



Agenda Report

TO:	Honorable Mayor, City Council & Members of the Public	FROM:	Nikki Fortunato Bas Council President Councilmember, District 2
			Nicolas Heidorn Executive Director Public Ethics Commission
SUBJECT:	Amendments to the Lobbyist Registration Act	DATE:	September 14, 2023

RECOMMENDATION

Council President Bas and the Public Ethics Commission (PEC) respectfully request that the City Council: approve an ordinance amending the Lobbyist Registration Act (LRA) (Chapter 3.2 of the Municipal Code) to:

- (1) Codify in the LRA the \$500/year lobbyist registration fee;**
- (2) Establish a lobbyist registration fee waiver and fee reduction policy;**
- (3) Cap the late filing fee for lobbyist quarterly reports;**
- (4) Require that lobbyists attend a training on the LRA;**
- (5) Change the lobbying quarterly reports filing schedule;**
- (6) Authorize the PEC to require additional information in quarterly reports; and**
- (7) Make other minor and technical amendments to the LRA.**

EXECUTIVE SUMMARY

In June of this year, the City Council adopted its Master Fee Schedule for Fiscal Year 2023-2024 which, at the request of the Public Ethics Commission (PEC or Commission), included a new \$500 annual lobbyist registration fee and a new \$10/day lobbyist late filing fee. In recommending that the City Council adopt these fees, the PEC committed to developing a registration fee waiver policy for lobbyists who are employees of nonprofits or community-based organizations for the City Council's consideration.

This proposal codifies the recent Master Fee Schedule amendments in the Lobbyist Registration Act (LRA) and adds three changes to the standard fee structure to mitigate hardship and promote fee equity:

- A fee waiver for 501(c)(3) nonprofit organizations with less than \$750,000 in annual revenue;
- A fee reduction for small businesses and organizations with less than \$200,000 in annual revenue; and
- A 50% fee reduction for lobbyists registering in the second half of the year.

The proposed LRA Amendments would also give the PEC the authority to modify these fee reductions or waivers based on experience administering the fee. Additionally, the \$10/day late fee would be capped at \$1,000, which is the PEC's maximum fining authority under the LRA.

The proposal also makes several ancillary changes to simplify or streamline the administration of the LRA, based on best practices from peer jurisdictions. These include:

- Requiring that lobbyists complete a PEC training session on the requirements of the LRA upon first registering as a lobbyist, and periodically thereafter.
- Changing the lobbyist quarterly report filing deadline from 30 days after the end of the quarter to the last day of the month following the end of the quarter (e.g., July 31 instead of July 30);
- Authorizing the PEC to require additional information relevant to lobbying related activities in the lobbyist quarterly reports; and
- Other minor and technical changes.

BACKGROUND / LEGISLATIVE HISTORY

The Oakland Lobbyist Registration Act requires any person that qualifies as a lobbyist to register annually with the PEC before conducting any lobbying activity. Under Oakland law, a person qualifies as a local governmental lobbyist in Oakland if:

- They are paid \$1,000 or more in a calendar month to communicate with City officials to influence any proposed or pending governmental, legislative, or administrative action; or
- Their duties as an employee, officer, or director of an organization or business entity include communicating (directly or through an agent) with City officials or employees to influence any proposed or pending governmental, legislative, or administrative action.

The LRA requires that registered lobbyists submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. This includes information such as the items of governmental action the lobbyist sought to influence and who the lobbyist communicated with, as well as any campaign contributions solicited by the lobbyist during that period. The PEC ensures compliance with the City of Oakland's lobbyist registration laws and acts as filing officer for lobbyist disclosures. Examples of filing officer activities include processes such as noticing registration and filing deadlines, providing advice and technical assistance, doing a surface review of filings for completeness, engaging with non-filers to gain compliance, and maintaining the PEC's online filing system. As of August 2023, 73 lobbyists are registered with the PEC.

Historically, unlike many other large California cities, the City of Oakland had not charged lobbyists a registration fee or late fees for missed deadlines. Earlier this year, the Commission proposed that the City

Council adopt in the Master Fee Schedule (A) a \$500 annual lobbyist registration fee and (B) a \$10/day late fee for lobbyist filings submitted after applicable deadlines. The staff report recommending the adoption of these fees noted that, if the fees were adopted, the “Commission shall develop a registration fee waiver policy for lobbyists that are employees or representatives of 501(c)(3) nonprofit organizations and/or community-based organizations that can demonstrate hardship, prior to fee implementation.” On June 20, 2023, the City Council adopted a revised Master Fee Schedule, which included the annual lobbyist registration fee and lobbyist late filing daily fees recommended by the Commission. On August 9, 2023, the PEC voted to recommend the proposal that is the subject of this report, which would provide a fee waiver/reduction for certain lobbyists and make other ancillary changes to the LRA.

Under City Charter Section 603(h), the City Council may amend the LRA to further its goals and purposes. Amendments to the LRA must be submitted to the PEC for review and comment prior to their passage, which has already been done in this case, since this proposal originates with the PEC. If the City Council makes substantive amendments to this proposal, the amended proposed ordinance would need to return to the PEC for review and comment prior to enactment.

ANALYSIS AND POLICY ALTERNATIVES

Proposed Lobbyist Registration Fee Changes

This proposal makes three changes to the \$500/year lobbyist registration fee, which would: waive the registration fee for qualifying nonprofits; reduce the fee for smaller businesses or organizations, for which the \$500 fee may pose a hardship; and reduce the fee for third and fourth quarter registrants. The attached draft language would also permit the PEC to modify the fee waiver/reduction requirements going forward based on experience administering the fee.

Fee Proposal Overview

Current Fee		
\$500/year		
Proposed Fee		
	Jan. 1 – Jun. 30 Registration	Jul. 1 – Dec. 31 Registration
Standard Fee	\$500/year	\$250/year
Small Business/Organization under \$200,000 gross revenue	\$100/year	\$50/year
501(c)(3) Nonprofit under \$750,000 gross revenue	\$0 (waived)	\$0 (waived)

A. Nonprofit Fee Waiver

Based on a review of Oakland registered lobbyist filings as of July 2023, PEC staff estimates that 21 lobbyists – or about 30% of all Oakland registered lobbyists – represent some type of nonprofit organization. While nonprofit lobbyists have always been required to report their activities under the LRA, until recently there was no charge for registering as a lobbyist in Oakland. For nonprofits that are not well-

resourced, the new \$500 fee may pose a hardship or divert organizational resources that might otherwise have been used for charitable or educational activities.

For this reason, several California jurisdictions either exempt from regulation, or waive the registration fee for, local lobbyists that are employed by nonprofit organizations or neighborhood or community organizations. PEC staff reviewed the lobbying registration ordinances of the eight California cities and counties with ethics commissions and found that the majority included some type of nonprofit fee waiver or regulatory exemption. Berkeley and San Francisco provide fairly broad fee waivers for 501(c)(3), (c)(4), and (in Berkeley) (c)(6) nonprofits. The jurisdictions that exempt nonprofits lobbyists from registration often adopt narrower exclusions. For example, in Sacramento (Sacramento MC 2.15.050(D)(3)), only *uncompensated* nonprofit officers are exempt from registering, whereas in Los Angeles (Los Angeles MC 12.12.020(E)-(F)) only 501(c)(3) nonprofits *providing direct services to the indigent and not seeking city funding* are eligible.

**Lobbyist Regulatory Exemption or Fee Waiver
 by Type of Nonprofit or Community Organization**

Jurisdiction	Regulatory Exemption or Fee Waiver	Type of Eligible Nonprofit/Organization:
Berkeley	Fee Waiver	501(c)(3), 501(c)(4), or 501(c)(6) nonprofit
Long Beach	Exemption	<ul style="list-style-type: none"> ▪ 501(c)(3) nonprofit ▪ Neighborhood associations or project area committees ▪ Organizations representing City business improvement districts
Los Angeles	Exemption	501(c)(3) nonprofit which receives government funding and provides direct services to indigent persons, unless seeking City funding
Orange County	Exemption	501(c)(3) or 501(c)(6) nonprofit not seeking a County grant or contract
Sacramento	Exemption	Any nonprofit (uncompensated members or directors only)
San Diego	None	-
San Francisco	Fee Waiver	501(c)(3) or 501(c)(4) nonprofit
	Exemption	<ul style="list-style-type: none"> ▪ 501(c)(3) nonprofit ▪ 501(c)(4) nonprofit whose most recent tax filing was an IRS Form 990-N or an IRS Form 990-EZ ▪ Organization whose next tax filing will be an IRS Form 990-N or an IRS Form 990-EZ
San Jose	Exemption	<ul style="list-style-type: none"> ▪ Any nonprofit (uncompensated members or uncompensated board members only) ▪ 501(c)(3) nonprofit ▪ Neighborhood association, neighborhood advisory committee, or project area committee

As the chart above demonstrates, the most common type of nonprofit to receive an exemption/waiver is a 501(c)(3) nonprofit, followed by a (c)(4), then a (c)(6). 501(c)(3) nonprofits are classified as public charities, whose political activities are more strictly regulated under federal law. 501(c)(3) nonprofits can only spend a limited amount of their funds on lobbying and cannot endorse political candidates. Donations to 501(c)(3) nonprofits are tax-deductible. By contrast, 501(c)(4) nonprofits, called social welfare nonprofits, and 501(c)(6) nonprofits, which represent business associations, may both endorse candidates and are not limited in how much lobbying activity they engage in. Donations to these nonprofits are generally not tax deductible.¹

This proposal would provide a full fee waiver for 501(c)(3) nonprofits (or a local chapter of a larger nonprofit) with less than \$750,000 in annual revenue. By law, 501(c)(3) nonprofits may not engage in substantial amounts of lobbying. Any fee therefore risks displacing the charitable activities of that nonprofit. By contrast, 501(c)(4) and 501(c)(6) nonprofits are frequently advocacy organization, where the lobbying fee is more akin to a cost of doing business. The proposed 501(c)(3) fee waiver is also limited to smaller nonprofits as measured by income, as larger nonprofits are unlikely to be significantly affected by the fee. Nonetheless, most nonprofits would likely qualify. According to a study by the National Council of Nonprofits, 88% of 501(c)(3) nonprofits reported less than \$500,000 in revenue in 2016, and 92% reported less than \$1 million.²

B. Small Business/Organization Fee Reduction

Because some community organizations may not have gone through the process of registering as a nonprofit, and because a \$500 fee could represent a hardship for very small businesses or self-employed lobbyists, and may deter their participation in the City's legislative process as a result, the proposal also includes a fee reduction from \$500 to \$100 for any organization (including a 501(c)(4) or (c)(6) nonprofit) or business with less than \$200,000 in annual revenue. This threshold is about double Oakland's median household income (~\$85,000) and follows a threshold set in federal law, where nonprofits of any type with less than \$200,000 in annual gross receipts may file a simplified, short form tax return called Form 990-EZ. In addition, San Francisco uses the same threshold for determining an organization's eligibility for a lobbyist regulatory exemption.

C. Reduced Fee for Third/Fourth Quarter Registrants

The proposal also includes a 50% fee reduction for lobbyists registering in the second half of a year. In most local jurisdictions, a lobbyist's registration and any applicable registration fee is only valid for the calendar year in which the lobbyist registered. For example, in San Francisco returning lobbyists must

¹ See Bolder Advocacy, "Types of Organizations," <https://bolderadvocacy.org/resource-library/types-of-organizations/> (accessed July 2023), and Bolder Advocacy, "Comparison of 501(c)(3) and 501(c)(4) Permissible Activities," <https://bolderadvocacy.org/resource/comparison-of-501c3-and-501c4-permissible-activities/> (accessed July 2023).

² National Council of Nonprofits, "Nonprofit Impact Matters," 17 (2019), https://www.nonprofitimpactmatters.org/?utm_source=web&utm_medium=site&utm_campaign=reports-page.

pay their registration fee by February 1 of each new calendar year, or else their registration is automatically terminated. (San Francisco Campaign and Governmental Conduct Code (SF CGCC) Sec. 2.110(f).) Similarly, under the LRA, returning Oakland lobbyists are required to reregister with the PEC in January of each calendar year. (OMC 3.20.040(C).)

Calendar year-based registration is simple to administer and provides for predictable registration deadlines; however, a flat registration fee regardless of when a person first registers as a lobbyist can result in some financial inequities between lobbyists. For example, if Oakland adopted a flat fee, a person who first registers to lobby in January and a person who first registers to lobby in December would both pay \$500, but one person could lobby for 12 months with that payment whereas the other person could only lobby for one month.

To reduce these inequities, but retain a predictable and easily administrable fee payment schedule, some jurisdictions charge a different fee depending on when a person registers. Sacramento, for example, charges lobbyists a \$100 initial registration fee for those registering for the first time before June 30, and \$50 for those registering on or after June 30.³ Similarly, California state lobbyists who register in the first year of a two-year legislative session must pay a \$100 fee but lobbyists registering in the second year must pay \$50.⁴ Following the model of Sacramento and California, this proposal would reduce the registration fee by half for lobbyists who initially register in the second half of a calendar year.

D. Future Changes

With experience administering the fee, the PEC may find that there are better ways to structure or target the fee waiver/reduction. Rather than requiring the PEC to repeatedly return to the City Council with small adjustments to the waiver/reduction process, this proposal provides the PEC with the authority to make future adjustments by resolution or regulation. Under the Oakland Municipal Code, any rules, regulations, or procedures adopted by the PEC must be submitted to the City Council within seven days of their adoption and become effective 60 days later unless the City Council, by two-thirds vote, veto the rule, regulation, or procedure. (OMC 2.24.020.) This would be a faster and less resource-intensive process than having the PEC adopt only recommended changes then seek a legislative sponsor to introduce an ordinance making this change.

Late Filing Fee

³ Sacramento City Clerk, "Lobbyists," <https://www.cityofsacramento.org/Clerk/Good-Governance-and-Compliance/Lobbyists> (accessed July 7, 2023).

⁴ California Secretary of State, "Lobbying Registration," <https://www.sos.ca.gov/campaign-lobbying/lobbying-disclosure-requirements/lobbying-filing-requirements/lobbying-registration-documents-required-registration-amendment-termination-and-withdrawal#:~:text=For%20registration%20submitted%20during%20the,or%20firm's%20registration%20is%20%2450> (accessed July 7, 2023).

Under the newly-adopted amendments to the Master Fee Schedule, the PEC may now impose \$10/day fines for late lobbyist filings, which is the same dollar amount that the PEC imposes pursuant to state law for late campaign filings. (See Cal. Gov. Code Sec. 91013.) As with campaign filing late fees, this fee would be imposed administratively by staff, without requiring a vote of the Commission or going through the Commission's complaint hearing process. Daily fees are intended to incentivize lobbyists to file their mandated reports as soon as possible to stop incurring new fees.

The current Master Fee Schedule does not cap the cumulative amount of late fees that a lobbyist may incur under the LRA. Hypothetically, a lobbyist that refuses or forgets for years to file their lobbying report could accumulate thousands to tens of thousands of dollars in late fees, which would significantly exceed the PEC's maximum enforcement penalty of \$1,000 for a violation of the LRA. (OMC 3.20.200.) For consistency, this proposal caps these late fees at a maximum of \$1,000. Notably, in addition to the daily late fees, a lobbyist who fails to file mandated reports could also be the subject of an enforcement proceeding.

The proposal also provides a streamlined process for waiving fees for good cause. Under the Master Fee Schedule, the recently-adopted \$10/day lobbyist filing late fee begins as soon as a lobbyist is one day late in filing their report. However, there may be situations where a lobbyist has a good reason for not filing their reports in a timely fashion, which might include a family emergency or a technology issue with the PEC's filing system. In San Francisco, the Ethics Commission's Executive Director may waive up to a \$500 fee (and higher amounts with notice to the Commission and the opportunity for review) if the late filing "was not willful and that enforcement will not further the purposes" of the lobbying registration ordinance. (SF CGCC 2.145.) For the LRA late filing fee, this proposal would provide the Executive Director with similar discretion to waive late filing fees of up to \$500 if the violation was not willful and enforcement would not further the purposes of the LRA.

Lobbyist Training Requirements

To ensure lobbyists are aware of, and comply with, city laws relating to lobbying, this proposal adds a requirement that lobbyists complete a PEC training on the LRA upon first registering as a lobbyist and periodically thereafter, as provided by the PEC by rule. The State (FPPC Reg. 18603.1) and many other cities, for example San Francisco (SF CGCC 2.116) and Berkeley (Berkeley M.C. Sec. 2.09.080), similarly require lobbyists to take a mandatory training course. Moreover, this proposed requirement is similar to what Oakland requires of its own employees. Under the Government Ethics Act, city employees that file an annual Form 700 Statement of Economic Interest are also required to take a PEC training on government ethics requirements every two years. (O.M.C. 2.25.080(A).) Because new lobbyists register at different times of the year, PEC staff envision providing this training as an online recording that lobbyists could review at their convenience and without requiring substantial additional PEC staff resources.

Quarterly Filing

Presently, the LRA requires that quarterly lobbyist reports be filed 30 days after the end of the quarter. For Quarter 1 (Q1) and Q3 reports, reports are due at the end of the month following the reporting period.

However, because the months following the Q2 and Q4 reports are 31 days long, the report is due the day *before* the last day of that month. This inconsistency can create the opportunity for inadvertent late filings. Moreover, this filing schedule is also inconsistent with campaign finance semi-annual reports (Cal. Gov. Code Sec. 84200) as well as California lobbyist quarterly reporting (Cal. Gov. Code Sec. 86117), which are due at the end of the month following the reporting period. This proposal would amend the LRA to provide a consistent end-of-the-next-month filing deadline for all lobbyist reports.

Comparison: LRA, State Lobbying, and Campaign Finance Reporting Deadlines

Reporting Period	LRA Reports	CA Lobbying Reports	Campaign Semi-Annual Reports	<i>Proposed</i> LRA Reports
Quarter 1 (Jan. 1 – Mar. 31)	Apr. 30	Apr. 30	-	Apr. 30
Quarter 2 (Apr. 1 – Jun. 30)	Jul. 30	Jul. 31	Jul. 31	Jul. 31
Quarter 3 (Jul. 1 – Sep. 31)	Oct. 30	Oct. 30	-	Oct. 30
Quarter 4 (Oct. 1 – Dec. 31)	Jan. 30	Jan. 31	Jan. 31	Jan. 31

Information in Quarterly Lobbyist Reports

Under the LRA, lobbyists are required to disclose in their quarterly reports (1) the items of governmental action they are seeking to influence, (2) who they communicated with, and (3) what their position was, as well as (4) whether the lobbyist has hired or (5) is hired by a City official, and (6) any campaign solicitations the lobbyist has made on behalf of an officeholder or candidate. (OMC 3.20.110.) Other cities have similar, but not identical, disclosure requirements. In Oakland, the PEC is not authorized to require disclosure of additional lobbying information beyond what is listed in the LRA. However, in most of Oakland’s peer cities with ethics commissions, including Los Angeles (LA MC 48.08(B)(13)), San Diego (San Diego MC Sec. 27.4017(a)(10)), and San Francisco (SF CGCC Sec. 2.110(c)(1)(J)), their ethics commission may require the disclosure of other lobbying information consistent with the purposes of the city’s lobbyist registration ordinance. This permits that commission, based on its expertise administering the law, to adopt other rules which may provide for more meaningful or contextualized disclosure. This proposal would give the PEC similar authority to require the disclosure of additional lobbying information on lobbyist quarterly reports. As described above, any new disclosure rule or regulation adopted by the PEC would be subject to City Council review, and possibly veto, before taking effect.

FISCAL IMPACT

This proposal may result in a small decrease in anticipated fee revenues, likely around \$5,000 to \$10,000, as more lobbyists would be able to claim a fee waiver or reduction. The administrative changes in this proposal can be implemented by the PEC using existing staff and budgetary resources.

With the newly adopted Master Fee Schedule, the PEC anticipates that the \$500/lobbyist registration fee will generate about \$35,000/year, based on approximately 70 people registering each year. According to a PEC review of lobbyist filings, about 14% of current lobbyists are likely employed by 501(c)(3) nonprofits. If all of those lobbyists were eligible for the fee waiver and applied for it, fee revenue would decrease by

around \$5,000. In addition, persons registering in the second half of the year would pay half of the normal fee. However, since most lobbyists register in the first half of the year (90%+ in 2022), this reduction is likely to have a very modest fiscal impact, likely a fee revenue reduction of only a few hundred to a few thousand dollars. The PEC does not have financial data to estimate the effects of the small business/organization fee reduction, but since most registered lobbyists represent higher-income clients, the impact of this reduction may similarly be small.

PUBLIC OUTREACH / INTEREST

The Public Ethics Commission met on August 9, 2023, to consider recommending a fee waiver or fee reduction to the lobbyist filing fee as well as other changes to LRA. Prior to its August 9, 2023 meeting, the Public Ethics Commission notified its lobbying listserv subscribers that the Commission would be considering this proposal.

COORDINATION

This proposal originated with the Public Ethics Commission, which administers the LRA.

SUSTAINABLE OPPORTUNITIES

Economic: There are no direct economic impacts associated with this proposed legislation.

Environmental: There are no direct environmental impacts associated with this proposed legislation.

Race & Equity: This proposal provides greater equity in the lobbyist registration fee structure, by providing a fee waiver or reduction for individuals, businesses, or entities for which the fee may impose a financial hardship. In particular, small community based organizations, many of whom represent or advocate on behalf of lower-income communities of color, are likely to pay no fee or a reduced fee if this proposal is adopted.

ACTION REQUESTED OF THE CITY COUNCIL

Council President Bas and Director Heidorn respectfully request that the City Council: **Approve an amendment to the Lobbyist Registration Act to (1) Codify in the LRA the \$500/year lobbyist registration fee; (2) Establish a lobbyist registration fee waiver and fee reduction policy; (3) Cap the late filing fee for lobbyist quarterly reports; (4) Require that lobbyists attend a training on the LRA; (5) Change the lobbying quarterly reports filing schedule; (6) Authorize the PEC to require additional information in quarterly reports; and (7) Make other more minor and technical amendments to the LRA,** as attached to this report.

For questions regarding this report, please contact Nicolas Heidorn, Executive Director of the Public Ethics Commission at nheidorn@oaklandca.gov or Cinthya Munoz-Ramos, Chief of Staff to Council President Nikki Fortunato Bas, District 2 at cmunozramos@oaklandca.gov.

Respectfully submitted,

Nikki Fortunato Bas

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Attachment:

- Legislation