

## What is lobbying in Austin, Texas?

Are you required to register as a lobbyist and report your lobbying activities?<sup>1</sup>

The City of Austin Ethics Review Commission requires individuals and organizations who lobby in Austin to register with the city and file activity reports if they meet certain requirements.

In Austin, a lobbyist is a person who:

- communicates directly with a city official
- to influence or persuade the city official to favor or oppose, recommend or not recommend, vote for or against, or to take action or refrain from taking action
- on a municipal question

The definition of “lobbying” includes the time a lobbyist spends preparing to lobby.

CITY OFFICIAL means:

- the mayor, or mayor-elect;
- a council member, or council member-elect;
- a city employee, other than a city employee whose duties are solely clerical; or
- a member of a city board or of a body created by the council and listed by the city clerk per requirements of §2-1-3(C).

COMMUNICATE DIRECTLY WITH or any variation of the phrase means contact in person or by telephone; written communication, electronic or otherwise; or direct contact through any other electronic means of communication.

MUNICIPAL QUESTION means the proposal of, consideration of, approval of, or negotiations concerning municipal legislation, an administrative action, or another matter that is, or may in the future be, subject to an action or decision by a city official.

(a) "Municipal question" includes, without limitation:

- (i) possible action, including a recommendation, on a proposed ordinance, resolution, or other action pending before the council, a council committee, or a City board or task force;
- (ii) a matter that is appealable to a city board or to the council;
- (iii) a recommendation, report, regulation, policy, nomination, appointment, or sanction by or to the council, a council committee or a city board.

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(iv) the development of specifications for, or the award of, a grant or contract for more than \$50,000;

(v) rulemaking under Chapter 1 -2 (Adoption of Rules); or

(vi) licensing.

(b) Unless it is also included in (a), "municipal question" does not include:

(i) the non-appealable, day-to-day decisions, routine application, administration, and execution of city programs and policies;

(ii) routine, non-appealable decisions on permitting, platting, and design approval matters in connection with a specific project or development; or

(iii) a technical building decision on a specific project, whether appealable or not, under Chapter 25-12 (Technical Codes).

## Registration Requirements

There are two tests to determine if you have to [register as a lobbyist](#), and meeting the requirements of either test will trigger lobbyist registration.

### Test 1: the "two-fold test"

1. You receive (or have an agreement to receive) compensation or reimbursement of \$2,000 or more per quarter to lobby.
  - a. This includes pro rata employment compensation for any part of the job which is considered "lobbying."
  - b. Any compensation paid for preparation to lobbying (i.e. strategy sessions or research) is included in the threshold.
  - c. However, reimbursement for a person's own travel, food, or lodging is not included in the compensation threshold;

### **and**

2. You spend 26 hours or more of compensated time per quarter lobbying.

[Other exceptions to registration](#) under this test (note: these exceptions apply ONLY to the \$2,000 compensation threshold. Compensation for any of the activities below will not count against the \$2,000 threshold but WILL count against the 26-hours threshold.)

- Requesting information about laws, rules, policy, etc. only
- Preparation or submission of applications
- Providing information per city official request
- Communication with the City Attorney regarding ongoing litigation
- Communication to demonstrate compliance with an audit, inspection, or investigation

- Providing testimony or appearing in public proceedings
- Serving on a city board or commission

### Test 2: Expenditures

You must register as a lobbyist regardless of compensation or time spent if you make more than \$500 in expenditures to lobby per reporting period. Personal travel, food, and lodging is not included in this threshold.

## **Examples for Nonprofits in Practice**

Some common nonprofit organization activities could trigger lobbyist registration, such as:

- Advocacy campaigns on local issues which involve an employee of the nonprofit sending messages directly to city staff or city officials urging action on a pressing issue. This activity is considered lobbying because it is a direct communication to a city official or city employee that recommends action on a municipal question. Note that this type of action would be considered lobbying even if the issue were not currently pending before city council or on the agenda for action because the definition of municipal question is sufficiently broad that it covers anything that is or could be taken up for a vote at the city level.
- Setting up meetings with city staff to discuss the nonprofit's issues and concerns and asking the city to take a certain action on those issues. However, if you do not make a recommendation or request for action on your issues at this meeting, it is not considered lobbying.

Some other scenarios are less obvious and require a closer look:

For example, what if nonprofit staff tweets that the nonprofit does not support a code rewrite on land use and urges all city council members to vote against the measure? Is this tweet considered lobbying? The measure referenced in the tweet is an identifiable municipal question, and the tweet urges "all city council members" to take action on the municipal question.

The question is whether the tweet will be considered "communicating with" the city officials. In this situation, whether the communication is considered lobbying likely depends on whether or not individual officials were tagged in the tweets and the communication was directed specifically to them. That is why nonprofits should keep in mind the lobbyist registration requirements when communicating any positions on issues in a public forum like social media sites.

## Affirmative Defenses for Failure to Register

Although the law does not carve out exceptions to lobbying, it does create [affirmative defenses](#) that may be raised in one's defense if a complaint results from any of these activities. These defenses apply when:

- Your only activity in question is communication with your organization's staff, or members in which you encourage others to contact city officials on a municipal question. This affirmative defense most commonly applies to advocacy campaigns and advocacy alerts to members of an organization and is not considered lobbying because you would not *yourself* make contact with the city official – a key component to the registration law – but would instead be encouraging others to do so.
- Assisting a lobbyist if all activity is reported by the lobbyist. This is especially applicable for nonprofits that hire outside lobbyists or which have limited staff who are registered to lobby. Most activity in support of registered lobbyists will fall under this defense as long as it is reported by the lobbyist.
- The sole activity at issue is giving public testimony, regardless of whether you are paid to do so
- Attending meetings or entertainment events with city officials present if you have not paid to attend the event
- Paying for copies of city documents
- Communication with city council by an appointed city commissioner
- You are a member of the news media

## Entity Lobby Registration

If your organization has one or more employees that are subject to lobby registration requirements you can either:

1. [Register the entity itself](#), pay the fee for entity registration and each of the employee lobbyists, and report all activity from employee lobbyists or,
2. Have each employee register and report individually.

There are advantages and disadvantages to both options. The advantage of entity registration is realized when an entity employs multiple lobbyists. All reportable activity of the entity's lobbyists is then consolidated within one combined report each time a report is due. The disadvantage though, is that all liability for any mistakes on a report will fall on the entity as a whole rather than on any individual.

Similarly, individual reporting eschews entity liability for errors on reports, but the disadvantage is that there are multiple reports filed each reporting period with more potential for errors when there is no entity oversight.

## **Lobbyist registration costs**

Annual Lobby Registration Fee: \$300.

Annual Lobby Registration Fee for an employee of a 501(c)(3) nonprofit organization, whose only lobbying activity is for the person's regular employer: \$25.

Annual Lobby Registration Fee for an organization making the entity registration election: \$100 for the organization, and \$50 for each employee-lobbyist of the organization.

Lobbyist Late Filing Fee for each notice that the clerk sends to the late filer: \$50.

## **Timeline to Register**

If you meet either threshold to register as a lobbyist, you must register [within five \(5\) working days](#) after you first directly communicate to lobby with a city official.

## **Lobby Reporting**

Lobby reports are filed on the same form as the Lobby Registration Form and are due no earlier than the 1<sup>st</sup> and no later than the 10<sup>th</sup> of the month in April, July, October, and January, and the reports cover all activity from the previous quarter.

### [Reports must contain:](#)

1. Current/updated information from Lobby Registration Form – This means that all lobby registration information must be up to date each time a lobby activity report is filed with the city.
2. Total lobby expenditures broken down by category
  - a. If you spent more than \$50 in a given day on a city official, you must also itemize the date, name, and address of the official, the exact amount and the purpose.
3. Compensation/reimbursement received by each organization.
4. Each business entity in which the registrant knows, or should know, that a City official is a proprietor, partner, director, officer, manager, employer, employee, or in which a City official has a substantial economic interest, and with which the registrant has engaged in an exchange of money, goods, services, or anything of value if the total of the exchanges is \$500 or more in a calendar quarter, identified by:
  - a. the name and address of the business entity;
  - b. the City official; and

- c. the date, amount, and nature of the exchange<sup>2</sup>;
5. Expenditures made by you, on your behalf, or within your direction, for broadcast or print advertisements, direct mail or other media if it is outside your corporate<sup>3</sup> members<sup>4</sup> and it supports or opposes a municipal question. This also applies to payments by lobbyists to other to create them (consultants).

## City Reporting Requirements

The City of Austin website (<http://austintexas.gov/department/lobbyists>) has critical information about how to register as a lobbyist with the city:

### **What Lobbyists Must Know**

1. The Office of the City Clerk has created a form for registering as a lobbyist, submitting quarterly activity reports, and terminating registration as a lobbyist. It is called the "Lobbyist Reporting Form" and can be downloaded using the link below. **The form must be filled out using Adobe Acrobat or an Acrobat Reader product.**

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<sup>2</sup> This subsection is unique to Austin's law--it does not appear in state statute or rule. It seems to require a lobbyist to report on the business dealings of a city official if the lobbyist "knows, or should know" about them. This will likely be a difficult ordinance for both city enforcement and lobbyists alike. It puts the standard of proof on the lobbyist to know all matters in which all city officials have a substantial economic interest, as defined above, and to report on them. While the city officials will have to report on their business dealings to the city themselves, it will mean that the lobbyist will have to constantly monitor those filings and update their reports as necessary throughout the year.

Enforcement will be difficult since the burden is that the lobbyist "knows, or show know" about the economic interest, and that definition will likely need to be broadened or narrowed by precedent either by the Ethics Review Commission or the court system to get clarity on culpability by a lobbyist.

<sup>3</sup> Note that under the [Texas Business Organizations Code](#), all corporations, nonprofits, associations, and partnerships are generally (with only a few exceptions for certain types of partnerships) all lumped into the category of "corporate" as that terms is applied in campaign finance contexts.

<sup>4</sup> Communications within your corporate structure are always protected and will never subject you to lobby registration or reporting requirements. These requirements will only be triggered when expenditures are made for broadcast media (in whatever form that may take) which is viewable to the general public.

2. The Lobbyist Reporting Form **MUST** be submitted to the Clerk's Office in **electronic format**, either by coming to the Clerk's Office with the completed form on a USB drive, or by emailing the completed form to [lobbyists@austintexas.gov](mailto:lobbyists@austintexas.gov).

3. Email submissions will be accepted **ONLY** if the lobbyist has filed a signed "Lobbyist Contact Information Form" with the Clerk's Office. This Contact Form can be downloaded using the link below.

4. Each registered lobbyist must submit a quarterly activity report to the Clerk's Office using the Lobbyist Reporting Form no later than 5:00pm on the 10th of January, April, July, and October.

5. **Organizations that are registered as a business entity** must submit a quarterly activity report for **EACH** of their lobbyist employees. For example, a registered business entity that employs five lobbyists must submit five quarterly activity reports to the Clerk's Office using the new Lobbyist Reporting Form. All forms must be submitted to the Clerk's Office using the new forms no later than 5:00pm on the 10th of January, April, July, and October.

6. The Lobbyist Reporting Form will **NOT** be accepted in paper form and must **NOT** be printed out and delivered or mailed to the Clerk's Office.

7. The Lobbyist Reporting Form must be submitted to the Clerk's Office in its **original fillable PDF form** and must **NOT** be printed out and scanned.

8. After the Lobbyist Reporting Form(s) have been received by the Clerk's Office, **notification of acceptance or rejection** of the submitted information will be sent to a designated contact **within 30 days.**"

- [Lobbyist Fee Payment Form \(Updated 09/22/2017\)](#) **Optional:** use this form when submitting a fee payment for either lobbyist registration or late fee(s).
- [Lobbyist Contact Information Form \(Updated 09/22/2017\)](#) **Optional:** use this form to provide a designated email address and contact information to the Clerk's Office. Submission of this form permits lobbyists and entities to submit their required forms via email.
- [Lobbyist Reporting Form \(Updated 03/20/2018\)](#) **Required:** use this form to submit both your registration and quarterly activity reports
- [Lobbyist Reporting Form Instructions \(Updated 03/20/2018\)](#) an instruction guide for filling out the Lobbyist Reporting Form

## Miscellaneous Lobbyist Requirements

A lobbyist must orally [identify himself](#) and the client he represents when:

1. The lobbyist speaks at a public meeting of city council or a city board/commission, and
2. In any oral communication with a city official (i.e. on the phone).

## Gifts

No person<sup>5</sup> may give [more than \\$100 in gifts](#) per year to a city official. Any expenditure over \$50 per city official per day triggers detailed reporting requirements.

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<sup>5</sup> [§1-1-2](#) - PERSON includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity, but does not include the City.

Not included as “gifts”:

- Political contributions
- Commercial loans
- Ordinary social contact
- Ordinary business meetings (including a meal)
- Gifts from close relatives

## Penalties

[Criminal penalty](#) – intentional violation of lobby rules is a Class C misdemeanor, in addition to any other penalties allowed by city or state law.

Each failure to report, failure to disclose, or failure to perform a certain required act is a separate offense.

Conviction of 3 or more violations within 2 years results in a [60 day suspension](#) of a person’s lobby registration.

### PRACTICE NOTES

This section is more lenient than [571.174, Government Code](#) which allows the Texas Ethics Commission to deny, suspend, or revoke lobby registration upon a single criminal conviction for an offense under [Ch. 36 of the Penal Code](#) or [Ch. 305 of the Government Code](#).

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