

## LEGISLATIVE DIGEST

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

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

#### Existing Law

The City's Lobbyist Ordinance, Article II of the Campaign and Governmental Conduct Code, imposes registration and reporting requirements on two types of lobbyists: contact lobbyists and expenditure lobbyists. A contact lobbyist is any individual who either (1) makes five or more contacts in a month with City officers on behalf of the individual's employer, or (2) makes at least one contact in a month with an officer of the City and County on behalf of a client who pays that individual for lobbyist services. Campaign & Gov'tal Conduct Code ("C&GC Code") § 2.105. An expenditure lobbyist is any person who engages in indirect lobbying, by spending at least \$2,500 in a month to solicit, request, or urge others to lobby City officers.

#### 1. Registration and reporting requirements

Lobbyists – either contact or expenditure – must register with the Ethics Commission within five business days of reaching the thresholds set forth above. *Id.* § 2.110(a). When they register, lobbyists do not need to identify which City agencies they intend to influence.

Lobbyists must file monthly disclosures regarding their activities. In these monthly disclosures, lobbyists must describe payments from their clients or employers, the City officers who they have attempted to influence, and the date and subject matter of each attempt to influence. Lobbyists must also disclose the campaign contributions that they have made or delivered, that their employers have made or delivered, that their clients have made or delivered at the lobbyists' direction or suggestion. *Id.* § 2.110(a).

#### 2. Gifts

The Lobbyist Ordinance incorporates the State law definition of what constitutes a gift, including the exceptions established by State law. *Id.* § 2.105; *see also* 2 C.C.R. § 18942. The Lobbyist Ordinance also prohibits lobbyists (either contact or expenditure) from making any gift to a City officer that has a fair market value of more than \$25. Gifts that would qualify for one of the exemptions under Section 3.216(b) of the Campaign and Governmental Conduct Code (often referred to as the "restricted source" rule) and its implementing regulations are not subject to this limit. *Id.* § 2.115(a).

Under existing law, a person who has made a payment to a third-party, which in turn directly pays for a gift to City official or provides a gift to an official is treated as as the true source of the gift. In these circumstances, the third-party is not considered the source of the gift because the third-party is merely an intermediary or “pass-through” for the contribution. See 2 C.C.R. § 18945; Modha Adv. Ltr., No. A-13-116A, 2013 WL 5934113 at \*4-5 (Oct. 25, 2013).

### 3. Campaign contributions

Campaign and Governmental Conduct Code Section 1.114(a) provides that local candidates are subject to a \$500 limit for campaign contributions from all persons. It does not establish any contribution limits specific to lobbyists.

Local law also does not restrict the ability of any persons, including lobbyists, from collecting campaign contributions from other persons – often referred to as “bundling” – and delivering or transmitting those contributions to City candidates and City elected officials.

## Amendments to Current Law

### 1. Registration and reporting requirements

The proposed measure would require lobbyists to identify which City agencies they intend to influence. The proposal would also explicitly impose a duty on local lobbyists to amend and update their registration information and monthly reports within five days of any changed circumstances that would affect the accuracy of information previously provided.

### 2. Gifts

The proposed measure would prohibit lobbyists from making any gift to a City officer, regardless of value, and would prohibit City officers from accepting or soliciting such gifts. But the proposal provides an exception to 501(c)(3) nonprofit organizations that would allow such nonprofit organizations to provide gifts of food or refreshment worth \$25 or less to City officers, if the 501(c)(3) nonprofit organization offers such gifts to all attendees of a public event that the organization is hosting.

The amendments would also clarify that a lobbyist could not use a third-party to circumvent the Lobbyist Ordinance’s restrictions on gifts.

### 3. Campaign contributions

The proposed measure would prohibit lobbyists from making contributions to or bundling contributions for City elected officials or candidates for City elective offices, if the lobbyists had been registered to lobby the officials’ agencies within 90 days of the date any contribution is made.

The measure would extend this prohibition to any candidate-controlled committee, including candidate controlled ballot measure committees. But this prohibition would not extend to any candidate-controlled states committees, i.e., committees that would support or oppose any candidates for State elective office or State ballot measures.

#### 4. Ability to amend

The proposal also provides that the Commission and the Board of Supervisors may amend its provisions, so long as a super-majority of the Commission and the Board of Supervisors approve the changes. Consistent with similar provisions found in the Campaign Finance Reform Ordinance and the Government Ethics Ordinance, an amendment may be made if:

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

#### Background Information

The Ethics Commission may place ordinances “relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics” on the ballot by a four-fifths vote. S.F. Charter § 15.102. At its July 25, 2016 meeting, the Ethics Commission, by a 4-0 vote, submitted this proposal to the ballot for the November 8, 2016 election.

A “controlled committee” is a committee that is controlled directly or indirectly by a candidate. Cal. Gov. Code § 82016. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. A candidate may exercise significant influence over a committee in various ways, including being involved with decision-making or developing or implementing campaign strategy for the committee. See Pirayou Adv. Ltr., FPPC Adv. I-10-159, 2010 WL 5481367 (Dec. 13, 2010).

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