INTRODUCED BY COUNCILMEMBER

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APPROVED AS TO FORM AND LEGALITY

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CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 3.20 OF THE OAKLAND MUNICIPAL CODE PERTAINING TO THE REGISTRATION OF LOBBYISTS

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Oakland Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 2.

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.

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 for such representation.

B. "Designated employees" mean City and Redevelopment Agency employees who are designated 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.

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, 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 meets the definition of "local governmental lobbyist", the provisions of this Act shall be interpreted broadly.

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.

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.

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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. ¶
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***COMMENT*: The Commission determined that a "person doing business with the City", as defined, should be regulated outside the provisions of the LRA. How and in what kind of ordinance remains to be determined. Commission staff has also expressed the opinion that the current definition is rather vague and potentially overbroad. Staff will develop alternative language for later Commission consideration.**

"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.**

3.20.060 Exceptions

The provisions of this Act shall not apply:

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

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.

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.

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.

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. ¶

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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.

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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.

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.

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.

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.

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

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

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the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

3.20.160 Prohibited Representations.

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

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.

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.

3.20.225 REGISTRATION FEES

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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. ¶
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3.20.170

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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.**

The Commission may wish to consider a recommendation to waive or reduce registration fees when and if the Commission recommends registration for certain "volunteer" representatives of organizations.