


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: July 23, 2010

Council File No. 07-3005-S2
Assignment No. 10-07-0722

TO: Honorable Members of Rules and Elections Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

SUBJECT: Comprehensive Review and Recommended Changes to the Municipal Lobbying Ordinance

RECOMMENDATION:

- 1) REQUEST the City Attorney to prepare and present an Ordinance, substantially as attached to the City Ethics Commission report and as amended below (recommendation nos. 1a, 1b, and 1c) to amend the City's existing municipal lobbying requirements by modifying definitions and categorical exemptions, requiring entirely electronic filings of registration and quarterly reports, streamlining reporting requirements, and ensuring consistency with all City laws, which also:
 - a. Restores the disclosure/reporting requirement for major filers;
 - b. Clarifies the proposed definitions of "Lobbying Firm" and "Lobbying Organization" to ensure that registration and filing fees do not apply multiple times to a single firm or organization; and
 - c. Requires lobbyists to complete an online ethics training course every two years.
- 2) REQUEST the City Attorney to review existing regulations and the proposed changes, and report back on the legality of City restrictions and prohibitions on lobbyist contributions to City officials and/or candidates in light of the Supreme Court decision in *Citizens United v. Federal Election Commission*.
- 3) INSTRUCT the Information Technology Agency, City Administrative Officer, and Chief Legislative Analyst to review the proposal to implement an entirely electronic registration and filing system for lobbyists, and to report on its feasibility and any costs associated with implementing such a system.

SUMMARY

This report is in response to a report from the City Ethics Commission that recommends significant changes to the City's Municipal Lobbying Ordinance (MLO), which regulates lobbying done in the City of Los Angeles. The Ethics Commission report notes that it represents the culmination of over two years of extensive study, and recommends substantial changes in the City's lobbying regulations, including a new approach towards how lobbyists are defined and who is subject to the MLO.

Major proposed changes can be broadly divided into five categories:

- New definitions of who constitutes a lobbyist, lobbying firm, and/or lobbying organization, and who is exempt from MLO requirements;
- Amended filing and registration requirements, including the implementation of a system that is entirely electronic (e-filing);
- Streamlining/combining periodic reporting requirements so that the bulk of information required to be disclosed by lobbyists is included in quarterly reports;
- Increased statute of limitations and penalties for failure to comply with the MLO; and
- Other changes, including elimination of existing requirements and technical changes designed to ensure consistency with other City laws.

Each category is detailed below; our office concurs with the majority of the recommendations in the Ethics Commission report, with certain amendments as noted. Our office also recommends that the City's Information Technology Agency (ITA) and the City Administrative Officer (CAO), in coordination with our office as necessary, examine and report back on the feasibility and cost of implementing the proposed e-filing only system before a final ordinance is considered for adoption by the City Council.

As the Ethics Commission report was released prior to the US Supreme Court's decision in *Citizens United v. Federal Election Commission*, which reversed laws limiting campaign spending by certain groups, we additionally recommend that the City Attorney be requested to review existing and proposed limitations and prohibitions on lobbyist contributions to ensure compliance with federal law.

New Definitions

The Ethics Commission's most substantial proposed change to the City's MLO is a new approach towards defining who should be considered a lobbyist, and to whom the MLO's regulations should apply. Under existing regulations, the City defines a lobbyist as a person who is compensated to engage in 30 hours of lobbying-related activities (including both direct contact with City officials as well as monitoring and/or giving public testimony at public meetings) in a consecutive three-month period.

The Ethics Commission proposes to redefine the term 'lobbyist' by eliminating the 30 hour requirement, and defining a lobbyist simply as any person that is entitled to receive compensation for lobbying and who has engaged in direct communication (defined as talking, corresponding, or answering questions or inquiries) with a City official for that purpose. The Commission also proposes to define the terms 'lobbying firm' and 'lobbying organization' as a firm that engages in lobbying for a third party and an organization that lobbies on its own behalf, respectively. Both lobbyists and lobbying firms and organizations would be required to register with the City Ethics Commission, and provide quarterly reports detailing their activities.

Exceptions to the definition of direct communication include communicating on the public record (either in public testimony or through public correspondence), communication designed to provide information on competitive contracts or bids proposed to or pending before the City, providing or requesting technical or legal information, requesting basic City services, and

communicating with elected officials on behalf of a City employee labor organization. Engaging in any of those activities would not trigger 'lobbyist' status.

501(c)(3) organizations that receive government funding and provide basic services to disadvantaged individuals either free of charge, at a below-market rate, or based on an individual's income or ability to pay, would be exempted from MLO requirements, unless they lobby for funding, property, or permits from the City on their own behalves. City officials and consultants would also be exempt from MLO requirements.

Individual lobbyists are further classified as either traditional or in-house lobbyists; the Ethics Commission proposes recognizing traditional lobbyists as those that lobby on behalf of a third party, and in-house lobbyists as those that lobby directly on behalf of their employer. Traditional lobbyists would be required to register as a lobbyist with the Ethics Commission upon a single direct contact with a City official, whereas in-house lobbyists (who could conceivably be business owners representing themselves) would be required to register upon engaging in 5 direct communications in a 3 month period.

Our office concurs with the general recommendations of the Ethics Commission, though the proposed language that defines 'lobbying firm' and 'lobbying organization' should be clarified; at present firms and organizations are proposed to be defined as 'a person' who owns or is employed by a lobbying firm or organization. This could lead to a requirement for firms and organizations to be registered multiple times, and our office recommends that the language defining these terms be amended so that it applies to entities and not explicitly to persons.

Amended Registration and Filing Requirements

The proposed new definitions of lobbyists and lobbying firms/organizations necessitate new registration categories. At present, lobbyists are required to pay a \$450 registration fee each year, and lobbying firms are required to pay a \$75 registration fee for each client from whom the firm is entitled to receive \$250 or more (each of these fees is discounted 25% if registration is completed during the last quarter of a year). There are no existing fees on 'lobbying organizations.' The Ethics Commission proposes maintain the \$450 registration fee for traditional lobbyists, and extend that fee to include lobbying organizations. In-house lobbyists of 501(c)(3) organizations that are not exempt from registering, as well those organizations themselves, would be subject to a discounted \$100 annual fee.

Under existing law, lobbying organizations are not required to register with the Ethics Commission; requirements that they register and pay an annual fee are therefore new under this proposal. The Ethics Commission report does note that several Business Improvement Districts (BIDs) have requested to be made exempt from MLO requirements, given their non-profit, assessment-funded status, but it does not recommend that they be given any categorical exemption from the proposed MLO due to their interests in promoting the views of specific private interests.

The Ethics Commission also strongly recommends that all registrations and reports be filed through an electronic system. At present, lobbyist registration must be done both through the submission of paper copies and through an online Lobbying Electronic Filing System. It is

recommended that the requirement to submit paper copies of registrations and quarterly reports be eliminated, and that all filings be submitted only electronically.

It is likely that this would reduce paperwork, time, and expense associated with filings, but our office believes that it is important to first ensure that the existing electronic filing system can be augmented to handle all registration and reporting requirements without paper supplements. We therefore recommend that ITA and the CAO report back on both the feasibility of and costs associated with the creation and implementation of such a system.

Streamlined Reporting Requirements

Existing regulations and the proposed changes require lobbyists and lobbying firms to make quarterly disclosure reports that detail their activities, agencies and policies lobbied for and against, clients, and compensations. The Ethics Commission proposal recommends adding additional data requirements to these quarterly reports, including the dates of direct communication with City officials and written communications to neighborhood councils.

Currently, lobbying entities engaged in fundraising must include in their quarterly reports the specific amount of funds that were raised as a result of their fundraising efforts. The Ethics Commission report notes that the reported total of funds raised at any given fundraiser may be inflated, as many lobbyists and lobbying firms report the entire amount of money raised at a fundraising event in which they participated, regardless of how much of that amount is attributable personally to the filer. The Commission therefore recommends replacing the requirement to report a dollar figure in quarterly reports with information detailing what fundraising efforts they were involved with, when they were involved, and who benefited from the fundraising.

The Commission also recommends moving reporting requirements for lobbyist contributions of more than \$7,000 over a 12-month period to an elected City officer, and fundraising of \$15,000, and \$30,000 (on behalf of a Councilmember or the Mayor respectively) from next-day reports to quarterly reports, given that no such notice has ever been filed, and Measure R restrictions on lobbyist contributions makes this threshold virtually unreachable.

The Ethics Commission also proposes eliminating a disclosure requirement that relates to major filers who spending more than \$5,000 in a three month period on public relations, media relations, advertising, research, investigation, reports, analyses, studies, or similar activities for the purpose of influencing City action, but who are not required to register as a lobbyist. Existing regulations require that these people file a quarterly report for each quarter in which they expend \$5,000 or more which identifies themselves, each item of legislation they attempted to influence, and the total payments they made during a quarter on each item of legislation.

The Commission notes that since that requirement was enacted, few major filer reports have been filed – with two reports filed six years ago, but none since – and that major-filer activity is irregular. While such filings may be rare and irregular, our office does not believe that reporting requirements for major filers should be eliminated. As federal restrictions on corporate funding of political campaigns are being loosened, disclosure requirements on significant spending intended to influence policy become more important. We therefore recommend that the major-filer disclosure requirement be restored.

Increased Statute of Limitations and Penalties

The City Ethics Commission recommends increasing both the statute of limitations and penalties for violations of the MLO. At present, the statute of limitations for criminal prosecution for violation of the MLO is one year. The Ethics Commission recommends increasing this to four years, to make it consistent with the statute of limitations for violating the Governmental Ethics Ordinance (GEO) and the Campaign Finance Ordinance (CFO).

The report also recommends that the cap on civil penalties (currently \$2,000) be increased to \$5,000, or three times the amount improperly reported, per violation. This would mirror the civil penalty provisions in the GEO and CFO. Existing regulations also call for a \$25 per day late filing fee, capped at \$500; the Ethics Commission recommends eliminating that \$500 cap.

Finally, the Ethics Commission recommends increasing the moratoria on lobbying to four years (from the existing moratorium of 1 year) for those who are found guilty of egregiously and/or criminally violating terms of the MLO. This would also make the MLO consistent with the GEO and CFO.


Other Changes

The Ethics Commission recommends a number of additional changes, most of which clean-up or make technical corrections to existing regulations in order to make them consistent with other City laws and regulations. Noteworthy changes in this category involve training requirements and the Ethics Commission's own periodic reporting requirements.

Existing law requires registered lobbyists to attend an information session conducted by the Ethics Commission at least once every two years. The Ethics Commission report recommends that instead of this requirement, registered lobbyists should be required to complete an online ethics course within 60 days of initial registration, and the proposal does not require any subsequent training classes.

Our office agrees that training courses could be offered more effectively and efficiently online, but does believe that continuing to require completion of an online course once every two years can help ensure that registered lobbyists remain informed and up-to-date on City lobbying laws. We therefore recommend that the requirement for periodic training continue to exist in any new MLO.

The Ethics Commission report also recommends that its own reports that detail information it receives about lobbying activity in the City be made on an annual basis rather than a quarterly basis. Since the establishment of the Commission's reporting requirement, the Lobbying Electronic Filing System has made it up-to-date information on lobbying entities, clients, activities, and fundraising available on-demand, without the need to wait for information to be included in a quarterly report. The Ethics Commission also states that annual reports are likely to give a better sense and broader picture of lobbying activity over the course of a year. Our office concurs with this recommendation.



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Analyst