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CITY OF OAKLAND



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

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November 3, 2008

HONORABLE CITY COUNCIL
CITY OF OAKLAND

Re: SECOND SUPPLEMENTAL REPORT ON ANTI-NEPOTISM ORDINANCE

Dear Members of the City Council:

Amendment

I am proposing one amendment to the Anti-Nepotism ordinance that was agendized for the October 21st and November 3rd City Council meetings. The attached ordinance dated November 3, 2008 is the final proposal and reflects amendments made since the item was first presented in July 2008.

This amendment modifies the role of the City Attorney's office, recommending that the City Attorney be consulted when alternate personnel arrangements are being made, but not receive all information collected by the Director of Personnel on relationships. The purpose of this amendment is to respect privacy concerns while also protecting the City from legal challenges that may arise from the improper re-assignment of an employee.

Section 4.B now reads as follows:

B. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists, 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.

Section 7.A now reads as follows:

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 years.

Section 7.B now reads as follows:

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.

Roles and Responsibilities

The revised roles and responsibilities would be as follows:

New employees	-Must disclose all known family relationships, consensual romantic (with employees in chain of command only) and co-habitant relationships with other city employees and officials at time of contingent employment offer.
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 arise, they must be disclosed to the Director of Personnel within 60 days
Director of Personnel	-Responsible for collecting information on family, consensual romantic (with employees in chain of command only) and cohabitant relationships. -Following receipt that a prohibited relationship exists, makes alternate arrangements in consultation with the City Attorney.
City Attorney	-Consult with Director of Personnel/City Administrator when alternate arrangements are necessary.
City Administrator	-Following receipt that a prohibited relationship exists involving the Director of Personnel, makes alternative arrangements in consultation with the City Attorney.

Respectfully submitted,



Ignacio De La Fuente
CITY COUNCIL PRESIDENT

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President De La Fuente
Revised Ordinance – Nov. 3, 2008

Approved as to Form and Legality

V. E. Raden 10/30/08

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,

WHEREAS, Oakland City Charter section 907 states that “The Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City Administrator or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship.”

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 contingent on the existence of no prohibited relations; (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 contingent on the existence of no prohibited relationships. 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, 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.

Section 5. 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 ineligible for hiring and/or will be subject to 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 will be preserved for a minimum of five 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.

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