



FACT SHEET ON ATTORNEYS AND THE LOBBYING ORDINANCE

The City's Lobbying Ordinance imposes registration and reporting requirements on lobbying firms and organization lobbyists. These entities may include firms, companies, and organizations that employ attorneys. This fact sheet is designed to help attorneys determine whether or not they are lobbyists, and whether the firm, company, 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 INFORMATION

- ❖ Except as described below, attorneys are not exempt from the City's lobbying laws. An attorney who lobbies city officials is considered a lobbyist.
- ❖ A lobbyist includes any individual who is paid to lobby on behalf of a client or on behalf of an organization lobbyist. As applied to attorneys, this means that a law firm will qualify as a lobbying firm if it is paid to lobby on behalf of a client. Alternatively, lobbying by an in-house attorney on behalf of the entity the attorney owns or works for may qualify the entity as an organization lobbyist.
- ❖ Lobbying means having a direct communication (e.g., a private meeting, talking on the telephone, sending a letter or email) with a city official outside of a publicly noticed Brown Act meeting (e.g., a meeting of the City Council) for the purpose of influencing a municipal decision on behalf of another person or entity. The term city official is not limited to elected officers; it includes many other City employees, City agency employees, and members of certain boards and commissions. Please refer to the fact sheet entitled "Am I a Lobbyist?" for a list of the positions that are considered city officials.
- ❖ The term influencing a municipal decision is to be broadly construed, and includes providing information, analysis, or studies to a city official. Accordingly, an attorney is lobbying when he or she provides a city official with a legal analysis regarding an upcoming municipal decision.
- ❖ If you are an attorney at a law firm and you have at least one instance of lobbying a city official on behalf of a client in exchange for compensation (including a contingency-fee agreement), then your firm must register with the City Clerk as a lobbying firm. 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 a municipal 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 McGruder & Sons for its lobbying efforts. 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. A sole practitioner will also qualify as a lobbying firm if he or she is paid to lobby city officials on behalf of a client.
- ❖ A law firm that is a lobbying firm is required to list on a registration form each client on whose behalf it is lobbying the City, including clients who are receiving pro bono legal services.

- ❖ A law firm that lobbies for another firm's client as part of an arrangement with the other firm must identify the client on its disclosure reports, even if the client does not pay the law firm directly. Do not list the other firm as the client on disclosure reports; instead, identify as the client the individual or entity for whom the lobbying is ultimately being performed.
- ❖ An attorney who accompanies a client to a meeting with a city official is a lobbyist if the attorney attempts to influence a municipal decision at that meeting. This is true even if the attorney is accompanied by another registered lobbyist.
- ❖ If you are an in-house attorney for a business or organization, including a non-profit or charitable organization, and your lobbying activities are performed on behalf of the business or organization, then that entity 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, a local utility company will qualify as an organization lobbyist if its general counsel has ten contacts with city officials regarding a pending municipal decision that could affect the company.
- ❖ See the fact sheet entitled Am I a Lobbyist for additional information regarding lobbying and the various registration thresholds.

LITIGATION EXEMPTION

- ❖ The City's lobbying laws include an exemption for communications by attorneys concerning pending or actual litigation or administrative enforcement actions. For example, an attorney who communicates with a deputy city attorney on behalf of a client in a personal injury lawsuit against the City is not engaging in lobbying. Similarly, an attorney is not lobbying when he or she speaks with members or staff of the civil service commission regarding a pending civil service matter.
- ❖ This exemption applies only to pending or actual litigation and administrative enforcement actions. Thus, it will apply when a complaint has been filed with a court, when a claim has been filed with the City as a precursor to a court filing, or when a matter has officially come before an administrative enforcement agency, such as the civil service commission or the ethics commission.
- ❖ This exemption extends to members of an attorney's team. In other words, it will cover paralegals, experts, and consultants who are working with the attorney on the matter being litigated.
- ❖ The litigation exemption does not apply to other types of contentious matters, even if it is likely that the parties involved will eventually litigate their dispute. For example, an attorney who contacts a city official to influence a controversial land use decision is engaging in lobbying even if litigation is inevitable. Similarly, an attorney is lobbying when he or she provides a legal analysis to the city attorney's office concerning the wording of a proposed ordinance.
- ❖ See the fact sheet on Exceptions to the Lobbying Ordinance for information regarding additional exemptions that may apply.

ATTORNEY-CLIENT PRIVILEGE

- ❖ California Business and Professions Code section 6009 authorizes the City to require attorneys who qualify as lobbyists to register and disclose their lobbying activities in the same manner and to the same extent as non-attorney lobbyists. Any prohibitions against specified activities by lobbyists adopted by the City shall also apply to attorneys who qualify as lobbyists. The attorney-client privilege does not override the application of section 6009.

- ❖ The City's lobbying ordinance requires law firms that qualify as lobbying firms to disclose information about their clients. In particular, they are required to disclose the identity of their clients, the amount of compensation earned for lobbying activities, and the outcome sought by their clients.
- ❖ See the fact sheet on Lobbying Disclosure Forms for more information.

DISCLOSURE OF CAMPAIGN-RELATED INFORMATION

- ❖ If a law firm qualifies as a lobbying firm, it will be required to disclose campaign contributions given by its owners, compensated officers, and lobbyists to City candidates and City candidate-controlled ballot measure committees.
- ❖ A law firm that qualifies as lobbying firm will also have to disclose campaign fundraising activities and compensated campaign-related services performed by its owners, compensated officers, and lobbyists.
- ❖ The term owner includes the equity partners in a law firm, regardless of whether such individuals personally engage in lobbying activities. In other words, even if only one attorney in a law firm engages in lobbying, the firm will have to register as a lobbying firm and disclose the foregoing campaign-related information for all the equity partners in the firm.
- ❖ See the fact sheet on Lobbying Disclosure Forms for additional information.

CLIENT CONSIDERATIONS

- ❖ A company or organization that retains an attorney to lobby on its behalf may also become subject to disclosure requirements under the lobbying ordinance. If a development company retains an attorney to lobby city officials, the attorney's firm will register as a lobbying firm. But if the owners, compensated officers, or employees of that development company also lobby city officials, either independently or in conjunction with the attorney, the company itself may qualify as an organization lobbyist and have its own reporting obligations.
- ❖ Similarly, a law firm's client may also become an expenditure lobbyist if the client spends money to indirectly influence a municipal decision. A company that pays an attorney to lobby for a proposed ordinance while also paying a public relations firm to rally community support for that ordinance could be considered both a client and an expenditure lobbyist.
- ❖ See the fact sheet entitled "Am I a Lobbyist?" for additional information regarding organization lobbyists and expenditure lobbyists.

Fact Sheets and other educational materials pertaining to the lobbying ordinance can be found on the ethics commission's website at www.sandiego.gov/ethics/documents/lobbyists. If you have any questions concerning the application of the Lobbying Ordinance to attorneys, please contact the ethics commission at (619) 533-3476.

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