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Public Ethics Commission

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June 12, 2014

President Kernighan and Council Members  
Oakland City Council  
1 Frank Ogawa Plaza  
Oakland, CA 94612

Dear President Kernighan and Council Members,

On June 9, 2014, the Public Ethics Commission reviewed Councilmember Kalb's proposal to amend the Oakland City Charter to strengthen the Public Ethics Commission's authority, resources, and independence. At its June 9 meeting, the Commission voted to support the proposal and requested that Councilmember Kalb continue to work with the Commission's staff and Ethics subcommittee on the language of the amendment.

You may recall that the Commission issued a letter to City Council in September 2013 requesting greater authority, resources, and independence, in addition to adoption of a local ethics ordinance. The proposed City Charter amendment, as reviewed by the Commission on June 9, aims to provide the Commission with much of what we requested last year. Attached is the Commission's letter articulating what the Commission needs in order to effectively carry out its mission.

We appreciate the City Council's responsiveness to our concerns and your consideration of this important Charter amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Whitney Barazoto", written in a cursive style.

Whitney Barazoto  
Executive Director



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Public Ethics Commission

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September 3, 2013

President Kernighan and Council Members  
Oakland City Council  
1 Frank Ogawa Plaza  
Oakland, CA 94612

Dear City Council Members,

On July 24, 2013, the Public Ethics Commission (PEC) held a public discussion around the question of what is needed to create an effective ethics program in Oakland City government. This letter communicates the PEC's recommendations for a comprehensive ethics program, with an emphasis on two priority areas: 1) a local ethics ordinance, and 2) an additional PEC staff position to support an ethics prevention and enforcement program.

To provide some context, the Public Ethics Commission has devoted attention this past year to building the Commission's capacity: assessing staffing needs, prioritizing activities to achieve the most effective outcomes with limited resources, evaluating the Commission's jurisdiction, and identifying gaps in the law and the need for new or amended ordinances. At the PEC's March 2013 retreat, Commissioners discussed the need for enhanced authority on campaign finance, transparency, and ethics issues while brainstorming ways to use the Commission's existing platform to achieve desired outcomes in the area of enforcement, prevention, and collaboration. One of these outcomes was the PEC achieving 100% compliance by local elected officials with state-ethics training requirements and publicly posting the compliance list on the Commission's website in May 2013. Continuing the dialogue around ethics enforcement, the Commission hosted the public meeting in July to outline priority areas that must be addressed in order to create an effective ethics program in Oakland City government.

### **Commission Created for Fairness, Openness, Honesty, and Integrity**

The Public Ethics Commission was created by City Charter in 1996 to ensure compliance with City laws and policies seeking *fairness, openness, honesty, and integrity* in City government. While the Charter sets forth this broad mandate, the Commission's actual authority to take action is dictated by City ordinance, such as the Oakland Campaign Reform Act and the Oakland Sunshine Ordinance. Contrary to our Commission's name, there is no ethics-related City ordinance that gives the PEC the authority to act upon ethics-related violations such as voting when one has a conflict of interest, using public resources for private or campaign purposes, or

accepting inappropriate gifts. Instead, as it relates to ethics, the PEC is authorized only to conduct trainings and develop educational materials, issue advice and formal written opinions with the assistance of the City Attorney's office, and recommend changes to local laws to the City Council.

While training and advice are key elements of an ethics compliance program, they represent only a few of the tools that can be deployed in an ethics program toolbox. After all, ethics in government is not about merely adopting a Code of Ethics and imposing penalties for violation of the code; rather, government ethics is about limiting the ways in which *improper influence* can weave its way through our institution to *weaken the effectiveness of the organization* and *weaken the public's trust in our service*.<sup>1</sup> We believe that limiting improper influence requires a comprehensive approach that appropriately blends prevention, collaboration and enforcement by an ethics commission with the capacity – authority, resources, and independence – to act in each of these three areas.

### **PEC has no Authority to Enforce Ethics Laws**

Oakland has no local ethics ordinance. In order to investigate and enforce ethics laws, the PEC must be given the specific authority under a local ordinance to investigate and enforce violations of the local law. Generally, state laws and entities govern ethics behavior. The PEC may develop trainings and publications to guide ethical conduct but has no authority to enforce the state laws. These laws include rules prohibiting 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, Cronyism
- Serving in two incompatible positions
- Bribery
- Embezzlement
- Preventing or inhibiting competitive bidding on contracts

By way of comparison, other cities have adopted a local ethics ordinance that consolidates the patchwork of state and common laws locally, facilitating local enforcement of the law and making it easier for staff and public officials to understand the rules. In California, the three other established ethics commissions – San Francisco, Los Angeles, and San Diego – each are charged with enforcement of their respective city's ethics ordinance, with the ability to issue administrative fines of up to \$5,000 per violation.

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<sup>1</sup> Lessig, Lawrence. Director. Edmond J. Safra Center for Ethics. Harvard University. Comments made during the launch of the Research Lab on Institutional Corruption, October 8, 2009.

An ethics ordinance in Oakland would locally codify state laws and give the PEC the authority to enforce them through a multi-tiered system of penalties that could include some or all of the following: advisory letters, warning letters, remedial action, compensatory action, debarment (prohibition from contracting), administrative fine, public censure, or disciplinary action.

### **With Authority Must Come Resources**

While the PEC welcomes the authority to enforce ethics violations, as a practical matter, the Commission would be limited in its ability to act on ethics issues without additional staffing. In December 2012, the PEC conducted a comprehensive assessment of staffing needed to implement existing local campaign finance and transparency provisions. Attached is a spreadsheet that outlines the PEC's current duties per City Charter and related ordinances, showing what can and cannot be accomplished within the Commission's resources as of December 2012. (Attachment A) Also attached is a proposed organizational chart that identifies how the duties in the staffing assessment would be distributed among potential staff positions, as well as the PEC's Annual Report for 2012 to provide an overall picture of the Commission's recent work. (Attachments B and C) The City Council in June 2013 authorized an additional Program Analyst I position, which was filled as of September 2, 2013. Going forward, this will help accomplish roughly one-quarter more of what was listed in the staffing assessment from December.

Along with the adoption of an ethics ordinance, the Commission will need one additional full-time staff position to implement an ethics program that effectively incorporates outreach, training, advice, and enforcement. At this time, what is needed most is a staff attorney to carry a full-time load of legal research, analysis, and immediate advice on ethics as well as campaign finance and transparency laws.

### **Commission Independence a Core Issue**

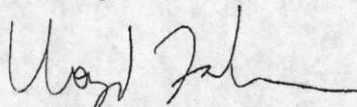
A discussion of authority and resources is incomplete without also dealing with the issue of Commission independence. Leaders in the municipal ethics community agree that a city ethics commission must be independent, with Commissioners, Commission staff, and legal assistance serving only the Commission and no other City official, and with a budget that is not under the direct control of City officials. This is because, in most cases, the subjects of a potential ethics commission investigation are City officials or City employees. If such officials have control over the commission's staffing, budget, or legal advice, this creates an inherent structural conflict of interest, which diminishes the Commission's effectiveness as well as the public's perception of the fairness and neutrality of the process.

As the City and the City Council move forward in a dialogue about the PEC's authority and resources, we believe it is essential to also evaluate the structure of the Commission to ensure that it has all of the elements for an effective, neutral, and independently accountable oversight agency.

## Moving Forward

In order to create an effective ethics program, the Commission urges the City Council to enact an ethics ordinance and provide resources to support the ethics program, including creation of a staff attorney position. We are committed to this issue and in the coming months intend to work with the Council to pursue these goals. Only with increased independence and effectiveness can the Commission fulfill its mandate to promote and protect government integrity in Oakland.

Sincerely,



Lloyd Farnham  
Public Ethics Commission Chairman  
On behalf of the Commission

*(This letter was approved by the Public Ethics Commission at its meeting on September 3, 2013.)*

### Attachments:

- A. PEC Staffing Assessment
- B. Proposed PEC Organizational Chart
- C. 2012 PEC Annual Report