Getting Through the Maze

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>How Lobbyists Can Be of Great Value</td>
<td>1</td>
</tr>
<tr>
<td>Who's in Your Corner</td>
<td>2</td>
</tr>
<tr>
<td><strong>Top 10 (ok, 11) Considerations You Need to Know About Before Hiring A Lobbyist</strong></td>
<td>3</td>
</tr>
<tr>
<td>Identifying A Lobbyist’s Area of Expertise</td>
<td>4</td>
</tr>
<tr>
<td>Lobbying: What’s Taking So Long?</td>
<td>5</td>
</tr>
<tr>
<td>What A Wake-Up Call</td>
<td>6</td>
</tr>
<tr>
<td>Stop the Fighting Now and Save Lives Later</td>
<td>8</td>
</tr>
<tr>
<td>Protecting Lives, Communities and Businesses Can Bear Significant Costs</td>
<td>9</td>
</tr>
</tbody>
</table>
How Lobbyists Can Be of Great Value
by Lee Kanon Alpert

During a recent conversation with a senior Building and Safety official, I was reminded of the significant impact a lobbyist can have in getting a job completed expeditiously. This official commented that a lobbyist can create great savings for their clients and that the need for this service is increasing. Like many cities around the country, the construction and building industry in the City of Los Angeles slowed dramatically when the economy dipped. That downturn caused City budgets to decrease, the need for City employees, including building inspectors and engineers, to dwindle, positions to be left vacant by employee retirement and normal department hiring to all but cease.

As our economy improves the construction industry is experiencing an upsurge in the availability of financing, an increase in the number of projects and developments, and requests for plan and inspection approvals have risen dramatically. On the other hand, the City departments that oversee and process these same requests remain stagnant or have even contracted in size, therefore perpetuating delays that can, and usually do, become very costly for developers and business owners alike.

This is exactly where a strategic advocate and lobbyist can be of great value. As with any business venture, time is money. A well-connected lobbyist’s positive relationships and thorough knowledge and understanding of the operations of various government entities and departments, would be of great benefit to their clients in effectively navigating the process of getting the proper permits and approvals in place prior to construction and occupancy. In this situation, a good lobbyist would have the ability to not only monitor, but speed up the process of the review and permitting stages. Additionally, a lobbyist would also be able to prepare and guide even the most experienced of builders and developers to develop a framework of oversight that gets the necessary documents submitted in a timely and correct manner. Furthermore, a strategic advocate would work to ensure that the project is reviewed by the correct personnel who would best be able to shepherd the project through the various complicated stages of review to keep the project moving forward while avoiding unnecessary delays.

What are the benefits of hiring a lobbyist to represent you and your business on a construction project you are developing?

- Minimizing time and costs incurred from other experts by avoiding unnecessary trips to the building and safety department.
- Obtaining a timely approval of the necessary permits for the construction, occupancy and sale of the project.
- Obtaining an expedited completion of the project thereby resulting in healthy and profitable revenue flows.

Where do you start and what do you need to do when searching for the right representation? When drawing your plans and setting your budget include sufficient funds to retain a lobbyist. Lobbying costs are erroneously omitted on project budget estimates because many developers still underestimate the value of advocacy services. In the long run, the benefits of lobbying representation far outweigh their costs. Next, find a lobbyist who knows the type of work you are doing and has long established and proven relationships with those necessary to get the project done. Permit your lobbyist to begin work in advance of when your project is actually ready for review so that the necessary framework may be laid to most effectively and expeditiously facilitate your project. Additionally, allowing your advocate to have continuous and open communication with the appropriate contacts on your behalf throughout the course of the project will give you better access to the right officials and boots on the ground should something begin to go wrong. In this situation, having made those connections early on places you and your project in a better position to facilitate a swift resolution.

By employing the strategy outlined above and retaining the appropriate lobbyist representation, you and your project will be well on your way to a successful and cost-effective completion. You will be thankful for the extra costs not incurred from experts whose submissions were disapproved and sent back to start over again. You will also not incur the extra costs of unreasonable job delays and loss of revenue by not having the development or project approved sooner. Finally, you will have established valuable relationships with the very people who may be able to assist you on future projects.

So for your next project explore the benefits of retaining a strategic advocate who would not only help guide your project from start to finish, but will also be a valuable asset to your team, where relationships really matter.
"It’s been over four months since we submitted our proposal to the city bidding on the alternative energy project. Despite the fact that we’ve followed up with calls, emails and even a letter we haven’t heard anything. There are some rumblings that they will be deciding on winning bid next month. I sure wish we could find out more about the details of their selection process. Our product is one of the best in the country. Did our message come across? This is so frustrating.”

To make a good case for support, an entity must have a clear, rationale purpose for trying to achieve their objective and good data to support their request. If their own efforts are not working perhaps it is time for this company to find a professional advocate to represent its efforts.

Advocacy is defined as active support, especially for a cause. Many times it involves communicating at a deeper level with identified decision makers in order to achieve a particular objective.

Professional lobbyist and strategic advocates can have deeper connections and more experience in the nuances of how to successfully guide a bid to a successful conclusion. These professionals can take a more active and wide-ranging approach. It often requires a more integrated strategy by an individual or group that has inroads and connections with the targeted organization.

Advocacy and lobbying efforts are most effective when they:
- are based on strong facts;
- draw on practical experience and offer proof;
- are carefully and strategically planned; and
- involve and represent the group on whose behalf they are representing.

Advocacy and lobbying can be least effective when they:
- are undertaken by an organization with no established reputation around the issue;
- are based on facts not supported by those who are being lobbied; and
- are poorly thought-out and unclear about the objective.

In order to increase positive results successful advocates tend to:
- Set advocacy priorities.
- Assess the political environment.
- Map out a clear advocacy strategy with alternative back-up options.
Top Ten (ok, 11) Considerations You Need to Know About
Before Hiring A Lobbyist
by Lee Kanon Alpert

There are many reasons both businesses and individuals hire lobbyist. And as of this writing there is no definitive evaluative system to reference the successes or experiences others may have had with any particular lobbyist or advocate. If you are in need of hiring a lobbyist you may wish to consider the following Top 11 points before engaging the services of a lobbyist or advocate.

1. Develop a clear description of the issue or project you wish to engage in and articulate the specific outcome you are seeking.
2. Create a list of the nature of any contacts that might be needed to expedite and/or champion the issue or project and whether you have the specific relationships and contacts necessary to successfully and timely conclude your issue or project.
3. Understand that there are hundreds and thousands of issues and projects being considered by the entity for which you are seeking an audience and a good advocate or lobbyist may be your best way of establishing the trust and relationship and relentless pursuit and follow up to keep your issue or project at the head of the list.
4. Determine the relationships that your advocate or lobbyist has established with the entities and persons with whom you will be dealing.
5. Research to find out if the advocate or lobbyist has ever been sanctioned by any entity with whom he/she will be dealing on your matter.
6. Determine if there have been any criminal or civil charges and/or litigation arising out of the advocate or lobbyists related activities.
7. Determine if the advocate or lobbyist maintains insurance which is typically readily available. If the lobbyist maintains insurance it lets you know they have their client’s best interests in mind.
8. Examine the fee arrangement that your advocate or lobbyist is seeking. Fee arrangements can vary from long or short-term monthly retainers, hourly rates, success fees, business interests in the issue or project or any combination thereof. Some jurisdictions preclude certain types of fee arrangements. Be certain there is no violation of those lobbying rules.
9. Always have the terms of the retention executed by the advocate or lobbyist in writing and signed by both the client and the advocate or lobbyist.
10. Have the advocate or lobbyist provide a strategic plan detailing how they will successfully complete your issue or project. As the client, be certain you are comfortable with this strategic approach.
11. Before signing a retention agreement meet with, or phone if geography is a problem, the advocate or lobbyist to ascertain your level of confidence and ability to work together as a team. Don’t discount one’s gut feel about a person. Of course, give careful consideration to the recommendations and reputation of that person or entity you are considering. Trust and confidence are essential.
Identifying A Lobbyist’s Area of Expertise  
by Lee Kanon Alpert

Just like doctors and lawyers, lobbyists have their own specialized fields of expertise. Some strategic advocates are skilled in drafting and/or in guiding a bill through Congress (or other legislative body), others in voicing the concerns of specific industries (or individual clients) to the various branches of the government, and yet others in effectuating a change in government policy.

When selecting a strategic advocate to be the champion of your project or business, it would be prudent to clearly identify your company’s needs and the types of contacts you feel are necessary to advance your cause. It would make little sense to hire a strategic advocate with experience only in dealing with the federal government, if the issue at hand involves local government or city or county departments.

Hiring an advocate with the specific relationships necessary to shepherd your issue to the appropriate contacts is crucial to a timely and equitable conclusion. Do not be afraid to ask the tough questions before hiring a lobbyist. Be sure to ask for specific examples as to how a strategic advocate may be able to help facilitate your project, as well as a plan of action they feel would be most beneficial for your cause. Such plan or strategy should be sufficiently flexible, dependent upon the results at various stages of their advocacy on your behalf or that of your company.
Lobbying: What’s Taking So Long?
by Lee Kanon Alpert

Hundreds, if not thousands, of projects and issues are presented to, reviewed and evaluated by decision makers in both government and government-run entities on a regular basis. Even though government representatives work tirelessly to give each proposal its due consideration, resources are limited. The tremendous number of propositions for consideration makes it crucial to not only ensure that proposals have significant merit, but also to differentiate it from the pack. Strategic advocates are also often called in after issues have arisen to ‘fix’ what can already be a major failing in the project, or the relationships with the decision makers.

Project developers look to strategic advocates for solutions. Frequently, advocacy clients work with extremely tight deadlines that demand swift progress and rapid response. Facilitating such degree of responsiveness requires an advocate that would not only seek and identify the appropriate audience for a proposal, but shepherd it to its full potential while doing so in a reasonable time period, and in a manner that coincides with rebuilding the trust between the Project Developer and those in government with whom they are dealing.

Clients often mistake lobbyists for magicians who can magically resolve issues at the snap of their fingertips, some of which may have been created to varying degrees by the project manager and the staff of the municipal department with whom they are dealing. In reality, lobbyists are allies who lend their reputation, share their extensive knowledge, and engage their longstanding relationships to champion a cause. Advocates work diligently to emphasize a project’s merits, establish or reestablish trust, maintain open lines of communication, foster good working relationships and deliver the most equitable and expeditious solution possible for all involved. Despite the costs, the saving that can be gained in bringing in a government relations specialist or lobbyist from the beginning can save boatloads of headaches, dollars and delays in a successful project.
What A Wake-Up Call
by Lee Kanon Alpert

Seismic activity in California has become increasingly active in recent weeks. On March 10th a powerful 6.9 magnitude earthquake hit 50-miles off the coast of Northern California, thankfully damage was minimal but the shaking was widespread. On March 12th a 4.6 magnitude quake hit Inyo County in Central California and on March 17th, Los Angeles basin residents got quite a wake-up call when a 4.4 magnitude tremor struck at 6:25am, the epicenter hitting very close to home in Encino.

The 4.4 magnitude tremblor was the most substantial quake to hit the Los Angeles basin since 2008. Compared to the seismically active 1980s and 1990s, Los Angeles has enjoyed a “quiet period” since the 1994 Northridge earthquake hence many of us, myself included, may have grown cautiously disinterested of the very real threat nature continues to pose. The display of apathy towards this sleeper threat of a major quake should be of real concern to all our citizens. An article published in the LA Times speculates that the rash of earthquakes around the state in recent weeks may signal the end of LA’s “earthquake drought”, giving us more reason to improve our disaster preparedness and mandate more earthquake retrofitting of the City’s many seismically vulnerable buildings before it is too late.

Recently, I blogged about Councilman Bernard Parks’ proposed motion to amend the current cost pass-through laws addressing seismic retrofitting of residential rental properties. Since then, much has been said and debated about the City’s options to further incentivize and/or mandate such structure improvements. As the City Council examined the motion and discussions progressed, it became apparent that a little-known and therefore under-utilized City Housing Department rule may already exist to address this issue. Similar to the rules adopted by the City of San Francisco, the said LA City Housing Department rule allows property owners to apply to pass on the full cost of all City required retrofitting work to tenants. If the application is approved, property owners would be able to impose higher rent increases to pay for the improvements than what Los Angeles’ rent control laws would normally allow. The existence of the said rule is undoubtedly good news for property owners, but understandably not so welcome news for tenants, especially those with low income.

Currently, the City Council, the City Housing Department and other concerned government entities are seeking to clarify exactly what costs or percentage of costs the City’s rules do and do not permit property owners to pass on to their tenants. City leaders are also working to determine (1) whether a revised ordinance is necessary to enable the pass through, (2) if the Housing Department rule sufficiently addresses the issue, or (3) if it is necessary for the Department to change its rules to comply with current City Ordinance.

Balancing the need for safe AND affordable housing is a difficult but necessary task especially as nature seems to have awaken from its slumber. Last Monday’s ‘wake-up call’ is a stark reminder that this sleeper threat can strike at any time, but that with sufficient preventive measures its destructive effects may be kept to a minimum. Stay tuned for more updates as the debate continues…
Acts of God: Who’s Liable?
by Lee Kanon Alpert

Webster’s dictionary defines “Act of God” as, “an extraordinary interruption by a natural cause (as a flood or earthquake) of the usual course of events that experience, prescience, or care cannot reasonably foresee or prevent.”

If a property owner is fully compliant with current building and safety codes and an act of God occurs, what liability do the property owners hold for any damage, injury or death that results? What if an owner has acted in good faith and made reasonable efforts in getting up to code, but a natural disaster hits prior to completion, what liability do they carry then?

In recent years, even with differing laws across states, legal decisions have steadily removed the shields of the ‘Act of God’ clause and defense. The argument that a property owner was compliant with the current law, and/or had more time to become compliant with the new law as a defense from liability are being struck down much to the surprise of property owners acting in

In California it is clear from several cases that have been decided and confirmed by higher California Courts, that should a structure be deficient of the necessary protection it need afford its occupants, or if the owner knew or should have known of the deficiency and a tragedy occurs, notwithstanding if the tragedy is caused by a natural disaster (Act of God) or the fact that the law did not require protective compliance until a date later than the disaster, it will not protect the owner from liability. The Courts have opined that the idea behind the dates of the retrofit laws “…is not the promotion of the interests of the building owner. Instead the overriding policy is public safety…” as stated by the 2nd District Court of Appeal in California in Myrick v. Mastagni (185 Cal.App.4th 1082 (2010)).

So what does this mean for property owners in Los Angeles where the government is now in the process of identifying potentially unsafe buildings that need retrofitting? Although the City recognizes the practicality of the cost of retrofitting and has made allowances as to timing of compliance, the grace period the City provides does not change the owners’ risk of liability should an act of God occur based on the Myrick v. Mastagni ruling. Simply put, if a real property owner knows or should have known that their property is at risk and an earthquake strikes, then the owners are still exposed to significant liability until the necessary repairs and retrofitting are completed to correct the problem. Now that the City has begun identifying high-risk buildings for collapse and damage, property owners are given even greater notice as to the dangers their properties may pose, and the substantial liability they face should they fail to address the defects expeditiously.

From a legal standpoint, if a property owner should have known their real property could be unsafe in the event of an Act of God, and even more so if it has been identified as a potentially unsafe property by the municipality, then there is only one option to minimize the owner’s risk and liability. The property must be vacated immediately, or if that is not practicable then retrofitting work must begin immediately to reasonably mitigate the potential cause of damage or liability.

Although the advice is undoubtedly severe and undeniably presents substantial financial strain for many property owners, this is what is necessary to protect you, your business and your financial future. The monetary hit may seem significant now, but just imagine the catastrophic loss you are avoiding in the future by preparing now.
Stop the Fighting Now and Save Lives Later
by Lee Kanon Alpert

Recently Bernard Parks, Past Chief of the LAPD and a long term Los Angeles City Councilman, announced the introduction of an ordinance that would modify the current law requiring apartment building owners in Los Angeles to retrofit their property for earthquake safety. Retrofitting older structures is crucial to saving lives before the next “big one” hits, however such improvements do not come cheap and may prove to be a hardship for many property owners. Recognizing this, the City Council enacted a law years ago which allowed rental property owners to pass through up to 50% of the cost of seismic upgrades to tenants over a long period of time. Now, Councilman Parks is proposing a modification which would further incentivize seismic retrofits, enabling apartment owners to pass through 100% of the upgrade costs to tenants over time.

The extreme costs of retrofitting makes this amendment necessary. Even with tenants paying half of the retrofitting costs over time, owners are still hesitant to undertake such upgrades because the expense of the renovation work may exceed the property’s mortgage loan balance or in some instances, even the property’s current market value. On the other hand, not making the necessary improvements may also be detrimental to the property’s value should it not meet the City’s building and safety code making it untenantable.

Councilman Mitch Englander has attempted to seek State funding by working with newly elected Assemblymember Adrin Nazarian, to promote residential rental property seismic upgrades. While not a bad idea, one must question the time it would take to pass such legislation, and whether or not the legislature would wish to embrace Los Angeles, having not done so for other cities in the past.

The City of San Francisco and other municipalities have found creative means to resolve this issue. They enacted ordinances that help both apartment owners and the poor and underserved in their City, while protecting the lives of ALL residents whom elected officials are bound to represent -- may they be wealthy, poor or neither -- as recently highlighted in an article published in the L.A. Times.

Our Los Angeles City Council is made up of very bright and well-intentioned people, led by a true leader as Council President. Our Mayor is as intelligent and progressive as they come in this country. All these elected officials know and understand the pressing need for earthquake readiness in our City to save lives. They can and must come to an appropriate compromise and reach the goal of getting these residences retrofitted expeditiously for the safety of the people living therein, before it is too late and the next large quake hits.

As a Past President of the Los Angeles Building and Safety Commission, and a long-time San Fernando Valley resident, I have seen firsthand the dangers that older “soft structure” apartments pose. In the 20-years since the Northridge earthquake, great strides have been made in encouraging seismic retrofitting but there are still far too many vulnerable apartment buildings in our City. As California residents, we all know that it’s not a matter of “if” but “when” the next quake will hit, so if San Francisco can do it, so can Los Angeles. We owe it to the residents, the constituents of this City, regardless of their socio-economic status, to make our buildings as earthquake ready as possible. In compromise, you give a little and take a little, no one is ever completely happy but perhaps this may be the correct solution for this situation. The key is to take the vision former Councilmember Hal Bernson had BEFORE the Northridge earthquake, in protecting his constituents and get something done before it is too late.
THE BIG ONE IS COMING and the Mayor was clearly thinking of the City and its residents and businesses when recently proposing the newest earthquake retrofitting plans for existing at risk buildings in this great City of Los Angeles. The City Council was also thinking of the residents and businesses when basically supporting the recommendations and need for these regulations, but also in delving deeply into the practical areas of who and how are we going to pay for the billions in costs. Saving lives and businesses are not cheap ventures. They are however morally and ethically correct.

The determination to bring that legislation and ordinance for public vote by the people was additionally a great stroke of genius and simply part of the American way. Yes, something must be done to correct these outdated and vulnerable buildings for the benefit of the members of our community who occupy those buildings and could be severely injured or worse in a major earthquake without adequate structural stability when it strikes. It is only a matter of time. But here is where it gets interesting. Should the voters support the legislation there will be a mandate and the payment of those extensive funds will likely be defined by ‘the people’, and therefore are no longer the sole responsibility from our elected leadership. Should the people say NO and should injuries, death and damage wreak havoc, it will have been the decision of the voters and not our elected officials.

While one may question if this is the way representative government was intended to work, one cannot question that the responsibility should likely be in the hands of the people on huge issues like this, rather than with only those few elected to represent us. The cost of the type of repairs we are talking about will be in the billions, based upon the recent reports numbering and identifying the existing buildings. That will mean that unless some independent financing or raising rents to cover the costs of repairs, the City would not be able to afford such repairs, and likely should not be required to do so, on the private property of others. The elected officials are trying to save the lives of Angelenos and the properties of Angelenos, which is their job, wherever there is danger. So prior to this initiative coming to the vote of the people, let’s get creative and find manners that will benefit and ease the burden of all whom will have to incur these costs if mandated to do the repair, as unfunded mandates are what have killed business in this State and in this City being made up for by reduced public services and nearly putting the City into bankruptcy. We must create a fair and reasonable means to finance this gigantic cost so as to enable this piece of critical legislation to pass and not naively reject the same for now and wait for the disaster to strike which will likely touch in some manner every life and every business in the City of Los Angeles and be far more costly in the end in both lives and dollars.