CITY OF OAKLAND
Public Ethics Commission
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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: January 5, 2009

RE: Analysis Of Key Terms In The Oakland Lobbyist Registration Act

I. PROCEDURAL HISTORY AND BACKGROUND

At its regular meeting of December 1, 2008, the Commission considered a staff report pertaining to allegations that a majority of the City Council's Community and Economic Development Committee ("CED Committee") gathered to hear a presentation on September 12, 2008. The allegations focused on whether the gathering constituted a meeting under the Brown Act and Sunshine Ordinance for which public notice should have been provided. ***Attachment 1.***

The presentation was conducted by representatives of the Oakland Builders Alliance ("OBA"), a non-profit corporation founded in 2007. According to people in attendance, the OBA representatives were Carlos Plazola, Kathy Kuhner and Joe DeCredico. All three are listed as current members of OBA's Board of Directors. The presentation consisted of a PowerPoint that discussed the status of affordable housing in Oakland and made specific recommendations to encourage the development and purchase of housing. Among the recommendations was a specific proposal to modify an existing City program known as the Mortgage Assistance Program ("MAP"). The MAP was established in 1993 to assist lower-income, first-time homebuyers. In 2005, the CED Committee considered a resolution to modify the MAP program and passed its recommendations to the full City Council for approval.

The PowerPoint presentation appears to be consistent with OBA's self-described mission. The OBA website contains the following greeting to visitors:

"The Oakland Builders Alliance (OBA) was formed in late 2007 as a non-profit organization focused on the economic growth and revitalization of Oakland, and to advocate for the needs of the building trades people and professionals of Oakland. The

OBA is committed to promoting and advocating for innovative policies and practices that support smart-growth and urban infill; that lead to livable communities; and that create mixed-income, mixed-use communities that reduce dependency on automobiles, and encourage safe, walkable streets. Our members are small and medium sized builders and affiliated trades and professions who live or do considerable work in Oakland."

At the Commission's request, staff prepared a report investigating and analyzing allegations arising under the Sunshine Ordinance in connection with the September 12, 2008, gathering. As part of that investigation, Commission staff contacted Mr. Plazola to ask him questions about the presentation. Commission staff also asked why, as a previously registered lobbyist under the City's Lobbyist Registration Act (LRA), he had not listed OBA as a client or disclosed the presentation on his Quarterly Disclosure of lobbying activities. Mr. Plazola told Commission staff he did not believe he was required to registered OBA as a client and objected to Commission staff even raising the question in the context of a Sunshine Ordinance investigation. In subsequent communications, Mr. Plazola, his spouse Monica Plazola, business associate Laura Blair, and local attorney Jenny Kassan have argued that provisions of the LRA are vague and that any effort to enforce the LRA against OBA representatives would "open a can of worms" as to other non-profit entities which may engage in non-reported lobbying.

At its meeting of December 1, 2008, the Commission considered whether to initiate a formal complaint against Mr. Plazola, Ms. Kuhner and/or Mr. DeCredico for failing to register and disclose lobbying activities under the LRA. Several members of the public addressed the Commission to assert that Mr. Plazola has lobbied on other items before the City Council that have not been previously disclosed.

The Commission directed staff to prepare this memorandum describing and analyzing relevant provisions of the LRA -- in particular the definition of "local governmental lobbyist" -- to assist it in considering future action with respect to OBA and/or future policy changes.

II. CURRENT LANGUAGE

The relevant provisions of the LRA for purposes of this memorandum are as follows:

Definition Of "Lobbyist":

“Local governmental lobbyist” means any individual 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 2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, for the purpose of influencing any proposed or pending governmental action of the city or the redevelopment agency. No person is a local governmental lobbyist by reason of activities described in Section 3.20.030(A). In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly. [3.20.030(D)]

Definition of "Client":

"Client" means the real party in interest 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 represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization 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. [3.20.030(A)]

If a person qualifies as a "local governmental lobbyist," then he or she must first register with the Office of the City Clerk before attempting to lobby. [LRA §3.20.040(A)] The LRA also prohibits local governmental lobbyists from "engag[ing] in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the City Clerk." [LRA §3.20.120(A)]

III. LEGISLATIVE HISTORY OF THE LRA

An initial proposal for a lobbying ordinance originated in the late 1990's from a "Lobbyist Registration Task Force" formed by the Commission. The Commission submitted several versions of a proposed ordinance to the City Council's Rules and Legislation Committee between 1999 and 2001 without success. The proposed drafts contained substantially similar versions of the following definition of "lobbyist" and "lobbying":

'"Lobbyist'" means. . . (1) "any individual who, during a consecutive three month period, (a) has received or is entitled to receive $3,200 to lobby City officials on behalf of one or more clients ("contract lobbyist"), or (2) is a salaried employee who has lobbied City officials on behalf of his or her employer 25 or more times or whose written job duties include lobbying ("in-house lobbyist"). . .

(2) Any person that makes payment or incurs expenditures of $5,000 or more during any calendar year in connection with carrying out public relations, advertising or similar activities with the intent of soliciting or urging employees or other persons to communicate directly with any City officials in order to attempt to influence legislative or administrative action ("expenditure lobbyist")."

*'"Lobbying'" means **influencing** or attempting to influence **legislative or administrative action."** (Terms in **bold** were further defined in the proposed ordinance.)*

In January, 2002, the Rules Committee considered a draft lobbyist registration proposal that also contained an exception made at the request of the Rules Committee for representatives of non-profit organizations:

"The officers or employees of a not-for-profit organization, who do not otherwise qualify as contract or expenditure lobbyists, and who communicate with City officials to promote

the general interests of the organization or of its members. No exemption is created by this section if the communication relates to: (1) future City or Redevelopment Agency funding for the organization or its programs; (2) any [collective bargaining] contract or agreement. . .or, (3) any formally proposed legislative or administrative action that would directly regulate the activities of the organization or its members. For purposes of this subsection, a "not-for-profit" organization generally includes corporations registered under 26 U.S.C. 501(c)(3), 501(c)(4), or 501(c)(6), labor unions, business and merchant associations, and other similar entities."

At its meeting of February 28, 2002, the Rules Committee expressed its preference for a lobbyist registration ordinance then in effect in the City of San Jose. It directed staff to make minimal changes to the "San Jose" ordinance to conform its language for use in Oakland. Former Councilmember Danny Wan proposed an additional series of amendments to the "San Jose" ordinance, many of which were adopted at the Rules Committee meeting of April 9, 2002, and at the full City Council meeting of May 14, 2002. The various Committee and City Council amendments resulted in the current definitions of "local governmental lobbyist", "client" and the removal of a number of the originally proposed exceptions, including the exception for non-profit representatives set forth above. Since 2002, there has been only a slight change to the definition of "local governmental lobbyist"[1] and no change to the definition of "client."

IV. ANALYSIS AND ASSESSMENT

The Commission requested staff to examine and analyze the definitions of "lobbyist" and "client" for policy and legal ramifications.

A. Examination Of The Term "Lobbyist"

As part of its membership in COGEL [The Council On Governmental Ethics Laws], Commission staff was part of a study group formed to research and develop a "model" lobbyist registration ordinance. As part of that effort, Commission staff reviewed numerous state and local laws currently regulating lobbying activities.

In general, most of the surveyed laws make a distinction between so-called "contract" lobbyists (those retained as an independent contractor), and so-called "in-house" lobbyists (employees whose job duties entail lobbying for their employer). Oakland's current definition of a "contract" lobbyist is fairly typical: It uses a dollar threshold ($1,000) over a period of time (one month) as a threshold criteria for those who are retained to lobby for others. On the other hand, Oakland's current definition of "in-house" lobbyist is somewhat rare in the sense that most definitions of "in-house" lobbyist contains a minimum "contacts" threshold (e.g., 10 lobbying contacts per month) or a minimum "hours" threshold (e.g., 5 hours spent lobbying per

[1] "Local governmental lobbyist" means any individual 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 2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, for the purpose of influencing any proposed or pending governmental, legislative or administrative action of the city or the redevelopment agency. No person is a local governmental lobbyist by reason of activities described in Section 3.20.030(A). In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

month) or a "significant" or "substantial" job-duties threshold (e.g., an employee for whom a "significant/substantial" amount of time is spent lobbying).

Oakland's definition of "in-house" lobbyist has none of the above threshold triggers, stating that a "local governmental lobbyist" is a "***salaried*** employee, officer or director of any corporation, organization or association [whose duties] include. . . [lobbying]." While rare, Oakland's absence of threshold triggers is not unique -- The COGEL research noted that the federal statutes of Canada, the state code of North Carolina, and the ordinances of Miami-Dade County in Florida also provide a "zero threshold" definition of lobbyist.

The primary objection and argument pertaining to Oakland's definition of "in-house" lobbyists is that it is too vague to know whether the law applies to an individual or not. One issue is whether the modifier "salaried" applies only to "employee" or to "officer" or "director" as well. If so, the applicable scope of the ordinance would be narrowed since few directors in a company are "salaried" -- in the case of a non-profit corporation, it is even rarer to see salaried "officers" or "directors". If, on the other hand, "salaried" modifies only "employee", then the LRA could apply to any organization's "officers" or "directors" if their job duties "include influencing any proposed or pending governmental action. . ." Another issue is the phrase "whose duties. . .include [lobbying]." Are these the ***written*** duties of a salaried employee, officer or director? Does the mere fact that a salaried employee, officer or director attempted to influence an Oakland official mean, ipso facto, that his or her job duties include lobbying? Or can salaried employees, officers or directors engage in an occasional or incidental amount of lobbying if it is not part of their "job duties?"

Further guiding the Commission's interpretation in determining who qualifies as a local governmental lobbyist is the last sentence of Section 3.20.030(D) which states: "In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly." As used in this context and giving the word its common meaning, the term "ambiguity" means "doubtfulness or uncertainty as regards interpretation" (American Heritage Dictionary, 3d Ed.) Thus the LRA intends for the term "lobbyist" to be broadly applied in situations where there may exist doubt or uncertainty as to whether an individual meets the definition of "lobbyist."

B. Examination Of The Term "Client"

The COGEL research did not survey definitions of who or what a "client" is. Commission staff cannot appreciate any vagueness or ambiguity over the current definition of ***client:*** "The real party in interest for whose benefit the services of a local governmental lobbyist are actually performed." Ms. Plazola and Ms. Kassan make a policy argument that the current definition of "client" and/or "lobbyist" be amended so that a registration requirement is triggered only if a salaried employee, officer or director seeks to influence a decision-maker on an issue that results in a "direct or indirect benefit" to a client. Thus they argue that there should be no "lobbyist-client" relationship established if a representative seeks to influence specific City policies or decisions on matters of general concern to the organization or the City. This argument is similar to the rationale supporting the 2002 proposed exception for representatives of non-profit entities (see above).

C. Legal Sufficiency Of The Ordinance

Commission staff could find no controlling legal authority that would indicate the LRA would be subject to judicial invalidation on First Amendment grounds. Courts have generally upheld lobbyist registration and disclosure provisions as serving important governmental interests, such as providing the electorate with useful information. In United States v. Harriss (1954) 347 U.S. 612, 625-626, the U.S. Supreme Court upheld the Federal Regulation of Lobbying Act which required lobbyists to report lobbying receipts and expenditures against challenges that it violated the guarantees of freedom to speak, publish, and petition. The court concluded that Congress has a valid interest in determining the source of voices seeking to influence legislation and could reasonably require the professional lobbyist to identify himself and disclose his lobbying activities.

V. DISCUSSION

Based on the foregoing, there appears to be no significant defect in the current language defining "lobbyist" or "client" that would preclude its enforcement by the Commission. There are some opportunities to clarify the definition of "in-house" lobbyist as it pertains to "salaried employee, officer or director" and the reference to whether the individual's "job duties" include lobbying. The Commission could also consider adding a minimum threshold requirement to the definition of "in-house" lobbyist as many other jurisdictions provide (e.g., a "minimum contacts per month" test or an "hours spent lobbying per month" test). The problem with such minimum threshold tests however is that they may fail to capture significant communications that pass "below the radar" of the minimum thresholds. Commission staff has historically recommended retaining a broad definition of "lobbyist" and then create whatever exceptions are necessary for those whom, for policy or practical reasons, arguably should stand outside the LRA's registration and disclosure requirements.

Earlier this year, the Commission approved for City Council consideration two additional exemptions from the LRA's registration requirements: One would exempt representatives of non-profit organizations that perform a public function or service on City-owned property; and the other would exempt individuals whose only communication is speaking at a noticed public meeting. ***Attachment 2.*** Commission staff has postponed the submission of these two exceptions to the City Council in the event the Commission desires to make any further recommendation as a result of the issues presented in this memorandum.

VI. FURTHER ACTION

The following is a non-exclusive list of options the Commission may wish to consider as a result of the December 1, 2008, staff memorandum, the public testimony taken at that meeting, and this memorandum:

1) Whether to direct staff to collect more information, initiate a formal complaint or issue an order to show cause pertaining to whether representatives of the OBA violated the registration and disclosure provisions of the LRA in connection with its September 12, 2008, presentation to the CED Committee.

2) Whether to direct staff to explore any additional instances of lobbying by Mr. Plazola as alleged by members of the public at the Commission's December 1, 2008, meeting. (***Note:*** On December 11, 2008, Oakland resident John Klein filed a complaint against Mr. Plazola, Ms. Kuhner, Mr. DeCredico and Jay Dodson for acting as local governmental lobbyists on behalf of OBA without first registering or disclosing their lobbying activities. The complaint essentially incorporates the allegations Mr. Klein presented at the December 1, 2008, meeting. Since there is now a formal complaint before the Commission regarding an alleged lobbying relationship between Mr. Plazola and others on behalf of OBA, Commission staff recommends that the Commission makes no further comment on the merits of these allegations until Commission staff completes its written report pursuant to the Commission's General Complaint Procedures.)

3) Whether to consider any additional amendments to the LRA pertaining to the definition of "lobbyist" or "client", as well as consider any additional exceptions for representatives of non-profit corporations such as the 2002 proposal. Such a legislative approach can be pursued concurrently with, or in lieu of, any enforcement proceedings the Commission may wish to pursue.

Respectfully submitted,

Daniel D. Purnell
Executive Director

Approved as to Form and Legality

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City Attorney

City of Oakland
Public Ethics Commission
December 1, 2008

In the Matter of)
) Complaint No. 08-12
)

The Public Ethics Commission initiated Complaint No. 08-12 at its regular meeting of November 3, 2008.

I. SUMMARY OF COMPLAINT

The Commission initiated Complaint No. 08-12 to determine whether the City Council's Community And Economic Development Committee ("CED Committee") conducted a meeting on September 12, 2008, without providing public notice pursuant to Section 2.20.070 of the Oakland Sunshine Ordinance.

II. FACTS

According to a memorandum circulated on September 19, 2008, from City Councilmember Nancy Nadel, Oakland City Councilmembers Ignacio De La Fuente, Larry Reid and Henry Chang met in a City Hall conference room to hear a presentation from Carlos Plazola, Kathy Kuhner and an "unknown third male." Councilmembers De La Fuente, Reid and Chang comprise three of the four current members of the CED Committee. The fourth member, Committee Chairperson Jane Brunner, reportedly did not attend the gathering. ***Attachment 1.***

Commission staff spoke with Ratna Amin, an aide to Mr. De La Fuente. Ms. Amin said she was contacted by Mr. Plazola during the City Council's summer recess. She said he told her that a group of local developers had completed some research that they wanted to share with interested members of the City Council pertaining to affordable housing in the City. Ms. Amin said Mr. De La Fuente asked her to invite Councilmembers Chang and Reid to attend the presentation. She said she did not consider the possible application of the Brown Act or Sunshine Ordinance in bringing together members of the City Council. City officials and staff attending the presentation were: Councilmembers De La Fuente, Larry Reid and Henry Chang, and staff members Ms. Amin and Ray Leon, an aide to Mr. Reid.

Ms. Amin said that at no time during the course of the presentation did anyone raise the issue that an un-noticed meeting might be taking place. She says in retrospect that calling the gathering was an "unintentional oversight." She also emphasized that no actions were taken and no decisions were made at the gathering.

Commission staff also spoke to Carlos Plazola about the presentation. Mr. Plazola confirmed that he had contacted Ms. Amin about some research and a proposal he and others had prepared about the City's affordable housing issues. He said he wanted to share a presentation with Mr. De La Fuente and any other councilmembers who might be interested. Mr. Plazola said he was accompanied by Kathy Kuhner, a principle with Dogtown Development Company, and Joe DeCredico, a principle with GarciaDeCredico Architecture and Design Studios. He said the only material distributed at the gathering was a PowerPoint presentation. ***Attachment 2.*** The presentation is entitled "Oakland Economic And Neighborhood Recovery Program -- A Proposal By The Oakland Builders Alliance." The presentation identifies the Oakland Builders Alliance as a "new organization in Oakland made up of over 75 Oakland-based architects, engineers, contractors, subcontractors, small and medium builders, and affiliated trades and professions." The presentation articulates a series of proposals to increase home ownership within the City through current and newly proposed City programs.

Among the existing City programs identified in the presentation is the Mortgage Assistance Program ("MAP"). The MAP was established by City Council Resolution No. 70274 in 1993. The MAP assists lower-income, first-time homebuyers to purchase homes in the City by providing secured loans to qualifying homebuyers. In 2005, the CED Committee considered a proposed resolution to modify the MAP. The CED Committee voted to recommend adoption of the proposed resolution to the full City Council.

Mr. Plazola told Commission staff that Oakland Builders Alliance was incorporated as a non-profit corporation last year. He said he serves as chair of its board of directors and that Ms. Kuhner serves as its vice-chair. Mr. DeCredico is listed on OBA's website as a member of the board of directors. ***Attachment 3.***

III. ANALYSIS

A. Alleged Failure To Notice A Special Meeting

1. Was there a "meeting"?

A "meeting" is defined under the Sunshine Ordinance as:

". . . (1) a congregation of a majority of the members of any local body in which any item within its subject matter jurisdiction is heard, discussed or deliberated;

(2) any use of direct communication, personal intermediaries or communications media to cause a majority of the members of a local body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon; and,

> *(3) any meal or social gathering of a majority of the members of a local body immediately before, during, or after a meeting of a local body."* [O.M.C. §2.20.030(F)]

A "local body" includes any "standing committee" of the City Council. [O.M.C. §2.20.030(E)]

There appears to be a factual and legal issue that the September 12, 2008, gathering of Councilmembers De La Fuente, Reid and Chang constituted a "congregation of a majority of the members" of the CED Committee to "hear, discuss or deliberate" on an item within the CED Committee's subject matter jurisdiction. The fact that persons representing the Oakland Builders Alliance were proposing a specific modification to the MAP, and the fact that the CED Committee had considered a previous proposal to modify the MAP, raises an issue that the item being discussed was within the CED Committee's "subject matter jurisdiction."

2. Was the "meeting" noticed?

The Brown Act requires local legislative bodies to provide public notice of all special meetings by posting and distributing a copy of the agenda to each member of the local body and to the news media no less than 24 hours before the meeting. [Government Code §54956] The Oakland Sunshine Ordinance extends this posting and distribution requirement to at least 48 hours before the meeting, not counting weekends and holidays. In addition, the Sunshine Ordinance requires that a copy of each special meeting agenda as well as all agenda-related materials be filed in the Office of the City Clerk at the time of posting. The City Council and its standing committees are also required to post a copy of special meeting agendas on-line. [O.M.C. §2.20.070]

There is no dispute that the noticing requirements specified in the Brown Act or Sunshine Ordinance were not met in connection with the September 12, 2008, gathering.

IV. ADDITIONAL ISSUES RAISED UNDER THE LOBBYIST REGISTRATION ACT

Under the relevant provisions of the LRA, a "local governmental lobbyist" is any person 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 2) whose "duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, for the purpose of influencing any proposed or pending governmental action of the city or the redevelopment agency. . .In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly." [LRA §3.20.030(D)].

If a person qualifies as a "local governmental lobbyist," then he or she must first register with the Office of the City Clerk before attempting to lobby. [LRA §3.20.040(A)]

The Lobbyist Registration Act also prohibits local governmental lobbyists from "engag[ing] in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the City Clerk." [LRA §3.20.120(A)] The LRA defines "client" in relevant part as "the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed." [LRA §3.20.030(A)]

While not specifically alleged in Ms. Nadel's September 19, 2008, memorandum, Commission staff notes that Mr. Plazola is currently a registered lobbyist under Oakland's Lobbyist Registration Act ("LRA"). On January 25, 2008, Mr. Plazola filed an annual renewal as a local governmental lobbyist, listing as his clients Pacific Thomas Capital, O'Keeffe Development, Golden Gate Views, LLC, and Scotlan Lane, LLC. The City Clerk has no record of any amendments to this list. On October 31, 2008, the City Clerk received a copy of Mr. Plazola's Quarterly Report for the period between July 1, 2008, and September 30, 2008. Mr. Plazola indicates that he did not engage in any "reportable lobbying activity" during this period of time. ***Attachment 4.***

As the purported "directors" of the Oakland Builders Alliance, Commission staff questions whether Mr. Plazola, Ms. Kuhner and/or Mr. DeCredico meet the definition of a "local governmental lobbyist" on behalf of the Oakland Builders Alliance and, if so, whether their presentation on September 12, 2008, constituted a communication "for the purpose of influencing any proposed or pending governmental action of the city or redevelopment agency" for which prior registration and subsequent disclosure was required.[2]

In a subsequent conversation with Mr. Plazola and other business associates, he said that he did not believe he was required to list the Oakland Builders Alliance as a client or disclose the presentation of September 12, 2008, on his Quarterly Disclosure because the Oakland Builders Alliance would receive no benefit from any policy change advocated in the presentation. He cited language on the final page of the PowerPoint presentation stating that "We (Oakland Builders Alliance) are volunteering many hours on this program because we care about Oakland, and expect nothing in return." He also objects to Commission staff's inquiry into possible issues arising under the Lobbyist Registration Act from the September 12, 2008, presentation as beyond the scope of the Commission's complaint against the CED Committee for possible Sunshine Ordinance violations.

It is beyond the scope of this report to fully analyze the merits of Mr. Plazola's contentions. Whether an organization can affect its status as a "client" by disavowing any expectation of benefit from the position one or more of its directors is advocating will depend on further development of the facts (including interviews with Ms. Kuhner and Mr.

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[2] LRA Section 3.20.060(D) provides that the provisions of the LRA shall not apply to "a person who, without extra compensation and not as a 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." Commission staff has reached no conclusion at this time whether this exception could apply to one or more of OBA's directors at the September 12, 2008, meeting.

DeCredico who have so far not been contacted), and analysis of the ordinance. However, based on the plain language of the LRA and the information currently available, Commission staff believes the above issues are fairly and legitimately raised in connection with the September 12 presentation.

V. STAFF RECOMMENDATION

A. Alleged Violation Of Sunshine Ordinance Section 2.20.070

The Commission has the discretion to schedule an evidentiary hearing to determine whether a majority of the members of the CED Committee conducted a meeting pursuant to Sunshine Ordinance Section 2.20.030(F)(1) in the absence of public notice pursuant to Sunshine Ordinance Section 2.20.070.

If the Commission were to determine that a violation of the ordinance occurred, the Sunshine Ordinance would require the CED Committee to agendize whether to cure and correct the violation. If the CED Committee chooses to cure and correct the item, it would then decide whether to affirm or supersede its previous action after taking any new public testimony on the item. [O.M.C. §2.20.270(D)]

In deciding whether to conduct a formal hearing, the Commission may wish to consider the magnitude of harm or prejudice to the public, the chance that the alleged conduct is likely to continue, the amount of time and resources the Commission wishes to devote to conducting a formal hearing on this subject, and/or the availability or suitability of other remedies.

Should the Commission decide to schedule a formal hearing in this matter, the Commission's General Complaint Procedures require the Commission to decide whether to sit as a hearing panel or to delegate its authority to hear evidence to one or more Commission members or to an independent hearing examiner. Commission staff further recommends that the Commission direct staff to discuss a mediated settlement or stipulated judgment with the respondent before a hearing, if any, is scheduled.

(***Note:*** At the time of this writing, an effort is underway to agendize a voluntary cure and correction by and before the CED Committee. Provided the cure and correction is properly agendized and completed, Commission staff would recommend a dismissal of the Sunshine Ordinance allegations contained in the complaint. Commission staff will provide any additional information regarding the status of the proposed cure and correction before or during the Commission's December 1, 2008, meeting.)

B. Initiation Of A Separate Complaint Under The Lobbyist Registration Act

The Commission has the discretion to initiate a formal complaint against Mr. Plazola, Ms. Kuhner and/or Mr. DeCredico to gather additional information and obtain an analysis from staff whether there is an issue that any person 1) met the definition of a local governmental lobbyist, 2) should have registered the Oakland Builders Alliance as a client prior to the September 12, 2008, gathering, and 3) should have disclosed the presentation on a Quarterly Disclosure form.

Respectfully submitted,

Daniel D. Purnell
Executive Director

3.20.060 Exceptions

The provisions of this Act shall not apply:

A. To a public official 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 salaried employee, officer or director of any 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 a multi-governmental agency in which the City or Redevelopment Agency is a member.

I. To any person whose communications regarding a governmental action are made 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, so long as the person publicly identifies himself or herself and the name of the client on whose behalf the communication is made.