

REVISED LEGISLATIVE DIGEST

(4/29/2014, Substituted)

[Campaign and Governmental Conduct Code - Lobbying and Ethics Regulations]

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of a lobbyist; expand the definition of an Officer of the City and County; expand the list of reportable lobbying contacts; hold employers and clients of lobbyists jointly and severally liable for violations of this Ordinance committed by the lobbyist on behalf of that employer or client; enhance lobbyist training, auditing, and record-keeping requirements; require public reports about City officials who fail to file Statements of Economic Interest; require a public guide to local campaign finance laws; require permit consultants to register with the Ethics Commission and file regular disclosure reports; and require major developers to disclose donations to nonprofits active in the City.

Existing Law

The Campaign and Governmental Conduct Code (“C&GCC”) requires individuals who lobby City officers and certain managerial employees to register with the Ethics Commission, complete a lobbyist training session, file regular reports about their lobbying activity, and maintain records substantiating their reports. Current law does not exempt officers or employees of non-profit organizations from these requirements.

Current law requires designated City officials to file Statements of Economic Interest with the Ethics Commission.

Current law does not obligate City officers and employees to assist the Ethics Commission, District Attorney or City Attorney with investigations into violations of this ordinance.

Current law does not require reporting about permit expediting if it involves contacts with City employees, as opposed to officers. Current law also does not require developers who are seeking City approvals for projects to disclose donations to non-profits that are active in the City.

Specific provisions that would be amended by the proposed ordinance are summarized below.

Definition of a “lobbyist” (C&GCC § 2.105)

A lobbyist is defined as anyone who makes lobbying contacts and receives \$3,000 or more within three months for lobbyist services.

Definition of an “Officer of the City and County” (C&GCC § 2.105)

An Officer of the City and County includes members of certain boards and commissions, but does not include members of the First Five Commission, Law Library Board of Trustees, Local Agency Formation Commission, Health Authority Board, Housing Authority Commission, Parking Authority, Relocation Appeals Board, Successor Agency to the former Redevelopment Agency of the City and County of San Francisco, Oversight Board of the Successor Agency, Successor Agency Commission, or Workforce Investment San Francisco Board. Nor does an Officer of the City and County include any person appointed as the chief executive officer under any board or commission.

Attorney exemption (C&GCC § 2.105)

Communications by a licensed attorney, who is acting in that capacity, are exempt from the definition of lobbying contacts and are not subject to reporting requirements.

Contract exemptions (C&GCC § 2.105)

Communications in connection with bidding on contracts with the City, negotiating the terms of a contract, or the administration of a contract, are exempt from the definition of lobbying contacts and are not subject to reporting requirements. This exemption applies regardless of whether the communication is by the contractor or a third party.

Lobbyist training (C&GCC §§ 2.116)

Lobbyists are required to complete a training session offered by Ethics within one year of registering as a lobbyist.

Audits and recordkeeping (C&GCC § 2.135)

Lobbyists are required to retain for five years all documents necessary to substantiate the registration and disclosure reports filed with Ethics. Current law does not require auditing of lobbyists.

Administrative and Civil Enforcement and Penalties (C&GCC § 2.145)

Current law does not hold the client or employer of a lobbyist liable for all violations of this ordinance committed by the lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

Public Report of City Officials Who Fail to File Form 700s (C&GCC § 3-1.103)

Elected officials, other department heads, and members of most decision-making City Boards and Commissions are required to file Form 700 Statements of Economic Interest with the Ethics Commission by April 1st of each year.

Public Guide for Contributors

Current law does not require the Ethics Commission to publish a guide about local law regarding campaign contributions.

Permit Consultants (C&GCC §§ 3.400-3.410)

Permit-related lobbying is subject to the Lobbyist Ordinance only if it involves communication with a City officer, the Zoning Administrator, the City Engineer, the County Surveyor, or the Bureau Chief of the Department of Public Works' Bureau of Street Use and Mapping. It is not subject to regulation or disclosure if it involves communication with other City employees.

Developer Disclosures

Current law does not require developers of major City projects to disclose donations to nonprofit organizations.

Amendments to Current Law

The proposal would amend the Campaign and Governmental Conduct Code as follows:

Definition of a "lobbyist" (C&GCC § 2.105)

The ordinance would expand the definition of lobbyist, and distinguish between outside consultants and employees. For outside consultants, "lobbyist" would be defined as a person who makes one or more contacts for any level of consideration. For employees making contacts on behalf of their employers, "lobbyist" would be defined as any individual who makes five or more lobbying contacts in a calendar month on behalf of that individual's employer; but such an individual would not be a lobbyist if the individual owns a 20% or greater share of the business on whose behalf the individual is lobbying.

Definition of an "Officer of the City and County" (C&GCC § 2.105)

The ordinance would expand the definition of Officer of the City and County to include members of the First Five Commission, Law Library Board of Trustees, Local Agency Formation Commission, Health Authority Board, Housing Authority Commission, Parking Authority, Relocation Appeals Board, Successor Agency to the former Redevelopment Agency of the City and County of San Francisco, Oversight Board of the Successor Agency, Successor Agency Commission, and Workforce Investment San Francisco Board. The ordinance would also expand the definition of Officer of the City and County to include any person appointed as the chief executive officer under any board or commission.

Contract exemptions (new C&GCC § 2.106)

The ordinance would limit the contract exemptions to communications by the contractor, or its officers, employees or subcontractors. Communications by outside consultants and independent contractors in connection with bidding on contracts, negotiating the terms of a contract, or the administration of a contracts, would no longer be exempt from the definition of a contact.

Non-profit exemption (new C&GCC § 2.106)

The ordinance would create an exemption for an officer or employee of a nonprofit organization or an organization fiscally sponsored by such a nonprofit organization communicating on behalf of their organization. This subsection would define "nonprofit

organization” to mean either an organization with tax exempt status under 26 United States Code Section 501(c)(3), or an organization with tax exempt status under 26 United States Code Section 501(c)(4) whose most recent tax filing included an IRS Form 990-N or an IRS Form 990-EZ.

Attorney exemption (new C&GCC § 2.106; new § 2.107)

The ordinance would eliminate the attorney exemption and clarify that the ordinance is not intended to regulate the practice of law.

Lobbyist training (C&GCC § 2.116)

The ordinance would require the Ethics Commission to make lobbyist training available on-line and require lobbyists to file statements certifying that they completed the training.

Audits and recordkeeping (C&GCC § 2.135)

The ordinance would require lobbyists to retain for auditing any invitations the lobbyist sends to political fundraisers for City officers, candidates, and ballot measures. It would also require the Executive Director to conduct a random audit of at least one lobbyist per year.

Duty to cooperate and assist (new C&GCC § 2.136)

The ordinance would establish a duty for City officers and employees to assist the Ethics Commission, District Attorney or City Attorney with any investigation into violations of this ordinance.

Administrative and Civil Enforcement and Penalties (C&GCC § 2.145)

The ordinance would establish that the client or employer of a lobbyist shall be jointly and severally liable for all violations of this ordinance committed by the lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

Public Report of City Officials Who Fail to File Form 700s (C&GCC § 3-1.104)

The ordinance would require the Ethics Commission to post on its website by April 10th of each year a report listing City officials who failed to file Form 700s by the April 1st deadline. It would also require a supplemental report by May 10th of each year.

Public Guide for Contributors (new C&GCC § 3.302)

The ordinance would require the Ethics Commission to publish a guide for campaign contributors describing local law regarding contribution limits, reporting requirements, and rules regarding who may contribute to committees.

Permit Consultants (C&GCC §§ 3.400-3.410)

The ordinance would require permit consultants (aka permit expeditors) to register with the Ethics Commission and file regular reports about their permit-related contacts with officers or employees in the Department of Building Inspection, the Entertainment Commission, the Planning Department, or the Department of Public Works.

Developer Disclosures (C&GCC §§ 3.500-3.520)

The ordinance would require developers of major City projects to disclose certain nonprofit donations to the Ethics Commission. Any developer of a project for which the Planning Commission certifies an Environmental Impact Report would be required to report donations of \$5,000 or more made during the reporting period to nonprofits active within the City.