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April 12, 2016

By Electronic Mail (karla.moore-love@portlandoregon.gov)

Portland City Council
City Hall
1221 SW Fourth Avenue
Portland, OR 97204

Re: Testimony of the Campaign Legal Center on Proposed Changes to Portland City Code 2.12, Registration of Lobbying Entities

Dear Mayor Hales and Commissioners Fish, Fritz, Novick and Saltzman:

On behalf of the Campaign Legal Center,[1] we are submitting this testimony in regard to proposed changes to the lobbying provisions of the Portland City Code (PCC), scheduled to be considered by the Council at its meeting on April 13. The proposed changes would add a monetary threshold to trigger lobbyist registration and reporting requirements, lengthen the "cooling off" period of the City's revolving door provision, increase penalties for violating the lobbying code and establish the Auditor's authority to initiate investigations. These commonsense changes proposed by Auditor Mary Hull Caballero reflect the type of changes necessary to keep the City's code up-to-date with current lobbying practices. The Campaign Legal Center supports these changes and suggests several additional changes to strengthen and clarify the City's lobbying laws.

I. The proposed amendments to the City's lobbying code, together with the Campaign Legal Center's suggested modifications, reflect good public policy.

For nearly 15 years, the Campaign Legal Center has worked to promote effective campaign finance, lobbying and ethics laws at every level of government. With this experience and perspective, we know that diligent maintenance of these laws is critical to their success. The proposed amendments to the City's lobbying code represents precisely the kind of periodic evaluation and updating that is so important to maintain meaningful lobbying laws.

The proposed amendments to the City's lobbying code would extend the amount of time, from one to two years, that former City elected officials must wait before lobbying the City and

[1] The Campaign Legal Center is a nonprofit, nonpartisan organization that works to enact, implement and defend effective campaign finance, lobbying and ethics laws. It was created to represent the public perspective in administrative and legal proceedings in the areas of campaign finance, voting rights and government ethics and to protect the integrity of government and the ability of all Americans to participate in the political process.

specifies other high-level positions within the City that will also be subject to the two-year "cooling-off" period. Post-employment restrictions such as these are intended to prevent high-level government officials from capitalizing on their public service for personal gain. Additionally, these restrictions are intended to temper the former officials' influence over subordinates who may still be serving within government. The cooling-off period diminishes the appearance that a former official is "cashing in" on their government service and provides those who worked with the official while in office the separation of time to diminish the sense that the official still has influence over them. The proposed amendment to extend the cooling off period from one to two years is important for several reasons. One year is a relatively short period of time and many of the matters pending before the City and many of the people working for the City will likely still be the same. A two-year cooling-off period makes it more likely that the government official's direct knowledge and connections they developed while in office will be attenuated, and thus diminishes the appearance that they have special influence and knowledge.

The City's current post-employment restriction applies to all City employees. PCC 2.12.080.A ("No former City elected official, City director *or other employee* shall . . .") (emphasis added). Such an across the board ban is unnecessarily restrictive. Post-employment restrictions should focus on the activities of former elected officials and other high-level positions within government. The potential for undue influence of former city officials is greatest for those who have had substantial power or decision-making authority during their government service. There is little potential for such abuse with lower ranking staff and it is accordingly not necessary to limit their post-employment activities in the same way. Federal law similarly establishes a two-year cooling-off period for Members of Congress and senior staff, defined as those who are compensated at a rate equal to or above 75 percent of the rate of pay of a Member of Congress. 18 U.S.C. § 207(e)(7). The proposed amendments make a sensible change to current law by specifying certain positions subject to the post-employment restrictions rather than the current provision that covers all city employees. The Campaign legal Center supports this change to lengthen the cooling-off period while at the same time specifying and narrowing the employees covered by this provision.

The amendments also propose changes to the Auditor's duties by giving her authority to initiate investigations and investigate complaints of alleged violations of the lobbying provisions. The amendments provide that the Auditor "[m]ay make such inquiries and obtain such reasonable assistance and information from any office or person as the Auditor shall require for enforcement purposes, including requests to produce documentary or other evidence that is reasonably relevant to the matters under investigation." Amendments 2.12.110.G. This grant of authority stops short of providing the Auditor with subpoena power to pursue her investigations. Based on our observations of other agencies and officials charged with administering and enforcing similar laws, we know that subpoena power may very well be necessary for the Auditor to fully investigate potential violations of the law. Subpoena power could be placed directly with the Auditor or the Auditor could request subpoenas on a case-by-case basis through the City Attorney. Either way, we recommend that the Auditor's increased enforcement authority also include subpoena power. The availability of subpoena power will enable the Auditor to conduct more robust and thorough investigations and, ultimately, to enforce the law in a meaningful way.

II. The Council should consider additional changes to the City's lobbying provisions to clarify and strengthen Chapter 2.12.

The proposed amendments to the City's lobbying ordinance represent good public policy. While the Council is in the process of making these changes, we recommend that the Council consider several additional changes to clarify and strengthen Portland's lobbying provisions.

First, the City's lobbying provisions relating to gifts could be greatly improved with some clarifying changes to reflect applicable State law. State law establishes an aggregate annual cap of $50 on the amount public officials may accept from "a single source that could reasonably be known to have a legislative or administrative interest," e.g., lobbyists, lobbying firms and their clients. Or. Rev. Stat. § 244.025. This law applies to public officials at all levels of government within the State. [2] The City's code, however, does not make clear that City officials are subject to this limit. The current City lobbying law addresses gifts in two places: 2.12.020.K defines "gift", and 2.12.070 requires city officials to file written reports documenting gifts from lobbyists in excess of $25. Neither section establishes a cap on the maximum value of a gift that a city official may accept or refers to the applicable State law.

The City's lobbying provisions should make clear that City officials are subject to the $50 gift limit. Other sections of the City's lobbying code refer to the Oregon Code, indicating that the City ordinance is relying on a State law definition or that a provision of State law governs. *See, e.g.*, PCC 2.12.020.K.1 (exempting "campaign contributions" from the definition of "gift" and relying on State law's description of campaign contributions). We recommend that the City's lobbying provisions specifically refer to the State's gift limits and perhaps to the State's government ethics laws more broadly. Such a reference will make clear that additional requirements and restrictions under State law may apply to individuals lobbying the City and, in turn, help ensure compliance with all applicable lobbying laws.

In addition, we recommend that the City official's gift reporting requirements be modified to use State's description of the giver of the gift, "any single source that could reasonably be known to have a legislative or administrative interest," Or. Rev. State. § 244.025, rather than the description used in current City law. As written, the reporting requirements for city officials require disclosure of gifts from "a lobbying entity, or any person authorized to lobby on the lobbying entity's behalf." PCC 2.12.070.A. This definition captures lobbying firms (a lobbying entity) and the lobbyists who work there (a person authorized to lobby on the lobbying entities behalf) but does not capture *clients* hiring lobbyists. We recommend that the Council use the State's language from Section 244.025 which would capture all three (client, lobbyist and lobbying firm), because all three would have a "legislative or administrative interest," and close this loophole in the gift reporting requirements. This modest change would ensure the reporting of gifts from those with lobbying interest and provide parity between the State's aggregate gift limit and the City's reporting requirements for such gifts.

[2] The gift cap established under Oregon Code applies to "public officials," defined as "any person who . . . is serving the State of Oregon or any of its political subdivisions or any other public body defined in ORS 174.109." Or. Rev. Stat. § 244.020(15). The definition of public body includes "local government bodies." § 174.109.

Finally, we recommend that the Council amend the quarterly reporting requirements for lobbying entities and require itemized reporting of lobbying expenditures. Even though the City Code defines six categories of lobbying expenditures, lobbyists are only required to report a lump-sum of their expenditures in excess of $1,000. PPC 2.12.040.A.2. Itemized expenditure reporting is an important tool to provide meaningful disclosure so that the public can understand the nature of lobbying activities. There is a vast difference in the type of lobbying represented by expenditures for "printing, postage and telephone" as opposed to expenditures for "food, refreshments, travel and entertainment." The public should be able to see not just who is attempting to influence City officials, but how they are attempting to influence them. This information will contribute to transparent government processes. California's Fair Political Practices Commission (FPPC) recently updated its regulations to provide greater detail to the public on lobbying expenditures. The FPPC recognized that detailed reporting of lobbying expenditures will also aid compliance and expose potential violations of the law. *See* FPPC Memo. Lobbying Disclosure of Other Payments to influence, Jan. 22, 2015, *available at* http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2016/01-16/50.1%20Memo%20Reg%2018616.pdf. We urge the Council to take similar steps and provide greater transparency into how lobbyists are spending money to influence City officials.

III. Conclusion

For all of the above-state reasons, the Campaign Legal Center concludes that the proposed amendments to Portland City Code 2.12 reflect good public policy. We respectfully urge the Council to make additional changes to the proposed amendments as outlined in this testimony. We thank you for the opportunity to submit this testimony.

Sincerely,

/s/ Catherine Hinckley Kelley

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