

## **Office of the City Clerk**

### **Notice of Adoption of Amendments to Chapter 1 of Title 51 of the Rules of the City of New York Governing Lobbying.**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Office of the City Clerk (the “City Clerk”) by Section 48 of the New York City Charter and Section 3-212 of the Administrative Code of the City of New York (the “Administrative Code”) and in accordance with the requirements of Section 1043 of the New York City Charter, of the adoption by the City Clerk of an amendment to Chapter 1 of Title 51 of the Rules of the City of New York to implement the amendments to the Administrative Code enacted by Local Law 129 of 2013.

This rule was proposed and published on April 17, 2015. The required public hearing was held on May 19, 2015.

### **Statement of Basis and Purpose of Rule**

New York City’s Lobbying Law, Administrative Code § 3-211 *et seq.*, regulates the conduct of lobbyists and their clients. In 2013, the New York City Council enacted Local Law 129 of 2013, which furthered the Lobbying Law’s goal of promoting transparency in City government by expanding the definition of lobbying, increasing the reporting obligations of the City Clerk, amending the reporting requirements to decrease the burden on not-for-profit organizations and establishing late filing penalties to encourage compliance. Local Law 129 also created an amnesty program that will allow those lobbyists and clients who have never filed lobbying reports with the City Clerk to file without incurring any penalties.

This rule amends chapter 1 of title 51 of the Rules of the City of New York (“RCNY”) to conform the existing rules to the amendments enacted by Local Law 129 of 2013. Specifically, the rule:

- Establishes criteria for requesting advisory opinions;
- Sets forth the procedure for enrolling in e-Lobbyist;
- Defines the roles of principal officer, designee and compliance officer;
- Provides requirements for retainers and authorization letters;
- Includes a process to deactivate statements of registration;
- Sets forth the procedures for obtaining a waiver of late filing penalties;
- Establishes Lobbying Bureau enforcement procedures; and
- Creates an amnesty program for those who have not previously complied with the Lobbying Law.

Changes were made to the rule as initially proposed based upon written comments and comments delivered at the public hearing. These changes include but are not limited to:

- Require that the City Clerk notify the requestor of an advisory opinion when the opinion is published and send the requestor a copy of the opinion;

- Incorporate changes to the Administrative Enrollment section, including changes to the process of completing an Administrative Enrollment;
- Require that Principal Officers only be listed on registrations in which the Principal Officer lobbies on behalf of the registered client;
- Provide that the Principal Officer’s signature is required whenever practicable;
- Remove the requirement that Authorization Letters and Retainers include end dates;
- Add a provision regarding registration fees;
- Allow an extension request to be submitted at any time prior to a filing deadline; and
- Permit the Lobbying Bureau to serve notifications via email.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

### **Adopted Rule**

Section 1. Chapter 1 of Title 51 of the Rules of the City of New York, relating to implementation of the Lobbying Law, is hereby REPEALED.

§ 2. A new Chapter 1 of Title 51 of the Rules of the City of New York is hereby adopted to read as follows:

#### **§ 1-01 Definitions.**

When used in this chapter:

“Administrative Enrollment” means an enrollment in e-Lobbyist of a lobbyist or client effectuated by the City Clerk.

“ALJ” means Administrative Law Judge.

“Authorization Letter” means the letter submitted pursuant to sections 3-213(c)(3) and (4) of the Lobbying Law if a lobbyist is an employee of a client.

“City Clerk’s Address” means the City Clerk’s street address, its email address or fax number. Its street address is 141 Worth Street, Attn: Lobbying Bureau, New York, NY 10013. Its email address is lobbyist\_helpdesk@cityclerk.nyc.gov. Its fax number is (212) 669-4224.

“Co-lobbyist” means a lobbyist retained and compensated by another lobbyist to lobby on behalf of the latter’s client.

“Designee” means a person identified by the Principal Officer in e-Lobbyist as an authorized representative.

“DOI” means the Department of Investigation.

“DoITT” means the Department of Information Technology and Telecommunications.

“e-Lobbyist” means the City Clerk’s electronic filing system where lobbyists and clients submit and certify Reports as required by the Lobbying Law.

“Lobbying Law” means subchapter 2 of chapter 2 of title 3 of the Administrative Code of the City of New York.

“Lobbying Bureau” means the lobbying bureau of the Office of the City Clerk, City of New York, which is charged with enforcing the Lobbying Law.

“OATH” means the Office of Administrative Trials and Hearings.

“Principal Officer” means an employee who has the legal capacity to enter into a contract on behalf of a lobbyist or client.

“Retainer” means the written agreement, or the written statement of the substance of any oral agreement, between a lobbyist and client or a lobbyist and Co-lobbyist pursuant to sections 3-213(c)(3) and (4) of the Lobbying Law.

“Reports” mean all filings required by the Lobbying Law, including statements of registration, periodic reports, lobbyist annual reports, client annual reports, termination notices, fundraising and political consulting reports, and any amendments thereof, unless otherwise stated.

“Respondent” means the lobbyist or client in any action brought before OATH by the City Clerk pursuant to the Lobbying Law or the Rules.

“Rules” mean chapter 1 of title 51 of the Rules of the City of New York.

### **§ 1-02 Advisory Opinions.**

(a) The City Clerk will issue advisory opinions on a case-by-case basis in response to written requests from persons who reasonably believe they may be subject to the jurisdiction of the City Clerk.

(i) Written requests for advisory opinions must be delivered to the City Clerk’s Address by first-class mail, hand-delivery, email or fax. These requests must clearly set forth the question raised and a statement of facts prompting the inquiry.

(ii) The City Clerk will send a copy of the advisory opinion to the requestor by email or first-class mail when the opinion is published.

(b) The City Clerk may issue advisory opinions on questions relating to the Lobbying Law on its own initiative or in response to informal inquiries if, in the sole discretion of the City Clerk, an advisory opinion will facilitate compliance with the Lobbying Law or the Rules.

**§ 1-03 e-Lobbyist Enrollment.**

(a) Generally. Every lobbyist and client required to file Reports under the Lobbying Law must enroll in e-Lobbyist before filing any Reports. Enrollment in e-Lobbyist is only required once.

(1) Client Enrollment. If a client retains a lobbyist for the upcoming year on or before December 31 of the current year and the client anticipates exceeding the reporting threshold, the client must enroll no later than January 10. If a client retains a lobbyist on or after January 1, such client must enroll no later than ten (10) days after retaining such lobbyist.

(2) Lobbyist Enrollment. If a lobbyist is retained by a client for the upcoming year on or before December 31 of the current year and the lobbyist anticipates exceeding the reporting threshold, the lobbyist must enroll no later than January 10. If a lobbyist is retained by a client on or after January 1, such lobbyist must enroll no later than ten (10) days after being retained.

(b) Proof of a Corporate Filing. As part of its enrollment, a lobbyist or client must submit proof of a corporate filing. The name listed on the lobbyist's or client's enrollment must be identical to the name on the corporate filing.

(1) Forms. Proof of a corporate filing, showing the legal name of the entity, includes a copy of the:

(i) print out of the online database entry of the department of state, or a similar agency;

(ii) filing receipt from the department of state or a similar agency;

(iii) articles of incorporation;

(iv) certificate of incorporation;

(v) articles of organization;

(vi) certificate of limited partnership;

(vii) certificate of registration;

(viii) certificate of assumed name; or

(ix) certificate of type of not-for-profit corporation.

(2) Affidavit in Lieu of A Corporate Filing. If the lobbyist or client is not incorporated, it must submit an affidavit in lieu of a corporate filing. The name listed on the lobbyist's or client's enrollment must match the name on the affidavit.

(3) If the name on the proof of a corporate filing or affidavit in lieu thereof and the name on the lobbyist's or client's enrollment are not identical, the City Clerk will reject the enrollment.

(4) If a lobbyist or client includes both corporate and "doing business as" names in the enrollment, the City Clerk will reject the enrollment.

(c) *Non-Enrollment Extension.* If a lobbyist's client or a client's lobbyist fails to enroll by the applicable deadline, such lobbyist or client must request an extension to file any Report pursuant to section 1-11(a)(1) of the Rules. If such lobbyist or client fails to timely request an extension, the Report will be deemed late if the Report is filed after the filing deadline set forth in sections 1-11(c)(2) and (3) of the Rules.

(d) *Failure to Enroll.*

(1) If a lobbyist or client fails to enroll within the time set forth in sections 1-03(a)(1) and (2) of the Rules, the City Clerk will send a formal notice by certified mail, return receipt requested, advising the lobbyist or client of the violation.

(2) *Administrative Enrollment.*

(i) If the lobbyist or client fails to cure the violation within fourteen (14) business days after the date of mailing of the formal notice described in section 1-03(d)(1) of the Rules, the Lobbying Bureau may create an Administrative Enrollment on its behalf.

(A) The City Clerk will notify the lobbyist or client affected by the non-enrollment (hereinafter referred to as "affected lobbyist" and "affected client," respectively), as well as the lobbyist or client enrolled pursuant to section 1-03(d)(2)(i) of the Rules (hereinafter referred to as "administrative enrollee"), by email and certified mail, return receipt requested, that an Administrative Enrollment was created.

(B) The City Clerk will commence a proceeding in OATH, pursuant to section 1-13 of the Rules, seeking civil penalties against the administrative enrollee.

(ii) The City Clerk may also create an Administrative Enrollment pursuant to the following conditions:

(A) a lobbyist does not anticipate exceeding the reporting threshold for being retained or employed to lobby in a calendar year; or

(B) a client does not anticipate exceeding the reporting threshold for retaining or employing a lobbyist in a calendar year; and

(C) the non-enrollment of the lobbyist or client described in (A) or (B) of this subparagraph may result in the incurring of late filing penalties by the affected lobbyist or affected client required to file Reports on behalf of a lobbyist or client described in clause (A) or (B) of this subparagraph.

(iii) If an Administrative Enrollment is required pursuant to subparagraph (ii) of this subdivision, the affected lobbyist or affected client must notify the Lobbying Bureau of the need to create an Administrative Enrollment under this subparagraph prior to the statement of registration's filing deadline.

(iv) After the creation of an Administrative Enrollment, the City Clerk must notify the affected lobbyist and/or affected client by email and certified mail, return receipt requested that the Administrative Enrollment was created.

#### **§ 1-04 Principal Officer.**

(a) Generally. A lobbyist or client must designate a Principal Officer in e-Lobbyist. A lobbyist or client may not designate more than one Principal Officer at any given time.

(1) If the Principal Officer engages in lobbying activity as defined in section 3-211(c) of the Lobbying Law, the Principal Officer must be designated in e-Lobbyist as a "Certifying Principal Officer-Employee who lobbies" or any equivalent designation in any subsequent modification of e-Lobbyist.

(2) If the Principal Officer does not engage in lobbying activity as defined in section 3-211(c) of the Lobbying Law, the Principal Officer must be designated in e-Lobbyist as a "Certifying Principal Officer-Employee" or any equivalent designation in any subsequent modification of e-Lobbyist.

(b) Responsibilities. The Principal Officer must:

(1) complete the enrollment form and agree to the terms of use agreement in e-Lobbyist;

(2) be listed on all statements of registration in which the Principal Officer lobbies on behalf of the registered client;

(3) certify all Reports pursuant to section 3-222 of the Lobbying Law;

(4) be the recipient of all official communications sent by the Lobbying Bureau; and

(5) be the signatory on any documentation relating to:

(i) an application for a waiver or reduction of late filing penalties, as described in section 1-12(f) of the Rules;

(ii) the deactivation of an inadvertent statement of registration or other Reports, as described in section 1-10 of the Rules;

(iii) a Retainer or an Authorization Letter, whenever practicable;

(iv) a payment plan agreement entered into with the City Clerk to pay penalties in installments; or

(v) an application for amnesty, as described in section 1-16 of the Rules.

(c) The Principal Officer must not:

(1) violate the e-Lobbyist terms of use agreement; or

(2) disclose his or her e-Lobbyist password.

(d) *Change in the Principal Officer.*

(1) Upon a change in Principal Officer, the lobbyist or client must designate a new Principal Officer in e-Lobbyist.

(2) *Notification to Lobbying Bureau.* The lobbyist or client must submit notice of the change in Principal Officer by email or fax to the City Clerk's Address no later than five (5) business days after the change in Principal Officer.

(3) *Content.* The notice of change must include the new Principal Officer's name, email address, telephone number and business/organizational title. The email address must be the Principal Officer's email address.

#### **§ 1-05 Designee.**

(a) *Generally.* A Principal Officer may designate up to two persons to be Designees in e-Lobbyist. The Principal Officer must list each Designee's name and email address in the appropriate section of e-Lobbyist. Each designee will have his or her own e-Lobbyist account.

(b) A Designee may:

(1) enter information in Reports;

(2) receive copies of automatically generated emails sent to the Principal Officer from e-Lobbyist;

(3) communicate with the Lobbying Bureau regarding specific Reports filed by the lobbyist or client that the Designee represents;

(4) submit an extension request pursuant to section 1-11(a)(1) of the Rules; or

(5) submit any application or request listed in section 1-04(b)(5) of the Rules.

(c) A Designee must not:

- (1) certify Reports;
- (2) have access to the Principal Officer's e-Lobbyist password; or
- (3) disclose his or her e-Lobbyist password.

**§ 1-06 Compliance Officer.**

(a) Generally. Any of the following persons may be a compliance officer:

- (1) an individual employed by a lobbyist or client whose job duties include compliance with the Lobbying Law;
- (2) a third-party entity retained by a lobbyist or client to engage in compliance with the Lobbying Law; or
- (3) an attorney retained by a lobbyist or client.

(b) A compliance officer may:

- (1) assist the Principal Officer or the Designee in completing Reports;
- (2) communicate with the Lobbying Bureau regarding specific Reports filed by the lobbyist or client represented by the compliance officer;
- (3) submit an extension request pursuant to section 1-11(a)(1) of the Rules;
- (4) submit any item listed in section 1-04(b)(5) of the Rules; or
- (5) submit payment of any late filing or civil penalty incurred by the lobbyist or client represented by the compliance officer.

(c) A compliance officer need not be designated in e-Lobbyist.

(d) A compliance officer must not:

- (1) certify Reports; or
- (2) have access to the Principal Officer's or Designee's e-Lobbyist password.

**§ 1-07 Co-Lobbyist Filing Procedure.**

(a) Generally. When a Co-lobbyist engages in reportable lobbying activity, the lobbyist (hereinafter referred to as "Primary Lobbyist"), the Co-lobbyist and client involved in such activity must follow the reporting requirements described in this section.

(b) Reporting Requirements.

(1) The Primary Lobbyist.

(i) The Primary Lobbyist must file a statement of registration listing both its client and the Co-lobbyist together with:

(A) the Retainer between the client and the Primary Lobbyist;

(B) the Retainer between the Primary Lobbyist and the Co-lobbyist; and

(C) a letter signed by the client designating the Co-lobbyist to lobby on its behalf.

(ii) The Primary Lobbyist must file all applicable Reports and must detail the compensation paid by the client to the Primary Lobbyist. Compensation paid by the Primary Lobbyist to the Co-lobbyist must be reported as an expense of the Primary Lobbyist.

(iii) The start date listed on the Primary Lobbyist's statement of registration must be the start date listed in the Retainer between the client and the Primary Lobbyist.

(2) The Co-Lobbyist.

(i) The Co-lobbyist must file a statement of registration listing the client and the Primary Lobbyist together with:

(A) the Retainer between the Primary Lobbyist and the Co-lobbyist; and

(B) a letter signed by the client designating the Co-lobbyist to lobby on its behalf.

(ii) The Co-lobbyist must file all applicable Reports and must detail the compensation paid to the Co-Lobbyist by the Primary Lobbyist and any expenses.

(iii) The start date listed on the Co-lobbyist's statement of registration must be the date the client signed the letter designating the Co-lobbyist to lobby on its behalf, unless otherwise noted in such designation letter.

(3) The Client. The client must file the client annual report listing:

(i) the Primary Lobbyist;

(ii) the Co-lobbyist;

(iii) compensation paid to the Primary Lobbyist; and

(iv) any reimbursed expenses paid to the Primary Lobbyist and/or Co-lobbyist.

**§ 1-08 Requirements for Retainers and Authorization Letters.**

(a) Retainers.

(1) All Retainers must contain:

(i) the compensation payable to the lobbyist;

(ii) the duration of the term of representation, including the specific date the retainer takes effect (hereinafter “start date”);

(iii) the client’s name, which must be identical to the client’s name listed in the enrollment; and

(iv) the terms of any third-party payments for the lobbyist’s services, if applicable.

(2) The Principal Officer of each party to the Retainer must sign the Retainer, unless it is impracticable. If the Principal Officer is unable to sign the Retainer, another person with capacity to legally bind the parties to a contract must sign the Retainer.

(3) Whenever an amendment is made to a Retainer, the lobbyist or Co-lobbyist must file an amended statement of registration and submit the amended Retainer and the original Retainer within ten (10) days as required by section 3-213(d)(1) of the Lobbying Law.

(4) Failure to include any term of the Retainer required by this section of the Rules shall result in the statement of registration being deemed incomplete and may result in civil penalties pursuant to the procedures set forth in section 1-12(c)(3) of the Rules.

(b) Authorization Letters.

(1) All Authorization Letters must contain:

(i) the names of the employees whom the client anticipates will lobby on its behalf;

(ii) the time period during which such employees anticipate lobbying; and

(iii) the signature of the Principal Officer.

(2) Whenever a client anticipates that additional employees will engage in lobbying on its behalf, an amended statement of registration listing the additional employees must be filed within ten (10) days, along with a supplemental Authorization Letter and the original Authorization Letter, as required by section 3-213(d)(1) of the Lobbying Law.

(c) Start Date. (1) If there is no start date specified in the Retainer or Authorization Letter, the later of any date (i) stamped onto the Retainer or Authorization Letter or (ii) listed alongside the document’s signatures will be deemed the start date.

(2) The start date listed on the statement of registration must match the start date of the Retainer or Authorization Letter.

(3) The timeliness of the statement of registration will be determined by the start date, the signature date or the date of receipt of the duly executed Retainer.

(d) *End Date.* (1) A Retainer or Authorization Letter will be deemed invalid if the end date has already occurred at the time of submission. The lobbyist must submit a supplemental letter that the Retainer or Authorization Letter is still in effect in the current calendar year.

(2) If a Retainer or Authorization Letter does not contain a specific end date and the start date occurred in a previous filing year, the lobbyist must submit a supplemental letter, signed by the parties to the Retainer or Authorization Letter, stating that such Retainer or Authorization Letter remains in full force and effect in the given calendar year.

(3) The end date on the statement of registration must match either the end date of the (A) Retainer or Authorization Letter or (B) supplemental letter submitted pursuant to section 1-08(d)(1) or (2) of the Rules, if applicable.

(e) *Clarification Requirement.* If there is a discrepancy between the start and/or end dates in the Retainer or Authorization Letter and the statement of registration, the City Clerk may require that the lobbyist file an amended statement of registration and:

(1) correct the start and/or end date provided on the statement of registration; or

(2) submit a letter explaining the discrepancy; and

(3) submit copies of all effective Retainers or Authorization Letters.

### **§ 1-09 Registration Fees.**

Pursuant to section 3-213(e) of the Lobbying Law, statements of registration must be accompanied by (1) a fee of \$150 for the first statement of registration and (2) a fee of \$50 for each additional statement of registration.

### **§ 1-10 Deactivation of Reports by the City Clerk.**

(a) *Generally.* The City Clerk may, at the request of a lobbyist or client, deactivate inadvertently filed statements of registration, fundraising and political consulting reports, or client annual reports.

(b) *Inadvertently Filed Statements of Registration.*

(1) *Eligibility.* A statement of registration will be deemed inadvertently filed when, subsequent to the filing of a statement of registration, the City Clerk determines that:

- (i) there is no expectation that the reporting threshold will be exceeded;
  - (ii) the activity which was the basis for the filing of the statement of registration does not constitute lobbying activity under section 3-211(c) et seq. of the Lobbying Law;
  - (iii) the statement of registration was mistakenly filed as a result of a duplicate enrollment of the lobbyist or client; or
  - (iv) similar circumstances exist that necessitate deactivation by the City Clerk.
- (2) *Non-Eligibility.* The termination of a Retainer or Authorization Letter by either or both parties will render the pertinent statement of registration ineligible for deactivation.
- (3) *Process to Deactivate an Inadvertent Statement of Registration.*
- (i) The lobbyist must contact the Lobbying Bureau to discuss the inadvertent statement of registration. The City Clerk must make an initial determination as to whether the statement of registration is eligible for deactivation. If the statement of registration is deemed eligible, the City Clerk must notify the lobbyist of the determination.
  - (ii) No later than ten (10) business days after such notification, the lobbyist must submit an affidavit, on forms prescribed by the City Clerk, by first-class mail, email, fax or hand-delivery to the City Clerk's Address. The affidavit must include all facts and circumstances that led the lobbyist to conclude that the statement of registration was inadvertently filed and the reasons it should be deactivated.
  - (iii) If the statement of registration is deemed inadvertent, the City Clerk must deactivate the statement of registration.
- (4) *Removal of Data.* If a statement of registration is deactivated after the data in the Reports is submitted to other City agencies that collect and use lobbying data, the lobbyist may contact such agencies to request removal of such information from that agency's database.
- (c) *Other Reports Eligible for Deactivation.* (1) A client or lobbyist may request the deactivation of (i) a client annual report or (ii) a fundraising and political consulting report, respectively.
- (2) *Deactivation of a Client Annual Report: Eligibility.* A client annual report will be deemed inadvertently filed when the City Clerk determines that:
- (i) there is no expectation that the client will exceed the reporting threshold;
  - (ii) the activity which was the basis for filing the client annual report does not constitute lobbying activity under section 3-211(c) et seq. of the Lobbying Law;

(iii) the client annual report was mistakenly filed as a result of a duplicate enrollment of the lobbyist or client; or

(iv) similar circumstances exist that necessitate deactivation by the City Clerk.

(3) *Deactivation of a Fundraising and Political Consulting Report: Eligibility.* A fundraising and political consulting report will be deemed inadvertently filed when the City Clerk determines that:

(i) the filing of a statement of registration was inadvertent for any of the reasons stated in section 1-10(b)(1) of the Rules;

(ii) the fundraising and/or political consulting activity which was the basis for filing the report does not constitute fundraising and/or political consulting activity under sections 3-211(h) and (i) of the Lobbying Law;

(iii) the fundraising and political consulting report was mistakenly filed as a result of a duplicate enrollment of the lobbyist; or

(iv) similar circumstances exist that necessitate deactivation by the City Clerk.

(4) The process to deactivate an inadvertent client annual report or fundraising and political consulting report is the same process as set forth in section 1-10(b)(3) of the Rules.

(d) *Party who May Request Deactivation.* Only the Principal Officer of the entity that filed a Report may request deactivation of that Report.

(e) *Effect of Deactivation.* When the City Clerk deactivates any Report listed in section 1-10(a) of the Rules:

(1) the Reports cannot be viewed or accessed in e-Lobbyist;

(2) all periodic reports associated with a deactivated statement of registration will be deactivated and not viewable or accessible in e-Lobbyist;

(3) all deactivated Reports will not be viewable or accessible by the public;

(4) no additional Reports will be required;

(5) no further automatically generated emails from e-Lobbyist regarding such Reports will be sent to the lobbyist or client;

(6) original Retainers or Authorization Letters submitted with a deactivated statement of registration will be returned to the lobbyist or client;

(7) the deactivated Reports will not be subject to selection for a random audit; and

(8) the deactivated Reports will not be reactivated for any reason.

(f) *Reports Deactivated in Error.*

(1) If it is later determined that deactivation was made in error, any deactivated report must:

(i) be re-filed by the lobbyist or client;

(ii) be subject to penalties under the Lobbying Law, if applicable.

(2) The lateness of any re-filed Report will be based on the due date of the original Report and the date on which the deactivated Report was re-filed.

**§ 1-11 Extension of a Filing Deadline.**

(a) *Lobbyist or Client Extension Request.*

(1) A lobbyist or client may request an extension of the filing deadline of any Report. Requests for extensions must be received by the City Clerk prior to the filing deadline of the applicable Report. A request for an extension must be in writing and delivered by first-class mail, hand-delivery, email or fax to the Lobbying Bureau at the City Clerk's Address. Extensions will only be granted for good cause as determined by the City Clerk.

(b) *Technical Extension.* If, on the date of the filing deadline, a lobbyist or client is unable to file a Report due to a technical failure of e-Lobbyist, the City Clerk may grant an extension only when:

(1) The lobbyist or client contacts the Lobbying Bureau before the filing deadline by telephone or in person to resolve the technical issue that is preventing the filing of a Report by the filing deadline.

(2) If, after the consultation described in paragraph one of this subdivision, the lobbyist or client remains unable to file the Report, the lobbyist or client must submit, by email or fax, proof of the technical failure, no later than the close of business on the date of the filing deadline.

(3) Proof of a technical failure must include:

(i) A screenshot from e-Lobbyist containing the error message received when the filing was attempted;

(ii) Evidence of electronic communications between the lobbyist or client and the Lobbying Bureau determining that a technical failure occurred and remains unresolved as of the filing deadline; or

(iii) Similar evidence of a technical failure that the City Clerk deems appropriate.

(4) Lobbyists or clients who are unable to file a Report due to a technical failure of e-Lobbyist after the close of the Lobbying Bureau's office hours on the filing deadline may be granted a technical extension if they submit a screenshot from e-Lobbyist containing the error message. The screenshot must show that the time of the attempted filing was prior to the filing deadline.

(5) Under no circumstances will the following be considered a technical failure:

(i) Failure of the lobbyist or the client to change its Principal Officer;

(ii) The Principal Officer's inability to retrieve, change or reset his or her password;

(iii) Any technical failure that is reported after the filing deadline; or

(iv) The failure of the lobbyist or client to request an extension pursuant to section 1-03(c) of the Rules.

(6) A technical failure that is reported after the filing deadline will be subject to late filing penalties starting from the date of the filing deadline until the date such failure was reported to the City Clerk. If the City Clerk can verify that a technical failure prevented the filing, an extension will be issued and the late filing penalties will be tolled until the technical failure has been resolved.

(7) The City Clerk may verify the technical failure with DoITT. If DoITT concludes that a technical failure did not occur, the City Clerk will not provide a technical extension to the filer who submitted the request.

(c) *Automatic Extensions.*

(1) If the filing deadline of a Report falls on a Saturday, Sunday or City holiday, the filing deadline will be extended to the following business day.

(2) If a statement of registration cannot be filed due to the client's failure to enroll in e-Lobbyist pursuant to section 1-03 of the Rules, and an extension, as set forth in section 1-03(c) of the Rules, has not been requested, the filing deadline of the statement of registration will be extended to two (2) business days after the date the client enrolls or an administrative enrollment has been completed on the client's behalf.

(3) If a client annual report cannot be filed due to the lobbyist's failure to enroll in e-Lobbyist pursuant to section 1-03 of the Rules, and an extension, as set forth in section 1-03(c) of the Rules, has not been requested, the filing deadline of the client annual report will be extended to two (2) business days after the date the lobbyist enrolls or an administrative enrollment has been completed on the lobbyist's behalf.

(4) If there is a system-wide problem with e-Lobbyist the City Clerk will notify all filers of such problem and the filing deadline may be extended to a date established by the City Clerk upon consideration of the nature and length of the system-wide problem.

**§ 1-12 Enforcement of the Lobbying Law.**

(a) Generally. Any lobbyist or client who violates any provision of the Lobbying Law or Rules will be subject to the penalties set forth in section 3-223 of the Lobbying Law.

(b) Types of Violations. Lobbyists and clients may be subject to a penalty for the following:

(1) failure to enroll in e-Lobbyist as required by section 3-213(a)(3) of the Lobbying Law;

(2) failure to file any Report as required by sections 3-213, 3-215, 3-216, 3-216.1 and 3-217 of the Lobbying Law;

(3) failure to include a term of a Retainer or Authorization required by section 1-08 of the Rules;

(4) knowingly and willfully providing incorrect information to the City Clerk pursuant to section 3-223(a) of the Lobbying Law;

(5) failure to pay the registration fee as required by section 3-213(e) of the Lobbying Law;

(6) failure to fully cooperate with any inquiry made by the City Clerk in accordance with section 3-212(a) of the Lobbying Law;

(7) failure of a Principal Officer to certify any Report as required by section 3-222 of the Lobbying Law;

(8) failure, by the applicable deadline in the Lobbying Law, to:

(i) enroll in e-Lobbyist pursuant to section 3-213(a)(3) of the Lobbying Law and section 1-03(a) of the Rules;

(ii) file any Report, including failing to complete any required portion thereof or supplying incorrect information, pursuant to sections 3-213; 3-215; 3-216; 3-216.1 and 3-217 of the Lobbying Law;

(iii) file a Retainer or Authorization Letter as required by sections 3-213(c)(3) and (4) of the Lobbying Law;

(iv) respond to a lawful subpoena issued by the City Clerk pursuant to section 3-212(a) of the Lobbying Law; or

(v) pay any civil penalty assessed by the City Clerk in accordance with section 3-223 of the Lobbying Law;

(9) the Principal Officer or Designee intentionally disclosing his or her e-Lobbyist password in violation of section 1-04(c)(2) or 1-05(c)(3) of the Rules, respectively;

(10) failure to comply with the terms of use agreement of e-Lobbyist pursuant to section 3-212(a) of the Lobbying Law; or

(11) any other act or omission that constitutes a violation of the Lobbying Law or Rules.

(c) *Enforcement Procedures.*

(1) *Late Filings.*

(i) *Generally.* Any lobbyist or client who fails to file a Report by the deadline for such Report will be subject to late filing penalties. Pursuant to section 3-223(c)(2) of the Lobbying Law, a lobbyist or client who has never previously filed a Report will be charged a late filing penalty of ten dollars (\$10) per day for each Report that is late and all other lobbyists or clients will be charged a late filing penalty of twenty-five dollars (\$25) per day for each Report that is late. Late filing penalties accrue from the day after the filing deadline through, and including, the day the Report is filed, and include weekends and holidays.

(ii) *Notice.* Pursuant to section 3-223(c)(1) of the Lobbying Law, following either the failure to file or the late filing of a Report, the City Clerk will send a notice by email and certified mail, return-receipt requested, advising the lobbyist or client of the following:

(A) if a Report has not been filed, that such Report must be filed and the applicable late filing penalty paid no later than fourteen (14) business days after the date of emailing or mailing of the notice by the City Clerk, whichever is earlier; or

(B) if a Report has been filed late, that the applicable late filing penalty must be paid no later than fourteen (14) business days after the date of emailing or mailing of the notice by the City Clerk, whichever is earlier.

(iii) *Formal Action.* If the lobbyist or client fails to file the late Report or satisfy the late filing penalty within fourteen (14) business days of the emailing or mailing of the notice by the City Clerk, whichever is earlier, the City Clerk may commence a formal proceeding in OATH, pursuant to section 1-13 of the Rules. The City Clerk, in addition to late filing penalties, may seek civil penalties in an amount set forth in section 1-12(d)(1) of the Rules.

(2) *Unreported Lobbying Activity.*

(i) *Initiation of Investigation.*

(A) *Public Complaint.* If a member of the public suspects a person, business or organization is engaged in unreported lobbying, a complaint may be submitted in writing to the City Clerk's Address by first-class mail, hand-delivery, email or fax.

(B) *City Clerk Investigation.* The City Clerk may initiate an investigation of suspected unreported lobbying at its discretion.

(ii) *Notices.*

(A) *Initial Notice.* Upon the commencement of an investigation of unreported lobbying, the City Clerk will notify the subject of the complaint (hereinafter "Subject") by certified mail, return-receipt requested, of the allegations.

(B) *Answer to Initial Notice.* The Subject may respond in writing to the initial notice and explain, rebut or provide other information concerning the allegations. The response must be in writing, delivered by first-class mail, hand-delivery, email or fax to the Lobbying Bureau at the City Clerk's Address no later than fourteen (14) business days after the date of mailing of the initial notice. The Subject may request an extension to answer for good cause and must make such request in writing and deliver it by first-class mail, hand-delivery, email or fax to the Lobbying Bureau at the City Clerk's Address prior to the deadline.

(C) *Failure to Answer the Initial Notice.* If the Subject fails to answer the initial notice, the City Clerk will make a determination of the allegations contained in the complaint based upon the available evidence.

(iii) *Investigation.* The City Clerk will investigate the allegations contained in the complaint by reviewing any and all available evidence.

(iv) *Determinations.*

(A) *Determination of No Probable Cause.* If the City Clerk determines that there is no probable cause that a violation of the Lobbying Law or the Rules has occurred, the matter will be dismissed and the Subject will be notified in writing of such dismissal.

(B) *Determination of Probable Cause.* If the City Clerk determines that there is probable cause that a violation of the provisions of the Lobbying Law or the Rules has occurred, the City Clerk will issue a finding of probable cause.

(v) *Formal Action.* Upon determining that probable cause exists, the City Clerk may commence a proceeding in accordance with the procedures set forth in one of the following sections:

(A) section 1-12(c)(1) of the Rules for the imposition of late filing penalties; or

(B) section 1-13 of the Rules to seek civil penalties in an amount set forth in section 1-12(d) of the Rules, if applicable.

(3) Other Violations. Any violation of the Lobbying Law or Rules not punishable under sections 3-223(a), (b) or (c) of the Lobbying Law will be enforced pursuant to the following procedure:

(A) Formal Notice. The City Clerk will send a formal notice by email and certified mail, return-receipt requested, advising the lobbyist or client of the violation.

(B) Formal Action. If the lobbyist or client fails to cure the violation within fourteen (14) business days after the date of emailing or mailing of the formal notice, whichever is earlier, the City Clerk will commence a proceeding in OATH, pursuant to section 1-13 of the Rules. In such proceeding, the City Clerk will seek civil penalties in an amount set forth in section 1-12(d) of the Rules.

(d) Civil Penalties.

(1) Pursuant to section 3-223(c) and (d) of the Lobbying Law, lobbyists or clients that fail to cure a violation within fourteen (14) business days after the date of emailing or mailing of a notice to cure, whichever is earlier, will be subject to a civil penalty based upon the following schedule:

<u>Days a violation was not cured after the expiration of the cure period</u>	<u>Civil penalty per violation not cured within the cure period</u>
<u>1-30</u>	<u>\$1,000</u>
<u>31-60</u>	<u>\$1,500</u>
<u>61-90</u>	<u>\$2,000</u>
<u>91-120</u>	<u>\$2,500</u>
<u>121-150</u>	<u>\$3,000</u>
<u>151-180</u>	<u>\$3,500</u>
<u>181-210</u>	<u>\$4,000</u>
<u>211-240</u>	<u>\$4,500</u>
<u>More than 240</u>	<u>\$5,000 - \$20,000</u>

(2) Notwithstanding the schedule provided in section 1-12(d)(1) of the Rules, the City Clerk may consider aggravating and mitigating factors based on the frequency and extent of the lobbyist's or client's record of violations in increasing or decreasing any civil penalty.

(e) Settlement or Satisfaction of a Violation.

(1) Generally.

(i) A violation of the Lobbying Law may be settled or satisfied by filing a Report, if applicable, and paying any late filing penalty or civil penalty, if applicable.

(ii) If a violation is settled or satisfied after a formal proceeding begins in OATH, a notice of withdrawal without prejudice will be filed by the City Clerk with OATH and served upon the lobbyist or client by first-class mail or email.

(f) *Waiver or Reduction of Late Filing Penalties.* If a lobbyist or client is subject to a late filing penalty, a lobbyist or client may request a waiver or reduction of such late filing penalty pursuant to section 3-223(c)(2) of the Lobbying Law.

(1) A request for a waiver or reduction of a late filing penalty must be received by the City Clerk no later than fourteen (14) business days after the date of emailing or mailing of the notice, whichever is earlier, issued by the City Clerk pursuant to section 1-12(c)(1)(ii) of the Rules. Such request must be sent in writing by first-class mail or hand-delivery to the City Clerk's Address on forms prescribed by the City Clerk.

(2) A request for a waiver or reduction must include:

(i) a cover letter setting forth the applicant's name, business address and name of the Principal Officer; and

(ii) an affidavit stating:

(A) The applicant's annual operating budget;

(B) Whether the applicant lobbies solely on its own behalf;

(C) The number of lobbying matters, number of hours spent on such matters and, for periodic reports, the amount of compensation and expenditures that were not reported during the relevant period;

(D) A narrative detailing significant impediments to the timely filing of the Report; and

(E) Any other facts that may be helpful to the City Clerk in making a determination.

(3) Significant impediments, as used in section 1-12(f)(2)(ii)(D) of the Rules, are limited to:

(i) the death of the Principal Officer or Designee or immediate family member thereof;

(ii) the illness of the Principal Officer or Designee; or

(iii) a force majeure.

(4) To the extent possible, all statements made in the affidavit should be corroborated by supporting documents that can be either submitted for review or made available for inspection by the City Clerk.

(5) The City Clerk may request additional evidence to support any statements made in the affidavit. If additional documentation is requested, the applicant must submit such documentation by first-class mail or hand-delivery to the City Clerk's Address no later than seven (7) days after the date of mailing of the City Clerk's request.

(6) The City Clerk will notify the applicant in writing of its determination regarding the request as soon as practicable. Any such determination made by the City Clerk is final. If the waiver or reduction request is denied, payment of the applicable late filing penalty must be made no later than fourteen (14) days after the date of mailing of such denial.

### **§ 1-13 Formal Proceedings.**

(a) *Designation of OATH.* Pursuant to New York City Charter § 1048(a), the City Clerk designates OATH to conduct all hearings involving violations of the Lobbying Law. OATH's Rules of Practice govern all aspects of the proceedings except as provided in this section of the Rules.

(b) *Petition.* The City Clerk initiates a formal proceeding in OATH by serving a petition on the Respondent's Principal Officer by email and certified mail, return receipt requested. If the Respondent notifies the City Clerk that Respondent is represented by counsel before the OATH proceeding begins, the City Clerk will serve the petition upon both Respondent's Principal Officer and its counsel.

(c) *Answer.* The Respondent must serve an answer to the petition upon the Petitioner by email, mail or fax to the City Clerk's Address no later than ten (10) business days from the mailing of the petition.

(d) *Effect of Failure to Answer.* If Respondent fails to serve an answer within ten (10) business days, all allegations in the petition will be deemed admitted and OATH will proceed to hold a default hearing. At the default hearing, the City Clerk shall submit, for the record, an offer of proof establishing the factual basis on which the presiding ALJ may issue a report and recommendation. If Respondent fails to respond specifically to any individual allegation in the petition, such individual allegation or charge shall be deemed admitted.

(e) *Adjournment.* A hearing may be adjourned upon written consent of both parties submitted to the ALJ no later than two (2) days prior to the hearing. If consent of both parties cannot be obtained, an adjournment may be granted at the discretion of the ALJ for good cause, upon the request of either party or upon the ALJ's own motion, with notice to the parties.

(f) *Depositions.* Depositions may be taken without leave from OATH as deemed necessary by the City Clerk.

(g) *Decision after the Hearing.* (1) The City Clerk will issue a final decision in writing after the hearing based exclusively on the record and the transcript of the hearing. The City Clerk shall not be bound by the ALJ's recommendation in whole or in part. The final decision may

consist of a letter from the City Clerk concurring with the ALJ's recommended findings and disposition. The City Clerk's decision after the hearing constitutes a final agency determination.

(3) The City Clerk must send a copy of the decision by email and certified mail to the Respondent and its counsel, if applicable.

(4) In the event that a decision is adverse to the Respondent, in whole or in part, the Respondent may seek judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

### **§ 1-14 Duty to Cooperate.**

(a) Lobbyist's and Client's Duty to Cooperate. A lobbyist or client must cooperate with the City Clerk.

(b) City Clerk's Duty to Report to DOI. If the City Clerk determines, on the basis of a Report, complaint, investigation or other information available to the City Clerk that a willful violation of the Lobbying Law has been, may have been or will be committed, the City Clerk will report the determination and any related information to DOI.

### **§ 1-15 Requests to Review Reports Filed with the Lobbying Bureau.**

(a) Records. All Reports must be:

(1) kept in electronic form at the Office of the City Clerk;

(2) available for public inspection upon request; and

(3) posted on the Internet as soon as practicable.

(b) Viewing Records. Requests to view Reports may be presented by hand-delivery, first-class mail, fax or email to the Lobbying Bureau at the City Clerk's Address.

(c) Copies of Records. Copies of Reports may be purchased for twenty-five (25) cents per page.

### **§ 1-16 Amnesty.**

(a) Generally. On January 1, 2016, a six-month amnesty program shall commence pursuant to section 3-223(i) of the Lobbying Law.

(b) Eligibility.

(1) Amnesty will be available to:

(i) any lobbyist who was required to have filed, but has never filed, a statement of registration pursuant to section 3-213 of the Lobbying Law at any time on or after December 10, 2006; or

(ii) any client who was required to have filed, but has never filed, an annual report pursuant to section 3-217 of the Lobbying Law at any time on or after December 10, 2006.

(2) Parties who act as both lobbyist and client will be eligible for amnesty only in the capacity in which such party qualifies pursuant to subdivision (b) of this section. If the applicant qualifies as both a lobbyist and a client, the applicant shall be eligible for amnesty in both capacities.

(3) Amnesty will not be available to any lobbyist or client who is:

(i) the subject of any pending criminal investigation relating to any violation of the Lobbying Law; or

(ii) a party to any pending criminal litigation in any court of law relating to any violation of the Lobbying Law.

(c) *Notice of Intent to Participate.* Prior to January 1, 2016, a lobbyist or client may file a notice of intent to participate in the amnesty program on forms prescribed by the City Clerk. This filing entitles the lobbyist or client to the benefits provided by section 3-223(i)(2) of the Lobbying Law.

(i) *Effect of Notice of Intent to Participate.*

(A) Once a notice of intent to participate is filed, the participant must comply with the Lobbying Law and file Reports immediately, if applicable.

(B) The Clerk will not assess any late filing penalties or civil penalties against the participant for the period from December 10, 2006 to the date of the filing of the notice of intent to participate. Such late filing penalties and civil penalties will be waived if the participant files a written application for amnesty and complies with all applicable provisions of the Lobbying Law.

(C) In order to qualify for amnesty, the participant must also file an application, as described in section 1-16(d), between January 1, 2016 and June 30, 2016.

(d) *Amnesty Requirements.* (1) To apply for amnesty, a lobbyist or client must file an application on forms prescribed by the City Clerk. The amnesty application must include:

(i) the applicant's name and business address;

(ii) a summary of the lobbying activities, fundraising activities, or political consulting activities performed by the lobbyist from January 1, 2015, to either (A) the date that the amnesty

application was filed, or (B) the date the notice of intent to participate, as described in section 1-16(c) of the Rules, was filed; and

(iii) a certification stating: “All statements contained in the application are true, accurate and complete and are made under the penalty of perjury. In addition, it is understood that the Office of the City Clerk will act in reliance on the statements made in this application.”

(2) *Submission of Application.* Applications must be submitted by first-class mail or hand-delivery to the City Clerk’s Address, Attn: Amnesty. All applications must be received no later than 11:59 p.m. Eastern Standard Time on June 30, 2016.

(e) *Effect of Amnesty.* If amnesty is granted, the City Clerk will waive any late filing and civil penalties that could be assessed against such lobbyist or client, as set forth in section 3-223 of the Lobbying Law, for the period from December 10, 2006 to the earlier of (i) the date the application was filed or (ii) the date the notice of intent was filed. Such lobbyist or client shall not be subject to any criminal penalties authorized by section 3-223 of the Lobbying Law, for the period from December 10, 2006 to the earlier of (i) the date the application was filed or (ii) the date the notice of intent was filed.

(f) *Denial of Amnesty. (1) Reasons for Denial.* An applicant may be denied amnesty if:

(i) the applicant is ineligible pursuant to section 1-16(b) of the Rules; or

(ii) the application does not contain the information required by section 1-16(d) of the Rules.

(2) *Process of Denial.* If the City Clerk determines that an applicant is not entitled to amnesty, the City Clerk will issue a written statement describing the reasons for such denial and will send the statement to the lobbyist or client as soon as practicable.

(3) *Pending Criminal Investigation.* If the City Clerk determines that an applicant is not eligible for amnesty because such applicant is the subject of a pending criminal investigation or is a party to pending criminal litigation, and such criminal investigation or litigation does not result in any criminal liability, such applicant may re-file for amnesty as long as the amnesty program has not ended. The applicant must re-submit its original application, any requisite documentation, the letter from the City Clerk determining that the applicant is not eligible for amnesty, and evidence, satisfactory to the City Clerk, that the criminal investigation or liability did not result in any criminal liability.

(4) *Effect of Denial of Amnesty.* If amnesty is denied, any applicable penalties will not be waived and the City Clerk may proceed with any administrative, civil or criminal action against the lobbyist or client.