

ORDINANCE NO. 10 - 01

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE SANTA CLARA VALLEY WATER DISTRICT
ADOPTING AN ORDINANCE RELATING TO
THE REGISTRATION OF LOBBYISTS, REPORTING REQUIREMENTS
GOVERNING ACTIVITIES OF LOBBYISTS AND COMMUNICATIONS WITH BOARD
MEMBERS AND DISCLOSURE BY DIRECTORS OF
CONTACTS WITH LOBBYISTS**

WHEREAS, the District functions to serve the needs of its constituents; and

WHEREAS, the people of the Santa Clara Valley Water District have a right to know the identity of interests which attempt to influence decisions of the District, as well as the means employed by those interests; and

WHEREAS, all persons engaged in compensated lobbying activities aimed at influencing decisions by the District must, when so engaged be subject to the same regulations, restrictions, and requirements, regardless of their background, training or other professional qualifications or licenses; and

WHEREAS, complete public disclosure of the full range of activities by and financing of lobbyists and those who employ their services is essential to the maintenance of citizen confidence in the integrity of local government; and

WHEREAS, it is in the public interest to ensure that lobbyists do not misrepresent facts, their positions, or attempt to deceive officials through false communications, do not place District officials under personal obligation to themselves or their clients, and do not represent that they can control the actions of District officials.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT DOES ORDAIN AS FOLLOWS:

SECTION 1. REFERENCES

This Ordinance shall be known and cited as the Lobbyist Ordinance of the Santa Clara Valley Water District.

SECTION 2. PURPOSE AND INTENT OF ORDINANCE

This Ordinance is intended to implement the Board's policy that District processes should be open, and that all persons are entitled to the greatest possible information regarding the affairs of the District and that official acts of those officers and employees who represent them.

Unless a term is specifically defined in this Ordinance or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 as amended from time to time (Government Code Section 81000 et seq.), shall govern the

interpretation of this Ordinance. Any term herein expressed in the plural may also apply to the singular.

This Ordinance is to be interpreted in favor of full disclosure. If there is a conflict of responsibilities under this Ordinance, the conflict will be resolved in favor of applicability of the requirements to disclose.

SECTION 3. DEFINITIONS

For the purposes of this Ordinance:

“Clerk” means The Clerk of the Board of Directors.

“Public official” includes, but is not limited to, any member of the Board of Directors or any of its committees, any District official-elect, any member of a District commission or committee, any District employee who participates in the consideration of any legislative or administrative action other than in a purely clerical, secretarial or ministerial capacity, and any consultant to the District.

“Consultant” means an individual who, pursuant to a contract with the District, participates in any District decision, other than in a purely clerical, secretarial or ministerial capacity.

“Client” means any person who employs, retains or is represented by a lobbyist.

“Compensation” includes, but is not limited to, money, goods, services or anything of value delivered or rendered or promises to perform or provide services, contractual arrangements or awards, but shall not include reimbursement for reasonable travel, meals and lodging expense.

“District decision” means any decision, or any recommendation as to a decision, concerning any matter, whether legislative, administrative, or quasi-judicial, which is pending before, or may be submitted to, the board of directors or any district commission, committee, or officer.

“Influence” or “Influencing” means any direct or indirect communication made by any means for the purpose of promoting, supporting, modifying, opposing, or otherwise affecting the decision making of a Public official or Public official-elect with respect to a District decision, other than a public communication made during or as a formal part of a noticed governmental public meeting.

“Lobbying” means influencing or attempting to influence any District decision.

“Lobbyist” means:

1. “Contract lobbyist”: A person who engages in lobbying on behalf of one or more clients (acting individually or through agents, associates, employees or contractors) and who has received or will become entitled to receive compensation from such client(s) aggregating at least \$1,000 during any consecutive three month period.

2. "Business or organization lobbyist": Any business or organization, whose officers, employees or agents have engaged in or will engage in lobbying on its behalf, in an aggregate amount of at least ten (10) hours within any consecutive three month period, whether or not such officers, employees or agents are specifically compensated to engage in lobbying; or
3. "Expenditure lobbyist": A person who makes payments or incurs expenditures of \$5,000 or more during any consecutive 12 month period to carry out public relations, advertising or similar activities with the intent of soliciting or urging others to communicate with any Public official to influence a District decision. The \$5,000 threshold shall not include: (a) compensation paid to contract lobbyists or employees of a business or organization lobbyist; or (b) dues payments, donations, or other economic consideration paid to an organization, regardless of whether the dues payments, donations or other economic consideration are used in whole or in part for lobbying purpose.
4. "Lobbyist" shall *not* mean:
 - (i) Any public official acting in his/her official capacity or acting within the scope of his or her employment or appointment;
 - (ii) The media, acting in the ordinary course of news gathering or editorial activity. "Media" shall mean newspapers or any other regularly published periodical, radio or television station or network or information published on the Internet, as well as neighborhood newsletters, flyers or gazettes;
 - (iii) Any person whose communications regarding any District decision are limited to appearing or submitting testimony or documents at any public meeting or hearing of the Board of Directors or any of its committees, or any other district commission or committee provided that any person appearing or submitting testimony or public documents at a public meeting who otherwise qualifies as a lobbyist must have first registered in the same manner and to the same extent as required of all other lobbyists pursuant to this Ordinance;
 - (iv) Any person submitting bids or responding to requests for proposals, provided that the communication pertaining to such bid or request for proposal is limited to (A) the submission of the bid or response to a request for proposal; (B) a written or oral response to a request for further information made by the official specifically designated to receive such information; (C) negotiations for the terms of a contract with the District following selection of the person as bidder or contractor and authorization by the District to enter into such contract; (D) a communication pertaining solely to the administration or performance of a contract already existing at the time the communication is made; or (E) a communication pertaining to the bid or request for proposal that, reasonably construed, is not intended to influence any District decision pertaining to the bid or request for proposal;
 - (v) Any person providing oral or written information pursuant to a subpoena or otherwise compelled by law or regulation, or in response to an official request

provided that the request and response thereto are public records available for public review;

- (vi) Any person who meets with a Public official solely to lodge "whistleblower" complaints relating to improper governmental activity such as gross mismanagement, waste of public funds, abuse of authority, or a substantial and specific danger to public health or safety;
- (vii) Any person who meets with the District Counsel or the Clerk with respect to the initiation, prosecution, negotiation and/or resolution of any claim or litigation matter;
- (viii) Members of neighborhood associations which are not incorporated pursuant to the Corporations Code, citizens' groups and local Chambers of Commerce;
- (ix) Officers, directors, employees or agents of any tax exempt organization with gross revenue less than \$2 million in any fiscal year, exclusive of grants from and/or contracts for services with governmental entities;
- (x) Any person whose communications relate to the negotiation, amendment, administration, implementation or interpretation of a collective bargaining agreement or a memorandum of understanding between the District and a recognized employee association;
- (xi) Any individual who communicates with a Public official on his/her own behalf with respect to a District decision; or
- (xii) Any person who is a member of the State Bar of California and whose communications regarding any District decision are made in the performance of a service which lawfully can be performed only by an attorney licensed to practice law in the State of California.
- (xiii) Any person, licensed as an architect by the State of California, and whose communications regarding any District decision is made in the performance of a service which lawfully can be performed only by a licensed architect.

"Person" means any individual, domestic or foreign corporation, for-profit or non-profit entity, firm, association, syndicate, union, joint-stock company, partnership of any kind, limited liability company, common-law trust, society, or any other group of persons acting in concert.

SECTION 4. Lobbyist Registration, Renewal and Termination and Fees

Each lobbyist shall register with the Clerk and shall be deemed active from and after the date of registration until December 31 of the year of registration.

- A. A lobbyist shall renew his/her registration by January 15 of each succeeding year unless such lobbyist has filed with the Clerk a declaration under penalty of perjury terminating his/her status as a lobbyist.
- B. Upon initial registration and yearly upon renewal of registration, lobbyists shall pay a fee in an amount to be recommended by the Clerk and approved by resolution of the Board,

which fee shall not exceed the estimated reasonable cost of the services provided pursuant to this Ordinance. The Clerk may adjust the fee from time to time as necessary to reflect the estimated reasonable costs of the services provided and shall report such adjustments to the Board. Any lobbyist registering for the first time after June 30 of a given year shall pay a registration fee equal to 50% of the normal fee.

C. No lobbyist may permissibly engage in lobbying unless he/she has first registered or has renewed registration and paid the fee required by this Section.

SECTION 5. DISCLOSURE REQUIREMENTS

A. Initial Disclosures. As part of the initial registration each lobbyist shall file with the Clerk a report under penalty of perjury that discloses the lobbyist's name, business address and telephone and fax numbers, a brief description of the nature of the lobbyist's business and the following additional information.

1. With respect to registrants that are sole proprietorships, partnerships or limited liability companies of fewer than ten persons: The name and address of each person holding an ownership interest in the sole proprietorship, partnership or limited liability company.
2. With respect to registrants that are corporations: The name and business address of the president, secretary, chief financial officer, and agent for service of process, if any, and, with respect to corporations with 35 or fewer shareholders, the name and business address of each shareholder holding at least 5% of the then-outstanding shares.
3. With respect to a contract lobbyist: The name, business address and telephone number of each client which has a decision pending with the District, the nature of each client's business, the District decision(s) the lobbyist seeks to influence on behalf of each such client, and the name of each person employed or retained by the lobbyist to lobby on behalf of each such client.
4. With respect to business or organization lobbyists: The name and business address of each person conducting lobbying activities on behalf of the business or organization lobbyist and the District decision (s) the lobbyist seeks to influence.
5. With respect to expenditure lobbyists: The District decision(s) the lobbyist seeks to influence.
6. The name, address, title and telephone number of the person responsible for preparing the report, together with a representation that the signatory is authorized to make the report.

B. Subsequent Disclosures. Commencing July 1 or January 1 of each year following the time in which the lobbyist has registered, and for each six month period thereafter in which the lobbyist is active, he/she shall file a report with the Clerk providing or updating the information required to be disclosed in the report included with the initial registration. The semi-annual report shall be filed not later than fifteen (15) days after the beginning of each semi-annual period and shall be filed whether or not the lobbyist has engaged in lobbying

activities during the period that is the subject of the report. In the event that the lobbyist has terminated or is terminating all activities as a lobbyist, he/she may submit the declaration of termination under penalty of perjury required by Section 7 with a final semi-annual report.

C. Records Retention. The lobbyist shall retain copies of any records pertaining to each of the reports required to be filed pursuant to this Section for a period of four years from the date of each filing.

SECTION 6. LOBBYIST IDENTIFICATION AT HEARINGS

When appearing to speak in a lobbying capacity at a public meeting or hearing of the Board of Directors or any of its commissions or committees, a lobbyist shall identify himself/herself and the client(s) or business or organization on whose behalf he/she is appearing.

SECTION 7. REPORTS BY LOBBYISTS

A. All lobbyists must file a semi-annual report for every six month period during which they retain that status with the Clerk not later than fifteen (15) calendar days after the end of the six month period, whether or not any lobbying activities have occurred during such period. Electronic reporting may also be permitted by the board Clerk.

B. Each semi-annual report must contain the same information as required to be disclosed in the registration report, for those activities occurring in that six month period. If a lobbyist has terminated all lobbying activities during such period, the lobbyist may file a declaration of termination with the semi-annual report. The final semi-annual report must include disclosure of any lobbying activities during the period of termination.

C. Each semi-annual report for Contract Lobbyist must indicate the total compensation promised or received from each client listed during the reporting period for lobbying activity within the following ranges: (\$0-\$500), (\$501-\$1,000), (\$1,001-\$10,000), (\$10,001-\$100,000), and (over \$100,000).

D. Semi-annual reports must be filed by July 15 and January 15 for the prior calendar year and are delinquent thereafter.

E. Records pertaining to the registration and semi-annual reports must be preserved by the lobbyist for inspection and audit by the District for a period of five (5) years from the date of production.

SECTION 8. DISCLOSURE OF COMMUNICATIONS WITH LOBBYISTS

Before taking any legislative or administrative action, the Chair and each member of the Board must disclose all scheduled meetings and any oral or electronic communications with a registered lobbyist about the action. The disclosure may be made orally at the meeting before discussion of the action on the meeting agenda. The oral disclosure must identify the registered lobbyists, the date(s) of the scheduled meetings, any electronic and/or telephone conversations, and the substance of the communication. This section does not limit any disclosure obligations that maybe required by this Ordinance or District policy.

SECTION 9. RESPONSIBILITIES OF THE CLERK

The Clerk shall:

- A. Create such forms and explanatory materials as are reasonably necessary to effectuate the purposes of this Ordinance.
- B. Determine and collect fees for lobbyist registration and renewal of registration.
- C. Establish a website to permit the electronic filing by lobbyists of, and electronic access by the public to, registration statements and reports filed pursuant to this Ordinance and establish protocols for the creation, maintenance, updating and use of and access to such website.
- D. Accept and maintain all filings required by, and otherwise oversee compliance with the requirements of this Ordinance.
- E. Provide semi-annual reports to the Board of Directors in public session regarding lobbyists' activities.
- F. Notify the Office of the District Counsel of any complaints and/or allegations made that a violation of this Ordinance has occurred.

SECTION 10. PROHIBITIONS

It shall be a violation of this Ordinance for any lobbyist to commit any one of the following acts:

- A. Failing or refusing to comply with the provisions of this Ordinance, including, but not limited to:
 1. Engaging in lobbying activities without first registering or renewing registration as a lobbyist pursuant to this Ordinance.
 2. Failing to pay any required fee when due.
 3. Failing to file or make any report when due and required or to provide information required by any such report.
- B. Making any misrepresentation of material fact with the specific intent to deceive any District official pertaining to any pending or proposed District decision.
- C. Attempting to evade the requirements of this Ordinance through any means.

SECTION 11. PENALTIES

- A. Any lobbyist who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$500 per violation.

- B. In any judicial proceeding to enforce the provisions of this Ordinance, if a court determines that a violation was intentional, the court may order that the defendant be prohibited from acting as a lobbyist or otherwise attempting to influence District decisions for one year.
- C. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

SECTION 12. The provisions of this ordinance are severable. If any provision of this ordinance or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

INTRODUCED by the Board of Directors of the Santa Clara Valley Water District, on 6/15/10 by the following vote:

AYES: Directors L. Wilson, T. Estremera, J. Judge, R. Kamei, P. Kwok, S. Mann,
R. Santos

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: 
RICHARD P. SANTOS
Chair/Board of Directors