

LOBBYING IN THE CITY OF SAN DIEGO

A Basic Guide to Municipal Advocacy Registration and Reporting Requirements for 2007

WHAT IS LOBBYING?

The Municipal Lobbying Ordinance [Div. 40, Chapter II, Article 7 of the San Diego Municipal Code (SDMC)], provides registration and disclosure requirements for those who lobby in the City.

Lobbying is direct communication with a City official for the purpose of influencing a municipal decision.

(1) **“Direct communication”** means talking to or corresponding with, in a way which does not become part of the record of a public hearing. **NOTE:** At least one instance of direct communication with a City official is needed before you qualify as a lobbyist.

(2) **A “City Official”** is NOT just an elected City officeholder! The term encompasses an elected or appointed City officeholder; City Board member; City consultant required to file an economic disclosure statement by a Council-adopted conflict of interest code; or Council member acting as an officer of the Housing Authority or the Redevelopment Agency. **Also** included as a City official is any 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.

(3) **“Influencing”** means affecting or attempting to affect any action by a City official by any method, including providing information, promoting, supporting, opposing or seeking to modify or delay.

(4) **“Municipal Decision”** encompasses the drafting, introduction, consideration, adoption, defeat, or repeal of any ordinance or resolution; the amendment of any ordinance or resolution; a report by a City official to Council or a Council committee; contracts; quasi-judicial decisions such as decisions on land development permits and maps, or any grant of, denial of, modification to, or revocation of a permit or license; **and** any other decision of the City Council or a City Board. City Boards include the boards of directors of all City agencies, and any board, commission, committee, or task force of the City which the Council created under the authority of the City Charter, the Municipal Code, or Council resolution.

AM I A LOBBYIST?

If you lobby--according to the definition above--and you receive or become entitled to receive the threshold compensation during any calendar quarter for lobbying, then you are indeed a lobbyist, and you must register and file quarterly reports with the City.

NOTE: *Only individuals are lobbyists, not companies or organizations!*

WHAT IS THE ‘THRESHOLD COMPENSATION’?

The SDMC does not require lobbyists to register and file quarterly reports until they have received or become entitled to receive the “threshold compensation” during any calendar quarter for lobbying. Then, after receiving or becoming entitled to receive that amount, lobbyists must register and report quarterly until (a) they terminate their registrations; or (b) their registrations automatically expire on January 5th. Details regarding the threshold compensation requirement are contained in SDMC §27.4005.

For calendar year 2007, the threshold compensation is \$2,730. Provisions of the lobbying ordinance require that the threshold be adjusted annually, based on the San Diego Consumer Price Index percentage change. (The threshold compensation amount is published every year no later than January 10. Call the City Clerk's Office to find out the current amount.)

In determining whether or not you've reached the threshold, you must take into account all compensation you've received or become entitled to receive *not only* for lobbying as it is defined in this brochure, *but also* for monitoring a municipal decision you're seeking to influence; for preparing testimony and presentations; for attending hearings on a municipal decision you're seeking to influence; for communicating with your client or employer about a municipal decision you're seeking to influence; and for waiting to meet with City officials. These and similar activities are an integral part of influencing a municipal decision.

Also, be aware that "compensation" means any economic consideration for services rendered, other than reimbursement for travel expenses.

DO I MEET THE THRESHOLD COMPENSATION?

Depending upon your salary, the following chart shows the average time you must spend involved in lobbying activities before you meet the \$2,730 threshold for 2007.

Annual Salary	Hourly Salary	Avg. Time/Qtr Spent Lobbying	Avg. Time/Week Spent Lobbying (13 wks/qtr)	Avg. Time/Day Spent Lobbying (64 workdays/qtr)
\$20,000	\$9.61	280 hrs., 9 mins.	21 hrs., 6 mins.	4 hrs., 3 mins.
\$30,000	\$14.42	187 hrs., 2 mins.	14 hrs., 40 mins.	2 hrs., 9 mins.
\$40,000	\$19.23	140 hrs., 40 mins.	10 hrs., 8 mins.	2 hrs., 1 mins.
\$50,000	\$24.03	112 hrs., 35 mins.	8 hrs., 6 mins.	1 hr., 7 mins.

IS MY WRITTEN STATEMENT PART OF THE RECORD OF A PUBLIC HEARING?

As defined by the Municipal Lobbying Ordinance, "direct communication" does **not** include "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 Client(s) represented." As the exception relates to written statements, the City Clerk's Office interprets the exception to apply **only** to the following: (1) a written statement, delivered to the City Clerk's Office prior to a City Council meeting, which is made part of the backup material of a Council docket item; or which is delivered to the appropriate office prior to a board or commission meeting and is made part of the backup material of a docket item for that meeting; or (2) a written statement which is distributed in Council chambers to all members of the Council during the course of a Council meeting; or distributed to all members of a board or commission during the course of its meeting. (Such material would then become a part of the backup material of the pertinent docket item.)

IS ANYONE EXEMPT FROM REGISTERING?

Details about who is exempt are contained in SDMC §27.4004.

Public officials acting in their official capacity and any government employees acting within the scope of their employment are exempt from the requirements of the Municipal Lobbying Ordinance.

So are people whose sole activity includes one or more of the following: (a) submitting a bid on a competitively bid contract; (b) submitting a written response to a request for proposals or qualifications; (c) participating in oral interviews for a request for proposals or qualifications; or (d) negotiating the terms of a

contract or agreement with the City, once the City has authorized entering into the agreement, either by action of the City Council, City Manager, or voters, and whether the “winner’s” selection was made pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.

Certain members of the media are exempt.

Neither attorneys nor representatives of non-profit organizations are exempt if they are acting as lobbyists. However, certain legal communications with the City may not qualify as ‘lobbying activities’.

REGISTERING AS A LOBBYIST

You must register with the City Clerk within 10 days of qualifying as a lobbyist. Using a registration form available through the Clerk's Office, you will disclose the following information for any compensated services you provided in the 3 months prior to the date you qualified as a lobbyist: certain identification information about yourself, your employer (if any) and your client(s) (if any); a list of the municipal decisions you attempted to influence, or for which you were retained to represent a client; and a statement that you’ve read and understood the provisions of the Municipal Lobbying Ordinance. Your original signature must be on the registration form filed with the Clerk. Details about the registration requirement are contained in SDMC §27.4007 and §27.4009.

REGISTRATION FEES

At the time you register, you must also pay a \$40 annual registration fee, plus an annual client registration fee of \$15 per client. (A client is a person, business entity, organization, etc. who compensates you for lobbying, or on whose behalf you make attempts at influencing a municipal decision.) Details about these fees are contained in SDMC §27.4010. *NOTE: Fourth-quarter fees are pro-rated! If you don't qualify as a lobbyist until the fourth quarter of the year, then your registration fee is \$20. If you take on a client during the fourth quarter, then that client's registration fee is \$10.*

In the case of a business which employs more than one “in-house” lobbyist, each of whom lobbies solely on behalf of the business and for no other client, one \$15 client fee covers the client-fee requirement for all the in-house lobbyists employed by that business. **Example:** *SD Widgets, Inc. has two people on its payroll, Lobbyist A and Lobbyist B, who lobby on the company's behalf. They only represent SD Widgets when they lobby. Lobbyist A must pay her \$40 registration fee, plus the \$15 client fee for SD Widgets. Lobbyist B must pay his \$40 registration fee, but another \$15 client fee for SD Widgets is not required.*

Similarly, if a business employs more than one lobbyist to represent “outside” clients, and more than one of those lobbyists lobby on behalf of the same “outside” client, then a single \$15 client fee covers that business’s representation of that particular client. **Example:** *“Ideas R Us” employs Lobbyists Y and Z to handle lobbying for the business's “outside” clients. One client, “Bay Harmonics,” requires the services of both lobbyists. Lobbyist Y must pay his \$40 registration fee, plus the \$15 client fee for “Bay Harmonics.” Lobbyist Z must pay her \$40 registration fee, but another \$15 client fee for this client is not required.*

It’s important to note that, regardless of which lobbyist does or does not have to pay a client registration fee for particular client, each lobbyist who represents that client **MUST** register the client!

QUARTERLY REPORTING IS MANDATORY

Once you’ve registered, you must file a quarterly report regarding your lobbying activities for the previous calendar quarter. You will be reporting quarterly until (a) you terminate your registration; or (b) your registration automatically expires on the next January 5th. The report forms are available through the Clerk's Office. As with the registration form, your original signature is required on the form you file. You will disclose certain identification information about yourself, your employer (if any) and your client(s) (if any); the municipal decisions you attempted to influence; the total amount of compensation (by range) you received during the reporting period in connection with lobbying, itemized by client; and your activity expenses (see the “Activity Expenses” section of this brochure), including information about all the parties involved in each expense, and the amount of the expense. Details are contained in SDMC §27.4016 and §27.4017.

WHEN DO I REGISTER A NEW CLIENT?

You are required to register and pay a registration fee for each of your clients. If a new client hires you after you've already registered as a lobbyist for the year, then you must amend your registration by adding the new client. There are two ways to do this: (1) You may file an amended registration form at the time you file your next quarterly disclosure report (or earlier, if you wish); or (2) you may use the "Representation Disclosure" page of your quarterly report to disclose the required registration information regarding the new client. Don't forget to pay the new client's registration fee.

ACTIVITY EXPENSES

Details about activity expenses are contained in SDMC §27.4002.

An "activity expense" is any payment made by a lobbyist to or benefiting **any** City official, such as gifts, meals, honoraria, consulting fees, salaries and any other form of compensation, but not campaign contributions.

Once you've registered, each quarter you'll be required to itemize certain information about your activity expenses of \$10 or more made on any one occasion; or those which aggregated \$50 or more to benefit any single City official on behalf of any one client. (An activity expense is made on behalf of a client if the client requires, authorizes or reimburses the expense.)

*NOTE: You must report the **exact** amount of the payment made to or benefiting a City official. This may require special attention from you--for instance, if you entertain more than one City official as your guest at the same lunch-date. You are not the only one required to keep track of such expenses. Many City officials are subject to strict "gift" restrictions, and because of their own reporting requirements, they will need to know the **exact** amount you spent on them. Because the cost of your guests' lunch orders may vary widely, it is not enough to simply divide the lunch bill by the number of people attending. We suggest that in this kind of situation, you request duplicate receipts from your server, at the time the order is placed. Make note of who ordered what. This will help you determine the exact amount you must disclose for each guest. Yes, it's important!*

You are also required to disclose the **entire** amount of your activity expenses for the quarter, whether or not they were itemized, and even if the amount is "zero."

ADDITIONAL REPORTING REQUIRED RELATED TO ACTIVITY EXPENSES

Thinking about buying lunch for a City official? Or sending a box of chocolates to his or her office? Or providing that City official with anything of value which is disclosable as an activity expense? Before you do so, SDMC §27.4023 requires you to make sure that City official knows you are a lobbyist!

Additionally, SDMC §27.4014 requires that when you make an activity expense, you must provide certain information, in writing and within 20 days, to the City official who is the beneficiary of your expense: date and amount of the expense; a description of the expense; and any client on whose behalf the expense was made.

SOME "WHAT IF" SCENARIOS

a) I regularly speak on my company's behalf at Council and committee meetings. Am I a lobbyist?
The test is where you are when you communicate with City officials. Comments made at Council and committee meetings are public record. If all of your communications with City officials are part of the public record, then you are not a lobbyist under the SDMC. However, private meetings with City officials are not part of the public record.

b) I volunteer my time and services to my favorite cause by frequently meeting with Council staff to urge their support. Am I a lobbyist? *The test is whether or not you have received or become entitled to receive the threshold compensation. If you don't receive any compensation for your time and services, or if you receive only reimbursement for travel expenses, then you will not need to register and file as a lobbyist for this volunteer effort.*

c) I wrote a letter to my Council member. Am I a lobbyist? *Probably not. The test is whether or not you have received or become entitled to receive the threshold compensation. Practically speaking, you probably must spend quite some time involved in lobbying activities before you reach that threshold.*

d) I represent a non-profit organization. Am I exempt? *The test is whether or not you're lobbying, and have received or become entitled to receive the threshold compensation during any calendar quarter for lobbying.*

e) I'm a salaried employee of a nonprofit organization. Does the lobbying ordinance prohibit me from participating in the public process? *No. Individuals may still write letters and meet with their Council members, but if they are paid for those activities, they may have to register as lobbyists. Remember, however, that you must have received or become entitled to receive the threshold compensation for your lobbying activities before you are required to register. Depending upon your salary, of course, it is likely you will have to engage in quite a lot of lobbying activity before you reach the threshold.*

f) I want to visit my Council member to urge Council approval of a contract. Am I a lobbyist? *Perhaps. There is a narrow exemption contained in the lobbying ordinance for a person whose sole activity is 1) submitting a bid on a competitively bid contract; 2) submitting a written response to a request for proposals or qualifications; 3) participating in an oral interview for a request for proposals or qualifications; or 4) negotiating the terms of a written agreement with any City agency, once the contractor is selected pursuant to that bid or request for proposals or qualifications. Beyond this narrow exemption, you may be engaging in activity potentially regulated by the lobbying ordinance. Then the test would be whether or not you have received or become entitled to receive the threshold compensation.*

g) I'm the CEO of my company, which employs a full-time lobbyist. She is registered with the City. This month we've both been meeting with City staff to discuss a major project we're developing. I also spent some time working with her on a presentation she gave at a committee hearing, then sat in on that hearing while she spoke. Am I a lobbyist? *The test is whether you received the threshold compensation for these activities, each of which is an integral part of influencing a municipal decision. Although your main job at your company is not as a "lobbyist," you are performing some of a lobbyist's functions. If your compensation for your "lobby-like" activities reaches the threshold, then you are required to register.*

h) I'm a sales representative who frequently meets with the City's purchasing agents. They're obviously City officials, I'm obviously trying to influence their decisions on where to buy certain products, and I make over the threshold compensation amount in any given quarter. Am I a lobbyist? *The test is the circumstances under which you meet with the purchasing agents. See "Is Anyone Exempt from Registering?" in this brochure.*

i) I'm an attorney representing my client. I should have attorney-client privilege, and not be required to register as a lobbyist, right? *The test is whether or not you're lobbying, and have received or become entitled to receive the threshold compensation during any calendar quarter for lobbying. Attorneys are not exempt from the registration requirement. However, communication among attorneys representing a party or potential party to pending or actual litigation either brought by or against the City, or City agent, officer or employee, is exempt from the definition of what constitutes a municipal decision, and, thus, from what may otherwise constitute lobbying activity.*

j) I'm a City employee, and my neighbor has been appointed to a City board. Are we required to register as lobbyists? *Public officials acting in their official capacity, and government employees acting*

within the scope of their employment, are exempt from the provisions of the lobbying ordinance. It should be noted, however, that the role of employees and board members in this instance is to present factual and unbiased information to assist the Council in making decisions. Ethical behavior of City officers, board members and employees is regulated by Council Policy 000-4 and Administrative Reg. 95.60.

k) I registered in January as an in-house lobbyist for SD Widgets, Inc.. In October I left the company to open my own business as a contract lobbyist. What must I do to be in compliance with the Municipal Lobbying Ordinance? *You should amend your registration to show that SD Widgets is no longer your client. Also, as you gain your own clients, you must amend your registration to show who you represent, and pay a client registration fee of \$10 per client, prorated because you have added them as clients during the last quarter of the year. As usual, your registration will automatically terminate on January 5th of the following year.*

l) Except for the obvious cases, how can I tell whether the person I'm lobbying is a City official? *Some not-so-obvious City officials are members of City boards, commissions, committees or task forces which have been established by Council action under the authority of the City Charter, SDMC or Council resolution. Other not-so-obvious officials are consultants to the City who must file statements of economic interests because of a Council-adopted conflict of interest code. Housing Commissioners and Housing Commission employees are City officials. So are the members of the boards of directors of the City's agencies. Also, any employee of the City or a City agency who participates in the consideration of any municipal decision as part of his or her official duties (other than in a purely clerical, secretarial or ministerial capacity) is considered a City official.*

m) I'm a registered lobbyist who meets regularly with City staff on behalf of my five clients. Here's what I did last quarter:

1) On behalf of Client A, I had four lunches in one month with a City staff member, and bought him a \$6 salad each time. We also went out to dinner, and I picked up his \$26 tab.

2) On behalf of Client B, I sent a Council member two tickets to a staged reading, each of which cost \$8. The Council member gave the tickets to someone on his staff; ultimately, only one ticket was used.

3) On behalf of Client C, I took everyone on a 10-person City project team out, one at a time, for coffee and sandwiches. Nobody's meal cost more than \$8, but the total amount my client reimbursed me was \$76.

4) On behalf of Client D, on the day the City Council adopted a project, I sent flowers to each member of the 4-person City project team. No bouquet cost more than \$10.

5) I met with one deputy director several times. I bought her dinner (\$18) to discuss Client A's project; had a series of breakfasts (\$8, \$7, \$9, \$3.50, \$12, \$5) on behalf of Client B; sent her two concert tickets (\$15 each) on behalf of Client C; gave her a \$6 baseball cap from Client D on the same day and for the same reason that I sent flowers to the 4-person City project team; and finally sent her a \$7.50 t-shirt on behalf of Client E. In all, I spent \$106 on this deputy director last quarter.

What activity expenses must I report?

Of course, before you spent any money on these City officials, you advised them that you're a registered lobbyist. Then, within 20 days of the expense, you sent a written notice to the City officials which included the date and amount of the expense; a description of the expense; and the client, if any, on whose behalf the expense was made.

SDMC §27.4017 requires you to report the total amount of all activity expenses you made during the reporting period, but it does not require you to necessarily itemize all of them.

In Situation 1, all the expenses must be itemized, since in the aggregate they amount to \$50 or more and are made to a single City official on behalf of a single client.

In Situation 2, the tickets must be itemized, because they amounted to \$10 or more in total (even though one ticket was not used), on a single occasion. Report them as a gift to the Council member, who had control over their disposal.

In Situation 3, nothing must be itemized. Although the total bill was \$76, on behalf of a single client, on no single occasion was the expense \$10 or more, and no single City official benefited \$50 or more in the aggregate.

In Situation 4, each bouquet must be itemized, because together they amounted to \$10 or more on a single occasion (the project's adoption).

In Situation 5, you must break down the expenses made benefiting this individual by the clients on whose behalf the expenses were made. The \$18 dinner on behalf of Client A must be itemized (\$10 or more on a single occasion). Of the breakfasts paid for by Client B, only the \$12 breakfast must be itemized, as it is the only one which meets the \$10 threshold, and the total amount spent on this official on behalf of Client B does not reach \$50. The tickets from Client C must be itemized (\$10 or more on a single occasion). The baseball cap from Client D must be itemized, as it must be aggregated with the bouquets sent to the project team members (\$10 or more on a single occasion). The \$7.50 t-shirt from Client E need not be itemized, as it does not meet any threshold.

LATE FILING PENALTIES

SDMC §27.4028 establishes late filing penalties of \$10 per day for each day a report is late, up to a maximum of \$100.

INTERACTIVE FORMS ARE AVAILABLE ON-LINE!

If you need a registration form, or a quarterly report form, you can always contact the City Clerk's Office. Our staff will be happy to mail or fax you what you need.

Also, about two weeks before the end of each calendar quarter, we'll send you a reminder that you have a filing deadline approaching.

You can also use our interactive registration and report forms, available through the City Clerk's Web site at

www.sandiego.gov/city-clerk

Look under "ELECTIONS/FILINGS," then under "Lobbying." On-line, you can fill in the required information on the interactive forms, then print them out on your own printer. As yet, we don't have the capability for on-line filing, however, so you'll still have to drop them off or send them to us through the mail.

TERMINATING YOUR STATUS AS A LOBBYIST

Your annual registration automatically terminates each year on January 5, but SDMC §27.4022 requires you to use the quarterly report form to notify the City Clerk if you stop being a lobbyist prior to the automatic termination.

THIS INFORMATION IS AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.

A LOBBYIST'S BASIC REQUIREMENTS

- 1) Lobby and receive (or become entitled to receive) the threshold compensation amount in a calendar quarter for lobbying.
- 2) Register with the City Clerk (and pay all fees).
- 3) Disclose your status as a lobbyist to any City official before you provide him or her with anything of value which would require disclosure as an activity expense.
- 4) Every time you make an activity expense, provide the following information, in writing and within 20 days, to the City official who is the beneficiary of your expense: the date and amount of the expense; a description of the expense; and the client, if any, on whose behalf the expense was made.
- 5) File quarterly reports by the deadline.
- 6) Renew registration annually by January 15, if you will continue lobbying.

A GENERAL CALENDAR FOR LOBBYISTS

January 5 - last year's registration automatically terminates*

January 15 - deadline to renew registration**

January 31 - deadline to file quarterly report for September-December

April 30 - deadline to file quarterly report for January-March

July 31 - deadline to file quarterly report for April-June

October 31 - deadline to file quarterly report for July-September

**You may terminate your registration at any time by notifying the Clerk's Office.*

***Amendments to registration, such as adding or deleting a client, are due with the next quarterly disclosure report after the amendment becomes necessary.*

SEEKING FURTHER INFORMATION

This brochure is not intended to repeat the entire letter of the law regarding San Diego lobbyists. Instead, it provides a broad overview of that law. You must review and understand the requirements of the Municipal Lobbying Ordinance. The City Clerk and his staff cannot interpret the law, nor give you legal advice. However, we can answer many of your technical questions, so call if we can assist!