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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

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 REGARDING THE PUBLIC ETHICS COMMISSION TO PROVIDE THE COMMISSION WITH GREATER INDEPENDENCE AND MINIMUM STAFFING, CHANGE TWO OF THE MAYORAL APPOINTMENTS TO ONE APPOINTMENT EACH BY THE CITY ATTORNEY AND CITY AUDITOR, EXPAND RESTRICTIONS ON ITS COMMISSIONERS AND STAFF, ADD ADDITIONAL ENFORCEMENT AUTHORITY AND REQUIREMENTS, CLARIFY ITS DUTIES INCLUDING ENABLING COMPLIANCE, MAKE IT THE FILING OFFICER FOR DISCLOSURE REPORTS, AND PROVIDE FINDINGS & SUBMISSION REQUIREMENTS REGARDING AMENDMENTS TO LAWS UNDER ITS JURISDICTION, AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE ELECTION

WHEREAS, The Oakland Public Ethics Commission (PEC) was formed in 1996 with the goal of ensuring "fairness, openness, honesty, and integrity" in City government; and

WHEREAS, Numerous observers and commentators have noted that the PEC has insufficient resources and authority to adequately fulfill its mission of administering and enforcing ethics laws; and

WHEREAS, The Alameda County Grand Jury issued a report in June 2013 stating that "local independent oversight of public ethics is essential" and that the PEC is a remedy for addressing government misconduct but that the PEC's limited staffing and resources affects its viability, concluding its observations regarding the PEC with a following formal Recommendation: "The Oakland City Council must provide the Public Ethics Commission with sufficient financial resources to properly investigate allegations of ethics violations;" and

WHEREAS, In response to the 2013-2013 Final Report of the Alameda County Grand Jury, the Oakland City Council wrote with unanimous approval, in relevant part: "Enhanced powers and authority for the PEC would be helpful to enforcing ethical behavior and legal requirements for Oakland public officials;" and

WHEREAS, The PEC wrote to the City Council by letter dated September 3, 2013, requesting enhanced resources for adequate staffing and evaluation of its structure and authority, specifically with regard to its independence within the City government; and

WHEREAS, The PEC's 2013 letter to the City Council indicated that the PEC required a minimum of five full time staff positions in order to fulfill its *existing* duties; and

WHEREAS, The PEC's 2013 letter to the City Council noted that, because an ethics agency may potentially investigate City officials and employees, there is an inherent structural conflict of interest if the same officials have budgetary or other control over the PEC, a flaw that "diminishes the Commission's effectiveness as well as the public's perception of the fairness and neutrality of the process;" and

WHEREAS, A publication of City Ethics, a nonprofit organization that provides information and resources for local government ethics programs, written by Robert Wechsler, Director of Research, provides best practices recommendations for the establishment and administration of a government ethics regulatory agency, including independence, administrative authority to enforce ethics requirements and impose penalties for violations, a guaranteed program budget, and oversight of governmental ethics disclosure requirements; and

WHEREAS, the expanding field of government ethics regulation and the necessity of regulatory oversight by a well-resourced and well-structured independent agency is required to address the reality and appearance of ethics problems in government; and

WHEREAS, existing state and local ethics requirements, such as campaign finance, economic interest, and lobbying disclosure rules, necessitate that Oakland invest sufficient public resources in an ethics commission that provides adequate training and compliance assistance to those subject to the requirements, as is done in other jurisdictions such as San Francisco and Los Angeles; and

WHEREAS, independent ethics regulatory agencies are increasingly functioning not only as regulatory and law enforcement agencies in specialized areas of jurisprudence but also as policy development bodies, providers of education, proponents of institutional culture change, and repositories of data related to influences on government; and

WHEREAS, both the Ethics Commission of San Francisco and the City of Los Angeles are independent agencies in their jurisdictions, have significantly larger budgets and more staff than Oakland's PEC, are able to terminate their agency's Executive Director, have significant enforcement powers, are the filing officers for disclosure statements in their jurisdictions, and were established by robust and detailed Charter provisions, rather than enabling ordinances, which provides the protection of

requiring voter approval before changes to the core structures of these agencies can be made; and

WHEREAS, an effective, independent, adequately funded watchdog agency is critical to increasing the public's trust in the governance of the City of Oakland; now, therefore, be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next special or general municipal election date, to file with the Alameda County Board of Supervisors and the County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed Charter Amendment text shall be as follows:

SECTION 202 – PUBLIC ETHICS COMMISSION; COUNCIL SALARIES

~~(a) There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including, Oakland's Campaign Finance Reform Ordinance, conflict of interest code, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matters relating thereto, and it shall set City Councilmember compensation, as set forth herein.~~

~~(b) The members of the Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents.~~

~~(1) Initial appointments. The first seven 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 and confirmed by the City Council; and four (4) members shall be appointed following a public recruitment and application following a public recruitment and application process, by the unanimous vote of the three (3) representatives appointed by the City Council. The four (4) members so appointed shall reflect the interest of the greater Oakland neighborhood and business communities.~~

~~(2) Subsequent Mayoral appointments. A vacancy in any of the three (3) positions nominated for appointment by the Mayor and confirmed by the City Council shall be~~

filled in the same manner and upon consideration of the same criteria as for the initial Mayoral appointments.

~~(3) Subsequent Non-Mayoral appointments. A vacancy in any of the four (4) positions initially selected by the unanimous vote of the three (3) Mayoral appointments shall be filled, following a public recruitment and application process, by a candidate who receives the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood and business communities.~~

~~(4) Staggered Terms. Both categories of member shall be appointed to staggered terms.~~

~~(5) Functions, duties, powers, jurisdiction and terms. The City shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission, in accordance with this Article.~~

~~(C) Beginning with Fiscal Year 2003-2004, tThe Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years. The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters.~~

SECTION 603 – PUBLIC ETHICS COMMISSION

(a) Creation and Powers. There is hereby established a Public Ethics Commission which shall be responsible for investigating, enforcing and responding to issues (1) with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, and other persons subject to laws within the jurisdiction of the Commission, and (2) with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government. The Commission shall have the power to enforce City laws and policies, including but not limited to Oakland's Campaign Finance Reform Ordinance, Lobbyist Registration Act, conflict of interest code, code of ethics, Ethics Ordinance, other ethics-related ordinances adopted by the Council, and any ordinance intended to supplement the Ralph M. Brown Act, all as they may be amended from time to time. The Commission shall have the power to enforce applicable provisions of state ethics-related laws, including but not limited to the Political Reform Act, the Ralph M. Brown Act, the Public Records Act, and the Elections Code as they pertain to Oakland, all as amended from time to time. The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing.

(b) Additional Functions and Duties. In addition to the powers granted in (a), above, The Public Ethics Commission shall serve without compensation and will perform all duties set forth herein or in the Oakland Municipal Code of Ordinances. The Public

Ethics Commission is hereby empowered to investigate and impose penalties for violations of these laws, regulations and policies by the City of Oakland, its elected officials, officers, employees, boards and commissions and other persons subject to laws within its jurisdiction, including but not limited to the following:

(1) Compliance with Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015.

(2) Enforcement of any ordinance intended to protect City whistleblowers from retaliation.

(3) Biannually, and within the time period for submission of such information for the timely completion of the city's bi-annual budget, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.

(4) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapters 4 and 7 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), the Oakland Conflict of Interest Code, and the Oakland Lobbyist Registration Act, provided that this duty shall be transferred to the Commission during the 12 months following the effective date of this provision and the Commission shall be the sole filing officer for Oakland by January 1, 2016.

(5) Perform such other functions and duties as may be prescribed by laws this Charter or City ordinance authorize the Commission to enforce.

(6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with Oakland's governmental ethics laws and identify possible solutions for increasing compliance;

(7) To review and make recommendations regarding all City systems used for public disclosure of information required by any law within the authority of the Commission.

(8) In prescribing the above duties and functions of the Commission, it is not the intent to have the Commission to occupy the entire field, to the exclusion of the functions, duties, or responsibilities heretofore or hereafter assigned to any other city board or commission or to a city department, or the council.

(c) Councilmember Salary Increases. The Public Ethics Commission shall set Council compensation as provided for in Charter Section 202.

(d) Appointment, Vacancies, Terms. The Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents. Commissioners shall serve without compensation.

The Commission shall be appointed as follows in subsection (1) and (2).

(1) Appointments by Mayor, City Attorney and City Auditor. The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney shall appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters.

The City Auditor shall appoint one member who has a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting. The Mayor, City Attorney, and City Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official.

Upon the effective date of this section, the three members appointed by the Mayor prior to 2014 shall continue to serve the remainder of their terms. Vacancies in the three positions appointed by the Mayor shall be filled in the following manner: the City Attorney shall appoint a member to fill the first vacancy; the City Auditor shall appoint a member to fill the second vacancy and the Mayor shall appoint the member to fill the third vacancy. Thereafter, the positions appointed by the Mayor, City Attorney and City Auditor shall be filled in the same manner and upon consideration of the same criteria as the initial appointments.

The appointments made by the Mayor, City Attorney, and City Auditor may be rejected by City Council Resolution within 45 days of receiving formal notice of the appointment. An appointment shall become effective once written notice is made by the appointing authority to the City Clerk. Upon receiving such written notice, the Clerk shall promptly provide formal notice to the City Council.

(2) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.

(3) Terms of office. All categories of member shall be appointed to staggered terms. 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 of the Commission shall serve for a term of three years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, he/she may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, he/she may serve two consecutive full three-year terms.

(4) Quorum. Four members shall constitute a quorum.

(5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member.

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 in the same manner as provided by this Charter, Section 601.

(6) Removal. Members of the Commission may be removed by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission, or violation of this Charter section, after written notice of the grounds on which removal is sought and an opportunity for a written response.

(e) Qualifications and Restrictions. Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. No member of the Commission shall:

(1) Have an employment or contractual relationship with the city during the member's tenure and for a period of one year after the date of separation.

(2) Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation .

(3) Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign.

(4) Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

(f) Enforcement.

(1) Authority. In furtherance of the above enumerated duties and functions, the Oakland Public Ethics Commission is authorized to:

(i) Conduct investigations;

(ii) Conduct audits of disclosures filed with the Commission;

(iii). Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for failure or refusal to appear, testify, or to produce required books, papers, records and documents;

(iv). Impose penalties and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be subject to the \$1,000 limit on fines provided by this Charter, Sections 217 and 1208. 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 the Alameda County Superior Court by filing a petition for writ of mandamus;

(v) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;

(vi). Seek remedial relief for violations, including but not limited to disgorgement and injunctive relief;

(vii). By an affirmative vote of at least five members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

(viii). Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures.

(ix) Perform other functions as authorized by law.

(2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four members.

(3). Investigations. Preliminary review by Commission staff of allegations shall be confidential, to the extent permitted by law, until any of the following occurs:

(i) Placement of the item on a Public Ethics Commission meeting agenda;

(ii) Passage of two years since the complaint was filed;

(iii) Action by the Executive Director closing the file without placing it on the agenda; or

(iv) Expiration of the Statute of Limitations.

(4). Penalty guidelines and Enforcement Discretion. The Public Ethics Commission shall develop regulations setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff shall follow the regulations when recommending penalties under each of the different penalty provisions that the Commission has the power to enforce.

(5). Per diem late filing fees. Regarding per diem fees that are authorized due to the late filing of disclosure reports, including campaign finance statements, lobbyist reports, Statements of Economic Interest, and other disclosures filed with the Commission by law, the following shall apply:

(i). Assessments. Any instance of late filing that triggers the assessment of fee of \$1,000 or more shall be placed on a Commission meeting agenda before issuance of the fee;

(ii). Waiver standards. The Commission shall adopt regulations in accordance with state law which the Commission, as the filing officer, shall follow in determining whether to grant a waiver. These regulations shall be published on the commission's website. The Commission shall prescribe regulations for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers granted since the previous regular meeting.

(iii) Referral of final, uncollected fees to collections. Unpaid non-investigatory, per diem late filing fees for ethics disclosure programs that are past due for more than 90 days shall be referred to a City delinquent revenue collection office.

(6). Private right of action. Residents shall be enabled by the individual ordinances within the Public Ethics Commission's authority to file suits to enforce the ordinances when the City does not act, subject to a required notice period. The ordinances shall

prescribe criteria for such suits, including potentially limiting categories of violations for which the suits are authorized or the types of remedies that may be sought.

(g) Staff assistance & budget. The City shall appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth above. Effective July 1, 2015, the City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full time positions or their equivalent should classifications change: Executive Director; Deputy Director; Investigator/Auditor; three (3) Program Analysts; Administrative Assistant. The minimum staffing budget set-aside may be suspended due to extreme fiscal necessity facing the City, as defined by the City Council by Resolution.

The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

The Deputy Director shall serve at the pleasure of the Executive Director. Other than the Executive Director and Deputy Director, staff shall be civil service in accordance with Article IX of the City Charter. Other than the Administrative Assistant, Commission civil service staff positions that are filled after the effective date of this provision shall be subject to selective certification, under the same meaning as provided by Section 5.03 of the Civil Service Rules, as may be amended from time to time.

All staff are subject to the restrictions in Charter Section 603(e), except that staff are not prohibited from employment with the City and the one-year post-service restriction shall apply only to the Executive Director.

(h) Amendment, of laws . Prior to enacting any amendments to laws that the Commission has the power to enforce, the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to laws that the Commission has the power to enforce and that are proposed by one or more members of the City Council shall be submitted to the Commission for review and comment, prior to passage of the amendments by the City Council.

and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for

submission of arguments for or against said proposed Charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE _____

Measure ...

Measure _____. <i>[to be drafted]</i>	Yes	
	No	

and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law; and be it

FURTHER RESOLVED: FURTHER RESOLVED: That the City Council declares the intent, upon the effective date of the above Charter Amendment, to amend and make clean-up modifications to Chapter 2.24 of the Oakland Municipal Code to be consistent with Charter Amendment, including, repealing Sections 2.24.030, 2.24.040, 2.24.050, and 2.24.080; and be it

FURTHER RESOLVED: That, following the effective date of the above Charter Amendment, the City Clerk's responsibilities and administration with regard to any contracts related to filing officer duties, such as those concerning the provision of online electronic filing and storage of campaign finance, economic interest, and lobbyist disclosure reports, shall be transferred to the Public Ethics Commission, with such transfer to be fully completed by January 1, 2016.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California