

DRAFT PROPOSED REGULATIONS

CITY OF BOSTON

REGULATIONS OF THE
MUNICIPAL LOBBYING COMPLIANCE COMMISSION

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Section 1 Introduction and Purpose

(1) Introduction. These regulations are promulgated by the Municipal Lobbying Compliance Commission pursuant to the authority granted to it by Section 2-15.4 of the Lobbyist Registration and Regulation Ordinance found at section 2-15 of Chapter 2 of the City of Boston Code, Ordinances. These regulations shall complement the rules and requirements of the Lobbyist Registration and Regulation Ordinance and shall have the force of law.

(2) Communications with the Office of City Clerk. All written correspondence, notices, or other submissions provided for in these Regulations except as otherwise provided for in the Ordinance or these Regulations shall be submitted electronically to lobbying@boston.gov or by mail to Office of City Clerk, One City Hall Square, Room 601, Boston, Massachusetts 02201.

Section 2 Definitions

The following terms when used in these Regulations or the Lobbyist Registration and Regulation Ordinance shall have the following definitions unless otherwise defined in these Regulations:

Compensation: Any salary, fee, gift, event tickets, payment, subscription, loan, advance, or any other thing of value paid, owed, given, or promised by the Client to the lobbyist or an immediate family member of the lobbyist for the purpose of lobbying.

Expenditures: Any expense incurred or paid separately by such lobbying entity or client during the reporting period in connection with each decision, legislation, legislative action or administrative action of a city employee that it sought to promote, oppose or influence and the total amount thereof incurred or paid separately by such lobbying entity or client during the reporting period. For avoidance of doubt, the term "expenditures" includes operating expenses and specific expenditures for lodging, meals, gifts, transportation, entertainment, advertising, public relations, printing, mailing, and telephone.

Non-ministerial Action: Any action on which the Mayor, City Council members, or any other City Employee may exercise discretion concerning any outcome, decision, or course of action.

Non-discretionary City Approval: Any license, permit, grant of permission, or other assent by a City Employee that does not involve any exercise of judgment or choice. Acts done in furtherance of obtaining a non-discretionary city approval may include oral

and written communications, applications, review processes, and approval processes that are prescribed by a law, rule, regulation, ordinance, or written policy of guidelines or standards of the City or any of its departments or agencies.

Operating Expenses: Costs incurred for clerical and administrative staff salaries or wages, equipment, and facilities incurred by a client or lobbying entity where portions of said costs are related to a lobbying entity or client engaging in lobbying activity.

Ordinance: The Lobbyist Registration and Regulation Ordinance at Section 2-15 of Chapter 2 of the City of Boston Code, Ordinances.

Policy: A plan or course of action which is applicable to a class of persons, proceedings, or other matters and which is designed to influence or determine the subsequent decisions and actions of the Mayor, the City Council, or City Employees, including, but not limited to, a plan or course of action which would constitute a regulation. The term “Policy” does not include the adjudication or determination of any rights, duties, or obligations of a person or entity made on a case by case basis, including, but not limited to, the issuance or denial of a license, permit, or certification, or a disciplinary action or investigation involving a person or entity.

Section 3 Lobbying or Lobbying Activities

(1) “Lobbying” or “Lobbying Activities” shall mean any attempt to influence by direct communication with the Mayor, City Council, or City Employee the matters described in paragraphs (a) through (e) of Section 3(1) of these Regulations:

- (a) Legislative action of the City Council or any member thereof with respect to the introduction, passage, defeat, or substance of any legislation or resolution of the City Council or Mayor.
- (b) Administrative action of the Mayor to support, oppose, approve, or disapprove any legislation or resolution of the City Council, whether or not such legislation or resolution has been introduced in the City Council.
- (c) Decisions or administrative actions of a City Employee with respect to the procurement of goods, services or construction, including the preparation of contract specifications or language, 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. Responses to the following shall not be considered lobbying or lobbying activity for the purposes of the Ordinance: written and published requests for proposals, requests for information, requests for quotes, invitations for bid, or any similar public invitation by a City Employee. Furthermore, persons or entities contracted by the City for the purpose of consulting or advising the City, a City department, or City Employee(s) concerning the procurement of goods, services or construction, including the preparation of contract specifications or language, or the

solicitation, award, or administration of a contract, grant, or loan involving the disbursement of public monies, shall not be considered a “lobbyist” under the Ordinance.

(d) Decisions or administrative actions of the Mayor, the City Council, or a City Employee with respect to the approval, denial, or postponement of a decision concerning the development of real property or zoning, including zoning approval. The filing of an application for a permit, license, grant of permission, or other assent from the Mayor, City Council, or a City Employee shall not be considered lobbying or a lobbying activity for the purposes of the Ordinance.

(e) Legislative or administrative action of the Mayor, the City Council, or a City Employee concerning the adoption, defeat, or postponement of a standard, rate, rule, or regulation promulgated pursuant to any local or special law or the adoption or rejection of a policy position.

(2) “Lobbying” or “Lobbying Activities” shall not include the actions or activities described in paragraphs (a) through (p) of Section 3(2) of these Regulations:

(a) Requests for scheduling of meetings, status of an action, or similar information so long as the requests do not involve an attempt to influence a City employee concerning a legislative or administrative action or decision.

(b) Acts undertaken in the course of participation in an advisory committee or task force of the City.

(c) Providing information in writing in response to a written request for specific information by a City Employee.

(d) Expressing an opinion, filing a complaint or tip, seeking information or advice, or requesting constituent services regarding a matter that does not involve a possible financial benefit to the individual or a business with which the individual is involved or whose interests the individual is representing. For the purposes of this paragraph (d), “financial benefit” shall mean monetary compensation or savings subject to the limitations provided for in paragraph 3(2)(e) of these Regulations.

(e) Expressing an opinion, filing a complaint or tip, seeking information or advice, or requesting constituent services regarding a matter that involves possible benefits, financial or otherwise, to the individual’s owner-occupied home so long as there is no other financial benefit to the individual, personally, or a business with which the individual is involved or whose interests the individual is representing.

(f) Acts required by subpoena, a civil investigative demand, or otherwise compelled by statute, ordinance, regulation, or judicial rules.

(g) Communications 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.

(h) Acts made in compliance with written board or agency procedures regarding an adjudicatory proceeding or evidentiary proceeding conducted by any department, board, commission, or City Employee. For the purposes of this paragraph (h), adjudicatory and evidentiary proceedings shall mean proceedings in which the legal rights, duties, or privileges of specifically named persons or entities are required by constitutional right or by any provision of a federal, state, or local law to be determined after opportunity for an agency hearing.

(i) Acts by attorneys, consultants, advocates, or other representatives appearing on behalf of or representing a client solely in an appearance at a publicly noticed meeting of a City board or commission, including boards or commissions of agencies made up of City Employees.

(j) Acts on behalf of an individual with regard to that individual's benefits, employment, or other personnel matters.

(k) Participating in a bid conference.

(l) Acts undertaken in the course of an appeal or request for a review of a procurement decision.

(m) Acts by designated union representatives in the course of negotiating a collective bargaining agreement with City representatives.

(n) Communications by unions and union representatives with their union members.

(o) Acts by newspapers and other periodicals, radio stations, and television stations, and owners, employees, or contributors thereof, provided that such acts are limited to the gathering or dissemination of news information, editorials, letters to editors, and other similar comments or paid advertisements.

(p) Acts by persons who participate as witnesses or attorneys or other representatives in publicly noticed rulemaking or ratemaking proceedings of the City.

Section 4 Technical Service Experts Not Lobbyists

(1) Technical Service Experts shall not be considered Lobbyists for the purpose of the Ordinance so long as the Technical Service Experts are engaged in qualified non-lobbying activity.

(2) For the purposes of this Section 4, Technical Service Experts shall be limited to individuals that are educated, trained, and licensed to provide technical services.

(3) For the purposes of Section 4, Technical Services shall be limited to services and analysis directly applying accounting, engineering, scientific, or architectural disciplines.

(4) Qualified non-lobbying activity shall be limited to providing technical information to the Mayor, City Council, or City Employee to assist the understanding of the characteristics or elements of a matter that is or may be subject to discretionary or non-discretionary decisions or administrative actions of the City. Qualified non-lobbying activity does not include recommending or advocating for approval, denial, or postponement of a decision or administrative action.

Section 5 Registration

(1) Not-For-Profit Fee Waiver

(a) The City Clerk may, in its sole discretion and upon written request, waive the filing fees for not-for-profit clients and lobbying entities which register to exclusively represent not-for-profit clients. Lobbyists employed by a not-for-profit client or a lobbying entity which registers to exclusively represent not-for-profit clients may similarly have their filing fees waived at the City Clerk's sole discretion and upon written request.

(b) A written request for a fee waiver for a not-for-profit client and its employees shall include the following information: (i) documentary proof that the entity is a not-for-profit in good standing with the Commonwealth of Massachusetts; (ii) the not-for-profit client's articles of organization or incorporation; (iii) most recent annual financial report or statement; and (iii) an explanation why the assessment of the annual registration fee would cause an undue burden or economic hardship to the not-for-profit client.

(c) A written request for a fee waiver for a lobbying entity and its employees that register to exclusively represent not-for-profit clients shall include the following information: (i) a list of all of the lobbying entity's clients signed by an authorized signatory of the lobbying entity acknowledging that the list is accurate and true; and (ii) an explanation why the assessment of the annual registration fee would cause an undue burden or economic hardship to the lobbying entity.

(2) Other Fee Waiver Requests

(a) A written request for a fee waiver for a client that employs fewer than ten persons and has been in business for fewer than five years shall include the following information: (i) a certification that the client employs fewer than 10 persons; (ii) the client's articles of organization or other filing with the Secretary of the Commonwealth of Massachusetts that demonstrates the client has been in business for fewer than five years; and (iii) an explanation why the assessment of the annual registration fee would cause an undue burden or economic hardship to the client.

(b) A written request for a fee waiver for a lobbyist that registers to exclusively represent a client that employs fewer than ten persons and has been in business for fewer than five years shall include the following information: (i) a list of all of the lobbyist's clients signed by the lobbyist acknowledging that the list is accurate and true; (ii)

documentary evidence that each of the lobbyist's clients employs fewer than ten persons and has been in business for fewer than five years; and (iii) an explanation why the assessment of the annual registration fee would cause an undue burden or economic hardship to the lobbyist.

(3) Annual registration statements shall be considered filed upon the City Clerk's receipt of payment unless said annual filing fee has been waived by the City Clerk.

Section 6 Reporting

(1) Reporting Expenditures. Clients or lobbying entities reporting expenditures must itemize all expenditures that exceed \$35.00 on any day during a Covered Reporting Period as that term is described by these Regulations. For expenditures that do not exceed \$35.00 on any day during a Covered Reporting Period, said expenditures must be reported but need not be itemized. The reports required under section 2-15.3 of the Ordinance must be filed for each Covered Reporting Period even if a client or lobbying entity will report zero dollars in expenditures.

(2) Covered Reporting Period. For each of the reports required to be filed by every lobbyist, lobbying entity, and client under the Ordinance, the report need only include the matters described in section 2-15.3 of the Ordinance for the immediately preceding three calendar months. For avoidance of doubt, reports due on January 20th of each calendar year shall cover the immediately preceding period between October 1st or the date of registration, whichever occurs later, and December 31st; reports due on April 20th of each calendar year shall cover the immediately preceding period between January 1st or the date of registration, whichever occurs later, and March 31st; reports due on July 20th of each calendar year shall cover the immediately preceding period between April 1st or the date of registration, whichever occurs later, and June 30th; and reports due on October 20th of each calendar year shall cover the immediately preceding period between July 1st or the date of registration, whichever occurs later, and September 30th; notwithstanding whether any such reporting deadlines fall on a Saturday, Sunday, or local, state, or federal legal holiday.

(3) Electronic Filing. All reports required under section 2-15.3 of the Ordinance shall be electronically filed in such portal or at such website as is advertised and maintained by the Office of the City Clerk.

Section 7 Advisory Opinions

Upon written request of any person or entity, the Commission may issue a formal advisory opinion. An advisory opinion issued by the Commission is binding on the Commission in any subsequent proceedings.

Section 8 Investigations

(1) The Commission is authorized to initiate formal investigations into a lobbyist's, a lobbying entity's, or a client's compliance with the Ordinance's annual registration and quarterly reporting requirements pursuant to section 2-15.4 of the Ordinance.

(2) Initiating an Investigation

(a) Any individual member of the public that suspects that a person, entity, or organization is engaged in unregistered lobbying activity may submit a complaint in writing to the Office of the City Clerk by mail, hand delivery, or e-mail to lobbying@boston.gov. The complaint shall contain (i) the date(s) or period of time the unregistered lobbying activity occurred; (ii) a concise statement of the alleged unregistered lobbying activity; (iii) identification of the complainant, including full name and contact information; and (iv) identification of the person, entity, or organization alleged to have engaged in unregistered lobbying activity; or,

(b) The City Clerk may initiate an investigation of unregistered lobbying activity or any other violation of the Ordinance upon request to and authorization from the Commission.

(3) Investigatory Procedure

(a) Investigations initiated by the public or the City Clerk will commence within thirty (30) days of the authorization of a formal investigation by the Commission. Upon the authorization of an investigation, the City Clerk shall conduct the investigation. The City Clerk may make written or oral inquiries to the subjects of the investigation and conduct witness interviews.

(b) The Commission may issue subpoenas requiring the attendance of persons or the production of documents and things during the investigation at the request of the City Clerk.

(c) An individual or entity that is the subject of the investigation may be accompanied by an attorney or other representative and by a translator if necessary during any interview or conference with the Commission or the City Clerk during the course of an investigation.

(d) The failure of an individual or entity to appear for an interview or conference with the Commission or the City Clerk pursuant to a subpoena shall be considered conclusive evidence that the subject of the investigation is not in compliance with the Ordinance and may be subject to any penalty described in section 2-15.4 of the Ordinance and any other penalty available in law.

Section 9 Determinations

(1) Determination of No Probable Cause. If the City Clerk determines, following an investigation pursuant to Section 8 of these Regulations, that there is no probable cause that the subject of the investigation is or has engaged in unregistered lobbying activity or some other violation of the Ordinance, then the City Clerk will close the investigation and the subject(s) of the investigation will be notified in writing that the investigation has been closed.

(2) Determination of Probable Cause. If the City Clerk determines, following an investigation pursuant to Section 8 of these Regulations, that there is probable cause that the subject of the investigation is or has engaged in unregistered lobbying activity, then the City Clerk shall refer the matter to the Commission for hearing.

Section 10 Hearings

(1) Presiding Commissioner. Following a referral from the City Clerk to the Commission of a determination of probable cause, the Chair shall designate a Commissioner, other than the City Clerk, to preside over and conduct a hearing. The Presiding Commissioner shall provide no less than thirty (30) days advanced written notice of the hearing to the respondent.

(2) Continuance. The Presiding Commissioner may grant such reasonable continuances of the hearing upon the respondent's or the City Clerk's written request, and, further provided, that such written request shall demonstrate changed circumstances or good cause for a continuance.

(3) Transcript and Record. Testimony offered at a hearing shall be recorded by electronic recording equipment. The respondent or the City Clerk may arrange to have a stenographer present at any hearing; provided, however, that if an unofficial transcript is prepared by a stenographer employed by the respondent or the City Clerk, such transcript shall be furnished to the Presiding Commissioner within five (5) days of the receipt of said transcript from the stenographer in electronic, machine-readable format. Any objections to the accuracy of a transcript are waived if not made within twenty (20) days after the parties receive notice from the Presiding Commissioner of the availability of the transcript. In addition to any electronic recording or transcript of the hearing, the record shall consist of the exhibits in evidence and the determination of probable cause.

(4) Rules of Evidence. The Presiding Commissioner shall not be bound by the rules of evidence observed or followed by the courts of the Commonwealth of Massachusetts except for the rules of privilege, including, but not limited to, the attorney-client privilege. Evidence that is unrelated or irrelevant to the proceedings shall not be admissible and shall not be considered by the Presiding Commissioner.

(5) Oral Argument. Following the submission of all evidence and testimony, the Presiding Commissioner may, in its discretion, allow a reasonable time for oral argument.

Section 11 Findings and Order

The Presiding Commissioner shall issue a decision in writing regarding whether a respondent has violated the Ordinance or these Regulations, and, if so, said decision shall identify the penalties to be imposed by the Presiding Commissioner.

Section 12 Review by the Commission

(1) Request for Review of Decision of Presiding Commissioner. Any respondent aggrieved by a decision of the Presiding Commissioner may within thirty (30) days file a petition with the

Commission to review the decision of the Presiding Commissioner. Such petition shall set forth (i) all facts alleged to have been erroneously decided; (ii) all legal determinations alleged to have been erroneously decided; (iii) all legal authority upon which the respondent relies; and (iv) the relief the petitioner seeks.

(2) Stay of Decision. The filing of a petition for review by the Commission shall not automatically stay the decision and order of the Presiding Commissioner unless specifically ordered by the Commission following a petitioner's filing of a motion for stay of the Presiding Commissioner's decision.

(3) Commissioners Involved in Review. The Presiding Commissioner shall not participate in the deliberations of the full Commission except when the Presiding Commissioner's involvement is necessary in order to create and preserve quorum of the Commission.

(4) Administrative Record. The Commission's review of the Decision shall be confined to the administrative record of the Presiding Commissioner, which shall include all documentary evidence, written submissions, and transcripts or recordings of testimony available to the Presiding Commissioner.

(5) Additional Evidence. If application is made to the Commission for leave to present additional evidence, and it is shown to the satisfaction of the Commission that the additional evidence is material to the issues in the matter and that there was good reason for failure to present it in the proceeding before the Presiding Commissioner, the Commission may order that the additional evidence be taken before the Presiding Commissioner and the Presiding Commissioner determine whether such additional evidence changes the Presiding Commissioner's decision and issue a new decision after consideration of the additional evidence that affirms, modifies, or reserves the previous decision.

(6) Commission Decision. After review of the decision of the Presiding Commissioner, the Commission may (i) affirm the decision; (ii) remand the matter for further proceedings before the Presiding Commissioner; or (iii) set aside or modify the decision if the Commission determines that the decision is (a) in violation of constitutional provisions; (b) in excess of the authority or jurisdiction of the Commission; (c) based on an error of law; (d) made on unlawful procedure; (e) unsupported by substantial evidence; or (f) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

Section 13 Enforcement of Monetary Penalties

The Commission may enforce any monetary penalty imposed by a decision of a Presiding Commissioner or the Commission pursuant to Mass. Gen. Laws ch. 40, § 21D.

Section 14 Recusal

Any member of the Commission shall be recused from any proceeding involving a lobbyist, lobbying entity, or client to the extent the Commissioner's involvement may violate any provision of Mass. Gen. Laws ch. 268A or if the Commissioner shall have been the subject of

lobbying activity by the lobbyist, lobbying entity, or client within the last 12 calendar months by virtue of the Commissioner's involvement on another board or commission of the City or employment by the City.