

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
INTERDEPARTMENTAL CORRESPONDENCE**

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

COPIES TO: Terry M. Brechtel, City Manager

SUBJECT: Amendments to the City of San Antonio Ethics Code

DATE: December 18, 2003

Summary and Recommendation

On November 19, 1998, the City Council passed and approved Ordinance Number 88874, adopting a new Code of Ethics for the City of San Antonio. The Council amended the code on August 19, 1999 by Ordinance Number 90313. The Council again amended the code by Ordinance Number 93998 on May 24, 2001. On May 29, 2003, the City Council further amended the Ethics Code by Ordinance No. 97711, based on recommendations from the Mayor's Committee on Integrity and Trust in Local Government. Additional amendments were proposed and adopted by City Council in that same ordinance.

This ordinance implements a suggestion of the Mayor's Committee on Integrity and Trust in Local Government that was deferred last spring for additional consideration. It affects the lobbying provisions of the Ethics Code, Part E, Section 1, specifically by amending the definitions of the terms "municipal question," "compensation" and "expenditure" so that defined lobbying activities relating to certain zoning and platting decisions may require the person who lobbies to register as a lobbyist and be subject to reporting and other regulations imposed on registered lobbyists.

Procedural Background

On October 23, 2003, Mayor Edward D. Garza convened the Mayor's Committee on Integrity and Trust in Local Government. The Committee was charged with providing specific recommendations to correct weaknesses in the Ethics Code, with the "goal of strengthening a culture of service, integrity, trust and accountability." From October 2002 through January 2003, the Committee interviewed city staff, current and former city officials, members of the business community and citizen groups. On January 29, 2003, the Committee issued its report, which included its specific recommendations for revisions to the Ethics Code. On January 30, 2003, the Committee presented its report to the City Council.

On May 7, 2003, the Council Governance Committee reviewed the proposed recommendations to the Ethics Code and proposed additional amendments and revisions. On May 29, 2003, the City Council amended the Ethics Code based on recommended proposals made by the Mayor's Integrity Committee and requested revisions by the Governance Committee. Additional amendments were proposed and adopted by City Council on that date as well.

At the May 29, 2003 meeting, the Council elected to defer consideration of the Integrity Committee's recommendation on the definition of "municipal question" in the lobbying provisions of the Ethics Code. The Council referred this issue back to the Council Governance Committee for further review. During its review on September 3, 2003, the Governance Committee requested that the Ethics Review Board assess the practical effect the proposed changes would have on its enforcement of the Ethics Code.

On October 30, 2003, General William V. McBride, U.S.A.F. (retired), chairman of the Integrity Committee's Ethics Code Review Subcommittee, Colonel Arthur Downey, Jr., Chairman of the Ethics Review Board, and Benjamin F. Youngblood, III, Vice-Chairman of the Ethics Review Board addressed the Council on this issue. With concurrence by Gen. McBride, the Ethics Review Board submitted a memorandum to Council setting out its revised recommendations on the definition of "municipal question," "compensation," and "expenditure" and a clarification of the exception to the lobbyist registration requirements for individuals acting on their own behalf.

Summary of Proposed Amendments to Lobbying Provisions of the Ethics Code

Under the Ethics Code, individuals engaged in lobbying activities before the City are required to register. Lobbying is defined in part as an effort to influence or persuade an official to take or refrain from official action on any municipal question. The term "municipal question" in the current code is defined to specifically exclude zoning and platting matters. The effect of the proposed amendments would remove this exclusion for zoning and platting matters.

Under the proposed revisions, those individuals or entities involved in lobbying activities related to zoning or platting matters would be subject to the general provisions of the lobbying regulations of the Ethics Code. Such individuals or organizations may¹ be required to register as lobbyists if they are compensated for or expend funds in furtherance of the lobbying activity. The terms "compensation" and "expenditure" are defined in the Ethics Code. The proposed revisions include amendments to these terms to clarify their application.

The Ethics Review Board's current proposed revisions provide as follows:

¹ The lobbying regulation provides exemptions for some types of individuals or groups from the registration requirement. See Ethics Code Part C, Section 3. Also, the regulation provides that some activities, such as presentations at an open meeting, do not constitute lobbying activity. A person engaged in activities that have been excluded from the definition of lobbying would not be subject to the lobbying provisions of the Ethics Code, including the registration requirements. See Ethics Code Part E, Section 1(h) (definition of "lobby" or "lobbying,").

Part E, Section 1(j) (Lobbyist Definitions)

Municipal question means a public policy issue of a discretionary nature pending or impending before city council or any board or commission, including, but not limited to, proposed action, 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. *{paragraph break added}*

The term "municipal question" does not include the day-to-day application, administration, or execution of existing city programs, ~~and~~ policies, ordinances, resolutions, or practices, including matters that may be approved administratively without consideration by a board, a commission, or the City Council, such as permitting, platting, and zoning matters (other than the amendment, modification or revision of the City of San Antonio Unified Development Code). The term "municipal question" does include all discretionary matters before the Board of Adjustment, the Planning Commission and the Zoning Commission and all advisory committees and subcommittees thereof.

Part E, Section 1(c) is amended as follows:

Compensation means money or any 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. "Compensation" for professional services that does not primarily require contact or advocacy with public officials does not constitute "compensation in connection with lobbying services" for purposes of this section, if contact with public officials is incidental to the primary purpose of the employment.

Compensation does not include a payment made to any individual regularly employed by a person if *{changed to block paragraph}*

- (1) the payment ordinarily would be made regardless of whether the individual engaged in lobbying activities; and
- (2) lobbying activities are not part of the individual's regular responsibilities to the person making the payment.

Compensation does not include the financial gain that a person may realize as a result of the determination of a municipal question, unless that gain is in the form of a contingent fee. *{paragraph break added}*

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 Part E (Lobbyists), the lobbyist has structured the receipt of compensation in a way that unreasonably minimizes the value of the lobbying activities. *{paragraph break added}*

Compensation which 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. Compensation does not include any amounts previously reported under Section 5 of Part E (Activity Reports).

Finally, the current Ethics Code exempts individuals who contact city officials to speak on issues on their own behalf from the lobbying provisions. The following amendment serves to reiterate the definition of "expenditure" as it relates to individuals acting on their own.

Part E, Section 3(h), regarding exceptions from lobbyist registration requirement, is amended as follows:

SECTION 3 EXCEPTIONS

The following persons are not required to register under Section 4 of Part E (Registration) or file an activity report under Section 5 of Part E (Activity Reports):

(h) Individual. An individual who engages in lobbying but who neither receives compensation nor expends monies for lobbying with respect to any client. The term "expends" does not include the cost of photocopying documents, or creating other informational material by individuals who communicate with public officials to express personal opinions on behalf of themselves, their family or members of their household.

As noted above, the Ethics Review Board has proposed these revisions to incorporate the original recommendations of the Mayor's Integrity Committee and the concerns regarding the potential application raised by members of the Council Governance Committee. General McBride of the Mayor's Integrity Committee has reviewed and concurred in the Ethics Review Board's proposed revisions.

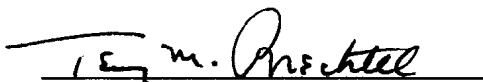
Financial Impact

This Ordinance may result in the registration of lobbyists, not previously registered under the existing version of the Ethics Code. Registration requires a payment to the City of San Antonio of \$1000.



Andrew Martin
City Attorney

APPROVED:



Terry M. Brechtel
City Manager