for the purpose of lobbyist disclosures. Under staff’s interpretation, an individual providing oral information under section 2.105(d)(2)(A) or requesting the status of an action under section 2.105(d)(2)(B) is not making a contact for the purposes of qualifying as a lobbyist. However, an individual who has already qualified as a lobbyist and who provides oral information under section 2.105(d)(2)(A) or requests the status of an action under section 2.105(d)(2)(B) would be required to report such communications if they are made to influence local legislative or administrative action. In addition, in light of the Commission’s comments regarding section 2.105(d)(1)(R), staff recommends also including language regarding participation at an interested persons meeting. Staff proposes the following language, which will be inserted in the draft Ordinance on page 7, after proposed section 2.105(d)(1)(S):

*(2) The following activities are not “contacts” for the purpose of determining whether a person qualifies as a lobbyist, but are “contacts” for the purpose of disclosures required by this Chapter:*

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

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

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

**Decision Point 41:** *Shall the Ordinance be amended to include language in proposed section 2.105(d)(2) to provide that an individual providing oral information under section 2.105(d)(2)(A), requesting the status of an action under section 2.105(d)(2)(B), or participating in a public interested persons meeting under section 2.105(d)(2)(C) is not making a contact for the purpose of qualifying as a lobbyist, but would be a contact for the purpose of disclosure?*

New Section 2.110(c)(9). Lobbyist Disclosures: add on page 18, beginning on line 4: at the March 9 meeting, the Commission discussed whether the Ordinance should require lobbyists to disclose the names of experts who accompany them to meetings with City officers. If the Commission wishes to include such a requirement, it could do so by inserting subsection 2.110(c)(9) to require lobbyists to report the following information in their disclosures:

(9) For each contact at which a person providing purely technical data, analysis, or expertise was present, as provided in section 2.105(d)(1)(K), the name, address, employer and area of expertise of the person providing the data, analysis or expertise.

(Current proposed sections 2.110(c)(9) and (10) would be renumbered to reflect this change.)

**Decision Point 42:** *Shall the Ordinance be amended to require lobbyists to disclose information regarding experts who accompany them to meetings with City officers?*

Section 2.125 Notification of Beneficiaries of Gifts. (page 26, line 24 – page 27, line 5.)  
Current law requires a lobbyist to create a written record of any gifts that the lobbyist has provided to any City officer. Under existing law, lobbyists must then provide these written records to the recipients of any gifts. Since, in general, lobbyists may not provide gifts to City officers that exceed \$25 in value, staff believes that this provision is no longer necessary.

NOTE: The version of the Ordinance submitted to the Commission on March 9 already includes this proposed amendment, but the accompanying memo addressed this recommendation as a technical change. Staff believes that this change should be made with the Commission's full consideration.

**Decision Point 43:** *Shall the Ordinance be amended to remove the requirement that lobbyists must notify the recipient of a gift that he or she has, in fact, received a gift?*

Effective Date of Amendments: Staff recommends that the Commission approve language establishing a reasonable effective date for the Lobbyist Ordinance that would provide the staff with flexibility to accommodate any unforeseen technical problems. Staff proposes the following language:

The operative date of this ordinance shall be January 1, 2010, unless the Ethics Commission approves a resolution establishing a later operative date for the ordinance. The Ethics Commission may not establish an operative date for the ordinance less than 60 days from the date of the resolution's adoption.

The suggested language would appear in the ordinance submitted to the Board of Supervisors that contains all of the amendments approved by the Commission. It would not appear in the final codified Lobbyist Ordinance as it will appear in the Campaign and Governmental Conduct Code. Nor would this language suggest, in any way, that the existing provisions of the Lobbyist Ordinance are not effective during the period between the Board's adoption of the amendments and the amendments' operative date.

**Decision Point 44:** *Shall the amendments become effective on January 1, 2010, unless the Commission takes further action?*

Submission to the Board of Supervisors: When the Commission concludes its consideration of amendments to the Lobbyist Ordinance, the Commission may wish to send the proposal to the Board of Supervisors ("Board") with a request that the Board consider and pass the amendments as soon as possible. If the Board does not promptly approve the amendments to the Lobbyist Ordinance, staff may not have a sufficient period of time to implement the Ordinance before January 1, 2010, especially if further amendments are made by the Board.

**Decision Point 45:** *Shall the Commission send its amendments to the Board of Supervisors with a request that the Board consider and approve the amendments as soon as possible?*

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## **Part II. Proposed Technical Changes to Lobbyist Ordinance**

### ***Technical Change 1:***

**Section 2.100 Findings** (page 1, line 14 – page 2, line 6) *(These changes reflect the purposes underlying the Ordinance, but they do not substantively change the requirements of the Ordinance.)* In addition to the technical amendments in this section, staff proposes modifications and deletions to the last two lines of subsection (b), which will conform changes in this section to proposed changes in section 2.117, discussed below.

### **Section 2.105 Definitions**

### ***Technical Change 2:***

(a) **“Activity Expenses.”** (page 2, lines 10-21; *these are technical changes.*) Staff proposes to (1) eliminate gifts from the definition of activity expenses, which are expenses that may benefit a City officer who is contacted by a lobbyist; (2) change “any other form of economic consideration” to “any other thing of value;” and (3) reduce the threshold of disclosure from \$30 to \$25. These changes will harmonize the Ordinance with the existing rule banning City officers

from receiving gifts from a “restricted source” (a person who during the prior 12 months attempted to influence the officer in any legislative or administrative action) under Campaign and Governmental Conduct Code section 3.216(b).

**Technical Change 3:**

(b) “Candidate.” (page 2, line 22 – page 3, line 2; these are technical changes.) ~~The changes more clearly and directly define a candidate for the purposes of the Ordinance.~~ **The changes would incorporate the San Francisco Campaign Finance Reform Ordinance's ("CFRO's") definition of “candidate” by referencing section 1.104(a) of CFRO. CFRO currently uses the following definition:**

**“Candidate” shall mean any individual listed on the ballot for election to any City elective office or who otherwise has taken affirmative action to seek nomination or election to such office. The term “candidate” shall also mean the candidate's campaign committee.**

**S.F. Campaign & Gov'tal Conduct Code § 1.104(a). Staff recommends that both the Lobbyist Ordinance and the CFRO use the same definition for the same term.**

**Technical Change 4:**

(d) “Contact.” (page 3, lines 5-7; these are technical changes.) The changes to the first three lines in section 2.105(d) are linguistic corrections.

**Technical Change 5:**

(d)(1)(A) (page 3, lines 10-15; this is a technical change): The current exception provides that a City officer’s communications are not contacts if they are made within the course of the officer’s official duties. Staff proposes to delete this exception, as it would no longer be necessary if the Commission approves the revised definition of “economic consideration.” The new definition of “economic consideration” (section 2.105(e)) excludes salary, wages or benefits furnished by a federal, state or local government agency. Because under no circumstances could legal communications by an officer in the course of official duties be considered “contacts,” the exception is unnecessary. But, if a public official is paid by a non-governmental entity to perform lobbyist services, that official would qualify as a lobbyist if he or she meets the economic and contact thresholds.

**Technical Change 6:**

(d)(1)(NM) (page 5, lines 14-16; these are technical changes): Current law provides that a communication by a person disseminating information or material to all or a significant segment of the person’s employees or members is not a contact. Staff proposes linguistic changes to clarify the exception. Under this exception, current and proposed, for example, a communication from the Sierra Club to its members, which may incidentally include members of the Board of Supervisors, would not be a contact for the purposes of the Ordinance.

**Technical Change 7:**

(d)(1)(P) (page 6, lines 9-22; these are technical changes): Staff proposes deleting existing subsection (d)(1)(P), which provides that a communication regarding a grading permit, parcel

map, subdivision tract map, or permit relating to the construction, alteration, demolition or moving of a building, other than communications with certain identified officers, is not a contact. Under current law, communications with City officers regarding such permits are not contacts, unless the communication is by a non-professional engineer with an elected City officer, the Zoning Administrator, the Bureau Chief of the Department of Public Works' Bureau of Street Use and Mapping, or the Directors of Planning, Building Inspection or Public Works. Staff believes that the exception as currently written is confusing and thus proposes to strike it. Staff's proposal would eliminate the exception for permit-related communications. A communication regarding permits would be a contact regulated by the Ordinance if the communication—like a communication related to any other City matter—is with an officer of the City. Communications by a professional engineer performing services that only a licensed engineer could perform have been incorporated into proposed subsection (d)(1)C).

**Technical Change 8:**

(jh) “Lobbyist services.” (page 9, line 23 – page 10, line 3; these are technical changes.) Staff proposes to delete “attempting to influence” to conform language in this section to the proposed definition of “lobbyist.” Staff proposes to delete the second sentence in the subsection because it is surplusage. At the interested persons meeting, a participant commented that the term “lobbyist services” remains unclear – staff believes that the Commission should adopt regulations to clarify the scope of lobbyist services **instead of amending this provision of the Ordinance.**

**Technical Change 9:**

(ki) “Local legislative or administrative action.” (page 10, lines 4-10; these are technical changes.) Staff proposes that “local legislative or administrative action” should **explicitly** include decisions about City contracts. **Staff interprets the current Ordinance to include decisions regarding contracts, but further clarification may benefit the public's understanding of this term.** Staff has also deleted the last sentence in this subsection because it is unnecessary in light of proposed new subsection 2.105(d)(1)(P). Under that proposed subsection, a person who appears as a party, **or as a representative of a party,** in an administrative adjudicatory proceeding before a City agency or department would not be making a contact.

**Technical Change 10:**

(lj) “Measure.” (page 10, line 11-14; these are technical changes.) Staff ~~proposes to amend the definition of “measure” to describe more accurately initiatives and recalls.~~ **The changes would incorporate CFRO's definition of "measure" into the Lobbyist Ordinance by referencing section 1.104(l) of CFRO. CFRO currently uses the following definition:**

**"Measure" shall mean any City, San Francisco Unified School District or San Francisco Community College District referendum, recall or ballot proposition, whether or not it qualifies for the ballot.**

**S.F. Campaign & Gov'tal Conduct Code § 1.104(l). Staff recommends that both the Lobbyist Ordinance and the CFRO use the same definition for the same term.**

**Technical Change 11:**

(h) “Payments to influence local legislative or administrative action.” (page 10, line 22 – page 11, line 14; *this is a technical change.*) Staff proposes to strike this definition because it is no longer needed if there is a single category of lobbyists. Under staff’s proposals, the term “payments to influence local legislative or administrative action” will not appear in the Ordinance, so the Ordinance need not define the term here.

**Technical Change 12:**

(e) “Person.” (page 11, lines 15-16; *this is a technical change.*) Staff proposes to add the term “labor union” to the definition of “person,” to clarify that an individual who lobbies on behalf of a labor union would be subject to the Ordinance. Thus, unless the individual is communicating with an officer regarding the establishment, amendment or interpretation of a collective bargaining agreement (“CBA”) or memorandum of understanding (“MOU”), or about a management decision regarding working conditions of employees represented by a CBA or MOU, the individual is subject to the Ordinance if he or she makes or is promised \$3,000 within any three consecutive months.

**Technical Change 13:**

**Section 2.110 Registration and Disclosures, Fees; Termination of Registration (page 21, lines 1-3).**

Staff also proposes technical changes to section 2.110(e)(3), on page 21, lines 1-3, to permit a full-time employee of a tax-exempt organization to seek waiver of the registration fee by presenting proof of the organization’s tax-exempt status. These technical changes conform the section to the proposed changes in the law defining a lobbyist as an individual who meets the economic and contact thresholds. **Staff previously proposed a technical change to section 2.110(e)(3) to restrict the types of non-profit organizations eligible for a waiver of lobbyist registration fees to 501(c)(3) organizations instead of both 501(c)(3) and 501(c)(4) non-profits. Upon further consideration, staff recommends no changes to the types of organizations whose employees are subject to a waiver of fees. Staff recommends that the current practice continue, allowing employees of either 501(c)(e) or 501(c)(4) organizations to present proof of their tax-exempt status in order to obtain a fee waiver.**

**Technical Change 14:**

**Section 2.130. Employment of Unregistered Persons.** (page 27, lines 6-9; *these are technical changes.*) Staff proposes changes to reflect other amendments to the Ordinance, and to clarify that registration must occur by the deadlines imposed in the Ordinance.

**Technical Change 15:**

**Section 2.140. Powers and Duties of the Ethics Commission.** (page 27, line 21 – page 29, line 5; *these are both technical and substantive changes.*) **The March 4, 2009 memo did not discuss this technical change, which would correct the reference to the Charter from section C3.699-9 to section 15.102, on page 29, line 3.**

**Technical Change 16:**

**Section 2.145. Administrative and Civil Enforcement and Penalties.** *(page 29, line 6 – page 30, line 16; these are technical and substantive changes.)* **The March 4, 2009 memo did not discuss the technical changes, which are:**

**(1) linguistic changes to section 2.145(a) on page 29, lines 7-14;**

**(2) new language in section 2.145(b) on page 29, lines 19-22 to state that the Ethics Commission may take administrative action pursuant to Charter section C3.699-13 regarding a violation of the Ordinance;**

**(3) deletion of the words “or three times the amount given or received in excess of the gift limit” in section 2.145(c) on page 30, lines 3-4; and**

**(4) deletion of the words “upon reasonable notice” in section 2.145(d) on page 30, line 6.**

**Technical Change 17:**

**Section 2.150. Limitation of Actions.** *(page 30, line 17 – page 31, line 13; these are technical and substantive changes.)* **The March 4, 2009 memo did not discuss the technical changes, which are linguistic changes on page 30, lines 18-21. (The substantive changes are part of Decision Point 39 set forth in the March 4, 2009 memo.**

**Technical Change 18:**

**Section 2.160. Electronic Filing of Statements and Reports.** *(page 32, line 4 – page 32, line 23; these are technical changes.)* Staff proposes to delete this section, which authorizes the Commission to require the electronic submission of lobbyist reports. Such authorization is now set forth in section 2.140.

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### **Part III. Summary of Changes Approved at March 9, 2009 Meeting**

**Decision Point 1.** Section 2.105(d)(1)(C): on page 4, lines 3-8, the Commission approved amending the Ordinance to provide that a communication by a professional engineer licensed to practice in the State of California is not a contact under the Ordinance, when the communication is one that only a licensed engineer can make.

**Decision Point 2.** Section 2.105(d)(1)(E): on page 4, lines 12-14, the Commission approved amending the Ordinance to state that providing oral information to a City officer in response to a request from that officer is not a contact for the purpose of determining whether the person providing the information qualifies as a lobbyist. But a person who otherwise qualifies as a lobbyist must report such a communication as a contact. This change has been incorporated into proposed new section 2.105(d)(2)(A), discussed above in Decision Point 41 on page 2, above. Providing written information in response to a request made by a City officer would continue to be an exception to the definition of "contact" in the Ordinance.

**Decision Point 3.** Section 2.105(d)(1)(I): on page 5, lines 1-3, the Commission approved amending the Ordinance to provide that a communication seeking the status of an action is not a contact for the purposes of qualifying as a lobbyist. A person who otherwise qualifies as a lobbyist must report the communication as a contact if it is a communication to influence local legislative or administrative action under section 2.105(d)(2)(B).



**Decision Point 4.** Section 2.105(d)(1)(K): on page 5, lines 8-10, the Commission approved amending the Ordinance to narrow the exception for expert communications such that only a person providing purely technical data, analysis or expertise in the presence of a registered lobbyist is not making a “contact” under the Ordinance.

**Decision Point 5.** Section 2.105(d)(1)(O): on page 6, lines 4-6, the Commission approved amending the Ordinance to provide that a person negotiating the terms of a contract after being selected to enter into a contract with the City is not making a “contact” under the Ordinance.

**Decision Point 6.** Section 2.105(d)(1)(P): on page 6, lines 7-8, the Commission approved amending the Ordinance to provide that a person appearing as a party or a representative of a party in an administrative adjudicatory proceeding before a City agency or department is not making a “contact” under the Ordinance.

**Decision Point 7.** Section 2.105(d)(1)Q): on page 6, line 23 – page 7, line 4, the Commission approved amending the Ordinance to state that a person communicating on behalf of a labor union representing City employees regarding the establishment, amendment, or interpretation of a collective bargaining agreement (CBA) or memorandum of understanding (MOU) with the City, or communicating about a management decision regarding the working conditions of employees represented by a CBA or MOU is not making a “contact” under the Ordinance.

**Decision Point 8.** Section 2.105(d)(1)(R): on page 7, lines 5-7, the Commission approved amending the Ordinance to provide that, unless representing a client, a person participating in a public interested persons meeting, workshop or other forum convened by a City department for the purpose of soliciting public input is not making a “contact” under the Ordinance. The approved language reads: *“Unless representing a client, a person participating in a public interested persons meeting, workshop, or other forum convened by a City agency or department for the purpose of soliciting public input.”*

As discussed above, in light of other changes approved by the Commission, staff recommends that the Commission incorporate this amendment into section 2.105(d)(2) so that participation in an interested persons meeting qualify as a "contact" for disclosure purposes only.

**Decision Point 9.** Section 2.105(e) “Economic consideration”: on page 7, line 8-10, the Commission approved amending the Ordinance so that the term “economic consideration” does not include salary, wages or benefits from a federal, state or local agency.

**Decision Points 10 and 11.** Section 2.105(g) “Lobbyist”: on page 7, line 15 – page 9, line 22, the Commission approved amending the Ordinance so that there is a single category of lobbyists, and that a lobbyist be defined as any individual who receives or is promised \$3,000 or more in economic consideration within three consecutive months for lobbyist services and makes at least one contact with a City officer.

**Decision Point 12.** Section 2.110(a) Registration of Lobbyist Required: On page 11, line 21 – page 12, line 4, the Commission approved amending the Ordinance to require any individual who qualifies as a lobbyist to register with the Ethics Commission no later than five business

days after qualifying as a lobbyist and, in any event, prior to making any additional contacts with any City officer. The approved language reads: ***“Lobbyists shall register with the Ethics Commission and comply with the disclosure requirements imposed by this Chapter. Such registration shall occur no later than five business days of qualifying as a lobbyist, but the lobbyist shall register prior to making any additional contacts with an officer of the City and County of San Francisco.”***

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# FAX

**To:** San Francisco Ethics Commission  
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**From:** Emily Pears, California Common Cause  
[epears@commoncause.org](mailto:epears@commoncause.org)  
(415) 913-7397 phone

**Date:** 3/26/09

**Pages:** 3 (including cover page)

**Message:** The enclosed comments are for the Commission's April meeting. Please let me know if you have any questions or require any further information.



California  
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March 25<sup>th</sup>, 2009

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Dear Madame Chair, Members of the Commission:

California Common Cause has long been an ardent advocate for transparency and accessibility in lobbyist disclosure. It is a reality in San Francisco that lobbyists paid by well-heeled interests seek to influence policy decisions on a daily basis. Shining a light on the contacts between our elected officials and lobbyists is key to understanding how decisions are made, and improving the public's confidence that our government is ethical. California Common Cause applauds the commission's efforts to make reporting requirements more stringent and your willingness to view the problem of lobbying reform in a holistic manner.

Common Cause believes that the public needs broader and better access to information about lobbyist activities, and that this information is more valuable and relevant when it is made available in a timely way – before decisions by city officials are finalized.

We are encouraged by the city's move to a new electronic lobbyist filing system that will allow media and advocacy organizations to gather lobbyist information much more easily. This new electronic filing system presents opportunities for more regular reporting that are less burdensome for individual filers. Some members of the commission as well as the members of the public have suggested a move as dramatic as 24-hour reporting. This call is an admirable attempt to force the kind of accountability and transparency that every ethics commission should strive for. We have concerns however, about the burden and potential chilling effect that a 24-hour reporting requirement may place on community advocates and citizen activists before such an electronic system is tested and proved efficient.

Professional lobbyists and the interests that they represent may have the resources mechanisms required to minimize the burden of 24-hour reporting. However, we fear that individuals and smaller non-profit organizations, neighborhood groups, or other entities that are not supported by a phalanx of moneyed interests would find a 24-hour reporting requirement to be unduly onerous. As a citizen advocacy organization, we encourage the active participation of individuals in the process of governance – including lobbying on their own behalf or on behalf of organizations in their communities. Without the support staff available to many lobbyists and their employers, the actions of these individuals may be severely chilled if their participation in civic governance triggers arduous reporting requirements.



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~~We do support more frequent lobbyist reporting, and do not mean to exclude the~~  
possibility of moving to 24 hour reporting cycles in the future. New technologies and changes in the manner of reporting may allow future regulations to require frequent filings without placing unnecessary burden on the individuals and organizations we seek to protect. California Common Cause suggests that the commission consider a variety of means to gather information about lobbyist contacts. For instance, if every visitor to a Supervisor's office was required to sign a visitor's log, including their name, organization, person they are meeting with, this information could be provided on a regular basis by each Supervisors' office to the commission. Lobbyists who have a significant number of contacts with Supervisors, or meet other thresholds, could still be required to separately report their contacts.

California Common Cause encourages the commissioners to consider solutions that promote the twin goals of more frequent reporting and citizen engagement.

Sincerely,

Emily Pears  
Northern California Organizer  
California Common Cause