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OFFICE OF THE CITY CLERK
OAKLAND

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AGENDA REPORT

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: Whitney Barazoto
Executive Director, PEC

SUBJECT: Proposed City Charter Amendment
regarding the Public Ethics Commission

DATE: June 23, 2014

City Administrator
Approval

Date

6/23/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Adopt a Resolution On The City Council's Own Motion Submitting To The Voters At The November 4, 2014 Statewide General Election A Proposed Amendment To The City Charter To Provide The PUBLIC ETHICS Commission With Greater Independence, ENFORCEMENT AUTHORITY, RESPONSIBILITIES AND STAFFING, And Directing The City Clerk To Take Any And All Actions Necessary Under Law To Prepare For And Conduct The Election

EXECUTIVE SUMMARY

The proposed amendment to City Charter would strengthen the Public Ethics Commission by creating a new Charter section 603 to consolidate and expand upon the responsibilities, authority, structure and staffing of the Public Ethics Commission into one comprehensive, voter-approved City Charter provision. The revised Charter section also would transfer the collection and maintenance of campaign finance, lobbying, and conflict-of-interest forms from the City Clerk's office to the Public Ethics Commission, and it would impose requirements upon the Commission to ensure transparency and accountability in its process, operations and decisions.

OUTCOME

The goal of the amendment is to create a fully functioning, appropriately staffed, and properly authoritative Public Ethics Commission that provides effective education and oversight to ensure compliance with government transparency, campaign finance, lobbying, and ethics laws.

BACKGROUND/LEGISLATIVE HISTORY AND ANALYSIS

See attached *Analysis of Proposed City Charter Section 603 Prepared by PEC Staff*.

Item: _____
City Council
July 15, 2014

PUBLIC OUTREACH/INTEREST

The Public Ethics Commission (PEC) issued a letter to City Council on September 3, 2013, requesting greater authority, resources, and independence. Also in 2013, Councilmember Kalb convened multiple meetings of the Oakland Ethics and Good Government Working Group, and held a televised, public input meeting on September 30, 2013, to examine the laws that establish the PEC and the Commission's jurisdiction. The working group released a report on May 8, 2014, that proposed changes to the City Charter. This Charter amendment reflects both the PEC's suggestions and the recommendations of the Ethics and Good Government Working Group. It was reviewed by the PEC's Ethics subcommittee and received unanimous support of the full Public Ethics Commission – *PEC Letter of Support* – attached.

COORDINATION

The proposal is a product of coordination among Councilmember Dan Kalb's office, the Public Ethics Commission, the PEC's Executive Director, the City Attorney's office, and the City Administrator's office, as well as with Councilmember Kalb's Ethics and Good Government Working Group, the members of which provided a range of perspectives from the community, nonprofit sector, and open government groups. The Charter amendment also requires meet and confer with the affected union and association; these meetings are in the process of occurring during the first two weeks of July.

COST SUMMARY/IMPLICATIONS

The Public Ethics Commission's total FY2014-15 budget is \$362,966 and includes two FTE positions.

The proposed Charter amendment would impose an additional estimated ongoing annual cost of \$639,047 from the General Purpose Fund for labor and operations expenses. This includes the addition of 5 positions, on top of the existing 2 FTE positions (Executive Director and Program Analyst) authorized in the current PEC budget, for a total of 7 FTE positions. This staffing structure would be mandated by the City Charter.

The PEC currently has an office space on the 11th floor of City Hall which is publicly accessible but relatively private. Given the Commission's work, ideally it should be in a space that is more public-facing and more easily-accessible, and the new duties under the proposed Charter amendment make this need more prevalent. This may require minor costs to move, as well as a new space within City Hall. However, if the PEC stays in its current location, the existing space consists of three offices and two cubicles, and the added staffing would require two more offices or cubicles, three computer workstations, a large copier/scanner, large filing cabinets (unless transferred from the City Clerk's office) and a large storage room or hallway space for document storage and retention.

Item: _____
City Council
July 15, 2014

Initial costs of staffing up may demand training of staff and hiring of external staff with expertise in the PEC’s subject matter areas. Transferring responsibilities and knowledge from the City Clerk’s office will require staff time and minor costs.

Below is a breakdown of the line-item costs and duties of each additional position, projected as fully-loaded with salary and benefits, as well as an estimate of potential operations and maintenance costs associated with the new duties and staffing.

Labor Projections (FTEs) ¹			
Description	Job duties	Positions (FTE) Full-Time Equivalent	Amount
Deputy Director	Lead the PEC’s legal and policy program related to campaign finance, transparency, lobbying, and ethics laws in consultation with the City Attorney; research legal issues, write legal analyses, draft regulations to implement City ordinances, provide legal advice/trainings, recommend legislative changes.	1 FTE	\$160,849
Public Ethics Investigator/Auditor	Conduct PEC investigations including complaint response and routine audits of campaign statements, initiate investigations, gather evidence, interview witnesses, prepare factual summary, and recommend case resolution.	1 FTE	\$132,306
Public Ethics Program Analyst II	Coordinate education and compliance program; develop educational materials, conduct outreach, coordinate trainings regarding state and local campaign finance, lobbying, transparency, and ethics laws.	1 FTE	\$114,309
Public Ethics Program Analyst I	Perform state-required filing officer duties including supplying and collecting campaign finance, conflict of interest, lobbyist registration, and Oakland Campaign Reform Act forms,	1 FTE	\$98,723

¹ Estimated costs of proposed additional salary and benefits based on comparable classifications for FY 2014-15 where the specified class does not exist; FY 2015-16 costs may be slightly higher due to benefit rates increasing over time.

Item: _____
City Council
July 15, 2014

	conducting initial review for compliance, communicate filing deadlines and noncompliance, and ensure online availability of all reports and information related to these disclosure reports.		
Administrative Assistant	Conduct administrative duties including copying, filing, maintaining databases, responding to public requests for records and information, records retention, agenda postings, and managing office supplies and correspondence via phone, email, mail, and fax.	1 FTE	\$87,860
TOTAL		5 FTEs	\$594,047

Estimated Operations and Maintenance Costs ²		
Line-Item Description	Details	Amount
Equipment and Maintenance	Computer, software, licenses, telephone, furniture, filing cabinets, and large printer	\$20,000
Office Supplies	Copies, postage, paper, office supplies and related costs	\$10,000
Staff Development	Training and associated travel costs for staff as needed	\$10,000
Communications	Printing of outreach and education materials, advertising for positions, meetings, seminars	\$5,000
TOTAL		\$45,000

Additional resources would be required from the Human Resources Management Department (HRM) for initially creating the new FTE classifications. HRM department staff will need to conduct the appropriate research to develop the new classifications and make salary rate recommendations. Once the job description and salary recommendations are complete, HRM will notify and meet with the representative union(s), bring the classifications to the Civil Service Board, and submit a Salary Ordinance Amendment for Council approval of the associated salary rates. The staff time associated with this would be considered an indirect cost of expanding the staff in the Public Ethics Commission and would not require additional funding.

² This includes added administrative costs for new "filing officer" form collection and processing duties as well as general overhead and maintenance to cover the additional positions and associated work.

Item: _____
 City Council
 July 15, 2014

SUSTAINABLE OPPORTUNITIES

Economic: A strengthened PEC that ensures compliance with campaign finance, transparency, and ethics laws could have the effect of increasing trust among citizens and government, thereby bolstering the City's economic viability.

Environmental: Transferring lobbyist registration management to the PEC would reduce the use of hard copy forms for filing lobbyist information, resulting in reduced paper and further "greening" of the process, as well as online accessibility of information filed with the City.

Social Equity: Social equity depends on a political system that ensures a fair and equal opportunity for all individuals and interest groups to participate meaningfully in the elective and governmental process. A PEC with the appropriate independence, resources, and authority to provide adequate education and to properly enforce government transparency, campaign finance, lobbying, and ethics laws will help to ensure that all participants know the rules, understand how to play by them, and be held accountable if they choose not to comply.

For questions regarding this report, please contact Whitney Barazoto, Executive Director of the Public Ethics Commission, at (510) 238-6620.

Respectfully submitted,



WHITNEY BARAZOTO
Executive Director, Public Ethics Commission

Attachments

1. *Analysis of Proposed City Charter Section 603 Prepared by PEC Staff*
2. *PEC Letter of Support*

Item: _____
City Council
July 15, 2014

Analysis of Proposed City Charter Section 603 Prepared by PEC Staff

Summary

Under existing law, the Public Ethics Commission (PEC or Commission) is established in City Charter section 202, approved by voters in 1996. The details of the Commission's duties are outlined by subsequent ordinance (OMC 2.24), approved by City Council in 1997. The City Council then passed subsequent ordinances in particular areas to require additional responsibilities and authority outlined in each ordinance. As such, most of the PEC's duties, authority, staffing and other operational capabilities are subject to City Council amendment and approval. It also means the aspects of the PEC's operational framework, including its authority and capabilities, cannot be found in one place, but are scattered among multiple ordinances in the City's municipal code.

The proposed amendment to City Charter would create a new Charter section 603 to consolidate the existing Public Ethics Commission City Charter and enabling ordinance provisions into one comprehensive law that articulates the responsibilities, authority, structure, and staffing in one voter-approved City Charter provision consisting of the following sections:

- a) Creation and Role
- b) Functions and Duties
- c) Councilmember Salary Increases
- d) Appointment, Vacancies, Terms
- e) Qualifications and Restrictions
- f) Enforcement
- g) Staff Assistance & Budget
- h) Amendment of Laws
- i) References to Other Laws in this Section

In addition, because the Charter Amendment places most of the provisions from existing Charter section 202 into the new Charter section 603, the proposed amendment also deletes most of the existing Charter section 202, leaving only the City Council related provision regarding the PEC's duty to adjust City Council salaries.

Background

In 1996, the PEC was created under City Charter section 202, which provides a brief and broad overview of 1) the Commission's purpose, 2) the membership of the Commission, 3) the Commission's functions, duties, jurisdiction and terms (only that these shall be prescribed by ordinance), and 3) the process for annually adjusting City Council salaries. Charter section 202 is the third section found in Article II, which summarizes the powers, duties, composition, and qualifications of the City Council.

At the time the Charter section was passed, there were no other PEC-related ordinances yet in effect except the Oakland Campaign Reform Act, though some of the subsequently adopted

ordinances were contemplated in the language of the Charter section, such as “any ordinance intended to supplement the Brown Act.”

Following the adoption of the new Charter section, City Council adopted *Chapter 2.24 – Public Ethics Commission* in 1997, outlining the PEC’s functions and duties, authority, rules and procedures, staff assistance, legal assistance, and a provision protecting city employees and officials from retaliation from others for reporting an issue to the Commission. In addition, the ordinance reiterated the composition of the PEC as well as the setting of compensation for City Councilmembers, with the latter provision language conflicting slightly with the Charter section.

Other laws for which the PEC has jurisdiction were passed following the adoption of the Charter section. Each ordinance has varying enforcement powers granted to the PEC. Below is a list of ordinances that relate to the PEC’s general jurisdiction:

- Oakland Campaign Reform Act, OMC 3.12, passed in 1993
- Public Ethics Commission (Enabling Ordinance), OMC 2.24, passed in 1997
- Oakland Sunshine Ordinance, OMC 2.20, passed in 1997
- Limited Public Financing Act, OMC 3.13, passed in 1999
- Lobbyist Registration Act, OMC 3.20, passed in 2002
- False Endorsement in Campaign Literature Act, OMC 3.14, passed in 2003
- Conflict of Interest Code, OMC 3.16, originally passed in 1993, with no mention of the PEC which was not yet in place, and no local enforcement mechanism

As each new ordinance was added, no staff augmentation came with the new set of duties. In 2012, the Public Ethics Commission conducted a review of all of its responsibilities under the different ordinances and concluded that a total of five staff are needed to effectively carry out the PEC’s current duties. In addition, the PEC and others, including the Alameda County Grand Jury, articulated the need for greater authority and resources in order to accomplish the objectives for which the Commission was originally established. In the 18 years since the PEC was created in City Charter, no changes have been made to its original language, despite the addition of multiple ordinances and new duties for the PEC, advances in the field of government integrity generally, and developments in technology and the availability and presentation of data to assist in disclosure of government information and promotion of compliance and openness.

Analysis

City Charter section 202 is outdated, does not reflect the City’s modern laws, and does not provide a clear framework for the Commission’s role, authority, activities, and structure. The section should be updated to reflect the Commission’s modern duties and properly reference the substantive laws under the Commission’s jurisdiction. The Commission also has been operating at a staffing level that does not adequately support its duties; as more laws were passed over time to require additional and significant tasks, the Commission’s two FTE staff positions remained the same. In addition, given the unique position of the PEC as a governmental oversight agency on campaign finance, transparency, and ethics actions by all elected officials and employees in the City of Oakland, placing the Commission’s framework in City Charter would better insulate the Commission from potential politically motivated changes to its operational makeup –

whether actual or perceived – including changes in the PEC’s resources, staffing, powers, or responsibilities.

In general, the proposed City Charter amendment would outline and clarify the Commission’s general responsibilities, including all current duties, as well as some new functions such as oversight on City Charter section 218 (non-interference in administrative affairs), 907 (nepotism), 1200 (conflict of interest), and 1202 (conflict in office). This adds a few new duties but mostly bolsters the PEC’s established responsibilities as it means any future amendment to the PEC’s powers and authority must go before the voters and cannot be amended by an ordinance passed solely by City Council. While the effect is a longer charter section, placing the Commission’s duties in City Charter is appropriate given the Commission’s unique position as an oversight body that regulates the behavior of other City departments and elected officials.

Specifically, the amendment would do the following:

- a) **Creation and Role** – Changes to the original language of this provision more clearly articulate the Commission’s overall responsibilities as including the enforcement, education, and administration of laws, regulations, and policies intended to assure fairness, openness, honesty, and integrity in City government.
- b) **Functions and Duties** – This provision outlines in more detail the Commission’s duties, many of which are currently listed in the PEC’s existing enabling ordinance (OMC section 2.24), and supplements them with the following new duties:
 1. Oversee compliance with the Oakland Conflict of Interest Code and City Charter Section 1200 (requiring adherence to state conflict of interest laws).
 2. Oversee compliance with City Charter Sections 218 (Non-interference in Administrative Affairs), 907 (Nepotism), and 1202 (Conflict in Office).
 3. Oversee enforcement of a governmental ethics ordinance and any ordinance intended to protect City whistleblowers from retaliation.
 4. Educate and promote understanding regarding the requirements under the Commission’s oversight.
 5. Study any significant non-compliance problems or trends with Oakland’s governmental ethics laws and identify possible solutions for increasing compliance.
 6. Act as the filing officer to collect and retain Form 700 Statements of Economic Interests, all campaign forms and electronic filings, and lobbyist registration and reporting forms.
 - i. Currently, the Oakland City Clerk is the filing officer for these forms. The rationale for this change is to consolidate form collection and compliance under one agency. Since the PEC investigates and audits these forms, works with the data to check compliance, and, in the case of lobbyist registration, makes the data available on its website, it is a natural place for filing and maintaining these forms. It also would assist the PEC and the filer by connecting the filer to the PEC’s education and advice assistance in filing the proper forms and information. However, this is a

significant workload addition to the PEC and will require the addition of two positions for just this function. It also may require relocation and expansion of PEC offices in order to provide a more publicly accessible location with an area and computer for public viewing of hard copy forms and electronic information and space for maintaining records.

7. Review and make recommendations regarding all City systems used for public disclosure of information required by any law under the jurisdiction of the Commission.
- c) **Councilmember Salary Increases** – This provision of the newly created Charter section 603 now refers to the portion of Charter section 202 that will remain virtually unchanged, relating to the PEC’s duty to adjust City Council salaries according to the Consumer Price Index, except that section 202 moves the adjustment from annual to once every two-years, which more appropriately matches the City budget cycle.
 - d) **Appointment, Vacancies, Terms** – Changes to the original language of this provision places the PEC commissioner appointments process in City Charter and spreads the three mayoral appointments to one appointment made by the City Attorney, one by the City Auditor, and one by the Mayor, subject to City Council veto within 45 days of the appointment. Appointments will be made on a staggered basis beginning after the expiration of each current mayoral appointment terms. The provision adds a requirement that a Commissioner attest to attending a PEC meeting prior to appointment. It also provides that vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days of the vacancy occurring may be filled by the City Council pursuant to an existing procedure applicable to other boards (see City Charter Sec 601). It adds a provision that prohibits the Mayor, City Attorney, and City Auditor from appointing a person to the Commission who was a paid campaign staffer for the official during the preceding two years. It sets a quorum requirement at 4 commissioners, codifying the PEC’s current by-laws. Lastly, this provision expands the process and reasons for removal of a Commissioner, adds a process to fill vacancies by City Council when the Mayor, City Attorney, or City Auditor do not fill the position within 90 days, and eliminates the description of the process for the initial appointments that created the Commission.
 - e) **Qualifications and Restrictions** – This provision amends Commissioner requirements and qualifications to expand the prohibition on seeking election to any other office to include any office in which Oakland is part of the jurisdiction, and add a restriction that prohibits a commissioner from being a registered Oakland lobbyist or required to register as an Oakland lobbyist, or be employed by or receive gifts or compensation from a registered Oakland lobbyist.
 - f) **Enforcement** – This provision takes all of the authority provisions from the PEC’s enabling ordinance (OMC 2.24) and places them into the City Charter. It inserts language to clarify that PEC ordinances, which already allow penalties of over \$1,000, are not subject to the \$1,000 limit on fines imposed by City Charter. The enforcement provision also adds the following new provisions:
 1. A person may appeal a PEC decision to impose penalties and fines for violation of the laws within the PEC’s jurisdiction by filing a petition for writ of mandamus

- (court order to compel action by government official) with the Alameda County Superior Court.
2. The PEC can submit referrals to other enforcement authorities, including the Alameda County District Attorney, California Fair Political Practices Commission, and the California Attorney General. This codifies existing practice that is currently allowable but not explicit in the law.
 3. The PEC can order remedial action for violations and injunctive relief.
 4. The PEC can, upon the approval of 5 commissioners, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance (not yet adopted), for violations of City Charter Section 218 (Non-interference in Administrative Affairs) and 1202 (Conflict in Office).
 5. The PEC can reprimand, censure, or impose administrative remedies, as provided for by a governmental ethics ordinance (not yet adopted), for violations of City Charter Section 907 (Nepotism).
 6. The PEC must have four aye votes to approve a final enforcement action on a matter, including imposing fines and dismissing a case. Under current law and Commission by-laws, the PEC must have at least four members to establish a quorum and officially meet and take action under open meetings laws. Once a quorum of four is established, the PEC can take final enforcement action with only a majority of the members present. If only four or five members are present, then a final enforcement action would require only 3 votes. The purpose of a four-vote requirement is to ensure that, following an investigation, a final enforcement action – the PEC's choice of whether to fine a person or let them off the hook – meet a heightened threshold.
 7. PEC staff preliminary review of complaints shall be confidential until the complaint is dismissed, closed, withdrawn, referred without other action, settled, announced as going to mediation, expired due to statute of limitations, moved to full investigation, or placed on a PEC meeting agenda. This conforms with the practices and requirements of other ethics commissions in California, and the rationale is that complaints filed with the Commission can be politically motivated, particularly during campaign season, and this offers some protection to the respondent by keeping the complaint confidential during the preliminary review by the PEC so that the PEC can review and make an initial determination as to whether there is legitimacy to the complaint before it becomes public as a matter being reviewed by the PEC.
 8. The PEC must develop a policy outlining standards for exercising prosecutorial discretion and proposing penalties. This ensures that the PEC articulates and makes public how it goes about determining penalties for violations.
 9. The Commission must place the issuance of a late filing fee of \$1,000 or more on a PEC meeting agenda, must publish standards utilized by the PEC for guiding filing officer decisions regarding requests for waiver of per diem late filing fees, as well as for appeals of waiver decisions, and must refer uncollected late filing fees to City collections after 90 days.

- i. As written, this does not appear to require a PEC vote, only the placement of the item on the PEC agenda, which staff interprets to mean as an informational, non-action item.
 10. Residents of Oakland may file suit to enforce an ordinance under the PEC's jurisdiction when the City does not act, subject to notice and criteria required by City ordinance.
 - i. This is an expansion of a private citizen's right to enforce the provisions under the PEC's jurisdiction, but only if explicitly added to an existing or new ordinances passed by City Council. An ordinance would specify certain notice to the PEC for a violation of the laws under its control, and if the PEC does not take action within a certain time period, then a citizen can file suit to enforce the law.
- g) **Staff Assistance & Budget** – This provision is almost entirely new. Under the PEC enabling ordinance, the "City Manager [sic], or designee thereof, shall provide the Commission with staff assistance as necessary to permit the Commission to fulfill the functions and duties" outlined in the enabling ordinance. Instead, the Charter amendment adds the following new staffing requirements:
 11. The City shall appropriate a sufficient budget for the PEC to fulfill the functions and duties set forth in the City Charter. Specifically, the City is required to meet a minimum staffing of 7 positions as follows, except during extreme fiscal necessity pursuant to a City Council Resolution:
 - i. Executive Director. The Executive Director shall serve at the pleasure of the PEC and is subject to termination at will by the affirmative vote of at least four commissioners. The current Executive Director position is represented by the Confidential Management Employees Association (CMEA) union and is placed organizationally within the City Administrator's office. The new "at will" designation makes the new Executive Director position exempt from union status and independent of the City Administrator's office. Upon vacancy, the PEC shall conduct a search with the support of the City's Human Resources department and shall select two or three finalists to forward to the City Administrator, upon which the City Administrator shall make the final selection. Once appointed, the Executive Director serves at the direction and supervision of the PEC only.
 - ii. Deputy Director, to serve at the pleasure of the Executive Director.
 - iii. Investigator/Auditor, a civil service position that is subject to selective certification (pursuant to Section 5.03 of the Civil Service Rules), which means the position would be exempt from the rule that allows another person with more seniority in the same position at another agency from bumping the PEC employee in the same classification if they are terminated. The rationale for selective certification is that PEC work is distinct from the subject matter of other City departments and is unique in that PEC staff conduct work on cases pertaining to other City departments,

and the bumping of a PEC employee would be a loss in the expertise and potential impartiality of that employee, who likely brings specific campaign auditing experience and familiarity with the laws under the PEC's jurisdiction.

iv. 3 Program Analysts, civil service positions that would be subject to selective certification as explained above.

v. Administrative Assistant, a civil service position

12. All PEC staff shall be subject to the same restrictions imposed on Commissioners, except that staff would not be required to be residents of Oakland, and that the one-year post-employment ban would apply only to the Executive Director. The rationale for these restrictions is to ensure that each PEC staff conducts their work in an impartial and unbiased manner. The one-year post-employment ban would restrict the Executive Director from being hired by the City in another capacity for one year following his or her service with the PEC.

h) **Amendments of Laws** – this new provision requires that, if any laws under the PEC's jurisdiction are amended by City Council, the Council shall make a finding that the proposed changes further the goals and purposes of the ordinance or program being amended, and the Council shall provide specifics substantiating the finding. It also requires amendments to be submitted to the PEC prior to passage by Council unless an urgency finding is made.

13. This provision is similar to that found in the California Political Reform Act, which outlines the state campaign finance, lobbying, and conflicts of interest laws which apply to state and local officials. The Political Reform Act goes further to require a 2/3 vote for any legislative amendments to the state Act, which was similarly voter-approved.

i) **References to Other Laws in this Section** – This provision states that all references to other laws shall refer to the specific laws as amended from time to time.

CITY OF OAKLAND



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Public Ethics Commission

(510) 238-3593
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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".

Whitney Barazoto
Executive Director

CITY OF OAKLAND



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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*.¹ 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.

¹ 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

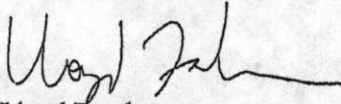
A discussion of authority and resources is incomplete without also dealing with the issue of Commission independence. Leaders in the municipal ethics community agree that a city ethics commission must be independent, with Commissioners, Commission staff, and legal assistance serving only the Commission 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