

Legislation Text

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Amending Title 20 of The Philadelphia Code, entitled "Officers and Employees," by adding a new Chapter entitled "Lobbying," under certain terms and conditions.

WHEREAS, City government functions to serve the needs of all citizens, and the citizens of the City of Philadelphia have a right to know the identity of interests which attempt to influence decisions of City government, as well as the means employed by those interests; and

WHEREAS, The Committee of Seventy has issued an "Ethics Reform Agenda," proposing, among other things, lobbying legislation for the reason that "lobbyists or lawyers acting as lobbyists are often perceived as having improper or undue influence on decisions made in the Office of the Mayor, City Council and other City departments, agencies and commissions;" and

WHEREAS, All persons engaged in lobbying activities aimed at influencing decisions by City government must, when so engaged, be subject to the same regulations, restrictions and requirements, regardless of their background, training or other professional qualifications or license; and

WHEREAS, Complete public disclosure of the full range of activities by and financing of lobbyists and those who employ their services is essential to the maintenance of citizen confidence in the integrity of local government; and

WHEREAS, It is in the public interest to ensure that lobbyists do not misrepresent facts, their positions, or attempt to deceive officials through false communications, do not place City officials under personal obligation to themselves or their clients, and do not represent that they can control the actions of City officials; and

WHEREAS, It is in the public interest to adopt these amendments to The Philadelphia Code to ensure adequate and effective public disclosure of information about efforts to lobby City government, the lobbyists, and their clients; now therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 20 of The Philadelphia Code relating to Officers and Employees is hereby amended to add the following new Chapter:

CHAPTER 20-1100. LOBBYING.

§20-1101. Definitions. In addition to the definitions provided in Section 1-103 of this Code, the words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Administrative action." Any of the following:

(a) Any determination made by an agency or by an elected City official or an officer or employee of the

City with respect to:

- (.1) proposal, consideration, promulgation, amendment or rescission of a rule or regulation;*
 - (.2) development or modification of a guideline or a statement of policy;*
 - (.3) the procurement of goods, services, or construction;*
 - (.4) the preparation of contract specifications, or the preparation of a Request for Proposals or Request for Qualifications, or the solicitation, award, or administration of a contract;*
 - (.5) the solicitation, award, or administration of a grant, loan, or agreement involving the disbursement of public monies;*
 - (.6) any determination with respect to zoning or the use, development or improvement of real property subject to City regulation; or*
 - (.7) any determination 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.*
- (b) The Mayor's approval or veto of legislation.*
 - (c) The nomination or appointment of an individual as an officer or employee of the City.*
 - (d) The proposal, consideration, promulgation or rescission of an executive order.*
 - (e) Any determination, adjudication, or recommendation by a City board or commission.*
- (2) "Agency." Any office, department, board, commission or other entity that is part of any branch of the government of the political subdivision that is the City of Philadelphia.*
- (3) "Compensation." Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.*
- (4) "Direct communication." An effort, whether written, oral or by any other medium, made by a lobbyist or principal, directed to a City official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action.*
- (5) "Economic consideration." Anything of value offered or received.*
- (6) "Gift." Something provided for free or for less than equal value in exchange. A Gift may include an object, service, payment, subscription, advance, forbearance, rendering or deposit of money or anything of value, unless consideration of equal or greater value is received.*
- (7) "Indirect communication." An effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. The term includes letter-writing campaigns, mailings, telephone*

banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

(8) *"Legislation." Bills, resolutions, amendments and nominations pending or proposed in City Council.*

(9) *"Legislative action." An action taken by a City official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation; legislative motions; overriding or sustaining a veto by the Mayor; or Council confirmation of appointments by the Mayor or of appointments to City boards or commissions.*

(10) *"Lobbying." An effort to influence legislative action or administrative action. The term includes:*

(a) providing any gift, entertainment, meal, transportation or lodging to a City official or employee for the purpose of advancing the interest of the lobbyist or principal; and

(b) direct or indirect communication.

(11) *"Lobbyist." Any individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney who engages in lobbying.*

(12) *"Officer or employee of the City." As "officer or employee" is defined in Code section 20-601 (relating to definitions).*

(13) *"Principal." Any individual, firm, association, corporation, partnership, business trust or business entity:*

(a) on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or

(b) that engages in lobbying on the principal's own behalf.

(14) *"Registrant." A registered lobbyist or a registered principal.*

(15) *"Regulation." Any regulation promulgated in accordance with Section 8-407 of the Home Rule Charter.*

(16) *"Reporting Period." Any of the following quarters of the calendar year:*

(a) January 1 through March 31;

(b) April 1 through June 30;

(c) July 1 through September 30;

(d) October 1 through December 31.

(17) *"Quarter." See "Reporting Period."*

(18) *"Rule." Any rule promulgated in accordance with Section 8-406 of the Home Rule Charter.*

§20-1102. *Registration.*

(1) *General Rule.-- Unless excluded under section 20-1105 (relating to exemption from registration and reporting), a lobbyist or a principal must register with the Board of Ethics within fourteen (14) days of first acting in any capacity as a lobbyist or principal. Registration thereafter shall be annually no later than the next working day after January 31, but no earlier than January 2.*

(2) *Principals.--*

(a) *A principal required to register shall file the following information with the Board of Ethics in accordance with Section 20-1104:*

(.1) *Name.*

(.2) *Permanent address.*

(.3) *Daytime telephone number.*

(.4) *Name and nature of business.*

(.5) *Name, registration number and acronyms of affiliated political action committees.*

(.6) *Name and permanent business address of each individual who will for economic consideration engage in lobbying on the principal's behalf.*

(.7) *If an organization or association is a principal, the number of dues-paying members in the past calendar year.*

(3) *Lobbyist.--*

(a) *A lobbyist who is required to register shall file with the Board of Ethics in accordance with Section 20-1104 a single registration statement including the following information:*

(.1) *Name.*

(.2) *Permanent business address.*

(.3) *Daytime telephone number.*

(.4) *A recent photograph of the lobbyist, if an individual. If an entity, a recent photograph of all individuals who will be doing lobbying for that entity.*

(.5) *Name, permanent business address and daytime telephone number of each principal the lobbyist represents.*

(.6) *Name, registration number and acronyms of affiliated political action committees.*

(4) Amendments.--

(a) When there is a change of information required for the registration statement under this section, an amended statement shall be filed with the Board of Ethics in accordance with Section 20-1104, within 14 days after the change occurs, except for information under Section 20-1102(2)(a)(.7).

(b) When there is a change in information required for the registration statement under subsection 20-1102(2)(a)(.7), an amended statement shall be filed with the Board of Ethics in accordance with Section 20-1104, within 14 days of the end of the year in which the change occurs.

(5) Termination.-- A lobbyist or a principal may terminate registration by filing notice with the commission. Within 30 days of filing the notice, the lobbyist or principal shall file a termination report, which shall include all information required by section 20-1103 (relating to reporting) through the final day of lobbying activity.

§20-1103. Reporting.

(1) General Rule.-- A registered principal shall, under oath or affirmation, file quarterly expense reports in accordance with Section 20-1104, no later than 30 days after the last day of the quarter.

(2) Content.--

(a) Each expense report must list the names and registration numbers when available of all lobbyists by whom lobbying is conducted on behalf of the principal and the general subject matter or issue being lobbied.

(b) Each expense report shall include the total costs of all lobbying for the period. The total shall include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to City officials or employees, and any other lobbying costs. The total amount reported under this paragraph shall be allocated in its entirety among the following categories:

(.1) The costs for gifts, hospitality, transportation and lodging given to or provided to City officials or employees or their immediate families.

(.2) The costs for direct communication.

(.3) The costs for indirect communication.

(.4) Expenses required to be reported under this subsection shall be allocated to one of the three categories listed under this section and shall not be included in more than one category.

(3) For purposes of filing an expense report under this subsection, a registrant may use any reasonable methods of estimation and allocation.

(4) The following apply:

(a) In addition to reporting the totals required under this subsection, the expense report must identify, by name, position and each occurrence, a City official or employee who receives from a principal or lobbyist anything of value which must be included in the statement of financial interest under Code section 20-610(2)

(relating to statement of financial interests), particularly subsections 20-610(2)(e), (f), or (g).

(b) This paragraph shall not apply to anything of value received from immediate family when the circumstances make it clear that motivation for the action was the family relationship.

(5) The expense report shall also include the name, permanent business address and daytime telephone number of any individual, association, corporation, partnership, business trust or other business entity which contributed more than 10% of the total resources received by the principal during the reporting period.

(6) A registered principal that attempts to influence, or that retains a lobbying firm or lobbyist to attempt to influence, an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included under paragraph (2).

(7) Records Retention By Registrant.-- A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under this section for four years from the date of filing the subject report. Upon request by the Board of Ethics, the City Solicitor, the City Controller, an investigating committee of City Council, or the Inspector General, the registrant shall make these materials available for inspection within ten working days, unless good cause is shown why more time is required.

(8) Thresholds For Reporting.-- An expense report required under this section shall be filed when total expenses for lobbying exceed \$ 2,500 for a registered principal in a reporting period. In a reporting period in which total expenses are \$ 2,500 or less, a statement to that effect shall be filed.

(9) Indirect Communication Disclosure.-- Whenever any person makes an expenditure for indirect communication under this chapter, for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication or education campaign, the communication shall clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.

§20-1104. Reporting

All registrations and reports required under this Chapter shall be filed with the Department of Records in care of the Board of Ethics, until such time as the Board of Ethics, by regulation, provides for any other specified procedure.

§20-1105. Exemption from registration and reporting.

The following individuals and activities shall be exempt from registration under section 20-1102 (relating to registration) and reporting under section 20-1103 (relating to reporting):

(1) An individual who participates as a witness, attorney or other representative or otherwise appears before Council or a committee thereof or before an administrative proceeding of an agency, with respect to all participation by such person which is a part of the public record thereof and all preparation by such person for such public participation.

(2) An elected or appointed City officer or employee acting in an official capacity.

(3) An employee of the Commonwealth or independent agency of the Commonwealth acting in an official

capacity.

(4) *An employee, who is not a registered lobbyist, of a corporation which:*

(a) is registered as a principal under section 20-1102;

(b) has one or more registered lobbyists; and

(c) includes in its reports under section 20-1103 all of the employee's expenses related to lobbying.

(5) *An individual who is an employee of an entity engaged in the business of publishing or broadcasting while engaged in the gathering and dissemination of news and comment on the news to the general public in the ordinary course of business.*

§20-1106. Prohibited Activities.

(1) Contingent Compensation.--

(a) No person may retain or employ any lobbyist for compensation, the rate, amount or payment of which is contingent in whole or in part upon any of the following:

(.1) Occurrence or nonoccurrence of legislative action.

(.2) Occurrence or nonoccurrence of an administrative action.

(b) No lobbyist, principal or individual may engage or agree to engage in lobbying for compensation contingent in whole or in part upon any of the following:

(.1) Occurrence or nonoccurrence of legislative action.

(.2) Occurrence or nonoccurrence of an administrative action.

(2) Fee Restrictions.-- A lobbyist may not charge a fee or receive compensation or economic consideration based upon an understanding, either written or oral, that any part of the fee, compensation or economic consideration will be converted into a contribution to a candidate for public office or a political committee.

(3) Falsification.-- No lobbyist or principal may, for the purpose of influencing legislative action or administrative action, transmit, utter or publish to any City officer or employee any communication, knowing that such communication or any signature on the communication is false, forged, counterfeit or fictitious.

§20-1107. Administration and Enforcement.

(1) Enforcement.-- The Board of Ethics shall have the power and duty to enforce this Chapter, and to conduct such investigations, adjudications, and enforcement actions as necessary thereto. In this regard, the Board of Ethics is authorized to promulgate regulations providing for the process and procedures for such actions.

(2) Advice And Opinions.-- The Board of Ethics shall provide advice and opinions in accordance with

procedures set forth in Chapter 20-600 to a lobbyist, principal or City officer or employee who has a question regarding compliance with this Chapter. A principal, a lobbyist or an individual who acts in good faith based on the written advice or opinion of the Board of Ethics shall not be held liable for a violation of this Chapter.

(3) Public Inspection And Copying.--Until such time as the Board of Ethics, in accordance with Section 20-1104, promulgates regulations on the subject, the Department of Records shall make completed registration statements, expense reports, termination notices and termination reports, which have been filed at the Department of Records, available for public inspection and provide copies of these documents in accordance with the fee schedule that the Department applies to other requests for public documents. Documents that are maintained and reproducible in an electronic format shall be provided in that format upon request.

(4) Retention Of Records Filed.-- Completed registration statements, expense reports, termination notices and termination reports shall remain on file for a four-year period with the Board of Ethics at the Department of Records, or such other location as provided by the Board of Ethics by regulation promulgated in accordance with Section 20-1104.

(5) Fees.--The Board of Ethics shall have the power and duty, unless otherwise provided by this Title, to provide by regulation for the establishment of fees reasonably related to costs for any filings under this Chapter, to devise forms for required filings, and to provide other administrative details implementing this Chapter.

§20-1108. Penalties.

(1) Any person who violates a provision of this Chapter shall be punishable by a fine not exceeding the maximum penalty as provided in the following schedule:

(a) for any violation committed between January 1, 2005 and December 31, 2005, seven hundred (700) dollars for each violation;

(b) for any violation committed between January 1, 2006 and December 31, 2006, one thousand one hundred (1,100) dollars for each violation;

(c) for any violation committed between January 1, 2007 and December 31, 2007, one thousand five hundred (1,500) dollars for each violation;

(d) for any violation committed between January 1, 2008 and December 31, 2008, one thousand nine hundred (1,900) dollars for each violation; and

(e) for any violation committed on January 1, 2009 or thereafter, two thousand (2,000) dollars for each violation.

(2) In addition, any person in violation of this Chapter shall be punishable by debarment from any contract with the City for a period of up to three (3) years, or, unless a principal, prohibition from lobbying for up to five years, or both.

(3) Repeat Offenders. Any person who commits, on more than one occasion, a violation of a provision of this Chapter, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than the maximum provided in subsection (1) of this Section, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless whether

the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

§20-1109. *Severability.*

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance are severable.

SECTION 2. Effective date. This Ordinance shall be effective in 60 days.

Explanation:

Italics indicate new matter added.