

CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: October 4, 2004

RE: A Report And Action To Be Taken Regarding Lobbyist Registration Committee's Proposed Amendments To The Lobbyist Registration Act

At its regular meeting of August 30, 2004, the Commission reviewed and took comment on a proposed series of amendments from the Campaign Finance And Lobbyist Registration Committee to the Lobbyist Registration Act. A copy of the proposed amendments, together with specific comments for each proposed amendment, was included in the agenda package for the August 30, 2004, meeting.

In summary, the Committee proposes that the Act be amended to provide:

- 1) annual registration of lobbyists every January. **See §3.20.040(C).**
- 2) an exemption from lobbyist registration for activities that include: a) communications involving employee contracts and agreements; and, b) responses to bids and RFP's. **See §§3.20.060(F) and (G), respectively.**
- 3) the identification of the person(s) a lobbyist seeks to influence. **See §3.20.110(B).**
- 4) the disclosure of a lobbyist's fundraising activities **See §3.20.110(D).**
- 5) a restriction on gifts and other forms of compensation by lobbyists to elected officials and certain staff. **See §3.20.180.**
- 6) misdemeanor penalties and a practice ban for knowing and willful violations of the ordinance. **See §3.20.200.**

In addition to the Committee's proposed amendments, the Commission directed staff to prepare language addressing several concerns raised by Commission members. That new language is presented as follows:

Section 3.20.060 Exceptions

The provisions of this Act shall not apply:

- E. To 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 writings that will be available for public inspection no later than the public meeting, public hearing, or other official proceeding open to the public for which the writings are submitted; 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.

Deleted: documents or writings in connection with the

Deleted: governmental action for use at a

COMMENT:

Several Commissioners voiced concerns that the term "in connection with" was too vague and did not properly ensure that the written materials over which an attorney, architect or engineer was contacting City employees or agents would be made public.

The above language is intended to provide that so long as an attorney, architect or engineer limits his or her attempts to influence a governmental action to making public appearances and to submitting writings which will ultimately be made available to the public, he or she is not required to register as a lobbyist. Any lobbying activity outside this narrow range of conduct could trigger a registration requirement under the Act.

- 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, City officer, or member of any City board or commission.

COMMENT:

The first sentence of subsection G was initially proposed by the Committee. The Commission requested that the second sentence be added to ensure that persons who attempted to "end run" established procedures for the award of a contract by attempting to influence elected officials, city officers or board or commission members first register as a lobbyist.

Section 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:

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, 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.

COMMENT:

The Commission directed staff to prepare an amendment addressing the situation in which candidates or officeholders hire lobbyists to perform such services as campaign consulting, fundraising, polling, event organizing etc. Under current law, the officeholder or candidate would be required to disclose an employment relationship with a lobbyist on his or her pre-election or semi-annual campaign statements provided the payments were made using campaign or officeholder funds. Lobbyists are not currently required to disclose such compensated activities on their quarterly reports. The proposed language would require lobbyists to disclose who hired them, what they were hired to do, and how much they were paid within a broad range of amounts.

Section 3.30.210 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 two 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.

COMMENT:

The Commission directed staff to prepare additional language in subsection (C) to provide that, in addition to being barred from "acting as a lobbyist", persons convicted of a misdemeanor violation under the Act be precluded for one year from "rendering consultation or advice." This new language is intended to address a situation in which a convicted lobbyist may be barred from lobbying but would still be permitted to consult with clients.

The above language is contained in the attached redline version of the Act along with the Committee's previously proposed amendments.

Commission staff recommends that the Commission review the proposed amendments and take public comment before taking any action on whether to recommend their adoption by the Oakland City Council.

Respectfully submitted,

Daniel D. Purnell
Executive Director