



## Item 5a - Staff Memo

Ryan Micik, Chair  
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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission  
FROM: Nicolas Heidorn, Executive Director  
DATE: July 28, 2023  
RE: Lobbyist Registration Act Fee Waiver/Reduction and Other Amendments

In June of this year, the City Council adopted its Master Fee Schedule for Fiscal Year 2023-2024 which, at the request of the Public Ethics Commission (PEC or Commission), includes a new \$500 annual lobbyist registration fee and a new \$10/day lobbyist late filing fee. In recommending that the City Council adopt these fees, the PEC committed to developing a fee waiver policy for lobbyists who are employees of nonprofits or community-based organizations.

In this memorandum and attached draft language, staff recommends that the PEC propose to the City Council that the Master Fee Schedule amendments be codified in the Lobbyist Registration Act (LRA) with three changes to the standard fee structure to mitigate hardship and promote fee equity:

1. A fee waiver for 501(c)(3) nonprofit organizations with less than \$750,000 in annual revenue;
2. A fee reduction for small businesses and organizations with less than \$200,000 in annual revenue; and
3. A fee reduction for third and fourth quarter registrants.

Staff is also recommending that the PEC be given the authority to modify these fee reductions or waivers based on experience administering the fee.

Staff also recommends that the PEC propose the following additional, ancillary changes to the LRA:

4. Cap the \$10/day late filing fee to a cumulative total of \$1,000, which is the PEC's maximum fining authority under the LRA, and authorize the Executive Director to waive fees of under \$500 if the violation was not willful and it furthers the purposes of the LRA;
5. Require that lobbyists complete a PEC training session on the requirements of the LRA.
6. Change the lobbyist quarterly report filing deadline from 30 days after the end of the quarter to the last day of the month following the end of the quarter (e.g., July 31 instead of July 30);
7. Authorize the PEC to require additional information relevant to lobbying related activities in the lobbyist quarterly reports; and
8. Other minor and technical changes in the draft language.

**Staff recommends that the Commission adopt a motion forwarding the attached draft LRA amendments to the City Council for its review and passage, without needing any introduced proposed ordinance to return to the Commission for further review and comment unless the City Council makes substantive changes to the Commission's proposals.**

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### Background

The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Commission before conducting any lobbying activity. Under Oakland law, a person qualifies as a local government lobbyist in Oakland if:

- They are paid \$1,000 or more in a calendar month to communicate with City officials to influence any proposed or pending governmental, legislative, or administrative action; or
- Their duties as an employee, officer, or director of an organization or business entity include communicating (directly or through an agent) with City officials or employees to influence any proposed or pending governmental, legislative, or administrative action.

The LRA requires that registered lobbyists submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. The Commission ensures compliance with the City of Oakland's lobbyist registration laws and acts as filing officer for lobbyist disclosure. Examples of filing officer activities include processes such as noticing registration and filing deadlines, advice and technical assistance, surface review of filings for completeness, engaging with non-filers to gain compliance, and maintenance of the PEC’s online filing system. As of July 2023, 74 lobbyists are registered with the PEC.

Historically, unlike many other large California cities, the City of Oakland had not charged lobbyists a registration fee or late fees for missed deadlines. Earlier this year, the Commission proposed that (A) a \$500 annual lobbyist registration fee and (B) a \$10/day late fee for lobbyist filings submitted after applicable deadlines be added to the Master Fee Schedule. The staff report recommending the adoption of these fees noted that, if the fees were adopted, the “Commission shall develop a registration fee waiver policy for lobbyists that are employees or representatives of 501(c)(3) nonprofit organizations and/or community-based organizations that can demonstrate hardship, prior to fee implementation.” On June 20, 2023, the City Council adopted a revised Master Fee Schedule, which included the annual lobbyist registration fee and lobbyist late filing daily fees recommended by the Commission.

### Proposed Lobbyist Registration Fee Changes

Staff recommends that the PEC propose three changes to the \$500/year lobbyist registration fee, which would: waive the registration fee for qualifying nonprofits; reduce the fee for smaller businesses or organizations, for which the \$500 fee may pose a hardship; and reduce the fee for third and fourth quarter registrants. The draft language would also permit the PEC to modify the fee waiver/reduction requirements going forward based on experience administering the fee.

#### Fee Proposal Overview

Current Fee		
\$500/year		
Proposed Fee		
	Jan. 1 – Jun. 30 Registration	Jul. 1 – Dec. 31 Registration
Standard Fee	\$500/year	\$250/year
Small Business/Organization under \$200,000 gross revenue	\$200/year	\$100/year
501(c)(3) Nonprofit under \$750,000 gross revenue	\$0 (waived)	\$0 (waived)

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### A. Nonprofit Fee Waiver

Based on a review of Oakland registered lobbyist filings as of July 2023, PEC staff estimates that 21 lobbyists – or about 30% of all Oakland registered lobbyists – represent some type of nonprofit organization. While nonprofit lobbyists have always been required to report their activities under the LRA, until recently there was no charge for registering as a lobbyist in Oakland. For nonprofits that are not well-resourced, the new \$500 fee may pose a hardship or divert organizational resources that might otherwise have been used for charitable or educational activities.

For this reason, several California jurisdictions either exempt from regulation, or waive the registration fee for, local lobbyists that are employed by nonprofit organizations or neighborhood or community organizations. PEC staff reviewed the lobbying registration ordinances of the eight California cities and counties with ethics commissions and found that the majority included some type of nonprofit fee waiver or regulatory exemption. Berkeley and San Francisco provide fairly broad fee waivers for 501(c)(3), (c)(4), and (in Berkeley) (c)(6) nonprofits. The jurisdictions that exempt nonprofits lobbyists from registration often adopt narrower exclusions. For example, in Sacramento (Sacramento MC 2.15.050(D)(3)), only *uncompensated* nonprofit officers are exempt from registering, whereas in Los Angeles (Los Angeles MC 12.12.020(E)-(F)) only 501(c)(3) nonprofits *providing direct services* to the indigent and not seeking city funding are eligible.

#### **Lobbyist Regulatory Exemption or Fee Waiver by Type of Nonprofit or Community Organization**

Jurisdiction	Regulatory Exemption or Fee Waiver	Type of Eligible Nonprofit/Organization:
Berkeley	Fee Waiver	501(c)(3), 501(c)(4), or 501(c)(6) nonprofit
Long Beach	Exemption	<ul style="list-style-type: none"> <li>▪ 501(c)(3) nonprofit</li> <li>▪ Neighborhood associations or project area committees</li> <li>▪ Organizations representing City business improvement districts</li> </ul>
Los Angeles	Exemption	501(c)(3) nonprofit which receives government funding and provides direct services to indigent persons, unless seeking City funding
Orange County	Exemption	501(c)(3) or 501(c)(6) nonprofit not seeking a County grant or contract
Sacramento	Exemption	Any nonprofit (uncompensated members or directors only)
San Diego	None	-
San Francisco	Fee Waiver	501(c)(3) or 501(c)(4) nonprofit
	Exemption	<ul style="list-style-type: none"> <li>▪ 501(c)(3) nonprofit</li> <li>▪ 501(c)(4) nonprofit whose most recent tax filing was an IRS Form 990-N or an IRS Form 990-EZ</li> <li>▪ Organization whose next tax filing will be an IRS Form 990-N or an IRS Form 990-EZ</li> </ul>
San Jose	Exemption	<ul style="list-style-type: none"> <li>▪ Any nonprofit (uncompensated members or uncompensated board members only)</li> <li>▪ 501(c)(3) nonprofit</li> <li>▪ Neighborhood association, neighborhood advisory committee, or project area committee</li> </ul>

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As the chart above demonstrates, the most common type of nonprofit to receive an exemption/waiver is a 501(c)(3) nonprofit, followed by a (c)(4), then a (c)(6). 501(c)(3) nonprofits are classified as public charities, whose political activities are more strictly regulated under federal law. 501(c)(3) nonprofits can only spend a limited amount of their funds on lobbying and cannot endorse political candidates. Donations to 501(c)(3) nonprofits are tax-deductible. By contrast, 501(c)(4) nonprofits, called social welfare nonprofits, and 501(c)(6) nonprofits, which represent business associations, may both endorse candidates and are not limited in how much lobbying activity they engage in. Donations to these nonprofits are generally not tax deductible.<sup>1</sup> Many 501(c)(3) nonprofits also have an affiliated 501(c)(4) nonprofit.

Of Oakland’s 21 registered nonprofit lobbyists, a majority represent a nonprofit that has both a 501(c)(3) and 501(c)(4) organization, including, for example, Earthjustice, Sierra Club, and Common Cause. The next most common type of nonprofit is a 501(c)(6) nonprofit, including the Oakland Chamber of Commerce, Jobs and Housing Coalition, and Bridge Association of Realtors.

### Oakland Lobbyists Employed by a Nonprofit, by Nonprofit Type

Type of Nonprofit	501(c)(3) only	501(c)(4) only	501(c)(3)&(4)	501(c)(6)
Number (%)	3 (14%)	1 (5%)	12 (57%)	5 (24%)

Staff recommends that the Commission propose a fee waiver for 501(c)(3) nonprofits with less than \$750,000 in annual revenue. By law, 501(c)(3) nonprofits may not engage in substantial amounts of lobbying. Any fee therefore risks displacing the charitable activities of that nonprofit. By contrast, 501(c)(4) and 501(c)(6) nonprofits are frequently advocacy organization, where the lobbying fee is more akin to a cost of doing business. While the jurisdictions surveyed above generally provide a nonprofit waiver/exemption without regard to an organization’s income, staff recommends that the fee waiver be income limited, as larger nonprofits are unlikely to be significantly affected by the fee. According to a study by the National Council of Nonprofits, 88% of 501(c)(3) nonprofits reported less than \$500,000 in revenue in 2016, and 92% reported less than \$1 million.<sup>2</sup> Based on those figures, around 90% of 501(c)(3) nonprofits should be eligible for the proposed fee waiver using a \$750,000 revenue threshold.

### B. Small Business/Organization Fee Reduction

Because some community organization may not have gone through the process of registering as a nonprofit, and because a \$500 fee could represent a hardship for very small businesses or self-employed lobbyists, and may deter their participation in the City’s legislative process as a result, staff also recommends that the fee be reduced to \$100 for any organization or business with less than \$200,000 in revenue. This is about double Oakland’s median household income (~\$85,000) and follows a threshold set in federal law, where nonprofits of any type with less than \$200,000 in annual gross receipts may file a simplified, short form tax return called Form 990-EZ. San Francisco uses the same threshold for determining an organization’s eligibility for a lobbyist regulatory exemption.

<sup>1</sup> See Bolder Advocacy, “Types of Organizations,” <https://bolderadvocacy.org/resource-library/types-of-organizations/> (accessed July 2023), and Bolder Advocacy, “Comparison of 501(c)(3) and 501(c)(4) Permissible Activities,” <https://bolderadvocacy.org/resource/comparison-of-501c3-and-501c4-permissible-activities/> (accessed July 2023).

<sup>2</sup> National Council of Nonprofits, “Nonprofit Impact Matters,” 17 (2019), [https://www.nonprofitimpactmatters.org/?utm\\_source=web&utm\\_medium=site&utm\\_campaign=reports-page](https://www.nonprofitimpactmatters.org/?utm_source=web&utm_medium=site&utm_campaign=reports-page).

### C. Reduced Fee for Third/Fourth Quarter Registrants

In most local jurisdictions, a lobbyist's registration and any applicable registration fee is only valid for the calendar year in which the lobbyist registered. For example, in San Francisco returning lobbyists must pay their registration fee by February 1 of each new calendar year, or else their registration is automatically terminated. (San Francisco Campaign and Governmental Conduct Code (SF CGCC) Sec. 2.110(f).) Similarly, under the LRA, returning Oakland lobbyists are required to reregister with the PEC in January of each calendar year. (OMC 3.20.040(C).)

Calendar year-based registration is simple to administer and provides for predictable registration deadlines; however, a flat registration fee regardless of when a person first registers as a lobbyist can result in some financial inequities between lobbyists. For example, if Oakland adopted a flat fee, a person who first registers to lobby in January and a person who first registers to lobby in December would both pay \$500, but one person could lobby for 12 months with that payment whereas the other person could only lobby for one month.

To reduce these inequities, but retain a predictable and easily administrable fee payment schedule, some jurisdictions charge a different fee depending on when a person registers. Sacramento, for example, charges lobbyists a \$100 initial registration fee for those registering for the first time before June 30, and \$50 for those registering on or after June 30.<sup>3</sup> Similarly, California state lobbyists who register in the first year of a two-year legislative session must pay a \$100 fee but lobbyists registering in the second year must pay \$50.<sup>4</sup> Staff recommends that Oakland follow the model of Sacramento and California and reduce the registration fee by half for lobbyists who initially register in the second half of a calendar year.

### D. Future Changes

With experience administering the fee, the PEC may find that there are better ways to structure or target the fee waiver/reduction. Rather than requiring the PEC to repeatedly return to the City Council with small adjustments to the waiver/reduction process, staff recommends that the PEC be given the authority to make future adjustments by resolution or regulation. Under the Oakland Municipal Code, any rules, regulations, or procedures adopted by the Commission must be submitted to the City Council within seven days of their adoption and become effective 60 days later unless the City Council, by two-thirds vote, veto the rule, regulation, or procedure. (OMC 2.24.020.) This would be a faster and less resource-intensive process than having the PEC adopt only recommended changes then seek a legislative sponsor to introduce an ordinance making this change.

### **Late Filing Fee**

Under the newly-adopted amendments to the Master Fee Schedule, the PEC may now impose \$10/day fines for late lobbyist filings, which is the same dollar amount that the PEC imposes pursuant to state law for late campaign filings. (Cal. Gov. Code Sec. 91013.) As with campaign filing late fees, this fee

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<sup>3</sup> Sacramento City Clerk, "Lobbyists," <https://www.cityofsacramento.org/Clerk/Good-Governance-and-Compliance/Lobbyists> (accessed July 7, 2023).

<sup>4</sup> California Secretary of State, "Lobbying Registration," <https://www.sos.ca.gov/campaign-lobbying/lobbying-disclosure-requirements/lobbying-filing-requirements/lobbying-registration-documents-required-registration-amendment-termination-and-withdrawal#:~:text=For%20registration%20submitted%20during%20the,or%20firm's%20registration%20is%20%2450> (accessed July 7, 2023).

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would be imposed administratively by staff, without requiring a vote of the Commission or going through the Commission's complaint hearing process. Daily fees are intended to incentivize lobbyists to file their mandated reports as soon as possible to stop incurring new fees.

The current \$10/day fee begins as soon as a lobbyist is one day late in filing their report. However, there may be situations where a lobbyist has a good reason for not filing their reports in a timely fashion, which might include a family emergency or a technology issue with the PEC's filing system. In San Francisco, the Ethics Commission's Executive Director may waive up to a \$500 fee (and higher amounts with notice to the Commission and the opportunity for review) if the late filing "was not willful and that enforcement will not further the purposes" of the lobbying registration ordinance. (SF CGCC 2.145.) For the LRA late filing fee, staff recommends that the Executive Director be given similar discretion to waive late filing fees of up to \$500 if the violation was not willful and enforcement would not further the purposes of the LRA.

The current Master Fee Schedule does not cap the cumulative amount of late fees that a lobbyist may incur under the LRA. Hypothetically, a lobbyist that refuses or forgets for years to file their lobbying report could accumulate thousands to tens of thousands of dollars in late fees, which would significantly exceed the PEC's maximum enforcement penalty of \$1,000 for a violation of the LRA. (OMC 3.20.200.) For consistency, staff therefore recommends that late fees be capped at a maximum of \$1,000. Notably, in addition to the daily late fees, a lobbyist who fails to file mandated reports could also be the subject of an enforcement proceeding.

### Lobbyist Training Requirements

To ensure lobbyists are aware of, and comply with, city laws relating to lobbying, staff recommends that lobbyists be required to take a PEC training on the LRA upon first registering as a lobbyist and periodically thereafter, as provided by the PEC by rule. The State (FPPC Reg. 18603.1) and many other cities, for example San Francisco (SF CGCC 2.116) and Berkeley (Berkeley M.C. Sec. 2.09.080), similarly require lobbyists to take a mandatory training course. Moreover, this proposed rule is similar to what Oakland requires of its own employees. Under the Government Ethics Act, city employees that file an annual Form 700 Statement of Economic Interest are also required to take a PEC training on government ethics requirements every two years. (O.M.C. 2.25.080(A).) Because new lobbyists register at different times of the year, PEC staff envision providing this training as an online recording that lobbyists could review at their convenience and without requiring substantial additional PEC staff resources.

### Quarterly Filing

Presently, the LRA requires that quarterly lobbyist reports be filed 30 days after the end of the quarter. For Quarter 1 (Q1) and Q3 reports, reports are due at the end of the month following the reporting period. However, because the months following the Q2 and Q4 reports are 31 days long, the report is due the day *before* the last day of that month. This inconsistency can create the opportunity for inadvertent late filings. Moreover, this filing schedule is also inconsistent with campaign finance semi-annual reports (Cal. Gov. Code Sec. 84200) as well as California lobbyist quarterly reporting (Cal. Gov. Code Sec. 86117), which are due at the end of the month following the reporting period. Staff recommends that the LRA be amended to provide a consistent end-of-the-next-month filing deadline for all lobbyist reports.

### Comparison: LRA, State Lobbying, and Campaign Finance Reporting Deadlines

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Reporting Period	LRA Reports	CA Lobbying Reports	Campaign Semi-Annual Reports	Proposed LRA Reports
Quarter 1 (Jan. 1 – Mar. 31)	Apr. 30	Apr. 30	-	Apr. 30
Quarter 2 (Apr. 1 – Jun. 30)	Jul. 30	Jul. 31	Jul. 31	Jul. 31
Quarter 3 (Jul. 1 – Sep. 31)	Oct. 30	Oct. 30	-	Oct. 30
Quarter 4 (Oct. 1 – Dec. 31)	Jan. 30	Jan. 31	Jan. 31	Jan. 31

### Information in Quarterly Lobbyist Reports

Under the LRA, lobbyists are required to disclose in their quarterly reports (1) the items of governmental action they are seeking to influence, (2) who they communicated with, and (3) what their position was, as well as (4) whether the lobbyist has hired or (5) is hired by a City official, and (6) any campaign solicitations the lobbyist has made on behalf of an officeholder or candidate. (OMC 3.20.110.) Other cities have similar, but not identical, disclosure requirements. In Oakland, the PEC is not authorized to require disclosure of additional lobbying information beyond what is listed in the LRA. However, in many other cities with ethics commissions, including Los Angeles (LA MC 48.08(B)(13)), San Diego (San Diego MC Sec. 27.4017(a)(10)), and San Francisco (SF CGCC Sec. 2.110(c)(1)(J)), their ethics commission may require the disclosure of other lobbying information consistent with the purposes of the city’s lobbyist registration ordinance. This permits the commission, based on its expertise administering the law, to adopt other rules which may provide for more meaningful or contextualized disclosure. Staff recommends that the PEC be given similar authority to require the disclosure of additional lobbying information on lobbyist quarterly reports. As described above, any new disclosure rule or regulation adopted by the PEC would be subject to City Council review, and possibly veto, before taking effect.

### Amending the LRA

If the PEC approves a proposal to amend the LRA, PEC staff will request that the City Council agendize and pass the proposal as an ordinance amending the LRA. Under the City Charter, the City Council may only amend the LRA to further its goals and purposes. (Oakland Charter Sec. 603(h).) Amendments to the LRA must be submitted to the PEC for review and comment prior to their passage, which would already be met for proposals originating with the PEC. However, if the City Council makes substantive amendments to the PEC’s proposal that differ from what the PEC has recommended, the amended proposed ordinance would need to return to the PEC for review and comment prior to enactment.

**Additional Attachment:** Draft LRA Amendment Language