



OFFICE OF THE CITY CLERK LOBBYING BUREAU

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City Clerk, Clerk of the Council**

**New York City Lobbying Law: Information Session for
Architects and Engineers**

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 increased transparency in government.
- 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 threshold for filers (Ad. Code §3-213).
- Amended the late filing penalties (Ad. Code §3-223).
- Provided that the City Clerk shall by rule establish an amnesty program.

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.
- Describe the rules and procedures with regard to the amnesty program.

AMNESTY PROGRAM

- Any lobbyist that was required to file, but never filed a statement of registration on or after December 10, 2006 and
- Any client that retained a lobbyist to lobby on its behalf and thus was required to file a client annual report on or after December 10, 2006.
- Can be in compliance with the lobbying law without penalty.
 - No late filing penalties;
 - No civil penalties; and
 - No criminal penalties.
- If acting as both lobbyist and/or client may qualify in whichever capacity the entity is eligible.
 - Ex: Filed as a lobbyist in the past, but never filed as a client and was required to file as a client.

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;
- Is a party to any pending criminal litigation in any court of law relating to a violation of the Lobbying Law; or
- Submits a deficient amnesty application.

HOW TO DETERMINE WHETHER TO APPLY FOR AMNESTY

1. Did the entity engage in lobbying?
2. Was the activity excluded from lobbying?
3. Was the reporting threshold met?

HOW TO DETERMINE WHETHER TO APPLY FOR AMNESTY

- You are eligible to apply for amnesty if you were required to comply with the lobbying law but did not comply from 2006 to the present.
- There are two different sets of laws that apply during these years.
 - Lobbying before Local Law 129 of 2013
 - Applicable time frame 2006 through 2013
 - Lobbying after Local Law 129 of 2013
 - Applicable time frame 2014 to the present

HOW TO DETERMINE WHETHER TO APPLY FOR AMNESTY

Local Law 129 of 2013:

1. Effective January 1, 2014, the threshold was increased from \$2,000 to \$10,000 for architects and engineers. **(Please note: Threshold is \$5,000 for all other lobbyist and clients.)**
 - If applying for amnesty from 2006 through 2013, the threshold was in excess of \$2,000.
 - If applying for amnesty from 2014 to the present, the threshold is in excess of \$10,000.
2. Effective May 2014, the definitions of lobbying were expanded and certain exclusions for architects and engineers took effect.
 - One of the exceptions for architects/engineers does not take effect until the City Clerk promulgates rules.

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;
3. Any determination with respect to the solicitation, award or administration of a contract, grant, loan, or agreement involving the disbursement of public monies;
 - **Ex: Soliciting a contract with the city may be lobbying**

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.**
 - **Attempts to influence city planning with respect to an application to amend the zoning resolution or its maps.**
 - **Please note: Anyone may be deemed a LOBBYIST regardless of job title. The analysis hinges on the activity/communications engaged in. Lawyers, architects, engineers, executive directors or board members of a not-for-profit organizations 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;
 - **Ex: Landmarks 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 official or agency;
 - **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 regarding an RFP is not lobbying.**
- **Communications prior to RFP may be lobbying.**
- **Communications pursuant to a current contract with the City is not lobbying.**

WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)

3. Persons engaged in advising clients in relation to proposed legislation;
4. Newspapers and other periodicals;
5. Persons who participate as witnesses in public rule making proceedings of an agency;
6. Persons who appear before an agency in an adjudicatory proceeding;
 - **If the decision-maker has no discretion. See the advisory opinions for more details.**
 - **Appearances before the Board of Standards and Appeals with respect to special permits and zoning variances is not lobbying.**
7. Persons or organizations who advertise the availability of goods or services

WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)
LOCAL LAW 129 OF 2013: TOOK EFFECT MAY 2014

8. Appearances before community boards provided that the proceeding before the final decision-making board or commission is adjudicatory;
 - **Applies where application will be before the BSA.**
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.
 - **Exception does not take effect until the City Clerk promulgates rules defining minor.**

AM I ENGAGED IN LOBBYING?

- A purely technical presentation at a community board is not lobbying.
- Presenting on behalf of a City agency client before landmarks or a community board is not lobbying.
- Testifying at a public hearing is not lobbying.
- Seeking a post designation permit from Landmarks is not lobbying, but Landmarks participation in a special permit is lobbying.
- Appearances before the Board of Standards and Appeals is not lobbying.

WHEN IS LOBBYING REPORTABLE:
DETERMINING WHETHER TO APPLY FOR AMNESTY

1. Was your firm retained or designated by a client(s) to engage in lobbying activities?
2. Was the activity excluded from lobbying?
3. Was the reporting threshold met because the firm exceeded \$10,000 (From 2006 through 2013 exceeded \$2,000) in combined compensation and expenses for lobbying activity in a calendar year?

WHEN IS LOBBYING REPORTABLE:

DETERMINING WHETHER TO APPLY FOR AMNESTY (cont.)

- To determine if the reporting threshold was met, calculate the amount of compensation and expenses:
- Compensation
 - Cumulative compensation paid by all clients for lobbying for an entire year.
 - Pro-rate the portion of compensation paid for lobbying activity only.
 - If exceed the threshold, then must report lobbying activity for all clients, even if engaging in lobbying on a pro-bono basis.
- Expenses: Total amount of expenses incurred only for lobbying activity for all clients for entire calendar year.

WHEN IS LOBBYING REPORTABLE:

DETERMINING WHETHER TO APPLY FOR AMNESTY (cont.)

- If your firm was retained or designated by a client(s) to engage in lobbying activities that was not excluded from lobbying and
 - From 2006 through 2013 was compensated more than \$2,000 or
 - From 2014 to the present was compensated more than \$10,000. (**Please note: Threshold is \$5,000 for all other lobbyist and clients.**)
- The firm must apply for amnesty to avoid penalties.
- **REMEMBER**: The exclusions provided by Local Law 129 of 2013 only apply if lobbying took place after May 2014.
 - The minor exception has not taken effect yet.

CLIENT AMNESTY

- If the firm must comply with the lobbying law, the firm's client may be obligated to comply as well.
- Client threshold is cumulative for compensation paid to all firms that are engaged in lobbying:
 - 2006 through 2013: over \$2,000
 - 2014 to the present: over \$10,000. **(Please note: Threshold is \$5,000 for all other lobbyist and clients.)**
- If threshold is met, then client is required to file a client annual report.
- If the client was required to file the client annual report, but never filed the report, the client must apply for amnesty to avoid penalties.

AMNESTY PROGRAM: APPLICATION

- Application form is on the City Clerk's website.
 - If engaged in lobbying/hired a lobbyist within the year prior to filing for amnesty, you must submit a summary including:
 - Lobbying activity – target and subjects;
 - Client name/lobbyist name; and
 - Amount of compensation and expenses for lobbying.
- Applications must be **received** no later than **11:59 p.m. June 30, 2016**.
- No fee to file for amnesty.
- Submit by mail or hand delivery.
- Not required to file reports on e-Lobbyist.

NEW YORK STATE AMNESTY PROGRAM

- If your firm was required to comply with the City lobbying law, it may have been required to comply with the New York State lobbying law as well.
 - Review the New York State lobbying law.
- **New York State Joint Commission on Public Ethics (JCOPE)** is conducting a similar amnesty program at the state level which also ends on June 30, 2016.
- More information can be found at www.jcope.ny.gov

TRAINING SESSIONS

Weekly training sessions:

- Every Wednesday from 3 – 4pm
- At the Lobbying Bureau office located at:
 - 141 Worth Street (btwn Centre St. and Baxter St.)
- Registration not required

LOBBYING LAW FILING REQUIREMENTS

After amnesty is over, the entity must determine if compliance with the lobbying law is necessary going forward to avoid penalties. To comply with the lobbying law you must file:

- Statement(s) of registration for each client;
- Periodic reports;
- Fundraising and political consulting reports (if applicable); and
- Termination notices (if applicable).

ENROLLMENT PROCESS

- Prior to filing a statement of registration, both the lobbyist and the client must enroll in e-Lobbyist.
- One-time process.
- No fee to enroll.
- Accept the 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 contains a welcome message and instructions for users. 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 includes a paragraph of instructions and a yellow "Enroll >" button. At the bottom of the page, there is a disclaimer about the accuracy of the information in the database. The browser's address bar shows the URL: https://www.nyc.gov/control/che/e-lobbyist/template.81736f7317a6755f66a6a447d99ad/.

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.

STATEMENT OF REGISTRATION

- If retained prior to Dec. 31 of the previous year, must file by Jan 15.
- If retained after Dec. 31, must file within 15 days.
- 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.
- Must submit retainer agreement with client as part of registration.
 - Only required to submit portion of retainer agreement that is relevant to lobbying activity.

PERIODIC REPORTS

- Six periodic reports per year
 - You file all periodic reports for the periods that fall within the start and end dates listed on the statement of registration and retainer agreement.
- **Reporting Periods:**
 - First Period: Jan. 1 through last day of Feb., 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 Sept.15;
 - Fifth Period: Sept. 1 through October 31, due Nov. 15;
 - Sixth Period/Lobbyist Annual Report: Nov. 1 through Dec.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 period.
 - 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.
- 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.

REVIEW OF REQUIREMENTS

- If your entity was required to comply with the lobbying law since December 10, 2006, because the entity:
 - Engaged in one of listed lobbying activities that is not otherwise excluded and
 - Was compensated more than \$2,000 (from 2006 through 2013) or more than \$10,000 (from 2014 to the present).
- The entity was required to comply with the Lobbying Law.
- To avoid penalties, must apply for amnesty by June 30.
- If required, comply with the Lobbying Law after June 30 by filing reports on e-Lobbyist including:
 - A statement of registration per client (including pro bono clients);
 - Six periodic reports per year (unless terminate); and
 - Fundraising and political consulting reports (if applicable).
- Comply with other requirements of the Ad. Code.

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)

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.
- Subject to a daily late filing penalty if file reports late:
 - \$10 per day per filing for first time filers and
 - \$25 per day per filing for repeat filers.
- Failure to cure violations within 14 business days from mailing a notice to cure subject the violator to a civil penalty of up to \$20,000 after a hearing at the Office of Administrative Trials and Hearings.