

Lobbyist Workshop Questions and Answers

August 20, 2007

Note: The questions and answers from this workshop are intended to be advisory only. Any questions regarding the following information, or the Lobbyist registration process, can be directed to the City Clerk, City of San Jose.

1. Are nonprofit organizations that have federal tax exempt status subject to the Lobbyist Regulations?

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. In September/October 2007, the definition of “nonprofit organization” for Chapter 12.12 will be clarified.

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

Currently, San Jose Municipal Code 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 Redevelopment Agency.

- (a) In order to “influence”, the individual must “contact” a City Official or City Official-Elect. These are select high ranking officials under San Jose Municipal Code Section 12.12.120 and on a list posted by the Office of the City Clerk.
- (b) A “contact” is 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.
- (d) The method of influencing may be by any means including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.

Under the current 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

Lobbyist Workshop Questions and Answers

August 20, 2007

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.

3. Is the time spent to processing an application is 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 San Jose Municipal Code Section 12.12.020, is “lobbying activity.”

4. 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 San Jose Municipal Code Section 12.12.420.H.

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

Section 12.12.430.B provides that if a Lobbyist has terminated all lobbying activities in the preceding quarter, the Lobbyists must file a final quarterly report. On the first page of the Lobbyist Report Form, the Lobbyist should indicate that this is a Termination Report and specify the effective date when all lobbying activity ceased.

Lobbyist Workshop Questions and Answers

August 20, 2007

If the Contract Lobbyist resumes lobbying activity on August 1, they must register if or once they are compensated by a client, \$1,000 or more in any three consecutive months for services that include lobbying activity.

6. 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.

7. 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. This disclosure obligation is of arrangements made before, on, and after August 1, 2007.

Contingent Compensation for Lobbying Activity

Arrangements for contingent compensation of lobbying services entered into on or after August 1, 2007 are prohibited.

Although arrangement for contingent compensation of lobbying services are allowed if made before August 1, 2007 and are not required to be disclosed under the current ordinance, this disclosure will be clarified in the ordinance after October 2007.

8. If an In-House Lobbyist has already registered in 2007 as an individual, does he or she need to register his or her business or organization? May activities of the individual be reported by the business or organization for the remaining quarters of 2007 due on October 15, 2007 and January 15, 2008?

For the remaining quarters of 2007, the business or organization may file the quarterly reports and list in the report the individuals or persons that engage in lobbying activity on its behalf. The business or organization need not register for 2007 or pay a registration fee if an individual lobbying on its behalf has already registered and paid the registration fee for 2007. For 2008, the business or organization must register, pay the annual registration fee, and disclose the name of each person lobbying on its behalf.