

**CITY OF SAN DIEGO
ETHICS COMMISSION**

M E M O R A N D U M

DATE: April 16, 2007

TO: Council President and Members of the City Council
City Attorney Mike Aguirre

FROM: Dorothy Leonard, Chair, San Diego Ethics Commission
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

Beginning in November of 2005, the Commission held a series of eighteen public workshops on specific aspects of the City's Lobbying Ordinance. The Commission received input from members of the public as well as members of the regulated community. As a result of this comprehensive and deliberative process, the Commission has compiled a package of proposed amendments to the City's Municipal Lobbying Ordinance.

The Commission initially presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on October 25, 2006. The Commission returned to the Rules Committee with several amended recommendations on March 7, 2007, at which time the Committee members unanimously decided to forward the package of proposed amendments to the full City Council.

At the March 7, 2007, Rules Committee meeting, several Committee members asked the Commission and/or the City Attorney to provide responses to the following questions in the interim between the Rules Committee meeting and the time this matter is docketed for consideration by the full City Council.

Question No. 1: The proposed definition of "City Official" includes a list of job titles that correspond to high-level positions in the City. Under the proposed new laws, lobbyists would be required to report lobbying contacts with these high level officials. Does this list include all of the positions recently created under the "strong Mayor" form of government?

Response No. 1: Additional research conducted by Commission staff indicates that, in some cases, the job titles of some high-level positions do not correspond to their working titles. Consequently, at its next meeting on May 10, 2007, the Commission will consider whether to recommend adding four additional

job titles to the definition of “City Official.” If the Commission decides to recommend adding any or all of these four job titles, the Commission staff will prepare alternative language for the City Council to consider.

Question No. 2: Some of the positions delineated in the proposed definition of “City Official” include people who may serve as hearing officers. May lobbyists lawfully contact these officials on quasi-judicial matters?

Response No. 2: As the Commission indicated at the March 7, 2007, Rules Committee meeting, we will defer to the City Attorney’s Office to advise the City Council on this legal issue.

Question No. 3: The proposed definition of “City Official” includes all members of City boards and commissions who are required to file Statements of Economic Interests. Are there any boards or commission that should be excluded from the Lobbying Ordinance? In other words, are there any boards or commissions whose actions lobbyists should be allowed to influence without having to disclose anything?

Response No. 3: The Commission will consider this issue at its next meeting on May 10, 2007. Any changes in the proposed amendments will be identified in the staff report accompanying the Request for Council Action. In addition, if appropriate, Commission staff will prepare alternative language for the City Council to consider.

Question No. 4: The amendments proposed by the Commission would require lobbying firms and organization lobbyists to disclose the total amount of compensation they receive from each client, rounded to the nearest \$1,000. Should lobbyists instead disclose a range of compensation received from each client?

Response No 4: As explained during the Commission’s initial presentation to the Rules Committee on October 25, 2006, the Commission does not believe that the current system, which requires lobbyists to disclose their compensation in certain ranges (\$0-\$5,000, \$5,000-\$25,000, \$25,000- \$50,000, over \$50,000), provides the public with sufficient information regarding the financing of lobbying activities. Because it may be difficult for a lobbyist to determine the precise dollar amount earned for lobbying efforts, the Commission’s proposal requires only that lobbyists disclose amounts rounded off to the nearest \$1,000. Note that other jurisdictions in California require lobbyists to disclose the exact amount earned.

Question No. 5: Are some lobbying contacts inappropriate in the context of managed competition?

Response No. 5: Because the City has not yet adopted any rules or guidelines regarding the managed competition process, it is premature for the Commission to consider if certain types of lobbying contacts should be regulated in a unique manner, or even prohibited altogether. If the Mayor and Council ultimately determine that certain types of lobbying contacts in the course of the managed competition process are inappropriate, the Commission would consider amendments to the Lobbying Ordinance at that time.

Question No. 6: Both the current and proposed ordinances indicate that direct communication for the purpose of influencing a municipal decision does not include speaking at a public hearing or providing written statements that become part of the record of the public hearing. How do documents become part of the record of a public hearing?

Response No. 6: When the City Clerk's Office receives documents concerning a particular item, the staff checks to see if the item is on a current Council docket or an upcoming docket. If so, then the materials are passed onto the City Clerk's Docket Section, and they become part of the record of the Council meeting. If not, then the materials are maintained in the City Clerk's general files, and they do not become part of the record of a particular Council meeting. If a lobbyist intends a particular document to become part of the record of a public hearing, the lobbyist should either forward the document to the City Clerk's Office with a docket item number once the item is docketed, or check with the City Clerk's Office to ensure that a document transmitted before a docket is published is contained within the docket back-up materials. The same process should be followed with respect to a Council Committee meeting, except that the lobbyist should transmit documents to the Committee Consultant or check with the Committee Consultant to ensure that a particular document is part of the back-up materials for a Committee meeting.

Question No. 7: What is the distinction between an exchange of information and an attempt to influence a municipal decision?

Response No. 7: Both the current and proposed lobbying laws define "influencing a municipal decision" as an attempt to affect any action by a City Official by any method, including "providing information, statistics, analysis or

studies to a City Official.” In other words, there is no distinction between an exchange of information and an attempt to influence a municipal decision, provided of course that the information provided is related to a municipal decision and could affect an action by a City Official concerning the municipal decision.

Question No. 8: The Commission’s proposed reforms would require lobbying firms and organization lobbyists to disclose certain types of campaign fundraising efforts when their owners, officers, or lobbyists personally deliver contributions to a candidate, or if they identify themselves to a candidate as having some responsibility for raising the contributions. Is it possible to clarify what it means to take credit for raising a contribution?

Response No. 8: During the course of its extensive deliberations on the topic of fundraising disclosure, the Commission initially considered requiring lobbyists to disclose all campaign contributions “made at the behest” of the lobbyist. After hearing from lobbyists that this would be unduly burdensome because it could require them to disclose contributions made by their friends and neighbors if they merely discussed a particular candidate with a lobbyist, the Commission decided to narrowly tailor this provision to require lobbyists to disclose only those contributions they personally deliver, or those contributions they take credit for raising. In the Commission’s experience, taking credit for a contribution can take many forms: coding of contribution remittance envelopes, providing a list of contributors to a candidate’s campaign staff, etc. It is not practical or desirable to limit the language in the ordinance to the specific ways that a lobbyist can take credit for campaign contributions, as doing so would likely encourage lobbyists to find a different way to take credit for contributions and thereby avoid the disclosure requirements.

As discussed above, there are two remaining issues that the Ethics Commission will discuss at its next meeting on May 10, 2007. The Commission anticipates submitting a Request for Council Action (Form 1472) no later than Monday, May 14, 2007. As explained at the March 7, 2007, Rules Committee meeting, the Commission is hopeful that the proposed reforms will be considered and adopted by the City Council as soon as possible. In order for the new laws to take effect on January 1, 2008, the Commission will need four to six months to prepare new registration and disclosure forms, prepare new fact sheets, and educate the regulated community on the various provisions in the new ordinance. Accordingly, the Commission respectfully requests that the Council President consider docketing this issue for City Council consideration in June (possibly after the City Council addresses final budget modifications on June 11).

At the March 7, 2007, Rules Committee meeting, the City Attorney indicated that he intends to conduct a legal analysis of the Commission’s proposed reforms. The Ethics Commission

President and Members of the City Council

April 16, 2007

Page 5

respectfully requests, therefore, that the City Attorney present the results of his analysis to the City Council as soon as possible to facilitate docketing of this issue in June.

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cc: Catherine Bradley, Chief Deputy City Attorney
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