CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: February 1, 2010

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, 2009, 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". Commission staff has taken the liberty of providing a redline draft of these changes in Section 2.20.060(E) for Commission consideration.

Respectfully submitted,

Daniel D. Purnell
Executive Director