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Proposed San Francisco Ordinance Would Impose Significant New Disclosure Obligations on Nonprofits That Interact with City Officials

A recent proposal by San Francisco Board of Supervisors President David Chiu would impose significant new disclosure obligations on nonprofits that have business with the City and County of San Francisco. Apparently intended to target communications and expenditures made by or on behalf of certain developers seeking to influence public officials, the proposal in its current form is actually much broader in scope.

The current proposal, which would amend San Francisco's Campaign and Governmental Conduct Code, redefines the term "lobbyist" to include any individual who "(1) makes five or more contacts in a calendar month with officers of the City and County on behalf of the individual's employer; or (2) makes one or more contacts in a calendar month with an officer of the City and County on behalf of any person who pays the individual or the individual's employer for lobbyist services." In contrast, current law defines "lobbyist" as a person who receives (or is promised) consideration of at least $3,000 within three consecutive months for making at least one lobbying contact.

"Contact" is defined in current law (which the proposed ordinance does not change) to include, with a host of exceptions not applicable to most nonprofit communications, "any communication, oral or written, including communication made through an agent, associate or employee, for the purpose of influencing local legislative or administrative action."

Consequently, under the proposed ordinance, a nonprofit employee who works regularly with city officials on public programs that require legislative or administrative action could qualify as a "lobbyist," even if the compensation attributable to those contacts is extremely small. If so, then the lobbyist must register with the City's Ethics Commission and submit monthly disclosures providing details of every contact with a City official related to the legislative or administrative action(s) in question.

Perhaps even more significant, the proposed ordinance seeks to force disclosure of relationships between any developer seeking City approvals, and every nonprofit organization (defined to include corporations formed under California's Nonprofit Corporation Law as well as any organization described in Section 501(c) of the United States Internal Revenue Code) to which the developer has made significant contributions.

To this end, the proposal requires a developer of a project for which the Planning Commission has certified an Environmental Impact Report to disclose within 30 days of certification of the Report, "(a) ... (4) The name, business address, business telephone number and website of any nonprofit organization to whom the developer has made

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cumulative donations of $5,000 or more since the date one year before the application for environmental review of the project was filed with the Planning Department [and] (5) For each nonprofit organization reported pursuant to Subsection (a)(4), the date and amount of each donation the developer made to the nonprofit during the reporting period." Similar disclosures are required of the developer every subsequent calendar quarter.

Note that these disclosure requirements capture contributions that have nothing to do with the project before the City, and would require public disclosure of contributions to nonprofits (not just charities) far and wide who happen to count San Francisco developers among their supporters.

Organizations with staff that communicate frequently with San Francisco officials, and those that have, or may have, contributors with development projects in San Francisco should review the proposed ordinance and consider its potential implications for them. The ordinance will be up for a vote by the Board of Supervisors in the coming weeks, so now would be a good time to let your views about it be known.