



MEMORANDUM

DATE: March 8, 2019

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Lobbyist Disclosure of Activity Expenses
Docketed for Ethics Commission Consideration on March 14, 2019

Since 1998, the City's Municipal Lobbying Ordinance has required the disclosure of "activity expenses," which are defined as follows:

Activity Expense means any payment made to, or on behalf of, any City Official or any member of a City Official's immediate family, by a lobbyist, lobbying firm, or organization lobbyist. Activity expenses include gifts, meals, consulting fees, salaries, and any other form of compensation to a City Official or a City Official's immediate family, but do not include contributions.

San Diego Municipal Code section 27.4002.

Although the Ethics Commission was not established when this disclosure requirement was adopted, its purpose is relatively self-evident: to alert the public when lobbying entities provide financial benefits to City Officials given that such payments could create the appearance that such officials were unduly influenced in their decision-making process. This requirement, however, also results in the disclosure of information with no connection between the subject matter of an entity's lobbying efforts and the City Official benefitting from an activity expense. Consider, for example, the following hypothetical scenarios:

- A law firm registers as a Lobbying Firm in order to disclose its lobbying efforts on behalf of a developer. The firm employs a receptionist who is married to a Deputy Director in the City's Human Resources Department. Even though the firm will not be lobbying the Human Resources Department, the receptionist's salary and benefits must be disclosed on its quarterly reports.

- A company registers as an Organization Lobbyist because it plans to lobby on a municipal decision concerning short term rental regulations. One of the company's employees has volunteered to serve on the Civil Service Commission (and thereby become a "City Official"). Even though the company will not be lobbying the Civil Service Commission, it must disclose the employee's salary and benefits on its quarterly reports.

In light of the potentially unintended consequences illustrated above, the Commission may want to consider recommending amendments to the City's lobbying laws to limit the disclosure of activity expenses to situations in which there is a nexus between an entity's lobbying efforts and the City Official benefitting from the payment. The definition of "activity expense" in the Lobbying Ordinance could, for example, be amended to only encompass payments made to a City Official or a member of his or her immediate family by lobbying entities that have lobbied the official's department, agency, or board within the past 12 months, or that may reasonably be expected to do so within the next 12 months.

For comparison purposes, research conducted by staff shows that the State's lobbying laws, as well as those in place in San Francisco, contain similar language requiring a connection between a lobbying effort and the City Official benefitting from the activity expense.

On a separate but related note, staff has received suggestions from several lobbying entities that employment-related activity expenses should be disclosed in dollar ranges rather than specific amounts. The proposed change would serve two purposes: (1) it would make it simpler for the filer because it is easier to calculate a range than an exact amount of compensation (which includes all types of employment benefits); and (2) it would afford some measure of privacy for the individuals receiving the compensation. If the Commission is amenable to this suggestion, staff recommends the following ranges: \$11¹ - \$2,500; \$2,501 - \$10,000; \$10,001 - \$25,000; and over \$25,000. (These ranges are modeled on those provided on the annual Statement of Economic Interest Form 700 but divided by four because the lobbyist disclosures are filed quarterly.) For comparison purposes, research conducted by Commission staff shows that San Francisco requires ranges for the disclosure of employment-related activity expenses (other jurisdictions require specific dollar amounts).

On a final note, the City Clerk's Office has advised staff that the software vendor who administers the City's electronic filing system estimates that the cost to implement the dollar range disclosures will be \$5,000 to \$10,000. If the Commission recommends this change, and if it is approved by the City Council, a funding source will need to be identified by the Mayor and/or City Council.

¹ The City's lobbying laws require the disclosure of "activity expenses" (which include gifts) only when valued at more than \$10 so that lobbyists don't have to report nominal gifts that fall within the \$10 per month gift limit.