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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 4, 2009

To: Members, Ethics Commission

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

Re: Proposed changes to Lobbyist Ordinance

Last year, the Ethics Commission considered, and staff held interested persons meetings regarding, possible changes to the Lobbyist Ordinance ("the Ordinance"), San Francisco Campaign and Governmental Conduct Code section 2.100 et seq. Based on the comments received last year, staff prepared a new set of proposals, and convened two interested persons meetings concerning those proposals on Tuesday, January 27, 2009. At the Commission's February 9, 2009 meeting, staff will present the draft proposals, as well as additional modifications based on comments received at the January interested persons meetings. This memo discusses the proposed amendments, which are set forth in the attached documents and summary chart.

Section 2.100 Findings

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 changes in section 2.117, discussed below.

Section 2.105 Definitions

(a) "Activity Expenses." Staff proposes (1) to eliminate gifts from the definition of activity expenses, which are expenses that may benefit a City officer who is contacted by a lobbyist; and (2) to reduce the threshold whereby disclosure of activity expenses is required, from \$30 to \$25. These changes will harmonize the lobbyist provisions 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).

(b) "Candidate." The changes more clearly and directly define a candidate for the purposes of the Ordinance.

(d) “Contact.” The changes in section 2.105(d) are linguistic corrections. As discussed below, staff proposes several modifications to the exceptions to the Ordinance's definition of “contact.”

(d)(1)(A): This current exception provides that an 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. Under the proposed change, if a public official is paid to perform lobbyist services by a non-governmental entity, that official may qualify as a lobbyist.

(d)(1)(D): Staff has consolidated two existing exceptions. Currently, section 2.105(d)(1)(D) creates an exception for communications by attorneys and architects. Section 2.105(d)(1)(P) creates a similar exception for communications by a professional engineer who carries out duties that only a licensed engineer may perform. Staff proposes combining the exceptions for professional services into a single exception and deleting current section 2.105(d)(1)(P).

(d)(1)(K): Staff proposes to revise the existing exception for communications by an expert so that it exempts an expert providing technical data, analysis or expertise in the presence of a registered lobbyist. Under the proposed amendment, the registered lobbyist would be required to report the contact with the officer, while the expert would be permitted to share his or her expertise with City officers without having to register as a lobbyist.

(d)(1)(O)-(R): Staff proposes to add four new exceptions to the definition of “contact.” In proposed subsection (O), staff seeks to clarify that a person communicating with the City regarding the terms of a contract after the person has been selected as the contractor is not a “contact.” Such communications are necessary in order for the City to negotiate financial terms with its contractors.

In subsection (P), the proposed exception recognizes that contacts with City officers in the course of an administrative proceeding should not constitute lobbying.

In proposed subsection (Q), staff recommends adding language that provides that communications by a labor union relating to a collective bargaining agreement or a memorandum of understanding with the City should not be contacts. Communications by a labor union with City officers regarding other matters would be considered contacts.

In new subsection (R), staff proposes to add language to state that oral or written input provided at a public interested persons meeting, workshop or similar meeting should not be contacts.

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. Staff believes that new subsection (d)(1)(O) would address situations where such communications relate to an administrative proceeding. In

addition, subsection (€B) would provide an exception for communications made at a public hearing. Finally, communications by a professional engineer who performs services that only a licensed engineer could perform have been incorporated into proposed subsection (d)(1)C).

At the interested persons meeting, staff also presented an exception for a person requesting advice regarding the interpretation of a law, regulation, or policy. Upon further consideration, staff has deleted this proposal because it is possible that an individual who requests such advice may use the request as an opportunity to influence a legislative or administrative action. However, even without this exception, it is possible that a request for advice regarding the interpretation of a law, regulation, or policy is not truly an attempt to influence a legislative or administrative action. Such a request would not, by definition, constitute a "contact" under the Ordinance since the proposed definition of "contact" explicitly requires that a communication be made for the purpose of influencing local legislative or administrative action.

(e) “Economic consideration.” Staff proposes adding language to clarify that economic consideration does not include salary, wages or benefits furnished by a federal, state or local government agency. This proposal mirrors an exception found in conflict of interest laws, which recognizes that governmental salaries should not be the source of a conflict of interest. As previously discussed, this amendment also allows for the deletion of section 2.105(d)(1)(A).

(ig) “Lobbyist.” Currently, there are three types of lobbyists in San Francisco: contract lobbyists, business and organization lobbyists, and expenditure lobbyists, each with different qualifying thresholds. Staff believes that the Ordinance's creation of three types of lobbyists has led to confusion about who qualifies as a lobbyist under local law. Accordingly, staff recommends that the Ordinance create a single category of lobbyists and define a “lobbyist” as any individual who receives \$3,000 or more in economic consideration within three consecutive months for lobbyist services and makes at least one contact with a City officer.

Also, staff's proposal would allow, in proposed section 2.110(d), a firm or organization employing multiple lobbyists to register and file required disclosures on behalf of its individual lobbyists.

(jh) “Lobbyist services.” 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.

(ki) “Local legislative or administrative action.” Staff has added action on a “contract” to the list of matters that could be deemed a local legislative or administrative action. Staff has also deleted the last sentence in this subsection because staff believes that a decision by any City officer that adjudicates the rights and/or duties of a single person or group of persons is a legislative or administrative action. A person who appears as a party in an administrative proceeding before a City agency or department would not be deemed a contact under proposed new subsection 2.105(d)(1)(P).

(h) “Measure.” Staff proposes to amend the definition of “measure” to capture more accurately initiatives and recalls.

(i) “Payments to influence local legislative or administrative action.” Staff proposes to strike this definition because it is no longer needed if there is a single category of lobbyists.

(j) “Person.” Staff proposes to add the term “labor union” to the definition of “person,” so that it is clear that an individual who works for a labor union and otherwise qualifies as a lobbyist 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.

Section 2.110 Registration and Disclosures, Fees; Termination of Registration.

Staff proposes several changes to this section. In general, the proposed changes aim to effectuate an online filing system for lobbyist registration and reporting.

(a) Registration of Lobbyist Required. Current law requires registration prior to any contacts by a lobbyist with a City officer. Since the proposed definition of “lobbyist” requires contact with a City officer to qualify as a lobbyist, it would be awkward to require lobbyists to register before they were subject to the Ordinance. For this reason, staff proposes that any individual who qualifies as a lobbyist must register as a lobbyist no later than 10 business days of qualifying as a lobbyist and, in any event, the individual who has qualified as a lobbyist must register prior to making any additional contact with any City officer.

(b) Registration. Current law generally requires a lobbyist to disclose information about the lobbyist, economic consideration received or promised, number of contacts, a description of the local legislative or administrative action the lobbyist sought to influence, and political contributions of \$100 or more. The disclosures vary depending upon the type of lobbyist who is registering. Staff proposes that registration instead capture only information about the lobbyist and the lobbyist’s client(s). Staff’s proposed amendments regarding monthly disclosures will capture other information such as identification of the legislative or administrative action that the lobbyist seeks to influence and which City officer is lobbied. Staff believes that the proposed changes will simplify filing requirements.

(c) Reregistration Reports. The Ordinance currently requires each lobbyist to reregister annually no later than January 15. Staff proposes to delete the reregistration requirement. Under the proposed changes, lobbyists would be required to provide updated information in their filings with the Commission when they submit their monthly reports. Staff believes that monthly updates of registration information is preferable to annual reregistration and updates.

(d) Lobbyist Disclosures. This section, which replaces the Ordinance’s current requirements for quarterly reports, requires lobbyists to submit information such as the names of their clients and

City officers whom they contacted, the dates of contacts, the legislative or administrative action that the lobbyist sought to influence, the amount of economic consideration they received, activity expenses, and political contributions. Staff has proposed several changes to the information required in lobbyist disclosures and also recommends narrowing the scope of some of the information collected. For example, staff recommends that lobbyists no longer require information about donations to ballot measure committees, if those committees are not controlled by a City officer that may be contacted by lobbyists.

In an earlier draft, staff recommended requiring lobbyists to submit reports about their activities for the past month by the third business day of the following month. In general, staff recommends moving from quarterly reports to monthly reports in order to provide disclosure about lobbying activities in a time-frame that would be more relevant in understanding the context of a particular local legislative or administrative action. At the interested persons meetings, staff received comments that monthly reporting would be a burden on the lobbyists' staff who must gather and review that information. Based on these comments, staff has extended the time for the filing of reports to the 15th day after the month during which the activities occurred. Staff believes that this change is a reasonable compromise to ease the burden placed on lobbyists' staff to submit the required information.

At the interested persons meetings, staff also received comments that it may be difficult for lobbyists to ascertain the dates of contacts. Nonetheless, staff believes that the dates on which contacts are made provides important information to the City and the public about the sequence of lobbying contacts and any resulting legislative or administrative action. For this reason, staff recommends requiring such information.

Staff also recommends requiring lobbyists to identify the local legislative or administrative action that they sought to influence, including, if any, the title and file number of any resolution, motion, appeal, application, petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement, or contract, and the outcome sought by the client. These changes will help not only to identify which lobbyist contacted which City officer but also to identify the particular legislative or administrative action that was the subject of the contact.

(d) Registration and Filing of Disclosures by Organizations.

Current law requires contract lobbyists and business and organization lobbyists to register and file reports, which may include reports of activities by the employee lobbyists. Under staff's proposal to redefine "lobbyist," individuals who qualify as lobbyists must register and submit disclosure reports. At the interested persons meeting, staff received comment that it would be more convenient and reflective of current practice if organizations were permitted to register and submit disclosure reports on behalf of their employees. For this reason, staff proposes new subsection 2.110(d), which will permit organizations to file on behalf of their employee lobbyists. Concurrently, staff also recommends a change to section 2.145(e), which provides corresponding liability for organizations that file on their employees' behalf.

(e) Fees; Termination of Registration. At last year's interested persons' meetings, staff received comments that the lobbyist registration fees were too high for "small" lobbyists. In an effort to

simply administration of the Ordinance, staff proposes to lower the annual lobbyist fees from \$500 to \$100. The Ordinance would no longer require lobbyists to pay any client fees. Lobbyists would be required to pay an annual \$100 fee by February 1 of each year. If a lobbyist failed to pay his or her annual fee by February 1, the Commission would terminate that lobbyist's registration. Staff proposes that the Commission also consider regulations that may allow a lobbyist to terminate his or her registration.

(f) Client Authorization Statements. Staff proposes to dispense with client authorization statements, which would streamline the Ordinance's filing requirements.

(g) Client Termination Statements. Staff proposes to dispense with client termination statements, which would streamline the Ordinance's filing requirements.

(h) Lobbyist Termination Statements. Staff proposes to dispense with lobbyist termination statements, which would streamline the Ordinance's filing requirements.

Section 2.115 Prohibitions

(a) Gift Limit.

Staff proposes to prohibit lobbyists from making gifts to City officer, who are prohibited from receiving gifts from restricted sources.

Section 2.116. Lobbyist Training.

Staff proposes that at least once each year, each lobbyist must complete a lobbyist training offered by the Ethics Commission. There is no current requirement that a lobbyist attend a training session offered by the Ethics Commission, although the Ordinance currently requires the Commission to conduct quarterly trainings and a lobbyist to report his or her most recent lobbyist training when reregistering with the Commission.

Section 2.117. Lobbying by Campaign Consultants.

Current law prohibits any campaign consultant from lobbying his or her current client or former client. Staff proposes to amend the law to shift emphasis from restrictions on lobbying to an emphasis on greater disclosure and information-gathering.

Section 2.130. Employment of Unregistered Persons.

Staff proposes changes to reflect other amendments to the Ordinance, and to clarify that registration must occur by the deadlines imposed in the Ordinance.

Section 2.135. Filing Under Penalty of Perjury; Retention of Documents.

Staff has added language requiring lobbyists to provide to the Ethics Commission, upon its request, books, papers and any other materials related to the lobbyist's activities within ten business days.

Section 2.140. Powers and Duties of the Ethics Commission.

Staff has proposed changes that would require the Commission to prescribe the format for the submission of all information required under the Ordinance, which may be by paper, electronic

filing or both. As explained above, staff anticipates that registration and reporting under the Ordinance will move towards an electronic format. These changes will accommodate the move towards electronic filing.

Staff has deleted the requirements that the Commission issue a registration number to each registered lobbyist, that it provide a copy of the Ordinance to each lobbyist, and that it issue a “Notice of Registration Required” upon the written request of any City officer. These changes would streamline the Ordinance.

Staff proposes that the Commission, instead of compiling quarterly reports about lobbyist activities, or an annual report about the implementation of the Ordinance, compile such reports only upon the request of the Board of Supervisors or Mayor. Staff expects that it will develop a form of online report that will capture the monthly information submitted by lobbyists.

Finally, staff proposes to delete the requirement that the Commission conduct quarterly workshops on the Ordinance. Staff expects that it will continue to conduct workshops as necessary and that the Commission will make training available online in the future.

Section 2.145. Administrative and Civil Enforcement and Penalties.

Staff proposes to add language that would allow the Commission to issue warning letters regarding potential violations of the Ordinance; and to increase the civil penalties to \$5,000 per violation.

Section 2.150. Limitation of Actions.

Staff proposes to extend the statute of limitations to five years for actions alleging a violation of the Ordinance, and to add a provision that permits the collection of fines or penalties up to four years after the fines are imposed.

Section 2.160. ~~Electronic Filing of Statements and Reports.~~

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.