



DAN KALB, Council Member AM CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Date: November 6, 2014

Subject: **Adoption of Proposed Governmental Ethics Act**

Colleagues on the City Council,

I am submitting the attached supplemental recommended edits to the Governmental Ethics Act. The edits mirror the recent recommendations submitted by the Public Ethics Commission regarding Section VI.D., except that they treat executive officers under boards and commissions in the same manner as department heads. In addition, a typo correction to V.A.5. is included.

Additions to the measure text are indicated by underscoring, while deletions are indicated by ~~strike-through type~~.

Respectfully submitted,

A handwritten signature in black ink that reads "Dan Kalb". The signature is fluid and cursive.

Dan Kalb, Councilmember

Prepared by:
Oliver Luby, Policy Manager
Office of Councilmember Dan Kalb

Section V.A.5.

5. Exception for testimony. The prohibitions in Subsections VA(1) and A(4) do not prohibit a former Public Servant from testifying as a witness pursuant to a subpoena, ~~Public Servant~~ provided that no compensation is received other than the fees regularly provided for by law or regulation for witnesses.

Section VI.D.

- D. **Prohibition on City Officers and Board or Commission Members Contracting with the City.** During his or her term of office, no City Officer shall enter, submit a bid for, negotiate for, or otherwise attempt to enter, any contracts or subcontracts with the City, other than compensation or employment stemming from their office held, ~~where the amount of the contract or the subcontract exceeds \$10,000.~~ During his or her term of office, no member of a City Board or Commission, as defined in this subsection shall enter, submit a bid for, negotiate for, or otherwise attempt to enter, any contracts or subcontracts with the City, other than compensation or employment stemming from their office held, where the amount of the contracts or the subcontracts exceeds \$10,000 in aggregate.
 1. Definitions. For purposes of this Subsection VI(D), the following definitions shall apply:
 - a. "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, or other legal entity or undertaking organized for economic gain.
 - b. "City Officer" shall mean the Mayor, City Council Members, City Administrator, City Attorney, City Auditor, City Controller, the head of any City department, ~~members of City boards and commissions,~~ and any person appointed as the chief executive officer under ~~such a~~ City board or commission.
 - ~~c. For the purposes of Subsection VI(D),~~ "City Board or Commission" shall include the Children's Fund Planning & Oversight Commission, the Housing Authority, the Housing, Residential Rent & Relocation Board, the Planning Commission, the Port Commission, the Public Ethics Commission, the Police and Fire Retirement Board, and any other City board or commission with decision making authority beyond merely the making of recommendations.
 - ~~d.e.~~ "Contract" means any agreement other than a grant or an agreement for employment in exchange for payment or benefits.
 - ~~e.d.~~ "Subcontract" means a contract to perform any work for a primary contractor that has an agreement with the City.
 2. Exceptions. This Subsection D shall not apply to the following contracts or subcontracts:

- a. A contract or subcontract with a 501(c)(3) nonprofit organization;
 - b. A contract or subcontract with a business with which a City Officer or member of a City Board or Commission, as defined in this subsection, is affiliated unless the City Officer or Board or Commission member exercises management and control over the business. A member exercises management and control if he or she is:
 - i. An officer or director of a corporation;
 - ii. A majority shareholder of a closely held corporation;
 - iii. A shareholder with more than five percent beneficial interest in a publicly traded corporation;
 - iv. A general partner or limited partner with more than 20 percent beneficial interest in the partnership; or
 - v. A general partner regardless of percentage of beneficial interest and who occupies a position of, or exercises management or control of the business;
 - c. A contract or subcontract entered into before a member of a board or commission commenced his or her service;
 - d. An agreement to provide property, goods or services to the City and County at substantially below fair market value; or
 - e. A settlement agreement resolving a claim or other legal dispute.
3. Waiver. The Ethics Commission may waive the prohibitions in this Subsection VI(D) for any City Officer or member of a City Board or Commission, as defined in this subsection, who, by law, must be appointed to represent any profession, trade, business, union or association.
 4. Limitation. Failure of a City Officer or member of a City Board or Commission, as defined in this subsection to comply with this Subsection VI(D) shall not be grounds for invalidating any contract with the City.