

New York City Updates Lobbying Laws

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BROADER COVERAGE, HIGHER THRESHOLDS – HOW WILL THESE CHANGES AFFECT YOU?

Introduction

In 2006, New York City adopted a series of revisions to the City's lobbying laws. Those amendments included a mandate that the City appoint a commission to review the lobbying laws and evaluate whether the City should make further changes to strengthen the administration and enforcement of the City's lobbying laws. The Mayor and the City Council established the New York City Lobbying Commission (the Commission) in 2011, and the Commission then spent two years examining the law and holding hearings to consider potential changes. As part of its final report issued in March 2013, the Commission called on the Council and Mayor to adopt a series of further revisions. Accepting much of the report, in December 2013, the City Council passed, and the Mayor promptly signed, legislation implementing the Commission's recommendations. Although lengthy, the changes are not likely to significantly affect individuals and entities that already register with the New York City Clerk as lobbyists. The new laws are likely to have a greater impact on individuals and entities that interact with City government but had not previously registered or previously were not required to register. Thus, it is important for all individuals who regularly contact City officials to be aware of the changes, some of which took effect on January 1, 2014.

Discussion

As a result of the Commission's findings, the City Council and Mayor enacted Local Law 129 of 2013. The following highlights the most significant changes.

Revisions to the Definition of Lobbying Activity

The New York City Administrative Code § 3-211(c) definition of lobbying activity has historically been broader than the New York State Legislative Law definition. The City's 2013 amendments, however, align certain aspects of the City definition with the changes that were made to the State law in 2011, but also further expands the City definition.

- **Lobbying City Officials on Federal and State Issues**

The most notable change to the definition of lobbying activity is that beginning in May of 2014, any attempt to influence a City official or employee to support or oppose “any state or federal legislation, rule or regulation,” regardless of whether there has been an introduction of such legislation, rule, or regulation on the State or federal level, will be deemed City lobbying. Therefore, “grass-tops” communications directed at City officials that were previously not considered City lobbying activity because the substance of the communication was unrelated to City policy, will be deemed lobbying that may trigger registration and reporting obligations. For example, a consultant who is paid to urge a City Council member to call a member of the New York State Assembly and ask the Assembly member to support State legislation, will likely be required to register and report the activity to both the New York City Clerk’s office and the New State Joint Commission on Public Ethics (JCOPE). This is a significant departure from the previous requirements, and may require individuals who historically did not consider themselves to be City lobbyists to register with the City Clerk’s office.

- **Definition Expanded and Clarified**

There are several other changes to the definition of lobbying activity that are noteworthy, but less dramatic. Also effective in mid-May, attempts to influence “any determination made by the city council or a member thereof” regarding the introduction or substance of any local legislation or resolution, and any attempt to influence an agency to propose a regulation will be considered City lobbying. Thus, simply contacting Council staff to encourage or discourage the introduction of a bill or resolution will be deemed lobbying activity, as will communications with an agency official to suggest a new regulation, even if the individual has no further involvement in the process. Similarly, the definition is clarified to include any efforts to influence the Mayor with regards to legislation or a resolution that has been introduced in the Council, even if the legislation has yet to pass the Council. Thus, the new law clarifies that communicating with the Mayor’s staff to convince the Mayor to announce support of a pending bill is considered lobbying activity.

Other changes include broadening the definition to include attempts to influence: (i) an agency with regards to “the decision to hold [or the] timing” of a rate making proceeding; (ii) a board or commission with regards to what to include on a public meeting agenda; (iii) “any determination regarding the calendaring or scope of any city council oversight hearing;” and (iv) “the issuance, repeal, modification or substance of a mayoral executive order.”

Registration Obligations

The New York City Administrative Code previously provided that any individual or entity that engages in lobbying activity must register as a lobbyist if the individual or entity anticipates earning or expending more than \$2,000 for lobbying activity during the calendar year. Effective January 1, 2014, the threshold is increased to \$5,000. Thus, persons or entities that engage in very limited lobbying activities over the course of a year may no longer be required to register with the New York City Clerk’s Office. It is important to note that the registration threshold is different for architects and engineers who engage in lobbying activity. Architects, engineers, and their respective firms are only required to register if they anticipate earning or incurring more than \$10,000 for lobbying activity. (See below for more on architects and engineers.)

The registration deadlines have also changed. For lobbyists who are retained prior to December 31st

of the prior calendar year, the deadline has been extended to January 15th. The time in which the registration must be filed by lobbyists who are retained during the year is also adjusted. All lobbyists must now register within 15 days of being retained (regardless if that date also marked the beginning of the lobbying activity).

Although the registration obligation continues to solely be the burden of the lobbyist, the new law establishes a specific obligation for clients to first “enroll in the electronic filing system.” The City already imposed this enrollment requirement on clients, but because it was not written in the law, the Clerk did not levy penalties for failure to timely enroll, and granted registration extensions to lobbyists who were unable to complete the registration if the client failed to enroll. It appears that the Clerk may no longer grant such extensions and could penalize both the client and the lobbyist when a late enrollment leads to a late registration.

The law also clarifies that lobbyists are not required to amend their registration statements to identify different or additional issues or individuals lobbied. The registration is meant to be a forward looking document, while the periodic reports are meant to be retrospective. Nevertheless, registrations must be amended if there is a change to the information in the authorization letter (e.g., the compensation is revised).

Enforcement, Penalties, and Training Requirements

The Commission found that although in recent years the City Clerk has increased its efforts to enforce the lobbying law, there are still too many incidents of unregistered lobbying activity. In order to improve this, the Commission suggested that the City “Lobbying Laws direct the Clerk to focus some of its limited resources on those organizations who are not registered, but whose dealings with City government may subject them to the Lobbying Laws’ requirements.” Based on these recommendations, the new law provides that the Clerk must “develop a protocol” to regularly review a variety of sources of information in order to identify lobbyists who have failed to appropriately register. Such sources of information include, but are not limited to, JCOPE filings, notice of appearance documents filed with City agencies, and the City’s “Doing Business Database.” In addition, the Clerk is required to work with other City agencies and the City Council to develop and disseminate notices and advertisements to make sure individuals are aware of the lobbying laws.

The law eliminates the requirement that the City Clerk’s penalties conform to the State’s penalty system, and instead codifies a penalty schedule for late filers -- \$10 per day per late report for first time filers, and \$25 per day per late report for all others. The Clerk is granted the authority to grant a full or partial waiver of these penalties if the late filer meets certain criteria.

Beginning in December 2014, registered lobbyists will be subject to new biennial training requirements. All lobbying entities that: (i) have five or more officers or employees who engage in lobbying or otherwise are employed in the organization’s lobbying division and (ii) have at least 30 clients, must require at least two of their employees to engage in the training program once every two years. At least one of those employees must have engaged in lobbying activity within the prior year. Smaller firms are only required to have one employee complete the training program once every two years, and when a lobbyist registers for the first time, at least one employee of that organization must register for the training within 15 days of beginning of the lobbying activity. The City Clerk is required to work with the Department of Information Technology and Telecommunications (DoITT) to develop and implement this training program as an online service. The law requires that this process be completed no later than December 2015.

Amnesty Program

In conjunction with the Clerk's education, training, and outreach efforts, the new law directs the Clerk to establish an amnesty program. Any lobbyist or client that was required to file with the Clerk at any time after December 10, 2006, but has failed to do so, may self-report as a non-filer, agree to disclose the relevant information, and, in exchange, any late filing penalties and any civil penalties that could have been levied against the non-filer will be waived. Once the Clerk begins the amnesty program, it will only last for six months. It is important to note that the law encourages early filing of requests to participate in the amnesty program. Thus, entities that should have registered because of lobbying activity conducted after December 6, 2006, but did not, should consider participating in this program to avoid what is likely to be very substantial penalties. There are, however, several pitfalls, and persons interested in the amnesty program should seek counsel prior to contacting the City Clerk.

Communications by Architects and Engineers

The Commission heard a lot of testimony regarding the interplay between the lobbying laws and the services provided by architects and engineers. As a result, the Commission recommended, and the law now includes, different lobbyist registration standards for these professionals.

Since the 1980s, the City Clerk has held that architects and engineers are engaging in lobbying activity when they attempt to influence City boards and commissions, unless the board or commission proceeding is adjudicatory in nature. Beginning in May 2014, however, architects and engineers will no longer be considered to be engaging in lobbying when they interact with a community board, if the community board's involvement pertains to an adjudicatory proceeding at another agency, such as the Board of Standards and Appeals. Similarly, the new law provides that architects and engineers (and their employees) are not engaging in lobbying activity when they perform design work and draft project plans, even if the architect or engineer engages in other related lobbying activity. Moreover, the law provides that attempts by architects and engineers to influence the City Planning Commission regarding an authorization under the zoning resolution, or any decision regarding real property by any other board or commission will not be considered lobbying activity, provided that the project being discussed is one of "minor importance." Additionally, architects and engineers are not engaging in lobbying activity when they appear before any board or commission in conjunction with a capital project being performed pursuant to a contract with the City. Finally, as noted above, to the extent that architects and engineers do engage in lobbying activity, they are subject to a higher registration threshold than other lobbyists.

It is important to remember, however, that architects and engineers are not exempt from registration as a lobbyist when they engage in traditional lobbying activities (e.g., influencing a community board) in connection with a project that is not deemed to be of minor importance or which, ultimately, is not an adjudicatory proceeding. Thus, for example, an architect or engineer who attends a meeting with a Council member in connection with a zoning change would likely be required to register with the Clerk's office.

Limited Periodic Reporting by Small Organizations

In response to concerns raised by certain charitable groups and associations that engage in minimal amounts of lobbying activity that the lobbying law disclosure obligations are overly burdensome, the new law provides for reduced disclosure obligations for certain filers. Organizations and individuals that only lobby on their own behalf, use no outside lobbyists, and have reportable compensation and

expenses that exceed \$5,000 but are equal to or less than \$10,000, are only required to file periodic reports twice each year (covering the periods of January through June, and July through December). This limited reporting option will become available as soon as the Clerk and DoITT certify that they are capable of implementing the corresponding electronic reporting system, provided, however, that the process is supposed to be complete no later than December 2015.

Political Consulting/Fundraising Reports – Expenses Now Reportable

The law continues the requirement for lobbyists who engage in either political consulting or fundraising activity to disclose certain information as part of the periodic reports, but expands the report to include disclosure of any expenses incurred by the lobbyist as part of the political consulting or fundraising activities.

New Review Commission

As was the case with the 2006 revisions to the law, the 2013 amendments again require that the City appoint a City Lobbying Commission -- in 2016 or 2017 -- in order to review the existing laws and determine if additional changes are warranted.

Conclusion

The Lobbying Law continues to be complex, and requires significant disclosure by individuals and entities that interact with City government – and might require disclosure even if the contact was unrelated to City policies. Thus, it is important to remain vigilant of the registration and reporting obligations, and seek counsel where appropriate. This is especially true with respect to the amnesty program for entities that may have been required to register with the City Clerk's Office, but did not.

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