



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR  
MARTIN J. WALSH  
January 9, 2017

## TO THE CITY COUNCIL

Dear Councilors:

I hereby transmit for your approval a Home Rule Petition to the General Court entitled “Petition for a Special Law re: An Act to Regulate Lobbying Activities before the City of Boston.” This Home Rule Petition is being re-filed in identical form to the version previously submitted in order to align with the City Council’s new legislative docket for 2017. In the interest of increasing government transparency and accountability, this Home Rule Petition will allow greater access and information concerning efforts by third parties seeking to influence discretionary decision making at all levels of municipal government.

Modeled after the existing lobbying regulations at the state-level, this petition covers both executive and legislative lobbying. In addition, this it goes beyond the State’s framework by covering communications not only with select officials, but with all city employees at all levels of municipal government. Such communications will be subject to registration and reporting requirements set forth in this petition, if made for the purposes of influencing City decisions. This petition also fortifies the State’s framework by including clearer regulation and explicitly including in its definition of lobbying activities, efforts to influence procurement.

Recognizing the need for balancing open and transparent government with encouraging innovative entrepreneurs to continue bringing new ideas and new technologies to city government, this petition allows for the ability to waive certain registration fees, while maintaining registration and reporting requirements, for certain entities and small operations, such as technology-based startup companies and not-for-profit organizations. Neighborhood groups and residents, which have historically played a central role in improving life in the City and its neighborhoods, would not have to register as lobbying entities, unless there is a clear indication through time and money spent, that such a group operates as a lobbying organization.

I urge your Honorable Body to act favorably on the proposed petition without delay.

Sincerely,

Martin J. Walsh  
Mayor of Boston

BOSTON CITY HALL • ONE CITY HALL SQUARE • BOSTON • MASSACHUSETTS • 02201  
617-635-4500 • [www.boston.gov](http://www.boston.gov)

# CITY OF BOSTON

## IN CITY COUNCIL

**ORDERED:** That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this Order be, and hereby is, approved under Clause One (1) of Section Eight (8) of Article Two (2), as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

### **PETITION FOR A SPECIAL LAW RE: AN ACT TO REGULATE LOBBYING ACTIVITIES BEFORE THE CITY OF BOSTON**

#### **SECTION 1. Definitions.**

As used in this act, 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 an employee of the Boston Redevelopment Authority, the Boston Public Health Commission, Boston Licensing Board, or Boston Water and Sewer Commission.

*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.

*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.

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

*Local enforcing entity* means the city clerk, unless the city establishes a commission as permitted under section 6, in which case it shall mean said commission.

*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.

**SECTION 2.** The local enforcing entity 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 during normal business hours.

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 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 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 local enforcing entity.

The annual filing fee for a lobbyist entity to register shall be \$1,000. The annual filing fee for a client shall be \$100. The annual filing fee for a lobbying agent shall be \$100. 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.

**SECTION 3.** On or before the fifteenth day of July, complete from January first through June thirtieth, and every fifteenth day of January, complete from July first through December thirty-first of the preceding year, every lobbying agent 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 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 fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year, every lobbyist entity and employer of a lobbying agent 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 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 fifteenth day of July, complete from January first through June thirtieth, and every fifteenth day of January, complete from July first through December thirty-first of the preceding year, every other lobbying organization shall provide to the local enforcing entity 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.

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

**SECTION 4.** 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; (iv) requiring the violator to pay a civil penalty of not more than \$10,000 for each violation. 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 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 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 in section 3, 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 the provision in section 3, 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 \$10,000 for each violation.

Any person who violates the confidentiality of an inquiry under this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both.

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.

**SECTION 5.** Upon investigation and when deemed appropriate the attorney general shall cause criminal prosecutions to be instituted for violations of sections 2 or 3 of this act.

Violation of sections 2 or 3 of this act shall be punished by a fine of not less than \$100, nor more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both. Any person acting as a lobbying agent who has been found guilty of violating any provisions of this act shall, in addition to such fine, be disqualified from acting as a lobbying agent for 3 years after the date of conviction of such offense.

**SECTION 6.** The city may by vote of the city council with the approval of the mayor create, modify, or abolish a city commission which shall be the local enforcing entity authorized to enforce this act. The commission shall consist of 3 commissioners appointed by the mayor and confirmed by the city council for a term of 3 years. The commission may appoint such other personnel as it may from time to time deem expedient, with the expenses for such personnel and operations of such commission to be met by the City of Boston subject to its ordinary appropriations process.

**SECTION 7.** This act 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 act 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 8.** This act 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 *EL*  
CORPORATION COUNSEL