



February 13, 2023

Honorable Members of the Los Angeles City Council

Via email

RE: Nonprofit Exemption to Municipal Lobbying Ordinance
 Council File #22-0560
 February 15, 2023 Agenda Item #13

Dear City Councilmembers,

Thank you for the opportunity to comment on Updates to the Municipal Lobbying Ordinance (MLO), Agenda item 13.

We respectfully ask that you NOT accept the proposed amendment in recommendation 1.c to amend proposed LAMC § 48.03(E). The amendment referred to in recommendation 1.c would eviscerate the nonprofit exemption that has been city law for decades. We have not had a chance to discuss this change, which was raised for the first time last Monday during the committee hearing after public comment, and we believe updating MLO without the nonprofit exemption recommended by the City

Ethics Commission would be a grave error. We support moving forward on updating the MLO as long as today's proposed amendment 1.c to amend LAMC § 48.03(E) is removed and the City Ethics Commission's recommended language from May 5, 2022 for LAMC § 48.03(E) is restored.

Our organizations are all 501(c)(3) nonprofits with distinguished records of service and engagement in Los Angeles. Many of us provide services to Angelenos who find themselves needing help – people living without shelter, people who have been taken advantage of by unscrupulous landlords or employers, people who are harmed by systems that are set up against them. When we speak out for different rules in the city, we are doing so alongside or on behalf of these neighbors. Recommendation 1.c would make it even harder for these voices to be heard in our city.

We know that city government has problems and that serious reform is needed. We support updating the MLO as twice recommended by the City Ethics Commission. But taking away the 501(c)(3) exemption to the MLO in the way proposed at the Ad Hoc Committee meeting last Monday does nothing to address any of the real problems with our redistricting process or the racist or fraudulent actions that have been taken by certain city leaders.

1. *The action today would effectively do away with a longstanding exemption for 501(c)(3)s that provide services – with no notice or discussion.*

- For decades there has been an exception for registration under the MLO for 501(c)(3) charities that “represent the interests of indigent persons” and meet a number of additional criteria.
- ***With support from the nonprofit sector, the City Ethics Commission twice recommended clarifying the existing exemption to make it clearer that it applies to 501(c)(3) charities that were “created primarily to provide food, clothing, shelter, child care, health care, legal services, vocational services, relief, or other similar assistance to disadvantaged people at a significantly below-market rate.”*** This is the clarified language we support because many nonprofits felt they had to have an attorney help them interpret the inscrutable language of the current MLO to help them understand that they were exempt from the ordinance.
- With the support of the nonprofit community, the ***City Ethics Commission also twice added an additional exemption for nonprofits small enough to not be subject to state nonprofit audit requirements (which only apply to nonprofits with gross receipts of \$2M or more per year).*** The City Ethics Commission recommended the same language for the 501(c)(3) exemption to the MLO to City Council in 2018 and again in 2022, through a highly deliberative process.

Last week, through an oral amendment that was not made public before the meeting, ***the Ad Hoc Committee on City Governance Reform removed the language that clarified the existing exemption for charities that provide assistance to disadvantaged people, and lowered the \$2M gross receipts threshold to approximately \$200,000***, the upper limit of annual income to be able to file a 990 N or 990 EZ. Apparently, they did this based on a misguided attempt to mirror San Francisco's lobbying ordinance without realizing that ***SF's ordinance actually exempts all 501(c)(3)s¹ from reporting any of their staff activity*** and uses the \$200,000 threshold to determine which 501(c)(4) organizations are exempt. This

¹ See statutory language in the chart below and SF factsheet at <https://sfethics.org/ethics/2015/01/ethics-commission-fact-sheet-who-is-a-lobbyist.html> (accessed 2/12/2023).

misunderstanding underscores the fact that there has not been enough discussion of this issue with the impacted constituency.

For reference, see the attached chart with different versions of 501(c)(3) exemption language.

2. *501(c)(3)s cannot support candidates for office, have lobbying limits, and only lobby in the public interest.*

- 501(c)(3)s cannot support or oppose candidates for office. The main reason to require lobbying reporting – to ferret out conflicts of interest that can arise when special interests contribute to political campaigns to achieve their legislative goals – does not apply to 501(c)(3)s.
- 501(c)(3)s are limited in how much lobbying they can do. All 501(c)(3)s can only do an “**insubstantial amount**” of lobbying, all of which must be reported on their tax returns.
- Many 501(c)(3)s have funding that prohibits lobbying.
- There are many different definitions of lobbying and the city’s definition is unique and includes much more activity than most other jurisdictions which creates perception problems and makes tracking under the city definition an extra burden for 501(c)(3) nonprofits who must comply with federal tax law reporting and reporting to funding sources.

3. *Our city benefits from nonprofit engagement in decision-making, but recommendation 1.c would chill that participation.*

By the numbers, most 501(c)(3)s are tiny, volunteer efforts, and most don’t lobby at all. But our city needs to support the engagement of more organized, marginalized residents in city decision making, and nonprofits are the vehicle for that. Our organizations recognize the vital role of nonprofits who provide services to city residents in making city policy. These groups have expertise in the conditions faced by community members and facilitate the input of marginalized residents better than government itself can. We need nonprofits at the table to create a city that is more equitable. Making their involvement more expensive and fraught with liability will mean less participation in city decisions by those who are already underrepresented. Even looking at the public comment on this item and the fact that very few nonprofits have been involved shows that 501(c)(3)s don’t do a lot of lobbying and are not primarily concerned about their own narrow interests.

4. *Reporting cost and liability will reduce charitable dollars available to help Angelenos.*

Those seeking to eliminate the nonprofit exemption are quick to say that nonprofits will still be allowed to lobby, they will just have to report. Reporting, of course, has a cost, which for 501(c)(3)s comes out of charitable donations which would otherwise be helping Angelenos in this time of extreme need. On top of that, we know that the risk of making a mistake on these reports is grave – the city has imposed a \$30,000 fine under the MLO to a 501(c)(3) who reliably filed reports but made mistakes in doing so. Many charities have funding that prohibits lobbying – under a different definition, but using the same word – and so perception or complexity will actually result in a chilling effect to their lobbying. Nonprofits that choose to avoid activities that would require them to register won’t even be able to respond to requests for input from City officials as there is no exception to the definition of lobbying for City Councilmembers asking for input from nonprofits.

5. *It’s not just a reporting requirement.*

There are other consequences to being a lobbyist besides having to file reports, too numerous to list here that come from other existing state and city laws. The most problematic of these will mean nonprofit staff who are lobbying in the public interest and are newly forced to register ***will lose their first amendment rights to personally support city candidates, and will not be able to sit on city commissions.***

Some of the organizations signing this letter have relied on the existing 501(c)(3) exemption for decades and will lose it if recommendation 1.c becomes law. As 501(c)(3)s, we are subject to a lobbying limit and have to report all our lobbying to the IRS, based on IRS definitions. The city's definition of lobbying is much broader and would require us to set up an additional tracking system. Setting up the tracking system and hiring someone to help us report will divert charitable dollars from our missions. We are also alarmed that some of us may have to cut back on helping marginalized residents participate in city processes based on fear of liability of making a mistake on the reporting or based on restrictions we may have from some of our funding sources, which could prevent us from registering.

Some organizations signing this letter are 501(c)(3)s that don't benefit from the existing 501(c)(3) exemption, nor would they benefit from the exemption recommended by the City Ethics Commission. We are interested in this simply because we believe the City Ethics Commission's proposed nonprofit exemption helps increase equity and access for underrepresented people in grassroots organizations.

The simple, clear 501(c)(3) exemption recommended twice by the City Ethics Commission is critical to facilitate underrepresented people's participation in city government decisions. ***We urge you to proceed with the City Ethics Commission language for § 48.03(E) and not amend it as proposed in recommendation 1.c.***

[Signatures on following pages]

Thank you,



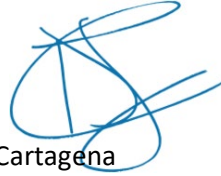
Cynthia Strathmann
Strategic Actions for a Just Economy



Nona Randois
Alliance for Justice



Almas Sayeed
Liberty Hill Foundation



Diego Cartagena
Bet Tzedek



Mahdi Manji
Inner City Law Center



Annie Marquit
Public Counsel



David Levitus
LA Forward Institute



Estella Owoimaha-Church
Empowering Pacific Islander Communities



Erich Nakano
Little Tokyo Service Center




Connie Chung Joe
Asian Americans Advancing Justice Southern
California



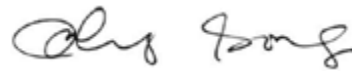
Eli Kaufman
BikeLA



Debra Suh
Center for the Pacific Asian Family



Jason Bautista
Thai Community Development Center



Johng Ho Song
Koreatown Youth & Community Center



Nancy Yap
Center for Asian Americans United for Self
Empowerment



Tommy Newman
United Way of Greater Los Angeles

William Chun
Pacific Asian Consortium in Employment

Barbara Schultz
Legal Aid Foundation of Los Angeles

Alexandra Suh
Koreatown Immigrant Workers Alliance

Shakeel Syed
South Asian Network

Dr. Herbert K. Hatanaka
Special Service for Groups, Inc.

Marielle A. Reataza, MD, MS
National Asian Pacific American Families Against
Substance Abuse

Hyepin Im
Faith and Community Empowerment

MLO 501(c)(3) Exemption Language Comparison Chart

Ethics Commission Recommendation (Two exemptions: Service provision + CA Gov Code Code § 12586 threshold)	Current MLO (Service provision confusingly worded)	SF Ordinance (All 501(c)(3) staff time and small 501(c)(4)s exempted)	Approved by Ad Hoc Committee on 2/6/2023 (Only 501(c)(3)s with budgets under \$200K per year exempted)
<p>An organization that is exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code when either of the following applies:</p> <ol style="list-style-type: none"> 1. The organization was created primarily to provide food, clothing, shelter, child care, health care, legal services, vocational services, relief, or other similar assistance to disadvantaged people at a significantly below-market rate. 2. The organization had gross receipts of less than \$2 million in the previous tax year. <p>This exemption also applies to the organization’s employees and board members while engaged in official duties. This exemption does not apply to an attempt by the organization or its employees or board members to influence a City matter regarding funding, a contract, or a permit for the organization.</p>	<p>Any organization exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, which receives funding from any federal, state or local government agency for the purpose of representing the interests of indigent persons and whose primary purpose is to provide direct services to those persons, if the individual or individuals represented by the organization before any City agency provide no payment to the organization for that representation. This exemption shall not apply to direct contracts with a City official in other than a publicly noticed meeting, for the purpose of attempting to influence a City decision with regard to any City funding which the organization is seeking.</p>	<p>An officer or employee of a nonprofit organization or an organization fiscally sponsored by such a nonprofit organization communicating on behalf of their organization. For purposes of this subsection only, "nonprofit organization" means either an organization with tax exempt status under 26 United States Code Section 501(c)(3), or an organization with tax exempt status under 26 United States Code Section 501(c)(4) whose most recent federal tax filing included an IRS Form 990-N or an IRS Form 990-EZ, or an organization whose next federal tax filing is reasonably likely to include an IRS Form 990-N or an IRS Form 990-EZ.</p>	<p>An organization that is exempt from federal taxation pursuant to Section 501(c)3 of the Internal Revenue Code whose most recent federal tax filing included an IRS Form 990-N or an IRS Form 990-EZ, or an organization whose next federal tax filing is reasonably likely to include an IRS Form 990-N or an IRS Form 990-EZ.</p> <p>This exemption also applies to the organization’s employees and board members while engaged in official duties. This exemption does not apply to an attempt by the organization or its employees or board members to influence a City matter regarding funding, a contract, or a permit for the organization.</p>