CITY OF SAN DIEGO
ETHICS COMMISSION

Office of the Executive Director

MEMORANDUM

DATE: June 25, 2009

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stephen Ross, Program Manager

SUBJECT: 2008 and 2009 Proposed Amendments to the Municipal Lobbying Ordinance Docketed for Ethics Commission consideration on July 9, 2009

On August 14, 2008, and September 11, 2008, the Ethics Commission discussed a number of amendments to the Lobbying Ordinance, and approved those amendments at its September 11, 2008, meeting. The amendments were subsequently approved by the Rules Committee on October 8, 2008. Because of scheduling difficulties, however, the amendments never came before the full City Council. Because there are four new City Council members and a new composition of the Rules Committee, it is appropriate to recommence the review process. In conjunction with the amendments previously approved by the Commission and the Rules Committee, Commission staff is proposing additional changes designed to clarify certain aspects of the Ordinance and to provide more guidance to organization lobbyists in connection with transitioning from one year's registration to the next. The proposed amendments in strikeout format (dated June 8, 2009) contain both the 2008 proposed changes (approved by the Commission and Rules Committee, but not the City Council) and the changes being proposed by staff for the first time in 2009.

2008 PROPOSALS – SUMMARY OF COMMISSION RECOMMENDATIONS

The following is a summary of the changes approved by the Commission on September 11, 2008. For a more detailed discussion of the underlying rationales for these proposals, please refer to staff's July 31, 2008, memorandum to the Commission.

Issue One – "Lobbying" versus "Lobbying Activities"

In 2008, the Commission advocated replacing the term "lobbying activities" with "lobbying" throughout most of the Lobbying Ordinance, such that the term "lobbying activities" will apply solely to the issue of lobbying firms calculating the compensation they receive for lobbying and related activities. Thus, engaging in lobbying related activities will not trigger reporting requirements unless and until an actual lobbying contact takes place.

Issue Two – Definition of "Lobbyist"

In 2008, the Commission approved amending the definition of "lobbyist" to expressly exclude volunteer non-officers of an organization from the scope of the Lobbying Ordinance. In addition,

the Commission recommended that the chairperson of an organization's board of directors be the only volunteer member of an organization who is subject to the Ordinance.

Issue Three – Disclosure Requirements for Quarters with No Lobbying

Lobbying firms often have quarters during which they have no lobbying contacts for a particular client. In 2008, the Commission recommended amending section 27.4017(a)(2)(E) to require a lobbying firm to affirmatively state on its quarterly report that it engaged in no lobbying for the client during the reporting period, rather than report nothing for that client.

Issue Four – Campaign Activities of Uncompensated Officers Who Lobby

This issue pertains to the disclosure obligations of volunteer officers who lobby, and who are therefore required to disclose their fundraising activities, contributions, campaign contracts, and City contracts. In 2008, the Commission approved changes to section 27.4017(b)(4)-(8) that would expressly limit the application of these disclosure requirements to the chairperson of the organization's board of directors.

Issue Five – Definition of "Officer"

There has been some confusion regarding who is an "officer," particularly with respect to the volunteer members of an organization's board of directors. As discussed above, in 2008, the Commission recommended limiting the application of the Ordinance to the board of director's chairperson, thus removing all other volunteers from the scope of the Ordinance.

Issue Six – Contact Needed Before Registration Requirement

In 2008, the Commission approved changes to section 27.4009(a)(6), clarifying that a lobbying firm is required to register a client only if the firm has had at least one lobbying contact on behalf of that client.

Issue Seven – Amending Organization Lobbyist's Registration Form

The current Ordinance requires that an organization lobbyist, upon registering, disclose only the municipal decisions it sought to influence during the 60 days prior to its filing date. An organization need not, however, amend its Registration Form when lobbying on a new municipal decision. In 2008, the Commission recommended adding additional language to section 27.4009(b)(5) to require organizations to amend their Registration Form when lobbying on new matters.

Issue Eight – Number of Contacts

In 2008, the Commission recommended maintaining the current requirement that organization lobbyists report the number of their lobbying contacts.

Issue Nine – Amount of Compensation

In 2008, the Commission recommended maintaining the current requirement that lobbying firms report the amount of compensation they receive for lobbying activities, rounded to the nearest thousand dollars.

Issue Ten – Communications with Lower Level City Employees

In 2008, the Commission approved an amendment to the definition of "lobbying activities" to require lobbying firms, when determining the compensation they receive from clients, to include communications they have with lower level City employees that are related to an attempt to influence a municipal decision.

Issue Eleven – Contributions by Form or Organization

In 2008, the Commission agreed that contributions made to a candidate-controlled ballot measure committee by a lobbying firm or organization lobbyist should be disclosed on the quarterly disclosure report.

Issue Twelve – Separate Fundraising Activity

In 2008, the Commission recommended clarifying in sections 27.4017(a)(6) and 27.4017(b)(6) that the fundraising activity dollar threshold applies to the aggregate efforts made during the reporting period, not to each instance of such activity.

Issue Thirteen – Campaign Workers Paid on Contingency Basis

In 2008, the Commission approved amendments to sections 27.4017(a)(7) and 27.4017(b)(7) that require the disclosure of individuals who provide campaign services to a candidate or a candidate-controlled committee during the reporting period on a contingency ("win bonus") basis.

2009 STAFF PROPOSALS

The following staff proposals supplement the amendments discussed above.

Issue A – Definition of "chairperson" (§ 27.4002)

As discussed above, the Commission previously approved the addition of a newly defined term, "chairperson" as part of a desire to exclude from the Lobbying Ordinance all volunteer officers of an organization other than the chairperson of the organization's board of directors. Since that time, staff has learned that some organizations have a "board president" rather than a "chairperson." Thus, the proposed amendments change the definition of "chairperson" to include the person who holds the highest position of authority on an organization's board of directors, even if that person has a title other than "chairperson." The proposal also expands the definition to include persons acting in a temporary capacity, e.g., "acting Chairperson."

Issue B – Definition of "contribution" (§ 27.4002)

This amendment will make "contribution" a defined term, and expressly state that the term includes payments made to a candidate's or elected official's professional expense committee (i.e., legal defense fund committee).

Issue C – Definition of "gift" (§ 27.4002)

The proposal provides the Commission with four options relating to the definition of "gift." Presently, for purposes of the Lobbying Ordinance, a "gift" does not include a ticket or invitation

to an event held for a non-profit entity. Staff has realized that the term "event held for a non-profit entity" may be too broad and could be interpreted to include a situation where a handful of members of a non-profit entity take a City Official out to dinner, a situation not contemplated by the City Council when it proposed and adopted this particular exemption. Thus, staff has proposed several options for policy consideration:

Option 1: No changes.

Option 2: Mirror the gift rules that apply to City Officials in the Ethics Ordinance (i.e., a single ticket to a fundraising event hosted by a non-profit entity and given to the official by that entity).

Option 3: Limit the exemption to an itemized list of events hosted by a non-profit entity.

Option 4: Limit the exemption to events held for a non-profit entity's full membership.

Please refer to the attached strike-out for specific language associated with the various options.

Issue D – Definition of "lobbyist" (§ 27.4002)

Under the current Lobbying Ordinance, lobbying firms and organization lobbyists identify on their registration forms the names of individuals they anticipate will lobby or that they are authorizing to lobby. This allows an entity to disclose the names of all actual and prospective lobbyists without having to amend its registration forms repeatedly throughout the year as individuals start lobbying.

Under the current definition of "lobbyist," however, these prospective lobbyists aren't technically "lobbyists" until they start engaging in lobbying activities, and under the revision approved in 2008, wouldn't be "lobbyists" until they have an actual lobbying contact. The Lobbying Ordinance does not expressly require that firms or organizations disclose a prospective lobbyist's fundraising activities, campaign contributions, campaign services, or City contracts. As a result, a prospective lobbyist could hold a fundraiser for an elected City Official one quarter and lobby that elected City Official the following quarter, and the details regarding those fundraising activities would never be disclosed.

Because it would be cumbersome and burdensome to require firms and organizations to amend their registration forms each time a prospective lobbyist becomes an actual lobbyist (as well as defeat one of the main purposes for allowing prospective lobbyists to be identified), staff recommends that the definition of "lobbyist" be amended to include anyone who has been designated by a lobbying firm or organization lobbyist on its registration form as being expected or authorized to lobby. Under this proposal, an organization lobbyist could either (a) designate an individual as being authorized to lobby and simultaneously disclose that individual's fundraising activities, etc., or (b) decide not to designate an individual as being authorized to lobby, and in that instance not make any disclosures about that person unless and until he or she was so authorized.

Option 1: No changes to the amendments approved by the Commission in 2008.

Option 2: Add to the definition of "lobbyist" approved by the Commission in 2008 a statement that the term includes any person designated on a registration form as being authorized or expected to lobby.

Issue E – Registration Renewal (Meeting the Threshold) (§ 27.4007(d),(e),(f))

The Lobbying Ordinance currently provides little guidance to organization lobbyists with respect to renewing their registration. In particular, when counting lobbying contacts made over the past 60 days, should an organization lobbyist have to count contacts that were made the previous year when such contacts were (or will be) reported on the quarterly disclosure report for the fourth quarter of the previous year? In other words, should an organization have to re-register in January even if it finished all of its lobbying efforts the previous November or December, and hasn't done any lobbying in January? Staff proposes three options to establish and clarify the appropriate policy:

Option 1: All contacts made in the previous 60 days count toward the "10 contacts in 60 days" threshold, even if they took place in the prior calendar year.

Option 2: No contact that took place in the prior calendar year count toward the "10 contacts in 60 days" threshold.

Option 3: Contacts made in the prior calendar year will count toward the "10 contacts in 60 days" threshold only if the organization is continuing to lobby in the current calendar year.

Issue F – Registration Renewal (Reporting Contacts and Decisions) (§ 27.4009(b)(4),(5))

Staff recommends that the registration form's filing requirements be consistent with the policy decision discussed in the previous section. Currently, the law requires an organization lobbyist to identify the number of contacts it made during the previous 60 days. To ensure consistency with the registration renewal criteria, staff recommends that contacts counted for purposes of renewing a registration also be counted for purposes of disclosure on the registration form. Similarly, staff recommends that municipal decisions lobbied on in the prior year be identified on the registration form if contacts associated with those decisions are counted for purposes of renewing a registration. Conversely, if those contacts are not counted for purposes of registration renewal, staff recommends that they not be counted for purposes of disclosure.

Option 1: Report all contacts made during the previous 60 days, <u>even if</u> they took place in the prior calendar year; report all decisions lobbied on during the previous 60 days and the outcome sought, <u>even if</u> the lobbying took place in the prior calendar year. (Consistent with Options 1 & 3 for section 27.4007(f).

Option 2: Report all contacts made during the previous 60 days, <u>unless</u> they took place in the prior calendar year; report all decisions lobbied on during the previous 60 days and the outcome sought but <u>only if</u> still lobbying on those decisions in the current calendar year. (Consistent with Option 2 for section 27.4007(f)).

Issue G – Contingency Fee Reporting (§ 27.4017(a)(2)(A))

Currently, the Lobbying Ordinance permits lobbying firms to write "zero" when disclosing the compensation amount for both pro bono clients and contingency clients who have not yet incurred a debt to the firm. As a result, the public has no way of discerning between these two situations. Moreover, because a firm may engage in contingency lobbying in one quarter but not become entitled to those fees until a subsequent quarter, some contingency fees earned may never be reported under the current Ordinance. Therefore, to ensure that all relevant information is provided to the public, staff is recommending two additional reporting requirements:

1. Require lobbying firms to disclose whether they lobbied on a contingency basis during the reporting period without becoming entitled to receive the contingent amount (i.e., check a box on the form); and,

2. Require lobbying firms to include in their reportable compensation any fees they became entitled to receive during the quarter for contingency lobbying that was performed in a previous quarter.

Issue H – Cleanup Amendments (§§ 27.4002, 27.4009, 27.4017)

In addition to the more substantive changes discussed above, staff is proposing the following housekeeping amendments:

1. Italicize instances of newly defined term "contribution."

2. Delete all instances of language excluding pre-2007 fundraising activities, contributions, campaign-related services, and contract services; all such activities now pre-date the two year look-back provisions in the Ordinance.

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