Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
May 4, 2009

In the Matter of)
) Complaint No. 08-20
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John Klein filed Complaint No. 08-20 on December 11, 2009.

I. SUMMARY OF COMPLAINT

Mr. Klein filed Complaint No. 08-20 alleging that Carlos Plazola, Kathy Kuhner, Joe DeCredico and Jay Dodson violated the Lobbyist Registration Act ("LRA") by failing to register and disclose lobbying activities on behalf of the Oakland Builders' Alliance ("OBA"). ***Attachment 1.***

II. BACKGROUND

According to its website, the Oakland Builders Alliance ("OBA") is a non-profit corporation made up of approximately 75 Oakland-based architects, engineers, contractors, builders and affiliated trades and professions. According to online sources, OBA is organized as a Section 501(c)(6) non-profit organization under the U.S. Internal Revenue Code. This tax category is generally reserved for so-called "business leagues" -- Associations formed to advance the common interests their members. Section 501(c)(6) non-profit organizations are permitted to advocate and lobby for laws advancing those interests. OBA's website contains the following greeting to visitors describing its purpose:

> *"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."*

According to the OBA website, Mr. Plazola serves as chairperson of OBA's board of directors. Ms. Kuhner serves as vice-president. Mr. DeCredico and Mr. Dodson serve as members of OBA's board of directors. ***Attachment 2.***

III. SPECIFIC ALLEGATIONS

Mr. Klein alleges five separate violations of the LRA in his complaint:

Allegation No. 1: Mr. Plazola failed to disclose lobbying activities pertaining to the Mayor's nomination of Ada Chan to the Oakland Planning Commission.

Allegation No. 2: Mr. Plazola failed to disclose lobbying activities pertaining to efforts to remove Dan Lindheim as acting City Administrator.

Allegation No. 3: Mr. Plazola attempted to create a "fictitious appearance" that the public disfavors the permanent hire of Dan Lindheim as City Administrator.

Allegation No. 4: Mr. Plazola and Ms. Kuhner failed to disclose lobbying activities pertaining to a proposal to extend existing development entitlements for a three-year period.

Allegation No. 5: Mr. Plazola and Mr. DeCredico failed to disclose lobbying activities pertaining to a proposed rezoning of Oakland's Central Business District.

Mr. Klein supports his allegations with a collection of documents submitted with his complaint. He also submits a letter dated March 11, 2009, arguing in favor of his allegations and refuting points made by Mr. Plazola and others. [1] ***Attachment 3.***

IV. FACTUAL SUMMARY

A. Nomination Of Ada Chan

In June, 2008, Mayor Dellums submitted to the City Council the nomination of Ada Chan as a member of the Oakland Planning Commission. The item was agendized for the City Council meeting of July 1, 2008, but was withdrawn by the Mayor's Office prior to the meeting. The City Council finally considered Ms. Chan's nomination at its meeting of September 16, 2008. The City Council voted 4-3 to reject her nomination.

On July 1, 2008, Mr. Plazola purportedly sent an email to members of the City Council and their senior aides.[2] The email states in relevant part: "The Oakland

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[1] Mr. Plazola and Jennifer Kassan both argue that Mr. Klein should be registered as a lobbyist on account of his activities with the Coalition of Activists for Lake Merritt (CALM). Mr. Plazola filed a separate complaint on March 11, 2009, (Complaint No. 09-04) alleging violation of the LRA by Mr. Klein. Commission staff will analyze these counter arguments and allegations in the context of Complaint No. 09-04.

[2] Mr. Plazola told Commission staff that he does not deny the authenticity of the emails Mr. Klein submits in support of this Complaint.

Builders' Alliance respectfully requests that you either **deny the appointment of Ada Chan to the Oakland Planning Commission or postpone the appointment** to allow for discourse and deliberation about who she is, what she believes in, and what she brings to the commission." (Emphasis in original.) Mr. Plazola identified himself at the end of the email as "Chair Oakland Builder's Alliance." ***Attachment 4A.***

Mr. Klein submits copies of two emails both dated September 15, 2008. The first is an email purportedly sent by Laura Blair, a business associate of Mr. Plazola, requesting the recipients to email Ms. Kernighan and Ms. Brooks to oppose Ms. Chan's nomination. ***Attachment 4B.*** The second email was sent by Mr. Plazola to City Councilmembers Ignacio De La Fuente, Henry Chang and their two respective aides stating that OBA members had submitted "about 40" emails to City Councilmembers Patricia Kernighan and Desley Brooks pertaining to Ms. Chan's nomination. In the email, Mr. Plazola forwards a copy of an email sent to Ms. Kernighan and Ms. Brooks from someone opposing Ms. Chan's nomination. ***Attachment 4C.***

Mr. Klein additionally submits an email from Mr. De La Fuente dated September 16, 2008, urging recipients to attend the City Council meeting that evening and to speak against the proposed nomination of Ada Chan. ***Attachment 4D.*** Mr. Klein contends that the email demonstrates that Mr. Plazola influenced Mr. De La Fuente's vote on the Ada Chan nomination.

B. Effort To Remove Dan Lindheim As Acting City Administrator

Mr. Klein submits a copy of a press release dated June 27, 2008, from OBA, and a press release dated July 2, 2008, from Mr. De La Fuente, to support his contention that Mr. Plazola and Mr. Dodson lobbied Mr. De La Fuente and the Mayor's Office on OBA's behalf to remove Dan Lindheim as acting City Administrator. ***Attachments 5A and 5B, respectively.***

Commission staff notes that nothing in Attachment 5A or 5B demonstrates that Mr. Plazola or Mr. Dodson communicated on behalf of OBA with any City official or employee pertaining to the removal of Mr. Lindheim. Mr. Plazola told Commission staff that he and several other OBA members attended a series of meetings convened by former City Administrator Robert Bobb last summer. These meetings were called as part of Mr. Bobb's consulting contract with the City, part of which was to assess the City's management practices. Mr. Plazola said that there were no City employees or officials at the meetings which he and other OBA members attended. Mr. Dodson told Commission staff that his only participation in any discussion pertaining to Mr. Lindheim was to attend the meeting convened by Mr. Bobb. He said all he did was to listen to the discussions and the complaints that were raised.

C. Creation Of A "Fictitious Appearance" Relative To Mr. Lindheim's Status As Acting City Administrator

Mr. Klein submits copies of a newspaper article dated July 4, 2008 ***(Attachment 6A)***, comments on a local political blog purportedly made by Mr. Plazola ***(Attachment 6B)***, a press release from OBA dated October 1, 2008 ***(Attachment 6C)***, and a letter-to-the-editor dated October 15, 2008 from Mr. Dodson ***(Attachment 6D)*** to support his contention that Mr. Plazola attempted to create a "fictional appearance" that the public disfavored the permanent hire of Mr. Lindhein as City Administrator. The comments highlighted by Mr. Klein and attributed to Mr. Plazola include the following:

1) "Word is spreading that Dan Lindheim is being considered for the City Administrator position upon [former City Administrator Deborah] Edgerly's departure. This would be a mistake for Oakland."

2) "I have not seen Mr. Lindheim value anyone in the investment community."

3) ". . .I think it is pretty much a consensus now in the business community in Oakland that Dan Lindheim is bad for Oakland, at least as long as he is making decisions that effect economic growth."

D. Proposal To Adopt Entitlement Extensions

On December 9, 2008, the City Council adopted a resolution extending for the period of one year the expiration date of certain City planning permits. The stated purpose was to preserve existing development rights during a time when economic conditions were causing delays over which developers had no control.

Mr. Klein submits a copy of an internet posting made earlier in the year on July 7, 2008, in which Mr. Plazola purportedly writes that OBA "has recommended language for a three year blanket extension on all entitlements acquired through next year . . .and is working with council to find a sponsor. We believe we have one. We hope to bring it forth in September or October of this year. Stay tuned." ***Attachment 7A.*** Mr. Klein also submits what he contends ultimately became the formal proposal from Mr. De La Fuente to extend all planning approvals for an additional one-year period. ***Attachment 7B.*** Mr. Klein argues that OBA "found its sponsor" in Mr. De La Fuente after lobbying him to carry the legislation. A newspaper article reports that OBA "had lobbied" the City Council to grant the extension. ***Attachment 7C.*** The only information Mr. Klein submits to support his allegation that Mr. Plazola and Ms. Kuhner lobbied to support the entitlement extensions on behalf of OBA is that Ms. Kuhner is quoted in the newspaper article about the City Council's action to approve the proposal.

Mr. Plazola told Commission staff that no one, to his knowledge, ever communicated directly with Mr. De La Fuente on the issue of entitlement extensions. He said he and several other volunteer members of OBA drafted "supporting arguments

and recommended parameters" for the proposal and sent them to Mr. De La Fuente's former aide, Ratna Amin. He said the final product from Mr. De La Fuente's office "actually looked very different from the recommendations we made." He emphasized that his participation on the proposal was voluntary and that he had no clients that would have benefitted from the proposal.

Ms. Kuhner told Commission staff that OBA originated the entitlement extension resolution. She said that she made public presentations to the City Council to get them to focus on the need for such a proposal. She said they "finally got Mr. De La Fuente's attention" to sponsor an extension of development rights. She said she recalls speaking in favor of the proposal at committee and full City Council meetings but does not recall speaking individually to any City Council member. Mr. De La Fuente told Commission staff that he does not recall speaking directly to anyone representing OBA. He said most of the communication to his office on the entitlement extension issue was handled through Ms. Amin. Ms. Amin told Commission staff that she has only a vague memory of whom she spoke with in developing the proposal and cannot recall whether any person represented whether they were speaking to her on behalf of OBA or solely as individuals.

Commission staff asked for and received copies of emails from Mr. De La Fuente's office in connection with the proposal. ***Attachment 7D.*** The emails demonstrate communications between Ms. Amin and Mr. Plazola on the entitlement extension proposal. There is a reference in one of the emails from Ms. Amin to Mr. Plazola that the entitlement resolution "is different than what you (Mr. Plazola) sent me originally." In all the email communications, however, there is no reference that anyone was communicating to Mr. De La Fuente or Ms. Amin expressly on behalf of OBA.

E. Rezoning Of The Central Business District

Mr. Klein contends that Mr. Plazola and Mr. DeCredico lobbied on behalf of OBA in connection with various recommendations from the Planning Commission's Zoning Update Committee ("ZUC"). He submits a copy of two emails in which Mr. Plazola sought information and clarification from a City planner (Neil Gray) about the ZUC's recommendations regarding maximum building height limits in the downtown area. ***Attachment 8A.*** He also submits a page of handwritten notes from a meeting apparently attended by Mr. Plazola and Mr. DeCredico with City staff on Wednesday, June 11, 2008. ***Attachment 8B.*** Commission staff also obtained from Oakland planning staff and from Mr. Plazola a copy of a written presentation submitted to Oakland Planning staff in connection with their meeting. ***Attachment 8C.*** The 13-page presentation, entitled "Central Business District Zoning Update Comments" advocates the adoption of general goals and certain methodologies for the Planning Commission's ongoing review of downtown zoning laws. Among its specific proposals and recommendations are:

1) "Additional Regulation 3 needs to provide graphic, descriptive development standards that describe how buildings can be set back from the street to create additional space for cafes and plazas."

2) "Therefore, we support unlimited height limits in all but the historic Old Oakland District."

3) "We agree that the entire lake front should continue to be open, public space. In Subareas A and 2B, we believe that well spaced thin towers will not detract from the overall experience of the lake. . ."

4) "The retention of a "Maximum Density" for dwelling units regulated by lot square footage is an arbitrary density limiting device that should be excluded from the proposal."

5) "All new housing in the (Central Business) District should be multi-family."

Mr. Gray told Commission staff that the meeting was an "information session" with OBA representatives asking questions and "Eric Angstadt doing most of the talking." The planner's notes themselves indicate that the OBA representatives will "report back to OBA about our approach and whether they support it."

V. APPLICABLE LAW AND ISSUES PRESENTED

A. Applicable Law

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)]

For each calendar quarter in which local governmental lobbyists are required to be registered, they must file a quarterly report with the City Clerk containing (as applicable here):

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence;

B. For each item of governmental action sought to be influenced, (1) the name of each City officer with whom the lobbyist communicated, (2) the name and title of any City boardmember or commissioner with whom the lobbyist communicated, and (3) the identity of any city employee with whom the lobbyist communicated indentified only by the office or department in which the employee works and his or her jobtitle; and

C. A brief narrative description (no longer than three sentences) of the position advocated by the governmental lobbyist on behalf of the identified client. [LRA §3.20.110]

Finally, the LRA contains a number of restrictions imposed on local governmental lobbyists including, but not limited to, a prohibition on "attempt[ing] 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." [LRA §3.20.160]

B. Issues Presented

In light of the above law, the issues presented by Mr. Klein are as follows:

1) Do any or all of Mr. Plazola, Kathy Kuhner, Joe DeCredico and Jay Dodson meet the definition of a "local governmental lobbyist" in connection with any activities on behalf of OBA?

2) Should Mr. Plazola and others have registered themselves as lobbyists and OBA as a client?

3) Did Mr. Plazola and others fail to report their attempts to influence City officials, officers and designated employees on a timely quarterly disclosure statement?

4) Did Mr. Plazola and others attempt to create a fictitious appearance of public favor or disfavor regarding the appointment of Daniel Lindheim as City Administrator?

VI. ANALYSIS

A. Allegations Pertaining To Carlos Plazola

1. Is Mr. Plazola a "local governmental lobbyist" for OBA?

Under the applicable provisions of Section 3.20.030(D), a person meets the definition of a "local governmental lobbyist" if 1) he or she is a "salaried employee, officer or director" of a corporation, organization or association, and 2) his or her duties include communicating 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.

Mr. Plazola identifies himself in at least one communication as the "Chair" of OBA. The OBA press releases identify Mr. Plazola as OBA's "President." The OBA website identifies Mr. Plazola as the "Chair" of its board of directors. On their face, these documents tend to support a conclusion that Mr. Plazola was, at all times relevant, an officer and/or a director of OBA. As to whether Mr. Plazola's "duties" as an officer and/or director include communicating to influence a proposed or pending governmental action, Commission staff believes that the totality of direct communications, meetings, blog postings and press releases create an issue that part of his duties as President and Chair of OBA is to lobby on behalf of the organization.

The final inquiry is whether Mr. Plazola is a "salaried employee, officer or director" of OBA. At its meeting of February 9, 2009, the Commission received a letter from Mr. Plazola's attorney, James Sutton, who argues that the word "salaried" modifies "employee, officer and director". ***Attachment 9.*** Under this interpretation, the LRA's registration requirement would not apply to Mr. Plazola since he (as well as Ms. Kuhner, Mr. DeCredico and Mr. Dodson), serve OBA only in a voluntary, uncompensated capacity. Mr. Plazola has previously advised Commission staff that he based his decision not to register as a lobbyist for OBA based on this interpretation of Section 3.20.030(D). Mr. Klein, on the other hand, argues that "salaried" modifies only the word "employee", and that all officers and directors of corporations, organizations and associations, regardless of their compensation status, are potentially subject to the LRA. ***Attachment 10.***

Commission staff believes the current definition is susceptible to both interpretations, thus giving rise to an ambiguity as to the LRA's interpretation and application. It is therefore significant, in Commission staff's opinion, that the City Council included in the definition of "local governmental lobbyist" the provision: "In case of any ambiguity, the definition of 'local governmental lobbyist' shall be interpreted broadly." Given the City Council's express intent to define local governmental lobbyist "broadly", Commission staff concludes that there is an issue of whether Mr. Plazola meets the definition of "local governmental lobbyist" notwithstanding his voluntary, uncompensated status as an officer and director of OBA.

2. Should Mr. Plazola have registered himself as a lobbyist and OBA as a client before attempting to influence Oakland officials, officers or designated employees?

The LRA 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 Mr. Plazola has maintained an active registration as a local governmental lobbyist since 2007, none of his named "clients" include OBA. Mr. Plazola told Commission staff that he identified himself as representing OBA in the meetings with Mr. Bobb, the enactment of entitlement extensions, and the June, 2008, meeting with City planning staff. There is no information that he was attempting to represent any other interest or person. Thus Commission staff concludes there is an issue that Mr. Plazola failed to register himself as a lobbyist on behalf of OBA prior to any attempt to influence a proposed or pending governmental action.

3. Did Mr. Plazola fail to report his attempts to influence City officials, officers and designated employees on a timely quarterly disclosure statement?

As stated above, local governmental lobbyists are required to file quarterly disclosures of their lobbying activities that include 1) the item of pending or proposed governmental action sought to be influenced, 2) the name of the City official, officer or designated employee with whom the lobbyist communicated, and 3) a description of the client's position with respect to the item. [LRA §3.20.110]

Assuming Mr. Plazola meets the definition of "local governmental lobbyist" there appears to be an issue, based on the foregoing information, whether the following items were discloseable items of lobbying activity:

1) Communications by Mr. Plazola to Oakland City Councilmembers expressly on behalf of OBA pertaining to the appointment of Ada Chan to the Oakland Planning Commission.

2) Communications by Mr. Plazola to Ms. Amin and Mr. De La Fuente pertaining to entitlement extensions. (While nothing in the emails contained in Attachment 7D ***expressly*** indicates that Mr. Plazola was communicating on behalf of OBA at the time he made them, Mr. Plazola's earlier blog postings and written statements to Commission staff raise an issue whether these communications were in fact made on behalf of OBA.)

3) Written communications submitted to Planning Commission staff on June 11, 2008, by Mr. Plazola and Mr. DeCredico on behalf of OBA regarding the Central Business District Rezoning effort

Commission staff cannot find information that Mr. Plazola or Mr. Dodson lobbied "directly or through agents" Mr. De La Fuente, the Mayor or his staff relating to the replacement of Dan Lindheim as City Administrator. Commission staff notes that Mr. Plazola, on behalf of OBA, issued press releases and made blog postings on this subject. However, there is no evidence that such forms of communications were ever directed to or read by Mr. De La Fuente or anyone in the Mayor's office. Such generalized communications do not appear to meet the test that any advocacy be made "directly or through agents."

4. Did Mr. Plazola attempt to create a fictitious appearance of public favor or disfavor regarding the appointment of Daniel Lindheim as City Administrator?

As stated above, the LRA contains a prohibition on a local governmental lobbyist from "attempt[ing] 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." [LRA Section 3.20.160]

Commission staff reviewed the numerous writings Mr. Klein submits to support his allegation that Mr. Plazola created a "fictitious appearance" of public disfavor towards the permanent hiring of Mr. Lindheim as City Administrator. What Mr. Klein submits, in Commission staff's opinion, is better characterized as personal opinion expressed through press releases and blog postings, than the creation of a "fiction" the intent of which is to misrepresent or mislead public officials, officers or employees. Commission staff is also uncertain regarding the enforceability of this rather vague prohibition as it is currently written.

B. Allegations Pertaining To Joe DeCredico

The record indicates that Mr. DeCredico was and apparently still is a member of the OBA board of directors. Thus, under the "broad" interpretation of local governmental lobbyist, there appears to be an issue 1) whether he was acting as a local governmental lobbyist at the time he met with City planning staff on behalf of OBA on June 11, 2008, 2) whether he failed to register as a lobbyist on behalf of OBA, and 3) whether he failed to submit a quarterly report pertaining to the June 11, 2008, meeting.

C. Allegations Pertaining To Kathy Kuhner

The record indicates that Ms. Kuhner was and still is a member of the OBA board of directors. Also under the "broad" interpretation of local governmental lobbyist, there appears to be an issue 1) whether she was acting as a local governmental lobbyist on behalf of OBA at the time she spoke in favor of the entitlement extension proposal at the Community and Economic Development Committee meeting on October 14, 2008, 2) whether she failed to register as a lobbyist on behalf of OBA, and 3) whether she failed to submit a quarterly report pertaining to her testimony at the October 14, 2008, committee meeting.

D. Allegations Pertaining To Jay Dodson

The record indicates that Mr. Dodson was and still is a member of the OBA board of directors. However there is nothing in the materials demonstrating that Mr. Dodson ever communicated "directly or through agents" on behalf of OBA with City officials or staff for the purpose of influencing any proposed or pending City decision. The only reference to Mr. Dodson in all the materials is a letter to the editor of the East Bay Express that he attended a meeting with Robert Bobb and heard stories how Mr. Lindheim "killed (development) projects. . ." This alone does not appear to meet the required elements of a local governmental lobbyist.

VII. STAFF RECOMMENDATION

As to allegations pertaining to Carlos Plazola:

The Commission has the discretion to schedule an evidentiary hearing to determine whether:

1) Mr. Plazola met the definition of a "local governmental lobbyist" pursuant to O.M.C. Section 3.20.030(D) when he (A) communicated to City Councilmembers pertaining to the appointment of Ada Chan to the Oakland Planning Commission, (B) communicated with City planners on June 11, 2008; and

2) Mr. Plazola had timely registered with the Office of the City Clerk pursuant to O.M.C. Sections 3.20.040(A) and 3.20.120(A) before acting as a local governmental lobbyist or engaging in activities on behalf of a client as a local governmental lobbyist, respectively; and

3) Mr. Plazola timely filed a quarterly disclosure of his lobbying activities on behalf of OBA.

As to allegations pertaining to Joe DeCredico:

The Commission has the discretion to schedule an evidentiary hearing to determine whether:

1) Mr. DeCredico met the definition of a "local governmental lobbyist" pursuant to O.M.C. Section 3.20.030(D) when he communicated with City planners on June 11, 2008; and

2) Mr. DeCredico had timely registered with the Office of the City Clerk pursuant to O.M.C. Sections 3.20.040(A) and 3.20.120(A) before acting as a local governmental lobbyist or engaging in activities on behalf of a client as a local governmental lobbyist, respectively; and

3) Mr. DeCredico timely filed a quarterly disclosure of his lobbying activities on behalf of OBA.

As to allegations pertaining to Kathy Kuhner:

The Commission has the discretion to schedule an evidentiary hearing to determine whether:

1) Ms. Kuhner met the definition of a "local governmental lobbyist" pursuant to O.M.C. Section 3.20.030(D) when she communicated with City Councilmembers at the October 14, 2008, meeting of the Community and Economic Development Committee; and

2) Ms. Kuhner timely registered with the Office of the City Clerk pursuant to O.M.C. Sections 3.20.040(A) and 3.20.120(A) before acting as a local governmental lobbyist or engaging in activities on behalf of a client as a local governmental lobbyist, respectively; and

3) Ms. Kuhner timely filed a quarterly disclosure of his lobbying activities on behalf of OBA.

As to allegations pertaining to Jay Dodson:

Commission staff recommends that the stated allegations against Mr. Dodson be dismissed on grounds there is no information to support a finding that he violated the LRA.

Factors the Commission may wish to consider in determining whether to conduct a hearing is 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. If the Commission were to determine that a violation of the

Lobbyist Registration Act occurred, the Commission is authorized to "...(1) Find mitigating circumstances and take no further action, (2) issue a public statement or reprimand, or (3) impose a civil penalty in accordance with this Act." [O.M.C. Section 3.20.200(B)]

Mr. Plazola, his attorney and others have raised constitutional, policy and practical concerns about the enforcement of the LRA's current provisions. ***Attachment 11.*** Specifically, they question whether the current definition of the term "local governmental lobbyist" provides sufficient and fair notice that ***all*** officers or directors of a corporation, organization or association -- regardless of compensation -- must register as a lobbyist before attempting to influence City employees, officers and officials. As pointed out by several speakers at previous Commission meetings, such an application could potentially involve the registration of many persons and organizations that have not registered previously.

Mr. Plazola and his attorney also call the Commission's attention to the fact that the Commission already voted at its meeting of February 9, 2009, not to initiate an enforcement action against Mr. Plazola, Mr. DeCredico or Ms. Kuhner for their reported efforts on behalf of OBA to advocate changes in the City's Mortgage Assistance Program to a majority of the members of the City Council's Community and Economic Development Committee. They argue that the Commission's decision not to initiate an enforcement action in that matter should set a precedent against further enforcement action in this complaint.

In the event the Commission wishes to recommend legislative changes to the LRA in lieu of, or concurrent with, further hearings in this matter, Commission staff recommends the Commission consider the following proposals:

1) Rather than rely on the current instruction to interpret the definition of local governmental lobbyist "broadly"; provide specific language indicating whether the definition includes all officers or directors of an organization, or just those who are "salaried" or compensated in some manner.

2) If the LRA is amended to expressly require registration of officers or directors who lobby regardless of their compensation status (i.e., "volunteer" officers and directors), then the Commission may wish to re-consider the following proposed exemptions:

(A) An exemption for representatives of non-profit organizations whose only communications are to promote the general interests of the organization.

(B) An exemption for persons whose only communication is in the form of public testimony at a noticed public meeting and/or whose written communications are concurrently filed with the City Clerk or made available for public inspection at the meeting at which the item will be heard, discussed or considered.

(C) An exemption for persons 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.

3) Amend or delete provisions of Section 3.20.160 pertaining to the creation of "fictitious appearances of public favor or disfavor."

Finally, 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 recommends that the Commission also direct staff to attempt to negotiate a mediated settlement or stipulated judgment with the respondents before a hearing is scheduled.

Respectfully submitted,

Daniel D. Purnell
Executive Director

** *City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*