



To: Billy Urquia, City Clerk

From: Stephanie Throckmorton, Assistant City Attorney

Approved: Miriam S. Ramos, City Attorney *MSR*

RE: Scrivener's error Section 2-305

Date: October 12, 2021

---

In August of 2021 the City Commission adopted Ordinance 2021-24 amending Section 2-305 of the City Code, entitled "Lobbying". Upon further review of the codified language the City Attorney's office has discovered a scrivener's error. The City Attorney has been granted express authority to take such action under Section 2-252(e)(9) of the City Code. Accordingly, please update Section 2-305(g)(7) as indicated below<sup>1</sup>:

**Sec. 2-305. Lobbying.**

(a) *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:

*City personnel* means those city officials, officers and employees who are entrusted with the day-to-day policy setting, operation, and management of certain defined city functions or areas of responsibility, even though ultimate responsibility for such functions or areas rests with the city commission, with the exception of the city attorney, deputy city attorney, and assistant city attorneys, advisory personnel (members of city advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the city commission); and any employee of a city department or division with the authority to participate in procurement matters, when the communication involves such procurement.

*Encourage* means to influence, promote, support, oppose, or seek to modify, alter, amend, or delay any recommendation, action, or decision of the city commission, any city board or committee, or any city personnel.

<sup>1</sup> Deletions are indicated by strikethrough and insertions are indicated by underline.

*Expenditure* means the same as defined in F.S. § 112.3215.

*Lobbyist* means an individual, firm, corporation, partnership, or other legal entity employed or retained, whether paid or not, by a principal, or that contracts with a third-party for economic consideration to perform lobbying activities on behalf of a principal.

Lobbyist specifically includes principal that lobbies as well as any employee that has been designated by the principal to perform lobbying activities on behalf of the principal.

*Lobbying activity* means any attempt to influence or encourage the passage or defeat of, or modification to, governmental actions, including, but not limited to, ordinances, resolutions, rules, regulations, executive orders, and procurement actions or decisions of the city commission, the mayor, any city board or committee, or any city personnel. The term "lobbying activity" encompasses all forms of communication, whether oral, written, or electronic, during the entire decision-making process on actions, decisions, or recommendations which foreseeably will be heard or reviewed by city personnel. This definition shall be subject to the exceptions stated below.

*Person* means any individual, corporation, partnership or other legal entity or an agent or employee thereof.

*Principal* means the person firm, corporation, or other entity that performs lobbying activity on behalf of itself or that has been designated, employed, or retained as a lobbyist to lobby on its behalf. The term principal also includes the person, firm, corporation, or other entity receiving the benefit of the lobbying effort and on whose behalf the lobbyist is lobbying, even if the lobbyist is retained, engaged, or employed by a third-party for such purposes. Procurement matter means the city's processes for the purchase of goods and services, including, but not limited to, processes related to the acquisition of: technology; public works; design services; construction, professional architecture, engineering, landscape architecture, land surveying, and mapping services; the purchase, lease or sale of real property; and the acquisition, granting, or other interest in real property.

(b) *Registration.*

(1) All lobbyists and principals who lobby shall, before engaging in lobbying activities, register annually with the city clerk. Every person required to so register shall:

- a. Register on the city clerk's online lobbyist registration system;
- b. Pay an annual registration fee of \$250.00; and
- c. State under oath the name and business address of the registrant; the name and business address of each principal or corporation which has directly or indirectly, designated, retained, or employed said registrant to lobby and the specific issue on which the lobbyist has been designated, retained, or employed to lobby. If the lobbyist represents a corporation, the corporation shall also be identified. In addition, the registrant shall state the specific issue for which he/she has been employed or retained to lobby and the existence of any direct or indirect business association, partnership, or financial relationship with any employee of the city.

(2) Within five days of the lobbyist registration, all principals must confirm/acknowledge with the city clerk that the lobbyist is authorized to represent the principal, describing the specific issue, agenda item, or procurement matter that is the subject of the lobbying, and identifying all persons holding, directly or indirectly, a five percent or more ownership interest in the corporation, partnership, or trust.

(3) Any lobbyist who paid the annual registration fee for a particular issue and the issue remains unresolved by the end of the calendar year, shall register for the following year.

(4) Any change to any information originally filed shall require that he/she file an amendment to the registration forms, although no additional fee shall be required for such amendment. He/she has a continuing duty to supply information and amend the forms filed throughout the period for which the lobbying occurs. Separate annual registration shall be required for each principal represented on each specific issue. Such issue shall be described with as much detail as is practical, including but not limited to a specific description where applicable of a pending request for a proposal, invitation to bid, or public hearing number. No additional fee shall be required for each issue. All amendments shall be filed within 15 days of any change of information required to be set forth on their registration forms.

(5) Each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal within 30 days after ceasing all lobbying activity with a principal.

(6) The registration fees required by this section shall be deposited by the city clerk for the purpose of recording, transcribing, administration, and other costs incurred in maintaining these records for availability to the public.

(7) The city clerk may waive the fee requirements of this section upon a finding of financial hardship, based upon the sworn statement of the applicant, or may waive it at his/her discretion where such waiver serves a public purpose. Any person who only appears as a representative of a non-profit corporation or entity (such as a 501(c)(3) organization, a trade organization, or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item, shall not be required to pay the registration fee. Any person who only appears as a representative of an educational institution (includes MDCPS, Charter schools, private schools, pre-schools, day cares, colleges, and universities) shall not be required to pay the registration fee.

(c) *Contingency fees; prohibited.* No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the lobbying activities.

(d) *Exceptions to registration.* The following shall not be required to register under this section:

(1) Any public officer, employee, or appointee, appearing in his/her official capacity to represent a governmental entity;

- (2) Any person who only appears in his/her individual capacity for the purpose of self-representation without compensation or reimbursement, whether direct or indirect, to express support of or opposition to any item;
- (3) Any person who appears on behalf of a homeowner or neighborhood association, without compensation or reimbursement for the appearance, whether direct, indirect, or contingent;
- (4) Any person requested to appear before the city commission, city board, committee, or any member thereof, or the city manager or city staff or any agent, attorney, officer or employee of such person, in a quasi-judicial proceeding where ex-parte communications are prohibited;
- (5) Any person under contract with the city who communicates with any public official or city staff regarding issues related only to the performance of their services under contract;
- (6) Any foreign dignitary appearing in his/her official capacity;
- (7) Attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications;
- (8) Any person employed or retained by a principal whose normal scope of employment or retention does not include lobbying activities and who is not engaged in lobbying activities on behalf of said principal;
- (9) Expert witnesses who provide only scientific, technical, or other specialized information or testimony in a public meeting;
- (10) Any person engaged in the following activities involving a procurement matter:
  - a. appearance at a pre-bid conference;
  - b. submission of a bid or proposal;
  - c. submission of a written question or response to a bid or proposal;
  - d. presentation by technical experts, or persons employed or retained by a principal whose normal scope of employment does not include lobbying activities, for purposes of explaining or demonstrating characteristics or performance of a procurement matter, provided the presentation does not include any advocacy or recommendation on the procurement matter and is otherwise consistent with the pending procurement matter or guidelines and procedures;
  - e. post-award contract management;
  - f. participation in market research process;
  - g. accessed contracts; and
  - h. emergency purchases.
- (e) *Duty to announce.* All lobbyists shall disclose to a city commissioner or city personnel that he/she is a registered lobbyist and disclose the principal on behalf of which the lobbyist is registered to lobby. In addition, all lobbyists appearing before the city commission, a city board,

or committee, shall disclose on the record, that he/she is a registered lobbyist and disclose the principal on behalf of which the lobbyist is registered to lobby.

(f) *Duty to list.* For all city commission agenda items relating to a development project and for procurement items, the city clerk shall list, under where the item appears on the city commission agenda, the name(s) of each lobbyist registered, prior to agenda publication, to lobby on that particular issue or item. In addition, the city clerk shall list the name(s) of the principal(s) whom the lobbyist represents.

(g) *Reporting requirements.*

(1) On July 1<sup>st</sup> of each year, lobbyists subject to the registration requirements of this section shall submit to the city clerk a signed statement under oath as provided herein listing the full name and business address of the lobbying entity; name of each of the entity's lobbyists; and all expenditures for the preceding calendar year with regard to the specific issue on which the lobbyist has been engaged to lobby. A statement shall not be filed if there have been no expenditures during the reporting period.

(2) The city clerk shall keep a current list of registered lobbyists and the reports required under this section which shall be open to the public for inspection. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publication, travel, lodging, and special events.

(3) The city clerk's online registration system provides for a daily log that reflects the principal and lobbyist registrations which have been filed in accordance with this ordinance. All logs shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to F.S. § 11.045.

(4) The city clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed as provided in the Miami-Dade County Ethics Code, a fine of \$50.00 per day shall be assessed for reports filed after the due date. Where a fine of \$50.00 per day is assessed, the ethics commission shall not impose a fine as provided in section (z) of the Miami-Dade Ethics Code. Any lobbyist who fails to file the required expenditure by September 1 shall be automatically suspended from lobbying until all fines are paid unless the fine has been appealed to the Miami-Dade Ethics Commission.

(5) The city clerk shall notify the Miami-Dade Ethics Commission of the failure of a lobbyist or principal to file a report and/or pay the assessed fine after notification.

(6) A lobbyist or principal may appeal a fine and may request a hearing before the ethics commission as set forth in section (s)(6)(d) of the Miami-Dade Ethics Code.

(7) Affidavit requirement. The following provisions shall apply to certain individuals who, in procurement matters, participate in oral presentations or recorded negotiation meetings and sessions:

a. The principal shall list on an affidavit form, provided by the city county, all technical experts or employees of the principal whose normal scope of employment does not include

lobbying activities and whose sole participation in the city procurement matter involves an appearance and participation in a city procurement matter involves an appearance and participation in an oral presentation before a ~~county~~ city certification, evaluation, selection, technical review or similar committee, or recorded negotiation meetings or sessions.

b. No person shall appear before any procurement committee or at any procurement negotiation meeting or session on behalf of a principal unless he/she has been listed as part of the principal's presentation or negotiation team ~~pursuant to this subparagraph (s)(6)~~, or has registered as a lobbyist. For purposes of this subsection only, the listed members of the oral presentation or negotiation team shall not be required to separately register as lobbyists or pay any registration fees. The affidavit required by this subsection shall be filed by the city procurement staff with the city clerk at the time the proposal is submitted or prior to the recorded negotiation meeting or session. Notwithstanding the foregoing, any person who engages in lobbying activities in addition to appearing before a procurement committee to make an oral presentation, or at a recorded procurement negotiation meeting or session, shall comply with all lobbyist registration requirements.

(h) *Investigation of violations and penalties.* Any alleged violations of this section shall be investigated by the Miami-Dade Ethics Commission and violations shall be punishable as set forth in subsection (s)(9) of the Miami-Dade Ethics Code. In addition, upon a finding by the Miami-Dade Ethics Commission that a person violated this section, the city commission may reprimand, suspend, or prohibit the person from lobbying before the city commission, a city board, a city committee, or members thereof, the city manager, or city staff.

(i) *Diligence requirement; lobbying by unregistered persons; effect on city action.*

(1) All members of the city commission, and all city personnel shall be diligent to ascertain whether persons required to register as lobbyists pursuant to this section have complied with the requirement. This diligence requirement may be satisfied if members of the city commission, or city personnel, maintain a written log that documents all oral lobbying communications or meetings with a lobbyist, held for the purpose of lobbying outside a duly noticed public meeting or hearing, and the log, at a minimum, reflects the name of the lobbyist, the date of the lobbying activity, whether the lobbyist indicates he/she is registered, and the subject matter discussed. Each such log shall be maintained and made available consistent with public records requirements.

(2) Commissioners or city personnel shall not knowingly permit a person who is not registered pursuant to this subsection to lobby the commissioner or his/her staff or the relevant committee, board, or city personnel.

(3) Notwithstanding the foregoing, and except as otherwise provide herein, the validity of any action or determination of the city commission or city personnel, board, or committee shall not be affected by the failure of any person to register as a lobbyist or otherwise comply with the provisions of this section.

(j) *Ethics training.*

(1) Each lobbyist shall, within 60 days after registering as a lobbyist, submit to the city clerk a certificate of completion of an ethics course offered by the Miami-Dade Commission on Ethics

and Public Trust ("ethics commission") or the city attorney's office. Lobbyists who have completed the initial ethics course mandated by the preceding sentence and have continuously registered as a lobbyist thereafter shall be required to complete a refresher course every two years. Each lobbyist who has completed a refresher ethics course shall submit to the city clerk a certification of completion within 60 days after registering as a lobbyist.

(2) The ethics course shall include, but not be limited to, a review of the following topics: the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, the City of Coral Gables Ethics Code, the Sunshine Law, and the Public Records Law.

(3) The fee for the ethics course shall be \$100.00. The registration fee required by this subsection shall be deposited into a separate account and shall be expended by the ethics commission or city attorney's office for ethics courses and related costs.