



Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed
Vice Mayor Dave Cortese
Councilmember Judy Chirco

SUBJECT: Reed Reforms

DATE: March 29, 2007

Approved

Chuck Reed

Date

Judy Chirco Dave Cortese R.C.

RECOMMENDATION

1. Direct the City Attorney to return to council with amendments to the revolving door ordinance to extend the existing prohibitions from one year to two years.
2. Direct the City Attorney to return to council with amendments to the lobbyist ordinance to ban success fees, and in those cases where the city cannot ban success fees, require disclosure to the City Clerk for posting on the internet prior to meeting with City officials.
3. Direct the City Attorney to return to council with amendments to the lobbyist reporting form to require more disclosure by adding more income categories and a category for success fees.
4. Direct the City Attorney to return to the council with amendments to the lobbyist ordinance to reduce the number of hours required for an In-House lobbyist to register, from 20 hours within any three month period, to 10 hours within a 12 month period, and to aggregate the number of hours spent by different individuals from the same legal entity in determining the 10 hour threshold:
 - (a) Direct the City Attorney to return to council with amendments to the lobbyist ordinance to create an exemption from registration for nonprofit organizations that are tax exempt organizations under Internal Revenue Code Section 501 (c) 3.
 - (b) Direct the City Attorney to return to council with amendments to the lobbyist ordinance to make clear that if a developer is required to register as a lobbyist they cannot avoid registration by having a contract lobbyist.
 - (c) Direct the City Attorney to return to the council with amendments to the lobbyist ordinance to exempt from registration small business owners who are representing themselves and who have not made or solicited contributions, donations, expenditures for or at the behest of the Mayor or Councilmembers or to independent committees in San Jose campaigns within the last year in excess of \$1,000.

BACKGROUND

These recommendations were originally made by the Transition Committee's Government Reform and Ethics subcommittee chaired by Dave Cortese or evolved from the Rules and Open Government Committee discussing their recommendations. Councilmembers Sam Liccardo and Pete Constant also participated on this subcommittee which consisted of 12 community members. Recommendation 4 (a) was suggested by members of the nonprofit community, as

they were concerned about modifications to the lobbyist ordinance and how they would be affected, as well as the cost if they were required to register as a lobbyist.

ANALYSIS

Revolving Door Ordinance – The Transition Subcommittee strongly believes the ordinance needs to be amended to reflect a longer period of time between leaving employment with the City and representing an entity before the City or being hired and assisting a company positioning itself for dealing with the City. This increase in the duration limits is intended to primarily prevent former officials and employees from profiting from their prior City service unfairly and to insure that a private firm does not have an unfair advantage in dealing with the City by hiring a former employee. Increasing the time frame from one to two years will assure citizens that the Council is serious about controlling the influence of former city employees with the City.

Success Fees – Currently, 38 states, including California, ban success fees as do a growing number of major cities in the country. The major concern with success fees is that a lobbyist may be tempted to resort to any means necessary to secure their goals when their compensation is linked directly to the outcome. Moreover, when the compensation in the form of a success fee is a large amount, it can create the impression that a legislative decision is overly influenced by money and thus give a negative impression to the general public. To the extent success fees cannot be banned, they must be disclosed.

Reporting Form – Modifying the lobbyist reporting form to include categories for higher levels of fees will give everyone a clearer idea of what amount of compensation a lobbyist receives. Currently the highest category is for \$100,000 and above. We believe by adding a category for \$200,000 and above and for \$400,000 and above it would provide a better degree of clarity for any interested party. Success fees should also be included on the form.

Hour Threshold for Lobbyist – Under the 20 hour per quarter threshold requirement for someone to qualify and register as a lobbyist, too many people who have lobbied the City Council have not had to register as a lobbyist. The general public, the media and other interested parties should know who is lobbying Councilmembers. To insure that people acting as lobbyists register, we strongly support lowering the number of hours to qualify as a lobbyist. Also, to avoid the possibility of a legal entity skirting the lobbying regulations by having multiple employees lobby Councilmembers, the new threshold will apply to a company not individuals. This approach of aggregating the number of hours will reduce the chance of an organization circumventing the City's lobbying ordinance and not disclosing their activities.

Exemption for 501 (c) 3 Nonprofits – It is appropriate to exempt 501 (c) 3 nonprofit organizations from having to register as lobbyists. The lobbyist registration fee is burdensome on many nonprofits and we don't believe the City is interested in regulating the activities of those entities that are not engaged in raising money for political campaigns. These organizations are also regulated under federal and state tax rules.

Developers –The lobbyist ordinance has to be clarified so that if a developer hires a contract lobbyist and the applicant still lobbies the council and reaches the threshold for hours they must register as a lobbyist.

Small Business Owners – The Rules Committee felt we must provide an exemption for small business-owners who on rare occasion may need to discuss an issue with the City. The City Attorney will need to develop a definition for the term small business-owners.

Conclusion

Approving the recommendations from the Transition Subcommittee on Government Reform and Ethics will continue to reinforce to the general public that we are serious about making decisions on merit and are not overly influenced by financial interest. We encourage you to support these recommendations.