

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

DRAFT



ADMINISTRATIVE REGULATIONS IMPLEMENTING OAKLAND MUNICIPAL
CODE, CHAPTER 3.20, THE OAKLAND LOBBYIST REGISTRATION ACT
Effective _____, 2003

**LRA A. R. NO. 20.030 Relating To The Definition Of "Local Governmental
Lobbyist"**

A "local governmental lobbyist" includes employees, independent contractors, or those with an ownership interest in a corporation, partnership, association or other entity whose personal lobbying activities cause the entity to receive or become entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month.

COMMENT: This regulation is intended to clarify that the definition of "local governmental lobbyist" includes individuals who work for, or partially own, a business that engages in lobbying. A narrow reading of O.M.C §3.20.030(D) could result in the interpretation that unless the lobbyist personally receives or becomes entitled to receive \$1,000 or more in a calendar month that the registration requirement does not apply. This regulation will close a potential loophole and make it clear that employees, independent contractors or partial owners of a business who engage in lobbying are required to register regardless of whether they personally receive payment directly from their clients.

LRA A.R. NO. 20.040 Relating To "Registration With The City Clerk"

Lobbyists shall file their annual re-registration with the Office of the City Clerk at any time during the preceding thirty (30) days before the one-year anniversary of their initial registration date.

COMMENT: This regulation is intended to clarify when a lobbyist must file his or her "annual" registration. Commission staff currently provides written notice to all lobbyists of their annual registration date.

LRA A.R. NO. 20.050 Relating To "Cessation Of Employment"

(A) A local governmental lobbyist who has terminated all activities requiring registration shall file an executed "Notice Of Termination" with the Office of the City Clerk within seven (7) days after the date he or she has reportedly terminated lobbying activities.

(B) A local governmental lobbyist who has terminated all activities requiring registration shall file an executed "Lobbyist Quarterly Report" with the Office of the City Clerk within thirty (30) days after he or she has filed an executed "Notice Of Termination." The period covered by such "Lobbyist Quarterly Report" shall comprise the period between the ending date of the last quarterly reporting period and the date on which the lobbyist reportedly terminated his or her lobbying activities.

COMMENT: Subsection A is intended to set a date certain when a lobbyist must provide notice to the City Clerk after terminating his or her lobbying activities. The ordinance requires such written notice to be given but does not specify when the notice is due.

Subsection B is intended to require lobbyists who have formally terminated their lobbying activities to file a "quarterly" report on their activities that covers the period from the end of their last reporting period through the date they stopped lobbying. Without this regulation, lobbyists could avoid having to file a quarterly activity report for the final months of their lobbying practice.

LRA A.R. NO. 20.100 Relating To "Records"

The books, papers and documents which a local governmental lobbyist shall retain in order to substantiate his or her registration requirements under the Act shall include, but not necessarily be limited to: correspondence for the retention of services; contracts, memoranda or job descriptions relating to the scope of work or job duties; billing statements or invoices; client payments; correspondence to City officials or designated employees relating to the position taken on behalf of a client on a matter of governmental action; and, any appointment books or telephone logs that indicate the person with whom the lobbyist communicated on behalf of a client.

COMMENT: This regulation is intended to clarify and illustrate the kinds of records which lobbyists are required to retain under the current ordinance. The ordinance requires lobbyists to retain "all books, papers and records" necessary to substantiate their registration requirement. The language of this regulation is taken primarily from the lobbyist record-keeping provisions of the Political Reform Act and its accompanying regulations. [See Gov't Code §86110; 2 Cal. Code Regs. Sections 18610, 18612 and 18615.]

LRA A.R. NO. 20.110 Relating To "Quarterly Disclosure"

(A) The quarterly reports must be received by the Office of the City Clerk or postmarked no later than 30 days after the end of each calendar quarter for which the report is due.

(B) The items of governmental action which the lobbyist sought to influence must be stated with reasonable specificity to permit identification of the particular issue, matter or agenda item that was the subject of the lobbyist's communications with the public official.

(C) The brief narrative description of the position advocated by the lobbyist must be stated with reasonable specificity to permit identification of the particular action or decision the lobbyist is requesting the public official to take or make, and the reasons supporting the requested action or decision.

COMMENT: Subsection (A) sets a specific deadline for when quarterly reports are "due" under the ordinance. Under the proposed regulation, a lobbyist would meet the deadline by the Office of the City Clerk's receiving, or the lobbyist's postmarking, the quarterly report no later than 30 days after the end of the calendar quarter.

Subsection (B) is intended to establish a standard by which lobbyists must describe the item(s) of governmental action they sought to influence on behalf of their client. Without requiring "reasonable specificity" in the description, a lobbyist could avoid providing meaningful disclosure by providing a vague, general or ambiguous description of the item.

Subsection (C) intends to clarify what information must be provided in describing the "position advocated" by a lobbyist in connection with any item. A lobbyist generally advocates the position of his or her clients position by requesting a policymaker do or refrain from doing something, and conveying the reasons why the policymaker should comply with the request. This regulation would require both components to be stated with "reasonable specificity" to avoid vague, general or ambiguous descriptions.

LRA A.R. NO. 20.120 Relating To "Unregistered Employment Or Activity"

No later than five days after accepting compensation from any unregistered client, any person acting as a local governmental lobbyist shall file an executed "Lobbyist Registration Form" or an amendment thereto listing the name of such unregistered client.

COMMENT: This regulation is intended to clarify when a person must file an initial registration or amend an initial registration for any client or clients after accepting compensation for acting as a local governmental lobbyist.

LRA A.R. NO. 20.130 Relating To "Personal Obligation Of City Officials Prohibited"

Placing any City or Agency officer or designated employee under personal obligation includes arranging or making a loan, whether secured or unsecured, to the City or Agency officer or designated employee. A lobbyist "arranges" a loan when the lobbyist refers the City or Agency officer or designated employee to an individual to facilitate the making of the loan and has contact with the individual for that purpose.

COMMENT: This regulation intends to define what it means to place any City or Agency officer or designated employee "under personal obligation" to a lobbyist, client, contractor or person. The language of this regulation is taken primarily from the California Political Reform Act and its accompanying regulations. [See Gov't Code §86205(a) and 2 Cal. Code Regs. Section 18625.]

LRA A.R. NO. 20.180(A) Relating To Enforcement Procedures And Actions

Any complaint alleging that a person has acted as a local governmental lobbyist without first registering with the Office of the City Clerk shall include a statement of facts which, if true, would constitute the alleged violation. The Executive Director shall recommend dismissal of any complaint that does not contain such a statement of facts unless the Commission, by majority vote, directs the Executive Director to undertake a preliminary investigation of the complaint and make a recommendation as specified in Section III.B. of the Commission's General Complaint Procedures.

COMMENT: This regulation would to permit the Executive Director to recommend dismissal of a complaint that alleges that a person is acting as an unregistered lobbyist if the complaint fails to provide a statement of facts which, if true, would constitute the violation. The intent is to minimize preliminary investigations into unfounded allegations of a person's lobbyist status.

OMITTED FROM FINAL DRAFT

LRA A. R. NO. 20.030 Relating To The Definition Of "Governmental Action"

An "administrative" action of the City and Redevelopment Agency includes, but is not limited to, proceedings or decisions to:

- (a) determine the rights or duties of a person under existing laws, regulations or policies;
- (b) issue, amend or revoke a permit or license;
- (c) enforce compliance with, or impose sanctions for the violation of, existing laws;
- (d) purchase or sell property, goods or services;
- (f) award a grant or contract;
- (g) issue or request a legal opinion.

A "legislative" action of the City and Redevelopment Agency means the drafting, introduction, consideration, modification, enactment or defeat of any ordinance, resolution, amendment, report, nomination or other matter by the city, redevelopment agency or any of its boards or commissions.

A "ministerial" action means any action or decision that does not require the exercise of discretion in order to be performed.

COMMENT: The definition of "administrative" and "legislative" actions are intended to clarify as well as illustrate the types of local governmental action that may be influenced by a lobbyist. The definitions are taken directly from the California Political Reform Act and the regulations thereto. [See 2 Cal. Code of Regs. Section 18202 and Gov't Code Section 82037]. The definition of "ministerial" action is the widely recognized legal definition of the term.