

A GUIDE TO LOBBYIST REGISTRATION IN THE CITY OF OAKLAND

On June 25, 2002, the Oakland City Council adopted the "Lobbyist Registration Act." This Act requires all professional lobbyists to register with the City before attempting to influence a local governmental action on behalf of another person. The Act went into effect on September 1, 2002, and was amended in January, 2007, and June, 2007.

The significant features of the Act are:

- ✓ Lobbyists meeting certain qualifications are required to register with the Office of the City Clerk before they attempt to lobby
- ✓ Lobbyists must file quarterly reports on their lobbying activities
- ✓ Limitations on gifts and payments benefiting City officials, candidates, certain employees and members of their immediate families

The Oakland Public Ethics Commission is charged with implementing and enforcing the Act. As part of this effort, the Commission has prepared this Guide to assist those seeking to influence governmental decisions to meet the requirements of the law and to address some of the most frequently asked questions.

Enclosed in this Guide you will find:

- The Oakland Lobbyist Registration Act
- Lobbyist Registration Forms

This Guide is intended to be advisory only. To the extent the Guide conflicts with the actual Act, administrative regulation or interpretation by the Public Ethics Commission, those authorities shall govern the implementation and enforcement of the lobbyist registration process.

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LOBBYIST REGISTRATION FORMS

THE OAKLAND LOBBYIST REGISTRATION ACT *(MUNICIPAL CODE CHAPTER 3.20)*

I LOBBYISTS AND LOBBYING DEFINED

A Local Governmental Lobbyists

The Act defines "local governmental lobbyist" as any person:

1. who receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month (other than reimbursement for reasonable travel expenses). . . **or**
2. whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee. . .

for the purpose of influencing any proposed or pending governmental, legislative or administrative action of the City or the Redevelopment Agency. [O.M.C. 3.20.030(D)].

The first category of lobbyists, those entitled to \$1,000 or more per month to lobby, is commonly referred to as "contract" lobbying. The second category is often referred to as "in-house" lobbying. Both contract and in-house lobbyists have identical filing requirements under the Act.

If a person's professional activities fall into one of the above two categories, then he or she must first register as a lobbyist with the Office of the City Clerk before attempting to lobby.

NOTE: Only individuals need to register as lobbyists, not companies or organizations.

NOTE: The Act provides that if there is any ambiguity over whether a person is or is not a lobbyist, the definition of lobbyist shall be interpreted "broadly." [O.M.C. 3.20.030(D)].

B. Lobbying Activities

Lobbying means the act of influencing any "governmental action" of the City of Oakland or its Redevelopment Agency. "Governmental action"

means any "administrative or legislative action" the City or Agency may take that is not "ministerial" in nature. [O.M.C. 3.20.030(E)].

Generally, an action is considered "administrative" if it relates to a local body's rule making authority, or the process of applying a rule or law to a specific set of facts. Examples of administrative action are the granting or denying of a permit, or the determination of claims. An action is considered "legislative" if it involves the formulation of a rule or policy to be applied in future cases. An example of legislative action is the making of an ordinance. "Ministerial" means an action that requires no discretion or judgment, such as the issuance of a business license or library card.

C. Lobbyists' Clients

A "client" is the person or organization (the "real party in interest") for whose benefit the services of a lobbyist are being performed. [O.M.C. 3.20.030(A)]. Thus a client could be the lobbyist's employer, or a person or organization that contracts with the lobbyist to be an independent contractor.

A person is **not** considered to be a client if he or she is merely a member of an organization that is represented by a registered lobbyist.

D. Exemptions From The Oakland Lobbyist Act

The provisions of the Act do not apply to:

1. "Public officials" acting in their official capacity [O.M.C. 3.20.060(A)];
2. Persons who publish or broadcast news, editorials or other comments, or those who make paid advertisements which urge governmental action [O.M.C. 3.20.060(B)];
3. Persons who have been specifically invited by the City Council, Redevelopment Agency, a City board or commission, subcommittee of any of the above entities, or by any City officer or employee charged by law with conducting a hearing or making a decision, to give testimony or information to the body or person extending the invitation [O.M.C. 3.20.060(C)];

4. Persons who, without extra compensation and not as a part of their regular employment, present the position of their organization and the organization already has a registered lobbyist [O.M.C. 3.20.060(D)];
5. Attorneys, architects or civil engineers whose attempts to influence governmental action are limited to:
 - a. appearing at a public meeting, hearing, or other official proceeding;
 - b. preparing and submitting writings in connection with the public meeting, hearing or proceeding; **or**,
 - c. contacting city or agency employees or agents working under the direction of the city manager or agency director directly relating to (a.) and (b.) above [O.M.C. 3.20.060(E)].
6. Designated representatives of employee organizations engaged in collective bargaining negotiations and follow-up communications regarding the administration, implementation or interpretation of an existing employment agreement. [O.M.C. 3.20.060(F)].
7. Persons whose only activity is to submit a bid, respond to an RFP, or negotiate the terms of any awarded contract. [O.M.C. 3.20.060(G)].

II. REGISTRATION REQUIREMENTS

A. Initial Registration

No person may act as a local governmental lobbyist without first registering with the Office of the City Clerk. [O.M.C. 3.20.040(A)].

At the time of registration, the lobbyist shall provide his or her name, business and residence address. [O.M.C. 3.20.040(B)]. In addition, the lobbyist must file a list of all clients before working on their behalf. [O.M.C. 3.20.120(A)].

The "Lobbyist Registration Form" (See Attached Form) must be completed and filed directly with the Office of the City Clerk to satisfy the Act's initial registration requirement. [O.M.C. 3.20.090]. This form may also be used to add new or additional clients, as well as to register annually. (See Section II.B, below).

B. Renewal Of Registration

All registered lobbyists must re-register annually within the month of January. [O.M.C. 3.20.040(C)]. Annual registration can be accomplished by re-submitting a completed "Lobbyist Registration Form" and checking the box indicating that it is an "Annual Registration."

C. Quarterly Reports

In addition to initial and annual registration, lobbyists are required to file with the Office of the City Clerk quarterly reports about their lobbying activities. The reports are due no later than 30 days after the end of each calendar quarter in which the lobbyist was required to be registered. [O.M.C. 3.20.110].

The following dates represent the end of each calendar quarter: March 31, June 30, September 30 and December 31.

Each quarterly report must contain the following information:

- 1.** The items of governmental action and the name of the client(s) on whose behalf the lobbyist sought to influence that item [O.M.C. 3.20.110(A)];
- 2.** For each item sought to be influenced, the name of each City officer, board and commission member with whom the lobbyist communicated, and the identity of any City

employee with whom the lobbyist communicated identified only by the office or department in which the employee works and his or her jobtitle. [O.M.C. 3.20.110(B)];

3. A brief narrative description of the position advocated by the lobbyist on behalf of the client. The description should not exceed three sentences. [O.M.C. 3.20.110(C)];
4. The name of any elected City officeholder, local candidate, designated employee or a member of their immediate families whom the lobbyist or client employed or hired, a description of the services performed, and the total payments made during the reporting period. [O.M.C. 3.20.110(D)];
5. The name of any elected City officeholder or local candidate who employs or hires a lobbyist, a description of the service performed, and the total payment made during the reporting period. [O.M.C. 3.20.110(E)]; and
6. The name of every person whom the lobbyist solicited for a campaign contribution and the name of the local candidate for whose benefit the solicitation was made. [O.M.C. 3.20.1110(F)]

The "Lobbyist Quarterly Report" and its accompanying Disclosure Form (See Attached Form) must be completed and filed directly with the Office of the City Clerk to satisfy the Act's quarterly reporting requirement.

D. Terminating Lobbying Activities

Lobbyists who have terminated all their regulated lobbying activities shall file notice with the Office of the City Clerk. They are then relieved of any further obligations under the Act until they begin lobbying again. [O.M.C. 3.20.050].

The "Lobbyist Notice Of Termination" (See Attached Form) must be completed and filed directly with the Office of the City Clerk to satisfy the Act's notice requirement. Lobbyists must re-register by filing a new "Lobbyist Registration Form" (See Attached Form) if they commence lobbying after filing a termination notice.

E Record Retention And Verification

Lobbyists must retain for a period of five years all "books, papers and documents" necessary to substantiate the registration information required under the Act. [O.M.C. 3.20.100].

III. RESTRICTED ACTIVITIES

The Oakland Lobbyist Act prohibits lobbyists, clients, "contractors" and "persons doing business with the City" from engaging in certain types of activities. Contractors and persons doing business with the City are defined as follows:

"Contractors"

*Any party to an agreement in which the value of consideration exceeds one thousand (\$1,000) dollars **and** (1) the City or Agency is a party; **or** (2) the agreement is conditioned or dependent upon approval by the City Council, Redevelopment Agency, City board or commission, or officer or employee of the City or Agency. [O.M.C. 3.20.030(B)].*

"Persons Doing Business With The City (Or Agency)"

Persons whose financial interests are materially affected by a "governmental action." (See Section I.B, above.) Financial interests are not materially affected by the issuance of a license or permit not requiring the exercise of discretion. Includes persons who are currently doing business with the City or Agency, planning to do business with the City or Agency, or have completed business with the City or Agency within two years. [O.M.C. 3.20.030(G)].

A. Personal Obligations Prohibited

Lobbyists, clients, contractors or persons doing business with the City (or Agency) shall not intentionally cause any City or Agency officer to be placed under "personal obligation" to them. [O.M.C. 3.20.130].

B. Deception Prohibited

Lobbyists, clients, contractors or persons doing business with the City or Agency shall not deceive or attempt to deceive a City or Agency officer or designated employee as to any material fact pertinent to any pending or proposed governmental action. [O.M.C. 3.20.140].

C. Improper Influence Prohibited

No lobbyist shall cause or influence governmental actions for the purpose of creating future business for the lobbyist. [O.M.C. 3.20.150].

D. False Appearances Prohibited

No lobbyist, client, contractor, or person doing business with the City or Agency shall attempt to create a fictitious appearance of public support or opposition to any governmental action, or to send any communication on behalf of any fictitious person or in the name of any real person without his or her consent. [O.M.C. 3.20.160].

E. Prohibited Representations

No lobbyist, client, contractor, or person doing business with the City or Agency shall represent that they can control or obtain the vote or action of any City or Agency officer or designated employee. [O.M.C. 3.20.170].

F. Restriction On Payments Benefiting Local Officials, Candidates, Certain Employees, And Members Of Their Immediate Families

No lobbyist or client shall make any payment or incur any expense in excess of \$240 per year that directly benefits a local official, local candidate, designated employee or a member of their immediate families. [O.M.C. 3.20.180(A)]. Some exceptions exist for campaign contributions, returned or reimbursed payments, in-home gifts of food, beverage and lodging, tickets to certain fundraisers and events, and payments for services. [O.M.C. 3.20.180(B)].

G. One-Year "Revolving Door" Restriction On Acting As A Lobbyist

No city officer, department head or budget director shall act as a local governmental lobbyist for a period of one year after leaving office. [O.M.C. 3.20.190].

IV. ENFORCEMENT

The Oakland Public Ethics Commission is responsible for enforcing the Lobbyist Registration Act and is authorized to impose penalties of up to \$1,000 per violation. [O.M.C. 3.20.190(B)]. Complaints alleging violation of the Act are administered under the Commission's existing General Complaint Procedures. [O.M.C. 3.20.180(A)]. No complaint alleging a violation of the Act shall be filed more than four years after the date of the violation. [O.M.C. 3.20.200].

Copies of the Commission's General Complaint Procedures are available from the Commission or its website.

In addition to civil penalties, the Act provides for misdemeanor prosecution for any person who knowingly or willfully violates the Act. [O.M.C. 3.20.220(A)]. No person convicted of a misdemeanor violation may act as a lobbyist, render consultation or advice to a client, or otherwise attempt to influence a governmental action for compensation for one year after the conviction. [O.M.C. 3.20.220(C)].

A Order To Show Cause

The Mayor, any member of the City Council, City board or commission member, or any officer or designated employee of the City, may request the Public Ethics Commission issue an order to any unregistered person to appear and provide evidence that he or she has complied with the registration requirement or is exempt from registration. [O.M.C. 3.20.070(A)(B)].

If the Commission determines that a person is subject to the registration requirement but fails to register within seven days of that determination, the person shall be barred from acting as a lobbyist for three months beginning from the date of the determination or until registration occurs, *whichever is later*. (A lobbyist may, while barred from professional lobbying, still appear at noticed public meetings or lobby upon his or her own behalf.) [O.M.C. 3.20.070(C)].

V. PRACTICAL QUESTIONS

1. A newspaper story reports that an elected state official has been lobbying City Council members to authorize a particular public works project. Must the state representative register as a lobbyist?

No, unless the state representative was lobbying for compensation on behalf of a "client." Public officials acting in their "official capacity" are exempt from the registration requirement. However, if the state representative was being compensated by a person or organization to lobby, then the state representative would arguably no longer be acting within his or her capacity as an elected official.

2. My neighborhood association wants a stop sign placed at a busy intersection. I've talked to employees at the public works department, planning department and our City Council representative to help us. Do I need to register as a lobbyist?

It depends on whether you were being paid more than \$1,000 to lobby, or whether you were a "salaried employee, officer or director" of your neighborhood group. Most neighborhood groups are not organized to the point that would qualify its members as "salaried employees, officers or directors." And even if they were, the person qualifying as a registered "in-house" lobbyist for the group could trigger an exemption from reporting for all other members as discussed in Section I.D.4, above.

3. I am an attorney recently retained to represent a client in obtaining all necessary development permits and licenses to build and operate a nightclub in town. I know some of the members of the planning commission and want to call them before the commission's hearing. Must I register as a lobbyist before making the calls?

Probably. While the Act creates an exemption for attorneys, architects and civil engineers, the exemption exists only so long as the lobbying activities are confined to appearing at noticed public meetings, preparing documents, and speaking to planning commission staff on matters "directly relating" to the appearance or documents. Attempting to influence planning commission members outside of the formal permit process goes beyond the limits of the exception and would trigger a registration requirement if the attorney were paid more than \$1,000 a month to influence governmental actions.

4. I own a small consulting business. Several months ago I submitted a response to an RFP (request for proposal) that was favorably reviewed by staff and now is going before the City Council for approval. Can I contact City Council members about the proposal without having to register as a lobbyist?

It depends on the organization of the business. If you are organized as a sole proprietor or partnership, where the interests of the business are essentially your personal interests, then you probably do not need to register. However, if your business is a corporation and you serve as a "salaried employee, officer or director" of that company whose duty it would be to influence that decision, then you must register before contacting any City Councilmember.

5. Do contract lobbyists have to disclose all their clients, or just the ones that have pending interests before the City?

Probably just the latter. The Act prohibits lobbyists from engaging in activities "on behalf of a client" unless the lobbyist has "listed such client with the City Clerk." A "client" is defined as "the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed." Thus it would appear that only persons whose interests are actually being represented by the lobbyist would have to be disclosed as "clients" before any lobbying on their behalf takes place.

6. I am a registered contract lobbyist. What are my filing obligations if a new client pays me a retainer of \$500 but I haven't had an opportunity to actually lobby for it yet?

Since you apparently have reached the \$1,000 threshold to require registration as a contract lobbyist already, you must amend your "Lobbyist Registration Form" to add the new company to your list of clients.

7. A group of eight local businesses have formed a group called "The Better Oakland Action Network" and have hired me to lobby against a proposed ordinance. They have paid me with a check that lists "The Better Oakland Action Network" as the payor but, so far as I know, the "Network" does not exist as a separate legal entity. Whom do I list as the client?

Probably all eight businesses. The reason is that the definition of "client" focuses on the "real party in interest" whose interests are being served by the lobbyist. Since the "Network" exists only as a label for the eight businesses and

has no other corporate or organizational status, it is their interests, and not "Network's," which are being served by the lobbyist.

8. I initially registered on September 15th. When will my annual registration be due?

The Act requires lobbyists to re-register annually during the month of January. You must re-register every January even if you have not been lobbying for an entire year.

9. What records do lobbyists have to keep for five years?

The Act requires that lobbyists shall retain "all books, papers and documents" necessary to substantiate the registration required under the Act. Such writings would reasonably include, but not necessarily be limited to, correspondence for the retention of services, contracts or memoranda relating to the scope of work or job duties, billing statements, client payments, positions taken on behalf of the client, and any appointment books or telephone logs.

10. What does the prohibition against putting a City official or employee under "personal obligation" to a lobbyist, client or contractor mean?

This prohibition primarily relates to arranging or making loans to a City official or "designated" employee (that is, an employee required to file an annual Statement of Economic Interests). Under this restriction, a lobbyist may not lend money to a City officer or designated employee, nor co-sign, guarantee or provide security for any loan.

11. I recently began business as a contract lobbyist. Client "A" today paid my first bill of \$300. I just sent Client "B" a bill for \$400 and Client "C" a bill for \$500. When must I register and whom must I list as clients?

You must register now since you have received, or became entitled to receive, a total of \$1,000 to lobby. Once you have reached the \$1,000 threshold, you must file a list of your clients with the City Clerk, regardless of how much each client pays you to lobby.