Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
April 6, 2009

In the Matter of)
) Complaint No. 09-01
) **SUPPLEMENTAL**

Carlos Plazola filed Complaint No. 09-01 on January 22, 2009.

I. SUMMARY OF COMPLAINT

Mr. Plazola filed Complaint No. 09-01 alleging that Oakland Mayor Ronald Dellums violated Oakland's "Anti-Nepotism And Cronyism" Ordinance by appointing long-time aide Dan Lindheim as Interim Director of Economic Development and Acting City Administrator. Mr. Plazola also alleges these actions implicate Oakland's Conflict of Interest regulations and the City Council's Rules of Procedure/Code Of Ethics.

At its regular meeting of March 2, 2009, the Commission postponed consideration of Complaint No. 09-01 and directed staff to re-agendize the item for the April 6, 2009, regular meeting. A copy of the March 2, 2009, initial staff report is found at ***Attachment 1.*** On Tuesday, March 24, 2009, Mr. Plazola sent an email to Commission staff pertaining to Complaint No. 09-01. ***Attachment 2.*** He requested that it be forwarded to Commission members. Commission staff believes the initial staff report already addresses the arguments Mr. Plazola raises in his March 24, 2009, email.

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.*

ATTACHMENT 2

Mr. Purnell,

I disagree with your overall conclusion of what the Public Ethics Commission has jurisdiction over, and encourage them to evaluate both my interpretation and your interpretation, and decide for themselves, relative to my complaint against the Mayor's Office on the appointment of Dan Lindheim. The implications of this complaint are serious. If the PEC has no jurisdiction over this matter, then who does? Since they are the body responsible for ensuring that Oakland is governed ethically, which body will ensure that future mayoral appointments of City Administrators are based on merit and not on historic friendships, political alliances, business relationships, campaign donations, family connections, or any number of improper reasons.

I offer this interpretation for the Commissioner's assessment:

Section 202 (a) of the Oakland Charter states: "There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including, Oakland's Campaign Finance Reform Ordinance, ***conflict of interest code***, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matters relating thereto, and it shall set City Councilmember compensation, as set forth herein." (***emphasis added***).

It is important to note that "conflict of interest code", and "any ordinance intended to supplement the Brown Act" are independent of each other, meaning that the PEC has jurisdiction of any conflict of interest code OR any ordinance intended to supplement the Brown Act. The code does not have to be an ordinance by this language.

Please note that the term "conflict of interest code" is all lower case, indicating that this is not referring to any specific Code, but rather to general activities that would constitute conflicts of interest.

Furthermore, on the City's Website, the Charter language under 202 (b) 5 states, counter to what you stated in your arguments,: "Functions, duties, powers, jurisdiction and terms. The **City** shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission, in accordance with this Article." To be clear, this verbatim language DOES NOT state that the ***city council*** shall prescribe the functions, duties, powers, jurisdiction, etc of the commission, but rather the ***city***.

And the city, in creating the Public Ethics Commission, with OMC Chapter 2.24, granted the Commission the following power: "Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions." (Section 2.24.020 (C))

Therefore, it is very reasonable to interpret, based on the Charter's language in creating the PEC, and the Commission's own enabling ordinance, that the PEC is authorized to investigate any and all conflict of interest matters as they pertain to any elected officials, not just a very narrow Code pertaining only to councilmembers.

The unfortunate truth is that should your interpretation prevail, it would render the PEC, Oakland's ethical watch-dog, powerless in overseeing one of the most critical offices in Oakland: the mayor's office, and one of the most important functions of the Mayor's Office: the appointment of a city administrator, creating a great disservice to the residents of Oakland. The implications of this are obvious. Our next City Administrator, for example, under a new mayor, could very well be the new mayor's inexperienced 25 year old son, or his biggest campaign contributor.

I encourage the Public Ethics Commissioners to take the broadest interpretation of their enabling legislation and to investigate whether the appointment of Dan Lindehim, the mayor's long-time political friend, to the position of City Administrator, was a conflict of interest.

I trust you will forward this to the commissioners.

Sincerely,

Carlos Plazola