



**Memorandum No: 24-014**

**City Attorney's Office**

**To:** Commissioner Steven Glassman

**From:** Thomas J. Ansbro, City Attorney

**Date:** February 14, 2024

**RE: Regulation of Members serving on Boards and Committees  
(lobbyists; quasi-judicial boards)**

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In response to your request for information regarding whether the City can regulate who can serve on Boards and Committees, specifically concerning lobbyists as well as members of quasi-judicial boards, I have the following responses.

First, as to the issue of whether the City can limit or prohibit lobbyists from serving on Boards and Committees, the answer is yes. It is a valid concern of the City that the City Commission appoint only those persons whose personal and private interests are not likely to conflict with that of the general public.

Lobbyists, whose interests are inherently going to be aligned with third party private interests, may have an apparent or actual ongoing conflict of interest with that of the City and the general public. It is for this reason that other cities have crafted legislation limiting who can serve on their Boards and Committees, including prohibiting lobbyists from serving. Attached are several examples of such legislation. If the City Commission wishes to prevent apparent or actual conflicts of interest and to ensure its Board and Committee members' interests are not unduly influenced, it is permissible for the City Commission to restrict who can and cannot serve on the various City Boards and Committees.

As to the second issue, regarding whether the City Commission may limit persons who serve on quasi-judicial boards from serving on committees, task forces or other boards, the answer is also yes. Quasi-judicial boards serve a valuable and powerful purpose, in that they exercise the City Commission's delegated authority to provide residents with due process in the application of the law.

To ensure that all applicants and residents receive due process, it is of paramount importance that quasi-judicial boards act fairly and impartially, and they must limit any appearance of bias or predisposition on the various issues that are presented to them. If the City Commission determines that limiting persons who serve on quasi-judicial

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boards from serving on other committees, boards or task forces will promote greater due process, then the Commission is permitted to do so.

Please let me know if you have any additional questions or concerns regarding these matters.

TA/mp

**Sec. 8A-5. Lobbyists; registration, reporting, fees, exemptions, expenditures, and penalties.**

- (a) This section shall be known as the City of South Miami lobbyist ordinance.
- (b) *Definitions.* For the purposes of this section, the following terms have the definitions contained herein:
- (1) *Lobbyist.* The city hereby adopts, by reference, the definition of a lobbyist as found in the Miami-Dade County lobbying ordinance, section 2-11.1(s)(1)(b) of the Miami-Dade County Code of Ordinances and the interpretations of this section as applied in practice by Miami-Dade County and the Miami Dade Commission on Ethics.
  - (2) *Principal* means the natural person, firm, company or other entity that has employed or retained a lobbyist, including the person employed by the company or other entity, that has the authority to retain or direct a lobbyist on their behalf.
  - (3) All lobbyists shall comply with this section and the Miami-Dade County Lobbying Ordinance as they are amended from time to time. All references to the "county" in the county's lobbying ordinance means the city, where applicable, for the purpose of this section and for the interpretation and application of the county's lobbying ordinance to the city.
- (c) (1) Registration and filing requirements. Before engaging in any lobbying activities, all lobbyists shall, register with the city clerk, unless exempted from registering by section 2-11.1(s)(3) of the Miami-Dade County Code and pay a lobbyist fee, if required. A lobbyist who has engaged in lobbying activities before timely registering as a lobbyist shall pay a fine of five hundred dollars (\$500.00). It is the responsibility of the city clerk to collect all fines and fees. A lobbyist who, without compensation for performing the services of a lobbyist, is representing an individual for non-commercial purposes (hereinafter referred to as a "limited lobbyist") shall include such information in the lobbyist registration form which must be signed under oath certifying the truth of the information. No registration fee is required for a limited lobbyist. In addition, any lobbyist who would not be required by Miami-Dade County to pay a lobbyist registration fee if engaged in lobbying activities with the county is not required to pay a lobbyist registration fee when engaged in lobbying activities with the city.
- a. Registration publication. All lobbyist registration forms must be dated by the city clerk with the date and time of registration. The clerk's office shall maintain a list of all registration and of the payment of the registration fee. The clerk shall publish on the city website a registration list of principals, issues and lobbyists which shall be updated at the end of each day, to the extent possible, that a completed or amended registration form is received.
  - b. Every person required to register shall register on forms prepared by the city clerk and, other than those lobbyists who are exempt from paying a fee, shall pay a registration fee as specified in this section or the city's fee schedule, whichever is greater. The forms must include the following information, which shall be certified (under oath) by the lobbyist and the principal whom the lobbyist represents, and if the principal is a legal entity or organization, the president, partner, managing member, or other authorized person, of such entity shall sign the certification:
    1. Name and business address of lobbyist;
    2. Name and business address of the principal;
    3. The name and address of the person who has paid, as well as the person who has agreed to pay compensation for the lobbying activities;
    4. Whether city commissioners, city administration, city attorney or city clerk will be lobbied; and
    5. The specific issue on which the lobbyist has been employed to lobby.



- c. The principal and the lobbyist must also submit a joint affidavit stating that the principal has not offered and the lobbyist has not agreed to accept any contingency or success fees as defined in section 2-11.1 (s)(7) of the Miami-Dade County Code of Ordinances. Failure of a principal to file the required forms may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor.
- (2) Change or modification of information. Any change to any information originally filed, or any additional city commissioner or personnel who are also sought to be lobbied shall require the lobbyist to file an amendment to the registration forms, although no additional fee is required for such amendment. The lobbyist has a continuing duty to supply information and amend the forms filed throughout the period for which the lobbying occurs. If an amendment is required, no lobbying activity may be performed until the registration form has been amended.
- (3) Disclosure. If the lobbyist represents a legal entity such as a corporation, company, partnership or trust, the chief administrative officer, including the president, managing partner, managing member, and managing partner. must also be identified by name and address.
- (4) Fee requirements for issues. An additional one hundred dollar (\$100.00) fee is required to be paid for each additional specific issue being lobbied for a principal. A separate fee is required for each separate issue for the same principal for each calendar fiscal year. The city clerk, in the clerk's judgment, may reject any registration statement that does not provide a description of the specific issue on which the lobbyist has been employed or retained.
- (5) Each person who withdraws as a lobbyist for a particular principal shall file an appropriate notice of withdrawal. Each principal shall file a form with the clerk at the point in time at which a lobbyist is no longer authorized to represent the principal.
- (6) Fees. Each lobbyist who is required to pay a registration fee, shall pay such fee each time he or she registers or re-registers each calendar year with the city clerk. A lobbyist must re-register every calendar year before commencing any lobbying activities. No fee is required for filing a notice of withdrawal. The city clerk may waive the registration fee upon a finding of financial hardship if supported by a sworn statement of the applicant. Any person who only appears as a representative of a nonprofit entity and who declares in the lobbyist registration application that he or she will not receive and has not received any compensation or reimbursement for the appearance to express support or opposition to any item, must register but is not required to pay a registration fee.
- (7) Disclosure and appearance of impropriety. In addition to the matters addressed above, every registrant shall be required to state the extent of any business, financial, familial, professional, or other relationship with the mayor, any city commissioner, or city personnel who is sought to be lobbied as identified on the lobbyist registration form filed.
- (8) All members of the city commission, and all city personnel, shall be diligent to ascertain whether persons required to register pursuant to this subsection have been complied. Commissioners or city personnel may not knowingly permit a person who is not registered pursuant to this subsection to lobby the commissioner, or the relevant committee, board or city personnel.
- (9) Any person who appears as a representative for an individual or firm for an oral presentation before a city certification, evaluation, selection, technical review or similar committee, may be listed on an affidavit provided by the city staff. The oral presentation affidavit shall be filed by city staff with the clerk's office at the time the committee's proposal is submitted to the city manager. For the purpose of this subsection only, the listed members of the oral presentation team, with the exception of any person otherwise required to register as a lobbyist, shall not be required to individually register or pay any registration fees. No person shall appear before any committee on behalf of anyone unless he or she has been listed as part of the firm's oral presentation team pursuant to this paragraph or unless

he or she is registered with the clerk's office as a lobbyist and has paid all applicable lobbyist registration fees.

(d) *List of expenditures.*

- (1) On October 1 of each year, lobbyists shall submit to the city clerk a signed statement under oath, as provided by the clerk, listing all lobbying expenditures for the preceding calendar year. A statement shall not be filed if there have been no expenditures during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events and shall identify the city officials, personnel, and members upon whom the expenditures were made.
- (2) 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 under this chapter, a fine of fifty dollars (\$50.00) per day shall be assessed for reports filed after the October 1 due date.
- (3) The city clerk shall notify the county commission on ethics and public trust of the failure of a lobbyist to file a report and/or pay the assessed fines after notification.
- (4) A lobbyist may appeal a fine and may request a hearing before the county commission on ethics and public trust. A request for a hearing on the fine must be filed with the county commission on ethics and public trust within fifteen (15) calendars days of receipt of the notification of the failure to file the required disclosure form. The county commission on ethics and public trust shall have the authority to waive the fine, in whole or in part, based on good cause shown.

(e) *Exceptions to registration.* All persons who are exempted from registration or from paying a registration fee by the Miami-Dade County's Lobbying Ordinance are likewise exempted by the city from registration and/or from the payment of registration fees.

(f) *Penalties.*

- (1) Violations of this section may be determined by the Miami-Dade County Commission on ethics and public trust. A finding by the commission that a person has violated this chapter shall subject the person to a five hundred dollars (\$500.00) civil penalty. The commission on ethics may additionally provide other penalties such as admonition and public reprimand, as well as prohibitions from registering as a lobbyist or engaging in lobbying activities before the city. Conviction for given false information shall be punishable by a fine of up to five hundred dollars (\$500.00), imprisonment for up to sixty (60) days and suspension from lobbying privileges in South Miami for a period of up to two (2) years.

- (2) Additionally, every person who is found to be in violation of this chapter shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

- First violation: for a period of one (1) year from the date of determination of violation;
- Second violation: for a period of two (2) years from the date of determination of violation;
- Third violation: for a period of three (3) years from the date of determination of violation.

The city commission may debar a bidder or proposer from lobbying activities in the city, and from entering into contracts with the city, or any agency or authority of the city when the bidder or proposer either directly or indirectly, on three or more occasions, has been found to have violated the lobbyist provisions of this section.

As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this section shall render the contract voidable. The city



manager shall include the provisions of this section in all city bid documents, RFPs and RFQs; provided, however, that failure to do so shall not render any contract voidable.

- (3) Except as otherwise provided in subsection (f)(1), the validity of any action or determination of the city commission, board, committee, or agency shall not be affected by the failure of any person to comply with the provisions of this section.

(g) *Prohibition on appointment of lobbyists to boards and committees.* No person who is required to register with the city clerk as a lobbyist, other than professionals who prepare documents or provide expert advice in their field of expertise, such as architects and engineers and consultants who interpret plans, (Design Professional), shall serve on any board or committee of the city. Any person who is required to register as a lobbyist, other than Design Professionals, subsequent to being appointed to a board or committee shall be disqualified from participating on the board or committee from the date that the person knew, or reasonably should have known, that he or she was required to register. No person, other than Design Professionals, shall be appointed to a board or committee for a period of nine (9) months from the time the person files a statement with the city clerk withdrawing his or her registration as a lobbyist. The penalty provisions of subsection (f) shall apply to any lobbyist who violates this prohibition.

(h) *Prohibited lobbying by campaign consultants.*

- (1) *Prohibition.* No campaign consultant shall lobby a member of the city commission for the duration of the member's term to whom the campaign consultant provide campaign consulting services.

(2) *Definitions.*

- a. *Campaign consultant* means any person who provides or facilitates campaign consulting services to a candidate for elected office in the City of South Miami.
- b. *Campaign consultant* shall include any individual who is an employee of or who has a ten (10) percent or greater ownership interest in an entity that is defined herein as a campaign consultant, except as otherwise excepted in this section below.
- c. "Campaign consultant" shall not include:
  1. Any vendor for a campaign whose primary responsibility is to supply goods or services for a campaign.
  2. Any employee of a campaign consultant whose sole duties are clerical: or
  3. Any employee of a campaign consultant who did not personally provide any campaign consulting services.
- d. *Campaign consulting services* means those services that involve campaign management or campaign strategy.
- e. *Campaign management* means conducting, coordinating or supervising a campaign to elect a candidate.
- f. *Campaign strategy* means formulation of plans for the election of a candidate.
- g. *Candidate* shall have the meaning ascribed to such term in F.S. § 97.021(5), as amended and supplemented.
- h. *Economic consideration* means any payment, fee, commission, gift, or anything else of value received directly or indirectly as consideration for campaign consulting services. The term "economic consideration" does not include reimbursement for out of pocket expenses.

(Ord. No. 1251, §§ 1—6, 6-3-86; Ord. No. 1712, § 1, 4-11-00; Ord. No. 1722, § 1, 9-19-00; Ord. No. 1876, § 1, 2-7-06; Ord. No. 2153, §§ 1, 2, 2-5-13; Ord. No. 2206, § 1, 12-17-14; Ord. No. 2291, § 1, 2-6-18; Ord. No. 2334, § 1, 6-4-19; Ord. No. 2425, § 2, 3-1-22)

Editor's note(s)—Although § 9 of Ord. No. 1251, adopted June 3, 1986, specified inclusion in ch. 2, the editor has included the provisions in § 8A-5 since § 7 of the ordinance repealed Ord. No. 1233, adopted June 14, 1985, §§ 1, 2 of which had been included as § 8A-5.

**Sec. 2-206. Prohibition on lobbyists serving on committees and boards.**

No lobbyist may serve on an advisory board of the city. If it is determined by the city administrator or designee that an appointed member of a city advisory board or committee has either registered as a lobbyist or is operating as a lobbyist, said person shall no longer be permitted to serve on the applicable board or committee. In such circumstance, the city administrator shall send a letter to the lobbyist with a copy to all Commissioners and covered individuals as defined herein. The lobbyist shall not be considered for reappointment to any board committee until 12 months following the time that the person engaged in the last lobbying activity or as determined by the city commission.

(Ord. No. 2012-05, § 2, 5-2-2012)



**Sec. 2-459. Certain appearances prohibited.**

- (a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:
- (1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.
  - (2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.
- (b) Definitions. As used in this section, the following definitions shall apply:

*Agency* means any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

*Associate* means any person or entity engaged in or carrying on a business enterprise with a city agency member as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property. Associate shall further include a business affiliation with a city agency member where an "employee" or "of counsel" relationship exists.

*Lobbyist* means all persons, firms, or corporations employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat, or modification(s) of any of the following: (1) ordinance, resolution, action or decision of any commissioner; (2) any action, decision, or recommendation of any city board or committee; or (3) any action, decision or recommendation of the city manager, deputy city manager, assistant city managers, all department heads, all division heads, city attorney, chief deputy city attorney, deputy city attorneys, and/or all assistant city attorneys (except when such personnel are acting in connection with administrative hearings) during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city agency. "Lobbyist," as defined above, specifically includes the principal, as described above, as well as any agent, attorney, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee.

- (1) For purposes of this section, and with limited applicability to those agencies that are not standing in nature, "lobbyist" shall exclude any person who only appears as a representative of a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association 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.
- (2) For purposes of this section, and with limited applicability to those agencies that are standing in nature:
  - a. Lobbying by a board, agency or committee member shall be permitted when such person is affiliated with a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) in a capacity other than as a managerial employee and appears as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
  - b. Lobbying by the associate of a board, agency or committee member shall be permitted:
    - (i) When a board, agency or committee member is affiliated with a not for profit corporation or entity in a capacity other than as a managerial employee, and the subject associate is

appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

- (ii) When a board, agency or committee member is a managerial employee of a not for profit corporation or entity, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item and is affiliated with said not for profit corporation or entity in a capacity other than as a managerial employee.
- c. The term "managerial employee" shall mean any employee of a nonprofit corporation or entity who has supervision and operational responsibilities/control of all or some departments of said entity.

*Public officer* means any person elected or appointed to hold office in the city, as a member of an agency which shall include an advisory body.

(Ord. No. 97-3105, § 1, 12-17-97; Ord. No. 2007-3561, § 1, 6-6-07; Ord. No. 2009-3634, § 1, 4-22-09)

**Sec. 22-35. Qualifications of members.**

- (a) All members shall reside permanently within the city at all times during their terms of office, and abandonment of residency within the city limits shall automatically constitute a forfeiture of office.
- (b) No member shall hold any other public position in the city.
- (c) The city commission shall appoint only those persons whose personal and private interests are not likely to conflict with that of the general public.
- (d) The members shall not be elected city officials, appointed city officers or city employees, nor shall they be employers of, or related to, any city official or city employee.

(Ord. No. 05-08, § 1, 2-22-05)