

# **REPORT TO THE LOBBYING COMMISSION 2011**



**OFFICE OF THE CITY CLERK  
THE CITY OF NEW YORK**

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## **INTRODUCTION**

This report was prepared for the Lobbying Commission (the “Commission”) appointed jointly by the mayor and City Council pursuant to §3-212(e) of the Administrative Code of the City of New York (the “Administrative Code”). It reviews the history of lobbying laws and the registration process in New York City (the “City”). The report includes a comparative look at the work of the Lobbying Bureau (the “Lobbying Bureau”) of the Office of the City Clerk (the “City Clerk”) both before and after the enactment of Local Law 15 of 2006 (“Local Law 15”), which effectuated the most significant retooling of §§3-211-223 of the Administrative Code and Title 51 of the Rules of the City of New York (the “RCNY” and collectively with the Administrative Code, the “Lobbying Law”) since 1986. The section of this report dedicated to post-Local Law 15 enforcement covers the online system for filing lobbying reports, the Lobbying Bureau’s educational efforts, the random audit program, and other enforcement actions.

## **LOBBYING AT THE OFFICE OF THE CITY CLERK PRIOR TO THE ENACTMENT OF LOCAL LAW 15 OF 2006**

### **History of the Lobbying Law**

On November 9, 1972, Local Law 79 of 1972 (“Local Law 79”) was signed into law by Mayor John V. Lindsay. This was the first attempt to regulate lobbying activity in the City. Over the past 39 years, the law has evolved from simply regulating the collection of lobbying data to a method of fostering and promoting transparency in City government.

Local Law 79 amended chapter 51 of the Administrative Code by adding section “N” regarding “municipal legislative advocacy,” otherwise known as lobbying. Local Law 79 focused on the attempt to influence municipal legislation without defining the actors and the process involved in influencing such legislation. The law required municipal legislative advocates, who earned \$25 per quarter for municipal legislative advocacy efforts, to register with the City Clerk, obtain a registration card and be sworn in by the City Clerk. Not-for-profit organizations, however, were explicitly excluded from such registration requirements. Furthermore, if an employee of a lobbyist was a former member of the City Council or a full-time city employee, the municipal legislative advocate was required to disclose certain detailed information regarding such relationship. The City Clerk was responsible for enforcement under Local Law 79. Violations of the law constituted a class B misdemeanor and the violator could be subject to a fine not to exceed \$100, imprisonment for no longer than three months, or both a fine and imprisonment.

Local Law 86 of 1973 (“Local Law 86”), which repealed and amended Local Law 79, was signed into law on December 28, 1973. Local Law 86 broadened the registration requirements for municipal legislative advocates by eliminating the requirement that such persons must be involved in the municipal legislative process. The penalties for those who violated the law were also expanded. Pursuant to Local Law 86, a municipal advocate’s

registration could be suspended. In addition, a municipal advocate who violated the law could be guilty of a class A misdemeanor, subject to a fine not to exceed \$1,000, imprisonment for up to one year, or both a fine and imprisonment. In addition, Local Law 86 eliminated the exemption for not-for-profits.

On December 1, 1986, Local Law 14 of 1986 (“Local Law 14”), which laid the foundation for the current Lobbying Law, took effect. Local Law 14 further expanded the definition of lobbying and lobbying activities, required more detailed reporting, increased the penalties for non-compliance, and expanded the powers of the City Clerk. The definition of a lobbyist was expanded to provide that a “lobbyist” is any person or organization retained, employed or designated by any client who attempts to influence the passage or defeat of legislation by the City Council or mayor, and the approval or disapproval of any resolution by the Board of Estimate. In addition, Local Law 14 increased the threshold for reportable lobbying to \$2,000 per year and \$500 per period.

Local Law 14 also specifically outlined the powers and duties of the City Clerk including the power to subpoena documents and witnesses, issue advisory opinions, conduct investigations, and prepare uniform forms. The law also established the following reporting requirements: (1) when a lobbyist is required to file a statement of registration; (2) the dates of reporting periods and due dates of periodic reports; and (3) mandatory filing of annual reports. In addition, Local Law 14 increased the penalty for a knowing and willful violation to include a civil penalty not to exceed \$15,000 and/or the issuance of a cease-and-desist order against a lobbyist for up to 60 days. Lastly, Local Law 14 implemented a prohibition on contingency fees.

Local Law 67 of 1993, signed into law on July 29, 1993, instituted the following changes: it (1) removed the defunct Board of Estimate from the definition of lobbyist; (2) increased the threshold of reportable expenses from \$50 to \$75; (3) broadened the prohibition on contingency fees; (4) provided an exemption for both persons or organizations that advertise goods or services and contractors or prospective contractors who communicate with city contracting officers in the regular course of procurement planning, contract development, contractor selection process and administration of a contract or audit of a contract; and (5) established the imposition of a civil penalty if a violation was not cured within 14 days.

Local Law 46 of 2003, signed into law on July 14, 2003, raised the filing fee for a statement of registration to \$150 for the first client and \$50 for each additional client registered.

The most significant amendments to the Lobbying Law occurred in 2006. On June 13, 2006, Mayor Bloomberg signed into law Local Law 15, Local Law 16 of 2006 (“Local Law 16”), and Local Law 17 of 2006 (“Local Law 17”). Local Law 15 significantly increased public disclosure of lobbying activities, created much needed effective enforcement mechanisms, required the filing of fundraising and political consulting reports (“FPCR”), increased penalties for violations, and added late filing penalties for the late filing of reports. Additionally, Local Law 15: (1) expanded the powers and duties of the City Clerk to conduct random audits; (2) required the posting of annual reports online; (3) required that lobbyists list spouses or domestic partners and unemancipated children on a statement of registration; (4) required the electronic filing of reports; (5) adopted reporting periods identical to the New York State Commission on

Public Integrity<sup>1</sup> (the “NYSCPI”); (6) required the establishment of a commission to review and evaluate the City Clerk’s performance; and (7) increased the civil penalty for a knowing and willful violation of the Lobbying Law to \$30,000.

Local Law 16 banned any person required to be listed on a statement of registration from giving gifts to any public servant. The Conflicts of Interest Board (“COIB”) enforced this local law. Local Law 17 amended the Administrative Code in relation to campaign contributions of lobbyists. Pursuant to this local law, campaign contributions of registered lobbyists were ineligible for taxpayer-financed public matching funds. In addition, the law mandated the Campaign Finance Board’s (“CFB”) use of the City Clerk’s database to determine whether a campaign contribution is matchable.

Local Law 57 of 2006 changed the effective date by which filings were to be made electronically and clarified that the 2006 fourth periodic and annual reports, both due in 2007, would be the last paper filings accepted for reporting lobbying activities in the City.

Acknowledging the privacy concerns of the lobbying community, Local Law 23 of 2007 (“Local Law 23”) was enacted to protect the release of information regarding domestic partners and the unemancipated children of lobbyists. The law provided for the disclosure of the names of unemancipated children only if the lobbyist made campaign contributions in the name of such child. Under Local Law 23, when a registered lobbyist contributes to a campaign, in the name of an unemancipated child, the lobbyist is required to disclose the name and home address of such unemancipated child within 48 hours. Local Law 23 further required the City Clerk to keep all home and business addresses of a lobbyist’s spouse or domestic partner confidential, as such information is not subject to public inspection. The law also prohibited the CFB from disclosing that any particular campaign contributor is the spouse, domestic partner or unemancipated child of a lobbyist.

Since 1972, when Local Law 79 was enacted, regulation of lobbying in the City has been within the purview of the City Clerk. Though historical records indicate a moderate sized legal division policed lobbying, by the late nineties, the members of the City Clerk staff dedicated to lobbying consisted of the general counsel and a clerical employee. The administrative focus was solely on compliance. This approach may partly have been driven by the lack of effective enforcement powers in the law. Although §3-223(c) of the Administrative Code empowered the City Clerk to impose fines of up to \$10,000 dollars for failure to timely file, a non-compliant filer was given a 14 day cure period after notification by certified mail. Given the laxity in the law, any offender had ample time to cure any late filing, and hence there was no sense of urgency on the filer’s part. Contributing to the public perception that there were no consequences for non-compliance was the fact that no fines were ever imposed.

Up until 2006, the law required lobbyists to file reports four times annually: January 15<sup>th</sup> for the statement of registration<sup>2</sup> for the current year and the fourth periodic report for the prior

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<sup>1</sup> The New York Temporary State Commission on Lobbying policed New York State lobbying until the 2007 Ethics Reform Act merged it with the New York State Ethics Commission to create the NYSCPI, the State body that currently regulates lobbying.

calendar year (covering October 1<sup>st</sup> to December 31<sup>st</sup>); April 15<sup>th</sup> for the first periodic report of the current calendar year (covering January 1<sup>st</sup> to March 31<sup>st</sup>); June 15<sup>th</sup> for the second periodic report of the current calendar year (covering April 1<sup>st</sup> to May 31<sup>st</sup>); and October 15<sup>th</sup> for the third periodic report of the current calendar year (covering June 1<sup>st</sup> to September 30<sup>th</sup>). Reporting was on paper forms and a clerical employee entered the information into the City Clerk's databank. If a filing was late, the office mailed a courtesy reminder to the filer 14 days after a filing deadline. If this failed to induce compliance, 30 days later a sterner letter followed. In this and similar ways, staff generally cajoled lobbyists to file reports. Clients routinely failed to file their annual report without consequences.

In the spring of every calendar year, City Clerk staff members compiled data extracted from lobbyists' statements of registration and periodic reports of the previous year, and produced an annual compendium of lobbyist information—a listing of the lobbyists and their clients, contact information, total reported revenue and periodic compensation and a list of the top ten lobbyists. This *Lobbyist Annual Report* was produced from 1989 to 2006 as a paper report, copied and bound in the copy room of the Department of Citywide Administrative Services. The compilation was typically released to the press in late spring and would garner some media interest guarantying coverage in the local press. This provided some incentive for lobbyists to register: being in the cadre of lobbyists listed as the top ten earners for the calendar year was deemed prestigious.

Generally, the City Clerk's office functioned primarily as a collector, repository and annual reporter of lobbyist registration information. Given the absence of effective enforcement mechanisms in the law, there was no emphasis on oversight, regulation or compliance. The passage of Local Law 15 radically altered the Lobbying Law and the City Clerk's role in its implementation and enforcement.

• **LOBBYING AT THE OFFICE OF THE CITY CLERK SUBSEQUENT TO THE ENACTMENT OF LOCAL LAW 15 OF 2006**

**General**

Concerned about the undue influence of lobbyists on local governance, Mayor Michael R. Bloomberg and the City Council led by Speaker Christine Quinn, unveiled a package of lobbying laws to strengthen regulation of the City's lobbyists—Local Law 15, Local Law 16 and Local Law 17.

Some sections of Local Law 15 took effect on December 10, 2006; the remainder in June 2007. After proposing nine new positions in preparation for regulating the law, the City Clerk

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<sup>2</sup> Pursuant to §3-213(a)(2) of the Administrative Code, the statement of registration is due on January 1. However, lobbyists were historically given a grace period of 15 days and so both the statement of registration and the fourth periodic report were filed on January 15. It is not clear when this practice began, but it is entirely conceivable that these dates were rolled into one for convenience.

hired a six-person staff, including one attorney, four investigators and one administrator, and began implementing the new laws.

The City Clerk worked with the Department of Information Technology and Telecommunications (“DoITT”) to develop e-Lobbyist, the online filing application. The City Clerk also started a rulemaking proceeding working collaboratively with the Law Department, the Department of Investigation (“DOI”), the Office of Administrative Trial Hearings (“OATH”) and other City agencies. The rules included an automatic late filing penalty. The public hearing, mandated by the City Administrative Procedures Act, was held on November 15, 2006. The amendments to the RCNY took effect on December 10, 2006.

The City Clerk held a public meeting regarding Local Law 15 with lobbyists and clients on December 14, 2006. The crowd was well over capacity. Those present expressed their dissatisfaction with the changes in the law and voiced concerns regarding the disclosure of information regarding spouses, domestic partners and unemancipated minors as well as filing reports online.<sup>3</sup>

In January 2007, filers commenced filing 2007 statements of registration on e-Lobbyist. Staff dedicated a large percentage of time to one-on-one, step-by-step assistance to filers, many of whom were averse to using computers. A kiosk was created in the office to facilitate the filings of those who did not have access to a computer. As with any new system, e-Lobbyist had its share of glitches. Accordingly, the staff fashioned creative and commonsensical solutions to such issues, despite being immersed in the learning process itself. If a filing was late due to technical issues involving e-Lobbyist, the fine would be reduced accordingly; if a staff member had to walk a filer through every step of the process that is exactly what was done. Nevertheless, the common refrain was that e-Lobbyist was not user-friendly and often comparison was made to the New York State (the “State”) system. Gradually e-Lobbyist would improve. (See “e-LOBBYIST SYSTEM– *History of Development*” below.)

The Lobbying Bureau issued its first statutorily-mandated March 1<sup>st</sup> “REPORT PURSUANT TO SECTION 3-212(c) OF THE NEW YORK CITY ADMINISTRATIVE CODE” on March 1, 2007. Adhering to the dictates of Local Law 15, the report contained information relating to lobbying in the calendar year 2006 including: (i) the number of complaints received from the public and the disposition of such complaints; (ii) the number and amount of civil penalties imposed pursuant to Administrative Code §3-223(a), (b), (c) and (d); (iii) the number and duration of orders issued pursuant to Administrative Code §3-223(a); (iv) the number of random audits conducted by the City Clerk and outcomes thereof; (v) compliance programs developed and implemented for lobbyists and clients; and (vi) such other information and analysis as the City Clerk deemed appropriate. See Appendix A.

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<sup>3</sup> The law was later amended to eliminate disclosure of information related to spouses and domestic partners and to clarify that an unemancipated minor would only be listed as a “lobbyist” if a political contribution was made in his or her name. See discussion of Local Law 23 on page 3.

The second statutorily mandated March 1<sup>st</sup> report was issued on March 1, 2008. See Appendix B. The third statutorily mandated March 1<sup>st</sup> report was issued on March 1, 2009. See Appendix C. The fourth statutorily mandated March 1<sup>st</sup> report was issued on March 1, 2010. See Appendix D. The fifth statutorily mandated March 1<sup>st</sup> report was issued on March 1, 2011. See Appendix E.

Calendar year 2007 in the Lobbying Bureau was a period where daily administrative routines often gave way to putting out fires. However, the Lobbying Bureau succeeded in getting lobbyists to register even if they were initially reluctant to do so. Clients, in general, took longer to comply as was reflected by the late filing penalties incurred as a group in the following year: \$216,995 in aggregate for the 2006 client annual reports (“CAR”), while lobbyists incurred \$30,875 in fines for the fourth periodic/lobbyist annual reports of that year. See Appendices F&G.<sup>4</sup> The aggregate late filing penalties for CARs increased the following year to \$304,475, remained steady in 2008 at \$303,610, before trending downwards in 2009 to \$214,865. See Appendix F. All indications are that this decline will continue.<sup>5</sup> This phenomenon is attributable to the following factors:

- ***Greater automation.*** Clients receive email warnings of impending filing deadlines in advance of the due date and the day after a missed filing.
- ***Timelier sending of notices to cure.*** The Lobbying Bureau routinely mails notices to cure within 30 days of the filing date. Early warning means filers are alerted before large late filing penalties have accrued.
- ***Mandatory client enrollment in e-Lobbyist.*** The confusion and consequent inability to match names that occurred because the client and its lobbyist would often use different versions of the client’s name when filing are now minimized.
- ***Increased familiarity with e-Lobbyist and the Lobbying Law.*** Clients are more familiar with the Lobbying Law and e-Lobbyist leading to greater compliance in general.

The same pattern of an initial rise followed by a gradual decline is evident in annual aggregate late filing penalties incurred by lobbyists, which totaled \$168,490 for 2007, rising to \$183,315 in 2008 and declining to \$106,470 in 2009. To date, lobbyist late filing penalties for 2010 total \$27,275—further evidence of a steady decline in late filing penalties. See Appendix G.

As the data demonstrates, lobbyists, because of their familiarity with compliance under the Lobbying Law and knowledgeable support staff, have been more efficient at complying with

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<sup>4</sup> Any variance in the late filing penalties contained in this report and any reports previously issued by the City Clerk is due to either (1) the determination subsequent to the issuance of the applicable report that an imposition of a late filing penalty was not appropriate; or (2) the imposition of a late filing penalty subsequent to the issuance of such report.

<sup>5</sup> Although, the aggregate late filing penalty for the 2010 client annual reports is not yet available, late filing penalties as compared to last year are decidedly down.



the law, resulting in lower aggregate fines. However, as the clients have become more knowledgeable, compliance has also increased exponentially.

By its one year anniversary the Lobbying Bureau managed to accomplish the following milestones:

- Promulgated rules necessary to implement the Lobbying Law;
- Conducted extensive training and outreach to lobbyists and their clients on the new requirements and systems;
- Created and implemented e-Lobbyist for lobbyists and their clients to file required disclosure reports online;
- Collected substantial fines and civil penalties;
- Revised the Lobbying Bureau's website at [http://www.cityclerk.nyc.gov/html/lobbying/lobbying\\_bureau.shtml](http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml) so the public can access information online, 24 hours a day;
- Issued several advisory opinions and bulletins providing information to the lobbyists, their clients and the public;
- Commenced dozens of enforcement proceedings at OATH against lobbyists and clients that failed to comply with the law; and
- Commenced the random audit program with the random selection of firms for audit and the issuance of 30 notices of random audits.

These accomplishments were detailed in a "Special Report, The New Lobbying Bureau at One Year" issued by the Lobbying Bureau on January 17, 2008. See Appendix H.

In a given year the Lobbying Bureau fields thousands of telephone calls from active and potential filers as well as governmental agencies, news media and members of the public. A minimum of 100 telephone calls are received each week.

## **The Reporting Requirements of the Administrative Code**

### *Statement of Registration*

Pursuant to §3-213 of the Administrative Code, a lobbyist is required to file a statement of registration annually if the lobbyist anticipates it will expend, incur or receive in excess of \$2,000 of reportable compensation and expenses in a given calendar year for the purpose of lobbying in the City. This reporting threshold is calculated cumulatively including income from all clients.

The statement of registration must be filed by January 1 if a lobbyist is retained, employed, or designated prior to December 15 of the previous year. If the lobbyist is retained, employed, or designated after December 15, the lobbyist must file a statement of registration within 15 days, but no later than 10 days after actually incurring or receiving reportable compensation and expenses.<sup>6</sup>

The statement of registration must be filed by the lobbyist entity, not the individual employee who lobbies.<sup>7</sup> Pursuant to §3-213(c) of the Administrative Code the statement of registration must contain:

- (0) The name, business address and business phone number of the lobbyist entity;
- (0) The name, home and business addresses, and business and home telephone numbers of the principal officers of the entity and each employee that will be engaged in the lobbying activities on behalf of the client;
- (0) The name and home and business addresses of the spouse or domestic partner of such officers and employees;
- (0) The name, address and telephone number of the client;
- (0) A copy of the retainer, or a written summary of any oral agreement;
- (0) A description of the subject(s) on which the lobbyist is lobbying or expects to lobby;
- (0) The name of the person or agency before which the lobbyist is lobbying or expects to lobby; and
- (0) If the lobbyist has a financial interest in the client, direct or indirect, information as to the extent of such interest and the date on which it was acquired.

See Appendix I.

If the information listed on the statement of registration changes, the lobbyist is required to amend the statement within 10 days after such change occurs.

### *Periodic Reports*

Any lobbyist required to file a statement of registration pursuant to §3-213 of the Administrative Code, must file periodic reports for each registered client pursuant to §3-216 of

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<sup>6</sup> If a filing deadline (for any required filing) falls on a weekend or New York City holiday, the filing deadline is the next available business day.

<sup>7</sup> For this reason, throughout this report, “lobbyist” refers to a “lobbyist entity.”

the Administrative Code. Each statement of registration filed with e-Lobbyist typically has six periodic reports and a CAR associated with it for a given year.<sup>8</sup>

A lobbyist files periodic reports for each of its clients, including:

- (1) The first periodic report covering lobbying activity engaged in from January 1<sup>st</sup> through the last day of February, due on March 15<sup>th</sup>;
- (2) The second periodic report covering lobbying activity engaged in from March 1<sup>st</sup> through April 30<sup>th</sup>, due on May 15<sup>th</sup>;
- (3) The third periodic report covering lobbying activity engaged in from May 1<sup>st</sup> through June 30<sup>th</sup>, due on July 15<sup>th</sup>;
- (4) The fourth periodic report covering lobbying activity engaged in from July 1<sup>st</sup> through August 31<sup>st</sup>, due on September 15<sup>th</sup>;
- (5) The fifth periodic report covering lobbying activity engaged in from September 1<sup>st</sup> through October 31<sup>st</sup>, due on November 15<sup>th</sup>; and
- (6) The sixth periodic/annual report covering lobbying activity engaged in from November 1<sup>st</sup> through December 31<sup>st</sup>, due on January 15<sup>th</sup>.

Pursuant to §3-216(b) of the Administrative Code, periodic reports must contain:

- (0) The name, address and telephone number of the lobbyist;
- (0) The name, address and telephone number of the client;
- (0) A description of the subject(s) on which the lobbyist has lobbied;
- (0) The agency before which the lobbyist has lobbied; and
- (0) Compensation earned and expenses incurred by the lobbyist.

See Appendix J.

If the lobbyist filed a statement of registration, a periodic report must be filed for each period, even if the lobbyist did not engage in lobbying activity within the given period.<sup>9</sup>

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<sup>8</sup> If a termination notice is filed at any time during the year, certain periodic reports may not be required. However, the periodic report covering the period within which the termination notice took place as well as the sixth periodic/annual report must be filed. Likewise, where a termination of lobbying activity occurred during the year, the client is required to file a CAR if the client exceeds the reporting threshold.

<sup>9</sup>Unless a termination was filed during the calendar year.

### *Fundraising and Political Consulting Report*

Pursuant to §3-216.1 of the Administrative Code, if a registered lobbyist engages in fundraising or political consulting activities in a given year or within the six months preceding the calendar year, the lobbyist must file a fundraising and political consulting report. This report follows the same filing schedule as the periodic reports.

The fundraising and political consulting report must include the following information:

- (0) The name, address and telephone number of the lobbyist and the individuals employed by the lobbyist engaged in such fundraising and/or political consulting activities;
- (0) The name, address and telephone number of the candidate, public servant, or elected official for whom the lobbyist provided fundraising and/or political consulting services;
- (0) The compensation paid or owed to the lobbyist for such fundraising and/or political consulting activities; and
- (0) A list of all persons or entities the lobbyist contracted for the purpose of providing fundraising and/or political consulting services.

See Appendix K.

### *Client Annual Report*

Pursuant to the Administrative Code §3-217, a client is required to file a CAR on January 15 of the following year if the client expended, received or incurred an amount in excess of \$2,000 in combined reportable compensation and expenses for the purposes of lobbying in a given year.

Pursuant to §3-217(c) of the Administrative Code, the following is required to be detailed in the CAR:

- (0) The name, address and telephone number of the lobbyist;
- (0) The name, address and telephone number of the client;
- (0) A description of the subject(s) on which the lobbyist has lobbied;
- (0) The agency before which the lobbyist lobbied; and
- (0) The compensation earned by the lobbyist for lobbying and expenses reimbursed by the client to the lobbyist.

See Appendix L.

### *Extensions to File Reports*

Pursuant to 51 RCNY §1-03(a)(3) filers may request an extension to file a report. Such request must be submitted in writing, no later than two business days prior to the filing deadline. Extensions are granted for good cause, solely at the discretion of the City Clerk.

## **Enforcement Measures**

### *Procedure for Untimely Filings*

Most fines imposed by the Lobbying Bureau are for the late filing or non-filing of statements of registration, periodic reports and annual reports.

e-Lobbyist automatically emails all registered filers to notify them when a report may be filed and its filing deadline. A report is considered late on the first day after the filing deadline.

If a statement of registration was filed, and a required report for a specific period was not filed, e-Lobbyist deems the report to be late and notifies the filer of the late report by email. In addition, this late report appears as an entry on the “late report” compiled by e-Lobbyist, which is used by the Lobbying Bureau to determine which entities filed late reports for a given period.

When it is determined that a report was either filed late, or not filed at all, a notice to cure is sent by the Lobbying Bureau notifying the erring filer to cure such violations by filing the report and paying a late filing penalty or if the report was already filed, by paying the late filing penalty listed in the notice. See Appendix M. The notice to cure is sent by certified mail, return receipt requested, and is addressed to the principal officer listed on the statement of registration. As a matter of course, the notice to cure is also sent by first-class mail to ensure its receipt.

Pursuant to 51 RCNY §1-03(b)(iv)(A)-(B), the late filing penalties that may be imposed are as follows: a first-time filer is subject to a fine of \$10 per day, per report for each day a report is late, while an entity that has previously filed a report with the City Clerk is subject to a daily fine of \$25. These late filing penalties are automatic and accrue at the daily rate commencing the day after the filing deadline and continuing to and including the day the required filing is made.

If an entity does not cure such violation within 14 business days of the date of the mailing of the notice to cure, pursuant to §3-223(c) of the Administrative Code, the City Clerk may seek a civil penalty up to \$20,000.

Most errant entities cure such infractions within the cure period by either filing the required report and/or paying the late filing penalty.<sup>10</sup>

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<sup>10</sup> For those entities that are unable to pay the total fine amount in one installment, the Lobbying Bureau provides the option of a payment agreement.

For those entities who fail to respond to the notice to cure and/or fail to cure within the 14 business days, a notice of petition and petition is filed in OATH and served upon the entity (the “respondent”).<sup>11</sup> See Appendix N. Pursuant to 51 RCNY §1-06(h)(1), the respondent must serve an answer to the petition upon the City Clerk personally or by mail within eight days after service of the notice of petition and petition.

When a respondent fails to answer the petition, about two weeks prior to the scheduled OATH hearing, a second notice is mailed reminding the respondent of both the OATH hearing date and its failure to answer the petition. This notification is sent by both first-class mail and certified mail return receipt requested. See Appendix O. This second notification often leads to a resolution. If it does not, a hearing is held at OATH before an administrative law judge.

### *OATH Hearings*

To date, 93 hearings have been held in OATH against late filers. Of the 93 OATH hearings, 88 were against clients for the late filing of CARs, five were against lobbyists for failing to file periodic reports in a timely manner, and the remaining hearing was against a client for engaging in unreported lobbying activity.

Subsequent to the hearing, the administrative law judge issues a report and recommendation, either recommending the relief sought by the City Clerk or dismissing the petition. See Appendix P. Of the 93 OATH hearings, the administrative law judge recommended the imposition of civil penalties in 36 proceedings (in addition to the late filing penalties). In the remaining proceedings, the administrative law judge only recommended late filing penalties.

In 2009, administrative law judges began recommending a graduated civil penalty for those respondents who did not file the required report by the time of the hearing. The graduated civil penalty provides a reduced civil penalty to encourage prompt compliance. Typically, a \$20,000 civil penalty is reduced to \$2,000 if the respondent files the required report within 60 days of the City Clerk’s imposition, to \$5,000 if filed within 90 days, and to \$10,000 if filed within 6 months. Any filing made later than 6 months would result in the full \$20,000 civil penalty being assessed.

Once the report and recommendation is received, the City Clerk issues its final imposition and serves it on the respondent. See Appendix Q. The respondent has up to 90 days to comply with the imposition. If the respondent fails to comply by that time, the City Clerk forwards the imposition to the Law Department for collection.

## **Random Audits**

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<sup>11</sup> Pursuant to OATH Rule §1-23, a petition is served by both first-class mail and certified mail, return receipt requested. The petition is addressed to the principal officer listed on the filings made with the City Clerk.

Administrative Code §3-212 requires that the City Clerk conduct random audits of statements of registration and reports filed by lobbyists and clients. The Administrative Code further provides that “the City Clerk shall select statements and reports for random audit in a manner pursuant to which the identity of any particular lobbyist or client whose statements or reports are selected for audit is unknown to the City Clerk.”

The Lobbying Bureau established a mechanism to ensure the random selection of lobbyists and clients for audit. An independent consultant, Medallion Consulting (“Medallion”), provides random numbers that are matched to an Excel worksheet created by DoITT. Neither Medallion nor DoITT are privy to the other’s work product. The DoITT worksheet contains all the statements of registration for the given year. Medallion’s random numbers are matched to statements of registration listed on the DoITT worksheet. The Lobbying Bureau tracks, schedules, and documents all stages of the process electronically and maintains physical folders in addition to electronic files that contain all pertinent documentation.

After the random selection procedure and the electronic and physical folders are established, the Lobbying Bureau sends the selected lobbyist entities a notice of random audit by certified mail, return receipt requested. See Appendix R. The random audit notice requests that copies of business records and other related documents relevant to the preparation of the required filings be submitted in advance to the Lobbying Bureau.

A second notice, also sent via certified mail returned receipt requested is sent to the client notifying it that its lobbyist has been selected for a random audit. See Appendix S. This notice also requests that the client provide copies of its business records and other related documents relevant to the preparation of its CAR filed for the audited year.

Lobbyists and clients have up to 14 days to comply with the requests to produce documents. Upon receipt of all the requested documentation for any given audit, auditors perform in-house compliance testing by analyzing and comparing the lobbyist’s and client’s certified filings with the retainer agreements, invoices, checks, payroll records, purchase orders, invoices and any other relevant documents provided by the parties. After the initial compliance testing, a field examination is scheduled with the lobbyist. This examination usually takes place at the lobbyist’s office or the lobbyist’s attorney’s office.

At the field examination, which is performed by two auditors, principal officers, designees, or attorneys in attendance are given a brief explanation of the random audit process and may ask questions. Auditors observe original documents, ask questions regarding such documents, and may require the submission of additional documentation.

Subsequent to the field examination, auditors draw conclusions and make findings regarding the viewed documents. As a result of such conclusions and findings, the lobbyists and/or clients may have to complete “required actions” to correct filings. In addition, the auditor may require the submission of additional documents prior to the completion of the audit.

The auditor then drafts an audit report, which contains information pertaining to: the lobbyist and client, selection and completion dates, objectives, scope and methodology of the audit, the documentation provided in connection with the audit, and facts, findings, and required actions. Copies of the audit reports are provided to DOI for review and comment. The audit report is then served upon the lobbyist and client by certified mail returned receipt requested. See Appendix T.

The lobbyist and/or client entity has up to 30 days to complete any necessary required actions listed in the report. Upon the expiration of the 30 day period, the Lobbying Bureau follows up with the entities to ensure compliance.

## **The Electronic Filing System: e-Lobbyist**

### *Description of System*

Local Law 15 mandated the creation of an electronic filing system. e-Lobbyist, developed in partnership with DoITT and the Lobbying Bureau, accomplished this directive, making available usable software to facilitate the filing of lobbyist and client reports.

Enrollment is the first step for a lobbyist or client to gain access to e-Lobbyist and is a one-time submission. The entity's name, tax identification number, and certain contact information must be submitted online. As part of the enrollment process, the principal officer ("PO")<sup>12</sup> of the entity designates himself or herself as PO, selects up to two designees, and accepts the terms of use agreement. Once an enrollment is completed, the entity must submit a voided check bearing the entity's name or an affidavit to validate the legal name of the entity to the Lobbying Bureau. Upon receipt of such documentation, the Lobbying Bureau either accepts or rejects the enrollment. e-Lobbyist then transmits a password link to the PO enabling the PO to create a unique password. If the enrollment is rejected, the entity will be informed of the reasons for such rejection electronically and can re-enroll. If the Lobbying Bureau accepts the enrollment, the PO can log into e-Lobbyist using the newly created password and begin to file requisite reports.

Subsequent to the enrollment process, the first filing submitted by the lobbyist is the statement of registration. The lobbyist files a separate statement of registration for each of its clients. The filing fee for a statement of registration is \$150 for the first client registration filed and \$50 for each additional client. The registration fees are either submitted by mail or hand delivered to the Lobbying Bureau.

After a statement of registration is filed, the PO can begin filing periodic reports and fundraising and political consulting reports (if applicable). All statements of registrations, periodic reports and other filings must be "certified" to be deemed a valid or complete filing. Any filing in draft status is not complete and an automatic email will be sent the next day

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<sup>12</sup>The PO is the chief administrative officer of the entity or the person who is capable of legally binding the entity to a contract.



notifying the PO and designees. After 30 days, if the filing still remains in draft status, a second email is sent.

Three data files in e-Lobbyist, a lobbyist store, a client store, and an employee store, automatically facilitate the pre-population of certain information previously entered by the filer when completing reports. These “stores” also ensure congruity between the information reported in the lobbyist and client filings and inform the Lobbying Bureau whether or not a requisite report was filed by either a lobbyist or client.

### *History of Development*

Prior to the 2006 amendments to the Lobbying Law, all filings were completed on paper forms and mailed or hand delivered to the City Clerk. The 2006 amendments, however, provided that all reports be filed electronically. This electronic filing commenced in the January 1, 2007 reporting year. Over the course of the past four years, several enhancements have been added to strengthen usability and compliance.

The history of development of e-Lobbyist includes the following:

#### 2006 Releases:

- Initial system analysis and design.
- Application launch in December 2006.

#### 2007-2008 Releases:

- The filing of periodic reports and fundraising and political consulting reports.
- Provided updates related to filing amendments, the pre-population of employee information, certification, view, and navigating within statements/reports.
- Enhancements to filing CARs, populating the employee store, selecting employees within reports, using the client and lobbyist stores and printing certified (PDF) versions of reports.

#### 2009 Releases:

- Update statement of registration to include start/end dates of retainer agreement.
- Changes to email content, address updates to screens and emails and updates to support voided checks and affirmations.
- The implementation of email updates.

- Provided the functionality to run late/missing periodic reports and late/missing CARs for use by the Lobbying Bureau.
- The ability to run a monthly docket report.
- The ability to select City targets such as the mayor, City Council members, other City agencies and employees from a drop-down list.

#### 2010 Releases:

- Enabled new POs to accept a terms of use agreement prior to logging into e-Lobbyist for the first time.
- Upgraded administrative reports to combine late and missing periodic reports.
- Provided administrative reports including late fundraising and political consulting reports, periodic reports, missing statements of registration, termination notice reports, target reports, subject/category reports, draft status reports and the ability to capture lobbyist/client filers' employee salaries.
- Provided the option to upload retainer agreements and view them in e-Lobbyist.
- Enabled a client to separately add lobbying activities and reimbursed expenses for each lobbyist entity selected in a CAR.
- Provided reimbursed expenses and compensation fields for separate entry of lobbyist entity information in the CAR.
- Enabled users to submit foreign addresses.

#### *Future Improvements*

Future improvements to e-Lobbyist include a functionality enabling filers to make online credit card payments, registration of co-lobbyists<sup>13</sup> and new search and report functionalities. The Lobbying Bureau also anticipates improvements to Lobbyist Search, the site that contains information on lobbyists and clients which is accessible by members of the public.

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<sup>13</sup> When a client retains a lobbyist, who, in turn, hires one or more lobbyist entities to assist in the lobbying effort on behalf of such client, this additional lobbyist(s) is referred to as a co-lobbyist.

## **Trainings Provided to the Lobbying Community**

Throughout the years, the Lobbying Bureau has held training sessions to keep the lobbying community apprised of changes in the Lobbying Law, the Lobbying Bureau's policy and enhancements made to e-Lobbyist.

The Lobbying Bureau held its first training session on December 12, 2006, at 1 Centre Street. One hundred and twenty-six individuals attended the three-hour session. A booklet outlining recent changes to the Lobbying Law and an e-Lobbyist user guide was distributed. This was the first time attendees were introduced to e-Lobbyist by DoITT representatives. A post-presentation question and answer session was held to clarify issues regarding the Lobbying Law as well as enrollment and registration procedures.

On December 28, 2006, the Lobbying Bureau held a second training session at Spector Hall. Seventy-five people attended the one hour and forty-five minute session. The training session addressed further changes to the e-Lobbyist system and a mock enrollment was conducted. Subsequent to the presentation, a Lobbying Bureau staff member briefed attendees about changes in the law. A question and answer session followed.

In 2007, the Lobbying Bureau held training sessions on January 26, April 5 and December 12. Each training session covered further enhancements made to e-Lobbyist and a synopsis of changes in the Lobbying Law was followed by a question and answer session.

In 2008, the Lobbying Bureau held a training session on December 17, 2008, to introduce lobbyists and clients to the lobbyist, client and employee stores. In addition to the training sessions, in 2008 the Lobbying Bureau participated in another user-specific training session, sponsored by the Lawyers Alliance that focused on not-for-profit and community-based organizations at the office of the New York State Bar Association.

In 2009, training sessions were held on March 20 and November 30. The March 20 training session, focusing on not-for-profit and community-based organizations, was held at Queens Borough Hall. During the November 30 session, filers were introduced to enhancements to e-Lobbyist including the capability to list specific targets of lobbying activities and the filing of termination reports online.

At the most recent training session held on November 22, 2010, the enhancements discussed included: the ability to upload a retainer during the filing of a statement of registration, and several upgrades to the CAR, allowing clients to separately report lobbying activities, compensation and reimbursed expenses for each lobbyist entity. An overwhelming demand to attend the training session necessitated a repeat session, which was held on December 7, 2010.

#### **IV. THE CITY CLERK'S INTERACTIONS WITH OTHER CITY AGENCIES IN IMPLEMENTING THE LOBBYING LAW**

##### **Campaign Finance Board**

Section 3-213(c)(1) of the Administrative Code provides that the name, home and business addresses of both the lobbyist and the spouse or domestic partner of the lobbyist be listed on the statement of registration. If a campaign contribution is made in the name of an unemancipated child of the lobbyist, the name and home address of such unemancipated child must be reported. This information, while not made available to the public, may be accessed by the CFB for the sole purpose of determining whether a campaign contribution is matchable pursuant to §3-702 of the Administrative Code.

Through DoITT's application program the Lobbying Bureau provides the requisite information listed above to the CFB. In addition, the Lobbying Bureau provides the CFB with a monthly report of all lobbying entities that have received extensions to file statements of registration.

##### **Department of Investigation**

In response to the requirement of Local Law 15 that DOI collaborate with the City Clerk with respect to the training of the Lobbying Bureau investigators, DOI created a new Lobby Law Unit to provide training and assistance to the City Clerk. The Lobbying Bureau staff has participated in training sessions covering auditing procedure, forensics and entity relationships presented by DOI at its headquarters. Since 2006, the Lobbying Bureau has had regular and ad-hoc meetings with the Lobby Law Unit and has maintained a free exchange of information including review of audits, and requests for information. DOI has also provided the Lobbying Bureau with guidance concerning enforcement of the Lobbying Law and refers matters to the Lobbying Bureau including evidence that organizations may be engaged in unreported lobbying.

#### **A CURRENT DEVELOPMENT IN THE LOBBYING LAW**

##### **Impact of Law Department Opinion on Financial Sector**

On March 31, 2009, the Law Department in response to a request from the City Clerk, issued an opinion concluding that placement agents, other third parties, as well as employees, who are retained or employed by investment firms are lobbying when they attempt to influence the decisions made by the Comptroller, members of his staff or the boards of trustees or members of their staff about the investment of pension funds. See Appendix U. This opinion effectively thrust the City Clerk to the forefront of lobbying regulation nationally since the opinion affects investment firms nationwide. Furthermore, national law firms have issued newsletters to clients discussing the opinion and it has garnered other media coverage among investment firm publications.

To notify affected parties of this opinion, on December 28, 2010 and in early January 2011, the Lobbying Bureau sent letters to investment firms, placement agents and other third parties who may have dealings with the City's pension funds or the Comptroller's office. The letter notified parties of the Lobbying Bureau's intention to prospectively enforce the law department's opinion, commencing in January 2011. The mailing of the letter was timed to coincide with the filing of the 2011 statements of registration at the beginning of the new lobbying year. Enclosed with the letter were the Law Department's opinion and a summary of the Lobbying Law. In total, the Lobbying Bureau mailed over 400 letters to affected entities throughout the country as well as to some international firms. The documents contained in the mailing were posted on the City Clerk's website. See Appendix V.

The Lobbying Bureau also sent a letter to the Comptroller with a copy to each member of the boards of trustees of the pension funds and retirement systems, and the executive director of each entity, requesting assistance in announcing the opinion by posting it on the Comptroller's website. Over 60 letters were sent, with an enclosure comprised of the Law Department's opinion and a summary of the Lobbying Law.

As expected, the public response to the mailing was swift and substantial. The Lobbying Bureau was besieged by emails and telephone calls from interested parties, including investment firms, bloggers, reporters and numerous law firms. As a result of such inquiries, several reoccurring fact patterns and issues began to emerge. Accordingly, the Lobbying Bureau, in collaboration with the Law Department is working to clarify these issues by releasing a series of advisory opinions. Answers to frequently asked questions specific to this new community will be posted on the City Clerk's website.

#### **THE LOBBYING BUREAU STAFF**

The current members of the Lobbying Bureau staff are:

*Patrick L. Synmoie, Counsel to the City Clerk*, is the chief legal officer for the City Clerk. In this capacity he oversees all legal issues for the Lobbying and Marriage Bureaus. He is a graduate of Columbia College and Harvard Law School. Prior to joining the Office of the City Clerk in 2002, Mr. Synmoie practiced in the area of municipal finance.

*Jaime Lynn Eckl, Deputy Counsel to the City Clerk*, is the attorney for the Lobbying Bureau. As Deputy Counsel, Ms. Eckl oversees compliance of the Lobbying Law. Ms. Eckl received her B.A. in Political Communication from George Washington University and her J.D. from Hofstra School of Law. Prior to joining the City Clerk in August 2010, Ms. Eckl prosecuted civil rights and employment discrimination cases. Ms. Eckl is admitted to practice law in the State of New York as well as the Eastern and Southern Districts of the United States District Court.

*Walter Carcione, Chief Investigator*, is the head of the Investigations Division of the Lobbying Bureau. Mr. Carcione manages the day-to-day operations and conducts audits and investigations and is the key contributor to the development of e-Lobbyist. He is a graduate of

Bernard M. Baruch College. Prior to joining the City Clerk in 2006, Mr. Carcione has over 25 years of business experience holding positions of accountant with a certified public accounting firm and Controller/Executive Vice President of a leading manufacturing corporation.

**Jenny Mendez, Associate Investigator**, joined the Lobbying Bureau in 2002. Ms. Mendez's duties include coordinating various facets of the Lobbying Bureau including maintaining late filing journals, payment agreements, cash receipts entries, compliance, and other document and record keeping.

**Edward Kurre, Associate Investigator**, joined the Lobbying Bureau in 2006. Mr. Kurre's duties include supporting the Legal Division of the Lobbying Bureau. Mr. Kurre also participates in audits, compliance, and the drafting of various reports.

**Stuart Bertrand, Associate Investigator**, joined the Lobbying Bureau in 2008. Mr. Bertrand's duties include conducting audits and investigations and supporting compliance efforts. Mr. Bertrand is a graduate of John Jay College of Criminal Justice. Mr. Bertrand served in United States Army Reserve for eight years. Prior to joining the City Clerk, Mr. Bertrand was an investigator for the Human Resources Administration of the City.

**Petra Daniels, Associate Investigator**, joined the City Clerk in 2005 and transferred to the Lobbying Bureau in 2010. Her duties include conducting audits and investigations. She also supports lobbyists in their compliance efforts. Ms. Daniels holds a Bachelor of Computer Information Systems from Touro College and a Masters of Criminal Justice from the University of Phoenix. Prior to joining the City Clerk, Ms. Daniels was a network engineer for AT&T IP Services.