


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CITY'S ANTI-NEPOTISM ORDINANCE, OAKLAND MUNICIPAL CODE CHAPTER 2.40, TO GRANT THE PERSONNEL DIRECTOR SPECIFIC AUTHORITY TO MAKE ALTERNATE ARRANGEMENTS REGARDING EMPLOYEES IN THE POLICE AND FIRE DEPARTMENTS TO MINIMIZE THEIR SUPERVISION AND/OR INFLUENCE OVER THE TERMS AND CONDITIONS OF EMPLOYMENT OF ANY INDIVIDUAL WITH WHOM THEY HAVE A FAMILY RELATIONSHIP, CONSENSUAL ROMANTIC RELATIONSHIP, OR COHABITANT RELATIONSHIP

WHEREAS, the City Council adopted the City's Anti-Nepotism Ordinance for the purpose of eliminating actual or perceived conflicts of interest, partiality or favoritism in the City workplace due to nepotism and/or cronyism and to maintain public confidence in the fairness of the City's hiring and employment practices as well as in the competence of City employees; and

WHEREAS, the City is committed to eliminating actual or perceived conflicts of interest, partiality or favoritism in the City workplace due to nepotism and/or cronyism and to maintaining public confidence in the fairness of the City's hiring and employment practices as well as in the competence of City employees; and

WHEREAS, the City is committed to continuing to make alternate arrangements to ensure that no City official, manager, or employee performs supervision for and/or unduly influences the terms and conditions of employment of any individual with whom that individual has a family relationship, consensual romantic relationship, or cohabitant relationship ("Relationships Covered by the Ordinance"); and

WHEREAS, the Police Department and Fire Department present special challenges because they utilize strict chains of command that all go through a chief, and because strict compliance with the ordinance could result in inequitable outcomes since it often is impossible for members of those departments (in particular sworn members) to transfer to other departments because of their highly specialized training, duties, skills, and certifications related to delivering critical health and safety services; and

WHEREAS, a strict application of the current Anti-Nepotism Ordinance could lead to inequitable and/or unintended outcomes for employees in the Police or Fire Department who have Relationships Covered by the Ordinance, particularly when one family member becomes the Chief of the Fire Department or Police Department, and even though there may be reasonable safeguards that would avoid undue supervision or influence, it may nevertheless be impossible or impracticable to strictly comply with the current ordinance; and

WHEREAS, the City Council finds it is in the City's best interest, and desires to amend the City's Anti-Nepotism Ordinance (Chapter 2.40 of the Oakland Municipal Code) to specifically address the Police Department and Fire Department, in order to balance the inherent risks of nepotism, on the one hand, against the risks of inequitable or undesirable outcomes for Relationships Covered by the Ordinance, on the other hand, by granting the Director of Personnel specific authority to make alternate arrangements within these two departments;

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows:

SECTION 1. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

SECTION 2. Chapter 2.40 of the Municipal Code, entitled Prohibition on Nepotism in City Employment, hereby is amended to read in its entirety as follows:

2.40.010 - Definitions.

The following definitions apply to this chapter:

"City," as used in this chapter, means the City of Oakland as a municipal organization, City officers, City managers and City employees, including all individuals who are employees of the City Council, Mayor's Office, City Administrator's Office, City Attorney and City Auditor's Office, as well as all employees of City agencies and departments.

"Cohabitant relationship" means any relationship where an individual shares a residence with a City official, manager or employee.

"Consensual romantic relationship" means any consensual sexual or romantic relationship with any City officials, managers and employees who may supervise them, directly or indirectly, or who may influence the terms and conditions of their employment.

"Cronyism" means participating in any employment decision that may be viewed as a conflict of interest, such as one involving a close friend, a business partner, and/or professional, political, or commercial relationship, that would lead to preferential treatment or compromise the appearance of fairness.

"Family relationship" includes relationship by blood, adoption, marriage, domestic partnership, foster care and cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins, siblings and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

"Official" means all elected officials including all individuals appointed to an elected office.

"Supervision" means authority, direction, control or influence, including being in the same chain of command and participation in decisions about terms and conditions of employment of one or more other employees.

"Supervisor" means any City employee who performs supervision.

"Terms and conditions of employment" includes but is not limited to hiring, setting and changing all forms of compensation or remuneration, benefits, payments, hours, shifts, transfers, assignments, working conditions, performance evaluations, promotions, training, retirement, classification, retention, evaluation, demotion, discipline and all other job-related qualifications, opportunities and privileges.

2.40.020 - Purpose.

The purpose of this anti-nepotism chapter is to eliminate actual or perceived conflicts of interest, partiality or favoritism in the City workplace due to nepotism and/or cronyism and to maintain public confidence in the fairness of the City's hiring and employment practices as well as in the competence of City employees. This chapter achieves its goals in three ways:

- A. By requiring applicants for City employment to disclose all family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees, after receiving an offer of employment;
- B. By requiring disclosure by officials and supervisors of all existing family and cohabitant relationships;
- C. By requiring disclosure by officials and supervisors of all existing consensual romantic relationships; and
- D. By prohibiting cronyism.

2.40.030 - Disclosure of relationships.

- A. All individuals who apply for employment with the City must disclose all known family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees. Information concerning cohabitant and consensual romantic relationships will be treated as confidential and disclosed only on a need-to-know basis. The City's anti-nepotism policy will be communicated to all applicants for City employment at the time of application.
- B. All current City officials and supervisors must disclose all known family relationships, consensual romantic relationships and cohabitant relationships with existing City employees, managers and officials no later than 60 days from the effective date of this chapter and thereafter, on an annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within 60 days of their inception to the Director of Personnel. Information concerning cohabitant and romantic relationships will be treated as confidential and disclosed only on a need-to-know basis.

2.40.040 - Prohibited supervisory relationships.

- A. City officials, managers and employees may not supervise City employees with whom they have a known family relationship, consensual romantic relationship or cohabitant relationship.
- B. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists in any City agency, department program or office other than the Police Department or Fire Department, alternate arrangements will be made by the Director of Personnel in consultation with the Office of the City Attorney, so that no City official, manager, or employee performs supervision for and/or influences in any manner the terms and conditions of employment of any individual with whom that individual has a family relationship, consensual romantic relationship, or cohabitant relationship.
- C. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists within the Police Department or Fire Department, the Director of Personnel in consultation with the Office of the City Attorney, will make alternate arrangements so that an employee's supervision for and/or influence in any manner over the terms and conditions of employment of any individual with whom that individual has a family relationship, consensual romantic relationship, or cohabitant relationship is minimized, including but not limited to identifying personnel decisions

that will bypass the normal chain of command and/or will require the approval of the City Administrator.

2.40.050 - Failure to report relationships, including cohabitant and romantic relationships involving supervision.

Any individual who willfully and deliberately fails to disclose her or his known, prohibited family relationship, consensual romantic relationship or cohabitant relationship with City officials, managers or employees, shall be eligible for penalties up to and including termination.

2.40.060 - Prohibition on participation or use of influence in hiring and in setting or changing terms and conditions of employment.

No official, manager or employee may engage in cronyism and/or attempt to influence the City or any official, manager or employee, to hire, promote, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship. No official, manager or employee may delegate such authority to a subordinate in order to participate in such personnel decisions.

2.40.070 - Enforcement.

- A. The Director of Personnel shall be responsible for collection of information concerning family relationships, consensual romantic relationships and cohabitation relationships. Such information will be preserved for a minimum of five (5) years.
- B. The Director of Personnel, in consultation with the City Attorney, shall be responsible for identifying and implementing alternate arrangements should an official, manager or employee provide supervision to, directly or indirectly, an individual with whom she or he has a family relationship, consensual romantic relationship or cohabitant relationship. In the event that a prohibited relationship exists between the Director of Personnel and any other City official, manager or employee, the City Administrator, in consultation with the City Attorney, shall make such alternate arrangements.
- C. Any City employee who becomes aware that an official, manager or employee has attempted to influence the City, its officials, managers or employees, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship, shall report that attempt to the Director of Personnel, the City Attorney or the City Auditor.

- D. The Director of Personnel shall provide an annual report to the City Council describing the nature and number of prohibited relationships disclosed, and what actions were taken to make alternate arrangements.

SECTION 3. This ordinance shall become effective immediately upon its final adoption by the affirmative vote of six or more members of the City Council of the City of Oakland. If the ordinance is finally adopted with the affirmative votes of five members of the Council, it shall take effect upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE CITY'S ANTI-NEPOTISM ORDINANCE, OAKLAND MUNICIPAL CODE CHAPTER 2.40, TO GRANT THE PERSONNEL DIRECTOR SPECIFIC AUTHORITY TO MAKE ALTERNATE ARRANGEMENTS REGARDING EMPLOYEES IN THE POLICE AND FIRE DEPARTMENTS TO MINIMIZE THEIR SUPERVISION AND/OR INFLUENCE OVER THE TERMS AND CONDITIONS OF EMPLOYMENT OF ANY INDIVIDUAL WITH WHOM THEY HAVE A FAMILY RELATIONSHIP, CONSENSUAL ROMANTIC RELATIONSHIP, OR COHABITANT RELATIONSHIP