
Item 9

Action

Key Lobbying Definitions

Executive Summary: This item presents recommendations to improve key definitions in the Municipal Lobbying Ordinance concerning lobbying entities.

Recommended Action: Conceptually approve the recommended definitions in Attachment A.

Presenters: Nathan Hardy, Director of Policy; Mark Low, Lobbying Program Manager

Key Lobbying Definitions

A. Introduction

The Los Angeles City Charter (Charter) charges the Ethics Commission with periodically evaluating and making recommendations concerning the effectiveness of the laws within its jurisdiction. Charter § 702(f). In the last five years, the Ethics Commission has conducted comprehensive reviews of the City’s campaign finance laws and governmental ethics laws. We turn now to lobbying, the final set of laws within our jurisdiction.

This report begins a series of discussions by recommending improvements to key definitions regarding lobbying entities. A summary of the proposed changes is provided in Attachment A. We recommend reaching consensus on the recommendations conceptually, to help inform future discussions.

B. History

City laws regulating the conduct of lobbyists predate the existence of the Ethics Commission by more than 20 years. In 1967, the City enacted its first ordinance regulating lobbying activities by requiring any person who attempted to influence municipal legislation for pay to register with the City Clerk as a “municipal legislative advocate.” *See* Ordinance No. 134571; former Los Angeles Municipal Code (LAMC) §§ 48.02-08, effective 1967. Once registered, legislative advocates had quarterly reporting requirements and were subject to regulations regarding their conduct.

After Los Angeles voters created the Ethics Commission in 1990, the City’s municipal legislative advocate ordinance was repealed and replaced by the Municipal Lobbying Ordinance (MLO). *See* Ordinance No. 169916, effective August 10, 1994; LAMC §§ 48.01 *et seq.* The MLO currently requires registration by lobbyists and lobbying firms, as well as quarterly disclosures by lobbyists, lobbying firms, lobbyist employers, and major filers regarding their lobbying activities, compensation, expenses, and political activities.

Over the years, the MLO has undergone relatively few amendments, all of which were addressed in a piecemeal fashion. For example, the definition of “lobbyist” was amended in 2007, as the result of a measure placed on the ballot by the City Council. *See* Measure H, adopted November 7, 2006; effective January 15, 2007. More recently, in 2013, the Ethics Commission recommended and the City Council adopted a requirement that lobbying entities register and report their activities electronically. LAMC § 48.06(B).

The Ethics Commission conducted a comprehensive review of the MLO in 2008, but the resulting recommendations were not implemented by the City Council at that time. This review will benefit from that one. However, because technology has changed and we have gained more

experience in administering the laws in the intervening eight years, this review will not be identical.

C. Process

An important part of any policy review is hearing from the public and the regulated communities. Last year, we began the process of analyzing the City's current laws, including soliciting input from our more than 8,600 email subscribers and holding two interested persons meetings, at which we heard from lobbying entities and others about the lobbying laws. We continue to encourage input from the public and the regulated community throughout this process.

We have also engaged in many hours of staff discussions, across all of the disciplines within the agency and based on our experiences administering the lobbying laws over the past 22 years. As part of that process, we reviewed the lobbying laws in other jurisdictions, including major cities in California and across the United States, to provide context for our laws. *See, e.g., Attachment B.*

Because of the magnitude and importance of this comprehensive review, multiple meetings will be required to properly address the various aspects of the MLO. For example, recommendations regarding registration and reporting requirements will be made at future meetings.

Once all recommendations have been presented and you have reached consensus on them from a conceptual perspective, we will provide specific implementing language for your approval. After the language is approved, we will transmit the entire package of recommendations regarding both concepts and language to the City Council for its consideration. Any recommended changes must be approved by the City Council to become law.

D. Guiding Principles

The primary purpose of any lobbying law should be to promote government transparency and accountability. While a variety of different lobbying systems exist around the country, we have sought to arrive at the answers that are best for our jurisdiction. To that end, we have endeavored to ensure that our proposals—as well as any recommendations that are ultimately presented to the City Council—reflect the following six principles enumerated in the MLO:

1. City government exists to serve the needs of all citizens.
2. The public has a right to know the identities of the interests that attempt to influence City decisions, as well as the means those interests employ.
3. All persons engaged in compensated lobbying should be subject to the same regulations, regardless of their background, training, qualifications, or licenses.
4. Complete public disclosure of the full range of lobbyist activities and their financing is essential to maintaining public confidence in the integrity of local government.

5. Lobbyists must not misrepresent facts or their positions, attempt to deceive City officials through false communications, place City officials under personal obligation to themselves or their clients, or represent that they can control the actions of City officials.

LAMC § 48.01(B). These findings and principles underscore the City’s historic goal of ensuring adequate and effective public disclosure about lobbying activities, which supports an informed citizenry and, in turn, promotes accountability for decision makers and those who influence them.

It is also important to recognize that lobbying is a legitimate activity. Lobbyists can and do help individuals and organizations effectively communicate their views to the City’s decision makers and can thereby help to improve outcomes for the community as a whole.

E. Definition of “Lobbyist”

The most fundamental issue in this review—indeed, of any lobbying law—is who qualifies as a lobbyist. Historically, the City has defined the term “lobbyist” on the basis of compensation earned for lobbying services. As originally enacted in 1994, the MLO defined a lobbyist as an individual who received or became entitled to receive at least \$4,000 in monetary or in-kind compensation in a calendar quarter for lobbying activities. *See* former LAMC § 48.02, effective August 10, 1994. Prior to that, the City defined a lobbyist as an individual who received *any* payment for attempting to influence municipal legislation. *See* original LAMC § 48.02(a), effective 1967.

The MLO currently defines a lobbyist as an individual who is compensated to spend 30 or more hours in any consecutive three-month period engaged in lobbying activities that include at least one direct communication with a City official for the purpose of attempting to influence municipal legislation on behalf of another person. LAMC § 48.02. This definition became effective in January 2007, following the adoption of Measure H, which was placed on the ballot by the City Council.

We recommend returning to a compensation-based definition and that “lobbyist” be defined as an individual who is entitled to receive \$2,000 or more in a calendar year for attempting to influence a City matter on behalf of another person. The attempt to influence would include a direct communication with a City official or employee, and compensation could be either monetary or non-monetary.

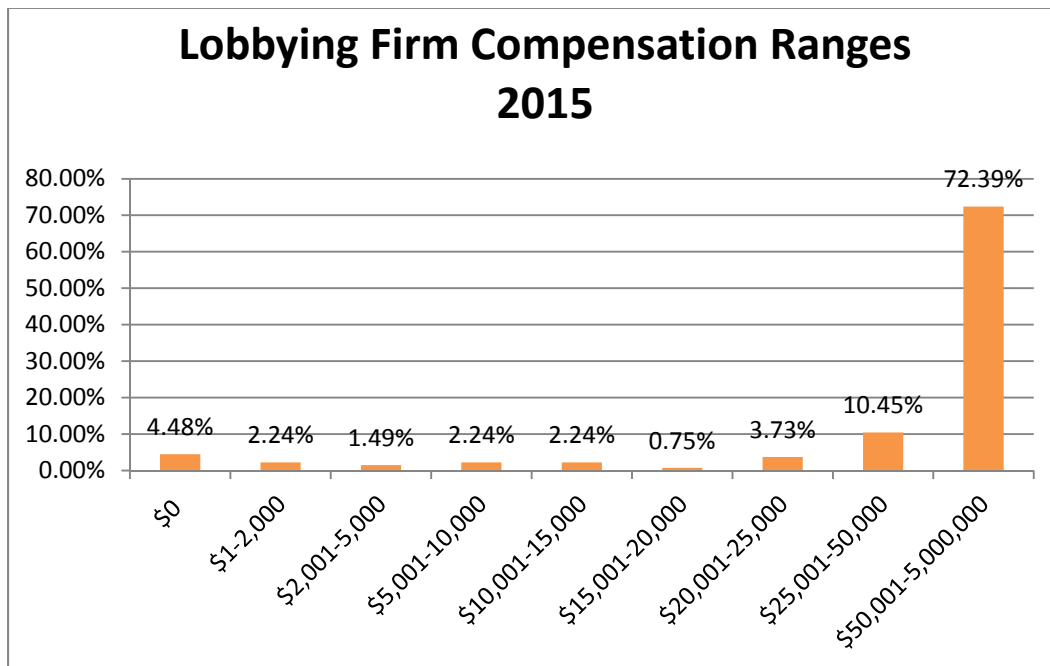
The purpose of lobbying regulations is to promote public accountability regarding the interests that attempt to influence governmental decisions. Transparency is central to accountability, and it can be achieved through regular, meaningful public disclosure of lobbying activities. Equally important, however, are compliance and enforceability. To provide real accountability, a lobbying regulation scheme must have both effective disclosure to the public and effective enforceability when violations occur.

The MLO’s current hourly threshold poses a compliance and enforcement challenge. Many individuals and entities do not track the number of hours dedicated to lobbying activities, making it difficult for them to determine when registration with the City is necessary. It can also

be very difficult for staff to collect evidence sufficient to show that an individual has engaged in 30 hours of lobbying in a three-month period and, thus, should be registered. By contrast, individuals and entities generally do track their monetary transactions; and it is likely to be far less difficult to sufficiently show that an individual has earned \$2,000 in a calendar year for attempting to influence a City matter on another’s behalf. When standards are clear and straightforward, compliance is easier both for those who are regulated and for those who carry out the regulations. That, in turn, serves to fortify public accountability.

Establishing an annual threshold of \$2,000 will also align the lobbying disclosure threshold with the campaign finance disclosure threshold. Persons who raise or spend \$2,000 in California elections are required to register as a committee and disclose their political activities. *See* Cal. Gov’t Code § 82013. Because both sets of laws aim to inform the public about those who spend significant sums of money in order to influence action, we believe that the lobbying threshold and the campaign disclosure threshold should mirror each other.

An annual threshold of \$2,000 also reflects the Commission’s historic view that not every person engaged in lobbying activities should be subject to regulation. There is a balancing that must occur if a lobbying law is to be reasonable in its breadth. A threshold of \$2,000 strikes precisely that kind of balance. As noted in the table below, over 93 percent of registered lobbying firms reported receiving compensation of \$2,000 or more in 2015. And the vast majority—over 72 percent—reported receiving at least \$50,000. In addition, over 84 percent of all clients paid more than \$2,000 for lobbying services in 2015. Therefore, an annual threshold of \$2,000 would likely have little impact on most currently registered lobbyists, but it would enhance public disclosure by clarifying who should and should not be reporting.



Finally, we note that the proposed definition has a more limited breadth than the definitions in the jurisdictions surveyed in Attachment B, including the State of California, the County of Los Angeles, the Los Angeles Metropolitan Transportation Authority, and several major cities across the nation. Six of the nine jurisdictions outside the City (67 percent) define a lobbyist as an individual who, among other things, receives any amount of compensation—even one dollar—for attempting to influence government action. Dallas has a compensation threshold of \$200 per calendar quarter, which is lower than we propose. Oakland’s compensation threshold does not apply if the lobbyist has one contact with a city official or employee. And Chicago has no compensation requirement at all.

F. Definition of “Lobbying Firm”

Currently, the MLO defines a lobbying firm as an entity, including an individual lobbyist, that is entitled to receive \$1,000 or more in compensation for City lobbying activities during a consecutive three-month period if a partner, owner, shareholder, officer, or employee of the entity qualifies as a lobbyist. LAMC § 48.02.

We recommend streamlining this definition and ensuring consistency with the definition of “lobbyist”. The two definitions are currently out of sync, because one is based on hours and the other is based on dollars. Ultimately, however, we do not believe that a detailed definition of “lobbying firm” is necessary. We believe it is sufficient to specify simply that a lobbying firm qualifies as such if it has a partner, owner, shareholder, officer, or employee who qualifies as a City lobbyist.

G. Definition of “Lobbying Organization”

We recommend defining a third type of lobbying entity—the lobbying organization—to include both entities that employ lobbyists in-house and persons who spend a certain amount of money in an attempt to influence City action.

Currently, “lobbyist employer” is the term the MLO uses to refer to an entity, other than a lobbying firm, that employs a lobbyist in-house to lobby on its own behalf. LAMC § 48.02. The MLO also uses the term “major filer” to refer to persons who spend at least \$5,000 in a calendar quarter to attempt to influence a City matter through public relations, media relations, public outreach, and similar activities. *Id.* In contrast to lobbyists and lobbying firms, which *receive* money to influence City action, lobbyist employers and major filers *spend* money to influence City action. Therefore, we believe it is appropriate to treat them with parity and refer to them both as lobbying organizations.

The MLO expressly provides that the “citizens of Los Angeles have a right to know the identity of the interests which attempt to influence decisions of City government, as well as the means employed by those interests.” LAMC § 48.01(B)(2). Persons who pay for in-house lobbyists and persons who pay for public relations are both interests that are attempting to influence City matters. As a result, the MLO has long required those persons to disclose their City lobbying activities in the same way that traditional lobbyists and lobbying firms do. *See* LAMC §§ 48.01(B)(3), 48.08(D), 48.08(E). This is true in other jurisdictions, as well. *See, e.g.,*

Cal. Gov't Code § 86115(b); San Diego Municipal Code § 27.4002; San Francisco Campaign and Government Code § 2.105-5; San Jose Municipal Ordinance § 12.12.180(C). Requiring this type of disclosure helps to ensure that the public is aware of the full range of lobbying activities, which is essential to maintaining citizen confidence in the integrity of City government. *See* LAMC § 48.01(B)(4).

The term “lobbying organization” is, therefore, not a new concept—it is simply a streamlined way to refer to two types of persons who are engaged in the lobbying arena and are already regulated by the MLO. We do, however, recommend modifying the concept of major filer. The current definition requires public disclosure when a person spends \$5,000 or more in a calendar quarter. To maintain consistency and equity among all lobbying entities, we recommend that the definition of “lobbying organization” include persons who spend either \$2,000 or more to influence one City matter or a total of \$5,000 or more to influence multiple City matters in a calendar year. Finally, we recommend eliminating the current exception for communications between an organization and its members. An organization that is spending money to urge its membership to voice a particular perspective regarding a City matter is precisely that kind of activity that is envisioned by the term, and we believe the public has a right to know when that is happening at significant levels.

H. Other Definitions

We recommend two additional modifications to the MLO definitions. The first is to use the term “City matter” to indicate what it is that a lobbying entity attempts to influence. The current term is “municipal legislation”, but it is defined to mean any legislative or administrative City matter. LAMC § 48.02. Employing a more intuitive and precise term will reduce confusion and enhance compliance.

Second, we recommend adding a definition for “compensation”. Currently, the MLO refers only to “compensated services”, and its use is inconsistent. *See* LAMC § 48.02. To further reduce confusion and enhance compliance, we recommend defining “compensation” as anything of value—monetary or non-monetary—that is provided, owed, or received in exchange for services rendered or to be rendered. We recommend clarifying that compensation does include bonuses and contingent fees and that it does not include reimbursement for reasonable expenses incurred for lobbying activities. To reduce confusion regarding other types of payments that may be made to a lobbyist or lobbying firm, we also recommend specifying that there is a rebuttable presumption that compensation for lobbying services includes all payments that a client makes or owes to a lobbying entity.

I. Exemptions

The MLO currently identifies five types of persons who are exempt from regulation. LAMC § 48.03. Those persons include the following:

- Public officials and government employees acting in their official capacities.

- Media outlets that broadcast news, advertising, or editorials that attempt to influence City action. This exemption also applies to the owners and employees of the outlets, but only for engaging in the same broadcasting activity.
- Persons who act without compensation other than reimbursement of reasonable travel expenses.
- Persons whose only activity is engaging in a competitive bid process for a City contract. This exemption does not apply to anyone who attempts to influence the Mayor, a City Council member, or their staffs regarding the contract.
- Organizations that are tax-exempt under section 501(c)(3) of the Internal Revenue Code, receive government funding, and provide direct representation services free of charge to indigent persons. This exemption also applies to the organization's employees while engaged in official duties. The exemption does not apply to the organization's attempts to influence City action regarding City funding that it is seeking.

We recommend eliminating the third exemption, because it is sufficiently addressed through the definitions of "lobbyist" and "compensation". See Section H, above; Attachment A. As explained below, we also recommend modifying the 501(c)(3) exemption and adding a new exemption for City consultants.

1. 501(c)(3) Organizations

We recommend modifying this exemption so that it applies to any 501(c)(3) organization that provides basic life assistance (food, shelter, child care, health, legal, vocational, relief, and other similar social services) directly to disadvantaged individuals, either free of charge, at a below-market rate, or based on an individual's income or ability to pay.

In our experience administering the MLO over the years, we have learned that some 501(c)(3) organizations are required to charge at least a small fee for their services. This approach is designed to actively involve the client and help improve the client's sense of well-being. Accordingly, we recommend that the exemption be expanded to apply to 501(c)(3) organizations that may charge a low rate or a rate that is based on a sliding scale. And, because some quality-of-life challenges are unrelated to a person's financial situation or to a need for representation, we also recommend that the exemption apply more generally to 501(c)(3) organizations that are created primarily to assist disadvantaged individuals with basic life needs.

Finally, we recommend clarifying that this exemption does not apply when an organization is seeking funding, property, or a permit from the City on its own behalf. Those activities are not limited to a private client's personal circumstances. The public has a greater stake in the outcome of those activities and, thus, a greater interest in knowing about them.

2. Consultants

We recommend adding a new exemption for consultants who are acting on behalf of the City under the terms of a consulting agreement and are required to file statements of economic

interests as a result of that activity. A consultant for one City department could be considered a lobbyist when communicating with another City department regarding a City matter, but consultants acting in that capacity are more akin to City employees. Consequently, we believe that the MLO should clarify that, under these circumstances, they are to be treated like City officials for purposes of the lobbying laws.

J. Conclusion

These definitions create a foundational framework for the MLO, and decisions about them are key to moving forward in this comprehensive review of the City's lobbying laws. We recommend that you approve the definitions in concept, to guide future discussions about registration, reporting, and other aspects of the law. Specific language to implement the definitions will be provided when the entire conceptual framework for the MLO has been decided.

Attachments:

A Current v. Recommended Definitions

B Jurisdictional Comparison: Definition of "Lobbyist"

Municipal Lobbying Ordinance
Key Definitions: Current v. Recommended
August 2016

Term	Current	Recommended
City Matter	Not defined. See “Municipal Legislation”.	<p><i>A matter that is proposed or pending before a City agency and requires a non-ministerial action. The term does not include the following:</i></p> <ol style="list-style-type: none"> <i>1. A request for advice or an interpretation of laws or policies.</i> <i>2. A direct response to an enforcement proceeding with the Ethics Commission.</i> <i>3. An action regarding a collective bargaining agreement or memorandum of understanding between the City and a recognized employee organization. This exception does not apply to an action taken by the Mayor, the City Council, a City Council member, a City Council committee, or a member of the staff of the Mayor or a City Council member.</i>
Compensation	Not defined.	<p><i>Money or any other thing of value that is provided, owed, or received in exchange for services rendered or to be rendered. The term includes bonuses and contingent fees, regardless of whether payment is ultimately received. It does not include reimbursement for reasonable lobbying expenses. There is a rebuttable presumption that compensation for lobbying services includes all payments given or owed by or on behalf of a client.</i></p>
Exemptions	<ol style="list-style-type: none"> 1. Public officials and government employees acting in official capacities. 2. Media outlets that broadcast news, editorials, or advertising that attempts to influence City action (and their employees engaged in the same activity). 3. Persons acting with compensation other than reimbursement of reasonable travel expenses. 4. Persons whose only activity is participating in a competitive bid process (unless they attempt to influence the Mayor, a City Council member, or their staffs). 5. 501(c)(3) organizations that receive government funding and represent indigent clients free of charge (and their employees engaged in the same activity). 	<ol style="list-style-type: none"> <i>1. Public officials and government employees acting in official capacities.</i> <i>2. Media outlets that broadcast news, editorials, or advertising that attempts to influence City action (and their employees engaged in the same activity).</i> <i>3. Consultants who are acting under a City consulting agreement and are required to file statements of economic interests.</i> <i>4. Persons whose only activity is participating in a competitive bid process (unless they attempt to influence the Mayor, a City Council member, or their staffs).</i> <i>5. 501(c)(3) organizations that are created to provide life assistance to disadvantaged clients at a below-market rate (and their employees engaged in the same activity).</i>

Term	Current	Recommended
Lobbying Firm	An entity, including an individual lobbyist, that receives or becomes entitled to receive \$1,000 or more in monetary or in-kind compensation for engaging in lobbying activities in a consecutive three-month period for the purpose of attempting to influence municipal legislation on behalf of another person if a partner, owner, shareholder, officer, or employee of the entity qualifies as a lobbyist.	<i>An entity, other than a lobbying organization, that has a partner, owner, shareholder, officer, or employee who qualifies as a lobbyist.</i>
Lobbying Organization	Not defined. See “Lobbyist Employer” and “Major Filer”.	<p><i>An entity, other than a lobbying firm, that employs a lobbyist in-house to lobby on its own behalf.</i></p> <p><i>OR</i></p> <p><i>A person who makes payments or incurs expenditures totaling either \$2,000 or more for the purpose of attempting to influence action on one City matter or a total of \$5,000 or more for the purpose of attempting to influence action on multiple City matters in a calendar year. Payments and expenditures include those made for public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, studies, and similar activities, if they are not required to be reported by a lobbyist or lobbying firm. Compensation paid to a registered lobbyist for engaging in lobbying activities does not count toward the threshold. The term does not include a lobbyist, lobbying firm, or lobbyist employer.</i></p>
Lobbyist	An individual who is compensated to spend 30 or more hours in a consecutive three-month period engaged in lobbying activities that include at least one direct communication with a City official or employee for the purpose of attempting to influence municipal legislation on behalf of another person.	<i>An individual who receives or becomes entitled to receive \$2,000 or more in compensation in a calendar year for engaging in lobbying activities that include at least one direct communication with a City official or employee for the purpose of attempting to influence a City matter on behalf of another person.</i>
Lobbyist Employer	An entity, other than a lobbying firm, that employs a lobbyist in-house to lobby on its own behalf.	<i>Not defined. See “Lobbying Organization”.</i>

Term	Current	Recommended
Major Filer	A person who makes payments or incurs expenditures totaling \$5,000 or more in a calendar quarter for the purpose of attempting to influence action on a matter of municipal legislation. Payments and expenditures include those made for public relations, media relations, advertising, public outreach, research, investigation, reports, analysis, studies, and similar activities, if they are not required to be reported by a lobbyist or a lobbying firm. The term does not include a lobbyist, a lobbyist employer, or a lobbying firm. Payments for routine communications between an organization and its members do not count toward the threshold.	<i>Not defined. See “Lobbying Organization”.</i>
Municipal Legislation	A legislative or administrative matter proposed or pending before a City agency. The term does not include the following: <ol style="list-style-type: none"> 1. A request for advice or an interpretation of laws or policies. 2. A direct response to an enforcement proceeding with the Ethics Commission. 3. A ministerial action. 4. An action regarding a collective bargaining agreement or memorandum of understanding between the City and a recognized employee organization. This exception does not apply to an action taken by the Mayor, the City Council, a City Council member, a City Council committee, or a member of the staff of the Mayor or a City Council member. 5. Preparing or compiling maps, plans, lists, signatures, or other documents required by the City Planning Department. 	<i>Not defined. See “City Matter”.</i>

Jurisdictional Comparison
Elements of the Definition of “Lobbyist”

	A lobbyist is an individual who...	And has at least one communication with...	In an attempt to influence action on...
State			
California	Receives compensation.	<ul style="list-style-type: none"> Elected, agency, or legislative official. Member or director of a state agency. 	<ul style="list-style-type: none"> A matter before the state legislature, governor, or a state agency. Certain rate-making and quasi-legislative proceedings.
County			
Los Angeles	Receives compensation.	<ul style="list-style-type: none"> County official. 	An ordinance or board motion, resolution, contract, permit, grant, license, or franchise.
Multi-jurisdictional Agency			
Metropolitan Transportation Authority	Receives compensation.	<ul style="list-style-type: none"> Board member. Agency official. Agency employee. 	An ordinance, resolution, contract, or report by a Metro board or unit.
City			
Chicago	Attempts to influence on behalf of another person.	<ul style="list-style-type: none"> Elected official. Appointed official. A person who makes a decision regarding a matter in the next column. 	<ul style="list-style-type: none"> A legislative or administrative matter. A determination by an elected or appointed official.
Dallas	Receives \$200 in compensation in a calendar quarter.	<ul style="list-style-type: none"> Elected official. City commissioner. Other “high level” official. 	A policy issue pending before or subject to action by the city council or a city board or commission.
Los Angeles	Engages in 30 or more compensated hours of lobbying activity in a three-month period.	<ul style="list-style-type: none"> City official. City employee. 	A non-ministerial legislative or administrative matter.
New York	Receives compensation.	<ul style="list-style-type: none"> Elected official. Commissioner. Certain city employees involved in a matter in the next column. 	<ul style="list-style-type: none"> A law or resolution of the City Council or action by the Mayor. A procurement, construction, contract, zoning, land use, or property development matter. A board or commission decision.
Oakland	Receives \$1,000 in compensation in a calendar month <u>or</u> has one contact with an individual in the next column.	<ul style="list-style-type: none"> Elected or appointed officer or employee. Designated city representative. <p><i>(No contact required if compensation threshold is met).</i></p>	A non-ministerial legislative or administrative matter.
San Diego	Receives compensation.	<ul style="list-style-type: none"> Member of board or commission who files SEIs. Individual with one of 29 specific job titles. 	An ordinance, resolution, report, contract, quasi-judicial decision, or other decision of Council or Board.
San Francisco	Has one compensated contact on behalf of a client <u>or</u> has five or more compensated contacts in a calendar month on behalf of an employer.	<ul style="list-style-type: none"> Elected official. Board or commission member. Department head. Other “high level” individual. 	A resolution, motion, application, petition, nomination, ordinance, approval, permit, license, entitlement, or contract.