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June 1, 2004

VIA FACSIMILE

Ken Yeager, Chairman
Blue Ribbon Task Force
San Jose City Council
801 North First Street
San Jose, CA 95110

Dear Chairman Yeager and Members of the Task Force:

I have had a chance to review the Draft Lobbyist Ordinance that was sent to me last week, and appreciate the opportunity to make a few comments. In general, I think that the draft ordinance is over-inclusive and over-broad in its reach. It also only addresses one side of the perceived problem, while completely ignoring the conditions that have led to the unprecedented recent growth of the lobbying industry in San Jose.

Two specific comments are as follows:

1. Contact with staff should be excluded. Under the draft, anyone representing a party doing business with the City would potentially have to disclose each and every contact with every member of the City staff. This is unnecessary, burdensome, and in conflict with the City's efforts to streamline its dealings with the public.

For example, in my land use practice, we typically will file an application on behalf of a client, then will have many interactions with City Planning staff, Public Works staff, City Attorneys, and perhaps other City employees in the course of the processing of the application. The City is a regulatory body, and has set up a complex system of laws and regulations. Compliance with these, as well as with State law, requires close contact with City staff. Such contact should be encouraged, not discouraged. There is no public purpose that would be served

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by attempting to disclose all such contacts over a quarterly period in the course of processing land use applications. It would add an extra level of complexity, bureaucratic record keeping, and costs for those doing business with the City for no real public gain.

In the existing ordinance, there is an exception for architects, engineers and attorneys working with staff. Of course, the newspaper calls this a "loophole," but in fact it is a very sensible exception that should extend to other professionals as well. I would suggest that if there is to be a requirement for disclosing contacts with City Officials, then it should be limited to Commission and Council members.

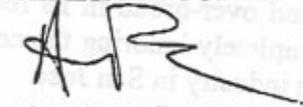
2. One-way regulation. As mentioned above, the draft attempts to regulate lobbyist conduct, while leaving conduct by City officials unchanged. This is true even in areas where it appears from reading the draft that there is a perceived risk of potentially improper interaction between officials and lobbyists. A good example would be the requirement to disclose "[c]ampaign 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." (Section 12.12.420(B).)

The disclosure requirement implies that there is a perceived potential for mischief in the fact that an elected City official or candidate would solicit contributions to be given to other elected officials or candidates. If that is the case, then it would be cleaner to regulate this conduct at its source, and simply prohibit the soliciting of such contributions by City officials and candidates from lobbyists.

Thank you for your consideration of these comments.

Very truly yours,

BERLINER COHEN



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