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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
CHAPTER 12.12 OF TITLE 12 OF THE SAN JOSE  
MUNICIPAL CODE TO AMEND AND RESTATE THE CITY  
OF SAN JOSE MUNICIPAL LOBBYING ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 12.12 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and read as follows:

**CHAPTER 12.12  
SAN JOSE MUNICIPAL LOBBYING  
Part 1  
Title and Purpose**

**12.12.010 Title and Purpose**

- A. This Chapter shall be known as the San José Municipal Lobbying Ordinance.
- B. Purpose and Goals: This Chapter is intended to achieve the following purposes and goals:
  - 1. To guarantee to the residents of the City that the City of San Jose (City) continues the highest ethical work environment for the residents of the City and the City's elected officials and employees.

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2. In the spirit of open and transparent government, to allow the public to know and better understand the relationship between its elected officials and lobbyist's clients.
3. To enhance public confidence and trust with respect to lobbyist activities and City practices.
4. To ensure that the requirements of this Chapter and their implementation are responsive to the goal of making it easy to do business with the City.
5. To bring about clarity and certainty about applicable provisions among stakeholders.
6. To establish a policy that sets clear standards of conduct.
7. To maintain the citizen's constitutional right to petition government for redress of grievances and not to limit the public's access to their elected officials.

### **Part 2** **Definitions**

#### **12.12.100 Definitions**

For purposes of this Chapter, the following definitions shall be applicable. Other terms used in this Chapter shall have the meanings set forth in the California Political Reform Act of 1974, as amended.

**12.12.110 Activity Expense**

“Activity Expense” means any payment made by a lobbyist to or directly benefiting any City official, City official-elect or member of such official’s or official-elect’s immediate family. Activity expenses include gifts, honoraria, consulting fees, salaries and any other form of compensation, but do not include campaign contributions.

**12.12.120 At the Behest**

“At the behest” means under the control of, at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of, or with the express prior consent of, any elective City official, City official-elect or candidate for elective City office.

**12.12.130 City Official**

“City Official” includes, but is not limited to, the Mayor and Members of the City Council, any appointee of the City Council, Mayoral or Council staff member or City employee or Redevelopment Agency Board Member or employee who participates in the consideration of any legislative or administrative action other than in a purely clerical, secretarial or ministerial capacity. The term City Official shall include any City board, commission or task force member, any City representative to any joint powers authority to which the City is a party, and any consultant to the City.

**12.12.140 City Official-Elect**

“City Official-elect” means a person who has been elected to a City office but has not yet been sworn in to office.

**12.12.150 Client**

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“Client” means a person who is compensated by a lobbyist for representation.

### **12.12.160 Contact**

“Contact” means any communication, whether orally, electronically or in writing, including without limitation, communication through an agent, associate or employee, for the purpose of influencing or attempting to influence legislative or administrative action.

### **12.12.170 Compensated or Compensation**

“Compensated or Compensation” means any economic consideration for services rendered or to be rendered in the future, including, without limitation, promises to perform or provide services, contractual arrangements, contingency fees, success fees, bonuses or awards.

### **12.12.180 Expenditure Lobbyist**

“Expenditure Lobbyist” means a person who makes payments or incurs expenditures of Five Thousand Dollars (\$5,000) or more during a calendar year in connection with carrying out public relations, advertising or similar activities with the intent of influencing legislative or administrative action.

### **12.12.190 Lobbying**

“Lobbying” means influencing or attempting to influence a legislative or administrative action of the City or Redevelopment Agency.

- A. “Influencing” means the purposeful communication, either directly or through agents, for the purpose of promoting, supporting, modifying, opposing, causing

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the delay or abandonment of conduct, or otherwise intentionally affecting the behavior of a City official or City official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentives, statistics, studies or analyses.

- B. "Legislative action" means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination or other action of the Mayor, City Council, Redevelopment Agency of the City, or City board or commission, or task force or any joint powers authority of which the City is a party.
- C. "Administrative action" means the proposal, drafting, development, consideration, advocacy, recommendation, adoption, amendment or approval of any rule, regulation, agreement or contract, permit, license or hiring action.

### **12.12.200 Lobbyist**

"Lobbyist" means:

- A. A person who is compensated (other than for reasonable travel expenses) for lobbying; or
- B. A person who engages in lobbying where the action relates to his or her employer or client and who is compensated by the employer or client;
- C. A Lobbyist Firm;
- D. An Expenditure Lobbyist.

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### **12.12.210 Lobbyist Firm**

“Lobbyist Firm” means an entity where any principal, owner, partner, shareholder, officer or employee qualifies as a lobbyist and the firm earns compensation during a calendar quarter from its clients for lobbying.

### **12.12.220 Person**

“Person” means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert.

## **Part 3 Exceptions**

### **12.12.300 Exceptions**

The following persons are exempt from the requirements of this Chapter:

- A. A public official acting in his or her official capacity;
- B. A person engaged solely in publication or broadcasting of news items, editorials, or commentary which directly or indirectly urges governmental action;
- C. A person specifically invited by the City Council or Redevelopment Agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City or the Redevelopment Agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony in aid of the body or person extending the invitation;

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- D. A person who, without additional compensation and not as part of, or in the ordinary course of his or her regular employment, appears to present the position of an employer or organization such as a taxpayers' association or trade association when that employer, association or organization has one or more of its officers, employees or representatives already registered as a lobbyist under the provisions of this Chapter.
- E. A person whose attempts to influence governmental action are limited to:
1. Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public;
  2. Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public.
- F. Any Person whose sole activity includes one or more of 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 the City has authorized either by action of the City Council, City Manager, or voters, entering an agreement with that Person, whether that Person has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.
- G. Uncompensated members or directors of non-profit organizations such as the League of Women Voters.

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### Part 4 Requirements

#### **12.12.400 Registration with City Clerk**

- A. A Lobbyist, Lobbyist Firm or Expenditure Lobbyist is required to register with the City Clerk no later than ten (10) days after qualifying as a lobbyist as defined in this Chapter.
- B. A Lobbyist shall renew his or her registration by January 15 of each year unless status as a lobbyist has terminated.
- C. After initial registration, annual registration renewal shall not be required if a declaration attesting to the termination of lobbying services within the City has been filed with the City Clerk no later than January 15.

#### **12.12.410 Required Registration Information**

- A. The initial registration report for lobbyists shall contain the name, business address, telephone and fax numbers of all persons required to register under this Chapter, including the names of all owners of sole proprietorships and partnerships of fewer than ten (10) persons.
- B. If the registrant is a corporation, it shall also include the names of the officers and agent for service of process, if any.
- C. Any business or organization registering under this Ordinance shall also describe the nature of its business or organization in sufficient detail to inform the reader of the nature and purpose of the business.
- D. The registration report shall contain the following:

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1. The name, business address, telephone number of each client, the nature of each client's business and a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence on behalf of the client; and the name of each person employed or retained by the lobbyist to lobby on behalf of each client.
2. Lobbyist Firm information shall also include the names of all owners, officers and employees conducting lobbying activities and a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence.
3. Expenditure lobbyist information shall also include a brief description of the legislative or administrative action the lobbyist is seeking to influence.

### **12.12.420 Additional Required Information and Disclosures**

The initial lobbyist registration shall also contain the following information:

- A. Campaign and officeholder contributions to a City official or candidate for City Office made during the preceding calendar quarter.
- B. Campaign and officeholder contributions made at the behest of an elected City official or candidate to any other elected public official or candidate for public office during the preceding calendar quarter.
- C. All Independent Expenditures made for or on behalf of a City official or candidate for City office made during the preceding 12 months.
- D. Fundraising activity for any City elected official, candidate for elective City office or any controlled committee of the City official or candidate for City office during the preceding calendar quarter.

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- E. Donations to for profit or nonprofit organizations made at the behest of a City elected official or candidate for elective City office of any contribution or payment of more than One Thousand Dollars (\$1,000) in the aggregate made during the preceding 12 months.
- F. Payments received for services as a consultant or in any other capacity for services rendered to any City department or Redevelopment Agency, City official, or any City official-elect, their controlled committees or officeholder committees during the preceding calendar quarter.
- G. Contacts made with City officials during the preceding calendar quarter for the purpose of influencing or attempting to influence legislative or administrative action.
- H. Activity expenses such as payments that directly benefits any City official, City official elect or member of his or her immediate family made during the preceding calendar quarter.

### **12.12.430 Quarterly Reports**

- A. For each calendar quarter following the quarter in which the lobbyist was required to register, the lobbyist must file a quarterly report with the City Clerk not later than fifteen (15) calendar days after the end of the qualifying quarter whether or not any lobbying activities have occurred during such period. Electronic reporting may also be permitted by the City Clerk.
- B. Each quarterly report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that quarter. If a lobbyist has terminated all lobbying activities during such quarter, the lobbyist

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may file a declaration of termination with the quarterly report. The final quarterly report shall include disclosure of any lobbying activities during the quarter of termination.

- C. Quarterly reports shall be filed by April 15, July 15, October 15 and January 15 for the prior calendar quarter, and are delinquent thereafter.
- D. Records pertaining to the registration and quarterly reports shall be preserved by the lobbyist for inspection and audit by the City for a period of five (5) years from the date of production.

### **12.12.440 Registration Fees**

Persons subject to the registration requirements of this Chapter shall pay an annual fee of \$350.00. Persons registering for the first time on or after June 30 of a given year shall pay a reduced registration fee of \$175.00.

- A. The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees may be assessed as specified in subsection C below, if payment occurs after the due date.
- B. In addition to the annual fee, each registrant shall pay \$60.00 per client for whom lobbying is undertaken for compensation in excess of \$500.00. The fees for clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent clients will be due and submitted at the time of submission of the relevant quarterly report as required in this Chapter.

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- C. A fine of 5% of the unpaid fees per day for delinquent fees, up to a maximum of 100% of the unpaid fees, will be assessed until the registration fees and the fines are paid in full.
- D. A fine of \$10.00 per day for delinquent quarterly reports will be assessed until the quarterly reports are filed with the City Clerk.

### Part 5 Enforcement and Prohibitions

#### **12.12.500 Noncompliance - Order to Show Cause**

- A. Upon the written request of any City Official, the City Clerk shall issue an order to show cause to any unregistered person.
- B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Elections Commission that he or she has complied with the registration requirement or is exempt from registration.
- C. If the Elections Commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, such person shall be barred from appearing before City Council or the Redevelopment Agency Board except at a public hearing on his or her own behalf or on oral petition. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

#### **12.12.510 Prohibitions**

It shall be unlawful for any lobbyist to commit any one of the following acts:

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- A. Engage in any activity on behalf of a client as a lobbyist or accept compensation as a lobbyist unless such lobbyist is registered and has listed the client as required by this Chapter.
- B. Doing any act with the express purpose and intent of placing any City official or immediate family member of a City official under personal or financial obligation, such as a loan or similar obligation, to such lobbyist.
- C. Deceive or attempt to deceive a City official as to any material fact which is pertinent to any pending or proposed legislative or administrative action.
- D. Cause or influence the introduction of any legislative or administrative action for the purpose of thereafter being employed as a lobbyist to secure the granting, denial, confirmation, rejection, passage or defeat of the legislative or administrative action.
- E. Create a fictitious appearance of public favor or disfavor of any legislative action or administrative action or to 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. Represent, either directly or indirectly, orally or in writing that the lobbyist can control or obtain the vote or action of any City official.
- G. Perform services for a client on any matter including any legislative action or administrative action which the lobbyist had performed services for the City of San Jose or Redevelopment Agency.
- H. Contact City officials concerning a City or Redevelopment Agency Request for Proposal or Request for Qualifications, other than a City or Agency designated contact person, during the period of time from the release to prospective

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proposers of the Request for Proposal or Request for Qualification until a recommendation is made public by the City or Agency.

### **12.12.520 Lobbyist Recommendation Prohibition**

City Officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist to facilitate favorable legislative or administrative action by the City or Redevelopment Agency with regard to such person's matter pending before the City or Redevelopment Agency.

### **12.12.530 Compliance and Training**

- A. The City Clerk shall oversee compliance with this Chapter, including the creation of all forms and explanatory materials.
- B. A training workshop shall be established for elected City officers and lobbyists on City ethics ordinances and a code of ethics for lobbyists. The City Clerk shall establish a program of required attendance on a regular basis not less than once every three (3) years.

### **12.12.540 Enforcement**

- A. The City Attorney may investigate complaints of violations of this Chapter. The City Attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this Chapter.
- B. Any person may file a complaint with the City Clerk alleging a violation of this Chapter with the Elections Commission.

### **12.12.550 Penalties**

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In addition to the fines which may be assessed pursuant to Section 12.12.440, violations of this Chapter may result in civil penalties of up to Five Thousand (\$5,000) Dollars for each violation which may be assessed by the Elections Commission or a court of law.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
RON GONZALES  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE  
City Clerk