

Draft Ordinance Regulating Lobbying Activity - Redline

ORDINANCE NO. _____

**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**

The City Council of the City of Cupertino finds that:

WHEREAS, the residents of Cupertino have a right to know the identity of interests which may attempt to influence decisions of City government, as well as the means employed by those interests;

WHEREAS, complete public disclosure of the full range of activities by and financing of lobbyists and those who employ their services is essential to the maintenance of residents' confidence in the integrity of City government;

WHEREAS, it is in the public interest to ensure that lobbyists do not misrepresent facts, obscure their positions or clients, or attempt to deceive a City official through false communications; do not place a City official under personal obligation to themselves or their clients; and do not represent that they can control the actions of any City official;

WHEREAS, it is in the public interest to adopt this chapter to ensure adequate and effective disclosure of information about efforts to lobby City government;

WHEREAS, the City Council hereby adopts this Ordinance pursuant to its authority under Article XI, Section 7 of the California Constitution;

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended to add Chapter 2.100 ("Regulation of Lobbying Activities") to Title 2 ("Administration and Personnel") of the Code, 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: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential to result in physical change to the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that this Ordinance may have a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937. However, the provisions of Chapter 2.100 ("Regulation of Lobbying Activities") shall not become operative until July 1, 2021. The City, or its designee, will not begin to enforce the provisions of Chapter 2.100 until that date.

SECTION 5: 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

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Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on February 2, 2021, and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A

Chapter 2.100

REGULATION OF LOBBYING ACTIVITIES

Sections:

- 2.100.010 Purpose.
- 2.100.020 Interpretation.
- 2.100.030 Definitions.
- 2.100.040 Registration.
- 2.100.050 Annual registration renewal.
- 2.100.060 Termination of Lobbyist status.
- 2.100.070 Active status.
- 2.100.080 Registration fees.
- 2.100.090 Required registration information.
- 2.100.100 ~~Semi-annual~~Quarterly reports.
- 2.100.110 Records retention.
- 2.100.120 Lobbyist identification.
- 2.100.130 Prohibitions.
- 2.100.140 Gifts.
- 2.100.150 Enforcement.
- 2.100.160 Injunction.
- 2.100.170 Practice restrictions.
- 2.100.180 Exemptions.

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 specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Section 81000 et seq., shall govern the interpretation of this chapter.

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.”

(ba) “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.

(db) “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 consultant to the City.

(ee) “Client” means a Person who is represented by a Lobbyist.

(fe) “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 engaging in Lobbying activity.

(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.

(ie) “Gift” means gift as defined in the California Political Reform Act, Government Code Section 81000 et seq., as amended from time to time.

(j) “Independent Expenditure” means an expenditure made by any Person, including a payment of public moneys by a state or local governmental agency, in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

(kf) “Influencing” 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.

(mg) “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.

(nh) “Lobbying” is the Influencing or attempting to influence a Legislative Action or Administrative Action of the City.

(oi) “Lobbyist,” unless exempt under subsection (pj) of this section, means:

(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;

(2) 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 amount of ten hours or more within any consecutive twelve (12)-month period, whether or not such officers or employees are specifically compensated to engage in Lobbying; provided, that the activities of officers shall be considered Lobbying only if those officers receive Compensation by the business or Organization beyond reimbursement for their reasonable travel, meals or incidental expenses; or

(3) Expenditure Lobbyist: A Person who makes payments or incurs expenditures of five thousand dollars (\$5,000.00) or more during any calendar year in connection with carrying out public relations, advertising or similar activities 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 Action or Administrative Action. The five thousand dollar (\$5,000.00) threshold shall not include: (A) Compensation paid to Contract Lobbyists or employees for Lobbying; or (B) dues payments, donations, or other economic consideration paid to an Organization, regardless of whether the dues payments, donations or other economic consideration are used in whole or in part to lobby.

(pj) Exemptions to “Lobbyist” include:

- (1) Any public official acting in his or her official capacity or acting within the scope of his or her employment or appointment;
- (2) The Media, when limiting its action to the ordinary course of news gathering or editorial activity, as carried out by members of the press. "Media" shall mean newspapers or any other regularly published periodical, radio or television station or network or information published on the Internet. This exemption does not apply to individuals conducting media activities when that individual would otherwise qualify as a Contract Lobbyist under this chapter;
- (3) Persons reimbursed for only their reasonable travel, meals or incidental expenses, including, but not limited to, uncompensated members or directors of nonprofit Organizations, such as chambers of commerce;
- (4) Persons whose communications regarding any Legislative Action or Administrative Action are solely limited to 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. Persons who appear or testify at public meetings and who otherwise qualify as Lobbyists due to other activities must register and disclose their Lobbying activities directed toward City Officials, and must identify themselves and their Clients at public meetings, in the same manner and to the same extent such registration, disclosure, and identification is required of all other Lobbyists;
- (5) Persons submitting bids or responding to requests for proposals, provided the provision of such information is limited to direct conversation or correspondence with the official or department specifically designated to receive such information;
- (6) Persons providing oral or written information pursuant to a subpoena or otherwise compelled by law or regulation, or in response to an official request; provided, that the request and response thereto are public records available for public review;
- (7) Designated representatives of a recognized employee Organization whose activities are limited to communicating with 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) Persons 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; provided however, the exemption for attorneys shall only be applicable if the attorney is engaged in the practice of law with respect to the subject of the employment;
- (9) Board members or employees of nonprofit 501(c)(3) corporations, unless the nonprofit Organization is Lobbying for a specific project, issue or Person for which the Organization has received Compensation or a contribution to lobby for or against a specific project, issue or Person;
- (10) Members of neighborhood associations;

(11) 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;

(12) The owner of a business whose attempts to influence governmental action are on behalf of the business and:

(i) The owner or business has not retained a Person to engage in Lobbying activity on behalf of the owner or business; or

(ii) Officers or employees of the business (not including the owner) have not engaged in Lobbying activity on behalf of the owner or business.

This exemption applies only to the threshold for becoming a Business or Organization Lobbyist as defined under Section 2.100.030(~~oi~~), subsection (2). An owner of a business who meets this exemption is subject to the requirements of this chapter if he or she meets the definition of Contract Lobbyist or Expenditure Lobbyist as defined under subsections (1) and (3) of Section 2.100.030(~~oi~~), respectively;

(13) Persons who meet with City Officials solely to lodge “whistleblower” complaints relating to alleged improper governmental activity such as mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(14) Persons whose communications with City Officials are solely in connection with the administration of an existing contract or agreement between the Person and the City; or

(15) Persons who meet 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.

(~~qk~~) “Organization” means any Person that is not an individual.

(~~rl~~) “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.

2.100.040 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 his or her registration by January 15th of each year unless he or she has 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 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) A fine of twenty-five dollars (\$25.00) per day for delinquent fees, up to a maximum of five hundred dollars (\$500.00), 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. Any business or Organization registering under this act shall also briefly describe the nature of its business or Organization and contact individual. In addition to this information, the report shall contain the following:

(a) Contract Lobbyists: The name, business address, telephone number of each Client, the nature of each Client's business 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) Business or Organization Lobbyists: The names of owners, officers or employees conducting Lobbying activities and the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence.

(c) Expenditure Lobbyists: The item(s) of municipal Legislative Action or Administrative Action the Lobbyist is seeking to influence.

(d) 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.

(e) 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.

(f) 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.

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

(h) 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.

(i) 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.

(j) Contacts made with City Officials or City officials-elect during the preceding calendar year for the purpose of influencing or attempting to influence Legislative Action or Administrative Action. Contact information must include a brief description of the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence, the date(s) of Contact, the method(s) of Contact, and the number of Contacts in the following ranges: (one), (two to five), (six to ten) or (eleven or more).

(k) 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.

(~~le~~) 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~~Quarterly reports.

~~Semi-annual~~Quarterly reports for the prior ~~threesix~~-month period are to be filed with the City Clerk on or before July 15th, October 15th, ~~and~~ January 15th, and April 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~~quarterly 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~~quarterly report. The final ~~semi-annual~~quarterly 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 himself/herself and the Client(s) on whose behalf he/she is appearing, and a Business or Organization Lobbyist shall identify himself/herself and the business or Organization he/she represents.

2.100.130 Prohibitions.

It shall be unlawful for any Lobbyist to commit any of the following acts:

- (a) Unregistered Lobbying: 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) Unauthorized Communications: Sending or causing any communication to be sent to any City official in the name of any nonexistent Person or in the name of an existing Person without the express or implied consent of such Person.
- (c) Indirect Violations: Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.
- (d) Creation of Obligations: Performing or sponsoring any act with the purpose and intent of placing any City Official under personal obligation to the Lobbyist.

(e) Contingent Compensation: Compensation for Lobbying activity when the Compensation is directly dependent on the result of Legislative Action(s) or Administrative Action(s) that are the subject of the Lobbying activity.

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.

2.100.150 Enforcement.

Persons or entities that violate this chapter may be subject to penalties as set forth in CMC 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 Practice restrictions.

No Person who the City finds to have violated this chapter may act as a Lobbyist or otherwise attempt to influence municipal Legislative Actions or Administrative Actions for Compensation for one year after such finding of violation.

2.100.180 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 exempt under CMC 2.100.030(~~pf~~) shall not be deemed to have violated the provisions of CMC 2.100.040 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.