

Offered by Councilors Michelle Wu, Michael Flaherty & Andrea Campbell

CITY OF BOSTON



IN THE YEAR TWO THOUSAND EIGHTEEN

AN ORDINANCE AMENDING CHAPTER 2 OF THE CITY OF BOSTON CODE, ORDINANCES, REGARDING LOBBYIST REGISTRATION AND REGULATION

WHEREAS, It is important that government employees and elected officials conduct themselves in a responsible manner and administer their duties in order to serve the best interests of the public; and,

WHEREAS, Increasing transparency and accountability in government promotes public confidence and serves the public interest; and,

WHEREAS, Having greater access to information concerning organizations and individuals that seek to influence actions of government employees and officials through registration and disclosure requirements will promote transparency in government.

NOW THEREFORE,

Be it ordained by the City Council of Boston, as follows:

Section 1.

The City of Boston Code, Ordinances, is hereby amended in Chapter 2 by adding after section 2-14, the following new section 2-15:

2-15.1 Title and Purpose.

This section shall be known as the "Lobbyist Registration and Regulation Ordinance." The purpose of this section is to promote good governance and to ensure transparency in government by requiring registration and disclosure of lobbying activities; to create fairness and consistency by applying the same rules to all persons engaged in lobbying activities; and to reinforce the community's trust in the integrity of its government by guaranteeing convenient, timely access to information about attempts to influence the government's decisions.

2-15.2 Definitions.

As used in this section, the following words shall, unless the context requires otherwise, have the following meanings:

Administrative Action means any decision on, or any proposal, consideration, enactment or making of any rule, regulation, or any other official nonministerial action or non-action by any executive department, or by any official or employee of an executive department on any matter which is within the official jurisdiction of the executive branch, or any matter within the official jurisdiction of any city employee or any official.

City employee means an employee of the city of Boston, including employees of the Mayor, of the Boston City Council, and employees of the departments of the city.

Client means any person, corporation, partnership, association, organization, including nonprofit, or other entity that retains, employs, or designates any person or organization to carry on lobbying activities on behalf of such client.

Legislative Action means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application, or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

Lobbyist shall mean every person or organization, including non-profit, retained, employed or designated by any client to engage in lobbying or lobbying activities. The term "lobbyist" shall not include any officer or employee of the City of Boston, the Commonwealth of Massachusetts, any political subdivision of the State, or any legislatively-created corporation, authority, agency or commission, or the United States when discharging his or her official duties. The term "lobbyist" shall not include any uncompensated volunteer of a not-for-profit entity who seeks to influence legislative or administrative action solely on behalf of that entity;

Lobbying or Lobbying Activities shall mean any attempt to influence:

- a) any legislative action made by the City Council or any member thereof with respect to the introduction, passage, defeat, or substance of any local legislation or resolution;
- b) any administrative action made by the Mayor to support, oppose, approve, or disapprove any local legislation or resolution, whether or not such legislation or resolution has been introduced in the City Council;
- c) any decision or administrative action made by an official or an officer or an employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies;
- d) any decision made by the Mayor, the City Council, an official, or city employee with respect to the approval, denial, or postponement of a decision concerning the development of real property or zoning, including zoning approval;
- e) any legislative or administrative action concerning the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any local or special law;
- f) the adoption or rejection of a policy position.

Lobbying or lobbying activities shall not include the following:

- a) a request for a meeting, a request for the status of an action or any similar administrative request, if the request does not include an attempt to influence a city employee or official;
- b) an act made in the course of participation in an advisory committee or task force;
- c) providing information in writing in response to a written request for specific information by a city employee;
- d) an individual expressing an opinion, filing a complaint or tip, seeking information or advice, or requesting constituent services regarding a matter that does not involve possible financial benefit to the individual or a business with which the individual is involved or whose interests the individual is representing;
- e) an individual expressing an opinion, filing a complaint or tip, seeking information or advice, or requesting constituent services regarding a matter that involves possible benefits to the individual's owner-occupied home;
- f) an act required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation or other action;
- g) a communication made to a city employee or official with regard to the status of a judicial proceeding or a criminal or civil law enforcement inquiry, investigation or proceeding; or an act made in compliance with written board or agency procedures regarding an adjudicatory proceeding or evidentiary proceedings conducted by any department, board, commission or official;
- h) a petition for action by the city made in writing and required to be a matter of public record pursuant to established procedures of the city;
- i) any act done in furtherance of obtaining a non-discretionary city approval, such as applying for a permit or license;
- j) an act made on behalf of an individual with regard to that individual's benefits, employment or other personal matters;
- k) a response to a request for proposals or similar public invitation by a city employee for information relevant to a contract; provided, however, that any communication to a city employee seeking to encourage the City to procure a particular type of item or service, or to consider a particular vendor, is a lobbying communication not subject to this exception;
- l) participation in a bid conference;
- m) an appeal or request for review of a procurement decision;
- n) persons engaged in the practice of law;
- o) designated union representatives negotiating a collective bargaining agreement with city representatives, and unions communicating with their members;
- p) newspapers and other periodicals and radio stations and television stations, and owners and employees thereof, provided that their activities are limited to the gathering or dissemination of news items, editorials or other comment, or paid advertisements;
- q) persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an entity covered by these provisions.

Local enforcing entity means the City Clerk. The Clerk may appoint such other personnel as it may from time to time deem expedient.

Official means any person, whether paid or unpaid, holding any elected office of the City or any appointed, non-employee member of any City agency, members of city commissions and boards, and an employee of the Boston Redevelopment Authority, the Boston Public Health Commission, Boston Licensing Board, or Boston Water and Sewer Commission.

Procurement means the buying, purchasing, renting, leasing or otherwise acquiring or disposing, by contract or otherwise, of supplies, services or construction, or the acquisition or disposition of real property or any interest therein, including, but not limited to, the purchase, lease or rental of any such real property or the granting of easements or rights of way therein.

2-15.3 Registration and Reporting Requirements.

The City Clerk shall keep a record containing all information required to be filed under this ordinance, which shall be in the form of an electronic database that shall be open and accessible for public inspection.

Each lobbyist and client retaining the services of a lobbyist shall file an annual registration statement with the local enforcing entity on forms it prescribes and provides. The annual registration statement shall be completed not later than December 15 of the year preceding the registration year, except that any person or entity that first qualifies as a lobbyist or client after January 1 of the registration year shall register within 10 days after so qualifying. Notice of termination of status as a lobbyist or client shall also be filed promptly with the local enforcing entity.

The annual filing fee for a lobbyist to register shall be \$1,000. The annual filing fee for a client shall be \$500. The local enforcing entity may, in its discretion and upon written request, waive the filing fees for a not-for-profit client, a lobbyist which registers to exclusively represent not-for-profit clients, a client that employs fewer than 10 persons and has been in business for fewer than 5 years, or a lobbyist that registers to exclusively represent such client.

No later than January 20th, April 20th, July 20th and October 20th of each year, every lobbyist shall provide to the local enforcing entity a statement, under oath, listing: (i) all campaign contributions as defined in section 1 of chapter 55 of the General Laws; (ii) the identification of each client for whom the lobbyist provided lobbying activities or services; (iii) names of pieces of legislation, legislative action, administrative action, or the decisions of city employees and officials that the lobbyist acted to promote, oppose, or influence; (iv) a statement of the lobbyist's position, if any, on each such piece of legislation, legislative action, administrative action or decision; and (v) the identification of the client or clients on whose behalf the lobbying agent was acting with respect to each such piece of legislation, legislative action, or decision. The disclosure shall be required regardless of whether the lobbyist specifically referenced the particular piece of legislation or other decision while acting to promote, oppose, or influence it.

No later than January 20th, April 20th, July 20th and October 20th of each year, every lobbyist and employer of a lobbyist shall provide to the local enforcing entity a statement, under oath, listing all campaign contributions as defined in section 1 of chapter 55 of the General Laws;

expenditures incurred or paid separately by such lobbyist or employer during the reporting period in connection with each decision, legislation, legislative action or administrative action of a city employee or official that it sought to promote, oppose or influence and the total amount thereof incurred or paid separately by such lobbyist or employer during the reporting period. When such expenditure is included as part of a regular salary or retainer, the statement shall specify the amount of the lobbyist's salary or retainer allocable to his or her lobbying services. If no such apportionment is possible, the statement shall indicate such impossibility and disclose the full salary or retainer.

Statements provided under this section shall be postmarked or electronically filed, as determined by the local enforcing entity, no later than the prescribed date.

2-15.4 Penalties and Enforcement.

The penalty for filing a late statement shall be in the amount of \$50 per day up to the twentieth day and an additional \$100 per day for every day after the twentieth day until the statement is filed.

Section 6 of chapter 268B of the General Laws, and any regulations promulgated thereunder, shall be applicable to lobbyists.

The local enforcing entity may enforce this act. Upon receipt of a sworn complaint signed under the pains and penalties of perjury, the local enforcing entity shall initiate a preliminary inquiry into alleged violations of this act. All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate a preliminary inquiry shall be confidential, except that the local enforcing entity may provide to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding. Any information provided to the local enforcing entity pursuant to this section shall be confidential, except that such information may be used by the officer or agency to whom it was provided in any investigation or in subsequent proceedings. The local enforcing entity shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within thirty days of the inquiry.

If the preliminary inquiry fails to indicate reasonable cause to believe that there has been a violation of the provisions of this act, the local enforcing entity shall immediately terminate the inquiry and shall within 10 days so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry.

If the preliminary inquiry indicates reasonable cause to believe that there has been a violation of the provisions of this act, the local enforcing entity may initiate an adjudicatory proceeding to determine whether such a violation has occurred. In conducting an adjudicatory proceeding the local enforcing entity may hold hearings, summons witnesses, administer oaths, take the testimony of any person under oath and in connection therewith, and require the production of any evidence, provided that the local enforcing entity's subpoena power shall be limited to obtaining employment contracts and other contracts or agreements related to services rendered,

work performed or compensation received in connection with lobbying activities. Any justice of the Supreme Judicial Court or the Superior Court may, upon application by the local enforcing entity, issue a summons to be served in the same manner as summonses for witnesses in criminal cases, issued on behalf of the local enforcing entity and all the provisions of law relative to summonses shall apply to summonses issued under this section so far as applicable. Any justice of the Supreme Judicial Court or the Superior Court may upon application by the local enforcing entity compel the attendance of witnesses summoned as aforesaid and the giving of testimony under oath before the local enforcing entity in furtherance of any investigation in the same manner and to the same extent as before said courts.

At any adjudicatory proceeding pursuant to this section, all parties and any witness shall have the right to be advised and represented by counsel, and a party may call, examine and cross-examine witnesses, and introduce exhibits. All adjudicatory proceedings under this section shall be conducted pursuant to chapter 30A of the General Laws.

Within 30 days after completion of deliberations, the local enforcing entity shall publish a written report of its findings and conclusions. Upon a finding that there has been a violation, the local enforcing entity may issue an order: (i) requiring the violator to cease and desist such violation; (ii) requiring the violator to file any report required pursuant to this act; (iii) suspending the violator for a specified period from engaging in any lobbying communications or revoking violator's registration. The local enforcing entity may file a civil action in superior court to enforce this order.

Final action by the local enforcing entity shall be subject to judicial review by the superior court upon petition of an aggrieved party within 30 days after the action for which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside the order, or it may remand the proceedings to the local enforcing entity for such further action as the court may direct.

The local enforcing entity shall inspect all statements required by this ordinance and if it appears that any person has failed to file such statement as required by said section, or if it appears that any such statement does not conform to law or is otherwise deficient, the local enforcing entity shall within a reasonable time notify the delinquent person, group or organization in writing.

Upon failure of any person, group or organization to file a statement within 14 days after receiving notice under this section, in addition to assessing the late penalties specified herein, the local enforcing entity may apply to the Supreme Judicial Court or Superior Court for an order compelling any person, group or organization to file such statement.

The Supreme Judicial Court or Superior Court may, upon application by the local enforcing entity, grant equitable or mandamus relief to enforce these provisions, prohibiting the offering or giving of or paying for gifts, meals, beverages, or other items. Relief under this section may include (i) an order to pay the city an amount equal to the value of any gift, meal, beverage, or other item given or received in violation of section 3; and (ii) a civil penalty of up to \$300.00 for each violation.

The local enforcing entity shall automatically disqualify any person convicted of a felony in violation of chapter 3, chapter 55, or chapter 268A of the General Laws from acting or registering as a lobbying agent for a period of 10 years from the date of conviction.

The local enforcing entity shall have authority to promulgate regulations for the administration of this act.

These provisions shall not apply to employees or agents of the federal government or any agency thereof, the Commonwealth, or of a city, town, district or regional school district who are acting in their capacity as such employees or agents. These provisions also shall not apply to any person requested to appear before the City Council or a committee thereof; provided, that such person performs no other act to influence legislation; and provided further, that the name of such person be recorded in the official records of the Council or a committee thereof.

Section 2.

Severability

If any provision of CBC 2-15 shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

Section 3.

Effective Date.

The provisions of this ordinance shall be effective 180 days after its passage.

Filed in Council: June 20, 2018