



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** Response from the Elections  
Commission to Referrals from  
the City Council Following the  
Mayor's Biennial Ethics Review  
on December 15, 2009

**DATE:** April 22, 2010

On December 15, 2009, the City Council considered the Mayor's Biennial Review of the Ethics Ordinances and referred four issues to the Elections Commission and the people who participated in the Mayor's Ethics Review Panel on October 13, 2009:

1. Avoiding Conflicts of Interests Arising from Family Relationships
2. Closing a Loophole in Lobbyist Registration and Disclosures
3. Protecting Public Participation in Council Hearings
4. Limiting Anonymous Complaints to the Elections Commission

At meetings on January 13, February 10, March 22 and April 14, 2010, the Elections Commission heard extensive testimony from members of the public about the Council's referrals. Members of the Commission also considered the following documents:

1. Memorandum from Mayor Chuck Reed to City Council, dated November 24, 2009, regarding "2009 Mayor's Biennial Ethics Review"
2. Memorandum from Mayor Chuck Reed to City Council, dated December 4, 2009, regarding "Mayor's Ethics Review Recommendations – Supplemental"
3. Memorandum from Councilmembers Ash Kalra, Nancy Pyle and Kansen Chu to Honorable Mayor and City Council, dated December 11, 2009, regarding "2009 Mayor's Biennial Ethics Review" recommendations
4. Memorandum from Mayor Chuck Reed to City Council, dated December 14, 2009, regarding "2009 Mayor's Biennial Review of Ethics Ordinances Amended and Restated"
5. Excerpt of Synopsis of City Council Meeting on December 15, 2009, Item 3.4: "Mayor's 2009 Biennial Review of Ethics Ordinances"
6. Editorial of the San Jose Mercury News, dated December 27, 2009, regarding "Lobbyist or not, it's disclosure that matters"
7. Letter from Ben Field, Chief of Staff, South Bay Labor Council, to Members of the Elections Commission, dated January 29, 2010

8. Memorandum from Lisa Herrick, Sr. Deputy City Attorney, to Elections Commission, dated February 3, 2010, regarding "Nonprofit Organizations – Lobbying Regulations"
9. Memo from Lee Price, City Clerk, on behalf of Elections Commission Subcommittee on Anonymous Complaints, to the Elections Commission, dated February 3, 2010, regarding "Subcommittee Recommendation Regarding Anonymous Complaints"
10. Letter from Fr. Bill Leininger to Elections Commission, dated February 3, 2010
11. Letter from Supervising Attorney James Zahradka, Law Foundation of Silicon Valley, to Members of the Elections Commission, dated February 8, 2010, regarding "Ethics Reform Proposals"
12. Letter from Richard Hobbs, Associate Director, Services, Immigrant Rights and Education Network (SIREN), to Fred deFuniak, Chair, dated February 9, 2010
13. Letter from Rabbi Melanie Aron, Congregation Shir Hadash, to Elections Commission, dated February 9, 2010
14. Letter from Rabbi Melanie Aron, Congregation Shir Hadash, to Elections Commission, dated February 11, 2010
15. Email from Gregory R. Kepferle, CEO, Catholic Charities of Santa Clara County, to Members of the Elections Commission, dated February 17, 2010, regarding "Nonprofit Lobbying Regulations Proposed Change"
16. Letter from Ben Field, Chief of Staff, South Bay Labor Council, to Members of the Elections Commission, dated February 18, 2010, enclosing IRS Form 990 Schedule R and Form 990 glossary
17. Letter from Bev DeKoven, Co-Chair of the Board, People Acting in Community Together, to Members of the Elections Commission, dated March 19, 2010
18. Email from Skyler Porras, Director – San Jose Office, ACLU of Northern California, to Members of the Elections Commission, dated March 22, 2010, regarding "Ethics Proposal"
19. Notes Regarding "Closing a Loophole in Lobbyist Registration and Disclosure" by Vice-Chair Michael A. Smith, dated March 22, 2010
20. Memo from Lee Price, MMC, City Clerk, to Honorable Mayor and City Council, dated March 29, 2010, regarding "Mayor's Biennial Ethics Review Panel on February 16, 2010" including the following attachments:
  - a. Memorandum from Mayor Chuck Reed to City Council, dated December 4, 2009, regarding "Mayor's Ethics Review Recommendations – Supplemental"
  - b. Memorandum from Councilmembers Ash Kalra, Nancy Pyle and Kansen Chu to Honorable Mayor and City Council, dated December 11, 2009, regarding "2009 Mayor's Biennial Ethics Review" recommendations
  - c. Memorandum from Mayor Chuck Reed to City Council, dated December 14, 2009, regarding "2009 Mayor's Biennial Review of Ethics Ordinances Amended and Restated"
  - d. Excerpt of Synopsis of City Council Meeting on December 15, 2009, Item 3.4: "Mayor's 2009 Biennial Review of Ethics Ordinances"

- e. Editorial of the San Jose Mercury News, dated December 27, 2009, regarding "Lobbyist or not, it's disclosure that matters"
  - f. Letter from Ben Field, Chief of Staff, South Bay Labor Council, to Members of the Ethics Panel, dated January 29, 2010
  - g. Memorandum from Lisa Herrick, Sr. Deputy City Attorney, to Elections Commission, dated February 3, 2010, regarding "Nonprofit Organizations – Lobbying Regulations"
  - h. Memo from Lee Price, City Clerk, on behalf of Elections Commission Subcommittee on Anonymous Complaints, to the Elections Commission, dated February 3, 2010, regarding "Subcommittee Recommendation Regarding Anonymous Complaints"
  - i. Letter from Supervising Attorney James Zahradka, Law Foundation of Silicon Valley, to Members of the Ethics Panel, dated February 8, 2010, regarding "Ethics Reform Proposals"
  - j. Email from E. Chris Wilder, Executive Director, Valley Medical Center Foundation, to Ethics Panel Members, dated February 10, 2010, regarding "Message to ethics panel members"
  - k. Email from Gregory R. Kepferle, CEO, Catholic Charities of Santa Clara County, to Members of the Ethics Panel, dated February 10, 2010, regarding "Nonprofit Lobbying Regulations Proposed Change"
  - l. Memorandum from City Attorney Richard Doyle, to Participants in Mayor's Biennial Ethics Review Panel on October 13, 2009, dated February 11, 2010, regarding "Mayor's Biennial Ethics Review"
  - m. Letter from Mayor Chuck Reed to Mayor's Biennial Ethics Review Panel Participants, dated February 16, 2010, regarding "Closing a Loophole in Lobbyist Registration and Disclosure"
- 21. Memo from Vice-Chair Michael A. Smith to Elections Commission, dated April 1, 2010, regarding Proposed Changes to Lobbying Ordinance
  - 22. Memo from Commissioner Erica Cosgrove to Elections Commission, dated April 12, 2010, regarding "Summary of Discussion by Blue Ribbon Task Force on Ethics from 2004 of the Question of Nonprofits and Lobbying"
  - 23. Letter from Patricia Gardner to Elections Commission, dated April 12, 2010, regarding "Meeting on Wednesday April 13, 2010 regarding Lobbyist Registration for nonprofit 501 c3"
  - 24. Chapter 12.12 of the San José Municipal Code
  - 25. Agendas, associated memos and minutes of the 2004-5 Blue Ribbon Task Force

All of this information is available on the City's website and in the Office of the City Clerk.

The following is a summary of the Commission's recommendations:

**1. Avoiding Conflicts of Interests Arising from Family Relationships**

A. Referral

The Council referral seeks input on the Mayor's recommendation that Council Policy 0-32 be amended to state that if a City Official has a family member involved in a matter and there is no legal conflict of interest then the City Official must disclose the relationship on the record at the time a decision is made.

The Mayor's recommendation would apply to all "City Officials", as defined in Section 12.12.120 of the San Jose Municipal Code:

"City Official" includes the Mayor and Members of the City Council; any appointee of the City Council; Mayoral or Council staff member; Redevelopment Agency Board Member; members of the Planning Commission, Appeals Hearing Board, Civil Service Commission; any City representative to any joint powers authority to which the City is a party; the City Manager and his or her Assistant City Manager and Deputy City Managers; the Executive Director of the Agency and his or her Assistant and Deputies; City department heads; and Agency division heads.

B. Recommendation

The Commission expressed concern about over-regulation of Councilmembers and others defined as "City Officials" on matters not considered legal conflicts of interest. The Commission agreed that any such regulation would likely be complex and, consequently, confusing. The Commission also agreed that – even without a policy – Councilmembers and other City Officials may make a disclosure about a relationship that is not a legal conflict of interest in order to dispel confusion or concern about a particular vote or decision. Therefore, the Commission recommends that the Council not amend Council Policy 0-32 to avoid conflicts of interest arising from family relationships.

**2. Closing a Loophole in Lobbyist Registration and Disclosures**

A. Referral

The Mayor's recommendation is to amend the Lobbying Ordinance to narrow the lobbyist registration exemption for 501(c)(3) nonprofit organizations, requiring a nonprofit organization to register and comply with the ordinance if it is engaged in lobbying activity and is controlled, as defined below, by another entity that is required to register under the lobbying ordinance.

The proposed change would require the registration of officers and employees of a 501(c)(3) organization engaged in lobbying activity if it is controlled by an entity that is

already required to register as a lobbying organization. All other 501(c)(3) organizations would remain exempt.

The definition of control would be:

- a. The other entity directly or indirectly appoints or selects members of the Board of Directors, officers or employees of the nonprofit; or
- b. The same person or organization manages or directs the nonprofit and the other entity; or
- c. The other entity and the nonprofit commingle assets, employees or expenses.

#### B. Recommendation

The Commission discussed the rationale for the Mayor's recommendation: that "organizations and businesses that are subject to our lobbyist registration and disclosure requirements should not be able to form nonprofit organizations to engage in lobbying, thereby having their lobbying efforts hidden from public scrutiny" since "currently, paid employees of nonprofit organizations with tax-exempt status under Internal Revenue Code section 501(c)(3) are exempt from registering under the City's lobbying ordinance." The Commission also discussed the Mayor's proposal, which narrowed the lobbyist registration exemption for 501(c)(3) nonprofit organizations by incorporating a definition of "control".

The Commission agreed that the proposed definition of "control" had resulted in confusion and criticism. While the Mayor's Office explained that the proposal attempted to reconcile – in plain language – the established definition of "control" under the Internal Revenue Code with a definition that exists under the California Political Reform Act, the resulting definition was not accepted by members of the public or the Commission.

Rather than formulate a definition of "control" or debate whether a "loophole" exists, the Commission took a broader view of the referral; the Commission reviewed the primary purpose of the Lobbying Ordinance, which is to allow the public to know and better understand the relationship between its elected officials and any persons, including businesses, corporations, associations, political action committees or any other organizations, that influence or attempt to influence City Officials about legislative or administrative actions of the City or Redevelopment Agency.

In order to meet the primary purpose of the Lobbying Ordinance, the Commission agreed that the public should know and better understand the relationship between its elected officials and 501(c)(3) organizations that spend a great deal of time influencing or attempting to influence City Officials about legislative or administrative actions of the

City or Redevelopment Agency. At the same time, the Commission was sensitive to the financial obligations imposed by the Lobbyist Ordinance. Thus, the Commission recommends:

1. Removing compensated officers or employees of 501(c)(3) nonprofit organizations from the list of those exempt from the requirements of the Lobbying Ordinance;
2. Establishing the threshold for the definition of an in-house lobbyist as forty hours of lobbying activity in a consecutive twelve month period for 501(c)(3) organizations (four times the threshold for others); and
3. Exempting 501(c)(3) organizations from having to pay annual lobbyist registration fees.

The Commission notes that the threshold of forty (40) hours was selected because it is between the current threshold for all other in-house lobbyists (10 hours or more in a consecutive twelve month period) and the former threshold before the Lobbying Ordinance was amended in 2007 (20 hours or more within any 3 month period (or 80 hours in a twelve month period)) but may not be the correct amount. The Commission, therefore, suggests that the Council discuss whether the threshold of forty hours in a consecutive twelve month period is appropriate for 501(c)(3) organizations.

### **3. Protecting Public Participation in Council Hearings**

#### **A. Referral**

The Council directed the Commission to review the concept of allowing, beyond the Brown Act, for public comments and debate about items on the Agenda during Orders of the Day even if the City Council is not debating any items during Orders of the Day.

#### **B. Recommendation**

The Commission recommends that the Council allow public comment on any motion on the floor made to change the printed order of the Agenda.

### **4. Limiting Anonymous Complaints to the Elections Commission**

#### **A. Referral**

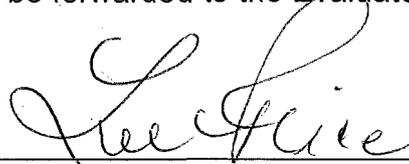
The Council referral directs the Commission to consider whether the phrase "good cause" should include those who can demonstrate a substantial vulnerability to retaliation by the person who is the subject of the complaint and review and determine what additional situations would constitute "good cause" for providing anonymous tip line complaints for inclusion in the regulation.

B. Recommendation

The Commission agrees that the definition of "good cause" should include those who can demonstrate a substantial vulnerability to retaliation by the person who is the subject of the complaint. Thus, the Commission recommends that Section E.6 of the Elections Commission Regulations be amended to read as follows:

**E. COMPLAINTS OF ALLEGED VIOLATIONS**

6. A complaint may be submitted anonymously only by calling the "Elections Commission Anonymous Complaint Hotline" at 408-XXX-XXXX975-ANON. The Complainant must state good cause for anonymity, which is limited to (a) a City or Redevelopment Agency employee who is not protected by the Civil Service system making a complaint about a supervisor in his or her chain of command; or (b) a private sector employee making a complaint about his or her employer (for example, a complainant who demonstrates his or her vulnerability to retribution by the person or organization who is the subject of the complaint). The Chair of the Commission, or the Vice-Chair, if the Chair is not available, will assess whether there is good cause for anonymity. It is recommended, but not required, that the Complainant provide a telephone number for the Commissioner reviewing the call to contact the Complainant to gather additional information about the cause for anonymity. If the Commissioner reviewing the call determines the Complainant has good cause for anonymity, the complaint will be forwarded promptly to the Evaluator by the City Clerk. If the Commissioner reviewing the call determines that the Complainant does not have good cause for anonymity, the complaint will not be forwarded to the Evaluator.



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LEE PRICE, MMC  
City Clerk

**CORRESPONDENCE PROVIDED TO CITY CLERK**

**RE: LOBBYIST REGISTRATION FOR NONPROFIT 501 c3**

- (a) Letter from Live United – United Way Silicon Valley President & CEO, Carole Leigh Hutton, dated April 20, 2010.
- (b) Letter from Silicon Valley Council of Nonprofits (SVCN) Executive Director, Patricia Gardner, dated April 20, 2010.
- (c) Letter from Next Door Solutions to Domestic Violence Executive Director, Kathleen Krenek, dated April 22, 2010.
- (d) Letter from EHC Lifebuilders CEO, Jenny Niklaus, dated April 23, 2010.
- (e) Letter from Law Foundation of Silicon Valley Supervising Attorney, James Zahradka, dated April 23, 2010.

**COMMUNITY PARTNERS  
2008-2009\***

**Pinnacle Level**  
\$500,000 to \$999,999  
Intel Corporation

**Peak Level**  
\$275,000 to \$499,999  
Opportunity Available

**Summit Level**  
\$175,000 to \$274,999  
LifeScan, Inc.

**Vista Level**  
\$100,000 to \$174,999  
Agilent Technologies, Inc.  
City of San Jose  
County of Santa Clara  
FIRST 5 Santa Clara County  
Silicon Valley Community  
Foundation  
Space Systems/Loral  
Varian Medical Systems, Inc.

**Foothill Level**  
\$50,000 to \$99,999  
Bank of America  
Microsoft Corporation  
The Walter S. Johnson  
Foundation  
Wachovia

LIVE UNITED Community Partners support United Way's Community Action Fund, one of the most powerful ways to change community conditions. The Community Action Fund supports programs and services that address the underlying causes of our most pressing problems right here in Santa Clara County.

\*Gifts as of June 30, 2009

April 20, 2010

Lee Price, City Clerk  
City of San Jose  
200 East Santa Clara Street - Wing 2nd Floor  
San Jose, CA 95113

RECEIVED  
San Jose City Clerk  
2010 APR 22 A 9:35

**A LETTER TO THE SAN JOSE CITY COUNCIL**

Dear Councilmembers,

This letter is to urge you to reject any requirement that executives of the nonprofit organizations serving this community be required to register as lobbyists because of their meetings with city government representatives in pursuit of our charitable missions.

United Way Silicon Valley is a nonprofit social services agency working in partnership across the community with government, business, civic and community-based organizations to improve the quality of life for all.

Like many executives and volunteer leaders of community benefit organizations, as the CEO of United Way Silicon Valley I regularly meet with government representatives to advance our work. And like my colleagues across the sector, I typically ask city officials for help on matters in which I have no opportunity for personal or financial gain. Rather, our "lobbying" is on behalf of the community.

For example, among the subjects that leaders in our sector have discussed with elected San Jose officials this year are: Affordable Housing, Domestic Violence, Police Accountability, Senior Nutrition, Resources for Disabled Veterans, Predatory Lending Practices, After-School Programs and Urban Blight.

These cannot be lumped with such issues as property development, land use, labor negotiations, regulatory issues and the like.

Many organizations, like my own, engage in public policy advocacy when it is in the furtherance of our goals and outcomes for the community. Advocating on behalf of those whose voices aren't always heard is a primary responsibility for the community benefit sector. But that doesn't make us lobbyists in the way they are defined by the city or in the way they are typically and reasonably regulated by most governments.

These days, as city, county and state governments battle fiscal crises and make difficult choices about how to spend diminished funds, they rely more and more on the nonprofit sector to fill gaps around all sorts of needs. It seems a harsh rebuke to

**COMMUNITY PARTNERS  
2008-2009\***

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**Foothill Level**  
\$50,000 to \$99,999  
Bank of America  
Microsoft Corporation  
The Walter S. Johnson  
Foundation  
Wachovia

LIVE UNITED Community  
Partners support United  
Way's Community Action  
Fund, one of the most  
powerful ways to change  
community conditions.  
The Community Action  
Fund supports programs  
and services that address  
the underlying causes  
of our most pressing  
problems right here in  
Santa Clara County.

\*Gifts as of June 30, 2009

consider rewarding us for all that hard work by making us register as lobbyists (or any other pseudonym) and track the time we spend trying to win government support for our work.

I was invited this year to take part in the Mayor's Biennial Ethics Review Panel. You'll easily pick out my comments in Lee Price's memo to the Mayor and City Council following our second panel session. They were a reiteration of my comments at the first panel session.

I urge the Council to show its respect and appreciation for the hard work done by the hundreds of nonprofit agencies in the Health and Human Services sector in this city and reject the recommendation from the Elections Commission that we must register as lobbyists in order to do our jobs. The community that you and I both seek to serve deserves no more encumbrances on our efforts.

Thank you for your consideration.

Respectfully,



Carole Leigh Hutton

President & CEO



## Silicon Valley Council of Nonprofits

Sobrato Center for Nonprofits - San Jose  
1400 Parkmoor Ave, Suite 130  
San Jose CA, 95126

Phone 408.260.3915 Fax 408.249.3496

[www.svcn.org](http://www.svcn.org)

April 20, 2010

To the City of San Jose Rules Committee  
From the Silicon Valley Council of Nonprofits

Re: Lobbyist Registration for nonprofit 501 c3

From Silicon Valley Council of Nonprofits

The Silicon Valley Council of Nonprofits champions the interest of health and human service nonprofits in Santa Clara County. We have a network of 200 agencies that serve a variety of our clients within the City of San Jose from homelessness, housing, senior day care, foster care youth, mental health and many health related services.

SVCN opposes nonprofit lobbyist registration.

We are most concerned about any ordinance that would require Executive Directors of Health and Human Services, Arts Groups, Environmental nonprofits or others whose primary mission is to serve this community become registered lobbyists. These individuals are advocates for clients, at risk individuals, spokespeople for a variety of community benefit issues which arise within the City of San Jose.

- Nonprofits are already regulated with reporting requirements based on federal tax law and in Section 1307 of Public Law 94-455 which recognized lobbying as a proper and legitimate function for charitable nonprofit organizations. We are also concerned that any ordinance is not in conflict with existing federal rules for nonprofit lobbying.
- Nonprofits have to sign letters with private foundations that state that there funds will not be used for lobbying and this would require nonprofits to administer greater paperwork and reporting with foundations.
- Nonprofits are advocates not lobbyists. Our advocacy is on behalf of others and surely the only financial gain can be seen as an investment in community services such as more low-income housing, early childhood services, health care for poor, etc.
- Numerous groups including members of the Mayor Ethics Review Panel has opposed nonprofit lobbyist registration.

SVCN opposes each Executive Director or the staff of nonprofit organizations needing to register as a lobbyist particularly on issues that are the central mission of their agency, to improve community well-being, promote the arts, and on issues that advocate for your clients rights to services. SVCN's major concern is to ensure nonprofit agencies are clearly viewed as advocates for their clients not lobbyists. Similar to the work of neighborhood associations, nonprofits are key to the health and well being of our community. What nonprofits do is deliver services to make communities healthier, environmentally clean, enhanced with art and culture and much more. Our advocacy is on behalf of others and surely the only financial gain can be seen as an investment in community services such as more low-income housing, early childhood services, health care for poor, etc.

We respectfully request the Rules Committee reject the Elections Commission recommendation to include nonprofits in the lobbyist ordinance or establish a threshold for nonprofits to be included in the ordinance.

Patricia Gardner  
Executive Director

[patriciag@svcn.org](mailto:patriciag@svcn.org)



### **Background Information from the California Association of Nonprofits**

Section 1307 of Public Law 94-455 recognized lobbying a proper and legitimate function for charitable nonprofit organizations.) The lobbying activities of Nonprofit organizations are also clearly defined in the Federal 1976 Lobby Law and Section 501 (c)(3) of the Internal Revenue Code.

Although lobbying is an important part of the advocacy and public policy work nonprofit organizations do for their constituents and the community. Most of the work – and for most nonprofits the only work they do—is advocacy. Very little of what we do is actually lobbying. Under the Federal 1076 Lobby Law, three characteristics must be in present for an organization to be engaged in lobbying:

1. Communication of any kind that expresses the organization's point of view; (via phone, fax, e-mail or mail, or in person.)
2. That is intended to influence legislation: (Legislation is action by a legislative body that includes the "introduction, amendment, enactment, defeat or repeat of Acts, bills resolutions and similar terms.")
3. Either directly by contacting the public official or their staff or indirectly by asking others to contact public officials. (Legislative bodies are Congress, state and local legislatures, and the general public in referenda, initiatives or proposed constitutional amendments. Legislative bodies do not usually include groups like judicial, executive or school and zoning boards.) (*Worry-Free Lobbying for Nonprofits: How to use the 5-1 (h) Election to Maximize Effectiveness*, Alliance for Justice, 2002, page 5 and 6.)

Charitable nonprofit organizations also face strict limits on political involvement, including federal laws that prohibit 501(c)(3) organizations from supporting or opposing candidates for election to public office. In Section 501(c)(3) of the Internal Revenue Code states that tax-exempt charitable nonprofits, "may not participate in, or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Perhaps that is where the misperception that charitable nonprofits cannot lobbying comes from. However, there are no restrictions on cause-related or public interest-related lobbying. Lobbying can be undertaken by a charitable nonprofit without any risk to its tax-exemption, so long as these efforts are not a substantial part of the organization's activities or are within the limits on nonprofit spending on lobbying efforts.

All charitable nonprofits (except churches, associations of churches and integrated religious associations) are required to report their lobbying expenditures to the IRS on Form 990.



April 22, 2010

To the City of San Jose Rules Committee

Re: Lobbyist Registration for nonprofit 501 c3

Next Door Solutions to Domestic Violence whose mission is *To end domestic violence in the moment and for all time* requests the City of San Jose Rules Committee to vote no on the lobbyist ordinance recommendations of the Election Commission.

Next Door represents victims of domestic violence and their children because they cannot represent their own interests without fear of reprisal. They are invisible yet the effects of domestic violence are felt throughout our community. We educate our public officials about the devastating impact of this social malady so that when confronted with policy issues, our representatives have a deeper understanding of the subject matter.

- Executive directors of non-profits do not gain from interaction with local representatives, but the community benefits because leaders of city governance are better informed.
- Nonprofits are already regulated with reporting requirements based on federal tax law and in Section 1307 of Public Law 94-455 which recognized lobbying as a proper and legitimate function for charitable nonprofit organizations. We are also concerned that any ordinance is not in conflict with existing federal rules for nonprofit lobbying.
- Duplicative paper work adds work to an already burdened non-profit community as well as government workers. Is this a time to add more layers to the bureaucracy while laying off massive numbers of city employees? Perhaps we should think of ways to streamline processes not add to them.

I respectfully request the Rules Committee reject the Elections Commission recommendation to include nonprofits in the lobbyist ordinance or establish a threshold for nonprofits to be included in the ordinance.

Kathleen Krenek  
Executive Director

**234 E. Gish Road, Suite 200**

**San Jose, CA 95112**



4/23/10

To the City of San Jose Rules Committee  
From : EHC LifeBuilders

Re: Lobbyist Registration for nonprofit 501 c3

EHC LifeBuilders has as its mission to promote housing stability and self-sufficiency for families confronting homelessness. We serve over 8,000 homeless individuals a year throughout the City of San Jose and Santa Clara County.

We oppose the lobbyist ordinance recommendations of the Elections Commission.

We are most concerned about any ordinance that would require Executive Directors of Health and Human Services, Arts Groups, Environmental nonprofits or others whose primary mission is to serve this community become registered lobbyists. We are advocates for our clients, many who depend on us to speak up and advocate for their needs. It is our position that:

- Nonprofits are already regulated with reporting requirements based on federal tax law and in Section 1307 of Public Law 94-455 which recognized lobbying as a proper and legitimate function for charitable nonprofit organizations. We are also concerned that any ordinance is not in conflict with existing federal rules for nonprofit lobbying.
- Our Executive Director and staff work for the organization and requiring them as individuals to be lobbyists would put undue burden and legal constraints on the staff of the Board of Directors of our organization.
- Our organization is obliged to sign contract letters with private foundations that state that their funds will not be used for lobbying and if our Executive Director needed to be a register lobbyist it may put our foundation funding at risk.
- This ordinance would require more administration cost to both the nonprofits and city staff who will be required to track lobbying time.
- Nonprofits are advocates not lobbyists. Our advocacy is on behalf of others and surely the only financial gain can be seen as an investment in community services such as more low-income housing and needed services for the poor and homeless.

We respectfully request the Rules Committee reject the Elections Commission recommendation to include nonprofits in the lobbyist ordinance or establish a threshold for nonprofits to be included in the ordinance.

Jenny Niklaus  
CEO, EHC LifeBuilders  
[jniklaus@ehclifebuilders.org](mailto:jniklaus@ehclifebuilders.org)



### **Background Information from the California Association of Nonprofits**

Section 1307 of Public Law 94-455 recognized lobbying a proper and legitimate function for charitable nonprofit organizations.) The lobbying activities of Nonprofit organizations are also clearly defined in the Federal 1976 Lobby Law and Section 501 (c)(3) of the Internal Revenue Code.

Although lobbying is an important part of the advocacy and public policy work nonprofit organizations do for their constituents and the community. Most of the work – and for most nonprofits the only work they do – is advocacy. Very little of what we do is actually lobbying. Under the Federal 1976 Lobby Law, three characteristics must be in present for an organization to be engaged in lobbying:

1. Communication of any kind that expresses the organization's point of view: (via phone, fax, e-mail or mail, or in person.)
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Charitable nonprofit organizations also face strict limits on political involvement, including federal laws that prohibit 501(c)(3) organizations from supporting or opposing candidates for election to public office. In Section 501(c)(3) of the Internal Revenue Code states that tax-exempt charitable nonprofits, "may not participate in, or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Perhaps that is where the misperception that charitable nonprofits cannot lobbying comes from. However, there are no restrictions on cause-related or public interest-related lobbying. Lobbying can be undertaken by a charitable nonprofit without any risk to its tax-exemption, so long as these efforts are not a substantial part of the organization's activities or are within the limits on nonprofit spending on lobbying efforts.

All charitable nonprofits (except churches, associations of churches and integrated religious associations) are required to report their lobbying expenditures to the IRS on Form 990.

**LAW FOUNDATION OF SILICON VALLEY**

152 North Third St., Third Floor

San Jose, California 95112

(408) 293-4790 • FAX (408) 293-0106 • [www.lawfoundation.org](http://www.lawfoundation.org)

April 23, 2010

**Via email**

Hon. Chuck Reed  
Chair, Rules Committee  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

**Re: Proposal from Elections Commission for non-profit registration as lobbyists**

Dear Mayor Reed:

I write on behalf of the Law Foundation of Silicon Valley, the largest non-profit legal services organization in Santa Clara County. The Law Foundation's mission is to secure justice and protect human rights by providing legal advocacy, counseling and access to the legal system for those who would otherwise be underrepresented. We carry out this mission by serving thousands of San Jose's neediest residents in a variety of legal contexts, including housing, public benefits, child welfare, and others.

We write to express our concern about the proposal from the Elections Commission to remove the current exemption in the City's Lobbying Ordinance for staff of non-profit organizations. We understand that this proposal will come before the Rules Committee at its next meeting, and we urge you to reject the proposal for the reasons set out below.

The rationale for exempting non-profits from the registration requirement was stated well in a March 29, 2007, memo from Councilmembers Reed, Chirco, and Cortese:

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.<sup>1</sup>

While the Elections Commission proposal would exempt 501(c)(3) organization from paying the fee, it would impose burdensome registration, tracking, and reporting requirements on these organizations. All of requirements generate costs for the entity subject to them; in the context of non-profits in particular, an opportunity cost is created when non-profit staff spend time and energy dealing with bureaucratic requirements rather than meeting the critical community needs that their organizations address. Further, as has been articulated by city staff at Elections Commission meetings, these requirements not only put additional administrative costs on the non-profits, it puts burdens on city staff that is tasked with processing these reports. In short, this

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<sup>1</sup> Memorandum to City Council re Reed Reforms, p. 2 (available at [http://www.sanjoseca.gov/clerk/Agenda/040307/040307\\_09.01b\\_att.pdf](http://www.sanjoseca.gov/clerk/Agenda/040307/040307_09.01b_att.pdf)).

is a lose-lose-lose proposal for non-profits, the City, and, most importantly, the community which would be deprived of the services it would be getting but for these proposed requirements.

Further, we echo the statement in the Kalra/Pyle/Chu memorandum of December 11, 2009, that "Lobbyists are required to register because they make a profit in contracting with interested parties to sway council decisions," and questioning "whether there is a benefit to the city from the registration of these non-profit employees as Lobbyists, especially when there is no profit incentive."<sup>2</sup> All non-profit legislative advocacy, by its very nature, is in line with the charitable purpose of the non-profit. None of the individuals performing this work stands to benefit personally from their actions; neither are they speaking on behalf of for-profit entities that would benefit financially from the legislative action they advocate for.

Thank you very much for considering our comments; we look forward to speaking further on this issue at the next Rules Committee meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Zahradka", enclosed within a rectangular box. The signature is stylized and includes a long horizontal stroke extending to the right.

James Zahradka  
Supervising Attorney

cc: Hon. Judy Chirco  
Hon. Nancy Pyle  
Hon. Pete Constant  
Hon. Madison Nguyen

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<sup>2</sup> Memorandum to Honorable Mayor and City Council re 2009 Mayor's Biennial Ethics Review, p. 2 (available at [http://www.sanjoseca.gov/clerk/Agenda/20091215/20091215\\_0304att.pdf](http://www.sanjoseca.gov/clerk/Agenda/20091215/20091215_0304att.pdf)).