

Are You Lobbying? A Primer for Those Working With Local Government

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In many circumstances, the person communicating on behalf of the company is an owner, officer, or employee rather than a hired third party. What might come as a surprise, however, is that by partaking in these commonplace, seemingly innocent conversations, that person might have engaged in “lobbying.” Worse yet, those conversations might have violated a local ordinance that could result in hefty penalties to the individual or bar the company from seeking government contracts for a long time. A routine conversation has the potential to result in a \$500 fine, up to 60 days in jail, or a prohibition on lobbying activities for up to two years. This formal penalty also comes with the potentiality of negative media coverage that could be detrimental to any business, especially small shops. With the recent rise in the number and scope of municipal lobbying regulations, it is important for businesspeople to step back and ask themselves, “Am I lobbying?”

There are many reasons why businesses lobby their local governments. Often, the companies want to have a say in things like pending land use matters, business regulations, grants, subsidies, procurement, licenses, contract specifications, enacting and changing local ordinances, etc. Local elected officials also have an interest in hearing from their constituents because they generally rely on industry professionals to educate themselves on local needs. Local business leaders can provide valuable advice in areas like the municipal land use code or laws specific to a particular industry. The nature of local lobbying thus creates a reciprocal need for regular contact between local officials and business professionals, who often do not even consider these conversations as “lobbying.” Additionally, because these talks are primarily conducted outside the professional lobbying context, they do not gain as much attention from the public. Accordingly, local lobbying has historically been less regulated than state or national lobbying, if not entirely unregulated; however, this lack of regulation has been rapidly changing in recent years.

Today, Florida appears to have more municipal lobbying codes than many other states. In fact, 20 of

the 23 Florida cities with a population of more than 100,000 now have regulations on local lobbying. The challenging part about these regulations, however, is the lack of uniformity, with each municipal lobbying code varying in many ways. Differences are seen in definitions, registration requirements, fees, deadlines, reporting requirements, whether uncompensated lobbyists must register, and the multitude of penalties and fines for violations. The confusing nature of these local ordinances leaves businesses in a difficult position if they are unfamiliar with the law, especially if they are conducting business in multiple cities.

Before discussing the conflicts among Florida municipal lobbying codes, it is important to understand why compliance is essential for a company or individual. The most common repercussion for violation of a lobbying code, seen in cities like Jacksonville, Miami, Orlando, and Tallahassee, is a potential fine of up to \$500 and/or imprisonment for up to 60 days for a single violation. Other cities, such as Tampa and St. Petersburg, take another approach and choose to impose differing penalties with increasing severity for repeat offenses. For example, a first offense in Tampa merely results in a warning, but a fourth offense within 12 months results in a one-year lobbying prohibition plus the possibility of a \$500 fine for further violations. St. Petersburg is similar, imposing a lobbying prohibition of two years after a third violation within 12 months. Needless to say, it would be detrimental for certain businesses to be barred from meeting and conferring with local officials for two full years.

In addition to the threat of fines and jail sentences, the most immediate penalty a business can face is in the form of negative press resulting from the accusation of a “scandal.” With the negative perception of any form of lobbying, popularized by dramatic television shows, accusations of improper influence can begin with little basis. Any resulting loss of business caused by a scandal would be far more expensive than any monetary penalty a city could impose. To avoid all of this, local businesses must understand the regulations for each city or seek counsel for help with compliance.

Municipal lobbying regulations in Florida vary wildly from city to city. Much of the variance is due to the lack of a model code or standard, which has resulted in local government officials crafting lobbying regulations as issues present themselves, often in response to the last problem they encountered. A basic example of these conflicts is in the differing definitions of terms like “lobbying” and “lobbyist,” which is critical to determining whether a person is even subject to lobbying regulations. For example, some municipalities, like Jacksonville, do not even define the word “lobbying,” opting instead to define the word “lobbyist” generally as a person who receives compensation for seeking to influence the governmental decision-making of an officer or employee of the city. Other cities, like Tampa, intertwine various definitions to provide, for example, that a “lobbyist” is a person who, for compensation, engages in “lobbying,” excluding certain governmental employees. “Lobbying” is then given a complex definition specifying which parties, what location, and what context of conversation is required to be subject to regulation.

Even if a layperson is able to determine whether his or her activities fit within those definitions, the next challenge is to determine whether he or she needs to register as a lobbyist with the city and, if so, when, how, and how often he or she is supposed to do it. Some cities require lobbyists to disclose the specific persons they intend to lobby and what subject matter they intend to lobby about, with varying levels of detail required for each disclosure. Cities also have differing due dates for renewing registration and paying lobbying fees. The amount of the fees also differs, with some cities imposing a one-time annual fee and others requiring a payment for each principal for whom the lobbyist is working.

Once a person has successfully identified him or herself as a lobbyist and has successfully registered, that person is then subject to certain reporting requirements that also differ among cities. Annual expenditure reporting, the most common of the reporting requirements, has different due dates and specifications for each city. There are, however, more confusing reporting requirements, like Orlando's biannual reporting requirement, or cities that have no reporting requirement at all, like Jacksonville and Pinellas County. In addition to the temporal requirements, cities also differ on which expenditures a lobbyist needs to report, with some including personal expenditures and others opting to leave those out.

The daunting nature of complying with these lobbying requirements often incentivizes people to ignore them until a problem occurs. However, given the recent rise in municipal lobbying regulations, some preventative planning can go a long way in ensuring compliance. Carlton Fields routinely advises clients on proactive approaches to lobbying requirements. Please reach out to us with any questions you may have on how your business can stay ahead in this regulatory environment.

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