APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY

ORDINANCE NO. _____C.M.S.

ORDINANCE ESTABLISHING REGULATION OF LOBBYISTS IN OAKLAND MUNICIPAL CODE CHAPTER 3.20

Oakland Municipal Code is amended to add Chapter 3.20 as follows:

Chapter 3. 20

THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT

Article I. Findings and Purpose

3.20.010 Title

This ordinance shall be known as the City of Oakland Lobbyist Registration Act, hereafter "the Act."

3.13.011 Findings and Declarations

The Oakland City Council finds and declares:

A. Organizations rely upon the services of lobbyists to influence City officials and City employees about proposed or pending governmental decisions.

B. The people of Oakland have the need and right to know the identity of lobbyists who attempt to influence the decisions of City government and the means employed by them to advance the interests of their clients.

C. The disclosure of lobbyists, their activities, their clients and the interests being represented will improve public knowledge and confidence in the integrity of City government.

D. The disclosure of lobbyists, their activities, their clients and the interests being represented is necessary to ensure City officials are kept informed about the identity of persons whose interests the lobbyists represent and that City officials are not improperly influenced by such lobbyists.

3.13.012 Purpose of This Act

The purpose of this Act is to maintain a fair and open decision-making process in City government by requiring those who seek to influence the legislative and administrative actions of the City to register and publicly disclose their lobbying activities.

COMMENT: ***The Commission considered the above proposed language at its special meeting of September 24, 2009. Commission staff previously reported that the current version of the LRA does not contain any factual findings or a legislative purpose. The Commission generally favored the inclusion of the above-proposed "Findings" and "Purpose" language based on the established history of lobbying activities in Oakland as documented by the LRA's ongoing registration and reporting process.***

Article II. Definitions and Interpretation of This Act

3.20.020 Words And Phrases

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

3.20.030 Definitions

For the purposes of this ordinance, the following definitions shall be applicable:

A. "Client" means the real party in interest, other than the local governmental lobbyist himself or herself, for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such organization is represented by a local governmental lobbyist as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

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COMMENT: ***At its meeting of November 2, 2009, the Commission directed staff to prepare language that would clarify that a "person is not a 'lobbyist' merely for representing his or her own interests" and that an individual who is a member of an organization is not a "client" of an organization's lobbyist unless the member pays additional compensation for representation.***

B.

Deleted: "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars, and, (1) The city is a party, or (2) the redevelopment agency is a party, or (3) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency. ¶

COMMENT: ***At its meeting of November 2, 2009, the Commission determined that a "contractor" and a "person doing business with the City", as defined, should be regulated outside the provisions of the LRA. Commission staff will develop an alternative proposal for their***

modification and submission into a different chapter of the municipal code.

C. "Designated employees" mean City and Redevelopment Agency employees and consultants who are designated [STRIKE: "employees"] within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a City or Redevelopment Agency conflict of interest code to file financial interest disclosure statements. For purposes of this Act, a "designated employee" shall include those City employees and consultants whose positions are one of the designated positions pursuant to Appendix A of O.M.C. Chapter 3.16.

COMMENT: ***The last sentence of above subsection (C) is intended to provide guidance as to what City positions are included in the term "designated employees."***

D. "Local governmental lobbyist" means any individual:

(1) who receives or is entitled to receive one thousand dollars ($1,000) or more in economic consideration in a calendar month or who receives or is entitled to receive five-thousand dollars ($5,000) or more in economic consideration in any calendar year for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action, or

(2) whose compensated activities as an employee, officer, director, manager or partner on behalf of any corporation, partnership, organization or any other entity operating under a fictitious name, include communication for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action.

When determining whether a person qualifies as a local governmental lobbyist, the provisions of this Act shall be interpreted broadly.

COMMENT: ***Much Commission time has been spent reviewing proposals to amend the fundamental definition of "local governmental lobbyist." The Commission initially considered the provisions of above subparagraph (2), relating to the definition of an "in house" lobbyist. At its November 2, 2009, meeting, the Commission directed staff to prepare the above amendments to the definition of "local governmental lobbyist."***

Still at issue is whether the Commission wishes to propose further amendments to the definition of "local governmental lobbyist" to include uncompensated representatives of organizations who make a minimum number of contacts with City officials and employees. The Commission requested its legal counsel for an advisory opinion on whether the City could legally require uncompensated representatives to register as lobbyists and for staff to develop a minimum threshold of "contacts" that would trigger a registration and reporting requirement.

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Commission staff has previously advised that it was not aware of any local lobbying laws that regulate "volunteer" representatives of organizations and that any proposal to include them would be controversial and possibly subject to legal challenge. The City Attorney's Office has yet to prepare an advisory opinion on the subject. Staff continues to recommend that the Commission proceed with the amendments already under consideration and take up the issue of whether to regulate uncompensated representatives separately from the current set of proposed amendments.

E. "Governmental action" means any administrative or legislative action of the city or the redevelopment agency other than an action which is ministerial in nature.

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F. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

G.

COMMENT: ***At its meeting of November 2, 2009, the Commission determined that a "contractor" and a "person doing business with the City", as defined, should be regulated outside the provisions of the LRA. Commission staff will develop an alternative proposal for their modification and submission into a different chapter of the municipal code.***

Deleted: "Person doing business with the city" means any person whose financial interests are materially affected by governmental action as defined by Section 3.20.030(E). It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees. ¶

"Public officer" means the Mayor, members of the City Council, the City Attorney, the City Auditor, the City Clerk, and members of City boards and commissions who are required to file a statement of economic interest in connection with their service on a City board or commission.

COMMENT: ***Commission staff revised the definition of "public officer" to make it consistent with the Oakland City Charter and existing reporting requirements.***

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H. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

Article III. Registration of Lobbyists

3.20.040 Registration With The Public Ethics Commission

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing, his or her name, business and residence addresses.

C. The lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

3.20.050 Cessation of Employment.

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

3.20.060 Exceptions

The provisions of this Act shall not apply:

A. To a public officer acting in his or her official capacity.

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B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the city council or redevelopment agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

> ***COMMENT:*** ***Above subsection (C) is the so-called "invited testimony" exception to the LRA. Other local lobbying ordinances contain similar provisions. San Francisco limits this exception to "written information" so long as the written information "is a public record available for public review."***
>
> ***It is possible that a lobbyist could communicate with City officers and employees without disclosing those communications if a City officer or employee "specifically invites" the lobbyist to provide the testimony or the information. Limiting this exception to written communications would narrow its scope and provide public access to otherwise undisclosed communications.***

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

> ***COMMENT:*** ***Above subsection (D) addresses the situation in which a representative of an organization accompanies or assists a registered lobbyist in "present[ing] the position of his or her organization." A lobbyist may, for example, bring a person who has specific knowledge of an issue to a meeting with City officials or employees. Under current law, it is likely that person would not be considered a lobbyist. The application of this section becomes potentially broader when these other persons begin influencing City officials outside the presence of a lobbyist. Thus in at least one of the jurisdictions reviewed this type of exception requires the other person to be in the presence of an otherwise registered lobbyist.***

E. Any attorney, architect or licensed engineer whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; or (2) Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city or redevelopment agency employees or agents working under the direction of the city administrator or agency or department director directly relating to (1) or (2) above.

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COMMENT: ***Many local lobbyist registration ordinances provide an exception similar to above subsection E. Commission staff previously commented on the above exception stating that its application is primarily in the context of the City's planning and development process in which "attorneys, architects and civil engineers" are retained by an applicant to obtain the necessary permits and approvals on a particular project. Since these persons could otherwise meet the definition of a contract lobbyist, the policy issue is whether to require the many people who routinely meet and confer with City staff in connection with securing permits and approvals on various residential, commercial or industrial projects to register as lobbyists. Any communications occurring outside those specified in the current exception could trigger a registration and reporting requirement.***

Commission staff notes that the above exception is narrowly drawn in that it applies only to three recognized and licensed professions, and is confined to a fairly narrow range of communications. The existing exception should arguably be modified to 1) permit any kind of "licensed" engineer (structural, seismic, geologic, mechanical) to take advantage of this exception, and 2) "city manager" should be conformed to the current term of "city administrator", and "executive director" should be conformed to the current term of "agency or department director".

F. To designated representatives of a recognized employee organization whose activities are limited to communicating with city officials or their representatives regarding 1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500 -- 3510, or 2) the administration, implementation or interpretation of an existing employment agreement.

Government Code Sections 3500 -- 3510 (aka the "Meyers-Milias-Brown Act") governs the process by which public employers and their employees "resolve disputes" regarding wages, hours and other terms and conditions of employment. It may help to clarify this exception if language were added specifying that it is the employee organizations recognized by the City of Oakland whose designated representatives are exempted from registering as lobbyists so long as they confine their communications to the above two specified subject matters.

G. To persons whose only activity is to 1) submit a bid on a competitively bid contract, 2) respond to a request for proposal or qualifications, or 3) negotiate the terms of a

written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award of terms of a contract with any elected official or member of any City board or commission.

H. To a person whose only communications regarding a proposed or pending governmental decision are made, submitted or distributed at a publicly noticed meeting of the City Council, Redevelopment Agency, City board or commission, or any standing committee of the City Council, Redevelopment Agency or City board or commission, and the person publicly identifies himself or herself and the name of the person or client on whose behalf the communication is made.

COMMENT: ***The above-proposed subsection H is another proposed exception that the Commission has debated extensively. It seeks to exempt persons who would otherwise qualify as lobbyists as long as they limit their efforts to influence governmental decisions to public meetings.***

I. To a compensated representative of a non-profit corporation that operates or manages property in which the City or Redevelopment Agency has an ownership or possessory interest and on which property the non-profit corporation performs a public function or service on behalf of the City, Redevelopment agency, or on behalf of a multi-governmental agency in which the City or Redevelopment Agency is a member.

COMMENT: ***The above-proposed subsection I also has a long history of Commission discussion. It proposes a policy exemption for compensated representatives of local non-profit organizations such as the Museum Foundation, the Chabot Foundation, and the Zoo Society, who communicate regularly with City officials regarding the operation and maintenance of facilities that perform a public function or service.***

3.20.070 Noncompliance - Order to Show Cause

A. Upon the request of the council, the mayor, or any board or commission or member thereof, or any officer or designated employee of the city or redevelopment agency, the Public Ethics Commission shall issue an order to show cause to any unregistered person.

B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Public Ethics Commission that he or she has complied with the registration requirement or is exempt from registration.

C. If the Public Ethics Commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the city council, redevelopment agency or other board or commission at a noticed public meeting or upon oral petition on his or her own behalf. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

3.20.080 Availability of Information.

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

3.20.090 Filing Under Penalty of Perjury

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Public Ethics Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

3.20.100 Records

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this chapter.

Article IV. Disclosure Of Lobbying Activities

3.20.110 Quarterly Disclosure

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk. The reports shall be due no later than 30 days after the end of the calendar quarter. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, 1) the name of each city officer with whom the lobbyist communicated, 2) the name and title of any city boardmember or commissioner with whom the lobbyist communicated, and 3) 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 job title.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any lobbyist, or a registered client at the behest of a lobbyist, employs or hires an elected city officeholder, candidate for elected office, a designated employee, or a member of the immediate family of one of these individuals, the lobbyist shall disclose 1) the name of the person employed or hired, 2) a description of the services actually performed, and 3) the total payments made during the reporting period identified only by the following categories: less than $250; between $250 and $1,000; greater than $1,000 but less than $10,000; greater than $10,000.

E. If any elected city officeholder or candidate for elected city office employs or hires a lobbyist to provide compensated services to the officeholder or candidate, the lobbyist shall disclose 1) the name of the person who employed or hired the lobbyist, 2) a description of the services actually performed, and 3) the total payments made during the reporting period identified only by the following categories: less than $250; between $250 and $1,000; greater than $1,000 but less than $10,000; greater than $10,000.

F. If a lobbyist solicits any person to make a contribution to an elected city officeholder, candidate for city office or to any committee or fund controlled by such officeholder or candidate, the lobbyist shall disclose the names of the persons whom the lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made (1) in a mass mailing sent to members of the public, (2) in response to a specific request for a recommendation, (3) to a gathering which members of the public may attend, or (4) in a newspaper, on radio or television, or in any other mass media. A lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a lobbyist makes a solicitation to more than fifty (50) individual members or employees of a corporation, union or other association that is a registered client of the lobbyist, or if the lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the lobbyist, the lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

Article V. Prohibitions

3.20.120 No Unregistered Employment or Activity

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the City Clerk.

B. No person shall accept compensation for acting as a local government lobbyist except upon condition that he or she forthwith register as required by this Act.

3.20.130 Personal Obligation of City Officials Prohibited

Local governmental lobbyists and their clients shall abstain from doing any act with the express purpose and intent of placing any public officer or designated employee under personal obligation to such lobbyist or client.

<u>COMMENT:</u> The above references to "contractors" and "persons doing business with the City" were removed for the reasons cited above.

3.20.140 Deception Prohibited

Local governmental lobbyist and their clients shall not deceive or attempt to deceive a public officer or designated employee as to any material fact pertinent to any pending or proposed

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governmental action including, without limitation, sending a written communication in the name of a fictitious person.

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COMMENT: ***The above references to "contractors" and "persons doing business with the City" were removed for the reasons cited above. The final phrase, "including, without limitation, sending a written communication in the name of a fictitious person" reflects the Commission's previous intent to include part of Section 3.20.160 into above Section 3.20.140.***

3.20.150 Improper Influence Prohibited.

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

3.20.160

COMMENT: ***The above Section 3.20.160 was recommended for deletion based on the Commission's assessment that "creating a fictitious appearance of public favor or disfavor" was too vague to be enforceable but for the prohibition on sending a communication in the name of a fictitious person, which has been incorporated into Section 3.20.140, above.***

Deleted: False Appearances Prohibited.¶
¶
No local governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city or agency officer or designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person. ¶

Prohibited Representations.

Local governmental lobbyistss shall not represent that they can control or obtain the vote or action of any public officer or designated employee.

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COMMENT: ***The above references to "contractors" and "persons doing business with the City" were removed for the reasons cited above.***

3.20.180 Restriction On Payments And Expenses Benefiting Local Public Officials, Candidates For Local Office, Designated Employees And Immediate Families

A. No lobbyist or a lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds $240 during any calendar year.

B. The payments and expenses specified in subsection A include gifts, honoraria, and any other form of compensation but do not include (1) campaign contributions; (2) payments or expenses that, within 30 days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual lobbyist or individual lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event

for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal.Code of Regs. No. 18944.1(a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

3.20.190 Restriction On Former Elected City Officers From Acting As A Local Governmental Lobbyist

No officer of the city, or person who has held the position of department head or budget director, shall be permitted to act as a local governmental lobbyist for a period of one year after leaving office.

Article VI. Enforcement

3.20.200 Procedures and Action

A. Any person who violates this Act is subject to civil enforcement proceedings before the Public Ethics Commission pursuant to the Commission's General Complaint Procedures. No complaint alleging a violation of any provision of this Act shall be filed with the Public Ethics Commission more than four years after the date the violation occurred.

B. If the Public Ethics Commission finds a violation of this Act, the Commission may (1) Find mitigating circumstances and take no further action, (2) issue a public statement or reprimand, or (3) impose a civil penalty in accordance with this Act.

3.20.210 Civil Penalties; Late Fines

A. Civil penalties shall be imposed by resolution of the Public Ethics Commission.

B. Except as otherwise specified in this Act, the Commission may impose penalties of up to one thousand dollars ($1,000) for each violation sustained.

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C. In addition to any other penalty or remedy available, if any person fails to file any report or statement required by this Act, after any deadline imposed by this Act, such person shall be liable to the City in the amount of $[10/25/50] per day after the deadline until the statement or report is filed, up to a maximum amount of $[100/250/500]. Liability need not be enforced by the Commission if its Executive Director determines that the late filing was not willful and that enforcement of the penalty would not further the purposes of this Act. No liability shall be waived if a statement or report is not filed within 10 days after the Executive Director has sent specific written notice to the filer of the filing requirement.

COMMENT*: The Commission agreed conceptually to include the above "late fine" provision to the LRA. The Commission needs to determine 1) the "per day" fine and 2) whether and in what amount to impose a maximum cap on late fines. Commission staff previously reported that of the five surveyed cities that impose late fines, the amounts ranged between $10 per day up to a maximum amount of $100; to $50 per day with no maximum amount. As a general principle, late fines have a dual purpose: to create an incentive for timely filing and to penalize those who are late and delay public disclosure of information. Commission staff recommends a $25 per day late fine up to a maximum amount of $500 as appropriate for achieving these two purposes.

D. If any civil penalty, late fine or registration fee imposed by the Public Ethics Commission is not timely paid, the Commission shall refer the debt to the appropriate City agency or department for collection.

3.20.215 REGISTRATION FEES

A. At the time of initial registration and annual re-registration as specified in Section 3.20.040, each lobbyist shall pay a fee of $180.00. The Public Ethics Commission shall prorate the fee for initial registration by calendar quarter. The Public Ethics Commission shall annually review the amount of registration fees and make any recommendation for their adjustment to the City Council.

B. The Public Ethics Commission shall deposit all fees collected pursuant to this Section to the City's general purpose fund.

***COMMENT*: The Commission directed staff to develop and propose language for the imposition of an annual filing fee. The proposed amounts are based on the following factors: The number of hours Commission staff expends on an annual basis administering the registration and reporting process; the "mid range" salaries of Commission staff; and the number of lobbyists currently registered.**

3.30.220 Criminal Violation

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

3.20.230 Effective Date

The effective date of this Act shall be September 1, 2002.

3.20.240 Severability

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.