CITY OF OAKLAND
Public Ethics Commission
Andrew Wiener, *Chair*
Mario Andrews, *Vice-Chair*
Barbara Green-Ajufo
Jonathan Stanley
Alaric Degrafinried
Alex Paul
Ai Mori

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: December 7, 2009 (As supplemented for the January 4, 2010 meeting)

RE: A Staff Report And Action To Be Taken Regarding Proposed Amendments To The Oakland Lobbyist Registration Act (O.M.C. Chapter 3.20)

At its meeting of November 2, 2009, the Commission directed staff to make several revisions to a set of proposals for amending the Lobbyist Registration Act (LRA) previously submitted by Commissioner Wiener. The Commission also directed staff to include proposed language relating to late filing penalties and registration fees. Attached to this memorandum is a working "redline" of the proposed amendments as revised by the Commission. ***Attachment 1.*** Staff has annotated comments into the text explaining the most recent revisions.

With the most recent revisions, the Commission is close to recommending a final set of amendments to the LRA to the City Council. Still requiring further Commission consideration are the issues of 1) the point at which volunteer members of organizations should be required to register as lobbyists and report their activities; and 2) whether and in what format should the current provisions regulating the conduct of "contractors" and "persons doing business with the City" be implemented outside of the provisions of the LRA. The Commission needs to determine whether to submit some version of the attached amendments to the City Council for consideration relatively soon, or to wait until these additional two issues are developed, debated and resolved before sending an entire package of recommendations to the City Council.

At the December 7, 2010, a public speaker requested that the Commission direct staff to provide an assessment of LRA Section 3.20.060(E), which provides an exception from the LRA's provisions for "attorneys, architects or civil engineers":

3.20.060 Exceptions

The provisions of this Act shall not apply. . .

E. [To a]ny attorney, architect or civil engineer whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; (2) Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city or redevelopment agency employees or agents working under the direction of the city manager or executive director directly relating to 1. and 2. above.

The above exception was part of the original version of the LRA adopted by the City Council and based on the San Jose ordinance that existed at the time. Its obvious application is in the context of the City's planning and development process in which "attorneys, architects and civil engineers" are retained by an applicant to obtain the necessary permits and approvals on behalf of a particular project. Since these persons could otherwise meet the definition of a contract lobbyist, the policy issue is whether to require the many people who routinely meet and confer with City staff in connection with securing permits and approvals on various residential, commercial or industrial projects to register as lobbyists. Any communications occurring outside those specified in the exception could trigger a registration and reporting requirement.

Commission staff notes that the above exception is narrowly drawn in that it applies only to three recognized and licensed professions, and is confined to a fairly narrow range of communications. The existing exception should arguably be modified to 1) permit any kind of "licensed" engineer (structural, seismic, geologic, mechanical) to take advantage of this exception, and 2) "city manager" should be conformed to the current term of "city administrator", and "executive director" should be conformed to the current term of "agency or department director".

Respectfully submitted,

Daniel D. Purnell
Executive Director

INTRODUCED BY COUNCILMEMBER

_____

APPROVED AS TO FORM AND LEGALITY

_____

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 3.20 OF THE OAKLAND MUNICIPAL CODE PERTAINING TO THE REGISTRATION OF LOBBYISTS

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Oakland Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 2.

3.13.011 Findings and Declarations

The Oakland City Council finds and declares:

A. Organizations rely upon the services of lobbyists to influence City officials and City employees about proposed or pending governmental decisions.

B. The people of Oakland have the need and right to know the identity of lobbyists who attempt to influence the decisions of City government and the means employed by them to advance the interests of their clients.

C. The disclosure of lobbyists, their activities, their clients and the interests being represented will improve public knowledge and confidence in the integrity of City government.

D. The disclosure of lobbyists, their activities, their clients and the interests being represented is necessary to ensure City officials are kept informed about the identity of persons whose interests the lobbyists represent and that City officials are not improperly influenced by such lobbyists.

3.13.012 Purpose of This Act

The purpose of this Act is to maintain a fair and open decision-making process in City government by requiring those who seek to influence the legislative and administrative actions of the City to register and publicly disclose their lobbying activities.

3.20.030 Definitions

For the purposes of this ordinance, the following definitions shall be applicable:

A. "Client" means the real party in interest, other than the local governmental lobbyist himself or herself, for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such ~~member is individually~~ organization is represented by ~~an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization~~ a local governmental lobbyist as long as such member does not pay an amount of money or other consideration ~~in addition to the usual membership fees~~ for such representation.

B. ~~"Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars, and, (1) The city is a party, or (2) the redevelopment agency is a party, or (3) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency.~~

~~**C.**~~ "Designated employees" mean ~~city and redevelopment agency~~City and Redevelopment Agency employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a ~~city or redevelopment agency~~City or Redevelopment Agency conflict of interest code to file financial interest disclosure statements.

D. "Local governmental lobbyist" means any individual:

(1) who~~: 1)~~ receives or is entitled to receive one thousand dollars ($1,000) or more in economic consideration in a calendar month~~, other than reimbursement for reasonable travel expenses, or~~ or who receives or is entitled to receive five-thousand dollars ($5,000) or more in economic consideration in any calendar year, or

(2) whose ~~duties~~compensated activities as ~~a salaried~~an employee, officer ~~or~~, director, manager or partner on behalf of any corporation, organization or ~~association~~any other entity operating under a fictitious name, include

communication ~~directly or through agents with any public official, officer or designated employee,~~ for the purpose of influencing ~~any~~ a public officer or designated employee about a proposed or pending governmental action ~~of the city or the redevelopment agency. No~~ .

When determining whether a person ~~is a local governmental lobbyist by reason of activities described in Section 3.20.030(A). In case of any ambiguity,~~meets the definition of "local governmental lobbyist~~"~~", the provisions of this Act shall be interpreted broadly.

E. "Governmental action" means any administrative or legislative action of the city ~~and~~ or the redevelopment agency other than an action which is ministerial in nature.

F. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

G. ~~"Person doing business with the city" means any person whose financial interests are materially affected by governmental action as defined by Section 3.20.030(E). It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees.~~

~~**H.** "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.~~"Public officer" means the Mayor, members of the City Council, the City Attorney, the City Auditor, the City Clerk, and members of City boards and commissions who are required to file a statement of economic interest in connection with their service on a City board or commission.

3.20.060 Exceptions

The provisions of this Act shall not apply:

A. To a public ~~official~~officer acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the city council or redevelopment agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. Any attorney, architect or civil engineer whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; (2) Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city or redevelopment agency employees or agents working under the direction of the city manager or executive director directly relating to 1. and 2. above.

F. To designated representatives of a recognized employee organization whose activities are limited to communicating with city officials or their representatives regarding 1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500 -- 3510, or 2) the administration, implementation or interpretation of an existing employment agreement.

G. To persons whose only activity is to 1) submit a bid on a competitively bid contract, 2) respond to a request for proposal or qualifications, or 3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award of terms of a contract with any elected official or member of any City board or commission.

H. To a person whose only communications regarding a proposed or pending governmental decision are made, submitted or distributed at a publicly noticed meeting of the City Council, Redevelopment Agency, City board or commission, or any standing committee of the City Council, Redevelopment Agency or City board or commission, and as long as the person publicly identifies himself or herself and the name of the person or client on whose behalf the communication is made.

I. To a compensated representative of a non-profit corporation that operates or manages property in which the City or Redevelopment Agency has an ownership or possessory interest and on which property the non-profit corporation performs

a public function or service on behalf of the City, Redevelopment agency, or on behalf of a multi-governmental agency in which the City or Redevelopment Agency is a member.

3.20.130 Personal Obligation of City Officials Prohibited

Local governmental lobbyists~~,~~ and their clients~~, contractors, and persons doing business with the city or the redevelopment agency~~ shall abstain from doing any act with the express purpose and intent of placing any ~~city or agency~~public officer or designated employee under personal obligation to such lobbyist~~,~~ or client~~, contractor or person~~.

3.20.140 Deception Prohibited

~~No local~~Local governmental lobbyist~~, client, contractor or person doing business with the city or the redevelopment agency~~s and their clients shall not deceive or attempt to deceive a ~~city or agency~~public officer or designated employee as to any material fact pertinent to any pending or proposed governmental action~~.~~ including, without limitation, sending a written communication in the name of a fictitious person.

3.20.150 Improper Influence Prohibited.

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

3.20.160 ~~False Appearances Prohibited.~~

~~No local governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city or agency officer or designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person.~~

~~3.20.170~~ Prohibited Representations.

~~No local~~Local governmental lobbyists~~, client, contractor, or person doing business with the city or the redevelopment agency~~s ~~shall~~shall not represent~~, either directly or indirectly, orally or in writing~~ that ~~such person~~they can control or obtain the vote or action of any ~~city or agency~~ public officer or designated employee.

3.20.210 Civil Penalties

A. Civil penalties shall be imposed by resolution of the Public Ethics Commission.

B. Except as otherwise specified in this Act, the Commission may impose penalties of up to one thousand dollars ($1,000) for each ~~complaint~~violation sustained.

C. In addition to any other penalty or remedy available, if any person fails to file any report or statement required by this Act, after any deadline imposed by this Act, such person shall be liable to the City in the amount of $[10/25/50] per day after the deadline until the statement or report is filed, up to a maximum amount of $[100/250/500]. Liability need not be enforced by the Commission if its Executive Director determines that the late filing was not willful and that enforcement of the penalty would not further the purposes of this Act. No liability shall be waived if a statement or report is not filed within 10 days after the Executive Director has sent specific written notice to the filer of the filing requirement.

D. If any civil penalty or late fee imposed by the Public Ethics Commission is not timely paid, the Commission shall refer the debt to the appropriate city agency or department for collection.

3.20.220 REGISTRATION FEES