



LAND USE AND LOBBYING FOR ENGINEERS AND ARCHITECTS

Frequently Asked Questions

Engineers and architects are routinely involved in land use, building construction, and planning activities which may include interactions with public officials. Depending on the nature of the interaction with a public official, there can also be registration and reporting obligations under the Lobbying Act.

The information below should be used as a starting point for any analysis under the Lobbying Act, and does not carry the force of law. Commission attorneys are available to answer questions during normal business hours, and can be reached at 1-800-87ETHICS.

FAQ's

What is lobbying?

Lobbying or Lobbying Activities¹ include any attempt to influence:

- ✓ State legislation or resolutions;
- ✓ gubernatorial executive orders;
- ✓ State Agency rules or regulations;
- ✓ governmental procurements;
- ✓ local laws, ordinance, resolutions, or regulations by any Municipality or subdivision thereof;
- ✓ executive orders issued by the chief executive officer of a Municipality; or
- ✓ rules, regulations, or resolutions having the force and effect of a local law, ordinance, resolution, or regulation.

¹ See §1-c(c) of the Lobbying Act for the complete definition of "Lobbying or Lobbying Activities."

I just try to get my projects approved – how could I possibly be considered a lobbyist?

The Lobbying Act does not distinguish between *who* engages in this activity and who does not; it only regulates the activity itself.

I interact with government on every project I design: Does that mean every application and meeting I have related to a permit, variance, zoning change, revocable consent or code determination is lobbying?

No. Lobbying is determined by whether there is an attempt to influence a law, regulation, procurement, or other activity found in Section 1-c(c) of the Lobbying Act.

- Seeking to **CHANGE OR AMEND ZONING LAWS** requires a municipality to pass a new or amended law, ordinance, or resolution, and thus *is* lobbying activity.
- If an architect attempts to influence a governmental activity that is not covered by the Lobbying Act, or the architect does not attempt to change or amend the law in any way, such conduct *is not* lobbying.
- Seeking a **VARIANCE** from a local law does not require a change to the law, only to receive permission to deviate from the law. This *is not* lobbying.
- Likewise, seeking a **REVOCABLE CONSENT**, which grants a right to an individual to construct and maintain certain structures on, over or under municipal or state-owned streets and sidewalks, does not require a change in the law. This *is not* lobbying.
- Seeking a **CODE DETERMINATION** only involves requesting an interpretation from a public official, and does not in and of itself attempt to change the law. This *is not* lobbying.

Further, there are certain exceptions in the Lobbying Act that exclude other activities, regardless of whether they might fall under Section 1-c(c).

- For example, seeking a **PERMIT** (or **SPECIAL PERMIT**) is specifically excluded under the law. This *is not* lobbying.

Okay – I’m trying to get an amendment to the zoning laws passed – what if I just meet with the public official to tell them about my project and my lawyer does all the advocating?

Whether or not an interaction with a public official constitutes lobbying depends on whether the activity is covered under Section 1-c(c) of the Lobbying Act, and if so, the nature of the architect’s or engineer’s participation. In other words, the focus is on the role the architect or engineer plays at the meeting: that is to say, whether someone advocates for a particular outcome or someone simply provides technical assistance or information.

- An architect or engineer who attends a meeting to **PRESENT TECHNICAL DESIGN INFORMATION OR ANSWER TECHNICAL QUESTIONS** *is not* lobbying.

What if I appear at a public proceeding or public hearing to provide information about a project? Is that lobbying?

- Again, whether any activity constitutes lobbying depends on whether it involves an attempt by the individual to influence a Lobbying Activity, as described in Section 1-c(c) of the Lobbying Act, and the role an architect or engineer plays in any such attempt.
- An architect or engineer who **PARTICIPATES IN AN ADJUDICATORY PROCEEDING** *is not* lobbying. An adjudicatory proceeding is generally any activity before an agency (which is not a rule making proceeding) in which a determination of the legal rights or privileges of parties is required by law to be made only on a record and after an opportunity for a hearing.
- An architect or engineer who **RESPONDS TO A REQUEST FOR INFORMATION OR COMMENTS** from a public official *is not* lobbying so long as the information provided is limited to what was requested.
- An architect or engineer who simply **PARTICIPATES AS A WITNESS OR REPRESENTATIVE** in a public proceeding of a municipal or state agency, without advocating for a particular outcome, *is not* lobbying.

What if the project I am working on has to go through NYC's Uniform Land Use Review Procedure ("ULURP") or some other similar land use review procedure? Is my participation lobbying?

- The ULURP process, albeit specific to New York City, illustrates how land use determinations are typically made throughout localities across the State. Whether there is lobbying depends on the facts surrounding an architect's or engineer's participation in a land use determination, including at what point they participate.
- As previously discussed, an architect or engineer who participates in an adjudicatory proceeding or a public hearing or meeting by simply providing technical or design information, *is generally not* lobbying.
- However, any attempt to influence a land use determination that requires or otherwise results in a **LEGISLATIVE RESOLUTION**, *would* constitute lobbying.

As with any analysis under the Lobbying Act, the facts and context matter. In order for any individual to be considered a Lobbyist, (1) there must be an attempt to influence an activity listed in and not excluded by §1-c(c) of the Lobbying Act; and (2) the cumulative compensation and expenses received, expended or incurred for such Lobbying Activity must exceed \$5,000 in a calendar year. These FAQs seek to clarify what activities by architects and engineers are generally excluded from the definition of Lobbying and what activities may cross the line into Lobbying.

**When in doubt, architects and engineers
should reach out to JCOPE
for further guidance.**