  
CITY ATTORNEY

**ORDINANCE NO. 12782 C.M.S.**

---

**AN ORDINANCE AMENDING CHAPTER 3.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE LOBBYIST REGISTRATION ACT") TO PROVIDE 1) A RESTRICTION ON ELECTED OFFICIALS FROM ACTING AS PROFESSIONAL LOBBYISTS FOR ONE YEAR AFTER LEAVING OFFICE; 2) A LIMITATION ON THE AMOUNT OF GIFTS LOBBYISTS CAN GIVE TO CITY OFFICIALS, STAFF AND THEIR IMMEDIATE FAMILIES; 3) QUARTERLY DISCLOSURE OF A LOBBYIST'S CAMPAIGN FUNDRAISING ACTIVITIES; 4) QUARTERLY DISCLOSURE OF ANY EMPLOYMENT RELATIONSHIP AMONG LOBBYISTS, CITY OFFICIALS AND STAFF; 5) DISCLOSURE OF THE NAMES AND TITLES OF THE PERSONS WHOM A LOBBYIST ATTEMPTS TO INFLUENCE; AND 6) MISDEMEANOR PROSECUTION FOR KNOWING AND WILLFUL VIOLATIONS OF THE ACT AND A ONE-YEAR PRACTICE BAN UPON CONVICTION**

**WHEREAS**, the Lobbyist Registration Act currently requires paid, professional lobbyists to register with the City, refrain from certain practices and to report quarterly on their lobbying activities, and

**WHEREAS**, the amendments set forth below will increase public disclosure of lobbyist activities and provide criminal sanctions for the knowing and willful violation of the Lobbyist Registration Act.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Section 3.20.030 of the Oakland Municipal Code is hereby amended to read as follows:

# 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."

## 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 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 represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization 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.
- C. "Designated employees" mean city and redevelopment agency employees 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 conflict of interest code to file financial interest disclosure statements.
- D. "Local governmental lobbyist" means any individual who: 1) 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 or director of any corporation, organization or association include communication directly or through agents with any public official, officer or

designated employee, for the purpose of influencing any proposed or pending governmental, legislative or administrative action of the city or the redevelopment agency. No person is a local governmental lobbyist by reason of activities described in Section 3.20.030(A). In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

- E. "Governmental action" means any administrative or legislative action of the city and 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 employee 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 commission.

### **Article III. 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.
- B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing, his or her name, business and residence addresses.
- C. The lobbyist shall reregister annually ~~within~~during the month ~~preceding the annual registration date of~~ January and at that time shall resubmit the required information.

#### **3.20.050 Cessation of Employment.**

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon 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 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.
- 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 when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.
- E. Any attorney, architect or civil 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; (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 director directly relating to 1. and 2. above.
- F. To designated representatives of a recognized employee organization whose activities are limited to communicating with city officials or their representatives regarding 1) wages, hours and other terms and conditions of 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.
- 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 or terms of a contract with any elected official or member of any City board or commission.

### 3.20.070 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 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 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. 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, ~~the individual~~ 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 following categories: City officer/City officer-elect; City employee; Member of a

City board or commission; or Other 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 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 (1) the persons whom the lobbyist solicited, and (2) the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request made in a mass mailing sent to members of the public, to a gathering which members of the public may attend, or 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.
- E. If any lobbyist, or a registered client at the behest of a lobbyist, employs or hires an elected city officeholder, candidate for elected city 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.
- F. 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.

## 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.
- 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, 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 officer or designated employee under personal obligation to such lobbyist, client, contractor or person.

**3.20.140 Deception Prohibited**

No local governmental lobbyist, client, contractor or person doing business with the city or the redevelopment agency shall deceive or attempt to deceive a city or agency officer or designated employee as to any material fact pertinent to any pending or proposed governmental action.

**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.**

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 governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any city or agency 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 From Acting As A Local Governmental Lobbyist**

No elected officer of the City of Oakland, for a period of one year after leaving office, shall act as a local governmental lobbyist.

**Article VI. Enforcement**

**3.20.1803.20.200      Procedures and Action**

- A. Any person who 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.

**3.20.1903.20.210      Civil Penalties**

- 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 sustained.
- C. If any civil penalty 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.

**3.20.2003.20.230      Effective Date**

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

**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.

In Council, Oakland, California, JAN 16 2007~~2002-2006~~.

PASSED BY THE FOLLOWING VOTE:

AYES-                      BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN,  
REID, AND PRESIDENT DE LA FUENTE - 8

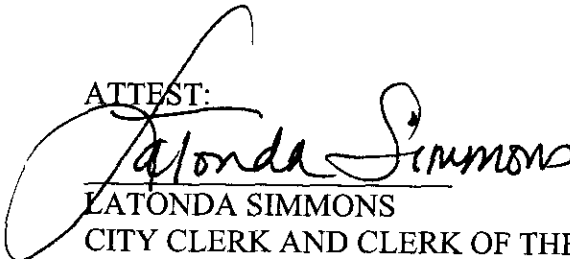
NOES- 0

ABSENT- 0

ABSENTION- 0

Introduction Date: DEC 19 2006

ATTEST:

  
LATONDA SIMMONS  
CITY CLERK AND CLERK OF THE  
COUNCIL OF THE CITY OF  
OAKLAND, CALIFORNIA

**AN ORDINANCE AMENDING CHAPTER 3.20 OF THE OAKLAND MUNICIPAL CODE ENTITLED "CITY OF OAKLAND LOBBYIST REGISTRATION ACT" REQUIRING PROFESSIONAL LOBBYISTS TO DISCLOSE SPECIFIC INFORMATION REGARDING CAMPAIGN FUNDRAISING, EMPLOYMENT RELATIONSHIPS AND LOBBYING ACTIVITIES, AND TO RESTRICT THE ABILITY OF LOBBYISTS TO MAKE GIFTS TO CITY OFFICIALS AND EMPLOYEES, TO RESTRICT THE ABILITY OF ELECTED OFFICIALS FROM WORKING AS A PROFESSIONAL LOBBYIST AFTER LEAVING OFFICE, AND TO PROVIDE MISDEMEANOR PROSECUTION FOR THE KNOWING AND WILLFUL VIOLATION OF THE ACT**

**NOTICE AND DIGEST**

The proposed amendments would provide: 1) a restriction on Oakland elected officials from acting as local governmental lobbyists for one-year after leaving office; 2) a restriction on gifts and other forms of compensation by lobbyists to local candidates, elected officials, certain City staff, and members of their immediate families; 3) quarterly disclosure of a lobbyist's fundraising activities; 4) quarterly disclosure of employment relationships between lobbyists and local candidates, elected officials, certain City staff, and members of their immediate families; 5) the identification of the person(s) a lobbyist seeks to influence; 6) an exemption from lobbyist registration for activities that include: a) communications involving employee contracts and agreements; and, b) responses to bids and RFP's; 7) misdemeanor prosecution for knowing and willful violations of the Act and a one-year practice ban upon conviction.