

Community Foundation for Monterey County
Advocacy and Public Policy Guidelines
August 28, 2019

Introduction

Section 3 (Community Leadership) of the 2015 CFMC Strategic Plan states the following:

Grow the CFMC's profile in advocacy when such activity can create a strong environment for the CFMC to prosper, or support initiatives that align with the CFMC's core values. This may be accomplished through participation in the League of California Community Foundations public policy work, working with the Council on Foundations or other national lobbying groups, partnering with local organizations or, when appropriate, developing our own initiatives.

The definition of advocacy is “public support for or recommendation of a particular cause or policy.” The definition of lobbying is “seek to influence (a politician or public official) on an issue.” These terms are often used interchangeably, but there is a clear difference between the two. However, for the purpose of these guidelines, the definitions will not be used individually; rather, unless specified, they’ll be conflated into “advocacy.”

IRS codes pertaining to advocacy do not differentiate community foundations from other public charities. However, these guidelines will use “community foundations” rather than “public charities” in order to reinforce that we are referring to allowed/disallowed activities for the CFMC.

The following guidelines outline the methods, parameters and limitations of how community foundations may engage in advocacy work. On the whole, this is not new work for the CFMC, but it has never been guided by a board approved set of guidelines. One can logically anticipate increased advocacy activity for the CFMC, as regulatory threats to philanthropy may become more common. Additionally, in California, increasing usage of the initiative and referendum process also means voters are assuming more responsibility in deciding important policy and fiscal matters, and it will become increasingly likely the CFMC will be asked to provide support on voting initiatives that align with the CFMC’s priorities and values. Locally, whether voting initiatives such as bond referendums or lobbying for or against County or local policy decisions, the voice and stature of the CFMC may be sought. It is important that the CFMC determine the circumstances in which it will engage on these matters. Lastly, advocacy work doesn’t necessarily equate to influencing legislation or taking positions on public referendums. It can also involve educating public officials on the intricacies and nuances of community issues.

For community foundations with a history of involvement in this arena, advocacy is seen as an integral part of their philanthropic strategy. Such support typically covers a range of activities, from defining the problem(s) and framing key issues to research, analysis and advocacy of specific policy actions. For

others, foundation involvement goes beyond grantmaking to encompass institutional leadership on issues that impact their core mission. This is especially important in a region as large as Monterey County, where the multiplicity of jurisdictions can diffuse leadership on issues that affect the entire County. There may be times when the CFMC can help shape public opinion and provide much needed leadership on significant public policy issues.

Precedence exists with other community foundations which have assumed this mantle of public leadership. The Silicon Valley Community Foundation led a legislative initiative to curb predatory payday lending. The California Community Foundation (Los Angeles) has been part of a public/private effort to make a dent in chronic homelessness. Smaller community foundations across California have been leaders in immigration policy and affordable housing. In the area homeless services, the CFMC led a series of meetings that led to structural changes of the Leadership Council (a HUD mandated group that oversees state and federal funding) and convinced jurisdictions and nonprofits to collaborate on projects. Advocacy, even to public entities, does not always involve shaping legislation.

The following guidelines are a framework for the CFMC's decision-making process on institutional leadership on advocacy. The intent is to define the parameters and develop a process that will enable CFMC staff and board to consider the circumstances in which an institutional position would add value to public discourse or shape legislation.

The Parameters

Who can engage in advocacy? All nonprofit organizations, including public charities like the CFMC and, to a limited extent, private foundations, can participate in public policy development and advocacy.

Definition of advocacy. Advocacy is a broad term that encompasses a range of activities designed to educate and influence others through issue analysis, community organizing and relationship-building. Lobbying is just one of many activities in the advocacy spectrum, which includes the following—

- Educating the public (e.g., through informational brochures, flyers, organizing of rallies);
- Educating legislators (e.g., oral/written testimony);
- Researching and analyzing public policy issues;
- Writing letters/email and sending them to partner organizations, public or elected officials;
- Writing and submitting op-ed pieces or letters to the editor of newspapers and other media outlets;
- Convening meetings, community forums, funder briefings;
- Convening and/or participating in press conferences;
- Voter education;
- Developing relationships with legislators;
- Providing testimony at public hearings and meetings;
- Providing technical assistance or guidance to legislators;
- Training nonprofits on how to engage in grassroots advocacy activities;

- Submitting comments on proposed regulations;
- Supporting candidates for public office (**not allowed for 501(c)(3) organizations**);
- Supporting/opposing specific initiatives or bond measures;
- Lobbying

Definition of lobbying. Under the laws applicable to community foundations and other public charities, there are two types of lobbying—direct and grassroots.

a. Direct lobbying consists of opinions or actions that are directed at legislators or legislative bodies intended to influence the outcome of a specific piece of legislation. “Legislator” refers to executive level public officials who participate in the development of legislation (this includes senior legislative staff). Under this definition, members of special purpose boards, such as school boards, planning and zoning commissions, are excluded because their functions are narrowly prescribed, and their role is to interpret or implement existing laws. “Specific legislation” includes existing bills that have been assigned a name and a number, as well as legislative proposals that have not been fully developed, are not yet written and not yet introduced.

Exceptions to the definition of “specific legislation” are:

- (1) rules and regulations;
- (2) enforcement (or lack of enforcement) of existing laws and regulations;
- (3) executive orders from a mayor, governor, or president of the U.S.; and
- (4) pending lawsuits

Community foundations are free to comment or advocate on issues involving any of the exceptions listed above. For example, they can participate as parties to a lawsuit or as “friends of the court” in legal briefs supporting or opposing specific litigation. They can write letters to public officials asking for the enforcement of habitability codes or fair housing laws against landlords who violate these provisions. Community foundation support of nonprofits to engage in these activities is not considered lobbying; and community foundations themselves can participate in these activities.

b. Grassroots lobbying includes communications to the public that expresses a point of view about a particular bill or legislative proposal and asks the public to contact their elected representatives in order to influence their vote on a bill or proposal. Direct calls to action will be treated as grassroots lobbying. An example of a direct call to action would be for the CFMC to utilize Facebook to urge readers to call their legislators to oppose or support a piece of legislation.

Exceptions to lobbying. There are four exceptions to the statutory definition of lobbying: (1) nonpartisan research and analysis; (2) discussion and analysis of broad social and economic issues; (3) legislative requests for technical advice or assistance; and (4) self-defense. Community foundations can engage in these exempt activities.

1. Nonpartisan research and analysis. The research or study should present a balanced, complete explanation of the issue that would enable a reader to reach his/her own independent conclusion. It can advocate a particular position or express a point of view as long as the analysis is evenhanded. The report should be widely distributed, not just shared with recipients who agree with the recommendations. And it should not direct readers to contact their elected representatives. Examples of nonpartisan research are the CFMC's *Status of Women and Girls in Monterey County* and studies produced by nonprofits like the Public Policy Institute of California and the California Budget Project.

2. Discussion of broad social and economic issues. Community foundations can convene meetings or community forums to discuss policy issues with government officials and the general public. For example, convenings organized by the CFMC on homelessness and how public and nonprofit agencies can work in a more coordinated fashion led to structural changes in oversight and implementation of public funds. It would be lobbying if the discussions revolved around support or opposition for specific legislation, such as seeking more State funding for homelessness or affordable housing or opposing legislation that reduced funding.

3. Legislative requests for technical advice or assistance. If a legislative or governmental body submits a written request to a community foundation to provide testimony on a particular subject, preparation and presentation of the information are not considered to be lobbying; and the expenses associated with preparing the testimony (e.g., research, writing, production of materials, travel time and costs) are not lobbying expenses. For example, the Assembly Committee on Human Services may send a written request to nonprofit job training providers, asking them to present testimony on the potential effects of federal budget cuts and policy changes affecting state-run welfare-to-work programs. Responding to these written requests is permissible, and the time invested to draft testimony or provide technical assistance is an exempt activity.

4. Self-defense. Communications with a legislator or legislative body regarding a bill or proposal that would affect an organization's existence, powers, tax-exempt status, or tax-deductibility of contributions to the nonprofit is not lobbying. For example, AB1712 in the 2019 California legislature sought to require all donor advised fund sponsors to have active funds policies, submit fund-by-fund reporting to the State Attorney General, and left open any action the AG's office might take if funds didn't adhere to an unspecified reporting outcome. The League of California Community Foundations' actions to make this a two-year bill in hopes of satisfactorily modifying or killing the bill was a position of self-defense, as the bill would have altered the business model of its member community foundations. The CFMC's CEO engaged in self-defense activities on behalf of the League of California Community Foundations. It would have been permissible for the CFMC's CEO to speak specifically on behalf of a formalized CFMC position. This would not have been considered lobbying, and any expenses incurred in this activity would not have to be reported as lobbying expenses.

Extent of permissible lobbying. Internal Revenue Service regulations allow community foundations to engage in some lobbying. Community foundations can support educational activities and advocacy

through grantmaking and direct institutional engagement. One of two tests is used to determine the permissible amount of lobbying: the “insubstantial part” test or the “expenditure” test.

a. Insubstantial part test. Under this test, lobbying activities should comprise an “insubstantial” part of an organization’s overall activities. While “insubstantial” is not clearly defined by the Internal Revenue Service, the parameters are generally set at less than five percent of an organization’s total activities.

b. 501(h) expenditure test. Community foundations can elect to be governed under Section 501(h), which permits lobbying up to a certain percentage of their budget. The expenditure limit is generally 20 percent of “exempt purpose expenditures” (often thought of as program budget expenditures within a fiscal year) for all lobbying, of which a quarter of that amount can be spent on grassroots lobbying. In no case can a public charity that has taken the 501(h) election exceed \$1 million a year in lobbying expenses. Application of the test means that a maximum of \$250,000 can be spent on grassroots lobbying, while the remaining \$750,000 can be used for direct lobbying. Community foundations that choose the expenditure test must report their lobbying expenses separately on the IRS Form 990. Some nonprofit organizations that do significant amounts of lobbying may choose to form a separate entity, such as a 501(c)(4) social welfare group or a 501(c)(6) membership association, instead of electing the 501(h) expenditure provision.

Review and Approval Process

Institutional positions. When the CFMC identifies a public policy matter on which it may choose to take a position, or if a request is made to the CFMC to take a position, the following will be considered:

1. The matter furthers the Foundation’s mission and has a significant impact on residents or communities in Monterey County (e.g., housing, education, access to healthcare, etc.);
2. The matter has the potential to impact the CFMC’s business model or interfere with or create barriers for donors to participate in community philanthropy through a partnership with the CFMC;
3. The matter has a direct bearing on the CFMC’s programmatic priorities in education, healthcare, neighborhood revitalization or arts and community development; or
4. The matter has received affirmative endorsements from two or more key nonprofit, public or private institutional stakeholders that have participated in the policy discussions and/or helped shape the recommendations and proposed actions;
5. Taking a policy position would further the goals and objectives in the CFMC’s strategic plan; and,
6. The CFMC has the potential to impact the matter because--
 - the staff has ample knowledge and expertise on the issue;
 - it has the relationships and partnerships necessary to be credible and proactive in the policy community; and

- financial support can be secured through the CFMC’s own grantmaking funds and/or through solicitation of other donors and/or institutional funders.

Senior management staff and the president/CEO will thoroughly review the matter presented and assess the implications for the CFMC and potential impact on the public policy debate.

Timing and procedures. If time is of the essence and the issue cannot wait for a regularly scheduled board meeting, the president/CEO will consult with the board chair and executive committee members and request a special meeting of the executive committee by conference call to discuss and potentially vote on the matter. If timing is not critical, the issue will be placed on the agenda for a regularly scheduled board meeting. As with all matters put before the executive committee and the board, approval requires a quorum of members and majority of yes votes.

Implementation

If the board or executive committee determines that an institutional position is warranted, the Foundation’s senior management will present recommendations on how that position can be implemented. This can include any or all of the following options:

- attach its name to materials endorsing the initiative;
- provide a public policy grant to a nonprofit or consortium of nonprofits that will work on the issue;
- develop a communications strategy, in collaboration with other stakeholders, to increase public visibility of the issue (e.g. writing op-ed articles, letters to the editor, assisting with press events, etc.)
- implement a variety of civic engagement strategies which may include convenings, forums, briefings and other activities;
- create and/or fund public policy publications, including white papers, issue briefs, and other research and analytical tools to inform and impact the policy debate; and/or
- train nonprofit organizations in public policy and media advocacy.

The specific recommendations will be tailored to each issue. This list of recommended actions is not intended to be exhaustive, but rather, is illustrative of the strategies that the CFMC can consider.