



Item No. 26

## AGENDA ITEM REQUEST FORM

**Town Attorney**

Department Submitting Request

**Susan L. Trevarthen**

Dept Head's Signature

### TOWN COMMISSION WORKSHOP

November 29, 2011

**SUBJECT TITLE:** Lobbyist Registration Ordinance and Other Issues in Implementing the New Ethics Requirements

**EXPLANATION:** Discussion of details of lobbyist registration ordinance, any changes for discussion at second reading, and any implementing policies.

**RECOMMENDATION:** Commission discussion and consideration of issues

**EXHIBITS:** 1. Draft Ordinance 2011-20 Lobbyist Registration Ordinance – Second Reading Dec. 13, 2011, Effective January 2, 2012

Reviewed by Town Attorney

Yes  No

Town Manager Initials ST

1        **AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF**  
2        **LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE CODE OF**  
3        **ORDINANCES BY CREATING SECTION 2-1 “LOBBYING**  
4        **REGULATION” OF ARTICLE I “IN GENERAL” OF CHAPTER 2**  
5        **“ADMINISTRATION” TO ESTABLISH A LOBBYIST REGISTRATION**  
6        **SYSTEM IN ACCORDANCE WITH SECTION 1-19 “CODE OF ETHICS**  
7        **FOR ELECTED OFFICIALS” OF THE BROWARD COUNTY CODE OF**  
8        **ORDINANCES BY PROVIDING FOR DEFINITIONS, REPORTING OF**  
9        **LOBBYING ACTIVITIES, PENALTIES, AND IMPLEMENTATION;**  
10       **PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY,**  
11       **AND AN EFFECTIVE DATE**

12  
13        **WHEREAS**, the Board of County Commissioners has recently amended Section 1-19  
14       “Code of Ethics for Elected Officials” of the Broward County Code of Ordinances (the “County  
15       Ethics Code”), to subject all municipal Elected Officials, including the Town Commission of the  
16       Town of Lauderdale-By-The-Sea, to the Code of Ethics imposed on the Board of County  
17       Commissioners, effective January 2, 2012; and

18        **WHEREAS**, the County Ethics Code requires that all lobbyists who intend to engage in  
19       lobbying activities with Town Elected Officials and other Covered Individuals must register as a  
20       lobbyist with the Town; and

21        **WHEREAS**, the Town Commission desires to create a lobbyist registration system in  
22       order to facilitate compliance with the requirements of the County Ethics Code.

23        **NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN**  
24       **COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AS**  
25       **FOLLOWS:**

26  
27        **SECTION 1. Recitals Adopted.**    The foregoing “Whereas” clauses are ratified and  
28       confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance  
29       and are hereby made a specific part of this Ordinance.

**ORDINANCE 2011-20**

30           **SECTION 2. Town Code Amended.** Section 2-1 “Lobbyist Regulation” of Chapter 2  
31 “Administration” of the Town of Lauderdale-By-The-Sea Code of Ordinances is hereby created  
32 and adopted as a new provision of the Town Code, and shall read as follows<sup>1</sup>:

33 **SECTION 2-1. LOBBYIST REGULATION**

34 **(a) Definitions.** The following terms, when used in this Section, shall have the meaning ascribed  
35 to them herein, unless the context indicates otherwise:

- 36           1.       “*Contractor*” means any person or entity having a contract with the Town of  
37                   Lauderdale-By-The-Sea, Florida.
- 38           2.       “*Covered Individual*” means:
- 39                   (i)     any member of the Town Commission, including the Mayor-  
40                   Commissioner;
- 41                   (ii)    any member of a final decision-making body under the jurisdiction of the  
42                   Town Commission;
- 43                   (iii)  any individual directly appointed to a Town employment position by the  
44                   Town Commission;
- 45                   (iv)   any individual serving on a contractual basis as the Town’s chief legal  
46                   counsel (i.e.: Town Attorney) or chief administrative officer (i.e.: Town  
47                   Manager), when such individual is acting in his or her official capacity;
- 48                   (v)    any member of a selection, evaluation, or procurement committee of the  
49                   Town that ranks or makes recommendations to any final decision-making  
50                   authority regarding a Town procurement;

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<sup>1</sup> Additions between first and second reading are shown in underline. Deletions between first and second reading are shown in ~~strikethrough~~.

**ORDINANCE 2011-20**

- 51 (vi) any employee, official, or member of a committee of the Town that has  
52 authority to make a final decision regarding a public procurement; and
- 53 (vii) the head of any department, division, or office of the Town government  
54 who makes final recommendations to a final decision-making authority of  
55 the Town regarding items that will be decided by the final decision-  
56 making authority of the Town.
- 57 3. “*Elected Official*” means any member of the Town Commission of the Town,  
58 including the Mayor-Commissioner.
- 59 4. “*Filed for Public Inspection*” means that the form is completed legibly and is filed  
60 with the Town Manager or Designee, with a copy of the form or all information  
61 contained thereon inputted into the Town’s governmental database, which  
62 database shall be searchable by internet.
- 63 5. “*Final Decision-Making Authority*” means:
- 64 (i) the Town Commission, including the Mayor-Commissioner;
- 65 (ii) final decision-making bodies under the jurisdiction of the Town  
66 Commission;
- 67 (iii) any employee, official, or committee of the Town that has authority to  
68 make a final decision to select a vendor or provider in connection with a  
69 public procurement by the Town; and
- 70 (iv) any other quasi-judicial boards, appointed boards, and commissions of the  
71 Town.
- 72 6. “*Lobbying*” or “*Lobbying Activities*” means a communication, by any means,  
73 from a lobbyist to a covered individual regarding any item that will foreseeably be

**ORDINANCE 2011-20**

74 decided by a final decision-making authority, which communication seeks to  
75 influence, convince, or persuade the covered individual to support or oppose the  
76 item. Lobbying does not include communications:

- 77 a. Made on the record at a duly-noticed public meeting or hearing; or
- 78 b. From an attorney to an attorney representing the Town regarding a  
79 pending or imminent judicial or adversarial administrative proceeding  
80 against the Town.

81 7. “*Lobbyist*” means a person who is retained, with or without compensation, for the  
82 purpose of lobbying, or a person who is employed by another person or entity, on  
83 a full-time or part-time basis, principally to lobby on behalf of that other person or  
84 entity. “*Lobbyist*” does not include a person who is:

- 85 a. An elected official, employee, or appointee of Broward County or of any  
86 municipality within Broward County communicating in his or her official  
87 capacity.
- 88 b. An individual who communicates on his or her own behalf, or on behalf of  
89 a person or entity employing the individual on a full-time or part-time  
90 basis, unless the individual is principally employed by that person or entity  
91 to lobby.
- 92 c. Any employee, officer, or board member of a homeowners' association,  
93 condominium association, or neighborhood association when addressing,  
94 in his or her capacity as an employee, officer, or board member of such  
95 association, an issue impacting the association or its members; or

**ORDINANCE 2011-20**

96 d. Any employee, an officer, or a board member of a nonprofit public interest  
97 entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue  
98 impacting a constituent of that entity.

99 All operative words or terms used in this Section not defined herein shall be as defined, in order  
100 of priority in the event of inconsistency, by (1) Part III of Florida Statutes, Chapter 112, (2) the  
101 Broward County Code of Ordinances, and (3) the Broward County Administrative Code.

102 **(b) Lobbyist Registration.**

103 1. *Lobbyist Obligations.* Prior to engaging in any lobbying activities, whether or not  
104 compensation is paid or received in connection with those activities, each lobbyist shall do the  
105 following:

106 (A) *Annual Registration Statement Required:* File with the Town Manager or  
107 designee, in form prescribed by the Town Manager or designee, an annual  
108 registration statement under oath containing the following information:

109 a. The lobbyist's full name, residence address, business name, business  
110 address, email address, and nature of business.

111 b. The full name and address of all persons on whose behalf the lobbyist will  
112 be lobbying.

113 c. The general and specific subject matters which the lobbyist seeks to  
114 influence.

115 d. The extent of any direct business association by the lobbyist with any  
116 current elected or appointed official or employee of Town. For the  
117 purposes of this Section, the term "direct business association" shall mean  
118 any mutual endeavor undertaken for profit or compensation.

**ORDINANCE 2011-20**

119 e. A lobbyist representing a group, association, or organization shall, prior to  
120 engaging in lobbying, receive appropriate authorization from said group,  
121 association, or organization to lobby on its behalf upon a particular subject  
122 matter. A copy of the applicable minutes, motion, or other documentation  
123 of the action providing such authorization shall be attached to the  
124 registration statements.

125 f. A lobbyist representing a principal or employer shall file a copy of a  
126 written statement of the principal or employer confirming authorization to  
127 lobby for the principal or employer.

128 fg. If, after filing the registration statement, the lobbyist intends to lobby on  
129 behalf of any person(s) not listed on the registration statement or on a  
130 subject matter not previously identified, the lobbyist shall, prior to  
131 engaging in any lobbying activities on behalf of such unlisted person(s),  
132 file an amendment to the registration statement in form prescribed by the  
133 Town Manager or designee, containing all the information required in the  
134 annual registration statement.

135 (B) *Fee Required.* Pay to the Town an annual Fifty Dollar (\$50) registration fee for  
136 each employer or principal, identified on an annual or amended registration  
137 statement, on whose behalf he or she intends to lobby, whether he or she was  
138 retained directly by the employer or principal or by another Lobbyist retained by  
139 the employer or principal. The registration fees required by this Section shall be  
140 expended by the Town solely for the purpose of defraying the administrative costs  
141 of implementing, monitoring, and otherwise ensuring compliance with this

ORDINANCE 2011-20

142 Section. A lobbyist who is lobbying as a volunteer, without any compensation, is  
143 not required to pay a registration fee in connection with those uncompensated  
144 lobbying activities, but still must otherwise meet the requirements of this Section.

145 (C) *Amended Statement.* A lobbyist is required to promptly amend any filed  
146 registration statement if any information in the statement changes.

147 (D) *Disclosure Statement Required.*

148 (1) On or before ~~July~~ January 15 of each year, each lobbyist shall submit to the  
149 Town Manager or designee, in form prescribed by the Town Manager or  
150 designee, a signed statement under oath, disclosing all Town lobbying  
151 expenditures, contingency fees, and the sources from which funds for  
152 making such expenditures and paying such contingency fees have come.  
153 The statement shall provide such information with respect to all lobbying  
154 activities undertaken from ~~July~~ January 1 of the prior year through ~~June 30~~  
155 December 31 of the year in which such disclosure statement is required to  
156 be filed. Lobbying expenditures shall not include personal expenses for  
157 lodging, meals, and travel. A statement shall be filed even if there have  
158 been no expenditures during a reported period. Any individual who is  
159 exempt from the definition of Lobbyist pursuant to Subsection 2-1(a)7  
160 shall not be required to file the statement required by this Subsection.

161 (2) ~~The Town Clerk~~ Town Manager or designee shall provide for a procedure  
162 by which a lobbyist who fails to timely file a disclosure statement shall be  
163 notified and assessed fines. The procedure shall provide for the following:

**ORDINANCE 2011-20**

- 164 a. Upon determining that the statement is late, the person designated to  
165 review the timeliness of the statement shall promptly notify the lobbyist as  
166 to the failure to timely file the statement and that a fine is being assessed  
167 for each late day. The fine shall be Fifty Dollars (\$50) per day for each  
168 late day.
- 169 b. Upon receipt of the late-filed statement, the person designated to review  
170 the timeliness of the statement shall determine the amount of the fine due.  
171 A fine shall not be assessed against a lobbyist the first time any statement  
172 for which the lobbyist is responsible is not timely filed, provided all  
173 statements for which the lobbyist is responsible are filed within twenty  
174 (20) days after receipt of notice that any statements have not been timely  
175 filed. A fine shall be assessed for any subsequent late-filed statement.
- 176 c. Such fine shall be paid within twenty (20) days after receipt of the notice  
177 of payment due, unless timely appeal is made to the Town Commission.
- 178 d. Any lobbyist may appeal a fine, based upon unusual circumstances  
179 surrounding the failure to file by the designated due date, and may request  
180 and shall be entitled to a hearing before the Town Commission, which  
181 shall have the authority to waive the fine in whole or in part for good  
182 cause shown. To be entitled to such appeal, the lobbyist must, within  
183 twenty (20) days after receipt of the notice of payment due, deliver a letter  
184 requesting a hearing to the person designated to review the timeliness of  
185 statements.

**ORDINANCE 2011-20**

186 (E) *Partial Year Filing Required.* Discontinuance of lobbying activities during a year  
187 shall not relieve the lobbyist of the requirement to file the statement required by  
188 Subsection 2-1(b)(1)(A) above for that portion of the year during which the  
189 lobbyist was engaged in lobbying activities.

190 (F) *Effectiveness.* Registration statements are effective from ~~July~~ January 1 of a  
191 given year through ~~June 30~~ December 31 of the following year. Registration fees  
192 paid under Subsection 2-1(b)(1)(B) above cover lobbying activities during the  
193 effective period of the registration statement. A new registration statement shall  
194 be filed, and all required fees shall be paid, prior to engaging in any lobbying  
195 activities after expiration of a previously-filed registration statement.

196 2. *List of Current Lobbyists.* The Town shall keep a current list of registered  
197 lobbyists and their respective statements required under this Section, all of which shall be open  
198 for public inspection. The Town Manager or designee shall routinely provide a copy of the  
199 lobbyist registration list to the Town Commissioners.

200 **(c) Reporting of Lobbying Activities.**

201 1. *Lobbyist Contact Log.* To promote full and complete transparency, lobbyists and  
202 their principals or employers who intend to meet or otherwise communicate with an Elected  
203 Official for the purpose of engaging in lobbying activities, either at the Elected Official's offices  
204 or elsewhere on the Town's premises, must legibly complete a contact log listing each Elected  
205 Official with whom the lobbyist, principal, or employer meets or intends to meet or  
206 communicate.

207 (A) *Content.* The information stated on the contact log shall include the lobbyist's  
208 name; the name of the entity by which the lobbyist is employed; the name of the

**ORDINANCE 2011-20**

209 person or entity for whom or which he or she is lobbying; the name of any  
210 employer or principal of the lobbyist who is present at any meeting at which the  
211 communication is made; the name of each Elected Official with whom he or she  
212 is meeting or communicating; the date and time of each such meeting; and the  
213 specific purpose and subject matter of each such meeting.

214 (B) *Timing, Filing.* The contact log shall be completed contemporaneously with the  
215 meeting(s) and shall be filed for public inspection with the Town.

216 2. *Elected Official Disclosures.* To further promote full and complete transparency,  
217 Elected Officials must disclose any and all lobbying activity that knowingly occurs between  
218 themselves and individual lobbyists or their principals or employers outside of the Town  
219 premises. This shall include communicating by any form of telephonic or electronic media.

220 (A) The disclosure shall include the lobbyist's name; the name of the entity by which  
221 the lobbyist is employed; the name of the person or entity for whom or which he  
222 or she is lobbying; the name of any employer or principal of the lobbyist who is  
223 present at any meeting at which the communication is made; the date, time, and  
224 location of the meeting; and the specific purpose and subject matter of the  
225 meeting.

226 (B) The disclosure shall be made within ten (10) business days of the lobbying activity,  
227 but must, in any event, be made prior to any vote on a matter that was the subject  
228 of the lobbying activity.

229 (C) The disclosure shall be filed for public inspection with the Town.

230 (d) **Penalties.**

**ORDINANCE 2011-20**

231           1.       The Town Manager or designee shall be informed of any person engaged in  
232 lobbying activities who has failed to comply with the provisions of Subsection II, and, in each  
233 such instance, shall conduct such investigation as he, she, or they shall deem necessary under the  
234 circumstances. The results of each investigation shall be reported to the Town Commission.

235           2.       The Commission shall warn, reprimand, suspend, or prohibit the violator from  
236 appearing on behalf of any person before the Town Commission or any decision-making body  
237 under the jurisdiction of the Town Commission or from otherwise lobbying the Town for any  
238 person in any fashion for a period of time; provided, however, that any suspension or prohibition  
239 may not exceed a period of two (2) years, and any of said sanctions shall not be imposed unless  
240 the lobbyist (or the employer or principal of the lobbyist, as applicable) allegedly in violation has  
241 been afforded reasonable notice and an opportunity to be heard. The penalties provided in this  
242 Section shall be the exclusive penalties imposed for violations of Subsection II, except as  
243 provided in Subsection 2-1(d)4. Further, the intentional failure or refusal of any lobbyist to  
244 comply with any order of the Town Commission suspending or prohibiting the lobbyist from  
245 lobbying shall be punishable as provided by law and shall otherwise be subject to such civil  
246 remedies as the Town may pursue, including injunctive relief.

247           3.       The validity of any action taken by the Town Commission, Town employees, or  
248 any decision-making body under the jurisdiction of the Town Commission, shall not be affected  
249 by the failure of any person to comply with the provisions of this Section 2-1.

250           4.       In addition to all other penalties in this Section, a competitive solicitation  
251 submitted by an employer or principal who has retained a lobbyist(s) to lobby in connection with  
252 that solicitation shall be deemed non-responsive unless the employer or principal, in responding  
253 to the competitive solicitation, certifies that each lobbyist retained has timely filed the required

**ORDINANCE 2011-20**

254 registration or amended registration. If, after awarding a contract in connection with the  
255 solicitation, the Town learns that the certification was erroneous, and upon investigation  
256 determines that the error was willful or intentional on the part of the employer or principal, the  
257 Town may, on that basis, exercise any contractual right to terminate the contract for  
258 convenience.

259 5. Except where a specific penalty or sanction is otherwise provided for above in  
260 this Section, this Section shall be subject to enforcement under the Local Government Code  
261 Enforcement Act, Chapter 162, F.S., as amended, and Chapter 6.5 of the Town Code, as  
262 amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief  
263 in a court of competent jurisdiction. The Town hereby expressly reserves its right, power and  
264 authority to act as the civil or administrative agency having jurisdiction concerning an alleged  
265 violation of this Section, and this reservation shall serve to fully preserve the Town's  
266 investigative and enforcement authority

267 **SECTION 3. Implementation.** The Town Manager shall be authorized to establish  
268 protocols for the administration of the lobbyist registration system provided by this Ordinance,  
269 and to take any action which is otherwise necessary to implement the purposes of this Ordinance.

270 **SECTION 4. Codification.** This Ordinance shall be codified in accordance with the  
271 foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall  
272 become and be made a part of the Town of Lauderdale-by-the-Sea Code of Ordinances; and that the  
273 sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be  
274 changed to "section", "article" or such other appropriate word or phrase in order to accomplish such  
275 intentions.

**ORDINANCE 2011-20**

276           **SECTION 5. Severability.** If any section, sentence, clause, or phrase of this Ordinance  
277 is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding  
278 shall in no way affect the validity of the remaining portions of this Ordinance.

279           **SECTION 6. Conflicting Ordinances.** All prior ordinances or resolutions or parts thereof  
280 in conflict herewith are hereby repealed to the extent of such conflict.

281           **SECTION 7. Effective Date.** This Ordinance shall become effective on January 2, 2012.

282 Passed on the first reading, this \_\_\_\_ day of \_\_\_\_\_, 2011.

283 Passed on the second reading, this \_\_\_\_ day of \_\_\_\_\_, 2011.

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\_\_\_\_\_  
Mayor Roseann Minnet

First Reading

Second Reading

Mayor Minnet

Vice-Mayor Dodd

Commissioner Clotney

Commissioner Sasser

Commissioner Vincent

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290 **Attest:**

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Town Clerk, June White, CMC

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296 (CORPORATE SEAL)

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299 **Approved as to form:**

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304 \_\_\_\_\_  
Town Attorney, Susan L. Trevarthen