

CITY OF OAKLAND
AGENDA REPORT

2011 FEB 17 PM 3:26

To: Office of the City Administrator
Attn: Dan Lindheim, City Administrator

From: Dan Pumell, Executive Director, Public Ethics Commission, 238-3593

Date: March 3, 2011

Re: An Ordinance Amending Chapter 3.20 Of The Oakland Municipal Code (aka "The City of Oakland Lobbyist Registration Act" ["LRA" or "Act"]) To 1) Establish Legislative Findings And Purposes For The Act; 2) Amend The Current Definition Of "Local Governmental Lobbyist;" 3) Establish Annual Registration Fees In The Amount Of \$180; 4) Expand The Existing Exceptions For Engineers And Exempt From Registration Any Person Whose Communications Are Made Publicly; 5) Delete From Regulation So-Called "City Contractors" And "Persons Doing Business With The City;" And 6) Authorize The Imposition Of Late Fines Of \$25 Per Day And A Maximum Of \$500 For Failure To Timely File Reports Required Under The Act

SUMMARY

The Lobbyist Registration Act ("LRA") requires local lobbyists to register with the City before attempting to influence a local governmental action on behalf of a client. The LRA's significant provisions include an initial and annual registration requirement, quarterly reports of lobbying activities, and limitations on gifts and payments benefiting City officials, candidates, certain employees and members of their immediate families. The Public Ethics Commission ("Commission") is authorized to administer and enforce the LRA.

The proposed amendments would:

- 1) Establish legislative findings and purposes where none currently exist [*See proposed §§3.20.011; 3.20.012*];
- 2) Revise the definition of who qualifies as a local governmental lobbyist [*See proposed §3.20.030(D)*];
- 3) Delete from regulation provisions applicable to "contractors" and "persons doing business with the City" [*See proposed §3.20.030(B); §3.20.030(G); §§3.20.130 - 3.20.170*];
- 4) Establish registration fees in the amount of \$180 annually [*See proposed §3.20.045*];
- 5) Expand an existing exception from registration requirements to include all licensed engineers [*See proposed §3.20.060(E)*];
- 6) Exempt from registration any person whose only communications are made at a public meeting or submitted in writing as a public record [*See proposed §3.20.060(H)*]; and
- 7) Authorize the imposition of late fines of \$25 per day to a maximum of \$500 for failure to timely file reports required under the Act. [*See proposed §3.20.210(C)*]

FISCAL IMPACT

As of December 1, 2010, forty-five individuals were registered as local governmental lobbyists with the City. The proposed annual registration fee of \$180 would likely generate approximately \$8,100 per year. The fee is based on the number of hours Commission staff expends on an annual basis administering the program; the mid-range salaries of Commission staff; and the number of lobbyists currently registered. If the City council adopts the proposed section regarding late fines, additional revenue in an unspecified amount could be realized.

BACKGROUND

The City Council adopted the LRA in June 2002. The LRA was closely based on a then-existing ordinance from the City of San Jose, which the City Council favored over an alternative proposal from the Commission. The LRA has been amended over the years primarily to increase the level of disclosure by lobbyists of their activities. During 2010, the Commission undertook a comprehensive review of the ordinance which led to the proposals herein. *Exhibit 1.*

KEY ISSUES AND IMPACTS

A. Proposal to add legislative findings and purpose. [§§ 3.20.011; 3.20.012]

Existing law does not contain any legislative findings or a legislative purpose. Such findings and purpose are necessary to establish a legal basis for the City's interest in regulating local lobbying activities. The proposed findings are based on the established history of lobbying activities documented by the LRA's ongoing registration and reporting practices.

B. Proposal to amend the definition of "local governmental lobbyist." [§3.20.030(D)]

Current law establishes two basic types of lobbyist: A so-called "contract" lobbyist, defined as an individual who receives \$1,000 or more in a calendar month to lobby, and a so-called "in-house" lobbyist, defined as a "salaried employee, officer or director" of a corporation, organization or association whose duties include influencing local governmental decisions.

The only proposed change to the definition of a "contract" lobbyist is the addition of a second monetary criterion (\$5,000 received during a calendar year) by which a person can qualify as a "contract" lobbyist. The Commission expressed concern that a "contract" lobbyist could avoid a registration and reporting requirement by spreading out his or her compensation below the current \$1,000 per month threshold over a period of time.

Far more problematic has been interpreting the current language for so-called "in-house" lobbyists. Oakland's current definition of "in-house" lobbyist is somewhat unique in that there is no specific criteria to determine when or how an individual qualifies as a lobbyist. For example,

other jurisdictions provide a minimum "contacts" threshold (e.g., 10 lobbying contacts per month) or a minimum "hours" threshold (e.g., 5 hours spent lobbying per month) or a "significant" or "substantial" job-duties threshold (e.g., an employee for whom a "significant/substantial" amount of time is spent lobbying). Oakland's definition of "in-house" lobbyist has none of these threshold triggers, stating that a "local governmental lobbyist" is a "salaried employee, officer or director of any corporation, organization or association [whose duties] include. . . [lobbying]."

The Commission ultimately determined that the current definition is likely too broad, essentially regulating "professionals who lobby" rather than "professional lobbyists." The Commission thus recommends the definition of an "in-house" lobbyist be amended to specify that lobbying must be part of a compensated employee's, officer's or director's "regular" job duties, and further provides that influencing City decisions is a "regular" job duty if such activity is specified in or inferred from that individual's job title or description, or if that individual influences two or more items of proposed or pending governmental actions within a consecutive six-month period.

C. Proposal to delete from regulation provisions applicable to "contractors" and "persons doing business with the City" [§3.20.030(B); §3.20.030(G); §§3.20.130 - 3.20.170]

Existing law imposes a series of prohibitions not only on lobbyists, but also on a class of persons defined as "contractors" and "persons doing business with the City." The Commission notes that the existing definitions of contractor and persons doing business with the City are particularly vague and over-broad. For example, current law defines a "person doing business with the City" as "any person whose financial interests are materially affected by [a] governmental action. . ." Furthermore, the Commission questions whether any type of regulation on such classes of persons should be contained in an ordinance regulating lobbyists. The Commission proposes to delete the definitions and prohibitions relating to contractors and persons doing business with the City. The Commission will return at a later date with an alternative proposal for a revised version of the existing prohibitions.

D. Proposal to establish annual registration fees for lobbyists. [§3.20.045]

Unlike comparable jurisdictions, Oakland imposes no fee for the annual registration of lobbyists.¹ The Commission proposes that the LRA be amended to provide an annual registration fee of \$180, pro rated by calendar quarter, which may be adjusted periodically by the City Administrator to reflect changes in the actual cost for administering the Act. The proposed fee is based on the following factors: The number of hours Commission staff expends on an

¹ Annual registration fees for other jurisdictions include: Los Angeles: \$450; San Francisco: \$500; San Diego: \$40; Richmond: \$35; Sacramento: \$100; San Jose: \$350.

annual basis administering the registration and reporting process; the "mid range" salaries of Commission staff; and the number of lobbyists currently registered.

- E.** Proposal to expand an existing exception for "civil engineers" to all licensed engineers, and to exempt from registration any person whose only communications are made at a public meeting or submitted in writing as a public record. [§3.20.060(E); §3.20.060(H)]

Current law provides an exemption from registration and reporting requirements for any "attorney, architect or civil engineer" whose attempts to influence City actions are limited to appearing at public meetings or preparing documents submitted for public meetings and who work with City or redevelopment staff. This common exemption is primarily applied to experts retained in the planning and development process. The Commission noted that there are often many types of engineers retained on development projects (seismic, structural, hydrological) who arguably should be included in this exemption.

Current law does not exempt from registration persons whose only communications are made at a publicly noticed meeting. The Commission seeks to create an incentive for persons who seek to influence governmental decisions to perform their communications publicly by exempting such public communications from the registration and reporting requirement.

- F.** Proposal to impose late fines of \$25 per day, up to a maximum of \$500, for failure to timely file reports required under the Act. [§3.20.210(C)]

Current law does not impose any penalty for the failure to timely file required reports. The Commission proposes a \$25 per day penalty (up to a maximum of \$500) to create an incentive for timely filing and to penalize those who delay public disclosure of lobbying information. The proposed language is based closely on the late fine provisions currently existing under the California Political Reform Act.

G. Miscellaneous Proposals

In addition to the above, the proposed amendments also 1) clarify existing definitions of "client," "designated employees," and "public official," [§3.20.030]; 2) require lobbyists to file their reports with the Public Ethics Commission instead of with the Office of the City Clerk [§3.20.040]; 3) require lobbyists who terminate their registration to disclose lobbying activities conducted since their last report [§3.20.050]; modify the existing exceptions pertaining to "invited testimony" and persons accompanying a previously registered lobbyist [§3.20.060]; and 4) delete provisions authorizing the Commission to issue "orders to show cause" for alleged noncompliance due to concerns over proper notice and fair process [§3.20.070].

SUSTAINABLE OPPORTUNITIES

The proposed amendments are intended to 1) enhance understanding of, and increase compliance with, the LRA; and 2) permit the recovery of costs associated with administering the program.

DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.

RECOMMENDATION(S) AND ACTION REQUESTED

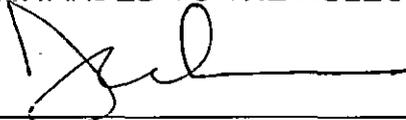
The Public Ethics Commission recommends that the City Council adopt the proposed amendments.

Respectfully submitted,



Daniel D. Pumell
Executive Director
Public Ethics Commission

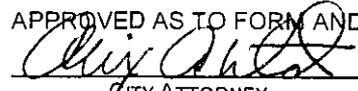
FORWARDED TO THE RULES AND LEGISLATION COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

Item: _____
Rules And Legislation Committee
March 3, 2011

2011 FEB 17 PM 3:40


CITY ATTORNEY

ORDINANCE No. _____ C.M.S.

**ORDINANCE ESTABLISHING REGULATION OF
LOBBYISTS IN OAKLAND
MUNICIPAL CODE CHAPTER 3.20**

Oakland Municipal Code is amended to add Chapter 3.20 as follows:

Chapter 3. 20

THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT

Article I. Findings and Purpose

3.20.010 Title

This ordinance shall be known as the City of Oakland Lobbyist Registration Act, hereafter "the Act."

3.20.011 Findings and Declarations

The Oakland City Council finds and declares:

- A. Organizations rely upon the services of lobbyists to influence City officials and City employees about proposed or pending governmental decisions.
- B. The people of Oakland have the need and right to know the identity of lobbyists who attempt to influence the decisions of City government and the means employed by them to advance the interests of their clients.
- C. The disclosure of lobbyists, their activities, their clients and the interests being represented will improve public knowledge and confidence in the integrity of City government.
- D. The disclosure of lobbyists, their activities, their clients and the interests being represented is necessary to ensure City officials are kept informed about the identity of persons whose interests the lobbyists represent and that City officials are not improperly influenced by such lobbyists.

3.20.012 Purpose of This Act

The purpose of this Act is to maintain a fair and open decision-making process in City government by requiring those who seek to influence the legislative and administrative actions of the City to register and publicly disclose their lobbying activities.

Article II. Definitions and Interpretation of This Act

3.20.020 Words And Phrases

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

3.20.030 Definitions

For the purposes of this ordinance, the following definitions shall be applicable:

- A. "Client" means the real party in interest, other than the local governmental lobbyist himself or herself, for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually organization is represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization a local governmental lobbyist as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.
- B. ~~"Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars, and, (1) The city is a party, or (2) the redevelopment agency is a party, or (3) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency.~~ **RESERVED.**
- C. ~~"Designated employees" mean city and redevelopment agency~~ **City and Redevelopment Agency** employees and consultants who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a ~~city or redevelopment agency~~ **City or Redevelopment Agency** conflict of interest code to file financial interest disclosure statements. For purposes of this Act, a "designated employee" shall include those City employees and consultants whose positions are one of the designated positions listed in Appendix A of O.M.C. Chapter 3.16.
- D. "Local governmental lobbyist" means any individual who:
 - (1) who receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses or
 - ~~(2) whose duties as a salaried employee, officer~~ who

~~receives or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, is entitled to receive five thousand dollars (\$5,000) or more in economic consideration in any calendar year for the purpose of influencing any a public officer or designated employee about a proposed or pending governmental action of the city or redevelopment agency. No, or~~

(2) whose regular and compensated duties as an employee, officer, director, manager, or partner on behalf of any corporation, partnership, organization or any other entity operating under a fictitious name, include making communications for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action. For purposes of this subsection, making communications for the purpose of influencing a public officer or designated employee shall be deemed a "regular" job duty whenever: (a) such duties are specified in or reasonably inferred from an individual's written job description, job announcement or job title, or (b) the individual seeks to influence a public officer or designated employee on two or more items of proposed or pending governmental action during any consecutive six-month period.

When determining whether a person is qualifies as a local governmental lobbyist, by reason the provisions of activities described in Section 3.20.030(A). In case of any ambiguity, the definition of "local governmental lobbyist" this Act shall be interpreted broadly.

- E. **"Governmental action"** means any administrative or legislative action of the city and or the redevelopment agency other than an action which is ministerial in nature.
- F. **"Payment"** means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.
- G. ~~"Person doing business with the city" means any person whose financial interests are materially affected by governmental action as defined by Section 3.20.030(E). It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees.~~
- H. ~~"Public official" means an elected or appointed officer or employoo or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or oommission.~~ "Public officer" means the Mayor, members of the City Council, the City Attorney, the City Auditor, the City Clerk, and members of City boards and commissions who are required to file a statement of economic interest in connection with their service on a City board or commission.

Article 111. Registration of Lobbyists

3.20.040 Registration With The Public Ethics Commission

- A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the ~~City-Clerk~~Public Ethics Commission.
- B. At the time of registering, the local governmental lobbyist shall file with the City Clerk~~Public Ethics Commission~~, in writing, his or her name, business address, and residence addresses~~business telephone number, and, the name, business address and business telephone number of every client.~~
- C. The lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

3.20.045 Lobbyist Registration Fees

- A. At the time of initial registration and annual re-registration as specified in Section 3.20.040, each local governmental lobbyist shall pay a fee of \$180.00. The Public Ethics Commission shall prorate the fee for initial registration by calendar quarter. The City Administrator may adjust the fee periodically to reflect changes in the actual costs for administering the Act. The Master Fee Schedule shall be amended to include the Lobbyist Registration Fee specified herein and amended periodically to update said fee.
- B. The Public Ethics Commission shall deposit all fees collected pursuant to this Section to the City's general purpose fund.

3.20.050 Cessation of Employment:Lobbying Activities

- A. No later than thirty (30) days after a local governmental lobbyist who has terminated all activities requiring registration under this Act, he or she shall notify file with the City-Clerk-of Public Ethics Commission: 1) A Notice Of Termination, and 2) a disclosure of lobbying activities containing the information required in Section 3.20.110 that fact-and-thereupon has not been reported since the date of his or her last Quarterly Report. Upon the timely filing of a Notice Of Termination and disclosure of lobbying activities, the local governmental lobbyist shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

3.20.060 Exceptions

The provisions of this Act shall not apply:

- A. To a public official~~officer, City employee or City consultant~~ acting in his or her official capacity.
- B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

- C. To a person specifically invited by the city council or redevelopment agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation so long as any testimony or information is communicated at a public meeting or hearing, or is submitted in a writing subject to public inspection or copying.
- D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization or any information or analysis when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act and the person communicating such position, information or analysis is in the presence of the organization's registered local governmental lobbyist.
- E. Any attorney, architect or ~~civil~~licensed engineer whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; or (2) Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city or redevelopment agency employees or agents working under the direction of the city manager or executive administrator or agency or department director directly relating to (1) and (2) above.
- F. To designated representatives of ~~a recognized~~an employee organization recognized by the City whose activities are limited to communicating with ~~city~~City officials or their representatives regarding 1) wages, hours and other terms and conditions of City employment pursuant to the procedures set forth in Government Code Sections 3500 - 3510, or 2) the administration, implementation or interpretation of an existing employment agreement with the City.
- G. To persons whose only activity is to 1) submit a bid on a competitively bid contract, 2) respond to a request for proposal or qualifications, or 3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award of terms of a contract with any elected official or member of any City board or commission.
- H. To a person whose only communications regarding a proposed or pending governmental decision are made, submitted or distributed at a publicly noticed meeting of the City Council, Redevelopment Agency, City board or commission, or any standing committee of the City Council, Redevelopment Agency or City board or commission, and the person publicly identifies himself or herself and the name of the person or client on whose behalf the communication is made.

3.20.070 RESERVED ~~Noncompliance—Order to Show Cause~~

- A. ~~Upon the request of the council, the mayor, or any board or commission or member thereof, or any officer or designated employee of the city or redevelopment agency, the Public Ethics Commission shall issue an order to show cause to any unregistered person.~~
- B. ~~Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Public Ethics Commission that he or she has complied with the registration requirement or is exempt from registration.~~
- C. ~~If the Public Ethics Commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the city council, redevelopment agency or other board or commission at a noticed public meeting or upon oral petition on his or her own behalf. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.~~

3.20.080 Availability of Information.

All registration information shall be retained by the ~~City Clerk~~Public Ethics Commission for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

3.20.090 Filing Under Penalty of Perjury

All information required by this Act shall be filed with the ~~City Clerk~~Public Ethics Commission on forms prescribed by the Public Ethics Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

3.20.100 Records

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this chapter.

Article IV. Disclosure Of Lobbying Activities

3.20.110 Quarterly Disclosure

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the ~~City Clerk~~Public Ethics Commission. The reports shall be due no later than **30** days after the end of the calendar quarter. The report shall contain the following information:

- A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.
- B. For each item of governmental action sought to be influenced, 1) the name of each city officer with whom the lobbyist communicated, 2) the name and title of any city boardmember or commissioner with whom the lobbyist communicated, and 3) the identity of any city employee with whom the lobbyist communicated identified only by the office or department in which the employee works and his or her job title.
- C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.
- D. If any lobbyist, or a registered client at the behest of a lobbyist, employs or hires an elected city officeholder, candidate for elected office, a designated employee, or a member of the immediate family of one of these individuals, the lobbyist shall disclose 1) the name of the person employed or hired, 2) a description of the services actually performed, and 3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.
- E. If any elected city officeholder or candidate for elected city office employs or hires a lobbyist to provide compensated services to the officeholder or candidate, the lobbyist shall disclose 1) the name of the person who employed or hired the lobbyist, 2) a description of the services actually performed, and 3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.
- F. If a lobbyist solicits any person to make a contribution to an elected city officeholder, candidate for city office or to any committee or fund controlled by such officeholder or candidate, the lobbyist shall disclose the names of the persons whom the lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made (1) in a mass mailing sent to members of the public, (2) in response to a specific request for a recommendation, (3) to a gathering which members of the public may attend, or (4) in a newspaper, on radio or television, or in any other mass media. A lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a lobbyist makes a solicitation to more than fifty (50) individual members or employees of a corporation, union or other association that is a registered client of the lobbyist, or if the lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the lobbyist, the lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

Article V. Prohibitions

3.20.120 No Unregistered Employment or Activity

- A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the ~~City Clerk~~ Public Ethics Commission.
- B. No person shall accept compensation for acting as a local government lobbyist except upon condition that he or she forthwith register as required by this Act.

3.20.130 Personal Obligation of City Officials Prohibited

~~Local governmental lobbyists, and their clients, contractors, and persons doing business with the city or the redevelopment agency shall abstain from doing any act with the express purpose and intent of placing any city or agency~~ public officer or designated employee under personal obligation to such lobbyist, ~~or client, contractor or person.~~

3.20.140 Deception Prohibited

~~No local~~ local governmental lobbyists, ~~client, contractor or person doing business with the city or the redevelopment agency and their clients~~ shall not deceive or attempt to deceive a city or agency public officer or designated employee as to any material fact pertinent to any pending or proposed governmental action; including, without limitation, sending a written communication in the name of a fictitious person.

3.20.150 Improper Influence Prohibited.

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

3.20.160 ~~False Appearances Prohibited~~ RESERVED.

~~No local governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city or agency officer or designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person.~~

3.20.170 Prohibited Representations.

~~No local~~ local governmental lobbyists, ~~client, contractor, or person doing business with the city or the redevelopment agency~~ shall not represent, either directly or indirectly, orally or in writing that such person they can control or obtain the vote or action of any city or agency public officer or designated employee.

3.20.180 Restriction On Payments And Expenses Benefiting Local Public Officials, Candidates For Local Office, Designated Employees And Immediate Families

- A. No lobbyist or a lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year.
- B. The payments and expenses specified in subsection A include gifts, honoraria, and any other form of compensation but do not include (1) campaign contributions; (2) payments or expenses that, within 30 days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual lobbyist or individual lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal.Code of Regs. No. 18944.1(a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

3.20.190 Restriction On Former Elected-City Officers, Department Heads And Budget Directors From Acting As A Local Governmental Lobbyist

No officer of the city, or person who has held the position of department head or budget director, shall be permitted to act as a local governmental lobbyist for a period of one year after leaving office.

Article VI. Enforcement

3.20.200 Civil Violation; Procedures and Action

- A. Any person who intentionally or negligently violates this Act is subject to civil enforcement proceedings before the Public Ethics Commission pursuant to the Commission's General Complaint Procedures. No complaint alleging a violation of any provision of this Act shall be filed with the Public Ethics Commission more than four years after the date the violation occurred.
- B. If the Public Ethics Commission finds a violation of this Act, the Commission may (1) Find mitigating circumstances and take no further action, (2) issue a public statement or reprimand, or (3) impose a civil penalty in accordance with this Act.

C. In addition to any other penalty or remedy available, if the Public Ethics Commission determines, pursuant to a hearing conducted under the Commission's General Complaint Procedures, that a person has been acting as a local governmental lobbyist without first registering with the Public Ethics Commission in accordance with this Act and he or she fails to register within fourteen (14) days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the city council, redevelopment agency or other board or commission at a noticed public meeting or upon oral petition on his or her own behalf. Such debarment shall be in effect until registration occurs.

3.20.210 Civil Penalties; Late Fines

- A. Civil penalties shall be imposed by resolution of the Public Ethics Commission.
- B. Except as otherwise specified in this Act, the Commission may impose penalties of up to one thousand dollars (\$1,000) for each complaint violation sustained.
- C. In addition to any other penalty or remedy available, if any person fails to file any report or statement required by this Act, after any deadline imposed by this Act, such person may be liable to the City in the amount of \$25 per day after the deadline until the statement or report is filed, up to a maximum amount of \$500. Liability need not be enforced by the Commission if its Executive Director determines that the late filing was not willful and that enforcement of the penalty would not further the purposes of this Act. No liability shall be waived if a statement or report is not filed within 10 days after the Executive Director has sent specific written notice to the filer of the filing requirement.
- D. If any civil penalty, late fine or registration fee imposed by the Public Ethics Commission is not timely paid, the Commission shall refer the debt to the appropriate City agency or department for collection.

3.30.220 Criminal Violation

- A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.
- B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.
- C. No person convicted of a misdemeanor violation of this Act may act as a lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

~~3.20.230~~ — ~~Effective Date~~

~~The effective date of this Act shall be September 1, 2002. RESERVED.~~

3.20.240 Severability

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 FEB 17 PM 3:40

Approved as to Form and Legality


City Attorney

AN ORDINANCE AMENDING CHAPTER 3.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT" ["LRA" OR "ACT"]) TO 1) ESTABLISH LEGISLATIVE FINDINGS AND PURPOSES FOR THE ACT; 2) AMEND THE CURRENT DEFINITION OF "LOCAL GOVERNMENTAL LOBBYIST;" 3) ESTABLISH ANNUAL REGISTRATION FEES IN THE AMOUNT OF \$180; 4) EXPAND THE EXISTING EXCEPTIONS FOR ENGINEERS AND EXEMPT FROM REGISTRATION ANY PERSON WHOSE COMMUNICATIONS ARE MADE PUBLICLY; 5) DELETE FROM REGULATION SO-CALLED "CITY CONTRACTORS" AND "PERSONS DOING BUSINESS WITH THE CITY;" AND 6) AUTHORIZE THE IMPOSITION OF LATE FINES OF \$25 PER DAY AND A MAXIMUM OF \$500 FOR FAILURE TO TIMELY FILE REPORTS REQUIRED UNDER THE ACT

NOTICE AND DIGEST

The proposed amendments would amend the LRA to (1) Establish legislative findings and purposes where none currently exist; (2) Revise the definition of who qualifies as a local governmental lobbyist; (3) Delete from regulation provisions applicable to "contractors" and "persons doing business with the City;" (4) Establish registration fees in the amount of \$180 annually; (5) Expand an existing exception from registration requirements to include all licensed engineers; (6) Exempt from registration any person whose only communications are made at a public meeting or submitted in writing as a public record; (7) Authorize the imposition of late fines of \$25 per day to a maximum of \$500 for failure to timely file reports required under the Act; and (8) modify other provisions related to specific definitions, exemptions, filing requirements and powers of the Public Ethics Commission.