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CITY COUNCIL STAFF REPORT

Meeting: July 6 2023

Subject

Introduction of Ordinance No. 23-_____, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities).

Recommended Action

Conduct a first reading of Ordinance No. 23-_____, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities).

Reasons for Recommendation

The City Council adopted the City's Lobbyist Registration Ordinance (Municipal Code Chapter 2.100) in February 2021. The ordinance was based on the City of Santa Clara's lobbyist registration ordinance and incorporates additional language from the City of San José ordinance. Subject to certain exemptions, the ordinance requires organizations or individuals who conduct lobbying activities, as defined by the ordinance, to register and comply with specified disclosure requirements. Presently, a total of six lobbyists are registered under the ordinance.

On July 19, 2022, the League of Women Voters of Cupertino-Sunnyvale ("LWVCS") filed a complaint against the City in federal district court alleging that the Lobbyist Registration Ordinance violates the First Amendment of the U.S. Constitution and Article 1 of the California Constitution. The City moved to dismiss the complaint on the grounds that it failed to state a claim for relief under the federal or state constitutions, and the court granted the City's motion on May 1, 2023. LWVCS was granted leave to file an amended complaint.

While the City has been successful in defending the ordinance against this challenge to its constitutionality, the City Attorney's Office has identified areas where language in the current ordinance could be clarified. The City Attorney's Office has also consulted with LWVCS, which has provided input on clarifying language and various policy issues. The City and LWVCS have agreed to extend court deadlines to provide the City Council with the opportunity to consider amendments to the ordinance that may resolve disputed issues in the lawsuit.

Proposed revisions to the ordinance are presented in Attachments A and B. For certain provisions, the City Attorney's Office has provided Council with alternative language (labeled Option A and Option B). Staff seeks direction from Council as to which option to include in the first reading of the ordinance. The proposed revisions include the following:

- Section 2.100.030: Revises the definitions of Lobbying and Lobbyist, including the deletion of the registration requirements for "Expenditure Lobbyists."

Option A: Retain the existing \$1,000 threshold compensation for registration as a Contract Lobbyist.

Option B: Increase the threshold compensation to \$5,000 threshold for registration.

- Section 2.100.031: Incorporates the current Section 2.100.030(p) ("Exemptions") as a new section; revises exemptions for Organization Lobbyist and clarifies exemption for media activities; expands and simplifies exemptions for nonprofit organizations.
- Section 2.100.090: Revises information requirements for registration and clarifies the requirement for reporting contacts with City Officials.
- Section 2.100.100: Replaces quarterly reporting requirements with semi-annual reporting, consistent with the City of Santa Clara ordinance, in order to reduce the burden of administering the ordinance.
- Section 2.100.130: Adds knowledge or willfulness requirement for violations of ordinance, as well as the following:

Option A: Revise prohibitions in the City ordinance to conform with state law prohibitions.

Option B: Do not incorporate state law provisions into ordinance; delete current Sections 2.100.130(b), (d), and (e).

- Section 2.100.150: Adds a reference to administrative enforcement provisions of the Municipal Code.
- Section 2.100.170: Deletes practice restrictions section of current ordinance.

The proposed ordinance also includes other revisions for clarity, internal consistency, and/or gender neutrality in Sections 2.100.020, 2.100.030, 2.100.050, 2.100.080, 2.100.120, and 2.100.140, and the proposed Section 2.100.170 (currently Section 2.100.180). In addition to improving the clarity of and removing certain internal inconsistencies in the ordinance, the proposed revisions would emphasize that the ordinance's intent to regulate paid lobbying of public officials by for-

profit entities and not communications to the general public that are entitled to greater protection under the First Amendment.

If the City Council identifies preferred language with respect to each of the options set forth above and conducts a first reading of the ordinance, the ordinance will return to Council on July 18 for its second reading and adoption.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

California Environmental Quality Act

Not applicable.

Prepared by: Christopher D. Jensen, City Attorney

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A –Draft Ordinance Amending Chapter 2.100 (clean)

B – Draft Ordinance Amending Chapter 2.100 (blackline)