

ORDINANCE NO. O2016.46

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA, AMENDING
CHAPTER 2, TEMPE CITY CODE, BY ADDING
A NEW ARTICLE IX, RELATING TO A
LOBBYIST REGISTRATION PROGRAM.**

WHEREAS, under the Arizona Constitution, a city with a population of more than 3,500 people is entitled to establish a charter for its government and that a charter city is granted autonomy over matters of local interests;

WHEREAS, the voters of the City of Tempe established the Tempe City Charter in 1964 that vests policymaking in the Tempe City Council; and,

WHEREAS, the implementation of a lobbyist registration program in the City of Tempe will maintain the public trust and contribute to transparency in local decision-making processes by providing the public with information about those individuals and organizations that are paid to lobby public officials, and expenditures made and who has received those expenditures.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 2 of the Tempe City Code is hereby amended to add a new Article IX as follows:

ARTICLE IX. LOBBYIST REGISTRATION

Sec. 2-700. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning, or as otherwise required by law:

Elected City official means the Mayor, Vice-Mayor, and Councilmembers, whether serving by election or appointment.

Expenditure means a purchase, payment, distribution, loan, advance, deposit or gift, and includes a promise or agreement, whether or not legally enforceable, to make an expenditure that provides a benefit to a public official that is incurred by or on behalf of a lobbyist.

Family gift means a gift to a public official or a member of his or her household from a lobbyist who is a relative of the public official or a member of his or her household if the donor is not acting for someone not covered by this paragraph.

Gift means money, real property or tangible personal property. For purposes of this article, gift does not include:

- a. A gift or inheritance from a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or any such person's spouse, or as devisee in a will, if the donor is not acting for someone not covered by this paragraph and gifts of a personal nature were customarily received from such persons before becoming a public official.
- b. The value of meals, entertainment or lodging that is reported or exempt from reporting under this article.
- c. Salary, compensation or employer-reimbursed expenses lawfully paid to a public official.
- d. The value of professional or consulting services not rendered to obtain a benefit for any lobbyist or lobbyist's client.
- e. A plaque or similar item given to a public official in recognition of service or notable accomplishment.
- f. Expenses relating to an event to which all members of the City Council, or all members of any Board or Commission are invited.
- g. Expenses relating to an event sponsored by a regional, statewide or national association of public officials.
- h. Informational material such as books, reports, pamphlets, tapes, calendars or periodicals.

- i. An unused item that is returned to the donor or delivered to a charitable organization within fifteen (15) days of receipt and is not claimed as a charitable contribution by a public official for tax purposes.
- j. A campaign contribution that is properly received and reported as required by law.
- k. An item given to a public official if an item of similar value is given by the public official to the lobbyist at the same time, or on a similar occasion under similar circumstances.

Lobby means communication with any public official for the purpose of influencing official action.

Lobbyist means any person who is compensated to lobby for a person or organization other than himself or herself.

Official action means the action of the City Council, a Board or Commission, or a Hearing Officer.

Person means an individual, partnership, committee, association, limited liability company or corporation and any other organization or group of persons.

Personal hospitality means meals, beverages, transportation or lodging furnished noncommercially by a person on his or her family's property or facilities.

Public official means an elected City official, a person appointed or serving on a Board or Commission, or a Hearing Officer.

State law reference A.R.S. §41-1231 et seq.

Sec. 2-701. Lobbyists, registration; reports; filing.

(a) Lobbyists shall register prior to lobbying, or within ten (10) calendar days after first lobbying, by filing a registration statement with the City Clerk, disclosing the following:

- (1) If the lobbyist is an individual, the name and business address of the lobbyist and any employee of the lobbyist who acts as a lobbyist, provided that an individual who is included as a lobbyist on the registration of an entity under paragraph 2 of this subsection need not register separately.

- (2) If the lobbyist is an organization, the legal name and business address of the entity, its chief executive officer or managing member or members and all its officers and employees who are designated to act as lobbyists in the City.
- (3) The name and business address of all persons by whom the lobbyist is compensated to lobby and all persons on whose behalf lobbying is performed.

(b) At the time of registration or any time thereafter, a lobbyist may file an exemption statement declaring that the lobbyist intends to make no expenditures reportable under this article during that calendar year. Upon filing this statement the lobbyist shall be exempt from the expenditure-reporting requirements of this section, so long as no expenditures are made during that calendar year. If a lobbyist who has signed an exemption statement subsequently makes any reportable expenditure, that lobbyist shall notify the City Clerk of such expenditure within ten (10) days and shall thereafter be subject to expenditure reporting requirements.

(c) Any change in the information required by subsection (a) shall be reported to the City Clerk by filing an amended registration statement within ten (10) calendar days.

(d) The registration and exemption statement shall be effective for a period of one (1) year, except that the first registration and exemption statement shall be valid until December 31 of the year following initial registration. Thereafter, the statements shall be filed annually between January 1 and January 31.

(e) All filings required by this article shall include a signed declaration as to the accuracy of the information, and be on forms and filed in the format prescribed by the City Clerk.

(f) Lobbyists shall report expenditures annually. The report shall be filed between January 1 and January 31, following the reportable year ending the prior December 31. Expenditures over fifty dollars (\$50.00) shall be itemized separately, listing the date, amount and nature of the expenditure, the name of the public official receiving or benefitting from the expenditure, and the person on whose behalf the expenditure was made. If no expenditures were made during the reporting period, a lobbyist may file a written statement declaring that no reportable expenditures were made.

(g) All expenditures for an event to which more than one (1) public official are invited shall be allocated on a pro-rata basis based on the total number of public officials invited.

(h) Expenditures for the lobbyist's personal sustenance, family gifts, personal hospitality, preparation or distribution of informational materials, campaign contributions, professional or consulting services not made on behalf of another person for compensation, and not rendered

primarily for the benefit of a public official, office expenses, filing fees, legal fees, employees, compensation and travel are not required to be reported under this article.

Sec. 2-702. Lobbyists; exceptions to registration.

This article does not apply to:

(1) A person who is not compensated for lobbying activity other than reimbursement for actual expenses.

(2) A person, acting on his or her own behalf, who appears before a public official or contacts a public official to support or oppose official action.

(3) A public official, public employee or member of a state, county or local board, commission or council or an organization of governmental entities of which the City is a member acting in his or her official capacity on matters pertaining to his or her office, employment, board, commission or council.

(4) An expert introduced or identified by a registered lobbyist, or public official, who provides technical information or answers technical questions, and makes no expenditure required to be reported by this article.

(5) A person who performs professional services in drafting legislation, or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation.

(6) An attorney who represents clients at any quasi-judicial hearing held by the City Council, Board, Commission or Hearing Officer, or in any litigation matter in which the City is a party and the public official is contacted pursuant to a duly filed notice, subpoena or request filed with legal counsel or the appropriate court.

(7) A person, including but not limited to a lobbyist, who contacts a public official solely for the purpose of obtaining information.

(8) A person who contacts a public official concerning any procurement awarded through a competitive procurement process. This provision shall not be construed to invalidate or otherwise affect any black-out provision required by a solicitation process involving the City.

Sec. 2-703. Lobbyists; prohibited practice.

(a) No person shall make a gift to, or expenditure on behalf of a public official through another person to conceal the identity of the person making the gift or expenditure.

(b) No person shall give a gift to a public official for the performance of official duties, or if it may reasonably be interpreted to be offered in order to influence an action or decision of a public official.

Sec. 2-704. Penalty.

(a) A violation of any provision of sections § 2-700 through 2-703 shall be filed in writing with the office of the City Clerk pursuant to 2-704(d).

(b) A violation of any provision of sections § 2-700 through 2-703 shall be a civil offense punishable by a fine as set forth in § 1-7 of this Code.

(c) A second and any subsequent violation of this article within twelve (12) months of a previous conviction or finding of responsibility for a violation of § 2-700 through 2-703 shall constitute a Class 1 misdemeanor.

(d) Any person claiming to have knowledge of a violation of this article may file with the office of the City Clerk, a written charge signed by the complainant and verified by such signature, within forty-five (45) days of the occurrence of the alleged violation. The charge shall set forth facts upon which it is based and shall identify the person charged (hereinafter "respondent"). The City Clerk's Office shall furnish the respondent with a copy of the charge and shall promptly investigate the allegations set forth in the charge.

(e) The respondent may file with the City Clerk's Office, no later than twenty (20) days following receipt of the charge, a written verified answer to the charge. Failure to answer or participate in the process will be considered an admission.

(f) The city manager or designee shall determine whether there may be reasonable cause to substantiate the charge, and shall furnish a copy of its report of findings, if any, to the complainant and to the respondent.

(g) No actions or omissions undertaken pursuant to this article, shall give rise to liability or legal responsibility on the part of the city or any of its employees, agents or officials.

(h) In connection with the investigation of any charge filed under this article, the city manager or designee shall seek the voluntary cooperation of any person to: obtain access to premises, records, documents, individuals and other possible sources of information; examine, record and copy any materials; and take and record testimony and obtain statements as reasonably necessary to further the investigation.

(i) A complaint may be dismissed for reasons including: the complaint was untimely filed; the location of the alleged practice was outside of the city's jurisdiction; insufficient evidence exists to conclude that a violation occurred; or otherwise.

(j) If upon completion of the investigation, the city manager or designee concludes that a violation of this article occurred; penalties shall be imposed as indicated in this section.

(k) Failure to remit payment of a fine imposed under this article shall result in collection efforts as any other civil judgment.

Section 2. Pursuant to the Tempe City Charter, Section 2.12, this ordinance shall be effective January 1, 2017.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA this ____ day of _____, 2016.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney