

MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: CAROL W. LYNCH, CITY ATTORNEY
DATE: JULY 7, 2009
SUBJECT: PROPOSED LOBBYIST ORDINANCE
REVIEWED: CAROLYN LEHR *cl*

RECOMMENDATION

Provide direction to the City Attorney whether to draft a Lobbyist Ordinance for the City.

BACKGROUND

At a previous City Council meeting, a member of the public suggested to the City Council that the City Council should adopt an ordinance regulating individuals who lobby within the City. Other cities, including Fairfield, El Segundo, Beverly Hills, and West Hollywood, have adopted such ordinances, and Staff has attached their ordinances to this report as samples. The City of Los Angeles also has a lobbyist ordinance, which is substantially longer and more complex than the rest; therefore, it is not attached to this report.

ANALYSIS

State law does not require the City to adopt an ordinance regulating lobbyists. Most of the ordinances define various terms, such as the term "lobbyist" and also may define other terms, such as: "attempting to influence," "compensation," and "direct communication." Most ordinances require a lobbyist to register with the city and provide information as part of the registration process, which may include his or her name, contact information, for whom or what entity he or she lobbies, and/or a description of the subject matter of the lobbying. This information would be registered with the City Clerk prior to meeting with an elected or appointed City official.

Typically, such an ordinance is passed for the stated purpose of public disclosure and transparency, since it requires disclosure of who is representing whom and how much money the lobbyist earns from the representation. The Rancho Palos Verdes City Council Members already routinely publicly disclose, as part of the City Council Oral Reports portion of agendas for City Council meetings, their substantive discussions with various parties.

Accordingly, the Council should consider whether such an ordinance is necessary and would aid in public transparency.

FISCAL IMPACT

The fiscal impact of such an ordinance would be the attorney time that is needed to draft it, which would not be significant. The more significant impact would be the Staff time that is necessary to administer the process by which lobbyists would register with the City.

Attachments:

Exhibit A: City of Fairfield Lobbying Ordinance

Exhibit B: City of El Segundo City Lobbyist Ordinance

Exhibit C: City of Beverly Hills Municipal Lobbying Ordinance

Exhibit D: City of West Hollywood Lobbying Ordinance

W:\City Attorney\City Atty Staff Reports, Attachments, Other Staff Reports, Misc Docs\2009\20090707 revised Staff report on lobbyist ordinance.DOC

ORDINANCE NO. 2008 - ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF FAIRFIELD ADDING A NEW CHAPTER 5C TO THE FAIRFIELD CITY
CODE REGULATING LOBBYING**

THE CITY COUNCIL OF THE CITY OF FAIRFIELD DOES ORDAIN AS
FOLLOWS:

SECTION 1. A new Chapter 5C is hereby added to the Fairfield City Code to
read as follows:

"Section 5C.1 **Findings.** The City Council finds as follows:

- A. City Government functions to serve the needs of all citizens.
- B. The citizens of the City of Fairfield have a right to know the identity of interests which attempt to influence decisions of City government, as well as the means employed by those interests.
- C. All persons engaged in compensated lobbying activities aimed at influencing decisions by City government must, when so engaged, be subject to the same regulations, restrictions and requirements, regardless of their background, training or other professional qualifications or license.
- D. Complete public disclosure of the full range of activities by and financing of lobbyists and those who employ their services is essential to the maintenance of citizen confidence in the integrity of local government.
- E. It is in the public interest to ensure that lobbyists do not misrepresent facts, their positions, or attempt to deceive officials through false communications, do not place City officials under personal obligation to themselves or their clients, and do not represent that they can control the actions of City officials.

Section 5C.2 **Lobbying – Defined.** "Lobbyist" shall mean any individual, organization, or business entity that is employed or retained or who contracts for economic or other consideration to communicate with any officer, employee, or elected official of the City of Fairfield for the purpose of influencing a legislative or administrative action on behalf of any other person.

Section 5C.3 **Exemptions.**

The following persons are exempt from the requirements of this Article:

- A. Any public official acting in his or her official capacity, and any government employee acting within the scope of his or her employment.
- B. A newspaper or other regularly published periodical, website, radio or television station or network, including any individual who owns, publishes or is employed by such newspaper, website, periodical or station or network, when, in the ordinary course of its business, it publishes or broadcasts news, editorials or other comments, or paid advertising, which directly or indirectly attempts to influence action on municipal legislation. This exemption does not apply to any other action by any such newspaper, periodical, station or network, or by any such person, to attempt to influence municipal legislation, if such activity is otherwise regulated by this Article.
- C. A person acting without any compensation or consideration other than reimbursement or payment of reasonable travel expenses.
- D. A person or organization that contracts with the City to provide consulting services to the City related to an election.
- E. A person or organization who contracts with the City to represent the City in matters before any other governmental body.
- F. A person who is employed by a business entity or organization who advocates on behalf of that entity or organization, rather than a third party, and who clearly identifies his or her employment by that entity or organization in all dealings with the City.

Section 5C.4 Prohibitions

No lobbyist subject to the requirements of this Article shall:

- A. Do any act with the purpose and intent of placing any City official under personal obligation to the lobbyist, the lobbying firm, or to the lobbyist's or firm's employer or client.
- B. Fraudulently deceive or attempt to deceive any City official with regard to any material fact pertinent to any pending or proposed municipal legislation.
- C. Cause or influence the introduction of any municipal legislation for the purpose of thereafter being employed or retained to secure its passage or defeat.
- D. Cause any communication to be sent to any City official in the name of any nonexistent person or in the name of any existing person without the consent of such person.

Section 5C.5

Registration and Reporting Statements

- A. **Registration Statement.** Prior to conducting any activities for the purpose of influencing any action by the City of Fairfield, any lobbyist shall register with the City Clerk by filing a written statement containing:
1. The lobbyist's full name, business address and telephone number;
 2. The name, business address and telephone number of any individual or entity by whom the lobbyist is employed or with whom he or she contracts to perform lobbying services in the City; and
 3. A description of the subject matter of the lobbyist's engagement.
- B. **Reporting Statement.** Every six months, the lobbyist shall file a written statement with the City Clerk reporting the compensation received for lobbying activities within the City of Fairfield. The Report shall list all sources of compensation for lobbying activities, and the amount of compensation received from each source. The Reporting Statement shall be filed according to the following schedule:
1. By July 31 of each year, the lobbyist shall submit a Reporting Statement reflecting the compensation received between January 1 and June 30 in the same year.
 2. By January 31 of each year, the lobbyist shall submit a Reporting Statement reflecting the compensation received between July 1 and December 31 in the immediately preceding year.

Section 5C.6

Registration Fee.

The City Clerk may charge a fee for the filing, amendment, and/or renewal of a registration, the amount of which shall be determined by resolution of the City Council.

Section 5C.7

Registration – Time.

Every lobbyist required to file a registration statement under this chapter shall register with the City Clerk no later than ten days after being engaged as a lobbyist, and shall renew the registration annually as required by this Chapter.

Section 5C.8

Registration – Duration.

Registration shall be renewed with the City Clerk on an annual basis between July 15th and July 31st of each year. Registration shall be valid for one year.

Section 5C.9

Amendment of Registration Information.

If any change occurs concerning any of the registration information required to be filed by this Chapter, the lobbyist shall file an amendment reflecting the change within ten days of the change.

Section 5C.10 **Notice of Termination**

Lobbyists may file a notice of termination with the City Clerk within ten days after ceasing all activity which required registration.

Section 5C.11 **Penalties.**

- A. Any person who violates any of the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$1,000 per violation. As an alternative to the criminal enforcement of this Chapter, any person who violates any of the provisions of this Chapter shall be subject to the issuance of an Administrative Citation pursuant to Sections 1.10 to 1.18 of this Code. Notwithstanding the provisions of Section 1.12(d), the amount of the fine to be assessed for a violation of this Chapter shall be \$1,000 per violation.
- B. In any judicial proceeding to enforce the provisions of this Chapter, if a court determines that a violation was intentional, the court may order that the defendant be prohibited from acting as a lobbyist or otherwise attempting to influence municipal legislation for one year.
- C. If two or more persons are responsible for any violation, they shall be jointly and severally liable.”

SECTION 2. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council of the City of Fairfield hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. Pursuant to 14 California Code of Regulations § 15061(b)(3), this Ordinance is categorically exempt from the California Environmental Quality Act in that the City Council of the City of Fairfield finds there is no possibility that the implementation of this Ordinance will have significant effects on the environment.

SECTION 4. This Ordinance shall be effective 30 days following its adoption by the City Council. A summary of this Ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

INTRODUCED at a regular meeting of the Fairfield City Council of the City of Fairfield on the ____ day of _____, 2008 and

PASSED AND ADOPTED this ____ day of _____, 2008, by the following vote:

AYES:	Councilmembers	_____
NOES:	Councilmembers	_____
ABSENT:	Councilmembers	_____
ABSTAIN:	Councilmembers	_____

MAYOR

ATTEST:

City Clerk

Exhibit B: City of El Segundo

1-8-4: CITY LOBBYISTS:

- A. Defined: The following shall be considered a "City lobbyist" and be subject to the provisions of this Chapter:

Any person, business entity or other organization which is employed, contracts or otherwise receives value of fifty dollars (\$50.00) or more, in any form whatsoever in a twelve (12) month period, to communicate directly or through agents, employees or subcontractors with any elected or appointed City official, employee or agent for the purpose of influencing any City legislative or administrative action on behalf of any other person, business entity, or organization. Provided, however, a City lobbyist shall not include:

1. An elected or appointed public official or public employee when acting in his or her official capacity as an elected or appointed public official or public employee.
2. A newspaper or other regularly published periodical, radio or television station (including any individual who owns, publishes or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge action upon City legislative or administrative action.
3. An attorney providing legal representation to a person, business entity or other organization which is a party to an administrative proceeding with the City.
4. An employee who has been employed on a full-time basis, forty (40) hours per week or more ("full time employee"), at the time the employee attempts to influence a City legislative or administrative action on behalf of his/her employer with respect to a proposed City legislative or administrative action.

- B. Registration: Prior to communicating with an elected or appointed City official, City employee or City agent about any potential City legislative or administrative action, each City lobbyist shall file with the City Clerk a statement under oath which contains the following information:

1. The full name, business and home addresses and telephone numbers of the City lobbyist;
2. The names of all persons, business entities or other organizations that the City lobbyist is performing lobbying services on behalf; and

3. A statement that the City lobbyist has read and understands the provisions of this Chapter.
- C. Disclosure Requirement; City Lobbyists And Full-Time Employees: City lobbyists shall not communicate with an elected or appointed official, City employee, or City agent about any potential City legislative or administrative action on behalf of any other person or business entity, other organization without first disclosing their status as a City lobbyist and the name of the person, business entity or other organization which has engaged the services of the City lobbyist. A full-time employee shall disclose his/her status as employee and the name of his/her employer when communicating with an elected or appointed City official, City employee or City agent on behalf of his/her employer about a legislative or administrative action.
 - D. Violations; Penalty: Any violation of subsection 1-8-4B or C of this Section shall be a misdemeanor and punishable as provided in Section 1-2-1 of this Code. (Ord. 1256, 7-16-1996; amd. 2000 Code)

Exhibit C: City of Beverly Hills

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS IMPOSING REGISTRATION REQUIREMENTS FOR COMPENSATED CITY LOBBYISTS AND AMENDING THE MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1: Chapter 9 is hereby added to Title 1 of the Beverly Hills Municipal Code, to read as follows:

“CHAPTER 9. COMPENSATED LOBBYISTS

Sec. 1-9.01. Title and Findings.

This Chapter shall be referred to as the Beverly Hills Municipal Lobbying Ordinance. In adopting this Ordinance, the City Council makes the following findings:

- A. City government functions to serve the interests of all citizens.
- B. The citizens of Beverly Hills have a right to know the identity of interests which attempt to influence the decisions of City government through compensated representatives.
- C. Complete disclosure of the efforts and financing of lobbyists is essential to maintaining public confidence in the integrity of City government.
- D. It is in the public interest to ensure that lobbyists do not misrepresent facts, the positions of their clients or others, or otherwise attempt to mislead or deceive City decision-makers.

Sec. 1-9.02. Definitions.

The following terms used in this Chapter shall have the meanings set forth below. For any term not specifically defined herein, the definitions shall be as set forth in the California Political Reform Act of 1974, as amended, and in the regulations of the California Fair Political Practices Commission, if defined therein.

“Attempting to Influence” means promoting, supporting, opposing, seeking to modify, or seeking to delay municipal legislation by any means, including, without limitation, providing or generating political contacts, presenting information, statistical analyses or studies.

“City Official” means the Mayor, any member of the City Council and any member of the Planning Commission.

“Compensation” means monetary or in-kind payment or remuneration for engaging in lobbying activities. Compensation does not include reimbursement of or payments for reasonable travel or business expenses, such as copying, telephone charges and meals.

“Direct Communication” means appearing as a witness before, talking to (either in person or by telephone), corresponding with, or answering questions or inquiries from, any City Official either personally or through an agent who acts under one’s direct supervision or control.

“Lobbying Activities” include the following and similar conduct for compensation when the conduct is related to attempting to influence municipal legislation:

- A. Engaging in, either personally or through an agent, written, electronic, or oral direct communication with a City Official;
- B. Drafting ordinances, resolutions, or regulations;
- C. Attempting to influence the position of any third party on municipal legislation or an issue relating to municipal legislation by any means, including but not limited to engaging in community or media relations activities;
- D. Advising clients regarding strategy for lobbying activities.

“Lobbyist” means any individual who is compensated or who is hired, directed, retained or otherwise becomes entitled to be compensated for engaging in lobbying activities.

“Municipal Legislation” means any legislative, quasi-judicial, or administrative matter proposed by or pending before the City Council or Planning Commission. “Municipal Legislation” includes, without limitation, those matters involving the granting, denial, amendment, revocation, or restriction of any license, permit or entitlement for use (including all land use permits); the consideration, adoption, amendment or repeal of all municipal ordinances; and the consideration and award of bids and proposals for City contracts. “Municipal Legislation” does not include purely ministerial actions. A development application shall be considered to be pending before the City Council or Planning Commission once any preliminary material, including an application for concept review, has been filed with the City.

Sec. 1-9.03. Exemptions.

The following persons are exempt from the requirements of this Chapter:

- A. Any public official or employee of a public entity acting in his or her official capacity and within the scope of his or her employment by the public entity.
- B. Any person who is engaging in lobbying activities without compensation.
- C. Any person whose only activity is submitting a bid on a competitively bid contract, who submits a written or oral response to a request for more information, or who participates in an oral interview process. This exemption shall not apply to any person who attempts to influence the actions of any City Official with regard to any such contract outside an interview or public meeting.

Sec. 1-9.04. Prohibitions.

No lobbyist shall knowingly and willfully:

- A. Deceive or attempt to deceive any City Official with regard to any material fact pertinent to any proposed or pending municipal legislation;
- B. Cause any communication to be sent to any City official in the name of a non-existent person, or in the name of a person without the consent of such person.

Sec. 1-9.05. Registration.

- A. A lobbyist shall not engage in lobbying activities that include direct communication with a City Official other than in an open public meeting unless the lobbyist shall have first registered as a lobbyist with the City Clerk on a form provided for that purpose. The registration form shall include the lobbyist's name, telephone number, business address, the identity of the client, and a general description of the matter of municipal legislation the lobbyist is attempting to influence. Copies of each registration form shall be available for public review in the City Clerk's office, and shall be forwarded to each City Official, the City Manager and the City Attorney.
- B. A lobbyist whose lobbying activities consist solely of direct communication with one or more City Officials on the record in an open public meeting shall not be required to register with the City Clerk. However, each such lobbyist shall disclose at the beginning of his or her direct communication the fact that he or she is a compensated lobbyist and the identity of his or her client.

Sec. 1-9.06. Remedies for Violation.

Pursuant to the administrative remedies and procedures set forth in Title 1, Chapter 10, any person who knowingly and willingly violates any provision of this

Chapter may be assessed an administrative penalty not to exceed five-hundred dollars (\$500.00).”

Section 2. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance, and shall cause this ordinance and her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 3. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

THOMAS S. LEVYN
Mayor of the City of
Beverly Hills, California

ATTEST:

NINA WEBSTER (SEAL)
City Clerk

APPROVED AS TO FORM

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

MARK SCOTT
City Manager

Exhibit D: City of West Hollywood

Chapter 2.72 Lobbying

2.72.010 Lobbyist – Defined.

“Lobbyist” shall mean any individual who is employed, retained or contracts for economic consideration to communicate with any elective official or any officer or employee of the City of West Hollywood for the purpose of influencing a legislative or administrative action.

(Ord. 85-44 (part), 1985: prior code § 21000)

2.72.020 Registration.

Prior to conducting any activities for the purpose of influencing any action by the City of West Hollywood, any lobbyist shall register with the City Clerk by filing a written statement containing:

- a. The lobbyist’s full name, business address and telephone number;
- b. The name, business address and telephone number of any individual or entity by whom the lobbyist is employed or with whom he or she contracts to perform lobbying services in the city; and
- c. A description of the subject matter of the lobbyist’s engagement.

(Ord. 97-491 § 1, 1997: Ord. 85-44 (part), 1985: prior code § 21001)

2.72.030 Registration Equivalents.

A lobbyist is deemed to be registered with the City Clerk if he or she has otherwise provided the City of West Hollywood in writing with the information required by Section 2.72.020 or has appeared at a public meeting of the City of West Hollywood and has stated the required information for the record.

(Ord. 85-44 (part), 1985: prior code § 21002)

2.72.040 Registration Fee.

The City Clerk may charge a fee for filing, amending and/or renewal of a registration, the amount of which shall be determined by resolution of the City Council.

(Ord. 97-491 § 2 (part), 1997: prior code § 21003)

2.72.050 Registration – Time.

Every lobbyist required to file a registration statement under this chapter shall register with the City Clerk no later than ten days after being engaged as a lobbyist, and shall renew the registration annually as required in Section 2.72.060.

(Ord. 97-491 § 3 (part), 1997: prior code § 21004)

2.72.060 Registration – Duration.

Registration shall be renewed with the City Clerk on an annual basis between May 21st and June 1st of each year. Registration shall be valid for one year.

(Ord. 97-491 § 3 (part), 1997: prior code § 21005)

2.72.070 Amendment of Registration Information.

If any change occurs concerning any of the information required by Section 2.72.020, the lobbyist shall file an amendment reflecting the change within ten days of the change.

(Ord. 97-491 § 2 (part), 1997: Ord. 85-44 (part), 1985: prior code § 21006)

2.72.080 Notice of Termination.

Lobbyists may file a notice of termination with the City Clerk within ten days after ceasing all activity which required registration.

(Ord. 97-491 § 2 (part), 1997: prior code § 21007)