

## FACT SHEET ON EXCEPTIONS TO THE LOBBYING ORDINANCE

The City's Lobbying Ordinance imposes registration and reporting requirements for entities that lobby the City. Some entities and activities, however, are exempt from these requirements. This fact sheet is designed to offer general guidance to prospective lobbyists with regard to factors that may exclude them or their activities from the scope of the Lobbying Ordinance, but should not be considered a substitute for the actual language contained in the ordinance.

- ❖ The Lobbying Ordinance does not apply to a public official acting in his or her official capacity, or to a government employee acting within the scope of his or her employment. For example, a County employee does not become a "lobbyist" when he or she is seeking to influence a City decision. In addition, lobbying by a consultant hired by a public entity to communicate with the City on behalf of that public entity is not subject to the Lobbying Ordinance.
- ❖ Communications pertaining to bidding on contracts through the City's competitive bid process do not generally fall within the scope of the Lobbying Ordinance. In other words, bids and responses to requests for proposals or qualifications are not lobbying contacts. Note, however, that this exception does not exempt communications that are outside of the City's established bid procedures.
- ❖ Negotiating the terms of an officially authorized City contract is not lobbying. If, for example, a company is awarded a contract through the request for proposal process, negotiating the terms of that contract would not be lobbying. On the other hand, attempting to influence a city official to extend the length of that contract would fall outside of the exception.
- ❖ The act of requesting advice or an interpretation of a City law, regulation, or policy from a City Official does not constitute lobbying. For example, contacting the City Attorney's office for an interpretation of a City law would fall outside the scope of the Lobbying Ordinance. Providing the City Attorney's office with reasons to change the language of an ordinance being submitted to the City Council, however, would be considered lobbying.
- ❖ There is an attorney-litigation exception for communications involving pending or actual litigation or administrative enforcement actions. For example, an attorney who communicates with members of the Civil Service Commission regarding a pending civil service matter would not be engaging in lobbying. Note that this exception is narrow and applies only to "pending or actual" litigation. It does not apply to other types of contentious matters, even if it is likely that the parties involved in a particular matter will eventually litigate their disputes. For example, an attorney who contacts a city official to influence a pending land use decision is engaging in lobbying.
- ❖ Communications regarding purely ministerial actions (i.e., actions that do not require a city official to exercise discretion concerning an outcome) are not considered lobbying. For example, making arrangements to meet with a City Official would be considered "ministerial" (although the meeting itself could involve "lobbying").
- ❖ Communicating with City employees who are not city officials is not considered lobbying. See the Fact Sheet entitled "Am I a Lobbyist?" for a list of city official positions. If your activities are limited to contacts with other types of City employees (for example, plan checkers, engineers, program managers, etc.) then your activities are not regulated by the Lobbying Ordinance.

- ❖ Communications concerning collective bargaining agreements (CBA) and memorandums of understanding (MOU) between the City and a union are not considered lobbying. Note, however, that if a union representative seeks to influence a municipal decision not directly related to the applicable CBA or MOU, then “lobbying” is taking place. For example, a union leader who meets with the Independent Budget Analyst to influence a decision involving outsourcing of City services is making a lobbying contact.
- ❖ A person who receives a subpoena or other legal request to provide information to the City is not lobbying the City when he or she provides information to the City in response to that request.
- ❖ A person’s direct response to an enforcement proceeding with the City does not constitute a lobbying contact. For example, if the City initiates a code enforcement action against a person for a noise violation, that person does not become a lobbyist by filing a response to a notice of violation. On the other hand, a lobbying contact would occur if that same person went outside the scope of the code enforcement process by meeting with a City Councilmember to try to convince the Councilmember to have the matter dismissed.
- ❖ A person who communicates with city officials by speaking at a public hearing is not making a lobbying contact. Public hearings include City Council meetings, Council committee meetings, City board and commission meetings, and any other meeting subject to the noticing requirements of the Ralph M. Brown Act. Such communications do not count toward the contacts threshold for organization lobbyists. In addition, the identity of the City Officials present at such meetings need not be reported on a lobbying firm’s or organization lobbyist’s disclosure forms.
- ❖ A contact that is limited to the submission of documents that become part of the record of a public hearing is not a lobbying “contact.” Note that you do not obtain this exemption simply by sending a document to a Councilmember or the City Clerk. For City Council meetings; the exemption applies only to documents that the City Clerk receives and associates with an item on an upcoming docket.
- ❖ A person who provides purely technical data or analysis to a city official does not become a lobbyist unless he or she engages in other actions to influence a municipal decision. For example, a soils engineer who prepares a report detailing an inspection of property that is the subject of a municipal decision would not be “lobbying” simply by providing that report to a city official. That same person, however, would become a lobbyist if he or she communicated with the city official beyond the technical scope of the document. If, for example, the soils engineer informs a city official of community opposition to a project, he or she is “lobbying.”
- ❖ News items, editorials, and comments made in the ordinary course of business by a newspaper, magazine, radio station, or television station do not qualify as communications subject to the Lobbying Ordinance. Keep in mind, however, that this exception does not preclude the possibility that media outlets may still engage in “lobbying.” For example, if a paid member of a newspaper’s editorial board contacts city officials on behalf of the newspaper in an attempt to influence an upcoming municipal decision, that newspaper could become an organization lobbyist.
- ❖ Communicating through an internet website that is accessible to the general public is not considered lobbying. For example, the Voice of San Diego, an online-only publication, does not become a lobbyist when printing news stories or editorials that seek to influence the actions of city officials. In addition, a person writing a blog (web log) encouraging particular action by city officials is not lobbying so long as that blog is accessible to the general public.
- ❖ Communications by volunteers (including the uncompensated members of an organization’s board of directors) are not subject to the Lobbying Ordinance.

- ❖ Finally, communicating with a city official regarding matters that do not involve a “municipal decision” is not “lobbying.” For example, speaking with someone in the Mayor’s office regarding filling a pothole on your street is not a lobbying contact. In other words, not all decisions by city officials are “municipal decisions.” You are not required to disclose meetings and telephone calls with city officials unless you are discussing something that involves an actual “municipal decision,” a term that is limited by the Lobbying Ordinance to matters that:
  - ✓ will require a decision by the City Council, a Council Committee, or a City Board (such as the Planning Commission, Commission for Arts and Culture, Retirement Board, etc.);
  - ✓ relate to a city official making a report to the City Council, a City Council Committee, or the Mayor;
  - ✓ involve making a City contract; or,
  - ✓ pertain to a quasi-judicial decision, such as decisions on Process 2 through 5 projects under the City’s land development procedures, granting or denying City permits and licenses, and debarment proceedings.

If you have any questions concerning exemptions to the City of San Diego’s Lobbying Ordinance, please contact the ethics commission at (619) 533-3476.

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