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PROBLEMS WITH THE PROPOSED DRAFT OF A SAN JOSE LOBBYING ORDINANCE

1) Lack of Thresholds

There is no minimal threshold for the number of lobbying activities, the duration of those activities, or the amount of compensation for those activities. Therefore, the following actions would all require registration as a lobbyist and payment of, at least, a $350.00 fee:

> Any phone call or e-mail by a business owner or manager to a city council member on an issue in which the business has an interest. For example, the baseball league referees call their councilmember to protest that they are subject to the $150.00 business license fee. By calling, they now owe a $350.00 lobbyist fee. A mom and pop store e-mails their councilmember about an issue of importance to their store. They do it once. If mom and pop both sign the -mail, they owe $700.00. A representative of a neighborhood organization meets with a councilmember. Because he took a day off from work, the associations pays him $50.00. He now owes a $350.00 fee.

In addition to being undemocratic and crazy, charging people $350.00 for making a 90 second phone call to their councilmember is blatantly unconstitutional.

2) Treatment of non-profits

Non-profits with numerous staff members who may occasionally lobby will pay enormous fees. WPUSA will pay $3500.00 a year, minimum. The exemption, 12.12.300 D which excludes persons who lobby "not as part of the ordinary course of their employment" is worthless since the terms "not as part of ordinary employment" is not defined - and a failure to correctly guess what it means can generate a $5000.00 fine. For example, if you lobby twice a year is lobbying part of your regular employment? Three times? Three times and a call back; that's four times.

If two people work for the mayor for a year, quit, and form a lucrative lobbying firm, they 'll pay $700.00 in fees, 20% of the fees charged to WPUSA.

3) Exemption for Editorials

The exemption for editorials reveals stupifying hypocrisy.

I work for a non-profit. If I want to call my city councilmember and urge her to support a city resolution in favor of SB2 because I think its good for San Jose, it costs me $350.00

If the Editorial Board of the SJ Mercury News, a for-profit business, urges the Council to oppose SB2 - because that's in the interest of their corporation, they pay nothing.

Please explain how this differential treatment and blatant favoritism provides a "high ethical environment" for the city.

4) Exemption for Members of Board of Directors

If WPUSA expands its Board to include politically connected people in the region, and we ask them to do all our lobbying, we have no obligation to report and pay no fees. If our professional staff lobbies, we pay full fees. Please explain how this advances the goal of "transparent" government?

5) Reporting of Contributions on Behest of City Officials

During election season, I routinely receive invitations to fundraising events sponsored by dozens, if not hundreds of people, including numerous city councilmembers. If I attend the event, do I have to report I made a contribution at the bequest of 9 or 10 councilmembers.

6) Prohibitions against attempts to "deceive" an elected official about material facts or creating the fictitious appearance of public favor disfavor.

In many issues, the material facts or the extent of public favor or disfavor are in dispute.

If Jim Cunneen claims that the city's living wage policy will force firms to leave San Jose, will he be subject to a complaint for violating this chapter.

If a businessman tells a councilmember, the taxpayers won't stand for your business license fees, will he be subject to a complaint?

7) Prohibition on representing that you can obtain votes

Consider the following scenario. I am lobbying my Councilmember, Cindy Chavez, to support having San Jose have a celebration of Human Rights Day. She asks me if anybody else on the Council will support the idea. I tell her I think I can convince Ken Yeager to support the idea because he supports Human Rights.

According to this ordinance, I would have to pay a $5000.00 fine for saying that.

8) Prohibition of Communication with Council between date of RFQ and date of Staff recommendation.

Consider the following scenario.

The RDA has a controversial idea, a complicated controversial idea, like a development that impacts the Guadalupe River in downtown San Jose. It issues an RFQ. Because of the complex impacts on the river, opponents hire a water resources expert to assist them in making their case to the Council. Under this ordinance, no one can bring the compensated expert to meet with Councilmembers until the staff recommendation is released. The recommendation is released Thursday afternoon for a Council meeting the next Tuesday. On Tuesday, the expert is allowed two minutes to make his case.

Does this meet the ordinance's goal of not limiting the public's access to elected official?

Look, I'm one of the better public speakers in this city, and I can't make a complex point in two minutes. The only way citizens can communicate with the council on a complex issue is by lobbying. Denying people time to lobby means denying them meaningful access.

9) Prohibition on performing services on legislative action on which Lobbyist performed services for the city. Section 12.12.510 G

Between 1990 and 1998, as public policy and budget director for Mayor Hammer, I worked on every kind of legislative and administrative decision that the city was engaged in.

When I left, I deliberately chose not to become a professional lobbyist and chose to work for a non-profit, at a substantial cut in pay. I did so because I wanted to continue to shape public policy in ways that improve justice for San Jose residents.

Other people chose to quit employment with a Mayor after a year, leaving them with numerous areas of policy in which they had never been involved. They lobby for profit.

This provision would allow the early leavers to lobby extensively as long as they want to. Since there is no time limit on the application of this provision, it would prohibit me from lobbying on virtually any issue for the rest of my life. Please explain how this approach enhances public trust in city government.