

Memorandum



CITY OF DALLAS

DATE October 15, 2009

TO The Honorable Mayor and Members of the City Council

SUBJECT Lobbyist Registration, Campaign Contribution Restrictions, and Zoning Process Amendments

Please find enclosed for Monday's briefing the materials for the Lobbyist Registration, Campaign Contribution Restrictions, and Zoning Process Amendments. The following changes have been made to the materials distributed on September 1, 2009.

First: The definition of City Official on pages 6 and 7 of the proposed lobbyist ordinance has been amended to list all city officials subject to the lobbying regulations in one place instead of referencing other sections of the Code of Ethics.

Second: The underlined language has been added to Paragraph (B)(1)(bb) of the definition of Compensation on pages 7 and 8 of the proposed lobbyist ordinance:

- (B) "Compensation" does not include:
 - (i) a payment made to any individual regularly employed by a person if:
 - (aa) the payment ordinarily would be made regardless of whether the individual engaged in lobbying activities; and
 - (bb) lobbying activities are not more than five percent [~~part~~] of the individual's regular responsibilities in any calendar year to the person making the payment; or

Third: The underlined language has been added to Paragraph (B)(1)(bb) of the definition of Expenditure on page 8 of the proposed lobbyist ordinance:

- (B) "Expenditure" does not include:
 - (i) an amount paid to any individual regularly employed by a person if:
 - (aa) the amount paid to the individual is ordinarily paid regardless of whether the individual engages in lobbying activities; and
 - (bb) lobbying activities are not more than five percent [~~part~~] of the individual's regular responsibilities in any calendar year to the person making the payment; or

Fourth: The underlined language has been added to the definition of Municipal Question on page 10 of the proposed lobbyist ordinance:

(9) MUNICIPAL QUESTION means a public policy issue of a discretionary nature that is pending before, or that might be the subject of action by, the city council or any city board or commission. The term includes, but is not limited to, proposed actions 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 does not include the day-to-day application, administration, and execution of city programs and policies such as permitting, platting, and design approval matters related to or in connection with a specific project or development.

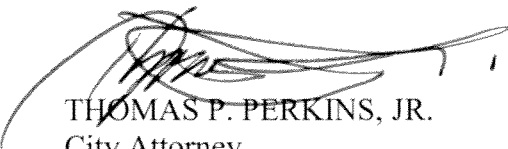
Fifth: The fee provision in Section 12A-15.5(f) on page 14 of the proposed lobbyist ordinance has been amended to charge a registration fee according to a graduated schedule based on the registrant's annual number of clients rather than a flat registration fee of \$300 per client. The fee schedule will be developed later and included in any final ordinance. Also, the registration fee must be collected by the special collections division of the water utilities department instead of the city secretary and the payment receipt must be filed with the registration form in the city secretary's office.

Sixth: The activity report disclosure requirement in Section 12A-15.6(a)(6) on page 15 of the proposed lobbyist ordinance has been amended to require itemization of gifts, benefits, and expenditures with a cumulative value of more than \$25 conferred on a city official in a calendar quarter. The prior provision required itemization for each separate gift, benefit, or expenditure greater than \$50 conferred on a city official.

Seventh: The preservation of records requirement in Section 12A-15.6(c) on page 16 of the proposed lobbyist ordinance has been amended to reduce the period of time during which registrants must preserve records of lobbying activities from five years to two years.

Eighth: Section 15A-4.1(c) has been added to the proposed ordinance restricting campaign contributions in zoning matters to include exceptions for zoning applications for historic districts, conservation districts, and neighborhood stabilization overlays.

Please contact me if you have any questions regarding the above.



THOMAS P. PERKINS, JR.
City Attorney

- c: Mary K. Suhm, City Manager
- Ryan S. Evans, First Assistant City Manager
- Forest E. Turner, Assistant City Manager
- Jill A. Jordan, P.E., Assistant City Manager
- A.C. Gonzalez, Assistant City Manager
- Deborah A. Watkins, City Secretary
- Craig Kinton, City Auditor
- The Honorable C. Victor Lander, Administrative Judge
- Dave Cook, Chief Financial Officer
- Frank Libro, Public Information Office
- Helena Stevens-Thompson, Assistant to the City Manager

ORDINANCE NO. _____

An ordinance amending Section 12A-2 of and adding Sections 12A-15.2 through 12A-15.11 to CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended; defining terms; providing registration, reporting, and other requirements for lobbyists appearing before the city; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 12A-2, "Definitions," of Article I, "Declaration of Policy," of CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended, is amended to read as follows:

"SEC. 12A-2. DEFINITIONS.

In this chapter, the following words and phrases have the meanings ascribed to them in this section, unless the context requires otherwise:

(1) **ACCEPT.** A person "accepts" an offer of employment or a business opportunity when the person enters into a legally binding contract or any informal understanding that the parties expect to be carried out.

(2) **AFFECT PARTICULARLY AN ECONOMIC INTEREST or AFFECT PARTICULARLY A SUBSTANTIAL ECONOMIC INTEREST.** An action is likely to "affect particularly an economic interest" or "affect particularly a substantial economic interest," whichever is applicable, if it is likely to have an effect on the particular interest that is distinguishable from its effect on members of the public in general or on a substantial segment of the public.

(3) **AFFILIATED.** Business entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent business entity.

(4) **AFFINITY.** Relationship by "affinity" (by marriage) is defined in Sections 573.024 and 573.025 of the Texas Government Code, as amended.

(5) BEFORE THE CITY. Representation or appearance “before the city” means before:

(A) the city council;

(B) a board, commission, or other city body or city entity; or

(C) a city official or employee.

(6) BENEFIT means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(7) BUSINESS ENTITY means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law, except that the term does not include a governmental entity.

(8) CITY means the city of Dallas, Texas.

(9) CITY COUNCIL MEMBER or MEMBER OF THE CITY COUNCIL means all members of the Dallas city council, including the mayor.

(10) CLIENT.

(A) The term “client” includes any specialized and highly personalized professional business relationship of an individual official or employee. The term does not include a regular or ordinary business or vendor relationship.

(B) If the official or employee does not personally represent the client but conducts business as a member of a primary partnership or professional corporation or conducts business through another entity, a client of the partnership, professional corporation, or entity is deemed to be a client of the official or employee if:

(i) the partnership, professional corporation, or entity derived two percent or more of its annual gross income within the preceding 12 months from the client; and

(ii) the city official or employee knows of the client’s relationship.

(C) This definition does not apply to the term “client” when used in Article III-A (lobbyist regulations).

(11) CODE OF ETHICS or ETHICS CODE means this chapter.

(12) CONFIDENTIAL GOVERNMENT INFORMATION includes:

(A) all information held by the city that is not available to the public under the Texas Open Records Act;

(B) any information from a meeting closed to the public pursuant to the Texas Open Meetings Act; and

(C) any information protected by attorney-client, attorney work product, or other applicable legal privilege.

(13) CONSANGUINITY. Relationship by “consanguinity” (by blood) is defined in Sections 573.022 and 573.023 of the Texas Government Code, as amended.

(14) DEPARTMENT DIRECTOR means the head of any department or office, including an office under the city manager, that is created by the city charter or by ordinance of the city council.

(15) DISCRETIONARY CONTRACT means any contract other than one that by law must be awarded on a competitive bid basis.

(16) DOMESTIC PARTNER means an individual who, on a continuous basis, lives in the same household and shares the common resources of life in a close, personal, intimate, committed relationship with a city official or employee. A domestic partner may be of the same or opposite gender as the official or employee and is not married to or related by blood to the official or employee.

(17) ECONOMIC INTEREST includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights, having more than de minimis value. Exceptions are as follows:

(A) Service by a city official or employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization.

(B) If a city official’s primary source of employment is with a governmental entity other than the city, such employment by the governmental entity does not create for that city official an economic interest in the property or contracts of the governmental entity.

(C) Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund.

(18) EMPLOYEE or CITY EMPLOYEE means any person listed on the city of Dallas payroll as an employee, whether part-time, full-time, permanent, or temporary.

(19) *EX PARTE* COMMUNICATION means any communication not made in a written document filed with the ethics advisory commission and not made orally during a hearing, but does not include a communication made pursuant to an inquiry duly authorized by the commission.

(20) FORMER CITY OFFICIAL OR EMPLOYEE means a person whose official duties as a city official or employee are terminated on or after January 1, 2001.

(21) GIFT means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.

(22) INDIRECT OWNERSHIP. A person has “indirect ownership” of an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

(23) KNOWINGLY or WITH KNOWLEDGE. A person acts “knowingly” or “with knowledge” with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts “knowingly” or “with knowledge” with respect to a result of his or her conduct when the person is aware that the conduct is reasonably certain to cause the result.

(24) OFFICIAL or CITY OFFICIAL includes the following persons, except when used in Article III-A (lobbyist regulations):

- (A) City council members.
- (B) Municipal judges.
- (C) The city manager, the first assistant city manager, and all assistant city managers.
- (D) The city auditor and the first assistant city auditor.
- (E) The city attorney and the first assistant city attorney.
- (F) The city secretary and the first assistant city secretary.
- (G) All department directors.
- (H) Members of all boards, commissions (except the youth commission whose members are minors), committees, and other bodies created by the city council pursuant to city ordinance or federal or state law, including bodies that are only advisory in nature.

(I) City council appointed members of boards of entities that were not created by the city council.

(25) OFFICIAL ACTION includes:

(A) any affirmative act (including the making of a formal or informal recommendation), that is within the scope of an official's or employee's duties; and

(B) any failure to act, if the official or employee is under a duty to act.

(26) OFFICIAL INFORMATION includes information gathered pursuant to the power or authority of city government.

(27) PARTNER includes any partner in a general partnership, limited partnership, or joint venture.

(28) PERSONALLY PARTICIPATED. The requirement of having "personally participated" in a matter is met only if the individual in fact exercised discretion relating to the matter. The fact that the person had responsibility for a matter does not by itself establish that the person "personally participated" in the matter.

(29) REPRESENTATION encompasses every form of communication or personal appearance in which a person, not acting in performance of official duties, formally or informally serves as an advocate for private interests. Lobbying and service as an expert witness, even on an informal basis, are forms of representation. "Representation" does not include appearance as a fact witness in litigation or other official proceedings.

(30) SOLICITATION. "Solicitation" of subsequent employment or a subsequent business opportunity includes any form of proposal or negotiation relating to employment or a business opportunity.

(31) SUBSTANTIAL ECONOMIC INTEREST.

(A) A person has a "substantial economic interest" in a business entity if:

(i) the person owns 10 percent or more of the voting stock, shares, or other ownership interest in the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(ii) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(B) A person has a "substantial economic interest" in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(C) For purposes of determining a “substantial economic interest,” ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund.”

SECTION 2. That CHAPTER 12A, “CODE OF ETHICS,” of the Dallas City Code, as amended, is amended by adding Article III-A, entitled “Lobbyists,” to read as follows:

“ARTICLE III-A.

LOBBYISTS.

[Note: This article is primarily modeled after San Antonio’s lobbying ordinance, with some provisions from Austin’s and Houston’s ordinances and the state’s lobbying regulations included.]

SEC. 12A-15.2. DEFINITIONS.

In this article, unless specifically provided otherwise:

(1) CITY OFFICIAL means:

(A) The mayor and city council members.

(B) The city manager and assistant city managers.

(C) The city attorney and first assistant city attorney.

(D) The city secretary and first assistant city secretary.

(E) The city auditor and first assistant city auditor.

(F) Municipal judges.

(G) All department directors and assistant department directors.

(H) All assistants and secretaries to the city council and the city manager.

(I) City of Dallas appointed members to the following boards and commissions:

(i) Board of adjustment and board of adjustment alternate members.

board. (ii) Building inspection advisory, examining, and appeals

(iii) City plan and zoning commission.

members. (iv) Civil service board and civil service board adjunct

(v) Community development commission.

(vi) Dallas area rapid transit board.

(vii) Dallas-Fort Worth international airport board.

(viii) Ethics advisory commission.

(ix) Fire code advisory and appeals board.

(x) Housing finance corporation board.

members. (xi) Landmark commission and landmark commission alternate

(xii) All local government corporation boards.

(xiii) All municipal management district boards.

(xiv) Park and recreation board.

(xv) Permit and license appeal board.

(xvi) All reinvestment zone boards.

(2) CLIENT means any person on whose behalf lobbying is conducted. If a person engages in lobbying on that person's own behalf, whether directly or through the acts of others, the person is both a client and a lobbyist. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

(3) COMPENSATION.

(A) "Compensation" means any money, service, facility, or 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.

(B) “Compensation” does not include:

(i) a payment made to any individual regularly employed by a person if:

(aa) the payment ordinarily would be made regardless of whether the individual engaged in lobbying activities; and

(bb) lobbying activities are not more than five percent of the individual's regular responsibilities in any calendar year to the person making the payment; or

(ii) any amounts previously reported under Section 12A-15.6 of this article.

(C) 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 under this article, the lobbyist has structured the receipt of compensation in a way that unreasonably minimizes the value of the lobbying activities.

(D) Compensation that 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.

(3) EXPENDITURE.

(A) “Expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or anything of value, including a contract, promise, or agreement to make an expenditure, regardless of whether such contract, promise, or agreement is legally enforceable.

(B) “Expenditure” does not include:

(i) an amount paid to any individual regularly employed by a person if:

(aa) the amount paid to the individual is ordinarily paid regardless of whether the individual engages in lobbying activities; and

(bb) lobbying activities are not more than five percent of the individual's regular responsibilities in any calendar year to the person making the payment; or

(ii) the cost of photocopying city documents, if those costs are the only expenditures made by the person in question on lobbying activities.

(C) The date on which an expenditure is incurred is determined according to generally accepted accounting principles.

(4) GIFT has the same meaning as in Section 12A-2.

(5) IMMEDIATE FAMILY means a spouse, a domestic partner, and dependent children.

(6) LOBBYIST means a person who engages in lobbying, whether directly or through the acts of another. If an agent or employee engages in lobbying for a principal or employer, both the agent and the principal, or the employee and the employer, are lobbyists.

(7) LOBBY or LOBBYING.

(A) “Lobby or lobbying” 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.

(B) “Lobby or lobbying” does not include a communication:

(i) 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;

(ii) made by a public official or employee (including, but not limited to, an official or employee of the city of Dallas) acting in his or her official capacity;

(iii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(iv) 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;

(v) made at a meeting open to the public under the Texas Open Meetings Act;

(vi) 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;

(vii) made in writing as a petition for official action and required to be a public record pursuant to established city procedures;

(viii) made in writing to provide information in response to an oral or written request by a city official for specific information;

(ix) the content of which is compelled by law;

(x) 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;

(xi) made on behalf of an individual with regard to that individual's employment or benefits;

(xii) made by a fact witness or expert witness at an official proceeding; or

(xiii) made by a person solely on behalf of that individual, his or her spouse or domestic partner, or his or her minor children.

(8) LOBBYING FIRM means:

(A) a self-employed lobbyist; or

(B) a person who has one or more employees that are lobbyists on behalf of a client or clients other than that person.

(9) MUNICIPAL QUESTION means a public policy issue of a discretionary nature that is pending before, or that might be the subject of action by, the city council or any city board or commission. The term includes, but is not limited to, proposed actions 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 does not include the day-to-day application, administration, and execution of city programs and policies such as permitting, platting, and design approval matters related to or in connection with a specific project or development.

(10) PERSON means an individual, corporation, association, firm, partnership, committee, club, organization, or a group of persons voluntarily acting in concert.

(11) REGISTRANT means a person required to register under this article.

SEC. 12A-15.3. PERSONS REQUIRED TO REGISTER AS LOBBYISTS.

Except as provided by Section 12A-15.4, a person must register with the city secretary if the person:

- (1) receives compensation of \$200 or more in a calendar quarter for lobbying;
- lobbying;
- (2) receives reimbursement of \$200 or more in a calendar quarter for
- lobbying;
- (3) expends \$200 or more in a calendar quarter for lobbying; or
- (4) lobbies as the agent or employee of a person who:
 - (A) receives compensation of \$200 or more in a calendar quarter for
 - lobbying;
 - (B) receives reimbursement of \$200 or more in a calendar quarter for
 - lobbying; or
 - (C) expends \$200 or more in a calendar quarter for lobbying.

[Note: San Antonio requires registration regardless of the amount of compensation or expenditures; Austin, Houston, and the State of Texas use the \$200 minimum.]

SEC. 12A-15.4. EXCEPTIONS.

The following persons are not required to register or file an activity report under this article:

(1) A person who owns, publishes, or is employed by a newspaper, any other regularly published periodical, a radio station, a television station, a wire service, or 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 to municipal questions, provided that the person does not engage in other activities that require registration under this article. This exception does not apply if a person's relation to the news media is only incidental to a lobbying effort or if a position taken or advocated by a media outlet directly impacts, affects, or seeks to influence a municipal question in which the media outlet has a direct or indirect economic interest.

(2) A person whose only lobbying activity is to encourage or solicit the members, employees, or owners (including shareholders) of an entity by whom the person is compensated to communicate directly with one or more city officials to influence municipal questions.

(3) A governmental entity and its officials and employees, provided the communications relate solely to subjects of governmental interest concerning the governmental entity and the city.

(4) A person who neither knows nor has 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.

(5) An attorney or other person whose contact with a city official is made solely as part of resolving a dispute with the city, provided that the contact is solely with city officials who do not vote on or have final authority over any municipal question involved.

(6) A client who would only be required to register under this article because of an expenditure to compensate a registrant, other than an employee, to lobby on a municipal question of interest to the client, provided that the compensated registrant files a registration statement or activity report for the period in question.

(7) An agent or employee of a lobbying firm or other registrant, provided that the lobbying firm or other registrant files a registration statement or activity report for the period in question fully disclosing all relevant information known to the agent or employee. *[Note: This exemption for agents/employees of a registered lobbying firm is based on San Antonio's ordinance. In Austin, the reverse applies - agents/employees must register and the lobbying firm is exempt.]*

(8) An individual who engages in lobbying, but who neither receives compensation nor expends monies for lobbying with respect to any client.

SEC. 12A-15.5. REGISTRATION.

(a) Separate registrations. A person required to register as a lobbyist under this article 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 must sign the form.

(b) Initial registration. An initial registration form relating to a client must be filed by a person required to register under this article within five days after the start of lobbying activity for that client. In no event shall a registrant knowingly fail to register, or knowingly fail to disclose such registration to relevant city officials, prior to official city action relating to the subject matter of the lobbying activity. *[Note: San Antonio requires initial registration within 90 days after commencing lobbying for a client; Austin requires registration within two working days; Houston requires registration within five working days; and the State of Texas requires registration within five days.]*

(c) Subsequent annual registration. Except as provided in Subsection (e), subsequent registration forms must be filed annually each January for each client for whom a registrant previously filed, or was required to file, an initial registration form. *[San Antonio and the state require renewals each January. Houston and Austin have a staggered renewal - one year from the date of issuance of the initial registration form.]*

(d) Required disclosures. An initial or subsequent registration must be on a form prescribed by the city secretary and must include, to the extent applicable, the following information:

(1) The full name, telephone number, permanent address, and nature of the business of:

(A) the registrant;

(B) the client;

(C) any person, other than the client, on whose behalf the registrant has been engaged by the client to lobby;

(D) any person, other than the client, who is known by the registrant to contribute financially to the compensation of the registrant, or which, in whole or in major part, plans, supervises, or controls the registrant's lobbying activities on behalf of the client;

(E) any lobbying firm for which the registrant is an agent or employee with respect to the client; and

(F) each employee or agent of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client.

(2) A statement of all municipal questions on which the registrant:

(A) has lobbied for the client in the 12 months preceding the filing of the registration; or

(B) will foreseeably lobby for the client in the 12 months following the filing of the registration.

(3) A list of any positions held by the registrant as a city official or city employee, as those terms are defined in Section 12A-2, during the 24 months preceding the filing of the registration.

(4) If the registrant is a former city official or employee, a statement that the registrant's lobbying activities have not violated and will not foreseeably violate Article III of this chapter, which governs former city officials and employees.

(e) Termination of registration. Within 30 days after ceasing activities requiring registration under this article, a registrant shall file a written, verified statement of termination of registration with the city secretary. A person filing a statement of termination under this subsection shall file all reports required by Section 12A-15.6 for any reporting period during which the person was registered or required to be registered.

(f) Fee. At the time of an initial or subsequent registration, a registrant shall pay to the city an annual registration fee of \$XXX *(according to a graduated schedule, which will be contained in the ordinance, based on the registrant's number of clients annually)*. The special collections division of the water utilities department will collect the fee and issue to the registrant a payment receipt that must be filed with the city secretary along with the registration form. A separate fee is not required for each registration form filed for a client by a registrant during the registration year. All lobbyist registration fees must be deposited into a separate account within the general fund, which account must be used to offset the costs of administering the city's lobbying ordinance and the costs of handling disclosure filings. *[Note: San Antonio and Austin have a \$300 annual registration fee; the State of Texas has an annual fee of \$100 for nonprofit registrants and \$500 for other registrants; Houston charges \$20 annually for each registration form filed. All require a separate registration form to be filed for each client. The registration fee is a regulatory fee and may not exceed the city's cost of regulation. The costs of the city secretary's office, the city attorney's office, and the ethics advisory commission in administering and enforcing the lobbying regulations may be considered in determining a fee. Also, none of the other cities address proration of the fee. Thus, if someone files an initial registration form and pays a fee in December, he would have to renew that same registration and pay another fee a month later in January.]*

SEC. 12A-15.6. ACTIVITY REPORTS.

(a) Required disclosures. Except as provided in Section 12A-15.4 of this article, each registrant shall file with the city secretary 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, or expended, monies for lobbying during the prior calendar quarter. The report for the preceding calendar quarter must 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 must be on the form prescribed by the city secretary and must include, with respect to the previous calendar quarter, to the extent applicable, the following information:

(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 pursuant to Section 12A-15.5.

(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) Total expenditures on lobbying broken down into the following categories, with each expenditure of \$500 or more being itemized by the date, name, and address of the recipient and the amount and purpose of the expenditure:

- (A) Office expenses.
- (B) Advertising and publications.
- (C) Compensation to other than full-time employees.
- (D) Reimbursement to others.
- (E) Personal sustenance, lodging and travel, if reimbursed.
- (F) Other expenses.

[Note: Austin and Houston require expenditures to be categorized and those over \$500 to be itemized. The State of Texas also requires categorizing expenditures. San Antonio just requires a good faith estimate of total expenditures.]

(6) Gifts, benefits, and expenditures that have a cumulative value of more than \$25 that are made to, conferred upon, or incurred on behalf of a city official or his or her immediate family by the registrant, or by anyone acting on behalf of the registrant, in any calendar quarter must be itemized by item, date, city official, actual cost, and circumstances of the transaction. [Note: San Antonio requires disclosure for gift over \$50, Austin for gift over \$100, and Houston for gift over \$250.]

(7) Each exchange (itemized by date, business entity and address, city official, amount, and nature of transaction) of money, goods, services, or anything of value by the registrant, or by anyone acting on behalf of the registrant, with any business entity in which the registrant knows or should know that a city official has an economic interest, or for which the city official serves as a director, officer, or other policy making position, if:

(A) the total of such exchanges is \$250 or more in a calendar quarter;
and

(B) the city official:

(i) has been lobbied by the registrant during the calendar quarter; or

(ii) serves on a board, commission, or other city body that has appellate jurisdiction over the subject matter of the lobbying.

For purposes of this paragraph, "exchange" does not include a routine purchase from a commercial business establishment, if the city official in question is neither aware, nor likely to become aware, of the transaction. [Note: San Antonio requires disclosure of exchanges over \$1,000 in a calendar quarter. Austin requires disclosure of exchanges over \$500 in a calendar

quarter with businesses in which a city official has a “substantial” economic interest, with no requirements for lobbying the city official during the calendar quarter or service by the city official on a body with jurisdiction over the lobbied matter. Houston is the same as Austin, except it requires disclosure after exchanges over \$250.]

(8) The name and position of each city official or member of a city official's immediate family who is employed by the registrant.

(b) Information required to be provided to registrant. Each person about whose activities a registrant is required to report by Subsection (a) of this section shall provide a full account of such activities to the registrant at least five days before the registrant's report is due to be filed.

(c) Preservation of records. Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required under this section for two years after the date the report containing such items is filed. [Note: San Antonio requires five-year retention of reports. Austin and Houston require two years.]

(d) 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.

(e) Contingent fees. [Note: Austin and State of Texas prohibit lobbying for a contingent fee based on the outcome of the matter. San Antonio allows contingent fee arrangements but requires disclosure of such arrangements.]

SEC. 12A-15.7. RESTRICTED ACTIVITIES.

(a) False statements. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not intentionally or knowingly:

(1) make any false or misleading statement of fact to any city official; or

(2) knowing a document to contain a false statement, cause a copy of such document to be received by a city official without notifying such official in writing of the truth.

(b) Failure to correct erroneous statement. A registrant who learns that a statement contained in a registration form or activity report filed by the registrant during the past three years is false shall correct that statement by written notification to the city secretary within 30 days of learning of the falsehood.

(c) 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.

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

(e) 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.

(f) 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 person can control or obtain the vote or action of any city official.

(g) Limitations on gifts. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not give to any city official or city employee, or to the city official's or city employee's immediate family, any gift that would reasonably tend to influence or reward official conduct or that is intended to influence or reward the discharge of official duties. *[Note: Austin limits gifts to \$100 per calendar year. San Antonio limits gifts to items of nominal value and meals of \$50 or less per occurrence or \$500 in a calendar year from a single source. These limits seem to imply that gifts can be given by lobbyists to city officials and employees, which would be contrary to Section 12A-5 of our ethics code which prohibits a city official or employee from accepting a gift or benefit that reasonably tends to influence or reward official conduct or is intended to influence or reward the discharge of official duties. Therefore, I used the language of 12A-5 to create a violation for lobbyists who give gifts to influence.]*

SEC. 12A-15.8. IDENTIFICATION OF CLIENTS.

(a) Appearances. Each person who lobbies or engages another person to lobby before the city council or before a city board or commission identified in Section 12A-15.2(1)(I) shall orally identify himself or herself and any client 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 he or she is registered as a lobbyist under this article.

(b) Oral lobbying contacts. Any person who makes an oral lobbying contact with a city official shall, on the request of the official at the time of the lobbying contact, state whether the person is registered under this article and identify each client on whose behalf the lobbying contact is made.

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

SEC. 12A-15.9. TIMELINESS OF FILING REGISTRATIONS AND REPORTS.

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

(1) it is properly addressed with postage and handling charges prepaid;

(2) 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 the person required to file furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that filing period or before that filing deadline; and

(3) it was in fact received by the city secretary.

SEC. 12A-15.10. ADMINISTRATION.

The city secretary shall:

(1) provide guidance and assistance on the registration and reporting requirements for lobbyists and develop common standards, rules, and procedures for compliance with this article;

(2) review registrations and reports for completeness and timeliness;

(3) maintain filing, coding, and cross-indexing systems to carry out the purposes of this article, including:

(A) a publicly available list identifying all lobbyists and lobbying firms registered with the city and their clients; and

(B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this article;

(4) on a quarterly basis, provide an updated list of all registered lobbyists and lobbying firms, and their clients, to the city council, the city manager, the city attorney, the city auditor, the administrative municipal judge, all department heads, and all chairs of boards and commissions identified in Section 12A-15.2(1)(I) of this article; *[Houston requires monthly updates, and updates are not required in Austin and San Antonio.]*

(5) make available for public inspection and copying at reasonable times the registrations and reports filed under this article; and

(6) retain registrations and reports in accordance with the Local Government Records Act (Title 6, Subtitle C, Texas Local Government Code, as amended).

SEC. 12A-15.11. VIOLATIONS; PENALTY.

(a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

(b) An offense under this article is punishable by a criminal fine not to exceed \$500.”

SECTION 3. That CHAPTER 12A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance will take effect _____, 2009, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By _____
Assistant City Attorney

Passed _____

LC/DCC/00467A

ORDINANCE NO. _____

An ordinance adding Section 15A-4.1 to CHAPTER 15A, “ELECTIONS,” of the Dallas City Code, as amended; defining terms; restricting the time in which campaign contributions may be made to city council members by applicants in zoning matters; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Article I, “Campaign Contributions,” of CHAPTER 15A, “ELECTIONS,” of the Dallas City Code, as amended, is amended by adding new Section 15A-4.1, “Campaign Contributions by Zoning Applicants,” to read as follows:

“SEC. 15A-4.1. CAMPAIGN CONTRIBUTIONS BY ZONING APPLICANTS.”

(a) In this section:

(1) AFFILIATED has the meaning given that term in Section 12A-2 of the Dallas City Code.

(2) ZONING APPLICANT means any person who:

(A) owns all or part of the property subject to a zoning application;

(B) is a parent, child, spouse, or other family member of the property owner within the first degree of consanguinity or affinity, or the domestic partner of the property owner;

(C) represents the property owner in connection with the zoning application;

(D) is affiliated with the property owner or the representative of the property owner; or

(E) is an employee of the property owner or the representative of the property owner.

(b) A zoning applicant shall not (either personally or through a representative, employee, or agent) knowingly make a campaign contribution to a city council member during the period between the date the notices of consideration of the zoning application by the city plan commission are mailed and the later of:

(1) 60 days after the zoning application is withdrawn pursuant to Section 51A-4.701(f) of the Dallas City Code;

(2) 60 days after the date a decision of the city plan commission on the zoning application becomes final and all opportunities for appeal are exhausted; or

(3) 60 days after the date a final decision on the zoning application is reached by the city council either granting or denying the request.

(c) Subsection (b) does not apply to zoning applications for historic districts, conservation districts, or neighborhood stabilization overlays.”

SECTION 2. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 3. That CHAPTER 15A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By _____
Assistant City Attorney

Passed _____

LC/DCC/00468A