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. 09-04
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Carlos Plazola filed Complaint No. 09-04 on March 11, 2009.

I. SUMMARY OF COMPLAINT

Mr. Plazola filed Complaint No. 09-04 alleging that John Klein violated provisions of the Lobbyist Registration Act ("LRA") by failing to register and disclose lobbying activities on behalf of the Coalition of Advocates for Lake Merritt (CALM). ***Attachment 1.***

II. FACTUAL SUMMARY

According to an internet posting by Mr. Klein in June 2008, CALM is an "all volunteer" group of Oakland residents seeking to protect and preserve Lake Merritt and its surrounding areas. He states CALM has been active in Oakland since 2001 when the City offered to sell park land at the south end of Lake Merritt for private development. ***Attachment 2.*** According to Mr. Klein, CALM is not a "formal" organization. It is not incorporated under any law; it elects or chooses no officers or directors. Commission staff found no corporate filings made on behalf of CALM or any fictitious name statements or business statements filed with the City or with Alameda County. He says CALM has no formal membership structure, collects no fees for membership, receives no donations and has no independent mailing address. According to Mr. Klein, CALM is simply an "ad hoc network of people" who coalesce whenever City policies or development proposals involve the Lake Merritt area.

In his complaint, Mr. Plazola provides a number of documents to support his contention that Mr. Klein engaged in lobbying activities on behalf on CALM. ***Attachment 3.*** The attached documents include:

- A June 21, 2008 email encouraging recipients to express support for building height limits in Oakland's Central Business District

- A June 25, 2008, email asking recipients for "help with lobbying Zoning Committee members and public officials about the 55' height limit"

- A letter dated July 7, 2008, to the Planning Commission's Zoning Update Committee (ZUC) written on behalf of CALM and signed by Mr. Klein and others stating support for various zoning limitations in the Central Business District

- An email from former City Planning Commissioner Ken Katz in which he refers to Mr. Klein as part of CALM's "leadership"

In addition, Mr. Plazola encloses a letter dated December 16, 2008, previously submitted to the Commission by Jenny Kassan, whom Mr. Plazola describes as an attorney for the Oakland Builders Alliance (OBA).[1] ***Attachment 4.*** The letter alleges that Mr. Klein "acting in a leadership capacity on behalf of CALM" presented CALM's position at the following public meetings held during 2008: Landmark Preservation Advisory Board meetings of July 14, August 11, September 15, October 20; and the Zoning Update Committee meetings of March 9, April 16 and July 16.

There is no record that Mr. Klein has ever registered as a lobbyist with the Office of the City Clerk.

III. ANALYSIS

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)]

The fundamental question raised by this complaint is whether Mr. Klein is a "salaried employee, officer or director" of CALM. (Mr. Klein denies ever being paid to lobby on behalf of CALM.) As the facts presented above appear to indicate, Mr. Klein does not occupy any of those roles with respect to CALM. This conclusion was also reached by Ms. Kassan in her December 16 letter which Mr. Plazola submits in support of his complaint:

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[1] Mr. Klein filed Complaint No. 08-20 alleging that Mr. Plazola violated the LRA for failing to register and report his activities as a lobbyist on behalf of the Oakland Builders Alliance.

> *"As far as I can tell, CALM does not have any officers and 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."*

It is not enough to trigger a registration requirement under the LRA that a person simply communicates with City officials, officers or designated employees "for the purpose of influencing any proposed or pending governmental action of the city. . ." Such persons must also meet the test of receiving "one thousand dollars ($1,000) or more in economic consideration in a calendar month," or serve as a "salaried employee, officer or director" of the organization being represented. Merely identifying Mr. Klein as a "leader" of CALM does not confer on him the status of "salaried employee, officer or director" of the organization. In none of the information Commission staff reviewed is Mr. Klein shown to hold any of those positions.

Mr. Plazola and Ms. Kassan argue that it is unfair to impose a registration and reporting obligation on volunteer members of some organizations who engage in lobbying activities but not on others. Yet the LRA nevertheless provides minimum threshold requirements that must be satisfied before the Act applies to any person. One could similarly argue, for example, that it is "unfair" to impose a registration requirement on a person who receives $1,000 in a calendar month to lobby, but not on a person who receives $999 to perform the same activities. The fact remains that there is no information to support a conclusion that Mr. Klein served as a "salaried employee, officer or director" for CALM during the activities alleged.

IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 09-04 on grounds that there is no information to support a conclusion that Mr. Klein met the definition of "local governmental lobbyist" during the time the alleged activities occurred.

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.*