

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
LOBBYING BUREAU HEARING- NEW RULES

PUBLIC HEARING

Office of Administrative Trials and Hearings

100 Church Street

May 19, 2015

10:15 A.M. to 10:40 A.M.

5/19/2015

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2 (The board meeting commenced at 10:15
3 a.m.)

4 MR. PATRICK SYNMOIE, GENERAL COUNSEL FOR
5 THE OFFICE OF THE CITY CLERK: Good morning.
6 Good morning, everyone. And thanks for coming up
7 to offer your input in this rule making exercise.
8 Before we begin, let me just remind that in order
9 to comment at this public hearing, advanced
10 registration is required either by calling 669-
11 8171, emailing the request to help lobby's desk
12 help@thecircuitclerknyc.gov, signing up at the
13 prior to its commencement. So, if you've not
14 called in or e-mailed a request or added your
15 name to the list this morning, and wish to
16 comment please see Felicia Cohen immediately.
17 And Felicia's over there, but it's such a small
18 group, I guess we don't need that.

19 This public hearing is held pursuant to
20 Section 10.43 of the City Charter. My name is
21 Patrick Synmoie, General Counsel for the Office
22 of the City Clerk. To my left is Jaime
23 Chirchella, who is the Deputy Counsel for Lobby,
24 and further left is Deputy City Clerk, Damaris

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2 Acosta. I would also like to acknowledge the
3 City Clerk, Michael McSwenney, as well as Walter
4 Carcione, the Chief Investigator, and Felicia
5 Cohen from our officers.

6 By way of introduction, let me remind
7 you that in 2013 the New York City Counsel
8 enacted Local Law 129 of 2013 which furthers the
9 lobbying laws role of transparency by expanding
10 the definition of the lobbying, increasing
11 reporting obligations on the City Clerk, amending
12 reporting requirements to decrease the burden on
13 non for profit organizations, and expandingly
14 filing penalties to increase compliance.

15 Local Law 129 also created an amnesty
16 program that will further increase compliance by
17 allowing lobbyists and their clients who have
18 never filed lobbying reports to enter the system
19 without penalty. The proposed rule amends
20 Chapter 1 of Title 51 of the Rules of the City of
21 New York by replacing the current version in, in
22 its entirety to conform the existi- existing
23 rules to the amendments enacted by Local Law 129.
24 Specifically, the proposed rule sets criteria for

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2 requ- requesting advisory opinions, sets forth
3 the procedure when rolling e-lobbyist defines the
4 roll of principal officer designee and compliance
5 officer. Provides requirements for retainers and
6 authorization letters includes a process to
7 deactivate statements of registration, indicates
8 when filing extensions may be obtained, sets
9 forth the procedure for obtaining waiver of late
10 filing penalties. Establishes lobbying bureau
11 enforcement procedures, and creates an amnesty
12 program which sets forth eligibility criteria for
13 lobbyist and clients who have not previously
14 complied with the lobbying law.

15 Please be reminded that comments today
16 are restricted to the rules and the rules only.
17 So, you should save any of other issues for an
18 appropriate time and forum. By the way, if you
19 noticed, we did not cover all ground required by
20 Local Law 129 in this rule. For instance, you
21 might have noticed we have not dealt with the
22 issues surrounding [unintelligible] [11:19:15].
23 I say this to say that we will certainly consider
24 all the great suggestions that we're sent in fu-

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2 future rule making. But we wanted to move
3 quickly on the amnesty.

4 As you may recall, written comments were
5 due by 5:00 p.m. yesterday. So, far we received
6 five. As of the hearing -- I'm sorry. After the
7 hearing, copies of all submitted written comments
8 and a summary of all oral comments will be
9 available to be viewed between 9:00 and 5:00 p.m.
10 at the Office of the City Clerk. I actually
11 think that should be 9:00 a.m. and 3:45 p.m.
12 because we actually close at 3:45 p.m. At the
13 Office of the City Clerk at 141 Worth Street, New
14 York, New York after May 26, 2015.

15 You will be allowed three minutes to
16 make oral comments. Please be mindful of all the
17 speake-, people wishing to speak and limit
18 yourself accordingly. Just in case you forget,
19 Deputy Circuit Clerk, Damaris Acosta, will
20 happily remind of your time constraints. Okay.

21 I'd like to invite Peggy Farber from the
22 Citizen's Union to testify. And Ms. Farber, if
23 you would just right in the front here, right
24 next to the water goblet.

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2 MS. PEGGY FARBER, LEGISLATIVE COUNSEL OF
3 CITIZEN'S UNION: Okay.

4 MR. SYNMOIE: Thank you.

5 MS. FARBER: Yep. Good morning. And
6 thanks so much for having us. My name is Peggy
7 Farber. I'm Legislative Counsel of Citizen's
8 Union, a non-partisan good government group
9 dedicated to making democracy work for all New
10 Yorkers. We service as a Civic Watch Dog,
11 combating corruption and fighting for political
12 reform.

13 Citizen's Union commends the Office of
14 the City Clerk for advancing many important new
15 provisions in the lobbying law enacted -- enacted
16 in Local Law 129 of 2013 through the proposed
17 rules. At the same time, we ask that you go
18 further. Citizen's Union played a pivotal role
19 in the enactment of Local Law 129 2013. As you
20 know, the law reflected the recommendations of
21 the 2011 City Lobby Commission, and the
22 Commission in turn adopted several
23 recommendations made by Citizen's Union.

24 Citizen's Union testified at every

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2 hearing held by the commission. And we also
3 testified at the City Council shortly before
4 passage of the law which resulted in the law
5 being amended to require the City Clerk's Office
6 to modernize its lobbying database ensuring that
7 the lobbying information that is collected is
8 made publically available.

9 There are several strong additions to
10 the proposed rules, and we commend you for them.
11 They establish a tighter regime for enforcing
12 punctual compliance with filing requirements and
13 increasing lobbyist accountability. These- these
14 will substantially assist you in obtaining
15 compliance with the lobbying law and Citizen's
16 Union endorses them.

17 At the same time, the ne- new rules do
18 not address some significant obligations that the
19 new law now imposes on the Office of the City
20 Clerk. Citizen's Union urges you to go further,
21 and believes the new law requires you to do so.
22 For example, the law amends Section 3-212 to
23 direct the clerk to develop an online training
24 program for lobbyists, and amends Section 3-219

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2 to require lobbyists to complete the training
3 program biannually. This new requirement is
4 important, and we urge you to revise the proposed
5 rules to add language specifying in greater
6 detail than the law provides. How the
7 requirements is to be fulfilled by lobbyist and
8 implemented by the clerk.

9 We, the, the law also amends 3-221 to
10 require the Office of the City Clerk to make the
11 electronic database maintained by the clerk,
12 easily searchable by and accessible to the
13 public. This is something that's very important
14 to us at Citizen's Union.

15 The law requires completion of this
16 project by December 2015, and Citizen's Union
17 strongly supports open data efforts and worked to
18 make sure that the new law gave the public
19 greater access to the lobbying database.

20 Independent analysis by journalists, specific
21 organizations like ours, and citizens will shed
22 light on who is trying to influence government.

23 The City Clerk's proposed Section 1-14
24 of the rules makes it easier for the public to

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2 request records, but this does not go nearly far
3 enough. Give the laws mandate to make the
4 database accessible to the public, the rule
5 should specifically state that the lobbying
6 databases available online in searchable format,
7 and that in most instances requests are not
8 necessary, and to provide instructions for using
9 the database.

10 I want to talk a little bit about the
11 doing business database. Citizen's Union
12 successfully sought revisions to Sections 3.2-,
13 3-213 and 3-216 of the lobbying law so that it
14 now requires the Office of the Clerk to notify
15 the Mayor's Office of contract services whenever
16 the clerk grants an extension to a filing
17 deadline. The purpose of this is to assure that
18 all lobbyists, even those who are late in
19 registering are filing are listed in the City's
20 doing business database. Nothing in the proposed
21 rules addresses this important new obligation.
22 And Citizen's Union strongly recommends that in
23 furtherance of transparency and accountability
24 the City Clerk's Office make it's protocol for

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2 meeting this new obligation public in the rules.

3 I want to turn to identifying non-
4 complaint lobbyist. The law amends 3-212 to add
5 new provisions requiring the City Clerk's Office
6 to develop a protocol for identifying lobbyists
7 who are required to register and who have not yet
8 done so. Citizen's Union also strongly
9 recommends that you make this protocol public in
10 the rules.

11 And then, I want to turn to advisory
12 opinions. The Clerk's Office proposes making the
13 issuance of an opinion in response to a written
14 request mandatory rather than a matter within the
15 clerk's discretion. Citizen's Union supports
16 this proposal but this recommends in addition
17 that the clerk's office amend the section on
18 advisory opinions to require that the clerk's
19 office delivery it's issued opinion to the
20 requesting party, or that it deliver notice to
21 the requesting party that an opinion has been
22 issued and is available online. At present the
23 clerk's office is under no obligation to notify
24 requesting party that its request has been

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2 satisfied.

3 And then with respect to the definition
4 of lobbying, Local Law 129 of 2- 2013 amended the
5 definition of lobbying in Section 3-211 to expand
6 it. It now includes attempts to influence more
7 than the mere passage or defeat of a bill,
8 resolution or rule. The proposed rules do not
9 address the new definition of lobbying, but we
10 believe it should. The City Clerk interprets the
11 definition of its -- but it's in advisory
12 opinions, of which there are now 18, and we think
13 that the public would be further aided in
14 understanding the City Clerk's interpretation of
15 the definition of lobbying through updated rules.

16 One -- on a specific note related to the
17 definition of lobbying. As you know, Citizen's
18 Union wrote to the City Clerk on April 1st, 2014,
19 requesting an advisory opinion on whether
20 advocacy in favor or opposed to the selection of
21 the speaker, of the City Council falls within the
22 definition of lobbying. In our, in our letter
23 that we noted that the selection of a speaker is
24 one of the most important votes a city council

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2 member will cast during an entire term. As a
3 consequence, we disagree with the City Clerk's
4 interpretation that activity influencing a vote
5 for speaker does not constitute lobbying, and we
6 urge the City Clerk's Office to add to the
7 definition of lobbying in the rules, a statement
8 clarifying that advocacy in favor or opposed to
9 the [unintelligible] [11:26:41] of the speaker of
10 the City Council does fall within the definition
11 of lobbying activity.

12 Given the new expanded definition of the
13 lob- of lobbying in the law, this is the most
14 reasonable interpretation. It's unlikely we
15 think that the counsel intended to require
16 disclosure of attempts to influence such act-
17 actions as the timing of the [unintelligible]
18 [11:27:01] proceeding, but not the selection of
19 the second most powerful in city government.

20 Thanks. And we're happy -- I'm happy to
21 take any questions.

22 MR. SYNMOIE: No, no questions. Thank
23 you very much.

24 MS. FARBER: Okay.

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2 UNIDENTIFIED FEMALE 1: Thank you.

3 MR. SYNMOIE: Laura Abel from the
4 Lawyer, Lawyers Alliance. Seeing that we have
5 just a small group, we're, we're not going to
6 hold you strictly to the three minute standard.
7 So, feel free to go on.

8 MS. LAURA ABEL, SENIOR POLICY COUNSEL AT
9 LAWYERS ALLIANCE FOR NEW YORK: Thank you. I'll,
10 I'll try to stay to the three minutes, but I will
11 speak a little more slowly than -- I'm -- my name
12 is Laura Abel. I am Senior Policy Council at
13 Lawyers Alliance for New York.

14 We are a nonprofit organization
15 providing business and transactional legal
16 assistance to nonprofits in New York City. Most
17 of our clients are very small nonprofits; many of
18 them are new. Many of them engage in advocacy
19 and don't realize that they're doing is lobbying.
20 We do our best to educate them about their
21 obligations under the Lobbying Law and to help
22 comply.

23 For these organizations the rules
24 implementing the six month amnesty period are

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2 particularly welcome. I've been talking to many
3 organizations about the amnesty period. I've
4 also been talking with JCOPE to urge them to
5 coordinate with you around the amnesty. Because
6 I have fear that organizations that have been
7 lobbying in New York City and should have
8 registered as lobbyists with the city and the
9 state will take advantage of the amnesty and then
10 promptly be penalized by JCOPE for their New York
11 City Lobbying activity.

12 In my last conversation with JCOPE, they
13 said that they would reach out to the Clerk's
14 Office and I would urge you to do whatever you
15 can to coordinate with them. Frankly, until we
16 have some sort of clear statement from JCOPE that
17 they will not penalize organizations for taking
18 part in the amnesty, I can't advise them, my
19 clients, to take part.

20 That said we will be doing a lot of
21 public education around the amnesty. Just as we
22 have been around the new lobbying law, and if
23 there are things that we can do to help you get
24 the word out, we'd be happy, eager to do that.

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2 I'm not going to repeat all of the
3 suggestions in my written comments, but I just
4 wanted to flag two of them. One is the provision
5 in the proposed rules that prohibits a principal
6 officer from sharing an e-lobbyist password.
7 That is going to cause problems in organizations
8 particularly when you have a principal officer
9 who is on vacation or out of the office right
10 when the report needs to be filed. It's common
11 practice in other settings.

12 The one I'm most familiar with is the
13 federal courts, where they have an e-filing
14 system where an attorney filing a document using
15 their, the equivalent of their e-lobbyist
16 password constitutes sig- signing that document.
17 Obviously, that's an important obligation. And
18 even there, attorneys are allowed to authorize
19 specific people in their office to e-file for
20 them, and effectively to sign their signature by
21 using their password. So, I would encourage that
22 practice here too.

23 And in a number of places the proposed
24 rules require lobbyists and clients to do various

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2 things within ten or 14 days after receiving
3 notice from the clerk's office via certified
4 mail. That scares me a bit because New York City
5 mail can be really unreliable. I frequently, in
6 my apartment in Brooklyn, don't get any mail
7 delivery for a couple of days, and then all of
8 sudden my mail for the last, you know, three days
9 appears. So, I would urge you to send notice via
10 e-mail in addition to certified mail. And also
11 to calculate deadlines from the date that notice
12 via a certified mail has been delivered rather
13 than the date that it's sent out. I believe that
14 by sending notice via certified mail you can find
15 out when it was delivered on a date certain and,
16 and calculate from then.

17 I'd be happy to take questions. Thank
18 you.

19 MR. SYNMOIE: Thank you very much. I
20 apologize for mispronouncing your name.

21 Okay. I'd like to invite Denise Wagner
22 to testify.

23 MS. DENISE WAGNER, NEW YORK ADVOCACY
24 ASSOCIATION: Thank you. Good morning. My name

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2 is Denise Wagner, and I'm here on behalf of the
3 New York Advocacy Association. An organization
4 representing lobbyists of both for profit, not-
5 for-profit entities.

6 What I can't do though is I can't leave
7 the other half of my brain at home. The part of
8 me that is a citizen, a voter, and, and a tax
9 payer, and very much wants to know who's
10 attempting to influence and how and why decisions
11 are being made. Because of that whole brain
12 approach to it, I always go back and I look at
13 the intent of the law, and then try to analyze
14 the regulations, the advisory opinions, in light
15 of that intent.

16 The intent of this law is transparency,
17 openness, people's ability to see what's going on
18 so there aren't on the secret backroom deals.
19 It's no longer the, the three men in a room.

20 When, I look at the laws that way, and
21 as does New York Advocacy Association, we look to
22 see the forest and not just the trees and
23 certainly we try not to get down to the
24 toothpicks. We want to see how these laws, how

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2 these regulations are allowing the public to
3 understand decision making. Sometimes I think we
4 get lost in the minutia and the details and we
5 forget the intent. And I, and, New York Advocacy
6 Association is thrilled with the new proposed
7 rigs, but wants to look at them in light of the
8 intent to be transparent.

9 The biggest concern many of us have with
10 the current law is that there are many, many who
11 are avoiding compliance, totally. Those who do
12 comply then get picked on sometimes. Sometimes
13 we're looking at reports that say that dollar
14 amounts are off by a little bit, or the name of
15 the person you lobbied wasn't entered right. Or,
16 you said you lobbied this but didn't you really
17 lobby that. And it seems to me that, that group
18 of people who are attempting to comply are being
19 penalized for complying instead of being
20 encouraged. And the large group out there that
21 is probably growing, and is not complying will
22 perhaps grow with some unduly burdensome
23 regulations.

24 Specifically, some of the regulations

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2 that, that we think might be unduly burdensome,
3 and I agree with the speaker who spoke before me,
4 is its inability to delegate authority. New York
5 has a statutory power of attorney form.

6 Attorneys are always able to act on behalf of
7 their client, but yet somehow, this system is
8 getting more restrictive, more cumbersome, and
9 more hard for everyone to work with, when you
10 state that the password for the person who can
11 certify the reports cannot be shared. Business
12 can't work that way; not-for-profits can't work
13 that way.

14 We need to delegate authority, always
15 from the top down. From the City Counsel to the
16 committees, to their staff members, from lar-
17 large organizations, from their boards, to their
18 directors, to their, their officers, to their
19 employees. What we would suggest when it comes
20 to the delegation of the ability to use and file
21 and certify a report is a system perhaps where
22 the designee, the compliance officer, is allowed
23 to certify a report, and the principal officer
24 has ten days to go back in and revoke it if it's

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2 not correct.

3 The, the actual practicality of doing
4 all of these reports, of the drafts of them, of
5 getting data that's needed to go in to go into
6 each report 15 days after the close of the
7 previous month means that there are days when
8 people are working on these reports solid.
9 They're doing nothing but three or four or five,
10 ten days of working morning to night creating
11 reports. The head of an organization has to run
12 the organization. The head of the Red Cross
13 isn't going to sit there at their computer and be
14 able to work on their reports. Why, why this is
15 so sacra saint I'm, I'm not sure. If we're
16 looking for transparency, if we're looking to get
17 information out to people, I would envision a
18 system that is encouraging of compliance and does
19 not penalize.

20 The Advocacy Association specifically
21 had comments about advisory opinions. And
22 perhaps setting time limits by which we'll know
23 if one is going to be issued or not.

24 We wanted to highlight also the need of

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2 a principal officer only to sign a retainer, or
3 an authorization to lobby form again is something
4 that's going to discourage compliance. We're
5 looking to help people comply. We want everyone
6 in the system; as citizens and as registered
7 lobbyists. It doesn't help registered lobbyists
8 if unregistered lobbying continues. So, whatever
9 we can do to support a broader database of people
10 complying with the system will help citizens and
11 will provide the information that people dually
12 expect under the law.

13 With the amnesty program, we agree that
14 there's a big problem between the state and the
15 city. We also are concerned that in order to be
16 part of the amnesty program you have to have
17 never been part of the city system. It seems
18 like a large and unnecessary restriction. There
19 are people who may have compl-, may have filed
20 with one client and not another. Again, if we're
21 trying to bring people into the fold and expand
22 that database, you want to encourage people to
23 come in under amnesty.

24 Let's see. Oh. The, your requirement

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2 that the authorizations to lobby have an end date
3 seems, we, li-, I guess we really don't even
4 understand why. Why there needs to be an end
5 date? A retainer with an attorney doesn't have
6 an end date. We have to re-, we have to register
7 every year. We reregister. Whether that
8 retainer letter should remain in effect is up to
9 the client. If they terminate the lobbyist's
10 service, then the term-, then the registration is
11 terminated. But the need for an end date in a
12 letter doesn't seem to help again expand the
13 database.

14 Let me just check. Any questions while
15 I'm looking? No. Again, I mean the New York
16 Advocacy Association is happy to, to help to meet
17 to talk, to work with you to expand those
18 complying with the system. Thank you.

19 MR. SYNMOIE: Thank you. Anyone else
20 wishing to comment? I guess there's no one else.
21 Okay. Well, I'd just like to thank everyone for
22 coming out to share with you your thoughts on the
23 process. And we'll take everything you've said
24 under advisement. And as I stated before, the,

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the reco-, the, the, the, the comments that were sent in will be available for viewing in our office [unintelligible] [11:40:24]. So, thanks again. And have a good day.

(The board meeting concluded at 10:40 a.m.)

CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Office of the City Clerk, Lobbying Bureau Hearing - New Rules on May 19, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: May 28, 2015

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