

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: July 31, 2008

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stephen Ross, Program Manager

SUBJECT: Municipal Lobbying Ordinance: Post-Enactment Issues

On January 1, 2008, the current Lobbying Ordinance went into effect. Since that time, Commission staff has heard many questions and concerns from the firms and organizations subject to the Ordinance, and has also had an opportunity to identify areas in the Ordinance that could be clarified, simplified, or otherwise improved. The following are thirteen issues with the Lobbying Ordinance that staff believes are appropriate for Commission consideration at this time.

Issue One: “Lobbying” versus “Lobbying Activities”

Issue: The Lobbying Ordinance defines “lobbying activities” to include a broad range of activities related to lobbying, including monitoring decisions, gathering facts, and conducting research. In other words, in addition to including actual lobbying, “lobbying activities” includes a variety of other related activities that do not require actual contact with a City Official. The term “lobbying activities” existed in the prior Lobbying Ordinance for purposes of determining whether someone met the compensation threshold, and was incorporated into the current Ordinance initially as a means of capturing the lobbying-related activities for which a Lobbying Firm is paid.

The term “lobbying activities” has a wider application in the current Lobbying Ordinance, and has caused some confusion with both Lobbying Firms and Organization Lobbyists. It clearly adds a layer of complexity to the Ordinance; firms and organization have to disclose two sets of individuals: those who lobby and those who indirectly support lobbying efforts. In addition, it has created some ambiguity for the public. For example, a firm may identify a person who engaged only in “lobbying activities” on the Quarterly Disclosure Report, while leaving blank the spaces for the names of City Officials lobbied; in such circumstances it may appear to the public that City Officials were lobbied but left off of the form.

Staff believes it would be prudent for the Commission to reexamine this issue to determine the extent to which the term “lobbying activities” should be used in the Lobbying Ordinance, and whether, in some instances the Ordinance should refer to actual “lobbying” rather than “lobbying activities.” In other words, does the Commission want firms and organizations to disclose the

names of individuals who aren't actually lobbying, but are instead engaging only in related activity? The Commission can give guidance to staff in this regard by answering the following questions:

Question A: If a Lobbying Firm has registered a client, and is being paid to monitor a municipal decision for that client, but has no lobbying contacts in a quarter with regard to that municipal decision, should the firm be required to identify on its Quarterly Disclosure Report the name of the person monitoring the decision?

Question B: If an Organization Lobbyist conducts research in the quarter for the purpose of potentially lobbying the City with regard to a municipal decision, but has no lobbying contacts in that quarter, should the firm be required to identify on its Quarterly Disclosure Report the name of the individual conducting the research?

Staff Recommendation: If the Commission answers “no” to the above questions, staff recommends replacing the term “lobbying activities” with “lobbying” in the applicable sections of the Ordinance. Such amendments would result in firms and organizations listing on their Quarterly Disclosure Reports only the names of the individuals who actually lobby, not the names of individuals who merely monitor decisions or conduct research in connection with prospective lobbying. Additionally, this amendment would require firms and organizations to disclose on their quarterly reports the municipal decisions for which they actually lobbied during the quarter, but not the decisions for which their activities were limited to monitoring or researching. The term “lobbying activities” would remain in the Ordinance solely as a means for Lobbying Firms to calculate the compensation they received for their lobbying and related efforts in a quarter in which they actually lobbied City Officials. Put another way, if a Lobbying Firm is paid to conduct research on a matter or monitor that matter, it would not have to disclose the payments it received for such activities unless the firm also lobbied on that matter during the quarter.

On the other hand, if the Commission answers “yes” to the above questions, staff can revise the Quarterly Disclosure Report form to make the required information clearer to the filer and to the public.

Issue Two: Definition of “Lobbyist”

Issue: Because of the expansive nature of “lobbying activities” (see above, Issue One), the term “lobbyist” is arguably broad enough to include volunteer members (non-officers) of an organization who lobby, as well as individuals who are paid to assist on lobbying efforts (e.g., secretaries, assistants), but never have an actual lobbying contact. Staff believes that the Commission never intended the Lobbying Ordinance to require that such individuals be listed as “lobbyists” on a Registration Form or Quarterly Disclosure Report.

Staff Recommendation: Amend “lobbyist” in the following manner: “*Lobbyist means any individual who engages in lobbying activities on behalf of a client or any individual owner, employee, or officer who engages in lobbying on behalf of an organization lobbyist.*”

[See Issue Four for a discussion regarding an alternative amendment to this definition. See Issue Five for a prospective new definition of “officer.”]

Issue Three: Disclosure Requirements for Quarters with No Lobbying

Issue: Lobbying Firms often have quarters during which they have no lobbying contacts, and may even engage in no “lobbying activities.” Should the firm be required to identify the client on the Quarterly Disclosure Report and affirmatively state that it engaged in no lobbying (or lobbying activities) for that client during the quarter? Or should it simply report nothing for that client? Although staff has advised firms that they need not report anything for clients for whom they have engaged in no lobbying activity in the quarter, some firms are hesitant to report nothing for fear that it will appear to the public that they are failing to report information for their registered clients.

Recommendation: The Lobbying Ordinance could be amended in one of two ways. Staff favors Option A, which will clarify for the public whether or not lobbying actually occurred for a client during the quarter.

Option A: Amend the Lobbying Ordinance to require that a Lobbying Firm affirmatively state on the Quarterly Disclosure Report that the firm engaged in no lobbying for the client during the quarter.

Option B: Amend the Lobbying Ordinance to clarify that a Lobbying Firm does not need to disclose any information for a registered client for whom the firm engaged in no lobbying during the quarter.

Note that if the Commission prefers Option A, and also decides to keep the expansive application of the term “lobbying activities” (discussed above in Issue One), staff recommends that firms also be required to affirmatively state on the Quarterly Disclosure Report that they engaged in no “lobbying activities” for a client during the quarter.

Issue Four: Campaign Activities of Uncompensated Officers Who Lobby

Issue: Under the Lobbying Ordinance, uncompensated officers of an Organization Lobbyist are generally exempt from disclosing campaign activities and City contract services. For example, an Organization Lobbyist is not required to disclose the fundraising activities of the volunteer members of its board of directors. The organization is, however, required to disclose the fundraising activities of its lobbyists. A “lobbyist” is defined to include any person who lobbies on behalf of an Organization Lobbyist, and thus the term includes uncompensated officers who lobby. Under the Lobbying Ordinance, when a person is both an “uncompensated officer” and a “lobbyist,” the organization must disclose the person’s lobbying as well as his or her campaign activities and City contract services. [Note that the lobbying contacts of uncompensated officers do not count towards the registration threshold.] Some organizations have been confused by board members being exempt in their capacity as “uncompensated officers,” but being subject to different rules in their capacity as “lobbyists.”

Staff Recommendation: There are several options available to the Commission with regard to clarifying and/or simplifying this issue:

Option A: Exclude uncompensated officers from the definition of “lobbyist.” This change could be accomplished by amending the definition of “lobbyist” as follows: “*Lobbyist* means any individual who engages in *lobbying activities* on behalf of a *client* or is paid to engage in lobbying on behalf of an organization lobbyist.” This amendment would simplify the ordinance by removing uncompensated individuals, in all instances, from the Ordinance. Removing these individuals from the definition of “lobbyist” would, however, result in lobbying contacts by some high-level officers never being disclosed; it is not uncommon for a member of a board of directors to lobby City Officials.

[See discussion in Issue One regarding changing “lobbying activities” to “lobbying”; the above proposed definition of “lobbyist” would satisfy staff’s concerns outlined in Issue Two.]

Option B: Keep the current disclosure requirement, but clarify it. Clarifying language could be added, for example with regard to section 27.4017(b)(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. The disclosures required by this subsection shall include any contributions of \$100 or more made by an uncompensated officer who is also a lobbyist.”

Option C: Make no changes to the Lobbying Ordinance; instead, strengthen educational resources, including fact sheets, instructions on disclosure forms, and the upcoming lobbying manual.

Issue Five: Definition of “Officer”

Issue: The term “officer” is not defined in the current ordinance, but is implicated frequently in the context of reporting campaign activities, i.e., making contributions and engaging in fundraising activities. There has been some confusion with regard to who is, and is not, an “officer,” particularly with regard to members of an organization’s board of directors.

Staff Recommendation: Add a definition of “officer” to read as follows: “*Officer* means an individual who holds an executive level position within a firm or organization, and includes, but is not limited to, the following persons: President, Vice-President, Chief Executive Officer, and Chief Operating Officer. *Officer* also includes any member of an organization’s board of directors.” [Note that there are other instances of the word “officer” in the Lobbying Ordinance that are unrelated to this issue, e.g., City officers; those instances would not be italicized.]

Issue Six: Contact Needed Before Registration Requirement

Issue: At its May 2008 meeting, the Commission agreed that the Lobbying Ordinance requires a Lobbying Firm to identify on its Registration Forms only the names of clients for whom the firm has had at least one lobbying contact. The Lobbying Ordinance could be clarified in this regard.

Staff Recommendation: Amend section 27.4009(a)(6) to state that identification on a Registration Form is required only “for each *client* for whom the *lobbying firm engages in lobbying activities* has had at least one lobbying contact.”

Issue Seven: Amending Organization Lobbyist's Registration Form

Issue: The Lobbying Ordinance requires an Organization Lobbyist to disclose on its Registration Forms the municipal decisions it sought to influence during the 60 days prior to its filing date. It also requires an Organization Lobbyist to amend its Registration Form within ten days of any changes in the information on the form. Lobbying on a new municipal decision, however, does not constitute a change in information on the form. Thus, if an Organization Lobbyist starts lobbying on a municipal decision not identified on its Registration Form, there is no requirement that the Registration Form be amended to reflect that fact. This provides less timely disclosure than that required of Lobbying Firms; the public may not know that an Organization Lobbyist is lobbying on a particular matter until months later when the Quarterly Disclosure Report is filed.

Staff Recommendation: Amend section 27.4009(b)5) to require Organization Lobbyists to disclose on their Registration Form: “a description of each *municipal decision the organization lobbyist has is seeking to influence, including decisions the organization lobbyist* sought to influence during the 60 calendar days preceding the filing date; and the outcome sought by the *organization lobbyist*.”

Issue Eight: Number of Contacts

Issue: The Lobbying Ordinance requires Organization Lobbyists to keep track of the number of its lobbying contacts. Some Organization Lobbyists have advised staff that this requirement is proving to be rather onerous – that it is very burdensome to keep track of all their contacts.

Staff Recommendation: As the Commission noted during prior meetings, gauging an organization's level of advocacy through the compensation of its lobbying employees (who typically do not typically track the time they spend or pay they receive specifically for lobbying) is not practical or enforceable. The Commission previously concluded that reporting the total number of contacts is the most reasonable way to measure the amount of an organization's lobbying efforts. Accordingly, staff recommends making no changes to this requirement. Although the Commission could consider an alternate reporting requirement wherein an organization identifies a range of numbers instead of a specific number, this would not alleviate the organization's obligation to track all of its contacts.

Issue Nine: Amount of Compensation

Issue: The Lobbying Ordinance requires Lobbying Firms to keep track of the amount of compensation they receive for lobbying activities, rounded to the nearest thousand dollars. Some Lobbying Firms have indicated that this requirement is overly burdensome, particularly when they also bill clients for services unrelated to lobbying – in such circumstances, the lobbying charges must be separated from non-lobbying charges on a client's bill.

Staff Recommendation: The Commission previously considered various options in this regard, from requiring the exact amount of compensation earned for lobbying (which some jurisdictions require) to allowing Lobbying Firms to disclose a range of compensation (which was the case with the prior Lobbying Ordinance). The Commission ultimately arrived at a middle ground, requiring

the disclosure of the amount received rounded to the nearest thousand dollars. Because the current disclosure requirement is a reasonable way to measure the extent of a lobbying effort, staff recommends making no changes to this requirement. Although the Commission could consider requiring firms to track their lobbying contacts instead of determining their compensation, staff believes that this would likely be a more cumbersome alternative since lobbying firms typically keep track of their time but not their lobbying contacts. Moreover, staff has not heard from any Lobbying Firms advocating such a change.

Issue Ten: Communications with Lower Level City Employees

Issue: As stated above, the term “lobbying activities” originated in the prior Lobbying Ordinance, which encompassed lobbying communications with all City officers and employees, not just the high-level officials identified in the current Lobbying Ordinance. Under the current Ordinance, therefore, a communication with a lower level City employee is not “lobbying” even if made for the purpose of influencing a municipal decision. Such communications do, however, appear to fit within the scope of what is a “lobbying activity.” In other words, when a Lobbying Firm is seeking to influence a municipal decision and receives compensation to contact a lower level City employee as part of that effort, it seems logical to include that activity within the scope of “lobbying activities.”

Staff Recommendation: Amend section 27.4002 to define “lobbying activities” as follows: “*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*; and (h) communications with City officers and employees that are not lobbying contacts.” If the Commission reduces the scope of the term “lobbying activities” as discussed in Issue One, this definition will apply only to the calculation of compensation for Lobbying Firms.

Issue Eleven: Contributions by Firm or Organization

Issue: The Lobbying Ordinance requires individual owners, officers, and lobbyists of a Lobbying Firm or Organization Lobbyist to disclose the contributions they make to candidate-controlled committees. The Ordinance does not, however, mandate any disclosure requirements for the firm or organization itself. Under the City’s campaign laws, a firm or entity may make unlimited contributions to ballot measure committees. Under the current Lobbying Ordinance, such contributions are not reported.

Staff Recommendation: Amend the Lobbying Ordinance to require Lobbying Firms and Organizations to disclose the campaign contributions they make to candidate-controlled ballot measure committees.

Issue Twelve: Separate Fundraising Activity

Issue: The Lobbying Ordinance requires Lobbying Firms and Organization Lobbyists to disclose individuals who engaged in “fundraising activities” during the reporting period. A person engages in “fundraising activities” when he or she has some responsibility for raising \$1,000 or more for a

candidate. A person must be identified on a disclosure statement if he or she raised \$1,000 in connection with one fundraising effort, or if he or she raised an aggregate of \$1,000 through multiple efforts. The Lobbying Ordinance's disclosure language uses the phrase "for each instance of fundraising activity," which could be interpreted to mean that disclosure is only required for each instance of reaching the \$1,000 threshold, i.e., that disclosure is not required when a person has multiple fundraising efforts that collectively meet the reporting threshold.

Staff Recommendation: Amend the language in sections 27.4017(a)(6) and 27.4017(b)(6) to require disclosure: "for each ~~instance of fundraising activities~~ fundraising effort by an owner, officer, or lobbyist of the *lobbying firm* who engaged in fundraising activities during the reporting period:"

Issue Thirteen: Campaign Workers Paid on Contingency Basis

Issue: The Lobbying Ordinance requires Lobbying Firms and Organization Lobbyists to disclose the names of owners, officers, and lobbyists who "provided compensated campaign-related services to a candidate or candidate-controlled committee." The Ordinance does not, however, expressly address the disclosure requirements for individuals whose compensation is contingent on some future happening, such as a "win bonus" that will be awarded only in the event that the candidate wins the election.

Staff Recommendation: Amend the language in sections 27.4017(a)(7) and 27.4017(b)(7) to expressly require disclosure for campaign workers: "who personally provided ~~compensated~~ campaign-related services to a *candidate* or a *candidate*-controlled committee during the reporting period in exchange for compensation or pursuant to a contingency fee agreement.

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