CITY OF SAN DIEGO
ETHICS COMMISSION

Office of the Executive Director

MEMORANDUM

DATE: May 8, 2008

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Municipal Lobbying Ordinance

During the months following the implementation of the City's new Lobbying Ordinance, staff has fielded many telephone calls and e-mail inquiries regarding different aspects of the Ordinance. In this regard, a question was posed regarding what kind of disclosures are necessary for a Lobbying Firm that registers a client, but never actually lobbies a City Official on behalf of the client during the quarter.

The following is from an e-mail staff sent to a Lobbying Firm regarding this issue:

> We interpret the new Lobbying Ordinance to require a Lobbying Firm to identify on its Registration Forms only the names of clients for which the firm has had at least one lobbying contact. When you've had at least one contact for a client, the firm is thereafter obligated to disclose information regarding all of the decisions for which that client retained the firm to lobby. For example, if a client retains your firm to lobby City Officials with regard to Decision A and Decision B, but the firm has only lobbied City Officials with regard to Decision A, your firm must disclose on its quarterly report information regarding both Decision A and Decision B.
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> A Lobbying Firm may choose to identify a client on its Registration Form before having any lobbying contacts on that client's behalf. This is purely voluntary, but once a client's name goes on a Registration Form it does obligate the Lobbying Firm to thereafter report on its quarterly report information regarding each decision for which it engaged in "lobbying activities" on behalf of that client during the quarter. This is the case even if the firm hasn't yet had a lobbying contact on behalf of that client.
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> It is important to keep in mind that "lobbying activities" only includes activities that are connected to the firm lobbying efforts. In other words, if a firm is retained to lobby (to

influence "municipal decisions" through direct communications with "City Officials"), then information related to those efforts will be reportable on its quarterly report. On the other hand, if a client does not retain a firm to lobby the City, and all the firm does is monitor decisions or engage in other activities unrelated to lobbying, then nothing regarding that client needs to be disclosed. There would be no "lobbying activities." So if your firm listed a client on its Registration Form, but it was not retained to lobby the City on behalf of that client, then you would report nothing for that client on your quarterly reports, and may even want to remove that client from your Registration Form.

In your e-mail, you mention communications with lower level City employees (individuals who are not "City Officials"). Although not specifically identified within the definition of "lobbying activities," this term will include communications with lower level City employees if those communications are related to "influencing a municipal decision." That term is defined, in part, as "affecting or attempting to affect any action by a City Official on one or more municipal decisions." So if your communication with a lower level City employee is part of an effort to influence "City Officials" regarding a "Municipal Decision" (i.e., to "lobby"), then it would fall within the scope of "lobbying activities." Under those circumstances, although these communications would not be a lobbying contact, and you would not have to identify the name of the lower level City employee, you would still have to report on Schedule A the decision, outcome sought, and name of the lobbyist making the communication, and you would use the time spent on that communication to calculate the reportable compensation received from the applicable client. On the other hand, if your communications with lower level City employees were not part of an effort to lobby "City Officials," then those communications would not fall within the scope of "lobbying activities" and you would not need to disclose information regarding the communications.

Therefore, if your firm has listed on its Registration Form a client for which it has not had at least one lobbying contact, you may do one of two things: (1) disclose on your quarterly report relevant information regarding the decisions, if any, for which your firm engaged in "lobbying activities" during the quarter; or (2) amend your Registration Form to remove this client. As stated above, if the firm never lobbied City Officials on behalf of this client, it never needed to list the client in the first place.

The purpose for bringing this matter to the Commission's attention is to ensure that staff's interpretation of the new Lobbying Ordinance is consistent with the Commission's intentions for the Ordinance. Please advise staff at the May 8, 2008, meeting if you have any concerns regarding the above interpretation.

As we field questions and concerns regarding the new Lobbying Ordinance, we are compiling a list of "housekeeping" issues that we intend to bring to the Commission later this year in a

proposal to amend the Ordinance. In connection with these "housekeeping" amendments, staff would propose amending the language in the Ordinance to more explicitly state what information needs to be disclosed when a Lobbying Firm engages in no "lobbying" or no "lobbying activities" for a client during the reporting period. In the meantime, staff plans to update applicable Fact Sheets and Frequently Asked Questions with regard to this issue, and to revise the Quarterly Disclosure Report form so that a Lobbying Firm may check a box to expressly state that it engaged in no "lobbying" or no "lobbying activities" for a client in a particular quarter.

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Stacey Fulhorst
Executive Director