City of Oakland
Public Ethics Commission

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Ai Mori

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: September 24, 2009

RE: **<u>SECOND SUPPLEMENTAL</u> Staff Report And Action To Be Taken Regarding Proposed Amendments To The Lobbyist Registration Ordinance**

I. INTRODUCTION

At the Commission's previous direction, Commission staff prepared a memorandum dated June 1, 2009, to provide a series of options for 1) amending Section 3.20.030(D) of the Lobbyist Registration Act ("LRA") relating to the definition of "local governmental lobbyist"; and 2) amending Section 3.20.160 relating to the current prohibition on the creation of "false appearances of public favor or disfavor" regarding a proposed governmental decision.

Commission staff prepared a First Supplemental staff report dated July 6, 2009, proposing further modifications to the definition and interpretation of "local governmental lobbyist" and the regulation of persons other than lobbyists and their clients within the LRA.

This Second Supplemental memorandum deals with additional concerns the Commission had regarding the absence of "findings and purpose" language in the current LRA.

II. FACTUAL FINDINGS AND PURPOSE

Most governmental ethics laws begin with factual findings and/or a statement of the law's purpose. The factual findings help explain why the law is being enacted. If the law is ever challenged, a court will examine the findings for evidence of a governmental

interest justifying the rule or regulation. The adopted findings also demonstrate that the legislators considered appropriate facts before enacting the challenged law. The law's "purpose" is also expressed to establish the specific interest the governmental agency has in regulating a particular form of conduct. As a general rule, the more a law impinges or burdens constitutionally protected conduct (such as First Amendment rights to free speech, petition one's representatives and to free association), the closer courts scrutinize the law for acceptable purposes to justify the regulation.

As stated above, the current version of the LRA does not contain any factual findings or a legislative purpose. The Commission previously submitted a draft lobbyist registration ordinance that contained the following language. This language was not considered by the City Council when adopting the current Act:

Findings and Declarations

The Oakland City Council finds and declares each of the following:

A. The people of Oakland have the need and right to know the identity of lobbyists who attempt to influence the decisions of City government and the means employed by them to advance their interests; and

B. Full disclosure of lobbying activities of such persons, their inducements, and the identity of their employers, will contribute to public confidence in the integrity of local government; and

C. Full disclosure is necessary to ensure City officials are kept informed about the identity of persons whose interests the lobbyists represent and to ensure that City officials are not improperly influenced by such lobbyists.

Purpose of This Act

The purpose of this Act is to maintain a fair and open decision-making process in City government and to ensure that the public and City officials have full knowledge of lobbying activities that have been brought to bear on any legislative or administrative action.

Commission staff has the following observations regarding the above language:

1) There are no factual findings in the "Findings and Declarations" section. This section could benefit from factual findings based on the established history of lobbying activities in Oakland documented by the LRA's ongoing registration and reporting process. (See below.)

2) The three declarations in the "Findings and Declarations" section are consistent with the few court cases upholding state and federal lobbyist registration and reporting requirements.

3) The "Purpose of this Act" could benefit from minor editing.

Based on the above comments, Commission staff proposes the following revisions:

Findings and Declarations

The Oakland City Council finds and declares each of the following:

A. Organizations rely upon the services of lobbyists to influence City officials and City employees about proposed or pending governmental decisions;

B. The people of Oakland have the need and right to know the identity of lobbyists who attempt to influence the decisions of City government and the means employed by them to advance their interests; and

~~B. Full~~C. The disclosure of ~~lobbying~~ lobbyists, their activities ~~of such persons, their inducements, and the identity of their employers,~~, interests and clients will ~~contribute to~~improve public knowledge and confidence in the integrity of local government; and

~~C. Full~~D. The disclosure of lobbyists, their activities, interests and clients is necessary to ensure City officials are kept informed about the identity of persons whose interests the lobbyists represent and ~~to ensure~~ that City officials are not improperly influenced by such lobbyists.

Purpose of This Act

The purpose of this Act is to maintain a fair and open decision-making process in City government ~~and~~ by requiring those who seek to ~~ensure that~~influence the ~~public and city officials have full knowledge of lobbying activities that have been brought to bear on any~~ legislative ~~or~~ and administrative actions of the City to register and publicly disclose their lobbying activities.

III. STAFF RECOMMENDATION

Commission staff recommends that the Commission take public input on the issues presented in this and previous memoranda and give direction to staff for any additional proposals for consideration at the September 24, 2009, meeting.

Respectfully submitted,

Daniel D. Purnell
Executive Director