

## 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 on behalf of a client, or any owner, compensated officer, or employee who engages in lobbying on behalf of an organization lobbyist.<sup>1</sup>
- ❖ A person is “lobbying” when he or she has a direct communication with a city official outside of a noticed public meeting (for example, a private meeting, talking on the telephone, sending a letter or email) for the purpose of influencing a municipal decision. For example, a person “educating” a city official regarding a proposed development project is “lobbying” that official.
- ❖ 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 (e.g., SDCERS, Housing Commission, Convention Center Corporation):

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

- ❖ A City candidate who has been elected, but not yet sworn in, is also a “city official.”
- ❖ Some city officials use “working titles” that are different from their official titles. Check the ethics commission website for a list of unclassified city officials and their official titles.
- ❖ Officials also include the members of any City board, commission, or committee who are required to file statements of economic interests

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❖ <sup>1</sup> A person who receives no compensation for lobbying is not a “lobbyist” under the City’s lobbying ordinance.

- ❖ Keep in mind that communications with a city official are considered “lobbying” only if they are for the purpose of influencing a “municipal decision.” Not all decisions by city officials are “municipal decisions.” Decisions that are covered by the lobbying ordinance are limited to those that:
  - ✓ will require a decision by the City Council, a Council Committee, or a City Board (such as the Planning Commission, Commission for Arts and Culture, Retirement Board, etc.);
  - ✓ relate to a City Official making a report to the City Council, a City Council Committee, or the Mayor;
  - ✓ involve making a City contract; or,
  - ✓ pertain to a quasi-judicial decision, such as decisions on Process 2 through 5 projects under the City’s land development procedures, granting or denying City permits and licenses, and debarment proceedings.
- ❖ If you are a lobbyist, then the firm, business, or 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.
- ❖ Note that a person or entity could qualify as more than one type of lobbyist. For example, a company that qualifies as an organization lobbyist could also be making payments to a public relations firm for indirect lobbying efforts and thereby qualify as an expenditure lobbyist. Such an entity would have to file two quarterly reports, one as an organization lobbyist and one as an expenditure lobbyist.
- ❖ There are several 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 if it has at least one instance of lobbying a city official.
- ❖ For example, Cooper & Lynch is a consulting firm that specializes in environmental issues. 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 Cooper & Lynch is paid to influence a City decision 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 Cooper & Lynch 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.
- ❖ Attorneys are not exempt from the City’s lobbying ordinance. See the fact sheet on attorneys and the lobbying ordinance for additional information.
- ❖ 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 owners, compensated officers, or employees have a total of 10 or more separate lobbying contacts with City Officials on behalf of the business or organization within any 60 calendar day period.
- ❖ For example, Quality Wireless is a business entity interested in providing cellular telephone service in the City. 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 City Council Chiefs of Staff, make six telephone calls to the Director of Real Estate Assets, and send one identical email message to every City Councilmember. 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.
- ❖ For purposes of the contacts rule, parent/subsidiary companies are considered a single entity. For example, ABC Development Company is a commercial builder with projects across the country. It creates a subsidiary corporation, Balboa Towers LLC, to oversee a project in San Diego. If an ABC Development employee has six contacts with city officials and a Balboa Towers employee has four contacts with city officials, all within a 60-day period, then the 10-contact threshold has been met. In this situation, the entities must jointly register with the City 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 count as one contact; a meeting regarding two municipal decisions counts as two contacts.
  - ✓ A meeting with a city official and a member of that official’s immediate staff regarding a single municipal decision counts as one contact, even if the staff member is also a city official.
  - ✓ A meeting with two city officials regarding a single municipal decision count as two 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 one contact.
  - ✓ A meeting that starts one day and finishes the next day, pertaining to the same municipal decision, counts as one 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 involves an attempt to influence a municipal decision.
  - ✓ Meetings with, and letter, faxes, and emails to, a non-city official (that is, someone whose title is not mentioned in the above list) are not considered contacts for purposes of the lobbying ordinance.
  - ✓ Identical or substantially similar letters, faxes, and e-mails count as one contact for each municipal decision discussed, regardless of the number of city officials to whom they are sent. For example, sending the same email message to eight Councilmembers, and using that email message as the sole

content of a letter to three Department Directors would count as one 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 emails that pertain to a single municipal decision count as one contact for each different letter, fax, or email. For example, sending one letter to four Councilmembers that emphasizes a project's financial concerns, and sending one letter to three Councilmembers emphasizing the project's environmental issues, would count as two contacts (one contact for each different letter).
- ❖ Keep in mind that lobbying contacts by an organization lobbyist's volunteers (including the uncompensated officers of the organization) do not count toward the 10-contact threshold, nor are they reportable on any lobbying disclosure reports.

#### **ADDITIONAL 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 electronically filed with the City Clerk no later than the last day of the month that follows the reporting period.
- ❖ Refer to the Commission's fact sheet on lobbying disclosure forms as well as the instructions contained in the City Clerk's online filing system for additional 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 (that is, 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 activities to date.

If you have any questions concerning who is, and who is not, a lobbyist in the City, please contact the ethics commission at (619) 533-3476.

Rev. 7/23/24