



A New Year for Lobbying in Philadelphia

Client Advisories

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As of January 3, 2012, lobbying firms, individuals and principals whose work meets the definition of "lobbying" (and is not otherwise exempt) will be subject to Philadelphia's Lobbying Code and its registration requirements. The City of Philadelphia Board of Ethics ("Board"), which is responsible for enforcing the registration and reporting requirements, issued an **advisory alert** on November 16, 2011, regarding the implementation of the Lobbying Code. The Board has determined that registration and reporting requirements are triggered when two conditions are met:

- (1) 10 days have elapsed after the commencement of lobbying and
- (2) the economic consideration to an individual (or firm) for lobbying exceeds \$2,500.

No event occurring prior to January 3, 2012, is relevant to determining thresholds, registration date, or expense reporting. See November 16, 2011 Advisory Alert.

Also, on December 21, 2011, the Board of Ethics approved for public comment proposed amendments to Regulation 9, which will become effective approximately January 23, 2012, if no hearing is requested. The new regulations are designed to implement certain **modifications to the Lobbying Code in October 2011** made by ordinance.

What is lobbying?

The **Board's Regulation No. 9**, which was issued in November 2011, will be in effect as of January 3, 2012, and is the conclusive guidance on who must register and when.

Lobbying is defined as an effort to influence legislative or administrative action including:

- (1) Direct or indirect communication;
- (2) Incurring office expenses; and
- (3) Providing any gift, hospitality, transportation or lodging to a City official or employee for the purpose of advancing the interest of the lobbyist or principal. ¶9.1(X).

Legislative action is one 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, a veto by the Mayor, or nominations or appointments to public boards and commissions by the Mayor or Council. ¶9.1(W).

Administrative action is an agency's proposal or consideration of legislation or statement of policy, its procurement or requests for proposals, zoning and other land use decisions, a veto by the Mayor, or nominations or appointments to public boards or commissions by the Mayor or Council. ¶9.1(B). The new definition of "agency" now includes, among others, the Philadelphia Industrial Development Corporation, the Philadelphia Authority for Industrial Development, City-related agencies, and the School District of Philadelphia.

Is anyone exempt from the definition of lobbying and the corresponding reporting and registration requirements?

The long list of exemptions appears in Paragraph 9.24 of Regulation No. 9 along with informative hypotheticals. For general purposes, the more pertinent exemptions include individuals and firms who are not paid for lobbying (¶9.24 (C)); those who prepare and present testimony at City Council hearings or participate in administrative agency hearings or seek specific Agency action on behalf of a particular client in which the principal's or client's interests, rights, or privileges are at issue (¶9.24 (A)); ¶9.1(x);[1-see footnote below] those who receive less than \$2,500 per quarter from all clients for lobbying (¶9.24 (D)); those businesses that spend less than \$2,500 per quarter on lobbying (¶9.24 (F))[2-see footnote below]; those who spend less than 20 hours a quarter lobbying on behalf of an employer (¶9.24 (E)); those who work for media outlets (¶9.24 (E)); and those who are lobbying on behalf of a religious organization in a matter which pertains solely to protecting the constitutional right to the free exercise of religion (¶9.24 (H)). ; those who spend less than 20 hours a quarter lobbying on behalf of an employer (¶9.24 (E)); those who work for media outlets (¶9.24 (E)); and those who are lobbying on behalf of a religious organization in a matter which pertains solely to protecting the constitutional right to the free exercise of religion (¶9.24 (H)).

See ¶9.1(x). The contact is not exempt if the individual contacts City officials or employees to influence general policy or legislation, addresses a matter which is not in the normal course, or if the communication goes beyond or outside the normal chain of command in making the determination at issue. Id.

Are nonprofit organizations exempt?

The lobbying rules do not exempt nonprofit organizations from its scope other than lobbyists who are seeking to protect a religious organization's constitutional right to freedom of religion. There is one hypothetical example, however, that is intended to illustrate how unlikely it would be for a nonprofit organization, employee, or volunteer to be covered by the lobbying registration and reporting rules (¶ 9.24 (F)). First, a lobbyist who does not receive more than \$2,500 in the quarter, is exempt. (Also, those who receive no economic consideration for their efforts are exempt). Second, an executive director or other employee of the nonprofit who spends less than



20 hours in lobbying each quarter is exempt. Finally, a nonprofit group which incurs less than \$2,500 of lobbying expenses during the quarter would therefore be exempt from reporting as a principal under ¶9.24(F).

What are non-exempt lobbyists, lobbying firms, and principals required to do as of January 3, 2012?

Under the registration and reporting requirements set forth in Subparts B, C, G, and H of Regulation No. 9, lobbyists, lobbying firms, and principals who are required to register:

- (1) Must register within 10 days of the lobbying action if they have charged more than \$2,500 for lobbying. See ¶9.3 and November 16, 2011 Advisory Alert. The interim registration forms can be found on the Board of Ethics website [here](#).
- (2) Must pay an annual registration fee of \$100 to the Board for the lobbying firm, made payable to the “City of Philadelphia.” ¶9.5.
- (3) Must pay a separate annual registration fee each annual registration period for the client, principal and individual lobbyist, even if the lobbyist is employed by a registered lobbying firm. ¶9.7.
- (4) Shall file a separate registration statement for each registrant. ¶9.7 (Lobbying firm/principal); ¶9.9 (Lobbyist).
- (5) As a principal, must file, under affirmation, an expense report with the Board, in electronic format and with an electronic signature or signatures, as required by this Regulation, no later than 30 days after the last day of each reporting period. ¶¶9.13-19. Until the Ethics Board finalizes the on-line registration process, which is expected to happen in March 2012, the report must be done manually.
- (6) As a lobbying firm or lobbyist, while generally not required to file an expense report, shall file one if either (a) the principal does not report the lobbying activities in its expense report or (b) the lobbyist is exempt under the City Code §20-20-1204(7) relating to City officials acting in an official capacity. ¶9.20.
- (7) Shall within 120 days of filing a registration statement attend an initial training session conducted by the Board regarding the requirements of Chapter 20-1200 and other relevant sections of the City Code. ¶9.33.



(8) Shall refrain from prohibited activities and unlawful acts including, but not limited to, serving as a treasurer or other officer for a candidate's political action committee if the candidate is seeking office; charging contingency-based fee; instigating the introduction of legislation to produce employment by opposing it; offering financial support to a City official; engaging in coercion, bribery, or fraud; or simultaneously representing two principals with adverse interests in a matter without proper disclosures and waivers. ¶¶9.26-27.

Do these reporting requirements signify a change in the prohibition on gifts to City employees?

No. A lobbyist, lobbying firm, principal, or City official or employee is not relieved by the provisions of Chapter 20-1200 from the restrictions in City Code §201200 from the restrictions in the City Ethics Code, §20-604 (Gifts, Loans, and Favors to City Personnel), or from financial disclosure requirements such as those in Code §20-610, or from departmental or other restrictions or prohibitions on the offer or acceptance of gifts, hospitality, transportation, and lodging such as [Mayor Nutter's Executive Order No. 3](#).

Are entities required to report a "Gift to the City" under the new lobbying rules?

As explained at ¶9.17(A) of Regulation No. 9, when a City official or employee, acting in his or her official capacity, attends an event at the invitation of an entity and, at the event, receives food, beverage, entertainment, and admission without charge, the fair market value of the same would be regarded as a gift to the City rather than a gift to the individual official or employee. Accordingly, the host is neither required to report the related expenditure on any expense report required to be filed under this Regulation or City Code §20-1200 nor to include it in the calculation of any reporting thresholds under this Regulation or City Code §20-1200.

What are the penalties for non-compliance with the Registration and Reporting requirements?

A person who violates the registration and reporting requirements is subject to a civil penalty of up to \$2,000, plus up to \$250 per day (up to a total of \$2,000) when a required registration or report is filed late. ¶9.32; City Code §20-1207(1). If the Board determines that the violation of lobbying law is intentional, the Board of Ethics may prohibit the individual from lobbying for pay for up to five years. The Disciplinary Board of Pennsylvania is additionally notified whenever the penalized lobbyist or principal is an attorney. City Code §20-1207(1)(d).

Whom do I contact for official guidance regarding the registration and reporting requirements?

The Board of Ethics will offer an Advisory Opinion to a lobbyist, lobbying firm, or principal seeking to determine whether that person or entity is required to register or file expense reports pursuant to Chapter 20-1200 and Regulation No. 9. The procedures for making such requests for Advisory Opinions are governed by the [Board's Regulation No. 4](#) as amended by Regulation No. 9 at ¶9.30(A)(2).



If you have any questions about the new lobbying law or related issues, please contact Carlton Johnson, Esquire, Co-Chair of Archer's Government Affairs Group, at (215) 279-9696 or cjohnson@archerlaw.com, or Group member Stella Tsai, Esquire, at (215) 279-9348 or stsai@archerlaw.com.

1 The contact is not exempt if the individual contacts City officials or employees to influence general policy or legislation, addresses a matter which is not in the normal course, or if the communication goes beyond or outside the normal chain of command in making the determination at issue. ¶9.1(x).

2 In a reporting period in which total expenses are \$2,500 or less, a statement to that effect shall be filed. City Code §20-1203(7).

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