

# TEXT OF PROPOSED ORDINANCE

## PROPOSITION G

Be it ordained by the People of the City and County of San Francisco:

Section 1. Chapter 16 of the San Francisco Administrative Code is hereby amended by adding Sections 16.540-16.547, to read as follows:

### ARTICLE XIIC

#### REGULATION OF CAMPAIGN CONSULTANTS

SEC. 16.540. FINDINGS. (a) The City and County of San Francisco has a paramount interest in protecting the integrity and credibility of its electoral and government institutions. Election campaigns are highly competitive in San Francisco, and candidates frequently contract for the services of professional campaign consultants who specialize in guiding and managing campaigns.

(b) It is the purpose and intent of the people of the City and County of San Francisco in enacting this Article to impose reasonable registration and disclosure requirements on campaign consultants. Required registration and disclosure of information by campaign consultants will assist the public in making informed decisions, and protect public confidence in the electoral and governmental processes.

SEC. 16.541. DEFINITIONS. Whenever used in this Article, the following definitions shall apply:

(a) "Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receive or are promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include persons who are employees of a campaign consultant, attorneys who provide only legal services; accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act, California Government Code § 81000, *et seq.*

(b) "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

(c) "Campaign management" means conducting, coordinating or supervising a campaign to elect, defeat, retain or recall a candidate, or adopt or defeat a measure, including but not limited to hiring or authorizing the hiring of campaign staff and consultants, spending or authorizing the expenditure of campaign funds, directing, supervising or conducting the solicitation of contributions to the campaign, and

selecting or recommending vendors or subvendors of goods or services for the campaign.

(d) "Campaign strategy" means plans for the election, defeat, retention or recall of a candidate, or for the adoption or defeat of a measure, including but not limited to producing or authorizing the production of campaign literature and print and broadcast advertising, seeking endorsements of organizations or individuals, seeking financing, or advising on public policy positions.

(e) "Candidate" means a person who has taken affirmative action to seek nomination or election to local office, a local officeholder who has taken affirmative action to seek nomination or election to any elective office, or a local officeholder who is the subject of a recall election.

(f) "Economic consideration" means any payments, fees, commissions, reimbursements for expenses, gifts, or anything else of value.

(g) "Lobby" means communicate with a local officeholder for the purpose of influencing local legislative or administrative action in exchange for economic consideration.

(h) "Lobbyist" is defined in Administrative Code § 16.520, *et seq.*

(i) "Local office" means the following elective offices in the City and County of San Francisco: Mayor, Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, Board of Education of the San Francisco Unified School District, and Governing Board of the San Francisco Community College District.

(j) "Measure" means a local referendum or local ballot measure, whether or not it qualifies for the ballot.

(k) "Vendor" means a person or entity who sells goods or services, other than campaign consulting services, including but not limited to printing, catering, and transportation services. The term "vendor" does not include attorneys who provide only legal services; accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act, California Government Code § 81000 *et seq.*

SEC. 16.542. PROHIBITIONS. It shall be unlawful for any campaign consultant to provide campaign consulting services, or accept any economic consideration for the provision of campaign consulting services, without first registering with the Ethics Commission and complying with the reporting requirements specified in section 16.543.

SEC. 16.543. REGISTRATION, RE-REGISTRATION, REPORTING, AND FEES.

(a) REGISTRATION REPORTS. At the time of initial registration, each campaign con-

sultant shall report to the Ethics Commission the following information:

(1) The name, business address and business phone number of the campaign consultant;

(2) if the campaign consultant is an individual, the name of the campaign consultant's employer and a description of the business activity engaged in by the employer;

(3) the names of any individuals employed by the campaign consultant to assist in providing campaign consulting services;

(4) a statement of whether the campaign consultant is required to register with the Ethics Commission pursuant to the Lobbyist Ordinance, San Francisco Administrative Code § 16.520, *et seq.*

(5) a statement of whether the campaign consultant is required to register with the Tax Collector pursuant to the Business Tax Ordinance, San Francisco Municipal Code, Part III, § 1001, *et seq.*

(6) the name, address, and telephone number of each client to whom the campaign consultant provided campaign consulting services during the preceding three months;

(7) for each client, the total economic consideration promised by or received from the client in exchange for the provision of campaign consulting services during the preceding three months, provided that the total is \$500 or more;

(8) each political contribution of \$100 or more made or delivered by the campaign consultant, or made by a client at the behest of the campaign consultant, or for which the campaign consultant acted as an agent or intermediary, during the preceding three months in support of or in opposition to a candidate or measure;

(9) the cumulative total of all political contributions made or delivered by the campaign consultant, or which is made by a client at the behest of the campaign consultant, or for which the campaign consultant acted as an agent or intermediary, during the preceding three months in support of or in opposition to each individual candidate or measure, provided that the cumulative total is \$500 or more;

(10) any gifts promised or made by the campaign consultant to a local officeholder during the preceding three months which in the aggregate total \$50 or more; and

(11) any other information required by the Ethics Commission consistent with the purposes and provisions of this Article.

(b) RE-REGISTRATION REPORTS. Each campaign consultant shall re-register annually no later January 1.

(c) FEES. At the time of initial registration and re-registration, each campaign consultant shall pay to the Ethics Commission a registration fee and an additional fee for each client of

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the campaign consultant. These fees shall be proposed by the Ethics Commission for approval by the Board of Supervisors. The fees shall be approved by the Board no later than December 1 for implementation during the following calendar year. When a client is acquired subsequent to initial registration or re-registration, the per-client fee shall be paid at the time of filing the information required by subsection (d). The Ethics Commission shall deposit fees collected pursuant to this section in the General Fund of the City and County of San Francisco.

(d) **CLIENT AUTHORIZATION STATEMENTS.** At the time of initial registration, the campaign consultant shall submit to the Ethics Commission a written authorization from each client that contracts with the campaign consultant for campaign consulting services.

If the campaign consultant is retained by a client after the date of initial registration, the campaign consultant must file a Client Authorization Statement before providing any campaign consulting services to the client and before receiving any economic consideration from the client in exchange for campaign consulting services, and in any event no later than 15 days after being retained to provide campaign consulting services to the client.

(e) **QUARTERLY REPORTS.** Each campaign consultant shall file with the Ethics Commission quarterly reports containing the following information:

(1) For each client, the total economic consideration promised by or received from the client during the reporting period for campaign consulting services, provided that the total is \$500 or more;

(2) the total economic consideration promised by or received from all clients during the reporting period for campaign consulting services;

(3) political contributions of \$100 or more made or delivered by the campaign consultant, or made by a client at the behest of the campaign consultant, or for which the campaign consultant acted as an agent or intermediary, during the reporting period in support of or in opposition to a candidate or measure;

(4) the cumulative total of all political contributions made or delivered by the campaign consultant, or made by a client at the behest of the campaign consultant, or for which the campaign consultant acted as an agent or intermediary, during the reporting period in support of or in opposition to each individual candidate or measure, provided that the cumulative total is \$500 or more;

(5) any gifts promised or made by the campaign consultant to a local officeholder during the reporting period which in the aggregate total \$50 or more;

(6) economic consideration promised to or received by the campaign consultant during the

reporting period from vendors and subvendors who provided campaign-related goods or services to a current client of the campaign consultant;

(7) the name of each local officeholder and City employee who is employed by the campaign consultant, or by a client of the campaign consultant at the behest of the campaign consultant, during the reporting period;

(8) each City contract obtained by the campaign consultant during the reporting period, provided that the contract is approved by a local officeholder who is a client of the campaign consultant;

(9) each appointment to public office received by the campaign consultant during the reporting period provided that the appointment is made by a local officeholder who is a client of the campaign consultant;

(10) any other information required by the Ethics Commission consistent with the purposes and provisions of this Article.

Quarterly reports are due as follows: The report for the period starting December 1 and ending February 28 is due March 15; the report for the period starting March 1 and ending May 31 is due June 15; the report for the period starting June 1 and ending August 31 is due September 15; and the report for the period starting September 1 and ending November 30 is due December 15.

(f) **CLIENT TERMINATION STATEMENTS.** Within 30 days after a client terminates the services of a campaign consultant, the campaign consultant shall submit to the Ethics Commission a statement that the client has terminated the services of the campaign consultant. A campaign consultant may not provide campaign consulting services to a client or accept economic consideration for the provision of campaign consulting services after a client termination statement is filed, until a new client authorization statement has been filed pursuant to section 16.543(d).

(g) **CAMPAIGN CONSULTANT TERMINATION STATEMENTS.** A campaign consultant shall comply with all requirements of this Article until the campaign consultant ceases all activity as a campaign consultant and files a statement of termination with the Ethics Commission. A statement of termination must include all information required by subsection (e) for the period since the campaign consultant's last quarterly report.

(h) Each campaign consultant shall verify, under penalty of perjury, the accuracy and completeness of the information provided under sections 16.543 and 16.544(c).

(i) Each campaign consultant shall retain for a period of five years all books, papers and documents necessary to substantiate the reports and statements required under this Article.

**SEC. 16.544. POWERS AND DUTIES OF**

## THE ETHICS COMMISSION.

(a) The Ethics Commission shall provide forms for the reporting of all information required by this Article.

(b) The Ethics Commission shall issue a registration number to each registered campaign consultant.

(c) At the time of initial registration and re-registration, the Ethics Commission shall provide the campaign consultant with a copy of the City's campaign and lobbyist laws, the Code of Conduct specified in section 16.545, and any related material which the Commission determines will serve the purposes of this Article. Each campaign consultant must sign a statement acknowledging receipt of these materials.

(d) The Ethics Commission shall compile the information provided in registration and quarterly reports filed pursuant to this Article as soon as practicable after the close of each quarter and shall forward a report of the compiled information to the Board of Supervisors and the Mayor.

(e) The Ethics Commission shall preserve all original reports, statements, and other records required to be kept or filed under this Article for a period of five years. Such reports, statements, and records shall constitute a part of the public records of the Ethics Commission and shall be open to public inspection.

(f) The Commission shall provide formal and informal advice regarding the duties under this Article of a person or entity pursuant to the procedures specified in San Francisco Charter section C3.699-12.

(g) The Ethics Commission shall have the power to adopt all reasonable and necessary rules and regulations for the implementation of this Article pursuant to the procedure specified in Charter section C3.699-9.

## SEC. 16.545. ADMINISTRATIVE AND CIVIL ENFORCEMENT AND PENALTIES.

(a) If any campaign consultant files an original statement or report after any deadline imposed by this Article, the Ethics Commission shall, in addition to any other penalties or remedies established in this Article, fine the campaign consultant \$50 per day after the deadline until the statement or report is received by the Ethics Commission. If any campaign consultant files an original statement or report after any deadline imposed by this Article, when the deadline is fewer than thirty days before or after an election, the Ethics Commission shall, in addition to any other penalties or remedies established in this Article, fine the campaign consultant \$100 per day after the deadline until the statement or report is received by the Ethics Commission. The Ethics Commission may reduce or waive a fine if the Commission determines that the late filing was not willful and that enforcement will not further the purposes of this Article. The Ethics Commission shall

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deposit funds collected under this Section in the General Fund of the City and County of San Francisco.

(b) Any person who believes that section 16.542 has been violated may file a complaint with the Ethics Commission. Upon receipt of a complaint, or upon its own initiative, the Commission may investigate allegations of a violation of section 16.542 and enforce the provisions of section 16.542 pursuant to the procedures established in San Francisco Charter section C3.699-13, and the Commission's rules and regulations adopted pursuant to Charter section C3.699-9.

(c) When the Commission, pursuant to the procedures specified in Charter section C3.699-13, determines on the basis of substantial evidence that a person or entity has violated section 16.542, the Commission may require the person or entity to: (1) cease and desist the violation; (2) file any reports or statements or pay any fees required by this Article; and/or (3) pay a monetary penalty of up to \$5,000 for each violation, or three times the amount not properly reported, whichever is greater. The Commission may cancel for up to one year the registration of any campaign consultant who has violated section 16.542. A campaign consultant whose registration has been canceled pursuant to this section may not provide campaign consulting services in exchange for economic consideration for the period that the registration is canceled. When the period of cancellation ends, the campaign consultant may re-register pursuant to section 16.543(a) and (c).

(d) Any person or entity which knowingly or negligently violates or who causes any other person to violate section 16.542 may be liable in a civil action brought by the City Attorney for an amount up to \$5,000 per violation, or three times the amount not properly reported, whichever is greater.

(e) Any person or entity which intentionally or negligently violates section 16.542 is guilty of a misdemeanor.

(f) No administrative, civil, or criminal action shall be maintained to enforce section 16.542 unless brought within four years after the date the cause of action accrued or the date that the facts constituting the cause of action were discovered by the Ethics Commission, City Attorney, or District Attorney, whichever is later.

(g) In investigating any alleged violation of section 16.542, the Ethics Commission and City Attorney shall have the power to inspect, upon reasonable notice, all documents required to be maintained under section 16.543(i). This power to inspect documents is in addition to other powers conferred on the Ethics Commission and City Attorney by the Charter or by ordinance, including the power of subpoena.

### SEC. 16.546. CODE OF CONDUCT.

At the time of initial registration and re-registration, each campaign consultant must elect whether to voluntarily comply with the following Code of Conduct:

"I am familiar with all the laws, rules and regulations applicable to local campaigns;

"I will not knowingly make false statements about the qualifications or positions of any candidate, or about the scope and effect of any measure;

"I will not knowingly make false statements that any real or fictitious person supports or opposes a candidate or measure;

"In the event that I make inadvertent false statements about the qualifications or positions of any candidate, or about the scope and effect of any measure, I will endeavor to provide corrected information in written form to the Ethics Commission within five days;

"I will refrain from appealing to prejudice in the conduct of a campaign, and from conducting, managing or advising a campaign, which appeals to prejudice based on race, gender, ethnic background, religious affiliation or non-affiliation, sexual orientation, age, disability, or economic status;

"I will refrain from seeking to obtain the support of or opposition to any candidate or measure by the use of financial inducements or by the use of threats or coercion;

"I will refrain from influencing the submission of a measure to the San Francisco voters for the sole purpose of obtaining economic consideration for campaign consulting services;

"I will disclose through a filing at the San Francisco Ethics commission any agreements that would result in a campaign consulting contract resulting from my efforts to influence the submission of a measure to the San Francisco voters at the time that I seek the submission of any such measure;

"I will refrain from seeking to evade, or participating in efforts of others to evade, the legal requirements in laws pertaining to political campaigns;

"I will not knowingly participate in the preparation, dissemination, or broadcast of paid political advertising or campaign materials that contain false information; and

"I will refrain from accepting clients whose interests are adverse to each other."

SEC. 16.547. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Article, or the application thereof to any person or entity is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article or its application to other persons, business entities, or organizations. The Board of Supervisors hereby declares that it would have adopted this Article, and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions, or the application thereof to any person or entity, to be declared invalid or unconstitutional.