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September 6, 2019

Sammy Nabulsi, Chair, Municipal Lobbying Compliance Commission
lobbying@boston.gov

Re: City Ordinance Chapter 2-15.1, *An Ordinance Amending Chapter 2 of the City of Boston Code, Ordinances, Regarding Lobbyist Registration and Regulation*

Dear Chairman Nabulsi,

On behalf of the American Council of Engineering Companies of Massachusetts (ACEC/MA), I am submitting these comments related to the Boston Lobbying Ordinance. ACEC/MA is a business association of 120 member firms employing over 7000 people performing engineering, land surveying, planning and other design professional services. Our firms design the public and private infrastructure that contributes to the economic vitality and quality of life here in the Commonwealth.

We are very concerned that the Boston Lobbying Ordinance, as currently written, is creating unintended consequences and uncertainty that would result in the need for thousands of design professionals to register as lobbyists as the result of providing technical professional work. I am certain that this was not the intent of the ordinance.

Design Professionals include architects, engineers, landscape architects, land surveyors, scientists, geologists, licensed site professionals and planners (“Design Professionals”) who may be required to register as lobbyists for participating in meetings in which their role is to provide factual information and technical analysis. The Ordinance should be modified so it will not discourage these technical experts from participating in meetings and so that city officials will not lose the benefit of this technical expertise.

ACEC/MA, on behalf of our member firms, would like to propose exemptions to the Ordinance for Design Professionals based on the rationale that Design Professionals are providing technical services as part of seeking permits, licenses or approvals which are already subject to detailed City agency or department guidelines or standards or where there is a public review process in place which provides opportunity for public input and comment. Further, ACEC/MA seeks an exemption for Design Professionals similar to what New York City has implemented.

ACEC requests the following additions and modifications to the Ordinance:

Non-discretionary Approvals.

The Ordinance currently includes an exception to the definition of “lobbying activities” for “any act done in furtherance of a non-discretionary city approval such as applying for a permit or license.” The Ordinance, however, does not provide any definition or guidance as to what constitutes a “non-discretionary” approval.

ACEC seeks the proposed modifications to the Ordinance to include a definition of Non-Discretionary City permits, licenses or approvals as follows:

Non-discretionary City permits, licenses or approvals include those where:

- a) there is a defined **review and approval process and there is an opportunity for public input** (e.g. one or more meetings or hearings open to the public) or
- b) where there are **City agency or department guidelines or standards** which must be met to obtain a permit, license or approval.

ACEC also requests the following technical services exception to the Ordinance in manner consistent with the New York City lobbying ordinance:

Lobbying or lobbying activities shall not include the following:

....

- (r) persons who provide technical services in connection with lobbying activities. Technical services shall mean advice and analysis directly applying any engineering, scientific or similar technical discipline.

The following are only a few of the many examples as to why the above proposed non-discretionary exceptions are reasonable for Design Professionals given that their role is to provide factual information and technical analysis.

It is unlikely the intent of the Ordinance is to include engineers as lobbyists when engineers, for example, prepare technical plans or provide technical information. For example, engineers prepare plans showing the Client’s proposed trees along a roadway for the Client’s project. Such plans are reviewed and approved by the Public Improvement Commission. As such, those technical plans are reviewed by as many as ten different City agencies for input as part of a defined and detailed Public Improvement Commission review and approval process and each agency has their own detailed standards and guidelines regarding kind of tree, size of tree, detail of tree pit or metal grate to cover tree, spacing of trees depending on whether or not the particular street has a designated tree plan, etc.). Prior to any approval being made, there are at least two hearings where the public would have any opportunity to provide any feedback.

It is also likely not the intent of the Ordinance to include engineers who submit Temporary Construction Management plans before Boston Transportation Department as lobbyists. Such plans are put in place as temporary constructions safety measures (e.g. barriers or warning signs) while construction work is being performed (e.g. rebuilding a sidewalk) and further, such plans are subject to extensive and detailed Boston Transportation Department technical guidelines and

standards. Traffic Signal Design Review plans and Surface Parking applications, like Temporary Construction Management plans, would also be subject to detailed Boston Transportation technical guidelines.

It is not likely the intent of the Ordinance to include planners as lobbyists when planners are submitting applications seeking Article 80 approval (including Transportation Access Plan Agreements which are part of the approval process). The Article 80 process is a defined and detailed process where public notice is explicitly written into the process. For example, after planners submit an application, the application is immediately posted and becomes publicly viewable on the Boston Planning & Development Agency (BPDA). Further, and as provide of the review process, there is a minimum of a 30 day public review and comment period where public input is expressly solicited. The proposer then reviews the City agency and public comments, responds to City agency and public comments, performs additional analysis and research as necessary and provides feedback in the form of a Project Impact Report which also becomes a public document.

Likewise, Design Professional services in support of permits, licenses or approvals requested of the Boston Conservation Commission, Boston Public Safety Commission, Boston Inspectional Services Department, Boston Public Works Department, Boston Landmark Commission, Boston Fire Department and Boston Groundwater Trust should also be deemed non-discretionary as they would be subject to a defined review process including ample opportunity for public input and comment or detailed City agency or department guidelines and standards.

We would be happy to provide additional information and proposed guidance language to you and the commission. Thank you for your consideration. For more information, please contact Abbie Goodman, agoodman@engineers.org or 617-305-4112.

Sincerely,

A handwritten signature in cursive script that reads "Abbie R. Goodman".

Abbie R. Goodman

Executive Director

American Council of Engineering Companies of Massachusetts