



CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

INTRODUCED BY THE PUBLIC ETHICS COMMISSION

**ADOPT AN ORDINANCE AMENDING THE “PUBLIC ETHICS COMMISSION” ENABLING ORDINANCE TO UPDATE THE ORDINANCE TO CONFORM WITH CITY CHARTER SECTION 603, DELETE DUPLICATIVE LANGUAGE THAT NOW APPEARS IN THE CITY CHARTER, AND CODIFY THE COMMISSION’S ADMINISTRATIVE HEARING AND FINE COLLECTION PROCESS**

**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**, in 2014, Oakland citizens voted to expand the PEC’s authority and resources in order to better fulfill its mission and goal of educating and enforcing the city’s ethics laws; and

**WHEREAS**, as a result of the 2014 vote to expand the PEC’s authority and resources, Section 603 was added to the Oakland City Charter in November of 2014; and

**WHEREAS**, Oakland Municipal Code Chapter 2.24 pre-existed the PEC Charter amendments and detailed the PEC’s jurisdiction and authority; and

**WHEREAS**, Oakland Municipal Code Chapter 2.24 contains numerous duplications of Oakland City Charter section 603 while omitting provisions regarding the administrative hearing process and the collection of administrative fines; and

**WHEREAS**, the PEC wishes to remove and revise the duplicative sections and add a section on administrative hearings, fines and penalties;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Title 2, Chapter 2.24 of the Oakland Municipal Code containing the enabling ordinance of the Public Ethics Commission is amended to add, delete or modify sections as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type.) Portions of regulations not cited or not shown in underscoring or strike-through are not changed.

**SECTION 2. Code Amendments.**

Title 2, Chapter 2.24 is amended as follows:

**2.24.010 - Creation.**

Oakland City Charter Section ~~202603~~ ~~has established~~ the Public Ethics Commission (Commission) and proscribes its role and function, Commissioner qualifications and appointment process, enforcement and investigative authority, and staff resources, among other provisions.

**2.24.020 – Commission Operations.**

- A. Implementation of City Charter enumerated role, functions, and duties. The Commission shall adopt policies, procedures, and regulations for the conduct of its business by a majority vote of the members present.
- B. Process. A majority vote of the Commission is required for the adoption of any motion or resolution.
- C. Transmittal. The Commission shall transmit to the City Council any rules, regulations, or procedures adopted by the Commission within seven calendar days of adoption. A rule, regulation or procedure adopted by the Commission shall become effective sixty days after the date of adoption by the Commission unless, before the expiration of the sixty day period, two-thirds of all the members of City Council vote to veto the rule, regulation, or procedure.
- D. Policies and Procedures. Policies and procedures include, but are not limited to, operations policies to guide the Commission’s general operations, and complaint procedures to establish the administrative process for the investigation and enforcement of potential violations of government ethics, transparency, and campaign finance laws or policies.

**~~2.24.020 – Functions and duties.~~**

~~It shall be the function and duty of the Public Ethics Commission, for and on behalf of the city, its elected officials, officers, employees, boards and commissions:~~

- ~~A. — Oversee compliance with the city Campaign Reform Ordinance.~~
- ~~B. — Oversee compliance with the city Code of Ethics.~~
- ~~C. — Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.~~
- ~~D. — Oversee the registration of lobbyists in the city should the City Council adopt legislation requiring the registration of lobbyists.~~
- ~~E. — Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.~~
- ~~F. — Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on city elections and campaigns.~~
- ~~G. — Make recommendations to the City Council regarding amendments to the city Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal report to the City Council every two years concerning the effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public ethics.~~
- ~~H. — Set compensation for the office of City Councilmember which shall be reviewed by the Commission and adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent above the base salary as adjusted.~~
- ~~I. — Each year, and within the time period for submission of such information for the timely completion of the city's annual budget, provide the City Council with an assessment of the Commission's staffing and budgetary needs.~~
- ~~J. — Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.~~
- ~~K. — Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.~~

- ~~L. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.~~
- ~~M. Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.~~
- ~~N. Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:
  - ~~1. Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.~~
  - ~~2. Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.~~~~
- ~~O. Perform such other functions and duties as may be prescribed by the Oakland Code of Ethics, conflict of interest regulations, ordinances as they may be adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the city and Campaign Reform Ordinance.~~

~~In prescribing the above duties and functions of the Commission, it is not the intent of the Council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to any other city board or commission or to a city department. As to such functions or responsibilities of another board or commission or of a department of the city, the Commission will render assistance and advice to such board, commission or department as may be necessary. Nothing in this section shall be construed to prevent city officers, employees, and elected or appointed officials from seeking advice directly from the City Attorney, or, when appropriate, the Fair Political Practices Commission, concerning regulations and ordinances related to campaign financing, conflicts of interest, lobbying, and public ethics.~~

#### **2.24.030 – Authority.**

~~In furtherance of the above enumerated duties and functions, the Oakland Public Ethics Commission is authorized to:~~

- A. ~~Conduct investigations, audits and public hearings.~~
- B. ~~Issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before the Commission. The Commission may find a person in contempt as provided by the general law of the state for failure or refusal to appear, testify, or to produce required books, papers and documents.~~
- C. ~~Impose penalties and fines as provided for by ordinance. 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 a mutually agreed upon arbitrator whose decision shall be final. The decision of the arbitrator is not appealable to the City Council.~~

#### **~~2.24.040—Composition—Terms of office.~~**

- A. ~~The Oakland Public Ethics Commission shall consist of seven members. The Commission shall be appointed as follows: Three members who represent local civic organizations with a demonstrated history of involvement in local governance issues shall be nominated for appointment by the Mayor, with confirmation by the City Council, pursuant to Section 601 of the City Charter. Four members shall be appointed, following a public recruitment and application process by the unanimous vote of the three representatives appointed by the Mayor with confirmation by the City Council. The four members so appointed shall reflect the interests of the greater Oakland neighborhood and business communities. Commissioners shall serve without compensation. Prior to appointment of a Commission member or members, by the Mayor, each member of the City Council may provide the Mayor with a list of up to three individuals qualified by experience and background to serve on the Commission. In appointing members to the Commission, the Mayor shall consider the recommendations of the City Council.~~
- B. ~~Four members shall constitute a quorum.~~
- C. ~~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, except that for terms commencing immediately preceding adoption of the ordinance codified in this chapter, two members shall be appointed for a one-year term, two members shall be appointed for a two-year term, and three members shall be appointed for a three-year term. No member may serve more than one consecutive three-year term.~~
- D. ~~A vacancy on the Commission will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within fourteen (14) days of appointment. A vacancy shall be filled no sooner than thirty (30) days and no later than sixty (60) days from the date that such vacancy occurs. Any member of the City Council who chooses to recommend a person or persons~~

~~to fill a vacancy of a position appointed by the Mayor and confirmed by the City Council pursuant to subsection A of this section shall forward such recommendation to the Mayor for consideration no later than thirty (30) days from the date that a vacancy occurs.~~

~~E. A member appointed by the Mayor may be removed pursuant to Section 601 of the Charter. A member appointed by the unanimous vote of the three members appointed by the Mayor and confirmed by the Council may be removed by the unanimous vote of the three members appointed by the Mayor and confirmed by the Council. Among other things, conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Commission, shall constitute cause for removal.~~

#### **~~2.24.050 – Qualifications.~~**

~~Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. During his or her tenure, and for one year thereafter, no member of the Commission shall:~~

- ~~A. Be employed by the city or have any direct and substantial financial interest in any work or business or official action by the city.~~
- ~~B. Seek election to any other public office, or participate in or contribute to an Oakland municipal campaign.~~
- ~~C. Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.~~

#### **2.24.030 - Commission Structure.**

- A. Role of the Commission. The Commission, as a whole, is responsible for establishing Commission policies and priorities, promoting government ethics and transparency, and serving as a quasi-judicial body that adjudicates enforcement matters brought to the Commission by staff.
- B. Commission Staff. The Executive Director reports to the Commission Chair and the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission. The Executive Director leads and supervises Commission staff and has the authority to hire and remove employees within constraints set by the Civil Service Commission, the Department of Human Resources, and the Commission’s budget.

**2.24.0460 - Election of chairperson and meetings.**

A. Election of Chair and Vice-Chair. At the first regular meeting of each year, the members shall elect a chairperson and a vice-chairperson.

A.B. Meetings. The Commission shall hold regular meetings at an established time and place suitable for its purpose. Other meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notice of special meetings shall be provided the members, the Council, and the public press at least seventy-two (72) hours before the meeting is scheduled to convene.

**~~2.24.070 – Rules, regulations and procedures.~~**

~~The Commission shall establish rules, regulations and procedures for the conduct of its business by a majority vote of the members present. The Commission must vote to adopt any motion or resolution. The Commission shall transmit to the City Council any rules, regulations and procedures adopted by the Commission within seven calendar days of adoption. A rule, regulation or procedure adopted by the Commission shall become effective sixty (60) days after the date of adoption by the Commission unless before the expiration of this sixty (60) day period two-thirds of all the members of the City Council vote to veto the rule, regulation or procedure.~~

**2.24.0580 - Staff assistance.**

The City Manager, or designees thereof, shall provide the Commission with staff assistance as necessary to permit the Commission to fulfill the functions and duties as set forth in the City Charter and in ordinances within the Commission's jurisdiction~~above~~.

**2.24.0690 - Legal assistance.**

The City Attorney is the Commission's legal advisor. The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict. In the event of a conflict, the City Attorney shall retain outside counsel.

**2.24.070 – Procedures for Imposing Administrative Fines.**

A. Purpose. This section establishes standard procedures for the imposition, enforcement, collection, and administrative review of fines and penalties for violation of any law or ordinance under the purview of the Commission. The procedures set forth in this section are adopted pursuant to Government Code Section 53069.4 and the City of Oakland's power to govern municipal affairs under Article 11 of the California Constitution. By adopting this section, the City does not intend to limit the ability of the City to use any other remedy, civil or criminal, that may be available in a particular case. The City may use the procedures set forth in this section as an alternative to, or in conjunction with, any other available remedy.

B. Complaint Procedures. The Commission shall adopt procedures to establish the administrative process for the investigation and enforcement of violations of the laws within the Commission's jurisdiction. These procedures shall dictate the process for receiving, initiating, and reviewing complaints, conducting investigations or audits, and resolving cases prior to an administrative hearing.

C. Administrative Hearing Process.

1. Selection of Hearing Panel or Examiner.

If the Commission decides to schedule a hearing, the Commission may either sit as a hearing panel or delegate authority to one or more members or to an independent hearing examiner.

2. Pre-Hearing Process and Submissions.

The Commission must provide notice of the hearing to the responding party and may define reasonable time limits and other requirements for submission of any proposed subpoenas, resolution of any procedural or preliminary matters not related to the truth or falsity of the factual allegations, and submission of any written materials.

3. Conduct of Hearings.

The Commission may define reasonable terms for the conduct of hearings, receipt and rules of evidence, presentation of testimony, and order of oral arguments. The Commission also may establish a process for hearing a matter in which the responding party refuses or otherwise fails to appear at a properly noticed hearing.

4. Action Upon Conclusion of Hearing.

The Commission may define reasonable time limits and other requirements for preparation and submission of findings of fact and conclusions by the hearing panel or examiner and any procedure for requesting re-hearing.

The Commission's order following a hearing may determine that any violation of law occurred only if the weight of the evidence shows that it was more likely than not that a violation occurred.

The Commission's order and any findings of facts and conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions, and any appropriate fines. The Commission's decision following a hearing shall be final and shall constitute closure of the administrative process with respect to any complaint.

D. Payment of Administrative Fines.



Any fines imposed by a final order of the Commission will be required to be paid by the due date identified in the order, but no sooner than thirty (30) days after the order is issued. Fines that remain unpaid after the due date will be subject to a late payment penalty of 10 percent plus interest at a rate of 1 percent per month on the outstanding balance.

E. Remedies for Non-Payment.

The amount of any fine not paid within the time required under this Chapter, including the amount of any applicable late payment charges, constitutes a debt to the City. The City may file a civil action or pursue any other legal remedy to collect such money. In any civil action to obtain payment of the fine, and any late payment penalties, the City shall be entitled to obtain a judgment for the amount of the unpaid fines and penalty payments and, in addition, for the costs and attorneys' fees incurred by the City in bringing any civil action to enforce the provisions of this Section.

F. Right to Judicial Review.

Any person aggrieved by the action of the hearing officer taken pursuant to this Chapter may obtain review of the administrative decision by filing a petition for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

If a final order of a court of competent jurisdiction determines that the City has not properly imposed a fine pursuant to the provisions of this Chapter, and if the fine has been deposited with the City during the course of the legal proceeding, the City shall promptly refund the amount of the deposited fine, consistent with the court's determination, together with interest at the average rate earned on the City's portfolio for the period of time that the City held the fine amount.

**2.24.100 - Protection against retaliation.**

- A. No officer or employee of the city shall use or threaten to use any official authority or influence to effect any action as a reprisal against a city officer or employee for acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.
- B. No officer or employee of the city shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

**SECTION \_\_. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION \_\_. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

### **ADOPT AMENDMENTS TO THE “PUBLIC ETHICS COMMISSION” ENABLING ORDINANCE TO UPDATE THE ORDINANCE TO CONFORM WITH CITY CHARTER SECTION 603, DELETE DUPLICATIVE LANGUAGE THAT NOW APPEARS IN THE CITY CHARTER, AND CODIFY THE COMMISSION’S ADMINISTRATIVE HEARING AND FINE COLLECTION PROCESS**

This Ordinance supplements and expounds on the Public Ethics Commission’s (PEC) authority and staffing as codified in Oakland City Charter Section 603. This Ordinance further adds a section codifying the PEC’s procedures regarding administrative hearings, penalties and fines.