



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the Office of the City Clerk on Proposed Amendments
to Rules Governing Lobbying Activity
May 19, 2015

Good morning, Mr. McSweeney, and members of the staff of the Office of the City Clerk. My name is Peggy Farber, and I am legislative counsel of Citizens Union, a nonpartisan good government group dedicated to making democracy work for all New Yorkers. We serve as a civic watchdog, combating corruption and fighting for political reform.

Citizens Union commends the Office of the City Clerk for advancing many important new provisions in the lobbying law enacted in Local Law 129 of 2013 through the proposed rules. At the same time, Citizens Union asks that you go further.

Citizens Union played a pivotal role in the enactment of Local Law 129 of 2013. As you know, the law reflected the recommendations of the 2011 City Lobbying Commission, and the commission, in turn, adopted several recommendations made by Citizens Union. Citizens Union testified at every public hearing held by the commission. We also testified at the City Council shortly before passage of the law, which resulted in the law being amended to require the City Clerk's Office to modernize its lobbying database, ensuring that the lobbying information that is collected is made publicly available.

I. Effective Proposals

There are several strong additions in the proposed rules. These establish a tighter regime for punctual compliance with filing requirements and increased lobbyist accountability. For example, the proposed rules:

- spell out enforcement procedures for late filings and unreported activity more clearly.
- replace vagueness about the dollar amount of civil penalties with a defined schedule of penalties;
- specify the circumstances under which the City Clerk will grant an extension when a lobbyist is late in seeking an extension of a filing deadline – and the circumstances are very narrow (only the death of the organization's principal officer or a member of his or her immediate family, the illness of the principal officer, or a force majeure);
- authorize the City Clerk to block a lobbyist's ability to use as an excuse a client's failure to enroll in e-Lobbyist – the City Clerk is authorized in that circumstance to create an administrative enrollment on behalf of the client; and
- spell out duties of the principal officers of lobbyists and clients.

These will substantially assist the Clerk's Office in obtaining compliance with the lobbying law, and Citizens Union strongly endorses them.

II. More to Do

At the same time, the new rules do not address significant obligations that the new law now imposes on the Office of the City Clerk. Citizens Union urges you to go further and believes the new law requires you to do so.

A. New Training Requirement

The law amends section 3-212 to direct the Clerk to develop an online training program for lobbyists, and amends section 3-219 to require lobbyists to complete the training program biennially. This new requirement is important and we urge you to revise the proposed rules to add language specifying in greater detail than the law provides how the requirement is to be fulfilled by lobbyists and implemented by the Clerk.

B. Greater Disclosure of Lobbying Activity

The law amends section 3-221 to require the Office of the City Clerk to make the electronic database maintained by the Clerk easily searchable by and accessible to the public. The law requires completion of this project by December 2015. Citizens Union strongly supports open data efforts and worked to make sure the new law gave the public greater access to the lobbying database. Independent analysis by journalists, civic organizations and citizens will shed light on who is trying to influence government.

The City Clerk's proposed section 1-14 of the rules makes it easier for the public to request records, but this does not go nearly far enough. Given the law's mandate to make the database accessible to the public, the rule:

- should specifically state that the lobbying database is available online in a searchable format, and that in most instances requests are not necessary, and
- should provide instructions for using the database.

C. The Doing Business Database

Citizens Union successfully sought revisions to sections 3-213 and 3-216 of the lobbying law so that it now requires the Office of the Clerk to notify the mayor's office of contract services whenever the Clerk grants an extension to a filing deadline. The purpose of this amendment is to assure that all lobbyists, even those who are late in registering or filing, are listed in the city's "doing business database."

Nothing in the proposed rules addresses this important new obligation. Citizen Union strongly recommends that, in furtherance of transparency and accountability, the Clerk's Office make its protocol for meeting this new obligation public in the rules.

D. Identifying Noncompliant Lobbyists

The law amends section 3-212 to add new provisions requiring that the City Clerk's office develop a protocol for identifying lobbyists who are required to register and who have not done so. Citizens Union also strongly recommends that the Clerk's office make this protocol public in the rules.

E. Advisory Opinions

The Clerk's Office proposes making the issuance of an opinion in response to a written request mandatory, rather than a matter within the Clerk's discretion. Citizens Union supports this proposal but recommends in addition that the Clerk's office amend the section on advisory opinions to require that the Clerk's office deliver its issued opinion to the requesting party or that it deliver notice to the requesting party that an opinion has been issued and is available online. At present the Clerk's Office is under no obligation to notify a requesting party that its request has been satisfied.

F. Definition of Lobbying

Local Law 129 of 2013 amended the definition of lobbying in section 3-211 to expand it. It now includes attempts to influence more than the mere passage or defeat of a bill, resolution, or rule. The proposed rules do not address the new definition of lobbying, but we believe it should. The City Clerk interprets the definition in its advisory opinions, of which there are now 18. The public would be further aided in understanding the City Clerk's interpretation of the definition of lobbying through updated rules.

On one specific matter related to the definition of lobbying, as you know, Citizens Union wrote to the City Clerk on April 1, 2014, requesting an advisory opinion on whether advocacy in favor or opposed to the selection of the speaker falls within the definition of lobbying. In our letter we noted that the selection of a speaker is one of the most important votes a city council member will cast during the entire term. As a consequence, we disagree with the City Clerk's interpretation that activity influencing a vote for speaker does not constitute lobbying, and we urge the City Clerk's Office to add to the definition of lobbying in the rules a statement clarifying that advocacy in favor of or opposed to the selection of the speaker of the city council does falls within the definition of lobbying activity. Given the new, expanded, definition of lobbying in the law, this is the most reasonable interpretation. It is unlikely that the council intended to require disclosure of attempts to influence such actions as the timing of a rate proceeding but not the selection of the second most powerful person in city government.