

ORDINANCE NO. 2020-010

AN ORDINANCE OF THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AMENDING SECTION 38.17 OF THE NORTH BAY VILLAGE CODE OF ORDINANCE BY MODIFYING LOBBYIST REGISTRATION PROCEDURES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR INCORPORATION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, North Bay Village (the “Village”) strives to improve its Code of Ordinances (the “Code”) with periodic updates; and

WHEREAS, the Village desires to updated those certain Code provisions related to the registration of lobbyist to ensure effective and efficient procedures that ensure transparency of individuals who are pursuing objectives from the Village Government; and

WHEREAS, the Mayor and Commission believe that this ordinance is in the best interest of the Community.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Village Code Amended. The North Bay Village Code of Ordinances is hereby revised as follows:

Chapter 38 - CONFLICT OF INTEREST AND CODE OF ETHICS

* * *

§ 38.17 - Lobbying.

(A) Definitions. For purposes of this section, the following words, terms and phrases shall have the meanings as indicated below:

(1A) ~~As used in this section~~ "Village personnel" means those Village officers and employees specified in subsection 38.02(A) through (F).

(2) "Lobbyist" means all employees, persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) any ordinance, resolution, action or decision of the Village Commission; (2) any action, decision, recommendation of any Village board or committee; or (3) any action, decision or recommendation of Village personnel during the time period of the entire decision-making process on the action, decision or recommendation which foreseeably will be heard or reviewed by the Village Commission, or a Village board or committee. "Lobbyist" specifically includes the principal, as well as any agent, officer or employee of a principal, regardless of whether the lobbying activities fall within the normal scope of employment of the agent, officer or employee. The term "lobbyist" specifically excludes the following persons: lobbyists hired by the Village who are in communication with Village personnel in the course of performing under their contracts; attorneys or other representatives retained to represent individuals and corporate entities in quasi-judicial proceedings where the law prohibits ex-parte communications; expert witnesses who only provide scientific, technical or other specialized information or testimony at public meetings; employees of the principal who do not engage in lobbying activities and representatives of non-profit organizations who only appear at publicly noticed meetings, without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support or opposition to any item.

(3) *Principal.* All persons, firms, or corporations who employ a lobbyist.

(B) *Lobbyist registration, fees, renewal and withdrawal.*

(1) All lobbyists shall, before engaging in any lobbying activities, register with the Village Clerk. Every person required to register shall:

{1a) Register as a lobbyist with the Village by: ~~on forms prepared by the Village Clerk;~~

(i) Completing the annual lobbyist registration form, as prepared by the village clerk, stating under oath his or her name, business address, the name and business address of each person or entity which has employed the registrant to lobby, and the specific issue(s) on which the lobbyist has been employed to lobby. If the lobbyist represents a corporation or is a principal, owner or employee of a corporate or other entity, it shall also be identified; and

(ii) Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five-percent or more ownership interest in the corporation, partnership, or trust;

- (b) Pay an annual lobbyist registration fee of \$300.00;
- (c) Register and disclose terms for each principal represented by:
 - (i) Completing the annual principal registration form, as prepared by the village clerk, prior to conducting any lobbying for each principal (client) being lobbied. Such application shall include a requirement that the lobbyist state under oath, his or her name, business address, the name and business address of each person or entity by which s/he has been employed to lobby and the specific issue on which the lobbyist has been employed to lobby;
 - (ii) Paying an annual principal registration fee of \$100.00.

If multiple lobbyists from the same firm represent the same principal, then only one principal registration form and principal registration fee of \$100.00 is required to be filed for that principal. All lobbyists from the same firm who represent the same principal must file a separate lobbyist registration form and a lobbyist registration fee of \$300.00. All lobbyists are required to file an expenditure report as outlined below in 2(a)(iv). Any lobbyist from the same firm may submit all the necessary documents to the village clerk on behalf of the firm.

- (d) File a lobbyist expenditure report.
 - (i) By January 15 of each year, all lobbyists shall submit to the village clerk a signed statement under oath listing all lobbying expenditures for the preceding calendar year. 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 village personnel on whose behalf or benefit the expenditure was made. A statement shall be filed even if there have been no expenditures during the reporting period. Annual statements shall be required until such time as the lobbyist files a notice of withdrawal of lobbying activities with the village clerk.
 - (ii) The village clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed, a fine of \$50.00 per day shall be assessed for reports filed after the due date. Any lobbyist who fails to file the required expenditure report by January 15 shall be automatically suspended from lobbying until all fines are paid, unless the fine has been appealed to the Miami-Dade Commission on Ethics and Public Trust.

A lobbyist or principal may appeal a fine and may request a hearing before the Miami-Dade Commission on Ethics and Public Trust. A request for hearing on the fine must be filed with the Miami-Dade Commission on Ethics and Public Trust, with a copy to the Village Clerk, within 15 calendar days of receipt of the notification of the failure to file the required disclosure form.

- (e) File a notice of withdrawal. Each person who withdraws as a lobbyist for a particular principal (client) shall file an appropriate notice of withdrawal.
- (2) All lobbyist and principal registration forms, expenditure reports, notices of withdrawal, and applicable fees shall be submitted to the village clerk. Such forms may be amended from time to time administratively.
- (3) Expiration of lobbyist and principal registrations. All lobbyist and principal registrations expire December 31 of each year.
- ~~(2) Pay an initial registration fee of \$125.00;~~
- ~~(3) State under oath his or her name and business address and the name and business address of each person or entity which has employed the registrant to lobby. If the lobbyist represents a corporation, it shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in the corporation, partnership, or trust. Annual registration of all lobbyists shall be required prior to January 15 of year and each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal. The fee for annual registration shall be \$300.00. In addition, every registrant shall be required to state the extent of any business or professional relationship with any current person described in subsection 38.02(A).~~
- (C) Processing of registration fees. The registration fees required by this section shall be deposited by the Village Clerk into a separate account and shall be expended for the purpose of recording, transcribing, administration and other costs incurred in maintaining these records for availability to the public. Unexpended funds may be transferred to general revenue at the end of the fiscal year. There shall be no fee required for filing a notice of withdrawal and the Village Commission may, in its discretion, waive the registration fee upon a finding of financial hardship.
- (4D) Prior to conducting any lobbying, all principals must file a form with the Village Clerk, signed by the principal or the principal's representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the Village Clerk at the point in time at which a lobbyist is no longer authorized to represent the principal.
- (5E) Every lobbyist and principal of a local business shall sign-in with the Village Clerk each time he or she meets with Village personnel at a Village facility, or shall deliver a memorandum of meeting to the Village Clerk within 24 hours of meeting with Village personnel at another location, and shall inform the Village Clerk, in writing, of the: (1) name of the lobbyist or the principal of the local business; (2) the Village personnel; (3) the time and place of the meeting; and (4) the issue to be discussed. The issue shall be described with as much detail as is practical, including but not limited to a specific description where applicable to a pending request for a proposal, invitation to bid, or public hearing item.

- (CF) (1) Any public officer, employee or appointee who only appears in his or her official capacity shall not be required to register as a lobbyist.
- (2) Any person who only appears in his or her individual capacity for the purpose of self-representation and any principal of a local business who appears without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item, shall not be required to register as a lobbyist.
- (DG) Any person who appears as a representative for an individual or firm for an oral presentation before a Village certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the Village all individuals who may make a presentation. The affidavit shall be filed by staff with the Village Clerk's office at the time the proposal is submitted. For the purpose of this section only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the Village Clerk's office and has paid all applicable fees.
- ~~(E) (1) Between January 2 and 15 of each year, the lobbyist shall submit to the Village Clerk a signed statement under oath listing all lobbying expenditures in excess of \$25.00 for the preceding calendar year. A statement shall be filed even 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.~~
- ~~(2) The Village Clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed, 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 an additional fine as provided in subsection 2-11.1(u) of the county code. Any lobbyist who fails to file the required expenditure report by July 1 shall be automatically suspended from lobbying until all fines are paid unless the fine has been appealed to the Ethics Commission.~~
- ~~(3) The Village Clerk shall notify the Ethics Commission of the failure of a lobbyist or principal to file a report and, or, pay the assessed fines after notification.~~
- ~~(4) A lobbyist or principal may appeal a fine and may request a hearing before the Ethics Commission. A request for a hearing on the fine must be filed with the Ethics Commission within 15 calendar days of receipt of the notification of the failure to file the required disclosure form. The Ethics Commission shall have the authority to waive the fine, in whole or part, based on good cause shown.~~
- (FH) Village sign-in sheet. The Village Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection 38.17. The Village Clerk shall publish logs for the current quarter of the fiscal year as soon as practicable after the effective date of

this ordinance. All logs required by this ordinance shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to F.S. Section 11.045.

(G) Penalties for violation. The Ethics Commission shall investigate any person engaged in lobbying activities who may be in violation of this subsection 38.17. In the event that a violation is found to have been committed, the person shall be prohibited from lobbying before the Village Commission or any committee, board or personnel of the Village on the subject that resulted in a finding of a violation. Additionally, every lobbyist who is found to be in violation of this section shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

- First violation for a period of 90 days from the date of determination of violation;
- Second violation for a period of one year from the date of determination of violation;
- Third violation for a period of five years from the date of determination of violation.

A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or proposer has violated this section, either directly or indirectly or any combination thereof, on three or more occasions. 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 the bidder or proposer. A contract entered into in violation of this section shall also render the contract voidable. The Village Manager shall include the provisions of this section in all Village bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of the failure illegal *per se*.

- (H) All members of the Village Commission, and all Village personnel, shall be diligent to ascertain whether persons required to register pursuant to this section have complied. Village Commissioners or Village personnel may not knowingly permit a person who is not registered pursuant to this section to lobby the Village Commissioners, or committee, board or Village personnel.
- (I) Except as otherwise provided in subsection 38.17(G) the validity of any action or determination of the Village Commissioners or Village personnel, board or committee shall not be affected by the failure of any person to comply with the provisions of this subsection 38.17.
- (J) Commencing on the effective date of this ordinance, and between January 2 and 15 of every year thereafter, each lobbyist shall disclose the terms and amount of compensation paid by each principal to the lobbyist. The principal shall also

disclose the terms and amount of compensation paid to every lobbyist retained or employed by the principal. No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to a lobbyist. No lobbyist 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 non-monetary benefit paid or promised as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) any ordinance, resolution, action or decision of the Village Commission; (2) any action, decision or recommendation of any Village board or committee; or (3) any action, decision or recommendation of Village personnel during the time period of the entire decision-making process regarding the action, decision or recommendation which foreseeably will be heard or reviewed by the Village Commission, or a Village board or committee.

* * *

Section 3. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in Code. The provisions of this Ordinance shall become and be made a part of the City Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word

Section 6. Implementation. The Village Manager, Village Attorney, and Village Clerk are hereby authorized to take such further action as may be needed to implement the purpose and provisions of this Ordinance

Section 7. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Wilmoth who passed on final reading. This motion was seconded by Commissioner Strout and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>YES</u>
Vice Mayor Marvin Wilmoth	<u>YES</u>
Commissioner Jose R. Alvarez	<u>YES</u>
Commissioner Rachel Streitfeld	<u>YES</u>
Commissioner Julianna Strout	<u>YES</u>

PASSED on first reading on this 10th of September, 2020.


PASSED AND ENACTED on second reading on this 13th day of October, 2020.

ATTEST:




Elora Riera,
Village Clerk

APPROVED AS TO LEGAL SUFFICIENCY:



Weiss Serota Helfman Cole & Bierman, PL
VILLAGE ATTORNEY



Brent Latham, Mayor

