



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

July 12, 2018

TO THE CITY COUNCIL

Dear Councilors:

I return herewith unsigned and disapproved Docket #0987, An Ordinance Amending Chapter 2 of the City of Boston Code, Ordinances, Regarding Lobbyist Registration and Regulation, passed by your Honorable Body on June 27, 2018. Along with this veto, I am filing a redrafted ordinance that I urge you to approve expeditiously.

As you know, in 2016, I filed a Home Rule Petition with your Honorable Body that sought to increase government transparency and be a strong and effective accountability measure, as it relates to lobbying activities before the City of Boston and the City's quasi-public agencies, including the Boston Redevelopment Authority, d/b/a the Boston Planning and Developing Agency, the Boston Public Health Commission, the Boston Licensing Board, and the Boston Water and Sewer Commission. Following the Council's inaction on my original proposal, I re-filed the Home Rule Petition again in 2017. And then again a third time in 2018.

After an abbreviated legislative process, your Honorable Body bifurcated my Home Rule Petition into a separate Ordinance and a redrafted Home Rule Petition, in the interest of approving regulations that could be implemented locally immediately and reserving the approval of strong, supplemental enforcement tools to the State Legislature's discretion. While I remain confident that my original proposed Home Rule Petition, which bundled the regulations and enforcement tools into a single piece of legislation, was the best way to adopt and implement a regulatory system for municipal lobbying activities, given the length of the Council's deliberations to date and the State Legislative calendar, I feel that in the interest of finally establishing a regulatory scheme for lobbying activities before the City of Boston, a two-pronged approach will help expedite the approval and implementation of the aforementioned regulatory system.

However, adopting an inadequate ordinance undermines the integrity of the mutually agreed upon policy goals. I cannot, in good faith, approve Docket #0987 as written, by your Honorable Body, and I must address certain shortcomings in the Ordinance that you recently approved.

First, my original Home Rule Petition was specifically modeled after the Commonwealth's existing lobbying regulations. Creating a framework that is consistent with the existing State regulations was a thoughtful approach meant to allow for easier adoption, clarity and understanding of rules, and better compliance by those who are subject to the regulations. Consistency with State regulations puts the City in a better position to effectively and efficiently implement these regulations. My original proposal separated relevant parties into three categories: lobbying agents, lobbying entities or firms, and clients.

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Required registration and regular reporting by each of these three groups allows for a more in-depth view of lobbying activities, and allows the City to make connections between the parties in an open and transparent system that is nearly identical to the system in place at the State level. The Commonwealth's lobbying regulations make it easy for the public to determine the relationship between lobbyists, firms and clients and the legislative and policy measures that they work to influence. As drafted, your ordinance (Docket #0987) does not require lobbying entities to register with the City (only individual lobbyists and clients are required to register annually). In the Ordinance I am submitting to the Council, I have maintained the quarterly reporting that you have proposed, but also maintain my original proposal that we require lobbying entities, lobbyists and clients alike to register annually and regularly report activities and expenditures for those activities.

Second, and of equal priority, is the City's ability to monitor compliance, investigate violations and enforce the regulations. My original proposal recognized the importance of placing the reporting system within the authority of the Office of the City Clerk, but included a provision that would allow for the creation of a new commission to assist in the investigation and adjudicatory processes. However, your ordinance removed this option. I remain committed to implementing regulations that are enforceable in Boston, and I remain committed to ensuring that the City Clerk has the necessary resources to administer this policy. In this order, I have defined a commission to assist the City Clerk in compliance, investigation and adjudication. This valuable tool should be reconsidered by your Honorable Body.

Third, I cannot support the Council provision that exempts from oversight the activities of attorneys when appearing on behalf of, or representing, clients at publicly noticed meetings of City boards and commissions. My original proposal protected the attorney-client relationship in matters of litigation, adjudicatory proceedings, and other similar situations. However, I believe that when an individual speaks on behalf of another, whether or not that individual is an attorney, in an effort to influence the decision of a city employee, that individual is engaged in lobbying. My original proposal defined lobbying as "acts to promote, oppose, influence or attempt to influence the decision of a city employee" and outlined specific activities that would not be considered "lobbying." Exempting lawyers creates a loophole in the regulations and a contradiction to the goals of transparent reporting and effective enforcement.

Fourth, you have removed all reference to, and definition of, "other lobbying organizations" which I specifically included in my original proposal, again modeled after the State's definitions, to cover political action committees (PACs). While PAC activity may not be as prevalent at the local level as it is at the State and Federal levels, I feel that it is still important to address the potential issue from the very beginning of our local regulations, so as to avoid the need to re-open the regulations at some point in the future should the activity become more prevalent locally.

Similarly, your ordinance removed the hours-worked and compensation-received thresholds that were included in my original proposal. These thresholds were incorporated to allow for occasional, incidental lobbying by individuals who otherwise engage in professional and civic-oriented activities that do not rise to the threshold or significance of required registration and reporting. Situations currently exist where an individual may ask a colleague, neighbor or friend to advocate on their behalf before certain city agencies and boards for a specific application for a discretionary permit. By establishing the lobbying activity threshold at 25 hours worked or \$2,500 paid in compensation within a six month reporting period, we can continue to allow Boston's citizens to be engaged and involved in local decision making, without requiring them to register as lobbyists and provide detailed reports on a regular basis.

Finally, there are some technical corrections and clarifications that I have included in the Ordinance that I submit to you today to ensure we are clearly drafting our legislative intent relative to (1)

giving the local enforcing entity the ability to issue fines for violations and (2) defining which classes of employees are the subject of the various types of lobbying to be both broad and clear in our regulations.

There is no doubt that we share similar goals and want to adopt a policy that increases government transparency and accountability and allows greater access to information concerning discretionary decision making at all levels of municipal government. I urge your Body to accept my veto of Docket #0987 and expeditiously approve the Ordinance I am filing today, to enact appropriate and effective lobbying regulations in the City of Boston.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Walsh', followed by a long horizontal line extending to the right.

Martin J. Walsh
Mayor of Boston

CITY OF BOSTON

IN CITY COUNCIL

AN ORDINANCE REGULATING LOBBYING ACTIVITIES BEFORE THE CITY OF BOSTON.

Be it ordained by the City Council of Boston, as follows, that the City of Boston Code be amended by adding the following ordinance:

SECTION 1. The City of Boston Code, Ordinances, Chapter II is hereby amended by inserting after Section 2-14, the following new Section 2-15:

2-15 Municipal Lobbying.

2-15.1 Definitions.

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

City employee means an employee of the city of Boston, members of city commissions and boards, and any other individual or group of individuals specifically authorized by law.

Client means any person, corporation, partnership, association, or other entity that contracts with another person, corporation, partnership, association, or other entity to receive lobbying services.

Decision means a conclusion or resolution reached after consideration concerning: (i) the introduction, sponsorship, consideration, action or non-action with respect to any legislation; or (ii) the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any local or special law; or (iii) the adoption or rejection of a policy position; or (iv) whether or not to make any procurement; or (v) the approval, denial, or postponement of a decision concerning the development of real property or zoning, including zoning approval; or (vi) an adjudicatory proceeding.

Lobbying agent means a person who for compensation or reward engages in at least one lobbying communication with a city employee. The term “lobbying agent” shall include a person who engages in lobbying as part of his regular and usual business or professional activities and not simply incidental thereto, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to be engaged in lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for lobbying. The term “lobbying agent” 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 activities or lobbying services means acts to promote, oppose, influence or attempt to influence the decision of a city employee.

Lobbying communication means any direct communication by a lobbying agent to a city employee by telephone, mail, commercial messenger, facsimile transmission, electronic mail, other direct means or in person, for the purpose of promoting, opposing, influencing, or attempting to influence the decision of a city employee. A lobbying communication 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;
- (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 act required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation or other action;
- (e) a communication made to a city employee 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;
- (f) 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;
- (g) any act done in furtherance of obtaining a non-discretionary city approval, such as applying for a permit or license;
- (h) an act made on behalf of an individual with regard to that individual's benefits, employment or other personal matters;
- (i) 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;
- (j) participation in a bid conference;
- (k) an appeal or request for review of a procurement decision;

(l) 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;

(m) 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;

(n) designated union representatives negotiating a collective bargaining agreement with city representatives, and unions communicating with their members;

(o) actions by 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.

Lobbyist Entity means an entity providing lobbying services to third parties, consisting of at least one lobbying agent, including a sole proprietor.

Municipal Lobbying Compliance Commission means the commission established in Section 2-15.4.

Other lobbying organization means any group or organization, however constituted, not employing a lobbying agent, which as part of an organized effort expends in excess of two hundred and fifty dollars during any calendar year to promote, oppose, influence, or attempt to influence the decision of any city employee.

The term other lobbying organization shall not include a group or organization that (i) does not employ a lobbying agent; (ii) does not realize a profit; (iii) does not make a contribution, as defined in section one of chapter 55 of the General Laws, to a political candidate or committee; (iv) does not pay a salary or fee to any member for any activities performed for the benefit of the group or organization; and (v) expends \$2,000 or less during any calendar year to promote, oppose, influence, or attempt to influence a decision of a city employee.

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.

2-15.2 Registration Requirements

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

Each lobbying agent and lobbying entity and client retaining the services of a lobbying agent or lobbying entity shall file an annual registration statement with the City Clerk 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 lobbying agent, client or lobbyist entity after January 1 of the registration year shall register within 10 days after so qualifying. Notice of termination of status as a lobbying agent, client, or lobbyist entity shall also be filed promptly with the City Clerk.

The annual filing fee for a lobbyist entity to register shall be \$300. The annual filing fee for a client shall be \$150. The annual filing fee for a lobbying agent shall be \$150. The local enforcing entity may, in its discretion and upon written request, waive the filing fees for a not-for-profit client, a lobbyist entity 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 lobbying agent that registers to exclusively represent such client.

2-15.3 Reporting Requirements

On or before the twentieth day of January, twentieth day of April, twentieth day of July and twentieth day of October, every lobbying agent shall provide to the City Clerk 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 lobbying agent provided lobbying services; (iii) names of pieces of legislation or the decisions of city employees that the lobbying agent acted to promote, oppose, or influence; (iv) a statement of the lobbying agent's position, if any, on each such piece of legislation or decision; (v) the identification of the client or clients on whose behalf the lobbying agent was acting with respect to each such piece of legislation or decision; (vi) the amount of compensation received for lobbying from each client with respect to such lobbying services; and (vii) the dates of all lobbying communications. The disclosure shall be required regardless of whether the lobbying agent specifically referenced the particular piece of legislation or other decision while acting to promote, oppose, or influence it.

On or before the twentieth day of January, twentieth day of April, twentieth day of July and twentieth day of October, every lobbyist entity and client shall provide to the City Clerk 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 entity or employer during the reporting period in connection with each decision of a city employee that it sought to promote, oppose or influence and the total amount thereof incurred or paid separately by such lobbyist entity 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 lobbying agent'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.

On or before the twentieth day of January, twentieth day of April, twentieth day of July and twentieth day of October, every other lobbying organization shall provide to the City Clerk a statement, under oath, containing the names and principals of such group or organization, the purposes of the organization, the decisions of city employees that it sought to promote, oppose,

or influence, the expenditures it incurred or paid during the reporting period in connection with each decision of a city employee that it sought to promote, oppose or influence, a list of all campaign contributions, as defined in section 1 of chapter 55 of the General Laws, and a listing of the names and addresses of every person, group, or organization from whom \$15 or more was contributed during the year for the objectives stated above.

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

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.

2-15.4 Municipal Lobbying Compliance Commission; Penalties and Enforcement

There shall be a Municipal Lobbying Compliance Commission (“Commission”) comprising five (5) Commissioners to be appointed by the Mayor of Boston, so long as one is an attorney with experience in public ethics law, the City Clerk, or their designee, the City Council President, or such other Councilor designated from time to time by the Council President, and two (2) members selected at-large by the Mayor. The City Council President and the City Clerk, or their designees, shall serve ex-officio. The purpose of the Commission shall be to investigate and make findings, pursuant to the following provisions, relative to compliance with the Municipal Lobbying Ordinance, CBC subsections 2-15.2, 2-15.3, and 2-15.4.

All Commissioners, with the exception of the City Council President and the City Clerk, shall serve coterminous with the Mayor and any vacancies shall be filled by the Mayor of Boston for the unexpired term. The Commissioners shall annually elect a Commission Chairperson. Commissioners shall serve without compensation and shall be classified as Special Municipal Employees for purposes of the State Ethics Law, G.L. c. 268A.

Upon receipt of a sworn complaint signed under the pains and penalties of perjury, the Commission shall initiate a preliminary inquiry into alleged violations of this act. The Commission 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 Commission 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 Commission may initiate an adjudicatory proceeding to determine whether such a violation has occurred. In conducting an adjudicatory proceeding the Commission 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 Commission’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.

The Commission may appoint from within or without its membership a hearing officer to conduct particular hearings. Subpoena power shall be exercised by the Chairperson of the Commission, or his or her designee, upon majority vote of the Commission.

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 Commission shall publish a written report of its findings and conclusions. Upon a finding that there has been a violation, the Commission 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; (iv) requiring the violator to pay a civil penalty of not more than \$300 per day for each violation. The Commission may file a civil action in superior court to enforce this order. The Commission shall order the City Clerk to issue and collect civil penalties on its behalf.

The Commission shall inspect all statements required by section 3 of this act 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 Commission 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 in section 3, the Commission may apply to the supreme judicial court or superior court for an order compelling any person, group or organization to file such statement.

The Commission 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 Commission shall have authority to promulgate regulations for the administration of this act.

2-15.5 Exemption from regulations for certain public employees

This section 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. This section 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. This section shall take effect 180 days after its passage.

I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.

BY Eugene L. O'Flaherty
EUGENE L. O'FLAHERTY
CORPORATION COUNSEL *EO*