

ORDINANCE NUMBER O- 18606 (NEW SERIES)

ADOPTED ON DEC 07 1998

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER II, ARTICLE 7, DIVISION 40, SECTIONS, 27.4001, 27.4002, 27.4005, 27.4007, 27.4009, 27.4010, 27.4013 AND 27.4017; BY ADDING NEW SECTION 27.4018; AND AMENDING SECTIONS 27.4022, 27.4023, 27.4024, 27.4025, 27.4026 AND 27.4028, ALL RELATING TO THE MUNICIPAL LOBBYING ORDINANCE.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 7, Division 40 of the San Diego Municipal Code is hereby amended by amending Sections 27.4001, 27.4002, 27.4005, 27.4007, 27.4009, 27.4010, 27.4013 and 27.4017, to read as follows:

SEC. 27.4001 Purpose

The purpose of this division is to provide registration and disclosure requirements whereby individuals acting as Municipal Lobbyists are required to register with the City. The purpose of registration is to require Lobbyists to provide sufficient information so that complete disclosure of principals and Clients they represent may become public information for the benefit of the City Council and the general public. This division is not intended to discourage or prohibit the exercise of constitutional rights.

SEC. 27.4002 Definitions

The first letter of each term defined in this division is capitalized. Unless the context otherwise indicates, the defined terms have the meanings set forth below.

“Activity Expense” means any Payment made to, or benefitting, any City Official made by a Lobbyist. An Activity Expense benefits a City Official if it is made to, or on behalf of, the City Official. An Activity Expense includes gifts provided to the City Official's spouse or dependent child if the City Official receives benefits from the gift or exercises control or discretion over the use or disposal of the gift. “Activity Expenses” include gifts, meals, honoraria, consulting fees, salaries and any other form of Compensation, but do not include campaign contributions.

“Agent” means a Person who acts on behalf of any other Person. “Agent” includes a Person who acts on behalf of a Lobbyist.

“City” means the City of San Diego or any organizational subdivision, office, or board of the City.

“City Board” includes any board, commission, committee, or task force of the City established by action of the City Council under authority of the City Charter, Municipal Code or Council resolution. It does not include boards of directors or employees of

City agencies that are nonprofit corporations of which the City is the only member. It also does not include Housing Commissioners or Housing Commission employees.

“City Official” includes:

(a) any elected or appointed City officeholder, including any City officeholder elected but not yet sworn in, City employee, or City Board member;

(b) City Council members acting in their capacity as Housing Authority and Redevelopment Agency officers; and

(c) any consultants of this City who are required to file a statement of economic interest pursuant to any conflict of interest code adopted by the City Council.

“Client” means

(a) a Person who compensates a Lobbyist, including an In-House Lobbyist, for the purpose of Influencing a Municipal Decision; or

(b) a Person on whose behalf a Lobbyist makes attempts at Influencing a Municipal Decision.

“Committee” has the same meaning as that set forth in California Government Code Section 82013.

“Compensated Services” means Lobbying activities for which Compensation was paid during a reporting period or for

which the Lobbyist became entitled to Compensation during that period.

“Compensation” means any economic consideration for services rendered, either via employment or contract, other than reimbursement for Travel Expenses.

“Day” means calendar day unless otherwise specified.

“Direct Communication” means:

- (a) talking to (either by telephone or in person); or
- (b) corresponding with (either in writing or by electronic transmission or facsimile machine).

“Direct Communication” does not include:

- (a) solely responding to questions from any City Official; or
- (b) appearing as a speaker at, or providing written statements which become part of the record of, a Public Hearing, so long as the Lobbyist identifies the Client(s) represented.

“Gift” has the same meaning as that set forth in California Government Code Section 82028.

“Influencing a Municipal Decision” means affecting or attempting to affect any action by a City Official on one or more Municipal Decisions by any method, including promoting, supporting, opposing or seeking to modify or delay such action.

“Influencing a Municipal Decision” also includes providing information, statistics, analysis or studies to a City Official.

“**In-House Lobbyist**” means a salaried employee who engages in Lobbying solely on behalf of his or her employer.

“**Lobbying**” means Direct Communication with a City Official for the purpose of Influencing a Municipal Decision on behalf of any other Person.

“**Lobbyist**” means an individual who receives or becomes entitled to receive the threshold Compensation amount during any calendar quarter for Lobbying, and who has had at least one Direct Communication with a City Official in that calendar quarter.

Lobbyist includes:

- (a) In-House Lobbyists who engage in Lobbying;
- (b) individuals under contract to engage in Lobbying; and
- (c) individuals employed by a firm under contract to provide Lobbying services, whose pro-rated salary for Lobbying activities meets the threshold Compensation during any calendar quarter.

“**Municipal Decision**” includes:

- (a) the drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution;
- (b) the amendment of any ordinance or resolution;

(c) a report by a City Official to the City Council or a City Council Committee;

(d) contracts; and

(e) quasi-judicial decisions, including:

(1) any decision on a land development permit, map or other matter decided pursuant to Process 2 through 5 as described in Chapter 11 of this Municipal Code; or

(2) any grant of, denial of, modification to, or revocation of a permit or license under Chapter 1 through 10 of this Municipal Code.

“Municipal Decision” does not include any of the following:

(a) any request for advice regarding, or for an interpretation of laws, regulations, City approvals or policies;

(b) a direct response to an enforcement proceeding with the City;

(c) any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the City, or City agent, officer or employee;

(d) any ministerial action such as decisions on private land development made pursuant to Process 1 as described in Chapter 11 of this Municipal Code;

(e) any action relating to the establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or memorandum of understanding between the City and a recognized employee organization, or a proceeding before the Civil Service Commission; or

(f) any management decisions as to the working conditions of represented employees that clearly relate to the terms of collective bargaining agreements or memoranda of understanding pursuant to (e) above.

“Payment” has the same meaning as that set forth in California Government Code Section 82044.

“Person” means any individual, business entity, trust, corporation, association, committee, or any other organization or group of Persons acting in concert.

“Public Hearing” means any meeting as defined by the Ralph M. Brown Act where a public record is kept of who spoke and who was represented by a Lobbyist testifying at that hearing.

“Public Official” means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies; the State of California; the City; any political subdivision of the state,

including counties and districts; or any public corporation, agency or commission.

“Travel Expenses” means reasonable expenses for transportation plus a reasonable sum for food and lodging.

SEC. 27.4005 Threshold Determination

(a) For the purpose of determining whether a Lobbyist has met the threshold Compensation for registration required by Section 27.4007, time spent on the following activities shall be included:

- (1) monitoring a Municipal Decision the Lobbyist is seeking to influence;
- (2) preparing testimony and presentations;
- (3) attending hearings on a Municipal Decision the Lobbyist is seeking to influence;
- (4) communicating with the Lobbyist’s Client or the Lobbyist’s employer on a Municipal Decision the Lobbyist is seeking to influence; and
- (5) waiting to meet with City Officials.

These and similar activities are an integral part of Influencing a Municipal Decision.

(b) The threshold Compensation shall be calculated as follows:

(1) In 1999 it is \$2,000.

(2) It will be adjusted each year thereafter, based on the San Diego Consumer Price Index percentage change.

(c) The City Clerk shall publish the threshold Compensation amount on or before January 10 of each year.

SEC. 27.4007 Registration Required

(a) A Lobbyist is required to register with the City Clerk no later than ten (10) Days after qualifying as a Lobbyist.

(b) Within ten (10) Days after qualifying as a Lobbyist, a Lobbyist shall report the information required by Section 27.4017 for any Compensated Services the Lobbyist provided in the three (3) months prior to the date of qualification as a Lobbyist.

(c) Lobbyists shall file with the City Clerk the registration form with the Lobbyists' original signature.

(d) Nothing in this division precludes an individual from registering as a Lobbyist prior to qualifying.

SEC. 27.4009 Contents of Lobbyist's Registration

Lobbyists shall file with the City Clerk the registration form which contains the following:

(a) the Lobbyist's full name, business address, and business telephone number;

(b) the name, business address, and business telephone number of the Lobbyist's employer, if any;

(c) a specific description of the Lobbyist's employer, if any, in sufficient detail to inform the reader of the nature and purpose of the employer's business;

(d) for each Client for which the Lobbyist provides Lobbying Activities:

(1) the Client's name, business or mailing address and business or message telephone number;

(2) a specific description of each Client in sufficient detail to inform the reader of the nature and purpose of the Client's business;

(3) the specific Municipal Decision(s) for which the Lobbyist was retained to represent the Client, or a description of the type(s) of Municipal Decision(s) for which the Lobbyist was retained to represent the Client;

(e) a statement that the Lobbyist has reviewed and understands the requirements of Division 40 governing municipal lobbying; and

(f) any other information required by the City Clerk consistent with the purposes and provisions of this division.

SEC. 27.4010 Lobbyist and Client Registration Fees

(a) At the time the Lobbyist registers pursuant to Section 27.4007, the Lobbyist shall pay:

(1) an annual Lobbyist registration fee of forty dollars (\$40); plus

(2) an annual Client registration fee of fifteen dollars (\$15) for each Client identified on the registration form.

(b) A Lobbyist who initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to Section 27.4007 shall pay:

(1) a prorated Lobbyist registration fee of twenty dollars (\$20); plus

(2) a prorated Client registration fee of ten dollars (\$10) for each Client identified on the registration form.

(c) When a Client is acquired subsequent to the initial registration, the Lobbyist shall pay the Client registration fee when filing the information required by Section 27.4009.

(d) For the purpose of determining Client registration fees, a trade association or business organization qualified under Internal Revenue Code 501(c)(6) shall consider its members as one Client.

(e) For the purpose of determining Client registration fees, a single Client registration fee shall be paid for a Person, other than an individual, that employs more than one In-House Lobbyist.

(f) Fees may be paid or reimbursed by the Person, if any, who employs the Lobbyist.

SEC. 27.4013 Duration of Status

An individual who registers as a Lobbyist retains that status through January 5 of the following calendar year unless and until he or she terminates that status in accordance with Section 27.4022. An individual who continues to qualify as a Lobbyist on January 5 shall renew that registration on or before January 15 of each year.

SEC. 27.4017 Contents of Lobbyist's Quarterly Disclosure Report

A Lobbyist's quarterly disclosure report shall contain the following information:

(a) the Lobbyist's full name, business address and business telephone number;

(b) the name, business address and business telephone number of the Lobbyist's employer, if any;

(c) the name, business or mailing address and business or message telephone number of each Client represented by the Lobbyist during the reporting period; and the specific Municipal

Decision(s) for which the Lobbyist represented the Client during the reporting period;

(d) total Compensation received during the reporting period in connection with Lobbying, itemized by Client. For Lobbyists employed by an entity that provides Lobbying services by contract with Clients, the individual Lobbyist shall report his or her pro-rata share of Compensation received by, or entitled to be received by, the entity for Lobbying services provided to those Clients. Such Compensation shall be disclosed using the following ranges: 0 - \$5,000; \$5,000 - \$25,000; \$25,000 - \$50,000; and Over \$50,000;

(e) an itemization, which includes the date, amount and description of any Activity Expenses made by the Lobbyist during the reporting period of \$10 or more on any one occasion; or Activity Expenses made by the Lobbyist during the reporting period aggregating \$50 or more during the quarter, to benefit any single City Official on behalf of any one Client;

(f) the name and title of the City Official benefitting from each itemized Activity Expense;

(g) the name and address of the payee of each itemized Activity Expense;

(h) the name of the vendor if different from that of the payee of each itemized Activity Expense;

(i) the name of the Client, if any, on whose behalf each itemized Activity Expense was made;

(j) the total amount of all Activity Expenses, whether itemized or not, made by the Lobbyist during the reporting period; and

(k) any other information required by the City Clerk consistent with the purposes and provisions of this division.

Section 2. That Chapter II, Article 7, Division 40 of the San Diego Municipal Code be amended by adding new Section 27.4018 to read as follows:

SEC. 27.4018 Accountability

In addition to any other requirement of this division, every Lobbyist shall retain for a period of five years all books, papers and documents necessary to substantiate the quarterly disclosure reports required to be made under this division.

Section 3. That Chapter II, Article 7, Division 40 of the San Diego Municipal Code is hereby amended by amending Sections 27.4022, 27.4023, 27.4024, 27.4025, 27.4026 and 27.4028, to read as follows:

SEC. 27.4022 Termination of Lobbyist Status

An individual who ceases being a Lobbyist shall notify the City Clerk of this status upon the quarterly disclosure report form

provided by the City Clerk. Upon terminating, the individual shall report the information required in Section 27.4017 that remains unreported since the last quarterly disclosure report.

SEC. 27.4023 Other Obligations of a Lobbyist

Any individual who is required to register as a Lobbyist under the provisions of this division shall:

(a) abstain from doing any act with the purpose or intent of placing a City Official under personal obligation to the Lobbyist, or to the Lobbyist's employer or Client;

(b) correct, in writing, any misinformation given to a City Official, specifying the nature of the misinformation;

(c) not deceive or attempt to deceive a City Official as to any material fact pertinent to any pending or proposed Municipal Decision;

(d) not cause any communication to be sent to a City Official in the name of any fictitious Person or in the name of any real Person, except with the consent of such real Person; and

(e) not attempt to evade the obligations in this section through indirect efforts or through the use of Agents, associates or employees.

SEC. 27.4024 Employment of City Employees by Lobbyist

If any Lobbyist registered or required to be registered under Section 27.4007:

(a) employs, in any capacity whatsoever, or

(b) requests, recommends, or causes the Lobbyist's

employer to employ any individual known to be a City Official, the Lobbyist shall file a written statement with the City Clerk within ten (10) Days after such employment. This statement shall set forth the name of the individual employed, the date first employed by the Lobbyist or the Lobbyist's employer, and that individual's position, title, and department in the City.

SEC. 27.4025 Powers and Duties of the City Clerk

(a) Upon receipt of a written request, the City Clerk shall issue a notice of registration requirements to any individual whom a City Official or any other Person has reason to believe should be registered under this division.

(b) Any individual who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of Section 27.4007 by reason of being exempt under any provision of this division shall not be deemed to have violated the provisions of Section 27.4007 if, within ten (10) Days after the City Clerk has sent specific written notice, the individual either

complies with the requirements of this division, or furnishes satisfactory evidence to the Clerk that he or she is exempt from registration.

(c) As soon as practicable after the close of each quarter, the City Clerk shall complete a summary of the information contained in registration forms and quarterly disclosure reports required to be filed under the provisions of this division. This summary shall be forwarded to the Mayor and City Council.

(d) The City Clerk shall preserve all registration forms and quarterly disclosure reports required to be filed under this division for a period of six (6) years from the date of filing. These registration forms and quarterly disclosure reports shall constitute part of the public records of the Clerk's office, and shall be open to public inspection. Copies shall be made available by the Clerk upon request and payment of any lawful copy charges.

(e) The City Clerk shall have the power to adopt all reasonable and necessary procedures to implement this division.

SEC. 27.4026 Inspection of Forms and Reports

(a) The City Clerk shall inspect, or cause to be inspected, each registration form and quarterly disclosure report filed under this division within twenty (20) working Days after the filing deadline. The Clerk shall notify an individual to file a registration

form or quarterly disclosure report under this division if it appears that the individual has failed to file as required by law or that the registration form or quarterly disclosure report filed by the individual does not conform to law.

(b) Any individual notified to file an original or amended registration form or quarterly disclosure report shall file the form or report by the deadline imposed in the notification from the Clerk.

SEC. 27.4028 Violations, Penalties and Defenses

(a) Violations of this division may be prosecuted as misdemeanors subject to the fines and custody provided in San Diego Municipal Code section 12.0201. The City may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue any administrative remedy set forth in Chapter I of this Code.

(b) In addition to any other penalty or remedy available, if any individual fails to file any registration form or quarterly disclosure report required by this division after any deadline imposed by this division, that individual shall be liable to the City of San Diego in the amount of twenty-five dollars (\$25) per Day after the deadline until the report is filed, up to a maximum amount of \$500.

(c) Provisions of this division need not be enforced by the City Clerk if it is determined that the late filing was not willful and that enforcement of the penalty would not further the purposes of this division.

(d) Provisions of this division shall not be waived if a registration form or quarterly disclosure report, or an amendment to correct any deficiency in a registration form or quarterly disclosure report, is not filed by the deadline imposed in the notification from the City Clerk of the filing requirement.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Cristie C McGuire
Cristie C. McGuire
Deputy City Attorney

CCM:jrl
11/09/98
11/30/98
Or.Dept:Clerk
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