

## TEN PROPOSALS FOR AUSTIN LOBBY LAW REFORM

**Executive Summary:** Austin's current lobbyist registration law is outdated and unclear. A number of people who are essentially lobbyists – they are paid to influence Austin city officials, especially in the land development arena-- do not register as lobbyists. The lobbyists that do register under city law are not required to disclose the amounts they are paid, details of much of their expenditures, or the names and pay of persons assisting them. The city clerk is responsible for reviewing the lobbyist registration submissions, but does not have the personnel or expertise to ensure compliance. The enforcement process is weak. Austin's lobbyist registration system has broken down, undermining transparency and public faith in government. Major revisions are needed to ensure lobbyist transparency and disclosure, while continuing to allow lobbyists to play their constitutionally-protected role in our governmental process.

**Ten Essential Reforms.** Ten key lobbyist reforms will ensure proper transparency and enforcement in Austin. Lobbying definitions should be tightened to include all individuals who are compensated over a certain threshold to directly communicate with any city officials to influence discretionary municipal administrative or legislative matters. The following proposed reforms are based primarily on Texas' state lobby registration law provisions, which work much better than the city's current provisions.

### 1. Clarify Ambiguous Definitions of Compensation for Lobbying.

**A. Eliminate Incidental Employment Exception to Compensation for Lobbying.** Austin law defines "compensation," which triggers paid lobbyist registration, to exclude payments to a person as part of their regular employment and for whom lobbying is incidental to their employment. Austin City Code, Section 4-8-2(2), (3). "Incidental to their employment" is undefined and amorphous and the most commonly exploited loophole. This exception does not exist in current state law. State regulations, however, exempt anyone that lobbies less than 5% of their uncompensated time, which has been difficult to enforce and reformers have sought to eliminate. The city's incidental exception should be eliminated and lobbying registration triggered by appropriately raised compensation and expenditure quarterly thresholds. (See below).

**B. Include Lobbying Preparation in Compensation for Lobbying.** Unlike under state law, "compensation" under Austin's law does not explicitly include preparation for lobbying by the person lobbying or their aides. 1 Texas Administrative Code 34.5 This is another large loophole and should be closed.

**2. Include Lobbying to Encompass All City Employees.** City law includes for lobbying purposes trying to influence only the council, their aides, certain commissions, and certain high level city

employees. City Code Section 4-8-3. However, many mid-level and other city staff are lobbied because they are actually reviewing, influencing or making discretionary decisions on municipal questions. Their decisions are often reviewed only cursorily, if at all, by the department heads. State law does not exclude any state employees from the ambit of lobbying; though, state law excludes explicitly from lobbying communicating about clerical and non-discretionary decisions. Texas Government Code, Section 305.002 (4); 1 T.A.C. 34.5. This approach yields more transparency, since it is the city employee's influence on a discretionary municipal question that matters, not their title.

**3. Define Municipal Question More Clearly to Distinguish between Discretionary and Non-discretionary Decisions.** The City's definition of municipal question, unlike state law, doesn't distinguish between discretionary and non-discretionary decisions. Texas Government Code, Section 305.002 (4); 1 T.A.C. 34.5. City law should distinguish between discretionary and non-discretionary administrative decisions and clarify that day-to-day administration of routine city policies are not discretionary (such as routine permitting). This legal approach is used in Houston and Dallas.

Austin's definition should clarify that any city administrative action in the land development process or other area that is appealable to the council, city commission, or city board is discretionary per se.

**4. Raise the Lobbyist Registration Threshold.** A person must register in Austin if they are paid or expend \$200 or more in a calendar quarter. If compensation is defined properly (including preparation and eliminating exceptions), this low threshold would capture too many people who are paid an insubstantial amount to lobby only sporadically. State law's threshold per quarter is \$1000. Our threshold should be raised to \$500 or \$1000 a quarter.

**5. Registration Fees Should Distinguish Between 501c3 lobbyists and For-Profit and Other Lobbyists.** Everyone in Austin that meets the lobbyist registration threshold must register and pay a \$300 fee. This should be tied to the cost-of-living and revised automatically every year in increments of \$10. Under state law, a lower fee is required for all non-profit lobbyists. City law should allow 501c3 lobbyists, who by definition cannot engage in electoral activity, to register for a smaller amount, say \$50-\$75 a year.

**6. Narrow the Lobbying Exceptions.** Several exceptions to lobbying are too broad. For example, one exception excludes from lobbying conversations between Austin officials and lobbyists at restaurants and events if they are "only" attending and they don't pay for the event for the city official. City Code, Section 4-8-4(3). Currying goodwill to influence state action is considered lobbying under state law and should be under city law. Another overly broad exception exempts from lobbying "dispute resolution" if it does not involve a city council member or final decision-maker. Again, this exception is too broad and doesn't exist under state law. City Code, Section 4-8-3(7).

**7. Lobbyist Reports Should Include Compensation Amounts and Lobbyist Assistants.** City law requires all lobbyists' clients to be listed, but doesn't require that the amounts paid by the clients be disclosed. City Code, Section 4-8-6(A). State law requires compensation amounts to be disclosed within ranges, and so should Austin to ensure transparency. Texas Government Code, Section 305.005(g). Austinites should know if there is a large, expensive campaign to lobby City Hall.

In addition, Austin, unlike state law, does not explicitly require that paid persons, who prepare and aid lobbyists in directly communicating with government officials, be disclosed. City Code, Section 4-8-6. Texas Government Code, Section 305.005(f)(B(4)). Lobbyist preparation is an integral part of seeking to influence a city official, and often involves more time and personnel than the actual direct communications. The lobbyist should be required to list their assistants, the specific municipal matters they worked on, and the amount of their compensation.

**8. Requiring Detailed Reporting of Specific Municipal Matters Lobbied on.** City law does provide any direction on reporting of the municipal item being lobbied on. The law should be reformed to require a detailed description of the property, a specific listing of case designation or number, and specific, detailed description of the subject matter.

**9. Updating Reports.** Unlike state law, city lobbyists can add clients and wait to report them till their next quarterly report. State law requires updating all new clients when the legislature is in session. Texas Government Code, Section 305.065. This ensures all clients and lobbying issues are revealed timely. City registration forms should be updated within 5 days when a new client or matter is added.

Under current Austin law, lobbyists also can delay triggering registration until the later of their first day of direct communication or entering into a lobby contract. City Code, Sections 4-8-2(2), 4-8-6. The trigger should be changed to simply the first day of directly communicating.

## **10. Enhancing Enforcement.**

**A. Subjecting Lobby Filings Explicitly to Perjury.** The maximum city penalty for violation of the city's lobbyist registration law is a Class C misdemeanor (\$500). State law's criminal penalty for failing to register is a Class A misdemeanor, which can include jail time. While the city's criminal penalty for failure to register and report cannot be changed, city law should provide explicitly that the lobbyist filings are subject to state perjury and false statement laws for intentionally filing a material false statement.

**B. Make Each Violation a Separate Offense.** City law should be made clear that each violation is a separate offense subject to a \$500 fine for each violation.

**C. City Auditor Reviews Filings for Compliance.** The law should require the City Auditor, rather than the City Clerk, to review the registration and report forms for completeness and lobbyist registrants. Require all findings of possible violations to be forwarded by the City Auditor to the Ethics Review Commission.

The City Clerk's office lacks the personnel and expertise for enforcing compliance, which is essentially an audit function. The City Auditor's Office likely will need more personnel to fulfill these new functions.

**D. Establish an Independent Special Municipal Ethics Prosecutor.** The Ethics Review Commission would refer all possible violations of the lobbyist laws to an independent municipal special ethics prosecutor. This prosecutor would be independent of the city manager and city attorney to ensure independence. With such an office, the Ethics Review Commission would review complaints solely to see if there was a reasonable basis to believe there was a possible violation before forwarding the complaint to the special prosecutor.

**Conclusion:** Government transparency is essential for the public's faith in government. Austin's lobbyist laws needed to be reformed to ensure that such transparency.