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CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Council President Ignacio De La Fuente
City Council Member, District 5

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October 17, 2008

HONARABLE CITY COUNCIL
CITY OF OAKLAND

Re: SUPPLEMENTAL REPORT ON ANTI-NEPOTISM ORDINANCE

Dear Members of the City Council:

History of Complaints

The Office of the City Attorney and other officials have received complaints about nepotism from a number of sources. For example, when the City Attorney conducted sexual harassment training, concerns were expressed at trainings conducted by the Office of the City Attorney over sexual favoritism arising out of supervisor-subordinate romantic relationships that may have resulted in disadvantageous treatment for employees not in such relationships. In other instances, the City has received complaints that employees have been placed in positions because they were relatives or romantic partners of existing City managers or employees. In sum, over the years, employees, themselves, have asked the Office of the City Attorney whether such relationships were “lawful,” given their impact on fairness and employee morale. Furthermore, the City recently resolved for \$125,000 claims against it arising out of a dating relationship in the former City Auditor’s Office.

The proposed ordinance seeks to mitigate nepotism involving family, consensual and cohabitant relationships through the use of disclosures. I have requested that the City Attorney draft a similar ordinance to address the contracting of goods and services.

Changes Proposed at Sept. 23rd Finance and Management Committee

At the September 23rd Finance and Management Committee meeting, I proposed amendments to the ordinance to respond to concerns. These amendments are reflected in the proposed ordinance attached to this report.

1. Add definitions:
 - a. "Supervisor" means any City employee who performs supervision.
 - b. "Official" means all elected officials including all individuals appointed to an elected office.

2. Modify Section 3.B to require only current officials and supervisors to disclose relationships, as follows:

Section 3.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 annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within sixty (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.

3. Modify Section 4.B to require information in prohibited relationships to be simply shared with the City Attorney rather than the City Attorney consulting with the Director of Personnel on alternate arrangements, as follows:

Section 4.B. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists, that information shall be shared with the City Attorney and alternate arrangements will be made by the Director of Personnel, 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.

4. Modify Section 5 to change consequences for non-compliance, as follows:

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

Roles and Responsibilities

This table presents the roles and responsibilities proposed in this ordinance. NOTE: The definition of consensual romantic relationships limits disclosures to only those consensual romantic relationships within the chain of command.

New employees	-Must disclose all known family relationships, consensual romantic (with employees in chain of command only) and cohabitant relationships with other city employees and officials.
Officials and Supervisors	-Must disclose annually all known family relationships, consensual romantic relationships (with employees in chain of command) and cohabitant relationships with other City employees and officials. -Should new such relationships form arise, they must be disclosed within 60 days to the Director of Personnel.

Director of Personnel	-Responsible for collecting information on family, consensual romantic (with employees in chain of command only) and cohabitant relationships. Such information shall be provided to City Attorney. -Following receipt that a prohibited relationship exists, share information with City Attorney, and make alternative arrangements.
City Attorney	-Receive information on family, consensual romantic (with employees in chain of command only) and cohabitant relationships from Director of Personnel.
City Administrator	-Following receipt that a prohibited relationship exists involving the Director of Personnel, make alternative arrangements.

Relation to Civil Service Rules

While the City's Civil Service Rules were established to ensure that hiring was based on merit, the Rules have not prevented favoritism based on relationships. Some limitations of the Civil Service Rules in preventing nepotism include:

1. Civil Service Rules do not apply to all positions – many positions are exempt or limited duration.
2. Civil Service Rules do not actually require any disclosure of relationships with existing City officials or employees, disclosures are necessary to detect illegal relationships.
3. For most jobs beyond entry level positions, some criteria are subjective.
4. Civil Service Rules only address fairness in hiring; they do not address issues that arise after hiring.
5. Eligibility lists established through the Civil Service system are sometimes allowed to expire or are otherwise not used.
6. The Civil Service Rules have thus far failed to prevent nepotism from influencing hiring.

Respectfully submitted,



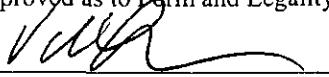
Ignacio De La Fuente
CITY COUNCIL PRESIDENT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT 16 PM 7:09

President De La Fuente
Revised Ordinance – Oct 21, 2008

Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

Introduced by Council President Ignacio De La Fuente

AN ORDINANCE AMENDING TITLE 9 OF THE CITY OF OAKLAND MUNICIPAL CODE BY ADDING A NEW CHAPTER, 2.38, ENTITLED ANTI-NEPOTISM POLICY, TO PREVENT NEPOTISM IN HIRING AND ADMINISTRATION.

WHEREAS, in order to maintain confidence in City government, it is imperative that citizens are assured that City employment is free from nepotism, patronage, and favoritism,

WHEREAS, it is imperative that City employment be based on merit, so that citizens are assured that City employees will be providing the highest quality service to those deserving citizens,

WHEREAS, nepotism, patronage and favoritism are demoralizing and dispiriting to the dedicated, hard-working employees of the City,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Chapter 2.38 is added to the Oakland Municipal Code to read as follows:

2.38. PROHIBITION ON NEPOTISM IN CITY EMPLOYMENT

Section 1. 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.

“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.

“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.

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

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

“Supervisor” means any City employee who performs supervision.

“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.

“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.

Section 2. Purpose.

The purpose of this anti-nepotism ordinance is to eliminate actual or perceived conflicts of interest, partiality or favoritism in the City workplace due to nepotism 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 Ordinance achieves its goals in three ways: (1) 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 (2) by requiring disclosure by officials and supervisors of all existing family and cohabitant relationships, (3) by requiring disclosure by officials and supervisors of all existing consensual romantic relationships.

Section 3. Disclosure of Relationships.

A. All individuals who apply for employment with the City of Oakland must disclose all known family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees, after receiving an offer of employment. 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 sixty (60) days from the effective date of this ordinance and thereafter, on an annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within sixty (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.

Section 4. 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, that information shall be shared with the City Attorney and alternate arrangements will be made by the Director of Personnel, 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.

Section 5. Failure to Report Relationships, Including Cohabitant and Romantic Relationships Involving Supervision.

Any individual who 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..

Section 6. 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 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.

Section 7. Enforcement

A. The Director of Personnel shall be responsible for collection of information concerning family relationships, consensual romantic relationships and cohabitation relationships. Such information shall also be provided to the City Attorney . Such information will be preserved for a minimum of five years.

B. The Director of Personnel, 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, 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.

Section 8. Severability.

If any part, provision, or clause of this Ordinance or the application thereof to any person or circumstance, is held to be invalid by a court of competent jurisdiction, all other provisions and clauses hereof, including the application of such provisions and clauses to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 OCT 16 PM 7:09

President De La Fuente
Revised Ordinance – Oct 21, 2008
Redline Version
Approved as to Form and Legality

City Attorney

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B. All current City officials and supervisors, ~~managers and employees~~ must disclose all known family relationships, consensual romantic relationships and cohabitant relationships with existing City employees, managers and officials no later than sixty (60) days from the effective date of this ordinance and thereafter, on an annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within sixty (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.

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IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____