BOARD OF ETHICS

CITY OF CHICAGO

FINAL DETERMINATION OF LOBBYING VIOLATION
CASE NO. 17011.12.LOB

This matter involves further action following the Board's determination, made at its meeting of April 19, 2017, that there is probable cause for the Board to conclude that: (i) an individual violated §2-156-245 of the Governmental Ethics Ordinance (the "Ordinance") by engaging in lobbying (as defined in §2-156-010(p) of the Ordinance) on November 9 and December 15, 2015, and then on January 8, 2016, but failed to register as a lobbyist. The subject was notified of that determination. On May 12, 2017, the Board received written responses from the subject. The Board afforded the subject the opportunity to meet to present any supplemental information or arguments, and that meeting was held on July 18, 2017.

At its meeting of July 19, 2017, the Board, having fully considered all of the information presented by the subject, VOTED 4-0 (William Conlon and Zaid Abdul-Aleem, recusing, and Nancy C. Andrade, absent) to determine that the subject violated §2-156-245 of the Ordinance by failing to register as a lobbyist within five (5) days of engaging in lobbying activity, and to impose a fine of $2,500, pursuant to §2-156-465(b)(3). Further, pursuant to §2-156-465(b)(3), the Board hereby names the lobbyist as Marc Andreessen.

The Board recites the following:

1. On November 6, 2015, a representative of the person on whose behalf the subject lobbied emailed the subject, forwarding an email exchange that representative had with an employee of the person on whose behalf the subject lobbied, asking whether the subject would be willing to contact the Mayor for the purpose of:

> "ask[ing]/encourag[ing] Rahm to take a meeting with [the company] about some new (and potentially unfavorable regulations that Chicago is considering."

In response, the subject wrote, "I can try!"

The subject then emailed the Mayor on November 9, 2015, writing:

> "My colleagues at [the company] are hoping to get a few minutes of your time to discuss the shifting home regulatory landscape. Detail below. I figured I'd just forward you this directly so you can see the straight stuff if you're interested. The ask is a meeting with [an employee of the company] who is now head of global policy at [the company]. And I'm sure [the CEO of the company] can join if you'd like. You may have seen the anti-home sharing Proposition F got shellacked in SF last week – but we want to keep putting our best foot forward as each city figures out the right path for itself."

Later that day, the Mayor responded "I will have my staff arrange," to which the subject responded "Muchos gracias" [sic].

Then, on December 15, 2015, the subject emailed the Mayor that '[t]he company is looking forward to bringing onboard their new senior policy lead from Chicago who we know is a strong supporter of yours." Later that day, the Mayor emailed back, asking about the timing of the arrangement; the subject responded that a "new person" would start at [the company] in February. The Mayor emailed back, asking whether the subject was free to discuss the matter by phone; a phone call was scheduled for that afternoon.

The final email in the thread, on January 8, 2016, was from the subject to the Mayor. It stated:

> "It doesn't sound like the legislation crafting is heading in a good direction. The company reports that the current draft from your team is even more onerous than San Francisco's Prop F which was proposed and defeated soundly here. The company is a bit puzzled because they thought the approach would be more like what San Jose or Philly are doing vs what the extremists in San Francisco unsuccessfully went for. I wanted to flag for you so you're not surprised if it moves forward and the company opposes it. They remain keen to figure out a good balance."

2. The Board has considered the arguments put forth by the subject, specifically that: (i) contacting an elected official, with the purpose of setting up a meeting, without compensation for such a request, is not lobbying, and that these emails were sent in response to a general request from the Mayor to attract technology businesses and jobs to Chicago; (ii) the kind of communication in which the subject engaged is not lobbying, and treating it as such poses First Amendment problems.

3. The Board rejects these arguments, for the following reasons:

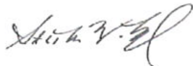
(i) as the Ordinance defines the term "lobbyist" in §2-156-010(p), it means "any person who, on behalf of any person other than himself, ***or*** as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action ..." [emphasis added]. The requestor here was emailing the Mayor on behalf of another. The Ordinance's requirement that only persons who were compensated or expended more than a set amount per year was removed, effective May 17, 2000. Moreover, the subject's emails contained more than merely an attempt to set up a meeting. They contained argumentation and advanced an explicit position, which the subject was urging the Mayor to take, and they urged the Mayor to use his Mayoral influence to attempt to drive legislation then pending before the City Council in a particular direction. Therefore the subject, unpaid for this effort, nonetheless attempted to influence "administrative action" as that term is defined in §2-156-010(a) of the Ordinance;

(ii) The Board's reading of the Ordinance itself, and the language of the Ordinance, do not violate the Constitution. *See Calzone v. Hagan*, 2017 WL 810291 (W.D. Mo., March 1, 2017), where the U.S. District court recognized in its order that the Supreme Court's 1954 decision in *U.S. v. Harriss* (347 U.S. 612), does *not* stand for the proposition that the First Amendment only permits paid lobbyists to be regulated, and went on to state that it:

> "finds there is a clear and strong governmental interest in lobbying transparency – in allowing the public to know who is seeking to influence legislators on behalf of someone else and who might be making expenditures for lobbyists. Standing alone, transparency is a sufficient compelling interest to justify the minimal burdens of registration. Transparency is part of the foundation of a democracy, particularly when it comes to how governmental officials are being influenced and by whom ... [plaintiff] does not explain why it is unconstitutional to require transparency for persons who are paid

to lobby but not for those who lobby without pay. Both are attempting to influence legislators for third parties and the public has a right to know who is behind these efforts."

4. **The Board makes clear that its determination is not intended to question the subject's integrity, character or motivations. It represents, rather, the Board's careful examination of all the facts and arguments presented to it, and the Board's conclusion that those facts show that the subject engaged in "lobbying" as defined in the Ordinance, but did not register as a lobbyist as required by the Ordinance.**



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