ETHICS REVIEW COMMISSION RECOMMENDATION

Recommendation Number: 20151110-03a: Recommendations on Lobbying Reform

WHEREAS Austin City Code § 2-7-26 states that the City of Austin's Ethics Review Commission (the "Commission") has jurisdiction over Chapter 4-8 (Regulation of Lobbyists); and

WHEREAS on August 26, 2015, City Council's Audit and Finance Committee considered and approved a draft resolution sponsored by Councilmember Leslie Pool regarding lobbying reform (the "Resolution"); and

WHEREAS the Resolution, as approved, requested that the Commission assist with review of the Resolution; and

WHEREAS the Commission's Working Group tasked with reviewing and proposing changes to Chapter 4-8 of City Code (Regulation of Lobbyists) (the "Working Group") has considered the Resolution and has taken testimony at several meetings of both of the Commission and the Working Group; and

WHEREAS on September 16, 2015, the Working Group hosted a public comment session regarding the Resolution where approximately thirty members of the public testified regarding the Resolution; and

WHEREAS the design, development, and building community (the "Development Community") has been vocal about their concerns regarding the Resolution in its current form; and

WHEREAS the Commission believes that further negotiation between the proponents of the Resolution and the Development Community is needed and that this negotiation will likely extend beyond November 10, 2015;

NOW, THEREFORE, BE IT RESOLVED BY THE ETHICS REVIEW COMMISSION:

The Commission supports the Resolution in general. In particular, the Commission believes that the following provisions should be included in any lobbying ordinance adopted by the City Council and further believes that there is little to no dispute regarding the inclusion of these provisions:

1) The elimination of the incidental employment exception and its replacement with a specific monetary and/or time threshold.

2) The clarification of the definition of municipal question to include explicitly legislative and administrative action.

3) The increase of the lobbyist registration compensation threshold to $2000 a quarter, the expenditure threshold, to $500, and the addition of a 26 hour per quarter threshold. The Commission would then periodically recommend adjustments to these thresholds. The compensation and time threshold encompass the total compensation and time spent by the individual for the quarter that is reasonably allocated to lobbying.

4) Adjust periodically the lobbyist registration fee and make lower the registration fee for regular employees of 501(c)(3) nonprofit organizations.

5) Require lobbyist reports to include lobbyist compensation ranges for each client and basic information about lobbyist preparers.

6) Require electronic filing and a searchable database for all lobbyist reports.

7) Require more detailed reporting of the specific municipal matters lobbied on, such as a listing of the real property or ordinance involved. Require the City Clerk to develop checkoff boxes for a comprehensive list of specific subject matter descriptions.

8) Require lobbyists to update their city registration forms within a relatively short period after a new client or new municipal matter is added and there is direct communication to a city official, which should be the triggering event for the update requirement.

9) Include the time used and compensation paid to a lobbyist for lobbying preparation in the thresholds for determining the registration requirement.

10) Redefine lobbying in Austin City Code to include "communicating directly".

11) Tighten the lobbying exception in Section 4-8-5(7) and add additional exceptions, such as for lobbyist assistants that do not directly communicate with city officials and for a person whose only lobbying communication is public testimony at a public hearing regardless of whether they are compensated. Add an exception for persons who are appointed to City Boards and Commissions when their sole activities relate directly to that public service.

12) Explicitly subject all lobby filings to state perjury and false statement penal provisions; clarify the law to provide that each and every failure to properly register, file or disclose information under Chapter 4-8 is a separate violation; and require the City Attorney to periodically report to Audit and Finance Commission and Ethics Review Commission on their enforcement of the lobby law.

13) Mandate that lobbyists who repeatedly violate the City lobby law be barred for a certain period from lobbying for compensation.

14) Require City personnel to facially review all lobbyist registration and activity report forms within a specified period. Require all findings of possible violations to be forwarded to the Ethics Review Commission within a specified period.

15) Consider improving the Ethics Review Commission's process for considering lobbyist violations and referrals for enforcement.

16) Require the City Auditor to annually conduct complete audits at random of a sufficiently large sample of lobby registrants to be representative. All possible violations shall be referred to the Ethics Review Commission within a certain time period.

17) Delineate the expenditure categories more specifically to include the following categories: (a) transportation and lodging; (b) food and beverages; (c) entertainment; (d) gifts, other than awards and mementos; (e) awards and 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. Require itemization for specific items over a lower threshold than the current $500 threshold.

18) Add to the definition of compensation exclusions similar to those provided by Texas State Law and for activities directly related to service on appointed city boards and commissions.

19) Clarify for the reimbursement threshold 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.

The Commission recommends that the following areas of concern be considered and addressed by the Resolution's sponsor and City Council:

1) The Commission recommends further consideration and clarification regarding whether there is some level of city staff that is *per se* not empowered to make a "discretionary decision" as that term is defined in the Resolution. Such clarification will provide guidance regarding what communications with city staff might invoke the provisions of the City's lobbying laws;

2) The Commission recommends further consideration and clarification regarding the potential effect of the Resolution, when combined with the City's ban on registered lobbyists serving on City Boards and Commissions, on the makeup of the City's Boards and Commissions; in particular, if the Resolution will substantially impact the membership of the city's Boards and Commissions by disqualifying a substantial number of commissioners, the Commission requests consideration of some modification of the City's ban including a moratorium on such ban, making such ban waivable on a case-by-case basis, or a quota system that allows a certain limited number of registered lobbyists to serve on City Boards and Commissions.

3) The Commission recommends amending the Resolution by adding a requirement that anyone meeting with and seeking to influence a city official on any matter disclose their name, the reason for their meeting with the official, and whether they are representing any client or organization in writing and that this information be publically posted. The Commission recommends that this information be required regardless of whether the individual is being compensated for the meeting.

4) The Commission recommends amending the Resolution so that for any entity that may employ more than one individual required to register as a lobbyist under the Resolution, the entity be allowed to submit a single registration application listing all of its lobbyists and single reports reporting its qualifying employees' lobbying activity. The Commission recommends any additional efforts to streamline the registration and reporting requirements to reduce the financial and time burden on registrants.

5) The Commission recommends consideration of the feasibility and legality of establishing 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.

6) The Commission recommends consideration of the impact that the Resolution in combination with the limits of campaign contributions might have on the ability of registered lobbyists to contribute to campaigns and whether these limits should be raised.

Date of Approval: November 10, 2015

Record of the vote: Unanimous on an 8-0 vote, with Commission Members Ohueri, Speight, and Stratmann absent

Attest: _____

Cynthia Tom, Commission Executive Liaison