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NEW YORK CITY LOBBYING COMMISSION

2

PUBLIC MEETING

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250 Broadway

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New York, New York

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7

June, 24 2011

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1:00 p.m.

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12 B E F O R E: Hon. Herbert Berman, Chair

13 COMMISSION MEMBERS:

14 Elisa Velazquez

15 Margaret Morton

16 Jamila Ponton Bragg

17 Lesley Horton

18 STAFF:

19 Bill Heinzen

20 Jim Caras

21 \*\*\*\*\*

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2 MR. BERMAN: Good afternoon, everyone.  
3 My name is Herb Berman. I have the pleasure  
4 of chairing the New York City Lobbying  
5 Commission and I welcome everybody to today's  
6 meeting.

7 This happens to be our sixth public  
8 hearing. Today the Commission is reading for  
9 the purposes of discussing the lists of  
10 issues for consideration for inclusion in our  
11 preliminary report, and hopefully by the end  
12 of today's meeting we will have a list of  
13 issues that we agree to move forward with and  
14 we will instruct staff to prepare a  
15 preliminary report that includes  
16 recommendations on these issues.

17 Our Commission has taken a tremendous  
18 amount of information in a short period of  
19 time, and as an aside but on important one,  
20 as we were reviewing all of this information,  
21 the State Legislation is passing Ethics in  
22 Albany Act which we have been reviewing both  
23 for informational purposes and for its impact  
24 on the lobbying laws.

25 We have had heard from the agencies

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2           involved in the implementation of the  
3           lobbying laws, we've heard from the State  
4           Commission on Public Integrity,  
5           representatives of lobbying firms,  
6           representatives of not-for-profits who lobby  
7           and many good government groups.

8                   Staff has had countless hours of  
9           additional meetings with representatives of  
10          these groups and others to try to flesh out  
11          and delve deeper into their issues. I must  
12          say that in a short period of time we  
13          attempted to reach out to just about  
14          everybody and invite them to come in and  
15          either submit testimony or come in and talk  
16          to us and a lot of people did take advantage  
17          of that.

18                   We have also received letters from  
19          organizations impacted by the lobbying laws  
20          including the Municipal Affairs Committee of  
21          the City Bar Association. I want to thank  
22          everyone for the time and efforts they have  
23          put into this so far and ask you to continue  
24          your participation as we proceed to a  
25          preliminary and then a final report this

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2 summer.

3 Because we are purely an advisory  
4 commission, we are not necessarily bound by  
5 the Open Meetings Law, but our goal is to  
6 bring more transparency to the system that  
7 regulates those who seek to access  
8 government, and we all agree that it is  
9 important for us to be transparent in our  
10 deliberations as well.

11 You have all spent a significant amount  
12 of time bringing issues forward when  
13 participating in our hearings and you should  
14 not be presented with a report at the end of  
15 the hearing process with no insight as to how  
16 its recommendations came to be. So, for  
17 better or for worse, you're going to get to  
18 hear us discuss many of the issues that have  
19 been brought to us over the last several  
20 months.

21 With that, I'd like to take the  
22 opportunity to introduce my colleagues on the  
23 Commission: Jamila Ponton Bragg, Lesley  
24 Horton, Elisa Velazquez, and Margarate Morton  
25 is now here. Thank you. Having said that,

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2 do any of the Commissioners want to make some  
3 opening comments?

4 (No response)

5 MR. BERMAN: Let's get started. The one  
6 issue that the Lobbying Board requires the  
7 Commission to consider and everyone who  
8 addressed it to the current thought, thought  
9 that the current threshold needed to be  
10 raised. We heard testimony in favor of this  
11 from the Clerk's Office that advises us that  
12 increasing the threshold to \$5,000 from the  
13 \$2,000 that are currently intact would  
14 eliminate possibly 35 to 40 filers and less  
15 than one percent of lobbying dollars.  
16 Raising the threshold to \$10,000 will  
17 eliminate about another 35 to 40 filers and  
18 still less than one percent of the lobbying  
19 dollars.

20 Public integrity Commission stated that  
21 the State threshold is \$5,000. They  
22 verbalized and believe that it should go to  
23 10,000 but I believe that they are still at  
24 5,000. Some of the not-for-profits requested  
25 that the threshold raise at least to the

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2 \$5,000 level, some requested \$25,000. New  
3 York City Bar Association recommended 10,000,  
4 good government groups basically indicated  
5 their support for an increase to \$5,000. The  
6 one constant was that there was no support to  
7 stay at \$2,000 should we recommend any  
8 increases.

9 Now, when I discuss the proposal  
10 threshold, it is as a consequence of the  
11 testimony that we have elicited during the  
12 hearings, questions that have been asked,  
13 Commissioners' involvement in the  
14 discussions, and I've tried basically in  
15 preparing for this hearing to enunciate the  
16 form of a proposal -- not exactly perfect,  
17 but it's an enunciation.

18 Recommendation should increase the  
19 threshold to \$5,000 and staff should consider  
20 as an option if we can have a separate  
21 streamline filing or filings for those who do  
22 not hire outside lobbyists and spend between  
23 5,000 and \$10,000 on lobbying. Is that clear  
24 to everybody?

25 MS. BRAGG: I feel like having that

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2           separate caveat for between the 5,000 and  
3           then \$10,000 opens up a new slope because  
4           it's not always clear who does and doesn't  
5           hire outside lobbyists, so I'd like the staff  
6           to kind of take a look at what that would  
7           mean if we would make that kind of exception  
8           for those groups.

9           MR. BERMAN: My recommendation was that  
10          the threshold be increased to \$5,000; is that  
11          acceptable?

12          MS. BRAGG: Yes.

13          THE COMMISSION: (Indicating yes.)

14          MR. BERMAN: Following basically what I  
15          said is that I suggested that staff look at  
16          creating that other exception, so, I agree  
17          that's something to look at. Any  
18          discussion?

19          MS. VELAZQUEZ: Just for the streamlined  
20          filing, I guess, too, because the whole staff  
21          is looking at this, as to whether or not it's  
22          reasonable, it's going to be a slippery  
23          slope, too. I guess I just want to clarify  
24          that what we're talking -- there could be two  
25          things we're talking about, right? We could

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1  
2 be talking about a streamlined filing so  
3 actually if they're between 5,000 and \$10,000  
4 there's either some short form of information  
5 or not, a full filing and then maybe what,  
6 you know, would be some paired-down filing in  
7 between those two, as opposed to less  
8 frequent filings, I guess. Because if we're  
9 just going to make it go from like six to  
10 three or something like that, you know, I  
11 don't know that it's going to make all that  
12 much difference, because they have to do it  
13 the other three times anyway. So, I guess,  
14 if we're going to look at something  
15 streamlined, they probably need to make it  
16 worth while, some sort of truncated form is  
17 what's the most important thing. So, looking  
18 at that to look at what makes sense in both  
19 of those ways.

20 MR. BERMAN: Just to remind everybody,  
21 the genesis of our recommendation was the  
22 numerous not-for-profits who do not have a  
23 fixed certain amount of the money for  
24 lobbying, they assigned a staff person to do  
25 it, and this was in furtherance of an attempt



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2 to try and make it a little easier for the  
3 small not-for-profits.

4 MS. VELAZQUEZ: Exactly.

5 MS. HORTON: Just to piggyback off that,  
6 I would also suggest maybe in terms of  
7 creating a form that's streamlined or  
8 truncated, maybe starting with the State  
9 form, given that these people who were  
10 between 5,000 and \$10,000 threshold still  
11 have to file at the State level, so maybe in  
12 an effort to not have to have them sort of  
13 provide additional or make it burdensome,  
14 given that they're still filing with the  
15 State, maybe starting with that in terms of  
16 steering that down to create the truncated so  
17 that they essentially feel like it's all a  
18 one-shot deal when they have to file both.

19 MR. BERMAN: Staff?

20 MR. CARAS: These are all the  
21 permutations that we've been talking about  
22 and discussing back and forth and having  
23 meetings with other groups and stuff, so  
24 we'll look at all of these things.

25 MR. BERMAN: Right, and again I want to

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2 remind everybody, the recommendation might be  
3 that staff cannot come up with anything that  
4 can be viably implemented, but that's what  
5 they'll look at.

6 Next, when does lobbying start? That  
7 bill was one of the more difficult issues and  
8 we all labored over that, and the New Ethics  
9 in Albany Act changes the State law so that  
10 lobbying now includes attempting to influence  
11 the introduction or intended introduction of  
12 such legislation or resolution. Current City  
13 law excludes oversight hearings and executive  
14 orders which is covered by State law.

15 At the hearings, the City Clerk  
16 testified about how the importance of the  
17 City law of making sure that the State  
18 interpretation of lobbying does not start  
19 until introduction is not applied to our law.  
20 To be very clear, the State law basically  
21 said that until such time as legislation is  
22 introduced, there's no lobbying, so, whatever  
23 happens, it's not an act of lobbying. We  
24 think that that's kind of like a foolish  
25 thing, that, indeed, a lot of effort before

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2 the introduction of legislation does  
3 constitute lobbying.

4 As a matter of fact, many lobbyists who  
5 testified advocated that lobbying should  
6 include advocacy before introduction of  
7 legislation. Good government groups have  
8 testified that one of lobbying expenditures  
9 include advocacy before introduction.

10 So, again, looking at testimony,  
11 listening to the people, examining the  
12 questions and the interests and the  
13 conversations of the Commissioners, there are  
14 several ways that this can be done. One way  
15 is to try to come up with some broader  
16 language that covers all of the issues  
17 including oversight, resolutions, etcetera.  
18 Another is to include the specific activities  
19 like the State has done which can be  
20 cumbersome and detailed, and added since  
21 advocating on the introduction or the  
22 intended introduction of legislation,  
23 advocating on rulemaking or the initiation or  
24 prevention of initiation on rulemaking would  
25 also be included under lobbying.

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2 Proposal under these circumstances I  
3 guess should read that it should ensure that  
4 lobbying begins before the introduction and  
5 before formal rulemaking and ratemaking  
6 proceedings have begun. So, however it's  
7 worded, it would basically -- it's more of a  
8 contact resolution.

9 A proposal should also make sure that  
10 advocating on executive orders and oversight  
11 areas are deemed to be lobbying activity.  
12 Any discussion?

13 MS. VELAZQUEZ: Yeah, totally agree.  
14 Just, if we do the broader language as  
15 opposed to more specific activity like the  
16 way the State has done, so if we do the  
17 broader language, would there have to be some  
18 rulemaking after that to further kind of --  
19 you know, you got the broad language and then  
20 get more specific, would there have to be a  
21 rule making that the Clerk's Office would  
22 have to do?

23 MR. CARAS: One of the concerns, and we  
24 staff like the idea that something for the  
25 broader language, but the lobbying law is

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2 structured, the way it's written on these  
3 specific categories, so, it's hard to move  
4 away from that. But we want to leave open  
5 the possibility to at least look at it  
6 further. Tight time schedule that we  
7 couldn't do all of the figuring out for  
8 everybody by today. We still want to leave  
9 that possibility open, but we'll come back to  
10 you and we'll figure the best options.

11 MS. MORTON: I thought there had also  
12 been testimony or points made about excluding  
13 or clarifying to exclude things like being  
14 invited to testify. Many non-profit  
15 organizations are invited to testify by  
16 either staff or City Council members or by  
17 the Administration, and it seems to me,  
18 especially for smaller non-profits, you know,

19 MR. BERMAN: The question is, do we deal  
20 with that by rulemaking?

21 MR. HEINZEN: Well, it's in the local  
22 law as an exception.

23 MS. MORTON: As an exception.

24 MR. HEINZEN: That's an interesting  
25 situation though, because we just exempt

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2 those people who are invited to testify at a  
3 hearing.

4 MS. MORTON: I guess I would just ask  
5 that we look at that as part of this because  
6 I recognize it was part of the original  
7 legislation, but this is a public forum and  
8 there are some First Amendment issues at play  
9 here and it seems to me that having that  
10 accrue to them as part of their threshold is  
11 just something particular organizations that  
12 are looking to maintain good relations and if  
13 they're invited to testify, it's seems to me  
14 that it's also not fair for that to be  
15 charged against them. Just something I hope  
16 we can talk about.

17 MR. BERMAN: One of the recommendations  
18 that we're going to make and I'll talk about  
19 it later basically is to urge the City  
20 Council and the Mayor also is to in two or  
21 three years to create another Lobbying  
22 Commission to again study what we have  
23 omitted, because in the short period of time  
24 that we have been in existence, you know,  
25 there are going to be areas that we either

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2 failed to recognize, should have been  
3 recognized or --

4 MS. MORTON: Just couldn't get to.

5 MR. BERMAN: Right. So, that's like the  
6 Elasticity Clause of the Constitution.

7 MS. VELAZQUEZ: So, currently if you are  
8 invited to testify and that's an exception,  
9 it doesn't go towards your accrual, it's not  
10 considered lobbying. So, currently, even at  
11 the small non-for-profit -- and I completely  
12 ignore the grey -- is called to testify, it's  
13 not lobbying activity?

14 MR. CARAS: Right.

15 MS. VELAZQUEZ: Right, I mean the point  
16 is -- I just wanted to make sure that I was  
17 understanding that correctly.

18 MR. CARAS: I think, you know, we may  
19 have to look at this from both ends; you  
20 know, is that fair and should it be made  
21 broader so that appearances before the City  
22 Council don't count or should it be made  
23 narrower?

24 MS. VELAZQUEZ: Right.

25 MR. CARAS: There is an unfairness.

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2 MS. VELAZQUEZ: To Margarate's point,  
3 the ones that get invited and you are larger  
4 non-for-profit, like you said, are the ones,  
5 the Council, are known to the Administration  
6 and get invited to testify, it doesn't count,  
7 though. Let's just say that smaller non-for-  
8 profit wants to weigh in and sends a letter,  
9 maybe that isn't part of the official  
10 testimony but that's a letter that someone  
11 spent time drafting, I would argue we're  
12 probably now on lobbying mode, we're then  
13 going charge that against the time.

14 MR. CARAS: Right.

15 MS. VELAZQUEZ: But if it's for that  
16 hearing, that issue, or whatever, I think  
17 that's what you're trying to get to, and  
18 maybe we can make that part of what you're  
19 looking at.

20 MR. BERMAN: I think it's important to  
21 recognize that we want to make this law a  
22 working law that people can comply with and  
23 not run away.

24 MS. VELAZQUEZ: Absolutely.

25 MR. BERMAN: Other questions?



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2 (No response)

3 MR. BERMAN: Next issue: What is  
4 lobbying? This was a very, very difficult  
5 issue for a variety of reasons. The  
6 Commission heard testimony that currently  
7 there are professionals other than those who  
8 might be known as lobbyists who are retained  
9 by clients to advocate before City officials  
10 generally because they possess certain  
11 technical expertise such as engineers or  
12 architects. We spent a lot of time studying  
13 this issue.

14 It seems clear that current law already  
15 requires these professionals to register if  
16 they reach the dollar threshold. The only  
17 exemption for technical professional  
18 expertise is in certain of the procurement  
19 provisions, not for lobbying in general. So,  
20 if they are advocating, for example, before  
21 the City Planning, they are lobbying.  
22 However, we have heard that there may be  
23 widespread failure to register because these  
24 professionals may view their role as  
25 technical.

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2 The proposal that we have been able to  
3 glom from all of this testimony is that, my  
4 dissertation is that we've had extensive  
5 discussions with the Clerk and with the Law  
6 Department on this issue and we all think  
7 that the current law clearly covers advocacy  
8 by any paid agent including architects,  
9 engineer, accountants, etcetera.

10 At this point, the thinking is that to  
11 try to articulate every permutation, what the  
12 architect or engineer is saying may be so  
13 limited to the technical aspects of their  
14 profession so as not to constitute advocacy  
15 would be unworkable. So, my thinking is that  
16 this is something that should be handled  
17 through education and outreach. If we tried  
18 to do this legislatively, you would have a  
19 long convoluted piece of legislation that  
20 would probably be almost impossible to  
21 understand.

22 Architects, engineers and other  
23 professionals who appear before government  
24 should be educated that if they are  
25 advocating for a particular outcome, they are

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2 for the most part engaged in lobbying. And  
3 this Commission's presentation to the Council  
4 at the end of this process should add support  
5 to that in the legislative history of the  
6 proposed legislation for those who may not  
7 understand the significance of legislative  
8 history. That is often used in judicial  
9 areas to understand the thinking of the  
10 legislation when laws are enacted.

11 The Clerk should conduct education and  
12 outreach at the bodies they are likely to  
13 appear before and before professional  
14 organizations. We'll say more about that  
15 when we get to our education and training  
16 proposals.

17 These professionals should be made aware  
18 that if they are going to be making  
19 appearances and they believe their role does  
20 not rise to advocacy that they should seek  
21 the guidance of the Clerk and the Clerk and  
22 the Law Department should be prepared to  
23 provide guidance. We have spoken to the  
24 Clerk, we have spoken to the Law Department  
25 and they indicated that they would be

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1  
2 prepared to provide guidance. So, we're not  
3 recommending any change, we're recommending  
4 educational outreach.

5 MS. VELAZQUEZ: Right, and I think  
6 that's the way to go, but I think we probably  
7 want to make or I would want you guys to look  
8 at making a further recommendation and that  
9 the Clerk issue an advisory opinion on that  
10 particular issue. I think that that is, you  
11 know, the advisory -- the ability to do  
12 advisory opinions in the law is there I think  
13 for just this type of reason, where the  
14 law -- you know, we have pretty much a legal  
15 opinion that the law covers a certain -- you  
16 know, that they're covered by the law.  
17 There's been maybe confusion as to whether  
18 they're covered or not, but it will be very  
19 clear once we issue our report that the  
20 Commission obviously believes it's covered.

21 So, to get that direction that the Clerk  
22 can work with the Law Department, issue an  
23 advisory opinion that can be used, that can  
24 be pointed to and be used as -- I don't want  
25 to say precedential, but as guidance on that

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2 issue. Then that actually can be the basis  
3 to go out and do the training, get the word  
4 out there, you know, to get those people  
5 covered.

6 MS. HORTON: I think that's important,  
7 especially given the fact that to the extent  
8 that they're educating and doing outreach, we  
9 want to make sure that there is consistency  
10 within the Clerk's Office in terms of what  
11 they are, some are lobbyists or potential  
12 lobbyists. So, I think that will be helpful  
13 in terms of just providing the City Clerk's  
14 Office with some sort of the streamlined  
15 approach in terms of education.

16 MS. VELAZQUEZ: It's a tool in the  
17 toolbox that they can use, and I think this  
18 is a really appropriate situation for that.

19 MR. BERMAN: In keeping with that  
20 thinking, and a little later I will be  
21 enunciating another proposal which basically  
22 says that if the Clerk issues an opinion, and  
23 that's one that would basically cover an  
24 industry, that it should be published so that  
25 the entire industry and the population be

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2 aware of it and not just the person who  
3 requested the --

4 MS. VELAZQUEZ: Right.

5 MR. BERMAN: So, that's one of the  
6 things that we will be looking at.

7 Another issue that was significantly  
8 interested in by many, many people was the  
9 issue of fines and penalties. The rules  
10 promulgated by the Clerk are made fees to  
11 provide for a set late fee for first-time  
12 filers of \$10 per day for each filing and  
13 other filers the late fee shall be \$25 per  
14 day for each late filing.

15 Under the rules, the Clerk has no  
16 discretion to reduce or waive late filing  
17 penalties. The State differs in its fine and  
18 penalty process. Their rules require that  
19 they fine up to \$25 a day and up to \$10 a day  
20 for first-time filers. The State, however,  
21 does have discretion in assessing fees.

22 We heard testimony from the Clerk's  
23 Office. The Clerk, even though they are the  
24 ones who are required to impose penalties,  
25 have indicated that they're not happy with

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2 the overly restricted language, that we use  
3 discretion.

4 The New York Advocacy Association, they  
5 said that the Clerk's Office should be  
6 specifically authorized to use discretion and  
7 consider mitigating and aggregating factors  
8 with assessing late fees. Not-for-profits  
9 and social service organizations agree. New  
10 York City Bar gave the City Clerk  
11 discretionary authority to waive or reduce  
12 late fees concurrent after the 14-day cure  
13 period, while the Human Services Council also  
14 supports the change for the same reasons.

15 Now, proposal: Give the Clerk limited  
16 discretion to waive or reduce late fees but  
17 only after making certain enumerated findings  
18 or considering certain factors. The factors  
19 would have to be set out and should include  
20 things like -- not exclusively necessarily,  
21 but include the annual budget of the  
22 organization. In other words, if it is a big  
23 organization small organization; whether the  
24 entity is in the business of lobbying or is a  
25 there client who lobbies on its own behalf,

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2 whether this was a first-time mistake; how  
3 much lobbying activity was reported during  
4 that period; and finally, the reason for the  
5 late filing.

6 And I really strongly believe that no  
7 one factor should be dispositive. A very  
8 small unsophisticated organization may not  
9 have a great reason for being late on its  
10 filing but it has never been late before and  
11 it is a small group that conducts a low level  
12 of lobbying and it may qualify therefore for  
13 a reduction or waiver of the late fees.

14 Likewise, a larger organization may have  
15 failed to file but that failure may have been  
16 because as a consequence of a catastrophic  
17 event and therefore there should be that  
18 discretion. That is my proposal. Comments?

19 MS. MORTON: I would only add for  
20 emphasis here that, again, many non-profit  
21 organizations, particularly with budgets of  
22 less than \$250,000, have staff that can be  
23 somewhat tenuous, their staff over the year  
24 may change because of the size of their  
25 budget. There are many organizations that



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2           are run by maybe one or two people. So,  
3           again, they don't, as we heard in numerous  
4           testimony, have necessarily fixed financial  
5           staff.

6           MR. BERMAN: Margarate, first factor  
7           that we set forth was the annual budget of  
8           the organization.

9           MS. MORTON: Exactly, and I'm just  
10          pointing out for clarity, very often these  
11          organizations may not have staff, they may  
12          have complied in the past but they lose, you  
13          know, two people. So, I just say that for  
14          emphasis, that's very important.

15          MS. BRAGG: The amnesty issue, also that  
16          should be considered for organizations who  
17          haven't filed, getting used to it, and that  
18          they aren't penalized (inaudible,)  
19          considering that amnesty extends to the late  
20          fee. I know we're going to address this as  
21          well. Because the language isn't in here at  
22          this point but it is later in the issue.

23          MR. BERMAN: Otherwise, acceptable?

24          MS. BRAGG: Fine, yes.

25          MR. BERMAN: Other questions?

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2 (No response)

3 MR. BERMAN: Next, education and  
4 training. This is pretty much a given, and  
5 supported by everybody. The current lobbying  
6 law includes a requirement that the City  
7 Clerk develop compliance programs for  
8 lobbyists and clients. The State Lobbying  
9 Act contains no expressed requirement for any  
10 type of compliance, education or training.  
11 However, the New Ethics in Albany Act amends  
12 the State Lobbyist Act and requires an online  
13 training course.

14 The City Clerk has in fact taken  
15 significant steps in education and training  
16 of the City lobbying laws. There were two  
17 courses in 2006 and three courses in 2007 and  
18 one in every year since then. There have  
19 been outreach efforts to constituencies who  
20 are or may be subject to registration  
21 requirements of the lobbying law but may have  
22 been unregistered.

23 In 2010, thousands of letters were sent  
24 to recipients of counsel of discretionary  
25 funding and investment firms, placement

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1 agents and others who may have business  
2 before the City Pension Boards informing them  
3 of the lobbying laws' applicability. The  
4 proposal following from that is that training  
5 be required for all registered lobbyists to  
6 be administered by the City Clerk.  
7

8 Also, let's try hard to look into  
9 mandating an education and outreach position  
10 in the City Clerk's Office to where it's not  
11 just with registered lobbyists but in  
12 outreach in venues where there are likely to  
13 be people who may be subject to the  
14 requirements of the lobbying laws but may not  
15 be registered, for example, outreach to  
16 professional organizations, community boards,  
17 City Planning, city websites, etcetera. This  
18 could include notices on land use  
19 applications and City contracting documents  
20 that applicants need to review the lobbying  
21 laws and determine if their actions bring  
22 them within the law's requirements. Any  
23 discussion?

24 MS. MORTON: I would only add that we  
25 should make sure that we do this carefully,

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2 mandating training, before we know what that  
3 budget will be, what the format will be, how  
4 many times the training will be available is  
5 important for us to just be very careful that  
6 we know the breadth and the scope before  
7 requiring it.

8 MR. BERMAN: Point well-taken. Anything  
9 else?

10 MS. VELAZQUEZ: We're talking about  
11 here -- because there was a lot of -- or we  
12 might be getting some of this later on some  
13 of the website stuff, some of the technology  
14 stuff, kind of making the enhancements --

15 MR. HEINZEN: (Inaudible.)

16 MS. VELAZQUEZ: Because that also to me  
17 is part of the education.

18 MS. BRAGG: Filing fines and penalties  
19 as part of the amnesty. I forgot to make my  
20 point that I'm actually not in favor of the  
21 per-day fines, I think that they are  
22 excessive and I think it keeps away from the  
23 idea of encouraging people to file and  
24 encouraging people -- the whole point of  
25 being able to do this registering is to get

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2 more transparency. I think in some way the  
3 per-day fines are detriment to that and I  
4 would ask that we look into either having  
5 some sort of 30-day, 60-day schedule  
6 instead. I think that the per-day creates a  
7 lot more work on the Clerk's part, a lot more  
8 work an the agency's part.

9 MS. MORTON: I agree.

10 MS. BRAGG: So, I would like to look  
11 into maybe some sort of schedule of 30, 60,  
12 something like that, maybe after 60 days it's  
13 per day or something like that instead of  
14 this per-day thing because it just gets into  
15 other issues.

16 MR. BERMAN: Okay, any other thoughts?

17 (No response)

18 MR. BERMAN: Okay, now, Jamila's  
19 favorite issue of amnesty.

20 MS. BRAGG: Yes.

21 MR. BERMAN: I must tell you that in my  
22 almost 27 years in the City Council, we had a  
23 variety of times when we had tax amnesty,  
24 parking ticket amnesty, etcetera, and each  
25 time, the results were really good and the

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1  
2 City brought a lot of people back onto the  
3 tax rolls, etcetera, plus we collected a lot  
4 of money. So, amnesty in my opinion is a  
5 very positive thing to do and I think the  
6 more important thing, because the lobbying  
7 law was so vague in its inception, is to  
8 bring as many people as possible under the  
9 lobbying law, so an amnesty is a good  
10 device. Thereafter, after that, the people  
11 are still not filing, you know what? Throw  
12 the book at them, I don't care. But given an  
13 opportunity to have amnesty, I think it's a  
14 positive thing.

15           Anyhow, once an enhanced education and  
16 outreach program is underway, a good way to  
17 bring people into the system would be a  
18 one-time amnesty program. To the extent that  
19 a potentially large accumulation of late  
20 filing fees may discourage people from coming  
21 forward, an amnesty would give them an  
22 incentive to enter the system.

23           I'm still not quite certain, my  
24 recollection in the past was that whenever an  
25 amnesty was declared, you had to pay the fee,

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2           you had to pay the interest but you were  
3           absolved of paying the penalty, but the  
4           interest had to be paid -- but I'm not quite  
5           sure, so look that up. Anyhow, it could run  
6           for a few months. Unregistered lobbyists  
7           could come forward during that amnesty period  
8           and all late penalties would be forgiven.  
9           They would have to pay the registration fees  
10          for the period that they were engaged in  
11          lobbying without being registered and I  
12          believe also pay interest and they would have  
13          an additional amount of time after the end of  
14          the amnesty to file their paperwork. It  
15          would probably be a good idea to have them  
16          file one or two years back at least,  
17          minimally, if they were lobbying, so that we  
18          could capture what their activities had been.

19                   Components of the program could include  
20          mandatory training on lobbying law for  
21          parties availing themselves of the amnesty  
22          program to encourage future compliance, a  
23          public education and communication campaign  
24          undertaken by the City and the City Clerk's  
25          Office in order to bring as many delinquent

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1  
2 individuals and entities into the City system  
3 as possible by informing them about the  
4 amnesty program. We should also include some  
5 kind of provision that if an organization  
6 should have reasonably known during the  
7 amnesty that they were engaged in  
8 unregistered activity and failed to come  
9 forward that they are not eligible for any  
10 reduction or waiver of late penalty.

11 For discussion?

12 MS. HORTON: I have a point of  
13 clarification because I think you noted that  
14 it could run for a few months. So, is it  
15 that the amnesty would be from January 1,  
16 2012 to June 30, 2012, that's a set period?  
17 Or that any point, whether you're a new  
18 filer, like it's your first time you get  
19 this --

20 MR. BERMAN: Well, remembering that what  
21 we're doing is making a recommendation to the  
22 City Council and to the Mayor. So, we can  
23 affix any period of time to cure the failure  
24 to file, ultimately it would be up to the  
25 Council and the Mayor to determine what that



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2 period would be. But usually it's about six  
3 months, four months.

4 MS. HORTON: It's generally a set  
5 period?

6 MR. BERMAN: Yeah.

7 MR. CARAS: Well, with taxes it's  
8 different. I think with taxes it's usually  
9 that you have to file within the amnesty  
10 period. Sometimes some amnesties work, it's  
11 a short amount of time to declare yourself,  
12 that, you know, "I want to come into the  
13 system," and then you're given an additional  
14 amount of time to get all your paperwork.  
15 That's what we would want to do because  
16 that's what we recommend be done in this  
17 case. And to the extent that we are talking  
18 about that the lobbyists are a small  
19 unsophisticated group that aren't registered,  
20 you may not want to have an amnesty that  
21 undermines itself by scaring people and  
22 saying, "Well, you know, I'm unregistered and  
23 I should come into the system, but I couldn't  
24 possibly do two years worth of filing in  
25 three months when I have to go out and hire

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2 someone or find someone," and three years'  
3 worth of filing could be 30 filings.

4 So, we would want to give enough time.  
5 We would want them to come in but have enough  
6 time so that the amnesty program in and of  
7 itself doesn't scare people away.

8 MR. BERMAN: The basic idea, though, is  
9 to give people enough time to file.

10 MS. HORTON: I guess sort of the time  
11 along with outreach, that a lot of the  
12 outreach would be front-loaded to put the  
13 word out and then this period would begin  
14 with some additional backing time to supply,  
15 if I'm understanding correct.

16 MR. CARAS: Exactly. And I think in  
17 doing some of our research on this, there  
18 were a couple of notable flops in tax  
19 amnesties where people claimed that they  
20 weren't publicized enough. For the most  
21 part, it has been very successful. There was  
22 one I think that came up when we were doing  
23 our research where it wasn't well-publicized  
24 and it brought in only a fraction of what was  
25 a State-level amnesty of what they expected

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2 to bring in.

3 MR. BERMAN: I would also, in keeping  
4 with this concept, ask staff to work with the  
5 Clerk and other City agencies on the protocol  
6 that could give the Clerk guidance at looking  
7 at those who may be unregistered lobbyists  
8 that they could use after the amnesty and  
9 target resources of those who should be  
10 registered. So, that's probably an important  
11 thing also.

12 This proposal could involve asking the  
13 State to identify those lobbyists who file at  
14 the State and declare that they've lobbied in  
15 New York City and make sure that they are  
16 also filing on a City level. So, if Joe Blow  
17 goes and files as a State lobbyist and  
18 indicates that he's lobbying with the City,  
19 we should be able to check against our list  
20 and make sure we have them as a filer.  
21 Looking at City Planning applications which  
22 identify a designated representative and  
23 checking to see if designated representatives  
24 who appear repeatedly in our registry, and  
25 that would apply to Board of Standards and

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2 Appeals I guess and other agencies like  
3 that. And there should be an outreach to  
4 professional associations as well so that we  
5 get the information out. Any conversation?

6 MS. VELAZQUEZ: I think these protocols  
7 would be very good, you know, sitting here  
8 there is probably a couple of other.  
9 Consumer Affairs might be another place where  
10 you would find lobbying activity that you  
11 would want to have some coordination between  
12 the Clerk's Office just the same way City  
13 Planning; you know, for sidewalk cafes,  
14 whatever they give, because, you know, they  
15 give the licenses for those, whatever. You  
16 know, maybe on some other concessions,  
17 granting all concessions and stuff like that,  
18 too.

19 So, I would ask if we could kind of also  
20 maybe think through a couple of other areas  
21 where there could be coordination between and  
22 information sharing between the Clerk's  
23 Office and these agencies.

24 So, like here, we know that there's a  
25 designated representative check box on the

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1  
2 City Planning like ULURP form or whatever it  
3 is, there might be something similar on if  
4 you're going for Consumer Affairs or whatever  
5 so that that information can be shared as  
6 well. So, if we could, you know, kind of  
7 look at it in an exhaustive kind of way.

8 Also, do you think we'll get cooperation  
9 from the State? Would the State, if we put  
10 the feelers out there to see if they will  
11 maybe do some of this stuff?

12 MR. CARAS: We're in the process, and  
13 we're happy to hear, we'd love to hear other  
14 ways that we can add to this protocol and  
15 make it as effective as possible. So,  
16 especially from our, you know, our government  
17 commissioners.

18 MS. VELAZQUEZ: Definitely. Because  
19 then we have some more control over obviously  
20 than what the State does.

21 MR. CARAS: But the State has indicated  
22 that they can do a run on their -- and they  
23 were willing to do it for me at my request,  
24 so we will talk to them about -- I think it  
25 is something they will be willing to do.

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2 MR. BERMAN: It's called "Jim Caras  
3 Syndrome."

4 (Laughter)

5 MR. CARAS: At least on a periodic  
6 basis. I think we have to work with them.  
7 We can't make it burdensome on them.

8 MR. HEINZEN: All of our discussions  
9 with the State have been very positive.

10 MS. VELAZQUEZ: Awesome.

11 MR. BERMAN: Going on. Coordination of  
12 State and City filings, basically calling on  
13 the State to accept the City filings for  
14 purposes of those who fall under the State  
15 Lobbying Act only because of their lobbying  
16 activities in New York City. Citizens Union,  
17 Common Cause, NYPIRG, etcetera, believe that  
18 the City system provides more useful  
19 information in many ways than the State  
20 system, especially in terms of contacts and  
21 tracing activity on a particular issue. And  
22 those cases where they think the City system  
23 provides too little publicity, we will be  
24 making changes to address their concern.  
25 Therefore, based upon concerns of the

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1  
2 organizations that I just mentioned, that we  
3 don't lose those aspects of the City's system  
4 that provide contact information and greater  
5 clarity, I recommend calling on the State to  
6 accept City filings for the purposes of those  
7 who fall under the State Lobbying Act only  
8 because of their lobbying activities in New  
9 York City.

10 We basically have no power to control  
11 the State, so all we can do then is ask them  
12 and identify the reasons why we're asking  
13 them. Any discussion?

14 MS. VELAZQUEZ: That will be great.

15 MR. BERMAN: That's gratuitous.

16 Technology issues and public information  
17 issues. Mention to obtain more information  
18 in the eLobbying system that needs to be  
19 publicly available and it needs to be  
20 available in a searchable format. We have  
21 had numerous conversations at meetings on  
22 what can be done to improve this. They're  
23 still working on a best way to accomplish  
24 this, to accomplish our goal. We are  
25 confident that we are going to be able to

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2 increase the transparencies and searchability  
3 of the lobbyist data so that people can  
4 search by topic or government entities. So,  
5 they're trying to arrive at that now.

6 Now, the requirement that more  
7 information should be reported by the Clerk,  
8 staff should make recommendations on this  
9 after more conversation with the Clerk.

10 Local Law 15 increases the requirement  
11 that the Clerk report on their audits and  
12 assessments of penalties and other actions.  
13 Until this year, the Clerk rightfully focused  
14 on complying with these new reporting  
15 requirements. However, they stopped  
16 reporting on some of the more global issues  
17 such as top lobbyists as well as that this  
18 year they made a good effort to combine both  
19 the micro and macro issues.

20 We have heard from the good government  
21 groups that may serve us well to require some  
22 additional reporting from the Clerk and to  
23 have some benchmarks that they need to report  
24 on like what would be found in the Mayor's  
25 Management Report.



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2 MR. BERMAN: On this issue, is there any  
3 discussion?

4 (No response)

5 MR. BERMAN: Staff should make a  
6 recommendation on changes to eLobbyist that  
7 would make the system more user-friendly such  
8 as more prepopulation on screens so that each  
9 report doesn't have to be started from  
10 scratch and more use of dropdown screens so  
11 that information is more uniform. Any  
12 thoughts on that?

13 MS. MORTON: I would add here that  
14 consideration of the amnesty program, how  
15 long it is, and the intersection of that with  
16 any plans to upgrade technology should be  
17 carefully considered because it just looks  
18 like a more intelligent way to go and plan  
19 for technology. And then, you know, once  
20 you've done that, we can get amnesty where we  
21 expect after that period. It will heighten  
22 compliance, that's all.

23 MR. BERMAN: I think staff should amend  
24 it to work with DeWitt and enunciate the  
25 areas.

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2 MS. MORTON: And coordinate the timing.  
3 I'm sure the Clerk's Office will welcome  
4 them.

5 MS. BRAGG: In addition to the  
6 coordination of the State and City filings,  
7 the technology is in line with that.

8 MS. MORTON: Exactly.

9 MS. BRAGG: Just saying in addition to  
10 in accordance with the coordination with the  
11 State and City filings, should be working  
12 DeWitt as much as possible in terms of our  
13 concerns trying to match the State and City  
14 reporting. It's not as clear in here.

15 MR. BERMAN: One of the areas that was  
16 repeatedly referred to by members of the  
17 Commission is to fix the glitch that prevents  
18 the Doing Business Database from getting the  
19 name of the lobbyist if that lobbyist has  
20 been granted filing an extension by the  
21 Clerk. So, we're going to fix that, am I  
22 right, James?

23 MR. CARAS: Yes, we are.

24 MR. BERMAN: There are some sundry other  
25 issues that I'd like to go through. The use

1                   COMMISSION MEETING 6/24/11  
2           of accrual basis in reporting lobbyist  
3           income, we understand that the Clerk is  
4           sticking to the use of the accrual basis  
5           instead of switching to cash, which I think  
6           we all agree could be more burdensome, that,  
7           resulting in significant benefit in terms of  
8           transparency.

9           The issue of allowing lobbyists to  
10          retain another lobbyist with certain  
11          expertise to list them as a co-lobbyist and  
12          whether rulemaking or other means of  
13          providing guidance can be used more regularly  
14          when the Clerk is providing guidance on  
15          issues that may apply to a large number of  
16          filers.

17          The proposal we would come up with would  
18          be calling for a new Lobbying Commission to  
19          review changes to City lobbying laws two or  
20          three years after any changes are enacted  
21          based on recommendations of this Commission.  
22          Any discussion?

23                 MS. BRAGG: I agree.

24                 MR. BERMAN: Alright, fine.

25                 MS. VELAZQUEZ: Just to clarify, so,

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2 staff is going to look at these three issues  
3 a little further and then is going to advise  
4 us, right?

5 MR. BERMAN: Right.

6 MR. CARAS: Right.

7 MR. BERMAN: There are certain issues  
8 that staff has given a significant amount of  
9 study of which I don't believe the Commission  
10 should pursue. One of them is the bundling  
11 and proposal to limit public campaign funds  
12 from purchasing consulting services from a  
13 lobbyist. That's an issue that we spent an  
14 awful lot of time trying to resolve it.  
15 There's a number of issues that kind of  
16 resulted in us not going with their  
17 recommendation, at least on which is the fact  
18 that Campaign Finance laws all over the  
19 country are being challenged and any attempt  
20 to further restrict might be negatively  
21 impacted upon judicially if in fact we change  
22 the legislation.

23 But more importantly, this is a Campaign  
24 Finance issue much more so than the lobbying  
25 issue. I believe the percentage is about 20

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2 percent of the average campaign contributions  
3 to candidates come from lobbyists -- bundled  
4 by lobbyists, I'm sorry. That leaves a vast  
5 area of 80 percent which comes from  
6 developers, builders, etcetera. This is an  
7 issue that is worthy of consideration but  
8 should be done in the context of an entire  
9 study of Campaign Finance Law, and under that  
10 heading, restrictions, if any, should come by  
11 not the lobbying law but rather in Campaign  
12 Finance Reform.

13 So, we're not necessarily against it, we  
14 just don't necessarily believe that this is  
15 the best forum for it. So, my recommendation  
16 is that we don't do anything about that.

17 MS. HORTON: I agree.

18 MS. VELAZQUEZ: I agree.

19 MR. BERMAN: Final issue is increase the  
20 ban on former City employees from appearing  
21 before their agency from one year to two  
22 years after leaving City services. It's an  
23 interesting issue. One of the things in  
24 researching this is we found that if we were  
25 to change that rule as it applied to elected

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2           officials, it would require a Charter change  
3           and you could not do it legislatively. It  
4           kind of would be singularly unfair to say  
5           that an elected official you could have one  
6           year but your employees have to have two  
7           years. I think that's an issue for a further  
8           Charter consideration and that's my  
9           recommendation. Any comments or thoughts?

10           MS. MORTON: Agree.

11           MR. BERMAN: That basically wraps up  
12           the -- I was going to propose resolution, but  
13           I need a five-minute break. So, guys  
14           continue talking for five minutes.

15                   By the way, ladies and gentlemen, one  
16           of the areas that was originally recommended  
17           was moving it from the City Clerk to the  
18           Conflicts of Interest Board and that had no  
19           support amongst members of the Commission and  
20           I think that the Clerk's Office has come a  
21           long way in doing an exemplary job.

22                   (Brief recess taken.)

23           MR. BERMAN: The reason for the delay  
24           was that Bill Heinzen and Jim Caras took the  
25           additional recommendations that we had during

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2 this session, added it to the ones that we  
3 enunciated before, and he is going to read  
4 them into the record.

5 Ladies and gentlemen, can I have your  
6 attention. Welcome back.

7 MR. HEINZEN: Thank you, sir,  
8 Mr. Chairman.

9 MR. BERMAN: I want to make clear that I  
10 know that when work is done to put together a  
11 substantive report covering a lot of issues  
12 that often an issue arises that may not have  
13 been contemplated or that could arise as a  
14 result of dealing with the related issue.  
15 Unfortunately these often cannot be fully  
16 anticipated, so staff should feel free to  
17 reach out to us as well as to agencies and  
18 those who participated in this process as  
19 such issues arise. They can then bring us  
20 any new issues or any revisions of any issues  
21 we discussed here as part of the preliminary  
22 report and that can be discussed when we  
23 consider it.

24 Mr. Caras will read those issues.

25 MR. CARAS: So, this would be the list

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2           of issues as we hopefully have captured them,  
3           and please, if I've left anything out, just  
4           let me know.

5                   Proposal 1. Increasing the threshold:  
6           The general threshold should be \$5,000.  
7           Staff should consider as an option if we  
8           could have a separate streamlined filing of  
9           filings for those who do not hire outside  
10          lobbyists and spend between \$5,000 and  
11          \$10,000. And then the additions from the  
12          Commissioners, we will also look at less  
13          frequent filings and filings based on State  
14          filings for that group of people.

15                   Proposal 2. Definition of lobbying and  
16          when lobbying begins: A proposal should  
17          ensure that lobbying begins before  
18          introduction and before formal rulemaking and  
19          ratemaking proceedings have begun. The  
20          proposal should also make sure advocating on  
21          executive order and oversight hearings on  
22          lobbying activities, and staff should look at  
23          the issues of invitations to testify.

24                   Proposal No. 3. Other professionals:  
25          Architects, engineers and other professionals



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1  
2 who appear before government should be  
3 educated and if they're advocating for a  
4 particular outcome, they are for the most  
5 part engaged in lobbying. The Clerk should  
6 conduct education and outreach at the bodies  
7 they are likely to appear before and before  
8 professional organizations. These  
9 professionals should be made aware that if  
10 they are going to be making appearances and  
11 they believe their role does not rise to  
12 advocacy, they should seek guidance from the  
13 Clerk and the Clerk and the Law Department  
14 should be prepared to provide such guidance.

15 Proposal 4. Assessment of late  
16 penalties: Give the Clerk limited discretion  
17 to waive or reduce late fees but only after  
18 making certain enumerated findings or  
19 considering certain enumerated factors. The  
20 factors should include things like: (i) The  
21 annual budget of the organization; (ii)  
22 whether the entity is in the business of  
23 lobbying or is a client who lobbies on its  
24 own behalf; (iii) whether this was a first-  
25 time mistake; (iv) how much lobbying activity

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2 was unreported during the period; and (v) the  
3 reason for the late filing.

4 And the second addition by the  
5 Commission is that staff should also consider  
6 a fine schedule.

7 Proposal 5. Training and outreach:  
8 Training should be required for all  
9 registered lobbyists to be administered by  
10 the City Clerk. Also, consider requiring an  
11 education and outreach position in the  
12 Clerk's Office to not work just with  
13 registered lobbyists but on outreach in  
14 venues where there are likely to be people  
15 who may be subject to the requirements of  
16 lobbying laws but may not be registered.

17 Proposal 6. Amnesty: A one-time  
18 amnesty where unregistered lobbyists would be  
19 forgiven their late penalties but would have  
20 to do one or two years of back-filings and  
21 take training, and staff should also consider  
22 whether there should be interest.

23 Proposal 7. Protocol for targeting  
24 unregistered lobbyists: Give the Clerk  
25 guidance in looking at those who may be

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2 unregistered lobbyists that the Clerk could  
3 use after the amnesty to target resources to  
4 those who should be registered.

5 This protocol could include asking the  
6 State to identify those lobbyists who file  
7 with the State who say that they have lobbied  
8 in New York City and make sure they are also  
9 filing at the City level; looking at City  
10 Planning applications which identify a  
11 "designated representative" and checking to  
12 see if designated representatives who appear  
13 repeatedly are registering. Outreach to  
14 professional associations, City Planning and  
15 other governmental bodies. And as  
16 articulated by one of the Commissioners,  
17 include other available agency filings and  
18 materials in that proposal.

19 Proposal 8. Coordination of State and  
20 City filings: Calling on the State to accept  
21 the City filings for purposes of those who  
22 fall under the State Lobbying Act only  
23 because of their lobbying activity in New  
24 York City.

25 Proposal 9 would be a series of

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1  
2 technology issues and public information  
3 issues: (i) Require more information from  
4 the eLobbyist system to be publicly available  
5 and make that available in a searchable  
6 format; (ii) require that more information  
7 should be reported by the Clerk. Staff  
8 should make recommendations on this after  
9 more discussions with the Clerk; (iii)  
10 recommend changes to eLobbyist that will make  
11 the system more user-friendly such as more  
12 prepopulation on the screens so that each  
13 report doesn't have to be started from  
14 scratch and more use of dropdown screens so  
15 that information is more uniform; (iv) fix  
16 the technological and logistical issues that  
17 prevent the Doing Business Database for  
18 getting information on a lobbyist if that  
19 lobbyist has been granted a filing extension  
20 by the Clerk; and (v) look at any  
21 consistencies we can achieve to make it  
22 easier to file in both the City and the State  
23 level.

24 Proposal 10 is series of proposals that  
25 staff will look at and assess. These issues

## COMMISSION MEETING 6/24/11

1  
2 include allowing lobbyists who retain another  
3 lobbyist to list them as a co-lobbyist, the  
4 use of the accrual basis and reporting  
5 lobbying income, whether rulemaking or other  
6 means of providing guidance can be used more  
7 regularly for issues affecting large numbers  
8 of filers, and (iv) is that staff should  
9 consider the timing in relation to  
10 implementation of these proposals, especially  
11 those relating to amnesty, training and  
12 technology, and then the direction that the  
13 Chair just gave us for other issues that may  
14 arise and the Commission in two to three  
15 years to review the work that's done and any  
16 legislation that follows.

17 MR. BERMAN: Then on the issues that  
18 I've discussed and the matters added by Jim  
19 Caras, my resolution now before us is to  
20 whether or not staff is authorized to  
21 conceive the now preliminary reports and  
22 present that at the next public meeting.

23 All in favor say "aye."

24 THE COMMISSION: (In unison) Aye.

25 MR. BERMAN: Any opposed?

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2 (No response)

3 MR. BERMAN: It is passed.

4 We are adjourned. We will have our next  
5 meeting shortly and, thank you, ladies and  
6 gentlemen.

7 (Time noted: 2:37 p.m.)

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1 C E R T I F I C A T I O N

2

3 STATE OF NEW YORK )  
4 COUNTY OF NEW YORK ) : SS.:

5

6

7 I, CASEY MARTIN, a Stenotype Reporter and  
8 Notary Public for the State of New York, do hereby  
9 certify:

10 THAT this is a true and accurate  
11 transcription of the New York City Lobbying  
12 Commission public meeting held on June 24, 2011.

13 I further certify that I am not related  
14 either by blood or marriage to any of the parties  
15 in this matter; and

16 I am not in any way interested in the  
17 outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand this 24th day of June 2011.

20

21 \_\_\_\_\_  
22 CASEY MARTIN

23

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