NYC Lobbying for Non-Profit Organizations: Overview including information on the Amnesty Program
BRIEF HISTORY OF THE LOBBYING LAW

  - Municipal Legislative Advocate

- The law has been amended several times leading to increased transparency in government.
  - Local Law 86 of 1973
  - Local Law 14 of 1986
  - Local Law 67 of 1993
  - Local Law 46 of 2003
  - Local Law 15 of 2006
    - Substantially increased public disclosure of lobbying activities,
    - Created much needed enforcement mechanisms, and
    - Expanded the City Clerk’s powers in administering the lobbying law.

- Local Law 129 of 2013
  - Based on recommendations made by the Lobbying Commission.
LOCAL LAW 129 OF 2013

• Expanded the definitions of lobbying (Ad. Code §3-211).

• Increased the reporting obligations of the Clerk (Ad. Code §§3-212; 221).

• Changed the filing requirements for:
  • Statements of registration (Ad. Code §3-213);
  • Periodic reports (Ad. Code §3-216);
  • Fundraising and political consulting reports (Ad. Code §3-216.1);
  • Client annual reports (Ad. Code §3-217).

• Added a mandatory training requirement (Ad. Code §3-219).

• Amended the late filing penalties (Ad. Code §3-223).
AMENDED LOBBYING RULES

• The amended rules took effect on November 4, 2015.

• The rules amended chapter 1 of title 51 of the Rules of the City of New York, by replacing the former version in its entirety, to conform to Local Law 129 of 2013.
AMENDED LOBBYING RULES

• Set forth procedures for enrolling in e-Lobbyist;
• Define principal officer, designee and compliance officer;
• Describe the requirements for retainers and authorization letters;
• Set forth the requirements for filing extensions;
• Discuss the procedures for obtaining a waiver of late filing penalties; and
• Describe the procedures for the amnesty program.
WHAT IS LOBBYING?

Eleven actions constitute lobbying, including the attempt to influence:

1. The introduction, passage, defeat or substance of local legislation or resolution by the city council whether or not it has been introduced;

2. The support, opposition, approval or disapproval of local legislation or resolution by the mayor whether or not it has been introduced;
   - Attempting to influence the introduction of legislation is lobbying.
   - Grass roots lobbying is reportable if the campaign focuses on specific legislation.
   - Monitoring legislative activity is not lobbying.

3. Any determination with respect to the solicitation, award or administration of a contract, grant, loan, or agreement involving the disbursement of public monies;
   - Actively seeking discretionary funding may be lobbying.
     - The mere completion of a form for funding is not lobbying.
     - Responding to a Council member’s request for information about how much funding an entity needs is not lobbying.
   - Soliciting a contract with the city may be lobbying (if not within the regular course of the procurement process).
4. Any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation;

• Appearances before community boards or city planning with respect to: ULURP applications, zoning variances and special permits is lobbying.

• Appearances before the Board of Standards and Appeals with respect to special permit and zoning variances do not constitute lobbying.

• Attempts to influence city planning with respect to an application to amend the zoning resolution or its maps constitute lobbying.

• **NOTE:** A person may be deemed a LOBBYIST regardless of job title. The analysis hinges on the activity/communications engaged in. Marketers, publicists, or executive directors/board members of a not-for-profit may be a lobbyist if they are attempting to influence.
WHAT IS LOBBYING? (CONT.)

5. Any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent;

6. The proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law;

7. The decision to hold, timing or outcome of any rate making proceeding before an agency;

8. The agenda or determination of a board or commission;

9. Any determination regarding the calendaring or scope of any city council oversight hearing;

10. The issuance, repeal, modification or substance of a mayoral executive order; or
11. Any determination made by an elected city official or an officer or employee of the city to support or oppose any state or federal legislation, rule or regulation whether or not it has been introduced.

- Funding for Sandy from the federal government.
- Funding for universal pre-k from the state government.
WHAT ACTIVITIES ARE NOT LOBBYING?

Eleven types of actions are excluded from the lobbying law:

1. **Persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency:**

   - Testimony at a public hearing is not lobbying (includes submission of written comments).
   - Responding to a Council member’s request for how much discretionary funding an entity needs is not lobbying.
   - Any communications with a Council member, the mayor or other elected city official or agency during the course of a meeting held at the request of such person is not lobbying.
     - But if you change the topic of conversation and attempt to influence (with respect to one of the definitions of lobbying) then the meeting may become a reportable lobbying activity.
2. Contractors or prospective contractors who communicate with or appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process, the administration of a contract, or the audit of a contract, except communications with elected officials or deputies of elected officials;

- Communications with an agency regarding an RFP or a current contract with the City is not lobbying, but may become lobbying once outside the regular course of procurement planning.

- Communications prior to the issuance of an RFP may be deemed lobbying.

3. Persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates, or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action;

- An attorney hired to advise a client on proposed legislation.
WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)

4. Newspapers and other periodicals;
   • Op-eds may be considered lobbying.

5. Persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings;

6. Persons who appear before an agency in an adjudicatory proceeding;
   • If the decision-maker has no discretion then the proceeding is deemed adjudicatory. See the advisory opinions for more details.

7. Persons or organizations who advertise the availability of goods or services;
WHAT ACTIVITIES ARE NOT LOBBYING? (CONT.)
(NOTE: THESE EXCLUSIONS ONLY APPLY TO
ARCHITECTS & ENGINEERS)

8. Appearances before community boards provided that the proceeding before the final decision-making board or commission is adjudicatory;

9. Designing/drafting plans even if work is preceded or followed by lobbying activity;

10. Work performed in connection with capital projects provided that such work is performed pursuant to a contract with the City; or

11. Actions designated as minor by the City Clerk.
WHAT IS LOBBYING: IMPORTANT NOTES

• Not all communications with Council members are lobbying.
  • Requesting a letter of recommendation for a constituent.
  • Inviting a Council member to speak at an event for a not-for-profit.
  • To classify as lobbying, the activity must fall within the definitions.

• An activity that is not deemed lobbying may become lobbying at any time. Focus on the facts.
  • A Council member requests a meeting to discuss a discretionary funding request and attendees discuss a zoning application before city planning.

• Are you attempting to influence? Job title is irrelevant. Anyone can be a deemed a lobbyist under the NYC Lobbying Law.
WHEN IS LOBBYING REPORTABLE?

1. Did the entity engage in reportable lobbying activity?
   - **Lobbyist/Client Filers**: Does your organization’s or business’s employees engage in lobbying on behalf the entity?

2. Is the activity excluded from lobbying?

3. Did your organization exceed the reporting threshold by expending more than $5,000 in combined compensation and expenses in a calendar year?
WHEN IS LOBBYING REPORTABLE? (CONT.)

• To determine if the reporting threshold will be met, calculate the amount of compensation and expenses.

• To calculate the Compensation:
  • Pro-rate the portion of the lobbying employees’ salaries toward the time spent lobbying (including efforts) for the entire year.
  • Cumulative for all employees lobbying on the entity’s behalf.

• To calculate the Expenses:
  • Total the amount of expenses incurred for lobbying for the entire entity for the calendar year.

• If this amount exceeds $5,000 then you are required to report your lobbying activities.
• Statement of Registration

• Periodic Reports

• Fundraising and Political Consulting Reports (if applicable)

• Client Annual Report (if applicable)

• Subject to other restrictions outlined in the Administrative Code.
ENROLLMENT PROCESS

- Prior to filing a statement of registration the organization must enroll in e-Lobbyist as both a lobbyist and a client.
- One-time process.
- No fee to enroll.
- Accept the terms of use agreement.
- Submit proof of corporate filing.
  - Print-out of registration with NYS Department of State
PRINCIPAL OFFICER ("PO")

• As part of the enrollment process, each organization must appoint a PO.

• A PO is a person who has the legal capacity to enter into a contract on behalf of the entity. The PO must be employed by the entity.

• The PO must complete the enrollment form.

• Only the PO can certify reports. A report is not deemed filed until certified by the PO.

• A PO cannot disclose his or her password for any reason whatsoever.

• A change in PO must be submitted by email or fax no later than five (5) business days after the change occurs.

• To change the PO, the new PO must complete the change in PO form available on our website.
STATEMENT OF REGISTRATION

• Must file no later than 15 days of anticipating exceeding the threshold for lobbying.
  • May be the day lobbying begins.

• File one statement of registration per year.

• Automatically expires on December 31.

• $150 registration fee.

• File in the name of the entity and list the employees the organization anticipates will be lobbying on its behalf.
AUTHORIZATION LETTER

• As part of the statement of registration, the entity must submit an "authorization letter". It can be uploaded directly through e-Lobbyist or mailed to the Lobbying Bureau to be uploaded. There is a sample on our website.

• All authorization letters must contain:
  • The names of the employees the entity anticipates will lobby on its behalf for the calendar year;
  • The time period the employees will be lobbying; and
  • The signature of the Principal Officer.

• If additional employees will lobby on the entity’s behalf midyear, then you must file an amended statement of registration and add those employees to the registration and upload an additional authorization letter listing those employees.
PERIODIC REPORTS

• Six periodic reports per year (if the start date is January 1).
  • Must file all periodic reports for the periods that fall within the
    start and end dates listed on the statement of registration.

• Reporting Periods:
  • First Period: January 1 through last day of February, Due March 15
  • Second Period: March 1 through April 30, Due May 15
  • Third Period: May 1 through June 30, Due July 15
  • Fourth Period: July 1 through August 31, Due September 15
  • Fifth Period: September 1 through October 31, Due November 15
  • Sixth Period/Lobbyist Annual Report: November 1 through December
    31, Due January 15

• If a filing deadline falls on a weekend or city holiday, then the
  deadline is extended to the next business day.
PERIODIC REPORTS (CONT.)

- Details the lobbying activity that takes place in the given period including:
  - The employees that lobbied for the entity for the period;
  - A description of the subject(s) lobbied;
  - The person/agency lobbied (contact AND decision-maker);
  - The pro-rated portion of the salary of the employees that lobbied for the period (itemized by employee).

- Once a statement of registration is filed, a periodic report must be filed **EVERY PERIOD** regardless of whether lobbying activity took place.
If the entity files a statement of registration, and in the given year or 6 months prior to filing the registration, then any person required to be listed on the statement of registration engages in fundraising or political consulting, then must file.

**Fundraising**: soliciting or collecting campaign contributions for a candidate for nomination or election for:
- Mayor
- Public Advocate
- Comptroller
- Borough President
- Council
- Any City public servant running for any office (City, State, Federal).

**Political Consulting**: Any lobbyist who receives compensation to provide political advice to any of the above listed offices.
- Report pertinent information regarding such activities, including expenses.
- Follows the same schedule as periodic reports, but only file if engage in activities.
- Does not include personal campaign contributions.
The organization is only required to file a CAR if the organization retains an outside lobbyist and compensates that lobbyist in excess of $5,000 to lobby on its behalf in the calendar year.

- Cumulative threshold: includes compensation paid to all retained lobbying firms throughout the year.

- Due January 15 every year and reports the prior year’s lobbying activity.
TERMINATION NOTICE

• Must be filed within 30 days of the termination of lobbying activity by its employees.
  • If you are a lobbyist/client filer, then you are only required to file a termination notice as a lobbyist.

• Even when you file a termination notice, you must still file the periodic report for the period in which the termination took place AND must file the P6 Report/Lobbyist Annual Report.
REVIEW OF REQUIREMENTS

• If your organization's employees are compensated in excess of $5,000 for engaging in one of listed lobbying activities that is not otherwise excluded then your organization must comply with the Lobbying Law by filing reports:
  • A statement of registration
  • Six periodic reports per year (unless terminate)
  • Termination Notice (if applicable)
  • Fundraising and political consulting reports (if applicable)
  • Client annual report (if compensate outside lobbyist more than $5,000).

• Must also comply with other requirements of the Administrative Code.
VIOLATIONS OF THE LOBBYING LAW

• Knowing and willful violations:
  • May be subject to a cease order and/or
  • A civil penalty of up to $30,000.

• Non-filing or late filing of reports:
  • Subject to daily late filing penalties and
  • May be subject to civil penalty of up to $20,000.

• Failure to correct an incorrect report or failure to file a termination notice:
  • May be subject to a civil penalty of up to $20,000.
NON-FILING OR LATE FILING OF REPORTS

• Subject to a daily late filing penalty:
  • $10 per day per filing for first time filers and
  • $25 per day per filing for repeat filers.

• May seek a waiver/reduction based on:
  • whether/how often late in the past;
  • annual operating budget of filer;
  • periodic reports - amount of unreported detail; and
  • significance of the impediments to timely filing.

• A civil penalty of up to $20,000 if violation not cured with the 14 day cure period, after a hearing at the Office of Administrative Trials and Hearings (OATH).
OTHER VIOLATIONS

• Violations subject only to civil penalties:
  • Failure to correct an incorrect report and
  • Failure to file a termination notice.

• Only subject to penalty if fail to file amendment and/or termination notice within 14 business days from the date of the mailing of a notice to cure.
AUDIT PROGRAM

- Each year the Lobbying Bureau conducts 45 random compliance audits.
- All reports filed for the year are reviewed including: statements of registrations, periodic reports, fundraising and political consulting reports, and termination notices.
- Auditees are selected randomly by a third party organization.
- Required to produce witnesses and records if requested.
- In conjunction with the audit, a field examination is conducted to review original documents.
- A report is issued listing required actions and findings that must be completed within a reasonable time.
OTHER REQUIREMENTS OF THE ADMINISTRATIVE CODE

- Retain records for five years including books, papers, and documents to substantiate finances in reports.

- Prohibited from receiving compensating employees on a contingent basis.

- "Willful" violations of the Lobbying Law may be referred to the Department of Investigations. (DOI)

- Prohibited from making gifts to public servants. (COIB)

- Campaign contributions are ineligible for taxpayer-financed public matching funds. (CFB)
AMNESTY PROGRAM: BACKGROUND

• Local Law 129 of 2013

“The city clerk shall by rule establish an amnesty program for any lobbyist who was required to have filed, but has never filed, a statement of registration pursuant to section 3-213 of this subchapter, or any client who was required to have filed, but has never filed, an annual report pursuant to section 3-217 of this subchapter, at any time on or after December tenth, two thousand six.”

• Effective November 4, 2015 Chapter 1 of Title 51 of the Rules of New York sets forth the procedures of the amnesty established by Local Law 129 of 2013.
AMNESTY PROGRAM

• Any lobbyist that was required to file, but never filed a statement of registration on or after December 10, 2006 and

• Any client that retained a lobbyist to lobby on its behalf and thus was required to file a client annual report on or after December 10, 2006.

• Can be in compliance with the lobbying law without penalty.
  • No late filing penalties;
  • No civil penalties; and
  • No criminal penalties.

• If acting as both lobbyist and/or client may qualify in whichever capacity the entity is eligible.
  • Ex: Filed as a lobbyist in the past, but never filed as a client and was required to file as a client.
AMNESTY ELIGIBILITY

Amnesty will not be available to any entity who:

• Is the subject of any pending criminal investigation relating to a violation of the Lobbying Law; or

• Is a party to any pending criminal litigation in any court of law relating to a violation of the Lobbying Law.

• Submits a deficient amnesty application.
AMNESTY PROGRAM: APPLICATION

• Application form is on the City Clerk’s website.
  • If engaged in lobbying/hired a lobbyist within the year prior to filing for amnesty, you must submit a summary including:
    • Lobbying activity – target and subjects;
    • Client name/lobbyist name; and
    • Amount of compensation and expenses for lobbying.

• Applications must be received no later than 11:59 p.m. June 30, 2016.

• No fee to file for amnesty.

• Submit by mail or hand delivery.

• Not required to file reports on e-Lobbyist.
REPORTING THRESHOLD

• **IMPORTANT:** Local Law 129 of 2013, effective January 1, 2014, raised the reporting threshold from $2,000 to $5,000.

• Amnesty applicants determining whether they have met the reporting threshold, it is based on the year in which compliance was required:
  
  • From 2006 through 2013, the threshold was $2,000.

  • From 2014 to the present, the threshold is $5,000.
NEW YORK STATE AMNESTY PROGRAM

• If your entity was required to comply with the City lobbying law, it may have been required to comply with the New York State lobbying law as well.
  • Review the New York State lobbying law.

• New York State Joint Commission on Public Ethics (JCOPE) is conducting a similar amnesty program at the state level which also ends on June 30, 2016.

• More information can be found at www.jcope.ny.gov
OUTREACH INITIATIVES

- Weekly training sessions:
  - Every Wednesday from 3pm to 4pm
  - At the Lobbying Bureau office located at 141 Worth Street
  - Registration not required

- Further questions contact:
  - Lobbyist_helpdesk@cityclerk.nyc.gov
  - 212-669-8171