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City of Oakland

Stamp Date/Time Received:

Public Ethics Commission

2009 MAR 11 A 12: 26
PUBLIC ETHICS COMMISSION
OAKLAND

COMPLAINT FORM

Complaint Number: 09-04

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

[ ] The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

[ ] Oakland Campaign Reform Act

[ ] Oakland City Council's Rules of Procedure/Code of Ethics

[ ] Oakland Limited Public Financing Act

[ ] Oakland Conflict of Interest regulations

[X] Oakland Lobbyist Registration Act

[ ] Oakland False Endorsement In Campaign Literature Act

[ ] I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

At the following Landmark Preservation Advisory Board meetings:

- July 14
- August 11
- September 15
- October 20

(continued on next page)

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And the following Zoning Update Committee hearings:

- March 19th
- April 16th
- July 16th
- August 20th
- October 6th

Please see attached document for more information.

The alleged violation occurred at the following place:

City of Oakland, at Landmark Preservation Advisory Board Meetings and at Zoning Update Committee Hearings

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

Please see attached documents.

The persons you allege to be responsible for the violation(s) are:

John Klein, leader of Coalition of Advocates for Lake Merritt (CALM)

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

PLEASE NOTE:

There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filing this complaint with the Public Ethics Commission it, and all other materials submitted

ATTACHMENT 1

with it, becomes a public record available for inspection and copying by the public.

NAME: Carlo Flazda PHONE NO.(Day):(510) [redacted]

ADDRESS:_____ PHONE NO.(Eve.):( )_____

CITY: Oakland STATE: CA ZIP: 94601

FAX NO.: ( )_____

E-MAIL [redacted] @hotmail.com

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

Phone: (510) 238-3593
FAX:(510) 238-3315

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March 11, 2009

Mr. Dan Purnell
Public Ethics Commissioners
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

I hereby file a formal complaint against Mr. John Klein, which I request be heard simultaneously with the complaint he filed against me and other volunteer board members of the Oakland Builders Alliance (Complaint No. 08-20), for alleged violations of the lobbying ordinance.

A clear justification for "coupling" the complaints is because in the response to the complaint brought forth by Mr. Klein against volunteer members of the OBA, our attorney, Ms. Kassan, raised a number of examples where Mr. Klein engaged in the very same activities that the complains about the OBA engaging in. Therefore, it is not only fair, but also prudent, to hear both complaints, this one, and Mr. Klein's, jointly.

Mr. Klein has engaged in many of the very same volunteer activities he is accusing me and other members of the Oakland Builders Alliance of having engaged in. While acting as a director of CALM, John Klein engaged in activities that, by his own definition, would constitute lobbying. In one case, he even invites members of his organization to "lobby" members of the planning commission on a downtown rezoning matter.

The Commissioners are hereby requested to review the attached letter written by attorney Jenny Kassan regarding Mr. Klein's activities that may constitute lobbying, depending on the commissioners interpretation of the ordinance relative to activities of volunteer directors and officers, as well as all the original documents submitted by Ms. Kassan as attachments to the referenced letter, also attached herein.

Sincerely,

Carlos Plazola

ATTACHMENT 1

SEARCH BLOG FLAG BLOG Next Blog» Create Blog | Sign In

REZONE LAKE MERRITT

SATURDAY, JUNE 7, 2008

CALM

The Coalition of Advocates for Lake Merritt (CALM) is an all-volunteer group of Oakland residents, professionals, and activists focused on protecting and improving the environs at Lake Merritt and preserving its surrounding parks and historic neighborhoods. CALM has been active in Oakland since 2001 when the City of Oakland offered to sell park land on 12th Street at the south end of Lake Merritt for private development. Cathedral

As an alternative to selling park land, CALM submitted a community-based proposal to remove traffic lanes and reclaim park land at 12th Street. The proposal was eventually accepted by the City and became part of the Lake Merritt Master Plan. Lake Merritt Master Plan Soon after, Measure DD was placed on the ballot by the Oakland City Council and included the CALM plan. Measure DD passed by a margin of 80% - 20% in 2002 and has already funded numerous restoration and reclaimation projects throughout Oakland, and will reclaim park land at Lake Merritt and reconnect it to the Lake. Measure DD

This blog deals with the City of Oakland's 2008 initiative to rezone the Central Business District (CBD). Working within this rezoning process, CALM's membership and supporters are providing specific proposals to preserve the historic buildings, social fabric, park land, and open space of the Gold Coast neighborhood of the CBD. CBD Rezoning Map

POSTED BY JOHN AT 9:05 PM
LABELS: "LAKE MERRITT" "ZONING UPDATE COMMITTEE"

BLOG ARCHIVE

▼ 2009 (2)
▼ April (1)
Downtown Rezoning at the Planning Commission
► January (1)
► 2008 (14)

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Gray, Neil D.

From: kleinjohne@comcast.net
Sent: Saturday, June 21, 2008 12:44 PM
To: kleinjohne@comcast.net
Subject: Rezoning at Lake Merritt [5] July 18 Zoning Comm Mtg

Hello all,

This message is to let you know about a very important meeting regarding the rezoning at Lake Merritt. For some of you, this is your first message from me about this ˜C welcome aboard!

On July 16, 2008, the Zoning Update Committee (ZUC) will discuss rezoning in the Central Business District (CBD) of Oakland. As you know, the Coalition of Advocates for Lake Merritt (CALM) is spear-heading an effort to zone at the edge of Lake Merritt for lower building heights. We are asking for heights to be limited to 55¡¯ or 5/6 floors within 300¡¯ of Lakeside Drive along the length of Lakeside Drive from 14th Street at the Fire Alarm site to Snow Park. This area is also known as the Gold Coast neighborhood.

For a number of years, it has been apparent to many Oakland residents and Lake-users alike that height limits are needed along the edge of Lake Merritt. Because the City of Oakland is currently rezoning the edge of the Lake in the CBD, now is the time to accomplish this.

Following are some of the important reasons why CALM is making the proposal for height limits:

- Tall buildings are often out of context with many of the historic buildings in the Gold Coast neighborhood.
- Allowing new tall buildings will encourage the destruction and replacement of lower, historic buildings.
- Views looking toward and away from Lake Merritt are obstructed by tall buildings and create a "wall" at the edge of the Lake.
- Sunlight and solar access are blocked by tall buildings, which also degrade the open space of park lands surrounding the Lake or next to tall buildings.

We are now asking all of you and everyone who supports the effort to limit building heights at the Lake to express this to the ZUC.

Below is the contact information for each ZUC member and also for Neil Gray, the City of Oakland planner who works directly on the rezoning.

DOUGLAS BOXER (Chair)
510-286-2937
Fax: 835-0415
Email: dboxer@gmail.com

MICHAEL COLBRUNO (Vice-Chair)
510-835-5900
Fax: 663-4662
Email: michaelcolbruno@clearchannel.com

ANNE E. MUDGE
(415) 392-4200
Fax: (415) 392-4250
Email: amudge@coxcastle.com

Neil Gray, Planner III
City of Oakland
(510)238-3878

ATTACHMENT 3

Email: NGray@oaklandnet.com

CALM is asking everyone to call, write or email each member of the ZUC and Mr. Gray. This is one of the most important parts to getting the height limits: we ***must*** let the ZUC and the City know who we are and know what we want for this area of the Lake.

We suggest that you may include any or all of the points mentioned above or you may copy from the following short statement (which is from CALM¡¯s petition). Of course, feel free to express your own thoughts on the subject to the ZUC as well:

> ¡°The Gold Coast is a diverse urban community with an abundance of culturally-significant buildings two to six stories in height which should be preserved and enhanced. High-rise buildings in close proximity to the Lake will have severe and damaging impacts on the character of this community and will also degrade the natural environment and open space of Lake Merritt and its adjacent park lands.¡±
>
> ¡°I/we urge the Zoning Update Committee to adopt CALM¡¯s proposal to limit building heights within 300¡¯ of Lakeside Drive at Lake Merritt to no more than 55¡¯ or 5-6 stories.¡±

Whatever you do in this regard, whether you call, write, or email, I greatly appreciate your assistance and support. It will also be helpful if you will include me in your emails to the ZUC.

Finally, CALM is planning a short community meeting on Saturday July 12 in the Lake area to get to know each other and to share information and contacts for the rezoning effort. I¡¯ll let you know the time and location as soon as possible ¨C but please reserve a little time that day, if you can.

Thank you.

John

ATTACHMENT 3

Gray, Neil D.

From: k[redacted]et
Sent: Wednesday, June 25, 2008 7:16 AM
To: [redacted]
Subject: Rezoning Lake Merritt [6] Blog and Outreach

Hello all,

This message is to, first, provide you with the link to the blog we've started regarding our efforts to limit building heights at Lake Merritt, here's the link: http://lakecoalition.blogspot.com/. It is very rudimentary right now and we will improve it over time. The main purpose will be to provide important information, documents, times and events regarding the issue of limiting building heights and the rezoning process to accomplish this.

Our current needs right now are:

1. Please contact the individuals listed in the blog and tell them you support 55' height limits at Lake Merritt (as part of the downtown rezoning).
2. Keep a spot open on your calendar on Saturday July 12 for a short community meeting to share information and contacts ahead of the Zoning Update Committee meeting on July 16.
3. We are looking for volunteers to help with the petition that many of you signed. We are also looking for a volunteer to help with lobbying Zoning Update Committee members and public officials about the 55' height limit.

Klein's own words

Thank you for your interest.

John

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July 7, 2008

Zoning Update Committee
Planning Commission
City of Oakland
Oakland, CA 94612

Attn: Neil Gray, Planner III, City of Oakland

Re CALM Position on Proposed New Zoning Regulations for the Central Business District

The Coalition of Advocates for Lake Merritt (CALM) submits the following comments on the proposed new zoning regulations for the Central Business District (CBD). As a volunteer group of Oakland residents, professionals, and activists, CALM's focus is on protecting and improving the environs at Lake Merritt and preserving surrounding parks and historic neighborhoods. CALM has been active since 1999, playing central roles in the Lake Merritt Master Plan and Measure DD. One of CALM's primary contributions was proposing and promoting the planned major reconstruction of 12th Street at Lake Merritt.

We appreciate the opportunity to participate and we compliment the Planning Commission and City staff for undertaking the long overdue task of bringing the City's Master Plan and Zoning Ordinance into mutual compliance. While the substance of the comments are specific to the areas of the CBD which border Lake Merritt, CALM unequivocally supports the City's goals of bringing increased density and business activity to the entire CBD.

When considering zoning changes to the Lake edge, we believe the following four objectives must be considered:

1. Regarding height limitations, the proposed new zoning must reach a sensitive balance between the need to preserve valued community assets and resources, on the one hand, and the interests of the development community, on the other.

2. Safeguarding a sense of openness and space near parklands;

3. Securing the cultural and historic fabric of the diverse and settled Gold Coast neighborhood, which is situated along a one-half mile stretch of Lakeside Drive and lies between Lake Merritt and the Broadway business corridor; and

4. Preserving view corridors toward and away from the Lake area and avoiding the creation of a "wall of buildings" around Lake Merritt.

CALM believes the most effective method to accomplish these objectives is to adopt the 55 foot height area 1 designation for the areas shown as area 2b and sub-area A (excluding Snow Park and north of 20th Street) on the "*Proposed Height, Bulk, and Intensity Map*" attached to the May 21, 2008, staff report. The area 1 designation will limit building heights to 55 feet in these areas.[1]

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[1] The current proposals for the two areas are: for Area 2b: either 150' or 275'. For Sub-area A, four alternatives are given: 150', 275', 400', or no height limit.

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Discussion

Balance Between Valued Community Resources and Development

The area proposed for the 55 foot height limit is within the City's designated Area of Primary Importance and includes historic buildings of highest importance. The Gold Coast neighborhood is predominantly low-rise in character, with building heights of 3-6 stories, and scattered taller structures. Implementing height limits will ensure that incongruous and out-of-scale structures will be avoided. Similarly, incentives to replace small, historic buildings with larger buildings will be minimized. (Exhibit 1)

Safeguarding Open Space and Park Land

Lake Merritt and the system of parks which surround it naturally provide an experience of openness, light, and a unique sense of place. The integrity of open space areas and open vistas at or near park land should be preserved. Tall structures intrude upon and diminish the open space experience; they block the sky, create wind tunnels, and cast shadows, obstructing the sunlight which enhances the outdoor experience. (Exhibit 2)

Securing the Cultural and Historic Fabric of the Gold Coast

The Gold Coast is one of Oakland's most historic neighborhoods and has always been important in providing work-force housing. Today, the Gold Coast is home to professionals, office and service workers, seniors, and students of all races, incomes, and interests. The historic and low-rise character of the Gold Coast provides both a sense of place and an identity for its residents and for the entire city. Maintaining the low-rise character of the Gold Coast area close to the Lake will allow it to retain its current human scale and sense of community. (Exhibit 3)

Preserving View Corridors

Significant view corridors exist in the Gold Coast and should be preserved. View corridors add interest, depth and visual appeal along roadways, between taller structures, and over low-rise buildings. Maintaining the widest possible view corridors at the edge of Lake Merritt will preserve scenic views for businesses in the core business district and in residential districts nearby and as far away as the Oakland hills. (Exhibit 4) Other cities, such as Seattle, have successfully implemented zoning regulations that result in building heights which step away from the waterfront. (Exhibit 5)

Conclusion

CALM presents this proposal on behalf of many Oakland residents who support development in Oakland, but have expressed the desire for adequate controls and limits near Lake Merritt. (Exhibit 6) We are certain that the 55 foot height limitation for the Gold Coast neighborhood will achieve the appropriate balancing of interests as previously stated and will also fulfill the community's wish for development controls at Lake Merritt. Not only will existing community resources and assets be preserved, but because the area of the proposal is less than 5% of the CBD, we believe the development community will retain the ability to achieve the highest and best use of properties.

For all of the foregoing reasons, CALM urges the Zoning Update Committee to adopt a height limitation of 55 feet as stated.

Respectfully submitted on behalf of CALM,

John Klein

Aileen Frankel

Naomi Schiff

J.E. for James E. Vann

James E. Vann

Antonio May

ANTONIO MAY

My Documents\CALM_Lake\July 2008 ZUC\ZUC Final.doc

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ATTACHMENT 3

Gray, Neil D.

From: Ken Katz [k[redacted]] on behalf of Ken Katz [[redacted]]
Sent: Tuesday, July 15, 2008 9:33 PM
To: Gray, Neil D.
Subject: CALM's proposed height limits for Lake Merritt

Mr. Gray,

I'm writing this letter in support of CALM's proposal for height limits adjacent to Lake Merritt. Time constraints have unfortunately kept me from becoming actively involved in the current efforts to protect the lake and the historic neighborhoods adjacent to it which are crucial to our remaining an attractive and livable community with Lake Merritt as its "crown jewel". I have, however, long cited CALM and its leadership (particularly James Vann and John Klein) as models for citizen participation in the decision-making process. Their organization deserves the lion's share of the credit for the plans to totally revamp the south end of the lake as the major element of
Measure DD. I believe their current campaign reflects the same kind of commitment, in depth analysis and creative thinking that was evident previously. Their approach to preserving the park-like setting around the lake strikes a reasonable balance between preservation of our historic and natural resources with the needs for ongoing urban development.

I urge you to unconditionally support the height limits as proposed.

Respectfully,

Ken Katz

Evidence that John Klein is acting in the capacity of "director".

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Gray, Neil D.

From: ann wenzell [sanfrannie@yahoo.com]
Sent: Sunday, June 22, 2008 10:20 AM
To: dboxer@gmail.com; michaelcolbruno@clearchannel.com; Gray, Neil D.; amudge@coxcastle.com
Subject: support for building height limits along lake merrit

The Gold Coast is a diverse urban community with an abundance of culturally-significant buildings two to six stories in height which should be preserved and enhanced. High-rise buildings in close proximity to the Lake will have severe and damaging impacts on the character of this community and will also degrade the natural environment and open space of Lake Merritt and its adjacent park lands.

I urge the Zoning Update Committee to adopt CALM's proposal to limit building heights within 300ft of Lakeside Drive at Lake Merritt to no more than 55ft or 5-6 stories.

Ann Wenzell

evidence that Klein's "lobbying" effort caused his followers to cut-and-paste his recommended language.

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Background Information

KATOVICH
LAW GROUP

1746 Broadway, Suite 301
Oakland, CA 94612
(510) 834-4530
www.katovichlaw.com

December 16, 2008

City of Oakland
Public Ethics Commission
One Frank H. Ogawa Plaza, Fourth Floor
Oakland, CA 94612

Dear Commissioners:

I am writing in response to Complaint No. 08-20 filed by John Klein.

As I discussed in a previous letter to the Commission, I believe that Oakland's Lobbyist Registration Act is overbroad and places an undue burden on Oaklanders' constitutional right to petition the government for a redress of grievances.

Furthermore, I am concerned that the Act is not being applied fairly and that certain individuals are being targeted for enforcement, while others who are conducting the exact same activities as the persons being targeted are being left alone. Because the ordinance is so broad, it could apply to almost everyone who has ever spoken to his or her councilmember or a "designated employee."

For example, the Complaint discusses communications related to the appointment of Ada Chan to the planning commission, replacing Dan Lindheim, the entitlement extension, and re-zoning of the central business district. If the Commission plans to investigate Mr. Plazola regarding these communications, will it also investigate all other groups and individuals that communicated on these topics? I highly doubt that every person or group that communicated on these topics was registered under the Act.

In fact, the very person who filed Complaint No. 08-20 has conducted all of the same activities that he describes in his complaint.

For example, Mr. Klein sent the following email:

```
From: "kleinjohne@comcast.net" <kleinjohne@comcast.net>
To: kleinjohne@comcast.net
Sent: Wednesday, August 20, 2008 6:17:21 AM
Subject: Rezone Lake Merritt [13] ZUC today

Hi everybody,

This message is to invite those who can attend the Zoning Update
Committee meeting toady at 5:00-7:30 pm at City Hall in Hearing Room
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One. The main issue area to be considered is the Lake Merritt edge of downtown. From reading the staff report recommendations and from listening to staff comments during the walking tour on Monday, it is clear the ZUC and City are still very intent on allowing high-rises and buildings out of size and context at the edge of the Lake. Most notably, on the eastern portion of Lakeside Drive (near the boathouse, courthouse, etc.) to 17th Street, staff is recommending building heights up to 170 feet. From the Essex (17th St.) to Snow park, staff is recommending building heights of 275 feet.

http://www.oaklandnet.com/government/ceda/revised/planningzoning/Commission/
zoningupdate-august-20-08/AttachmentsandStaffReport/8-20-08ZUCStaffreport.pdf
These recommendations are the complete opposite of our proposal for 55 foot heights in the same areas. In other words, we've been ignored.
We are not certain why the staff and ZUC have ignored our proposal, particularly in such a public and important process, but we are certain they have an obligation to listen to what the community wants for Oakland and we will be sure to remind them of their obligation in this regard today.

You are encouraged to attend the meeting today and speak on behalf of
55 foot height limits and/or to write to the ZUC members listed below.

Thank you.

John

How is this any different from what Mr. Klein complains about?

Following is a list of meetings in 2008 at which John Klein, acting in a leadership capacity on behalf of CALM, presented CALM's position against high density development around Lake Merritt:

Landmark Preservation Advisory Board meetings held on:

- July 14th
- August 11th
- September 15th
- October 20th

Zoning Update Committee hearings held on:

- March 19th
- April 16th
- July 16th

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- August 20th
- October 6th
- October 29th

In addition, Mr. Klein has communicated on many occasions with city staff regarding CALM's position. In fact, one of the pieces of "evidence" that Mr. Klein submitted with his complaint makes this quite clear: the handwritten notes he submitted labeled 4c which he says are notes of a meeting with city staff including Dan Lindheim, Eric Angstadt, Neil Gary, and Alicia Parker state the following: "CALM – Lake Merritt interest group will give us their proposal – 5 stories w/ in 300" of lake; we will forward to ZUC."

So, in the very same notes that Mr. Klein is presenting as evidence against Oakland Builders Alliance, there is reference to activities that CALM has been undertaking which are no different from those of Oakland Builders Alliance.

On June 25, Mr. Klein even sent an email (attached) stating that CALM is looking for volunteers to help "with *lobbying* Zoning Update Committee members and public officials" (italics added for emphasis). So Mr. Klein has even described his own activities as lobbying.

I am attaching several additional documents that clearly demonstrate that Mr. Klein has been engaging in the same kinds of activities that are in his complaint.

I have been trying to understand why Mr. Klein would make a complaint about activities that he himself conducts. The only conclusion I can reach is that perhaps he believes that he is not included in the definition of a lobbyist under the Act because he is not, legally speaking, an "officer or director" of CALM. As far as I can tell, CALM does not have any officers or directors. It is not required to because it is not a legal entity under California law. Thus Mr. Klein can serve as a leader of CALM without falling within the strict legal definition of a lobbyist. If that is in fact the case, this points to yet another flaw in the Act because it makes no logical sense to exempt leaders of unincorporated associations from the coverage of the Act. Any organization that wanted to avoid registration would simply choose not to form an organization that requires directors and officers so that its leaders would not meet the definition of a lobbyist under the Act.

I would also like to point out another major flaw in the Act that is demonstrated by the complaint. Section 3.20.160 provides that "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 . . . ."

It is very unclear what this means, but Mr. Klein's interpretation seems to be that any statement criticizing a city employee is illegal under this provision. The examples he gives of statements that he believes violate this provision include things like

- "Word is spreading that Dan Lindheim is being considered for the City Administrator position upon Edgerly's departure. This would be a mistake for Oakland."

- "We are going to make Oakland politicians listen to us."

Surely, it could not have been the City Council's intention to outlaw such statements.

While we believe the ordinance, as written, is unconstitutional, if the Commission chooses to initiate an investigation against Mr. Plazola, it is also certainly obligated to initiate investigations against Mr. Klein and any other individual representing any group that participated in any of the events described in Mr. Klein's complaint.

I urge the Commission to consider very carefully what it would mean to try to enforce this very poorly written Act and rather than attempting to do so, re-write the Act so that it is narrowly tailored to meet the reasonable objectives of the city.

Sincerely,

Jennifer Kassan, Esq.