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Approved as to Form and Legality

DRAFT

City Attorney

AMENDED
OAKLAND CITY COUNCIL
Ordinance No. _____ C.M.S.

Introduced by Council President Ignacio De La Fuente, Adopted 11/18/08
Amendments Introduced by Council Member Nancy J. Nadel 11/18/08
Revisions/Amendments Adopted on the Floor 11/18/08

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

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

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

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

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

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

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

2.38. PROHIBITION ON NEPOTISM IN CITY EMPLOYMENT

Section 1. Definitions.

The following definitions apply to this chapter:

“City,” as used in this chapter, means the City of Oakland as a municipal organization, City officers, City managers and City employees, including all individuals who are employees of the City Council, Mayor’s Office, City Administrator’s Office, City Attorney and City Auditor’s Office, as well as all employees of City Agencies and Departments.

“Family Relationship” includes relationship by blood, adoption, marriage, domestic partnership, foster care and cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins, siblings and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

“Consensual Romantic Relationship” means any consensual sexual or romantic relationship with any City officials, managers and employees who may supervise them, directly or indirectly, or who may influence the terms and conditions of their employment.

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

“Cronyism” means participating in any employment decision that involves preferential treatment based on a close friendship, a business partnership, and/or a professional, political, or commercial relationship.

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

“Supervisor” means any City employee who performs supervision.

“Supervision” means authority, direction, control or influence, including being in the same chain of command and participation in decisions about Terms and Conditions of Employment of one or more other employees.

“Terms and conditions of employment” includes but is not limited to hiring, setting and changing all forms of compensation or remuneration, benefits, payments, hours, shifts, transfers, assignments, working conditions, performance evaluations, promotions, training, retirement, classification, retention, evaluation, demotion, discipline and all other job-related qualifications, opportunities and privileges.

Section 2. Purpose.

The purpose of this anti-nepotism ordinance is to eliminate actual or perceived conflicts of interest, partiality or favoritism in the City workplace due to nepotism and/or cronyism, and to maintain public confidence in the fairness of the City's hiring and employment practices as well as in the competence of City employees. This Ordinance achieves its goals in three ways: (1) by requiring applicants for City employment to disclose all family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees, after receiving an offer of employment (2) by requiring disclosure by officials and supervisors of all existing family and cohabitant relationships, (3) by requiring disclosure by officials and supervisors of all existing consensual romantic relationships, and (4) by prohibiting cronyism.

Section 3. Disclosure of Relationships.

A. All individuals who apply for employment with the City of Oakland must disclose all known family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees. Information concerning cohabitant and consensual romantic relationships will be treated as confidential and disclosed only on a need-to-know basis. The City's anti-nepotism policy will be communicated to all applicants for City employment at the time of application.

B. All current City officials and supervisors must disclose all known family relationships, consensual romantic relationships and cohabitant relationships with existing City employees, managers and officials no later than sixty (60) days from the effective date of this ordinance and thereafter, on an annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within sixty (60) days of their inception to the Director of Personnel. Information concerning cohabitant and romantic relationships will be treated as confidential and disclosed only on a need-to-know basis.

Section 4. Prohibited Supervisory Relationships

A. City officials, managers and employees may not supervise City employees with whom they have a known family relationship, consensual romantic relationship or cohabitant relationship.

B. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists, alternate arrangements will be made by the Director of Personnel in consultation with the Office of the City Attorney, so that no City official, manager, or employee performs supervision for and/or influences in any manner the terms and conditions of employment of any individual with whom that individual has a family relationship, consensual romantic relationship, or cohabitant relationship.

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

Any individual willfully and deliberately fails to disclose her or his known, prohibited family relationship, consensual romantic relationship or cohabitant relationship with City officials, managers or employees, shall be eligible for penalties up to and including termination.

Section 6. Prohibition on Participation or Use of Influence in Hiring and in Setting or Changing Terms and Conditions of Employment

No official, manager or employee may engage in cronyism and/or attempt to influence the City or any official, manager or employee, to hire, promote, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship. No official, manager or employee may delegate such authority to a subordinate in order to participate in such personnel decisions.

Section 7. Enforcement

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

B. The Director of Personnel, in consultation with the City Attorney, shall be responsible for identifying and implementing alternate arrangements should an official, manager or employee provide supervision to, directly or indirectly, an individual with whom she or he has a family relationship, consensual romantic relationship or cohabitant relationship. In the event that a prohibited relationship exists between the Director of Personnel and any other City official, manager or employee, the City Administrator, in consultation with the City Attorney, shall make such alternate arrangements.

C. Any City employee who becomes aware that an official, manager or employee has attempted to influence the City, its officials, managers or employees, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship, or who has otherwise engaged in cronyism, shall report that attempt to the Director of Personnel, the City Attorney or the City Auditor.

D. The Director of Personnel shall provide an annual report to the City Council describing (1) the nature and number of prohibited relationships disclosed, and (2) investigations which disclosed cronyism, and what actions were taken.

Section 8. Severability.

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

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

DATE OF ATTESTATION: _____

AMENDED
OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

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

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

2.38. PROHIBITION ON NEPOTISM IN CITY EMPLOYMENT

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B. All current City officials and supervisors must disclose all known family relationships, consensual romantic relationships and cohabitant relationships with existing City employees, managers and officials no later than sixty (60) days from the effective date of this ordinance and thereafter, on an annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within sixty (60) days of their inception to the Director of Personnel. Information concerning cohabitant and romantic relationships will be treated as confidential and disclosed only on a need-to-know basis.

Section 4. Prohibited Supervisory Relationships

A. City officials, managers and employees may not supervise City employees with whom they have a known family relationship, consensual romantic relationship or cohabitant relationship.

B. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists, alternate arrangements will be made by the Director of Personnel in consultation with the Office of the City Attorney, so that no City official, manager, or employee performs supervision for and/or influences in any manner the terms and conditions of employment of any individual with whom that individual has a family relationship, consensual romantic relationship, or cohabitant relationship.

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No official, manager or employee may engage in cronyism and/or attempt to influence the City or any official, manager or employee, to hire, promote, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship. No official, manager or employee may delegate such authority to a subordinate in order to participate in such personnel decisions.

Section 7. Enforcement

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

B. The Director of Personnel, in consultation with the City Attorney, shall be responsible for identifying and implementing alternate arrangements should an official, manager or employee provide supervision to, directly or indirectly, an individual with whom she or he has a family relationship, consensual romantic relationship or cohabitant relationship. In the event that a prohibited relationship exists between the Director of Personnel and any other City official, manager or employee, the City Administrator, in consultation with the City Attorney, shall make such alternate arrangements.

C. Any City employee who becomes aware that an official, manager or employee has attempted to influence the City, its officials, managers or employees, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship, or who has otherwise engaged in cronyism, shall report that attempt to the Director of Personnel, the City Attorney or the City Auditor.

D. The Director of Personnel shall provide an annual report to the City Council describing (1) the nature and number of prohibited relationships disclosed, and (2) investigations which disclosed cronyism, and what actions were taken.

Deleted: to make alternate arrangements

Section 8. Severability.

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

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

DATE OF ATTESTATION: _____