**RESOLUTION NO.**

**WHEREAS,** Austinites have a fundamental constitutional right to petition and to seek changes to their city government; and

**WHEREAS**, Austinites have a right to and need for disclosure of the activities of all persons paid appreciably to seek to influence the decisions of their government; and

**WHEREAS**, comprehensive, timely and accessible disclosure of persons compensated appreciably to influence government promotes government transparency and public faith in the City of Austin's government; and

**WHEREAS**, the City of Austin's current lobbying ordinances, Chapter 4-8, Regulation of Lobbyists, are outdated, ambiguous, and contain numerous gaps in transparency; and

**WHEREAS**, a number of individuals who appear to be paid appreciably to influence through direct communications Austin city employees on discretionary municipal matters are currently not registering and reporting as lobbyists; and

**WHEREAS**, individuals should be required to register and report as lobbyists in Austin who satisfy all of these criteria: 1) they are compensated; 2) over a specified minimum threshold amount; 3) to influence; 4) through direct communications: 5) a city employee; 6) on a discretionary; 7) municipal matter; and

**WHEREAS**, Austin's lobbyist laws, unlike Texas' state laws, do not require lobbyist to disclose essential information, such as the amounts they are

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paid, the specific matters they are lobbying on, details of their expenditures, or the names and pay of the persons assisting them; and

**WHEREAS**, the City's enforcement of Austin's lobbyist laws has not been effective; and

**WHEREAS**, the State of Texas' more modern and effective lobbying laws (Tex. Gov. Code, Chapter 305) and regulations (1 Tex. Admin. Code, Chapter 34) provide guidance for improving Austin's laws, as referenced below; and

**WHEREAS,** consideration by the Audit and Finance Committee of revisions described in general terms below to Chapter 4-8 will provide an opportunity for the City of Austin to make substantial improvements to its lobbyist disclosure laws:

1) Eliminate incidental employment as a lobbyist exception to the definition of "compensation" and "expenditures" for lobbying in Austin City Code, Section 4-8- 2(2), (3).

2) Encompass all city employees and agents within the scope of city personnel who may be subject to being lobbied on a discretionary matter, by redefining "city official" in Austin City Code, Section 4-8-2(1), to include all city employees, except solely clerical and administrative personnel. Similarly, revise the Austin lobby law's applicability in Austin City Code, Section 4-8-3 to include all city employees. See Tex. Gov. Code Section 305.002(4), (7).

3) Amend "municipal question" in Austin City Code, Section 4-8-2 (9) to explicitly require the city officials' decision or action to be discretionary. Include specifically in the definition of municipal question both municipal legislation and administrative action of a discretionary nature that are subject

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to any action or decision by a city official and that is pending or may in the future be subject to a discretionary action or decision. See Tex. Gov. Code, Section 305.002 (1), (6). A matter is considered discretionary per se if it can be appealed to a city commission, city board, or to the council.. However, technical building life and safety decisions, whether appealable or not, in Chapter 25-12 (Building Technical Code) are considered non-discretionary.

Subject to the above, discretionary excludes the non-discretionary day-to-day, routine application, administration, and execution of city programs and policies such as routine, non-discretionary permitting, platting, and design approval matters in connection with a specific project or development. See City of Houston Code, Section 18-71 (administrative action, municipal legislation); City of Dallas Code, Section 12A-15.2(12).

Define "municipal legislation" as (1) An ordinance, resolution, motion, amendment, nomination, or any other matter pending before the city council, council committee, city-created entity, or city commission; or (2) Any matter that is or may be the subject of action by the city council, council committee, city- created entity, or city commission, including drafting, placing on the agenda, consideration, passage, defeat, approval, timing or tactics, or countersignature of the matter. See City of Houston Code, Section 18-71 (municipal legislation) Define "administrative action" as rulemaking, licensing, or any other matter that is or may be the subject of decision or action by a city official, including the proposal, consideration, or approval of the matter. See City of Houston Code, Section 18-71 (administrative action).

4) Raise the lobbyist registration compensation thresholds in Austin City Code,

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Section 4-8-4 to $2000 a quarter from $200 a quarter for all lobbying activities and the expenditure threshold to $500 from $200.

Add an additional lobbyist registration time threshold of 26 hours of lobbying time a quarter. Add a subsection in Section 4-8-4 specifying that a person who meets a threshold in this section is required to register if the person, as part of his regular employment, communicates directly with a city official to influence a municipal question, whether or not the person receives any compensation or reimbursement for the communication in addition to their salary for that employment. See Tex. Gov. Code 305.003(b).

Require the registrant to make a reasonable allocation of compensation, between compensation for lobby activity and compensation for other activities, for all reported persons. See 1 Tex. Admin. Code 34.43(c). Require the Ethics Review Commission to recommend to the Council for consideration every four years a modification in the registration compensation and expenditure thresholds to maintain a substantially equivalent threshold after 4 years of cost of living and other relevant changes.

5) Increase the current lobbyist registration fee of $300 to $350 to reflect the cost of living, in Austin City Code, Section 4-8-6(C). Tie the fee to the cost-of-living index and having it revised automatically every year in increments of $10 at the time of the City budget's adoption. Lower the registration fee for regular employees of 501(c)(3) nonprofit organizations, that are not retained or compensated by others to lobby, to $50 a year.

6) Require lobbyist reports, pursuant to Austin City Code, Section 4-8-7(A), to include lobbyist compensation ranges for each client. See Tex. Gov. Code,

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Section 305.005(g). In addition, the Code in Section 4-8-6 (A) should include the following information on lobbyist preparers or aides: their name, compensation, client, and specific subject matter. Tex. Gov. Code, Section 305.005(f)(5).

7) Require all lobbyist registration forms and reports to be filed in an electronic format that allows for a downloadable, searchable database, which will be placed within 2 business days on the City website with common queries for publicly accessibility, such as total compensation for a particular lobbyist, all clients of a particular lobbyist, and all lobbyists and their compensation for a particular municipal matter or client.

8) Require in Austin City Code, Section 4-8-6(A)(3) more detailed reporting of the specific municipal matters lobbied on so that the lobbyist reports contain a description by each client of every real property (an address or legal description) and/or a description of each subject matter being lobbied. Require the City Clerk to develop checkoff boxes for a comprehensive list of specific subject matter descriptions. See Tex. Gov. Code, Section 305.005(f)(4).

9) Require lobbyists to update their city registration forms within 5 business days when a new client or new municipal matter is added. See Tex. Gov. Code, Section 305.0065. Change Austin City Code, Sections 4-8-2(2) and 4-8-6 to have lobbyist registration or amended registration triggered simply by the first day of direct communication with a city official, rather than under current law, which is triggered by the latter of their first day of direct communication or entering into a lobby contract.

10) Include lobbying preparation by lobbyists and their assistants for directly

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communicating to the definition of "compensation" in Austin City Code, Section 4-8-2(2) for lobbying. See 1 Texas Administrative Code Sections 34.3, 34.63.

11) Redefine lobbying in Austin City Code, Section 4-8-2 (6) to include "communicating directly" or communicating through intermediaries with city officials. See Tex. Gov. Code Section 305.002(2).

12) Eliminate the overbroad dispute exception to lobbying in Section 4-8-5(7) and add additional exceptions, such as for lobbyist assistants that do not directly communicate with city officials and are reported by the lobbyist (See 1 T.A.C 34.63), and for a person whose only lobbying communication is public testimony at a public hearing regardless of whether they are compensated. See Tex. Gov. Code, Section 305.004 (2). Add an exception for persons who are appointed to city boards and commissions and their sole activities relate directly to that public service. Tex. Gov. Code, Section 305.0041(a)(4).

13) Require all registered lobbyists, by amending Austin City Code Section 4-8-9, at the beginning of all their direct communications with city employees to state their name and the client(s) for whom they are lobbying.

14) Amend the Austin lobby law to explicitly subject all lobby filings to state perjury and false statement penal provisions, by amending Austin City Code, Sections 4-8-6 (A) and 4-8-7 (A). Clarify City Code Section 4-8-11 to provide that each and every failure to properly register, file or disclose information under Chapter 4-8 is a separate violation and is subject to a separate Class C Misdemeanor.

15) Mandate in Section 4-9-11 that lobbyists that violate the City lobby law after

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two prior adjudicated violation occurrences shall be banned from lobbying the City of Austin for 60 to 365 days for each subsequent adjudicated occurrence.

16) Require the City Clerk, pursuant to Austin City Code, Section 4-8-7 (E), to facially review all lobbyist registration and activity report forms for timeliness and completeness within 30 days. Require all findings of possible violations to be forwarded by the City Clerk to the Ethics Review Commission within 10 business days.

17) Change Austin City Code, Section 2-7, Article 3, to require that complaints for alleged violations of Austin City Code, Article 4-8, that the Ethics Review Commission shall hold only a preliminary hearing, and not a final hearing, and that the Commission be required to refer all complaints for which there is a reasonable basis to believe that there may be a possible violation for municipal prosecution. Require an Ethics Review Commissioner to fully recuse themselves from any decision or participation in any lobbyist or ethics complaint before the Commission involving an alleged violation by the Council member that nominated them.

18) Require, in Section 4-8-7, the City Auditor to annually conduct a complete audit at random of a sufficiently large sample of lobby registrants to be representative, but not less than 5% of registrants, to ensure registrants' filings are in compliance. All possible violations shall be referred to the Ethics Review Commission within 14 days.

19) Delineate the expenditure categories more specifically. to include these categories: (a) transportation and lodging; (b) food and beverages;(c) entertainment; (d) gifts, other than awards and mementos; (e) awards and

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mementos; (f) expenditures made for the attendance of city council members at political fund-raisers or charity events; (g) expenditures for broadcast or print advertisements, direct mailings, and other mass media communications if: (1) the communications are made to a person other than a member, employee, or stockholder of an entity that reimburses, retains, or employs the registrant; and (2) the communications support or oppose, or encourage others to support or oppose, municipal questions; and (h) each person who is paid to assist or prepare the lobbyist in directly communicating, including employees, agents, contractors, experts, strategists, pollsters, media consultants, and others that assist or help prepare the registrant in lobbying, excluding purely clerical or administrative assistance. See Tex. Gov. Code, Section 305.006(b). Require itemization for specific items over $50.

20) Add narrow and limited exclusions to the definition of compensation in Section 4-8-2(2), similar to those provided by Texas State Law, including for activities directly related to service on appointed city boards and commissions.

Tex. Gov. Code Section 305.0041(a)(4); 1 Tex. Adm. Code 34.5. These exceptions do not exist in current law, except the exceptions for mere inquiries and individual financial gain. The exceptions to compensation for lobbying are:

a) requesting or inquiring merely for informational purposes only, without seeking directly or indirectly to influence or persuade, about a municipal law, ordinance, regulation, rule, policy, practice, or procedure administered by the city;

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b) preparing or submitting an application or other required written document, without seeking to influence or persuade, that provides merely information required by law, ordinance, rule, regulation, order, or subpoena;

c) communicating, without seeking to influence or persuade, for the purpose merely of requesting information for achieving compliance with an audit, inspection, city investigation, or existing laws, rules, and policies;

d) providing, without seeking to influence or persuade, information consisting of facts or data to a city official that the city official specifically requested in writing regarding a municipal matter, when the request was not solicited by or on behalf of the person providing the information;

e) communicating to a city attorney or a municipal judge concerning litigation or adjudicative proceedings to which the city is a party, or concerning adjudicative proceedings of the city;

f) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative or judicial nature, including before the City Municipal Courts, the Ethics Review Commission, and the Municipal Service Commission;

g) providing only clerical assistance to another in connection with the other person's lobbying or preparation for lobbying;

h) realizing financial gain as a result of a determination of a municipal question as to real property that the person in question owns, unless that

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gain is in the form of a contingent fee;

i) serving as a member of a city board, commission, or task force when their communications relate solely and directly to their public service on the city entity; or

j) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures.

21) Add additional minor clarifying language as appropriate to modernize Chapter 4-8.

22) Add a new section, outlining a good-faith process to capture information from individuals who appears before city officials to directly communicate with them on a municipal matter to sign in in writing with the city department or agency in question, with their name and address, person or entity whom they represent, the subject matter, and the main city officials they are meeting with. See Texas Government Code, Section 2004.

23) Amend 4-8-4, 4-8-6 and 4-8-7, providing as an alternative to each individual employee lobbyist of a business entity being required to register and report separately, such that the employer entity may register and report on behalf of all its employee lobbyists. Each employee lobbyist would have to swear under oath to their information submitted by the employer, and the same required information would have to be provided. The employee lobbyist would not have to file separate registration, reports, or fees. This provision would not apply to third-party lobbyists.

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24) Amend 4-8-11 to authorize late filing administrative penalties to be imposed by the city clerk. Also, provide that filings are not considered late if registrants amend or correct their lobbyist reports within 14 business days of being made aware of errors. This grace period does not apply after a complaint has been filed. See Texas Gov. Code Section 305.033.

25) Clarify for the reimbursement threshold in 4-8-4 that reimbursement does not include the person's own travel, food, lodging, or membership dues to communicate directly with a city official to influence a municipal matter. See 1 Texas Admin. Code Section 34.43.

26) Seek to establish a civil enforcement administrative process, similar to the process for short term rental violations, for violations of Chapter 4-8 and make the fines civil rather than criminal.

27) The City Attorney shall submit a written report subject to the Public Information Act and testify in an Open Meeting at least quarterly to the Audit and Finance Committee on their enforcement activities, which shall include: number of referrals by City Clerk, City Auditor, and other City Departments, number of citizen complaints, and number of City Attorney self-generated complaints; number of investigations opened, the number of cases settled, the number of subpoenas for documents issued; the number of witnesses subpoenaed; the number of cases tried, the number of cases in which a fine was imposed; the number of cases a fine was not imposed or the person was adjudged not liable; the amount of fines assessed and collected; and the number of City Attorney staff hours devoted for the period for enforcement of the lobby laws;

**NOW, THEREFORE,**

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**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

The City Manager is directed to provide a draft ordinance in accordance with this resolution within 60 days and provide comment and recommendation for review and consideration by the City Council.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to analyze and report back to the City Council within 90 days alternative approaches to ensure the diligent and independent City prosecution of alleged lobbyist law violations.

**ADOPTED:**_____, 2015 **ATTEST**: _____

Jannette S. Goodall
City Clerk

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