

ORDINANCE NO. 2020-3

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 1.12.020 SUBSECTION J, AND ADDING CHAPTER 1.28 TO TITLE 1 OF THE NEWPORT BEACH MUNICIPAL CODE TO INCREASE TRANSPARENCY IN GOVERNMENT OPERATIONS AND ESTABLISH LOBBYIST REGISTRATION, REPORTING AND DISCLOSURE REQUIREMENTS

WHEREAS, all actions and deliberations by public agencies should, to the greatest extent possible, be conducted openly;

WHEREAS, an informed public and transparency in decision-making is essential to democracy;

WHEREAS, on April 9, 2019, the City Council adopted Resolution No. 2019-33 forming an Ad Hoc Committee on Election Reform ("Committee") to determine whether the provisions of the Newport Beach Municipal Code ("NBMC") should be modified or updated;

WHEREAS, the Committee has recommended the City Council amend Section 1.12.020 subsection J, and add Chapter 1.28 to Title 1 of the NBMC to increase transparency in government operations by establishing lobbyist registration, reporting and disclosure requirements;

WHEREAS, it is the goal and intent of this ordinance, to ensure that citizens of Newport Beach have timely access to information and an opportunity to address the various legislative bodies of the City prior to governmental decisions being made;

WHEREAS, the citizens, staff and City Council of the City ought to know the identity of persons engaged in compensated lobbying activities aimed at influencing decisions by City government and which interests such persons represent; and

WHEREAS, public disclosure of the financing of lobbyists and those who employ their services helps maintain citizen confidence in the integrity of City government.

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Section 1.12.020 subsection J of Chapter 1.12 of Title 1 of the Newport Beach Municipal Code is hereby amended to add Subsection J to read as follows:

J. The City Clerk shall have the power to issue administrative citations for violations of Chapter 1.28.

Section 2: Chapter 1.28 is hereby added to Title 1 of the Newport Beach Municipal Code to read as follows:

Chapter 1.28
LOBBYIST REGISTRATION AND REPORTING

Sections:

- 1.28.010 Purpose and Findings.
- 1.28.020 Definitions.
- 1.28.030 Exemptions.
- 1.28.040 Lobbyist Registration and Annual Reporting.
- 1.28.050 Identification of Clients.
- 1.28.060 Prohibited Acts.
- 1.28.070 Enforcement.

1.28.010 Purpose and Findings.

The City Council of the City of Newport Beach finds and declares as follows:

- A. City government functions to serve the needs of all citizens.
- B. The citizens, staff and City Council of the City ought to know the identity of persons engaged in compensated lobbying activities aimed at influencing decisions by City government and which interests such persons represent.
- C. Public disclosure of the financing of lobbyists and those who employ their services helps maintain citizen confidence in the integrity of City government.
- D. It is in the public interest to ensure that lobbyists do not misrepresent facts, their positions, or attempt to deceive a City representative through false communications; do not place a City representative under personal obligation to themselves or their clients; and do not represent that they can control the actions of any City representative.
- E. It is in the public interest to adopt this chapter to ensure adequate and effective disclosure of information about efforts to lobby City government.

1.28.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. "City representative" means the Mayor, Mayor Pro Tem, members of the City Council, members of all City Boards, Commissions and Committees, the City Manager, Assistant City Manager, Department Directors, Deputy Department Directors, the Police Chief, the Assistant Police Chief, the Fire Chief, the Assistant Fire Chief, the City Attorney, Assistant City Attorney, the City Clerk, and the Zoning Administrator.

B. "Commission" means the Orange County Campaign Finance and Ethics Commission.

C. "Influence" and "Influencing" means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions of a City representative, by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.

D. "Lobbyist" means any person who receives compensation of five hundred dollars (\$500.00) or more in consideration in any calendar month, other than reimbursement for reasonable travel expenses, for engaging in lobbying activities. A lobbyist includes any person that engages in lobbying activities on behalf of another person pursuant to any form of contingency compensation agreement.

E. "Lobbying activities" means influencing or attempting to influence a City representative, by means of oral, written, or electronic communication, in regards to any legislative, quasi-judicial or administrative action or decision to: (1) adopt an ordinance, resolution, regulation or policy; (2) grant or deny any permit, license or other entitlement of use; (3) award of a contract or grant; or (4) decide to initiate, defend, appeal or take any other action related to litigation.

F. "Person" means any individual and any form of business entity including, but not limited to, a domestic or foreign corporation, association, syndicate, joint stock corporation, partnership of every kind, club, business or trust, society, or limited liability company.

1.28.030 Exemptions.

The following persons are exempt from the requirements of this chapter unless otherwise specified:

- A. A public official or public employee acting in his or her official capacity.
- B. An attorney, licensed to practice law in the state of California, with regard to his or her representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the City, or City agent, officer, or employee.
- C. A person who owns, publishes or is employed by a newspaper, radio station, television station or other media outlet that is engaged in the business of broadcasting of news items, editorials, or commentary, which directly or indirectly urges governmental action.
- D. A person hired by the City, to the extent the lobbying activities directly relate to the work the person was hired to perform for the City.
- E. A person who is communicating with a City representative concerning a ministerial action.
- F. A person who meets with a City representative solely to lodge "whistleblower" complaints relating to improper governmental activity such as gross mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- G. A person who meets with the City Manager, City Attorney, City Clerk, Assistant City Manager, Assistant City Attorney, Department Directors, Deputy Department Directors, the Police Chief, the Assistant Police Chief, the Fire Chief, or the Assistant Fire Chief, regarding any claim or litigation matter, the resolution of any dispute, or potential dispute, or negotiation of any agreement where the City will be a party to the agreement.
- H. An expert witness retained to provide opinions or testimony at an official City proceeding.
- I. Any person who is not compensated for engaging in lobbying activities.
- J. Any employee, officer, or board member of an association for a residential common interest development of five or more dwelling units, which is wholly located within the City, when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members.

K. Any regular employee, officer, or board member of a business entity when addressing, in his or her capacity as an employee, officer, or board member of such business entity, an issue impacting the business entity.

L. Any state licensed architect or engineer whose attempts to influence any legislative, quasi-judicial or administrative action or decision are limited to: (1) publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; or (2) preparing or submitting documents or writings in connection with the action or decision for use at a public meeting, public hearing, or other official proceeding open to the public.

1.28.040 Lobbyist Registration and Annual Reporting.

A. Within ten (10) days of qualifying as a lobbyist and within ten (10) days of the annual anniversary of the lobbyist's initial registration, if the lobbyist continues to qualify as a lobbyist, any lobbyist who engages in lobbying activities shall register with the City Clerk by:

1. Paying all filing fees, which shall be set by resolution of the City Council, and

2. Filing a lobbying registration form, as provided by the City Clerk and made available on the City Clerk's webpage, which shall include, at a minimum, a written statement containing the following information, certified as true under penalty of perjury:

a. The full name, business address and telephone number of the lobbyist, and, if the lobbyist is a business entity or other organization, the full name, business address and telephone number of each person employed by or otherwise associated with the business entity or organization who will be engaging in lobbying activities;

b. The full name, business address and telephone number of the person by whom the lobbyist has been employed, retained or engaged by to perform lobbying activities;

c. The legislative, quasi-judicial or administrative action or decision with respect to which the lobbyist has been employed, retained or engaged; and

d. The date and amount of all campaign contributions to any candidate or candidate's controlled committee that the lobbyist has made within the past twelve (12) months.

B. An amendment to the registration form must be completed and filed by the lobbyist with the City Clerk within ten (10) days if the lobbyist knows, or should have known, of any change in the accuracy of the information reported on the registration form.

1.28.050 Identification of Clients.

A. Unless otherwise excused by law, each lobbyist who appears before the City Council or City board, commission or committee to engage in lobbying activities shall identify himself or herself and the client(s) he or she represents upon addressing the body.

B. Any lobbyist who makes an oral lobbying contact with a City representative shall, at the time of the initial lobbying contact with each City representative, identify himself or herself as a registered lobbyist and identify the client or clients on whose behalf the lobbying contact is made.

C. Any lobbyist who makes an initial written lobbying contact (including an electronic communication) with a City representative and/or City employee shall identify the client(s) on whose behalf the lobbying contact is made and identify himself or herself as a registered lobbyist.

1.28.060 Prohibited Acts.

No lobbyist shall:

A. Do any act, or refrain from doing any act, with the express purpose and intent of placing any City representative under personal obligation to such lobbyist or the lobbyist's client.

B. Intentionally deceive any City representative with regard to any material fact pertinent to any pending or proposed legislative, administrative, or quasi-judicial action.

C. Represent, either directly or indirectly, orally or in writing, that he or she can control or obtain the vote or action of any City representative.

1.28.070 Enforcement.

A. Negligent and unintentional violations of this chapter shall be punishable in accordance with Chapter 1.05 of this Code. Administrative fines for negligent and unintentional violations of this chapter shall be assessed in the following amounts:

1. A fine not exceeding fifty dollars (\$50.00) for a first violation;
2. A fine not exceeding five hundred dollars (\$500.00) for a second violation within one year from the date of a prior violation; and
3. A fine not exceeding one thousand dollars (\$1,000.00) for a third violation, or any subsequent violation, within one year from the date of the prior violations.

The City Clerk shall post on the City website and make available to the public a list of all lobbyists who have paid fines for violating the provisions of this chapter within the previous two (2) years.

B. Any person who knowingly and intentionally violates the provisions of this chapter shall be liable in a civil action brought by the Office of the City Attorney. Any violation of the provisions of this chapter may result in a civil penalty no greater than five thousand dollars (\$5,000.00) for each violation.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated herein by this reference.

Section 4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall take effect thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of January, 2020, and adopted on the 11th day of February, 2020, by the following vote, to-wit:

AYES: Mayor O'Neill, Mayor Pro Tem Avery, Council Member Brenner, Council Member Dixon, Council Member Duffield, Council Member Herdman, Council Member Muldoon

NAYS: _____

ABSENT: _____



WILL O'NEILL, MAYOR

ATTEST:



LEILANI I. BROWN, CITY CLERK



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2020-3 was duly introduced on the 28th day of January, 2020, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 11th day of February, 2020, and that the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Will O'Neill, Mayor Pro Tem Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon
NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12th day of February, 2020.



Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2020-3 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: February 1, 2020
Adopted Ordinance: February 15, 2020

In witness whereof, I have hereunto subscribed my name this 24th day of FEBRUARY, 2020.



Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California