



Clerk of the Council Office
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Item # 65

City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
June 21, 2022

TOPIC: Lobbyist Ordinance

AGENDA TITLE:

Ordinance Relating to Lobbyist Disclosure Policy

RECOMMENDED ACTION

1. Approve the first reading of an ordinance to implement a Lobbyist Registration Policy.
2. Provide staff direction for registration and penalty fees.

DISCUSSION

At the May 3 meeting of the City Council, Management Partners presented the Santa Ana Lobbyist Registration Assessment dated April 18, 2022. The assessment involved a review of the existing regulations adopted in Santa Ana that affect lobbyists, why public agencies adopt laws and regulations related to lobbying, what is and is not lobbying, and issues related to adoption of lobbyist registration and reporting requirements.

Management Partners researched the definition of lobbyist and the requirements for lobbyists in the following cities:

- Anaheim,
- Bakersfield,
- Los Angeles,
- Long Beach,
- Riverside,
- San Diego,
- Santa Monica, and
- Stockton.

It was determined that Bakersfield, Riverside and Stockton have not adopted regulations requiring registration by lobbyists. The requirements for Anaheim, Los Angeles, Long Beach, San Diego, and Santa Monica were presented and focused on the following:

- The definition of "lobbyist," including any exclusions;

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- Reporting requirements, such as the frequency of disclosures, registration fees, and other prohibited activities; and
- Fines or other penalties for failing to follow the ordinance.

Following the presentation, the Mayor and Council discussed the report and regulations requiring registration by lobbyists in comparable cities and directed that a draft ordinance be prepared for further consideration.

Major observations from the May 3, 2022, meeting which guided the development of the draft ordinance, are provided below.

- The Mayor and City Council support efforts to bring further transparency to government decision-making.
- Lobbyists can organize voices, build momentum for projects and issues, and provide technical or specialized information, but these interests should be balanced with the community's right to know the interests that attempt to influence decisions by government and to evaluate whether these interests create undue influence over decision-makers.
- In November 2021, the Mayor and City Council amended the City's Sunshine Laws. The initial draft of this ordinance included requirements related to lobbyist registration and reporting that should be considered as a new proposed ordinance as developed.
- In defining "lobbyist," emphasis should be placed on people, businesses and other entities including non-profit organizations that are paid to engage decision-makers in a manner to influence a position on an item.
- The definition of "lobbyist" should be based on the amount of compensation received rather than on the number of hours the lobbyist worked. This will facilitate administration of the ordinance and avoid potentially burdensome timekeeping requirements for lobbyists and City staff.
- Residents, community groups, neighborhood associations, and other stakeholders expressing their views to individual Council members or at public meetings should be exempt from lobbyist regulations.
- The names of city officials the lobbyist has spoken to should be disclosed.
- Various penalty options should be considered including a fine as a first offense with additional penalties accruing for flagrant or ongoing violations.
- Language should be clear, and to the extent possible, easy for lobbyists to comply with and for staff to administer. A goal is to ensure program costs are recovered and the program is sustainable.
- Lobbyist registration and reporting should continue to be discussed as a possible Charter amendment.

As suggested, the initial draft of the ordinance that included regulations pertaining to lobbyists developed by the City Attorney's Office was used by Management Partners as a starting point in drafting the new regulations for consideration. Also utilized were the new article and numbering protocols identified therein. New or revised language was

developed to address comments and suggestions made during the May 3, 2022, Council meeting. The draft ordinance, which is included as an attachment to this document, has been reviewed by City Attorney's Office and their changes and suggestions were incorporated.

Highlights of the draft ordinance are provided below.

- Added language related to the purpose and intent of the regulation. Specifically, new language indicates the purpose for enacting these regulations is to promote public confidence and trust, preserve the integrity of local government decision-making, and provide members of the community with access to information about persons and organizations who attempt to influence decisions of City government through the use of paid lobbyists.
- Provided the definition of lobbyist. As there was not a Council majority consensus, staff suggested a threshold amount for the calendar month as an effort to compromise. As written, "lobbyist" is defined as any individual or entity who receives or becomes entitled to receive \$500 or more in consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate, directly or through his/her agents with any elected or appointed official of the City, member of the City Executive Team, or Legislative Body, board or commission of the City, for the purpose of influencing legislative or administrative action of the City of Santa Ana or any regional agency in which Santa Ana has a voting role.
- Expanded the definition of "lobbyist" to include non-profit organizations.
- Added a definition of "client" which is the person who compensates a lobbyist or lobbying firm for the purpose of attempting to influence a legislative or administrative action and the person on whose behalf a lobbyist or lobbying firm attempts to influence such municipal action even if the lobbyist or lobbying firm is compensated by another person for such representation.
- Added language related to the information to be disclosed at the time of registration and established that the registration expires and must be renewed annually.
- Provisions related to the exemptions to the definition of "lobbyist" were retained from the initial draft of the proposed ordinance at the November 16, 2021 Council meeting and were expanded.
- Provisions related to quarterly reporting including information required to be disclosed. Deadlines included in the initial draft of the proposed ordinance were retained and effective dates updated.
- Added language requiring use of the Clerk of the Council's electronic filing system to file online registration forms and disclosure reports. Added language providing that duly authorized owners or officers of lobbying firms shall review the contents and electronically verify under penalty of perjury that s/he believes the contents are true, correct and complete based on personal knowledge or on information and belief.

- Expanded the section related to registration fees to provide that the City Council may, by resolution, set the registration fee as well as fees for renewal and late filing. Staff is seeking direction from Council.
- Retained language that the Clerk of the Council will make all lobbyist registration and disclosure reports available online to the public and make copies available through the Clerk of Council's Office.
- Added language related to the duties of the Clerk of the Council including a provision that the Clerk may issue notices advising of registration and filing obligations. If, within 10 days of the issuance of the notice, the lobbyist complies or furnishes satisfactory evidence that s/he is exempt, a violation will be deemed not to have occurred. This section also requires that registration forms and disclosure reports be maintained for five years.
- Added language that would enable an unregistered lobbyist to make a presentation at a public meeting of the Mayor and City Council after making certain disclosures related to his/her lobbying activities and agreement to register within seven calendar days and pay a late registration fee.

Lobbyist Registration and Disclosure Fees

In addition to the ordinance, fees related to the lobbyist registration and disclosure program shall be set by resolution. Annual review of the fees is encouraged to ensure the costs related to program administration are fully recovered. Other items to be considered in setting the fee are provided below.

- The registration fee should include the cost for the registration of the lobbyist as well as a cost per client. Registration forms and annual and quarterly disclosure reports related to larger firms with more clients will be more complex, requiring more staff time to review and process.
- A penalty for late registration and late filing of disclosure reports should be established to recover the additional costs related to notices and recordkeeping.
- Registration should expire each year and require renewal if the lobbyist continues to qualify for registration. Payment of a renewal fee should cover the costs related to this process and processing of the annual and quarterly reporting requirements.

A preliminary fiscal impact analysis of a lobbyist registration implementation policy and disclosure e-filing module procurement from an existing vendor, NetFile, was conducted. The subscription-based software costs approximately \$10,000 annually to procure. To implement such a policy, the Clerk of the Council recommends that an additional full-time office specialist be hired to fulfill the functions required of the policy which will be requested during the 2022-2023 Mid-Year Budget Update. Staff estimates that the annual personnel cost is \$40,000. In summary, there will be a \$40,000 expense associated with implementation of the lobbyist registration policy. This increase in expenses will require an appropriation adjustment.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action at this time but staff will be requesting the addition of a full-time staff position at the Mid-Year Budget Update to fulfill the functions required by the Lobbyist Disclosure Policy.

EXHIBIT(S)

1. Ordinance

Submitted By: Daisy Gomez, Clerk of the Council

Approved By: Kristine Ridge, City Manager



To: Ms. Daisy Gomez, Clerk of the Council, City of Santa Ana

From: Amy Paul, Corporate Vice President
Andrea Miller, Special Advisor
Leonard Hyman, Senior Management Analyst

Subject: Santa Ana Lobbyist Registration Assessment

Date: May 3, 2022

Executive Summary

Management Partners was engaged by the City of Santa Ana to research lobbyist regulations adopted in peer cities and use this research to assess current requirements, the relationship between existing state and local reporting regulations, and present best practices in comparable agencies for consideration as part of Council's ongoing efforts to promote transparency in government decision-making.

Background

Santa Ana has adopted regulations that affect lobbyists. These regulations generally supplement state-required reporting such as Campaign Contribution Reports (Fair Political Practices Commission, FPPC Form 460), Statement of Economic Interests – Conflict of Interest Code Filing (Fair Political Practices Commission, FPPC Form 700) and Behested Payment Reports (Fair Political Practices Commission, FPPC Form 803) as well as establish restrictions on making and receiving gifts and public access to campaign contributions.

Public Official Gift Restrictions

Section 2-583 of the Santa Ana Municipal Code prohibits persons doing business with the City from making gifts to City officers or employees who, by virtue of their employment, could make or participate in a governmental decision or use his/her official position to influence a governmental decision regarding pending business of the donor. The section precludes donations or gifts within 12 months of any governmental decision and prohibits public officers or employees from soliciting and/or accepting gifts from any person whom he or she knows, or has reason to know, is doing business with the City or has done business within the preceding 12 months. Gifts from unknown donors are also prohibited by Section 2-583.

Public Access to Lobbyist Information

Public access to forms disclosing information required by the Fair Political Practices Act (FPPC) which includes information related to campaign contributions is made available through a link on the City's website pursuant to Section 2-156 of the Santa Ana Municipal Code. This section requires that reporting, which is already required by the FPPC and is a public record, to be posted on the City's website.

Project Approach

Management Partners' approach involved learning about local regulation and why public agencies adopt laws and regulations related to lobbying, what is and is not lobbying, and understanding the issues related to adoption of lobbyist registration and reporting requirements. We interviewed staff members providing administrative support, reviewed existing documents including video segments of public meetings, and reviewed publicly available information from comparable agencies. We conducted follow-up interviews as needed to clarify information, with comparable agency staff.

Why Adopt Local Lobbying Laws?

Participatory democracy guarantees the right to free speech and to petition government. Lobbyists organize voices, sorting out the many competing interests of the public into a collective and comprehensive message, and apply continued pressure on issues to avoid loss of momentum as new issues arise. Additionally, lobbying and lobbyists can benefit government decision-making by providing technical or specialized information that might otherwise not be available to decision-makers.

But there are competing public interests such as transparency, the fair exchange of ideas, and the integrity of the government decision-making process. The benefits of lobbying can be outweighed if the lobbying drowns out community voices, the information is incorrect or flawed, or where there is corruption or the appearance of corruption in the form of lobbyists exploiting their influence with public officials on behalf of private interests, bribery and/or sweet-heart contracts.

To the greatest extent possible deliberations and actions by public agencies should be conducted openly. Members of the community have the right to know the identity of interests that attempt to influence decisions by government and to evaluate whether these interests create undue influence over local decision-makers.

Lobbying laws, in varying forms, reflect an effort to reconcile these important rights and interests and promote public confidence in the integrity of City government by tempering the role of "influence" in government decision-making, preventing special interests from controlling the political process and ensuring ethical behavior by policymakers and government officials, while allowing the practice. The laws vary but essentially seek to capture who is acting on behalf of whom, on what kinds of matters with what desired outcome, and for what level of remuneration through registration and reporting on activities.



What is “lobbying”?

Lobbying is generally defined as communicating directly or soliciting others to communicate with any public official or staff in the legislative or executive branch of government or in a quasi-public agency for the purpose of influencing any legislative or administrative action. This typically involves lobbying on behalf of another for compensation.

Not everyone who engages in the act of lobbying is a lobbyist. Definitions commonly exclude legislators attempting to gather support for a bill or policy decision through the normal course of the legislative process, constituents making calls to policymakers regarding a matter of personal concern, government employees working within the ordinary course of their positions, and the media. Other persons or activities that are often excluded from the definition of lobbyist include professionals such as licensed lawyers filing comments in a regulatory proceeding on behalf of a client and individuals and companies responding to information requests from an administrative department.

Regulation of Lobbyists in California

California Business & Professions Code Section 6009 provides that cities and counties may regulate both attorney and non-attorney lobbyists. Information that may be required to be disclosed by the lobbyist includes:

1. The name, business address, and telephone number of the lobbyist, of any lobbying firm of which the lobbyist is a partner, owner, officer, or employee, and of any persons or lobbying firms paid to lobby by the lobbyist.
2. The name, business address, and business telephone number of each client who pays the lobbyist to lobby; the specific matter and agency lobbied, itemized by client; and the amount of money paid to the lobbyist for lobbying and the total expenses of the lobbyist for lobbying, itemized by client.
3. All gifts or payments made by the lobbyist to officials in the jurisdiction, itemized by the name of the official, the amount, date, and description of the gift or payment, and the names of the person making the gift or payment and the person receiving the gift or payment.
4. All campaign contributions made, arranged, or delivered by the lobbyist to officials in the jurisdiction, specified by amount, date, and name of the official receiving the contribution.

Interviews and Review of City Documents

Management Partners conducted interviews with staff in the City Clerk’s Office, reviewed public agenda items and watched video segments of public meetings. The purpose was to gather information and perspectives about the effectiveness of existing regulations, measures being undertaken to bring further transparency to decision-making, and the administrative support structure required to effectively manage existing and new reporting requirements,



Major Observations from Interviews and Document Review

Major observations from the interviews and review of agenda items and video segments are provided below.

- The City Council strives to be transparent to the public and supports efforts to bring further transparency to government decision-making.
- A survey of similarly sized cities with lobbyist registration requirements and a comparison of the regulations imposed would be a useful starting point for discussions about the possible adoption of a lobbyist law in Santa Ana.
- If the Mayor and City Council decide to move forward in developing a lobbyist law, a clear definition of “lobbyist” is critical, and an emphasis should be placed on people, businesses and other entities that are paid to engage decision-makers in a manner to sway a position on an item. The definition should not discourage or interfere with the rights of residents, community groups and other stakeholders to express their views to individual Council members or at public meetings.
- Penalties should be commensurate with the violations, and alternative penalty options should be considered including infractions or fines as a first offense.

Peer Agency Research

Management Partners also researched the definition of lobbyist and the requirements set for lobbyists in the following jurisdictions:

- Anaheim,
- Bakersfield,
- Los Angeles,
- Long Beach,
- Riverside,
- San Diego,
- Santa Monica, and
- Stockton.

We determined that Bakersfield, Riverside and Stockton have not adopted regulations requiring registration by lobbyists. The requirements for Anaheim, Los Angeles, Long Beach, San Diego, and Santa Monica are shown in Table 1 below. For each of these jurisdictions, we researched the following:

- The definition of “lobbyist,” including any exclusions;
- Reporting requirements, such as the frequency of disclosures, registration fees, and other prohibited activities; and
- Fines or other penalties for failing to follow the ordinance.



Table 1. Peer Agency Lobbyist Requirements

"Lobbyist" Definition and Exclusions	Requirements	Fees, Fines and Penalties
ANAHEIM (population 353,468)		
<p>Any individual or entity who receives \$500 or more in consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate with any elective or appointed official of the city, member of the Executive Team, or Legislative Body, board or commission for the purpose of influencing legislative or administrative action of the City or any regional agency in which Anaheim has a voting role.</p> <p>Exclusions: public officials acting in official capacity, press, licensed professionals, persons invited to give testimony, city employee acting in official capacity. [AMC 1.11.010]</p>	<ul style="list-style-type: none"> ▪ Registration is required within 15 days of lobbying the city or regional agency. ▪ Required information includes name, contact information, employer, employer contact information, and issues the lobbyist has been engaged to lobby. ▪ Quarterly reporting on items lobbied and positions taken are due the last day of each quarter; completed forms are posted on the City Clerk’s website. ▪ Annual reporting outlining lobbyist activity and any fines paid is due within 30 days after the end of the calendar year. ▪ [AMC 1.11.070] 	<ul style="list-style-type: none"> ▪ Registration fees and penalties are set by Resolution; registration fee is \$100; late filing penalty is \$50. ▪ If an unregistered lobbyist appears before Council, lobbyist will be allowed to make a presentation to Council and shall register/pay fee within seven days. ▪ [AMC 1.11.070]
LOS ANGELES (population 3,923,341)		
<p>“Lobbyist” means any individual who is compensated to spend 30 or more hours in any consecutive three-month period engaged in lobbying activities which includes at least one direct communication with a City official or employee, conducted either personally or through agents for the purpose of attempting to influence municipal legislation on behalf of any other person.</p> <p>Exclusions: public officials and employees acting within their capacity, media, persons acting without compensation, tax exempt organizations including employees, and persons negotiating. [LAMC 48.03]</p>	<ul style="list-style-type: none"> ▪ Registration is required within 10 days of the end of the calendar month in which they qualified as a lobbyist. [LAMC 48.07 A] ▪ Lobbyist must disclose each client from whom they receive \$250 per quarter [LAMC 48.07 A] ▪ Must attend a City lobbying information session every two years. [LAMC 48.07 H] ▪ Quarterly disclosure reports outlining compensation received and expenditures made for lobbying, including each expense over \$25 and each recipient, each campaign donation over \$100 (and much more) are required. [LAMC 48.08 A] 	<ul style="list-style-type: none"> ▪ Annual registration fee is \$450 plus \$75/client. [LAMC 48.07 C] ▪ Violation may be prosecuted as a misdemeanor. May not act as a lobbyist for one year after conviction. ▪ Civil penalties may not exceed \$2,000. ▪ Late filing penalty is \$25 per day, not to exceed \$500.
LONG BEACH (population 467,730)		
<p>Contract lobbyist receives \$3,200 to engage in lobbying over a three-month period</p> <p>Business or organization lobbyist has employees who engage in lobbying for 50 hours or more in a three-month</p>	<ul style="list-style-type: none"> ▪ Registration required within 15 days of qualifying as a lobbyist. [LBMC 2.08.030] ▪ Annual registration shall be renewed by January 15. [LBMC 2.08.040] 	<ul style="list-style-type: none"> ▪ Registration fee is \$123 plus \$29.45 for each additional client. [LBMC 2.08.070] ▪ Fine is \$25 per day for delinquent

<p>period Expenditure lobbyist makes payments or incurs expenses over \$5,000 in a calendar year</p> <p>Exemptions: Public officials; the media; persons reimbursed for reasonable travel; persons who submit communications available for public records; persons submitting bids or replying to RFPs; persons providing information pursuant to a subpoena; persons whose communications relate to a collective bargaining agreement; board members or employees of nonprofits or business improvement districts; members of neighborhood associations.</p>	<ul style="list-style-type: none"> ▪ Must disclose clients, legislative/admin item they want to influence, and payments received. [LBMC 2.08.090] Must re-file disclosure every six months. [LBMC 2.08.100] Must retain records related to lobbying. [LBMC 2.08.120] ▪ No gifts to City officials. [LBMC 2.08.150] 	<p>filing, not to exceed \$500.</p> <ul style="list-style-type: none"> ▪ Criminal penalties, including fines and possible imprisonment, may be imposed for continued failure to comply. ▪ May not be a lobbyist for one year.
<p>SAN DIEGO (population 1,411,034)</p>		
<p>Any individual who engages in lobbying on behalf of a client and any individual owner, compensated officer, chairperson, or employee who engages in lobbying on behalf of an lobbying firm. Lobbyist also means any individual owner, compensated officer, chairperson, or employee who has been designated on a lobbying firm’s or organization lobbyist’s registration form as being expected or authorized to lobby.</p> <p>Exemptions: public officials; the media; persons submitting bids or responding to RFPs; persons requesting advice on the interpretation of laws or policies; attorney-client communication; communication about ministerial action; collective bargaining negotiations; responding to a subpoena; providing communication that is only part of public hearing; providing technical data or analysis; Internet publishing.</p>	<ul style="list-style-type: none"> ▪ Registration required by January 15, or no later than 10 days after qualifying. [SDMC 27.4007] ▪ Quarterly disclosure reports, including name and details of each client, total compensation for lobbying, specific municipal decisions they sought to influence, name and department of each City official who was lobbied, contributions made to candidates, and fundraising efforts for candidates shall be disclosed. [SDMC 27.4015] ▪ Records shall be retained for five years. [SDMC 27.4019] ▪ Gifts shall not exceed \$10 in a calendar month. [SDMC 27.4030] 	<ul style="list-style-type: none"> ▪ Registration fee is \$154.05 plus \$31.09 per client. ▪ Penalty for failure to file is \$10 per day up to a maximum of \$100. ▪ Continued violation may be prosecuted as a misdemeanor resulting in possible fines and imprisonment.
<p>SANTA MONICA (population 92,968)</p>		
<p>Any individual who receives economic consideration as the employee, representative or contractor of a person or entity other than the City of Santa Monica for communicating with any official or employee of the City for the purpose of influencing City action. For purposes of this Chapter, “Lobbyist” does not include City contractors and</p>	<ul style="list-style-type: none"> ▪ Registration is required within 10 days after qualifying as a lobbyist and annually thereafter, [SMMC 4.85.020(a)] ▪ Must report every client; provide a brief description of government decisions they are seeking to influence, any payments made to officials (including gifts, meals, fees, etc.). [SMMC 4.85.020(a)] 	<ul style="list-style-type: none"> ▪ Registration fee is \$94. The annual renewal fee is \$54. ▪ Violation may be prosecuted as a misdemeanor including fines of up to \$500, six-month imprisonment or both fines and imprisonment.



<p>those seeking City contracts through bids and proposals. Exemptions: Persons whose attempts to influence government are limited to public meetings or preparing or communications in the public record; persons representing themselves in attempting to obtain decisions relating to their own property or business; persons communicating about collective bargaining agreements with the city; or officials or members of neighborhood groups that are not compensated for their influence.</p>	<ul style="list-style-type: none"> ▪ Must amend registration within 10 days of representing a new client. [SMMC 4.85.020(b)] 	<ul style="list-style-type: none"> ▪ Civil damages up to \$10,000
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Conclusion

The role of “influence” in government decision-making raises complex issues. Efforts to balance the issues of free speech, the right to freely associate and to petition elected officials with the competing public interests of transparency, the fair exchange of ideas, and the integrity of the government decision-making process can be challenging. Local lobbying laws attempt to reconcile these important rights and interests by addressing the practical question about the appropriate role of lobbying in local government decision-making, whether and to what extent efforts to lobby officials should be disclosed, and how disclosures are to be made.

