

ORDINANCE No. \_\_\_\_\_ C.M.S.

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**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 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 during the month of January and at that time shall resubmit the required information.

Deleted: within  
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**COMMENT:**

*Under existing Section 3.20.040(C), lobbyists must "reregister annually within the month preceding the annual registration date and at that time resubmit the required information." The purpose of this annual "re-registration" is to maintain current information on lobbyists and their clients. The problem is that the annual registration date is based on the lobbyist's initial filing date, which can occur anytime during the year. Because there are now approximately 27 registered lobbyists in the City, Commission staff must actively track and occasionally follow-up on 27 separate annual registration deadlines.*

*The above proposed language would ease this administrative burden by establishing a single annual registration period for all lobbyists. The language would require all registered lobbyists to submit their annual registration in January of each year, rather than by the one-year anniversary of their initial registrations. Commission staff will continue its current practice of providing lobbyists with a completed annual registration form together with a request that they make any changes necessary to bring the information up-to-date as a way of encouraging compliance.*

**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 who communicate 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.

**COMMENT:**

*During its review of other lobbyist ordinances, the Committee noted that most have adopted a variety of exemptions from the definition of "lobbyist" or what activities constitute "lobbying." Most ordinances contain an exemption for labor negotiations in which labor representatives attempt to influence governmental decisions over the terms and conditions of a contract or agreement. Such negotiations could be interpreted as a form of lobbying as that term is defined under the Act.*

*Subparagraph F would exempt from registration those persons who conduct negotiations under the Meyers-Milias-Brown Act ("MMBA"). This Act governs labor negotiations between public employees and their employers. It would also exempt persons who communicate with City officials regarding the terms of an existing employment agreement. Still covered by lobbying regulations would be any attempt to influence a decision on a labor agreement that takes place outside the MMBA process. For example, employee representatives could attempt to influence City officials during their formal bargaining sessions or in subsequent meetings to administer, implement or interpret an existing labor agreement. They would be required to register under the Act, however, if they meet the definition of a lobbyist and attempt to influence a decision on an agreement outside the formal bargaining process.*

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 agreement if selected pursuant to such bid or request for proposal or qualifications.

**COMMENT:**

*The Committee also noted a common exemption from the definition of lobbyist or lobbying for persons or entities involved with negotiating and securing a City contract. Without the exemption, some contract negotiations arguably could constitute "lobbying" under the current definition and which, for practical and policy reasons, ought to be exempt. The exemption would not apply to efforts to influence the award of a particular contract outside the public bid or RFP/RFQ process.*

**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 individual with whom the lobbyist communicated.

**Deleted:** identified only by the following categories: City officer/City officer-elect; City employee; Member of a City board or commission; or Other

#### **COMMENT:**

***Under the Act, lobbyists are required to identify the people they lobby only by the following categories -- City officer/City officer-elect, City employee, member of a board or commission, or "other." Lobbyists are not required to identify the people they lobby by name or position. The Committee determined, as a matter of policy, to recommend that the Act require lobbyists to disclose the names of the people they lobby. Both San Francisco and the City of Richmond require lobbyists to identify the "name and title" of each officer and department they lobby. Commission staff could find no controlling case law which would prohibit a local jurisdiction from requiring lobbyists to disclose the identities of those they lobby.***

- 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 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.

#### **COMMENT:**

***The Act does not currently require lobbyists to disclose the role they may play in soliciting or arranging contributions for officeholders or candidates. Under state law, officeholders and candidates must report the name, address, occupation and employer of any individual who contributes \$100 or more. If a lobbyist is the source of the contribution,***

*the officeholder or candidate is required to identify the lobbyist as the source of the contribution. However, if a lobbyist recommends or advises that one of his or her clients make the contribution, the officeholder or candidate would list the client, and not the lobbyist, as the proper source of the contribution. The Committee noted that a number of local jurisdictions require registered lobbyists to disclose contributions which they help to arrange or solicit.*

*The proposed amendment would require lobbyists to disclose all contributions they make or which are made at their behest. The term "at the behest of," has specific meaning under the California Political Reform Act. Its definition is: "...made under the control or at the direction of, in cooperation, consultation, coordination or concert with, at the request or suggestion of, or with the express, prior consent of." [See 2 Cal. Code of Regs. No. 18225.7(a)] There is also a number of FPPC advice letters interpreting how this term applies in different situations.*

*The amendment would also apply to contributions that are designated for campaign accounts, officeholder accounts and legal defense funds currently authorized under OCRA.*

*Finally, the Committee recognized that lobbyists may be involved with campaign fundraising that is not necessarily related to their job as a lobbyist. For this reason the Committee proposed an exemption for situations in which the lobbyist's name appears in a mass mailing to a general audience or in an advertisement used to request contributions. A similar exemption is already recognized under another state law dealing with the solicitation of contributions by appointed officials. [See Government Code Section 84308; 2 Cal.Code of Regs. No. 18438.6] The main argument in support of such an exemption is that such mass mailings or advertisements are made to a large public audience and are not targeted to persons who may have specific interests before the City.*

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 a) the name of the person providing the services, b) a description of the services, and c) 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:**

*Currently, lobbyists and their clients are not required to disclose information about the people they employ or hire. This proposed amendment would require lobbyists to disclose quarterly whenever they, or any client at their behest, employ or hire a City officeholder, candidate, designated employee or an immediate family member of one of these*

*individuals. Lobbyists would have to provide the information specified above.*

*The Committee believed this disclosure was necessary due to the exemption it is recommending in Section 3.20.180(B) that would permit lobbyists and their clients to pay officeholders, candidates, designated employees and their immediate family members more than \$120 per year for services rendered or bargained for. (See discussion in Section 3.20.180). Since it would be impractical to require or to enforce such a ban as to the immediate family members of Oakland's officeholders, candidates and designated employees, the Committee chose to make it an item of quarterly disclosure whenever a lobbyist employs one of these persons or requests or suggests that a client do so.*

## **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 \$120 during any calendar year.

#### **COMMENT:**

*The Committee noted that almost all surveyed jurisdictions required disclosure of so-called "activity expenses," that broad category of payments and expenses, including gifts and honoraria, that benefit the person being lobbied. Some jurisdictions also restrict the amount of gifts a lobbyist can give to elected officials, candidates, public employees and their immediate families (i.e., spouse and dependent children). Currently, lobbyists and other persons are permitted to give Oakland officials and designated employees the maximum permitted under state law, which is \$340 per year.*

*One of the problems the Committee noted with other lobbying laws is the difficulty in defining what constitutes a "gift" or an "activity expense" for reporting and compliance purposes. Representatives from the lobbyist community told the Committee that some of these jurisdictions imposed significant administrative burdens on lobbyists and local officials to track and report gifts and activity expenses.*

*As a way to regulate both the amount and disclosure of gifts and activity expenses, the Committee recommends a simple cap on the amount of financial benefit a lobbyist and their registered clients may confer upon elected officials, candidates, designated employees and members of their immediate family. The rationale supporting this approach is that with such a cap in place, there is far less need for lobbyists to track every such*

**payment or expense for reporting purposes or to draw nuanced distinctions between gifts and activity expenses.**

**The Committee specifically recommends that lobbyists and their clients be restricted from making any payment or incurring any expense that directly benefits City officials, designated employees and members of their immediate family more than \$120 during any calendar year. The Committee settled on a cap of \$120 per year after considering other amounts and time periods. The amount is based on the ten dollars per month restriction the state places on state-registered lobbyists.**

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. Any 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 not apply to this section.

**COMMENT:**

**The Committee considered a number of exemptions to the general restriction contained in Section 3.20.180(A). These exemptions are currently contained in the regulations interpreting the state Political Reform Act and are generally recognized within the regulated community. The proposed exemptions basically apply to payments or expenses whose value is difficult to establish, whose value is minimal to the benefited party or received in the course of an employment relationship, or where the benefit is returned unused or reimbursed. The reference to the state Administrative Code in Section 3.20.180(B)(5) refers to the situation in which tickets are given to the agency but are used by the officeholder or designated employee. The term "informational material" has a specific and narrow meaning under state regulations.**

**Article VI. Enforcement**

**3.20.190 Procedures and Action**

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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.

- 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.

**3.20.200 Civil Penalties**

Deleted: 3.20.190

- 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.

**3.30.210 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 or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

**COMMENT:**

*The Committee noted that a number of jurisdictions provide for misdemeanor penalties in the event of a knowing and willful violation. Most also prohibit a lobbyist from working within the jurisdiction for one year in the event of a criminal conviction. Since the likelihood of misdemeanor conviction is relatively small, it can be argued that such provisions constitute mere "window dressing" than a practical enforcement tool. On the other hand, the Committee determined that the threat of such penalties can act as a deterrent to improper behavior and, if the facts are present to sustain a criminal prosecution, such a remedy should be available to those responsible for enforcing the ordinance.*

**3.20.220 Effective Date**

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

In Council, Oakland, California, \_\_\_\_\_, 2004.

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PASSED BY THE FOLLOWING VOTE:

| AYES- BRUNNER, CHANG, ~~BROOKS~~, NADEL, REID, WAN, ~~QUAN~~, AND  
PRESIDENT DE LA FUENTE

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NOES-  
ABSENT-  
ABSTENTION-

ATTEST: \_\_\_\_\_  
Ceda Floyd  
CITY CLERK AND CLERK OF THE COUNCIL OF  
THE CITY OF OAKLAND, CALIFORNIA