



Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: NONPROFIT ADVOCACY

DATE: February 4, 2011

Approved

Chuck Reed

Date

2/4/11

MWR

RECOMMENDATION

That the City Council resolves to:

1. Require all 501(c)(3) organizations to report to the City Clerk attempts to influence the City Council to approve an expenditure or budget action of over \$100,000.

This report should include:

- The expenditure or budget action requested
- A list of the Council offices that the organization advocated to and the dates of any meetings or conversations held

The report should be filed before any Council action.

2. Require Councilmembers to disclose which 501(c)(3) organizations they have met with that have advocated for an expenditure or budget action of over \$100,000. This disclosure should be made at the Council meeting before the deliberations, similar to the disclosure required for communications with lobbyists and interested parties.

BACKGROUND

In December 2009, the Mayor's Biennial Ethics Review recommendation, "Closing a Loophole in Lobbyist Registration and Disclosure", was referred in parallel to both the Elections Commission and the Mayor's Ethics Review Panel. This recommendation would have required any 501(c)(3) nonprofit organization to register and comply with the lobbyist ordinance if they were both a. controlled by another entity that was required to register under the lobbying ordinance and b. engaged in lobbying activity.

After reviewing the recommendation, the Elections Commission crafted a recommendation to the Rules Committee to eliminate the lobbying exemption for all 501(c)(3) organizations but raise the registration threshold for those organizations to 40 hours or some other limit the Council saw as appropriate.

Before taking action on this recommendation, the Rules and Open Government Committee directed City Staff to (a) “to return with more information about the reporting requirements and thresholds, as well as the number and type of nonprofits that actually register and report in other comparable cities with lobbying laws” and (b) hold an informational meeting with 501(c)(3) organization representatives about the proposal from the Elections Commission and to collect input. Nonprofit representatives shared many concerns during that meeting and this recommendation is an attempt to balance those valid concerns with the need for additional transparency in how decisions are made here at City Hall.

As stated in the introduction of the last revision of the City Lobbying Ordinance, the City of San José:

*... has paramount interests in ensuring fair and impartial governmental decisions, **identifying the true voice of those who exert political pressure on government decisions**, reducing corruption and the appearance of corruption in the decision-making process, promoting integrity in public office, **enhancing transparency and public confidence in City government**, and protecting each citizen's right to representation (emphasis in bold)*

Unlike other large cities with lobbying ordinances, (Los Angeles, San Francisco, San Diego, Oakland, etc.) 501(c)(3) organizations remain exempt in the City of San José and do not need to report attempts to influence legislative or administrative actions.

The reason this City chose to exempt these organizations in the past was because:

- These groups provide services that benefit the public as a whole.
- Unlike contract lobbyists, these groups have no private profit motive.
- These groups do not want to have the negative connotation of being labeled as “lobbyists”. Many organizations sign agreements with donors stating that their funds will not be used for lobbying activity.

These are all compelling reasons to exempt these organizations from registering as lobbyists and I am not advocating they do so.

Thus, many nonprofit representatives have rhetorically asked, “What is the problem”?

Simply, this loophole, unique among cities with a lobbyist ordinance, shields from public view attempts to sway Council decisions that have a direct effect on the public’s money. Furthermore, Councilmembers are not required to disclose their communications with these groups under Section 12.12.800 of the Municipal Code.

Nonprofit organizations are impassioned advocates and activists. Their representatives are frequently at City Hall attempting to exert pressure and influence legislative action.

Over the years, 501(c)(3) organizations have advocated directly to the City Council for millions in funding. During Fiscal Year 2009-2010, the City of San José provided funding of at least \$35.6 million to 323 community-based organizations. Sometimes, the funding provided by the

Council has kept the doors open at the 501(c)(3) organizations doing the advocating – clearly benefiting the people employed by the organization itself.

The citizens of San José have a right to know who is asking for public funds and for what purpose. Since these organizations are working for the greater good, they should have no problem disclosing whom they talk to and what action they are asking for.

A major concern of nonprofit representatives was administrative burden and this proposal is far more modest than the requirements of the lobbying ordinance. Unlike those who are registered under the lobbyist ordinance, 501(c)(3) organizations would not have to track for how long a meeting occurred nor the total time spent advocating.

The report would only require:

- The expenditure or budget action requested of the Council
- A listing of all Councilmembers whom the organization advocated to (Unlike the lobbyist ordinance, which requires a list of meetings with all City Officials)

Most importantly, nonprofit organizations *would not be required to pay any type of fee or register as “lobbyists”*.

Some nonprofit representatives have stated that the public already has access to Councilmember calendars and that this access is sufficient “Sunshine”. While true, the public should not be forced to sift through twenty-two separate calendars each week to find out who a particular group advocated to on an issue. Put another way, *if you ask for funding, we ask you to disclose who you talked to and why*.

Additionally, Councilmembers would also now be required to disclose communications with these groups if they sought City funds over \$100,000, which is similar to the disclosure now made for communications with lobbyists.

Under this proposal, unlike other organizations, 501(c)(3) organizations could still meet with City Officials about policy proposals and not be required to register as lobbyists. For example, 501(c)(3) organizations had deep input and drafted numerous recommendations to the City’s Affordable Housing Policy and the Competition Policy. This type of influence on legislative action would remain exempt.