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OAKLAND

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Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE ~~13469~~ 13469 C.M.S.

INTRODUCED BY THE PUBLIC ETHICS COMMISSION

ADOPT AMENDMENTS TO THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT (ACT) ORDINANCE TO (A) TRANSFER THE RESPONSIBILITY FOR COLLECTING AND RETAINING LOBBYIST FORMS FROM THE CITY CLERK TO THE PUBLIC ETHICS COMMISSION, (B) REFLECT THE CURRENT STRUCTURE OF THE CITY AND THE PUBLIC ETHICS COMMISSION, AND (D) CLARIFY THE PROVISIONS OF THE ACT.

WHEREAS, a charter city has the constitutional authority to enact local regulations to supplement state ethics laws under the home rule and municipal affairs doctrines; and

WHEREAS, the Lobbyist Registration Act was passed in 2002 and amended in 2007, and requires that professional lobbyists register with the City Clerk, refrain from certain practices, and report quarterly on their lobbying activities to the City Clerk; and

WHEREAS, the Lobbyist Registration Act requires lobbyist forms be filed with and retained by the City Clerk, but assigns the Public Ethics Commission the task of creating lobbyist forms and enforcing the requirements of the Lobbyist Registration Act; and

WHEREAS, the citizens of Oakland voted to amend the Oakland City Charter in 2014 to strengthen the Public Ethics Commission to better ensure compliance with laws, including the Lobbyist Registration Act, that seek fairness, openness, honesty, and integrity in City government; and

WHEREAS, the Lobbyist Registration Act has not been amended since 2007 to keep pace with changes to the structure of the City and the Public Ethics Commission that have occurred since 2007; and

WHEREAS, the Oakland City Council finds that these amendments further the purposes of the Lobbyist Registration Act.

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

Section 1. City of Oakland Lobbyist Registration Act. The City Council of the City of Oakland, in order to ensure clear expectations pertaining the requirements of the City of

Oakland Lobbyist Registration Act, does hereby amend Chapter 3.20 of the Oakland Municipal Code to amend the City of Oakland Lobbyist Registration Act as follows:

Chapter 3.20 - THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT

Sections:

Article I. - Findings and Purpose

3.20.010 - Title.

This chapter shall be known as the City of Oakland Lobbyist Registration Act, hereafter "this 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 Act, 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 (\$1,000), and, (1) The city is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or any board or commission, officer or employee of the city.
- C. "Designated employees" mean city 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 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, to communicate directly or through agents with any public official, officer, or designated employee, for the purpose of influencing any proposed or pending governmental action of the city; 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 action of the city. 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 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, planning to do business with the city, or having done business with the city 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 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 Public Ethics Commission.
- B. At the time of registering, the local governmental lobbyist shall file with the Public Ethics Commission, in writing, his or her name, business and residence addresses.
- C. The local governmental lobbyist shall reregister annually during the month 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 Public Ethics Commission 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 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 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 employees or agents working under the direction of the city administrator 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

If the Public Ethics Commission determines that a person is a local governmental lobbyist and he or she fails to register pursuant to this Act 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, 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 pursuant to this Act, whichever is later.

3.20.080 - Availability of information.

All registration information shall be retained by the 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 Public Ethics Commission in a manner 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 and disclosure required to be made under this Act.

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 Public Ethics Commission. The reports shall be due no later than thirty (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 local governmental lobbyist communicated, (2) the name and title of any city board member or commissioner with whom the local governmental lobbyist communicated, and (3) the identity of any city employee with whom the local governmental 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 local governmental lobbyist, or a registered client at the behest of a local governmental 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 local governmental 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 local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental 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 local governmental 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 local governmental lobbyist shall disclose the names of the persons whom the local governmental 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 local governmental 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 local governmental lobbyist makes a solicitation to more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the local governmental 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 local governmental lobbyist is registered and has listed such client with the Public Ethics Commission.
- B. No person shall accept compensation for acting as a local governmental 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 shall abstain from doing any act with the express purpose and intent of placing any city officer or designated employee under personal obligation to such local governmental lobbyist, client, contractor or person.

3.20.140 - Deception prohibited.

No local governmental lobbyist, client, contractor or person doing business with the city shall deceive or attempt to deceive a city 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 local governmental 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 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 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 shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any city officer or designated employee.

3.20.180 - Restrictions on payments and expenses benefiting local public officials, candidates for local office, designated employees and immediate families.

- A. No local governmental lobbyist or a local governmental 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 thirty (30) days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual local governmental lobbyist or individual local governmental 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 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 - Administrative action.

- A. Any person who violates this Act is subject to administrative proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission's Complaint Procedures. The Public Ethics Commission shall not commence an administrative action alleging a violation of this Act more than four years after the date of the alleged violation.
- B. If the Public Ethics Commission finds a violation of this Act, the Public Ethics Commission may: (1) find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, or (3) impose an administrative penalty of up to one thousand dollars (\$1,000) for each violation.
- C. Commencement of an administrative action is the date that the Public Ethics Commission sends written notification of the allegation to the respondent pursuant to the Public Ethics Commission's Complaint Procedures.

D. If any penalty imposed by the Public Ethics Commission is not timely paid, the Public Ethics Commission shall refer the debt to the appropriate city agency or department for collection.

3.20.220 - Criminal action.

- A. Any person who knowingly or willfully violates 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 local governmental 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. All amendments to this Act shall go into effect immediately.

3.20.240 - Severability.

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

IN COUNCIL, OAKLAND, CALIFORNIA,

JAN 16 2018

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, ~~WILLIAMS~~, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID - 7

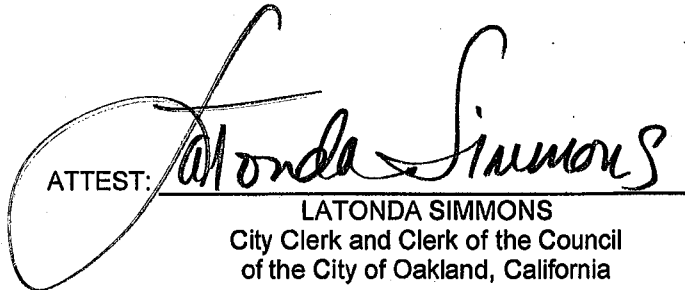
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Gallo - 1

ATTEST:


 LATONDA SIMMONS
 City Clerk and Clerk of the Council
 of the City of Oakland, California

Introduction Date

Date of Attestation: 1-19-2018

DEC 18 2017