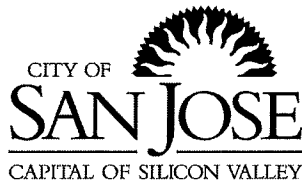


3.3 Actions Related to Changes to the Lobbyist Ordinance Under Title 12.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Toni Taber, CMC
City Clerk

SUBJECT: ACTIONS RELATED TO
CHANGES TO THE LOBBYIST
ORDINANCE UNDER TITLE 12

DATE: June 8, 2017

RECOMMENDATION

Approve Ordinance amending Sections 12.12.400 and 12.12.430 and adding Sections 12.12.425, 12.12.450, 12.12.460 to Chapter 12.12 of Title 12 of the San José Municipal Code to require lobbyists engaged in lobbying activities to file weekly reports and to make other clerical and technical changes.

BACKGROUND

In the *Mayor's 2015 Biennial Ethics Review and Recommendations*, the City Clerk was directed to report on the feasibility of creating an electronic filing system for lobbyist tracking and reporting, which would automate the process in a way that provides immediate online disclosure upon submittal of reports, and to refine current lobbyist forms and add a section that differentiates the type of contact with elected officials and their Chief of Staffs. In addition, the Council directed that lobbyist reporting, under Title 12, be changed from requiring quarterly reports to weekly reports that are filed on every Monday after contact with elected officials and Chiefs of Staff. On October 12, 2016, a revised Lobbyist Ordinance was presented to the Board of Fair Campaign and Political Practices ("Board"). Representatives from several non-profits attended the meeting to speak against requiring non-profits to register as lobbyists. The Board approved the ordinance as presented and did not recommend removing the exemption for non-profits. However, the ordinance presented to the Board, and ultimately approved by Council, did not seek to implement weekly reporting because of technical and staff limitations.

At that time, the City Clerk had not been able to come up with a cost free solution of implementing weekly reporting. Several free form softwares were evaluated. These required a lot of staff time to set the forms up, and would only generate the filings into an email inbox, which was a solution we were able to implement using current software. In December, it was decided to try a one-year trial of Seamless docs which did not include all the reporting capabilities desired, but would enable immediate postings of filings, and the City Clerk felt it this would meet the needs of a cost effective weekly filing solution.

ANALYSIS

In an effort to increase transparency in lobbyist reporting, the proposed ordinance will require lobbyists to file weekly on Mondays if they had any lobbying activity in the previous week. There are no fines being added at this time for missed or late filings; however, we are retaining the quarterly report in which the quarterly report will contain a summary of the weekly reports. The associated fines will still apply to quarterly reports. Additionally, we are making no changes to the annual registration beyond updating the forms to make them easier to read and to fill out.

The system utilized for the past several years is a PDF repository through Netfile, the City's Campaign Finance and Form 700 filing system. This requires staff to create a profile for the lobbyist, and then scan and upload the Lobbyist forms. While lobbyists can now file electronically, the filing is merely a filled out PDF with an electronic signature, and staff must still upload the document into Netfile.

The City Clerk investigated different methods of posting the information online in the most cost effective manner. Starting in January 2017, the City Clerk began building electronic forms using test software with a cost of \$10,000 annually, which will enable the data to be posted automatically and not require staff to scan and upload. This will also enable reports to be posted instantaneously. This method will not retain the information entered by the filer to create the summary quarterly reports, and will require the lobbyist to manually count and re-enter the information for those summaries, although we are asking for a count of total contacts only on the summary.

The City Council may choose to revise the recommendation to only require weekly reporting and eliminate the quarterly report. If this is desired, the City Clerk would recommend that late fines not be charged as it will require full time staff to review each weekly report to ensure that the contacts were reported the Monday after the contact.

We have included in our RFP for the Campaign Filing and Form 700 system, for which our current contract ends December 2017, a request for pricing on lobbyist filings which will allow for storage of the data from filing period to filing period. The cost estimates we received in the past were approximately \$54,000 per year with a 5-year minimum guarantee; however, the RFP will reach more companies who provide these services and we may get lower estimates from other respondents.

PUBLIC OUTREACH

The Board of Fair Campaign and Political Practices discussed the Lobbyist Ordinance and potential revisions on October 12, 2016 and January 11, 2017. This memo has been posted on the City Clerk's website as a part of the June 20, 2017 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the Office of the City Attorney and the Board of Fair Campaign and Political Practices.

COMMISSION RECOMMENDATION

On October 12, 2016, the Board of Fair Campaign and Political Practices approved the ordinance, and on January 11, 2017 they were presented with an update stating we would add the weekly filing requirement.

CEQA

Not a project.

A handwritten signature in black ink, appearing to read 'Toni J. Taber', written over a horizontal line.

Toni J. Taber, CMC
City Clerk

For questions, please contact Toni J. Taber, City Clerk, at (408) 535-1260.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 12.12.400 AND 12.12.430 AND ADDING SECTIONS 12.12.425, 12.12.450, AND 12.12.460 TO CHAPTER 12.12 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE LOBBYISTS ENGAGED IN LOBBYING ACTIVITIES TO FILE WEEKLY REPORTS AND TO MAKE OTHER CLERICAL AND TECHNICAL CHANGES

WHEREAS, on December 15, 2015, the City Council approved the Mayor's 2015 Biennial Ethics Review and Recommendations which recommended requiring lobbyists to file weekly reports when engaged in lobbying activities in the City of San José; and

WHEREAS, the revisions to Title 12 (Ethics and Open Government Provisions) of the San José Municipal Code will increase transparency on lobbyist disclosure reporting by requiring lobbyists to file a report with the City Clerk each week they engage in lobbying activity in the City;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 12.12.400 of Chapter 12 of Title 12 of the San José Municipal Code is amended to read as follows:

12.12.400 Registration with City Clerk

- A. A lobbyist is required to register with the eCity eClerk, on a form provided by the City Clerk, no later than ten (10) days after qualifying as a lobbyist under this eChapter. A lobbyist who meets the threshold requirements of one (1) or more

of the categories (~~e~~C~~o~~ntract ~~i~~L~~l~~obbyist, ~~i~~n-house ~~i~~L~~l~~obbyist, or ~~e~~E~~x~~penditure ~~i~~L~~l~~obbyist) is only required to register once.

B. A ~~i~~L~~l~~obbyist must renew the registration by January 15 of each year.

C. The annual registration renewal is not required if a declaration attesting to the termination of ~~i~~L~~l~~obbying ~~a~~A~~c~~tivity in the ~~e~~C~~i~~ty is filed with the ~~e~~C~~i~~ty ~~e~~C~~l~~erk ~~before~~~~no later than~~ January 15.

~~D. Electronic reporting may also be permitted by the city clerk. Facsimile signatures shall have the same legal force and effect as an original signature on lobbyist forms filed with the city.~~

SECTION 2. Chapter 12.12 of Title 12 of the San José Municipal Code is amended to add a new Section to be numbered, entitled, and to read as follows:

12.12.425 Weekly Reports

A. All Lobbyists must file a weekly report with the City Clerk, on a form provided by the City Clerk, for each calendar week they are registered as a Lobbyist with the City and have engaged in Lobbying Activity as defined in this Chapter. For the purposes of this Section, a “calendar week” begins at 12:00 a.m. on Monday and ends at 11:59 p.m. on the following Sunday.

B. Each weekly report must contain the same information required to be disclosed in the registration report for those activities occurring in the calendar week being reported.

- C. Each weekly report for Contract Lobbyists must indicate the total compensation promised or received from each client listed during the reporting period 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).
- D. Each weekly report must indicate whether the Lobbyist has any agreement, arrangement, or understanding regarding compensation for services set forth in Section 12.12.300.C and D for those activities occurring in the calendar week being reported and identify the name of the person that filed the disclosure form and the date it was filed with the City Clerk.
- E. Weekly reports must be filed with the City Clerk by 5:00 p.m. on Monday for the prior calendar week, and are delinquent thereafter. If the filing date in this Section is a holiday, the weekly report must be filed by 5:00 p.m. the next business day.
- F. The weekly reporting requirement under this Section is in addition to the quarterly reporting requirement under Section 12.12.430.

SECTION 3. Section 12.12.430 of Chapter 12.12 of Title 12 of the San José Municipal Code is amended to read as follows:

12.12.430 Quarterly Reports

- A. All lobbyists must file a quarterly report with the City Clerk, on a form provided by the City Clerk, for every calendar quarter ~~during which they retain that status with the city clerk not later than fifteen days after the end of the qualifying quarter, whether or not any lobbying activities have occurred during such~~

~~period they are registered as a Lobbyist with the City. The quarterly report must be filed whether or not any Lobbying Activity occurred during the quarter being reported. Electronic reporting may also be permitted by the city clerk. Facsimile signatures will have the same legal force and effect as an original signature on lobbyist forms filed with the city.~~

- B. Each quarterly report must contain the same information ~~as~~ required to be disclosed in the registration report, for those activities occurring in ~~the~~that quarter being reported. If a ~~I~~Lobbyist has terminated all ~~I~~Lobbying Activity activities during ~~such the~~ quarter being reported, the ~~I~~Lobbyist may file a declaration of termination with the final quarterly report. The final quarterly report must include a disclosure of any lobbying activities during the quarter of termination.
- C. Each quarterly report for ~~e~~Contract ~~I~~Lobbyists must indicate the total compensation promised or received from each client listed during the reporting period for ~~I~~Lobbying ~~a~~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).
- D. Each quarterly report must indicate whether the ~~I~~Lobbyist has any agreement, arrangement, or understanding regarding compensation for services set forth in Section 12.12.300.C. and D. for those activities occurring in ~~that the~~ quarter being reported and identify the name of the person that filed the disclosure form and the date it was filed with the ~~e~~City ~~e~~Clerk.
- E. Quarterly reports must be filed by April 15, July 15, October 15, and January 15 for the prior calendar quarter, and are delinquent thereafter. If the filing date in this Section occurs on a weekend or holiday, the quarterly report must be filed the next business day.

- F. ~~The quarterly reporting requirement under this Section is in addition to the weekly reporting requirement under Section 12.12.425. Records pertaining to the registration and quarterly reports must be preserved by the lobbyist for inspection and audit by the city for a period of five years from the date of production.~~

SECTION 4. Chapter 12.12 of Title 12 of the San José Municipal Code is amended to add a new Section to be numbered, entitled, and to read as follows:

12.12.450 Electronic Reporting

The City Clerk may permit electronic reporting whenever a Lobbyist is required to file a report under this Part. Facsimile Signatures have the same legal force and effect as an original signature on Lobbyist forms filed with the City.

SECTION 5. Chapter 12.12 of Title 12 of the San José Municipal Code is amended to add a new Section to be numbered, entitled, and to read as follows:

12.12.460 Record Retention

A Lobbyist must preserve all records pertaining to reports required to be filed under this Part for inspection and audit by the City for a period of five (5) years from the date of filing with the City Clerk.

PASSED FOR PUBLICATION of title this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk