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CITY COUNCIL STAFF REPORT

Meeting: February 2, 2021

Subject

Consider Municipal Code Amendments adding Chapter 2.100 ("Regulation of Lobbying Activities") to Title 2 ("Administration and Personnel") of the Cupertino Municipal Code to create lobbying registration and reporting requirements.

Recommended Action

Conduct the first reading of Ordinance No. 21-____: "An Ordinance of the City Council of the City of Cupertino Adding Chapter 2.100 ("Regulation of Lobbying Activities") to Title 2 ("Administration and Personnel") of the Cupertino Municipal Code," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

Discussion

Generally, lobbying is defined as an attempt to influence government action through either written or oral communication. Local governments can adopt lobbying regulations. Currently there are five jurisdictions in Santa Clara County with lobbying ordinances in place: the City of Santa Clara, City of San Jose, Santa Clara County, City of Milpitas, and City of Palo Alto. The City of Santa Clara, City of San Jose, and Santa Clara County have broad ordinances that regulate lobbyists seeking to influence decisions of their respective legislative bodies and local officials. These lobbyists are required to register with these jurisdictions, pay certain fees, submit reports on their lobbying activities, and disclose their status as lobbyists when speaking to local officials. These ordinances do not limit or prohibit lobbying activities, but instead are intended to promote transparency and accountability. The draft ordinance for Cupertino incorporates these requirements and is closely modeled after the City of Santa Clara's ordinance. The City of Milpitas and the City of Palo Alto also have lobbying ordinances; however, they have a narrower scope. The Milpitas ordinance focuses on lobbying performed on behalf of the City, while Palo Alto's ordinance focuses on the cable television industry.

Proposed Ordinance

On November 2, 2020, Mayor Paul and Vice Mayor Chao proposed a new agenda item to consider adopting a lobbying registration ordinance. The draft ordinance (Attachment A) would regulate lobbyists who seek to influence legislative and administrative actions taken by City officials and City bodies. This ordinance would require lobbyists (as defined) to register with the City annually and pay a registration fee. It would also require lobbyists to disclose their identity and clients when appearing in a lobbying capacity at any meeting with a City official or at a public meeting of the City Council or any other City body. Lobbyists would also be required to submit reports disclosing their lobbying activities to the City Clerk's Office twice a year.

Disclosure of lobbyists' identities and activities fosters public confidence in government officials by making government decision-making more transparent to the public. Additionally, the disclosure and registration requirements ensure that City officials are made aware of the interests that lobbyists represent when the officials are lobbied. If adopted, the regulations in this proposed ordinance would become operative on July 1, 2021 to allow for the development of the registration and reporting process.

Definitions & Exemptions¹

The ordinance defines "lobbyist" to include three categories, summarized as follows:

- Contract Lobbyist: A person who engages in lobbying on behalf of one or more clients and who has received or has entered into an agreement for compensation of \$1,000 or more for lobbying in any consecutive three-month period.
- Business or Organization Lobbyist: Any business or organization, whose owner(s), officer(s) or employee(s) carry out lobbying on its behalf in an aggregate of 10 hours or more in any consecutive 12-month period.
- Expenditure Lobbyist: A person who makes payments or incurs expenditures of \$5,000 or more during any calendar year with the intent of soliciting or urging, directly or indirectly, other persons to communicate directly with any City official in order to attempt to influence legislative or administrative action.

The proposed ordinance also includes a list of exemptions to the term "lobbyist"¹:

- Public officials acting in their official capacity.
- Persons engaged in media publishing or broadcasting news, editorials and commentary. This exemption does not apply to individuals that would otherwise qualify as a Contract Lobbyist.
- Persons reimbursed for only their reasonable travel, meals, or incidental expenses such as uncompensated nonprofit representatives.
- Persons whose communications regarding any legislative or administrative action are limited to appearing or submitting testimony at any City public meeting.

¹ This section paraphrases the ordinance's definitions and exemptions. Please see the draft ordinance text for full details.

- Persons submitting bids or responding to requests for proposals that limit correspondence to the designated staff to receive the information.
- Persons providing oral or written information pursuant to a subpoena or compelled by law or regulation.
- Designated representatives of a recognized employee organization.
- Persons who are professionally licensed pursuant to state law, including attorneys, architects, and engineers appearing at public meetings under certain conditions.
- Nonprofit organizations, unless the nonprofit organization is lobbying for a specific issue or project for which it has received compensation.
- Members of neighborhood associations.
- A person hired by the City for work performed on behalf of the City to provide information requested by City staff.
- The owner of a business whose attempts to influence governmental action are on behalf of the business, subject to certain limitations.
- A person who meets with City officials solely to lodge "whistleblower" complaints.
- A person whose communications with City officials are solely in connection with the administration of an existing contract between the City and that person.

Identification

The draft Cupertino ordinance requires those appearing as lobbyists when meeting with City officials or at public meetings to identify themselves as such and disclose the client(s) or organization that they represent.

Registration, Reporting, and Fees

The proposed ordinance requires that lobbyists register with the City and pay registration fees to cover the City's administrative costs. Lobbyists must renew their registration annually by January 15th of each year. As part of registration, lobbyists must disclose their contact information, business information, client contact information, the nature of the clients' business, the items of legislative or administrative action the lobbyist is seeking to influence, and payments received for lobbying services as a consultant or in any other capacity for services rendered to the City, City officials, City officials-elect, or their controlled committees or ballot measure committees. In addition to the annual fee, each registrant shall pay a fee for each client that they are lobbying for in exchange for compensation of more than \$500. The ordinance also includes a \$25 per day fine for delinquent fees. The registration fee and client fee will be brought before Council for consideration as part of the annual fee schedule update in April.

The draft Cupertino ordinance requires lobbyists to submit semi-annual reports to disclose lobbying activity within the last year and any updates to the information previously provided via registration. This includes disclosure of any payments to the lobbyist for services rendered to the City, City officials, City officials-elect or their controlled committees, or ballot measure committees. The City of San Jose's ordinance includes additional disclosure requirements that are not included in the City of Santa Clara's ordinance or in Cupertino's current draft, such as payments made by lobbyists,

lobbyist campaign contributions, and donations made on behalf of City officials. San Jose’s reporting requirements are included as Attachment B and could be included at the direction of Council.

These reports are due to the City Clerk by July 15th and January 15th of each year. The City of Santa Clara’s ordinance requires semi-annual reports, while Santa Clara County requires quarterly reports and the City of San Jose requires weekly reports. Both the County and San Jose impose a \$10 fee for every day the report is late. In the current draft Cupertino ordinance, a late report fee is not included but can be added at the direction of Council. Requiring reports twice a year is recommended as more frequent reporting would be administratively burdensome.

For reference, the lobbying ordinance fees imposed by other jurisdictions are below:

Jurisdiction	Initial Registration Fee	Renewal Fee	Late Registration Fine	Client Registration Fee	Late Lobbyist Report Fee
City of Santa Clara	\$745	\$745	\$25/day	\$128/client	N/A
Santa Clara County	\$180	\$60	\$60/day	N/A	\$10/day
City of San Jose	\$239	\$239	5% of unpaid fee/day	\$81/client	\$10/day

The most recent registered lobbyist lists from each of these jurisdictions indicate that the City of Santa Clara had 68 registered lobbyists, Santa Clara County had 66 registered lobbyists, and City of San Jose had 199 registered lobbyists in 2020. These jurisdictions provide a public list of registered lobbyists. Cupertino would develop a similar public list.

Implementation

The lobbyist registration program and fee collection would be administered by the City Clerk’s Office. It is recommended that the ordinance become operative July 1, 2021 in order to allow time to develop the registration and report submittal process. This would also allow time to estimate program costs and adopt program fees. Additionally, the City Clerk would update to the City’s records retention schedule in order to address the required reports and registration.

Enforcement

Violations of the proposed ordinance would be subject to the General Penalty provisions in the Cupertino Municipal Code Section 1.12.010. Under this provision, the City Attorney would have discretion to prosecute violations as infractions or misdemeanors as appropriate. If a violation is treated as an infraction, the fine would be \$100 for the

first violation, \$200 for the second violation of the same code provision within one year; and \$500 for subsequent violations. If a violation is prosecuted as a misdemeanor, violations would be punishable by a fine up to \$1,000, imprisonment for up to six months, or both.

Sustainability Impact

No sustainability impacts.

Fiscal Impact

The proposed ordinance allows the City to investigate and audit lobbying activity within its jurisdiction and the lobbyists' registration and client fees would cover those regulatory costs. Further analysis and program development will be conducted to determine an appropriate fee for costs related to the administration of the lobbyist registration, report submittal, and administrative enforcement that will be brought before the Council during the annual fee schedule update in April.

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Reviewed by: Katy Nomura, Assistant to the City Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Ordinance Regulating Lobbying Activity

B – San Jose Reporting Requirements