

ORDINANCE NO. NS-19.42

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
REPEALING CHAPTER VII OF DIVISION A3 OF THE COUNTY OF SANTA
CLARA ORDINANCE CODE AND ENACTING A NEW CHAPTER VII OF
DIVISION A3 RELATING TO LOBBYING**

Summary

This Ordinance repeals the County of Santa Clara's Lobbying Ordinance and enacts a new Lobbying Ordinance to redefine lobbying activity and establish new registration and disclosure requirements for lobbyists.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

SECTION 1. Chapter VII of Division A3 of the Ordinance Code of the County of Santa Clara relating to lobbying is hereby repealed in its entirety and a new Chapter VII is hereby added to read as follows:

**CHAPTER VII
LOBBYING**

Sec. A3-61. Purpose.

- (a) The purpose of this chapter is to impose registration and disclosure requirements on those engaged in efforts to influence the decisions of County 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.
- (b) Additionally, the disclosure and registration requirements ensure that County officials are made aware of the interests that lobbyists represent when the officials are lobbied.

Sec. A3-62. Definitions.

Whenever used in this chapter, Sections A3-61 through A3-69, the following words and phrases shall have the definitions provided in this section. Other terms used and not defined in this chapter have the meanings set forth in this title, and terms used and not

defined in this title have the meanings set forth in the California Political Reform Act of 1974, as amended.

- (a) “At the behest” means at the means under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.
- (b) “County official” means members of the Board of Supervisors and their staff (excluding administrative staff), appointees of the Board of Supervisors, the District Attorney, the Assessor, the Sheriff, the County Executive, Chief Operating Officer, Deputy County Executives, County department and agency heads, members of County boards or commissions, and persons who have been elected to a County office but have not yet been sworn in to office.
- (c) “Client” means the person who compensates a lobbyist for representation before a County official.
- (d) “Contact or contacting” means attendance at a meeting with a County official, or any direct communication with a County official, 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.
- (e) “Compensated or compensation” means any economic consideration for services rendered or to be rendered in the future, including, without limitation, payment, distribution transfer, loan advance, deposit, other rendering of money, property, services, or anything else of value.
- (f) “Lobbying Activity” means influencing or attempting to influence a County official with regard to a legislative or administrative action of the County.
 - (1) “Influencing” means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions of the County official, by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies, or analyses.
 - (2) “Legislative action” means the drafting, introduction, consideration, modification, enactment, or defeat of any resolution, ordinance, amendment thereto, report, nomination, policy, or other action of the Board of Supervisors; a County board, commission, or task force; or any joint powers authority of which the County is a party.

- (3) “Administrative action” means the proposal, drafting, development, consideration, advocacy, recommendation, adoption, amendment, termination, extension, or approval of any rule, regulation, agreement, contract, permit, license, policy, or hiring action.
- (g) “Lobbyist,” unless exempt under section A3-64, means:
- (1) “Contract lobbyist” means any person, whether an entity or individual, engaging in Lobbying Activity 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) or more for any services that include engaging in Lobbying Activity during any consecutive three-month period.
- (2) “In-house lobbyist” means any person, including a business, corporation, association, political action committee, or any other organization if its owners, officers, or employees have engaged in Lobbying Activity on its behalf and whose aggregate time engaging in Lobbying Activity total ten (10) hours or more in a consecutive twelve-month period.
- (3) “Expenditure lobbyist” means any person who makes payments or incurs expenditures in the aggregate amount of five thousand dollars (\$5,000) 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 County official in order to attempt to influence a legislative or administrative action. The five thousand dollars (\$5,000) threshold does not include:
- (A) Compensation paid to contract lobbyists or in-house lobbyists for Lobbying Activity; or
- (B) Dues, donations, or other economic consideration paid to a membership organization that is ongoing in nature and whose membership services are not limited to Lobbying Activity, regardless of whether the dues, donations, or other economic consideration are used in whole or in part for Lobbying Activity.
- (h) “Owner” means any individual with greater than a fifty percent interest in the business.

- (i) "Person" means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert.

Sec. A3-63. Registration and Disclosure Requirements

- (a) Initial Registration. A lobbyist is required to register his or her Lobbying Activity by filing a Lobbyist Disclosure Report (defined below) with the Clerk of the Board no later than ten days after qualifying as a lobbyist as defined in this chapter and paying a registration fee. A lobbyist who meets the threshold requirements of one or more of the categories (contract lobbyist, in-house lobbyist, or expenditure lobbyist) is only required to register once, but must make all disclosures in the Lobbyist Disclosure Report. Only Lobbying Activity that occurs after the effective date of this ordinance shall be considered for the purpose of qualifying as a lobbyist.
- (b) Annual Registration. A lobbyist must renew his or her registration by January 15 of each year by filing a Lobbyist Disclosure Report and paying a registration fee.
- (c) Quarterly disclosures. Every Lobbyist must file a Lobbyist Disclosure Report for every calendar quarter with the Clerk of the Board no later than fifteen (15) calendar days after the end of each quarter after Initial Registration whether or not any Lobbying Activities have occurred during such period unless they have filed a declaration attesting to the termination of Lobbying Activity pursuant to the requirements of sub-section (e). Quarterly disclosures must be filed by April 15, July 15, and October 15 for the prior calendar quarter.
- (d) Lobbyist Disclosure Report.
 - (1) A lobbyist who meets the threshold requirements of one or more of the categories (contract lobbyist, in-house lobbyist, or expenditure lobbyist) must fill out one registration report with all the applicable information including the following:
 - (A) Name;
 - (B) Business address;
 - (C) Telephone and fax numbers;
 - (D) Names of all owners if the lobbyist is a sole proprietorship or partnership of fewer than five persons;

- (E) Names of the officers and agent for service of process, if any, if the lobbyist is a corporation;
 - (F) If applicable, a description of the nature of, the business, corporation, association, committee, or any other organization in sufficient detail to inform the reader of its nature and purpose; and
 - (G) If applicable, contacts made with County officials during the preceding calendar quarter for the purpose of conducting Lobbying Activity. Contact information must include a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence and the number of contacts in the following ranges: (1), (2 - 5), (6 - 10), or (11 or more).
- (2) All contract lobbyists must also provide the following information for each client:
- (A) Name, business address, and telephone number of each client represented before County officials;
 - (B) Nature of each client's business;
 - (C) A brief description of the legislative or administrative action(s) the lobbyist seeks to influence on behalf of each client;
 - (D) Name of each person employed or retained by the lobbyist to engage in Lobbying Activity on behalf of each client; and
 - (E) The total compensation promised or received from each client listed during previous calendar quarter for Lobbying Activity within the following ranges: (\$0.00 - 500), (\$501 - \$1,000), (\$1,001 - \$10,000), (\$10,001 - \$100,000), (\$100,001 - \$200,000), (\$200,001 - \$300,000), (\$300,001 - \$400,000), and (Over \$400,001).
- (3) All in-house lobbyists must also provide the following information:
- (A) Names of each owner, officer, and employee conducting Lobbying Activities on its behalf; and
 - (B) A brief description of the legislative or administrative action(s) the lobbyist seeks to influence.

- (4) All expenditure lobbyists must also provide the following information:
 - (A) Names of each owner, officer, and employee conducting Lobbying Activities on its behalf; and
 - (B) A brief description of the legislative or administrative action(s) the lobbyist seeks to influence.
- (e) Termination of Lobbying Activity. If lobbyists file a declaration attesting to the termination of Lobbying Activity no later than the date the annual registration or quarterly disclosure is due, they will not be required to file any further reports. This declaration must be accompanied by a final Lobbyist Disclosure Report, disclosing any Lobbying Activities that occurred during the quarter of termination.
- (f) All information required under this section shall be submitted to the Clerk of the Board in the format designated by the Clerk.
- (g) Lobbyists shall verify, under penalty of perjury, the accuracy and completeness of the information provided under this chapter.
- (h) Lobbyists shall retain for a period of five years all books, papers and documents necessary to substantiate the registration and disclosure reports required by this chapter.

Sec. A3-64. Exemptions.

The following persons are exempt from the requirements of this chapter unless otherwise specified:

- (a) A public official acting in his or her official capacity.
- (b) A person engaged solely in publication or broadcasting of news items, editorials, or commentary which directly or indirectly urges governmental action.
- (c) A person hired by the County for work performed on behalf of County, or a person who prepares documents for approval by the County under the California Environmental Quality Act of 1970, or a person who has been specifically invited by a County official for the purpose of giving testimony in aid of the body or person extending the invitation or invited to attend a meeting such as a County task force or department committee meeting to provide information or assistance requested by County staff.

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

- (1) The owner or business has not retained a person to engage in Lobbying Activity on behalf of the owner or business; or
- (2) 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 an in-house lobbyist as defined under Section A3-62(g)(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 Sections A3-62(g)(1) and (3), respectively.

(e) A person whose attempts to influence governmental action are limited to:

- (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; and/or
- (2) Preparing, processing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public.

(f) A person whose sole activity includes one or more of the following:

- (1) Submitting a bid on a competitively bid contract or other solicitation for goods or services;
- (2) Submitting a written response to a request for proposals or qualifications or other solicitation for goods or services;
- (3) Participating in an oral interview or other process in connection with a request for proposals or qualifications, or other solicitation for goods or services; or
- (4) Negotiating the terms of an agreement with the County official authorized to negotiate such an agreement.

(g) A person who meets with County officials solely to lodge “whistleblower” complaints relating to improper governmental activity such as mismanagement,

waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

- (h) A person who meets with the County Counsel or Clerk of the Board regarding any claim or litigation matter, negotiation of any agreements where the County is a party, or the requirements or interpretation of this chapter.
- (i) Members of non-profit organizations or the uncompensated members of the board of directors of a non-profit organization when they attempt to influence County officials on behalf of the non-profit organization.
- (j) Members of neighborhood associations, neighborhood advisory committees, or project area committees.
- (k) A person whose communications are solely related to:
 - (1) The establishment, amendment, administration, implementation, or interpretation of a collective bargaining agreement or a memorandum of agreement between the County and a recognized employee organization;
 - (2) Management decisions as to the working conditions of represented employees that clearly relate to the terms of a collective bargaining agreement or memorandum of agreement between the County and a recognized employee organization; or
 - (3) Proceedings before the County Personnel Board.
- (l) A person whose communications with County officials are solely in connection with the administration of an existing contract or agreement between the person and the County.
- (m) Compensated officers or employees of a nonprofit organization with tax exempt status under Section 501(c)(3) of the Internal Revenue Code whose attempts to influence governmental action are on behalf of the organization.
- (n) A person performing a duty or service that can be performed only by an attorney, architect, or engineer licensed to practice in the State of California.

Sec. A3-65. Fees.

- (a) All fees and interest referenced in this section shall be set forth in the schedule of fees established by resolution of the Board of Supervisors.

- (b) Lobbyists are required to pay an annual registration fee at the time of initial registration or annual registration (as defined in Section A3-63). If the lobbyist registers for the first time on or after June 30 of a given year, the lobbyist may pay a reduced registration fee. If the fee is not paid at the time of registration or registration renewal, a late registration fee will be assessed each day until the registration fee is paid in full. In no event will the late registration fee exceed one hundred percent of the unpaid registration fee.
- (c) Lobbyists who fail to file a quarterly report on the date due will be assessed a late fee.

Sec. A3-66. Administrative Penalties.

- (a) Each violation of this chapter may result in civil penalties of up to five thousand dollars (\$5,000) or the amount of the compensation received for the Lobbying Activity, whichever is greater.
- (b) Violation of this chapter may result in a prohibition against engaging in Lobbying Activity for compensation. Such debarment will be in effect for three months from the date the Clerk of the Board determines that a violation has occurred or until the lobbyist has come into compliance with this chapter, whichever is later.
- (c) Violation of this chapter shall not constitute a criminal misdemeanor.

Sec. A3-67. Enforcement.

- (a) Any person may file a complaint with the Clerk of the Board alleging a violation of this chapter.
- (b) Enforcement protocol.
 - (1) Upon discovering a potential violation of this chapter, the Clerk of the Board must notify the lobbyist of the alleged violation and the requirements of this chapter. Persons notified of a potential violation will have thirty (30) days to correct the error or demonstrate to the Clerk that they have not violated this chapter.
 - (2) The Clerk of the Board will investigate alleged violations of this chapter. The Clerk of the Board may refer investigations of alleged violations to an independent third party investigator. The independent third party investigator shall investigate the alleged violation and make a

recommendation to the Clerk of the Board based on its findings. The Clerk of the Board may accept, reject, or modify this recommendation.

- (A) The Clerk of the Board has the power to inspect all documents required to be maintained by this chapter.
 - (B) The Clerk of the Board may issue an order to show cause to any person. Such an order must specify a time and place where such person must appear to provide evidence that he or she has complied with the requirements of this chapter.
- (3) The Clerk of the Board may assess and collect fees and administrative penalties as an Enforcement Officer in compliance with the administrative procedures established by Division A37 of this Code.
- (4) Decisions of the Clerk of the Board shall be appealable to the Office of the County Hearing Officer established by Division A38 of this Code.
- (A) Appointment. The Board of Supervisors shall appoint three hearing officers to hear appeals related to this chapter. Should an appeal be taken to the Office of the County Hearing Officer, an officer shall be selected at random from these three hearing officers.
 - (B) Qualifications. In addition to the qualifications defined in Section A38-3 of this Code, hearing officers appointed to hear appeals from this chapter shall be retired judges who have not served as a judge in Santa Clara County.
 - (C) Compensation. Notwithstanding Sec A38-5, hearing officers appointed under this chapter may receive compensation if they are chosen to adjudicate a dispute arising out of the requirements of this chapter.
- (c) The Clerk of the Board may promulgate rules, regulations, guidelines, and/or policies in furtherance of this chapter.

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Sec. A3-68. Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the chapter. Every section, subsection, sentence, clause, or phrase of this chapter is severable from all other sections, subsections, sentences, clauses, or phrases.

Sec. A3-69. Effective Date.

This ordinance shall become effective 30 days from the date of second reading.

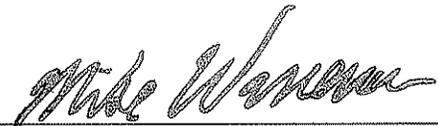
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on **FEB 25 2014**, 20__ , by the following vote:

AYES: **CHAVEZ, CORTESE, SIMITIAN, WASSERMAN, YEAGER**

NOES: **NONE**

ABSENT: **NONE**

ABSTAIN: **NONE**



MIKE WASSERMAN, President
Board of Supervisors

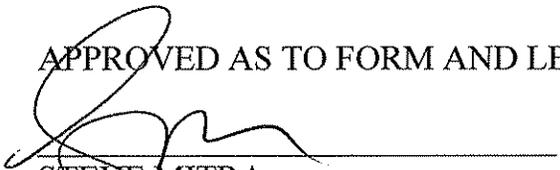
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



LYNN REGADANZ
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



STEVE MITRA
Assistant County Counsel

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