

SUMMARY OF PUBLIC COMMENTS ON PROPOSED REVISED LOBBYING PROGRAM RULES

The comments received by the Auditor's Office in response to our August 2019 Notice of Rulemaking are summarized below. This summary is intended to highlight the overall nature of the comments in a very general way. In most cases, the comments summarized below are paraphrased and are not direct quotes.

While the Auditor's Office has reviewed and considered all comments received, not all comments are summarized below. Some comments include a response from the Auditor's Office.

Please note that under Code Chapter 2.12 and the proposed revised lobbying program rules:

- The lobbying program **does not** apply to individuals who are representing their own opinions to City officials. See Code Section 2.12.020 G.
- The lobbying program **does not** prevent individuals or groups from lobbying City officials (except for restrictions on certain former City employees). Instead, in an effort to promote transparency and preserve the integrity of City decision-making processes, the lobbying program requires the *disclosure* of certain lobbying activities. To achieve these goals, the lobbying program has two key disclosure requirements: 1) lobbying entities that spend more than 8 hours or \$1,000 on lobbying in a three-month period must register with the Auditor's Office and disclose their lobbying activities and expenditures; and 2) City officials must disclose certain activities related to lobbying, such as their calendars and gifts from lobbyists.

The Auditor's Office received general comments that expressed overarching support for or concern about the proposed revised lobbying program rules, including:

- A commenter expressed concern about the definition of lobbying in the City Code as being vague and inclusive of volunteer organizations and groups.
- A commenter asked the Auditor's Office to conduct more pro-active trainings with community groups that do not have regular access to the internet and/or may not have traditionally engaged in City lobbying, but want to comply with City regulations.
- A commenter made an appreciative comment about the rule-making notification, level of explanation, and proposed clarifications.
- A commenter indicated that promoting transparency around activities intended to advance a self-interest (such as obtaining a contract or a permit or license from the City to advance a private business interest) seems like a legitimate purpose, but noted that to the extent that the lobbying rules dissuade the public from advocating coherently for policy changes for the general welfare, the rules aren't serving the public interest and should be discontinued.



The Auditor's Office received questions about whether providing public comment on a proposed administrative rule is "lobbying."

Response: In most cases, providing public comment on a citywide administrative rule through a public process is not lobbying, either because the commenter is providing their own opinion (which is not "lobbying"), or because a lobbyist submitting a comment is not communicating directly with a "City official" (as defined in Code Section 2.12.020 D.). However, if a lobbyist communicates directly with a City official in an attempt to influence official action, including related to a proposed administrative rule, the communication would be considered lobbying. The Auditor's Office included this additional guidance in the revised ARA 15.01.

The Auditor's Office received comments about the proposed definition of "at will staff of a City elected official" in ARA 15.01(D), including:

- A commenter requested that this definition be reframed into who *is* a City Official for reporting purposes, rather than listing who is *not*, to make the definition clearer.
- A commenter noted an inconsistency: The Deputy Director of the Office of Government Relations is an employee of the Office of Government Relations (not at-will, per the proposed rule), but is also a Deputy Director (at will, per the proposed rule).

Response: The Auditor's Office proposed including a definition of "at will staff of a City elected official" in ARA 15.01 and 15.02 to offer guidance about which City employees are considered "City officials" subject to lobbying program requirements. In response to these comments, the Auditor's Office has further refined this proposed rule to clarify that at will staff of a City elected officials is exempt from the City's classified service, and include Directors of bureaus that are not specifically listed in Code 2.12.120 C., Deputy Directors of City bureaus, high-level city officials within the Office of Management and Finance (such as the City Treasurer), and all administrative staff of City Council members. In addition, the amended rules require the Auditor's Office website to list the City positions considered to be at-will staff of City elected officials.

The Auditor's Office received comments about including "attempts to gain the goodwill of City officials" in the definition of lobbying set forth in ARA 15.01(E)(3), including:

- Some commenters questioned how this provision will be applied and how the Auditor's Office will determine intent.
- A commenter expressed concern that any political discussion could be considered lobbying under this provision, which may discourage citizen activities and engagement.
- A commenter noted that this addition seems overly broad, could be difficult to administer and comply with for community-based groups, and could have a chilling effect on outreach and participation for those that haven't traditionally had access to City officials.

Response: Code Section 2.12.020 G. defines lobbying as “attempting to influence the official actions of City officials.” The Auditor’s Office is frequently asked whether attempts to build and maintain relationships with City officials, for the purposes of future lobbying, must be disclosed under the City’s lobbying program. To further the lobbying program’s goal of preventing even the appearance of impropriety, the Auditor’s Office proposed including relationship-building lobbying activities in the definition of “lobbying” when there is intent for future lobbying. The proposed rule’s “attempts to gain goodwill” language was intended to apply only to lobbying entities, which would largely self-report such activities on a good-faith basis.

However, given the self-reported nature of this disclosure requirement, and after learning about the difficulty that some organizations may face in determining when they may be relationship-building with an intent to lobby, the Auditor’s Office has decided to significantly revise this provision. The Auditor’s Office will nevertheless continue to encourage lobbying entities to disclose relationship-building lobbying.

The Auditor’s Office received comments about the proposed inclusion of grassroots lobbying in the definition of lobbying set forth in ARA 15.01(E)(2)(a), including:

- Some commenters stated that the proposed rules seem very undemocratic, make it sound like City officials do not want to hear from their constituents, and appear designed mainly to keep citizens from organizing as groups to speak out on issues about which they’re concerned.
- A commenter expressed concern about the overall impact of this provision, indicating that the language used may have an unintended chilling effect on individuals or community groups and organizations that are marginalized or underrepresented and/or have otherwise not historically had a voice with City government (even if the Auditor’s Office has discretion in applying some of the rules).
- A commenter noted that a reasonable person might think that the City government would want an informed citizenry and would welcome participation of the public as a means to better represent the people. The new rules pertaining to grassroots lobbying, however, suggest that notion is incorrect.
- A commenter noted that grassroots lobbying primarily involves teaching citizens about issues and engaging them to care, and possibly act. Because grassroots lobbying generally does not involve directly contacting and engaging with legislators, it should not be subject to the same reporting requirements that apply to direct lobbyists.
- A commenter stated that the City Code specifies that lobbying does not include time spent by an individual representing his or her own opinion to a City official, but that it seems easy to cross the line between contacting your legislators with concerns and lobbying. For example, an individual citizen who schedules meetings with each of their council members can quickly use up their allotted 8 hours, and if they’re associated with any grassroots groups, in any capacity, that association could be held against them.
- A commenter expressed concerned about the administrative burden on community efforts to influence City officials. When such joint efforts are undertaken by volunteers, it has a chilling effect on such activities and seems calculated to dissuade organized public participation in the deliberations of City officials.

- A commenter noted that speaking with other citizens about issues of concern is protected under the First Amendment and should not result in being saddled with onerous bureaucratic demands. The commenter further asked why residents who have similar concerns should not be allowed to freely share information about how the government works and how they can address their concerns, especially if the group has no financial stake or direct personal interest in proposed legislation.
- A commenter stated that communicating with the public is essential to informing them about public policy options, and that it is difficult and administratively burdensome to dissect which part of that effort is public education vs. encouraging them to self-advocate with City officials.
- A commenter requested removal of the new grassroots lobbying provision in general or at least the hourly time threshold for disclosure in City Code.
- A commenter stated that grassroots lobbying is not direct lobbying and should not be regulated. Grassroot lobbying is not something that needs regulation by eyeing the books on money spent or registering. It is little more than people congregating as a club.
- A commenter stated that the proposed changes to ADM 15.01 would force hundreds of nonprofits with positions on City policies to register as lobbyists and could even force private citizens blogging their personal opinions to do so. The commentator indicated that the change seems overly broad and more likely to be used as a weapon to silence public discourse than as a method to limit corruption.
- A commenter stated that the new grassroots lobbying provisions could negatively impact a citizen rallying their neighbors to contact the City officials and that the rule is overbroad because it could require an engaged and active community member who posts an email or spends time talking to neighbors to encourage them to contact a City official about a specific issue to register and report as a lobbyist.
- A commenter noted that statements in the rules indicating that the City has an interest in encouraging participation from traditionally marginalized and underrepresented groups, and that the rules are not meant to discourage participation from such groups, would be helpful.
- A commenter indicated that a proposed rule that places burdens on the ability of individuals and groups to encourage other individuals to contact City Officials to express their own opinions, which is not consistent with valuing and encouraging citizen engagement. The commenter noted that although large-scale efforts to influence public policy may well be an activity that the City wishes to regulate, the City should call that out in a specific manner in its rule making and it must take care not to create new rules that conflict with existing ones or unduly burden citizen engagement. To the extent that the City wishes to regulate the "grassroots" activities of other "lobbying entities," the commenter suggested that it craft a different approach, with different thresholds, for such activities, mindful of the fact that grassroots lobbying differs significantly from direct lobbying: grassroots lobbying is indirect and calls upon individuals to express their own opinions to their representatives, an activity that is expressly excepted from the definition of lobbying.

Response: Many of the comments misinterpret existing City Code and the proposed grassroots lobbying rules. Because the rules are intended to help provide clear guidance and prevent confusion, the Auditor's Office has amended the proposed grassroots lobbying provisions in an attempt to more clearly explain their purpose and applicability. The Auditor's Office responds to other concerns raised by commenters as follows:

- The following new language was added to ARA 15.01 to acknowledge that the lobbying program rules are not intended to hamper attempts to engage City officials:

"The City encourages participation and input by individuals, groups, and organizations, including those that are underrepresented, marginalized, and/or have otherwise not historically had a voice with City government. Nothing in this rule is meant to discourage public participation in City government."

- Individuals communicating their own opinions to City Officials are not "lobbying," and therefore are not subject to the lobbying program's registration and reporting requirements. See Code Section 2.12.020 G.1 (lobbying does not include, among other activities, "[t]ime spent by an individual representing his or her own opinion to a City official").
- The lobbying program sets forth disclosure requirements for lobbyists (who lobby *on behalf of* a lobbying entity) and lobbying entities (who employ or authorize a lobbyist to lobby *on their behalf*). An individual who acts on their own behalf to encourage others to lobby is not a "lobbyist" or a "lobbying entity"—and is not subject to the lobbying program's registration and reporting requirements.
- ARA 15.01(E) explains that ministerial tasks, such as scheduling, that do not involve attempts to influence are not lobbying. ARA 15.01(E) also clarifies that "[g]roups and individuals that advocate, analyze, or discuss public policy, without encouraging others to communicate with City officials to promote, oppose, or advocate on any official action," are not lobbying.
- The lobbying program's financial disclosure requirements for grassroots lobbying are not new. For years, the Auditor's Office has interpreted "lobbying" to include indirect or grassroots / grass-tops lobbying carried out by lobbyists who attempt to influence the official actions of City officials by soliciting others to lobby. Such activities fall within the existing definition of "lobbying" because they involve attempts to influence the official actions of City officials. In addition, Code Section 2.12.040 A.2.c. already requires registered lobbying entities who meet reporting thresholds to report their lobbying expenditures, including for advertising, direct mail, and email. However, the formal inclusion of "grassroots lobbying" in the lobbying program rules is new—and is designed to more clearly and publicly announce the Auditor's Office's long-standing interpretation.

- The lobbying program's disclosure requirements, including for grassroots lobbying, are not intended to be burdensome:
 - o Individual lobbyists do not have reporting requirements (regardless of whether they engage in direct or grassroots lobbying). However, lobbyists are required to declare, in communications with City officials and prior to offering public testimony, which lobbying entity they are authorized to represent. In addition, lobbyists should share information about their lobbying activities with the lobbying entity on whose behalf they lobby.
 - o A lobbying entity that is required to register with the City Auditor, meets the reporting thresholds, and spends over \$1,000 on lobbying during a calendar quarter must disclose various lobbying-related information, including a good faith estimate of the funds it spent on lobbying. See Code Section 2.12.040 A. The disclosure reports can be filed through a free on-line portal.

The Auditor's Office received the following comment on ADM 15.03 – Enforcement and Civil Penalties:

- A commenter requested that the rules clarify how the Auditor's Office uses discretion in applying its penalties relating to violations of PCC 2.12, and noted that it may be helpful to clarify in what ways and under what circumstances marginalized, underrepresented, and other community groups will be treated differently for the purposes of these rules.

Response: When a violation of City lobbying rules has occurred, the Auditor's Office may consider various mitigating factors in determining the severity of a penalty. The mitigating factors are already set forth in the existing rule, including with examples provided. Some examples of mitigating or aggravating factors already included are: the budget of the organization, the size of the organization's professional paid staff, whether trainings were administered to the organization, and the technical and continuous nature of the violation(s). Other items that may be considered on a case by case basis are the types of benefits that resulted from lobbying efforts. Please review the examples and full guidance [here](#).