

City of San José
Lobbying Ordinance
Frequently Asked Questions

The Lobbying Ordinance imposes registration and reporting requirements on persons who engage in lobbying activity. ([San Jose Municipal Code \(SJMC\), Title 12, Chapter 12.12](#)) This document is advisory and provides answers to frequently asked questions. Questions regarding more complex situations should be directed to the Office of the City Clerk. Questions regarding the interpretation of the Lobbying Ordinance should be directed to the Office of the City Attorney.

All section references are to the San Jose Municipal Code.

The Lobbying Ordinance was last amended on July 27, 2017, changing quarterly reporting to weekly reporting. Late filing fines for failure to file a weekly report or filing a weekly report late will be assessed beginning July 1, 2018.

Lobbyists

1. Who is a lobbyist?

A person may meet the description of one or more of three types of lobbyists depending on the circumstances.

- (a) A “Contract Lobbyist” is a person (either an entity or an individual) with a client who compensates the person to engage in lobbying activity on their behalf. The compensation must be \$1,000 or more in any consecutive three months and can be for any services as long as one of those services is lobbying activity.
- (b) An “In-House Lobbyist” is an entity including a sole proprietorship whose owners, officers, and employees are compensated by the entity to engage in lobbying activity on its behalf and whose collective time totals ten (10) hours or more in any consecutive twelve (12) month period. An owner is deemed to be compensated based on his or her financial interest in the entity.

The time an officer or employee spends on lobbying activity for his or her employer and/or personal initiative which is not compensated would not be attributed to the 10 hour threshold.

- (c) An “Expenditure Lobbyist” is any person that pays or incurs a cost in the amount of \$5,000 or more in a calendar year for a public relations campaign, advertising or similar activity to solicit and urge others to lobby. All payments or expenditures in the calendar year from the person should

be aggregated to determine whether the collective amount is \$5,000 or more. This form of indirect lobbying excludes compensation paid to Contract Lobbyists or In-House Lobbyists for lobbying activity and dues and donations paid to an organization.

If you meet the descriptions for any of the three types of lobbyists listed above, you are required to register with the City of San Jose as a lobbyist.

2. Are nonprofit organizations that have federal tax exempt status subject to the City’s Lobbying Ordinance?

[San Jose Municipal Code Section 12.12.020](#) exempts individuals from nonprofit organizations in two situations:

- (a) Compensated officers or employees of a nonprofit organization with tax exempt status under Section 501(c)(3) of the Internal Revenue Code whose attempts to influence governmental action are on behalf of the organization.
- (b) Uncompensated members or uncompensated members of the board of directors of nonprofit organizations. For the purpose of this exemption, the term “nonprofit organization” has been interpreted to be any entity which would qualify under the Federal Internal Revenue Code as a nonprofit.

City Officials

3. Who are City Officials?

The list of City Officials is at <http://www.sanjoseca.gov/DocumentCenter/Home/View/132>. This list may be subject to change. Any questions regarding specific individuals not on the list should be directed to the Office of the City Clerk. Pursuant to [Section 12.12.120](#), “City Officials” are:

- (a) The Mayor and Councilmembers;
- (b) The Chair and Members of the Successor Agency Board;
- (c) Council Appointees;
- (d) The Mayor and Councilmembers’ staff (except administrative staff);
- (e) Members of the Planning Commission, Appeals Hearing Board, and Civil Service Commission;

- (f) City Manager, Assistant City Manager and Deputy City Managers;
- (g) Successor Agency Executive Director and his or her Assistants and Deputies;
- (h) City Department Heads; and
- (i) City representative to any joint powers authority to which the City is a party.

4. What are the obligations of City Officials under the City’s Lobbying Ordinance?

Under [Section 12.12.700](#), City Officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist or recommend the name of a particular lobbyist to facilitate favorable legislative or administrative action by the City or Successor Agency with regard to such person's matter pending before the City or Successor Agency.

Under [Section 12.12.800](#), before taking any legislative or administrative action, the Mayor, each member of the City Council, the Chair and each member of the Board of Directors of the Successor Agency to the San José Redevelopment Agency, and each member of the Planning Commission, Civil Service Commission, or Appeals Hearing Board must disclose all scheduled meetings and all scheduled telephone conversations with a registered lobbyist that involves lobbying activity about the action. The disclosure may be made orally at the meeting before discussion of the action on the meeting agenda. The oral disclosure must identify the registered lobbyists, the date(s) of the scheduled meetings and the scheduled telephone conversations, and the substance of the communication. This section does not limit any disclosure obligations that may be required by the San Jose Municipal Code or City policy.

Lobbying Activity

5. When is a person engaged in lobbying activity?

[Section 12.12.170](#) defines “lobbying activity” as influencing or attempting to influence a City Official or City Official Elect with regard to a legislative or administrative action of the City or Successor Agency.

- (a) In order to “influence”, the individual must “contact,” directly or indirectly, a City Official or City Official Elect. These are select high ranking officials under [Section 12.12.120](#) and on a [list posted by the Office of the City Clerk](#).

- (b) A “contact” can be a meeting with a City Official or City Official Elect (either in person or by teleconference), or sending (either personally or through an agent) a direct communication. A direct communication may be an email, letter, tape, or video.
- (c) The purpose of the “contact” must be to promote, support, modify, oppose, cause the delay or abandonment of conduct, or otherwise affect an official action in any way. This includes any campaign contributions; independent expenditures; fundraising activity; donations; payments received for consultant and other services; and activity expenses that a lobbyist may make in a calendar week for or on behalf of a City Official or City Official Elect.
- (d) The method of influencing may also be by any means including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.

6. If I did not have any lobbying activity for the week, do I have still have to file a weekly report?

No. Under [Section 12.12.430.A](#), all lobbyists must file a weekly report for every calendar week during which they retain that status as a lobbyist with the City Clerk, AND have conducted any lobbying activities during that period.

7. If I, as a lobbyist, call a City Official to schedule a meeting, do I have to report that call as a contact?

No, the purpose of the “contact” must be to “promote, support, modify, oppose, cause the delay or abandonment of conduct, or otherwise affect an official action” per Section 12.12.170. Calling to schedule a meeting, without engaging in the above purposes during the call is not a “contact” that is required to be reported.

8. Should time to conduct the research, prepare the study, to be used in a contact with a City Official be counted as “lobbying activity?”

[Section 12.12.170](#) defines “lobbying activity” as influencing or attempting to influence a City Official or City Official Elect with regard to a legislative or administrative action of the City or Successor Agency.

Under [this definition of “lobbying activity”](#), the time spent on researching or preparing a report to use at the meeting with the City Official would not be counted as “lobbying activity”. The time, however, preparing the email or letter (including drafts), should be counted because the email or letter is being used to urge an official action in the stead of meeting face to face.

9. Is the time spent processing an application included as time spent engaged in “lobbying activity?”

The time spent by any individual to submit a completed application is not generally considered “lobbying activity”. For example, submitting plans or reports for a permit as part of the application, meeting with City staff that are not City Officials, or submitting other information in response to a request by City staff is not “lobbying activity”. Similarly, time interacting with a Department Head at a public hearing, such as a Director’s Hearing, would not be considered “lobbying activity”. On the other hand, if the individual initiates contact with a Department Head outside of a public hearing, for the purpose of influencing his or her decision, that contact time, unless otherwise exempt under [Section 12.12.020](#), is “lobbying activity”.

10. If a Lobbyist is hosting a 2 hour picnic for Members of the City Council and there is no specific discussion regarding an official action by the City but the Lobbyist engages in a 15 minute conversation about a governmental action he is trying to influence, what time should be considered “engaging in lobbying activity?” What if the 15 minute conversation was regarding each other’s families?

Although one of the purposes of the picnic may be to build a better relationship with Members of the City Council in order to lobby more effectively in the future, the Lobbyist is only required to account for the 15 minute conversation discussing the governmental action as “lobbying activity”. The cost of the picnic which directly benefits each Member of the City Council and his or her immediate family including spouse or domestic partner, must be reported as an activity expense under [Section 12.12.420.H](#).

11. If a lobbyist has three (3) Lobbying Activity contacts with a City Official in one day on the same subject matter, is it reported as three (3) contacts or one (1) contact?

Registered lobbyists must disclose “contacts” made with City Officials or City Officials-Elect during the preceding calendar week for the purpose of influencing or attempting to influence legislative or administrative action. “Contacts” include direct communication, oral or written, in informal or social settings if those communications are to influence a governmental decision. A contact is what a lobbyist must count toward their hourly threshold and this may occur during informal or social settings for as brief a period as a five to ten minute conversation. It may be a spontaneous interaction, or a more formal or scheduled gathering.

Contact information disclosed on the registration and weekly reports must include a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence and the number of contacts.

In the above scenario, these will be reported as three (3) contacts.

12. When is a person not engaged in lobbying activity?

Pursuant to [Section 12.12.020](#), the following persons are exempt from the Lobbying Ordinance:

- (a) Uncompensated members or uncompensated members of the board of directors of nonprofit organizations;
- (b) Members of neighborhood associations, Neighborhood Advisory Committees or Project Area Committees;
- (c) Compensated officers or employees of Section 501(c)(3) tax exempt nonprofit organizations; and
- (d) Business owners who meet the criteria under [Section 12.12.020.D](#).

The following activities are exempt from the Lobbying Ordinance:

- (a) Public officials acting in their official capacity;
- (b) A person engaged solely in publication or broadcasting of news items, editorials, or commentary which directly or indirectly urges governmental action;
- (c) A person hired by and performing work on behalf of the City or Successor Agency;
- (d) Preparing environmental review documents for approval by the City;
- (e) Giving testimony or attending a meeting such as a task force or department committee to provide information or assistance pursuant to an invitation from the City or Successor Agency;
- (f) Appearing at a public meeting or preparing documents for use at a public meeting or other official proceeding;
- (g) Participating in a competitive bid process;
- (h) Lodging a complaint relating to improper governmental activity (“whistleblower”);

- (i) Meeting with the City Clerk or City Attorney regarding a claim or litigation matter, negotiation of any agreements where the City is a party or the requirements or interpretations of the lobbyist ordinance;
- (j) A person whose communications relate solely to collective bargaining agreement or memorandum of agreement between the City and a recognized employee organization or proceedings before the Civil Service Commission; and
- (k) A person whose communications are solely related to the administration of an existing agreement between the person and the City or Successor Agency.

To the extent that time is spent on any of the above activity, that time should not be counted as “lobbying activity.”

Registration

13. How do I register?

No later than ten (10) days after qualifying as a lobbyist, a person must register with the Office of the City Clerk by filing a [City of San Jose Lobbyist Reporting Form](#). A person that meets the threshold requirements of one or more categories (*i.e.*, Contract Lobbyist, In-House Lobbyist, or Expenditure Lobbyist) is only required to register once.

Once you are registered, you are required to file a report each calendar week you engage in lobbying activity. A “calendar week” begins at 12:00 a.m. on Monday and ends at 11:59 p.m. on the following Sunday. Weekly reports must be filed with the City Clerk by 5:00 p.m. on Monday for the prior calendar week. If Monday is a holiday, the weekly report must be filed by 5:00 p.m. the next business day.

The registration must be renewed by January 15 of each year unless a termination of lobbying activity on the [City of San Jose Lobbyist Reporting Form](#), along with a [Notice of Client Termination if a Contract Lobbyist](#), is filed with the Office of the City Clerk by January 15.

14. Are there additional forms that must be filed along with the [Lobbyist Reporting Form](#)?

Whenever engaging in any qualifying lobbying activity in a calendar week, you must file, as required under [Section 12.12.420](#), a [Schedule A \(Campaign Contributions, Independent Expenditure, donation\)](#), [Schedule B \(Payment for Consultant or Other Services\)](#), and [Schedule C \(Activity Expenses\)](#), whichever is

applicable. Qualifying activity may include, but not be limited to, contributions, independent expenditures, fundraising, donations, or activity expenditures.

Additional forms are available on the [Office of the City Clerk's website](#) for [adding](#) and [terminating clients](#), [registration renewal](#), and [disclosure of contingent compensation](#).

15. When a lobbyist is both a contract lobbyist and an in-house lobbyist for themselves, how should the lobbyist register and what fees do they pay?

[Section 12.12.440.B](#) provides: "All lobbyists are required to register...and pay an annual registration fee at the time of registration or registration renewal." This requires a lobbyist, even if it falls into more than one category such as in-house and contract lobbyist, to register once and pay one fee with that registration.

A lobbyist who meets the thresholds for one or more categories need only file one registration and weekly reports but should provide information for all application categories. Thus, when a lobbyist is both a contract lobbyist and an in-house lobbyist for themselves, the lobbyist will file only 1 lobbyist registration form and file only 1 registration fee, but will complete both the contract and in-house lobbyist portions of the clerk's forms. The lobbyist will pay for the additional client fees for their external clients (as a contract lobbyist), but will not pay any client fee for itself (as an in-house lobbyist).

New and Current Clients

16. A Contract Lobbyist added a new client on September 21, 2017 and engaged in lobbying activity on behalf of that new client. A Contract Lobbyist is required to file a weekly report for that week (due Monday, September 25, 2017), and the annual registration report (due January 15, 2018). Does he have to pay a new client fee with the September 25, 2017 weekly report and a client fee for that client for the annual registration?

Yes. [Section 12.12.440.C](#) provides that after the registration or registration renewal, the new client fee must be paid with the weekly report immediately following the week when the lobbyist is compensated and the compensation is greater than \$500. In addition, the fee for each client must be paid on an annual basis with the registration or registration renewal.

17. A Contract Lobbyist has done lobbying for a current client, but has not received compensation in that week. What are the disclosure requirements?

The Contract Lobbyist must disclose lobbying done for a current client in a calendar week, even if no compensation has been received in that week. Each

weekly report must disclose the total compensation promised as well as received from each client during the reporting period within the following ranges: (\$0.00 - \$500), (\$501 - \$1,000), (\$1,001 - \$10,000), (\$10,001 - \$100,000), (\$100,001 - \$200,000), (\$200,001 - \$300,000), (\$300,001 - \$400,000), and (Over \$400,001). If no compensation has been received, the [Lobbyist Reporting Form, on the page "Contract Clients"](#) allows checking a box for \$0 for the total compensation promised or received from the client.

When the Contract Lobbyist actually receives compensation, that compensation must be disclosed in a weekly report for the week compensation was received, even if the Contract Lobbyist had no lobbying activity during that week.

18. A Contract Lobbyist is paid on a monthly basis by a client. When does a Contract Lobbyist report this monthly compensation?

Either lobbying activity or compensation will trigger the filing of a weekly report. When submitting a weekly report, Contract Lobbyists should report any promised client compensation as well as any client compensation received for any lobbying activity performed in a calendar week. If a client pays on a retainer fee or on a monthly basis regardless of whether lobbying activity occurs, Contract Lobbyists should report the compensation received to date since the last weekly report was filed.

Contributions, Donations and Fundraising Activity

19. When do lobbyists report a campaign contribution to an elected City Official or candidate for City office?

Lobbyists need to report a campaign contribution on the weekly report filed on the Monday following the date of the campaign contribution.

20. When do lobbyists report fundraising activity?

Lobbyists need to report lobbyist fundraising activity, as defined by [Section 12.12.190](#), on the weekly report filed on the Monday following the date of the fundraising activity. [Section 12.12.420.D and E](#) require reporting of fundraising activity and donations that actually resulted on [Schedule A, Contributions, Expenditures, Fundraising and Donations](#). There are no disclosure requirements if no donations or contributions actually resulted.

21. A Councilmember has solicited lobbyists for donations from their clients, and those lobbyists in turn, solicited their clients for donations, but no donations actually resulted. What are the disclosure requirements?

[Section 12.12.420.D and E](#) require reporting of fundraising activity and donations

that actually resulted on [Schedule A, Contributions, Expenditures, Fundraising and Donations](#). There are no disclosure requirements if no donations or contributions actually resulted.

Termination

- 22. A Contract Lobbyist renews his registration on January 15 anticipating that he will have clients but engages in no lobbying activity in the weeks that follow and decides to submit a Notice of Termination on March 1 to the Office of the City Clerk. What is the Contract Lobbyist's report obligation after submitting the Notice of Termination? What is the Contract Lobbyist threshold requirement if he resumes lobbying activities on August 1?**

[Section 12.12.400](#) provides that if a Lobbyist has terminated all lobbying activities then an annual registration renewal is not required. On the second page of the [Lobbyist Reporting Form](#), the Lobbyist should check the box "Termination of Registration" and specify the effective date when all lobbying activity ceased.

If the Contract Lobbyist resumes lobbying activity on August 1, he must re-register if or once he is compensated by a client, \$1,000 or more in any three consecutive months for services that include lobbying activity. The lobbying activity on August 1 will also need to be reported in the registration report. Any subsequent lobbying activity will also need to be reported in a weekly report.

- 23. Can an In-House Lobbyist start with a new 10 hour threshold if it files a Notice of Termination?**

The threshold requirement for registering as an In-House Lobbyist is whether the owner, or paid officers and employees of the business or organizations have collectively engaged in 10 hours or more of lobbying activity on behalf of the business or organization **in the preceding 12 consecutive months**. These 12 consecutive months are rolling and the In-House Lobbyist would only start with a new 10 hour threshold if it had no activity for the last 12 months.

Contingent Compensation

- 24. What are the disclosure obligations regarding contingent compensation arrangements?**

Contingent Compensation for Services other than Lobbying Activity
[Section 12.12.310](#) requires disclosure of contingent compensation arrangements for nonlobbying services. In situations where the lobbyist is not specifically compensated to engage in lobbying activity but lobbying for a certain legislative or administrative result is crucial to realizing compensation for other services

rendered or potential future income, the lobbyist is required to disclose the compensation arrangement.

Specifically, the disclosure would require the person engaged in lobbying activity to identify the name and address of the source of the compensation, and include a brief description of the legislative or administrative action the person is seeking to influence. In many instances, the precise compensation may be difficult to determine because it may be based on the final sale price of a development, specific legislative or administrative actions, and/or future conditions (e.g. financing or acquisition). As such, disclosure would require either (1) a range of the known compensation up to and over \$400,000, or (2) a brief description of how compensation will be calculated and other conditions that would need to be met before the lobbyist is entitled to payment.

Contingent Compensation for Lobbying Activity

Compensation for lobbying activity is prohibited when the compensation is directly dependent on the result of legislative or administrative actions that are the subject of the lobbying activity.

The prohibition and disclosure requirements do not apply to contingent compensation to a lobbyist for non-lobbying activity such as the practice of law or compensation completely independent of the governmental action.

25. What are examples of Contingent Compensation under Section 12.12.300?

Examples of when [Section 12.12.300](#) would apply are set forth in the following:

[Section 12.12.300.A](#): “A person may not accept compensation for lobbying activity when the compensation is directly dependent on the result of legislative or administrative action(s) that are the subject of the lobbying activity.”

Lobbyist A enters into an agreement where he or she is paid \$100,000 for lobbying services on approval of PD Zoning for a development project. This compensation would be prohibited,

[Section 12.12.300.B](#): “A person may not accept compensation for engaging in lobbying activity when the compensation depends on both:

1. The result of legislative or administrative action(s) that are the subject of the lobbying activity, and
2. Additional condition(s) or event(s) which are not the subject of the lobbying activity.”

Lobbyist B enters into an agreement where he or she is paid \$200,000 for lobbying services after approval of PD Zoning for a residential development project and sale of the first house. This compensation would be prohibited.

[Section 12.12.300.C](#): “A person engaged in lobbying activity may accept compensation for services, other than lobbying activity, when the compensation directly depends on the result of legislative or administrative action(s) that are the subject of the lobbying activity.”

Lobbyist C is a civil engineering firm that engages in lobbying activity. Lobbyist C prepares surveys for a proposed project and payment for the survey work is on approval of the project. This compensation must be disclosed.

Lobbyist C is a civil engineering firm that engages in lobbying activity. Lobbyist C will not secure an agreement to provide engineering services for the build out of the project unless the project is approved. This compensation must be disclosed.

[Section 12.12.300.D](#): “A person engaged in lobbying activity may accept compensation for services, other than lobbying activity, when the compensation depends on both:

1. The result of legislative or administrative actions that are the subject of the lobbying activity, and
2. Additional condition(s) or event(s) which are not the subject of the lobbying activity.”

Lobbyist D is a real estate broker who engages in lobbying activity. Lobbyist D provides brokerage services and will not be paid for the brokerage services until after the project is approved and the real estate transaction closes. This compensation must be disclosed.

26. Are lobbyists allowed to accept commissions under the City of San Jose’s Lobbying Ordinance?

The terms “contingent compensation,” “success fees” and “commissions” are synonymous for purposes of the City’s Lobbying Ordinance. “Commissions” for lobbying activities when the commission is directly dependent on the result of legislative or administrative action(s) that are the subject of the lobbying activity are prohibited.

The [June 8, 2007 Council memo](#) and the [June 18, 2007 Council memo](#) explain more in detail [Section 12.12.300](#) regarding contingent compensation.

Forms and Fees

27. Where can I obtain the necessary forms?

All forms are available for download in Adobe format from the [City Clerk’s website](#). Forms can also be obtained from the Office of the City Clerk located at San Jose City Hall, 200 East Santa Clara Street, San Jose, CA 95113.

28. Are there any fees and penalties?

Fees and penalties in effect are set forth in the [City of San Jose's Schedule of Fees](#) as may be amended. Late filing fines for failure to file a weekly report or filing a weekly report late will be assessed beginning July 1, 2018.

Enforcement

29. How is the City's Lobbying Ordinance enforced?

The City's Lobbying Ordinance may be enforced in the following ways:

- (a) The City Attorney may investigate complaints of violations and seek judicial or injunctive relief from the courts;
- (b) The City Attorney or City Clerk may put lobbyist on notice of a potential violation; or
- (c) Any person may file a complaint with the City Clerk alleging a violation of this Chapter with the Elections Commission.
- (d) A City Official may request that the City Clerk issue an order to show cause to any unregistered person. The person will have an opportunity to be heard before the Elections Commission. If the Commission finds that the person must register and the person fails to do so within 7 days, he or she may be temporarily barred from appearing before the City Council or Successor Agency Board

A violation of the City's Lobbying Ordinance may also result in civil penalties of up to \$5,000 or the amount of the compensation received for the lobbying activity.