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OFFICE OF THE CITY CLERK  
OAKLAND  
2009 APR -8 PM 3:37

# CITY OF OAKLAND

## AGENDA REPORT

**To:** Office of the City Administrator  
**Attn:** Dan Lindheim  
**From:** Public Ethics Commission  
**Date:** April 23, 2009

**Re: An Ordinance Amending Chapter 2.24 Of The Oakland Municipal Code Pertaining To The Functions, Duties, Authority, And Composition Of The Public Ethics Commission**

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### SUMMARY

In November 1996, the citizens of Oakland added Section 202 to the City Charter to establish the Oakland Public Ethics Commission ("Commission"). In 1997, the City Council adopted Chapter 2.24 to the Oakland Municipal Code (O.M.C.) setting forth the functions, duties, authority and composition of the Commission. Since 1997, City Charter Section 202 has been amended by public vote three times, most recently in 2004.

The proposed amendments herein seek to achieve greater consistency with the City Charter as well as to clarify and further articulate the Commission's functions and duties.

If adopted, the proposed amendments would:

- 1) create definitions of essential terms. *See proposed §2.24.010.*
- 2) reduce and simplify current language pertaining to the Commission's functions and duties. *See proposed §2.24.020.*
- 3) authorize the Commission to make final decisions regarding laws under the Commission's jurisdiction; issue letters of guidance regarding alleged violations of governmental ethics laws; and, issue written opinions and advice which, if relied upon, shall confer immunity or a defense against a Commission enforcement proceeding. *See proposed §2.24.030.*
- 4) adjust the method by which Commission members are selected to achieve consistency with the City Charter and permit Commissioners to serve multiple terms. *See proposed §2.24.040.*
- 5) clarify the level of staff and legal support provided to the Commission and provide a process for seeking outside legal counsel if the City Attorney declares a conflict that would substantially affect his or her representation of the Commission. *See proposed §2.24.080 and §2.24.090.*

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A "redline" version of all proposed amendments is attached as *Exhibit 1*.

## **FISCAL IMPACT**

Current law requires the "City Manager and the City Clerk" to provide the Commission with "staff assistance as necessary" to fulfill its functions and duties. For the past eight years, the Office of the City Administrator has funded two full-time positions in support of the Commission: An Executive Director and an Executive Assistant. The proposed amendments would provide that the Office of the City Administrator provide the Commission with "staff and financial assistance as necessary" including the positions of Executive Director, Executive Assistant and "additional personnel as circumstance require." The language also memorializes the existing status of the Executive Director as a classified position under civil service.

## **BACKGROUND**

City Charter Section 202(5) currently provides: "The City shall *by ordinance* prescribe the function, duties, powers, jurisdiction and the terms of members of the commission, in accordance with this Article." (Emphasis added.) The Commission is therefore regulated to a great extent by its enabling ordinance, O.M.C. Chapter 2.24, which the Commission hereby proposes to amend.

## **KEY ISSUES AND IMPACTS**

### **A. Proposal To Define Three Essential Terms. [§2.24.010]**

The Commission proposes to add three terms to the ordinance:

1) *"Doing business with an Oakland Agency"* would apply only to a provision that would prohibit individuals from serving on the Commission if they have a substantial financial interest in a business entity "Doing business with an Oakland Agency." The rationale for this definition and subsequent prohibition is to ensure that Commissioners have nothing more than a minor and remote financial interest in the agencies they regulate.

2) *"Governmental ethics laws"* is merely a collective noun describing the various laws which the Commission administers and enforces. The current ordinance repeats each separate law or category of law each time it is mentioned, thus adding unnecessary length to the ordinance.

3) **"Oakland Agencies"** is also a collective noun proposed to mean the City of Oakland, Oakland Redevelopment Agency, Port of Oakland, and the Oakland Unified School District. The purpose of this definition is to avoid having to separately list these entities whenever their names appear in the ordinance.

**B. Proposal To Reduce And Simplify Current Language Pertaining To The Commission's Enumerated Functions And Duties. [§2.24.020]**

Current law consists of a duplicative recitation of the various laws over which the Commission has the "function and duty" to monitor, administer and enforce. The proposed amendment would eliminate this duplicative language.

**C. Proposal To Provide Immunity And/Or A Defense To A Complaint Based Upon Good Faith Reliance On Commission Advice; Proposal To Make Commission Decisions Final; Proposal To Memorialize Current Commission Practice To Issue Letters Of Guidance [§2.24.030]**

**1. Immunity and/or defense based on Commission opinions and staff advice [Proposed §2.24.030(E)]**

Commission staff is frequently asked to provide information and advice regarding local ethics laws. Current law does not provide either immunity from, or a defense to, allegations of wrongdoing in which the conduct was based on the good faith reliance on staff advice or a formal Commission opinion. The ethics commissions in San Francisco, Los Angeles and San Diego all provide for immunity or a defense if a person reasonably relies on Commission staff advice or a formal Commission opinion. The proposed language provides immunity to any person who relies in good faith upon a written opinion issued by the Commission so long as the material facts in the complaint are the same as those stated in the opinion request. Good faith reliance upon written advice from Commission staff shall be a complete defense in enforcement proceedings provided that the material facts are as stated in the advice request. All procedures for issuing advice would be subject to Commission adoption and City Council review.

**2. Proposal to make Commission decisions final [Proposed §2.24.030(C)]**

Current law provides that a Commission decision to impose penalties and fines for violation of a local ethics law can be appealed "to a mutually agreed upon arbitrator whose decision shall be final." The Commission proposes that any Commission decision regarding an alleged violation of a local ethics law, which can only be reached after a formal evidentiary hearing, should be final. The Commission contends that existing Commission procedures ensure a fair hearing process that would only be delayed and undermined by a new hearing before an arbitrator.

**3. Proposal to formalize letters of guidance or concern [Proposed §2.24.030(E)]**

The Commission occasionally issues letters to persons or Oakland's local bodies when there is a basis for proceeding with a formal hearing but, for various reasons, the Commission chooses not to do so. Such letters provide guidance on the provisions of local ethics laws and/or express the Commission's concern over the undisputed violation of such laws. The Commission proposes to formalize a process that has historically given the Commission an additional alternative to the formal hearing process.

**D. Proposals Pertaining To The Selection Of Commissioners And Terms Of Office [§2.24.040]**

Much of the proposed language in this section conforms the ordinance to the current language of the City Charter. Additional proposals are as follows:

**1. No "hold-over" terms; Commissioners can serve additional terms after a one-year separation in service. [Proposed §2.24.040(E) and (G)]**

Current law (Section 2.24.040) prohibits Commissioners from serving "more than one consecutive three year term." The Commission proposes that service on the Commission terminate upon the expiration of a term (i.e., no "holdover" status), and that Commissioners be permitted to serve more than one term so long as their service is separated by a period of at least one-year. The Commission contends that the Commission will benefit from allowing experienced members to serve additional terms; the one-year separation will create opportunities for others to serve.

**2. Expedited Mayoral appointments. [Proposed §2.24.040(F)]**

The Commission proposes that the Mayor submit his or her appointments to the City Council for confirmation no later than 30 days before the normal expiration of a Commissioner's term and within 60 days if a Commissioner dies, resigns or is removed from office.

**3. Grounds for removing a Commission-appointed member. [Proposed §2.24.040(I)]**

The Commission seeks to clarify and specify the grounds by which a Commission-appointed member may be removed from office. (There is no proposed change to the manner in which a Mayoral appointee may be removed.) Current law states that a Commission-appointed member can be removed for "conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or absence from three (3) regular meetings..." The Commission proposes that the grounds for removal be re-stated as follows: 1) conviction of a felony, 2) willful or corrupt misconduct in office, 3) inability or unwillingness to perform the duties of office, and 4) absence from

three regular meetings during a twelve month period unless because of illness or when excused by the Commission chairperson.

**E. Proposals Pertaining To Commissioner Qualifications And Restrictions While Holding Office [§2.24.050]**

The Commission seeks to create stronger restrictions against actual and perceived conflicts of interest while serving on the Commission.

**1. Proposal to limit certain activities while on the Commission and for one-year thereafter [Proposed §2.24.050(B) and (C)]**

Current law states that during one's service on the Commission and for one-year thereafter, no Commissioner may 1) be employed by the City or have any "direct and substantial financial interest" in any work, business or official action of the City, or 2) seek public office or participate in any local campaign. The Commission proposes that the current restrictions also prohibit: 1) employment by an Oakland Agency, 2) acting as a local governmental lobbyist, and 3) accepting a gift of any value from an Oakland employee, Oakland official, local candidate or from a local governmental lobbyist.

Current law also does not define what constitutes a "substantial financial interest" in any work, business or official action of the City. The Commission proposes to define this term to mean: 1) a controlling ownership interest in a business entity doing business with an Oakland Agency; 2) service as a director, officer or general partner or trustee of any entity doing business with an Oakland Agency; and 3) directly receiving more than \$500 in the capacity as an employee or contractor from an Oakland Agency during any calendar year.

**F. Proposal Pertaining To Staff And Financial Assistance For The Commission [§2.24.080]**

Current law provides that the "City Manager and City Clerk" provide the Commission with "staff assistance as necessary" for the Commission to carry out its functions and duties. The Commission proposes to memorialize the existing staff structure: An executive director subject to civil service status, and an at-will executive assistant. The Commission also proposes that the City Administrator provide the Commission with sufficient financial assistance to carry out its functions and duties and to use his or her "best efforts" to consult with the Commission prior to the hiring or termination of an executive director.

**G. Proposal Pertaining To Legal Assistance For The Commission [§2.24.090]**

Current law provides that the City Attorney shall provide the Commission with legal assistance "to the extent such assistance does not constitute a conflict. In the event of a conflict, the

City Attorney shall retain outside counsel." Under the proposed amendments, the Commission seeks to 1) incorporate the California Bar's rules pertaining to attorney conflicts, and 2) require the Office of the City Attorney to consult with the Commission before retaining outside counsel.

**SUSTAINABLE OPPORTUNITIES**

Not applicable.

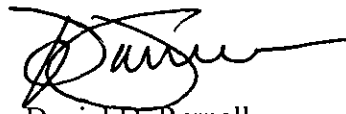
**DISABILITY AND SENIOR CITIZEN ACCESS**

Not applicable.

**RECOMMENDATION(S) AND ACTION REQUESTED**

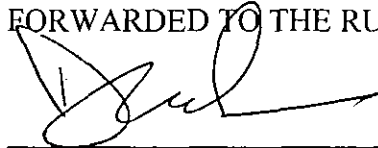
The Oakland Public Ethics Commission recommends that the City Council adopt the proposed amendments to the Commission's enabling ordinance.

Respectfully submitted,



Daniel D. Purnell  
Executive Director  
Public Ethics Commission

FORWARDED TO THE RULES AND LEGISLATION COMMITTEE

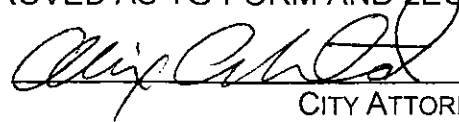


OFFICE OF THE CITY ADMINISTRATOR

Item: \_\_\_\_\_  
Rules And Legislation Committee  
April 23, 2009

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OFFICE OF THE CITY CLERK  
OAKLAND  
INTRODUCED BY COUNCILMEMBER  
2009 APR -8 PM 3:37

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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### ORDINANCE AMENDING CHAPTER 2.24 OF THE OAKLAND MUNICIPAL CODE PERTAINING TO THE FUNCTIONS, DUTIES, AUTHORITY, AND COMPOSITION OF THE PUBLIC ETHICS COMMISSION

**WHEREAS**, City Charter Section 202(5) provides that the City Council shall "by ordinance" prescribe the function, duties, powers, jurisdiction and the terms of office for the Public Ethics Commission; and

**WHEREAS**, the amendments set forth below will achieve greater consistency with the provisions of City Charter Section 202 and further clarify and articulate the functions and duties of the Public Ethics Commission; now, therefore

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

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through~~ type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Chapter 2.24 of the Oakland Municipal Code is hereby amended to read as follows:

**2.24.010 CREATION DEFINITIONS**

For purposes of this chapter, the following definitions shall apply:

A. "Commission" shall mean the Oakland Public Ethics Commission as established pursuant to Oakland City Charter section 202 has established the PUBLIC ETHICS COMMISSION-Section 202.

B. "Doing business with an Oakland Agency" shall mean soliciting, bidding on, submitting proposals or qualifications for, or entering into or performing, a contract for goods, equipment, services or financial assistance with an Oakland Agency. "Doing business with an Oakland Agency" shall also mean the soliciting, applying for or receiving more than \$500 in public funds from an Oakland Agency."

C. "Governmental ethics laws" shall mean local laws governing campaign finance and communications, public financing of campaigns, lobbyist registration, public meetings and records, elections, conflicts of interest, disclosure of economic interests, use of public resources, incompatible office holding and employment, nepotism and ethical behavior.

D. "Oakland Agencies" shall mean the City of Oakland, Oakland Redevelopment Agency, Port of Oakland, and the Oakland Unified School District.

**2.24.020 FUNCTIONS AND DUTIES**

It shall be the function and duty of the Public Ethics Commission, for and on behalf of Oakland Agencies, residents of the City of Oakland and its elected officials, officers, employees, boards and commissions to:

A. Monitor, administer and enforce governmental ethics laws as authorized to the Commission by ordinance. ~~Oversee compliance with the City of Oakland Campaign Reform Ordinance.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Oversee compliance with the City of Oakland Code of Ethics.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ Oversee compliance with Conflict of Interest regulations as they pertain to City of Oakland elected officials, officers, employees, and members of boards and commissions.~~

~~\_\_\_\_\_ D. \_\_\_\_\_ Oversee the registration of lobbyists in the City of Oakland should the City Council adopt legislation requiring the registration of lobbyists.~~

~~\_\_\_\_\_ E. \_\_\_\_\_ Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.~~



~~F. Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on City of Oakland elections and campaigns.~~

~~G. Make~~

~~B. Review and make recommendations to the City Council regarding amendments to the City of Oakland Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal report governmental ethics laws and to report periodically to the City Council every two years concerning the application and effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public governmental ethics laws. ethics-H.~~

~~C. Set compensation salary for the office of City Councilmember which shall be reviewed by the Commission and adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that pursuant to Oakland City Charter Section 202 and advise the City Council regarding issues pertaining to City Council salaries which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent (10%) above the base salary as adjusted.~~

~~I. Each year, and within the time period for submission of such information for the timely completion of the City's annual budget, provide the City Council~~

~~D. Provide the City Administrator with an assessment of the Commission's staffing and budgetary needs.~~

~~J. Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.~~

~~K. Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.~~

~~L. Issue oral advice and formal written opinions, E. Issue opinions, advice and instruction, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public regarding governmental ethics laws.~~

M. — Prescribe forms for

F. Prescribe forms, reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics governmental ethics laws as authorized to the Commission by ordinance.

N. — Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:

1) — Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.

2) — Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.

G. Develop informational resources and training programs pertaining to governmental ethics laws.

H. Solicit, promote and receive public comment on governmental laws.

O.I. Perform such other functions and duties as may be prescribed by ordinance the Oakland Code of Ethics, Conflict of Interest regulations, ordinances as they may adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the City of Oakland and Campaign Reform Ordinance. or consistent with its responsibilities under the City Charter.

In prescribing the above duties and functions of the Commission, it is not the intent of the City Council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to any other City board or commission or to a City department. As to such functions or responsibilities of another board or commission or of a department of the City, the Commission will render assistance and advice to such board, commission or department as may be necessary. Nothing in this section shall be construed to prevent City of Oakland officers, employees, and elected or appointed officials from seeking advice directly from the City Attorney, or, when appropriate, the Fair Political Practices Commission, concerning regulations and ordinances related to

~~campaign financing, conflicts of interest, lobbying, and public ethics governmental ethics laws.~~

#### 2.24.030 AUTHORITY

In furtherance of the above enumerated duties and functions, the Oakland Public Ethics Commission is hereby authorized to:

A. Initiate and conduct investigations, audits and public hearings.

B. Issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before the Commission. The Commission may find a person in contempt as provided by the general law of the State for failure or refusal to appear, testify, or to produce required books, papers and documents.

~~C. Impose penalties and fines as provided for by ordinance.~~ C. Determine the merit of complaints alleging violations and impose penalties, fines and other remedies as authorized to the Commission by ordinance. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to a mutually agreed upon arbitrator whose decision shall be final. The with respect to violations, penalties, fines and other remedies shall be final. decision of the arbitrator is not appealable to the City Council.

D. Issue letters of guidance or concern to Oakland Agencies, their officials, officers, candidates for elected office, employees, local bodies and any other persons regarding an alleged violation of a governmental ethics law that the Commission is authorized to enforce where it appears, after an investigation, that there is an issue sufficient to justify a formal evidentiary hearing but the Commission chooses not to proceed with a hearing.

E. Issue written opinions and written advice with respect to a person's duties under governmental ethics laws that the Commission is authorized to enforce so long as the procedures for issuing such opinions and advice have been approved pursuant to Section 2.24.070. No person who relies in good faith upon a written opinion issued by the Commission shall be subject to enforcement proceedings by the Commission provided that the material facts are as stated in the opinion request. The good faith reliance upon written advice from Commission staff shall be a complete defense in enforcement proceedings by the Commission provided that the material facts are as stated in the advice request.

#### 2.24.040 COMPOSITION, TERMS OF OFFICE

A. The Oakland Public Ethics Commission shall ~~consist of~~have seven (7) members.

B. ~~The~~Members of the Commission shall be appointed as follows: Three (3) members who represent local civic organizations with a demonstrated history of involvement in local governance issues shall be nominated for appointment by the Mayor, with confirmation by the City Council, pursuant to Section 601 of the City Charter. Four (4) members shall be appointed, following a public recruitment and application process by the unanimous vote of the three (3) representatives appointed by the Mayor with confirmation by the City Council. The process, by the affirmative vote of at least four (4) members so appointed of the Commission. Commission-appointed members shall reflect the interests and diversity of the greater Oakland neighborhood and business communities. Commissioners shall serve without compensation. ~~compensation. Prior to appointment~~

C. ~~Prior to the nomination of a Commission member or members,~~ by the Mayor, each member of the City Council may provide the Mayor with a list of up to three individuals qualified by experience and background to serve on the Commission. In appointing members to the Commission, the Mayor shall may consider the recommendations of the City Council.

B.D. Four (4) members shall constitute a quorum of the Commission.

C.E. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members after terms beginning on January 22 and ending on January 21. Each Commission term of office shall be three (3) years. The tenure of a member on the Commission shall serve for a term of three (3) years, except that for terms terminate when the member's term expires, commencing immediately preceding adoption of this Ordinance, two (2) members shall be appointed for a one-year term, two (2) members shall be appointed for a two-year term, and three (3) members shall be appointed for a three-year term. No member may serve more than one consecutive three-year term.

D.F. A vacancy on the Commission will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within fourteen days of appointment. A vacancy shall be filled no sooner than 30 days and no later than 60 days from the date that removed. For vacancies caused by the normal expiration of a Mayoral appointee's term, the Mayor shall submit his or her nomination to the City Council no later than 30 days before the end of the term. For such vacancy occurs. Any member of the City Council who chooses to recommend a person or persons to fill a vacancy of a position appointed by the Mayor and confirmed by the City Council pursuant to section 4(a) shall forward such recommendation to the Mayor for consideration no later than thirty days from the date that a vacancy occurs. vacancies caused by a Mayoral appointee's death, resignation or removal from office, the Mayor shall submit his or her nomination to the City Council within 60 days after the death, resignation or removal from office.

G. There shall be no limit on the number of terms a person may serve on the Commission provided that any term be separated by a period of at least one year from the last date of service on the Commission. No person removed from the Commission pursuant to Sections 2.24.040(H) or 2.24.040(I) shall be eligible to serve on the Commission after his or her removal.

~~E.~~ H. A member appointed by the Mayor may be removed pursuant to Section 601 of the Oakland City Charter.

I. A member appointed by the unanimous vote of the three (3) members appointed by the Mayor and confirmed by the Council may be removed by the unanimous vote of the three (3) members Commission may be removed by the affirmative vote of at least four (4) members of the Commission. No member of the Commission shall be removed appointed by the Mayor and confirmed by the Council. Among other things, except for one or more of the following reasons as determined by the Commission: 1) conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or 2) willful or corrupt misconduct in office, 3) inability or unwillingness to perform the duties of office, or 4) absence from three (3) consecutive regular meetings except on account during a twelve month period unless because of illness or when absent from the City excused by permission of the Commission, shall constitute cause for removal. Commission chairperson.

## **2.24.050 QUALIFICATIONS AND RESTRICTIONS**

A. Each member of the Commission shall be an individual whose domicile is located within the City of Oakland, a resident of Oakland and registered to vote in Oakland elections.

~~During~~ B. During his or her tenure service, and for one year thereafter, no member of the Commission ~~shall~~: shall

1) be employed by an Oakland Agency; 2) act as a local governmental lobbyist; 3) seek election to any Oakland public office; 4) — A. — Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City. B. — Seek election to any other public office, or participate in or contribute to an Oakland municipal campaign. campaign; 5) publicly endorse, — C. — Enderse, support, oppose, or work on behalf of any candidate or measure in an Oakland election. an Oakland election; or 6) accept a gift of any value from an Oakland elected or appointed official of any Oakland Agency, from a candidate for election to any Oakland office, from a designated employee of any Oakland Agency, or from a local governmental lobbyist.

C. During his or her tenure, no member of the Commission shall have a substantial financial interest in any work, business, property or official action of an Oakland Agency. For purposes of this section, a substantial financial interest includes, but is not limited to, the following situations: 1) the member has a controlling ownership

interest in a business entity doing business with an Oakland Agency; 2) the member serves as a director, officer, general partner, or trustee of any business entity doing business with an Oakland agency; 3) the member directly receives more than \$500 in the capacity as an employee or contractor from an Oakland Agency during any calendar year. In determining whether a substantial financial interest exists, the Commission shall be guided by the laws, opinions and advice pertaining to financial conflicts of interests pursuant to the California Political Reform Act.

#### **2.24.060 ELECTION OF CHAIRPERSON AND MEETINGS**

At the first regular meeting of each year the members shall elect a chairperson and a vice chairperson. The Commission shall hold regular meetings at an established time and place suitable for its purpose. Other meetings scheduled for a time or place other than for regular meetings shall be designated as special meetings. Written notice of special meetings shall be provided the members, the Council, and the public press at least seventy-two hours before the meeting is scheduled to convene.

#### **2.24.070 RULES, REGULATIONS AND PROCEDURES**

The Commission shall establish rules, regulations and procedures for the conduct of its business by a majority vote of the members present. The Commission must vote to adopt any motion or resolution. The Commission shall transmit to the City Council any rules, regulations and procedures adopted by the Commission within seven calendar days of adoption. A rule, regulation or procedure adopted by the Commission shall become effective 60 days after the date of adoption by the Commission unless before the expiration of this 60 day period two-thirds of all the members of the City Council vote to veto the rule, regulation or procedure.

#### **2.24.080 STAFF ASSISTANCE**

The City Manager and the City Clerk, or designees thereof, Office of the City Administrator shall provide the Commission with staff and financial assistance as necessary to permit the Commission to fulfill the functions and duties as set forth above. above including, but not limited to, staffing and funding the positions of Executive Director, an Executive Assistant, and additional personnel as circumstances require. The Executive Director shall be a classified position subject to the civil service rules of the City of Oakland however the City Administrator, or his or her designee, should use his or her best efforts to consult with the Commission prior to the hiring or termination of the Executive Director.

#### **2.24.090 LEGAL ASSISTANCE**

The City Attorney is the Commission's legal advisor. The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict assistance in conformity with the California Rules of Professional Responsibility

and applicable state law. In the event of a conflict, the City Attorney, after consultation with the Commission, shall retain outside counsel.

**2.24.100 PROTECTION AGAINST RETALIATION**

A. No officer or employee of the City shall use or threaten to use any official authority or influence to effect any action as a reprisal against a City officer or employee for acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

B. No officer or employee of the City shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

**2.24.110 SEVERABILITY**

The provisions of this ordinance are severable. If any word, clause, sentence, paragraph, provision, or part of this ordinance, or the application of this ordinance to any person, is declared invalid, preempted or unconstitutional by any court, the court's ruling shall not impair or invalidate any other portion of this ordinance. The City Council finds and declares that it would have adopted this ordinance without the invalid, preempted or unconstitutional word, clause, sentence or provision.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, NADEL, QUAN, REID, KAPLAN,  
KERNIGHAN, AND PRESIDENT BRUNNER

NOES-  
ABSENT-  
ABSTENTION-

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

LaTonda Simmons  
CITY CLERK AND CLERK OF THE COUNCIL OF  
THE CITY OF OAKLAND, CALIFORNIA

DATE OF ATTESTATION: \_\_\_\_\_

Approved as to Form and Legality

  
\_\_\_\_\_  
City Attorney

**AN ORDINANCE AMENDING CHAPTER 2.24 OF THE OAKLAND MUNICIPAL  
CODE PERTAINING TO THE FUNCTIONS, DUTIES, AUTHORITY AND  
COMPOSITION OF THE PUBLIC ETHICS COMMISSION**

**NOTICE AND DIGEST**

The proposed amendments to Chapter 2.24 of the Oakland Municipal Code would, if adopted: 1) create definitions of essential terms; 2) reduce and simplify current language pertaining to the Commission's functions and duties; 3) authorize the Commission to make final decisions regarding laws under the Commission's jurisdiction; issue letters of guidance regarding alleged violations of governmental ethics laws; and, issue written opinions and advice; 4) adjust the method by which Commission members are selected and permit Commissioners to serve multiple terms; and 5) clarify the level of staff and legal support provided to the Commission and provide for Commission consultation if the City Attorney has a conflict requiring the retention of outside counsel.