



**OFFICE OF THE CITY CLERK
LOBBYING BUREAU**

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**CHANGES TO THE LOBBYING LAW: LOCAL LAW 129 OF 2013
LOBBYING FOR ADVANCED FILERS: LOBBYING FIRMS**

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BRIEF HISTORY OF THE LOBBYING LAW

- Local Law 79 of 1972: First attempt to regulate lobbying activity in NYC
 - Municipal Legislative Advocate
- Throughout the past 39 years, the law has been amended several times leading to an increase in 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: Most significant lobbying law reform.
 - substantially increased public disclosure of lobbying activities
 - created much needed enforcement mechanisms
 - 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

- Definitions of lobbying (Ad. Code §3-211)
- Reporting obligations of the Clerk (Ad. Code §§3-212; 221)
- Changes to Filings Requirements:
 - Statements of Registration (Ad. Code §3-213)
 - Periodic Reports (Ad. Code §3-216)
 - Fundraising and Political Consulting Reports (Ad. Code §3-216.1)
 - Client Annual Reports (Ad. Code §3-217)
- Training requirement (Ad. Code §3-219)
- Late filing penalties (Ad. Code §3-223)

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;
2. The **support, opposition**, approval or disapproval of local legislation or resolution by the mayor **whether or not is 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;
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;

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;

Definitions Added by Local Law 129 of 2013

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
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.

What do the Changes Mean for Filers?

INCREASED REPORTING

- More lobbyists will exceed the threshold
- Increase of client registrations
- Increase of activities that must be reported
- More detailed statements and reports

All changes take effect on May 16, 2014

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;
- 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;
- 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;
- 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;

- 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;
- 7. Persons or organizations who advertise the availability of goods or services with fliers, leaflets or other advertising circulars;

Architects & Engineers

Local Law 129 gave specific exclusions:

- 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 (Rules).

Architects & Engineers (cont.)

- Actions designated as minor by the City Clerk:
 - Authorization by city planning commission pursuant to the zoning resolution; and
 - Decision related to real property by other board or commission.

- Designated as minor based on the following factors:
 1. Size and cost of relevant project;
 2. Size, class, and/or value of the property to which the relevant project relates; and
 3. The size of the architecture or engineering firm typically involved in the type of project.

WHEN IS LOBBYING REPORTABLE?

1. Was your firm retained or designated by a client(s) to engage in lobbying activity(s)?

2. Did your firm exceed the reporting threshold for that lobbying activity by receiving, expending or incurring in excess of **\$5,000** in combined compensation and expenses in a calendar year?
 - **\$10,000 for Architects and Engineers**

WHEN IS LOBBYING REPORTABLE?

The Reporting Threshold

To determine if your firm exceeds the reporting threshold:

COMPENSATION

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

EXPENSES

Total amount of expenses incurred for lobbying for all clients for year

WHEN IS LOBBYING REPORTABLE?

If the total amount of compensation received, combined with expenses incurred **cumulatively for all clients** retained or designated, exceeds **\$5,000** then the firm is required to comply with the lobbying law.

HOW TO COMPLY WITH THE LOBBYING LAW

- Statements 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.

STATEMENT OF REGISTRATION

- If retained prior to December 15 of previous year file by January 1
- If retained after December 15 file within 15 days
- 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 in the upcoming year for the client
- Filed in the name of the firm and list employees that anticipate will lobby for each client in upcoming year

STATEMENT OF REGISTRATION

- Upload or submit retainer agreement
 - Name on retainer agreement must match enrollment name.
 - Name on enrollment must be correct corporate name (name registered with NYS DOS or foreign equivalent).
- Start and end dates on the retainer agreement must match dates on the statement of registration.
 - Timeliness is determined by the latest date on the retainer, **unless** the text of the retainer lists a specific start date.
 - The firm controls the start date
 - The start date is the date representation begins NOT the date the lobbying activity commences. Sometimes, however, these dates will be the same.
 - If the end date is after 12/31 of the given calendar year, then the end date is 12/31 and start date for the following year is 1/1

STATEMENT OF REGISTRATION

- Incorrect information on the retainer agreement and/or statement of registration must be corrected.
 - If the client’s enrolled name is incorrect, the client must request a name change in writing. Once name is changed, lobbyist must file an amended statement of registration so new name appears.
 - If the lobbyist’s retainer agreement lists the wrong name, the lobbyist must amend the statement of registration and upload or submit a retainer letter amendment (form available online) together with the original retainer (all retainer agreements that were in effect in the given calendar year).
- May be subject to a civil penalty if not corrected in a timely manner.

STATEMENT OF REGISTRATION

- An **incorrect** statement of registration is different from a **change** in the information on the statement of registration (civil penalty vs. late filing penalty).
- Code requires that if information changes, an amendment must be filed within 10 days. See Announcement Regarding the Late Filing of Amendments
 - Ex: Compensation in retainer changes
 - Ex: Contract extension - 10 days from the date the amended contract begins
 - Also see Announcement Regarding Extended Representation
 - If extended with no gap in representation ONLY end date changes
 - If extended with gap in representation end date changes and upload a letter explaining the gap in representation

PERIODIC REPORTS

- Six Periodic Reports per year
- Reporting Periods:
 - January 1 through last day of February, due March 15
 - March 1 through April 30, due May 15
 - May 1 through June 30, due July 15
 - July 1 through August 31, due September 15
 - September 1 through October 31, due November 15
 - November 1 through December 31, due January 15
- If a filing deadline falls on a weekend or city holiday, the deadline is the next business day

PERIODIC REPORTS

- Reports the lobbying activity that actually takes place in the given period.
- Client specific information:
 - the employees who lobbied;
 - 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.

PERIODIC REPORTS

Periodic reports must be filed **EVERY PERIOD** regardless of whether lobbying activity took place in the period.

- Except if a termination notice is filed.
 - No further periodic reports are required to be filed, unless:
 - The termination is in the middle of a reporting period, then the periodic report for that period is required, even if no lobbying activity took place.
 - The sixth periodic report must always be filed.

PERIODIC REPORTS: LOCAL LAW 129

- Lobbyist/client filers whose combined compensation and expenses for lobbying is between \$5,000 and \$10,000
- Less filing requirements
 - Statement of registration
 - Two periodic reports - P3 and P6
- Effective when DOITT has certified that the City Clerk is capable of implementing

FUNDRAISING AND POLITICAL CONSULTING REPORT

If file a Statement of Registration and

- In given year or in past 6 months engage in fundraising or political consulting.
- Reporting pertinent information regarding such activities, **including expenses incurred for such activities.**
- Same schedule as Periodic Reports, but only if engage in such activities.
- Compare reports filed with NYC Campaign Finance Board.

CLIENT ANNUAL REPORT

- Filed by clients who retain a lobbyist to lobby on its behalf and exceed the **\$5,000** reporting threshold.
- Lobbyists may assist clients in completing these filings, but **only** clients can certify filings.

Mandatory Training Requirements

- All first time filers must register to attend training within 15 days of commencement of lobbying
- Every other year, each registered lobbyist entity must have one employee complete training
 - If the entity lists more than 5 employees and 30 clients then at least 2 employees must complete training

What do the changes mean for filers?

- May be penalized if not registered for training
- Training program to begin in 2015

REVIEW OF REQUIREMENTS

- If your firm
 - Exceeds the reporting threshold
 - For being retained or designated to engage in one of listed lobbying activities
- A Statement of Registration
- Six Periodic Reports per year (unless terminate)
- Fundraising and Political Consulting Reports (if applicable) and
- Client annual report (to be filed by the client).
 - Extensions may be granted if made in writing, for good cause no later two business days prior to the deadline.
- Must file for all clients including pro bono clients

Review of Changes: Local Law 129

- Increase in activities that are deemed lobbying = increase in reporting
- Increase in threshold = decrease in filers
- Client may be fined if they do not enroll in a timely manner
- Lobbyist/client filers between \$5,000 and \$10,000 must continue to file 6 periodic reports per year until e-Lobbyist is changed
- Client annual report not required if the \$5,000 threshold for cumulative outside lobbying activity is not exceeded
- Must list expenses incurred for fundraising and political consulting activities
- At least one employee of all registered lobbyist entities must attend training starting in 2015

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 salaries, may be subject to a civil penalty of up to \$30,000.

Late Filing Penalties: Local Law 129

As of May 16, 2014, the late filing penalties are:

- \$10 per day per filing for first time filers and
- \$25 per day per filing for repeat filers.

Waiver/Reduction of Late Filing Penalties 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 up to \$20,000 if violation is not cured may be imposed 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
 - Failure to file a termination notice (by client and/or lobbyist)
- Only subject to penalty if fail to file within 14 business days from the date of the mailing of a notice to cure

Co-Lobbyist Enhancement



Statement of registration

- **Primary**- lists client and all co-lobbyists and submits retainer with client and agreement with co-lobbyist
- **Co-Lobbyist**- lists client and primary and submits agreement with primary and a designation letter from the client

Periodic Reports

- **Primary**- reports compensation paid by client and as an expense, compensation it paid to the co-lobbyist.
- **Co-Lobbyist**- reports compensation paid by primary as compensation

Client Annual

- Client lists both primary and co-lobbyist and reports compensation paid to primary and any expenses that were reimbursed to either primary or co-lobbyist.

COALITIONS AND ASSOCIATIONS

- Entities that are formed due to a common interest for the purpose of lobbying a specific issue
 - Members do not enroll individually
 - Enroll under client name: “**Coalition** as coalition for **Members**”
 - Z as coalition for A, B, C
- A new entity is not formed, but individual entities hire a lobbyist to represent all entities and each pays a portion of retainer
 - Each payor enrolls separately under name: “**Payor** with **Entities**”
 - A with A, B, C
 - B with A, B, C
- If previously enrolled client required to enroll under coalition scenario must file a separate enrollment under different name if hire lobbyist as client in its own name.

THIRD-PARTY BENEFICIARIES

Entity benefiting vs. Entity paying

Ex: A hires Lobbyist to lobby for B

- May have varying clients listed in retainer, but so long as one entity is paying and another is benefiting then client must enroll under name
 - “**Payor Entity** for the benefit of **Beneficiary Entity**”
- If client is a client on its own as well as a third-party payor, then must have a second enrollment for the third-party and file all reports under the two separate enrollments.
