

## FACT SHEET ON EXPENDITURE LOBBYISTS

The City's Lobbying Ordinance imposes reporting requirements on lobbying firms, organization lobbyists, and a new type of lobbyist: the expenditure lobbyist. This fact sheet is designed to assist individuals and entities with determining whether or not their activities qualify them as an expenditure lobbyist, and accordingly, whether they have to disclose those activities in a report filed with the City Clerk. This fact sheet is designed to offer general guidance to prospective expenditure lobbyists but should not be considered a substitute for the actual language contained in the Lobbying Ordinance.

### **\$5,000 THRESHOLD**

- ❖ An expenditure lobbyist is defined in the City's Lobbying Ordinance as any person or entity that makes expenditures for public relations, media relations, advertising, public outreach, research, investigations, 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.
- ❖ Expenditure lobbyists are persons and entities that use "indirect" methods of influencing municipal decisions rather than having direct communications with city officials. Activities such as holding a private meeting with a city official, sending a letter or e-mail to a city official, and talking with a city official on the telephone do not count toward the \$5,000 calendar quarter threshold. Instead, these types of "direct" lobbying efforts are disclosed by lobbying firms and organization lobbyists (see "Additional Information" below).
- ❖ An expenditure lobbyist is the person or entity that is the actual source of the payment, not the intermediaries or vendors who carry out their instructions or orders. For example, Simply Sweepers, Inc. pays \$5,000 to public relations firm Spinnet & Howe to encourage members of the public to contact their Councilmembers to support an upcoming decision to outsource the City's street cleaning services. Simply Sweepers is the expenditure lobbyist, not Spinnet & Howe. (Note that if Spinnet & Howe was also retained to directly lobby city officials, it would become a lobbying firm and would identify Simply Sweepers as a client on its disclosure forms.)
- ❖ Expenditures do not carry over to the following quarter. In other words, a person or entity that spends \$3,000 in March and \$2,000 in April does not meet the \$5,000 threshold.
- ❖ The \$5,000 threshold applies to all municipal decisions a person or entity has sought to influence in a calendar quarter. It is not a "\$5,000 per-decision" threshold. For example, a person could meet the \$5,000 threshold by spending \$2,500 to influence the adoption of a City ordinance in January and spending \$2,500 to influence the approval of a land development permit in February.
- ❖ When determining whether a payment is "made" within a particular calendar quarter, keep in mind that an expenditure is "made" on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. For example, an entity that arranges for a newspaper advertisement to run on September 5 but doesn't pay the \$750 cost of the advertisement until October 15 has "made" a \$750 expenditure on September 5 (during the July-September quarter).
- ❖ Payments for lobbying activities that are reported by a lobbying firm or an organization lobbyist on a quarterly disclosure report are not considered for purposes of calculating the \$5,000 threshold. For example:

- ✓ A payment made to a lobbying firm to have it communicate directly with city officials will be reported by the lobbying firm when it files its quarterly disclosure report; such a payment does not count toward the \$5,000 threshold and does not need to be reported by the expenditure lobbyist.
- ✓ Similarly, the salary an organization lobbyist pays an employee to communicate directly with a city official would not count toward the \$5,000 threshold.
- ❖ The payments an organization makes to communicate with its own members do not count toward the \$5,000 threshold. For example, an organization that hosts a breakfast meeting for its members is not making an “expenditure” even if that organization uses the meeting as an opportunity to encourage its members to support or oppose a particular municipal decision.

## QUARTERLY DISCLOSURE REPORTS

- ❖ Although expenditure lobbyists do not register with the City Clerk on an annual basis, they are still required to file quarterly disclosure reports with the City Clerk if they have reached the \$5,000 threshold for a calendar quarter.
- ❖ Each report must be filed with the City Clerk no later than the last day of the month that follows the reporting period. For example, a person who reaches the \$5,000 threshold during the January through March quarter must file the report no later than the last day of April.
- ❖ When completing its quarterly disclosure report, an expenditure lobbyist must identify itself and the individual who has prepared the form, describe each municipal decision it attempted to influence, and disclose how much money it spent to influence the decision.
- ❖ If another person or entity helped fund an expenditure by giving \$100 or more to an expenditure lobbyist, the quarterly disclosure report must also include the name, address, and telephone number of that person or entity.
  - ✓ For example, Calamity Construction spent \$7,500 for a public relations firm to conduct community meetings in neighborhoods affected by a controversial development project that is awaiting approval by the City Council. The meetings are intended to encourage residents to contact their Councilmembers and express support for the project. A local union whose members would benefit from the project gives Calamity Construction a \$1,000 check to help cover the costs of retaining the public relations firm.
  - ✓ When Calamity Construction files its Quarterly Disclosure Report as an Expenditure Lobbyist, it will disclose the \$7,500 payment, and will also identify the union and the \$1,000 payment it received from the union. (As indicated above, because the public relations firm is not the actual source of the payment, it is not an expenditure lobbyist and need not file a disclosure report.)
- ❖ An expenditure lobbyist is only required to report the expenditures it made during the calendar quarter in which it reached the \$5,000 threshold. There is no need to report payments made in previous quarters where the threshold was not met, even if those earlier payments were intended to influence the same municipal decisions that are being disclosed.
  - ✓ For example, Bedrock Brewery is a business entity that supplies alcoholic beverages to stores in the City’s beach areas. The City Council is considering an ordinance that will allow alcohol on the City beaches. Bedrock Brewery supports the ordinance and spends money on newspaper advertisements (\$3,500 in June and \$6,500 in July) asking people to contact their Councilmembers to urge them to adopt the ordinance.
  - ✓ Bedrock Brewery need not file a quarterly disclosure report for the April-June quarter because it didn’t reach the \$5,000 threshold for that quarter. It must, however, file a quarterly disclosure

report for the July-September quarter, and disclose that it spent \$6,500 on newspaper advertisements designed to support the ordinance.

## **ADDITIONAL INFORMATION**

- ❖ A person or entity that qualifies as an expenditure lobbyist for one quarter does not automatically become an expenditure lobbyist for the following quarter. In other words, an entity has no filing obligations as an expenditure lobbyist for any quarter in which it does not meet the \$5,000 threshold. For this reason, there is no need to terminate one's status as an expenditure lobbyist.
- ❖ If an expenditure lobbyist pays for, or engages in, "direct communications" for purposes of influencing a municipal decision (in addition to "indirectly" attempting to influence a municipal decision as discussed above) that person or entity will be subject to other provisions of the City's Lobbying Ordinance.
  - ✓ Any person or entity, including one that qualifies as an expenditure lobbyist, that pays someone else to communicate directly with city officials to influence a municipal decision will be reported as a "client" on a lobbying firm's registration form and quarterly disclosure report.
  - ✓ A person or entity, including one that qualifies as an expenditure lobbyist, that pays its own officers or employers to communicate directly with city officials to influence a municipal decision on its own behalf may become an organization lobbyist, and, if so, will have to file its own registration forms and quarterly disclosure reports with the City Clerk.
  - ✓ Consult the ethics commission's fact sheet "Am I a Lobbyist?" for additional information regarding these other types of lobbying entities.
- ❖ Note that the City's campaign laws require the disclosure of "electioneering communications," which are defined as any communication that mentions a City candidate and is disseminated, broadcast, or published within 90 calendar days of a City election.
  - ✓ If an expenditure lobbyist pays for public relations or community outreach purposes that result in a communication that mentions a City candidate (which includes a City officeholder running for re-election), that effort could be an "electioneering communication."
  - ✓ If the payments associated with such an effort total \$1,000 or more and are made within 90 days of a City election, they must be reported on an electioneering communication disclosure report form filed with the City Clerk.

If you have any questions concerning expenditure lobbyists in the City of San Diego, please contact the ethics commission at (619) 533-3476.

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