



P O R T L A N D  
CITY AUDITOR  
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**Final Decision on Reconsideration  
Portland Business Alliance – 2020 Fourth Quarter Lobbying Report**

The Auditor's Office issued a Notice of Violation and Penalty on April 26, 2021, to the Portland Business Alliance, pursuant to Chapter 2.12 of the Portland City Code. The Notice found 25 violations of City lobbyist reporting requirements by the Alliance in 2020. On May 10, the Alliance requested reconsideration of the Notice, challenging 23 of the violation findings.

I have reviewed the request and the record in its entirety. On reconsideration, I affirm the April 26 Notice of Violation and Penalty.

**Background**

The Alliance is a lobbying entity with frequent access to high-level decision makers at the City, as documented by the emails, texts, and meetings under reconsideration. The Alliance's lobbying activity is lawful but must be transparent. City Code requires entities such as the Alliance, who spend an estimated 8 hours or more or at least \$1,000 lobbying in a quarter, to report their "attempt[s] to influence the official action of City officials." Code 2.12.040 A (quarterly reporting requirements); Code 2.12.020 G ("lobbying" definition).

Before addressing the merits of the Alliance's request for reconsideration, the record requires clarification. As a part of its reconsideration request, the Alliance provided copies of what it described as "every communication subject to allegations." However, the collection was incomplete and, in several instances, inaccurate.<sup>1</sup> To avoid any further misunderstanding of the lobbying at issue, each of

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<sup>1</sup> The following is a list of emails misidentified by the Alliance, with an Appendix cite to the correct email:

- Q4, Item 1 (McGirk, Oct. 6) – Appx., p. 1
- Q1, Item 2 (Hoan, March 17) – Appx., p. 33
- Q2, Item 8 (Isaacs, April 28) – Appx., p. 56

The following is a list of communications omitted by the Alliance, with an Appendix cite to a copy of the communication:



the 25 lobbying instances giving rise to a violation is included here as an Appendix. The Appendix is bookmarked to correspond to the list of quarterly reporting included in the April 26 Notice.

## **Analysis**

On the whole, I find that the Alliance's communications speak for themselves as lobbying. In several instances, the Alliance seems to agree that lobbying occurred, but mistakenly believes that reporting was not required. In other instances, the Alliance seems to argue that lobbying has not occurred based on a misunderstanding of what constitutes an attempt to influence official City business. I considered the entirety of the Alliance's request with care, and not every point or communication warrants discussion. But several overarching arguments span the Alliance's request, and those are addressed below: the import and characterization of so-called "administrative" communications; lobbying in response to the City; lobbying related to task forces not created by Code; lobbying a City official who also has a board seat with the lobbyist entity; and lobbying that the lobbyist is aware is transmitted by a third party.

### 1. "Administrative" Communications

Throughout its request, the Alliance posits that its "administrative" emails were not lobbying. Under the Code, "ministerial tasks, such as scheduling, are not lobbying, unless an attempt to influence is made during the scheduling or other ministerial communication." ARA 15.01 E.2. Some of the Alliance's communications included discussion of scheduling, but they also included attempts to influence official City actions and therefore were lobbying. No benefit to the Alliance is required for its actions to constitute lobbying.

Examples of lobbying in some of the communications described as "administrative" include:

- emailing the City's Chief Administrative Officer with a request that he intervene and prioritize the removal of particular tree stumps and garbage, Appx. p. 16-19, 21-23;
- emailing the Mayor's staff requesting a meeting on policy issues, requesting faster responses to meeting requests, and requesting specific stakeholders be present at a meeting to answer questions and "figure out [how] we can stay on the same page moving forward," Appx., p. 24-25;
- emailing the Mayor's Deputy Chief of Staff for the City's input on Alliance communications to its members and requesting the Mayor's staff to "send [the Alliance] any updates," Appx., p. 26;
- texting the Mayor's Deputy Chief of Staff to request an extension to a public comment period, noting its intent to "update 50+ business lobbyists today at 1:30 so would be awesome to give them any news," Appx., p. 31; and,
- emailing a Commissioner's Chief of Staff "to communicate again that the Alliance and Downtown Clean and Safe are strongly supportive" of a funding request by the Commissioner, and asking him to "please let us know if there's anything we can do to advocate for this ...", Appx., p. 52.

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Q4, Item 4 (Isaacs, Oct. 28) – Appx., p. 20  
Q4, Item 8 (Campbell, Dec. 8) – Appx., p. 28  
Q4, Item 10 (Rathfelder, Dec. 18) – Appx., p. 31  
Q1, Item 1 (Fisher, March 5) – Appx., p. 32  
Q2, Item 10 (Wilson, May 7) – Appx., p. 61  
Q2, Item 11 (Alliance, May 26) – Appx., p. 64

Whether or not those emails and text message fairly may be characterized as “administrative,” they are attempts to influence the official actions of City officials.

## 2. Responses to the City

The Alliance is mistaken that City-initiated exchanges cannot result in lobbying. A response to the City can include an attempt to influence official action and is not exempt from reporting because the City requested input or otherwise initiated the contact.

For example, a Commissioner’s Chief of Staff emailed the Alliance with “a one pager about a food delivery fee ordinance,” stating, “Please let me know if you and/or anyone on your team has any questions or concerns.” Appx., p. 69. The Alliance responded with several paragraphs that included:

- a request to receive proposed lawmaking with more advanced notice in the future,
- an assertion that “it would be prudent” to wait and “have a full understanding of the implications of the ordinance before it is enacted,” and
- a comment that in the past the Alliance was “a key part of successful negotiations on emergency regulations ... and it seems there could be an opportunity to achieve that here.”

Appx., p. 68-69. Each of those was an attempt to influence the official acts of a City official.

## 3. City Task Forces

Lobbying does not include: “Time spent participating in a board, committee, working group, or commission created by City Council through approval of resolution or ordinance.” Code 2.12.020 G.2. The Alliance cites this as the basis for its omission of reports of several emails and a meeting it describes as “related to service” on “a city established stakeholder work group, the City of Portland Economic Task Force.” This appears to be a reference to the [Economic Recovery Task Force](#) led by Prosper Portland. Because this task force was not “created by City Council through approval of resolution or ordinance,” it does not satisfy the lobbying exemption in Code. The emails identified in this regard by the Alliance include efforts by the Alliance to influence official action. Appx. p. 43, 45.

Moreover, one of the emails and the meeting were in fact not related to the task force:

- An email addressed to “Regional Elected Officials,” recipients of which included at least two city officials, attaching a letter and asking officials to “review this letter and use it as a guide for actions local and regional governments can take to help businesses and their employees ... We will be reaching out immediately to begin partnering with you ...” Appx., p. 36. The email and letter did not reference the task force.
- A meeting included on the calendar of official City business of the City’s Chief Administrative Officer, described as “Mayor monthly meeting with Portland Business Alliance.” Appx., p. 55.

These were lobbying with no exception to the reporting requirements.

#### 4. Officials as Board Members

The director of Prosper Portland, a City official, holds an ex-officio seat on the Alliance's board of directors. The Auditor's Office agrees with the Alliance that purely internal communications regarding private board business do not become lobbying communications by virtue of a City's official's board membership. In all instances, lobbying requires an attempt to influence the official acts of City officials. However, the communications here are not a close question in this regard.

In one of the emails, a member of the Alliance board's Executive Committee writes to the director of Prosper Portland asking for City funding for the Alliance: "I'm reaching out to solicit Prosper Portland's support for the Alliance's Black Economic Prosperity Agenda." Appx., p. 28. The fact that the Alliance did not register that person as a lobbyist, and the fact that the Prosper director sits on the Alliance's board, do not detract from this email as lobbying. There is no loophole for reporting lobbying to an official who also holds a board seat.

The two other relevant emails were not limited to the Alliance board and did not relate to board business. They were addressed to "Regional Elected Leaders" and were sent (by way of blind copy) to City officials that included not only the Prosper Portland director but also at least one commissioner's chief of staff. Appx., pp. 33, 36. The emails are lobbying. Both emails were misidentified by the Alliance in its response as "internal communications." To comply with lobbying reporting requirements in the future, the Alliance is encouraged to track with more care its emails to City officials.

#### 5. Letters Transmitted by Others

The Alliance signed two lobbying letters that were also signed by others. Appx., p. 10-15, 64-65. The Alliance was copied on the transmission of its letters by someone else – in one case by another signatory and in another by a lobbyist. The Alliance does not dispute that the content of the letters makes them lobbying. But the Alliance is mistaken that if someone else delivers its lobbying letter, it no longer needs to report the lobbying. The Alliance characterizes the letters as being sent by a "coalition." On review, however, it is clear that the letters had multiple individual signatories, including the Alliance, and neither letter identifies any separate group or organization that would have been required to report the lobbying. The Alliance must report its lobbying even when it does so alongside others.

#### **Conclusion**

The Notice of Penalty and Violation is affirmed. This decision is final upon issuance, pursuant to Auditor's Administrative Rule ARA 15.03 H.5. The penalty of \$450 is due within 30 days of the date of this letter. My office is happy to schedule a training on lobbying regulations for the Portland Business Alliance, and you can email my staff at [lobbyist@portlandoregon.gov](mailto:lobbyist@portlandoregon.gov) to make arrangements. At your suggestion, we will include any Alliance members or members of the media who would like to attend.

Sincerely,



Mary Hull Caballero