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Public Ethics Commission

October 9, 2014

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President Kernighan and Council Members
Oakland City Council
1 Frank Ogawa Plaza
Oakland, CA 94612

Dear City Council Members,

On behalf of the Public Ethics Commission, I am pleased to see the Government Ethics Act now pending consideration by the City Council. This ordinance was initially drafted by the Commission, and specifically the Commission's *ad hoc* Ethics Subcommittee, in prolific collaboration with the City Attorney's office, Councilmember Kalb's office, and the Ethics and Good Government Working group created by Councilmember Kalb in 2013, and it reflects some of the best of state and local ethics laws.

The Public Ethics Commission voted unanimously to approve the Government Ethics Act as presented by the Commission's Ethics Subcommittee at the September 2, 2014, Commission meeting. Since then, Councilmember Kalb and the City Attorney have made minor amendments for which the more substantive changes are reflected in the attached spreadsheet. The spreadsheet shows recent changes in underline format, and the Commission as a whole has not yet opined on these changes but is anticipated to meet to discuss new amendments before the ordinance is considered by the full City Council.

Under existing law, there is no ethics-related City ordinance that gives the Public Ethics Commission the authority to enforce government ethics laws. The City Charter and corresponding municipal code (OMC 2.24) charge the Commission with general duties such as conducting trainings, developing educational materials, issuing advice and written opinions, and recommending changes to local laws as it relates to ethics matters. There is no government ethics ordinance that provides City staff and officials with clear ethics rules to follow or that gives the Commission the ability to enforce ethics laws.

The proposed Government Ethics Act would consolidate and codify myriad state and local ethics laws into one comprehensive local ethics ordinance that clearly outlines ethics-related rules for City staff and officials, empowers the Public Ethics Commission with the authority to enforce against violations, and articulates the Commission's education and training responsibilities.

By way of background, on July 24, 2013, the Public Ethics Commission held a public discussion of its authority, resources, and independence, and the Commission identified the need for an ethics ordinance as one of its top priorities. In September, 2013, the Commission sent a letter to City Council expressing the need for an ethics ordinance, and in December, the Commission created an *ad hoc* Ethics Subcommittee to begin drafting the language of the ordinance. This year, the Commission held two public subcommittee meetings and two full Commission meetings over the course of six months to review and discuss the language and receive public input. In addition to the collaborative partners mentioned above, Commission staff also consulted with the directors of the Los Angeles, San Diego, and San Francisco ethics commissions, all of which have a local ethics ordinance with local enforcement authority embedded within the ordinance.

The Commission's Ethics Subcommittee drafted the Commission's initial language with the following goals in mind:

1. Provide a clear and comprehensive framework for rules for City staff and officials,
2. Codify and consolidate all existing state and local ethics laws currently applicable to City staff and officials,
3. Include additional requirements to address needs that are unique to Oakland, and
4. Authorize the Commission to fairly and effectively enforce the provisions in the ordinance.

The Government Ethics Act now before you incorporates all of these goals, and the Public Ethics Commission **encourages your support** of an ethics ordinance that will bring better awareness and understanding of ethics laws as well as enhanced authority to ensure local compliance with these important provisions. Thank you for your consideration.

Sincerely,



Whitney Barazoto
Executive Director

Attachments:

- A. Public Ethics Commission Staff Analysis of the Government Ethics Act as submitted by Councilmember Kalb, with recent changes noted in underline font
- B. Government Ethics Act, as approved unanimously by the Public Ethics Commission on September 2, 2014

Analysis of Proposed Government Ethics Act
Prepared by PEC Staff
(Recent changes by Councilmember Kalb noted in underlined font)

PROVISION	RULE	SOURCE	PRACTICAL EFFECT/COMMENTS
IV. Conflicts of Interest and Personal Gain			
A. Financial Conflicts of Interests	A public servant shall not make, participate in making, or influence a decision in which he or she has a financial interest, as defined by the CA Political Reform Act (PRA).	CA Gov Code 87100-87505; Oakland City Charter sec. 1200	Codifies the existing conflict of interest rule of the CA Political Reform Act (PRA) and incorporates the related provisions locally by reference; also references the same conflict of interest provision of City Charter section 1200. (Rec 1.2 of the EGG Working Group)
B. Statement of Economic Interests (Form 700) Disclosure	Requires elected officials and designated public servants to file a Form 700 Statement of Economic Interest pursuant to the CA PRA.	CA Gov Code 87100 – 87350; Oakland Conflict of Interest Code	Consolidates existing Form 700 disclosure requirements already applicable, authorizing the PEC to enforce. (Rec 1.1 of the EGG Working Group)
C. Conflicts of Interests in Contracting	A public servant may not make a contract in which he or she has a financial interest.	CA Gov Code 1090-1097	Codifies existing conflicts of interest in contracting provisions of the CA Government Code and authorizes the PEC to enforce.
D. Confidential Information	A public servant may not disclose confidential information acquired in the course of his or her official duties to another person for pecuniary gain, personal advantage or private interest.	CA Gov Code 1098	Codifies existing state law, adding “personal advantage or private interest” to the restriction, and authorizes the PEC to enforce. (Rec 1.11 of the EGG Working Group)
E. Incompatible Public	A public servant may not hold two	CA Gov Code	Codifies existing state law and

Offices	public offices that are incompatible.	1099	authorizes the PEC to enforce.
F. Conflict in Office	Neither the Mayor nor members of City Council may hold other City office or employment with the City during their term and for one year following their term.	Oakland City Charter 1202	Mirrors existing Charter language into the Ethics Act, authorizing the PEC to enforce.
G. Influencing Prospective Employment	A public servant may not make or influence a government decision affecting a future employer.	CA Gov Code 87407, Reg 18747	Restates state law more simply, authorizing the PEC to enforce. (Rec 1.12 paragraph 2 of the EGG Working Group, but based on state law instead of Los Angeles Municipal Code)
V. Leaving Public Service "Revolving Door" Restrictions			
A. Permanent Post-Service Restriction on Representing or Assisting Non-City Parties in Particular Matters	Prohibits a public servant from leaving the City to work for a non-City person or entity other than oneself on the other side of a particular issue in which they personally and substantially participated while employed with the City. Certain exceptions apply, and this rule is subject to waiver by the PEC upon the request of the public servant. <u>Recent changes add a presumption that assumes the existence of representation if a former public servant is compensated by the party to a particular matter or a party intending to influence a particular matter within 12 months before or after the communication. Recent changes</u>	San Francisco Campaign and Governmental Conduct Code 3.234, also similar to federal law as it relates to federal employees	New provision to Oakland (Rec 1.12.1 of the EGG Working Group)

	<u>also add an exception for a public servant providing testimony pursuant to a subpoena.</u>		
B. One-Year Post-Service Restriction on Supervisors Representing Non-City Parties	Prohibits a public servant from leaving the City to work for another person or entity on the other side of an issue in which the public servant served as a supervisor of an employee who personally and substantially participated in a particular matter, as defined by V(A).	Federal law as it relates to federal employees (18 USC 207)	New provision to Oakland
C. One-Year Restriction on Representing Other Persons Before Former Department	Restricts a public servant, for one year after they leave City service, from influencing their former department or unit on behalf of another person. This rule is subject to waiver by the PEC in limited situations upon the request of the public servant.	SF Campaign and Gov Conduct Code 3.234	New provision to Oakland (Rec 1.12.2 of the EGG Working Group)
D. Employment by a Party to a City Contract on Which the Public Servant Worked	Prohibits a public servant from working for a person or entity that entered into a contract with the City within the preceding one year where the public servant personally and substantially participated in the award of the contract. This rule is subject to waiver by the PEC in limited situations upon the request of the public servant.	SF Campaign and Gov Conduct Code 3.234	New provision to Oakland (Rec 1.12.3 of the EGG Working Group)
E. Waiver by the Public Ethics Commission	Authorizes the PEC to waive the restrictions in sections V(A) – V(C)	SF Campaign and Gov	This allows an “out” for situations where these restrictions might be too

	under certain circumstances.	Conduct Code 3.234	onerous for the individual or not in the interest of justice because of the circumstances. It would require the PEC to establish a process to grant waivers and ensure consistent application of waivers. (Rec 1.12 of the EGG Working Group)
VI. Perks of Office and Misuse of City Resources or Position for Private Gain			
A. Misuse of City Resources or Position	A public servant may not use or permit others to use public resources for campaign activities or for personal or non-City purposes not authorized by law. A public servant may not use his or her authority or power of position for private advantage.	CA Gov Code 8314	Codifies state law locally and authorizes the PEC to enforce. (Rec 9 of the EGG Working Group, but based on state law/8314 instead of LA Code)
B. Prohibitions Related to Political Activity and Solicitation of Contributions	A public servant's political activities shall not be restricted, except as otherwise provided in federal, state, or local law. A public servant may not use his or her office or authority to help secure a position with the City in exchange for a vote or other political influence. A public servant, in addition to an Oakland School Board candidate, may not solicit a political contribution from another public servant, except as part of mass communications to a large group of the general public.	CA Gov Code 3203 CA Gov Code 3204 CA Gov Code 3205 CA Gov Code 3206	Codifies state law locally and authorizes the PEC to enforce. (Rec 10 of the EGG Working Group, but based on state law instead of SF Code)

	A public servant may not participate in political activities while in uniform.		
C. Restriction on Gifts	<p>Restricts a public servant or candidate from receiving a gift when it is reasonably foreseeable that the public servant would be influenced by the gift.</p> <p>Requires a public servant to comply with the gift requirements and restrictions in the Political Reform Act.</p> <p>Imposes a <u>\$250 annual gift limit</u> for public servants, except gifts from restricted sources, such as lobbyists and persons doing business with or seeking to do business with the City, which would be limited to <u>\$50 in gifts</u> per year per source.</p>	CA Political Reform Act; and a blend of SF Campaign and Gov Conduct Code 3.216 and LA Code 49.5.8	<p>Codifies state gift rules locally and imposes lower annual gift limits, authorizes PEC to enforce.</p> <p>Note: the state-imposed gift limit is \$420 per calendar year for all gifts, although the state has a \$10 annual gift limit for lobbyist gifts to state legislators.</p> <p>State legislation is currently pending that would lower the annual gift limit to \$200.</p> <p>Los Angeles imposes a \$100 gift limit for City officials from restricted sources and a \$25 limit on gifts from lobbyists.</p> <p>San Francisco has a no-gifts rule for restricted sources but allows many exceptions.</p> <p>(Rec 5 of the EGG Working Group)</p>
D. <u>Prohibition on City Officers Contracting with the City</u>	<p><u>Recent changes add a new section to prohibit "City officers," as defined more narrowly than "public servant," from entering into contracts of more than \$10,000 with the City while they are serving in their public service positions. The additional language includes exceptions, such as for contracts with a nonprofit organization or with an entity in which the City officer does not</u></p>	SF Campaign and Gov Conduct Code 3.222	<p>New provision to Oakland</p> <p>(Rec 4a of the EG Working Group)</p>

	<u>exercise management and control over the business. The new provision also allows the Commission to waive the prohibition for a city officer who must, by law, be appointed to represent any profession, trade, business, union, or association.</u>		
VII. Fair Process			
A. Prohibition on Bribery	No person shall offer or make, and no public servant shall solicit or accept, anything of value in exchange for the performance of any official act.	CA Penal Code 68, SF Code 3.216	Codifies general bribery law and CA Penal Code section 68, and mirrors SF Code, and authorizes the PEC to enforce. (Rec 6 of the EGG Working Group)
B. Prohibition on Payment for Office or Appointment	A public servant may not give or promise to give to any person anything of value in exchange for nomination, appointment, support, or election to any office or employment.	San Diego Ethics Ordinance 27.3572	New provision to Oakland, though this overlaps with the prohibition on bribery. (Rec 7 of the EGG Working Group)
C. Prohibition on City Public Servant Influencing Contracts with Former Employer	A public servant may not use his or her official position to influence a decision regarding a contract with a party with whom the public servant was previously employed within the preceding 12 months.	LA Code 49.5.13	New provision to Oakland. (Rec 4(c) of the EGG Working Group)
D. Prohibition on Nepotism	Incorporates City Charter section 907 (nepotism) by reference, which gives the PEC the authority to enforce the Charter provision. A public servant may not make or	Oakland City Charter 907	Codifies City Charter sec 907, giving the PEC authority to enforce. (Rec 8 of the EGG Working Group)

	influence an employment or contract action involving a relative, as defined.	SF Code 3.212	New provision to Oakland. (Rec 8 of the EGG Working Group)
E. Non-Interference in Administrative Affairs	City Council may not give orders, coerce or influence City administrative staff and should deal with administrative services through the City Administrator, Mayor, or other designees.	Oakland City Charter 218	Codifies City Charter sec 218, giving the PEC authority to enforce.
VIII. Public Ethics Commission Role and Responsibilities			
A. Prevention	Requires the PEC to provide advice, assistance and training to City public servants and candidates who would be subject to the Ethics ordinance.	Oakland Municipal Code 2.24 (PEC Enabling Ord)	Specifies the educational duties referenced in the PEC's enabling ordinance to state the PEC's specific duties regarding ethics education. (Rec 15 of the EGG Working Group)
B. Implementation	Allows the PEC to adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Government Ethics Act.	Oakland Municipal Code 2.24.070	Similar to the PEC's enabling ordinance allowing the Commission to promulgate regulations subject to City Council veto.
C. Enforcement	Adds criminal, civil, and administrative penalties for violations of the Government Ethics Act, and adds an injunctive relief remedy for any person residing in the City. <u>Recent changes now require five commissioners (rather than four) to approve the commencement of a civil action brought by the PEC.</u> Imposes a statute of limitations for actions to be brought within four years of the	CA PRA 91000 et seq.; SF Code 3.242, LA Code 49.5.19; SD Code 26.0413	Adds new ethics enforcement penalties and remedies not currently existing in Oakland. Penalties are modeled after the CA Political Reform Act, SF, LA, and San Diego. (Rec 17 of the EGG Working Group)

	<p>date of the violation, with a reasonable discovery clause. Prohibits the filing of false charges and imposes a duty to cooperate with an investigation upon request, <u>except that this duty shall not be construed to require the identification of a whistleblower, as defined by the Oakland Whistleblower Ordinance.</u> New changes also add that <u>violations occurring prior to passage of this ordinance may not be enforced, except for continuing violations after proper notice.</u></p>		
IX. Miscellaneous Provisions			
a. Severability	Clarifies that the provisions of the new ordinance are severable, so that, if any provision is held invalid by a court, the remaining provisions still apply.		Standard language found in many statutes.
b. References to Other Laws in this Section	States that all laws referenced in this section are referenced in their most current form.		To ensure the ordinance is a living document that reflects ongoing changes in other laws that are referenced.

City of Oakland Government Ethics Act

Whereas, the integrity of City government depends upon public servants who are entrusted by the public whom they serve to use City time, property and resources efficiently and in a legal and ethically responsible manner; and

Whereas, in order to prevent improper influence, California state law imposes requirements on public servants that include regulations to avoid financial conflicts of interest (Government Code Section 87100 et seq.), self-dealing in government contracts (Government Code section 1090), disclosure of confidential information (Government Code section 1098), holding incompatible offices (Government Code section 1099), soliciting contributions from City staff (Government Code section 3205), and misuse of public resources (Government Code section 8314), among others; and

Whereas, current California laws and regulations provide a minimum standard for the conduct of public servants; and

Whereas, a Charter City has the constitutional authority to enact local regulations to supplement state law ethics requirements; and

Whereas the citizens of Oakland voted to amend the Oakland City Charter in 1996 to create the Public Ethics Commission, for the primary purpose of ensuring compliance with laws and policies seeking fairness, openness, honesty, and integrity in City government; and

Whereas, an effective government ethics program requires multiple elements to ensure that public servants serve with honesty and integrity; these include political commitment, a clear legal framework, effective accountability measures, prevention activities such as education, advice, and outreach, supportive public service conditions, an ethics coordinating body, an active civil society and probing media.

Whereas, the City Council added Chapter 2.24 to the Oakland Municipal Code to establish the Commission's authority to ensure compliance and enforce various additional ordinances, including the Oakland Campaign Reform Act, Sunshine Ordinance, Lobbyist Registration, and Limited Public Financing Act.

Now, therefore, be it ordained;

The City Council of the City of Oakland, in order to set clear expectations pertaining to the conduct of public officials, and to provide ethical guidance and support for public officials who serve the public, does hereby enact the Oakland Government Ethics Act (hereinafter referred to as the "Act"), to provide as follows:

The City of Oakland Government Ethics Act

I. **Title.** This chapter shall be known as the City of Oakland Government Ethics Act.

II. **Purpose**

- A. This Government Ethics Act is based on the premises that 1) the integrity of City government depends upon public servants who are entrusted by the public to use City time, property and resources efficiently and in a legal and ethically responsible manner, and 2) all individuals and groups who come into contact with our City should have a fair and equal opportunity to participate in government.
- B. This Act is intended to provide a clear, comprehensive, and locally enforceable framework of laws to ensure that Oakland City government operates with integrity, that government decisions are made on the merits and in the best interest of its citizens and not for private or individual gain, that the rules are clear for public servants, and that the law is fairly and effectively enforced.
- C. The provisions in this Act are in addition to other local, state and federal laws, some of which are cited by and incorporated into this Act.

III. **Definitions**

- A. Unless the term is specifically defined in this Act, or the definition is stated or clearly appears from the context, the definitions set forth in the state or local law that is cited as the source of each relevant provision in this Act shall govern the interpretation of that provision.
- B. "City" means the City of Oakland, though the terms "City Administrator," "City Attorney," and "City Auditor" refer to the officers of the City of Oakland as described by the City Charter. This definition of "City" does not apply when it is used in the term "City office."
- C. "City office" includes the Mayor, City Attorney, City Auditor, City Councilmembers and School Board Directors.
- D. "Public servant" includes:
 - 1. any elected or appointed officeholder of the City of Oakland, including any such officeholder elected but not yet sworn in, and not including Oakland School Board officeholders
 - 2. any City board or commission member, including the Board of Port Commissioners, and
 - 3. any full-time or part-time employee of the City, and

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on September 2, 2014*

4. any consultant of the City who is required to file a Form 700 Statement of Economic Interests pursuant to the City of Oakland Conflict of Interest Code and the California Political Reform Act.
- E. "Relative" means any person who is related within the third degree by blood, marriage, or contract, and includes a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin, and any similar step relationship or similar relationship created by adoption.

IV. Conflicts of Interests and Personal Gain

- A. **Financial Conflicts of Interests.** A public servant shall not make, participate in making, or seek to influence a decision of the City in which the public servant has a financial interest within the meaning of the California Political Reform Act, Government Code Section 87100 et seq. and pursuant to City Charter section 1200. All provisions of California Government Code Section 87100 – 87505 and City Charter section 1200, as they relate to public servants, are incorporated by reference into this Act.
- B. **Statement of Economic Interests (Form 700) Disclosure.** The Mayor, City Council Members, City Administrator, City Attorney, City Auditor, City board or commission member, and Oakland Unified School District Board Director, any candidate for City office, and any employee or consultant designated in the City Conflict of Interest Code shall file statements of economic interests and shall disclose all required information pursuant to the California Political Reform Act and the City and Unified School District Conflict of Interest Codes.
- C. **Conflicts of Interests in Contracting.** A public servant shall not make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 – 1097. All provisions of California Government Code Section 1090 – 1097, as the Sections relate to public servants, are incorporated by reference into this Act.
- D. **Confidential Information.** A public servant shall not willfully and knowingly disclose for pecuniary gain, personal advantage or private interest, to any other person, confidential information acquired by him or her in the course of his or her official duties.
- E. **Incompatible Public Offices.** A public servant, including but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible, as prohibited by California Government Code Section 1099.
 1. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

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- a. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body or over a multimember body that includes that other office.
 - b. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
 - c. Public policy considerations make it improper for one person to hold both offices.
2. When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second.
 3. This subsection does not apply to a position of employment, including a civil servant position.
 4. This subsection shall not apply to a governmental body that has only advisory powers.
- F. **Conflict in Office.** As prohibited by City Charter section 1202, the Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while he or she is a member thereof, until at least one year shall have expired after the expiration of the term for which he or she was elected.
- G. **Influencing Prospective Employment.** A public servant shall not make, participate in making, or otherwise seek to influence a governmental decision affecting a person or entity with whom the public servant is discussing or negotiating or has entered into an agreement concerning future employment.

V. **Leaving Public Service "Revolving Door" Restrictions**

A. **Permanent Post-Service Restriction on Representing or Assisting Non-City Parties in Particular Matters.**

1. Prohibition. A former public servant, after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any person or entity other than oneself or the City before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter in which both of the following exist as it relates to the particular matter:
 - a. the City is a party or has a direct and substantial interest; and

- b. the public servant participated personally and substantially as a City public servant.
- 2. Definition. "Particular matter" includes but is not limited to a particular claim, official filing to the City by another, contract, negotiation, grant, permit, license, litigation, settlement, or similar transaction.
- 3. Restriction on assisting others. No former public servant, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another private entity in any proceeding in which the public servant would be precluded under Subsection (A)(1) from personally appearing.
- 4. Exception for testimony. The prohibitions in Subsections A(1) and A(3) do not prohibit a former public servant from testifying as a witness, based on the public servant's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

B. One-Year Post-Service Restriction on Supervisors Representing Non-City Parties.

- 1. Prohibition. A former public servant, within one (1) years after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any other private entity before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter, as defined in A(2), in which both of the following exist as it relates to the particular matter:
 - a. the City is a party or has a direct and substantial interest; and
 - b. the public servant knows or reasonably should know that the particular matter was actually pending under his or her official responsibility as a public servant within a period of one (1) year before the termination of his or her service with the City; and

C. One-Year Restriction on Public Servants Representing Other Persons Before Former Department. No current or former public servant, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City) with any officer or employee of the department, board, commission, office or other unit of government, for which the public servant served.

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1. Mayor, Members of the Council, and their Senior Staff Members. For purposes of the one-year restriction under subsection (B), the "department" for which a former Mayor, a former member of the Council, or a former senior staff member to either the Mayor or a member of the Council served shall be the City and the prohibition in subsection (B) shall extend to communications with:

- a. a board, department, commission or agency of the City;
- b. an officer or employee of the City;
- c. an appointee of a board, department, commission, agency, officer, or employee of the City; or
- d. a representative of the City.

2. For the purposes of this subsection, "a former senior staff member to either the Mayor or a member of the Council" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: chief of staff, deputy chief of staff, communications or other director, legislative or policy aide, or any position in the Mayor's or Council Member's office that is required to file a Form 700 pursuant to the Oakland Conflict of Interest Code.

D. Employment by a Party to a City Contract on Which the Public Servant Worked. No current or former public servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the officer or employee personally and substantially participated in the award of the contract.

E. Waiver by the Public Ethics Commission.

- 1. At the request of a current or former public servant, the Public Ethics Commission may waive any of the restrictions in Subsections (A), (B), or (C) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business union or association.
- 2. At the request of a current or former public servant, the Public Ethics Commission may waive the prohibition in Subsection (D) if the Commission determines that imposing the restriction would cause extreme hardship for the City public servant.

VI. Perks of Office and Misuse of City Resources or Position for Private Gain

A. Misuse of City Resources or Position.

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1. As prohibited by California Government Code section 8314, a public servant may not use or permit others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law.
 - a. Definitions. For purposes of this section, the following definitions provided in California Government Code section 8314 apply:
 - i. "Personal purpose" means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.
 - ii. "Campaign activity" means an activity constituting a contribution as defined in California Government Code section 82015 or an expenditure as defined in California Government Code section 82025. "Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.
 - iii. "Public resources" means any property or asset owned by the City, including but not limited to land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City-compensated time.
 - iv. "Use" means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.
 - b. Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on government activities, operations, or policies, provided that the informational activities are otherwise authorized by the laws of the City or California and the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.
2. No public servant or candidate for City office may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City public servant or candidate or any other person.

B. Prohibitions Related to Political Activity and Solicitation of Contributions.

1. Political Activities. As prohibited by California Government Code section 3203, no restrictions shall be placed on the political activities of any public servant, except as otherwise provided in federal, state or local law.
2. Political Influence. As prohibited by California Government Code section 3204, no public servant who holds, or who is seeking election or appointment to, any office or employment in the City shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the City, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.
3. Solicitation of Contributions.
 - a. As prohibited by California Government Code section 3205, a public servant or candidate for City of Oakland office shall not, directly or indirectly, solicit a political contribution from another City public servant, or from a person on an employment list of the City, with knowledge that the person from whom the contribution is solicited is a public servant or is on an employment list of the City. This Section shall not prohibit a City public servant or candidate for City office from requesting political contributions from public servants if the solicitation is part of a solicitation made to a significant segment of the public which may include City public servants.
 - b. As prohibited by California Government Code section 3205, an Oakland Unified School District Board Director or candidate for such office shall not, directly or indirectly, solicit a political contribution from an employee of the District, or from a person on an employment list of the District, with knowledge that the person from whom the contribution is solicited is an employee of the District or on an employment list of the District. This Section shall not prohibit a Director or candidate from requesting political contributions from District employees if the solicitation is part of a solicitation made to a significant segment of the public which may include District employees.
4. Activities While in Uniform. As prohibited by California Government Code section 3206, a public servant shall not participate in political activities of any kind while in his or her City work-related uniform.

C. Restrictions on Gifts.

1. A person shall not offer or make, and a public servant, Oakland Unified School District Board Director, or candidate for City office shall not accept, a gift when it is reasonably foreseeable that the public servant, School Board Director or candidate could be influenced by the gift in the performance of an official act.
2. A public servant, Oakland Unified School District Board Director, or candidate for City office who is required to file a statement of economic interests pursuant to the California Political Reform Act shall comply with the gift requirements and restrictions in the Political Reform Act and the California Constitution except that the total annual gift limit per source for public servants and Directors shall be \$100.
3. In addition to the gift limits and reporting requirements imposed on certain public servants by the Political Reform Act and section (C)(1), a public servant or Oakland Unified School District Board Director shall not solicit or accept, and a person who is a restricted source shall not offer or make, any gift or loan valued at more than \$25 cumulatively in a calendar year from a person who the public servant knows or has reason to know is a restricted source, except loans received from commercial lending institutions in the ordinary course of business. This prohibition applies to all public servants regardless of whether they must file a statement of economic interests.
 - a. Restricted Source. For purposes of this section, a restricted source means:
 - i. a person doing business with or seeking to do business with the department of the public servant or School Board Director; or
 - ii. a person who during the prior 12 months knowingly attempted to influence the public servant or School Board Director in any legislative or administrative action.
 - b. Gift. For purposes of this subsection, the term gift has the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq., and the regulations adopted thereunder. Gifts exempt from the limits imposed by California Government Code Section 89503 shall also be exempt from the prohibition set forth in this subsection.
4. A lobbyist, lobbying firm, or any other person or entity shall not act as an agent or intermediary in the making of any gifts or arrange for the making of any gift by another person to any public servant or Oakland Unified School District Board Director.
5. A public servant, Oakland Unified School District Board Director, or candidate for City office may request that the Public Ethics Commission provide the requestor with written advice concerning the legality of accepting any specific

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gift. Such request shall contain sufficient information to allow the Commission or its staff to properly consider the matter. The Commission or its staff shall provide written advice in response to such a request within a reasonable time after the Commission's receipt of the request.

VII. Fair Process

- A. Prohibition on Bribery.** No person shall offer or make, and no public servant shall solicit or accept, anything of value in exchange for the performance of any official act.
- B. Prohibition on Payment for Office or Appointment.** It is unlawful for any public servant to give or promise to give to any person any portion of his or her compensation or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for, or elected to any office or employment.
- C. Prohibition on City Public Servant Influencing Contracts with Former Employer.** In addition to the requirements of Government Code Sections 87100, *et seq.*, no public servant shall knowingly make, participate in making, or attempt to use his or her official position to influence any governmental decision directly relating to any contract where the public servant knows or has reason to know that any party to the contract is a person by whom the public servant was employed immediately prior to entering government service within 12 months prior to the time the official acts on the matter.
- D. Prohibition on Nepotism.**
1. In addition to the prohibition in Oakland City Charter section 907, which is incorporated herein by reference, a public servant may not make, participate in making or otherwise seek to influence a decision of the City regarding an employment or contract action involving a relative. Nothing in this section shall prohibit a public servant from acting as a personal reference or providing a letter of reference for a relative who is seeking appointment to a position in any City department, board, or commission other than the officer or employee's department, board, or commission or under the department, board or commission's control.
 - a. A department head who is prohibited under section D(2) from participating in an employment action involving a relative shall delegate in writing to an employee within the department any decisions regarding such employment action.
 2. A public servant may not supervise another public servant who is also a relative. This prohibition applies to the regular assignment for each public servant's position and does not apply to temporary assignments such as working an overtime or traded shift, or substituting for a fellow employee.
- E. Non-Interference in Administrative Affairs.** As prohibited by City Charter section 218, except for the purpose of inquiry, the Council and its members shall deal with the

administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. In addition to the other remedies available in this Act, a violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

VIII. Public Ethics Commission Role and Responsibilities

A. Prevention. The Commission shall provide timely advice, assistance, and training to public servants and candidates who are subject to the requirements of this Act.

1. All public servants who must file a Form 700 Statement of Economic Interest shall receive training regarding government ethics laws no less than once every two years facilitated by the Public Ethics Commission in partnership with the Office of the City Attorney.
2. The Commission, with the assistance of the City Attorney, shall issue an ethics resource guide for City public servants which shall be updated periodically.

B. Implementation. The Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this Act, subject to section 2.24.070 of the Oakland Municipal Code.

C. Enforcement. A person who violates this Act is subject to criminal, civil, administrative, and other penalties provided for in this section. In the event criminal violations of the Act come to the attention of the Commission, the Commission may forward the information to the appropriate enforcement agency.

1. **Criminal Penalties.** Any person who knowingly or willfully violates any provision of this Act is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of any provision of this Act, shall be liable under the provisions of this Act.
 - a. No person convicted of a misdemeanor under this Act shall act as a lobbyist or as a City contractor for a period of four years following the date of the conviction unless the court, at the time of sentencing, specifically determines that this provision shall not be applicable.

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- b. For the purposes of this section, a plea of nolo contendere shall be deemed a conviction.
2. Civil Penalties. Any person who intentionally or negligently violates any provision of this Act shall be liable in a civil action brought by the Public Ethics Commission or the City Attorney for an amount up to \$5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.
- a. If two or more persons are responsible for any violation, they shall be jointly and severally liable.
 - b. In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant.
3. Administrative penalties. Any person who violates any provision of this Act shall be liable in an administrative proceeding before the Commission held pursuant to the Commission's Complaint Procedures. The Commission may impose administrative penalties in an amount up to \$5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Commission may issue warnings to or require other remedial measures.
4. Injunctive Relief. The Commission, City Attorney, or any individual residing within the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of sections IV, V, VI and VII this Act.
- a. Any person, other than the Commission or City Attorney, before filing a civil action pursuant to this subsection, shall first file with the Commission and City Attorney a written request for the Commission and/or City Attorney to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Commission and City Attorney shall each respond in writing within ninety (90) days after receipt of the request indicating whether they intend to file an action for injunctive relief. If either indicates in the affirmative and files an action within sixty (60) days thereafter, no other action may be brought unless the action brought by the Commission or City Attorney is dismissed without prejudice. If the Commission needs additional time to determine whether to file an action or needs additional time to file the action, the Commission may, by resolution indicating evidence of good cause and notice thereof to the requestor, extend the ninety day time period by another sixty (60) days. If both the Commission and City Attorney indicate they will not pursue the matter, or if neither they files an action within the sixty (60) day period following their affirmative response to the requestor, the requestor may file suit for injunctive relief. No resident may bring an action under this Section if the Commission commenced

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administrative action arising out of the same facts, resulting in either the imposition of or stipulation to remedial measures to prevent reoccurrence of the violation or compel compliance.

5. **Costs of Litigation.** The court may award to a party, other than an agency, who prevails in any civil action authorized by this Act, his or her costs of litigation, including reasonable attorneys' fees. If the costs or fees are awarded against the City, the payment of such award shall be the responsibility of the City.
6. **Limitation of Actions.** No criminal, civil or administrative action alleging a violation of this Act shall be commenced more than four years after the date of the violation.
 - a. Commencement of an administrative action is the date the complaint was filed by another person or the date of the Commission's initial notification to the respondent that a violation has been alleged pursuant to the Commission's Complaint Procedures.
 - b. For the purposes of this section, the date of the violation means the earliest date when the complainant, Commission, or other prosecuting authority has, or reasonably should have, knowledge of the violation and its cause, and a suspicion of wrongdoing. Suspicion shall be determined from an objective standpoint of what is reasonable for the complainant, Commission, or other prosecuting authority to know or suspect under the facts of the situation.
7. **Violations Related to Enforcement.**
 - a. **False Charges and Information.** A person shall not knowingly and intentionally furnish false or fraudulent complaints, evidence, documents, or information to the Public Ethics Commission, District Attorney or City Attorney, or knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Commission, District Attorney or City Attorney of an alleged violation of this Act.
 - b. **Duty to Cooperate and Assist.** A public servant shall cooperate and assist with an investigation into an alleged violation of this Act, upon the request of the Public Ethics Commission, District Attorney or City Attorney.

IX. Miscellaneous Provisions

- A. **Severability.** The provisions of this Act are severable. If any provision of this Act is held invalid, the remaining provisions shall not be affected.
- B. **References to Other Laws in this Section.** All references to other laws in this Section shall refer to these laws as they may be amended from time to time.