

CITY OF OAKLAND
Public Ethics Commission

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Daniel D. Purnell, Executive Director

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: November 7, 2005

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

I. BACKGROUND

At its regular meeting of October 20, 2005, the City Council's Rules and Legislation Committee considered a series of amendments to the Lobbyist Registration Act proposed by this Commission. These amendments resulted from a number of study sessions by the Commission's Campaign Finance and Lobbyist Registration Committee. The Committee had surveyed other local and statewide lobbyist registration programs to determine how Oakland's program compared with other jurisdictions.

At the Rules Committee meeting, Vice Mayor Jane Brunner offered a set of proposals to modify the Commission's proposed amendments. The Rules Committee ordered the item to be re-heard on Thursday, November 10, 2005, to permit time for Ms. Brunner's proposals to circulate to committee members and members of the public.

Commission Chair Ralph Kanz was present at the meeting and directed staff to prepare this memorandum so that the Commission could comment timely on the modifications before the next Rules Committee meeting.

II. PROPOSED MODIFICATIONS TO THE COMMISSION'S PROPOSED AMENDMENTS

Attachment 1 presents Ms. Brunner's modifications as they affect specific Commission proposals. Commission staff has provided a brief explanation of the stated intent of each modification.

Attachment 2 is a redline of the entire Lobbyist Registration Act as initially proposed by the Commission and as further modified by Ms. Brunner's language.

III. STAFF RECOMMENDATION

Commission staff recommends that the Commission review and take public comment on the proposed modifications and direct staff to convey any comments from the Commission to the Rules Committee when it meets on November 10, 2005, to consider this matter.

Respectfully submitted,

Daniel D. Purnell
Executive Director

ATTACHMENT 1: Modifications To The Commission's Proposed Amendments

Section 3.20.060(E)

(The provisions of this Act shall not apply 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 ~~documents or writings in connection with the writings that will be available for public inspection no governmental action for use at a 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 administrator or agency~~ director directly relating to 1. and 2. above.

MODIFICATION: Delete the proposed amendments. Amendment would create an affirmative obligation on the part of a project applicant to produce all public records; public records are already available upon request.

Section 3.20.060(G)

(The provisions of this Act shall not apply to:)

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 [~~delete: "or terms"~~] of a contract with any elected official or member of any City board or commission.

MODIFICATION: Delete the words "or terms". Elected officials are often engaged in negotiating terms with selected contractors.

Section 3.20.110(B)

(The report shall contain the following information:)

For each item of governmental action sought to be influenced, the name and title of each individual 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.~~

MODIFICATION: Modify the proposed changes to Section 3.20.110(B) as follows. Believe public should know the name of elected officers that are contacted but not staff:

For each item of governmental action sought to be influenced, the name of each city officer with whom the lobbyist communicated and the identity of any other individual 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.

Section 3.20.110(D)

(The report shall contain the following information:)

The date, amount and name of the recipient for any campaign contribution of \$100 or more that is made (1) by the lobbyist; or (2) by a client [delete: or other person] at the behest of the lobbyist; to an elected city officeholder, candidate for elected city office, or to any committee or fund controlled by such officeholder or candidate. A campaign contribution is not made at the behest of a lobbyist if the contribution is made in response to a mass mailing sent to members of the public or in response to an advertisement published in a newspaper or in any other mass media.

MODIFICATION: Delete the words "or other person." Believe lobbyists should be responsible for fundraising disclosures involving their own clients but not as to anyone else.

Section 3.20.110(E)

(The report shall contain the following information:)

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 [*insert:* for the quarter in which the employment is agreed upon] (1) the name of the person providing the services, (2) a description of the services, and (3) the [*delete:* total payments made during the reporting period] [*insert:* monthly rate of compensation] 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. [*insert:* If compensation is to be paid hourly as services are rendered, then the hourly rate of compensation.]

MODIFICATION: Delete and insert as indicated above. Intention is to avoid an on-going reporting obligation over a potentially long term of employment. Initial disclosure should be sufficient.

Section 3.20.110(F)

(The report shall contain the following information:)

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 [*insert:* for the quarter in which the employment is agreed upon] (1) the name of the person who employed or hired the lobbyist, (2) a description of the services, and (3) the [*delete:* total payments made during the reporting period] [*insert:* monthly rate of compensation] 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. [*insert:* If compensation is to be paid hourly as services are rendered, then the hourly rate of compensation.]

MODIFICATION: Delete and insert as indicated above. Intention is to avoid an on-going reporting obligation over a potentially long term of employment. Initial disclosure should be sufficient.

Section 3.20.180(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 [~~delete: \$120~~] [*insert: \$240*] during any calendar year.

MODIFICATION: Change proposed \$120 per year to \$240 per year.
Existing gift limit is \$360 from any source. Intention is to split the difference between an overly restrictive \$120 per year and maximum limit provided under state law.

Section 3.20.030(D) -- (proposed for discussion purposes only:)

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

“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 [*insert: pending or 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.

MODIFICATION: Insert the term "pending" or "proposed or pending" to clarify that only items under actual or likely consideration would be the subject of a lobbyist's communication. Intention is to permit undisclosed communications on general matters of interest and to require disclosure only when such matters crystallize into actual or likely action items.

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."

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 [pending] [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 ~~withinduring~~ 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 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 name and title of each city officer with whom the lobbyist communicated and the identity of any other individual 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.
- 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. The date, amount and name of the recipient for any campaign contribution of \$100 or more that is made (1) by the lobbyist; or (2) by a client at the behest of the lobbyist; to an elected city officeholder, candidate for elected city office, or to any committee or fund controlled by such officeholder or candidate. A campaign contribution is not made at the behest of a lobbyist if the contribution is made in response to a mass mailing sent to members of the public or in response to an advertisement published in a newspaper or in any other mass media.
- 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 for the quarter in which the employment is agreed upon (1) the name of the person providing the services, (2) a description of the services, and (3) the monthly rate of compensation 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. If compensation is to be paid hourly as services are rendered, then the hourly rate of compensation.

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 for the quarter in which the employment is agreed upon (1) the name of the person who employed or hired the lobbyist, (2) a description of the services, and (3) the monthly rate of compensation 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. If compensation is to be paid hourly as services are rendered, then the hourly rate of compensation.

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 for 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, _____, ~~2002-2005.~~

PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-
ABSTENTION-

Attest: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California