

**Council Meeting: September 9, 2008****SUBJECT: Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual (Study Issue)****REPORT IN BRIEF**

At the January 2008 Study Issue Workshop, Council identified “consideration of a policy to require all city employees funded by grants to be designated as temporary/contractual” as a study to be undertaken in 2008 (see Attachment A.) The purpose of the study is to consider alternatives to employment for those employees hired for grant-funded positions, which are typically of limited duration. The primary goal of the study is to preclude the necessity of layoff of regular full-time or part-time employees during times of fiscal constraints for employment tied to grant funding, and to review alternative staffing options. Another goal was to limit the impact on other City employees as a result of the layoff of employees from grant-funded positions due to the employment rights of the grant-funded employees.

BACKGROUND

The study issue resulted primarily from the need to layoff sixteen employees in the Department of Employment Development (DED) due to a lack of sufficient commitment of grant funding to carry DED through the 2006/2007 Fiscal Year at the then current rate of expenditures. DED had previously experienced the need for a reduction in force in Fiscal Year 2003-2004 when ten positions were eliminated and eight employees received notice of lay off. Subsequent to the issue being adopted for study, in Fiscal Year 2007/2008, DED was impacted by a reduction in the amount of Dislocated Worker funds available to and from the State of California, compounded by an unprecedented, one-time, nationwide rescission of \$300 million of previously allocated funds that was passed by Congress on December 26, 2007. The impact of the reduction in funds was the need to eliminate 25 budgeted positions, seven of which were vacant and eighteen which were filled.

The City of Sunnyvale Department of Employment Development (DED) manages programs and services for the NOVA Job Training Consortium, a seven-city entity (Cupertino, Los Altos, Milpitas, Mountain View, Palo Alto, Santa Clara, and Sunnyvale) formed through a joint powers agreement. The City of Sunnyvale administers all of NOVA’s programs on behalf of the consortium cities, and has done so under the condition that non-General Fund resources are available to cover all of the associated costs.

Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual (Study Issue)

September 9, 2008

Page 2 of 6

As the City, through NOVA, applies for grants, contracts, and contributions, it determines what services and service levels will be provided through the application process. The determinations are reviewed and approved by the NOVA Workforce Board through reports to the Workforce Board at regular Board meetings. After Workforce Board approval, decisions to apply for funds must also then be approved by the Sunnyvale City Council, on behalf of the consortium cities. These decisions occur throughout the year through Reports to Council at regular City Council meetings. Periodically, DED's city budget is modified to reflect the change in actual versus planned funding levels. Since its inception in 1983 NOVA has been successful in attracting sufficient outside resources to manage all obligations.

There have been other departments with grant-funded employment, including the Department of Community Development - Community Development Block Grants (CDBG), and the Library. In the future, depending upon the nature of the grant, these departments as well as others in the City may be eligible for grant funding and have positions which are funded by grants and which may require layoff due to the funding period and/or the reduction or elimination of funding.

EXISTING POLICY

5.0 Socio-Economic Element, Goal F: Provide job training and employment services, within constraints of operative federal regulations and available federal funding, to address the locally-determined employment and training needs of economically disadvantaged residents and others with special needs.

7.3 Legislative Management Subelement, Goal D: Maintain a quality workforce, consistent with State and Federal laws, City Charter, and adopted policies in order to assure that City Services are provided in an effective, efficient, and high quality manner.

DISCUSSION

Currently, full-time and regular part-time employees, including those in grant-funded positions, are covered by collective bargaining agreements, the City's Civil Services Rules and Regulations (CSR&R), and the City's Administrative Policies. These agreements, CSR&R, and policies provide employment rights to employees, including those appointed to grant-funded positions.

In a recent survey of local agencies, a variety of methodologies for handling grant-funded employment was reported. Some indicated that employment was on a temporary basis or that the category of employment was unrepresented with no employment rights, while others reported that employees were represented and had employment rights.

Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual (Study Issue)

September 9, 2008

Page 3 of 6

Although DED is a unique department in the City in that it is funded solely from grants, contracts, and contributions, other departments in the City are not precluded from having positions that are similarly funded. Therefore, the scope of the study encompasses a City-wide review of grant-funded positions, and how best to staff such positions. Further, employees in other departments may be affected by layoffs in DED due to seniority and/or bargaining units' bumping rights.

At Council's direction, the Director of Human Resources notified the bargaining units of the Study Issue, invited comments, and offered to meet to discuss the issue. No response was received from the Sunnyvale Managers Association (SMA). The Director of Human Resources met with the representatives of the Sunnyvale Employees Association (SEA) and Service Employees International Union (SEIU) to discuss this issue and attempt to reach consensus on a resolution. SEA's and SEIU's concerns were employment rights for all represented employees, including maintaining seniority, bumping, and re-employment rights for employees facing layoff. SEA and SEIU recognized the potential impact to employees in other departments who could be laid off, as a result of seniority or bumping rights, due to the elimination of a grant-funded position, and felt that the potential impact of seniority or bumping was appropriate for their membership as public employees.

Based on the research related to the Study Issue and discussions with bargaining unit representatives, the consensus is to recommend to the City Council that a provision be included in the Salary Resolution that defines grant-funded employment, authorizes the creation of job classification titles that are distinct from regular classification titles, establishes the benefits for which employees would be eligible, and further defines the City's authority to terminate employment when necessary for grant-funded positions.

Given existing memoranda of understanding, the City's Civil Services Rules and Regulations (CSR&R), and Administrative Policy, this approach is the most expedient way to gain consensus with SEA and SEIU and address issues/goals of the Study Issue. It would be difficult to reach a mutual agreement with the bargaining units to implement an MOU change to exclude employees appointed to grant-funded positions from employment rights, and in the case of SEA, bumping rights, as SEA and SEIU strongly oppose any change to reduce their membership.

It is proposed that job classification titles for grant-funded positions be distinct from job classification titles for regular positions which would reduce the impact of seniority/bumping rights. This change will ensure that new employees will have employment rights only within the category of grant-funded employment. Due to MOU provisions, current employees retain

Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual (Study Issue)

September 9, 2008

Page 4 of 6

existing employment rights. The overall goal is to reduce the unintended consequences that seniority or bumping rights may provide, such as a grant-funded employee bumping a regular employee, resulting in the layoff of the regular employee.

Prospective employees will be informed of the duration of the appointment in the job announcement and at the time of employment, and will be advised of and acknowledge in writing the impact of the limited duration status. Prospective employees will be clearly informed that their employment is contingent upon continued grant funding and that the City maintains the authority to terminate their employment at the completion of the grant. Unless otherwise stated by the funding source or agency, while employed in a grant-funded position, if the appointment is for a period of twelve months or more, it is proposed that employees receive the same benefits of regular employees. This is consistent with practices reported by agencies responding to the survey where several indicated that employees in limited duration positions receive the same benefits as regular employees.

For grant-funded employment of less than one year, the category of temporary employment remains a viable alternative under current temporary employment provisions. SEA and SEIU concur.

The Personnel Board reviewed the Study Issue on July 21, 2008 and supported the concepts related to the Study Issue and alternatives proposed for discussion with the bargaining units.

An alternative for grant-funded employment that is expected to exceed a year would be to create another category of temporary employment status. This new category could be structured to allow employees to work more than 900 hours in a fiscal year, limit employment rights, and eliminate the need for layoff as temporary employees can be separated from service at the end of an assignment. However, SEA and SEIU have raised concerns regarding this alternative, as they are concerned about the possible erosion of the bargaining units, and are opposed to the creation of a new category of temporary employment. Both SEA and SEIU have indicated that it is their desire to retain representation of employees in grant-funded positions.

As a result of the research related to the study and consideration of the issues raised by the bargaining units, the alternative recommended below maintains representation and moves towards addressing the goals/issues of the Study Issue.

Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual (Study Issue)

September 9, 2008

Page 5 of 6

FISCAL IMPACT

Some minimal administrative savings due to a more expedited process and other savings as a result of the creation of grant-funded specific classifications may be realized in the event of a layoff related to grant funding.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Do not implement any changes related to grant-funded employment.
2. Update the Salary Resolution to include a provision that defines grant-funded employment, authorizes the creation of job classification titles that are distinct from regular classification titles, establishes the benefits for which employees would be eligible, and further defines the City's authority to terminate grant-funded employment at the completion of the grant or for reduction or loss of grant funding.
3. Direct the City Manager to enter into further discussions with SEA, SEIU, and SMA to explore other alternatives, such as creating a temporary category of employment in the unclassified service that would support the scope and duration of grants awarded to the City.
4. Approve other alternatives as suggested by the City Council.

RECOMMENDATION

Staff recommends Alternative #2; update the Salary Resolution to include a provision that defines grant-funded employment, authorizes the creation of job classification titles that are distinct from regular classification titles, establishes the benefits for which employees would be eligible, and further defines the City's authority to terminate grant-funded employment at the completion of the grant or for reduction or loss of grant funding.

Reviewed by:

Erwin Young, Director, Department of Human Resources
Prepared by: Tammy Parkhurst, Senior Management Analyst

Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual (Study Issue)

September 9, 2008

Page 6 of 6

Approved by:

Amy Chan
City Manager

Attachments

- A. Proposed New Study Issue (HRD-01)
- B. Resolution

Proposed New Council Study Issue

Number	HRD-01
Status	Pending
Calendar Year	2008
New or Previous	New
Title	Consideration of Policy to Require all City Employees Funded by Grants to be Designated as Temporary/Contractual
Lead Department	Human Resources
Element or SubElement	Socio-Economic Element and Legislative Management SubElement

1. What are the key elements of the issue? What precipitated it?

This Study Issue will focus on City-wide grant-funded employment; however, it is a result of the Fiscal Year 2006/2007 need for the layoff of sixteen employees in the Department of Employment Development (DED/NOVA) due to a lack of sufficient commitment of grant funding to carry NOVA through the 2006/2007 Fiscal Year at the current rate of expenditures. Reduced Dislocated Worker funds available to and from the State of California for Fiscal Year 2006/2007 were the primary contributor to the need for the reduction in force. DED also experienced the need for a reduction in force in Fiscal Year 2003/2004 when ten positions were eliminated and eight employees received lay off notices.

The City of Sunnyvale Department of Employment Development (DED) manages programs and services for the NOVA Job Training Consortium, a seven-city entity (Cupertino, Los Altos, Milpitas, Mountain View, Palo Alto, Santa Clara, Sunnyvale) formed through a Joint Powers Agreement. The City of Sunnyvale administers all of NOVA's programs on behalf of the consortium cities, and has done so under the condition that non-General Fund resources are available to cover all of the associated costs. As the City, through NOVA, applies for these grants, contracts and contributions, it determines what services and service levels will be provided through the application process. The determinations are reviewed and approved by the NOVA Workforce Board through Reports to the Workforce Board at regular Board meetings. After Workforce Board approval, decisions to apply for funds must also then be approved by the Sunnyvale City Council, on behalf of the consortium cities. These decisions occur throughout the year through Reports to Council at regular City Council meetings. Since its inception in 1983 NOVA has been successful in attracting sufficient outside resources to manage all obligations, putting no burden on the General Fund. In recent years funding from these competitive grants has equaled approximately 60% of NOVA's overall budget, with the remainder being non-competitive, allocated awards.

DED is a unique department in the City in that it is funded solely from grants, contracts and contributions. Each award is restricted to specific services and activities that can be offered and is accompanied by specific performance standards matrices. The FY 2006/2007 adopted budget for DED was developed based upon available information regarding the anticipated grants, contracts and contributions that were expected to be realized during the year. Actual revenues were less than anticipated.

It should be noted that all regular full-time and part-time employees of NOVA and other City grant-funded positions are covered by collective bargaining agreements, and currently receive the same benefits as other City employees. Grant-funded employees in regular status are also subject to the same layoff provisions of other City employees.

Staffing in DED through regular full-time and part-time employment, given the nature of grant funding, may not be the most effective method for managing the various programs in DED. Due to the type of funding for NOVA programs and other grant-funded employment in the City, staffing options need to be explored.

The Study Issue will include and focus on the following:

1. Primary goal is to preclude the necessity of laying off regular full-time or part-time employees during times of fiscal constraint for employment tied to grant funding City-wide.
2. Survey of local benchmark agencies to determine how staffing is handled for similar type grant-funded programs, and analysis of the data collected.
3. Review of alternative staffing options, including those that provide more flexibility for starting and ending employment.
4. Analysis of City rules and regulations and determining appropriate recommended changes.
5. Discussions with the bargaining units about potential impacts of any proposed changes.
6. The development of an alternative category(s) of employment, if applicable, to better support the type of staffing needed for NOVA programs, and any other grant-funded employment in the City.
7. Identification and review of fiscal impact.
8. Report of findings and options to the City Council.

2. How does this relate to the General Plan or existing City Policy?

5.0 SOCIO-ECONOMIC ELEMENT

GOAL F: PROVIDE JOB TRAINING AND EMPLOYMENT SERVICES, WITHIN CONSTRAINTS OF OPERATIVE FEDERAL REGULATIONS AND AVAILABLE FEDERAL FUNDING, TO ADDRESS THE LOCALLY-DETERMINED EMPLOYMENT AND TRAINING NEEDS OF ECONOMICALLY DISADVANTAGED RESIDENTS AND OTHERS WITH SPECIAL NEEDS.

Policy F.1 Participate in JTPA as a service delivery area as long as adequate Federal and State funding for the program is available, legislation remains essentially intact and the program can be cost-effectively administered.

Action Statements

F.1a Develop an annual job-training plan responding to local economic needs.

F.1b Support strong private sector involvement (through the Private Industry Council) in developing local program goals and objectives.

F.1c Develop program alternatives to address the unique needs of special populations, such as youth, seniors, the disabled, welfare recipients and others.

F.1d Develop a comprehensive, flexible delivery system oriented to placing participants in employment opportunities with future potential.

F.1e Cooperate to the maximum extent feasible with other Federal, State and local agencies providing similar services or serving common clients.

F.1f Stress performance outcomes in setting program objectives and monitor and evaluate performance in relation to those targets on an on-going basis.

F.1g In event that federal/state funding for job training services is insufficient to continue City sponsorship of a Service Delivery Area, the City will consider alternative delivery systems that will assure effective delivery of job training services to Sunnyvale residents.

7.0 PLANNING AND MANAGEMENT ELEMENT
7.3 LEGISLATIVE MANAGEMENT SUBELEMENT

GOAL D: MAINTAIN A QUALITY WORK FORCE, CONSISTENT WITH STATE AND FEDERAL LAWS, CITY CHARTER, AND ADOPTED POLICIES IN ORDER TO ASSURE THAT CITY SERVICES ARE PROVIDED IN AN EFFECTIVE, EFFICIENT, AND HIGH QUALITY MANNER.

GOAL F: CONTINUALLY STRIVE TO ENHANCE THE QUALITY, COST AND CUSTOMER SATISFACTION OF SERVICE DELIVERY.

POLICY F.1. Provide a work environment that supports all staff in continually seeking ways to enhance the efficiency, effectiveness and quality of City services.

Action Statements

F.1a Actively pursue continuous improvement by finding ways to removing barriers to the provision of high quality, cost-effective services.

3. Origin of Issue

Council Member(s) Moylan (01/09/07)
General Plan
City Staff
Public
Board or Commission none

4. Multiple Year Project? No **Planned Complete Date** 6/30/2008

5. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No
Does this issue require review by a Board/Commission? Yes
If so, which?
Personnel Board
Is a Council Study Session anticipated? No
What is the public participation process?
Public Hearing at a Personnel Board Meeting and at a City Council Meeting.

6. Cost of Study

Operating Budget Program covering costs
755-Recruitment, Classification, and Compensation
Project Budget covering costs
Not applicable.
Budget modification \$ amount needed for study
None

Explain below what the additional funding will be used for
It is expected that the costs for the Study can be absorbed by Program 755.

7. Potential fiscal impact to implement recommendations in the Study approved by Council

Capital expenditure range None
 Operating expenditure range None
 New revenues/savings range None

Explain impact briefly

The fiscal impact will be determined by the Department of Finance as part of the Study, and is unknown at this time; however, the expectation is that the results of the Study may produce savings in personnel costs.

8. Recommendation for this calendar year

Board or Commission ranking comments

Staff Recommendation For Study

If 'For Study' or 'Against Study', explain

Staff recommends, due to reduction in force issues encountered to date, study of this issue in order to address the unique situation of grant-funded employment.

The scope of this project is not expected to impact existing services/priorities, or other major projects that the Department of Human Resources is working on or will be working on during Fiscal Year 2007/2008.

9. Estimated consultant hours for completion of the study issue

0

Managers

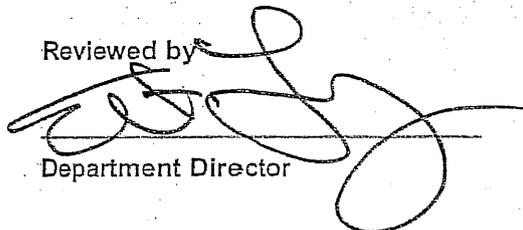
Role	Manager	Hours			
Lead	Young, Erwin	Mgr CY1:	20	Mgr CY2:	0
		Staff CY1:	0	Staff CY2:	0
Support	Menehan, Kelly	Mgr CY1:	10	Mgr CY2:	0
		Staff CY1:	0	Staff CY2:	0
Support	Parkhurst, Tammy	Mgr CY1:	80	Mgr CY2:	0
		Staff CY1:	0	Staff CY2:	0
Interdep	Leung, Grace	Mgr CY1:	10	Mgr CY2:	0
		Staff CY1:	0	Staff CY2:	0

Total Hours CY1: 120

Total Hours CY2: 0

Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.

Reviewed by



Department Director

11-12-07

Date

Approved by

Robert Walker

4-17-07

City Manager

for Amy Chan

Date

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING RESOLUTION NO. 190-05, THE CITY'S SALARY RESOLUTION BY ADDING A SECTION RELATED TO GRANT-FUNDED EMPLOYMENT

WHEREAS, the City desires to update the City's Salary Resolution to include a new provision in the Salary Resolution related to grant-funded employment;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT Exhibit 1 to Resolution No. 190-05, the City's Salary Resolution, be amended to add Section 7.170 as follows:

7.170. GRANT FUNDED EMPLOYMENT.

- (a) The City may hire employees in grant-funded (limited duration) positions where the position is funded by grant funds or similar types of non-City funding sources.
- (b) Job classification titles for grant-funded positions shall be distinct from job classification titles for regular positions.
- (c) Prospective employees shall be informed of the duration of the appointment in the job announcement and at the time of employment, and shall be advised of and acknowledge in writing the impact of the grant-funded (limited duration) status, including that the City has the authority to terminate employment at the completion of the grant or for reduction or loss of grant funding.
- (d) Unless otherwise stated by the funding source or agency, if the appointment is for a period of twelve months or more, employees in grant-funded positions shall receive the same benefits as regular employees. Employees who will be working a full-time schedule in a management classification will be included in the Sunnyvale Managers Association bargaining unit; employees who will be working a full-time schedule in a non-management classification will be included in the Sunnyvale Employees Association bargaining unit; and employees who will be working a schedule of 1,092 -1,716 hours per fiscal year will be included in the Services Employees International Union bargaining unit.
- (e) If the appointment is for less than twelve months, employees shall be employed in the unclassified service as temporary employees. Temporary employees are unrepresented, are eligible for only those benefits applicable to this category of employment, and are limited to 900 hours of work in the fiscal year.

- (f) Should an employee who was originally hired to fill a grant-funded position of twelve months or more be later appointed to a regular position, his/her hire date will be the date that service commenced in the grant-funded position.

Adopted by the City Council at a regular meeting held on September ____, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David Kahn, City Attorney