



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;

- 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