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LOBBYING ORDINANCE REVIEW

- DRAFT REVISIONS -
(Proposed Effective Date: January 1, 2008)

Article 7: Elections, Campaign Finance and Lobbying

Division 40: Municipal Lobbying

§27.4001 Purpose and Intent

~~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.~~

It is the purpose and intent of the City Council of the City of San Diego in enacting this division to: ensure that the citizens of the City of San Diego have access to information about persons who attempt to influence decisions of City government through the use of paid lobbyists; establish clear and unambiguous registration and disclosure requirements for lobbyists in order to provide the public with relevant information regarding the financing of lobbyists and the full range of lobbying activities; prohibit registered lobbyists from exerting improper influence over City Officials or from placing City Officials under personal obligation to lobbyists or their clients; promote transparency concerning attempts to influence municipal decisions; avoid corruption and the appearance of corruption in the City's decision-making processes; regulate lobbying activities in a manner that does not discourage or prohibit the exercise of constitutional rights; reinforce public trust in the integrity of local government; and ensure that this division is vigorously enforced.

§27.4002 Definitions

All defined terms in this ~~Division~~ division appear in italics. ~~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"~~ Activity Expense means any ~~Payment~~ payment made to, or benefiting or on behalf of, any *City Official* or any member of a *City Official's immediate family*, made by a ~~Lobbyist~~ lobbyist, lobbying firm, or organization 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" Activity expenses include gifts, meals, honoraria, consulting fees, salaries, and any

000604 other form of Compensation compensation to a City Official or a City Official's immediate family, but do not include campaign contributions.

~~"Agent"~~ Agent means a ~~Person~~ person who acts on behalf of any other ~~Person~~ person.

~~"Agent"~~ Agent includes a ~~Person~~ person who acts on behalf of a ~~Lobbyist~~ lobbyist.

Candidate means any individual who is holding, or seeking to hold, elective City office.

~~"City"~~ City means the City of San Diego or any of its organizational subdivision, office, or board subdivisions, agencies, offices, or boards of the City.

~~"City Board"~~ City Board includes the boards of directors of all City agencies, and 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, whose members are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

~~"City Official"~~ includes:

- (a) ~~any elected or appointed City officeholder, including any City officeholder elected but not yet sworn in, City Board member, or employee of the City or any City agency, who, as part of his or her official duties, participates in the consideration of any Municipal Decision other than in a purely clerical, secretarial or ministerial capacity;~~
- (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.~~

City Official means any of the following officers or employees of the City, which includes all City agencies: elected officeholder; Council staff member; Council Committee Consultant; Assistant City Attorney; Deputy City Attorney; General Counsel; Chief; Assistant Chief; Deputy Chief; Assistant Deputy Chief; City Manager; Assistant City Manager; Deputy City Manager; Treasurer; Auditor and Comptroller; Independent Budget Analyst; City Clerk; Labor Relations Manager; Retirement Administrator; Director; Assistant Director; Deputy Director; Assistant Deputy Director; Chief Executive Officer; Chief Operating Officer; Chief Financial Officer; President; and Vice-President. City Official also means any member of a City Board.

~~"Client"~~ 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.~~

any person who provides compensation to a lobbying firm for the purpose of influencing a municipal decision, and any person on whose behalf lobbying activities are performed by a lobbying firm.

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(a) Client includes any person that retains a lobbying firm to engage in lobbying activities pursuant to a contingency agreement.

(b) If a coalition or membership organization is a client, a member of that coalition or organization is not also a client unless that member paid, or agreed to pay, at least \$1,000 to the lobbying firm for lobbying activities performed on behalf of the coalition or organization with regard to a specific municipal decision. For purposes of this subsection, if a member is an individual, payments by that individual's immediate family are attributable to that individual member.

~~"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" Compensation means any economic consideration for services rendered or to be rendered. Compensation does not include, other than reimbursement for travel expenses.~~

Contact means the act of engaging in a direct communication with a City Official for the purpose of influencing a municipal decision. For purposes of this definition:

- (a) each discussion with a City Official regarding a different municipal decision is considered a separate contact;
- (b) each discussion regarding a municipal decision with a City Official and members of that official's immediate staff, or with multiple immediate staff members of the same City Official, is considered a separate contact;
- (c) each substantially similar communication, regardless of whether it is made by letter, e-mail, or facsimile, pertaining to one or more municipal decisions to one or more City Officials is considered a separate contact for each municipal decision.

~~Contract includes but is not limited to written contracts, agreements, memoranda of understanding, and similar writings that set forth transactions involving personal property, real property, intellectual property, personal services, consultant services, public works, or insurance. For purposes of this division, "contract" and "agreement" are synonymous. The definition of "contract" is intended to be broadly construed.~~

~~Day means calendar day unless otherwise specified.~~

~~"Direct Communication" 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:~~

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- (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 Clients(s) represented; or~~
- (c) ~~a direct response to an enforcement proceeding with the City.~~

~~“Enforcement Authority” has the same meaning as that term is defined in Section 27.2903. Enforcement Authority means the City of San Diego Ethics Commission. Nothing in this article limits the authority of the City Attorney, any law enforcement agency, or any prosecuting attorney to enforce the provisions of this article under any circumstances where the City Attorney, law enforcement agency, or prosecuting attorney otherwise has lawful authority to do so.~~

~~Expenditure lobbyist means any person who makes expenditures for public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, studies, or similar activities designed to influence one or more municipal decisions, to the extent that such payments total \$5,000 or more within a calendar quarter. An expenditure is made on the date a payment is made or on the date consideration, if any, is received by the expenditure lobbyist, whichever is earlier. Expenditures for lobbying activities reported by a lobbying firm or organization lobbyist on a quarterly disclosure report shall not be considered for purposes of calculating the \$5,000 threshold.~~

~~Fundraising activity means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$1,000 or more in contributions to a candidate or to a candidate’s controlled committee, or (b) identifying oneself to a candidate or a candidate’s controlled committee as having any degree of responsibility for \$1,000 or more in contributions received as a result of that solicitation~~

~~“Gift” has the same meaning as that set forth in California Government Code section 82028. Gift means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. Gifts are subject to the exceptions set forth in Municipal Code section 27.3525.~~

~~In-House Lobbyist” means an individual who engages in Lobbying solely on behalf of his or her business or employer. In-House Lobbyist includes, but is not limited to, owners, officers, and salaried employees of a business.~~

~~Immediate family means an individual’s spouse or registered domestic partner, and any dependent children.~~

~~“Influencing a municipal decision” Influencing a municipal decision means affecting or attempting to affect any action by a City Official on one or more Municipal Decisions~~

000607 Municipal decisions by any method, including promoting, supporting, opposing, or seeking to modify or delay such action. ~~“Influencing a municipal decision”~~ Influencing a municipal decision also includes providing information, statistics, analysis, or studies to a City Official.

~~“Lobbying”~~ Lobbying means ~~Direct Communication~~ direct communication with a City Official for the purpose of ~~Influencing a Municipal Decision~~ influencing a municipal decision on behalf of any other person.

Lobbying activities means the following and similar activities that are related to an attempt to influence a municipal decision: (a) lobbying; (b) monitoring municipal decisions; (c) preparing testimony and presentations; (d) engaging in research, investigation, and fact-gathering; (e) attending hearings; (f) communicating with clients; and (g) waiting to meet with City Officials.

Lobbying entity means any lobbying firm, organization lobbyist, or expenditure lobbyist.

Lobbying firm means any entity that receives or becomes entitled to receive any amount of monetary or in-kind compensation to engage in lobbying activities on behalf of any other person, and that has at least one direct communication with a City Official for the purpose of influencing a municipal decision. A lobbying firm includes any entity that engages in lobbying activities on behalf of another person pursuant to a contingency fee agreement.

~~“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.

Lobbyist means any individual who engages in lobbying activities on behalf of a client or an organization lobbyist.

Ministerial action means any action that does not require a City Official to exercise discretion concerning any outcome or course of action. A ministerial action includes, but is not limited to, decisions on private land development made pursuant to Process 1 as described in Chapter 11 of the Municipal Code.

~~“Municipal Decision”~~ Municipal decision includes:

- (a) the drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and
- (b) the amendment of any ordinance or resolution; and
- (c) a report by a City Official to the City Council or a City Council Committee; and

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(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; and
- (2) any grant of, denial of, modification to, or revocation of a permit or license under Chapter 1 through 10 of this Municipal Code; and
- (3) any declaration of debarment as described in Chapter 2, Article 2, Division 8, of this Municipal Code; and

(f) any other decision of the *City Council* or a *City Board*.

~~“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; or~~
- ~~(b) 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; or~~
- ~~(c) any ministerial action such as decisions on private land development made pursuant to Process 1 as described in Chapter 11 of this Municipal Code; or~~
- ~~(d) 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~~
- ~~(e) 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 (d) above.~~

Organization lobbyist means any business or organization, including any non-profit entity, that provides compensation to one or more employees who have a total of 10 or more separate contacts with one or more City Officials within 60 consecutive calendar days for purposes of lobbying on behalf of the organization lobbyist. An employee of any parent or subsidiary of the business or organization is considered an employee of that entity. “Employees” of an organization lobbyist include the owners, officers, and employees of the business or organization.

“Payment” has the same meaning as that set forth in California Government Code section 82044. Payment means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services, or anything else of value, whether tangible or intangible.

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~~"Person"~~ Person means any individual, business entity, trust, corporation, association, committee, or any other organization or group of *persons* acting in concert.

~~"Public Hearing"~~ 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"~~ 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"~~ Travel expenses means reasonable expenses for transportation plus a reasonable sum for food and lodging.

§27.4004 Exceptions

The following *persons* and activities are exempt from the requirements of this division:

- (a) a ~~Public Official~~ public official acting in his or her official capacity and any government employee acting within the scope of his or her employment;
- (b) any newspaper or other regularly published periodical, radio station, or television station (including any individual who owns, publishes, or is employed by any such newspaper, periodical, radio station, or television station) that in the ordinary course of business publishes news items, editorials, or other comments or paid advertisements ~~which that~~ directly or indirectly urge action on a ~~Municipal Decision~~ municipal decision, if such newspaper, periodical, radio station, or television station, or individual engages in no other activities to ~~Influence a Municipal Decision~~ influence a municipal decision; and
- (c) any ~~Person~~ person whose sole activity includes one or more of the following, unless the activity involves direct communication with a member of the City Council or a member of the City Council's immediate staff:
 - (1) to submit a bid on a competitively bid contract;
 - (2) to submit a written response to a request for proposals or qualifications;
 - (3) to participate in an oral interview for a request for proposals or qualifications; or,
 - (4) to negotiate the terms of a contract or agreement with the ~~City~~ City, once the ~~City~~ City has authorized either by action of the ~~City~~ City Council, ~~City~~ City Manager, or voters, entering an agreement with that ~~Person~~ person whether that ~~Person~~ person has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.
 - (5) to communicate in connection with the administration of an existing contract between the person and the City.

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- (d) any request for advice regarding, or for an interpretation of, laws, regulations, City approvals, or policies;
- (e) any communication by an attorney with regard to his or her representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the City, or City agent, officer, or employee;
- (f) any communication concerning a ministerial action;
- (g) any communication concerning 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 concerning a proceeding before the Civil Service Commission;
- (h) any communication concerning management decisions regarding the working conditions of represented employees that clearly relate to the terms of collective bargaining agreements or memoranda of understanding pursuant to (g) above;
- (i) solely responding to questions from any City Official, or providing oral or written information in response to a subpoena or as otherwise compelled by law;
- (j) solely appearing as a speaker at, or providing written statements that become part of the record of, a public hearing;
- (k) any direct response to an enforcement proceeding with the City.
- (l) the provision of purely technical data or analysis to a City Official by an expert, so long as the expert does not otherwise engage in direct communication for the purpose of influencing a municipal decision. This subsection is intended to be interpreted in a manner consistent with title 2, section 18239(d)(3)(A) of the California Code of Regulations.
- (m) the publishing of any information on an Internet website that is accessible to the general public.

§27.4005

Threshold Determination

- (a) For the purpose of determining whether a *Lobbyist* has met the threshold for Compensation 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

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- (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.~~

§27.4006 Activity Expense on Behalf of Client

An ~~Activity Expense~~ activity expense shall be considered to be made on behalf of a Client client if the Client client requires requests, authorizes, or reimburses the expense.

§27.4007 Registration Required

- (a) ~~A Lobbyist~~ Every lobbying firm and organization lobbyist is required to register with the City Clerk no later than ten (10) calendar Days days after qualifying as a Lobbyist lobbying firm or organization 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. Lobbying firms and organization lobbyists shall file their registration forms with the City Clerk, using forms provided by the City Clerk.~~
- (d)(c) ~~Nothing in this division precludes an individual entity from registering as a lobbyist lobbying firm or organization lobbyist prior to qualifying as such.~~
- (d) An entity that registers as a lobbying firm or organization lobbyist retains that status through January 5 of the following calendar year unless and until it terminates that status in accordance with section 27.4022. An entity that continues to qualify as a lobbying firm or organization lobbyist on January 5 shall renew that registration on or before January 15 of each year.

§27.4009 Contents of Lobbyist's Registration Form

~~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;~~

000692 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.

(a) Every lobbying firm shall file with the City Clerk a registration form that contains the following information:

(1) the lobbying firm's name, address, and telephone number.

(2) the name of each individual employed by the lobbying firm:

(A) who has engaged in lobbying the City within the previous 30 calendar days, or

(B) who the lobbying firm reasonably anticipates will engage in lobbying the City in the future.

(3) a listing of all owners, officers, and lobbyists of the lobbying firm who engaged in fundraising activities for a current elected City Official during the two year period preceding the filing date, along with the name of each applicable City Official. Notwithstanding the requirements of this subsection, lobbying firms have no obligation to report fundraising activities that took place prior to January 1, 2007.

(4) a listing of all owners, officers, and lobbyists of the lobbying firm who personally provided compensated campaign-related services to a current elected City Official during the two year period preceding the filing date, along with the name of each applicable City Official. Notwithstanding the requirements of this subsection, lobbying firms have no obligation to report campaign-related services that were rendered prior to January 1, 2007.

(5) a listing of all owners, officers, and lobbyists of the lobbying firm who personally provided compensated services under a contract with the City during the two year period preceding the filing date, along with the name of the City department, agency, or board for which the services were provided. Notwithstanding the

requirements of this subsection, *lobbying firms* have no obligation to report compensated services provided prior to January 1, 2007.

- (6) for each *client* for whom the *lobbying firm* engages in *lobbying activities*:
- (A) the *client's* name, business or mailing address, and telephone number; in addition, if the *client* is a coalition or membership organization, include the name, business or mailing address, and telephone number of each member who also qualifies as a *client* under section 27.4002.
 - (B) a specific description of each *client* in sufficient detail to inform the public of the nature and purpose of the *client's* business; and,
 - (C) the specific *municipal decision(s)* for which the *lobbying firm* was retained to represent the *client*, or a description of the type(s) of *municipal decision(s)* for which the *lobbying firm* was retained to represent the *client*, and the outcome(s) sought by the *client*;
- (7) statements by a duly authorized owner or officer of the *lobbying firm* that he or she:
- (A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,
 - (B) reviewed the contents of the registration form and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (8) the printed name, title, and original signature of the individual making the statements required by subsection (a)(7).
- (9) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.
- (b) Every *organization lobbyist* shall file with the *City Clerk* a registration form that contains the following information:
- (1) the *organization lobbyist's* name, address, and telephone number.
 - (2) a specific description of the *organization lobbyist* in sufficient detail to inform the public of the nature and purpose of its business.
 - (3) the name of each owner, officer, and employee of the *organization lobbyist* who is authorized to *lobby City Officials* on behalf of the *organization lobbyist*.
 - (4) the total number of *lobbying contacts* with *City Officials* made on behalf of the *organization lobbyist* by the *organization lobbyist's* owners, officers, or employees during the 60 calendar days preceding the filing date.

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- (5) a description of each *municipal decision* the *organization lobbyist* has sought to influence during the 60 calendar days preceding the filing date; and the outcome sought by the *organization lobbyist*.
- (6) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who engaged in *fundraising activities* for a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report *fundraising activities* that took place prior to January 1, 2007.
- (7) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who personally provided compensated campaign-related services to a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report campaign-related services that were rendered prior to January 1, 2007.
- (8) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who personally provided compensated services under a contract with the *City* during the two year period preceding the filing date, along with the name of the *City* department, agency, or *board* for which the services were provided. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report compensated services provided prior to January 1, 2007.
- (9) statements by a duly authorized owner or officer of the *organization lobbyist* that he or she:
 - (A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,
 - (B) reviewed the contents of the registration form and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statements required by subsection (b)(9).
- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.

§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.

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- (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.~~
- (a) At the time a lobbying firm registers pursuant to section 27.4007, the lobbying firm shall pay an annual registration fee based on the number of lobbyists identified on its registration form, plus an annual client registration fee for each client identified on the registration form.
- (1) A lobbying firm that initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to section 27.4007 shall pay prorated registration fees.
 - (2) When a lobbying firm adds a lobbyist subsequent to the lobbying firm's initial registration, the lobbying firm shall pay an additional lobbyist registration fee when filing its amended registration form as required by section 27.4012.
 - (3) When a lobbying firm acquires a client subsequent to the lobbying firm's initial registration, the lobbying firm shall pay an additional client registration fee when filing its amended registration form as required by section 27.4012.
 - (4) For the purpose of determining client registration fees, a coalition or membership organization shall be considered a single client, even if one or more of its members also qualify as clients under section 27.4002.
 - (5) Registration fees may be paid or reimbursed by a client.
- (b) At the time an organization lobbyist registers pursuant to section 27.4007, the organization lobbyist shall pay an annual organization lobbyist registration fee.
- (1) An organization lobbyist that initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to section 27.4007 shall pay a prorated registration fee.

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(2) An organization lobbyist shall pay a single registration fee regardless of the number of its owners, officers, and employees who engage in lobbying activities.

(c) All registration fees shall be set by the City Council based upon the recommendation of the City Clerk. The City Clerk shall from time to time recommend fee amounts to the City Council that reflect, but do not exceed, the City's costs of administering the filing requirements set forth in this division. A copy of the fee schedule shall be filed in the rate book of fees on file in the office of the City Clerk.

§27.4012 Amendments to Registration Form

~~Except as provided in Section 27.4015(b), Within ten calendar days of any change in the information required on their registration forms, Lobbyists lobbying firms and organization lobbyists shall file amendments to their registration form forms, with the next quarterly disclosure report, and shall disclose any disclosing the change in information required on the registration form as set forth in Section 27.4009.~~

§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.~~

§27.4014 — Notification of Activity Expense Paid to or Benefiting a City Official

(a) ~~Any Lobbyist required to file a disclosure report under the provisions of this division shall provide the following information to each City Official who is the beneficiary of an Activity Expense from the Lobbyist.~~

~~(1) the date and amount of the Activity Expense;~~

~~(2) a description of the Activity Expense provided to the City Official; and~~

~~(3) the client, if any, on whose behalf the expenditure was made.~~

(b) ~~The information required to be disclosed pursuant to subdivision (a) shall be provided in writing to the City Official who is the beneficiary within twenty business days after the date of the expenditure.~~

§27.4015 Quarterly Disclosure Report Required

(a) Lobbyists lobbying firms and organization lobbyists shall file quarterly disclosure reports for every calendar quarter during which they retain their status as a Lobbyist lobbying firm or organization lobbyist.

(b) ~~In lieu of amending the registration form, a Lobbyist may use the quarterly report to disclose any change in information required on the registration form as set forth in Section 27.4009. Expenditure lobbyists shall file quarterly disclosure reports for every~~

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calendar quarter in which they qualify as expenditure lobbyists. An entity has no filing obligations as an expenditure lobbyist for any calendar quarter in which it does not meet the definition of an expenditure lobbyist.

- (c) ~~The Lobbyist shall file with the City Clerk the report with an original signature. Each lobbying entity shall file its quarterly disclosure report with the City Clerk, using forms provided by the City Clerk.~~

§27.4016 Filing Deadline for Quarterly Disclosure Report

~~Lobbyists Lobbying entities shall file quarterly disclosure reports with the City Clerk, with the Lobbyist's original signature, no later than the last Day day of the months of April, July, October, and January. Lobbyists Lobbying entities shall disclose the information required by Section section 27.4017 for the calendar quarter immediately prior to the month in which the report is required to be filed.~~

§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 benefiting 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;~~

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- (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.~~
- (a) Each *lobbying firm's* quarterly disclosure report shall contain the following information:
- (1) the *lobbying firm's* name, address, and telephone number.
 - (2) the name, business or mailing address, and telephone number of each *client* represented by the *lobbying firm* during the reporting period (except that if the *client* is a coalition or membership organization, such identifying information need not be disclosed for any of its members who also qualify as *clients* under section 27.4002), along with the following information for that *client*:
 - (A) the specific *municipal decision(s)* for which the *lobbying firm* represented the *client* during the reporting period, and the outcome(s) sought by the *client*;
 - (B) the name and department of each *City Official* who was subject to *lobbying* by the *lobbying firm* with regard to that specific *municipal decision*;
 - (C) the name of each *lobbyist* employed by the *lobbying firm* who engaged in *lobbying activities* with regard to that specific *municipal decision*; and,
 - (D) the total *compensation* that the *lobbying firm* became entitled to receive for engaging in *lobbying activities* during the reporting period on behalf of that *client*. Such *compensation* shall be disclosed to the nearest thousand dollars.
 - (3) an itemization of *activity expenses* that includes the following:
 - (A) the date, amount, and description of any *activity expense* that exceeds \$10 on any single occasion made by the *lobbying firm* or any of its *lobbyists* during the reporting period for the benefit of a single *City Official* or any member of a *City Official's* immediate family;
 - (B) the name, title, and department of the *City Official* who benefited, or whose immediate family benefited, from the itemized *activity expense*;
 - (C) the name of each *lobbyist* who participated in making the *activity expense*;
 - (D) the name and address of the payee of each itemized *activity expense*; and,
 - (E) the name of the *client*, if any, on whose behalf each itemized *activity expense* was made.
 - (4) an itemization of any campaign contributions of \$100 or more made by owners, officers, or *lobbyists* of the *lobbying firm* to a *candidate* or a *candidate-controlled*

committee during the reporting period, including the date and amount of the contribution and the name of the candidate supported.

- (5) an itemization of any campaign contributions of \$100 or more made by the lobbying firm or any of its owners, officers, or lobbyists during the reporting period to a candidate-controlled committee that is organized to support or oppose a ballot measure, including the name of the candidate, the date and amount of the contribution, and the name of the ballot measure committee.
- (6) for each instance of fundraising activity by an owner, officer, or lobbyist of the lobbying firm during the reporting period:
- (A) the name of the owner, officer, or lobbyist who engaged in the fundraising activity;
 - (B) the name of the elected City Official or candidate benefiting from the fundraising activity;
 - (C) a description of the ballot measure, if any;
 - (D) the date(s) of the fundraising activity;
 - (E) a brief description of the fundraising activity; and
 - (F) the approximate amount of (i) all contributions personally delivered by the owner, officer, or lobbyist to a candidate or a candidate's controlled committee; and (ii) all contributions for which the owner, officer, or lobbyist has identified himself or herself to a candidate or a candidate's controlled committee as having some degree of responsibility for raising.
- (7) for each owner, officer, and lobbyist of the lobbying firm who personally provided compensated campaign-related services to a candidate or a candidate-controlled committee during the reporting period:
- (A) the name of the owner, officer, or lobbyist who provided the services;
 - (B) the candidate's name, and the office sought by that candidate;
 - (C) the name of the candidate-controlled ballot measure committee and a description of the ballot measure, if applicable;
 - (D) the approximate amount of compensation earned during the reporting period for the services provided to the candidate or candidate-controlled committee; and
 - (E) a description of the services provided.
- (8) for each owner, officer, and lobbyist of the lobbying firm who personally provided compensated services under a contract with the City during the reporting period:

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- (A) the name of the owner, officer, or lobbyist who provided the services;
 - (B) the name of the department, agency, or board for which the services were provided;
 - (C) the approximate amount of compensation earned during the reporting period for the services provided under the contract; and,
 - (D) a description of the services provided.
- (9) a statement by a duly authorized owner or officer of the lobbying firm that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statement required by subsection (a)(9).
- (11) any other information required by the Enforcement Authority or the City Clerk consistent with the purposes and provisions of this division.
- (b) Each organization lobbyist's quarterly disclosure report shall contain the following information:
- (1) the organization lobbyist's full name, address, and telephone number.
 - (2) for each municipal decision(s) for which the organization lobbyist engaged in lobbying activities during the reporting period:
 - (A) a description of the specific municipal decision, and the outcome sought by the organization lobbyist;
 - (B) the name and department of each City Official who was subject to lobbying by the organization lobbyist during the reporting period with regard to that specific municipal decision; and,
 - (C) the name of each owner, officer, or employee of the organization lobbyist who engaged in lobbying activities during the reporting period with regard to that specific municipal decision.
 - (D) the total number of lobbying contacts with City Officials made on behalf of the organization lobbyist by the organization lobbyist's owners, officers, or employees with regard to that specific municipal decision during the reporting period.
 - (3) an itemization of activity expenses that includes the following:
 - (A) the date, amount, and description of any activity expense that exceeds \$10 on any single occasion made by the organization lobbyist or any of its lobbyists

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during the reporting period for the benefit of a single *City Official* or any member of a *City Official's immediate family*;

- (B) the name, title, and department of the *City Official* who benefited, or whose *immediate family* benefited, from the itemized activity expense;
 - (C) the name of each lobbyist who participated in making the activity expense; and
 - (D) the name and address of the payee of each itemized activity expense.
- (4) an itemization of any campaign contributions of \$100 or more made by owners, compensated officers, or lobbyists of the organization lobbyist to a candidate or a candidate-controlled committee during the reporting period, including the date and amount of the contribution and the name of the candidate supported.
- (5) an itemization of any campaign contributions of \$100 or more made by the organization lobbyist or any of its owners, compensated officers, or lobbyists during the reporting period to a candidate-controlled committee that is organized to support or oppose a ballot measure, including the date and amount of the contribution and the name of the ballot measure committee.
- (6) for each instance of fundraising activity by an owner, compensated officer, or lobbyist of the organization lobbyist during the reporting period:
- (A) the name of the owner, officer, or lobbyist who engaged in the fundraising activity;
 - (B) the name of the elected *City Official* or candidate benefiting from the fundraising activity;
 - (C) a description of the ballot measure, if any;
 - (D) the date(s) of the fundraising activity;
 - (E) a brief description of the fundraising activity; and
 - (F) the approximate amount of (i) all contributions personally delivered by the owner, officer, or lobbyist to a candidate or a candidate's controlled committee; and (ii) all contributions for which the owner, officer, or lobbyist has identified himself or herself to a candidate or a candidate's controlled committee as having some degree of responsibility for raising.
- (7) for each owner, compensated officer, and lobbyist of the organization lobbyist who personally provided compensated campaign-related services to a candidate or a candidate-controlled committee during the reporting period:
- (A) the name of the owner, officer, or lobbyist who provided the services;
 - (B) the candidate's name, and the office sought by that candidate;

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- (C) the name of the *candidate*-controlled ballot measure committee and a description of the ballot measure, if applicable;
 - (D) the approximate amount of *compensation* earned during the reporting period for the services provided to the *candidate* or *candidate*-controlled committee; and,
 - (E) a description of the services provided.
- (8) for each owner, compensated officer, and *lobbyist* of the *organization lobbyist* who personally provided compensated services under a contract with the *City* during the reporting period:
- (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the name of the department, agency, or *board* for which the services were provided;
 - (C) the approximate amount of *compensation* earned during the reporting period for the services provided under the contract; and,
 - (D) a description of the services provided.
- (9) a statement by a duly authorized owner or officer of the *organization lobbyist* that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statement required by subsection (b)(9).
- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.
- (c) An *expenditure lobbyist's* quarterly disclosure report shall contain the following information:
- (1) The name, address, and telephone number of the *expenditure lobbyist*.
 - (2) The name, title, address, and telephone number of the individual responsible for preparing the report.
 - (3) A description of each *municipal decision* that the *expenditure lobbyist* attempted to influence during the reporting period, and for each such *municipal decision*:
 - (A) The total expenditures the *expenditure lobbyist* made during the reporting period for the purpose of attempting to influence that *municipal decision*. An expenditure is made on the date a *payment* is made or on the date consideration, if any, is received by the *expenditure lobbyist*, whichever is

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earlier. An expenditure lobbyist need not disclose expenditures for lobbying activities reported by a lobbying firm or organization lobbyist on a quarterly disclosure report.

(B) The name, address, telephone number, and amount of payment for each person who made a payment, or the promise of a payment, of \$100 or more to the expenditure lobbyist for the express purpose of funding any expenditure identified in subsection (c)(3)(A).

(C) The outcome sought by the expenditure lobbyist.

(4) a statement by a duly authorized owner or officer of the expenditure lobbyist that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.

(5) the printed name, title, and original signature of the individual making the statement required by subsection (c)(4).

(6) any other information required by the Enforcement Authority or the City Clerk consistent with the purposes and provisions of this division.

§27.4018 Amendments to Quarterly Disclosure Reports

Any lobbying entity that discovers incomplete or inaccurate information in a quarterly disclosure report that it filed with the City Clerk shall, within ten calendar days of the discovery, file an amended quarterly disclosure report with the City Clerk disclosing all information necessary to make the report complete and accurate.

§27.4018 27.4019 Accountability Retention of Records

In addition to any other requirement of this division, every *Lobbyist lobbying entity* 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.

§27.4020 Forms to be Provided by the City Clerk

~~Lobbyists shall file registration forms and quarterly disclosure reports required by this division on forms provided by the City Clerk.~~

§27.4021 Verification of Registration Form and Quarterly Disclosure Report

~~Lobbyists shall sign and verify registration forms and quarterly disclosure reports required by this division under penalty of California perjury laws.~~

§27.4022 Termination of Lobbyist Status as Lobbying Firm or Organization Lobbyist

~~An individual who~~ A lobbying firm or organization lobbyist that ceases being a Lobbyist lobbying entity shall notify the City Clerk of this status upon the quarterly disclosure report form provided by the City Clerk. Upon terminating, the individual lobbying firm or

~~organization lobbyist shall report the any information required in Section by section 27.4017 that remains unreported has not been reported since the its last quarterly disclosure report.~~

§27.4023

~~Other Obligations of a Lobbyist~~ Individual Lobbyists

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

- (a) ~~disclose his or her status as a Lobbyist lobbyist to a City Official before providing anything of value to that individual which would require disclosure as an Activity Expense to the City Official pursuant to Section 27.4014. making any activity expense to, or for the benefit of, that City Official or that City Official's immediate family;~~
- (b) ~~abstain from doing any act with the purpose or intent of placing a City Official under personal obligation to the Lobbyist lobbyist, or to the Lobbyist's lobbyist's employer or Client client;~~
- (c) ~~correct, in writing, any misinformation given to a City Official, specifying the nature of the misinformation;~~
- (d) ~~not deceive or attempt to deceive a City Official as to any material fact pertinent to any pending or proposed Municipal Decision municipal decision;~~
- (e) ~~not cause any communication to be sent to a City Official in the name of any fictitious Person person, or in the name of any real Person person, except with without the consent of such real Person person; and~~
- (f) ~~not attempt to evade the obligations in this section through indirect efforts or through the use of Agents agents, associates, or employees.~~

§27.4024

~~Employment of City Official or Employees by Lobbyist~~ Lobbying Entity

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

- (a) ~~employs, in any capacity whatsoever, or~~
- (b) ~~requests, recommends employs, in any, 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.~~

If any lobbying entity employs or retains a current City Official or City employee, or any member of that official's or employee's immediate family, that lobbying entity shall file a written statement with the City Clerk within ten calendar days after such employment commences. This statement shall set forth the name of the individual employed, the date the individual was first employed by the lobbying entity, and the individual's position, title, and department in the City.

§27.4030 Gifts from Lobbying Entities and Lobbyists

~~000625~~ It is unlawful for a *lobbying firm* or any of its *lobbyists* to make a *gift*, act as an *agent* or intermediary in the making of a *gift*, or arrange for the making of a *gift* if:

- (1) the *gift* is given to a *City Official*, and
 - (2) the aggregate value of all *gifts* from the *lobbying firm* and its *lobbyists* to that *City Official* exceeds \$10 within a calendar month.
- (b) It is unlawful for a *organization lobbyist* or any of its *lobbyists* to make a *gift*, act as an *agent* or intermediary in the making of a *gift*, or arrange for the making of a *gift* if:
- (1) the *gift* is given to a *City Official*, and
 - (2) the aggregate value of all *gifts* from the *organization lobbyist* and its *lobbyists* to that *City Official* exceeds \$10 within a calendar month.
- (c) For purposes of this section, an entity or individual “arranges for the making of a *gift*” if the entity or individual, either directly or through an *agent*, does any of the following:
- (1) delivers a *gift* to the recipient;
 - (2) acts as the representative of the donor, if the donor is not present at the occasion of a *gift*, except when accompanying the recipient to an event where the donor will be present;
 - (3) invites or sends an invitation to an intended recipient regarding the occasion of a *gift*;
 - (4) solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a *gift*;
 - (5) is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a *gift*;
or,
 - (6) acts as an intermediary in connection with the reimbursement of a recipient's expenses.

~~§27.4025~~ §27.4040 Powers and Duties of the City Clerk

- (a) Upon receipt of a written request, the *City Clerk* may issue a notice of ~~registration requirements~~ filing obligations to any *Person person* whom a *City Official* or any other *Person person* has reason to believe should ~~be registered~~ file a registration form or quarterly disclosure report under this division. Before sending the notice, the Clerk:
- (1) shall require the *City Official* or *Person person* making the request to provide a written statement of the factual basis for the belief; and,
 - (2) shall determine whether sufficient facts exist to warrant sending the notice.

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- (b) Any individual person who in good faith and on reasonable grounds believes that he, or she, or it is not required to comply with the provisions of ~~Section~~ sections 27.4007 or 27.4015 by reason of being exempt under any provision of this division shall not be deemed to have violated the provisions of ~~Section 27.4007~~ these sections if, within ten ~~(10) Days~~ calendar days after the City Clerk has sent specific written notice, the individual person either complies with the requirements of this division, or furnishes satisfactory evidence to the Clerk that he, or she, or it is exempt from registration filing obligations.
- (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, and the Enforcement Authority.
- (d) The City Clerk shall preserve all registration forms and quarterly disclosure reports required to be filed under this division for a period of five 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 report apparent violations of this division to the Enforcement Authority.
- (f) The City Clerk shall have the power to adopt all reasonable and necessary procedures to implement this division.

~~§27.4026~~ §27.4041 **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~~ thirty calendar days after the filing deadline. The Clerk shall notify an individual entity to file a registration form or quarterly disclosure report under this division if it appears that the individual entity has failed to file as required by law or that the registration form or quarterly disclosure report filed by the individual entity does not conform to law.
- (b) Any individual entity 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.

§27.4045 **Online Disclosure of Forms and Reports**

- (a) It is the intent of the City to implement an electronic filing system that facilitates the disclosure of lobbying activities engaged in by lobbying entities. When a practical and financially feasible electronic filing system has been implemented by the City Clerk, the provisions of this section shall be in effect.
- (b) Every lobbying entity required to file a registration form or quarterly disclosure report pursuant to this division shall use the City Clerk's electronic filing system to file online such forms or reports.

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(c) Every lobbying entity shall continue to file a paper copy of each form or report with the City Clerk. The paper copy shall continue to be the original form or report for audit and other legal purposes.

(d) The information contained on a form or report filed online shall be the same as that contained on the paper copy of the same form or report that is filed with the City Clerk.

§27.4027 §27.4050 Enforcement Authority: Duties, Complaints, Legal Action, Investigatory Powers

- (a) Any ~~Person~~ person who believes that violation of any portion of this ~~Division~~ division has occurred may file a complaint with the *Enforcement Authority*.
- (b) The *Enforcement Authority* shall have such investigative powers as are necessary for the performance of the duties prescribed in this ~~Division~~ division. The *Enforcement Authority* may demand and shall be furnished ~~records of Lobbying Activity Expenses activity expenses at any time. any records that may prove or disprove the accuracy of information contained in a registration form or quarterly disclosure report. In the event that there is a claim that any such records are entitled to protection from disclosure under the attorney-client privilege, the Enforcement Authority shall be provided with sufficient documentation to verify the information to which the City is entitled under California Business and Professions Code section 6009.~~
- (c) The *Enforcement Authority* shall determine whether ~~required statements and declarations forms and reports~~ have been filed as required and, if so, whether they conform ~~with~~ to the requirements of this ~~Division~~ division.
- (d) The *Enforcement Authority* may elect to enforce the provision of this ~~Division~~ division administratively pursuant to Chapter 2, Article 6, Division 4, or may otherwise recommend or refer enforcement actions to the City Attorney or other law enforcement agency with jurisdiction.

§27.4028 §27.4055 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. In addition, if the matter is pursued by the Enforcement Authority as an administrative matter, any person found in violation is subject to the administrative penalties provided for in Chapter 2, Article 6, Division 4.~~
- (b) In addition to any other penalty or remedy available, if any ~~individual~~ lobbying entity fails to file any registration form or quarterly disclosure report required by this division after any deadline imposed by this division, that ~~individual~~ lobbying entity shall be liable to the City of San Diego in the amount of ~~ten dollars (\$10)~~ per Day calendar day after the deadline until the report is filed, up to a maximum amount of \$100.
- (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.

000628 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.

- (e) Any limitation of time prescribed by law within which prosecution for a violation of any part of this division must be commenced shall not begin to run until the *City's* discovery of the violation.

FACT SHEET: "AM I A LOBBYIST?"

The City's Lobbying Ordinance imposes registration and reporting requirements on lobbying firms, organization lobbyists, and expenditure lobbyists. Lobbying firms and organization lobbyists are entities that employ at least one individual lobbyist. This fact sheet is designed to assist individuals with determining whether or not they are lobbyists, and accordingly, whether the firm, business, or organization they work for is required to register with the City Clerk and report lobbying activities. This fact sheet is designed to offer general guidance to prospective lobbyists, but should not be considered a substitute for the actual language contained in the Lobbying Ordinance.

GENERAL RULES

- ❖ A "lobbyist" is defined in the City's Lobbying Ordinance as any individual who engages in "lobbying activities" on behalf of a client or on behalf of an organization lobbyist.
- ❖ The most important part of "lobbying activities" is lobbying itself, which occurs when an individual has a direct communication (e.g., meeting, talking on the telephone, sending a letter or e-mail) with a City Official for the purpose of influencing a municipal decision.
- ❖ Other "lobbying activities" include monitoring municipal decisions, preparing testimony and presentations, engaging in research, performing investigations, gathering facts, attending hearings, communicating with clients, and waiting to meet with City Officials, to the extent that such activities are related to influencing a municipal decision.
- ❖ The term "City Official" does not include all City employees. The following positions are "City Officials" under the Lobbying Ordinance (keep in mind that the "City" includes the City's agencies, such as CCDC, SDDPC, etc.):

Elected officeholder	Council staff member	Council Committee Consultant
Assistant City Attorney	Deputy City Attorney	General Counsel
Chief	Assistant Chief	Deputy Chief
Assistant Deputy Chief	Treasurer	Auditor and Comptroller
Independent Budget Analyst	City Clerk	Labor Relations Manager
Retirement Administrator	Director	Assistant Director
Deputy Director	Assistant Deputy Director	Chief Executive Officer
Chief Operating Officer	Chief Financial Officer	President
Vice-President		

- ❖ City Officials also include the members of any City board, commission, or committee who are required to file Statements of Economic Interests.
- ❖ If you are a lobbyist, then the firm, business, organization that you own or work for may be required to register with the City Clerk. The type of registration depends on whether the lobbying is done on behalf of clients (register as a "lobbying firm") or on behalf of the entity you own or work for (register as an "organization lobbyist").

- ❖ There is a third type of lobbying entity – the expenditure lobbyist. These lobbyists do not register annually, but are still required to file Quarterly Disclosure Reports with the City Clerk when they make expenditures designed to indirectly influence municipal decisions through methods such as public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, and studies (instead of having direct contacts with City Officials). Please see the Fact Sheet on Expenditure Lobbyists for additional information.
- ❖ There are a number of exceptions to the Lobbying Ordinance that may be applicable to a prospective lobbyist. For a complete list of all the exceptions, please refer to the Fact Sheet on Exceptions to the Lobbying Ordinance.

REGISTRATION – LOBBYING FIRMS

- ❖ If you work for a firm that has clients, and you attempt to influence a municipal decision on behalf of a client in exchange for compensation, then your firm must register with the City Clerk as a “lobbying firm” as soon as it has at least one instance of lobbying a City Official.
- ❖ For example, McGruder & Sons is a law firm that specializes in land use litigation. On one occasion, it contacts a City Official for the purpose of influencing an upcoming land use matter on behalf of one of its clients. Because McGruder & Sons is paid to influence municipal decisions on behalf of a client, it must register with the City Clerk as a “lobbying firm.”
- ❖ Note that in the above example registration would be required even if the client had not yet paid McGruder & Sons for the lobbying. If the firm is entitled to be paid for lobbying, including an entitlement that is contingent on a particular outcome, then that firm is a “lobbying firm.”
- ❖ As indicated by the above example, attorneys are not exempt from the City’s Lobbying Ordinance.
- ❖ Firms must register with the City Clerk within ten calendar days of qualifying as a “lobbying firm.”

REGISTRATION – ORGANIZATION LOBBYISTS

- ❖ If you own or work for a business or organization, including a non-profit or charitable organization, and your lobbying activities are performed on behalf of your business or employer (and not on behalf of outside clients), then that business or employer may be an “organization lobbyist.” It will qualify as an “organization lobbyist” if its compensated owners, officers, or employees have a total of 10 or more separate lobbying contacts with City Officials within any 60 consecutive calendar day period.
- ❖ For example, Quality Wireless is a business entity interested in providing cellular telephone service in the City of San Diego. Several of its employees are assigned the task of contacting City Officials to encourage them to support the placement of cellular towers on City property. These employees have three meetings with Council Chiefs of Staff, make six telephone calls to the Director of Real Estate Assets, and send an identical e-mail message to all of the members of the City Council. All this activity takes place over the course of several weeks. Because Quality Wireless had 10 lobbying contacts with City Officials within a 60 day period, it must register with the City Clerk as an “organization lobbyist.”
- ❖ Businesses and organizations must register with the City Clerk within ten calendar days of qualifying as an “organization lobbyist.”
- ❖ Under the Lobbying Ordinance’s “contacts” rules:
 - ✓ Each meeting with a City Official regarding a single municipal decision counts as 1 contact; a meeting regarding 2 municipal decisions counts as 2 contacts.

000631 ✓ A meeting with a City Official and a member of that official's immediate staff regarding a single municipal decision counts as 1 contact, even if the staff member is also a "City Official."

- ✓ A meeting with 2 City Officials regarding a single municipal decision counts as 2 contacts (unless one of the officials is the immediate staff member of the other official).
- ✓ Meeting multiple times in the same day, to discuss the same municipal decision discussed earlier in the day, counts as 1 contact.
- ✓ A meeting that starts one day and finishes the next day, pertaining to the same municipal decision, counts as 1 contact.
- ✓ A meeting does not have to take place in a City Official's office to count as a contact. A meeting includes any social or political occasion, such as a lunch engagement, cocktail party, reception, fundraiser, or similar event where an individual has direct communication with a City Official regarding a municipal decision. A meeting also includes a chance encounter on the street if it results in an attempt to influence a municipal decision.
- ✓ Meetings with, and letter, faxes, and e-mails to, a non-City Official (i.e., someone whose title is not mentioned in the above-referenced list) are not considered "contacts" for purposes of the Lobbying Ordinance.
- ✓ Substantially similar letters, faxes, and e-mails count as 1 contact for each municipal decision discussed, regardless of the number of City Officials to whom they are sent. For example, sending the same e-mail message to 8 Councilmembers, and using that e-mail message as the sole contents of a letter to 3 Department Directors would count as 1 contact. Note that using a different argument or making a different point would characterize a communication as being "substantially different."
- ✓ Substantially different letters, faxes, and e-mails that pertain to a single municipal decision count as 1 contact for each different letter, fax, or e-mail. For example, sending 1 letter to four Councilmembers that emphasizes financial concerns regarding a project, and sending 1 letter to three Councilmembers emphasizing that project's environmental issues, would count as 2 contacts (one contact for each different letter).

ADDITIONAL FILING INFORMATION

- ❖ In addition to filing a Registration Form, each lobbying firm and organization lobbyist must file a Quarterly Disclosure Report with the City Clerk to report their activities during the following calendar quarters: January through March; April through June; July through September; and October through December. Each report must be filed with the City Clerk no later than the last day of the month that follows the reporting period. Consult the instructions for these reports for more information.
- ❖ Lobbying firms and organization lobbyists generally retain their status until January 5 of the following year, and must renew their registration at that time (i.e., file a new Registration Form with the City Clerk) if they continue to qualify as a lobbying entity. If, however, a lobbying firm or organization lobbyist ceases to engage in lobbying activities in the midst of a calendar year, it may terminate its status as a lobbying entity by filing a Quarterly Disclosure Report with the City Clerk and reporting all of its activity to date.

If you have any questions concerning who is, and who is not, a "lobbyist" in the City of San Diego, please contact the Ethics Commission at (619) 533-3476.

Rev. 12/7/06

FACT SHEET ON EXCEPTIONS TO THE LOBBYING ORDINANCE

The City's Lobbying Ordinance imposes registration and reporting requirements for lobbying activities. Some entities and activities, however, are exempt from these requirements. This fact sheet is designed to offer general guidance to prospective lobbyists with regard to factors that may exclude them or their activities from the scope of the Lobbying Ordinance, but should not be considered a substitute for the actual language contained in the ordinance.

- ❖ The Lobbying Ordinance does not apply to a public official acting in his or her official capacity, or to a government employee acting within the scope of his or her employment. Accordingly, a County employee does not become a "lobbyist" when he or she is seeking to influence a City decision.
- ❖ Communications pertaining to bidding on contracts through the City's competitive bid process do not generally fall within the scope of the Lobbying Ordinance. In other words, bids and responses to requests for proposals or qualifications are not lobbying contacts. Negotiating the terms of a duly authorized contract is also not a lobbying contact. Note, however, that this exception does not extend to communications with a member of the City Council or a member of the City Council's immediate staff.
- ❖ The act of requesting advice or an interpretation of a City law, regulation, or policy from a City Official does not constitute lobbying. For example, contacting the City Attorney's Office for an interpretation of a City law would fall outside the scope of the Lobbying Ordinance. On the other hand, providing the City Attorney's Office with reasons to change the language of an ordinance being submitted to the City Council would be considered lobbying.
- ❖ There is an attorney-litigation exception for communications involving pending or actual litigation or administrative enforcement actions. For example, an attorney who communicates with members of the Civil Service Commission regarding a pending civil service matter would not be engaging in "lobbying." Note that this exception is narrow and applies only to "pending or actual" litigation. It does not apply to other types of contentious matters, even if it is likely that the parties involved in a particular matter will eventually litigate their disputes. An attorney who seeks to influence a pending land use decision by contacting a City Official, for example, would be engaging in lobbying activities.
- ❖ Communications regarding purely ministerial actions (i.e., actions that do not require a City Official to exercise discretion concerning an outcome) are not considered lobbying activities. For example, making arrangements to meet with a City Official would be considered "ministerial" (although the meeting itself could involve "lobbying").
- ❖ Communications with City employees who are not "City Officials" are not considered lobbying contacts. See the Fact Sheet entitled "Am I a Lobbyist?" for a list of "City Official" positions. If your activities are limited to contacts with other types of City employees (e.g., plan checkers, engineers, program managers, etc.) then your activities are not regulated by the Lobbying Ordinance.
- ❖ Communications concerning collective bargaining agreements [CBA] and memorandums of understanding [MOU] between the City and a union are not considered lobbying activities. Note, however, that if a union representative seeks to influence a municipal decision not directly related to

the applicable CBA or MOU, then "lobbying" is taking place. For example, a union leader who meets with the Independent Budget Analyst to influence a decision involving outsourcing of City services is making a lobbying contact.

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- ❖ A person who receives a subpoena or other legal request to provide information to the City is not lobbying the City when he or she provides information to the City in response to that request.
- ❖ A person's direct response to an enforcement proceeding with the City does not constitute a lobbying contact. For example, if the City initiates a code enforcement action against a person for a noise violation, that person does not become a lobbyist by filing a response to a notice of violation. On the other hand, a lobbying contact would occur if that same person went outside the scope of the code enforcement process by meeting with a City Councilmember to try to convince the Councilmember to have the matter dismissed.
- ❖ A person whose contact with City Officials is limited to appearing as a speaker at public hearings is not a lobbyist. Public hearings include City Council meetings, Council committee meetings, City board and commission meetings, and any other meeting subject to the noticing requirements of the Ralph M. Brown Act. Note that this exemption is not available to individuals who also have lobbying contacts with City Officials. For example, speaking on behalf of an employer at a public meeting counts as a "contact" if one of the employer's owners, compensated officers, or employees also has a private meeting with a City Official.
- ❖ Similarly, a person whose contact with City Officials is limited to submitting documents that become part of the record of a public hearing is not a lobbyist. Note that you do not obtain this exemption simply by sending a document to a Councilmember or the City Clerk. For City Council meetings, the exemption applies only to documents that the City Clerk receives and associates with an item on an upcoming docket.
- ❖ A person who provides purely technical data or analysis to a City Official does not become a lobbyist unless he or she engages in other actions to influence a municipal decision. For example, a soils engineer who prepares a report detailing an inspection of property that is the subject of a municipal decision would not be "lobbying" simply by providing that report to a City Official. That same person, however, would become a lobbyist if he or she communicated with the City Official beyond the technical scope of the document. If, for example, the soils engineer informs a City Official of community opposition to a project, he or she is "lobbying."
- ❖ News items, editorials, and comments made in the ordinary course of business by a newspaper, magazine, radio station, or television station do not qualify as communications subject to the Lobbying Ordinance. Keep in mind, however, that this exception does not preclude the possibility that media outlets may still engage in "lobbying." For example, if a member of a newspaper's editorial board contacts City Officials on behalf of the newspaper in an attempt to influence an upcoming municipal decision, that newspaper could become an "organization lobbyist."
- ❖ Communicating through an Internet website that is accessible to the general public is not considered lobbying. For example, the Voice of San Diego, an online-only publication, does not become a lobbyist when printing news stories or editorials that seek to influence the actions of City Officials. In addition, a person writing a blog (web log) encouraging particular action by City Officials is not lobbying so long as that blog is accessible to the general public.

If you have any questions concerning exemptions to the City of San Diego's Lobbying Ordinance, please contact the Ethics Commission at (619) 533-3476.

Rev. 12/7/06



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COMPARISON OF LOBBYING LAWS – REGISTRATION THRESHOLD

Type of Lobbyist	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Contract lobbyist	\$2,625 in a calendar quarter	\$1	\$1,000 within 3 consecutive months	\$3,200 in a calendar quarter or 25 contacts within 2 consecutive months	\$0 (Any attempt to influence a County decision by anyone who makes personal or telephone contact with County official)	\$2,000 in a calendar month or 1/3 of time in calendar month
Organization lobbyist	\$2,625 in a calendar quarter	10 contacts with City Officials within 60 calendar days	30 compensated hours within 3 consecutive months	25 contacts within 2 consecutive months	\$0 (Any attempt to influence a County decision by anyone who makes personal or telephone contact with County official)	1/3 of time in calendar month
Expenditure lobbyist	n/a	\$5,000 within 90 calendar days	\$5,000 in a calendar quarter	\$3,200 within 3 consecutive months	n/a	n/a

¹ Current San Diego Municipal Code §§ 27.4005

² Proposed San Diego Municipal Code § 27.4002

³ L.A. Municipal Lobbying Ordinance § 48.02

⁴ San Francisco Campaign and Government Conduct Code § 2.105

⁵ San Diego County Code of Regulatory Ordinances § 23.102

⁶ California Government Code §§ 18238.5, 18239, 18239.5



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COMPARISON OF LOBBYING LAWS – INFORMATION ON REGISTRATION FORM

Category	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Firm or individual registers?	Individual	Firm and/or organization	Both	Either entity or individual	Either entity or individual	Firm and/or organization
Lobbyist information	Yes	Yes	Yes	Yes	Yes	Yes
Names of officers and/or employees	n/a	Yes	Yes	Yes	No	Yes
Names of Client/s	Yes	Yes	Yes	Yes	Yes	Yes
Nature/purpose of filer's or client's business	Yes	Yes	No	No	No	Yes
Client authorization	No	No	Yes	Yes	No	Yes
Decisions to be influenced	Yes	Yes	Yes	Yes	No	No
Outcome sought	No	Yes	No	Yes	No	No
Agency to be lobbied	No	No	Yes	No	Yes (departments and names of Supervisors)	Yes
Compensation received or promised	No	No	No	Yes (within past two months)	No	No
Previous contacts	No	Yes (for organization lobbyists)	No	Yes (within past two months)	No	No

Category	San Diego (current)	San Diego (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Campaign contributions	No	No	No	Yes (within past two months; itemize \$100 or more)	No	No
Campaign fundraising	No	Yes; name of any current elected official for whom at least \$1,000 was raised within past 2 years	No	Yes (within past two months; itemize \$100 or more)	No	No
Compensated campaign services	No	Yes; for any current elected official within past 2 years	No	No	No	No
City contracts	No	Yes; any contract services provided within past 2 years	No	No	No	No
Amendments	Any change in information filed with next quarterly disclosure report	Filed within 10 calendar days of discovery	Filed within 10 calendar days of discovery	Required but no timeframe specified	Not addressed	Filed within 20 calendar days of discovery
Other Information	n/a	n/a	Training required every two years	(1) Must register before contacting city official; (2) Re-registration reports must include date of most recent training	n/a	Photograph of each lobbyist & training certification

¹ Current San Diego Municipal Code §§ 27.4007, 27.4009, 27.4012

² Proposed San Diego Municipal Code §§ 27.4007, 27.4009, 27.4012

³ L.A. Municipal Lobbying Ordinance § 48.07(D),(E),(G),(I)

⁴ San Francisco Campaign and Government Conduct Code §2.110

⁵ San Diego County Code of Regulatory Ordinances §23.104

⁶ California Government Code §§ 86100, 86103, 86104, 86105, 86107



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COMPARISON OF LOBBYING LAWS – CONTENTS OF QUARTERLY DISCLOSURE REPORTS

Category	San Diego (current)	San Diego (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Firm or individual files?	Individual	Firm or organization	Both	Either entity or individual	Either entity or individual	Both
Lobbyist information	Yes	Yes	Yes	Yes	Yes	Yes
Names of officers and/or employees	n/a	Yes	Yes	Yes	No	Yes
Names of Client/s	Yes	Yes	Yes	Yes	No	Yes
Compensation Received	Yes, in following ranges: (\$0-\$5,000; \$5,000–25,000; \$25,000–50,000; Over \$50,000)	Yes, to nearest \$1,000 (for lobbying firms)	Yes (total payments received)	Yes (total payments promised and total payments received)	No	Yes (total payments received)
Number of contacts	No	Yes (for organization lobbyists)	No (but organization lobbyists required to disclose compensation paid to employees)	No (but organization lobbyists required to disclose compensation paid to employees)	No	No (but lobbyist employers must disclose payments to employees who spend 10% of time in one month on lobbying)
Decisions influenced	Yes	Yes	Yes	Yes	No	Yes

Category	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Outcome sought	No	Yes	No	Yes	No	No
Identity of City Official lobbied	No	Yes (name and department)	Yes (department or agency; not name of individual)	Yes (name, title, and department)	No	Yes (agency or department name must be identified for administrative actions)
Activity expenses (includes consulting fees, salaries, & other forms of compensation)	Yes if \$10 or more on one occasion or \$50 or more aggregate during reporting period	Yes if \$10 or more on one occasion during reporting period	Yes, if \$25 or more	Yes (all expenses regardless of amount)	Yes if \$25 or more on one occasion or \$100 or more aggregate during reporting period (gifts from lobbyist to elected officials and candidates are prohibited)	Yes (all expenses regardless of amount)
Campaign contributions	No	Yes (itemize \$100 or more)	Yes (itemize \$100 or more)	Yes (itemize \$100 or more)	Yes (itemize \$100 or more; note that contributions are prohibited if official is identified on lobbyist registration as someone the lobbyist will attempt to influence)	Yes (itemize \$100 or more)
Campaign fundraising	No	Yes if \$1,000 or more raised; include name of candidate, date & description of activity, and approximate amount raised	Yes; include name of candidate, date of activity, and amount raised	Yes; itemize \$100 or more; include name of candidate and indicate whether the filer delivered or arranged the contribution or whether a client made the contribution at the lobbyist's behest	No	No

Category	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Compensated campaign services	No	Yes	Yes	Yes	No	No
City contracts	No	Yes	Yes	Yes	No	No
Amendments	Not addressed	Filed within 10 calendar days of discovery	Not addressed	Not addressed	Not addressed	Not addressed
Miscellaneous	n/a	n/a	Must disclose contributions of \$1,000 or more made at behest of city officials to other candidates and/or to charitable or nonprofit organizations	Must separately disclose gift tickets and admissions to political and charitable fundraisers	n/a	Invitations from lobbyists must include a disclosure indicating that attendance at the event constitutes acceptance of a reportable gift. (§86112.3)

¹ Current San Diego Municipal Code §§ 27.4017

² Proposed San Diego Municipal Code §§ 27.4015, 27.4017, 27.4018

³ L.A. Municipal Lobbying Ordinance § 48.08, 48.08.5

⁴ San Francisco Campaign and Government Conduct Code §2.110(d)

⁵ San Diego County Code of Regulatory Ordinances §23.106

⁶ California Government Code §§ 86112 – 86116; FPPC Regs. 18613, 18616



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COMPARISON OF LOBBYING LAWS -- MISCELLANEOUS ISSUES

Issue	San Diego (current)	San Diego (proposed)	Los Angeles	San Francisco	County of San Diego	State of California
City Official defined	Elected officeholders, City board members, or City employees (other than purely clerical) (§27.4002)	List of 29 positions identified in ordinance (§27.4002)	Elected or appointed officers, members, employees, or consultants who qualify as public officials pursuant to state law (those who file SEIs) (§48.02)	Any officer of the City and County of San Francisco (§2.105)	List of 21 positions included in ordinance (§23.102)	Any employee (other than purely clerical) (§82004, 82038)
Fees	\$40 registration \$15 per client (§27.4010)	Fees to be set by Council and filed in Clerk's Rate Book of Fees; fees must be based on administration costs (§27.4010)	\$450 registration \$75 per client (§48.07)	\$500 registration \$75 per client (§2.110(e))	None	\$25 (§86102)
On-line filing	No provision	Required when system is implemented (§27.4010)	Required (§48.06.1)	Required when system is implemented (§2.160)	No provision	Required if \$5000 or more in activity in quarter (84605(d))

Issue	San Diego (current)	San Diego (proposed)	Los Angeles	San Francisco	County of San Diego	State of California
Campaign contributions by lobbyist banned?	No	No	Yes (Charter § 470(c)(11))	No	Yes, for offices the lobbyist has indicated on registration that he or she will attempt to influence. (§23.109)	Yes, if the lobbyist is registered to lobby the governmental agency of the candidate or officer. (§85702)
Campaign consultants banned from lobbying?	No	No	No	Yes (§2.117)	No	No
Gift limits?	No (other than \$360 limit set forth in state and local ethics laws)	Yes (\$10 in a calendar month) (§27.4030)	Yes (Officials may not accept any gifts from lobbyists) (§49.5.10(A)(4))	Yes (\$50 within 3 months of contacting an official) (§2.115)	Yes. (Elected officials and candidates may not accept any gifts from registered lobbyists) (§23.109.5)	Yes (\$10 in a calendar month) (§86203)
Acting as intermediary for gifts prohibited?	No	Yes (if more than \$10 in a calendar month) (§27.4030)	Yes (§ 49.5.10(A)(5))	Yes (within 3 months of contacting an official) (§ 2.115)	No	Yes (§86203)
Contingent fees prohibited	No	No	No	No	No	Yes (for administrative & legislative actions, but not contracts) (§86205(f))

Issue	San Diego (current)	San Diego (proposed)	Los Angeles	San Francisco	County of San Diego	State of California
Notification to Beneficiary of Activity Expense	Yes, within 20 business days (\$27.4014)	Unnecessary if gifts over \$10 are prohibited	No	Yes, within 30 days after the end of a calendar quarter (note that gifts over \$50 are prohibited within 3 months of contacting an official) (\$2.125)	No	Yes, within 30 days after the end of a calendar quarter (note that gifts over \$10 are prohibited) (\$86112.5)

Rev. 2/15/07

000645

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: July 3, 2007
TO: Stacey Fulhorst, Executive Director, Ethics Commission
FROM: Michael J. Aguirre, City Attorney
SUBJECT: 1472 and Proposed Amendments to Lobbying Ordinance

In accordance with discussions between our offices, we have signed the 1472 so that you can docket the amendments to the lobbying ordinance for the Council meeting on July 16-17, 2007. However, we have not signed the ordinance because we need additional time to complete our analysis. As you know, the regulation of lobbying activities raises important legal questions about constitutional rights and enforcement. The additional time is necessary for a thorough review of these legal issues. We expect to complete our analysis before the Council meeting. In the meantime, please feel free to contact us if you have any questions.

MICHAEL J. AGUIRRE, City Attorney

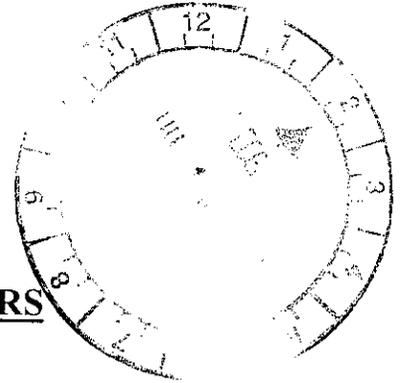
By



Michael J. Aguirre
City Attorney

MJA:als

000647



OFFICE OF MAYOR JERRY SANDERS
CITY OF SAN DIEGO

MEMORANDUM

DATE: July 16, 2007
TO: Honorable City Council
FROM: Mayor Jerry Sanders
SUBJECT: Proposed Lobbying Ordinance

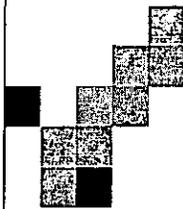
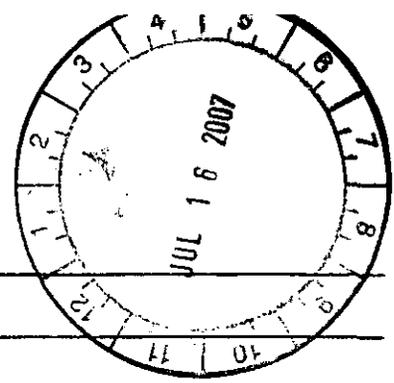
I support Item- 151, the Ethics Commission's proposed Lobbying Ordinance, on the July 16, 2007 docket. This ordinance will significantly increase accountability and transparency in government. By forcing greater disclosure, the public can better ensure that government is working for the best interest of the public and not just trying to benefit a given special interest.

While the majority of the ordinance is well conceived, I am worried that the fundraising disclosure section will actually decrease transparency and increase confusion. By requiring lobbyists to disclose how much they fundraise for a candidate there is a high likelihood that many gifts will be reported more than once. Many fundraisers will list more than one lobbyist on the host committee invitation meaning that multiple lobbyists will be claiming a single donation. Additionally, multiple lobbyists will solicit contributions from the same person leading to multiple reporting. When these lobbyists' disclosures are compared to the candidate's disclosures, the public may be led to believe that candidates are raising much more money than they are declaring.

A preferred alternative would be to (prohibit contributions from registered lobbyists.) While decreasing the amount of money a candidate would be able to raise, it would clean up the political process. I would urge you to consider these changes when debating the ordinance on Monday afternoon.

cc: Jay Goldstone, Acting COO
Stacey Fullhorst, Executive Director, San Diego Ethics Commission
Kris Michell, DCO

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**Amendments to
Lobbying Ordinance**

Office of the City Attorney
Report to the Mayor and City Council
July 16, 2007

Purpose

- The San Diego Ethics Commission has proposed comprehensive changes to the City's lobbying ordinance (San Diego Municipal Code §§ 27.4001- 27.4055).
- The changes are meant to better regulate paid lobbyists, to broaden and clarify the information they must disclose, and to make enforcement easier.

Legal Issues

- Our report discusses some of the legal issues related to the proposed amendments.
- Regulations of the type proposed by the Commission may face challenges that they violate First Amendment rights including the rights to free speech, freedom of association, and to petition for redress of grievances. They may also face claims they violate equal protection rights if they regulate different groups differently.

Strict Scrutiny When Regulation Limits a Fundamental Right

- When a regulation significantly limits a fundamental right such as those guaranteed by the First Amendment, the courts generally require that it address a "compelling state interest" and that it be "closely tailored" to effectuate only that interest in order to pass constitutional muster. Such "strict scrutiny" of a regulation by a court often results in the overturning of the regulation.

Lesser Standard for Reporting Requirements for Lobbyists

- Fortunately, the courts have decided that registration and reporting requirements for lobbyists are not a direct limitation on the First Amendment right to petition for redress of grievances.
- Applying a more relaxed legal test to most reporting requirements, the courts have found it reasonable to require those that engage in the commercial business of lobbying to describe that business; to report their receipts and expenditures; and to require businesses that employ lobbyists to disclose their expenses for that purpose and the actions they seek to influence.

Reporting Requirements Must be Related to Lobbying Activities

- Reporting requirements may become the subject of stricter scrutiny if they require the reporting of activities that are too far removed from the lobbying activities being regulated. Regulations unrelated to lobbying activities may be considered so onerous that they significantly interfere with the First Amendment right to petition for redress of grievances. For example, applying strict scrutiny, the California Supreme Court invalidated a requirement that lobbying entities report financial transactions that were not related to lobbying activities. *Fair Political Practices Comm'n v. Superior Court*, 25 Cal.3d 33, 47 (1979).

Legitimate Reasons for the Regulations are Necessary

- Governments must demonstrate they have a legitimate interest justifying the regulation.
- Governments should deliberate and make findings that the laws are necessary. The findings should occur after the legislative body considers empirical evidence justifying the need for the law, such as testimony, reports, declarations, and surveys.

Recent Case Law

- In a recent case, *Citizens for Clean Government v. City of San Diego*, 474 F.3d 647, 653, 654 (2007), the court found that the City of San Diego ordinance limiting campaign contributions to the petition-gathering phase of a recall election could not be supported in the absence of such record evidence or governmental findings.
- The court specifically said that "[h]ypothetical situations not derived from any record evidence or governmental findings accompanied by vague allusions to practical experience" would not be enough to demonstrate a "sufficiently important state interest."

Rationale for Regulations

- The Council should assure itself of the need to expand the ordinance as requested.
- The Commission has supported its rationale for many of the proposed changes in the materials provided to the Council. The Council may consider any additional evidence that may be offered at this hearing.

Proposed Revisions

- The following revisions are proposed to clarify the provisions, avoid conflicting language within the ordinance, and to help ensure enforceability.

Section 27.4024 – Employment of City Officials and Employees by Lobbying Entity

- Requires that lobbying entities report the employment of any *City employee*, or the employee's immediate family.
- City employees are generally not City officials and most employees do not influence municipal decision-making.
- A court could decide that this reporting requirement is unrelated to lobbying activity and subject it to the "strict scrutiny" test. Such a requirement would be upheld if the government demonstrates it has a sufficiently important interest *and* the law is "closely tailored to effectuate only those interests."

Section 27.4024 – Employment of City Officials and Employees by Lobbying Entity

- If any *lobbying entity* employs or retains a current *City Official* [or *City employee*], or any member of that official's [or employee's] *immediate family*, that lobbying entity shall file a written statement with the *City Clerk* within ten calendar days after such employment commences. This statement shall set forth the name of the individual employed, the date the individual was first employed by the *lobbying entity*, and the individual's position, title, and department in the *City*.

**Section 27.4002 –
“Organization Lobbyist”**

- An organization lobbyist must quarterly report any “employee” who “engaged in *lobbying activities*” regardless of whether the employee engaged in that activity on behalf of the organization or was authorized to do so. Yet when registering, an organization lobbyist must report only those employees who are authorized to lobby for it.
- This could raise unnecessary legal issues.

**Section 27.4002 -
“Organization Lobbyist”**

- To clarify the intent of this section, we recommend revisions to state:
- any business or organization, including any non-profit entity, that provides *compensation* to one or more employees for the purpose of lobbying on behalf of the business or organization and who have a total of 10 or more separate contacts with one or more City Officials for that purpose within 60 consecutive calendar days. [for purposes of *lobbying* on behalf of the business or organization.]

**Section 27.4017(b)(2)(C) -
Reporting by Organization Lobbyist**

- For additional consistency and clarification, we recommend the following revision:
- the name of each owner, officer, or employee of the *organization lobbyist* who engaged in *lobbying activities on behalf of the organization lobbyist* during the reporting period with regard to that specific *municipal decision*.

Section 27.4002 – “Contact”

- The definition of “organization lobbyist” sets the threshold for registration:
- if one or more employees makes a “total of 10 or more separate *contacts* with one or more *City Officials* within 60 consecutive calendar days for purposes of *lobbying* on behalf of the business or organization.”

Section 27.4002 – “Contact”

- “Contact” is the act of engaging in a direct communication with a *City Official* for the purpose of influencing a municipal decision. The definition of “contact” states:
- “(c) each substantially similar communication, regardless of whether it is made by letter, e-mail, or facsimile, pertaining to one or more *municipal decisions* to one or more *City Officials* is considered a separate contact for each *municipal decision*.”

Section 27.4002 – “Contact”

- The intent of subsection (c) is to allow organizations, when assessing the threshold number of contacts for registration purposes, to count multiple identical or substantially similar writings to multiple *City officials* as only *one* contact per municipal decision.

Section 27.4002 – “Contact”

- We recommend the following proposed phrasing of subsection (c) to better meet this intent.
- (c) multiple identical or substantially similar written communications made by letter, facsimile or electronic mail to one or more City Officials pertaining to a single municipal decision may be considered a single contact for that municipal decision.

Section 27.4002 – “City Official”

- The Commission originally proposed:
- (a) any elected or appointed City officeholder, including any City officeholder elected but not yet sworn in; (b) any City Board member; (c) any unclassified employee of the City who is required to file a statement of economic interests; (d) City Council members acting in their capacity as Housing Authority and Redevelopment Agency officers; and (e) any consultants of the City who are required to file a statement of economic interests.

Section 27.4002 – “City Official”

- To address concerns raised at the Rules Committee hearings, the Commission proposes a revised definition for “City Official:”
- Any of the following officers or employees of the City, which includes all City agencies: elected officeholder; Council staff member; Council Committee Consultant; Council Representative; Assistant City Attorney; Deputy City Attorney; General Counsel; Chief; Assistant Chief; Deputy Chief; Assistant Deputy Chief; City Manager; Assistant City Manager; Deputy City Manager . . . Chief Executive Officer; Chief Operating Officer; Chief Financial Officer; President; and Vice-President. City Official also means any member of a City Board.

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Section 27.4002 – “City Official”

- The proposed definition no longer includes consultants or City officeholders who have been elected but not yet sworn in, or persons appointed to fill elective office.
- Moreover, because the definition of “City Official” is primarily limited by the title an official uses, a change in an official’s title would exempt the official from the lobbying activities the ordinance seeks to regulate, at least until the ordinance is amended.
- We recommend the original language proposed by the Commission with some additional revisions:

Section 27.4002 – “City Official”

- *City Official* includes any of the following: (a) any elected or appointed *City* officeholder, including any *City* officeholder elected but not yet sworn in; [and] (b) any *City Board* member; [and] (c) any employee of the *City*, [except for] who is not a classified employee[s] as that term is defined in San Diego Charter section 117, and who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended; [and] (d) *City Council* members acting in their capacity as Housing Authority and Redevelopment Agency officers;] and [(e)] (d) any consultants of the *City* who are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

Section 27.4002 – “Municipal Decision”

- To reflect the new Mayor-Council form of government, we suggest the following be added to this definition:
- (a) the drafting, introduction, consideration, reconsideration, adoption, defeat, [or] repeal, or veto of any ordinance or resolution; and . . .] (c) a report by a *City Official* to the *City Council*, or a *City Council Committee*, or to the Mayor, . . .

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Section 27.4004 – Exception for Sole Activity

- Excepted activities include those activities and communications that are necessary and related to the competitive bid process, such as responding to a request for proposals.
- The Commission proposes a new phrase be added to subsection (c) so that it provides that "any person whose sole activity includes one or more of the following, unless the activity involves direct communication with a member of the City Council or a member of the City Council's immediate staff:

UNAPPLICABLE ITEMS MADE
FOR ADDITIONS YOU WOULD
LIKE TO INCORPORATE IN
ORDINANCE.

Section 27.4004 – Exception for Sole Activity

- The new phrase appears unnecessary because the phrase "sole activity" speaks for itself and may cause confusion. We recommend deleting the phrase:
- "any person whose sole activity includes one or more of the following: [unless the activity involves *direct communication* with a member of the City Council or a member of the City Council's immediate staff:]

**Sections 27.4009 and 27.4017
Registration and Quarterly Reporting Requirements**

- These existing sections require that lobbyists provide certain specific information when they register and when they file quarterly reports including:
- "any other information required by the City Clerk consistent with the purposes and provisions of this division."
- The Commission proposes a revision: "any other information required by the Enforcement Authority or the City Clerk consistent with the purposes and provisions of this division."

**Sections 27.4009 and 27.4017
Registration and Quarterly Reporting
Requirements**

- Providing this authority to the Clerk and the Commission to create new rules may conflict with the limited authority given to the Commission by other ordinances. In general, the Commission may only create regulations subject to the City Council's approval. Moreover, new rules adopted without Council approval may be unenforceable.

WORKING IS CONFLICTED
AND COULD BE UNENFORCEABLE.

**Sections 27.4009 and 27.4017
Registration and Quarterly Reporting
Requirements**

- We recommend proposed sections 27.4009(a)(9), 27.4009(b)(11), 27.4017(a)(11), 27.4017(b)(11) and 27.4017(c)(6) be modified as follows:
- any other information required by regulation of the Enforcement Authority [or the City Clerk] consistent with the purposes and provisions of this division, and as approved by the City Council.

Section 27.4002 – "Seeking to Hold"

- The proposed definition of "candidate" provides: *Candidate* means any individual who is holding, or seeking to hold, elective *City* office.
- "Seeking to hold" is not defined. To avoid ambiguity, we recommend the following:
- *Candidate* means any individual who is holding, [or seeking to hold,] elective *City* office, or otherwise meets the definition of candidate under Section 27.2903.

**Section 27.4002 –
“Ministerial Action”**

- The proposed revision defines “ministerial action” as follows:
- *Ministerial action* means any action that does not require a *City Official* to exercise discretion concerning any outcome or course of action. A *ministerial action* includes, but is not limited to, decisions on private land development made pursuant to Process 1 as described in Chapter 11 of the Municipal Code.

**Section 27.4002 –
“Ministerial Action”**

- The Process 1 example may add confusion because depending on the project, Process 1 decisions may involve the exercise of discretion. We recommend the example be deleted:
- *Ministerial action* means any action that does not require a *City Official* to exercise discretion concerning any outcome or course of action. [A *ministerial action* includes, but is not limited to, decisions on private land development made pursuant to Process 1 as described in Chapter 11 of the Municipal Code.]

Conclusion

- The Council must be able to demonstrate it has a legitimate interest justifying these lobbying activity regulations. The Council should consider all the evidence, deliberate, and if appropriate, make findings that the laws are necessary. The findings should occur after the legislative body considers empirical evidence such as testimony, reports, declarations, and surveys.
- The Commission has provided support for its rationale for many of its proposed changes in the materials provided to the City Council to assist the Council in making findings that the proposed changes are necessary to meet the purpose and intent of the ordinance. Additional evidence presented at the hearing should also be considered by the Council.

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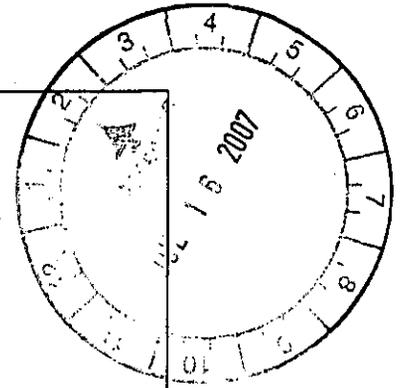
Conclusion

- Finally, we also provided the Council with suggested modifications to various provisions to make the ordinance clearer, easier to enforce, and stronger against any potential legal challenge.
- If any of the proposed revisions are approved for introduction, a "clean" revised version of the ordinance will be presented at the hearing for adoption.

000661



THE CITY OF SAN DIEGO
ETHICS COMMISSION



Proposed Revisions to the Lobbying Ordinance

Presentation to City Council

July 16, 2007

Problems with Existing Registration Threshold

- The current threshold (\$2,730 per quarter) is confusing.
- Current law equates salary with influence.
- Current law does not encompass many individuals who engage in substantive lobbying.
- The Commission cannot effectively enforce the existing law.
- The proposed reforms are narrowly tailored to remedy these problems.

Registration Threshold – Contract Lobbyists

- Current law requires contract lobbyists to register if they earn \$2,730 for lobbying activities in a calendar quarter.
- The Commission recommends changing this threshold to \$1.
- Under this proposal, anyone who is paid to influence a municipal decision on behalf of another person would be required to register as a lobbyist.
- The \$1 threshold includes contingency fee agreements.

Registration Threshold – Organization Lobbyists

- Current law requires employees of an organization to register if they earn \$2,730 for lobbying activities in a calendar quarter.
- The Commission recommends applying the registration threshold to the organization rather than to an individual employee. Under its proposal, the threshold will be reached when compensated employees of the organization have a total of 10 lobbying contacts with high-level City Officials within 60 calendar days.
- The proposal would regulate organizations that pay employees to attempt to influence decisions that could impact the organization, without also regulating members of the public who are simply contacting their elected representatives.
- The proposal is based on actual lobbying contacts; it does not equate compensation with amount of influence.

Registration Threshold – Expenditure Lobbyists

- The current law does not address expenditure lobbyists (persons who spend money on indirect lobbying efforts such as public outreach, media, etc.).
- The Commission recommends adding this category, and establishing a threshold of \$5,000 within a calendar quarter.
- The \$5,000 threshold is designed to avoid regulating true grass-roots efforts.
- Under the proposed law, expenditure lobbyists do not file registration forms; instead, they would be required to file disclosure reports if active in a calendar quarter.

Need for Additional Transparency

- The Commission's proposed reforms will require lobbyists to disclose additional information on their registration forms and quarterly disclosure reports that will create more transparency and combat the appearance of undue influence.
- These reforms will provide the public with information that they have a right to know and that they can use to judge the process through which City decisions are made.

Registration Forms

- Current City law requires individuals to register as lobbyists. The Commission's proposals would instead require registration by lobbying firms and organization lobbyists.
- Under existing law, any new information (e.g., a new client) must be disclosed on the next quarterly disclosure report. The Commission's proposed changes would require an amendment to the registration form to be filed within 10 calendar days.
- In addition to identifying the municipal decisions to be influenced, the Commission's proposals would require lobbyists to indicate the outcome sought.
- Lobbyists would be required to identify all clients, including individual members of a coalition or membership organization who pay \$1,000 or more for a lobbyist's services.

Registration Forms - continued

- The Commission recommends that lobbying firms and organization lobbyists disclose whether any of their owners, officers, or lobbyists have:
 - ✓ fundraised \$1,000 or more in campaign contributions for current elected officials during the prior two years.
 - ✓ provided compensated campaign-related services to a current elected official within the past two years.
 - ✓ provided compensated services under a contract with the City within the past two years.
- The above disclosure provisions would not apply to uncompensated officers of organization lobbyists.

Quarterly Disclosure Reports

- Currently, the public does not receive any information regarding the identity of City Officials contacted by registered lobbyists.
- The Commission's proposed reforms would require lobbyists to disclose the name and department of each high-level City Official lobbied. (There are 28 high-level positions identified in the draft ordinance, plus 4 proposed for inclusion following the March 2007 Rules Committee meeting as reflected in Alternative A – 32 total.)
- Existing law requires lobbyists to disclose the compensation they receive by checking a box for certain ranges (\$0-5,000, \$5,000-\$25,000, \$25,000-\$50,000, over \$50,000).
- The Commission's proposals would instead require lobbying firms to disclose the amount received (rounded to the nearest \$1,000). Organization lobbyists would be required to disclose the number of lobbying contacts during the reporting period.

Quarterly Disclosure Reports - continued

- Under the Commission's proposed reforms, lobbying firms and organization lobbyists would be required to disclose whether any of their owners, officers, or lobbyists have:
 - ✓ made campaign contributions of \$100 or more.
 - ✓ fundraised \$1,000 or more for any candidate or candidate-controlled ballot measure committee.
 - ✓ provided compensated campaign-related services to a candidate or candidate-controlled ballot measure committee.
 - ✓ provided compensated services under contract with the City.
- Note that the above disclosure provisions would not apply to uncompensated officers of organization lobbyists.

Gifts from Lobbyists

- The Commission recommends limiting gifts from lobbyists to \$10 in a calendar month.
- The proposed limit would include gifts delivered by a lobbyist (acting as an intermediary).
- Exemptions in gift laws included in the Ethics Ordinance would apply (e.g., gifts from family members, tickets to 501(c)(3) fundraisers, etc.).

Conclusion

The Commission has received valuable input from lobbyists and members of the public at 18 public workshops and 2 meetings of the Rules Committee. The vast majority of suggestions have been incorporated into the proposed amendments.

The Commission asks you to approve the proposed amendments today, which will allow sufficient time for the following before the January 1, 2008, proposed effective date:

- Preparation of new registration and disclosure forms.
- Preparation of Fact Sheets and Manuals.
- Education and outreach to groups who may be affected by the new regulations.

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Proposed Revisions to the Lobbying Ordinance

City Council Presentation

July 16, 2007

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**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: May 11, 2007

TO: Council President and Members of the City Council

FROM: Dorothy Leonard, Chair, San Diego Ethics Commission
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

Introduction

One of the responsibilities of the Ethics Commission, as set forth in SDMC section 26.0414(g), is to “undertake a review of the City’s existing governmental ethics laws, and to propose updates to those laws to the City Council for its approval.” As you will recall, the Commission completed an extensive review and overhaul of the City’s campaign laws in 2004 and 2005. As soon as this process was completed, the Commission began working on proposed amendments to the City’s Lobbying Ordinance. Beginning in November of 2005, the Commission held a series of eighteen public workshops on specific aspects of the City’s Lobbying Ordinance. The Commission received input from members of the public as well as members of the regulated community. In addition, the Commission considered the results of staff research which included a review of lobbying regulations in place in other jurisdictions, particularly those in California, as well as legal research on the constitutional principles involved in developing lobbying regulations.

As a result of this comprehensive and deliberative process, the Commission has compiled a package of proposed amendments. As discussed in detail below, each one of the Commission’s proposals has been tailored to address an actual problem with the existing laws or to address real or perceived corruption in the lobbying process.

The Commission initially presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on October 25, 2006. The Commission returned to the Rules Committee with several amended recommendations on March 7, 2007, at which time the Committee members unanimously decided to forward the package of proposed amendments to the full City Council. Note that several members of the Committee asked the Commission and/or the City Attorney to provide responses to several questions in the interim between the Rules Committee meeting and the time this matter is docketed for consideration by the full City Council. These questions and the majority of the Commission’s responses are set forth in the attached memorandum

dated April 16, 2007 (Attachment A). Two additional responses (both concerning the definition of "City Official") are discussed below.

Proposed Amendments

A summary of the proposed changes forwarded by the Rules Committee for your consideration is as follows:

A. Definition of Lobbyist and Threshold Determination (SDMC §§ 27.4002 & 27.4005):

Proposed changes: Currently, lobbyists are required to register with the City and disclose their activities if they earn a total of \$2,730 for lobbying and related activities in a calendar quarter. The Commission recommends changing this threshold to \$1 for contract lobbyists. In other words, the Commission believes that any person who contracts with others to influence a municipal decision should register as a lobbyist when the person receives or becomes entitled to receive any type of compensation for lobbying activities. The Commission further recommends that the \$1 threshold be based on any economic consideration for services rendered, including consideration that is contingent upon the accomplishment of a particular goal (whether or not the goal is accomplished).

With respect to organization lobbyists (companies that employ lobbyists in-house), the Commission believes that the registration threshold should be changed to ten lobbying contacts within sixty calendar days. The regulation of in-house lobbyists is the most difficult issue the Commission grappled with during the past eighteen months. On one hand, the public clearly has an interest in the disclosure of lobbying efforts by employees of companies when these employees attempt to influence municipal decisions that could have a substantial effect on the revenue of their employers. On the other hand, the Commission does not want to propose a law that would effectively require average citizens to register as lobbyists for simply exercising their right to petition their elected representatives on an issue that may affect their employers. The Commission's proposal seeks to resolve this balancing act by regulating only those employees who exhibit a substantial level of advocacy for their employer.

The Commission considered a variety of options for regulating in-house lobbyists, including thresholds based on compensation earned for lobbying, total hours spent lobbying, and percentage of time spent lobbying. Although no registration threshold methodology is perfect, the Commission determined that a threshold based on a number of contacts is the most preferable, particularly when compared to the other options. Because employees of organization lobbyists typically do not keep track of the time they spend on lobbying activities, it is very difficult to enforce a law that is based on the amount of time they spend or the amount of compensation they earn for those activities. In addition, the contacts threshold is more equitable than other options because it does not make distinctions based on level of income. For example, the City's current threshold, which is based on compensation earned for lobbying activities, requires an employee who earns \$200,000 per year to register as a lobbyist much sooner than an employee who earns \$50,000 per year, even if they both engaged in the same amount of lobbying activities. Because earnings do not necessarily equate to influence, the Commission concluded that a threshold based on actual lobbying contacts is the preferable means of identifying a substantial level of advocacy. Moreover, a contacts threshold is one that is easily verifiable from an enforcement perspective; it is much simpler for Commission staff

to determine the number of contacts a particular individual has had with City Officials than it is to calculate amount of time spent or dollars earned.

The Commission is recommending “ten contacts” within “sixty days” after considering a variety of factors. Although the Commission recognized that there are eight elected officials who can be lobbied on any municipal decision, it ultimately decided to recommend a threshold of ten contacts in order to ensure that the law is not inadvertently applied to constituents who contact council offices on several occasions over a two month period. The proposed sixty day period is intended to cover the general timeframe before a municipal decision when most lobbying takes place.

It is important to note that the members of the public and regulated community who communicated with the Commission on the threshold issue overwhelmingly indicated their support for the proposed \$1 threshold for contract lobbyists, and the proposed contact-based threshold for organization lobbyists. In other words, the Commission heard no objections to the proposed registration thresholds, with the exception of several lobbyists who recommended that the Commission go further in its definition of lobbyist by including people who are not compensated for their lobbying activities. The Commission considered this option, but ultimately concluded that the regulation of uncompensated advocacy would have the unintended effect of also regulating constituents who are simply seeking to communicate with their elected officials. It is the Commission’s view that regulating uncompensated lobbying activities would inevitably result in a complicated and overly broad ordinance, as well as a highly confused regulated community. Moreover, as evidenced in the attached comparison chart reflecting lobbying laws in place in other jurisdictions, it is highly unusual for government agencies to regulate unpaid individuals as “lobbyists.”

In addition to the foregoing, the proposed changes include a new category of lobbyist referred to as an “expenditure lobbyist.” This is an entity or individual that attempts to indirectly influence one or more municipal decisions by spending money on public relations, media relations, advertising, public outreach, etc. The Commission concluded that it is important for these activities to be disclosed to the public if the related costs meet or exceed \$5,000 within a calendar quarter. The proposed \$5,000 threshold is intended to avoid regulating the true grass-roots efforts of those who participate in the legislative process.

Rationale for proposed changes: There are a variety of public policy and enforcement problems with the current registration threshold, including the following:

- Persons who are currently engaging in lobbying activities are not registering as lobbyists because they do not meet the registration threshold. In other words, the current system is not working as intended. For example, an individual who earns \$100,000 per year would not meet the current registration threshold of \$2,730 in a calendar quarter, even if he or she met with representatives from each of the 8 Council offices once a week for each of the 12 weeks in a calendar quarter (8 meetings per week @ 0.5 hours per meeting = 4 hours per week; 4 hours x 12 weeks = 48 hours; 48 hours x \$50/hour = \$2,400). This means that a substantial amount of lobbying efforts are not being disclosed to the public.
- The current system inappropriately equates earnings with influence; a lobbyist with a high hourly rate reaches the threshold sooner than a lobbyist with a low hourly rate, even if they

both engage in the same amount and type of lobbying activities. This system is contrary to good public policy because it enables lower-paid lobbyists to avoid registration and disclosure while effectively lobbying on behalf of clients. In addition, because the current threshold is based on compensation actually earned, it exempts lobbyists whose compensation is based on a contingency agreement and whose efforts are unsuccessful.

- The Commission has had difficulty enforcing the current registration threshold for in-house lobbyists primarily because they generally do not keep track of the time they spend on lobbying activities. It is difficult, therefore, for the Commission to ascertain the precise amount of time a person spends on lobbying activities and to determine whether or not that person meets the registration threshold. As a result, an investigation can boil down to a dispute concerning the amount of time that an individual actually spent preparing a letter or waiting to meet with a City Official. In addition, employees of companies are generally reluctant to provide information regarding their salaries, benefits, stock options, bonuses, etc. This creates yet another obstacle in the enforcement process.
- The fact that the current threshold is based on a calendar quarter means that a lobbyist who earned just over the threshold level of compensation from March through May would not have to register as a lobbyist because the compensation was spread out over two calendar quarters. This results in a regulatory system that is both arbitrary and illogical.
- The current system does not capture "expenditure lobbying." The Commission learned through several enforcement actions that special interests in San Diego have spent substantial sums of money on public relations, media, outreach, etc., to generate support for a particular issue. In most of these instances, the sources of the expenditures were never disclosed, and both the public and the City Officials involved in the municipal decisions failed to receive important information that would have been relevant to their assessment of the issues.

After extensive discussion and consideration, the Commission concluded that the proposed changes to the registration threshold would remedy above-referenced problems and create the desired transparency in the lobbying process.

B. Information Provided on Registration Form (SDMC §§ 27.4007, 27.4009, 27.4012):

Proposed changes: The current Lobbying Ordinance requires individual lobbyists to register and disclose their activities. The Commission recommends changing this system to require lobbying firms or organization lobbyists to register and disclose the activities of their lobbyist employees. In addition, in the event that information on a registration form changes (e.g., a lobbyist obtains a new client), the lobbyist is currently required to provide the new information at the time he or she files the next quarterly disclosure report. The changes proposed by the Commission would require lobbyists to amend their registration forms within ten calendar days.

On the form itself, the Commission recommends that the following additional information be disclosed:

- (1) the identity of all clients, including members of a coalition or membership organization who pay \$1,000 or more for a lobbyist's services;
- (2) the outcome sought with respect to the particular municipal decisions the lobbyists intend to influence;
- (3) the number of lobbying contacts with City Officials within the past sixty days (organization lobbyists only);
- (4) the identity of any owners, officers, or lobbyists at the firm or organization who have engaged in campaign fundraising activities (which are defined as those that resulted in \$1,000 or more raised for a candidate) for any current elected official within the past two years, together with the name of the elected official who benefited from the fundraising effort;
- (5) the identity of any owners, officers, or lobbyists at the firm or organization who provided compensated campaign-related services to a current elected official within the past two years, together with the name of the elected official who received the services;
- (6) the identity of any owners, officers, or lobbyists at the firm or organization who provided compensated services under a contract with the City within the past two years, together with the name of the City department, agency, or board for which the services were provided; and

With respect to the disclosure of fundraising activities, campaign-related services, and City contracts, it should be noted that the proposals include a "grandfather" provision that exempts the disclosure of such activities if they occurred prior to January 1, 2007. In addition, it should be noted that the disclosures are extremely limited and do not require the disclosure of specific dates or dollar amounts. Finally, uncompensated officers (e.g. volunteer board members) of organization lobbyists are excluded from these disclosure requirements.

Rationale for proposed changes: Registration by lobbying firms and organization lobbyists (in lieu of registration by individual lobbyists) is intended to ensure that all lobbying activities by the firm or organization are disclosed to the public. For example, under the proposed registration threshold for organization lobbyists, the lobbying activities of all employees of a particular company count toward the proposed 10-contact threshold. This eliminates the potential for a company to avoid registering and disclosing its lobbying activities by simply spreading the work out amongst multiple employees. Similarly, as discussed in greater detail below, it is important for the public to receive information concerning the campaign fundraising activities of all owners, officers, and lobbyists of a particular company. In other words, if the members of a lobbying firm or organization lobbyist have raised substantial sums of money for a particular candidate, but the individuals primarily responsible for the fundraising efforts are not personally engaging in lobbying activities, then the public would not receive relevant information regarding fundraising efforts if only individual lobbyists were required to register and disclose their activities.

The shortened time period for amending the form is designed to ensure that the public receives information in a timely manner regarding lobbying efforts to influence municipal decisions. It simply does not serve the stated purpose and intent of the lobbying laws to delay informing the public of the identity of the person paying to influence a particular decision until months after the decision is made.

With respect to the proposed requirements for additional information on the registration form, the rationale for each proposal is as follows:

- (1) Including within the definition of "client" those members of coalitions or organizations who pay \$1,000 or more for a lobbyist's services will ensure that all relevant information regarding the financing of lobbying activities is disclosed to the public on the lobbyist registration forms. This change was made as a result of information obtained by the Commission during the course of recent enforcement activities. The Commission saw evidence of a trend in "grassroots" lobbying wherein a lobbyist retained and financed by an unpopular or unsympathetic client will recruit members of the public to join the cause, and then hide the identity of the original client by disclosing that the firm's client is a "coalition" of "concerned citizens."
- (2) Information regarding the outcome sought by lobbyists is clearly relevant in terms of fully informing the public regarding lobbying efforts.
- (3) Information regarding the number of lobbying contacts within the previous sixty days is intended to correspond to the proposed contacts-based threshold, while also informing the public of the organization's pre-registration level of advocacy.
- (4) Disclosures regarding previous campaign fundraising efforts over the past two years are intended to provide the public with information regarding the access that lobbyists may have "earned" by fundraising for officials whose vote they now seek to influence. As discussed below, the Commission feels strongly that campaign fundraising efforts must be disclosed on lobbyists' quarterly disclosure reports. It follows, therefore, that information regarding fundraising efforts that occurred before registration is also relevant and should be disclosed to the public. Because the Commission recognizes that it may be difficult to retrieve specific information regarding fundraising efforts that took place years earlier, the Commission's proposal would require lobbyists to merely list the names of those who raised \$1,000 or more for a current elected official within the past two years.
- (5) Information regarding the provision of campaign-related services over the past two years is intended to provide the public with information regarding a special relationship that might exist as a result of a lobbyist's efforts to help a City Official win an elective office.
- (6) Although several lobbyists advised the Commission that a special relationship between an officeholder and his or her campaign consultant are unlikely, several Councilmembers disagreed with this assertion at the October 25, 2006, Rules Committee meeting. The Commission staff subsequently conducted additional research and heard from various Council staffers that elected officials generally have a very good relationship with the

campaign consultants who helped them gain elective office. By way of example, one Council staffer reported that Larry Remer had such a close relationship with former Councilmember Ralph Inzunza after he served as Councilmember Inzunza's campaign consultant that the Councilmember used a list of concerns prepared by Remer and printed on the letterhead of Remer's company (The Primacy Group) when the City Council was considering the creation of the Ethics Commission and the adoption of the Ethics Ordinance. Council staffers pointed out that it is typically only losing candidates who have complaints regarding the services provided by their consultants.

- (7) Disclosures regarding work performed by lobbyists pursuant to a City contract are intended to provide the public with information regarding a close working relationship that might exist between a particular City Official and a lobbyist. In the Commission's experience, the City sometimes retains lobbying firms, including some lobbying firms that are registered with the City to influence local municipal decisions, to assist with the City's lobbying efforts at the state and federal level. In addition, many lobbyists are former City employees. Scenarios such as these support the notion that lobbyists should disclose their current or prior status as City employees or City consultants.

C. Information Provided on Quarterly Disclosure Reports (SDMC §§ 27.4017, 27.4018):

Proposed changes: In order to ensure transparency in the lobbying process and to avoid the appearance of corruption and/or undue influence, the Commission recommends that lobbyists disclose the following additional information on their quarterly disclosure reports:

- (1) The names and departments of individual high-level City Officials contacted by lobbyists during the reporting period.
- (2) The total compensation received by lobbying firms from each client (rounded to the nearest \$1,000), and the total number of contacts by employees of organization lobbyists, during the reporting period.
- (3) Information regarding the outcome sought for each municipal decision influenced.
- (4) Information regarding campaign contributions of \$100 or more made during the reporting period to candidate committees, including candidate-controlled ballot measure committees.
- (5) Information regarding campaign fundraising efforts that resulted in contributions totaling \$1,000 or more for a candidate or a candidate-controlled ballot measure committee during the reporting period.
- (6) Information regarding compensated campaign-related services provided to a candidate or candidate-controlled ballot measure committee during the reporting period.
- (7) Information regarding compensated services provided under contract with the City during the reporting period.

Rationale for proposed changes: The above-referenced recommendations are based on the following underlying principles:

- (1) The Commission believes that identifying the names and departments of individual high-level City Officials contacted by lobbyists is key information that should be disclosed to the public. It is critical for the public to know which City Officials were contacted by a lobbyist. There is a substantive difference between a lobbyist meeting with an elected Councilmember and a lobbyist meeting with a council staffer.

The Commission heard from several lobbyists who argued that it is burdensome to identify each City Official they lobby. The Commission believes that the public's right to have this information far outweighs any inconvenience for lobbyists. In the spirit of compromise, however, the Commission recently revised its initial proposal by narrowing the definition of "City Official" to a select group of high-level positions at the City and City agencies. By way of comparison, it is relevant to note that the current lobbying laws broadly define a "City Official" as any City employee who participates in the consideration of a municipal decision, other than those who work in a purely clerical, secretarial, or ministerial capacity.

At the March 7, 2007, Rules Committee meeting, the Commission was asked whether the list of high-level positions includes all of the positions recently created under the "strong Mayor" form of government. Additional research conducted by Commission staff revealed that the job titles of high-level positions do not sometimes correspond to their working titles. Consequently, at its May meeting, the Commission decided to modify the proposed definition of "City Official" in order to add the following additional job titles: Council Representative, Management Assistant to City Manager, Financial Operations Manager, and Budget/Legislative Analyst. Because these additional positions were not included at the time the Rules Committee considered the Commission's proposals, we have attached an "Alternative A" to the proposed ordinance that includes these four additional job titles.

The list of high-level positions included within the proposed definition of "City Official" includes members of City boards and commissions who file Statements of Economic Interests. At the March 7, 2007, Rules committee meeting, the Commission was also asked to consider whether some boards should be excluded from the definition, such that lobbyists would not have to disclose lobbying contacts with these officials. The Commission considered this issue at its May 10, 2007, meeting, and concluded that it would not be appropriate to exclude any boards or commissions from this definition. The Commission based this recommendation on the fact that the members of these boards have some type of decision-making capabilities, as reflected in the City's prior determination that the members must file Statements of Economic Interests [SEIs]. In other words, if the members of a particular board must disclose their personal economic interests because their board has been determined to be more than "solely advisory" in nature, then lobbying contacts with these members should be disclosed to the public. (Note that the members of approximately seventy percent of City boards are required to file SEIs.)

Several lobbyists have objected to the proposed disclosure of specific City Officials contacted, and claimed that the disclosure of this information would have a "chilling effect"

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because City Officials will not want to speak to lobbyists if their names will appear in a disclosure report. During the course of the Commission's discussions on the City's lobbying laws, the Commissioners repeatedly reiterated their view that there is nothing inherently wrong with lobbying, which they recognize as a valuable and integral part of City government. Accordingly the appearance of a person's name in a lobbying disclosure report should not be considered as evidence of anything more than the performance of normal City duties. That said, the Commission would strongly encourage any high-level City Official who has reservations about the public disclosure of a particular meeting with a lobbyist to reconsider the appropriateness of having that meeting.

- (2) The Commission does not believe that the current system, which requires lobbyists to disclose their compensation in certain ranges (\$0-\$5,000, \$5,000-\$25,000, \$25,000-\$50,000, over \$50,000), provides the public with sufficient information regarding the financing of lobbying activities. Because it may be difficult for a lobbyist to ascertain the precise dollar amount earned for lobbying efforts, the Commission has proposed that lobbyists disclose an amount rounded off to the nearest \$1,000. Note that other jurisdictions in California require lobbyists to disclose the exact amount earned.

As discussed above, the proposed threshold for organization lobbyists is based on a number of contacts because of the difficulty inherent with in-house lobbyists (employees of organization lobbyists) calculating the amount of compensation they earn for City lobbying activities. Accordingly, in lieu of disclosing the amount of compensation received for lobbying, it is more appropriate for organization lobbyists to disclose the total number of contacts with City Officials in connection with a particular municipal decision.

- (3) As discussed above, an important aspect of the information regarding a lobbyist's efforts to influence a particular municipal decision is the actual outcome sought by the lobbyist or his/her client. Depending upon the identity of the client and the specific municipal decision, the outcome sought might not be readily apparent to the public.
- (4) Although campaign contributions are disclosed on reports filed by City candidate and ballot measure committees, this information may not be disclosed until long after a municipal decision is made (in non-election years, candidates only file semi-annual campaign statements). In addition, it can be difficult for the public to connect a contribution on a campaign statement with a municipal decision identified on a lobbying statement. The Commission concluded, therefore, that this information should be included on quarterly disclosure reports to ensure that the public receives it in a timely and efficient manner.
- (5) Because of the City's campaign contribution limits, campaign fundraising has become the means by which individuals and entities may demonstrate their financial support for a candidate. When these individuals and entities contact officeholders who benefited from their fundraising efforts and attempt to influence their official decisions, the appearance of improper influence is created. In other words, the public may believe that a lobbyist obtained special access to, and/or undue influence over, an elected official when he or she has helped finance that official's election campaign. This perception is underscored by recent events in San Diego involving the prosecution of local elected officials and a lobbyist

who fundraised for them. In addition, as discussed in greater detail in the Memo to the Rules Committee dated February 21, 2007 (attached as Exhibit B), there are many documented examples throughout the country in which lobbyists obtain, or appear to obtain, special access to elected officials via campaign contributions and campaign fundraising. The Commissioners also considered the personal experience of one of the Ethics Commissioners, who explained that he received special access (e.g., private telephone numbers and email addresses) for public officials only after he engaged in campaign fundraising efforts to benefit these officials.

In order to address the public's perception that corruption exists in the lobbying arena, it is critical to provide transparency in the lobbying process wherever possible and practical. Accordingly, the Commission believes that quarterly disclosures should detail all fundraising efforts that result in \$1,000 or more in campaign contributions for a City candidate or candidate-controlled ballot measure committee. It is important to note that the Commission's proposal is narrowly tailored and would require that lobbyists only disclose (1) contributions personally delivered by the lobbyist, and (2) contributions for which the lobbyist "has identified himself or herself to a candidate or candidate's controlled committee as having some degree of responsibility for raising." In other words, if the lobbyist takes credit for providing a candidate with contributions, then the lobbyist would disclose the amount of those contributions on a quarterly disclosure report.

Several lobbyists have objected to this proposed disclosure requirement and suggested that lobbyists should only be required to disclose contributions that they personally deliver to a candidate. In the Commission's experience, this approach would enable lobbyists to easily circumvent disclosure rules by simply asking someone else to deliver the contributions on their behalf. Moreover, this approach would ignore prevalent practices in campaign fundraising that involve the coding of contribution envelopes so that lobbyists receive credit for contributions sent directly by contributors to a candidate's campaign committee.

In addition to their objections on the grounds that they should be required to disclose only contributions personally delivered to candidates, some lobbyists have suggested that the fundraising disclosure requirement should apply to all fundraisers and should be included in the City's campaign laws. Although the Commission may ultimately recommend such disclosure by candidate committees under the City's campaign laws, it is the Commission's view that it is certainly appropriate to impose this requirement on paid lobbyists at this time because of the role that they play in influencing municipal decisions. The public has an undeniable interest in obtaining information regarding the different ways in which paid lobbyists obtain access and/or influence.

- (6) As discussed above, the disclosure of campaign-related services is intended to provide the public with information regarding a special relationship that might exist as a result of a lobbyist's efforts to help a City Official win an election. Although it is important for a lobbyist to disclose on a registration form whether he or she has provided campaign-related services to a candidate in the past (possible months or years before a lobbying contact with the same official), it is just as important – arguably even more important – for a lobbyist to

disclose on a quarterly report that he or she is engaged in providing campaign related services to an elected official at the same time that he or she is lobbying that same official.

- (7) As discussed above, information gathered by the Commission suggests that lobbyists who perform work under contract with the City may develop special relationships with certain City Officials, and that such relationships should be disclosed if these lobbyists are also paid by private parties to influence decisions made by City Officials. The rationale behind this recommendation is very similar to the rationale discussed above with respect to the disclosure of campaign-related services. In both instances, disclosures create a higher degree of transparency than currently exists.

D. Limits on Gifts from Lobbyists (SDMC § 27.4030):

Proposed changes: The amendments proposed by the Commission include a \$10 limit on gifts from lobbyists to City Officials in a calendar month. They also include a \$10 limit on gifts delivered by lobbyists when they are acting as an agent or intermediary for the donor of the gift.

Rationale for proposed changes: The \$10 gift limit proposal stems from the Commission's belief that, in the view of the public, City Officials may be influenced in the performance of their official duties if they receive an expensive meal or a ticket to an event from a lobbyist. The recent conviction of a United States Congressman in connection with excessive gifts from a lobbyist has reinforced the public's belief that gifts from lobbyists to government officials are indications of undue influence.

It is relevant to note that, as reflected in the comparison chart (Attachment B, Exhibit 4), other jurisdictions throughout California have similar gift limits, or have imposed an outright ban on gifts from lobbyists. Rather than ban all gifts outright and potentially expose City Officials to an enforcement action for simply accepting a cup of coffee from a lobbyist, the Commission ultimately settled on the \$10 limit to allow officials to accept gifts with a nominal value.

Conclusion

Throughout many months of deliberations, beginning in November of 2005, the Commission has received extremely valuable input from lobbyists and members of the public regarding a variety of proposals under consideration. Each recommendation was seriously considered and most were incorporated into the Commission's proposals. The input the Commission received was instrumental to the preparation of preparing amendments that are straightforward, practical, and comprehensible, while incorporating important public policy considerations.

As explained in detail in the Memo to the Rules Committee dated February 21, 2007 (Attachment B), each of the Commission's proposals has been drafted to address an actual problem with the existing laws, or to address real or perceived corruption in the lobbying process. If adopted, these reforms will dramatically improve what is largely an ineffective ordinance. The proposed amendments will ensure that people who are compensated to influence municipal decisions are required to register as lobbyists, and will allow the Ethics Commission to effectively enforce the law when such individuals fail to register.

In addition, the proposed reforms will require lobbyists to disclose more information than is presently required, which will in turn create more transparency and combat the appearance of corruption that surrounds lobbying and related activities. Although some lobbyists and City officials may object to the notion that there is anything untoward in the lobbying process, the volume of empirical evidence recited in the exhibits to Attachment B shows that it is commonplace for lobbyists to obtain access and/or influence through campaign contributions and fundraising, and that these activities engender an appearance of corruption.

Finally, as explained in Attachment B, the Commission is confident that there has been a thorough legal analysis of the proposed amendments to the City's lobbying laws. In the opinion of the Commission's General Counsel, Cristie McGuire, the proposed reforms do not substantially interfere with the ability of a lobbyist to exercise his or her First Amendment rights. Because there is a rational basis for each proposal, and because each provision has been crafted to achieve a specific goal, Ms. McGuire is confident that the proposals do not impermissibly infringe on constitutionally protected activities. Although the Commission certainly defers to the Office of the City Attorney to ultimately determine whether the proposed ordinance is "legal," the Commission is confident that the City has sufficiently demonstrated the need for the proposed reforms, and that they would survive any legal challenge.

We look forward to the City Council considering the proposed amendments as soon as docketing of this issue is feasible. The Commission is hopeful that the proposed reforms will be considered and adopted by the City Council this June, following final budget modifications on June 11. In order for the new laws to take effect on January 1, 2008, the Commission will need four to six months to create new registration and disclosure forms, prepare new fact sheets, and educate the regulated community regarding the changes to the Lobbying Ordinance. If you have any questions, please contact Stacey Fulhorst at your convenience.



Dorothy Leonard
Chair, San Diego Ethics Commission



Stacey Fulhorst
Executive Director, San Diego Ethics Commission

Attachments:

- A) Memorandum from Dorothy Leonard and Stacey Fulhorst to City Council and City Attorney dated April 16, 2007
- B) Memorandum from Stacey Fulhorst to Rules Committee dated February 21, 2007

cc: Catherine Bradley, Chief Deputy City Attorney
Kris Michel, Deputy Chief Community & Legislative Services

000681

CITY OF SAN DIEGO
ETHICS COMMISSION

MEMORANDUM

DATE: April 16, 2007

TO: Council President and Members of the City Council
City Attorney Mike Aguirre

FROM: Dorothy Leonard, Chair, San Diego Ethics Commission
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

Beginning in November of 2005, the Commission held a series of eighteen public workshops on specific aspects of the City's Lobbying Ordinance. The Commission received input from members of the public as well as members of the regulated community. As a result of this comprehensive and deliberative process, the Commission has compiled a package of proposed amendments to the City's Municipal Lobbying Ordinance.

The Commission initially presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on October 25, 2006. The Commission returned to the Rules Committee with several amended recommendations on March 7, 2007, at which time the Committee members unanimously decided to forward the package of proposed amendments to the full City Council.

At the March 7, 2007, Rules Committee meeting, several Committee members asked the Commission and/or the City Attorney to provide responses to the following questions in the interim between the Rules Committee meeting and the time this matter is docketed for consideration by the full City Council.

Question No. 1: The proposed definition of "City Official" includes a list of job titles that correspond to high-level positions in the City. Under the proposed new laws, lobbyists would be required to report lobbying contacts with these high level officials. Does this list include all of the positions recently created under the "strong Mayor" form of government?

Response No. 1: Additional research conducted by Commission staff indicates that, in some cases, the job titles of some high-level positions do not correspond to their working titles. Consequently, at its next meeting on May 10, 2007, the Commission will consider whether to recommend adding four additional

job titles to the definition of "City Official." If the Commission decides to recommend adding any or all of these four job titles, the Commission staff will prepare alternative language for the City Council to consider.

Question No. 2: Some of the positions delineated in the proposed definition of "City Official" include people who may serve as hearing officers. May lobbyists lawfully contact these officials on quasi-judicial matters?

Response No. 2: As the Commission indicated at the March 7, 2007, Rules Committee meeting, we will defer to the City Attorney's Office to advise the City Council on this legal issue.

Question No. 3: The proposed definition of "City Official" includes all members of City boards and commissions who are required to file Statements of Economic Interests. Are there any boards or commission that should be excluded from the Lobbying Ordinance? In other words, are there any boards or commissions whose actions lobbyists should be allowed to influence without having to disclose anything?

Response No. 3: The Commission will consider this issue at its next meeting on May 10, 2007. Any changes in the proposed amendments will be identified in the staff report accompanying the Request for Council Action. In addition, if appropriate, Commission staff will prepare alternative language for the City Council to consider.

Question No. 4: The amendments proposed by the Commission would require lobbying firms and organization lobbyists to disclose the total amount of compensation they receive from each client, rounded to the nearest \$1,000. Should lobbyists instead disclose a range of compensation received from each client?

Response No 4: As explained during the Commission's initial presentation to the Rules Committee on October 25, 2006, the Commission does not believe that the current system, which requires lobbyists to disclose their compensation in certain ranges (\$0-\$5,000, \$5,000-\$25,000, \$25,000- \$50,000, over \$50,000), provides the public with sufficient information regarding the financing of lobbying activities. Because it may be difficult for a lobbyist to determine the precise dollar amount earned for lobbying efforts, the Commission's proposal requires only that lobbyists disclose amounts rounded off to the nearest \$1,000. Note that other jurisdictions in California require lobbyists to disclose the exact amount earned.

Question No. 5: Are some lobbying contacts inappropriate in the context of managed competition?

Response No. 5: Because the City has not yet adopted any rules or guidelines regarding the managed competition process, it is premature for the Commission to consider if certain types of lobbying contacts should be regulated in a unique manner, or even prohibited altogether. If the Mayor and Council ultimately determine that certain types of lobbying contacts in the course of the managed competition process are inappropriate, the Commission would consider amendments to the Lobbying Ordinance at that time.

Question No. 6: Both the current and proposed ordinances indicate that direct communication for the purpose of influencing a municipal decision does not include speaking at a public hearing or providing written statements that become part of the record of the public hearing. How do documents become part of the record of a public hearing?

Response No. 6: When the City Clerk's Office receives documents concerning a particular item, the staff checks to see if the item is on a current Council docket or an upcoming docket. If so, then the materials are passed onto the City Clerk's Docket Section, and they become part of the record of the Council meeting. If not, then the materials are maintained in the City Clerk's general files, and they do not become part of the record of a particular Council meeting. If a lobbyist intends a particular document to become part of the record of a public hearing, the lobbyist should either forward the document to the City Clerk's Office with a docket item number once the item is docketed, or check with the City Clerk's Office to ensure that a document transmitted before a docket is published is contained within the docket back-up materials. The same process should be followed with respect to a Council Committee meeting, except that the lobbyist should transmit documents to the Committee Consultant or check with the Committee Consultant to ensure that a particular document is part of the back-up materials for a Committee meeting.

Question No. 7: What is the distinction between an exchange of information and an attempt to influence a municipal decision?

Response No. 7: Both the current and proposed lobbying laws define "influencing a municipal decision" as an attempt to affect any action by a City Official by any method, including "providing information, statistics, analysis or

studies to a City Official.” In other words, there is no distinction between an exchange of information and an attempt to influence a municipal decision, provided of course that the information provided is related to a municipal decision and could affect an action by a City Official concerning the municipal decision.

Question No. 8: The Commission’s proposed reforms would require lobbying firms and organization lobbyists to disclose certain types of campaign fundraising efforts when their owners, officers, or lobbyists personally deliver contributions to a candidate, or if they identify themselves to a candidate as having some responsibility for raising the contributions. Is it possible to clarify what it means to take credit for raising a contribution?

Response No. 8: During the course of its extensive deliberations on the topic of fundraising disclosure, the Commission initially considered requiring lobbyists to disclose all campaign contributions “made at the behest” of the lobbyist. After hearing from lobbyists that this would be unduly burdensome because it could require them to disclose contributions made by their friends and neighbors if they merely discussed a particular candidate with a lobbyist, the Commission decided to narrowly tailor this provision to require lobbyists to disclose only those contributions they personally deliver, or those contributions they take credit for raising. In the Commission’s experience, taking credit for a contribution can take many forms: coding of contribution remittance envelopes, providing a list of contributors to a candidate’s campaign staff, etc. It is not practical or desirable to limit the language in the ordinance to the specific ways that a lobbyist can take credit for campaign contributions, as doing so would likely encourage lobbyists to find a different way to take credit for contributions and thereby avoid the disclosure requirements.

As discussed above, there are two remaining issues that the Ethics Commission will discuss at its next meeting on May 10, 2007. The Commission anticipates submitting a Request for Council Action (Form 1472) no later than Monday, May 14, 2007. As explained at the March 7, 2007, Rules Committee meeting, the Commission is hopeful that the proposed reforms will be considered and adopted by the City Council as soon as possible. In order for the new laws to take effect on January 1, 2008, the Commission will need four to six months to prepare new registration and disclosure forms, prepare new fact sheets, and educate the regulated community on the various provisions in the new ordinance. Accordingly, the Commission respectfully requests that the Council President consider docketing this issue for City Council consideration in June (possibly after the City Council addresses final budget modifications on June 11).

At the March 7, 2007, Rules Committee meeting, the City Attorney indicated that he intends to conduct a legal analysis of the Commission’s proposed reforms. The Ethics Commission

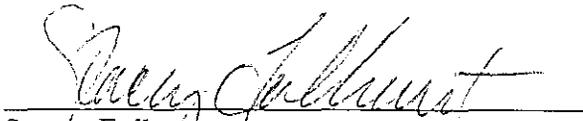
President and Members of the City Council

April 16, 2005
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respectfully requests, therefore, that the City Attorney present the results of his analysis to the City Council as soon as possible to facilitate docketing of this issue in June.



Dorothy Leonard
Chair, San Diego Ethics Commission



Stacey Fulhorst
Executive Director, San Diego Ethics Commission

cc: Catherine Bradley, Chief Deputy City Attorney
Kris Michel, Deputy Chief Community & Legislative Services
Chris Cameron, Rules Committee Consultant
Michelle Strauss, Policy Advisor, Council District 1

000687

CITY OF SAN DIEGO
ETHICS COMMISSION

Office of the Executive Director

MEMORANDUM

DATE: February 21, 2007
TO: The Committee on Rules, Open Government and Intergovernmental Relations
FROM: Stacey Fulhorst, Executive Director
SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

A. Updates since October 25, 2006, Rules Committee Meeting

On October 25, 2006, the Ethics Commission made a presentation to the Rules Committee regarding its proposed amendments to the City's Lobbying Ordinance. At that time, the Rules Committee asked the Commission to consider the following issues, and to report back with its recommendations:

- Consider whether to narrow the scope of who is a "City Official" to require lobbyists to disclose only those contacts with high-level officials, not mid-level officials.
- Consider modifying the requirement that lobbyist activities for the past four years on their registration time period would be more appropriate. raising
either a shorter
- Consider adding a requirement that lobbyists disclose to current elected officials. ATTACHMENT B
- Consider clarifying the language regarding campaign fundraising disclosures.
- Consider clarifying the language regarding reportable compensation.
- Consider clarifying and/or narrowing the definition of a "contact" with a City Official.

After considering the issues raised at the October 25, 2006, Rules Committee meeting, the Commission has amended its recommendations as follows:

- The definition of "City Official" has been narrowed in scope to include only twenty-nine high-level positions at the City and at City agencies (this list includes members of City boards and commissions, as well as the positions of City Manager, Assistant City Manager, and Deputy City Manager which are presently nonexistent under the "strong Mayor" form of government).

- The requirement to disclose campaign fundraising information on lobbyist registration forms has been changed from four years to two years. In addition, a “grandfather” provision has been added to exempt fundraising efforts that occurred prior to January 1, 2007. It is important to keep in mind that this disclosure is extremely limited and essentially requires the lobbyist to simply identify the name of the elected official who benefited from the fundraising efforts. There is no requirement to disclose specific dates or amounts raised.
- Also with regard to the disclosure of campaign fundraising activities, the phrase, “contributions the lobbyist knows or has reason to know were raised” has been deleted and replaced with the same language used in the definition of “fundraising activity.” This language requires lobbyists to disclose contributions that are personally delivered to a candidate or to a candidate’s committee, as well as contributions that the lobbyist identifies himself or herself to the candidate as having some responsibility for raising.
- There is a new requirement for the disclosure of a lobbyist’s compensated campaign-related services. The applicable language is patterned after the provisions requiring the disclosure of campaign fundraising – lobbyists would be required to disclose very limited information for compensated campaign services provided to an elected City Official within the past two years on their registration forms, and disclose more detailed information on their quarterly disclosure reports for compensated campaign-related services provided to a candidate or a candidate-controlled committee during the reporting period.
- Language regarding reportable compensation has been revised to state that lobbyists must disclose the amount of compensation they receive for “lobbying activities,” which includes direct communications with City Officials, as well as monitoring decisions, preparing testimony, conducting research, attending hearings, communicating with clients, and waiting to meet with City Officials.
- The definition of “contact” has been revised to clarify that it includes only those instances of direct communication with City Officials that are made for the purpose of influencing a municipal decision. Although the Rules Committee asked the Commission to consider whether it would be appropriate to limit “contacts” to certain locations or lengths of time, the Commission ultimately concluded that such an approach would create loopholes that would inevitably be used by lobbyists to avoid disclosure. For example, if a “contact” is defined as only those communications that take place in the office of a City Official, lobbyists could simply ensure that their contacts took place in another location. Similarly, if the ordinance includes a time limit for contacts, it would inevitably result in multiple, shorter meetings with lobbyists. [It is important to distinguish the definition of “contact” in the lobbying ordinance from a law or policy regulating ex-parte communications. As you will recall, such a law or policy was proposed by Carl DeMaio at the October 25, 2006, Rules Committee meeting. This issue has been placed on the Commission’s legislative agenda for 2007 at the request of the Rules Committee.]

In addition, during the course of the Commission’s deliberations over the past few months, several other issues were brought to the Commission’s attention that resulted in the following changes to the draft ordinance:

- The definition of “client” has been updated to include members of a coalition or membership organization who pay \$1,000 or more for a lobbyist’s services. This will ensure that all relevant information regarding the financing of lobbying activities is disclosed to the public on the lobbyist registration forms. This change was made as a result of information obtained by the Commission during the course of recent enforcement activities. Essentially, there is a new trend in “grassroots” lobbying whereby a lobbyist retained and financed by an unpopular or unsympathetic client will recruit members of the public to join the cause, and then hide the identity of the original client by disclosing that the firm’s client is a “coalition” of “concerned citizens.”
- The provisions that address the disclosure of compensation have been amended to clarify that a lobbyist must report the compensation received from each client, but is not required to itemize the compensation received for each municipal decision he or she attempts to influence on the client’s behalf.
- The definition of “expenditure lobbyist” (a lobbying entity that does not have any direct communications with City Officials, but makes expenditures for public relations, advertising, public outreach, etc., to influence a municipal decision) has been revised as follows: (1) the \$5,000 threshold applies to any number of municipal decisions rather than to a single decision; (2) the corresponding time period for the threshold is a calendar quarter rather than ninety consecutive days; and (3) language has been added to clarify that an expenditure is considered made when a payment is made or when consideration is received.
- A new provision has been added that would require lobbyists to disclose compensated services they provide pursuant to a contract with the City. This provision is based on new information recently brought to the Commission’s attention. In particular, in the past the City has retained lobbying firms, including some lobbying firms that are registered with the City to influence local municipal decisions, to assist with the City’s lobbying efforts at the state and federal level. In addition, the City has hired individuals who previously lobbied the City. Because several other provisions recommended by the Commission would require the disclosure of activities that may serve to create a special relationship between a lobbyist and a City Official, the Commission believes that lobbyists should also disclose whether they have provided compensated services under a contract with the City. It should be noted that both Los Angeles and San Francisco require lobbyists to disclose contracts they have with their respective cities.

At this time, it is the Commission’s view that the proposed amendments are in final form and are ready for consideration and approval by the Rules Committee. There are lobbyists who continue to object to the Commission’s recommendations by asserting that the proposals are “too complicated,” or that there has been “no legal analysis” of the recommended changes, or that the proposed amendments constitute “a solution in search of a problem.” As discussed in greater detail below, the Commission does not believe there is any basis in fact for these claims. Instead, as demonstrated by the information set forth below, the proposed reforms will fix a series of problems that exist with the current ordinance, and will serve to prevent corruption and the appearance of corruption by creating far more transparency in the lobbying process. Moreover, as a result of the thorough legal analysis performed by the Commission’s General Counsel throughout the past fifteen months, the Commission is confident that its proposals will withstand judicial scrutiny. The Commission does, of course, defer

to the City Attorney's Office to advise you on the legal issues associated with the Commission's proposals.

B. Foundation for Commission's Proposals

As the Commission explained at the October 25, 2006, Rules Committee meeting, each one of the Commission's proposals has been closely drawn to address an actual problem in terms of the effectiveness of the existing laws, or to address real and perceived corruption in the lobbying process. The following is an overview of the substantive proposed changes and the corresponding rationale:

New Definition of Lobbyist and Registration Threshold:

As explained at length in my memorandum to the Rules Committee dated October 19, 2006, the current definition of lobbyist and the registration threshold simply do not work. Investigations conducted by Commission staff reveal that there are people engaged in continuous and substantial lobbying of City Officials, yet they are not currently required to register because they do not meet the compensation threshold (currently \$2,700 in a calendar quarter). For example, a lobbyist who works in-house for a company and earns \$100,000 per year could meet with the staff in each of the eight Council offices once a week for twelve weeks, and still not meet the quarterly compensation threshold. The current law, therefore, allows a substantial amount of lobbying to take place without any disclosure to the public. In addition, the current system improperly equates earnings with influence, and requires an employee who earns \$200,000 per year to register as a lobbyist much sooner than an employee of another company who earns \$50,000 per year, even if they both engage in the same amount of lobbying activities. The Commission has also found that the current system is ineffective in terms of enforcement because it is very difficult to determine the precise amount of time someone spends on lobbying activities, which is essential in order to compute whether or not the individual reached the registration threshold.

In order to correct these problems, the Commission has proposed a \$1 threshold for lobbying firms (contract lobbyists hired by third parties) and a contacts-based threshold for organization lobbyists (companies that employ lobbyists in-house). As discussed at great length in my previous memorandum, the Commission determined that the contacts-based threshold (10 contacts in 60 calendar days) is the best means of regulating significant attempts to influence decisions that may affect the revenue of a lobbyist's employer, without also inadvertently requiring average citizens to register as lobbyists for simply exercising their right to petition their elected officials on an issue that may affect their employers.

It is important to note that members of the public and regulated community who communicated with the Commission on the threshold issue overwhelmingly indicated their support for the proposed \$1 threshold for lobbying firms, and the proposed contacts-based threshold for organization lobbyists. In other words, the Commission heard no objections to the proposed registration thresholds, with the exception of several lobbyists who recommended that the Commission go further in its definition of lobbyist by including people who are not compensated for their lobbying activities.

The Commission's proposals include a third category of lobbyist known as an "expenditure lobbyist." This is an entity or individual that attempts to indirectly influence municipal decisions by spending money on public relations, media relations, advertising, public outreach, etc. The Commission

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concluded that it is important for these activities to be disclosed to the public if the related costs meet or exceed \$5,000 within a calendar quarter. The Commission based this proposal on its experience with several enforcement matters that involved spending by special interests to generate public support for a particular issue. In those enforcement matters, the sources of the expenditures were never disclosed, and both the public and the City Officials involved in the municipal decisions failed to receive important information that would have been relevant to their assessment of the issues.

Disclosure of Campaign Contributions and Fundraising:

As discussed in greater detail below, there are many examples throughout this country in which lobbyists obtain, or appear to obtain, unique access to elected officials via campaign contributions and campaign fundraising. In addition, the Commissioners considered the personal experience of one of the Ethics Commissioners, who explained that he received special access (e.g., private telephone numbers and email addresses) for public officials after he engaged in campaign fundraising efforts to benefit these officials. In order to address the appearance of corruption that is created when lobbyists seemingly obtain unique access to elected officials, the Commission has included proposals that would require lobbyists to disclose their own campaign contributions, as well as their campaign fundraising activities.

It should be noted that, at one point during its deliberations, the Commission considered whether the appearance of corruption created by lobbyists engaging in campaign fundraising efforts to benefit the elected officials they may seek to influence was so great that a ban on fundraising by lobbyists was warranted. At that time, Jim Sutton (a lobbyist representing a group of clients) strenuously opposed the proposed ban, and promoted disclosure as a preferable alternative. In a letter dated July 13, 2006, Mr. Sutton asked the Ethics Commission to let "the sun shine on the fundraising activities of lobbyists," in lieu of a prohibition on fundraising by lobbyists. When the Commission ultimately decided to recommend disclosure of fundraising in lieu of an outright ban, Mr. Sutton clarified that his recommendation for transparency was only intended to cover those campaign contributions that a lobbyist personally delivers to a candidate. In the Commission's experience, this approach would easily enable lobbyists to circumvent disclosure rules by simply asking someone else to deliver the contributions on their behalf. In addition, this approach would ignore prevalent practices in campaign fundraising that involve the coding of contribution envelopes so that lobbyists receive credit for contributions sent directly by contributors to a candidate's campaign committee.

Both Los Angeles and San Francisco require lobbyists to disclose their fundraising activities. The Commission reviewed the laws in effect in these other cities and ultimately agreed with Mr. Sutton and others that the language used by these other jurisdictions could be improved upon to clarify the underlying intent. Accordingly, the Commission narrowly tailored the language in the relevant sections to require that lobbyists disclose (1) all contributions personally delivered by the lobbyist, and (2) all contributions for which the lobbyist "has identified himself or herself to a candidate or candidate's controlled committee as having some degree of responsibility for raising." In other words, if the lobbyist takes credit for providing a candidate with contributions, then the lobbyist should disclose the amount of those contributions on a quarterly disclosure report.

Some lobbyists have objected to this proposal and suggested that such a disclosure requirement should apply to all fundraisers and should be included in the City's campaign laws. Although the Commission may ultimately recommend such disclosure by candidate committees under the City's

campaign laws, it is the Commission's view that it is certainly appropriate to impose this requirement on paid lobbyists at this time because of the role that they play in influencing municipal decisions. The public has an undeniable interest in obtaining information regarding the different ways in which paid lobbyists obtain access and/or influence.

Disclosure of Campaign-Related Services:

During the course of its deliberations over the past fifteen months, the Commission was advised by a lobbyist that it is incorrect to assume that a special relationship exists between an elected official and his or her campaign consultants, and that it is often the case that elected officials are not fond of their respective campaign consultants for a variety of reasons. This information was contradicted by Councilmembers Madaffer and Frye at the Rules Committee meeting on October 25, 2006, at which time they suggested that the Commission consider a requirement that lobbyists disclose these prior relationships with elected officials.

The Commission staff subsequently conducted additional research and heard from various Council staffers that elected officials generally have a very good relationship with the campaign consultants who helped them gain elective office. By way of example, one Council staffer reported that Larry Remer had such a close relationship with former Councilmember Ralph Inzunza after he served as Councilmember Inzunza's campaign consultant that the Councilmember used a list of concerns prepared by Remer and printed on the letterhead of Remer's company (The Primacy Group) when the City Council was considering the creation of the Ethics Commission and the adoption of the Ethics Ordinance. Council staffers pointed out that it is typically only losing candidates who have complaints regarding the services provided by their consultants.

Disclosure of City Contracts:

As discussed above, the Commission received information over the past few months suggesting that lobbyists who have City contracts may develop special relationships with certain City Officials, and that such relationships should be disclosed if these lobbyists are also paid by private parties to influence the decisions made by City Officials. The rationale behind this recommendation is very similar to the rationale discussed above with respect to the disclosure of campaign-related services in that both disclosures would create a higher degree of transparency than currently exists.

Disclosure of City Officials Lobbied:

The Commission's rationale for this proposal is elementary: the most important piece of information the public needs regarding compensated efforts to influence the decisions of City Officials is the identity of the officials who were actually lobbied. Without this information, the public has no way of determining which officials may have been influenced by a lobbyist, and no way to rationally assess whether any acts of undue influence took place.

Several lobbyists recommended that lobbyists should be required to disclose the name of the department lobbied, but not the identity of the City Official. The Commissioners rejected this recommendation because they believe there is a very important distinction between meeting with an elected official and a Council staffer. The Commission also heard from several lobbyists that it would be too burdensome to identify every City Official present at a particular meeting. After further

consideration, the Commission modified its recommendations to require that lobbyists only disclose contacts with a select group of high level officials.

Some lobbyists also objected to disclosing the identity of City Officials they lobby, contending that that City Officials will avoid talking to them for fear of being "called out on a public report." The Commission staff has conferred with several City Officials on this issue, each of whom expressly deny that they would be concerned about being identified on a lobbyist disclosure report. They point out that they are frequently required to provide records and calendars in response to Public Records Act requests, and that their activities as government employees are continuously subject to public scrutiny. In fact, public access to the calendars of City Officials was the subject of an October 16, 2005, *Union Tribune* article (Attachment 6) that detailed the contacts various individuals had with City Officials over a specific period of time.

Gifts from Lobbyists:

The Commission has proposed a \$10 per month limit on gifts from lobbyists to City Officials. This proposal stems from the Commission's belief that, in the view of the public, City Officials may be influenced in the performance of their official duties if they receive an expensive meal or a ticket to an event from a lobbyist. The recent conviction of a United States Congressman in connection with excessive gifts from a lobbyist has reinforced the public's belief that gifts from lobbyists to government officials are indications of undue influence.

It is relevant to note that, as reflected in the comparison chart, other jurisdictions throughout California have similar gift limits, or have imposed an outright ban on gifts from lobbyists. Rather than ban all gifts outright and potentially expose City Officials to an enforcement action for simply accepting a cup of coffee from a lobbyist, the Commission ultimately settled on the \$10 limit to allow officials to accept gifts with a nominal value. It is also relevant to note that, throughout the course of the Commission's deliberations on the Lobbying Ordinance, the Commission did not hear any objections to this proposal (other than one that indicated the \$10 limit should be slightly higher as the cost of a hamburger has increased over time).

C. Level of Complexity

As discussed above, some lobbyists have contended that the Commission's proposals are too complicated and burdensome, and are far more complex than comparable laws in other jurisdictions. The Commission has made every effort to propose reforms that are clear and concise, and that will not impose unnecessary burdens on the regulated community. In addition, the Commission has conducted a thorough review of the laws in other jurisdictions in California and made every effort to streamline and simplify the corresponding provisions whenever possible. The following are examples of laws in place in other jurisdictions which the Commission rejected or modified because they appear to be too complicated or burdensome:

- Both San Francisco and Los Angeles require lobbyists to itemize the contributions obtained through fundraising activities. In other words, lobbyists must identify the name of each contributor, the date of each contribution, the amount of each contribution, the name of the candidate who benefited, etc. Los Angeles also requires lobbyists to provide specific information regarding written political fundraising solicitations (whether or not the

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solicitations actually resulted in contributions). The Commission opted to propose a much simpler, more straightforward approach that still ensures that the public has sufficient information about a lobbyist's fundraising activities. The Commission's proposal would require lobbyists to disclose the date and description of the fundraising effort, and the total amount raised. In other words, the Commission's proposal does not require lobbyists to itemize each contribution and identify the name of each contributor.

- Los Angeles requires lobbyists to fill out a separate disclosure page for all contributions made by lobbyists "at the behest" of City Officials to other candidates, which includes contributions made at the direction of the lobbyist, or in cooperation, consultation, or coordination with the lobbyist. Similarly, lobbyists in Los Angeles must disclose donations made "at the behest" of City Officials to charitable, religious, and non-profit organizations. The Commission received input from a lobbyist with experience in Los Angeles who explained that the "at the behest" language had caused a great deal of confusion because it arguably requires lobbyists to disclose campaign contributions and charitable donations, even if they were only discussed with City Officials in passing. Accordingly, the Commission decided against recommending a similar provision.
- San Francisco requires lobbyists to disclose gifts of tickets or admissions to political fundraisers or fundraising events sponsored by a 501(c)(3) organization. The Commission decided against recommending a similar provision in San Diego's lobbying laws because it appears somewhat inconsistent with San Diego's Ethics Ordinance (and the state's Political Reform Act), which expressly exempt these types of tickets from the gift regulations.
- The State of California requires individual lobbyists, as well as the lobbying firms/lobbyist employers who employ them, to prepare separate disclosure reports. In many instances, the lobbyist must disclose the exact same information as his/her employer (e.g. activity expenses and campaign contributions). The Commission viewed this system as unnecessarily duplicative and burdensome, and opted instead to recommend that lobbying firms and organization lobbyists file the disclosure reports, which will include information supplied by the individual lobbyists.
- The State of California requires people who retain lobbying firms to file disclosure reports in the same time and manner as employers who have lobbyists working for them in-house. In other words, the clients of lobbying firms must also file disclosure reports and provide specific information regarding their payments to lobbying firms and their campaign contributions. The Commission has not recommended that the City of San Diego adopt similar requirements. The information disclosed by the clients appears to be duplicative of the information disclosed by the lobbyists with the exception of the clients' campaign contributions, which are disclosed by the recipient campaign committees.
- The State of California does not exempt government entities from its lobbying regulations. If a similar provision were enacted in San Diego, employees of the County of San Diego, the Port District, the City of Chula Vista, the City of National City, etc., would be required to register as lobbyists and disclose their activities if they met with City of San Diego officials regarding a municipal decision. The Commissioners opted to maintain the current exemption

for government agencies because they believe the public is primarily interested in receiving information regarding efforts by private companies to influence government decisions.

Although several lobbyists have generally criticized the Commission's proposed reforms as too complicated, these lobbyists have not provided the Commission with any information regarding a specific provision that is allegedly problematic. Instead, the Commission heard from members of the public that the proposed reforms are clear and comprehensible. The Commission first learned that some lobbyists believe the proposals are too complicated at the October 25, 2006, Rules Committee meeting. In particular, one lobbyist expressed his belief that the proposals are "more complicated than any lobbying law in any other city in California." In his October 23, 2006, letter to Council President Peters, lobbyist Jim Sutton cites the following as the basis for his belief that the Commission's proposals are too complex:

- Mr. Sutton describes the registration thresholds proposed by the Commission as "inconsistent" because they treat contract lobbyists differently than employees who lobby on behalf of their employers.

As demonstrated in the comparison chart prepared by the Commission (Attachment 4), other jurisdictions (e.g. Los Angeles, San Francisco, and the State of California) recognize the need to treat different types of lobbyists differently in terms of registration thresholds. Not only is San Diego not unique in terms of these "inconsistent" thresholds, but the Commission's current proposal is arguably far simpler than the current system or the alternatives. Instead of requiring lobbyists to register if they earn a specific amount of money in a certain time period or if they spend a certain amount of time lobbying in a certain period, the proposal would simply require all compensated contract lobbyists to register. There is no simpler way to impose a registration threshold. With respect to employees who lobby on behalf of their employers, they will need to register if they have ten lobbying contacts with high level City Officials in a sixty-day period. It is not a complex proposition to require lobbyists to count their number of lobbying contacts, and is clearly far less complicated than having them, or any enforcement agency, calculate the amount of compensation earned for lobbying activities.

- Mr. Sutton also references the fact that the Commission's proposals do not require homeowners associations and advocacy groups to register "simply because their members are not paid."

The Commission considered the request by Mr. Sutton and other lobbyists to regulate uncompensated advocacy, but ultimately concluded that this type of regulation would have the unintended effect of also regulating average constituents seeking to contact their elected officials. In other words, it is the Commission's view that regulating uncompensated lobbying activities would inevitably result in an overly-complex ordinance and a highly confused regulated community. Moreover, as evidenced in the comparison chart, the vast majority of other jurisdictions in California do not regulate uncompensated lobbyists.

- As a purportedly "more straightforward alternative," Mr. Sutton recommends that the City of San Diego adopt the state's lobbying disclosure laws because these laws have been in effect for thirty years and because the state's Fair Political Practices Commission [FPPC] has a staff of technical advisors.

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As some Councilmembers may recall, Mr. Sutton made a very similar recommendation when the City Council was considering the Commission's proposed changes to the City's campaign laws in 2003 and 2004. Then, as now, the adoption of state law would have the net effect of removing the proposals that are most objectionable to Mr. Sutton and his clients. In this case, the state does not require lobbyists to identify the names of the officials they have lobbied, nor does it require lobbyists to disclose campaign fundraising activities. As reflected in the comparison charts, the majority of the other provisions in state law are identical or substantially similar to those proposed by the Commission. Moreover, as discussed above, the Commission has not recommended several provisions that currently exist in state law because they believe that they are complicated, duplicative, and/or burdensome.

Finally, it is important to mention that the state's lobbying laws apply only to state lobbyists. It is highly unlikely that the FPPC would use its limited resources to provide advice to lobbyists whose local activities are not under its jurisdiction. In other words, "adopting" state law would not bring local lobbying activities under the purview of the FPPC. Instead, it would only impose on local lobbyists a set of laws expressly tailored for the unique structure of the state.

In order to highlight the relative simplicity and straightforward nature of the Commission's proposed reforms, the Commission staff has prepared draft Fact Sheets entitled "Am I a Lobbyist?" and "Exceptions to the Lobbying Ordinance" (Attachment 3).

D. Legal Analysis

The Commission's General Counsel, Cristie McGuire, has conducted a thorough and ongoing legal analysis of the proposed amendments to the City's lobbying laws, and is confident that they would survive any legal challenges. In addition to the customary legal research and analysis that is typically performed by the Commission's General Counsel when the Commission proposes legislative reforms, Ms. McGuire prepared a "primer" (Attachment 5) on the constitutional principles involved in developing lobbying regulations. The Commission used this primer as a guideline throughout its deliberations on the proposed Lobbying Ordinance.

This primer addresses a variety of Court cases that explain how different types of government regulation are subject to different types of legal scrutiny. Laws that incidentally burden a First Amendment right, such as registration, disclosure, and gift provisions, are not direct limitations on the right to petition the government, and are therefore subject to a relatively low level of judicial scrutiny. In order to enact such laws, a government entity need only demonstrate that there is a reasonable or rational basis for the law. As explained in Ms. McGuire's memo, this burden is met if it can be shown that the law was reasonably calculated to achieve its goal. On the other hand, laws that prohibit or restrict constitutionally-protected activities (such as a ban on campaign contributions by lobbyists) are subject to a higher judicial standard known as "strict scrutiny."

In the opinion of the Commission's General Counsel, the proposed reforms do not substantially interfere with the ability of a lobbyist to exercise his or her First Amendment rights. Because there is a rational basis for each one of the provisions, and because each provision has been crafted to achieve a specific goal, Ms. McGuire is confident that the proposals do not impermissibly infringe on

constitutionally protected activities. Similarly, because the proposals do not include outright prohibitions or restrictions on First Amendment activities, Ms. McGuire does not believe they would be subject to a “strict scrutiny” standard of judicial review. Accordingly, it is Ms. McGuire’s opinion that the City is not required to demonstrate a “compelling governmental interest” by documenting the actual or apparent corruption that would be corrected by each of the proposals. (It is important to note that Ms. McGuire’s memo addresses a specific case in which the California Supreme Court found that a limit on gifts from lobbyists was not subject to strict scrutiny because it was not a direct limitation on the right to petition for redress of grievances.)

In light of the extensive legal analysis performed by the Commission staff, it is difficult to understand any basis for an assertion that there has been “no legal analysis” of the Commission’s proposals. Although the Commission will of course defer to the Office of the City Attorney to ultimately determine whether the proposed ordinance is “legal,” the Commission is confident that the City has sufficiently demonstrated the need for the proposed reforms, and that the proposed amendments have been drafted in a manner that is reasonably calculated to achieve the Commission’s articulated goals.

E. Empirical Evidence

Even though the City is not required to provide evidence of corruption or the appearance of corruption to justify the proposed amendments, such evidence certainly exists in abundance. The Commission was, therefore, surprised to hear a lobbyist at the February 2007 Commission meeting express his view that there is no empirical evidence to support the changes recommended by the Commission. During the ensuing Commission discussion, one of the Ethics Commissioners pointed out that a court reviewing the proposed changes might indeed distinguish between “empirical” evidence and “anecdotal” evidence. The Ethics Commission has, therefore, compiled a body of empirical evidence that supports the need for the reforms proposed by the Commission. The following are examples of this empirical evidence, but are by no means exhaustive:

- Three former City councilmembers were indicted following a federal corruption probe that identified Lance Malone as a lobbyist who had obtained special access to the councilmembers through campaign fundraising. The councilmembers received a total of \$23,150 in “bundled” campaign contributions through Malone, and in the aggregate the former elected officials and their staffs had at total of 346 phone calls over two years with this lobbyist. Although appeals are still pending on this matter, the facts surrounding the indictments created an undeniable appearance of corruption between a lobbyist and City officials. (Attachment 12)
- In 2005, former U.S. Representative Duke Cunningham (whose district included parts of the City of San Diego) resigned from office and pled guilty to fraud and bribery charges stemming from his relationship with a lobbyist for a governmental contractor. (Attachment 13)
- *New York Times*, February 11, 2007 (Attachment 7). United States Senator Lindsey Graham was quoted as saying, “I don’t see any problem with having events where private individuals who give you money can talk to you.” The article also mentions an arrangement set up by Congressman Eric Cantor, who invited lobbyists to join him for a cup of coffee at the local Starbucks in exchange for a \$2,500 contribution.

- *The Bankrollers: Lobbyists' Payments to the Lawmakers they Court, 1998 – 2006*, Public Citizen, May 2006 (Attachment 8). This report identifies the influence obtained by lobbyists through campaign contributions and campaign fundraising. The report details the access and influence of the top ten lobbyist-contributors on a federal level by identifying the elected officials who benefited from the contributions and documenting their subsequent actions (e.g. voting on specific matters, appropriations, earmarking, etc.) in support of the lobbyists' clients.

One example cited in the report involves Stewart Van Scoyoc, a federally registered lobbyist. According to the data compiled in this report, the top ten recipients of Van Scoyoc's campaign contributions serve on the House or Senate Appropriations Committees. In turn, these elected officials have rewarded Van Scoyoc's clients in various forms. For example, the Senate Appropriations Committee earmarked nearly \$150 million for the University of Alabama during the time that Senator Richard Shelby, a beneficiary of Van Scoyoc's campaign contributions, was Chair of the Committee (the University paid Van Scoyoc nearly \$1.5 million in lobbying fees).

Another example involving Van Scoyoc's fundraising and corresponding influence involves Reveal Imaging Technologies, a small Massachusetts start-up company that hired Van Scoyoc in June of 2003 and received a \$2.4 million grant from the Transportation Security Administration [TSA] three months later. In October of 2003, Van Scoyoc hosted a fundraiser for Representative Harold Rogers, the Chair of the Appropriations Homeland Security Subcommittee. This fundraiser netted contributions from Reveal executives totaling \$14,000. Over time, Rogers ultimately received \$122,111 from Reveal executives and associates and by March of 2006, Reveal had received \$28.1 million in orders from the TSA.

- *Measuring Corruption: Do Campaign Contributions and Lobbying Corrupt?* Gajan Retnasaba, Harvard Law School, 2005, Paper 737 (Attachment 9). This academic study examines the appearance of corruption with respect to underwriters of municipal bonds. As a result of the study, the author concludes that an appearance of corruption was created when politicians were able to reward underwriters who had benefited them (via campaign contributions) with lucrative underwriting contracts. The author further notes that when the Municipal Securities Rulemaking Board prohibited underwriters and their employees from conducting business in states where they had made campaign contributions in the past two years, the underwriters turned to lobbyists to make campaign contributions and obtain influence on their behalf.
- *Dallas Morning News*, July 7, 2005 (Attachment 10). This news story refers to court documents indicating that representatives of Westar Energy were told by their company's lobbyist, Richard Bornemann, that a \$25,000 contribution to Representative Tom DeLay would give them access to DeLay, who was the U.S. House majority leader at the time. As a result of the contribution, two Westar executives attended a golf outing with DeLay.
- *Washington Post*, June 10, 2003 (Attachment 11). This story details the efforts of lobbyist Richard Bornemann on behalf of Westar Energy. In particular, Bornemann reportedly attended at least seven Washington fundraisers and brought checks from Westar executives. Bornemann subsequently set up a meeting between Congressman Joe Barton and Westar executives, shortly after which Congressman Barton offered an amendment to exempt Westar

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from a federal energy regulation. The story also mentions emails from Westar executives discussing their belief that their \$56,500 in campaign contributions should get Westar a “seat at the table” during the negotiations over the energy bill.

- *McConnell v. Federal Election Commission* 540 U.S. 93 (2003): In this landmark United States Supreme Court case, the Court considered a host of empirical evidence cited to justify the imposition of contribution limits on political parties, including the following:

Declaration of lobbyist Robert Rozen, partner, Ernst & Young: “You are doing a favor for somebody by making a large donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone – that is write a larger check – and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings.” *McConnell*, 540 U.S. 93, 147 (2003).

Declaration of former United States Senator Alan Simpson: “Too often, Members’ first thought is not what is right or what they believe, but how it will affect fundraising. Who, after all, can seriously contend that a \$100,000 donation does not alter the way one thinks about-- and quite possibly votes on--an issue? . . . When you don't pay the piper that finances your campaigns, you will never get any more money from that piper. Since money is the mother's milk of politics, you never want to be in that situation.” *McConnell*, 540 U.S. at 149.

Declaration of former United States Senator Warren Rudman: “Special interests who give large amounts of soft money to political parties do in fact achieve their objectives. They do get special access. Sitting Senators and House Members have limited amounts of time, but they make time available in their schedules to meet with representatives of business and unions and wealthy individuals who gave large sums to their parties. These are not idle chit-chats about the philosophy of democracy. . . . Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way.” *McConnell*, 540 U.S. at 151.

Declaration of Gerald Greenwald, United Airlines: “Business and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute (enough), competing interests who do contribute generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union. . . . Though a soft money check might be made out to a political party, labor and business leaders know that those checks open the doors of the offices of individual and important Members of Congress and the Administration. . . . Labor and business leaders believe--based on experience and with good reason--that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties. *McConnell*, 540 U.S. at 125, n13.

The *McConnell* court concluded that “it is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.” *McConnell*, 540 U.S. at 145.

In addition, the *McConnell* court determined that actual evidence of corruption is not required to impose contribution limits and thereby restrict activities protected by the First Amendment: "More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.' Many of the 'deeply disturbing examples' of corruption cited by this Court in *Buckley*, 424 U. S., at 27, to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." *McConnell*, 540 U.S. at 150 (citations omitted).

Although some of the above-cited evidence pertains to large campaign contributions and does not specifically concern lobbying, the evidence is clearly applicable to campaign fundraising, which is an activity that is common to both lobbying and campaign finance. In addition, because the City of San Diego imposes limits on contributions to candidates, fundraising is one of the main avenues through which someone may demonstrate direct support for a candidate.

It should also be noted that the United States Supreme Court has held that in establishing the basis for the imposition of legislative reforms, it is entirely appropriate for the City of San Diego to consider evidence of corruption and the appearance of corruption that exists in other jurisdictions. "The First Amendment does not require a city, before enacting . . . an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 394 (2000), citing *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 51-52 (1986).

F. Public Perception

During the course of the Commission's work on the lobbying laws over the past fifteen months, one lobbyist suggested that there is no evidence that the public is concerned about lobbying or that the public is in favor of the changes proposed by the Commission. This opinion was based on the fact that few members of the public attended the Commission meetings, which were more heavily attended by lobbyists. The Ethics Commission disagrees with this assessment and does not believe it is appropriate to equate low attendance with lack of interest. Research conducted by Commission staff indicates that the public is extremely concerned about corruption and the appearance of corruption when it comes to lobbyists and the access they have to elected officials, as evidenced by the following polls:

- ABC News Poll (January 5 – 8, 2006):

Sixty-seven percent of those polled would ban lobbyists from making campaign contributions to Congress.

Fifty-four percent of those polled would ban lobbyists from organizing campaign fundraisers for congressional candidates.

Ninety percent of those polled would ban lobbyists from giving Congress gifts, trips, or other things of value.

- Fox News / Opinion Dynamics Poll (January 10 – 11, 2006):

Sixty-five percent of those polled believe that most elected officials in Washington make policy decisions or take actions as a direct result of money they receive from major campaign contributors.

- CBS / New York Times Poll (January 20 – 25, 2006):

Seventy-seven percent of people polled think that recent reports of lobbyists bribing members of Congress is “the way things work” in Congress.

- Pew Research Center (February 1 – 5, 2006):

Eighty-one percent of people polled think recent reports of lobbyists bribing members of Congress reflect behavior that is “common” in Congress.

- Pew Research Center (April 7 – 16, 2006):

Forty-six percent of people polled are “very concerned” about the influence of lobbyists and special interests.

Twenty-nine percent of people polled are “somewhat concerned” about the influence of lobbyists and special interests.

Seventy-six percent of people polled are in favor of stricter limits on gifts from lobbyists.

The polling data is attached for your review (Attachment 14).

G. Conclusion

Throughout the past fifteen months of deliberations, the Commission has received extremely valuable input from lobbyists and members of the public regarding a variety of proposals under consideration. As reflected in letters to the Commission (Attachment 15) and minutes of the Commission meetings (available at www.sandiego.gov/ethics), each recommendation was seriously considered and most were incorporated into the Commission’s proposals. The input the Commission received was instrumental in terms of preparing a draft ordinance that is straightforward and comprehensible for the regulated community, and yet also addresses important public policy considerations.

As explained in detail above, the Commission does not believe that there is any legitimate basis to assert that the Commission’s proposed reforms are “too complicated,” or are a “solution in search of a problem.” Instead, if adopted, these reforms will dramatically improve what is currently a largely ineffective ordinance. They will ensure that people who are compensated to influence municipal decisions are required to register as lobbyists, and they will further ensure that the Ethics Commission can effectively enforce the law when such individuals fail to register.

The proposed reforms will also require lobbyists to disclose more information than is presently required, which will in turn create more transparency and combat the appearance of corruption that surrounds lobbying and related activities. Although some lobbyists may object to the additional disclosure requirements, the Commission believes that this increased level of transparency will be critical to assuring the public that there is nothing secretive or sinister about the lobbying activities that take place in the City of San Diego every day. As registered lobbyist Michael McDade told the *Union-Tribune* in October of 2005: "People who are doing a legitimate job of presenting information to government officials should not have to worry about whether the public knows if they've talked to them."

For your convenience, we have provided "clean" and "strike-out" versions reflecting the proposed changes to the Lobbying Ordinance (Attachments 1 and 2). Note that we have added text boxes in the left margin of the "clean" version to identify the substantive changes made since the October 25, 2006, Rules Committee meeting. We look forward to discussing these proposed changes with you at the Rules Committee meeting on March 7, 2007. If you have any questions in the meantime, please contact me at your convenience.



Stacey Fulhorst
Executive Director

Attachments

cc: Catherine Bradley, Chief Deputy City Attorney
Kris Michel, Deputy Chief Community & Legislative Services

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**CITY OF SAN DIEGO
ETHICS COMMISSION**

MEMORANDUM

DATE: June 8, 2006
TO: Chair and Members of the San Diego Ethics Commission
FROM: General Counsel Cristie C. McGuire
SUBJECT: Constitutional Principles Involved in Developing Lobbying Regulations

At the May 11, 2006, meeting of the San Diego Ethics Commission, the Commission asked its General Counsel to prepare a brief report on constitutional law principles to keep in mind as it develops proposals for changes to San Diego's lobbying laws (San Diego Municipal Code §§ 27.4001–27.4008). This report is in response to that request.

I. First Amendment Issues

Lobbying laws and regulations touch on several *First Amendment* rights, in particular the rights of freedom of speech and association and the right to petition one's government. Lobbying laws also touch on constitutional principles of equal protection. The First Amendment issues are raised most frequently in challenges to the validity of lobbying laws and regulations. Therefore, these issues are treated first in this report.

A. Standard of Review for Lobbying Laws - Disclosure

As with other kinds of laws that touch on First Amendment rights, the courts have drawn a distinction between lobbying laws that substantially burden a First Amendment right and laws that merely incidentally burden those rights. Courts generally examine carefully how much a particular law or regulation burdens a lobbyist's constitutional rights.

If a court finds that a lobbying law merely incidentally burdens a fundamental right, the law will not become subject to strict scrutiny. "[R]egistration, reporting, and gift provisions are not direct limitations on the right to petition for redress of grievances. Application of the burdens of registration and disclosure of receipts and expenditures to lobbyists does not substantially interfere with the ability of the lobbyist to raise his voice." *Fair Political Practices Commission [FPPC] v. Institute of Governmental Advocates*, 25 Cal. 3d 33, 47 (1979). Accordingly, the issues that pertain solely to the disclosure of lobbying activities, such as whether to require lobbyists to report activity expenses, compensation received, decisions being influenced, fundraising, officials

contacted, and items of a similar nature, are subject to a relatively low constitutional standard.

Rather than being subject to "strict scrutiny," the courts apply a "reasonableness" standard or the "rational basis test" to determine whether or not a lobbying disclosure law is valid. *FPPC*, 25 Cal 3d at 47. The rational basis test is met when the governmental action at issue is rationally a means to an end. *Warden v. State Bar*, 21 Cal.4th 628, 663 (1999). In other words, a disclosure law will meet constitutional muster so long as it is reasonably calculated to achieve its goal. In this context, the courts defer greatly to a governmental entity's legislative judgment.

This is not to say that all disclosure laws are necessarily subject to a low level of scrutiny. As set forth in the *FPPC* case, when a lobbying disclosure law seeks information not truly related to lobbying, that law may significantly interfere with the fundamental right to petition, and accordingly may be subject to a higher level of scrutiny. In the *FPPC* case, the court subjected to strict scrutiny a law that would require a lobbyist to disclose all financial transactions with a bank if a person on the bank's board of directors also served as a public official, even if those financial transactions had nothing to do with lobbying activities. Under that law, a lobbyist could not seek to influence governmental decisions unless he or she was willing to disclose unrelated private financial information, a requirement that imposed a significant impairment of First Amendment rights. "We are satisfied that the right to petition for redress of grievances . . . may not be conditioned upon disclosure of irrelevant private financial matters unrelated to the petition activity." *FPPC*, 25 Cal 3d at 49. As applied to the City's lobbying disclosure laws, therefore, such laws will not be subject to strict scrutiny so long as they remain limited to requiring disclosure only of information truly related to lobbying activities.

B. Standard of Review for Lobbying Laws – Prohibitions & Restrictions

Unlike laws that are purely related to lobbyist registration requirements and the disclosure of lobbying activities, a lobbying law that significantly infringes on protected First Amendment activities must meet a higher standard than the rational basis test. If a court finds that a lobbying law significantly abridges a fundamental right, such as the right of speech, association, or petition, that law will become subject to the court's closest scrutiny, also known as "strict scrutiny." *FPPC*, 25 Cal. 3d at 48. Such laws would include any that prohibit a lobbyist from making a contribution or engaging in fundraising activities. These kinds of activities directly limit a lobbyist's speech and associational rights.

Even though a lobbying law may impair protected First Amendment rights, those rights are not absolute and the government may justify regulation of lobbying activity by showing it has a "compelling interest" in so doing. *FPPC*, 25 Cal 3d at 44-45. See also *State of Alaska v. Alaska Civil Liberties Union*, 978 P.2d 597, 619 (Alaska, 1999); *Minnesota State Ethical Practices Board v. National Rifle Association of America*, 761 F. 2d 509, 511 (8th Cir. 1985). These holdings stem from the landmark case of *Buckley v. Valeo*, 424 U.S. 1 (1976), which held that "[e]ven a significant interference with

protected rights of political association may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25.

Although not an exhaustive list, the compelling interests recognized by the courts as potentially justifying significant interference with First Amendment rights include: (1) ridding the political system of actual corruption or the appearance of corruption (*FPPC*, 25 Cal. 3d at 45; *Alaska*, 978 P. 2d at 618); (2) ridding the political system of improper influence (*FPPC*, 25 Cal. 3d at 45); and (3) ensuring that "the voice of the people" is "not too easily drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal" (*Minnesota State Ethical Practices Board*, 761 F.2d at 512, citing *U.S. v Harriss*, 347 U.S. 612, 625 (1954)).

In the *FPPC* case, the California Supreme Court found that a lobbying law that banned all contributions by any lobbyist demanded strict scrutiny because it substantially interfered with a lobbyist's freedom of association. *FPPC*, 25 Cal 3d at 44-45. The claimed government interest was to "rid the political system of both apparent and actual corruption and improper influence." *Id.* at 45. Even though eliminating corruption and improper influence are compelling governmental interests, a strict scrutiny analysis also requires that any law imposed to serve these interests be "closely drawn." *Id.* In evaluating the contribution ban, the Court found that the law was unconstitutional because it was not "narrowly directed to the aspects of the political association where potential corruption might be identified." *Id.* In particular, the prohibition applied to all candidates, even those whom the lobbyist would never have any reason to lobby. *Id.* The Court also questioned whether the law was serving its anti-corruption interest by prohibiting all contributions, even those that were relatively small. *Id.*

Based on the reasoning in the *FPPC* case, the Ethics Commission should tread cautiously when considering bans on lobbyist fundraising activities and contributions from lobbyists. If the Commission proposes, and the City Council adopts, a lobbying law that significantly affects First Amendment rights, the City will have to demonstrate that there are one or more compelling governmental interests in that law, and that the law is narrowly or closely drawn to serve those compelling interests and to avoid unnecessary abridgment of those rights. If the Commission wishes to pursue contribution and fundraising bans on the basis of corruption or undue influence, it must ensure that any prohibitions are carefully crafted to focus only on the narrow aspect of activities where actual and potential corruption have been identified. *FPPC*, 25 Cal 3d at 44.

With regard to limiting gifts from lobbyists to public officials, the California Supreme Court, in deciding the *FPPC* case, found that a law that prohibited lobbyists from making gifts of more than \$10 to a state candidate, state elected officer, or state agency official, was not subject to strict scrutiny, because the Court found that the restrictions on gift-giving were not direct limitations on the right to petition for redress of grievances. *FPPC*, 25 Cal 3d at 47.

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II. Equal Protection Issue

Equal protection arguments often arise when a regulating body draws distinctions between individuals or groups of people, and chooses to regulate one group differently from another. If the validity of a lobbying regulation were challenged because it allegedly violated the constitutional right of equal protection under the laws, courts would likely apply the rational basis test discussed above. Under this test, legislative classifications are presumed to be valid. *Minnesota State Ethical Practices Board*, 761 F.2d at 513. To overcome this presumption, the challenger would have to show that "the facts on which the legislature may have relied in shaping the classification could not reasonably be conceived to be true by the governmental decisionmaker." *Id.*, citing *Brandwein v. California Board of Osteopathic Examiners*, 708 F.2d 1466, 1470 (9th Cir. 1983) (citations omitted).

III. Conclusion

If a lobbying law is found to burden a First Amendment right significantly, it will be subject to strict scrutiny. On the other hand, if it merely incidentally burdens a First Amendment right, it will be subject to a lesser standard, variously described as the "reasonableness standard" or the "rational basis test." Most of the subjects considered by the Ethics Commission thus far in its review of the City's Lobbying Ordinance pertain to the disclosure of activities that are purely related to lobbying, and are therefore subject only to the rational basis test. On the other hand, there have been some suggestions that the Commission consider imposing prohibitions on certain activities, including lobbyists making contributions or engaging in fundraising activities. Because such prohibitions significantly interfere with First Amendment rights of speech and association, they will likely be found unconstitutional unless they are closely drawn to serve a compelling governmental interest.

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San Diego's Pension Crisis

A matter of influence

San Diego City Hall is thick with lobbyists, but many sidestep the law. Lobbying rules remain loose, even as councilmen are convicted of extortion and conflicts of interest are charged in the city's fiscal scandal.

By Kelly Thornton
UNION-TRIBUNE STAFF WRITER

October 16, 2005

On the day the living-wage ordinance was up for a suspenseful vote, 600 people jammed the San Diego City Council meeting, hoping to cap two years of passionate campaigning with a victory. Donald Cohen was one of them. Eugene "Mitch" Mitchell was another.

Cohen and his organization, the Center on Policy Initiatives, had made the proposal to increase wages and benefits for employees of city contractors. Mitchell, vice president of public policy for the San Diego Regional Chamber of Commerce, marshaled efforts to defeat it.

Both men have cozy relationships at City Hall. Cohen lunches often with city officials. Mitchell is so comfortable in the council chambers that he uses the private door reserved for elected officials and their staff. The two have lobbied on a number of issues, including the wage law, which ultimately passed with a 5-4 vote in April.

But their names don't appear on the city's roster of registered lobbyists. Nor do many others who have tried to influence public officials on everything from ballparks to the budget crisis.

The city has a lobbying law, but those familiar with it say there are plenty of ways around its requirements, specifically the provision that people who lobby politicians and their staffs must register.

The bottom line: City Hall is being heavily pressured by people who don't publicly disclose whom they're representing, what decisions they're trying to influence, or what gifts they might have given to elected officials or staffers.



HOWARD LIPIN / Union-Tribune
Eugene "Mitch" Mitchell had the most frequent access to public officials over the past two years, while working for the San Diego Regional Chamber of Commerce.

Lobbying is a sensitive subject in a city where two councilmen were convicted of extortion and authorities are investigating whether conflicts of interest contributed to starving the pension fund while bloating retirement benefits. The one-two punch has crippled city services.

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"Powerful, well-connected people are flying under the radar," said registered lobbyist Jeff Marston, a former state assemblyman. "Labor, environmental, business interests. Why do they get a pass and all those 'slimy' lobbyists like me don't? Let's let folks know all the folks that are lobbying City Hall."

The most egregious offender was Lance Malone. The Las Vegas resident was convicted in July along with Ralph Inzunza and Michael Zucchet, who were then councilmen, of multiple counts of extortion, wire-fraud conspiracy and wire fraud. Councilman Charles Lewis, also indicted, died before the trial.

Malone, who never registered as a lobbyist, had unprecedented access to those councilmen and funneled thousands of dollars of illegal campaign contributions to them in exchange for efforts to repeal the law banning touching between patrons and dancers at strip clubs. He and the councilmen dined together and exchanged 330 phone calls over two years that were surreptitiously recorded by the FBI.

Inzunza and Zucchet have protested their convictions, saying they were unfairly prosecuted as a result of lobbying practices that are commonplace at City Hall.

Who is a lobbyist?

In a review of the appointment calendars of City Council members and their chiefs of staff over the past two years, The San Diego Union-Tribune found that fewer than half of the 25 people whose names appear most frequently – besides city employees – are registered lobbyists.

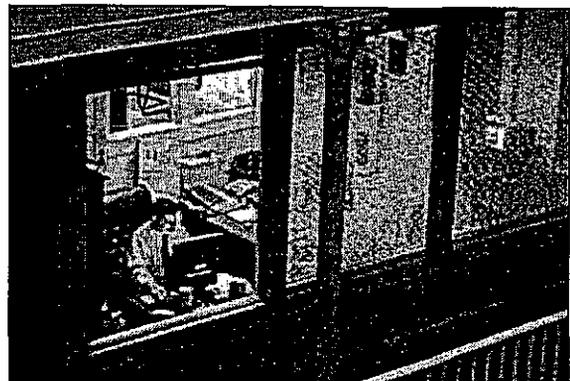
Most of the others who met with public officials are labor and business leaders. They include Jerry Butkiewicz, secretary-treasurer of the San Diego-Imperial Counties Labor Council; Johnnie Perkins, director of governmental affairs for the firefighters union; Ron Saathoff, president of the firefighters union; and Judie Italiano, head of the Municipal Employees Association, as well as San Diego Regional Economic Development Corp. Vice President Erik Bruvold. Some of them argue that they don't fall into the classic category of lobbyist.

Cohen and Butkiewicz draw a distinction between traditional lobbyists – who they say mostly represent developers – and groups that try to shape public policy and represent those without a voice, such as low-wage workers.

"It's different for advocacy groups like us, the chamber, the (American) Lung Association, the Environmental Defense Fund," Cohen said. "The activity may be the same, but it's a different story line."

Most lobbying laws don't adequately define the term "lobbyist," which defeats the purpose of transparency, said Michael McCarthy, a philosophy professor at Vassar College in Poughkeepsie, N.Y., who has co-written a book on the ethics of lobbying.

"I think the present rules both at the national level and at the local level have much too narrow a conception of what a lobbyist is," McCarthy said. "People are generally listed when they practice lobbying as a profession, and that lets people like business leaders and union leaders off the hook."



— HOWARD LIPIN / Union-Tribune
John Dadian, a registered lobbyist, starts his day e-mailing East Coast clients about 5 a.m. He says San Diego's lobbying law is unevenly enforced.

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San Diego's lobbying ordinance requires anyone who has direct communication with a city official for the purpose of influencing a municipal decision, and who is paid more than \$2,542 per quarter, to register with the City Clerk's Office. The law provides an exception for any person whose "sole activity" is to negotiate terms of a contract with the city. Violations can result in fines or misdemeanor prosecution.

The number of lobbyists registered in San Diego has declined to 83 this year from 103 in 2001.

The 25 names that appear most often on the calendars are collectively listed 458 times from 2003 to 2005. Among the names, Cohen's and Mitchell's show up more than any others: 64 times for Mitchell and 38 for Cohen. The names of Butkiewicz, Perkins, Italiano, Saathoff, Bruvold and businessmen Dan Shea and Carl DeMaio together appear about 120 times.

Saathoff, a former pension board member, faces felony conflict-of-interest charges for his vote in 2002 to continue underfunding the pension system while standing to gain large retirement benefit increases.

The Union-Tribune obtained the calendars under the California Public Records Act and Proposition 59. That ballot measure, approved last year, made access to government records and meetings a constitutional right.

The count doesn't include phone calls, drop-in meetings, social events and meetings with other City Council staffers who specialize in particular issues. Lobbyists said they have many of these types of interactions with council offices.

Lobbying is a critical part of the political process. Elected officials say they need lobbyists to educate them on the issues, and constituents employ lobbyists to represent their viewpoints. But the process has to be open, city ethics officials said.

"It's profoundly important to know the people that did get access before they vote," said Stacey Fulhorst, executive director of the city's Ethics Commission, which is preparing to overhaul the city's lobbying rules. "That's important to the public to assess their public officials."



HOWARD LIPIN / Union-Tribune
Bradford Barnum, with Associated General Contractors, conferred with lobbyist John Dadian (right) at the Chamber of Commerce.

During the corruption trial, Malone's lawyer argued that his client wasn't required to register as a lobbyist because he didn't earn the threshold amount of money per quarter.

Malone was snagged not by the Ethics Commission but by the FBI, which had learned through an informant that strip club owner Michael Galardi was illegally reimbursing contributors to council campaigns. Malone was bundling and delivering the contributions, which Galardi described as "bribes."

It's unlikely that the Ethics Commission, with its limited resources, would have caught up with Malone. But even if it had, critics who include city officials and longtime registered lobbyists such as Marston and John Dadian say the ordinance governing lobbyists is weak to the point of being ineffective.

They say the law isn't applied evenly and that its rules are easily circumvented



by those who call themselves consultants, for example, rather than lobbyists. Even lobbyists who register aren't required to say whom they approach. Campaign donations they make or fundraisers they organize need not be reported.

Jerry Butkiewicz distinguishes between lobbyists and advocates.

The reporting debate

San Diego's rules define lobbying as communicating directly with a city official to influence a decision on behalf of another person.

Lobbyists who meet the financial minimum must file quarterly reports with the City Clerk's Office identifying their employer, their clients, the specific municipal decision in question and any expenses or gifts to officials. They also must check a box indicating a range of earnings.

Registered lobbyists in San Diego represent about 500 clients, including developers; churches; hotels; charities; retailers such as Home Depot, Wal-Mart and Costco; the Chargers; San Diego Gas & Electric Co.; universities; small companies; banks; high-tech and biotech companies; and health care companies.

Not surprisingly, the résumés of most lobbyists include stints as elected or appointed public officials, staff members for officials, or both.

There's no consensus on whether leaders of labor unions, nonprofit organizations and community groups who routinely meet with elected officials and their staffs should qualify as lobbyists.

Labor advocate Cohen said: "I don't get paid to lobby. That's not my job title. I get paid to advocate for the issues that we believe in – better wages for workers, more health care, more affordable housing."

Butkiewicz said he doesn't consider himself a bona fide lobbyist, either.

"When you use the word 'lobbyist,' I don't think lobbyists run food banks, run labor council meetings, run training programs for workers," he said. "Ninety-nine percent of my job is running the labor council."

Butkiewicz met at least 27 times in two years with council members or their chiefs of staff, according to their calendars. He met most often with Zucchet's office – five times – just once with Councilman Brian Maienschein and three or four times with the others. He ranks fourth on the list of frequent visitors, below Mitchell, Cohen and Jim Bartell, a former Santee councilman and former San Diego council aide.

The calendars show that Mitchell had the most appointments and the subjects included the living-wage law, housing matters, the Chargers, public art, the "strong mayor" form of government and the Mount Soledad cross. Mitchell, who announced last week that he would leave the chamber to work for SDG&E and Southern California



NANCEE E. LEWIS / Union-Tribune
Las Vegas lobbyist Lance Malone left federal court after being convicted in July of funneling illegal campaign contributions to San Diego councilmen. He was not registered to lobby in San Diego.

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Gas Co., did not return calls seeking comment for this story.

Cohen's meetings were mostly related to the living-wage ordinance. But he also met about proposed restrictions on "big box" retail stores and the controversial housing project at Ballpark Village, to be built by JMI Realty, which is the development company of Padres owner John Moores, and Lennar-San Diego Urban Division.



JOHN GIBBINS / Union-Tribune
Donald Cohen, a labor advocate with easy access to San Diego public officials, does not believe he is a traditional lobbyist.

The calendars indicated that Butkiewicz met with various officials about the pension fund, the wage law, the Chargers, various labor union issues and stagehands at the North Park theater. Most officials didn't indicate on calendars a reason for meetings.

On the living-wage proposal, the labor leader acknowledged stumping for passage of the law: "I did talk with City Council members about how we thought it was important. I was more there as an activist than as a labor council guy, you know what I mean."

Asked whether the public should be apprised of his activities through the lobbyist registration, Butkiewicz said, "Isn't my agenda written on my shirt when I walk in the room?"

But that argument doesn't convince some registered lobbyists.

"I do think it is ridiculous to say because they think they're doing it as a public benefit, w that they are not a lobbyist," Dadian said. "If they are trying to influence public officials and they're getting paid for it, they are professional lobbyists."

Little has changed

The corruption verdicts have brought subtle changes to the way politicians do business at City Hall. Councilman Scott Peters said he adds an extra line on thank-you letters to contributors, to make sure they don't expect anything in return: "My campaign promise to you is an open mind and an open door, and nothing more."

Councilwoman Donna Frye said she's more careful to "lay the ground rules out real clear" to those with whom she meets, "because people like to misstate my positions."

But little else has changed in the city's political culture since Malone, Inzunza and Zucchet were convicted in July. Not one elected official has called for lobbying reform.

Observers suggest this is because the city is distracted by numerous scandals, federal investigations and financial crises. And those in politics are sharply divided over the outcome of the trial, and whether the guilty verdicts mean the city's political system is also corrupt.

At the trial, longtime registered lobbyist Mitch Berner, once an aide to former county Supervisor Susan Golding and former Councilwoman Barbara Warden, testified for the defense that the actions of the councilmen and Malone were common practice. His message seemed to be: Everyone else is doing it.

Even after the verdicts, Inzunza and Zucchet continued to proclaim innocence, saying they were merely

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doing their jobs as legislators by meeting with a lobbyist on an issue they supported. It's not unusual to accept campaign contributions and later vote on a matter that benefits a contributor, they said. The councilmen said they were stunned by the convictions, and a lot of lobbyists were, too.

The lobbyists were also shocked by Malone's behavior.

"I think it was embarrassing to most people who are good lobbyists to even have people think for a moment that most of us behave in the fashion that Lance Malone did," said Michael McDade, a longtime registered lobbyist, former port commissioner and staffer for Roger Hedgecock when he was mayor.

Frye says the culture that led to the corruption remains.

"It's cronyism. It's more like a clique in high school, where there were the kids that had access and kids that didn't," she said. "For some reason I think people haven't moved beyond some of the stereotypes and that culture."

City Attorney Michael Aguirre said the corruption trial revealed the dark side of politics.

"I think these bad practices have become a way of performing public business in San Diego," he said.

Deputy Mayor Toni Atkins said she didn't agree that the practices exposed at the corruption trial represent the way business is normally conducted.

"I get contributions from people that support affordable housing because they know I care about it," she said. "Do I care because these people give me money, or because it's relevant and I've always been interested in it? I don't think there are easy answers. We all need to hold ourselves and each other accountable."

What to do

Many cities across the United States are implementing new lobbying regulations or strengthening existing laws. Locally, only the city of San Diego, the county and the Port District require lobbyists to register. Oceanside is considering an ordinance.

San Diego's rules were enacted in 1973 and revised in 1998.

Portland is considering a lobbying ordinance, and New York City, Chicago and Los Angeles have one. Last year, the Los Angeles law was strengthened in the wake of abuses, making it one of the nation's toughest.

In San Diego, the Ethics Commission, created in 2001, has been planning to revamp the lobbying ordinance since before the trial, executive director Fulhorst said.

It plans to consider issues related to fundraising and campaign contributions by lobbyists, whether registration requirements are adequate, and "whether the ordinance sufficiently identifies the persons and organizations that are involved in lobbying activities in the City," said Dorothy Leonard, chairwoman of the commission.

Frye, who has made open government a platform for her City Council and mayoral candidacies, said she would shift the burden of disclosure from lobbyists to the elected officials, much like the California

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Coastal Commissioner does.

Before voting, each commissioner is required to disclose who he or she has communicated with about the matter at hand and the essence of the conversation.

Mayoral candidate Jerry Sanders said he favors requiring anyone lobbying city officials to make those efforts public.

"The more disclosure, the better," he said. "It just makes it a more honest process."

Sanders said he would require the disclosure of gifts and campaign contributions by registered lobbyists and contractors who have business before the council, and he would mandate ethics training for lobbyists.

Registered lobbyist McDade sees no problem with greater disclosure.

"People who are doing a legitimate job of presenting information to government officials should not have to worry about whether the public knows if they've talked to them," he said.

"And the public takes a great deal of comfort knowing what input the official has had before they vote. Put the responsibility on the official to disclose who they've discussed things with."

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February 11, 2007

Congress Finds Ways to Avoid Lobbyist Limits

By DAVID D. KIRKPATRICK

WASHINGTON, Feb. 10 — The 110th Congress opened with the passage of new rules intended to curb the influence of lobbyists by prohibiting them from treating lawmakers to meals, trips, stadium box seats or the discounted use of private jets.

But it did not take long for lawmakers to find ways to keep having lobbyist-financed fun.

In just the last two months, lawmakers invited lobbyists to help pay for a catalog of outings: lavish birthday parties in a lawmaker's honor (\$1,000 a lobbyist), martinis and margaritas at Washington restaurants (at least \$1,000), a California wine-tasting tour (all donors welcome), hunting and fishing trips (typically \$5,000), weekend golf tournaments (\$2,500 and up), a Presidents' Day weekend at Disney World (\$5,000), parties in South Beach in Miami (\$5,000), concerts by the Who or Bob Seger (\$2,500 for two seats), and even Broadway shows like "Mary Poppins" and "The Drowsy Chaperone" (also \$2,500 for two).

The lobbyists and their employers typically end up paying for the events, but within the new rules.

Instead of picking up the lawmaker's tab, lobbyists pay a political fund-raising committee set up by the lawmaker. In turn, the committee pays the legislator's way.

Lobbyists and fund-raisers say such trips are becoming increasingly popular, partly as a quirky consequence of the new ethics rules.

By barring lobbyists from mingling with a lawmaker or his staff for the cost of a steak dinner, the restrictions have stirred new demand for pricier tickets to social fund-raising events.

Lobbyists say that the rules might even increase the volume of contributions flowing to Congress from K Street, where many lobbying firms have their offices.

Some lawmakers acknowledge that some fund-raising trips resemble the lobbyist-paid junkets that Congress voted to prohibit.

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Jennifer Crider, a spokeswoman for the Democratic Congressional Campaign Committee, said its leaders had decided to stop holding fund-raising events for lobbyists with political action committees because of the seeming inconsistency.

So the committee canceled its annual Colorado ski weekend for lobbyists and lawmakers to raise money for the next campaign. Gone, too, is its Maryland hunting trip with Representative John D. Dingell of Michigan, the avid hunter who is chairman of the House Energy and Commerce Committee.

But other Congressional party campaign committees have not stopped their events, including the Democratic Senatorial Campaign Committee's annual Nantucket weekend for donors who contribute \$25,000. And individual lawmakers are still playing host to plenty of events themselves.

Senator Lindsey Graham, a South Carolina Republican who sometimes invites lobbyists to join him for fund-raising hunting trips, called such events an innocuous fact of life.

"If you are not going to have publicly financed elections and you are getting your support from private individuals — which I believe in — I don't see any problem with having events where private individuals who give you money can talk to you," said Mr. Graham, who like the other senators quoted in this article voted for the ethics reform. He added, "Hunting is a very popular attraction in South Carolina."

Representatives John R. Kuhl Jr. of New York and Greg Walden of Oregon, both Republicans, each recently invited lobbyists to a rock concert by Bob Seger and the Silver Bullet Band. And three Republican lawmakers, Mr. Walden and Representatives Darrell Issa and Mary Bono of California, have invited lobbyists to join them next month at a Who concert in Washington.

"They're her favorite rock 'n' roll band," said Frank Cullen, Ms. Bono's chief of staff.

Among Democrats, Senator Thomas R. Carper of Delaware recently returned from his annual ski trip to the Ritz-Carlton Bachelor Gulch in Beaver Creek, Colo. Senator Max Baucus, a Montana Democrat, just got back from a skiing and snowmobiling trip to his state and has planned two golfing and fly-fishing weekends as well. Expeditions of lobbyists attend each trip. The top prices for the events are meant for lobbyists with political action committees.

Meredith McGehee, policy director of the Campaign Legal Center, which advocates for tighter campaign finance rules, said that organizing a fund-raising trip was not the same as accepting a free vacation. But she added: "At the end of the day, it is the same thing."

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Representative Eric Cantor, a Virginia Republican famous on K Street for his annual fund-raising weekends in Beverly Hills and South Beach, has recently invited lobbyists to join him for some expensive cups of coffee. A \$2,500 contribution from a lobbyist's political action committee entitles the company's lobbyist to join Mr. Cantor at a Starbucks near his Capitol Hill office four times this spring.

"What's next? Come help me pick up my dry cleaning?" said Massie Ritsch, spokesman for the Center for Responsive Politics, a group that tracks political fund-raising.

The excursions would be illegal under the new ethics rules if lobbyists or their employers paid for them directly. (The rules, passed by both houses in early January, have already taken effect in the House and are expected to take effect in the Senate later this spring.) And some outings involving personal entertainment or recreation for lawmakers could also run afoul of legal restrictions on the personal use of campaign money if they were paid for by a lawmaker's re-election campaign.

But they are allowed, and increasingly common, because of a combination of loopholes. First, the ethics rules restrict personal gifts but not political contributions, so paying to attend a fund-raiser is still legitimate. Second, the "personal use" restrictions apply to lawmakers' re-election campaigns but not to their personal political action committees, which can spend money on almost anything. Lawmakers use their personal PACs to sponsor most of the events. (Lawyers disagree about whether Congressional ethics rules restrict personal use of members' PACs.)

The lawmakers' so-called leadership PACs began proliferating about two decades ago, initially as vehicles for senior members of Congress to build loyalty among their colleagues by funneling money to their campaigns.

These days, however, even the newest members of Congress usually start them. Two newly elected Democratic senators, Claire McCaskill of Missouri and Jim Webb of Virginia, already have. And many use them mainly to pay for travel or miscellaneous other costs.

Over the last two years, the roughly 300 PACs controlled by lawmakers raised a total of about \$156 million and used only about a third of that on federal campaign contributions, according to the Center for Responsive Politics, a group that tracks political fund-raising.

Vacationlike fund-raising events with lobbyists are not new. Former Representative Tom DeLay's trips to Puerto Rico were legendary on K Street, for example. But the new ethics rules barring lobbyists from treating lawmakers to less-expensive amusements have given new

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importance to such getaways.

"I have to have some personal contacts to be a lobbyist," said James Dyer, a lobbyist at the firm of Clark & Weinstock. "If the only ticket in terms of contact is these fund-raising events, it is going to be costly," Mr. Dyer said. "The fund-raising part of our lives is a very expensive tool."

Thomas Susman, a lawyer who was an editor of the American Bar Association lobbying manual, said that at a recent presentation about the new rules to the lobbyists trade group, "the biggest question was, Is this going to drive everything to the fund-raising side? Is that going to be the way to have social contact with members?"

Some members of Congress said it would not bother them if the upshot of the new rules turned out to be more contributions.

"I am not going to hide from the fact that we have to raise money," said Representative Devin Nunes, a California Republican who has invited donors to his political action committee on a wine-tasting tour in June, modeled after the movie "Sideways." "Only a moron would sell a vote for a \$2,000 contribution," Mr. Nunes said.

Fund-raising consultants for both parties said they saw a golden opportunity. "We are definitely seeing an increase in the number of events across the board," said Dana Harris of Bellwether Consulting, a Republican firm that specializes in courting lobbyists' political action committees. "Fund-raising events will provide a safe haven for lobbyists to talk to members."

Among the coming events Ms. Harris's firm helped organize: a trip this month to the Yacht and Beach Club Resort at Disney World for Senator Mel Martinez of Florida, for a \$5,000 PAC contribution, and a May trip to the Robert Trent Jones Golf Club in Virginia for Senator Richard M. Burr of North Carolina, for \$2,500 a head.

Some private jet companies are trying to capitalize on the rules as well. Lawmakers can no longer fly on a company's corporate jet and then reimburse the owner at a discount. But lawmakers can still use their PACs to pay the actual cost for the use of jets, as Mr. Cantor and others have done.

Marco Larsen, vice president for publicity at Blue Star Jets, a broker that sells single flights on private planes, said his company planned to hold an event in Washington to promote its services to members of Congress. Because of concerns about appearances, Mr. Larsen said, "We wanted to stay away right after the rules were passed, but I think it is a better time now."

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Lawmakers are usually reluctant to talk about their fund-raising events. Asked in an interview in the Capitol why he was taking lobbyists on a Montana hunting trip, Mr. Baucus said only, "To show off the beauty of our state," then retreated behind a guarded door.

Mr. Martinez, who will be spending next weekend with lobbyists at Disney World, said, "I've heard from many other members that they have had very successful weekend events." He added, "People can bring their families to it and bring their children, and it's going to be fun."

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The Bankrollers:

**Lobbyists' Payments to the Lawmakers They Court,
1998 - 2006**



Congress Watch

May 2006

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ALTERNATIVE A

(Adds the following four positions to the definition of "City Official": Council Representative, Management Assistant to City Manager, Budget/Legislative Analyst, and Financial Operations Manager)

§27.4002 Definitions

.....

City Official means any of the following officers or employees of the *City*, which includes all *City* agencies: elected officeholder; Council staff member; Council Committee Consultant; Council Representative; Assistant City Attorney; Deputy City Attorney; General Counsel; Chief; Assistant Chief; Deputy Chief; Assistant Deputy Chief; City Manager; Assistant City Manager; Deputy City Manager; Management Assistant to City Manager; Treasurer; Auditor and Comptroller; Independent Budget Analyst; Budget/Legislative Analyst; Financial Operations Manager; City Clerk; Labor Relations Manager; Retirement Administrator; Director; Assistant Director; Deputy Director; Assistant Deputy Director; Chief Executive Officer; Chief Operating Officer; Chief Financial Officer; President; and Vice-President. *City Official* also means any member of a *City Board*.

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ETHICS COMMISSION
2007 FEB -5 PM 1:03
CITY OF SAN DIEGO

February 2, 2007

VIA OVERNIGHT DELIVERY

Ms. Dorothy Leonard, Chair
San Diego Ethics Commission
1010 Second Ave., Ste. 1530
San Diego, CA 92101

THIS ITEM IS AVAILABLE FOR
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CITY CLERK. 2ND FLOOR

RE: Citizens for Clean Government vs. City of San Diego

Dear Ms. Leonard:

As you know, we have been working with the Commission and the City Council on proposed changes to the City's lobbying law on behalf of the San Diego Public Affairs Working Group, an informal coalition of lobbying firms, trade associations and businesses active in City Hall matters. We wanted to bring to your attention a court decision which was just issued by the Ninth Circuit Court of Appeals relating to the City's campaign finance laws. More specifically, by this letter, we are asking the Commission to consider whether this decision impacts its proposed changes to the City's lobbying law, and will raise the issue during the Commission's consideration of the lobbying law at its meeting next week. By copy of this letter, we are making the same request to the City Attorney.

The Ninth Circuit has ruled that the City may not enforce any limits on contributions to political committees set up to support or oppose the recall of an elected official, unless it bases the limits on concrete, substantiated evidence that unlimited contributions to these types of political committees run the risk of corrupting the elected official or creating the appearance of corruption. (Citizens for Clean Govt. v. City of San Diego (1/19/07) ___ F.3d ___, WL Case No. 121146; copy enclosed.) Although the case analyzed one of the City's campaign finance laws, it arguably stands for the proposition that cities may not enact any type of restriction on activities protected by the First Amendment – such as the right to “petition the government for the redress of grievances” – without concrete, substantiated evidence of the potential of corruption (unless a court has already ruled that a similar type of restriction is permissible). The court strongly admonished the City that it may not base laws which restrict the First Amendment on “mere conjecture,” concluding that: “We cannot hold that hypotheticals, accompanied by vague allusions to practical experience, demonstrate a sufficiently important state interest.” (Id. at p. 5 & 6; citations omitted.)

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The Performance Institute
3675 Ruffin Road • Suite 110 • San Diego, CA 92123
Tel: 858-503-6787 • Fax: 858-503-6753 • www.PerformanceWeb.org

ETHICS COMMISSION
2006 OCT 31 AM 10:08
CITY OF SAN DIEGO

October 24, 2006

Councilmember Kevin Faulconer
Council District 2
Via Fax: 619-236-6996

Dear Councilmember Faulconer:

As you may already be aware, at the October 25, 2006 meeting of the City Council's Rules Committee a proposal by the Ethics Commission to strengthen the City's lobbying ordinance will be discussed.

Though The Performance Institute applauds the Commission for attempting to achieve greater transparency by tightening the rules already in place, we believe this proposal would have a chilling effect on free speech and could actually deter public participation in the legislative process. As such, the Institute would like to bring to your attention an alternative solution that will be submitted to the Rules Committee. This solution is modeled after the disclosure guidelines currently used by the California Coastal Commission.

The Coastal Commission disclosure approach is simple: it requires that the politicians themselves be held accountable for disclosing who has provided input to them on a matter before the Commission. The disclosure occurs before a vote is cast on an issue, is entered fully into the public record and is made available to the public on the day a vote is cast on a particular issue.

The Coast Commission approach to regulating lobbying activities is favored for three key reasons:

- **Accountability:** By placing the burden on the politician, it is more likely to produce better judgment on who each has met with and for what purpose
- **Transparency:** Disclosure of a lobbying activity would be required before a vote is cast on a particular issue—and would be placed in the hearing record for the public to see.
- **Precedent:** Currently, a full and complete listing of all contributors must be filed by candidates for political office. This proposal would set the same standard for lobbying activities.

If adopted, these ideas would go farther than any other jurisdiction in applying disclosure standards on elected leaders and make San Diego a model for the nation in open government. Should you have any questions regarding this proposal or suggestions on how it may be enhanced, please feel free to contact the Institute at any time.

Sincerely,

Carl DeMaio
President

Transferring Knowledge to Transform Organizations

000729



ETHICS COMMISSION
2006 OCT 24 AM 10:13
CITY OF SAN DIEGO

October 23, 2006

VIA OVERNIGHT DELIVERY

Council President Scott Peters
Rules Committee Chair
202 C St., MS #10A
San Diego, CA 92101

RE: Proposed Changes to City's Lobbying Law

Dear Council President Peters:

We have monitored the Ethics Commission's consideration of changes to the City's lobbying law on behalf of the San Diego Public Affairs Working Group, an informal coalition of consulting firms, trade associations and business entities involved in City Hall matters. The members of the coalition support a lobbying law which focuses on transparency and accountability – as long as the rules are applied evenly to all participants in the legislative and political process, are not overly complicated or overly burdensome, and respect the First Amendment rights of lobbyists and their clients to “petition the government for the redress of grievances.”

The proposal submitted by the Ethics Commission falls far short of these basic legal and policy standards. Most notably, it is incredibly and unnecessarily complex (possibly more complicated than any lobbying law in any other city in California), and includes dozens of novel legal terms and inconsistent disclosure thresholds. For example, it would require law and consulting firms to register if they earn only \$1 for helping a client with a City Hall matter; would require businesses and nonprofits to count the number of times which their employees talk to City officials and register if these discussions total 10 or more in any two-month period; would not cover grassroots advertisements or telephone banks unless they cost \$5,000 or more (by far the highest threshold in the proposed law); and would completely exempt such powerful lobbying interests as homeowners associations and advocacy groups simply because their members are not paid.

Some of the provisions in the Ethics Commission's proposal would have a “chilling effect” on the working relationship between City officials, lobbyists and their clients. Most notably, the Commission wants a lobbyist's reports to list the actual names of every City official or employee which the lobbyist contacts. For example, if a local charity is seeking a

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Council President Scott Peters

October 23, 2006

Page 2

City grant, or a company is responding to a RFP, the charity or company would have to keep track of every e-mail to City employees (including "cc's"), every telephone call with every Council aide, every casual encounter with a Councilmember in the Concourse or at community events, etc. Under this scenario, City officials – especially mid-level employees in City departments – would avoid talking to lobbyists for fear of being called out on a public report.

The proposal is also "a solution in search of a problem." There has been no public outcry about the inadequacies of the City's existing lobbying law. Although Lance Malone lobbied City officials while passing them illegal campaign contributions, and although the Union Tribune published an article last year identifying several City Hall regulars who had not registered as lobbyists, the Ethics Commission's proposal would not in any way fix these problems. Bribery is already a crime – and Mr. Malone would most likely not have registered even if the Ethics Commission's proposal were in effect at the time of his lobbying activities. And the Ethics Commission could decrease the number of unregistered lobbyists by conducting training seminars on the law, by printing a notice about lobbyist registration on all Council, Council Committee and Commission meeting agendas, or by simply enforcing the law already on the books. Although we acknowledge that some of the language and disclosure thresholds in the existing law need clarifying, these minor fixes do not justify the adoption of a completely new and ridiculously complicated regulatory scheme.

We propose a more straightforward alternative: either keep the existing law and adopt amendments to clarify some of its language, or adopt the state's lobbying disclosure law. The state's lobbying disclosure law presents several advantages to the Ethics Commission's proposal. Most notably, it has been on the books for 30 years, in which time the Fair Political Practices Commission, the state agency which oversees this law, has issued dozens of advice letters and regulations clarifying its scope and application. (See Cal. Govt. Code section 86100 et seq.; FPPC Regs. 18600 et seq.) Its basic outline is the same as the Ethics Commission's proposal: identifying three types of lobbying entities – "lobbying firms," their clients (known as "lobbyist employers") and organizations which conduct "grassroots advocacy" – and requiring these lobbying entities to file quarterly reports disclosing all of the money which they spend attempting to influence governmental actions.

Whereas the Ethics Commission has offered vague terms and unnecessary complexity, the state's law is clear and straightforward. Where the Ethics Commission has one researcher and one part-time attorney to interpret such a new and complex law, the FPPC has an updated Information Manual, a staff of technical advisors, and 30 years of

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Council President Scott Peters

October 23, 2006

Page 3

clarifying interpretations. Although we acknowledge that City may want to cover certain types of legislative and administrative matters not covered by the state law, this problem could be fixed with very minor modifications to the state law.

In sum, we urge the Rules Committee to reject the Ethics Commission's proposal as unnecessarily complex and overly burdensome, and instead ask the Commission to consider either making minor modifications to the existing law and more aggressively enforcing it, or adopting the state's lobbying disclosure law with minor modifications.

Thank you very much for your consideration. We look forward to working with the Committee, the full Council, and the Ethics Commission on this matter.

Sincerely,



James R. Sutton

cc: Mayor Jerry Sanders
Councilmember Donna Frye
Councilmember Brian Maienschein
Councilmember Jim Madaffer
Councilmember Tony Young
✓ Dorothy Leonard, Ethics Commission Chair
Stacey Fulhorst, Ethics Commission Executive Director

Enclosures

JRS/lc

#1193.01

Comparison of Current Lobbying Law, Ethics Commission Proposal and State Lobbying Disclosure

Issue	Current Law	Proposed Law	State Law
Who registers?	Individuals	Three types of lobbyists: lobbying firms, organization lobbyists, and expenditure lobbyist	Three types of lobbyists: lobbying firms, lobbyist employers, and expenditure lobbyists
Individual lobbyist/lobbying firm threshold for registration	Individual receiving \$2,625 in calendar year	\$1	Individual receiving \$2,000 or more in a calendar month
In-house lobbyist threshold for registration	Individual receiving \$2,625 in calendar year	No registration	1/3 of time in calendar month
Lobbyist employer threshold for registration	N/A	Employees have 10 contacts within 60 calendar days	Any entity which contracts with a lobbying firm or employs an in-house lobbyist
Expenditure lobbyist reporting threshold	N/A	Any individual or entity that spends over \$5,000 in any three consecutive calendar months	Any individual or entity that spends over \$5,000 in any calendar quarter
Reporting of contacts with City officials or employees	No	Yes; lobbyists will be required to disclose the name and department of each City official whom the lobbyist contacts	No
Definition of City official	Any City official or employee unless their duties are ministerial	Only non-classified staff	Any state official or employee unless their duties are ministerial
Reporting of compensation	Disclosed in the following ranges: \$0 - \$5,000 \$5,000 - \$25,000 \$25,000 - \$50,000 Over \$50,000	Compensation received or entitled to be received – rounded to the nearest thousand – for lobbying firms; no disclosure for lobbyist employers	Itemized payments from clients for lobbying firms; total payments for lobbyist employers
Reporting of contingency fees	No	Yes; unclear when fee is disclosed	Yes

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WERTZ MCCLADE WALLACE MOORE & BROWER

LAWYERS

A PROFESSIONAL CORPORATION

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October 12, 2006

Transmittal

To: City of San Diego Ethics Commission 1010 Second Avenue, Suite 1530 San Diego, CA 92101	From: Rebecca Michael, Esq.
	Re: Lobbying Ordinance

Documents Enclosed:

15 copies of attachment to October 11, 2006 letter for distribution to Ethics Commission members and staff at tonight's meeting.

945 Fourth Avenue, San Diego, California 92101

[171314v1/1463-001]

Telephone 619-233-1888 • Facsimile 619-696-9476 • www.wertzmcclade.com

**000727 PROPOSED DEFINITION OF
*CITY OFFICIAL***

*Proposed by Wertz McDade Wallace Moot & Brower
October 11, 2006*

Mayor (including elected but not yet sworn in) and unclassified staff

City Council Members (including elected but not yet sworn in) and unclassified staff

City Council Members

City Attorney (including elected but not yet sworn in)

Assistant City Attorneys

City Manager

Assistant City Managers

Auditor and Comptroller

City Clerk

City Directors

City Deputy Directors

Budget Officer

Purchasing Officer

Chief of Police

Assistant Chiefs of Police

Hearing Officers

Planning Commission Members

Historical Resources Board Members

Ethics Commission Members

Center City Development Corporation:

Board Members

000738 President & CEO

San Diego Convention Center

Board Members

President & CEO

San Diego Data Processing Corporation

Board Members

CEO

San Diego Housing Commission

Board Members

President & CEO

San Diego Workforce Partnership

Board Members

President & CEO

Southeastern Economic Development Corporation

Board Members

President & CEO

Any consultants of the *City* who are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974.

[The above definition eliminates the need to define "City Board"]

San Diego County Code of Regulatory Ordinances

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Title 2, Chapter 1, Section 23.102

SEC. 23.102. REGISTRATION.

(a) Except as provided in Section 23.103, any person who, on behalf of any corporation, firm, organization, or person other than himself attempts to influence any County decision by contacting, personally or by telephone any of the following County officers or employees shall prior to such contact, or within 5 calendar days thereafter, register as a County legislative advocate:

- (1) Members of the Board of Supervisors
- (2) Members of Planning Commission
- (3) Members of Assessment Appeals Board
- (4) Members of Civil Service Commission
- (5) Members of San Diego County Air Pollution Control District
Hearing Board
- (6) Confidential Investigators of the Board of Supervisors
- (7) Board Representatives of the Board of Supervisors
- (8) County Assessor
- (9) Chief Deputy County Assessor
- (10) District Attorney
- (11) Assistant District Attorney
- (12) Sheriff
- (13) Undersheriff
- (14) County Treasurer
- (15) Chief Deputy County Treasurer
- (16) Director of Planning and Land Use

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- (17) Director of General Services
- (18) Chief Administrative Officer
- (19) Assistant Chief Administrative Officer
- (20) Members of San Diego County Capital Asset Leasing Corporation (SANCAL) Board of Directors
- (21) Director of Purchasing and Contracting

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WERTZ MCDADE WALLACE MOOT BROWER

LAWYERS

A PROFESSIONAL CORPORATION

Lynn M. Beckman	J. Michael McDade	Of Counsel
Sandra J. Brower	Kathleen J. McKee	
Julie A. Delahunt	John S. Moot	Rebecca Michael
Richard T. Forsyth	Elaine A. Rogers	Evan S. Kavich
Jenny K. Goudman	John H. Stephens	
Bonny Hsu	Robert A. Vacchi	
Sarah H. Latham	Bruce R. Wallace	Administrator
Joseph C. Lavelle	John Ross Wertz	Fred Mahady, Jr.
Larry L. Marshall	Camela Lawton Wilson	

October 11, 2006

VIA E-MAIL

Stacey Fulhorst, Executive Director
City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, CA 92101

Re: Comments and Suggested Revisions to
Draft Revisions of the Lobbying Ordinance

Dear Ms. Fulhorst:

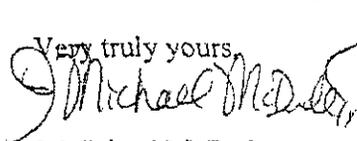
This letter is written to provide comments and suggested revisions to the Draft Revised Lobbying Ordinance which the Ethics Commission will consider at its meeting on October 12. To aid you in understanding our comments, attached is a matrix showing various provisions of the draft ordinance along with our corresponding comments. We would appreciate distributing this to all Commissioners prior to the hearing.

We know that the Ethics Commission has labored long and hard over this issue. Unfortunately, our review leads us to a belief that many of the provisions in the proposed draft are overly bureaucratic, and do not seem to consider in the least the record-keeping burden that this will place on those who engage in lobbying.

We are also of the opinion that the burdensome record-keeping and reporting requirements with respect to campaign contributions and fund raising efforts will have a chilling effect on those activities, and may lead to lobbyists being unwilling to participate in the political process, thus giving up a basic right which should be available to every citizen.

Your consideration of our comments will be much appreciated.

Very truly yours,


J. Michael McDade


Rebecca Michael

Enclosure

945 Fourth Avenue, San Diego, California 92101

Telephone 619-233-1888 • Facsimile 619-696-9476 • www.wertzmcdade.com

COMMENTS and REVISIONS

Prepared by

WERTZ MCDADE WALLACE MOOT & BROWER
DIVISION 40, MUNICIPAL LOBBYING

October 11, 2006

Section	City Language	WMMWB Comments/Revisions
§27.4001 Purpose and Intent	It is the purpose and intent of the City Council of San Diego in enacting this Division to: ensure that the citizens of the City of San Diego have access to information about persons who attempt to influence decisions of City government through the use of PAID lobbyists; establish clear and unambiguous registration and disclosure requirements for lobbyists in order to provide the public with relevant information REGARDING THE FINANCING OF LOBBYISTS and the full range of lobbying activities; <i>prohibit registered lobbyists from exerting</i> improper influence over City Officials or from placing City Officials under personal obligation to lobbyists or their clients; promote transparency concerning attempts to influence municipal decisions; avoid corruption and the appearance of corruption in the City's decision-making processes; regulate lobbying activities in a manner that does not discourage or prohibit the exercise of constitutional rights; reinforce public trust in the integrity of local government; and ensure that this Division is vigorously enforced.	Delete the words "paid" and "regarding the financing of lobbyists." One of the stated purposes of the Municipal Lobbying regulations is to "promote transparency concerning attempts to influence municipal decisions." Surely the public should know who, on behalf of someone other than their selves, is influencing the City's decision makers whether they are paid or not.

Section	City Language	WMWMA Comments/Revisions
§27.4002 Definitions	<p><i>City Official</i> includes: (c) any employee of the <i>City</i>, except for classified employees as that term is defined in San Diego Charter section 117, who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended;</p> <p><i>Lobbyist</i> means any individual who engages in lobbying activities with any <i>City Official</i> on behalf of a <i>client</i> or an <i>organization lobbyist</i>.</p>	<p><i>City Official</i>: Replace this definition.</p> <p>It is our position that a list of exactly which employees are covered by this definition should be readily available. We recommend the inclusion of such a list within the ordinance. For example, see the attached San Diego County Code of Regulatory Ordinances Title 2, Chapter 1, Section 23.102. Furthermore, we recommend that the list be limited to critical decision makers such as those listed by the County.</p> <p><i>Lobbyist</i>: Change “on behalf of a <i>client</i> or an <i>organization lobbyist</i>” to “on behalf of another.”</p> <p>One of the stated purposes of the Municipal Lobbying regulations is to “promote transparency concerning attempts to influence municipal decisions.” Surely the public should know who, on behalf of someone other than their selves, is influencing the City’s decision makers whether they are paid or not.</p>

Section	City Language	WMA/WMB Comments/Revision
<p>§27.4004 Exceptions</p>	<p>(l) the provision of purely technical data or analysis to a <i>City Official</i> by an expert employed or retained by a <i>lobbyist</i>, so long as the expert does not otherwise engage in <i>direct communication</i> for the purpose of <i>influencing a municipal decision</i>.</p>	<p>(l) Change the language to read: "Any person accompanied by a <i>lobbyist</i>."</p> <p>Generally an expert is employed by the client, not the <i>lobbyist</i>. Often a <i>lobbyist</i> is accompanied by an architect and/or engineer. While their presence is primarily for technical data, they may "argue" (engage in <i>direct communication</i> for the purpose of <i>influencing a municipal decision</i>) why their design is better – especially in meetings with staff. Requiring these architects and engineers to register is unduly burdensome. The current ordinance requires registration of consultants that engage in <i>direct communication</i> for the purpose of <i>influencing a municipal decision</i> – yet few, if any, register. We believe this will be the case if the language of (l) remains as proposed.</p>
<p>§27.4009 Contents of Registration form</p>	<p>(a) Every <i>lobbying firm</i> shall file with the City Clerk a registration form that contains the following information:</p> <p>(3) a listing of all individuals identified in subsection (a)(2) who have engaged in <i>fundraising activities</i> for a current elected <i>City Official</i> within the past four years, along with the name of each applicable <i>City Official</i>.</p>	<p>(a)(3) Delete this subsection.</p> <p>We believe the "past four years" is overly burdensome and may be illegal. Short of deleting the subsection, the reference to "subsection (a)(2)" should be revised to read "subsection (a)(2) (A) and (B) otherwise everyone employed in the <i>lobbying firm</i> would fall within this requirement.</p>

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Section	City/Language	WV/MVBE Comments/Revisions
	<p>(5) statements by a duly authorized owner or officer of the lobbying firm that he or she:</p> <p>(A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,</p> <p>(B) reviewed the contents of the registration form and verified, under penalty of perjury, that such contents are accurate and complete.</p> <p>(6) the printed name and original signature of the individual making the statements required by subsection (a)(5).</p> <p>(b) Every <i>organization lobbyist</i> shall file with the <i>City Clerk</i> a registration form that contains the following information:</p> <p>(6) a listing of all individuals identified in subsection (b)(3) who have engaged in <i>fundraising activities</i> for a current elected <i>City Official</i> within the past four years, along with the name of each applicable <i>City Official</i>.</p>	<p>(a)(5) (A) and (B) and (a)(6) Delete these subsections.</p> <p>These requirements are unduly burdensome. An individual lobbyist can properly verify under penalty of perjury, but an owner or officer of the firm may not be a lobbyist, and will be only reporting facts "second hand." To be exposed to perjury charges under these circumstances is patently unfair.</p> <p>(b)(6) Delete this subsection.</p> <p>We believe the "past four years" is unduly burdensome and may be illegal.</p>

Section	City Language	WM/WMB Comments/Revisions
	<p>(7) statements by a duly authorized owner or officer of the <i>organization lobbyist</i> that he or she:</p> <p>(A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,</p> <p>(B) reviewed the contents of the registration form and verified, under penalty of perjury, that such contents are accurate and complete.</p> <p>(8) the printed name and original signature of the individual making the statements required by subsection (b)(7).</p>	<p>b)(7)(A) and (B) and (8) Delete these subsections.</p> <p>As stated above, these requirements are unduly burdensome. An individual lobbyist can properly verify under penalty of perjury, but an owner or officer of the firm may not be a lobbyist, and will be only reporting facts "second hand." To be exposed to perjury charges under these circumstances is patently unfair.</p>
§27.4010 Registration Fees	Registration Fees	Registration fees should be limited to cost recovery. This should not be viewed as an opportunity to augment the general fund.
§27.4012 Amendments to Registration Form	Within ten calendar days of any change in the information required on their <i>registration forms</i> , <i>lobbying firms</i> and <i>organization lobbyists</i> shall file amendments to their registration forms, disclosing the change in information.	In lieu of "within ten calendar days," which is unduly burdensome, the amendments should be disclosed at the next quarterly disclosure report.
§27.4014 Notification of Activity Expense Paid to or Benefiting a City	(a) Whenever a <i>lobbying firm</i> or a <i>lobbyist</i> employed by that <i>lobbying firm</i> makes an <i>activity expense</i> , the <i>lobbying firm</i> shall, within, twenty business days, disclose in writing the <i>activity expense</i> to the <i>City Official</i> who benefited from the <i>activity expense</i> .	(a) In lieu of "within twenty days," which is unduly burdensome, the disclosure should be made at the next quarterly disclosure report.

Section	City Language	WMWMB Comments/Revisions
Official	<p>(b) Whenever an <i>organization lobbyist</i> or an owner, officer, or employee of that <i>organization lobbyist</i> makes an <i>activity expense</i>, the <i>organization lobbyist</i> shall, within twenty business days, disclose in writing the <i>activity expense</i> to the <i>City Official</i> who benefited from the <i>activity expense</i>.</p>	<p>(b) In lieu of “within twenty days,” which is unduly burdensome, the disclosure should be made at the next quarterly disclosure report.</p>
§27.4017 Contents of Quarterly Disclosure Report	<p>(a) Each lobbying firm’s quarterly disclosure report shall contain the following information:</p> <p>(2) the name, business or mailing address, and telephone number of each <i>client</i> represented by the <i>lobbying firm</i> during the reporting period, along with the following information for that <i>client</i>.</p> <p>(B) the name and department of each <i>City Official</i> who was subject to <i>lobbying</i> activities by the <i>lobbying firm</i> with regard to that specific <i>municipal decision</i>;</p>	<p>(a)(2)(B) Delete this subsection.</p> <p>We believe this requirement is unduly burdensome. It requires new, costly, time-consuming record keeping, while serving little purpose.</p>

Section	City language	WMWMB Comments/Revisions
	<p>(D) the total <i>compensation</i> received, or entitled to be received, during the reporting period in connection with the <i>lobbying</i> for that specific <i>municipal decision</i>. Such <i>compensation</i> shall be disclosed to the nearest thousand dollars.</p> <p>(4) an itemization of any campaign contributions of \$100 or more made by owners, officers and <i>lobbyists</i> of the <i>lobbying firm</i> during the reporting period in support of or in opposition to a <i>candidate</i> for elective <i>City</i> office, including the date and amount of the contribution and the name of the <i>candidate</i> supported or opposed.</p> <p>(5) an itemization of any campaign contributions of \$100 or more made by owners, officers and <i>lobbyists</i> of the <i>lobbying firm</i> during the reporting period to a <i>candidate's</i> controlled committee that is organized to support or oppose a ballot measure, including the date and amount of the contribution and the name of the ballot measure committee.</p> <p>(6) for each <i>City Official</i>, each <i>candidate</i> for elective <i>City</i> office, and each <i>candidate</i>-controlled ballot measure committee for which the <i>lobbying firm</i> or any of its owners, officers, or <i>lobbyists</i> engaged in</p>	<p>(a)(2)(D) Replace with categories of compensation.</p> <p>Requiring disclosure to the nearest thousand dollars is an invasion of privacy, as to both client and lobbyist, and serves no public purpose and is inconsistent with the established practice of categories of compensation used in many jurisdictions.</p> <p>(a)(4), (5) and (6) Delete these subsections.</p> <p>These subsections serve no valid purpose and likely will result in an end to campaign contribution by lobbyists. The requirement imposes costly time consuming record keeping.</p>

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Section	City Language	WMA/MB Comments/Revisions
	<p>any <i>fundraising activity</i> during the reporting period: (1) the name of the elected <i>City Official</i> or <i>candidate</i>; (2) a <i>description of the ballot measure</i>, if applicable; (3) the date(s) of the <i>fundraising activity</i>; (4) a brief description of the <i>fundraising activity</i>; and (5) the approximate amount of contributions the <i>lobbying firm</i> knows or has reason to know were raised as a result of the <i>fundraising activity</i>.</p> <p>(7) a statement by a duly authorized owner or officer of the <i>lobbying firm</i> that he or she has reviewed the contents of the quarterly disclosure report and verified, under penalty of perjury, that such contents are accurate and complete.</p> <p>(8) the printed name and original signature of the individual making the statement required by subsection (a)(7).</p> <p>(b) Each <i>organization lobbyist's</i> quarterly disclosure report shall contain the following information: (2) for each <i>municipal decision(s)</i> for which the <i>organization lobbyist</i> engaged in <i>lobbying activities</i> during the reporting period: (2)(B) the name and department of each <i>City Official</i> who was subject to lobbying activities by the <i>organization lobbyist</i> during the reporting period with regard to the specific <i>municipal decision</i>; and</p>	<p>(a)(7) and (8) Delete these subsections.</p> <p>These requirements are unduly burdensome. An individual lobbyist can properly verify under penalty of perjury, but an owner or officer of the firm may not be a lobbyist, and will be only reporting facts "second hand." To be exposed to perjury charges under these circumstances is patently unfair.</p> <p>(b)(2)(B) Delete this subsection.</p> <p>We believe this requirement is unduly burdensome, and accomplishes no valid regulatory purpose.</p>

Section	City Language	WMWMB Comments/Revisions
	<p>(2)(D) the total number of contacts with the <i>City Officials</i> made on behalf of the <i>organization lobbyist</i> by the <i>organization lobbyist's</i> owners, officers, or employees during the reporting period.</p> <p>(4) an itemization of any campaign contributions of \$100 or more made by owners, officers and lobbyists of the <i>organization lobbyist</i> during the reporting period in support of or in opposition to a <i>candidate</i> for elective <i>City</i> office, including the date and amount of the contribution and the name of the candidate supported or opposed.</p> <p>(5) an itemization of any campaign contributions of \$100 or more made by owners, officers, and lobbyists of the <i>organization lobbyist</i> during the reporting period to a candidate's controlled committee that is organized to support or oppose a ballot measure, including the date and amount of the contribution and the name of the ballot measure committee.</p> <p>(6) for each <i>City Official</i>, each candidate for elective <i>City</i> office, and each candidate-controlled</p>	<p>(b)(2)(D) Replace number of contacts to categories of contacts.</p> <p>The requirement of the number of contacts is an invasion of privacy, as to both the organization and lobbyist, and serves no public purpose and is inconsistent with the established practice of categories used in many jurisdictions.</p> <p>(b)(4),(5) and (6) Delete these subsections.</p> <p>As stated above, these subsections serve no valid purpose and likely will result in an end to campaign contribution by lobbyists of organization lobbyists. The requirement imposes costly time consuming record keeping.</p>

Section	City/Language	W/MW/MB Comments/Revisions
	<p>ballot measure for which the <i>organization lobbyist</i> or any of its owners, officers, or <i>lobbyists</i> engaged in any <i>fundraising activity</i> during the reporting period:</p> <p>(1) the name of the elected <i>City Official</i> or <i>candidate</i>;</p> <p>(2) a description of the ballot measure, if applicable;</p> <p>(3) the date(s) of the <i>fundraising activity</i>; (4) a brief description of the <i>fundraising activity</i>; and (5) the approximate amount of contributions the <i>organization lobbyist</i> knows or has reason to know were raised a result of the <i>fundraising activity</i>.</p> <p>(7) a statement by a duly authorized owner or officer of <i>the organization lobbyist</i> that he or she has reviewed the contents of the quarterly disclosure report and verified, under penalty of perjury, that such contents are accurate and complete.</p> <p>(8) the printed name and original signature of the individual making the statement required by subsection (b)(7).</p>	<p>(b)(7) and (8) Delete these subsections.</p> <p>As stated above, these requirements are overly burdensome. An individual lobbyist can properly verify under penalty of perjury, but an owner or officer of the organization lobbyist may not be a lobbyist, and will be only reporting facts "second hand." To be exposed to perjury charges under these circumstances is patently unfair.</p>

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Section	City Language	WMWMB Comments/Revisions
	<p>(c) <i>An expenditure lobbyist's</i> quarterly disclosure report shall contain the following information:</p> <p>(3) A description of each <i>municipal decision</i> that the expenditure lobbyist attempted to influence during the reporting period, and for each such <i>municipal decision</i>:</p> <p>(A) The total <i>payments</i> the <i>expenditure lobbyist</i> made during the reporting period for the purpose of attempting to influence that <i>municipal decision</i>;</p> <p>(B) The name, address, telephone number, and amount of payment for each <i>person</i> who made a <i>payment</i>, or the promise of a <i>payment</i>, of \$100 or more during the reporting period to the <i>expenditure lobbyist</i> for the express purpose of influencing that <i>municipal decision</i>; and,</p> <p>(4) a statement by a duly authorized owner or officer of the <i>expenditure lobbyist</i> that he or she has reviewed the contents of the quarterly disclosure report and verified, under penalty of perjury, that such contents are accurate and complete.</p> <p>(5) the printed name and original signature of the individual making the statement required by subsection (c)(4).</p>	<p>(c)(3)(A) and (B) Delete these subsections.</p> <p>As stated above, these subsections serve no valid purpose and likely will result in an end to campaign contribution by expenditure lobbyists. The requirement imposes costly time consuming record keeping.</p> <p>(c)(4) and (5) Delete these subsections.</p> <p>These requirements are unduly burdensome. An individual lobbyist can properly verify under penalty of perjury, but an owner or officer of the expenditure lobbyist may not be a lobbyist, and will be only reporting facts "second hand." To be exposed to perjury charges under these circumstances is patently unfair.</p>

EDITORIAL COMMENTS and REVISIONS

Prepared by

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October 11, 2006

Section	City Language	WMWMB Comments/Revisions
§27.4002 Definitions	<i>Activity Expense</i> means any payment made to, or benefiting, any City Official made by a lobbyist, lobbying firm, or organization 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, registered domestic partner, 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, unless it is clear that the donor had no intent to make a gift to the official. Activity expenses include gifts, meals, consulting fees, salaries and any other form of compensation, but do not include campaign contributions.	<i>Activity Expense:</i> Change "spouse, registered domestic partner, or dependent child" to "immediate family", a defined term.
§27.4004 Exceptions	(f) any ministerial action. An action is ministerial if it does not require the City Official to exercise discretion concerning any outcome or course of action. A ministerial action includes, but is not limited to, decisions on private land development made pursuant to Process 1 as described in Chapter 11 of the Municipal Code.	(f) Why not define "ministerial action" in §27.4002 Definitions?