

OFFICE OF THE CITY CLERK LOBBYING BUREAU

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City Clerk, Clerk of the Council**

LOBBYING FOR BEGINNERS: LOBBYING FIRMS

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 several 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, 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

- 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)

AMENDED RULES

- The amended rules were published in the City Record on October 5, 2015.
- The rules amend chapter 1 of title 51 of the Rules of the City of New York, by replacing the current version in its entirety, to conform the existing rules to the amendments enacted by Local Law 129 of 2013.

AMENDED RULES

- Important changes include:
 - Criteria for requesting advisory opinions;
 - 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;
 - Requirements for filing extensions;
 - Procedures for obtaining a waiver of late filing penalties;
 - Establish Lobbying Bureau enforcement procedures;
 - Details 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;
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;
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;

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;

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 whether or not it has been introduced.

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;

WHAT ACTIVITIES ARE NOT LOBBYING? (CONT)

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;

WHAT ACTIVITIES ARE NOT LOBBYING?

(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 (Rules).

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?

To determine if your firm exceeds the reporting threshold, calculate the amount of compensation and expenses:

- **Compensation:**

1. Cumulative compensation paid by all clients for entire year
2. If exceed threshold, then must report all clients, even 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 include: preparation work, staff meetings, telephone calls, time spent making photocopies

- **Expenses:**

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

WHEN IS LOBBYING REPORTABLE?

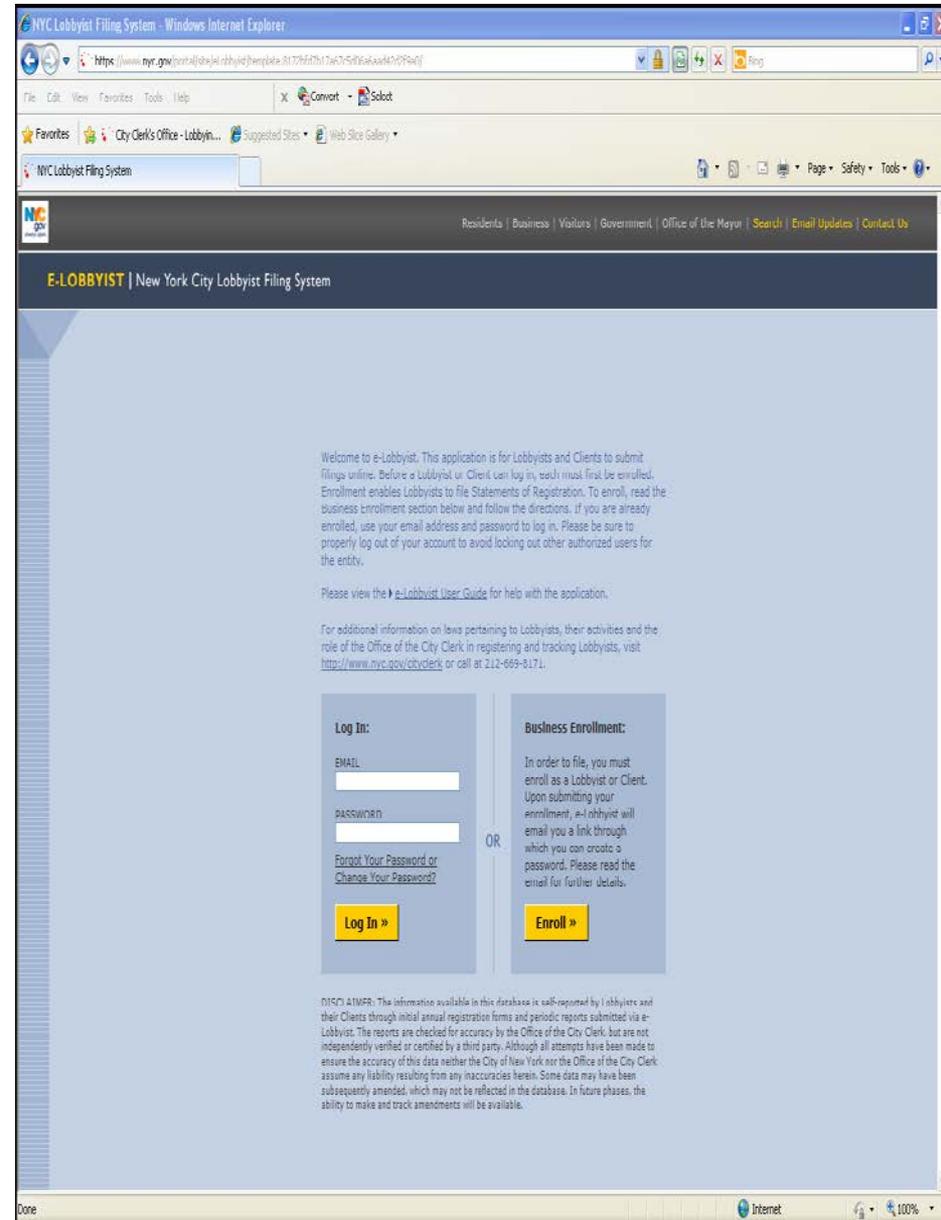
If the total amount of compensation received, combined with expenses incurred cumulatively for all clients retained or designated, exceeds \$5,000 then the firm is required to comply with the lobbying law.

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.

ENROLLMENT PROCESS

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



PRINCIPAL OFFICER (“PO”)

- Each client must select a principal officer for their organization.
- A **Principal Officer** is the chief administrative officer or the person who has the legal capacity to enter into a contract on behalf of the entity.
- Duties of a Principal Officer include:
 - Complete the enrollment form;
 - Designate other employee to complete all reports
 - Only the PO can certify all reports, not designees.
- To change the PO, complete the Change in PO form available on our website.
- Pursuant to the new rules, 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.

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DESIGNEE

- A Principal Officer may select up to two persons to be Designees. The Principal Officer enters the name and email address of the Designee in e-Lobbyist. Each designee will have his or her own e-Lobbyist account.
- Designee may:
 - enter information in Reports
 - receive copies of emails from e-Lobbyist
 - communicate with the Lobbying Bureau about specific reports
 - requests extensions
 - submit a waiver application
- Designee may not:
 - certify Reports
 - have access to the Principal Officer's e-Lobbyist password

COMPLIANCE OFFICER

- **Compliance Officer** is an individual retained by a lobbyist or client whose job duties include compliance work.
- A compliance officer may:
 - assist the Principal Officer or the Designee in completing Reports;
 - communicate with the Lobbying Bureau regarding specific Reports
 - requests extensions
 - apply for waiver on behalf of lobbyist or client
 - submit payment of any late filing or civil penalty
- A compliance officer may not:
 - certify Reports
 - have access to the Principal Officer's or Designee's e-Lobbyist password.

STATEMENT OF REGISTRATION

- If retained prior to December 31 of previous year file by January 15.
- If retained after December 31 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.
- 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.

STATEMENT OF REGISTRATION

- Upload or mail retainer agreement.
 - Name on retainer agreement must match enrollment name.
 - Name on enrollment must be correct corporate name (name registered with NYSDOS 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 selects 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.
 - If the lobbyist's retainer agreement lists the wrong name, the lobbyist must amend the statement of registration and submit a retainer letter amendment (form online) together with the original retainer (all effective retainers in the given calendar year).
- May be subject to a civil penalty if not corrected in a timely manner.

STATEMENT OF REGISTRATION

- Amending an **incorrect** statement of registration is different from **changing** the information on the statement (civil penalty vs. late filing penalty).
- The 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 (change in the end date) filed within 10 days from the start of the amended contract.

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

FUNDRAISING AND POLITICAL CONSULTING REPORT

If file a Statement of Registration and

- In the given year or in the past 6 months engage in fundraising or political consulting.
- Reporting pertinent information regarding such activities, including expenses.
- Same schedule as periodic reports, but only filed 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.

REVIEW OF REQUIREMENTS

- If your firm:
 - Exceeds the reporting threshold
 - For being retained or designated to engage in one of listed lobbying activities which is not excluded
- 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);
 - 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 prior to the deadline.
- Comply with other requirements of the Code.

OTHER REQUIREMENTS OF THE ADMINISTRATIVE CODE

Mandatory Training Requirement:

- Commencing in 2015
- 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

OTHER REQUIREMENTS (CONT.)

- 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.

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.