

**BLUE RIBBON TASK FORCE ON ETHICS ORDINANCE  
MEETING NOTES**

***DRAFT***

Wednesday, June 2

CH - Room 204 Building

**Attending:** Councilmember Ken Yeager (Chair), Councilmember Cindy Chavez, Vice Mayor Pat Dando, Councilmember Chuck Reed

**Staff:** Rick Doyle (City Attorney), Lee Price (City Clerk), Deanna Santana (City Manager's Office), Norm Sato (City Attorney's Office), Peter Jensen (City Manager's Office).

**DISCUSSION AND DELIBERATIONS ON DRAFT LOBBYIST ORDINANCE**

Based on input from the Task Force, a revised lobbyist ordinance was drafted by the City Attorney's Office and distributed to currently registered lobbyists, panel members and other interested parties. The main purpose of this meeting was to hear from the public and consider modifications and/or amendments to the draft. Chair Yeager indicated that the submission of a proposed ordinance would likely be delayed from its original Council date of June 8<sup>th</sup>, depending on the results of today's discussions.

**Public Comments:**

- **Kirk Everett, Silicon Valley Manufacturing Group** – Mr. Everett referred to a letter from Carl Guardino, SVMG President and CEO, also supported by San José State University, PG & E, Apple, NUMMI, and others. The letter (on file in the Office of the City Clerk) expresses support for the Task Force's efforts, and concern over the following aspects of the draft ordinance:
  - Definition of contact may be overly broad (associates or employees may be required to register for contacts related to administrative functions)
  - Expenditure lobbyist definition measures expenditures rather than number of contacts – time threshold similar to State guidelines may be more equitable
  - Including City officials-elect may go beyond City's ability to regulate, definition of lobbying may include providing educational materials rather than requesting action
  - Disclosure of contributions may be in conflict with or add confusion to existing campaign fundraising provisions
  - Quarterly reporting requirements would be burdensome and without check and balance of officeholders also reporting contacts
  - Per client registration fee seems unclear (could it apply to all SVMG members?)

- **Teresa Alvarado, PG & E** – Ms. Alvarado expressed the following concern:
  - Definitions of “contact” and “lobbying” seem overly broad – could apply to as many as 100 PG & E employees. She suggested to focus the definitions on policy discussions and to make the rules very clear.
  
- **Bob Brownstein, representing himself (employed by Working Partnerships USA)** – Mr. Brownstein strongly criticized the draft ordinance, raising the following concerns, as outlined in his written communication (on file in the Office of the City Clerk):
  - No minimum threshold for lobbying activity, so one contact may require registration
  - Non-profits could be hurt if many employees are forced to register; the exemption for people lobbying “not as part of ordinary employment” is not defined
  - Exemption for newspaper editorials is unfair and should be removed
  - Exemptions for board members could create a loophole for organizations to use board members as lobbyists
  - Unclear whether attending a fundraiser whose invitation lists officeholders would constitute a contribution at the behest of those officeholders
  - Prohibition against attempting to deceive an elected official is too difficult to define, since facts involving legislative issues are often in dispute
  - Prohibition on representing that a lobbyist can obtain votes of other officeholders is unreasonable, because it could include statements that are only conjecture about who might support a particular issue
  - Prohibition on communications between the time an RFP or RFQ is released and the time that a staff recommendation is made is too limiting a timeframe, given the often brief time between staff recommendation and Council action
  - Prohibition on lobbying on issues for which the lobbyist performed services for the City has no time limitations, and could have the effect of disqualifying people from participating in public debate based on the extent of the job duties they had during their City employment
  
- **Ross Signorino, resident** – Mr. Signorino felt that “lobbyist” should be defined in a broader sense. He felt activity such as Cisco’s sponsorship of the Mayor’s trip to Europe on City business should be covered by the ordinance. He felt that elected officials should not be allowed to accept such gifts and organizations or individuals should not be allowed to offer them.
  
- **Tom Armstrong, HMM Engineers** – Mr. Armstrong felt that the draft ordinance would classify all of his firm’s employees as lobbyists. He therefore felt that fees would be too high, it would be impossible to properly document all the contacts his firm had with City employees, and his firm would be placed in a position of breaking the law in order to do business. Mr. Armstrong also commented that the Task Force may not have reached the attention of some architects and engineers who would be affected by the ordinance, because they don’t consider themselves lobbyists, so may not have been following the Task Force’s activities.

- **Philip Bump, South Bay Labor Council** – Mr. Bump thanked the Task Force for involving SBLC, and said he felt the result of its work should be non-destructive. He raised the following concerns:
  - The ordinance is vague on the distinction between advocacy groups and lobbying firms
  - Determining who qualifies as a client is unclear
  - Prohibition on communications between the time an RFP or RFQ is released and the time that a staff recommendation is made limits debate and free speech on issues that concern people
  - Exception for editorials is curious
  
- **Beverly Bryant, Home Builders' Association** – Dr. Bryant recalled that when she was in the New Hampshire legislature, lobbyists were required to wear large orange signs identifying themselves as lobbyists. She expressed the following concerns:
  - Definition of lobbyist may force all employees and members of associations like hers to register
  - Suggested that for professional associations, only one person should be required to register
  - Agreed with Mr. Brownstein that the ordinance seemed to pick and choose who qualifies as a lobbyist
  
- **Andy Faber, Berliner Cohen** – Mr. Faber expressed concerns outlined in his letter (on file in the Office of the City Clerk):
  - Requiring lobbyists to report contacts with staff is difficult, and there is no particular public interest in disclosing these contacts
  - Distressed that the ordinance is aimed at lobbyists, but not at officeholders and City staff
  - Unclear whether attending a fundraiser whose invitation lists officeholders would constitute a contribution at the behest of those officeholders

### **Task Force/Public Discussion:**

The Task Force conducted an informal roundtable discussion including members of the public. In response to inquiry from Vice Mayor Dando, Andy Faber commented that Council Members and/or Council Offices get more involved than they used to in land use decisions. He added that there is a perception that certain people know what's going on in a District and that their expertise is needed to be successful. Tom Armstrong agreed, adding that over the last several years there has been a fundamental change in the development process.

On the matter of solicitations, Vice Mayor Dando provided examples of “direct” solicitations (a council member calls an individual and requests directly a contribution) and mass mailings without any individual contact (an invitation goes out to many to contribute but no direct contact is made by a council member). Andy Faber indicated an interest in seeing that type of distinction as it would make a difference in reporting.

Tom Armstrong reiterated that the ordinance is too broad, snares too many people and will be costly to comply with. He urged the Task Force to look at the ripple effect. In response to Vice

Mayor Dando's questions, Mr. Armstrong suggested that the definition of "lobbyist" include "someone that directly interfaces with council members".

Patricia Gardner, Silicon Valley Council of Non-Profits, asked for clarification about whose responsibility it is to disclose contacts/solicitations made by non-profits to more than one council member. The City Attorney reported that it is currently the responsibility of the lobbyist (or the one that writes the check) to disclose the information. He added quickly that non-profits, like United Way, are clearly not lobbyists and would not be subject to disclosure. The intent, he emphasized is to make sure there is no quid pro quo.

### **Task Force Deliberations:**

The Task Force reviewed the first seven pages of the ordinance and provided direction to the City Attorney to come back with revisions, as follows:

- **Definitions:** Better define "at the behest", "direct contacts" and "clients". There was agreement that there needs to be an exemption for mass mailing solicitations. "Direct contacts" should include the Mayor, Mayor's Office; the Council, Council Offices; Department Heads and advisory bodies with decision-making authority, i.e. the Planning Commission, Board of Appeals and the Civil Service Commission. More work is needed on "clients". The Task Force agreed that the intent is to capture the private contacts with lobbyists and not occasional and casual conversations with constituents.
- Examine **threshold levels** to define better "lobbyist" and "expenditure lobbyist".
- Clarify the "**in-house**" lobbyist
- Add "**whistle blower**" to the list of exemptions
- Examine more closely impact to **non-profits**.

Upon the advice of the City Attorney, the Task Force gave no direction to eliminate reference to "city official-elect".

The Task Force briefly discussed suggestions provided by Council Member Reed in his Memo dated June 1<sup>st</sup>. The City Attorney advised against adding another exemption to Section 12.12.300 that would result in the unintended consequence of including "mom and pop's", which is not the intent of these regulations.

### **Next Steps:**

1. City Attorney to re-work first seven pages.
2. Set another working session, at least two weeks out (*Note: The meeting date has been set for Tuesday, June 22, 2004 from 6:00 – 8:00 p.m.*)
3. Circulate the draft to and engage others, including the Developers Roundtable

Discussion on the Work Plan was postponed.

The Meeting was adjourned at 11:00 a.m.