

ORDINANCE NO. 23-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE CHAPTER 2.100

THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS
FOLLOWS:

SECTION 1: Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 4: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a special meeting of the Cupertino City Council on July 6, 2023 and
ENACTED at a regular meeting of the Cupertino City Council on July 18, 2023 by the
following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>_____</p> <p>Hung Wei, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

Attachment A – Amendments to Chapter 2.100: Regulation of Lobbying Activities

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows.

2.100.010 Purpose.

The purpose of this chapter is to impose registration and disclosure requirements on those engaged in efforts to influence the decisions of City policy makers for Compensation. 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.

2.100.020 Interpretation.

Unless the term is otherwise specifically defined in this chapter or the contrary is stated, this chapter is intended to be interpreted consistently with the Political Reform Act of 1974, Government Code Section 81000 et seq., as amended from time to time.

2.100.030 Definitions.

For the purposes of this chapter, the following definitions shall be applicable:

(a) "Activity Expense" means any payment made by a Lobbyist to or directly benefiting any City Official, City Official-elect or member of his or her immediate family. Activity Expenses include Gifts, honoraria, consulting fees, salaries and any other form of Compensation, but do not include campaign contributions.

(b) "Administrative Action" means the proposal, drafting, development, consideration, advocacy or recommendation of any rule, regulation, agreement or contract, permit, license or hiring action.

(c) "At the behest" means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective City Official, City Official-elect or candidate for elective City office.

(d) "City Official" means any public official, or City employee who participates in the consideration of any Legislative Action or Administrative Action other than in a purely clerical, secretarial or ministerial capacity. It shall also include any City board or commission member, or City representative to any joint powers authority to which the City is a party, and any person working in a capacity as a consultant to the City.

(e) "Client" means a Person who is represented by a Contract Lobbyist, but shall not include the employer, if any, of the Contract Lobbyist.

(f) “Compensation” includes, but is not limited to, money of any denomination or origin; goods or services or anything of value, delivered or rendered; or promises to perform or provide services or contractual arrangements or awards.

(g) “Contact” means attendance at a meeting with a City Official or City Official-elect, or any direct communication with a City Official or City Official-elect, whether oral, electronic or in writing, including, but not limited to communication through an agent, associate or employee, for the purpose of Lobbying.

(h) “Fundraising Activity” means soliciting a contribution; hosting or sponsoring a fundraising event; or hiring a fundraiser or contractor to conduct any event designed for political fundraising at which contributions for any City Official, candidate for elective City office or any controlled committee of an elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization are solicited, delivered or made.

(i) “Gift” has the definition provided by the California Political Reform Act of 1974, Government Code Section 82028, as amended from time to time.

(j) “Independent Expenditure” has the definition provided by the California Political Reform Act of 1974, Government Code Section 82031, as amended from time to time.

(k) “Influencing” or “to Influence” means the purposeful communication, either directly or through agents, promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the behavior of a City Official or official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentives, statistics, studies or analyses.

(l) “Intermediary” means a Person who makes a campaign or officeholder contribution on behalf of another Person. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. A Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.

(m) “Legislative Action” means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination, or other action of the Mayor, City Council, any City board, committee, or commission or any joint powers authority of which the City is a party, acting in its official capacity, or the granting, approval, or amendment of contracts or agreements to which the City is a party by any of the foregoing.

(n) "Lobbying" means making a Contact with a City Official for the purpose of Influencing or attempting to Influence, whether or not successful, a Legislative Action or Administrative Action of the City on behalf of his or her employer or client, except as provided in section 2.100.031.

[OPTION A: Revise definition of "Lobbyist," and retain or establish \$1,000 compensation threshold.]

(o) "Lobbyist" means a Contract Lobbyist or Organization Lobbyist as follows:

(1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of one thousand dollars (\$1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months; or

(2) Organization Lobbyist: Any Organization that hires an employee for Compensation to engage in Lobbying on its behalf with the City, provided that the employee is paid one thousand dollars (\$1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation"), during any consecutive three-month period during the preceding twenty-four months specifically for engaging in Lobbying or for time during which Lobbying was the employee's primary duty. Individuals employed by an Organization Lobbyist to engage in Lobbying are not themselves Lobbyists unless they meet the definition of Contract Lobbyist.

[OPTION B: Revise definition of "Lobbyist," and increase compensation threshold to \$5,000.]

(o) "Lobbyist" means a Contract Lobbyist or Organization Lobbyist as follows:

(1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of five thousand dollars (\$5,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months; or

(2) Organization Lobbyist: Any Organization that hires an employee for Compensation to engage in Lobbying on its behalf with the City, provided that the employee is paid five thousand dollars (\$5,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation"), during any consecutive three-month period during the preceding twenty-four months specifically for engaging in Lobbying or for time during which Lobbying was the employee's primary duty. Individuals

employed by an Organization Lobbyist to engage in Lobbying are not themselves Lobbyists unless they meet the definition of Contract Lobbyist.

(p) "Organization" means any Person that is not an individual.

(q) "Person" means any individual, domestic or foreign corporation, for-profit or nonprofit entity, firm, association, syndicate, union, chamber of commerce, joint-stock company, partnership of any kind, limited liability company, common-law trust, society, or any other group of Persons acting in concert.

2.100.031 Excluded Activities.

(a) For the purposes of this chapter, the following activities shall not be considered Lobbying, and the performance of such activities shall not be considered in determining whether a Person is a Lobbyist:

- (1) Any actions taken by a public official acting in his or her official capacity or acting within the scope of his or her employment or appointment;
- (2) Any actions taken by a Person hired by the City for work performed on behalf of the City, or a Person who prepares documents for consideration by the City under the California Environmental Quality Act, when acting in that capacity;
- (3) With respect only to Persons who do not otherwise qualify as Lobbyists, appearing at or submitting testimony for any public meeting held by the City or any of its agencies, offices, or departments, as long as the communications thereto are public records available for public review;
- (4) Providing oral or written information pursuant to a subpoena or otherwise compelled by law or regulation, or in response to an official request;
- (5) Communicating with City Officials in connection with the administration of an existing contract or agreement between the Person (or its employer) and the City;
- (6) Meeting with the City Attorney, or City staff regarding any claim or litigation matter, negotiation of any agreements or contracts where the City is a party, or the requirements or interpretation of this chapter.
- (7) Communications by designated representatives of a recognized employee Organization to City Officials or their representatives regarding (A) wages, hours and other terms or conditions of employment, or (B) the administration, implementation or interpretation of an existing employment agreement;
- (8) Submitting bids or responding to requests for proposals while directly communicating with the official or department specifically designated to receive such information;

(9) For purposes of the definition of Organization Lobbyist, actions taken by the owners or employees of a business seeking to obtain a permit or other entitlement, license, or similar Administrative Action generally available to qualifying members of the public. This exemption shall not apply to actions taken on behalf of, or for the benefit of, a Client by a Contract Lobbyist;

(10) For purposes of the definition of Organization Lobbyist, actions taken by the Media in the ordinary course of news gathering, reporting, or editorial activity, as generally carried out by members of the professional or amateur press. "Media" shall mean the publishers of newspapers or any other regularly published periodical or newsletter, a radio or television station or network, and Persons who publish information on the Internet. This exemption shall not apply to actions taken on behalf of, or for the benefit of, a Client by a Contract Lobbyist;

(11) Communications by individuals who are professionally licensed by a State licensing Organization pursuant to the California Business and Professions Code, including, but not limited to, attorneys, architects and engineers, and whose communications are made in the course of professional activity under such license;

(12) Actions taken by individuals whose only Compensation for the actions is reimbursement of their own reasonable travel, meals, or incidental expenses; and

(13) Actions taken by a nonprofit Organization, or its officers or employees.

2.100.040 Registration.

Lobbyists shall register with the City Clerk within fifteen (15) days after qualifying as a Lobbyist under CMC_2.100.030. Should a Lobbyist have a change to its registration information, including, but not limited to, the City Legislative Action or Administrative Action as to which the Lobbyist has been engaged, after the annual registration period, such Lobbyist shall file an amended registration with the City Clerk within fifteen (15) days of such change with the changed information.

2.100.050 Annual registration renewal.

A Lobbyist shall renew their registration by January 15th of each year unless they have terminated their status as a Lobbyist pursuant to CMC 2.100.060 by such date.

2.100.060 Termination of Lobbyist status.

After initial registration, annual registration renewal will not be required if a declaration attesting to the termination of Lobbying services within the City has been filed with the City Clerk no later than January 15th.

2.100.070 Active status.

All registrations, renewals and terminations will be deemed filed on the date received by the City Clerk. A Lobbyist shall be deemed active for the duration of the year of registration ending December 31st, unless a declaration attesting to termination of Lobbying services within the City is filed.

2.100.080 Registration fees.

Persons subject to the registration requirements of this chapter shall pay an annual fee set by resolution of the City Council.

(a) The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees may be assessed as specified in subsection (c) of this section, if payment occurs after the due date.

(b) In addition to the annual fee, each registrant who is a Contract Lobbyist shall pay a fee set by resolution of the City Council per Client for whom Lobbying is undertaken for Compensation in excess of five hundred dollars (\$500.00). The fees for Clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent Clients shall be due and submitted within fifteen (15) days of such change with the changed information pursuant to CMC 2.100.040.

(c) An administrative penalty of twenty-five dollars (\$25.00) per day for delinquent fees, up to a maximum of five hundred dollars (\$500.00) in total penalties, will be assessed until in compliance with the registration provisions herein.

2.100.090 Required registration information.

The initial registration shall contain the name, business address, telephone, email addresses and, if applicable, business license of all Persons required to register pursuant to this chapter, including the names of all owners of sole proprietorships and partnerships of fewer than ten Persons. If the registrant is a corporation, it shall also include the names of the president, secretary, chief financial officer, and agent for service of process, if any. In addition to this information, the report shall contain the following:

(a) Contract Lobbyists: The name, business address, and telephone number of each Client and the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence on behalf of the Client; and the name of each Person employed or retained by the Lobbyist to lobby on behalf of each Client.

(b) Organization Lobbyists: The names of owners, officers, or employees engaged in Lobbying on behalf of the Organization, and the item(s) of Legislative Action or Administrative Action that those owners, officers, or employees are seeking to influence.

(c) Payment received by the reporting Lobbyist for services as a consultant or in any other capacity for services rendered to a City agency, any City Official or any City Official-elect or their controlled committees, or ballot measure committee within the previous calendar year. The dates of payment and name of each payer shall be included.

(d) Campaign and officeholder contributions that a Lobbyist made, delivered or acted as an Intermediary for, to an elected City Official or candidate for City office made during the preceding calendar year. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. Also, a Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.

(e) Campaign and officeholder contributions made at the behest of an elected City Official or candidate to any other elected public official or candidate for public office during the preceding calendar year.

(f) All Independent Expenditures made for or for the benefit of a City Official or candidate for City office made during the preceding calendar year.

(g) Fundraising Activity for any City Official, candidate for elective City office or any controlled committee of the elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization made at the behest of a City Official during the preceding calendar year. Required information and disclosures must include the name of the City Official, candidate, committee or party on whose behalf the Lobbyist engaged in fundraising activities, or delivered or acted as Intermediary for one or more contributions. The information and disclosures must also include the name of the City Official requesting the Fundraising Activity, the date of the Fundraising Activity, the name of the contributors and the amount of contributions raised, delivered and/or made in connection with which the Lobbyist acted as an Intermediary.

(h) Donations to for profit or nonprofit Organizations made at the behest of a City Official or candidate for elective City office of any contribution or payment of more than one thousand dollars in the aggregate made during the preceding calendar year.

(i) Contacts made with City Officials or City Officials-elect during the preceding calendar year for the purpose of to influence Lobbying, which shall describe the matter that the Lobbyist sought to influence.

(j) Activity Expenses such as payments that directly benefit any City Official, City Official-elect or member of his or her immediate family or domestic partner made during the preceding calendar year. Activity Expenses include Gifts, honoraria, consulting fees, salaries and other forms of Compensation, but do not include campaign contributions.

(k) The name, address, title and telephone number of the Person responsible for preparing the report, together with that individual's signature attesting to the authority of the signatory and the accuracy and truthfulness of the information submitted.

2.100.100 Semi-annual reports.

Semi-annual reports for the prior six-month period are to be filed with the City Clerk by each Lobbyist on or before July 15th and January 15th of each year, whether or not any Lobbying activities have occurred during such period. Electronic reporting may also be permitted by the City Clerk. Each semi-annual report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that period. If a Lobbyist has terminated all Lobbying activities during such period, the Lobbyist may file a declaration of termination with the semi-annual report. The final semi-annual report shall include disclosure of any Lobbying activities during the period of termination.

2.100.110 Records retention.

All information, reports and statements required to be filed under the provisions of this chapter shall be compiled and preserved by the City pursuant to the City's records retention schedule and shall be open to public inspection. Copies of the records pertaining to the above-required reports shall be preserved by the Lobbyist for inspection and audit for a period of four years from date of production.

2.100.120 Lobbyist identification.

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 board, commission or hearing, a Contract Lobbyist shall identify themselves and the Client(s) on whose behalf they are appearing, and an individual representing an individual representing an Organization Lobbyist shall identify themselves and the Organization they represent.

2.100.130 Prohibitions.

It shall be unlawful for any Person to knowingly or willfully (as those terms are defined in Penal Code section 7) commit any of the following acts:

[OPTION A: Incorporate state law prohibitions into City ordinance.]

(a) Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter.

(b) Performing any action with the purpose of placing any City Official or candidate for City office under personal obligation to the Lobbyist or any Contract Lobbyist's Client.

(c) Deceiving or attempting to deceive any City Official or candidate for City office with regard to any material fact pertinent to any pending or proposed Legislative Action or Administrative Action.

(d) Causing or influencing the introduction of any Legislative Action for the purpose of thereafter being employed to secure its passage or defeat.

(e) Attempting to create a fictitious appearance of public favor or disfavor of any proposed Legislative Action or Administrative Action or to cause any communication to be sent to any City Official or candidate for City office in the name of any fictitious person or in the name of any real person, except with the consent of such real person. This section shall not be interpreted to restrict communications made anonymously.

(f) Representing falsely, either directly or indirectly, that the Lobbyist can control the official action of any City Official or candidate for City office.

(g) Accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed Legislative Action or Administrative Action.

(h) Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.

[OPTION B: Do not incorporate state law prohibitions into City ordinance and limit scope of prohibitions to paragraphs (a)-(b), below.]

(a) Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter.

(b) Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.

2.100.140 Gifts.

It shall be unlawful for any Lobbyist to deliver or cause to be delivered any Gift to any City Official, and for any City Official to accept any Gift from a Lobbyist. This provision shall be interpreted consistently with Government Code Section 86203.

2.100.150 Enforcement.

Persons or entities that violate this chapter may be subject to penalties as set forth in CMC 1.10.150 and 1.12.010.

2.100.160 Injunction.

The City Attorney may seek injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.

2.100.170 Exemptions.

Any Person who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of CMC 2.100.040 by reason of his or her being excluded under CMC 2.100.031 shall not be deemed to have violated the provisions of this chapter if, within fifteen (15) days after notice from the City, he or she either complies or furnishes satisfactory evidence to the City that he or she is exempt from registration.