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September 28, 2016

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Via U.S. Mail and email:  
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**Re: Review/Analysis of Complaint Regarding Potential Violation of  
City's Lobbyist Ordinance**

Dear Mr. Nosky:

On September 7, 2016, I was retained to review a complaint filed in August 2016 regarding a potential violation of the City of Santa Clara's recently-adopted Lobbyist Ordinance. Specifically, I was asked to:

- 1) Review the facts and circumstances raised in the complaint to determine whether a violation of the ordinance could be substantiated; and
- 2) Make a recommendation for further action based on the outcome of the review.

This report addresses the above-referenced review and provides recommendations for your consideration.

**BACKGROUND**

In January 2016 the City Council of Santa Clara adopted two ordinances in furtherance of its commitment to open and transparent government: one regulating lobbying activities (the Lobbyist Ordinance) in the City, and one requiring certain public officials to publish their meeting calendars on the City's website (the Calendar Ordinance). The ordinances became effective in February, and City staff began developing policies and procedures for their implementation. The City began posting the monthly meeting calendars of designated officials on its website in March 2016. The Lobbyist Ordinance created a new regulation requiring persons participating in lobbying activities within the

City to register as lobbyists. The City began outreach and educational efforts to persons and entities that might be subject to the new requirements shortly after they became effective, and set the first reporting deadline as June 1, 2016.

Meanwhile, back in March of 2015, the City Council had approved an "Agreement for the Performance of Services" between the City and AllVision, LLC, which provided that AllVision would develop a plan related to accessing the City's real estate assets for outdoor advertising within the City, and return to the Council with a proposal for consideration of construction of digital billboards on City property. The issue went back to the City Council at its March 22, 2016 meeting, listed on the agenda as "Authorization to proceed with the entitlement process to construct a two sided digital billboard at one of two locations along the corridor on the west side of US Highway 101 between the San Tomas Expressway and Lafayette Street; return to Council with final approval and provide direction on the options outlined for billboard removal." The City Council had a number of questions and concerns about the item, and after some discussion it was continued to a later date. A presentation about the proposal was made to the City's Marketing Committee in May 2016. As of this writing, the item has not been set for a further City Council hearing.

In April 2016, following the March 22<sup>nd</sup> meeting, AllVision retained local attorney Patricia Mahan<sup>1</sup> to provide them with legal services related to the AllVision agreement. Soon thereafter, Ms. Mahan set up meetings with Council members, AllVision's Vice President of Business Development Josh Scharfberg, and herself to discuss the AllVision proposal. Ms. Mahan identified herself as AllVision's attorney. The published calendars show three meetings in May, two in June, and four in July.

As of June 1, 2016, the first reporting deadline for lobbyists under the new ordinance, Ms. Mahan had not registered as a lobbyist. A referral was made to the City Attorney's office inquiring whether she should register in connection with her AllVision activities. The City Attorney contacted Ms. Mahan and spoke with her about the Lobbyist Ordinance and referral. The ordinance contains a provision that exempts attorneys from registering as lobbyists, but only so long as the attorney is "engaged in the practice of law with respect to the subject of the employment." Ms. Mahan told the City Attorney she believed she was exempt from the registration requirement under the attorney exemption because she had been retained as a lawyer by AllVision related to the matter, and was engaged in the practice of law pursuant thereto. The City Attorney accepted Ms. Mahan's characterization of her activities and concluded no further action was warranted at that time. A courtesy notice dated June 16, 2016, was sent to Ms. Mahan from the City Clerk's Office providing her with information about the ordinance, a copy of the ordinance, and an FAQ sheet developed by the City. Ms. Mahan remained unregistered. In mid-July she pulled nomination papers to run for Seat 4 in the upcoming November 2016 Santa Clara City Council elections; at that time, she

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<sup>1</sup> Ms. Mahan is a member in good standing of the California State Bar. She is also a well-known figure in local politics, having served three terms as a City Councilmember of the City of Santa Clara (1994-1998, 1998-2002, 2010-2014), and two terms as Mayor (2002-2006, 2006-2010).

informed the City Attorney that she had terminated her legal services agreement with AllVision in connection with the City of Santa Clara and withdrawn from any further representation.

On or around August 12, 2016, the City received a letter addressed to the Mayor and City Council, questioning whether Ms. Mahan's previous failure to register as a lobbyist for AllVision and "the Alan Square Project" violated the City's ordinance. The letter, sent by Ms. Deborah Bress<sup>2</sup>, stated that Ms. Bress had reviewed the published calendars of City officials and noted that Ms. Mahan had attended a number of meetings but was not registered as a lobbyist. The letter lists the following meetings:

Acting City Mgr Batra	5/9/16	3:00 pm	All Vision
Councilwoman Watanabe	5/18/16	2:00 pm	Meeting regarding billboards
Mayor Gillmor	5/23/16	11:30 am	Meeting regarding All Vision Billboards
Councilwoman Davis	5/23/16	10:00 am	Meeting regarding All Vision Billboards
Councilwoman Davis	6/16/16	11:30 am	Meeting regarding All Vision Billboards
Councilman Caserta	6/17/16	11:00 am	Meeting regarding All Vision
Acting City Mgr Batra	6/30/16	2:00 pm	Alan Square Project

In the letter, Ms. Bress wrote that "Ms. Mahan is listed as an attorney... but that title, according to our lobbying ordinance, is immaterial... as there were no other attorneys representing the City's legal interests and Santa Clara has no employment issues with All Vision BillBoards (sic) nor Alan Square that would qualify her to be exempt." Following receipt of the letter, the City Attorney retained this law firm to review the complaint to determine whether a violation of the ordinance could be substantiated under the described facts and circumstances, and to make a recommendation for further action based on the outcome of the review.

### REVIEW AND DISCUSSION

I was asked to conduct a prima facie review of the facts and circumstances raised in the complaint to determine whether a violation of the ordinance could be substantiated. Accordingly, for purposes of this report, I have accepted as true the statements made to me by the persons I spoke with in order to analyze whether, under the facts and circumstances related, a violation was substantiated. Toward that end, I reviewed the relevant ordinances and related guidance documents and reports, watched the recordings of the City Council meetings related to development and adoption of the ordinances, reviewed relevant law in the area, and spoke with the following individuals, each of whom was open and cooperative:

Ms. Deborah Bress  
Ms. Patricia Mahan  
Mayor Lisa Gillmor  
Vice Mayor Teresa O'Neill

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<sup>2</sup> Ms. Bress is a candidate for the City Clerk in Santa Clara in the upcoming November 2106 election.

Council Member Debi Davis  
Council Member Kathy Watanabe  
Council Member Dominic Caserta  
City Attorney Richard Nosky  
City Clerk/Auditor Rod Diridon, Jr.  
Acting City Manager Rajeev Batra  
Ms. Maggie Le, City of Santa Clara Management Analyst  
Ms. Jennifer Yamaguma, City of Santa Clara Public Communications Manager

**Facts**

**AllVision:** The underlying facts in this matter are relatively straightforward. In March 2015 AllVision entered an agreement with the City to prepare a plan for possible placement of digital billboards on City property, and to return to Council with a recommendation for site locations and options for construction and operation of the signs with a cost/benefit analysis (the "Proposal"). Further action with respect to digital billboards, if any, was subject to Council approval. AllVision's Proposal was brought before the Council a year later in March 2016. Council did not act on the Proposal; rather it moved to continue the item to obtain more information. AllVision made a presentation about the Proposal to the City's Marketing Committee in May 2016; a further City Council hearing has not yet been scheduled.

After the March 2016 Council meeting, AllVision engaged attorney Mahan to perform legal services in connection with AllVision's contract with the City.<sup>3</sup> Shortly thereafter, Ms. Mahan, mostly along with AllVision's Vice President of Business Development, Mr. Josh Scharfberg (he did not attend three of the meetings), attended a number of meetings with different City officials to discuss AllVision's Proposal. The calendars published on the City's website list the following meetings; they are set forth exactly as they are noted on the website:

<b>City Official</b>	<b>Date</b>	<b>Subject</b>	<b>Attendees</b>
Acting City Manager Batra	Mon 5/9/2016 3:00 PM	Allvision	Pat Mahan
Council Member Watanabe	5/18/16 2:00 p.m.	Meeting regarding billboards	Patty Mahan, Attorney; Josh Scharfberg, All Vision Rep; Ed McGovern, All Vision
Mayor Gillmor	5/23/16 11:30 a.m.	Meeting regarding All Vision Billboards	Josh Scharfberg, All Vision VP Business Development; Patty Mahan, Attorney

<sup>3</sup> I have not seen a copy of the legal services agreement. California Business and Professions Code section 6149 provides that legal service agreements are confidential and subject to attorney-client privilege; only a client may waive the privilege. Mr. Rob Goldberg, General Counsel for AllVision, contacted me and confirmed that AllVision had engaged Ms. Mahan "solely for legal services" "in connection with AllVision's contract with the City of Santa Clara". He further confirmed that Ms. Mahan withdrew from representing AllVision with respect to Santa Clara in mid-July, and that she has not been compensated for work with respect to Santa Clara since that time. For purposes of this review, I accepted Mr. Goldberg's statements as true.

Council Member Davis	5/23/16 11:30 a.m.	Meeting regarding All Vision Billboards	Josh Scharfberg, All Vision VP Business Development; Patty Mahan, Attorney
Council Member Davis	6/16/16 10:00 a.m.	Meeting regarding All Vision Billboards	Patty Mahan, Attorney; Josh Scharfberg, All Vision
Council Member Caserta	6/17/16 11:00 a.m.	Meeting regarding All Vision	Patty Mahan, Attorney
Vice Mayor O'Neill	7/6/16 1:00 PM	Meeting regarding All Vision Billboards	Council Member Kathy Watanabe; Patricia Mahan, Attorney and Resident; Josh Scharfberg, CEO AllVision
Council Member Watanabe	7/6/16 2:00 PM	Meeting regarding All Vision Billboards	Vice Mayor Teresa O'Neill; Patricia Mahan, Attorney and Resident; Josh Scharfberg, CEO AllVision
Acting City Manager Batra	Wed 7/6/16 9:00 A.M.	All Vision	Rajeev Batra; Sharon Goei; Lee Butler; Jennifer Yamaguma; Pat Mahan; Josh Scharfberg; Alex Belenson
Council Member Davis	7/29/16 4:30 PM	Meeting regarding All Vision Billboards	Patricia Mahan – Attorney and Resident

I spoke with each of the City officials about the above-listed meetings. For clarification, Mayor Gillmor noted that the meeting she had listed on 5/23/16 never actually occurred; it was scheduled but she did not attend. Vice Mayor O'Neill and Council Member Watanabe noted that although they are listed as "attendees" under both the 1:00 and 2:00 July 6 meetings, this is a calendaring error. There were two separate meetings, one at 1:00 pm and another at 2:00 pm, each actually attended only one of the meetings. Council Member Caserta indicated that the June 17<sup>th</sup> meeting he listed was not generally a meeting about AllVision, but that the topic came up during a conversation so he listed it to make sure he was in compliance with the Calendar Ordinance. Likewise, Council Member Davis indicated the 7/29 meeting was not a scheduled meeting about AllVision, but that during the course of another conversation Ms. Mahan raised the topic of AllVision, so she listed it to comply with the Calendar Ordinance.

Otherwise, information about the meetings and Ms. Mahan's role in them was essentially consistent (although individuals' opinions about whether her activities constituted lobbying and whether she was exempt from registration differed). During the meetings, AllVision, through Mr. Scharfberg and Ms. Mahan, provided information to City staff and Council members about the Proposal, and responded to questions and concerns that had been raised. They presented written and oral information about AllVision's agreement with the City, about the details of the Proposal, and an analysis of potential benefits to the City. Ms. Mahan participated in the different meetings to varying degrees, and discussed the potential benefits of the Proposal for the City. Everyone I spoke with was aware that Ms. Mahan had been retained as a lawyer by AllVision, although she announced in some meetings she was attending as AllVision's attorney, and in others she did not.

The question presented is whether this behavior constituted lobbying under the ordinance for purposes of triggering the registration requirement, and, if so, whether Ms. Mahan was exempt from registration based on the attorney exemption.

Alan Square: Alan Square is the name of a development project that was approved some time ago. Acting City Manager Batra's published calendar shows an "Alan Square Project" meeting on June 30, 2016, at 2:00 PM, attended by "Ali Mozaffari; Setarah Farsio; Pat Mahan; Kevin Reilly; Sharon Goei." I spoke with Mr. Batra and Ms. Mahan about this meeting. The purpose of the meeting was to discuss the application of a recently approved City policy on this previously approved project. Ms. Mahan attended on behalf of Mr. Mozaffari who is a client of hers. The issue was resolved after this meeting; Ms. Mahan did not participate in any other meetings or activity related to this topic.<sup>4</sup>

### **Applicable Law**

On January 12, 2016, the Santa Clara City Council adopted Ordinance No. 1949, "Regulation of Lobbying Activities," which became effective February 11, 2016. The purpose of the ordinance is to "ensure adequate and effective disclosure of information about efforts to lobby City government." (The Code of the City of Santa Clara, California (SCCC), Chapter 2.155.)<sup>5</sup>

The ordinance creates three categories of lobbyists – Contract Lobbyist (someone retained to lobby on behalf of a client), Business or Organization Lobbyist (a business whose employees carry out lobbying on its behalf) and Expenditure Lobbyist – and requires that they register with the City within 15 days of qualifying as a lobbyist. (§2.155.030.) In this matter, the potentially applicable category for Ms. Mahan would be Contract Lobbyist. A "Contract Lobbyist" is specifically defined as "A person who engages in lobbying on behalf of one or more clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for compensation of one thousand dollars (\$1,000.00) or more, or equivalent non-monetary compensation ("threshold compensation") for engaging in lobbying during any consecutive three-month period." (§2.155.020(j)(1).)

The ordinance goes on to exempt certain persons from the definition of lobbyist, including: "Persons who are professionally licensed by a State licensing organization pursuant to the California Business and Professions Code, including but not limited to attorneys, architects and engineers; provided however, *the exemption for attorneys shall only be applicable if the attorney is engaged in the practice of law with respect to the subject of employment.*" (§2.155.020(k)(8); emphasis added.)

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<sup>4</sup> Due to its limited nature and subject matter, I have concluded this activity would not constitute lobbying under the Santa Clara lobbying ordinance; accordingly, I do not discuss it further in this report.

<sup>5</sup> All further statutory references are to the Code of the City of Santa Clara, California (SCCC) unless otherwise indicated.

The ordinance requires anyone who is a lobbyist, who is not otherwise exempt, to register with the City, and prohibits lobbying without registration. (§§2.155.030 and 2.155.120.) “Lobbying” is broadly defined as “the influencing or attempting to influence a legislative or administrative action of the City.” (§2.155.020, subd. (i).)

“Administrative action” means the proposal, drafting, development, consideration, advocacy or recommendation of any rule, regulation, agreement or contract, permit, license or hiring action.” (§2.155.020(b).) “Influencing” means “the purposeful communication, either directly or through agents, promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the behavior of a City official or official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentive, statistics, studies or analyses; excepted from this definition is communication made as a part of a noticed governmental public meeting.” (§2.155.020, subd. (g).)

Under the ordinance, the required registration and implementing actions are to be processed by the Office of the City Clerk (§§2.155.030, 2.155.050, 2.155.090) and the City Attorney is empowered to seek injunctive relief to enjoin violations or compel compliance. (§2.155.140.) Persons or entities that knowingly violate the ordinance may be subject to penalties set forth in the City’s general provisions related to code enforcement. (§2.155.140.)

Finally, “Any person who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of SCCC 2.155.030 [Registration] by reason of his or her being exempt under SCCC 2.155.030(k) [Exemptions] shall not be deemed to have violated the provisions of SCCC 2.155.030 if, within fifteen (15) days after notice from the City, he or she either complies or furnishes satisfactory evidence to the City that he or she is exempt from registration. (§2.155.170.)

### **Analysis**

AllVision entered into an agreement with the City to analyze sign options for City property, and pursuant thereto, brought forward a Proposal for City Council approval regarding digital billboards. The Proposal constitutes an “administrative action” within the meaning of the Lobbyist Ordinance. (“Administrative action” means the proposal, drafting, development, consideration, advocacy or recommendation of any rule, regulation, agreement or contract, permit, license or hiring action.” (§2.155.020(b).))

A person or entity that engages in lobbying is required to register as a lobbyist if they fall within one of the three categories of “lobbyist” and are not otherwise exempt. A “contract lobbyist” is a person who engages in lobbying on behalf of a client and who has entered an agreement for \$1000 or more to engage in lobbying during any consecutive three-month period. (§2.155.020(j)(1).) “Lobbying” means influencing, or attempting to influence, an administrative action. (§2.155.030(i).) “Influencing” includes providing a City official with information, incentives, statistics, studies or analyses to support or promote an administrative action. (§2.155.030(g).) Under these rules, anyone providing City officials with information, including studies and analyses, in support of the Proposal would be engaged in lobbying, and if that person met the

definition of lobbyist, they would be required to register with the City.

Ms. Mahan entered an agreement with AllVision for legal services related to its agreement with the City of Santa Clara. As part of those services, she attended meetings during May, June and July 2016 with City officials and participated with another AllVision representative in providing information and analyses explaining the potential benefits of AllVision's Proposal, activities which constitute lobbying under the broad definition contained in the ordinance. Based on this, she would be considered a Contract Lobbyist under the ordinance and required to register, unless the attorney exemption applies.

The ordinance states that "the exemption for attorneys shall *only be applicable if the attorney is engaged in the practice of law with respect to the subject of employment.*" In the instant matter, this means that Ms. Mahan was exempt from registering as a lobbyist if she was *engaged in the practice of law* within the meaning of the ordinance.

The ordinance itself does not define the term "practice of law." As noted, it is relatively new and its interpretation and implementation guidelines are still developing. When considering the meaning to be given to language in an ordinance, basic rules of statutory construction apply: "[t]he primary duty of a court when interpreting a statute is to give effect to the intent of the Legislature, so as to effectuate the purpose of the law. [Citation.] To determine intent, courts turn first to the words themselves, giving them their ordinary and generally accepted meaning. [Citation.] If the language permits more than one reasonable interpretation, the court then looks to extrinsic aids, such as the object to be achieved and the evil to be remedied by the statute, the legislative history, public policy, and the statutory scheme of which the statute is a part. [Citation.] ... Ultimately, the court must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and it must avoid an interpretation leading to absurd consequences. [Citation.]" (*Woodland Park Management, LLC v City of East Palo Alto Rent Stabilization Board*, (2010) 181 Cal.App.4th 915, *citing, Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 583.)

The language in the Lobbyist Ordinance provides an exemption for attorneys engaged in the "practice of law" related to the scope of their services, but does not explain what "practice of law" means for purposes of the exemption. The phrase is difficult to define, and is susceptible to different, reasonable interpretations depending on context. In a broad context, the term "practice of law" encompasses all of the activities engaged in by attorneys in a representative capacity, including advocacy. (*Baron v City of Los Angeles* (1970) 2 Cal.3d 535.) If that definition is applied to the term "practice of law" in the exemption, Ms. Mahan would qualify for the exemption: she was acting on behalf of AllVision in her representative capacity under the legal services agreement.

In other contexts, the term "practice of law" has been defined more narrowly. For example, for purposes of deciding whether regulations pertaining to attorneys are preempted by State law, Courts have defined what constitutes the practice of law as



the flipside of what constitutes the “unauthorized practice of law,” which is prohibited in California. Thus, courts have held that local regulations, including lobbying ordinances, may be applied to attorneys “except when they are ‘acting on behalf of others in the performance of a duty or service, which duty or service lawfully can be performed for such other only by an attorney licensed to practice law in the State of California.’” (*Baron v City of Los Angeles, supra.*) This means that the term “practice of law” includes only those activities that legally can be performed only by a licensed attorney; activities that would be considered the unauthorized practice of law if performed by a layperson instead of an attorney. If “practice of law” is defined in this way in the Lobbyist Ordinance, Ms. Mahan would not be exempt because her participation in meetings providing information about the AllVision Proposal would not constitute the unauthorized practice of law if undertaken by a layperson.

Under the rules of statutory construction noted above, when a term in an ordinance is susceptible to more than one meaning, the intent of the City Council in adopting the ordinance should be considered. It is appropriate to consider the background surrounding the ordinance’s adoption to ascertain the meaning of the term. Thus, the ordinance should be construed in a manner that comports most closely with the apparent intent of the City Council, with a view to promoting rather than defeating its general purpose. Based on the reports submitted to City Council when the ordinance was adopted, and on comments made at the meetings, the legislative record shows the City Council intended to make a distinction with the attorney exemption between the “practice of law” and “lobbying,” excluding lobbying from the exemption. This distinction is legally permissible. In fact, the Legislature has recognized that attorneys may act in a lobbying capacity distinct from “the practice of law,” and has provided that cities and counties “may require attorneys who qualify as lobbyists, as defined by the local jurisdiction, to register and disclose their lobbying activities directed toward the local agencies of those jurisdictions, in the same manner and to the same extent such registration and disclosure is required of nonattorney lobbyists.” (Bus.&Prof. Code §6009(a).) Under these rules, the exemption for attorneys engaged in the “practice of law” in the Lobbyist Ordinance should be limited to activity that only licensed attorneys are authorized to perform.

Under this interpretation, Ms. Mahan would not have been exempt from registering as a contract lobbyist for AllVision under the ordinance with respect to her meetings with City officials in May, June and July. The analysis as to whether her failure to register violated the ordinance does not end there, however, because enforcement of the ordinance requires a “knowing” violation of the ordinance. (“Persons or entities that knowingly violate this chapter may be subject to the penalties set forth in SCCC 1.05.070.” (§2.155.140.)) Ms. Mahan believed she was exempt from the registration requirements, and therefore did not “knowingly” violate the ordinance. In addition, Ordinance Section 2.155.170 states that “[a]ny person who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of SCCC 2.155.030 [Registration] by reason of his or her being exempt under SCCC 2.155.030(k) [Exemptions] shall not be deemed to have violated the provisions of SCCC 2.155.030 if, within fifteen (15) days after notice from the City, he

or she either complies or furnishes satisfactory evidence to the City that he or she is exempt from registration.” When Ms. Mahan was informed about the Lobbyist Ordinance and referral, she concluded she was exempt from registration under the attorney exemption. Given the broad meaning that the term “practice of law” can have, and the lack of definition in the ordinance or guidance, it was not unreasonable for Ms. Mahan to reach that conclusion. She discussed her opinion that she was exempt from registration with the City Attorney, and no further action was taken, which supported her conclusion, and lead her to believe she had complied with Section 2.155.170, and was exempt from registration.

### **Conclusion**

Based upon the foregoing, I conclude Ms. Mahan engaged in lobbying within the meaning of the Lobbying Ordinance when she met with various City officials on AllVision’s behalf, and that she was not exempt from registration as a lobbyist under the attorney exemption; however, her failure to register did not constitute a “knowing” violation of the ordinance that would subject her to penalties because she had a reasonable and good faith belief that she was covered by the attorney exemption, and had satisfied the requirements of Section 2.155.170. Ms. Mahan has stated that she terminated the above-described agreement with AllVision in July. If she were to resume the agreement, she would be required to register under the Lobbyist Ordinance.

### **RECOMMENDATIONS**

The City Council furthered its commitment to open and transparent government when it adopted the Calendar and Lobbyist Ordinances, and the City has been actively engaged since their adoption in developing guidance and procedures for their implementation and enforcement. The calendars are published on a regular basis, and a number of persons and entities have registered as lobbyists. All of the information is readily available on the City’s website. It is not unusual, in fact it is common, that as ordinances are implemented, components will be identified that require clarification. Cities that have a longer history implementing lobbyist ordinances appear to have recognized the difficulty in determining what constitutes the practice of law as distinct from lobbying activities, and have promulgated detailed guidance for lawyers. For example, in regulations implementing its Lobbyist Ordinance, the City of San Francisco has adopted the following regulation (Note: San Francisco’s ordinance uses the term “contact” to describe lobbying activity):

#### **Regulation 2.107-1. Practice of Law; Determination.**

Any determination of whether communications with an officer of the City and County or other activities constitute the practice of law shall be based on an analysis of whether those communications or activities would constitute the unauthorized practice of law if performed by a layperson instead of a licensed attorney, and shall not be based on whether the person engaging in that communication or those activities is in fact a licensed attorney.

Example #1: An attorney is representing a corporation that opposes a proposed ordinance. The attorney and the Chief Executive Officer of the corporation meet with

the Mayor's Chief of Staff. The attorney begins the meeting by stating that he represents the corporation, and that he is acting in his capacity as an attorney for the corporation. Throughout the meeting, the attorney and the CEO urge that the Mayor should oppose the proposed ordinance because it would adversely affect the corporation and other companies in the same business sector. The attorney and the CEO have each made a contact.

Example #2: An attorney is representing a person involved in ongoing litigation with the City and County. The attorney contacts the City Attorney and urges him to dismiss the City's complaint against his client, arguing that the City's legal claims are not supported by existing law. The attorney has not made a contact.

Example #3: An attorney representing a trade association sends a letter to the City Attorney on behalf of her client urging a change to the wording of a proposed ordinance and provides a legal analysis in that letter supporting her position. The attorney has made a contact.

Given that the term "practice of law" is susceptible to different interpretations and therefore misunderstanding, guidance and examples like the type noted above would be useful for both the City and attorneys for determining whether registration is required, and I therefore recommend that the City adopt such guidance. Many cities that have lobbyist ordinances also have ethics [or similar] commissions that promulgate guidelines and enforce their ordinances, and there are ready examples of different models of regulations.

If you have any questions or need additional clarification regarding this report, please feel free to contact me. Thank you.

Very truly yours,



JOAN A. BORGER