Communication from Public

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Council File No:	22-0560
Comments for Public Posting:	Attached please find a letter from Public Counsel on the proposed changes to the Los Angeles Municipal Lobbying Ordinance. Thank you.

Councilmember Paul Krekorian
Councilmember Nithya Raman
Councilmember Bob Blumenfield
Councilmember Marqueece Harris-Dawson
Councilmember Heather Hutt
Councilmember Eunisses Hernandez
Councilmember Traci Park

Dear City Councilmembers:

Re: Council File #22-0560

I am an attorney at Public Counsel, a nonprofit law firm that provides free legal services to disadvantaged individuals and nonprofit organizations that serve such individuals in Los Angeles County. I write on behalf of Public Counsel and our city's nonprofit community to share concerns regarding proposed reforms to Los Angeles City's Municipal Lobbying Ordinance (MLO).

We appreciate the Ad Hoc Committee's effort to grapple with the challenge of crafting a MLO that doesn't unduly burden small and medium-size 501(c)(3) nonprofits – which are crucial service providers and engines of civic participation among systemically disadvantaged communities – while also limiting the unfair influence of far more powerful entities that hold nonprofit status.

Small and medium-size 501(c)(3) nonprofits do not wish to undermine important efforts to increase transparency and accountability. Public Counsel and the organizations we advise already track and report certain lobbying activities to comply with IRS rules limiting the lobbying activity of 501(c)(3)s. However, the current proposals go far beyond these existing procedures and will have the unintended consequence of chilling the very type of civic engagement that the City should be encouraging.

We need more public participation in City Hall, not less, and the primary vehicle for many people from low-income communities of color are community-based 501(c)(3) nonprofits. Indeed, the groups of people engaged by community-serving nonprofits are far more representative of LA City and its racially and economically marginalized communities than many official vehicles the City has for civic participation. For that reason, the City leans heavily on community-serving nonprofits to support the development, implementation, and reform of policies in which those nonprofits have significant experience and expertise. It would be sad and ironic if in the name of reducing corruption the City also undermined actual community engagement.

LA City's Unusual Definition of Lobbying

To convey the far-reaching impact of the MLO on community-based nonprofits, it's first important to address a widespread misconception about the kind of "lobbying" that's being regulated under the MLO.

LA City's definition of lobbying is unusually broad, encompassing not only direct contact with elected and appointed officials, but also activities ***unrelated to direct communication*** with officials, including the mere acts of conducting research and gathering information and engaging in public, media, and community relations, so long as the activity is related to an attempt to influence either legislation or administrative decisionmaking. (LAMC 48.02(P)) It is not simply about making public comment, speaking privately to city officials, or drafting legislation.

The enormous breadth of the activities classified as lobbying is compounded by the fact that proposed changes to the MLO's definition of "City Matter" will extend it to encompass "matters that do not have a City reference number or are newly raised" (Proposed LAMC 48.02(E)). In essence, nearly all civic engagement in city issues involving paid nonprofit employees now may now be classified as lobbying under the proposed MLO.

To illustrate, the following actions may not be considered lobbying under IRS regulations but are classified as lobbying by the City of Los Angeles:

- A service-provider being interviewed by a journalist about why a proposed city policy is damaging to its clients.
- An Instagram post with stories and statements from clients about why the City should move forward with a policy
- A conversation with a partner organization explaining why an organization supports a pending city council item.

Proposed regulations that include this overly broad definition of lobbying could result in community-based organizations being required to register as "MLO nonprofit filers" even if their employees were spending no time at all communicating directly with government officials. This framework imposes an overbearing regulatory framework that burdens nonprofit organizations which support systemically-disadvantaged communities in exercising their fundamental democratic rights to speech, assembly, and petitioning the government.

The Proposed Changes Create a Significant Burden for Nonprofit Organizations

Under the proposed regulations, nonprofit filers would be required to set up and implement systems to track staff members' time on all of the so-called lobbying activities described above. Tracking time spent directly on public comment, meetings with officials, preparing comment letters, and drafting legislation is one thing and relatively easy given how well-defined it is. (Indeed, it is the kind of activity already tracked for IRS reporting purposes.) It is entirely another thing to have to track all time spent in any activity related to influencing City policy, such as communicating with clients and community members about LA city matters or gathering information and conducting research about problems that may be related to a pending city

matter. Moreover, *unlike the definition of "lobbyist" in the proposed ordinance, the threshold for a nonprofit employee to be considered a "nonprofit representative"* (thereby triggering nonprofit filer registration) *does not require the employee to have ANY direct communications with city personnel* (See Proposed LAMC 48.02(S) and (V).)

The fact that reporting is only triggered at $5,000 is no relief given the Ethics staff's stated position that as soon as the threshold is reached, all past activity prior to hitting the threshold needs to be reported. It would be impossible for a nonprofit to ascertain if the $5,000 threshold for a given employee has been reached unless the nonprofit implements detailed tracking systems for ALL of its employees who possibly engage in activities which fit the expansive definition of lobbying. Further, given the broad definition of lobbying, it's easily conceivable that numerous employees at community-based organizations could easily exceed $5,000 worth of time spent on qualifying activities. An employee making $70,720 annually (or $34 per hour) would only need to approximately spend 150 hours per year – less than 3 hours per week on average to qualify.

The financial cost and administrative burden of this would be considerable. Setting up tracking systems and hiring people to help report will divert charitable dollars, disrupting operations with staff tracking and reporting requirements. These costs will be particularly burdensome for small and medium-sized nonprofits, many of whom have done important work to democratize City decision making and elevate the voices of disadvantaged communities in the civic process.

It is for all these reasons that nearly all other jurisdictions define lobbying in their ordinances more narrowly to concern direct contacts with government officials, rather than require employers to track community engagement and research activities and push regulators to pursue detailed internal records from nonprofits. For example, California requires nonprofits to register only if the organization hires a contract lobbyist or employs an individual who spends more than 1/3 of their time in a calendar with month in direct contact with state officials. Organizations that don't meet the criteria for registration only need to file reports in quarters where they spend $5,000 – staff time only counts toward that threshold if an employee spends more than 10% of their time in a month lobbying (under a definition analogous to IRS rules). Los Angeles County, requires full-time employees to register as lobbyists only if they directly communicate with County officials on at least five separate occasions in any three consecutive calendar months *or* if their full-time work primarily involves the performance of County lobbying.

The broad definitions of lobbying also render enforcement of the MLO quite difficult. Because so much of what are categorized as "lobbying activities" do not involve direct contact with City officials, it is not clear how the Ethics Commission and their staff would ascertain when the $5,000 threshold for an employee is reached. Unless they do spot audits of civically engaged nonprofits, it seems likely that enforcement actions will most likely be triggered by complaints from people and institutions who have a reason to undermine the alleged rule violator.

Please consider exempting all but the largest 501(c)(3) organizations from the MLO or in the alternative, conforming the MLO definition of lobbying for nonprofit organizations to the IRS rules and establishing a threshold for registration and/or reporting that reflects a significant investment of organizational resources. We look forward to working with your offices to come

up with a proposal that ensures transparency, administrative ease, and a robust democratic process in which the voices of systemically disadvantaged communities are elevated, not further marginalized.

Sincerely,

Annie Marquit
Senior Staff Attorney, Public Counsel