

14 OCT -3 AM 9: 14

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6<sup>TH</sup> FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
**Barbara Parker**  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TDD: (510) 839-6451

City Councilmember **Dan Kalb**  
District One

(510) 238-7001

October 16, 2014

**RE: Adoption of Proposed Governmental Ethics Act**

Dear City Councilmembers:

We are writing to recommend that the Council adopt a "Government Ethics Act" Ordinance which expands the Public Ethics Commission's authority and oversight of City Officials and Public Servants with respect to ethics-related matters.

**RECOMMENDATION**

Adopt a "Government Ethics Act" Ordinance (A) Adopting and Expanding Local Oversight over Ethical Requirements Regarding Conflicts of Interest, Revolving Door, Use of City Resources for Private Gain, Gifts, City Officers Contracting with the City, and Other Ethics Issues; (B) Adopting and Expanding State Governmental Ethics Laws Applicable to Local Government Officials and Public Servants; (C) Granting the Public Ethics Commission Authority to Impose Penalties for Violations of certain Charter provisions including Sections 218 (Non-Interference in Administrative Affairs) and 907 (Nepotism); (D) Requiring that the Public Ethics Commission Provide Training, Advice and Assistance Regarding Compliance with the Act; and (E) Authorizing the Commission to Impose Penalties and Fines for Violations

**OUTCOME**

Adoption of an Ethics Act will allow the Public Ethics Commission to fulfill one of its mandated purposes of education, training and enforcement over City Officials and Public Servants, as defined in the Act, with respect to governmental ethics matters. The Ethics Act is intended to provide a clear, comprehensive and locally enforceable framework of laws to ensure that Oakland City government operates with integrity, that government decisions are made on the merits and in the best interest of its citizens and not for private or individual gain, that the rules are clear for all Public Servants, and that the law is fairly and effectively enforced.

## **BACKGROUND/LEGISLATIVE HISTORY**

The Oakland Public Ethics Commission (PEC) was formed in 1996 with the goal of ensuring "fairness, openness, honesty, and integrity" in City government. Numerous observers and commentators, including the Alameda County Grand Jury, have noted that the PEC has insufficient resources and statutory authority to adequately fulfill its mission of enforcing ethics laws. In September of 2013, the PEC itself wrote to the City Council regarding its limited authority, requesting (1) a local ethics ordinance, similar to those enacted in various other local jurisdictions, (2) enhanced resources for adequate staffing, and (3) evaluation of its structure and authority, specifically with regard to its independence within the City government. Various other local jurisdictions in California have Ethics Commissions with significantly more authority, responsibilities, and resources than Oakland's PEC.

Councilmember Dan Kalb campaigned for office in 2012 in part on restoring confidence in City Hall, improving government transparency, and strengthening the PEC. In early 2013, Councilmember Kalb began work on convening a working group of local experts on ethics and good government. The group was formed with the purpose of researching best practices in comparative ethics law and identifying needed reforms regarding the structure and powers of the PEC and the laws under its regulatory purview. Important components of this research and policy development included seeking and receiving input from the public and conferring with the PEC's Executive Director, Whitney Barazoto.

Following the PEC's September 2013 letter, the PEC created an *ad hoc* Ethics subcommittee to begin drafting an ethics ordinance. The subcommittee conducted its first public meeting to develop the draft and receive public input on April 24, 2014.

In May of 2014, Part I of the blueprint proposals developed by the working group and the office of Councilmember Kalb, "**Proposed Oakland Ethics Reforms: Public Ethics Commission Charter Reforms and Governmental Ethics Ordinance**", was published. The report covers recommendations for (1) amendments to the Oakland Charter provisions pertaining to the PEC and (2) establishment of an Oakland Government Ethics Ordinance, comparable to ethics ordinances previously adopted in various municipal jurisdictions throughout California.

The PEC began the drafting process for the Governmental Ethics Act. Shepherded by Executive Director Barazoto, this process included significant collaboration with the Ethics subcommittee and the offices of Councilmember Kalb and the City Attorney. The recommendations of the Councilmember Kalb's working group blueprint Part I were utilized in the drafting process. The PEC's subcommittee presented a first draft of the Act at the PEC's regular meeting of July 7, 2014. At the PEC's regular meeting of September 2, 2014, the PEC unanimously approved recommendation of the next draft of the Governmental Ethics Act.

City Attorney Barbara Parker is pleased to partner with Councilmember Kalb and co-sponsor the proposed Ethics Act for the City of Oakland, which will further empower the PEC to fulfill its mandate in education, training and enforcement with respect to ethics matters.

### **ANALYSIS**

The current Oakland municipal laws regarding governmental ethics are inadequate. Even cursory examinations of ethics statutes of other cities like San Francisco, Los Angeles, and San Diego reveal much more robust and comprehensive statutes.

The Ethics & Good Government Working Group formed by Councilmember Kalb recommended both of the following:

(1) The City of Oakland should adopt an ethics ordinance drawing upon existing ordinances in San Francisco, Los Angeles, and San Diego, as well as any other appropriate sources or models;

(2) The PEC functions and duties should include oversight and enforcement of Oakland Charter Section 218 ("Non-interference in Administrative Affairs"), including the power to formally reprimand, censure, or impose certain administrative remedies on a Councilmember or other local elected official found to be in violation.

The PEC's September 3, 2013 letter to the City Council requested that the PEC be given specific authority to investigate and enforce violations related to the following:

- Use of public resources for private or political purposes;
- Conflicts of interest in decision-making;
- Leaving public office to work for a company doing business with the City within a restricted post-employment time period ('Revolving Door' rules);
- Bias, Nepotism, and Cronyism;
- Serving in two incompatible positions;
- Bribery;
- Embezzlement; and
- Preventing or inhibiting competitive bidding on contracts.

Furthermore, the PowerPoint presentation at the PEC's July 2013 meeting noted that the PEC has no authority to enforce the Oakland Conflict of Interest Code (the requirements for Form 700 (Statement of Economic Interest) disclosure in Oakland). By contrast, the Los Angeles City Ethics Commission and San Diego Ethics Commission are empowered to enforce violations of their Conflict of Interest Codes.

In addition, Councilmember Kalb's proposed Charter Amendment to strengthen the PEC, which was unanimously approved for the ballot by the City Council in July, includes several provisions relevant to the establishment of a governmental ethics ordinance, including the following:

(1) Provides that the PEC has the duty to foster and enforce compliance with Oakland Charter Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") and a "governmental ethics ordinance;

(2) Provides that, for violations of Charter Section 218, 907, and 1202, the PEC may impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council.

With those recommendations and priorities in mind, we propose that the Oakland Ethics Ordinance be comprised of the following provisions summarized below. **We note that a majority of the provisions already exist in state law, or in the Oakland City Charter, and are already applicable to Oakland public officials and employees. Incorporation of such state or Charter provisions into the Governmental Ethics Act has the primary effect of facilitating local administrative enforcement oversight by the PEC.** Unless otherwise noted, these proposed provisions are applicable to Oakland "Public Servants," which is defined as including City officeholders, board and commission members, and employees, as well as consultants who are required to file Statements of Economic Interest.

1. Disclosure of economic interests:

The Act requires Statement of Economic Interest (Form 700) Disclosure as required by the California Political Reform Act and the City's Conflict of Interest Code, as is done in Los Angeles and San Diego.

2. Incorporation of state conflicts of interest laws:

The Act incorporates by reference state conflict of interest prohibitions (Cal. Gov. Code Sections 87100 et seq. (Political Reform Act) and 1090 et seq.), as San Francisco has done in Section 3.206 of their Campaign & Governmental Conduct ("CGC") Code, thereby reaffirming the authority of the PEC to enforce at the local level the state conflict of interest laws already incorporated by reference into Charter Section 1200. The Act also incorporates California Government Code Sections 1090-1097, which prohibit conflicts of interest in contracting.

3. Prohibition of improper disclosure of confidential information:

Similar to reforms passed in various local jurisdictions such as San Francisco and Los Angeles, the Act codifies California Government Code 1098 to prohibit disclosure of confidential information for personal advantage or private interest.

4. Incompatible Public Offices & Conflicts in Office:

The Act codifies a restriction on holding incompatible government offices, as currently prohibited by Government Code 1099. In addition, the Act mirrors Charter Section 1202, which prohibits conflicts in office by the Mayor and members of the City Council.

5. Revolving door & future employment provisions:

The Act prohibits a Public Servant from influencing a government decision regarding a person with whom they are seeking future employment, as already prohibited by Government Code Section 87407

Additionally, the Act mirrors San Francisco CGC Code Section 3.234 ("Post-employment and Post Service Restrictions"), in order to prevent former City officials and employees from (1) working for others on projects on which they had previously worked or supervised for the City, (2) communicating on behalf of others with their former agency or department for a specified period of time after leaving City service, and (3) accepting employment within a specified period of time from those who they awarded contracts to during their City service.

6. Misuse of City position or resources:

The Act incorporates Government Code Section 8314, which prohibits misuse of City resources or position.

7. Prohibitions related to political activity:

State law prohibits public servants from engaging in political activity in uniform, soliciting contributions from other public servants (when not making the solicitation to a significant segment of the public), and using your office secure or obstruct a conferring position or compensation upon the condition that what is conferred is used in a particular way, however, the PEC is not currently authorized to enforce these provisions. Therefore, the Act incorporates Government Code Sections 3206, 3205, and 3204. The restriction regarding improper solicitation of contributions would also apply to candidates for the Oakland Unified School District Board. Section 3203, which prohibits placing restrictions on the political activities of public servants, is also incorporated.

8. Restrictions on gifts:

The Act's proposed new restrictions on gifts to Oakland public servants is a blend of the Political Reform Act, San Francisco CGC Code Section 3.216, and Los Angeles Municipal Code Section 49.5.8. In addition to preventing a person from offering or making gifts to a public servant, and a public servant from accepting gifts, when it is reasonably foreseeable that the public servant could be influenced by the gift in the performance of an official act, the Act lowers the state annual gift limit, which is currently \$440, to \$250, limits gifts from restricted sources to \$50 annually, and bans lobbyists or lobbying firms from acting as an intermediary for gifts or arranging the making of gifts to a public servant.

9. Prohibition on top City officers contracting with the City:

The Act mirrors San Francisco CGC Code Section 3.222 to prohibit the City elected officials and the City Administrator, City Controller, department heads, and member of listed boards and commissions from entering into contracts, other than for employment, with the City of a value exceeding \$10,000, subject to certain exceptions.

10. Prohibition on payment for government services (bribery):

To allow the PEC to enforce existing bribery laws, the Act mirrors existing law on bribery, California Penal Code Section 68.

11. Prohibition on payment for office:

The Act mirrors San Diego Municipal Code Section 27.3572, which prohibits officials from giving or promising anything of value in exchange for being nominated, appointed, voted for, or elected.

12. Prohibition on influencing contracts with former employer:

The Act mirrors Los Angeles Municipal Code Section 49.5.13, which prohibits a public servant from using his or her position to influence a contract decision with a party with whom the public servant was employed with the preceding 12 months.

13. Nepotism & decisions involving family members:

The Act incorporates Charter Section 907 regarding nepotism. In addition, the Act mirrors the requirements of San Francisco CGC Code Section 3.212 ("Decisions Involving Family Members"), which prohibits officers and employees from making or seeking to influence the City's employment decisions regarding their relatives. The Act further prohibits supervision of another public servant who is a relative, with an exception made for temporary assignments.

14. Non-interference.

The Act incorporates Charter Section 218.

15. False Charges:

The Act mirrors San Francisco CGC Code Section 3.238 ("Filing of False Charges"), which prohibit the filing of false charges related to the Oakland Ethics Ordinance with the PEC or another enforcement authority.

16. Requirements related to misleading information, withholding information, and a duty to cooperate:

The Act mirrors San Francisco CGC Code Section 3.240 to prohibit providing false or misleading information to the PEC or other enforcement authorities or withholding information relevant to a PEC investigation of an Ethics Ordinance violation. Additionally, this section would impose on City officers a duty to cooperate with PEC investigations of alleged violations of the Ethics Ordinance. However, the Act specifically notes that the latter requirement shall not be construed as requiring identification of a confidential whistleblower, as defined by the Oakland Whistleblower Ordinance.

17. Training & Guide:

The Act mandates that all City officers and employees who must file a Statement of Economic Interest (Form 700) must receive a local ethics training not less than once every two years, which will be provided by the PEC in partnership with the City Attorney. Additionally, the Act provides that the PEC, in consultation with the City Attorney, would be required to issue an ethics resource guide for City public servants.

18. Enforcement:

Utilizing a best practices blend of the Political Reform Act and the ethics ordinances of other local jurisdictions, the Act provides that violations of the Act are subject to criminal, civil, and administrative penalties. Criminal violations are misdemeanor. Civil and administrative penalties are *up to* \$5,000 per violation, or up to three times the amount the violator failed to report or unlawfully contributed, expended, gave, or received, whichever is greater. Civil penalties may be enforced by the PEC or City Attorney. Administrative penalties are enforceable via the PEC's complaint procedures. In addition, injunctive relief may be obtained for violations by action brought the PEC, City Attorney, or a City resident.

**COST IMPLICATIONS**

Any costs that might be necessary to administer this Ordinance are identified in the PEC Charter Amendment.

**PUBLIC OUTREACH/INTEREST**

Public input was sought through a number of meetings with Councilmember Kalb's Ethics & Good Government Working Group, as well as through the PEC's Ethics subcommittee. The full PEC held two public meetings seeking public input on the proposed Ethics Act.

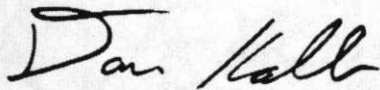
**COORDINATION**

Councilmember Kalb and the City Attorney's Office worked closely during preparation of this report. The PEC staff and Ethics subcommittee performed extensive work regarding the drafting and vetting of the proposed ordinance.

**SUSTAINABLE OPPORTUNITIES**

Enforcement of a robust set of Ethics regulations should cut down on waste and misuse of public funds or resources and help ensure that all City time, property and resources are being used efficiently in compliance with the law.

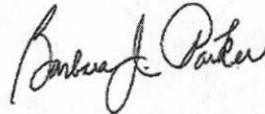
Respectfully submitted,



---

Dan Kalb  
Councilmember, District 1

Respectfully submitted,



---

Barbara J. Parker,  
Oakland City Attorney

*Prepared by:*  
Oliver Luby  
Policy Analyst for Councilmember Kalb, and  
Tricia Hynes,  
Deputy City Attorney





City Attorney's Office

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

14 OCT -3 AM 9:14

## OAKLAND CITY COUNCIL

ORDINANCE \_\_\_\_\_ C.M.S.

---

**ADOPT A "GOVERNMENT ETHICS ACT" ORDINANCE (A) ADOPTING AND EXPANDING LOCAL OVERSIGHT OVER ETHICAL REQUIREMENTS REGARDING CONFLICTS OF INTEREST, REVOLVING DOOR, USE OF CITY RESOURCES FOR PRIVATE GAIN, GIFTS, CITY OFFICERS CONTRACTING WITH THE CITY, AND OTHER ETHICS ISSUES; (B) ADOPTING AND EXPANDING STATE GOVERNMENTAL ETHICS LAWS APPLICABLE TO LOCAL GOVERNMENT OFFICIALS AND PUBLIC SERVANTS; (C) GRANTING THE PUBLIC ETHICS COMMISSION AUTHORITY TO IMPOSE PENALTIES FOR VIOLATIONS OF CERTAIN CHARTER PROVISIONS INCLUDING SECTIONS 218 (NON-INTERFERENCE IN ADMINISTRATIVE AFFAIRS) AND 907 (NEPOTISM); (D) REQUIRING THAT THE PUBLIC ETHICS COMMISSION PROVIDE TRAINING, ADVICE AND ASSISTANCE REGARDING COMPLIANCE WITH THE ACT; AND (E) AUTHORIZING THE COMMISSION TO IMPOSE PENALTIES AND FINES FOR VIOLATIONS**

**WHEREAS**, the integrity of City government depends upon Public Servants, as defined in this Act, who are entrusted by the public whom they serve to use City time, property and resources efficiently and in a legal and ethically responsible manner; and

**WHEREAS**, in order to prevent improper influence, California state law imposes requirements on Public Servants that including but not limited to regulations to avoid financial conflicts of interest (Government Code Section 87100 et seq.), self-dealing in government contracts (Government Code Section 1090), disclosure of confidential information (Government Code Section 1098), holding incompatible offices (Government Code Section 1099), soliciting contributions from City staff (Government Code Section 3205), and misuse of public resources (Government Code Section 8314); and

**WHEREAS**, current California laws and regulations provide a minimum standard for the conduct of Public Servants; and

**WHEREAS**, a Charter City has the constitutional authority to enact local regulations to supplement state ethics laws under the home rule and municipal affairs doctrines; and

**WHEREAS**, the citizens of Oakland voted to amend the Oakland City Charter in 1996 to create the Public Ethics Commission, for the primary purpose of ensuring compliance with laws and policies seeking fairness, openness, honesty, and integrity in City government; and

**WHEREAS**, an effective government ethics program requires multiple elements to ensure that Public Servants serve with honesty and integrity; these include political commitment, a clear legal framework, effective accountability measures, prevention activities such as education, advice, and outreach, supportive public service conditions, an ethics coordinating body, an active civil society and probing media.

**WHEREAS**, the City Council added Chapter 2.24 to the Oakland Municipal Code to establish the Commission's authority to ensure compliance and enforce various additional ordinances, including the Oakland Campaign Reform Act, Sunshine Ordinance, Lobbyist Registration, and Limited Public Financing Act.

**NOW, THEREFORE, BE IT ORDAINED;**

The City Council of the City of Oakland, in order to set clear expectations pertaining to the conduct of public officials, and to provide ethical guidance and support for public officials who serve the public, does hereby enact the Oakland Government Ethics Act (hereinafter referred to as the "Act"), to provide as follows:

**The City of Oakland Government Ethics Act**

14 OCT -3 AM 9: 14

**I. Title. This chapter shall be known as the City of Oakland Government Ethics Act.**

**II. Purpose**

- A. This Government Ethics Act is based on the premises that 1) the integrity of City government depends upon Public Servants who are entrusted by the public to use City time, property and resources efficiently and in a legal and ethically responsible manner, and 2) all individuals and groups who come into contact with our City should have a fair and equal opportunity to participate in government.
- B. This Act is intended to provide a clear, comprehensive, and locally enforceable framework of laws to ensure that Oakland City government operates with integrity, that government decisions are made on the merits and in the best interest of its citizens and not for private or individual gain, that the rules are clear for Public Servants, and that the law is fairly and effectively enforced.
- C. The provisions in this Act are in addition to other local, state and federal laws, some of which are cited by and incorporated into this Act.
- D. Enforcement authority established by this Act shall not be applied to alleged violations occurring prior to the effective date of this Act, except as to continuing violations after proper notice.

**III. Definitions**

- A. Unless the term is specifically defined in this Act, or the definition is stated or clearly appears from the context, the definitions set forth in the state or local law that is cited as the source of each relevant provision in this Act shall govern the interpretation of that provision.
- B. "City" means the City of Oakland, though the terms "City Administrator," "City Attorney," and "City Auditor" refer to the officers of the City of Oakland as described by the City Charter. This definition of "City" does not apply when it is used in the term "City office."
- C. "City Office" includes the Mayor, City Attorney, City Auditor, and City Councilmembers and School Board Directors.
- D. "Public Servant" includes:
  - 1. any elected or appointed officeholder of the City of Oakland, including any such officeholder elected but not yet sworn in, and not including Oakland School Board Directors, and

2. any City board or commission member, including the Board of Port Commissioners, and
  3. any full-time or part-time employee of the City, and
  4. any consultant of the City who is required to file a Form 700 Statement of Economic Interests pursuant to the City of Oakland Conflict of Interest Code and the California Political Reform Act.
- E. "Relative" means any person who is related within the third degree by blood, marriage, or contract, and includes a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin, and any similar step relationship or similar relationship created by adoption.

#### **IV. Conflicts of Interests and Personal Gain**

- A. **Financial Conflicts of Interests.** A Public Servant shall not make, participate in making, or seek to influence a decision of the City in which the Public Servant has a financial interest within the meaning of the California Political Reform Act, Government Code Section 87100 et seq. and pursuant to City Charter Section 1200. All provisions of California Government Code Section 87100 – 87505 and City Charter Section 1200, as they relate to Public Servants, are incorporated by reference into this Act.
- B. **Statement of Economic Interests (Form 700) Disclosure.** The Mayor, City Council Members, City Administrator, City Attorney, City Auditor, any City board or commission member, any candidate for City Office, and any employee or consultant designated in the City Conflict of Interest Code shall file statements of economic interests and shall disclose all required information pursuant to the California Political Reform Act and the City Conflict of Interest Code.
- C. **Conflicts of Interests in Contracting.** A Public Servant shall not make or participate in making a contract in which he or she has a financial interest within the meaning of California Government Code Sections 1090 – 1097. All provisions of California Government Code Section 1090 – 1097, as the Sections relate to Public Servants, are incorporated by reference into this Act.
- D. **Confidential Information.** A Public Servant shall not willfully and knowingly disclose for pecuniary gain, personal advantage or private interest, to any other person, confidential information acquired by him or her in the course of his or her official duties.
- E. **Incompatible Public Offices.** A Public Servant, including but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible, as prohibited by California Government Code Section 1099.

1. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
    - a. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body or over a multimember body that includes that other office.
    - b. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
    - c. Public policy considerations make it improper for one person to hold both offices.
  2. When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second.
  3. This Subsection IV(E) does not apply to a position of employment, including a civil servant position.
  4. This Subsection IV(E) shall not apply to a governmental body that has only advisory powers.
- F. **Conflict in Office.** As prohibited by City Charter Section 1202, the Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while he or she is a member thereof, until at least one year shall have expired after the expiration of the term for which he or she was elected.
- G. **Influencing Prospective Employment.** A Public Servant shall not make, participate in making, or otherwise seek to influence a governmental decision affecting a person or entity with whom the Public Servant is discussing or negotiating or has entered into an agreement concerning future employment.

V. **Leaving Public Service "Revolving Door" Restrictions**

A. **Permanent Post-Service Restriction on Representing, Advising and/or Assisting Non-City Parties in Particular Matters.**

1. Prohibition. A former Public Servant, after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any person or entity other than oneself or the City before any court, or before any state, federal, or local agency, including the City Council, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter in which both of the following exist:

- a. the City is a party or has a direct and substantial interest; and
  - b. the Public Servant participated personally and substantially in the matter as a City Public Servant.
2. Definition. "Particular matter" includes but is not limited to a particular claim, official filing to the City by another, contract, negotiation, grant, permit, license, litigation, settlement, or similar transaction.
  3. In determining if communication regarding a particular matter violates this prohibition, representation or agency shall be presumed if a former Public Servant is compensated in any way and for any reason during the preceding twelve (12) month period either prior to or after the communication by a non-City person or entity that is either a party to the particular matter or is intending to influence the particular matter.
  4. Restriction on assisting others. No former Public Servant, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another public or private entity regarding a matter or in any proceeding in which the Public Servant would be precluded under Subsection V(A)(1) from personally appearing.
  5. Exception for testimony. The prohibitions in Subsections VA(1) and A(4) do not prohibit a former Public Servant from testifying as a witness pursuant to a subpoena, Public Servant provided that no compensation is received other than the fees regularly provided for by law or regulation for witnesses.

**B. One-Year Post-Service Restriction on Supervisors Representing Non-City Parties.**

Prohibition. A former Public Servant, within one (1) year after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any other public or private entity before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter, as defined in V(A)(2), in which both of the following exist as it relates to the particular matter:

- a. the City is a party or has a direct and substantial interest; and
- b. the Public Servant knows or reasonably should know that the particular matter was actually pending under his or her official responsibility as a Public Servant within a period of one (1) year before the termination of his or her service with the City; and

**C. One-Year Restriction on Public Servants Representing Other Persons Before Former Department.** No current or former Public Servant, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City) with any officer or employee of the department, board, commission, office or other unit of government, for which the Public Servant served.

1. Mayor, Members of the Council, and their Senior Staff Members. For purposes of the one-year restriction under Subsection V(C), the "department" for which a former Mayor, a former member of the Council, or a former senior staff member to either the Mayor or a member of the Council served shall be the City and the prohibition in Subsection V(C) shall extend to communications with:
  - a. a board, department, commission or agency of the City;
  - b. an officer or employee of the City;
  - c. an appointee of a board, department, commission, agency, officer, or employee of the City; or
  - d. a representative of the City.
2. For the purposes of this Subsection V(C), "a former senior staff member to either the Mayor or a member of the Council" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: chief of staff, deputy chief of staff, communications or other director, legislative or policy aide, or any position in the Mayor's or Council Member's office that is required to file a Form 700 pursuant to the Oakland Conflict of Interest Code.

**D. Employment by a Party to a City Contract on Which the Public Servant Worked.** No current or former Public Servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

**E. Waiver by the Public Ethics Commission.**

1. At the request of a current or former Public Servant, the Public Ethics Commission may waive any of the restrictions in Subsections V (A), (B), or (C) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business union or association.

2. At the request of a current or former Public Servant, the Public Ethics Commission may waive the prohibition in Subsection V(D) if the Commission determines that imposing the restriction would cause extreme financial hardship for the City Public Servant.

**VI. Perks of Office and Misuse of City Resources or Position for Private Gain**

**A. Misuse of City Resources or Position.**

1. As prohibited by California Government Code Section 8314, a Public Servant may not use or permit others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law.
  - a. Definitions. For purposes of this Section, the following definitions provided in California Government Code Section 8314 apply:
    - i. "Personal purpose" means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.
    - ii. "Campaign activity" means an activity constituting a contribution as defined in California Government Code Section 82015 or an expenditure as defined in California Government Code Section 82025. "Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.
    - iii. "Public resources" means any property or asset owned by the City, including but not limited to land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City-compensated time.
    - iv. "Use" means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.
  - b. Nothing in this Subsection VI(A) shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on government activities, operations, or policies, provided that the informational activities are otherwise authorized by the laws of the City or California and the information provided constitutes a fair and impartial



presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

2. No Public Servant or candidate for City Office may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

**B. Prohibitions Related to Political Activity and Solicitation of Contributions.**

1. Political Activities. As prohibited by California Government Code Section 3203, no restrictions shall be placed on the political activities of any Public Servant, except as otherwise provided in federal, state or local law.
2. Political Influence. As prohibited by California Government Code Section 3204, no Public Servant "who holds, or who is seeking election or appointment to, any office or employment in the City shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the City, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action."
3. Solicitation of Contributions.
  - a. As prohibited by California Government Code Section 3205, a Public Servant or candidate for City of Oakland office shall not, directly or indirectly, solicit a political contribution from another City Public Servant, or from a person on an employment list of the City, with knowledge that the person from whom the contribution is solicited is a Public Servant or is on an employment list of the City. This Subsection VI(B)(3)(a) shall not prohibit a City Public Servant or candidate for City of Oakland office from requesting political contributions from Public Servants if the solicitation is part of a solicitation made to a significant segment of the public which may include City Public Servants.
  - b. As prohibited by California Government Code Section 3205, an Oakland Unified School District Board Director or candidate for such office shall not, directly or indirectly, solicit a political contribution from an employee of the District, or from a person on an employment list of the District, with knowledge that the person from whom the contribution

is solicited is an employee of the District or on an employment list of the District. This Subsection VI(B)(3)(b) shall not prohibit a Director or candidate from requesting political contributions from District employees if the solicitation is part of a solicitation made to a significant segment of the public which may include District employees.

4. **Activities While in Uniform.** As prohibited by California Government Code Section 3206, a Public Servant shall not participate in political activities of any kind while in his or her City work-related uniform.

**C. Restrictions on Gifts.**

1. A person shall not offer or make, and a Public Servant or candidate for City Office shall not accept, a gift when it is reasonably foreseeable that the Public Servant or candidate could be influenced by the gift in the performance of an official act.
2. A Public Servant or candidate for City Office who is required to file a statement of economic interests pursuant to the California Political Reform Act shall comply with the gift requirements and restrictions in the Political Reform Act and the California Constitution except that the total annual gift limit per source for Public Servants shall be \$250.
3. In addition to the gift limits and reporting requirements imposed on certain Public Servants by the Political Reform Act and Subsection VI(C) of this Act, a Public Servant shall not solicit or accept, and a person who is a restricted source shall not offer or make, any gift or loan valued at more than \$50 cumulatively in a calendar year from a person who the Public Servant knows or has reason to know is a restricted source, except loans received from commercial lending institutions in the ordinary course of business. This prohibition applies to all Public Servants regardless of whether they must file a statement of economic interests.
  - a. **Restricted Source.** For purposes of this Subsection VI(C), a restricted source means:
    - i. a person doing business with or seeking to do business with the department of the Public Servant; or
    - ii. a person who during the prior 12 months knowingly attempted to influence the Public Servant in any legislative or administrative action.
  - b. **Gift.** For purposes of this Subsection VI(C), the term gift has the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq., and the regulations adopted thereunder. Gifts exempt from the limits imposed by California Government Code

Section 89503 shall also be exempt from the prohibition set forth in this Subsection.

4. A lobbyist or lobbying firm shall not act as an agent or intermediary in the making of any gifts or arrange for the making of any gift by another person to any Public Servant. Any intermediary of a gift shall be required to disclose the true source of the gift to the recipient.
  5. A Public Servant or candidate for City Office may request that the Public Ethics Commission provide the requestor with written advice concerning the legality of accepting any specific gift. Such request shall contain sufficient information to allow the Commission or its staff to properly consider the matter. The Commission or its staff shall provide written advice in response to such a request within a reasonable time after the Commission's receipt of the request.
- D. Prohibition on City Officers Contracting with the City.** During his or her term of office, no City Officer shall enter, submit a bid for, negotiate for, or otherwise attempt to enter, any contract or subcontract with the City, other than compensation or employment stemming from their office held, where the amount of the contract or the subcontract exceeds \$10,000.
1. Definitions. For purposes of this Subsection VI(D), the following definitions shall apply:
    - a. "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, or other legal entity or undertaking organized for economic gain.
    - b. "City Officer" shall mean the Mayor, City Council Members, City Administrator, City Attorney, City Auditor, City Controller, the head of any City department, members of City boards and commissions, and any person appointed as the chief executive officer under such board or commission. For the purposes of Subsection VI(D), boards and commissions shall include the Children's Fund Planning & Oversight Commission, Housing Authority, Housing, Residential Rent & Relocation Board, Planning Commission, Port Commission, Public Ethics Commission, the Police and Fire Retirement Board, and any other City board or commission with decision making authority beyond merely the making of recommendations.
    - c. "Contract" means any agreement other than a grant or an agreement for employment in exchange for payment or benefits.
    - d. "Subcontract" means a contract to perform any work for a primary contractor that has an agreement with the City.

2. Exceptions. This Subsection D shall not apply to the following contracts or subcontracts:
  - a. A contract or subcontract with a 501(c)(3) nonprofit organization;
  - b. A contract or subcontract with a business with which a City Officer is affiliated unless the City Officer exercises management and control over the business. A member exercises management and control if he or she is:
    - i. An officer or director of a corporation;
    - ii. A majority shareholder of a closely held corporation;
    - iii. A shareholder with more than five percent beneficial interest in a publicly traded corporation;
    - iv. A general partner or limited partner with more than 20 percent beneficial interest in the partnership; or
    - v. A general partner regardless of percentage of beneficial interest and who occupies a position of, or exercises management or control of the business;
    - vi. A contract or subcontract entered into before a member of a board or commission commenced his or her service;
    - vii. An agreement to provide property, goods or services to the City and County at substantially below fair market value; or
    - viii. A settlement agreement resolving a claim or other legal dispute.
3. Waiver. The Ethics Commission may waive the prohibitions in this Subsection VI(D) for any City Officer who, by law, must be appointed to represent any profession, trade, business, union or association.
4. Limitation. Failure of a City Officer to comply with this Subsection VI(D) shall not be grounds for invalidating any contract with the City.

## **VII. Fair Process**

- A. Prohibition on Bribery.** No person shall offer or make, and no Public Servant shall solicit or accept, anything of value in exchange for the performance of any official act.
- B. Prohibition on Payment for Office or Appointment.** It is unlawful for any Public Servant to give or promise to give to any person any portion of his or her compensation or any money or thing of value in consideration of having been,

or of being nominated, appointed, voted for, or elected to any office or employment.

**C. Prohibition on City Public Servant Influencing Contracts with Former Employer.** In addition to the requirements of Government Code Sections 87100, *et seq.*, no Public Servant shall knowingly make, participate in making, or attempt to use his or her official position to influence any governmental decision directly relating to any contract where the Public Servant knows or has reason to know that any party to the contract is a person by whom the Public Servant was employed immediately prior to entering government service within 12 months prior to the time the official acts on the matter.

**D. Prohibition on Nepotism.**

1. In addition to the prohibition in Oakland City Charter Section 907, which is incorporated herein by reference, a Public Servant may not make, participate in making or otherwise seek to influence a decision of the City regarding an employment or contract action involving a Relative. Nothing in this Section shall prohibit a Public Servant from acting as a personal reference or providing a letter of reference for a Relative who is seeking appointment to a position in any City department, board, or commission other than the officer or employee's department, board, or commission or under the department, board or commission's control.

A department head who is prohibited under Subsection VII(D)(2) from participating in an employment action involving a Relative shall delegate in writing to an employee within the department any decisions regarding such employment action.

2. Public Servant may not supervise another Public Servant who is also a Relative. This prohibition applies to the regular assignment for each Public Servant's position and does not apply to temporary assignments such as working an overtime or traded shift, or substituting for a fellow employee.

**E. Non-Interference in Administrative Affairs.** As prohibited by City Charter Section 218, except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. In addition to the penalties provided for in Charter Section 218, a member of the Council who

violates the provisions of this Subsection VII(E) shall be subject to all other penalties provided in this Act.

### **VIII. Public Ethics Commission Role and Responsibilities**

**A. Prevention.** The Commission, in consultation with the City Attorney, shall provide timely advice, assistance, and training to Public Servants and candidates who are subject to the requirements of this Act.

1. All Public Servants who must file a Form 700 Statement of Economic Interest shall receive training regarding government ethics laws no less than once every two years facilitated by the Public Ethics Commission in partnership with the Office of the City Attorney.
2. The Commission, in consultation with and with the assistance of the City Attorney, shall issue an ethics resource guide for City Public Servants which shall be updated periodically.

**B. Implementation.** The Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this Act, subject to Section 2.24.070 of the Oakland Municipal Code.

**C. Enforcement.** A person who violates this Act is subject to criminal, civil, administrative, and other penalties provided for in this Section. In the event criminal violations of the Act come to the attention of the Commission, the Commission may forward the information to the appropriate enforcement agency.

1. **Criminal Penalties.** Any person who knowingly or willfully violates any provision of this Act is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of any provision of this Act, shall be liable under the provisions of this Act.
  - a. No person convicted of a misdemeanor under this Act shall act as a lobbyist or as a City contractor for a period of four years following the date of the conviction unless the court, at the time of sentencing, specifically determines that this provision shall not be applicable.
  - b. For the purposes of this Section, a plea of nolo contendere shall be deemed a conviction.
2. **Civil Penalties.** Any person who intentionally or negligently violates any provision of this Act shall be liable in a civil action brought by the Public Ethics Commission or the City Attorney for an amount up to \$5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

A civil action brought by the Commission requires an affirmative vote of not less than five members of the Commission.

- a. If two or more persons are responsible for any violation, they shall be jointly and severally liable.
  - b. In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant.
3. Administrative penalties. Any person who violates any provision of this Act shall be liable in an administrative proceeding before the Commission held pursuant to the Commission's Complaint Procedures. The Commission may impose administrative penalties in an amount up to \$5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Commission may issue warnings to or require other remedial measures.
  4. Injunctive Relief. The Commission, City Attorney, or any individual residing within the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of Sections IV, V, VI and VII this Act.

Any person, other than the Commission or City Attorney, before filing a civil action pursuant to Subsection VIII(C)(4), shall first file with the Commission and City Attorney a written request for the Commission and/or City Attorney to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Commission and City Attorney shall each respond in writing within ninety (90) days after receipt of the request indicating whether they intend to file an action for injunctive relief. If either indicates in the affirmative and files an action within sixty (60) days thereafter, no other action may be brought unless the action brought by the Commission or City Attorney is dismissed without prejudice.

If the Commission needs additional time to determine whether to file an action or needs additional time to file the action, the Commission may, by resolution indicating evidence of good cause and notice thereof to the requestor, extend the ninety day time period by another sixty (60) days. If both the Commission and City Attorney indicate they will not pursue the matter, or if neither entity files an action within the sixty (60) day period following their affirmative response to the requestor, the requestor may file suit for injunctive relief. No resident may bring an action under Subsection VIII(C)(4) if the Commission commenced administrative action arising out of the same facts, resulting in either the imposition of or stipulation to remedial measures to prevent reoccurrence of the violation or compel compliance

5. Costs of Litigation. The court may award to a party, other than the City or any of its commissions, boards, departments or agencies, who prevails in any civil action authorized by this Act, his or her costs of litigation, including reasonable attorneys' fees. If the costs or fees are awarded against the City, the payment of such award shall be the responsibility of the City.
6. Limitation of Actions. No criminal, civil or administrative action alleging a violation of this Act shall be commenced more than four years after the date of the violation.
  - a. Commencement of an administrative action is the date the complaint was filed by another person or the date of the Commission's initial notification to the respondent that a violation has been alleged pursuant to the Commission's Complaint Procedures.
  - b. Unless otherwise prescribed by applicable law, the date of the violation means the earliest date when the complainant, Commission, or other prosecuting authority has, or reasonably should have, knowledge of the violation and its cause, and a suspicion of wrongdoing. Suspicion shall be determined from an objective standpoint of what is reasonable for the complainant, Commission, or other prosecuting authority to know or suspect under the facts of the situation.
7. Violations Related to Enforcement.
  - a. False Charges and Information. A person shall not knowingly and intentionally furnish false or fraudulent complaints, evidence, documents, or information to the Public Ethics Commission, District Attorney or City Attorney, or knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Commission, District Attorney or City Attorney of an alleged violation of this Act.
  - b. Duty to Cooperate and Assist. A Public Servant shall cooperate and assist with an investigation into an alleged violation of this Act, upon the request of the Public Ethics Commission, District Attorney or City Attorney. This requirement shall not be construed as requiring the identification of a confidential whistleblower, as defined by the Oakland Whistleblower Ordinance.
8. Effect of Act on Prior Violations.

Enforcement authority established by this Act shall not be applied to alleged violations occurring prior to the effective date of this Act, except as to continuing violations after proper notice.



**VIII. Miscellaneous Provisions**

- A. Severability. The provisions of this Act are severable. If any provision of this Act is held invalid, the remaining provisions shall not be affected.
- B. References to Other Laws in this Act. All references to other laws in this Act shall refer to those laws as they may be amended from time to time.

IN COUNCIL, OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES: SCHAAF, BROOKS, KAPLAN, GALLO, KALB, GIBSON McELHANEY, REID and PRESIDENT KERNIGHAN

NOES:

ABSENT:

ABSTENTIONS:

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

1485452v1