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1-15-2020

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHAPTER 2.55 OF THE CHULA VISTA MUNICIPAL CODE TO ADD LOBBYIST REGISTRATION AND REPORTING REQUIREMENTS

WHEREAS,

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Chapter 2.55 of the Chula Vista Municipal Code is amended as follows:

Chapter 2.55

LOBBYIST REGISTRATION AND REPORTING

Sections:

- 2.55.010 Title.
- 2.55.020 Findings and Declarations.
- 2.55.030 Purpose of the Lobbyist Requirements.
- 2.55.035 Lobbyist Defined
- 2.55.040 Definitions.
- 2.55.050 Activities Not Considered Lobbying.
- 2.55.060 Lobbyist- Annual Registration and Reporting.
- 2.55.070 Lobbyist- Identification.
- 2.55.080 Lobbyist- Prohibited Activities; Restriction
- 2.55.090 Administration by the City Clerk.
- 2.55.100 Enforcement.
- 2.55.105 Board of Ethics Review
- 2.55.110 Implementation Date.

CHAPTER 2.55

2.55.010 Title.

This Chapter shall be known as the Lobbyist Registration and Reporting Requirements of the City of Chula Vista, and may be referred to herein as the Lobbyist Requirements.

2.55.020 Findings and Declarations.

The City Council of the City of Chula Vista finds and declares as follows. The People of the City of Chula Vista have the need and right to know the identity of Lobbyists who attempt to influence the decisions of City government and the means employed by them to advance their employer's interests. Full disclosure of Lobbying activities of such persons and the identity of their employers will contribute to public confidence in the integrity of local government. Full disclosure is also necessary to ensure that City officials are kept informed about the identity of persons whose interests the Lobbyists represent.

2.55.030 Purpose of the Lobbyist Requirements.

The purposes of the Lobbyist Requirements are to maintain a fair and open decision-making process in City government and to ensure that the public and City officials have full knowledge of Lobbying activities that have been brought to bear on any Municipal Decision.

2.55.035 Lobbyist Defined.

A. A "Lobbyist," unless exempt under section 2.55.050, means any Person who is employed, retained, or otherwise engaged for Compensation to Lobby, on behalf of a Person or Organization, any Designated City Official, either individually or collectively.

2.55.040 Definitions.

Unless a term is specifically defined in this section or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974, Government Code sections 81000 *et seq.*, shall govern the meaning of terms. Any term herein expressed in the plural may also apply to the singular. The following terms shall have the meanings set forth herein:

A. "Client" means any Person or Organization that employs, retains, or otherwise engages a Lobbyist, including one employed by a Lobbying Business, for Compensation to engage in Lobbying.

B. "Compensation" means any economic consideration provided in exchange for services rendered or to be rendered in the future, including, without limitation, salary and wages, stipends, payments, promises to perform or provide goods or services, fees, contingency fees, success fees, bonuses, or awards. To satisfy the requirements of being a Lobbyist under Section 2.55.035, Compensation, as defined herein, must be provided, in whole or in part, as remuneration for engaging in Lobbying.

C. "Designated City Official" means any of the following:

- (1) The Mayor;
- (2) Any Councilmember;
- (3) Mayor and Councilmember staff members responsible for advising or reporting to the Mayor or Councilmember on policy matters or Municipal Decisions (including Chiefs of Staff, community liaisons, policy aides);
- (4) A City board or commission member of the following boards or commissions: Board Ethics, Civil Service Commission, Planning Commission, [Add others as necessary];
- (5) The City Manager;
- (6) The City Attorney;
- (7) The City Clerk;
- (8) Deputy or Assistant City Manager;
- (9) Any City Department Director; or
- (10) the Zoning Administrator, when acting as the decision maker in a Chapter 19 land use decision requiring a public hearing by the Zoning Administrator.

Designated City Official shall also include the Mayor or councilmembers acting as the governing body for any governmental entity such as, but not limited to, the Successor Agency, Housing Authority, or Finance Authority. Designated City Official shall further include any City representative to any joint powers authority to which the City is a party and the joint powers authority does not have a separate lobbying registration requirement.

D. "Direct Communication" means talking to or communicating with a person, either by telephone or cell phone (including "Skype" or "Facetime") or in person, or corresponding with a person, either in writing, by electronic transmission (including, but not limited to, emails, text messages, direct messaging via social media, or "Twitter," "Instagram" or "Facebook" type medium), or by facsimile machine.

E. "Enforcement Authority" means the attorney assigned as special counsel to enforce the provisions of this

Chapter as set forth in Section 2.55.100 of this Chapter. The Enforcement Authority shall be selected by the Board of Ethics from the same panel of special counsel chosen by the Board of Ethics, in accordance with Board of Ethics's selection and assignment policy, to act as the enforcement authority for the City's Campaign Contribution Ordinance set forth in Chapter 2.52. The aforementioned Board of Ethics special counsel panel shall remain in place for the purposes of assigning a complaint to the Enforcement Authority until the Board of Ethics replaces it with a new panel.

F. "Lobby" or "Lobbying" means to influence or attempt to influence a Municipal Decision of the City of Chula Vista by Direct Communication, in public or in private, with any Designated City Official, either individually or collectively, including as part of City Council or any committee, board, task force, or other body of the City. Lobbying includes providing information, statistics, analysis, studies, or petitions to a Designated City Official.

G. "Lobbyist Business" means any individual, business entity, trust, corporation, or partnership that employs a Lobbyist to Lobby for a Client.

H. "Municipal Decision" means:

1. The drafting, introduction, consideration, reconsideration, adoption, defeat, repeal, or veto of any ordinance or resolution;
2. The amendment of any ordinance or resolution;
3. A report recommending City action by a City staff member or City consultant to a Designated City Official;
4. A contract approval by City Council or the City Manager, except as otherwise permitted by Section 2.55.050.
5. Quasi-judicial decisions, including, but not limited to:
 - a. Any decision on a land development permit, map, or other matter decided by the City Council or City board or commission pursuant to the Municipal Code;
 - b. Any grant, denial, modification, or revocation of a permit or license under the Municipal Code; and
 - c. Any declaration of debarment under the municipal code; and
6. Any other decision or direction by the City Council or a City board or commission, as defined in Section 2.55.040(C)(4).

I. "Organization" means any business entity, trust, corporation, partnership, association, committee or any other organization or group of individuals acting in concert.

J. "Person" means any individual.

2.55.050 Activities Not Considered Lobbying.

The following activities shall not be considered Lobbying for purposes of this Chapter:

A. Any City official, or any federal, state or local elected or appointed official, acting

in his or her official capacity; any employee, consultant or contractor of the City, acting within his or her scope of employment for the City; or employee of any federal, state or local governmental entity, acting within the scope of his or her federal, state, or local governmental entity employment.

B. Any newspaper or other periodical of general circulation, book publisher, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes (including via internet or other electronic medium) news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if such newspaper, periodical, book publisher, radio or television station or individual, engages in no further or other activities in connection with urging legislative or administrative action other than to appear before the City Council or any commission, body or board in support of or in opposition to such action.

C. Any person whose sole activity includes communications **with Designated City Officials except the Mayor, City Councilmembers, or Mayor and Councilmember staff members described in Section 2.55.040(C)(3)** regarding the following:

1. To submit a bid on a competitively bid contract;
2. To submit a written response to a request for proposals or qualifications;
3. To participate in an oral interview for a request for proposals or qualifications; or
4. To negotiate the terms of a contract or agreement with the City once that person has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.

D. A person whose communications are solely related to the establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or a memorandum of understanding or memorandum of agreement between the City and a recognized City employee organization or any communication required under the Meyers-Milias-Brown Act. Included in this Subsection is the representation of a City employee by an attorney or other representative in a disciplinary matter, including representation at an administrative interview, *Skelly* meeting (in accordance with *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194), or appeal of discipline.

E. Any person who communicates with the City Attorney regarding legal matters or actual or potential litigation in any court or other legal forum.

F. Any person who communicates with a City employee, who is not a Designated City Official, on interpretation or implementation of existing land use plans and laws with respect to a land use project, including project processing.

G. Any person who communicates with the Development Services Department Director or Assistant Director of the Development Services Department on interpretation or implementation of existing land use plans and laws, including for an approved project, and which do not involve communications regarding amendments to the City's General Plan, Specific Plans, or zoning changes.

H. The provision of purely technical data or analysis by an expert, so long as the expert does not otherwise engage in a Direct Communication for the purpose of influencing a Municipal Decision. This subsection is intended to be interpreted in a manner consistent with Title 2, Section 18239(d) (3) (A), of the California Code of Regulations. Experts include, but are not limited to, persons who are trained as architects, engineers, designers, statisticians, accountants, economists, or similar professions.

I. An owner of a business or residence who communicates regarding his or her own business or residence with a Designated City Official. An owner, as used this section, means any person with a controlling interest in his or her own business or residence.

J. Any person, who otherwise meets the definition of Lobbyist, but solely engages in Lobbying activity at any meeting of the City Council or any commission, committee, board, task force, or other body of the City open to the public.

K. Any person who engages in a De Minimis Act of Lobbying. A De Minimis Act of Lobbying means an unplanned communication regarding a Municipal Decision or Decisions and which would be considered lobbying, but lasts no longer than a total of a minute and does not involve any discussion or discussions on whether the Designated Official supports or opposes the Municipal Decision or Municipal Decisions discussed.

2.55.060 Lobbyist-Annual Registration and Reporting Requirements.

A. **Registration.** A Lobbyist must register with the City Clerk five (5) days before any scheduled Lobbying, but in no event no later than ten (10) after engaging in Lobbying.

B. **Annual Registration Renewal.** A Lobbyist must renew his or her registration by January 15 of

required to register under this Chapter. The Lobbyist must also provide the name, business address, email, telephone number, and fax numbers of their Lobbyist Business employer, if any. The Lobbyist must file an amended registration report with the City Clerk, in writing, within fifteen (15) days, of any change in business address, email, or telephone or fax numbers.

2. The name, business address, email, telephone and fax numbers of each Client, Person, or Organization on whose behalf Lobbying activities are being conducted. The Lobbyist must also describe the nature of each client's or Person's or Organization's business and the Municipal Decision that the Lobbyist is seeking to influence on behalf of the client or Person or Organization.

G. Supplemental Registration Reports. Lobbyists must file supplemental registration reports with, and in a format, prescribed by, the City Clerk five (5) days before any scheduled lobbying, but in no event no later than ten (10) of Lobbying on behalf of any Person or Organization who was not listed on the Lobbyist's initial or annual report. Supplemental reports must contain the information as specified in Subsection F of this Section.

H. Quarterly Reports Summarizing Lobbyists Activities. Lobbyists must file quarterly reports with, and in a format prescribed by, the City Clerk, on or before April 15, July 15, October 15 and January 15, for the prior calendar quarter.

1. Quarterly reports must contain the following information regarding their Lobbying activities with each Designated City Official:

1. The Designated City Official with whom the Lobbying occurred; and
2. For whom the Lobbying was conducted; and
3. A brief description (no more than twenty (20) words required) of the subject of the Lobbying; and
4. With regard to the subject of the Lobbying, whether there was a single act or multiple acts of Lobbying and the approximate total amount of time spent Lobbying per subject in increments set forth in Subsection 5, below.
5. Time spent Lobbying shall be reported in increments of:
 - (i) One (1) hour or less;
 - (ii) More than one (1) hour, but less than five (5) hours ;

(iii) More than five (5) hours, but less than ten (10) hours; or

(iv) More than ten (10) hours.

2. Any Lobbyist that discovers incomplete or inaccurate information in a quarterly report filed under this Section, shall within ten (10) days of the discovery, file an amended quarterly report with the City Clerk disclosing all information necessary to make the report complete and accurate.

I. Termination of Lobbyist Status. A person or entity that was registered as a Lobbyist shall be deemed to be a Lobbyist for purposes of this Chapter until such time as that person or entity files a declaration with the City Clerk attesting to the termination of Lobbying services within the City, along with a final report summarizing their Lobbying activities as set forth Subsection H, beginning with the day after the period end on the most recent report filed through the termination date. If the Lobbyist had not filed their first quarterly report, the final report will cover the date they first were required to register through the termination date. The declaration and final report must be executed on a form prescribed by the City Clerk for that purpose, and must be filed with the City Clerk within thirty (3) days of the termination of a Lobbyist status.

J. Updates Required Upon Notice from City Clerk. The City Clerk may, but is not required to, notify a Lobbyist to file an amended registration, registration renewal, quarterly report, or supplemental report pursuant to this Section as a courtesy. When any person is so notified by the City Clerk to file an amended registration, registration renewal, quarterly report, or supplemental report pursuant to this Section the Lobbyist must provide the information within the time period specified in the notice from the City Clerk. Failure to receive notification from the City shall not excuse compliance with, and shall not be a defense to any action to enforce, the provisions of this Chapter.

K. Under Penalty of Perjury. All documents and reports required of a Lobbyist under this Chapter must be signed and submitted under penalty of perjury.

2.55.070 Lobbyist-Identification.

When appearing in a Lobbying capacity at any meeting with a Designated City Official or at a public meeting of the City Council or any other City board or commission, the Lobbyist must identify himself or herself and the Client that he or she represents. In addition, at any public meeting

of the City Council or any other City board or commission, a Lobbyist must disclose on the record, prior to addressing the City Council or any other City board or commission, whether they have engaged in Lobbying activities within thirty days (30) of the public meeting with Designated City Officials that are present at the public meeting on a matter on the agenda for that public meeting, including public comment, by stating that they have met outside of the aforementioned public meeting with Designated City Officials (naming each one). For example, the above disclosure may be made as follows: "John Doe, appearing on behalf of Jane Doe on item X and for the record I have had contact with Councilmembers X and Y on this matter within the last thirty (30) days before this meeting."

2.55.080 Lobbyist-Prohibited Activities; Restriction

A. No Lobbyist shall engage in Lobbying unless he or she is registered with the City Clerk, as required by Section 2.55.060, is current with any required reporting, and has paid any and all fees and fines required or imposed pursuant to this Chapter.

B. No person convicted of a criminal violation of this Chapter may act as a Lobbyist or otherwise attempt to influence Municipal Decisions for Compensation under this Chapter for two years after such conviction.

2.55.090 Administration by the City Clerk.

The City Clerk shall:

1. Subject to review and approval by the City Attorney, create all forms and explanatory materials, and adopt all reasonable and necessary policies or procedures to implement this Chapter. The City Clerk may require electronic filing of registration, required reports, complaints, or other documents.
2. Provide yearly reports to the Mayor and City Council on the following: (1) Lobbyist registrations; (2) pending complaints and enforcement proceedings under this Chapter; and (3), if determined appropriate by the City Clerk, provide any recommendations for amendments of this Chapter to improve administration of this Chapter. Press releases summarizing the contents of the reports may be prepared and distributed with the respective reports by the City Clerk

3. Accept all filings required by this Chapter. The City Clerk shall inspect or cause to be inspected all filings for completeness and may refuse to accept any filing that is incomplete or from which the required information is missing or omitted. The City Clerk has the authority to notify, or cause to be notified, any person submitting an incomplete filing to file an amended registration, quarterly report or supplemental report and the date upon which it must be filed. Any person so notified by the City Clerk must comply as directed.
4. The City Clerk shall accept complaints of violations of this Chapter and refer them to the Enforcement Authority in accordance with Section 2.55.100, with a copy to the City Attorney's Office.
5. The City Clerk shall refer to the Enforcement Authority any person who has failed to file any required registration, report, or amendment, or make payment of any fee or fine, following two notices being sent by the City Clerk.
6. The following records shall be preserved by the City Clerk and be available for public inspection as a public record and audit for a period of four years from date of filing of the records with the City Clerk: (1) required registration forms; (2) required quarterly reports; (3) written violation complaints filed with the City Clerk or submitted to the Enforcement Authority by the City Clerk, City Manager, or City Attorney; and (4) written decisions regarding the aforementioned violation complaints dismissing a matter or imposing a remedy as provided for in this Chapter.

2.55.100 Enforcement.

- A. The Enforcement Authority, as set forth in this Section, shall be responsible for the investigation and prosecution of alleged violations of this Chapter, including making referrals to the District Attorney's Office for criminal prosecution.
- B. Complaints of violations of this Chapter must be: (1) in writing on a form prescribed by the City Clerk; (2) sworn under penalty of perjury by the complainant; and (3) filed by either (i) an owner or operator of a business located in the City of Chula Vista or (ii) a resident of the City of Chula Vista. The complaint shall be filed with the City Clerk and include evidence to the satisfaction of the City Clerk that the complainant is (i) an owner or operator of a business located in the City of Chula Vista, or (ii) a resident of the City. The complaint shall state a full recitation of all facts that are alleged to constitute a violation of this Chapter. If a complaint does

not comply with these requirements, the City Clerk shall not forward the complaint to the Enforcement Authority, but shall instead notify the complainant and provide the basis as to why it is insufficient for filing.

C. After receipt of a complaint that complies with Subsection B of this Section, within five (5) business days, the City Clerk shall forward the complaint to the Enforcement Authority for a probable cause determination. Within thirty (30) calendar days of receiving the complaint from the City Clerk, the Enforcement Authority shall determine if probable cause exists that Sections 2.55.060, 2.55.070, or 2.55.080 were violated. If no probable cause is determined to exist, the complaint shall be dismissed summarily and involved parties shall be notified of the dismissal in writing. The above time frames are directory, not mandatory, and shall not be a basis to dismiss a complaint.

D. If probable cause is determined to exist, the Enforcement Authority, in their discretion, shall determine whether civil or criminal remedies are appropriate as follows:

1. If the Enforcement Authority determines that civil or administrative remedies are appropriate, the Enforcement Authority shall refer the complaint to the City Attorney, who, in turn, shall forward the complaint to the next Enforcement Authority on the special counsel panel, who will then take further investigatory and procedural steps necessary to resolve the matter. If the subsequent special counsel, upon further investigation or review, determines that criminal prosecution is warranted, they may refer the matter to the District Attorney.

2. The Enforcement Authority may refer a violation for criminal prosecution after consideration of the following factors: (1) whether the violation was knowing or willful; (2) the severity of the violation; (3) the frequency of violations; (4) efforts to correct violations; (5) whether the violation was negligent or inadvertent; or (6) other considerations the Enforcement Authority determines is relevant in their decision making process. The aforementioned consideration of factors is directory, not mandatory, and shall not constitute a defense to any criminal charges brought under this Chapter nor preclude the initiation of any criminal prosecution. If the Enforcement Authority determines that criminal prosecution is appropriate, it shall refer the matter to the City Attorney, who, in turn, shall forward the complaint to the District Attorney for further handling. Violations of this Chapter forwarded to the District Attorney for handling shall not be subject to any further action by the Enforcement Authority.

F. The special counsel, serving as the Enforcement Authority, may investigate and may institute legal action to compel compliance or to prevent further violations of this Chapter. If the allegation contained in the complaint is also a violation of state law, the Enforcement Authority shall not investigate but, rather, shall forward the complaint to an appropriate enforcement agency.

G. Criminal prosecution for violations of this Chapter must be commenced within one (1) year after the date on which the violation occurred.

H. Civil prosecution for violation of this Chapter must be commenced within four (4) years after the date on which the violation occurred. No administrative action alleging a violation of any of the provisions of this Chapter shall be commenced more than four years after the date on which the violation occurred. If the person alleged to have violated a provision of this Chapter engages in the fraudulent concealment of his or her acts or identity, the four-year period for civil and administrative actions shall be tolled for the period of concealment. For purposes of this subdivision, "fraudulent concealment" means the person knows of material facts related to his or her duties under this Chapter and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under this Chapter.

I. If the District Attorney determines that no violation occurred, the Enforcement Authority, who referred the matter to the District Attorney, may review the complaint and, if necessary, conduct further investigation to determine if there is probable cause to find that the complainant committed perjury. If such probable cause exists, the enforcement authority shall forward the complaint to the District Attorney for prosecution for perjury.

J. The Enforcement Authority may consult with the City Clerk, City Manager, or City Attorney on matters, including but limited to, the complaint, this Chapter, or City practices or procedures.

K. Special counsel, serving as the Enforcement Authority, shall be immune to liability for enforcement of this Chapter.

L. If a violation of this Chapter is observed by the City Clerk, City Manager, or City Attorney, they may file a complaint in writing and refer the matter to the Enforcement Authority for enforcement and prosecution. The requirements of Subsection B of this Section shall not apply to a complaint filed pursuant to this Subsection L.

M. The following remedies shall be available for violations of Sections 2.55.060, 2.55.70, or 2.55.080 of

each year and shall cover the preceding calendar year.

B. The City Clerk shall provide to the Board of Ethics the following information on a quarterly basis:

1. Registration Reports;
2. Quarterly Reports;
3. Information regarding fines and fees assessed; and
4. Information regarding complaints of violations

2.55. 110 Implementation Date.

The registration, reporting and other requirements of this Chapter shall apply to Lobbying occurring on or after December 1, 2018, referred to as the Implementation Date. Lobbying that occurs prior to the Implementation Date of this Chapter shall not be considered for purposes of the registration, reporting and other requirements of this Chapter.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented By:

Approved as to form by:

[INSERT DEPARTMENT HEAD NAME]
[INSERT DEPARTMENT HEAD TITLE]

Glen R. Googins
City Attorney