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Important New Rules Regarding New York City Lobbying Take Effect

In 2013, six years after the last round of amendments to the New York City lobbying laws, the City enacted Local Law 129, resulting in some notable revisions to the Administrative Code's regulation of lobbying. Among other things, the revised Administrative Code provisions broadened the application of the City's lobbying law to capture certain activities that had previously not triggered an obligation to register as a lobbyist with the City Clerk, and file subsequent disclosure reports. In October, the City Clerk adopted revised Rules which took effect on Nov. 4, 2015. The Rules purport to "conform existing rules to the amendments enacted by Local Law 129 of 2013," but there are aspects of the Rules that represent a departure from prior practice and could require lobbyists and clients of lobbyists to change existing internal processes. This memorandum summarizes the key changes to the City Clerk's lobbying regulations, and a complete copy of the [amended City Clerk Rules is available here](#).

New Requirements

1. Enrollment

a. Must be complete within 10 days; subject to penalties

New York City's Administrative Code provides that lobbyists who "reasonably anticipate combined reportable compensation and expenses in excess of" \$5,000 must file statements of registration with the City Clerk within 15 days. The Administrative Code further provides that "[b]efore a lobbyist files a statement of registration pursuant to paragraph one of this subdivision, the lobbyist and its client shall enroll in the electronic filing system." Notably, the Administrative Code provides no time period within which the enrollment must occur. However, for the first time, the new rules will require clients and lobbyists to complete the process of enrolling in the City's e-Lobbyist system "no later than ten (10) days after retaining" a lobbyist or being retained to lobby. This is a full five days before the registration is due. If a lobbyist or client will not be able to meet this deadline, it must request an extension *before the deadline for filing occurs*. Should the lobbyist or client fail to do so, the individual or entity may be subject to monetary fines. The Clerk had not historically

sought to penalize lobbyists and clients for failing to timely enroll in e-Lobbyist, but the Rules now include express authority for the Clerk to do so. The compliance risk for this requirement will have a greater effect on clients than lobbyists: once a lobbying firm enrolls in e-Lobbyist, there is no requirement to do so again, so lobbying firms that have been subject to regulation by the City Clerk prior to the adoption of the Rules are already in compliance with the enrollment requirement. Entities that will either engage in lobbying or retain outside lobbyists for the first time, however, will need to be sensitive to these timeframes.

b. Administrative Enrollment

i. Delinquent Enrollees

Some lobbying firms have experienced difficulties registering new clients, due to the client's failure to timely enroll. The Rules now provide a process by which the City Clerk may "create an Administrative Enrollment" to avoid compliance risks in the event that the client or lobbyist fails to enroll. In some circumstances, where it appears that a client will not be able to enroll prior to the deadline for the lobbyist to register, the lobbyist may - - prior to the registration deadline - - seek a registration extension from the City Clerk. The City Clerk will then send a formal notice to the client who has failed to timely enroll, providing the client with 14 business days to cure the defect. If the delinquent client still does not enroll, the City Clerk will notify the corresponding client that an Administrative Enrollment was created. Additionally, the City Clerk has authority to commence an adjudicatory proceeding before the Office of Administrative Trials and Hearings (OATH) to seek civil penalties against the party that failed to timely enroll and ignored the notice to cure. In the unlikely event that a lobbyist does not timely enroll, a similar process is available to clients seeking to file an annual report.

ii. Exempt Enrollees

Lobbyists and clients that do not anticipate exceeding the then applicable reporting threshold for retaining or employing a lobbyist during a calendar year are not required to enroll, but will be administratively enrolled if the failure to do so would cause the corresponding lobbyist or client – who is required to register or file disclosure reports – to incur late filing penalties due to the non-enrollment. As noted above, it is the obligation of the so-called "affected lobbyist or affected client" to contact the City Clerk and request that this form of Administrative Enrollment occur.

2. Principal Officers and Designees

The City regulation imposes new, hyper-technical regulations on the activities of the lobbyist's and client's Principal Officer (PO). Strict compliance with these requirements is of utmost importance, as the rules also now provide the Clerk authority to seek penalties for individuals who fail to comply with certain PO restrictions. Of note, PO non-delegable "responsibilities" now include signing all Retainer and Authorization letters and certifying all reports filed with the City Clerk.

Only one individual may serve as a PO of a particular lobbying or client entity. Should the organization seek to change its PO, the entity must notify the City Clerk within no less than five business days of any change. The new regulations do allow lobbyists and clients of lobbyists to have up to two designees, in addition to a PO. This is, however, of very limited utility. Designees may only enter information into City Clerk registration and disclosure documents, and serve as a point of contact for the City Clerk. These individuals **may not** certify registration and disclosure reports. Only the PO is permitted to finalize and certify reports. In fact, as a result of the new rules, POs are prohibited from sharing their password with **anyone**, not even the designee. POs and Designees may now be subject to significant monetary penalties for intentionally disclosing their e-Lobbyist passwords.

Again, as is discussed in further detail below, the Rules now provide that only the PO of the lobbyist and the PO of the client may execute Retainer Letters. This is a significant departure from prior practice, where anyone who has the authority to enter into an agreement on behalf of the entity was permitted to sign these letters.

3. Retainer and Authorization Letters

The City Clerk's Rules distinguish "Retainers" – the written engagement agreement or statement between a client and an outside lobbyist – from "Authorizations" – the letter issued by an entity that intends to include in-house employees engaged in lobbying on a registration statement. The new Rules set out requirements as to what must be included in both types of letters. Retainer Letters must include information regarding: (i) the compensation paid to the outside lobbyist; (ii) the term of the representation, including a specific start date; (iii) the legal name of the client (which must match the name of the client used in the e-Lobbyist enrollment); and (iv) information regarding third party payors, if appropriate. Authorization Letters must specifically identify the names of the in-house employees who will be engaging in the lobbying activity, and the time period during which the employees are expected to engage in lobbying. As a result, every time a new in-house employee will be engaging in lobbying activity, the organization will be required to amend its registration and include an updated Authorization Letter.

Both types of letters are now required to be signed by the organization's PO, however, the Rule acknowledges that if "it is impracticable . . . [for the PO] to sign the Retainer, another person with capacity to legally bind the parties to a contract must sign the Retainer." It is not immediately clear what the City Clerk would consider to be "impracticable," but it appears that lobbying firms with multiple lobbyists who represent clients, will have to adjust internal practices to accommodate this change. Retainer Letters must be signed by both the lobbyist's PO and the client's PO.

The Rules now also provide that to the extent a letter does not expressly provide a "Start Date," the authorization will be deemed to take effect "the later of any date (i) stamped onto the Retainer or Authorization Letter or (ii) listed alongside the document's signatures." Additionally, if the letter does not expressly provide an "end date and the start date occurred in a previous filing year," the City Clerk will no longer allow lobbyists to continue to use the same letter in perpetuity as evidence of a continued client relationship. Rather, "the lobbyist must submit a supplemental letter" executed by both parties, confirming that the Retainer or Authorization Letter continues to be in effect during the subsequent calendar year. As such, the Registration Statement's end date must "match either the end date on" the initial letter, or the date provided for in the supplemental letter.

Notably, the City Clerk now has the authority to penalize lobbyists and clients who "fail[] to include a term of a Retainer or Authorization required by . . . the Rules."

4. Extensions

The City Clerk now provides a set process by which lobbyists and clients may seek extensions to file any registration or disclosure report. The City Clerk will consider extension requests that are made in writing and delivered to the City Clerk – whether via postal service, hand delivery, email, or fax – "prior to the filing deadline of the applicable" report. The City Clerk, however, will only grant the extension upon a showing of "good cause." Extensions continue to be provided as of right, automatically, when a "filing deadline . . . falls on a Saturday, Sunday or City holiday," in which case the filing will be due on the next business day. Extensions will also be granted automatically where the reason the registration or client annual report could not be filed was due to the failure of a client or lobbyist to complete the enrollment process. Note that the affected filer will only be granted a two business day extension from the date the client or lobbyist enrolls, or from when the City Clerk effectuates an Administrative Enrollment.

5. Penalties

The Rules also include a long list of new grounds on which the City Clerk may assess penalties, or commence an OATH proceeding. For example, penalties may be assessed against an individual or entity that fails to: (i) enroll in a timely fashion; (ii) include the term of a retainer or authorization letter; (iii) pay the required registration fee; and (iv) complete any required portion of any report or otherwise supply correct information. POs and their designees may also be penalized for intentionally disclosing filing passwords. Civil penalties for failure to cure a violation within the required timeframe will be assessed in accordance with a civil penalty schedule which ranges between \$1,000 - \$20,000.

6. Amnesty for Lobbyists that Have Never Registered

Local Law 129 provided for a program to grant amnesty to individuals and entities that engaged in lobbying activity on or after Dec. 10, 2006 but never filed a registration statement. The new rules now set forth the process for applying for amnesty. While this will have very limited application, it is important for entities that may be able to take advantage of this process to note that applications for amnesty must be filed no later than Dec. 31, 2015.

Conclusion

The City Clerk has indicated that the new Rules were promulgated in order to address the 2013 law, and resolve certain administrative and compliance problems that the Lobbying Bureau identified over the past five years. In doing so, however, the Clerk established obligations on lobbyists and clients of lobbyists that are different than historical practice. Additionally, new and increased penalties could be assessed on individuals and entities that fail to comply with what could be viewed as bureaucratic standards (e.g., a PO disclosing her password to an administrative assistant in order to expedite the filing process). Nonetheless, it is imperative for all New York City lobbyists and clients of lobbyists to be aware of these process changes in order to ensure compliance. For individuals interested in learning more, the City Clerk is hosting a series of training sessions in early December. Additionally, Greenberg Traurig's Government Law Compliance Practice is available to assist with questions regarding New York City and State's lobbying, ethics, and election laws. Greenberg Traurig has a broad range of experience in New York City and State, and provides advice to some of the world's leading corporations, lobbying firms, public officials, candidates, advocacy organizations, and others who seek to navigate New York's complex political law compliance requirements.

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