



A BASIC GUIDE TO LOBBYING REGISTRATION AND DISCLOSURE IN THE CITY OF IRVINE

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What does the City of Irvine Lobbying Ordinance regulate?

The City's lobbying Ordinance (Irvine Municipal Code Division 7) regulates persons who are paid or compensated by others to attempt to influence City decisions. It requires certain individuals and entities to register as a lobbyist with the Office of the City Clerk and requires public disclosure by quarterly reporting of certain lobbying activities in the City.

When did the Ordinance take effect?

The initial ordinance (Ordinance 06-02) was effective on March 15, 2006. Ordinance 06-06 amended these regulations, effective August 10, 2006.

Declaration of policy:

The City Council declares and finds as follows:

- A. City government functions to serve the needs of all citizens.
- B. The citizens of the City have a right to know the identity of interests which attempt to influence decisions of City government, as well as the means employed by those interests.
- C. All persons engaged in compensated lobbying activities aimed at influencing decisions by City government must, when so engaged, be subject to the same regulations, restrictions and requirements, regardless of their background, training or other professional qualifications or license.
- D. 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 citizen confidence in the integrity of City government.
- E. It is in the public interest to ensure that lobbyists do not misrepresent facts, their positions 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.
- F. It is in the public interest to adopt this division to ensure adequate and effective disclosure of information about efforts to lobby City government.

Who is a City official under the Lobbying Ordinance?

City official means the Mayor, Mayor Pro Tem, members of the City Council, City Council Executive Assistants, the City Manager, Assistant City Managers, Department Directors, Deputy Department Directors, the Police Chief, the Deputy Police Chief, the City Attorney, the City Clerk, the Zoning Administrator, and members of the Planning Commission, the Community Services Commission, the Finance Commission, and any other commission that is advisory in nature.

Who qualifies as a “Lobbyist”?

Lobbyist means a person who engages in lobbying, whether directly or through the acts of another. If an agent engages in lobbying for a principal, both the agent and the principal are lobbyists. A lobbyist includes but is not limited to an in-house employee who engages in lobbying for his or her employer or for a client of the employer, and a land use project applicant who is not the record owner of the subject real property.

What is “Lobbying”?

Lobby or *Lobbying*, except as provided below, means any oral or written communication (including an electronic communication) to a City official, made directly or indirectly by any person in an effort to influence or persuade an official to favor or oppose, recommend or not recommend, vote for or against, or take or refrain from taking action on any municipal question. The term “lobby or lobbying” does not include a communication:

1. Merely requesting information or inquiring about the facts or status of any municipal question, matter, or procedure, and not attempting to influence a City official;
2. Made by a public official or employee (including, but not limited to, an official or employee of the City of Irvine) acting in his or her official capacity;
3. Made in the course of, or in connection with the gathering, preparation or dissemination of news, information or commentary to the public, or in connection with a municipal question’s possible effect upon or relevance to the media’s right or ability to engage in such conduct.
4. Made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, or any other medium of mass communication;

5. Made in the form of a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;
6. Made in writing as a petition for official action and required to be a public record pursuant to established City procedures;
7. Made in writing to provide information in response to an oral or written request by a City official for specific information;
8. The content of which is compelled by law;
9. Made in response to a public notice soliciting communications from the public and directed to the official specifically designated in the notice to receive such communications;
10. Made on behalf of an individual with regard to that individual's employment or benefits;
11. Made by a fact witness or expert witness at an official proceeding; or
12. Made by a person solely on behalf of that individual or his or her relative.

What is a “Lobbying firm”?

Lobbying firm means:

1. A self-employed lobbyist, or
2. A person that has one or more employees who are lobbyists on behalf of a client or clients other than that person.

What is a “Client”?

Client means any person on whose behalf lobbying is conducted. In the case of a coalition or association that employs or retains persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

What is a “Registrant”?

Registrant means a person required to register under Section 1-7-103.

What is “Compensation”?

Compensation means money or any other thing of value that is received, or is to be received, in return for, or in connection with, lobbying services rendered, or to be rendered, including reimbursement of expenses incurred in lobbying. Compensation includes the financial gain that a person may realize as a result of the determination of a municipal question, including gains in the form of a contingent fee. If a lobbyist engages in both lobbying activities and other activities on behalf of a person, compensation for lobbying includes all amounts received from that person, if for the purpose of evading the obligations imposed by this division, the lobbyist has structured the receipt of compensation in a way that unreasonably minimizes the value of the lobbying activities. Compensation which has not yet been received is considered to be received on the date that it is earned, if that date is ascertainable; otherwise, it is received on the date on which the contract or agreement for compensation is made, or on the date lobbying commences, whichever is first. Compensation does not include any amounts previously reported.

What is a “Municipal question”?

Municipal question means a public policy issue of a discretionary nature pending before the City Council or another City body identified in the definition of City official, including but not limited to proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts. The term "municipal question" does not include the day-to-day application, administration, or execution of City programs and policies such as permitting, zoning and planning matters, but does include the amendment, modification or revision to the City's General Plan or Zoning Ordinance.

What is a “Contact”?

Contact means all oral and written (including electronic) communications directed to a City official, including but not limited to telephone calls and messages, voicemail and answer machine messages, e-mail messages, mail, personally delivered material, meetings, and conversations.

What is a “Person”?

Person means an individual, business entity, trust, corporation, association, firm, partnership, committee, club, or any other organization or group of persons acting in concert.

What is a “Relative”?

Relative means father, step-father, mother, step-mother, grandmother, grandfather, grandchild, brother, step-brother, sister, step-sister, spouse, aunt, uncle, cousin, child or step-child, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

What do I have to file as a lobbyist?

All lobbyists use Lobbyist reports provided by the City Clerk. There are three (3) reports – an Initial/Annual Registration Report – a Quarterly Report of Activity – and a Notice of Lobbyist Termination Report. Forms are available at the City Clerk’s Office and online at www.ci.irvine.ca.us.

Required disclosures. Each registrant shall file with the City Clerk a separate report signed under oath concerning the registrant’s lobbying activities for each client from whom, or with respect to whom, the registrant received compensation of ten thousand dollars (\$10,000.00) or more for lobbying during the prior calendar quarter. The report for the preceding calendar quarter shall be filed between the first and fifteenth day of April, July, October, or January, or on the date registration on behalf of the client is required, whichever comes later. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. The report shall be on the form prescribed by the City Clerk and shall include, with respect to the previous calendar quarter, to the extent applicable:

1. The name of the registrant, the name of the client, and any changes or updates in the information provided in the most recent registration statement filed;
2. A list of the specific issues upon which the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of specific legislative proposals and other proposed, pending, or completed official actions;
3. A list of the City officials contacted by the registrant on behalf of the client with regard to a municipal question;
4. A list of the employees or agents of the registrant who acted as lobbyists on behalf of the client;
5. The name and position of each City official or City official’s relative who is employed by the registrant.

Separate registrations. A person required to register as a lobbyist must file a separate registration form for each client. A registrant who makes more than one lobbying contact for the same client shall file a single registration form covering all lobbying contacts for that client. Each registration form must be signed under oath. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form.

Initial Registration Report. A person engaging in lobbyist activities must file an Initial Registration Report within 30 days of the date he/she receives or becomes entitled to receive \$10,000 or more in compensation from a client in a calendar quarter, or prior to the date the subject matter of the lobbying activity is scheduled for official city action, whichever is sooner.

Quarterly Reports. Quarterly Reports must be filed for each client for which \$10,000 or more was received during the prior calendar period. No fee is due with the quarterly report. Quarterly reports are due:

- April 15 (Period ending March 31)
- July 15 (Period ending June 30)
- October 15 (Period ending September 30)
- January 15 (Period ending December 31)

Subsequent annual registration. Subsequent registration forms and required fees must be filed annually by January 31st for each client for whom a registrant previously filed, or was required to file, an initial registration form.

A registration or report filed by first-class United States mail or by common or contract carrier is timely if:

- A. It is properly addressed with postage and handling charges prepaid; and
- B. It bears a post office cancellation mark or a receipt mark from a common or contract carrier indicating a time within the applicable filing period or before the applicable filing deadline, or if the person required to file furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period or before that deadline.

Preservation of records. Each registrant shall obtain and preserve all books, papers and documents necessary to substantiate the activity reports required to be made pursuant to this Section for five (5) years from the date of filing of the report containing such items.

No activity or changes. No quarterly activity report is required if there is no activity during the preceding quarter calendar year and there are no other changes to items

required to be reported. Simply identify the client on the quarterly reporting form and check the “no reportable” activity box.

Contingent fees. A person shall disclose employment to lobby on a contingent fee basis as well as any arrangement to engage in lobbying activities on a contingent fee arrangement.

What registration fees must be paid and what penalties may be assessed?

In accordance with Resolution No.06-26 adopted by the City Council on March 14, 2006, the following fees are effective January 1, 2016:

Lobbyists must pay an annual fee of \$495.00 per registrant. Those persons registering for the first time after June 30 of a given year must pay a reduced fee of \$233.00. Annual registration renewal fees are due no later than January 31 of each year. If the deadline falls on a weekend, the deadline becomes the following Monday.

Lobbyists are also required to pay a \$70.00 fee per client for whom lobbying is undertaken. The fees are due with the registration. The fees for subsequent clients are due at the time that Quarterly Reports are submitted.

There will be a fine of 5% of the unpaid fee per day assessed for delinquent fees up to a maximum of 100% of the unpaid fees until the registration fees and the fines are paid in full.

There is a fine of \$10 per day for delinquent quarterly reports until the quarterly reports are filed with the City Clerk.

Who is exempt from registering?

The following persons are exempt from the requirements of the Lobbying Ordinance:

A. *Media outlets.* A person who owns, publishes or is employed by: (1) a newspaper; (2) any other regularly published periodical; (3) a radio station; (4) a television station; (5) a wire service; OR 6) any other bona fide news medium that in the ordinary course of business disseminates news, opinions, or paid advertisements that directly or indirectly oppose or promote municipal questions or seek to influence official action relating thereto, if the person does not engage in other activities that require registration; and (7) any employee of such media outlet or other person engaged in gathering or preparing information for dissemination therein.

B. *Governmental entities.* Governmental entities and their officials and employees, provided the communications relate solely to subjects of governmental interest concerning the respective governmental bodies and the City.

C. *Unknown municipal questions.* A person who does not know and has no reason to know that a municipal question is pending at the time of contact with a City official. This exception does not apply if the existence of a municipal question is discovered during on-going contacts with a City official and the person then engages in additional lobbying of the same official or other City officials with respect to that municipal question.

What additional information and disclosures are required of lobbyists?

Appearances. To the extent otherwise permitted by law, each person who lobbies or engages another person to lobby appearing before the City Council or another City body identified in the definition of "City official" shall complete a speaker identification card prior to that appearance and shall orally identify himself or herself and the client(s) he or she represents upon beginning an address. Each person who lobbies or engages another person to lobby shall also disclose on appropriate sign-in sheets his or her identity, the identity of the client he or she represents, and whether or not he or she is registered as a lobbyist.

Oral lobbying contacts. Any person who makes an oral lobbying contact with an official shall, on the request of the official at the time of the lobbying contact, state whether the person is registered under Section 1-7-105 and identify the client or clients on whose behalf the lobbying contact is made.

Written lobbying contacts. Any registrant who makes a written lobbying contact (including an electronic communication) with a City official shall identify the client(s) on whose behalf the lobbying contact is made and identify himself or herself as a registered lobbyist.

What are some of the activities that are specifically unlawful under the Lobbying Ordinance?

Personal obligation of City officials. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not do any act, or refrain from doing any act, with the express purpose and intent of placing any City official under personal obligation to such lobbyist or person.

Improper influence. A registrant shall not cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination, or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage, or defeat.

False appearances. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not cause any communication to be sent to a City official in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

Prohibited representations. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not represent, either directly or indirectly, orally or in writing, that that person can control or obtain the vote or action of any City official.

Does the Lobbying Ordinance prohibit any activity by City officials?

Yes. City officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist or recommend the name of a particular lobbyist to facilitate favorable legislative or administrative action with regard to such person's matter pending before the City or Agency.

How is the Lobbying Ordinance administered?

The ordinance is administered by the City Clerk who shall:

A. Provide guidance and assistance on the registration and reporting requirements for lobbyists and develop common standards, rules, and procedures for compliance;

B. Review for completeness and timelines of registrations and reports;

C. Maintain filing, coding, and cross-indexing systems to carry out the purposes of this important provision of the Ethics Code, including:

1. a publicly available list of all registered lobbyists, lobbying firms, and their clients; and

2. computerized systems designed to minimize the burden of filing and maximize public access to materials filed;

D. Make available for public inspection and copying at reasonable times the registrations and reports filed;

E. Retain registrations and reports in accordance with the California Public Records Act; and

F. Upon receipt of a complaint filed with the Clerk's office alleging that a violation of the rules applicable to lobbyists may have been committed, forward information to the City Manager's Office to determine whether to file a complaint and initiate an investigation. Lobbyists who knowingly violate this division may be liable in a civil action brought by the City Attorney for up to one thousand dollars (\$1,000) per violation.

How do I terminate my registration?

A notice of termination of registration must be filed with the City Clerk if the registrant is no longer required to register. Note: The filing under of a notice of termination does not relieve the registrant of reporting requirements imposed for the reporting period in question.

PRACTICAL QUESTIONS REGARDING LOBBYING REGULATIONS

When is a person required to register as a lobbyist?

A person engaging in lobbyist activities must file an Initial Registration Report within 30 days of the date he/she receives or becomes entitled to receive \$10,000 or more in compensation from a client in a calendar quarter, or prior to the date the subject matter of the lobbying activity is scheduled for official city action, whichever is sooner.

My firm is a real estate consulting firm that employs two independent contractors who represent clients and who provide lobbying services. Each contractor is compensated more than \$10,000 within the three month period for representation of clients including lobbying services. Do they need to register as lobbyists?

Yes. Each independent contractor is a Lobbyist if they meet the thresholds for compensation during any consecutive 3 month period and engage in services which include lobbying.

My lobbying firm uses sub-consultants who may qualify as lobbyists who identify the firm as a client or who may also identify the firm's clients as their client. Do they need to register as lobbyists?

"Sub-consultants" may qualify independently as lobbyists under the Ordinance. If so, they must register as lobbyists. They would also need to list the name(s) of those client(s) for whom you retain the services of the sub-consultants.

If I don't have a retainer fee arrangement with a client but one that provides a fee in the future based on a milestone or based on a result, would I need to report this fee?

Yes. This is compensation that is promised on a success fee or contingency fee basis. As promised compensation under the Ordinance, it must be reported in accordance with the ranges set out in the Ordinance.

If I hire a polling firm to conduct opinion research on a development that may come before the City Council, and the results of the research are presented only to my client and not to a City official, is the polling firm or pollster considered a lobbyist?

No. If a polling firm or pollster engages only in research and data gathering and does not solicit or urge, directly or indirectly, other persons to communicate directly with any City official, then the firm or pollster is not an expenditure lobbyist under the Lobbyist Ordinance.

My neighborhood association wants to oppose a certain project near the neighborhood school. I've talked to our City Councilmember and employees in the Planning Department about assisting our association. Do I need to register as a lobbyist?

No. If no compensation is received, this is not lobbying under the terms of the regulations.

I am an attorney retained to represent a client in obtaining a large contract for consulting work for the City. There are legal issues that I intend to raise with elected City officials and department heads. Do I need to register as a lobbyist?

If you engage in influencing or attempting to influence a City official with regard to a City legislative or administrative action and you are paid \$10,000 or more for such services during any consecutive three month period, you must register as a lobbyist.