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December 8, 2003

RECVD BY

ETHICS COMMISSION  
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The Honorable City Ethics Commission  
of the City of Los Angeles  
200 North Spring Street, Suite 2400  
Los Angeles, CA 90012

Re: Proposal to Require Lobbyist Disclosure on Communications to  
Neighborhood Councils and Community Groups (CF 03-0283)

Honorable Members:

At your meeting on November 4, 2003, you requested our advice concerning the legality of a pending proposal to require lobbyists to include identifying information about them on written communications to Neighborhood Councils and community groups. This letter responds to your request.

**Summary of Advice**

A court would likely uphold a City requirement that lobbyists include identifying information on their communications to Neighborhood Councils in order to assist the Councils in determining whether registered paid legislative advocates are attempting to influence them. Such a requirement is permissible because it is consistent with the Constitution and Neighborhood Councils are part of the City and have an official Charter role in providing advice to City decisionmakers. However, we believe that a court probably would not uphold the same City requirement for lobbyists' communications with private community groups because a sufficient governmental interest has not been identified that would sustain a burden on lobbyists' free speech rights.

**Factual Background**

City Council introduced a motion that would require all registered lobbyists and lobbying firms who receive financial compensation for advancing a particular cause or issue to provide a disclosure in all communications to Neighborhood Councils and other community groups.

The motion was apparently prompted by e-mails and correspondence sent to leaders of the City's Neighborhood Councils regarding a proposed policy change that was voted on by the City Council. At least one message was sent by a registered lobbyist which received financial compensation for its work with the Neighborhood Councils. The motion noted that while Council members are expected to know who the City's more than 200 lobbyists are, Neighborhood Councils are far less likely to know.

The City's Lobbying Ordinance currently provides for registration, disclosure, and conduct requirements for persons engaged in a specified level of lobbying activities. LAMC 48.01 *et. seq.* When a lobbyist, lobbying firm, or lobbyist employer (lobbying entity) engages in lobbying activities and meets the thresholds for contacts and compensation provided in the ordinance, it must register with the Ethics Commission. The lobbying entity must at that time disclose its clients and the City departments that it will be lobbying. A majority of the lobbying entities report that they will be lobbying all departments. Registered lobbying entities must file quarterly lobbying reports to the City Ethics Commission. These reports include matters on which a lobbyist attempted to influence City officials, compensation received by a lobbying entity for its municipal lobbying activity, and expenditures made in connection with a lobbying firm's or lobbyist employer's attempts to influence City decisions. Other disclosures include, campaign contributions and payments a lobbyist or lobbying firm receives for other services provided to the City or to a City candidate or officeholder.

Based on the reporting received, the City Ethics Commission compiles reports, which it posts on its website and distributes to City officials. Those reports include lists of registered lobbying entities and their clients.

This information is important to City officials and others for a variety of reasons. It is of particular importance to City officials who must comply with gift and travel restrictions that have specified limitations as to lobbyists. The lists provided by the City Ethics Commission aids City officials in determining whether a potential source of a gift or travel is a registered lobbyist. Neighborhood Council governing board members who will be filing statements of economic interests will have the same interest in this regard.

### **Conclusions and Discussion**

#### **Issue No. 1**

May the City require registered lobbyists to include identifying information in their communications when communicating with Neighborhood Councils?

**Answer No. 1**

Yes.

**Discussion**

We first note that there are no reported cases regarding this type of disclosure requirement on lobbyists. Therefore, we analyze the issue by reviewing related precedent.

Lobbyists engaged in lobbying activities are exercising First Amendment free speech rights and the right to petition one's government and California Constitution liberty of speech rights when communicating with the City Council, City Departments, Neighborhood Councils or other City officials.<sup>1</sup> Disclosure requirements on written communications are likely to be viewed as restrictions on that speech.

A court's analysis of the provision's constitutionality will be based on the level of scrutiny used for this type of restriction. While a First Amendment right is a fundamental interest, if the restriction on the First Amendment right has only an "incidental effect on exercise of protected rights, strict scrutiny is not applied. It is only when there exists a real and appreciable impact on, or a significant interference with the exercise of the fundamental right that the strict scrutiny doctrine will be applied." *Fair Political Practices Comm'n v. The Superior Court of Los Angeles* (1979) 25 Cal.3d 33, 47, cert. den. (1980) 444 U.S. 1049, citing *Zablocki v. Redhail* (1978) 434 U.S. 374; *Gould v. Grubb* (1975) 14 Cal.3d 661, 670.

Courts have generally upheld reporting requirements for lobbyists. *United States v. Harriss* (1954) 347 U.S. 612, 625-626, *Fair Political Practices Comm'n v. The Superior Court of Los Angeles*, supra, 25 Cal.3d 33, 49. In concluding that strict scrutiny would not apply to the registration, reporting, and gift provisions concerning lobbyists, the California Supreme Court found that those type of restrictions are ". . . not direct limitations on the right to petition for redress of grievances and that any burdens of registration and disclosure of receipts and expenditures to lobbyists does not substantially interfere with the ability of the lobbyist to raise his voice. While the burden of disclosure might be substantial for those engaging in extensive lobbying activities,

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<sup>1</sup> Neighborhood Councils are part of the City and have an official role in providing advice to the City Council and other City Departments on various issues. Charter §§ 907-910. In fact, City Council agendas now carry a community impact statement to specifically alert Councilmembers to Neighborhood Council views on a particular matter.

the burden is not great when viewed in the context of the total activities engaged in. Requiring a person engaged in a business to describe it and to report its receipts and expenses may not be viewed in our commercial society as a substantial impediment to engaging in that business." *Fair Political Practices Comm'n v. The Superior Court of Los Angeles, supra*, (1979) 25 Cal.3d 33, 47-48.

It is possible that a court may view this type of disclosure requirement differently because the identification appears on the communication itself. There are no reported cases concerning this type of disclosure by lobbyists. However, the Supreme Court has concluded that anonymous communication at the time of the communication by individuals regarding a ballot measure is constitutionally protected. In *McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334, 338, the court struck down an Ohio statute that made it a crime to distribute any political publication which was designed to promote the nomination or election or defeat of a candidate without disclosing the person responsible for it. Additionally, the Supreme Court has struck down laws prohibiting the anonymous distribution of handbills, *Talley v. California* (1960) 362 U.S. 60 (invalidating a Los Angeles ordinance) and requiring permits for door-to-door canvassing, which must be presented upon request, *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton* (2002) 536 U.S. 150. However, the California Supreme Court, citing *Tally*, upheld a Political Reform Act provision requiring identification on campaign literature regarding candidate elections as to candidates and candidate-controlled committees. *Griset v. Fair Political Practices Com.* (1994) 8 Cal.4th 851, 855, *cert. den.* (1995) 514 U.S. 1083. In that case, the Court used a strict scrutiny analysis and found the need for an informed electorate prior to casting their votes was a compelling government interest that justified the restriction on speech. The Court noted that it did not decide whether a strict scrutiny analysis was required for that restriction because the government had met the stricter burden. *Id.* at 861.

It is not clear whether a court would use strict scrutiny or a lower threshold as to the new restrictions on registered lobbyists. However, we believe it more likely that a court would use a lower level of scrutiny just as they have for lobbyists' other disclosure and registration requirements because the provision is essentially a disclosure requirement and because the requirement is a minimal burden. As noted above, courts have upheld lobbyist disclosure and registration provisions under this lower level of scrutiny. Here, the governmental interest is to inform Neighborhood Councils, who play an official role in City decisionmaking, when they are being influenced by registered paid lobbyists. Although we believe it less likely, a court could apply a strict scrutiny analysis which could place such a provision in jeopardy because alternate means of obtaining the information, although less convenient and less timely, are available from

the Ethics Commission.<sup>2</sup>

### **Issue No. 2**

May the City require registered lobbyists to include identifying information their communications when communicating with community groups?

### **Answer No. 2**

No.

### **Discussion**

Using the same analysis discussed above, we believe that a court would conclude that even under a lower level of scrutiny, that the provision is overbroad and a governmental interest has not been identified that will be served by the identification requirement on lobbyist communications. Neighborhood Councils are part of the City and have an official function in providing advice to City departments and officials including the City Council. Indeed, the Charter provides a system so that Neighborhood Councils can “. . . provide input before decisions are made. . .” (Charter § 907) and may be delegated to “. . .hold public hearings prior to the City Council making a decision on a matter of local concern.” (Charter § 908) Private groups may provide input to City decisions just as any citizen may, however, those groups do not have an official Charter-given role in governmental decisions. Because of this different role, we are not aware of a governmental interest that supports an infringement on registered lobbyists’ free speech rights by requiring identifying information on their communications to community groups. This type of restriction would likely be viewed differently than identification requirements in the campaign context as it applies to controlled committees and candidates because the provisions do not serve the same governmental interest. In the candidate campaign context, using a strict scrutiny analysis, a compelling governmental interest has been found in providing information to voters before an election so that they may make the appropriate decision at the ballot box. That interest is not relevant to the proposed provision nor has a reported decision articulated a governmental interest in ensuring those who seek to influence the government are adequately informed before contacting their elected representatives.

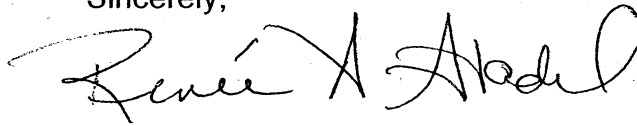
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<sup>2</sup> Depending on how the provision is actually crafted or applied a court could analyze the provision to determine whether it is content-based or content-neutral. If a court concluded that the provision is content-based, a strict scrutiny analysis would be used. If the provision is determined to be content-neutral, an intermediate level of scrutiny would be employed. *Savage v. Trammel Crow Co.* (1990) 223 Cal.App.3d 1562, 1572-1574.

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In addition, "community groups" would have to be defined in any provision to avoid an argument that lobbyists' due process rights are violated because of the vagueness of the term, which creates an uncertainty in complying with the provision.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee A. Stadel". The signature is fluid and cursive, with the first name "Renee" being the most prominent.

RENEE A. STADEL  
Deputy City Attorney

RS:rp (96441)

cc: LeeAnn Pelham, Executive Director  
City Ethics Commission  
Honorable Councilmember LaBonge  
Honorable Councilmember Miscikowski  
Honorable Councilmember Parks