



# **OFFICE OF THE CITY CLERK LOBBYING BUREAU**

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**NYC Lobbying: Overview including a focus on the  
Amended Rules and Amnesty Program**

# **BRIEF HISTORY OF THE LOBBYING LAW**

- Local Law 79 of 1972: First attempt to regulate lobbying activity in New York City.
  - Municipal Legislative Advocate
- The law has been amended several times leading to increase transparency in government.
  - Local Law 86 of 1973
  - Local Law 14 of 1986
  - Local Law 67 of 1993
  - Local Law 46 of 2003
  - Local Law 15 of 2006
    - Substantially increased public disclosure of lobbying activities,
    - Created much needed enforcement mechanisms, and
    - Expanded the City Clerk's powers in administering the lobbying law.
  - Local Law 129 of 2013
    - Based on recommendations made by the Lobbying Commission.

# **LOCAL LAW 129 OF 2013**

- Expanded the definitions of lobbying (Ad. Code §3-211).
- Increased the reporting obligations of the Clerk (Ad. Code §§3-212; 221).
- Changed the filing requirements for:
  - Statements of registration (Ad. Code §3-213);
  - Periodic reports (Ad. Code §3-216);
  - Fundraising and political consulting reports (Ad. Code §3-216.1);
  - and
  - Client annual reports (Ad. Code §3-217).
- Added a mandatory training requirement (Ad. Code §3-219).
- Amended the late filing penalties (Ad. Code §3-223).

## **AMENDED LOBBYING RULES**

- The amended rules took effect on November 4, 2015.
- The rules amended chapter 1 of title 51 of the Rules of the City of New York, by replacing the former version in its entirety, to conform to Local Law 129 of 2013.

# **AMENDED LOBBYING RULES**

- Set forth procedures for enrolling in e-Lobbyist;
- Define principal officer, designee and compliance officer;
- Describe the requirements for retainers and authorization letters;
- Set forth the requirements for filing extensions;
- Discuss the procedures for obtaining a waiver of late filing penalties; and
- Describe the procedures for the amnesty program.

# WHAT IS LOBBYING?

Eleven actions constitute lobbying, including the attempt to influence:

1. The introduction, passage, defeat or substance of local legislation or resolution by the city council whether or not it has been introduced;
2. The support, opposition, approval or disapproval of local legislation or resolution by the mayor whether or not it has been introduced;
  - Attempting to influence the introduction of legislation is lobbying.
  - Grass roots lobbying is reportable if the campaign focuses on specific legislation.
  - Monitoring legislative activity is not lobbying.
3. Any determination with respect to the solicitation, award or administration of a contract, grant, loan, or agreement involving the disbursement of public monies;
  - Actively seeking discretionary funding may be lobbying.
    - The mere completion of a form for funding is not lobbying.
    - Responding to a Council member's request for information about how much funding an entity needs is not lobbying.
  - Soliciting a contract with the city may be lobbying (if not within the regular course of the procurement process).

## WHAT IS LOBBYING? (CONT.)

4. Any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation;
  - Appearances before community boards or city planning with respect to: ULURP applications, zoning variances and special permits is lobbying.
  - Appearances before the Board of Standards and Appeals with respect to special permit and zoning variances do not constitute lobbying.
  - Attempts to influence city planning with respect to an application to amend the zoning resolution or its maps constitute lobbying.

**NOTE:** May be deemed a LOBBYIST regardless of job title. The analysis hinges on the activity/communications engaged in. Lawyers, architects, executive directors/board members of a not-for-profit may be a lobbyist if they are attempting to influence.

## **WHAT IS LOBBYING? (CONT.)**

5. Any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent;
6. The proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law;
7. The decision to hold, timing or outcome of any rate making proceeding before an agency;
8. The agenda or determination of a board or commission;
9. Any determination regarding the calendaring or scope of any city council oversight hearing;
10. The issuance, repeal, modification or substance of a mayoral executive order; or

## **WHAT IS LOBBYING? (CONT.)**

11. Any determination made by an elected city official or an officer or employee of the city to support or oppose any state or federal legislation, rule or regulation whether or not it has been introduced.
  - Funding for Sandy from the federal government.
  - Funding for universal pre-k from the state government.

# **WHAT ACTIVITIES ARE NOT LOBBYING?**

Eleven types of actions are excluded from the lobbying law:

1. Persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency;
  - Testimony at a public hearing is not lobbying (includes submission of written comments).
  - Responding to a Council member's request for how much discretionary funding an entity needs is not lobbying.
  - Any communications with a Council member, the mayor or other elected city official or agency during the course of a meeting held at the request of such person is not lobbying.
    - But if you change the topic of conversation and attempt to influence (with respect to one of the definitions of lobbying) then the meeting may become a reportable lobbying activity.

## WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)

2. Contractors or prospective contractors who communicate with or appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process, the administration of a contract, or the audit of a contract, except communications with elected officials or deputies of elected officials;
  - Communications with an agency regarding an RFP or a current contract with the City is not lobbying, but may become lobbying once outside the regular course of procurement planning.
  - Communications prior to the issuance of an RFP may be deemed lobbying.
  
3. Persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates, or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action;
  - An attorney hired to advise a client on proposed legislation.

## **WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)**

4. Newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements;
  - Op-eds may be considered lobbying.
5. Persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation;
6. Persons who appear before an agency in an adjudicatory proceeding;
  - If the decision-maker has no discretion then the proceeding is deemed adjudicatory. See the advisory opinions for more details.
7. Persons or organizations who advertise the availability of goods or services with fliers, leaflets or other advertising circulars;

**WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)**  
**(ARCHITECTS & ENGINEERS)**

8. Appearances before community boards provided that the proceeding before the final decision-making board or commission is adjudicatory;
9. Designing/drafting plans even if work is preceded or followed by lobbying activity;
10. Work performed in connection with capital projects provided that such work is performed pursuant to a contract with the City; or
11. Actions designated as minor by the City Clerk.

# **WHAT IS LOBBYING: IMPORTANT NOTES**

- Not all communications with Council members are lobbying.
  - Requesting a letter of recommendation for a constituent.
  - Inviting a Council member to speak at an event for a not-for-profit.
    - To classify as lobbying, the activity must fall within the definitions.
- Activity that is not deemed lobbying may become lobbying at any time. Focus on the facts.
  - Example: A Council member requests a meeting to discuss a discretionary funding request and attendees discuss a zoning application before city planning.
- Are you attempting to influence? Job title is irrelevant. Anyone can be deemed a lobbyist under the NYC Lobbying Law.

# WHEN IS LOBBYING REPORTABLE?

1. Did the entity engage in reportable lobbying activity?
  - **Lobbying Firm**: Was your firm retained or designated by a client(s) to engage in lobbying?
  - **Lobbyist/client Filer**: Does your organization's or business's employees engage in lobbying on behalf the entity?
2. Is the activity excluded from lobbying?
3. Was the reporting threshold for lobbying met because the entity exceeded \$5,000 in combined compensation and expenses in a calendar year?
  - \$10,000 for architects and engineers

## **WHEN IS LOBBYING REPORTABLE? (CONT.)**

To determine if the reporting threshold will be met, calculate the amount of compensation and expenses:

### **Compensation**

#### **Lobbying Firms:**

- Cumulative compensation paid by all clients for an entire year.
- If exceed threshold, then must report all clients, even pro-bono.
- If engage in both lobbying and non-lobbying activity must pro-rate portion of the compensation for lobbying efforts.
  - Lobbying efforts include: preparation work, staff meetings, telephone calls, time spent making photocopies.

#### **Lobbyist/client Filer:**

- Pro-rate the portion of the lobbying employees' salaries toward the time spent lobbying (including efforts) for the entire year.
- Cumulative for all employees lobbying on the entity's behalf.

**Expenses:** Total amount of expenses incurred for lobbying for:

- **Lobbying Firms:** All clients for calendar year or
- **Lobbyist/client filer:** The entire entity for the calendar year.

# **HOW TO COMPLY WITH THE LOBBYING LAW**

- Statement(s) of registration (client is required to enroll prior to the lobbyist filing the statement of registration),
- Periodic reports,
- Fundraising and political consulting reports (if applicable),
- Client annual report (to be completed by the client), and
- Subject to other restrictions outlined in the Administrative Code.

# ENROLLMENT PROCESS

- Prior to filing a statement of registration, both the lobbyist and the client must enroll.
  - Lobbyist/client filers enroll as both a lobbyist and a client.
- If the client does not enroll a statement of registration cannot be filed for that client.
- One-time process.
- No fee to enroll.
- Terms of use agreement.
- Submit proof of corporate filing.
  - Print-out of registration with NYS Department of State

The screenshot displays the NYC Lobbyist Filing System website in a Windows Internet Explorer browser. The page title is "E-LOBBYIST | New York City Lobbyist Filing System". The main content area features a welcome message and instructions for enrollment. Below the text, there are two distinct sections: "Log In:" and "Business Enrollment:". The "Log In:" section includes input fields for "EMAIL" and "PASSWORD", a "Forgot Your Password or Change Your Password?" link, and a yellow "Log In >>" button. The "Business Enrollment:" section contains explanatory text and a yellow "Enroll >>" button. A "DISCLAIMER" is located at the bottom of the page. The browser's address bar shows the URL: "https://www.nyc.gov/portal/site/et.lobbyist/template.8172bf07b1767c5d06a6aad42d299d".

# **ENROLLMENT PROCESS (CONT.)**

## **Client Enrollment:**

- If a client retains a lobbyist on or before December 31, the client must enroll no later than January 10.
- If a client retains a lobbyist on or after January 1, the client must enroll within ten (10) days.

## **Lobbyist Enrollment:**

- If a lobbyist is retained by a client on or before December 31, the lobbyist must enroll no later than January 10.
- If a lobbyist is retained by a client on or after January 1, the lobbyist must enroll within ten (10) days.

# **PRINCIPAL OFFICER (“PO”)**

- As part of the enrollment process, each entity must appoint a PO.
- A PO is a person who has the legal capacity to enter into a contract on behalf of the entity. The PO must be employed by the entity.
- The PO must complete the enrollment form.
- Only the PO can certify reports. A report is not deemed filed until certified by the PO.
- A PO cannot disclose his or her password for any reason whatsoever.
- Pursuant to the new rules, a change in PO must be submitted by email or fax no later than five (5) business days after the change occurs.
- To change the PO, the new PO must complete the change in PO form available on our website.

# DESIGNEE & COMPLIANCE OFFICER

- A Designee and Compliance Officer can also assist in complying with the lobbying law.
- The PO may select up to two persons to be **Designees** (an authorized representative). The PO enters the name and email address of the Designee in e-Lobbyist. Each Designee will have his or her own e-Lobbyist account.
- The Designee may enter information in reports, but cannot certify reports or have access to the PO's e-Lobbyist password.
- A **Compliance Officer** is an individual retained by a lobbyist whose job duties include compliance work. A Compliance Officer can be a third party and does not have to be listed as a Designee in e-Lobbyist.
- A Compliance Officer may assist the PO or Designee in completing reports, but cannot certify reports or have access to the PO's or Designee's e-Lobbyist password.

## **STATEMENT OF REGISTRATION (Lobbying Firms)**

- If retained prior to December 31 of the previous year, must file by January 15.
- If retained after December 31, must file within 15 days.
- If the statement of registration will be delayed due to the failure of the client to enroll, the lobbyist **MUST** submit an extension request prior to filing deadline.
- The statement of registration is a client based filing.
- Registration Fee:
  - \$150 for the first statement of registration.
  - \$50 for each statement of registration thereafter.
- Required to be filed each year - automatically expires on December 31.
- Anticipatory filing: a description of the lobbying activities the organization anticipates it will be engaging in the upcoming year for the client.
- Filed in the name of the firm and list employees that you anticipate will lobby for each client in upcoming year.

# **RETAINER AGREEMENT (Lobbying Firms)**

The lobbying firm must upload the retainer agreement to the statement of registration. The firm can upload it directly through e-Lobbyist or mail it for upload by the Lobbying Bureau.

- All retainers must contain:

1. The compensation payable to the lobbyist;
2. The name of the client which must match the enrollment name;
  - The enrollment name must be the correct corporate name (name registered with NYSDOS or foreign equivalent).
3. The duration of the term of representation, including the start date; and
4. The terms of any third-party payments for the lobbyist's services.

The PO of each party to the retainer must sign it, unless it is impracticable.

- If the PO is unable to sign the retainer, another person with the legal capacity to bind the parties to a contract must sign.

Whenever an amendment is made to a retainer, the lobbyist must file an amended statement of registration and submit the amended retainer together with the original retainer within ten (10) days.

# **STATEMENT OF REGISTRATION**

## **(Lobbyist/Client Filers)**

- Must file no later than 15 days of anticipating exceeding the threshold for lobbying.
  - May be the day lobbying begins.
- File one statement of registration per year.
- Automatically expires on December 31.
- \$150 registration fee.
- Filed in the name of the entity and list the employees the entity anticipates will be lobbying on its behalf.

## **AUTHORIZATION LETTER (Lobbyist/Client Filers)**

Lobbyist/client filers must upload an “authorization letter” to the statement of registration. It can be uploaded directly through e-Lobbyist or mailed for upload by the Lobbying Bureau. There is a sample authorization letter on our website.

- All authorization letters must contain:
  1. The names of the employees the lobbyist/client filer anticipates will lobby on its behalf for the calendar year;
  2. The time period the employees will be lobbying; and
  3. The signature of the Principal Officer.

# PERIODIC REPORTS

- Six periodic reports per year (if the start date is January 1).
  - Must file all periodic reports for the periods that fall within the start and end dates listed on the statement of registration.
- **Reporting Periods:**
  - First Period: January 1 through last day of February, due March 15;
  - Second Period: March 1 through April 30, due May 15;
  - Third Period: May 1 through June 30, due July 15;
  - Fourth Period: July 1 through August 31, due September 15;
  - Fifth Period: September 1 through October 31, due November 15;  
and
  - Sixth Period/Annual: November 1 through December 31, due January 15.
- If a filing deadline falls on a weekend or city holiday, the deadline is extended to the next business day.

# **PERIODIC REPORTS (CONT.)**

Details the lobbying activity that takes place in the given period.

- **Lobbying Firms** (client specific information):
  - The employees who lobbied for the client;
  - A description of the subject(s) lobbied;
  - The person/agency lobbied (contact AND decision-maker);
  - The compensation “billed” to client; and
  - The expenses incurred for lobbying in the period including expenses reimbursed by the client.
- **Lobbyist/client Filers:**
  - The employees that lobbied for the entity for the period;
  - A description of the subject(s) lobbied;
  - The person/agency lobbied (contact AND decision-maker); and
  - The pro-rated portion of the salary of the employees that lobbied for the period (itemized by employee).
- Once a statement of registration is filed, a periodic report must be filed **EVERY PERIOD** regardless of whether lobbying activity took place.

# **FUNDRAISING AND POLITICAL CONSULTING REPORT**

If the entity files a statement of registration and in the given year or 6 months prior to filing the registration, any person that is required to be listed on the statement of registration engages in fundraising or political consulting, the entity is required to file the fundraising and political consulting report.

- **Fundraising** – soliciting or collecting campaign contributions for a candidate for nomination or election for:
  - Mayor;
  - Public Advocate;
  - Comptroller;
  - Borough President;
  - Council; or
  - Any City public servant running for any office (City, State, Federal).
- **Political Consulting** – Any lobbyist who receives compensation
  - From a candidate or elected official to participating in the campaign by providing political advice for the above listed offices or
  - To provide political advice to the mayor, public advocate, comptroller, borough president or council member.
- Report pertinent information regarding such activities, including expenses.
- Follows the same schedule as periodic reports, but only file if engage in activities.
- Does not include personal campaign contributions.

# CLIENT ANNUAL REPORT

- Filed by clients who retain a lobbyist to lobby on their behalf and exceed \$5,000 in compensation for such lobbying.
  - Cumulative threshold – includes compensation paid to all retained lobbying firms throughout the year.
- Lobbyist/client filers are only required to file the client annual report if the entity retains an outside lobbyist and meets the reporting threshold.
- Lobbyists may assist clients in completing the report, but only the client can certify it.
- Due January 15 every year and reports the prior year's lobbying activity.

# **TERMINATION NOTICE**

**Lobbying Firm** – must file within 30 days of the termination of a retainer or designation.

- Required whether the contract terminates by its terms or prematurely due to a decision by the parties.
- Not required if the contract terminates on December 31.
- The client must file the termination notice within 30 days as well.

**Lobbyist/client filer** – must file within 30 days of the termination of lobbying activity by its employees.

- Only required to file a termination notice as a lobbyist.
- Even when file termination notice, must file the periodic report for the period in which the termination took place **AND** must file the P6 report.

# REVIEW OF REQUIREMENTS

- If your entity:
  - Exceeds the reporting threshold
  - For engaging in one of listed lobbying activities that is not otherwise excluded
    - Lobbying Firm – retained by clients to lobby.
    - Lobbyist/client Filer – entity’s employees lobby on its behalf.
- Must comply with the Lobbying Law by filing reports:
  - A statement of registration per client (including pro bono clients);
  - Six periodic reports per year (unless terminate);
  - Termination Notice (if applicable);
  - Fundraising and political consulting reports (if applicable); and
  - Client annual report (to be filed by the client).
- Comply with other requirements of the Ad. Code.

# VIOLATIONS OF THE LOBBYING LAW

- Knowing and willful violation.
  - May be subject to a cease order and/or
  - A civil penalty of up to \$30,000.
- Violation of the prohibition on contingent retainers, may be subject to a civil penalty of up to \$30,000.

# **NON-FILING OR LATE FILING OF REPORTS**

- Subject to a daily late filing penalty:
  - \$10 per day per client per filing for first time filers and
  - \$25 per day per client per filing for repeat filers.
- **May seek a waiver/reduction based on:**
  - whether/how often late in the past;
  - annual operating budget of filer;
  - lobbyist/client filer;
  - periodic reports - amount of unreported detail; and
  - significance of the impediments to timely filing.
- A civil penalty of up to \$20,000 if violation not cured with the 14 day cure period, after a hearing at the Office of Administrative Trials and Hearings (OATH).

# CIVIL PENALTIES

- Violations subject only to civil penalties:
  - Failure to correct an incorrect report and
  - Failure to file a termination notice (by client and/or lobbyist).
- Only subject to penalty if fail to file amendment and/or termination notice within 14 business days from the date of the mailing of a notice to cure.

# AUDIT PROGRAM

- Each year the Lobbying Bureau conducts 45 random compliance audits.
- All reports filed for the year including statements of registrations, periodic reports, fundraising and political consulting reports, and termination notices are reviewed.
- Auditees are selected randomly by a third party organization.
- Lobbyist and clients are required to produce witnesses and records if requested.
- In conjunction with the audit, a field examination is conducted to review original documents.
- A report is issued listing required actions and findings that must be completed within a reasonable time.

# **OTHER REQUIREMENTS OF THE** **ADMINISTRATIVE CODE**

- Retain records for five years including books, papers and documents to substantiate finances in reports.
- Prohibited from receiving compensation from a client on a contingent basis.
- “Willful” violations of the Lobbying Law may be referred to the Department of Investigations. (DOI)
- Prohibited from making gifts to public servants. (COIB)
- Campaign contributions are ineligible for taxpayer-financed public matching funds. (CFB)

# **AMNESTY PROGRAM: BACKGROUND**

- **Local Law 129 of 2013**

“The city clerk shall by rule establish an amnesty program for any lobbyist who was required to have filed, but has never filed, a statement of registration pursuant to section 3-213 of this subchapter, or any client who was required to have filed, but has never filed, an annual report pursuant to section 3-217 of this subchapter, at any time on or after December tenth, two thousand six.”

- Effective November 4, 2015 **Chapter 1 of Title 51 of the Rules of New York** sets forth the procedures of the amnesty established by Local Law 129 of 2013.

## AMNESTY ELIGIBILITY

- Any lobbyist or client who **was required to file, but never filed**, a statement of registration or client annual report at any time on or after December 10, 2006.
- If acting as both lobbyist and client may be eligible for amnesty in both capacities.
  - Eligible as a lobbyist if have not filed a statement of registration since 2006.
  - Eligible as a client if have not filed a client annual report since 2006.

# **AMNESTY ELIGIBILITY**

Amnesty will not be available to any lobbyist or client who:

- Is the subject of any pending criminal investigation relating to a violation of the Lobbying Law; or
- A party to any pending criminal litigation in any court of law relating to a violation of the Lobbying Law.

# AMNESTY PROGRAM: APPLICATION

- Timeline: January 1, 2016 - June 30, 2016.
- Application must contain the following information:
  - Applicant's name;
  - Business address;
  - Summary of lobbying, fundraising, and political consulting activities from January 1, 2015 to the date the amnesty application is filed; and
  - Signed certification.
- Deadline: Applications must be received no later than **11:59 p.m. June 30, 2016** either by first class mail or hand delivery to the Office of the City Clerk.

# **REPORTING THRESHOLD**

- **IMPORTANT: Local Law 129 of 2013, effective January 1, 2014, raised the reporting threshold from \$2,000 to \$5,000.**
- Amnesty applicants determining whether they have met the reporting threshold, it is based on the year in which compliance was required:
  - From 2006 through 2013, the threshold was \$2,000.
  - From 2014 to the present, the threshold is \$5,000.

## **EFFECT OF AMNESTY**

- If granted the City Clerk will waive any late filing and civil penalties that could have been assessed.
- The applicant will not be subject to any criminal penalties that could have been assessed as early as December 10, 2006 to the date the application.

## **DENIAL OF AMNESTY**

- Reasons for Denial:
  - Applicant is ineligible or
  - Application does not contain the required information.
- Process of Denial:
  - City Clerk will issue a written statement describing the reasons for denial.
- Pending Criminal Investigation:
  - If amnesty is denied because of a pending criminal investigation against the applicant and a criminal investigation does not result in criminal liability, the applicant may re-file for amnesty as long as the amnesty period has not expired.

# **NEW YORK STATE AMNESTY**

- **New York State Joint Commission on Public Ethics (JCOPE)** announced a similar amnesty program at the state level effective January 1, 2016 – June 30, 2016.
- More information can be found on the JCOPE website at [www.jcope.ny.gov](http://www.jcope.ny.gov)

# **OUTREACH INITIATIVES**

Weekly training sessions

- Every Wednesday from 3pm to 4pm
- At the Lobbying Bureau office located at 141 Worth Street
- Registration not required

Further questions contact [lobbying\\_info@cityclerk.nyc.gov](mailto:lobbying_info@cityclerk.nyc.gov)