



Date: July 9, 2014

Subject: **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**

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Colleagues on the City Council and Members of the Public,

I am submitting this memorandum to you as a supplement to the Charter Amendment to strengthen the Public Ethics Commission (PEC) which was forwarded to you by the Rules & Legislation Committee. I propose consideration of the following additional changes to the Charter Measure text provided in the packet for this agenda item. These additions have been submitted to and reviewed by the City Attorney's office.

The following are proposed as replacements for referenced portions of proposed Charter Section 603. Additions to the measure text are indicated by underscoring, while deletions are indicated by ~~strike-through type~~. Narration of simple form edits are indicated by *italic type*.

I. Page 5, sub-section b (4):

(4) Within the time period for submission of such information for the timely completion of the Ccity's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.

Reason for change: Capitalize "City."

II. Page 5, sub-section b (5):

(5) 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.), provided that this duty shall be transferred to the Commission during the ~~42~~24 months following the effective date of this

provision and the Commission shall be the sole filing officer for the campaign finance programs~~Oakland~~ by January 1, 20176.

Reason for change: At the City Council's Rules & Legislation Committee meeting of June 19th, our City Clerk indicated agreement with the proposal to transfer the Campaign Finance Filing Officer duties to the Public Ethics Commission, but stated that she believed that the Filing Officer duties for Statements of Economic Interest (Form 700s) should remain with the City Clerk for the time being. This revision only moves over the Campaign Finance Filing Officer duties. Additionally, the date change provides more time for a smooth transition.

III. Page 8, sub-section f (1) (iv) (v) (vii) (viii) & (ix):

Remove unnecessary periods following "(iv)," "(v)," "(vii)," "(viii)," and "(ix)."

Reason for change: Correct form.

IV. Page 9, sub-section f (3) & (4):

Remove unnecessary periods following "(3)" and "(4)."

Reason for change: Correct form.

V. Page 9, sub-section f (5):

(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 ethics-related disclosures filed with the Commission by law, the following shall apply:

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

(ii)- Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The Commission shall prescribe criteria 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 waiver decisions ~~made~~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.

Reason for change: In addition to the removal of three unnecessary periods following the sub-section numbering, the edits provide some minor clarifying word changes

and provide that any PEC waiver decisions, including rejection of a request for waiver, shall be posted.

VI. Page 9, sub-section f (6):

(6): Private right of action. Oakland Residents shall have a private right of action to file suits to enforce the Oakland Campaign Reform Act, Oakland Lobbyist Registration Act, Oakland Sunshine Ordinance, and any City governmental ethics ordinance~~ordinances within the Public Ethics Commission's authority when the City does not impose or stipulate to a penalty or file suit for a particular violation~~action. Such private right of action shall be enabled for a given ordinance once criteria for such suits, including a required notice period and potential limits of categories of violations for which the suits are authorized or the types of remedies that may be sought, are prescribed by the ordinance.

Reason for change: These edits clarify both which specific laws for which a private right of action shall be provided as well as the types of action by the City that would bar a private right of action.

VII. Page 10, sub-section g (2):

(2) Sufficient staffing shall not be less than the following minimum staffing requirement. 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; One Deputy Director; ~~Public One Ethics Investigator; One Program Analyst I or Operations Support Specialist; three (3) Public Ethics Two (2) Program Analyst I or IIs; One Administrative Assistant I.~~ The minimum staffing budget set-aside may be suspended, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing, due to an extreme fiscal necessity facing the City, as defined by the City Council by Resolution.

Reason for change: This change clarifies the intended classifications of the newly created positions, and clarifies intention of allowing for the suspension of staffing requirement only for one or two fiscal years at a time.

VIII. Page 10, sub-section g (4):

(4) 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. After the effective date of this Charter provision, the Commission Executive Director shall identify special qualifications and experience that the Program Analysts and Operation Support Specialist candidates must have. Candidates for future vacancies shall be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that said selective certification shall not be subject to discretionary approval by the Personnel Director.

Reason for change: This change puts back in the selective certification that was in the first draft published for the Rules Committee. Instead of having new, specialized classifications created all for the newly created positions, selective certification of existing classifications is being used to provide greater opportunities for current employees to qualify for these positions.

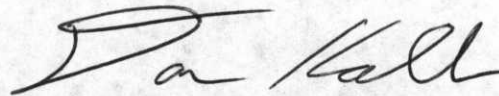
IX. Page 12 – addition of a “Further Resolved” clause:

; and be it

FURTHER RESOLVED: That the City Council declares the intent to convert all campaign finance, statement of economic interest, and lobbyist disclosure filing requirements into fully paperless, electronic online systems, to the extent practicable;
and be it

Reason for change: These additions clarify (1) that Oakland Filing Officer systems are intended to be converted to paperless systems facilitating online users, to the extent practicable, which would significantly reduce the need for in-person filing.

Respectfully submitted,



Dan Kalb, Councilmember

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Office of Councilmember Dan Kalb

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May 13, 2014

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Oakland Needs Tougher Ethics Rules

A new comprehensive plan proposed by Councilmember Dan Kalb and good government activists could go a long way to restoring faith in City Hall.

By Robert Gammon  @RobertGammon

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Following a series of corruption scandals that have rocked the state capital, lawmakers in Sacramento have been rushing to implement stricter ethics rules during the past few months. Although it's disheartening that the state legislature didn't act until elected officials were arrested, indicted, and convicted, the proposed reforms are welcome nonetheless. Likewise, Oakland City Hall would be smart to push for ethics reform this year — and not wait until it suffers its own corruption scandal.

In fact, Oakland's ethics and corruption laws have long needed an overhaul. Last year, the Alameda County Grand Jury rightly criticized Oakland's public ethics regulations for being weak and ineffectual. In addition, the city council has starved the Oakland Public Ethics Commission (PEC) of funds over the years. As a result, the city's regulations are not only insufficient, but the watchdog agency in charge of investigating and enforcing the rules has been unable to effectively do so because of a lack of funds.

However, Councilmember Dan Kalb and a group of good government activists in Oakland, including the League of Women Voters, are now proposing a comprehensive plan to upgrade the city's ethics rules and enforcement. Late last week, the group announced its proposal for a November 2014 ballot measure that would strengthen the city's regulations and guarantee staffing for the PEC. In addition, the group wants an ordinance that would establish new anti-corruption, conflicts-of-interest, and code-of-conduct regulations for elected officials. The plan was developed over the past several months and is based on the best practices of other large cities.

"The public wants to feel better about government, and we need to prove that we can do that" for city residents, said Kalb, who represents North Oakland and ran for office in 2012 on a platform of restoring transparency and trust in government. "This has been an issue that has been building for a number of years."

The new ethics blueprint also is just the first phase of the plan. Later this year, Kalb and the Oakland Ethics and Good Government Working Group intend to propose tougher campaign finance, lobbying, and ethics laws for the city. "For the people of Oakland to retain faith in their city government, they need to be assured that adequate structures are in place to keep it fair, open, and ethical," said Oakland League of Women Voters President Katherine Gavzy, a member of the working group that developed the blueprint, in a statement.

Under current Oakland law, the Public Ethics Commission typically deals with campaign finance, lobbying, and open government violations in the city. But the PEC has historically been understaffed, because councilmembers — who are required to follow the city's campaign finance and open government rules — routinely withhold funds from the agency. It's a classic case of the fox guarding the henhouse.

The PEC, as result, operates on an annual shoestring budget of just \$300,000 and has only two full-time staffers, including its executive director, Whitney Barazoto. The lack of funds and staffing means that the agency can't effectively investigate complaints of official wrongdoing. By comparison, San Francisco's

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ethics commission has a staff of seventeen and a robust annual operating budget of \$2.2 million.

Under the new proposal, city voters would be asked to approve a minimum staffing of seven full-time positions for Oakland's Public Ethics Commission. The plan is based on a similar mandate in the City of San Diego. Over the next several months, the working group also plans to consider new ways to fund the PEC, including an annual fee on local campaign committees based on how much money they raise. Other cities also levy hefty registration fees on lobbyists to help finance ethics watchdog agencies.

In addition, the blueprint proposes giving the PEC more autonomy by making it tougher to remove commissioners and staffers. The proposal also would change a current law that allows the mayor to appoint three members to the commission and would give one of those appointments to the city attorney and the city auditor, respectively. The plan also proposes strengthening ethics requirements for the commissioners themselves, and to allow them to serve longer terms.

The plan also calls for greatly expanding the authority and duties of the PEC to investigate and penalize ethical wrongdoing. The PEC, for example, would have the power to formally reprimand or censure councilmembers for illegally interfering in the city's administrative affairs. The PEC also would have the power to investigate and enforce the city's anti-nepotism law, conflicts-of-interest rules, and whistleblowers' protection law.

The plan also would eliminate the maximum fine of \$1,000 that can currently be imposed by the PEC, replacing it with stiffer fines based on the severity of the wrongdoing. The PEC also would have the power to enforce code-of-conduct rules on the mayor, city attorney, city auditor, and city administrator. The proposal also calls for establishing "revolving-door restrictions" that would prohibit city officials, after they leave office, from accepting work with employers to whom they awarded government contracts.

In short, the plan is excellent — and one that Oakland desperately needs. Kalb said the blueprint will get its first public airing soon in front of the Public Ethics Commission. In the meantime, it's available for review on Kalb's council District One website. He's planning to ask his fellow councilmembers to vote in late July to put a city charter amendment on the November ballot and to approve changes to existing laws in order to strengthen Oakland's ethics regulations.

Let's hope he's successful, because good government reforms in Oakland are long overdue.

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