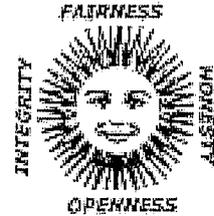


CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, June 3, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Monique Rivera, Eddie Tejada, Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

MEETING AGENDA

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**

CONSENT ITEMS¹

4. **Approval of Commission Draft Minutes.**
 - a. April 9, 2013, Special Meeting Minutes (Attachment 1)
 - b. May 13, 2013, Special Meeting Minutes (Attachment 2)

GUEST PRESENTATIONS

5. **City Council Code of Conduct Video Project.** Commission staff Lauren Angius served as a mentor for the SPARK Apprenticeship Program through Frick Middle School in East Oakland. As part of this 8-week program, the student apprentice, Akira Rodgers, created a video guide to the City Council Code of Conduct and will premiere the video with the Commission.
6. **Limited Public Financing Program Policy Review.** The Commission will receive a presentation by Greg Gonzales, graduate student at the U.C. Berkeley Goldman School of Public Policy, who conducted a policy review of the City of Oakland's Limited Public Financing Program.

ACTION ITEMS

7. **City Council Salary Adjustment Required by Law.** The Commission will discuss and take action to adjust the salaries of Oakland City Councilmembers according to the increase in the Consumer Price Index (2.4 percent) as required by Oakland City Charter. (Attachment 3)

¹ Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, June 3, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.



DISCUSSION ITEMS

8. **Records Management Policy.** The City Clerk's office will provide the Commission with an update on the development of the City's Records Management Policy.
9. **Subcommittee Reports.** The Commission currently has two subcommittees: 1) Access to Public Records, and 2) Complaint Procedures. The Commission may make announcements regarding either of these subcommittees.
10. **Complaint/Enforcement Program.** An updated list of pending cases is included. Commissioners may discuss the complaint process in general and may discuss any of the complaints listed in the attached spreadsheet. (Attachment 4)

INFORMATION ITEMS

11. **Commission Publications.** Commission staff continues to update print publications and the Commission's website. Revised versions of the Handbook for Board and Commission Members (Attachment 5) and the Ethics Resource Guide for staff and officials (Attachment 6) are included with this agenda packet for informational purposes.

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Public Ethics Commission or its Committees, please contact the Office of the City Clerk (510) 238-7370. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandnet.com/pec.

Approved for Distribution

5/24/13
Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Tuesday, April 9, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

DRAFT



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Monique Rivera, Eddie Tejada, and Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director

MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:35 p.m.

Members present: Commissioners Farnham, Johnson, Kimberley, Tejada, and Whitman

Staff present: Whitney Barazoto

2. Staff and Commission Announcements.

Ms. Barazoto announced that the Commission is scheduling a Public Records Act Training for May 6, 2013 (later changed to May 13, 2013). Also, the Commission will be adjusting City Council member salaries in accordance with the Commission's mandate at the June regular meeting.

3. Open Forum.

There was one speaker: Katherine Gavzy.

CONSENT ITEMS

4. Approval of Commission Draft Minutes.

The Commission approved 6-0 the February 4, 2013 and March 4, 2013 Meeting Minutes.

ACTION ITEMS

5. Public Ethics Commission Annual Report 2012

The Commission discussed the content and language in the Annual Report 2012 draft.

There were no speakers.



Commissioner Johnson moved and Commissioner Baker seconded to adopt the draft of the Public Ethics Commission Annual Report 2012. The motion passed 6-0.
(Commissioner Rivera was absent for this vote)

6. Public Ethics Commission Framework to Ensure Compliance

Commissioners discussed the proposed compliance model and its application to the Commission's mandate and current projects.

There was one speaker: Barbara Newcombe.

Commissioner Rivera moved and Commissioner Kimberley seconded to adopt the Commission's compliance model. The motion passed 7-0.

DISCUSSION ITEMS

7. Non-Interference in Administrative Affairs

Commissioners discussed the City Auditor's Non-Interference in Administrative Affairs Audit and directed staff to provide a status update and an opportunity to revisit the item at the July, 2013, Commission meeting.

There were two speakers: Katherine Gavzy and Virian Bouze.

8. Ethical Climate Survey

Commissioners discussed the City Auditor's 2012 Ethical Climate Survey and the Commission took the results into consideration.

There was one speaker: Virian Bouze.

9. Subcommittee Reports

Complaint Procedures Subcommittee Chair Farnham announced that the subcommittee is scheduling to meet soon to discuss a draft of amended complaint procedures.

Access to Public Records Subcommittee Chair Baker gave an update on the work of the subcommittee and proposed an informational hearing tentatively set for May 20 (now scheduled for June 25).

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Tuesday, April 9, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

DRAFT



10. Complaint/Enforcement Program

The Commission took the complaint log under advisement.

The meeting adjourned at 8:27 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, May 13, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

DRAFT



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Eddie Tejada, and Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director

MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:30 p.m.

Members present: Commissioners Farnham, Baker, Johnson, Kimberley, Tejada, and Whitman

Staff present: Whitney Barazoto

2. Staff and Commission Announcements.

Executive Director Whitney Barazoto announced that the Commission has scheduled an Open Government/Transparency Hearing for June 25, 2013 featuring Tim O'Reilly, as well as representatives from the Sunlight Foundation, Davenport Institute, New America Foundation, California Forward, and Open Oakland.

3. Open Forum.

There were no speakers.

GUEST PRESENTATION

4. California Public Records Act and California Ralph M. Brown Act

Terry Francke, General Counsel, Californians Aware presented on the California Public Records Act and the California Ralph M. Brown Act and answered questions.

5. Oakland Sunshine Ordinance

Kathleen Salem-Boyd, Deputy City Attorney, Oakland City Attorney's Office, provided an overview of the Oakland Sunshine Ordinance for the Commission, City staff, and the public as well as answered questions.

The meeting adjourned at 9:50pm.

CITY OF OAKLAND
Public Ethics Commission

Lloyd Farnham, Chair
 Aspen Baker, Vice Chair
 Roberta Johnson
 Benjamin Kimberley
 Monique Rivera
 Eddie Tejeda
 Jenna Whitman
 Whitney Barazoto, Executive Director



TO: Public Ethics Commission
 FROM: Whitney Barazoto, Executive Director
 DATE: May 17, 2013
 RE: Mandated City Council Member Salary Adjustment

Each year, the Commission is responsible for adjusting the City Councilmember salary level according to the increase in the Consumer Price Index (CPI) for the preceding year, and for making additional salary increases as deemed necessary by the Commission. This memorandum provides background information for the Commission to do the following:

- 1) adjust Councilmember salaries per the CPI increase as mandated by law, and
- 2) determine whether to adjust Councilmember salaries beyond the required increase, up to a combined total of 5%.

Background

Section 202 of the City Charter establishes the Public Ethics Commission to, among other things, "set City Councilmember compensation" in the following manner:

Beginning with Fiscal Year 2003-2004, the Public Ethics Commission shall annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding year. The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters. [Oakland City Charter, Sec. 202(c)]

Payroll adjustments take effect on the first payroll period after the beginning of the new fiscal year, which will begin in July, 2013.

In June 2012, the Commission issued a resolution to increase Councilmember salaries by the required CPI percentage increase while requesting that the City Council decline to accept the salary adjustment in light of significant budget shortfalls facing the City for fiscal years 2011-13. Councilmembers generally have declined salary increases for the last 4 years and now receive an annual salary of \$72, 859.28, the same amount authorized by the Commission in June 2009. This is roughly 6% less than the salary authorized by the Commission in 2012. Councilmember

Elizabeth Schaaf is the exception, as she voluntarily receives \$67,709.20 or 13% less than the 2012 Commission-authorized salary.

The table below shows salary increases approved by the Commission since 2004.

City Council Salary Adjustments

Year	PEC Authorized Increase (%)	Salary Amount with Increase (\$)
July 2012	2.1 (CPI)	77,772.25
June 2011	2.8 (CPI)	76,172.62
June 2010	1.7 (CPI)	74,097.88
June 2009	0.8 (CPI)	72,859.28*
June 2008	2.9 (CPI)	72,281.04
June 2007	5	70,243.94
July 2006	4	66,899.04
July 2005	2.1 (CPI)	64,326.08
June 2004	5	63,003.94

*This is the current salary taken by all returning Councilmembers except Councilmember Elizabeth Schaaf, who takes a salary of \$67,709.

The Commission now has the legally-required duty to adjust the annual salary according to the Consumer Price Index. Over the last 12 months, the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose metropolitan area rose 2.4 percent, as indicated by the U.S. Bureau of Labor Statistics.¹ This increase of 2.4 percent puts the new salary for City Councilmembers at \$79,638.78.

Additional Salary Increase Option

In addition to the required increase per CPI, the Commission has the discretion to increase City Councilmember salaries for a maximum total potential increase of 5 percent, including the CPI adjustment. In determining whether to authorize an additional discretionary increase, the Commission may wish to consider the current budget context in Oakland, as well as current salaries of Councilmembers in cities comparable to Oakland.

The City of Oakland still is experiencing significant budget shortfalls, as outlined in the Mayor's proposed Budget for FY 2013-15. Generally, departments are still being asked to decrease their budgets by 10% for the next fiscal year. While no furloughs currently are planned for FY 2013-2014, union and budget negotiations are still under way.

For additional background information, attached is a table of City Councilmember salaries in seven other cities that are comparable to Oakland in either population size or location.

¹ U.S. Bureau of Labor Statistics. San Francisco Region Consumer Price Index. February 2012 – February 2013. <http://www.bls.gov/ro9/cpisanf.htm>. Website accessed March 27, 2013.

Salary Ordinance

The current salary ordinance for the City of Oakland, which is supposed to represent the current pay ranges for all City positions, does not reflect the current authorized salary for City Councilmembers. Staff suggests that the City amend its salary ordinance to accurately reflect the total authorized salary amount available to Councilmembers, which, upon approval by the Commission at the June 3, 2013, meeting, should be \$79,638.78 annually, or roughly \$6636.57 per month. City Councilmembers may still wish to decline the current or cumulative increases as has been done in previous years. However, that determination is made by the Councilmembers themselves and is separate from the salary amount stated in the ordinance and available to Councilmembers.

Recommendation

Staff recommends that the Commission issue a resolution to adjust City Councilmember salaries by the required 2.4 percent according to the Consumer Price Index.

Staff will work with the relevant City departments to ensure that the salary ordinance is amended appropriately.

City Council Member Salary and Benefit Comparison 2012

City & population	Salary (per month)	Salary (per year)	Health benefits	Dental/ Vision	Retirement plan	Life Insurance	Automobile Allowance (Monthly)
Los Angeles 3,810,129	\$ 14,899.17	\$ 178,790.00	Yes	Yes	Yes	Yes	Yes
San Diego 1,311,882	\$ 6,258.00	\$ 75,096.00	Yes	Yes	Yes	Yes	
San Jose 958,789	\$ 6,750.00	\$ 81,000.00	Yes	Yes	Yes	Yes	
San Francisco 812,820	\$ 8,561.92	\$ 102,743.00	Yes	Yes	Yes	Yes	Yes
Long Beach 463,894	\$ 2,753.42	\$ 33,041.00	Yes	Yes	Yes	Yes	
Sacramento 469,566	\$ 5,068.00	\$ 60,816.00	Yes	Yes	Yes	Yes	Yes
Santa Ana 325,228	\$ 125.00	\$ 1,500.00	Yes	Yes	Yes	Yes	Yes
Oakland 392,932	\$ 6,071.58	\$ 72,859.00	Yes	Yes	Yes	Yes	Yes
Mean of 5 Cities (excluding Cities that pay more than \$100,000 and less than \$12,000 in salary)	\$5,380.20	\$ 64,562.40	Standard Package	Standard Package	Standard Package	Standard Package	
Mean of all 8 Cities (including Oakland)	\$6,310.89	\$ 75,730.63	Standard Package	Standard Package	Standard Package	Standard Package	

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 13-01
[Proposed 6-3-13]



By action of the Oakland Public Ethics Commission:

WHEREAS, Oakland City Charter Section 202(c) requires the Public Ethics Commission (Commission) to annually adjust City Councilmember salaries by the increase in the Consumer Price Index over the preceding year and to optionally adjust salaries beyond the increase in the Consumer Price Index up to a total of five percent; and

WHEREAS, the Commission-authorized annual salary for Oakland City Councilmembers is \$77,772.25 effective July 2012; and

WHEREAS, Oakland City Councilmembers have declined salary increases for the past several years and are currently taking a salary of \$72,859.28 or less; and

WHEREAS, the consumer price index for the San Francisco Bay Area increased by a total of 2.4 percent between April 2012 and April 2013; and

WHEREAS, Oakland continues to face general fund budget shortfalls for Fiscal Years 2013-2015, with proposed reductions of \$11.6 million for FY 2013-14 and \$16.1 million for FY 2014-15;

Now, therefore be it:

RESOLVED, that the Commission does hereby authorize a salary increase of 2.4 percent for the office of City Councilmember, for a total annual salary of \$79,638.78, effective as of the first payroll period of Fiscal Year 2013-14 as mandated by City Charter Section 202(c); and

RESOLVED, that the Commission does not authorize any additional increase beyond that required by the Oakland City Charter due to the continued budgetary shortfalls facing the City heading into Fiscal Year 2013-14.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission held on June 3, 2013, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of _____ to _____.

I hereby certify that the foregoing is true and correct.

Whitney Barazoto, Executive Director
Oakland Public Ethics Commission

Date

Public Ethics Commission Pending Complaints

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
2/8/2013	13-2	Marleen Sacks	City Attorney's Office	1/24/2013	Alleges a violation of the California Public Records Act and Oakland's Sunshine Ordinance.	Staff is reviewing	H/M 3
11/21/12	12-14	Avram Gur Aye	Jane Brunner	11/8/2012	Alleges respondent violated the City of Oakland's Conflict of Interest regulations in their involvement with the proposed Safeway on College Avenue.	Staff is reviewing	H/S 2
11/1/12	12-13	Judith Cox and Pamela Drake	Ignacio De La Fuente	9/28/2012	Alleges respondent violated Oakland's Campaign Reform Act by accepting campaign contributions in violation of the \$700 contribution limit.	Staff is reviewing	H/M 3
11/1/12	12-12	Okhoo and Ernest Hanes	Mitch Thomson (City Arborist, Tree Section, Public Works Agency) and Camille Rodgers (Vegetation Management Inspector - Oakland Fire Department)	3/20/2009 - 3/29/2012	Alleges respondents abused their City authority and misused public funds.	Staff is reviewing	H/M 3
10/18/12	12-11	Scott Alonso	Ignacio De La Fuente	July 26, 2012	Alleges respondent used his Councilman elected position and City resources for a campaign press conference.	Staff is reviewing	H/S 2

* Priority code is based on a dual determination: 1) level of priority (High, Medium or Low, based on criteria such as public interest, complainant interest, timing of complaint, statute of limitations, and impact of Commission decision), and 2) amount of staff time likely needed (Small, Medium, or Large amount of time).

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
4/26/12	12-04	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente		Alleges respondent failed to report \$37,500 in payments from a campaign group tied to a lobbyist for a group competing for the Coliseum mgmt contract (alleges failure to report payment and a COI issue)	Staff is reviewing	H/L 4
4/4/12	12-03	City Auditor/ Anonymous	Downtown Oakland Association and Lake Merritt/Uptown District Assoc.	Dec 2009 and annually thereafter	Alleges respondents failed to provide adequate public notice about discussions and decisions related to the payment of "holiday bonuses," adds that discussion of bonuses was never put on open session agenda	Staff is reviewing	M/M 4
8/23/11	11-03	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente	June 2011	Complaint expresses concerns about the source of concert tickets allegedly in the possession of respondent	Staff is reviewing	H/L 4
4-4-11	11-01	PEC initiated	ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse	Various; approx. betw 3/1/107/10 and 7/27/10	Complaint alleges two contractors made impermissible campaign contributions to candidates in the Nov 2010 election (OCRA; §3.12.140)	Staff is investigating	H/L 4
11-1-10	10-28	Ralph Kanz	Ala. Demo. Central Comm.; OakPAC	October 29, 2010	OCRA; §3.12.230 – Alleges 1) failure to include written disclosure required by OCRA and 2) failure to file late contribution and independent expenditure reports	Staff is investigating	H/M 3
10-13-10	10-26	Ralph Kanz	Jean Quan Floyd Huen	June 30, 2010 and ongoing	OCRA; §3.12.050; 3.12.090 – Alleges failure to report and include information regarding respondent's loans to own campaign	Staff is investigating	H/M 3
10-13-10	10-25	Ralph Kanz	Don Perata	June 30, 2010 and ongoing	OCRA; §3.12.090(A)(D) – Alleges campaign was given extension of credit of over \$1500 for more than 90 days	Staff is investigating	H/M 3

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority
9/14/10	10-21	Jean Quan	Don Perata, Paul Kinney; California Correctional Peace Officers Association; Ronald T. Dreisback; T. Gary Rogers; Ed DeSilva; Richard Lee	Ongoing	OCRA violations – Alleges respondent campaign exceeded the voluntary expenditure limit during the November 2010 election	Staff is investigating	H/L 4
3/23/10	10-07	Sanjiv Handa	Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil Tagami	January 1, 2007 to present	Lobbyist Registration Act – Alleges respondents failed to register as lobbyists	Staff is investigating	H/L 4
3/3/10	10-05	David Mix	Oakland City Council	3/2/10	Oakland Sunshine Ordinance – Alleges City Council Rules Committee failed to make an "urgency finding" to schedule a decision (per Section 2.20.080)	Staff was directed to explore settlement in lieu of hearing.	M/M 4
09/16/09	09-12	Marleen Sacks	Office of the City Attorney (Mark Morodomi)	ongoing	Sunshine Ordinance; Public Records Act – Alleges failure to provide multiple public records upon request	Awaiting hearing re: Records Management Policy	M/M 5
2/7/09	09-03	John Klein	City Council President Jane Brunner	February 3, 2009	Sunshine Ordinance -- Allocation of speaker time – Alleges City Council 15-minute total time limit on Open Forum comments is inconsistent with the Sunshine Ordinance, which authorizes 2 minutes per person	Staff is investigating	M/M 4

City of Oakland

HANDBOOK FOR BOARD & COMMISSION MEMBERS



Your guide to conflicts of interest,
public meetings, public service ethics,
and other City government information



Public Ethics Commission
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Oakland, CA 94612
Phone: (510) 238-3593
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ethicscommission@oaklandnet.com
Web: www.oaklandnet.com/pec



Handbook for Members of Boards and Commissions

WELCOME TO OAKLAND CITY GOVERNMENT!

Congratulations on your appointment to one of Oakland’s boards, commissions, or committees. All of these entities are referred to generally in this handbook as “boards.” Oakland relies on its many boards to provide critical guidance in City decisions and to serve as important forums for public participation. With this privilege comes your responsibility to comply with governmental integrity laws and to uphold the public’s trust. This **Handbook for Members of Boards and Commissions** is intended to help you understand this new responsibility and to help guide you in your role as a board member for the City of Oakland. It includes the following information:

<u>Conflict of Interest and Ethical Considerations</u>	1
The California Political Reform Act	1
A Special Note on Gifts and Travel	1
Filing Statements of Economic Interest (Form 700)	2
Restrictions on Receiving or Soliciting Campaign Contributions	3
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What Constitutes a Public Meeting	4
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<u>Appendix C: Boards and Commissions Required to File Conflict of Interest Form 700.</u> ..	17

Please note that you are responsible for filing a **Form 700 – Statement of Economic Interests** within one month of assuming office. You may file electronically through the City Clerk’s office (Elections web-page) or our Public Ethics Commission web-page for Board and Commission Members, accessible through our home page at www.oaklandnet.com/pec. Alternatively, you may file a hard copy that can be printed from either web site and filed with the City Clerk, located on the first floor of City Hall.

For more information about your responsibilities as a board member, please contact the City staff person supporting your board, or contact our Public Ethics Commission at (510) 238-3593 or ethicscommission@oaklandnet.com.

CONFLICTS OF INTEREST AND ETHICAL CONSIDERATIONS

The California Political Reform Act

The laws pertaining to conflicts of interest are too broad and complex to permit a detailed discussion in this Handbook. However it is important for people participating in City government to have a basic understanding of conflict laws so they know how to spot a potential conflict situation should one arise.

Most financial conflict of interest laws are contained in the California Political Reform Act of 1974 ("PRA"). Basically, the PRA states that a financial conflict of interest may exist when a person **influences a decision** that will materially affect an **economic interest** connected to you or your immediate family. Let's take a look at these highlighted terms:

"Influences a Decision" -- A person "influences" a government decision when he or she makes or participates in making it; or when he or she attempts to use his or her official position to affect the outcome of the decision. ***It is often not enough just to refrain from voting on a matter that may involve a conflict of interest -- the law requires that you completely refrain from all participation or attempts to influence the outcome!***

"Economic Interest" -- The law identifies six basic kinds of economic interests:

- **business entities** in which you, your spouse or your dependent children have an investment;
- **real property** in which you, your spouse or your dependent children have an investment;
- **sources of income** paid to you or your spouse 12 months before the governmental decision was made;
- **business entities** in which you hold a position of management, employment or executive responsibility;
- persons who have given or promised you **gifts** totaling \$420 or more within 12 months before the time you make a governmental decision; and
- the **personal finances** of you and your immediate family.

If a decision before your board or commission may have an effect on any of the above economic interests which you or your immediate family may have, contact the Office of the City Attorney before you participate in any way. The City Attorney can perform a legal analysis to determine if you do indeed have a conflict of interest.

Remember: The basic rule is to avoid participating in any decision that could affect any of the above financial interests held by you or your immediate family!

A Special Note on Gifts and Travel

One of the most common issues which people encounter is whether it is permissible to accept gifts or travel expenses while serving on a board or commission. The basic rule is that if you are a member of a board or commission whose members are required to file a Form 700 (see below), ***you may not accept gifts from any single source totaling more than \$420 in a calendar year.*** There are exceptions to this rule which include:

- Gifts not used and returned or donated to charity or the City without being claimed as a tax deduction within 30 days of acceptance.
- Tickets to a fundraising event for a non-profit organization that is tax exempt under IRC Section 501(c)(3), or to a political fundraising event.
- Gifts from family members (spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother or sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse of any of these persons) as long as they are not acting as intermediaries for restricted sources.
- Gifts to you or an immediate family member in connection with a non-recurring ceremonial event (e.g., bar mitzvah) valued at no more than \$100.
- Informational material such as books, reports, pamphlets, calendars, seminars, or informational conferences exclusively for official or office use and valued at less than \$250. (Note: travel is never informational material.)
- Personalized plaques and trophies valued at less than \$250.
- Meals and lodging offered in an individual's home.
- Meals provided at an event at which you speak, participate in a seminar, or provide a similar service.
- Meals paid for by a governmental agency.
- Inheritances and bequests. (An inherited investment or interest in real property, however, may be required by state law to be disclosed on your statement of economic interests.)

Travel expenses are also occasionally offered to board or commission members. Basically, travel payments are permissible for travel *within California* when the payments are made directly in connection with the event at which you give a speech or participate in a panel or seminar. Other travel payment may also be permitted but might have to be reported. Other types of free travel may be prohibited.

If you have any doubt about whether a gift falls into one of these exceptions, call the Fair Political Practices Commission (FPPC) or the Office of the City Attorney.

Filing Statements of Economic Interest (Form 700)

The PRA requires every city in California to adopt a conflict of interest code. The underlying principle behind this code is to ensure that decisions are made by public officials openly, honestly, and free from the motivation of personal gain. Most members of Oakland's boards and commissions have been identified as decision-makers subject to its conflict of interest code. A list of these boards and commissions can be found in Appendix C.

If you are a member of one of the public bodies listed on Appendix C, you are required to file periodic "Statements of Economic Interests," (otherwise known as a "Form 700"). A Form 700 must be completed and filed with the Office of the City Clerk at the following times:

- Within 30 days after assuming office.
- Annually on April 1 of each year.
- Within 30 days of leaving office.

Instructions and the period covered by each type of statement are included with the forms used for filing.

Form 700's are kept available for public inspection by the Oakland City Clerk. State law permits a penalty of \$10 per day for late filings. Also remember that you must complete and return your forms even if you have "no reportable interests" to disclose.

For most people, filling out a Form 700 can usually be an easy experience provided you read the instructions carefully. However, questions are bound to arise, especially if you have financial interests in addition to the income from your job, a personal residence, or typical loan obligations. Again, board and commission members can contact the FPPC or the Office of the City Attorney for advice.

Restrictions on Receiving or Soliciting Campaign Contributions

California law disqualifies certain appointed board or commission members who are running, who have run, or who are fundraising for, elective office from participating in decisions affecting his or her campaign contributions. The law may require on-the-record disclosure of all contributions received. Even if you are not a candidate for public office, the state law also prohibits certain appointed board and commission members from soliciting, receiving or directing contributions in excess of \$250 on behalf of **another** candidate from any person having business pending before your board or commission (and for 90 days after the decision).

This law is generally limited to those boards and commissions, such as the Oakland Planning Commission or Port Commission, that make decisions involving business, professional, trade and land use licenses, certain contracts and all franchises. The law is fairly complex, so if you have any questions about its application to you or your board or commission, please contact the FPPC or Office of the City Attorney.

Other Ethics Laws

There are other conflict of interest laws which may apply to decisions you may make as a board or commission member. One law forbids you to have a financial interest in any contract made by you or a board or commission on which you serve as a member. This means generally that your board or commission cannot make or recommend a grant or a contract to a company or organization in which you or an immediate family member has an interest or serves as an officer or director.

Another law generally prohibits a public official (that's you again) from using his or her official position for personal benefit or gain. Still another forbids public officials from engaging in employment or activities that are incompatible with their public duties. Finally, some boards and commissions are governed by their own specific conflict of interest rules, such as those administered by the U.S. Department of Housing and Urban Development.

The main thing to keep in mind is that the position you hold is one of **public trust**. When in doubt, the better course of conduct often is to avoid even the **appearance** of a conflict and to recuse yourself from participation.

PUBLIC MEETINGS

Practically all of Oakland's boards and commissions are required to conduct their meetings in public. Most of the work and all of the decisions you will be making will take place at these public meetings. It is therefore important that you understand how "open meeting" laws work, and how to prepare for meetings so you may participate effectively.

There are two laws that help ensure that public meetings are properly announced and conducted. The Ralph M. Brown Act is a state law that applies to all public bodies in the State of California. The Oakland Sunshine Ordinance is a local law that supplements the Brown Act and provides even greater public access to the workings of Oakland government. Both laws address the important topics of: 1) What constitutes a public meeting; 2) What kinds of public meetings there are; 3) How meetings are announced (or "noticed") to the public; and, 4) How meetings are conducted.

What Constitutes a Public Meeting

Under the Oakland Sunshine Ordinance, a "meeting" for which public notice must first be given, is defined as "any congregation of a majority of the members of a local body at the same time and location. . . to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the local body."

A majority of the members of a local body are not permitted to use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the local body.

A "meal gathering" conducted before, during or after a public meeting is considered a part of the public meeting and must be properly noticed and made open to the public.

Under the above definition, a "meeting" can occur if a staff or member of a public body calls, faxes or e-mails other members to develop a consensus regarding an item of business, even if the members never communicate to each other directly.

It is very important that you restrict your communications with fellow commission members or City staff to avoid reaching a consensus outside of a noticed public meeting!

The Sunshine Ordinance does **not** include in its definition of a "meeting" individual conversations between members of a public body and a constituent; attending community meetings or conferences; or attending purely social, recreational, or ceremonial occasions (just so long as you do not discuss business items within the jurisdiction of your board or commission).

It is not uncommon for members of a public body to meet socially or as friends. Care must be taken whenever a majority of members gather to avoid discussing any specific item or topic that may be within the jurisdiction of the public board, commission, or committee.

The attendance of a majority of the members of a public body at one of its standing committee meetings could become an improper meeting if those members who are not on the committee speak, deliberate or vote at the committee meeting.

Kinds of Public Meetings

There are two types of public meetings you should be familiar with: **Regular Meetings** and **Special Meetings**. Each has its own unique notice requirements, which are discussed below:

Regular Meetings

All boards and commissions must take formal action (by a motion and vote) to establish a regular time and place for holding regular meetings. (For example: "7:00 p.m. on the first Monday of every month at City Hall") The Sunshine Ordinance states that "whenever possible" such regular meetings shall be conducted on weekday evenings.

Special Meetings

A special meeting may be called by the presiding officer or by a majority of the public body at a date, time, or place that deviates from the regular meeting schedule.

Besides the meeting date, location and time, the biggest difference between a regular meeting and a special meeting is the kind of business that can be conducted at each meeting. To know what can and cannot be considered at a regular meeting and a special meeting, you need to know something about meeting "agendas," the next topic below.

Providing Notice for a Public Meeting (Agendas)

Under the Sunshine Ordinance and Brown Act, a meeting agenda must be posted and distributed within certain time limits before a public meeting occurs. The amount of time depends on whether it is a regular meeting or a special meeting:

Notice for a Regular Meeting

The agenda for all regular meetings must be posted by City staff at least 72 hours before the meeting in a location that is freely accessible to the public 24 hours a day. The Sunshine Ordinance also requires that copies of the agenda and all agenda materials be filed with the City Clerk's office 72 hours before a regular meeting.

Notice for a Special Meeting

Under the Sunshine Ordinance, agendas for a special meeting must be delivered by City staff to each member of the public body, news media, and any person who has previously requested notice in writing at least 48 hours (excluding weekends and holidays) before the time of such meeting.

If the special meeting is held in a location other than the regular meeting place, then the agenda must be posted and filed with the City Clerk at least ten (10) days prior to the meeting date.

Special meetings are subject to more extensive noticing requirements than regular meetings because of the short amount of time involved in providing public notice and the fact that the meeting may entail a change in the meeting time or location.

Agenda Requirements

Meeting agendas serve as the official “guide” for every public meeting. They must specify the date, time, and location of the meeting and give a brief general description of each item of business to be transacted or discussed. Usually, City staff works with the Chairperson and members of a public body to determine what items will be placed on future meeting agendas.

If an item is not on the agenda for a **regular** meeting, there may be no action or discussion about it at the meeting unless two-thirds of the members present at the meeting (or if less than two-thirds of the members are present, then **all** of the members) vote that there is a need to take immediate action which came to the attention of the local body after the agenda was posted; and the action

1. is required to avoid a substantial adverse impact if the meeting were continued;
2. relates to federal or state legislation; or,
3. relates to a purely ceremonial or commendatory action.

If an item is not on the agenda for a **special** meeting, there may be no action or discussion on the item, period.

Conduct of a Public Meeting

The Brown Act and Sunshine Ordinance do not expressly provide how a public meeting must be conducted. There are many issues that can arise before or during a public meeting that you are likely to encounter. The following is a brief summary of those issues:

Agenda Packages

An agenda or “meeting” package is usually assembled by City staff and sent to all board and commission members before the meeting. It typically contains the agenda, reports, and any other material which provides background information or recommendations concerning the subject matter of any item on the agenda. The agenda package may also include any other material that is forwarded to the local body before the posting of the meeting agenda.

Perhaps the most important thing to know about agenda packages is to **read them before the meeting**. Board and commission members are encouraged to contact City staff prior to the meeting if you have questions or need clarification about any item.

Presence of a Quorum

Unless otherwise provided in the city ordinance or resolution creating the public body, a majority of the members typically constitutes the quorum. A quorum is necessary before a local body can take any formal action; a majority of a quorum is required to take action on behalf of the local body.

Any member who recuses himself or herself due to a conflict of interest on an item should not be counted in establishing a quorum. For example, on a seven member commission or task force in which two members are absent and two other members recuse themselves on a vote because of a conflict, the item cannot be acted upon due to lack of a quorum.

No Barriers to Attendance

No local body shall conduct a meeting, conference, or other function in any facility that is inaccessible to persons with physical disabilities or where members of the public must pay or purchase something to gain entrance.

Meetings Must Be Tape Recorded

All local bodies in Oakland must tape record their regular and special meetings. All tape or video recordings are public records that must be available for inspection during regular business hours. Any person may tape record, photograph, or videotape any meeting as long as such recording does not disrupt the proceedings.

Right to Public Comment at a Meeting

Every regular or special meeting *at which action is proposed to be taken* shall provide an opportunity for members of the public to directly address the public body *before* action is taken.

Every regular and special meeting agenda must also provide an opportunity for members of the public to directly comment on an item of interest to the public that is within the body's subject matter jurisdiction. This is usually accomplished by providing an "Open Forum" as a standing item on every regular and special meeting agenda.

During open forum, member of a public body may ask a question for clarification, make a brief report or announcement, refer a matter to City staff, or direct City staff to place on a future agenda any item or matter brought up during a meeting that is not listed on the agenda.

While the local body may adopt reasonable rules regulating the order and decorum of public testimony, the local body may not prohibit criticism of its policies, procedures, programs, or services, or of its acts or omissions. This generally applies to criticisms offered by a member of the local body as well. Any time constraints that are imposed on public testimony must be adopted at the outset and uniformly applied.

Cancellation or Continuation of an Agenda Item

An item on the agenda may be cancelled or continued by a vote of the local body at the meeting, or by issuing formal notice of the cancellation or continuance if known far enough in advance of the meeting. Any continued item must specify the time and place of the meeting at which the item will be heard, and should be placed on the next meeting agenda.

If there is any indication prior to the meeting that an item may be cancelled or continued (e.g., withdrawal of the item by the party seeking a hearing, illness of staff, absence of an essential party), good meeting practice suggests that as much prior notice as possible be given to members of the public. This should at least include an announcement and action at the beginning of the meeting to withdraw or continue those items that will not be heard.

Conditions on the Right to Attend or to Speak at a Public Meeting

A public body may request that members of the public wishing to speak provide their names on a speaker's card to facilitate staff responses or for inclusion in the minutes of the meeting. However, the public cannot be required to give names or sign a register as a condition to attend a public meeting.

Taking and Keeping Minutes

All local bodies must take and keep minutes of its meetings. Meeting minutes are essential for creating an "official" public record of the actions taken at a public meeting. Minutes should contain at least the following information:

- The time the meeting was called to order
- The names of the members attending the meeting
- A one sentence summary of the action taken on each item and the roll call vote (Note the names of each member who voted "Aye", "No," or "Abstained" if the vote is not unanimous.)
- The names of those people who spoke on each item
- The time the meeting was adjourned

A draft of the minutes of each meeting should be available for public inspection and copying no later than ten (10) business days after the meeting.

The officially adopted minutes should be available for public inspection and copying no later than five (5) business days after the public meeting at which the minutes were adopted.

If your board or commission does not typically take or keep minutes, you should bring it to the attention of the Chairperson or City staff member.

ROLES AND RESPONSIBILITIES

While this handbook is intended to provide a basic overview of the operating guidelines and legal requirements that are common to all City boards and commissions, it is by no means an exhaustive guide to your participation in City government. Most of your actions will be guided by your own good judgment and common sense. The following is intended to serve as general guidelines when dealing with others who participate in City government.

Expression of Personal Opinion

Individual members of boards and commissions should not present their personal views or recommendations as representing the board or commission unless their respective board or commission has voted to approve such a position or action. Members expressing views not approved by the majority of a board or commission should clearly state that their opinions are being expressed "personally" or as a "private citizen".

Public statements should also not include promises that may be construed to be binding on the City. When making a public statement, members should indicate that board or commission actions might only constitute a recommendation, and that final action will be taken by the City Council.

It should be recognized that commission and board members' statements and actions may assume special significance, and if not responsibly discharged, could result in a situation detrimental to the City's best interests. If you have any questions in this regard, please contact the Office of the City Attorney.

Role of the City Council and Mayor's Office

Most of Oakland's boards and commissions were established to provide information and advice to the City Council or the Office of the Mayor. As the elected representatives of the people of Oakland, the City Council and Mayor have the ultimate responsibility for making decisions that affect the City. It is important to remember that not all of the recommendations from advisory bodies may be accepted by the City Council and Mayor in carrying out their respective duties. Often final decisions must take into account a broader range of issues than the sometimes limited jurisdiction of an advisory body. While disagreements can and do arise, it is important that the established laws and policies of the City be followed.

Role of City Staff

City staff serves in a support capacity to Oakland's boards and commissions. Staff is usually responsible for ensuring that meeting notices are properly and timely distributed, and provides Oakland's public bodies with the professional expertise for which they were hired. While highly dedicated to the boards and commissions they serve, City staff is ultimately responsible to the administrative departments of the City. Staff cannot and should not be directed to perform tasks that conflict with their established duties and work priorities. In no event may staff be directed to perform work for the personal advantage of board or commission members.

Frequently City staff provides recommendations to public bodies on a variety of issues. These recommendations are often based on the technical requirements of the law or established City policy.

While a board or commission is not always expected to adopt staff's recommendations, they should always be carefully considered before taking formal action.

Dealing with the Public

The earlier discussion in the section entitled "Public Meetings" highlighted specific requirements for keeping public meetings open and available to members of the public. But there is more to serving as a board or commission member than mere compliance with the law. Good public service demands that people be treated fairly, honestly and with the utmost of courtesy. It is crucial for you to keep an open mind in all your deliberations, and to consider all opinions expressed at a public meeting before making a decision. This not only encourages greater public participation, but rewards you with information and opinions you may not have previously considered.

Just as people have a right to expect the highest standards of decorum from their representatives, no one is expected to suffer from undue abuse or physical or verbal threats. California law permits the removal of any person who willfully engages in disorderly conduct and disrupts the peace and good order of a public meeting.

Attendance, Resignation and Removal

Oakland's boards and commissions simply cannot function without your attendance and active participation. If you are required to miss a meeting, please inform City staff and the chairperson with as much advance notice as possible. Some boards and commissions have specific requirements about missing more than a certain number of meetings without excuse or good reason. In some cases, failure to regularly attend meetings could result in your removal from the board or commission.

Occasionally people are required to resign their seats on a public body before the end of their appointed term. If this should occur, you should submit a letter stating your intention to resign and an effective date of your resignation to the Office of the City Clerk, the board and commission on which you serve, and a copy to City staff.

The Oakland City Charter provides that members of City boards and commissions may be "removed for cause" after a hearing and upon the affirmative vote of at least six City Councilmembers. While there is no definition of what specific conduct would lead to such an action, board and commission members should realize that certain conduct -- such as a constant failure to attend meetings without a legitimate excuse -- could result in removal from office.

CITY OF OAKLAND BACKGROUND

History of Oakland¹

Development as a commercial and transportation center began with the California Gold Rush of 1849, when Oakland became the mainland staging point for passengers and cargo traveling between the Bay and the Sierra foothills.

Oakland was chartered as a city in 1852, and construction of shipping wharfs began immediately. Ferry service between Oakland and San Francisco had existed for years, but by building large wharfs and dredging a shipping channel, Oakland became an independent destination.

Owners of the Central Pacific Railroad, the “Big Four” - Stanford, Crocker, Hopkins, and Huntington - saw the convenience of Oakland as a shipping center and chose it as the western terminus of the Transcontinental Railroad, which began service across America in 1869.

Oakland grew steadily through the 20th century. After the devastating earthquake in 1906, many people and businesses chose to relocate from San Francisco to less damaged Oakland. Oakland's population more than doubled between 1900 and 1910.

Oakland benefited from the general prosperity of the area through the 1920s. California farms expanded their markets contributing to canning, processing, and shipping companies based in Oakland. Auto makers and steel companies led the industrial expansion throughout the East Bay. Construction businesses had plenty of work as homes went up south and east of the inner city, and new highrise office buildings were built in downtown Oakland.

Post-War Expansion

World War II brought tremendous changes to Oakland. Huge numbers of workers moved to the Bay Area to work in local shipyards, and many of these people, as well as large numbers of military personnel who mustered out at Treasure Island and the Oakland Army Base, chose to remain in the Bay Area. The population grew by almost one third between 1940 and 1950.

During the war, the military had made substantial improvements in Oakland's port facilities. The decision in the late 1950's to further modernize Oakland's docks and equip them with container-shipping facilities opened another chapter in Oakland's history.

Today, the Port of Oakland is a technically advanced facility and the fourth largest container shipping port in the United States. Oakland is the terminus of three shipping railroads, and is home to more than 1,000 trucking companies. Oakland is recognized as the center of commerce for the entire Bay Area, and the main sea terminal for cargo moving between the western United States and the Pacific Rim, Latin America, and Europe.

¹ Annalee Allen and Harry Hamilton, City of Oakland Cultural Arts and Marketing Office.

City Government Structure

Structural Overview

The City of Oakland has a Mayor/Council form of government. The Mayor is elected at-large for a four-year term, and can be re-elected only once. The Mayor is not a member of the City Council; however, he or she has a right to vote as one if the Council members are evenly divided on certain issues. The City Council is the legislative body of the City and is comprised of eight Council members. One Council member is elected “at large,” while the other seven Council members represent specific districts. All Council members are elected to serve four-year terms. Every two years, the City Council elects one member to serve as President of the Council, with another member selected annually to serve as Vice Mayor.

The City Administrator is appointed by the Mayor and is subject to confirmation by the City Council. The City Administrator is the Chief Administrative Officer of the City and is responsible for day-to-day administrative and fiscal operations of the City.

The Mayor

The Mayor is Oakland’s chief elected officer. He or she is specifically responsible for presenting a balanced budget to the City Council, recommending legislation and measures for consideration by the City Council, appointing the City Administrator (subject to City Council confirmation), and generally promoting programs for the social, physical, economic and cultural development of the City.

The City Council

The City Council is the legislative body of the City, vested with the regulatory and corporate powers of the municipal corporation. The City Council establishes local policy and, together with the Mayor, is ultimately responsible to the people for the actions of the City. The City Council establishes priorities and direction for the City through the legislative process, adopts and monitors the annual operating and capital improvement budgets, makes appointments to various advisory committees and commissions, and serves as the Redevelopment Agency Board of Directors.

The City Administrator

The City Administrator is responsible for the proper and efficient administration of City affairs. He or she directly manages several departments and divisions including the Budget Office, the Office of Information Technology, Office of Personnel, Citizens Police Review Board, ADA Programs, Contract Compliance, Intergovernmental Affairs, Risk Management, Oakland Sharing the Vision, Equal Access programs and communications including the City’s cable television station, KTOP. The City Administrator also provides support to City Council and Committee meetings by coordinating responses to City Council requests for information and action.

The City Attorney

The elected City Attorney provides legal services, advice and representation to the Mayor, City Council, City Administrator, City departments, and City boards and commissions, and serves as general counsel for the Oakland Redevelopment Agency and the Oakland Housing Authority and co-counsel to the Oakland-Alameda County Coliseum Authority. The legal services provided by the City Attorney's office include a wide variety of specialized legal and financial functions such as claims investigation, adjustment and negotiations, court appearances, calendaring, litigation and pre-trial discovery.

The City Auditor

The City Auditor is an elected officer of the City whose office performs audits and reviews of the records, procedures and activities of City departments. The City Auditor also prepares impartial financial analyses of selected proposed major expenditures, conducts surveys, reviews and performance audits deemed to be in the best public interest, and publicly reports to the City Council on the implementation of the City Auditor's recommendations. The City Auditor provides a professional service to City government to help ensure that City operations are effective and efficient, and to act as a deterrent to fraud, waste and mismanagement of City resources.

The City Clerk

The Office of the City Clerk provides a variety of essential services for the residents, businesses and municipal agencies of the City of Oakland. Those services include producing and distributing the weekly City Council meeting and committee agendas and maintaining the official minutes of the Oakland Redevelopment Agency (ORA), City Council and all City Council Committees. The City Clerk is responsible for administering municipal elections and assisting candidates in meeting their legal responsibilities before, during and after an election. As Oakland's filing officer for its local conflict of interest laws, the City Clerk's office ensures that statements of economic interest and campaign disclosure are distributed to and filed by candidates for public office, elected officials, members of various boards and commissions, and numerous City employees. Finally, the City Clerk's office oversees the preservation and protection of public records, such as the minutes, reports, ordinances and resolutions adopted by the City Council, and ensures that other municipal records are readily accessible to the public.

Oakland Boards, Commissions, Committees and Task Forces

The Office of the Mayor and the City Council are assisted by numerous boards, commissions, and committees. With the exception of the Planning Commission, which is required by state law, Oakland's advisory bodies are established by local law to provide citizen input and advice in specific areas. Occasionally, the City Council appoints ad hoc committees, as needed, to address a special issue. These ad hoc committees usually terminate when their specific task has been completed.

APPENDIX A

ROBERT'S RULES OF ORDER

Some public boards and commissions conduct their meetings according to a specific set of bylaws. Often those bylaws, or the board or commission's own rules of conduct or procedure, state that meetings shall be conducted under the Robert's Rules of Order. Most people have never thoroughly read Robert's Rules, and even fewer have received training in how to use and apply them. This appendix is intended to give you a summary of some of the most important Rules.

Making and Voting On Motions

The most common application of the Rules is in making and voting on motions. A motion is simply a proposal that is recognized by the presiding officer. It can be changed (amended) or withdrawn before it is finally voted upon. The following are the usual steps followed in making and voting on a motion.

1. A member is recognized and states his or her motion;
2. Another member seconds the motion;
3. The members debate the motion;
4. The chair or presiding officer calls for a vote; and,
5. The chair or presiding officer announces the result of the vote and/or that the motion has carried or failed.

After a motion has been made but before it is voted upon, any member may move to amend a pending motion. The important thing to remember is that a pending motion may only be amended by adding or deleting words or phrases; you cannot use the amendment procedure to substitute a new or different motion in its place. Once an amendment is proposed or seconded, a vote is taken on whether to accept the amendment before voting on the underlying motion.

Many boards and commissions have bylaws or informal agreements that determine how voting occurs. Several of the most common ways are:

1. **By Voice** -- The Chairperson asks those in favor to say, "aye" and those opposed to say "no." Any member may move for an exact count.
2. **By Roll Call or Ballot** -- Each member responds "yes" or "no" as the vote is taken. These methods are used when a record of each person's vote is desired or required.
3. **By Unanimous Consent** -- When a motion is not likely to be opposed, the Chairperson says, "If there is no objection ..." The membership shows agreement by its silence, however if any member objects, then the item must be put to a vote.

The Chairperson may properly seek unanimous consent ("If there is no objection...") on relatively non-controversial matters as an alternative to the formal motion process. Typically this process is used to

adopt minutes, adjourn, extend a speaker's time, and other similar matters. It can be very effective in helping to move quickly through parts of an agenda.

Common Misapplications of the Rules

Anyone who has attended public meetings for very long will eventually encounter various motions or actions that are technically not appropriate under the Roberts Rules of Order. Here are some of the most common:

1. **"I so move."** This motion sometimes comes after a long discussion or speech. The problem is that the discussion or speech may not precisely set forth what the board or commission is being asked to consider. It is always better to make a clear and accurate motion.
2. **"Call The Question."** Most people intend this motion as a request (and sometimes as a demand) to automatically end debate and put the item to an immediate vote. The problem is that it takes a two-thirds vote to terminate a discussion. Furthermore, state and local laws require members of the public to have an opportunity to address a public body before voting occurs. The better course of action is to permit everyone to discuss a motion or item before the vote is taken. (If there are too many speakers, consider limiting the time each speaker may have *before* the discussion begins.)
3. **"I Move To Table."** A "motion to table" or "lay on the table" is permitted only to temporarily interrupt an agenda to consider another matter (usually an emergency) out of turn. It is *not* the appropriate motion to use to kill or defeat a motion that is under consideration.
4. **"Point Of Personal Privilege!"** This exclamation is sometimes used to interrupt a speaker whenever another member's name is mentioned in a context the other member doesn't like or agree with. Actually, a motion for privilege can pertain to the rights of the board or commission as a whole as well as an individual (for example: "Point of privilege, Madam Chair: Can we turn down the heat in this room?"), but it should only be used sparingly when a speaker's remarks refer to another member. Absent a grievous attack on your character, simply seek recognition from the Chairperson and wait your turn to speak or respond.

APPENDIX B

USEFUL TELEPHONE NUMBERS

Mayor's Office	238-3141
City Council	238-3266
City Manager	238-3301
City Clerk	238-3612
City Attorney	238-3601
City Auditor	238-3378
Office of Information Technology	238-2274
Office of Personnel	238-3307
Police Department	238-3366
Financial Services Agency	238-2220
Fire Services Agency	238-3856
Life Enrichment Agency	238-4920
Public Ethics Commission	238-3593
Public Works Agency	238-3961
Community & Economic Development Agency	238-3344
Oaklanders Assistance Center	238-7366
City Hall Security	238-3995

APPENDIX C**BOARDS REQUIRED TO FILE FORM 700s**

Broadway/MacArthur/San Pablo Redevelopment Project Area Committee
 Business Tax Board of Review
 Central City East Redevelopment Area Project Area Committee
 Central Oakland Community Development District Board
 Children's Fairyland Board of Trustees
 Citizen's Police Review Board
 Citizens Advisory Board
 Civil Service Board
 Commission on Aging
 Commission on Disabled Persons
 Community Action Agency Administrating Board
 Community Policing Advisory Board
 Community Reinvestment Commission
 Cultural Affairs Commission
 Downtown Oakland Senior Center Advisory Council
 Earthquake Damage Abatement Board
 East Oakland Multipurpose Senior Center Advisory Council
 Eastlake/San Antonio/Chinatown Community Development District Board
 Elmhurst Community Development District Board and Citizens Advisory Board
 Fruitvale/San Antonio Community Development District Board
 Head Start Advisory Panel
 Health and Human Services Commission
 Housing and Residential Rent and Relocation Board
 Kids First! Children's Fund Planning and Oversight Committee
 Landmarks Preservation Advisory Board
 Loan Review Committee
 Medical Hill Parking Commission
 North Oakland Community Development District Board
 North Oakland Senior Center Advisory Commission
 Oakland Base Reuse Authority
 Oakland Fund for Children and Youth Planning and Oversight Committee
 Oakland Housing Authority Board of Commissioners
 Oakland Municipal Employees Retirement System
 Parks and Recreation Advisory Commission
 Police and Fire Retirement System Board
 Planning Commission*
 Public Ethics Commission
 West Oakland Redevelopment Area Project Area Committee
 West Oakland Senior Center Advisory Council
 Western Oakland Community Development District Board
 Workforce Investment Board

* Based on Government Code §87200

City of Oakland

ETHICS RESOURCE GUIDE



An overview of ethics laws and principles
to guide City staff and officials
in the performance of your service to the public



Public Ethics Commission
1 Frank H. Ogawa Plaza, 11th Floor
Oakland, CA 94612
Phone: (510) 238-3593
Fax: (510) 238-3315
EthicsCommission@Oakland.net
Web: www.oaklandnet.com/pec



Ethics Resource Guide

INTRODUCTION

Oakland employees and officials are entrusted by the public to use City time, property and money efficiently and in a legal and ethically responsible manner. This **Ethics Resource Guide** is intended to provide an overview of the various ethics laws that guide and direct the performance of our official duties. These laws include the following:

- Personal Gain** 2
 - Corruption of Office 2
 - Financial Conflict of Interest 2
 - Self-Dealing in Contracts 5
 - Restrictions on Employment 6
- Perks of Office** 8
 - Use of Public Resources 8
 - Gifts 9
 - Personal Loans 10
 - Honoraria 10
 - Travel Payments 10
 - Gifts of Public Funds 11
- Open Government** 12
 - Open Meetings 12
 - Public Records 13
 - Financial Disclosure 14
 - Whistleblower Laws 14
 - City Auditor's Fraud, Waste and Abuse Hotline 15
- Fair Process** 17
 - Common Law Bias 17
 - Incompatible Offices and Employment 17
 - Competitive Bidding of Contracts 19
 - Nepotism/Cronyism 19
 - City Council Non-Interference in City Administration 21
- Ethical Decision Making** 22
 - What are ethics? 22
 - Why should we care about ethics? 23
 - Aren't there enough laws already? 23
 - What are steps to assist public servants in making ethical decisions? 25

For more information, contact one of the following offices:

Office of the City Attorney
Attn: [Mark Morodomi](#)
(510) 238-3603

Office of the City Auditor
Attn: [Sharon Ball](#)
(510) 238-4975

Public Ethics Commission
Attn: [Whitney Barazoto](#)
(510) 238-3593

Personal Gain

CORRUPTION OF OFFICE

Bribery

Bribery involves requesting or receiving anything of value in exchange for performing an official act, such as a vote, opinion, or action on a matter brought before an official in his or her official capacity.¹ The purpose of bribery statutes is to prevent people from seeking preferential treatment from public officials and to prevent public officers from using their offices for personal gain.

Willful or Corrupt Misconduct in Office

California law provides a procedure for removing local officials for acts of “misconduct.” While the actual law does not specifically define what constitutes “misconduct” for purposes of the removal process, California courts have ruled that it can include a crime committed in connection with the discharge of official duties, failing to carry out a required duty, or where the official's conduct falls below a “standard of decency rightfully expected of a public official.”²

Embezzlement

Embezzlement is the act of taking another person's money or property through the abuse of an official job or a position of trust.³ Embezzlement is different than stealing because it involves the wrongful taking of property after it has been given freely or by law to the accused person. Thus embezzlement can occur by public employees and officials by falsifying records or keeping money lawfully paid to the City.

Computer Crime

California law makes it a crime to knowingly introduce a contaminant into a computer system or network. It is also a crime to knowingly and without permission access a computer and damage, delete, destroy, or use any data, computer or computer network. It is unlawful to use computers as part of a scheme to defraud or to wrongfully control or obtain money, property, or data.⁴

Prohibited Political Activities

California has specific laws prohibiting certain political activities by public employees and officials. It is against the law for a City employee or official to solicit political contributions from other known employees or officials except as part of a solicitation from a “significant segment of the public.” Officers and employees are also prohibited from participating in political activities while in uniform.⁵

Penalties

Violation of the above laws may be prosecuted criminally as misdemeanors or felonies. Conviction can result in fines, jail time and, in some cases, loss of employment or office.

¹ California Penal Code Section 68

² California Government Code Sections 3060-3074

³ California Penal Code Section 503

⁴ See California Penal Code Section 502 et seq

⁵ See Government Code Sections 3201-3209

FINANCIAL CONFLICT OF INTEREST

Introduction

There's nothing inherently wrong with having a financial conflict of interest. In these days where more and more people maintain outside interests and investments, such conflicts can occasionally arise. It is how we recognize and manage those conflicts that are most important.

The law surrounding financial conflicts of interest is complicated. The following summary is only intended to help you spot potential issues and provide a general understanding of the law. ***It is absolutely essential to contact the Office of the City Attorney if you believe you have a financial conflict of interest.***

The Basic Rule

No public official shall make, participate in making, or attempt to influence a governmental decision if it is reasonably foreseeable that the decision could have a material financial effect on his or her financial interests.⁶

Who is a "Public Official?"

The financial conflict of interest rules apply not only to elected officials but also to employees, many appointed board and commission members, and consultants whom the City has designated as having decision-making authority. An easy way of determining whether the law applies is to ask whether the person in question is required to file a Form 700 Statement of Economic Interests each year. If so, the financial conflict of interest laws probably apply in some way.

Are You Making, Participating In Making, Or Attempting To Influence A Governmental Decision?

A public official "makes" a governmental decision by voting on an item, appointing a person to a position, or entering the City, agency or department into a contract. "Participating" in a decision can include negotiating, or providing advice, research or analysis for, or on behalf of, a decision maker. "Influencing" a governmental decision can include contacting or appearing before an official, employee or other representative of a City agency in order to influence or persuade a decision.

What Economic Interests Are Covered?

The above rules only apply to certain kinds and amounts of economic interests. The following is a summary of those economic interests:

- 1) **Real Property:** Investing \$2,000 or more in real property creates an economic interest in that property. The property must be located in Oakland or within two miles of City boundaries or within two miles of any land owned or used by the City. The investment may include ownership, a mortgage, a leasehold interest (e.g., if you are renting the property), or a future option to buy or sell. The interest may also belong to the public official, his or her spouse, child or anyone acting on their behalf.
- 2) **Source of Income:** Receiving \$500 or more in income from a source located or doing business in the City within 12 months prior to a decision creates an economic interest. This also includes a community property interest in a spouse's or domestic partner's income. Income does not include loans by a commercial lending institution in the regular course of business on

⁶ See Government Code Section 87100 et seq for all references contained in this section.

terms made available to the public without regard to official status. Income received from a governmental agency is generally exempted from this conflict of interest analysis.

- 3) **Business Investment:** An economic interest is created if the public official, the official's spouse or domestic partner, or dependent child or anyone acting on their behalf obtains an investment worth \$2,000 or more in a business entity located or doing business in the City.
- 4) **Business Employment or Management Position:** An economic interest is created in any business entity in which the public official is a director, officer, partner, trustee or employee or otherwise serves in a management position.
- 5) **Gifts:** The receipt of a gift of \$420 or more in a twelve month period prior to the decision from any one person or organization creates an economic interest -- Even if the person or organization is not located or doing business within the City. There are many exceptions to what constitutes a "gift", such as gifts from family members, gifts that are returned, reimbursed or given to charity, and gifts of home hospitality. Another complicated area are free tickets, passes and gifts of intra-state travel; check with the Office of the City Attorney to determine whether any exception applies.
- 6) **Personal Financial Effect:** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision is said to have a "personal financial effect" on the public official.

Are Economic Interests Directly Or Indirectly Involved In The Decision?

An economic interest which is **directly** involved in a governmental decision creates a bigger risk of conflict than an economic interest which is only **indirectly** involved in the decision. For example, if the economic interest is real property, and the decision is whether to build houses on that property, then the interest is "directly" involved in the decision because the property is the subject of the decision itself. If the economic interest is not the subject of the decision but could be affected by the decision, then the economic interest is said to be only "indirectly" involved. An example of an indirect interest would be a decision whether to require all food stores to undergo health inspections and the public official is part-owner of a small market.

California law has specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision. The details of what these rules are and how they are applied are again lengthy and complicated. What is important to remember is that if a public official's economic interest is the subject of, or is affected by, a governmental decision, then there may exist a financial conflict of interest.

When Are Economic Interests Important (Material) Enough To Trigger A Conflict Of Interest?

A key question in determining whether a public official has a conflict of interest is whether it is "sufficiently likely" that the governmental decision will have an important (material) financial effect on his or her economic interests. California law provides rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important enough.

There are far too many of these rules to review here. However, it is important to remember: 1) if an economic interest is **directly** involved in the governmental decision, the more likely the decision will constitute a material

effect on that interest; and 2) there are different sets of materiality standards for the different types of economic interests. These materiality standards vary by the size and situation of the economic interest. For example, a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may represent small change for a big corporation.

It is at this point where a public official, in consultation with the City Attorney's Office, can make a determination whether a financial conflict of interest exists. If a conflict does not exist, the public official may choose to proceed with the decision. If a conflict of interest **does** exist, then there are a few more questions to answer and/or steps to take.

Does The Decision Affect a Majority of People The Same Way? (The “Public Generally Exception”)

There are times when a governmental decision affects a public official's economic interests in substantially the same manner as it would affect a significant segment of the public. An example is if public officials in the community are working on a proposal to tax homeowners and businesses. Since the foreseeable financial effect of the tax would be the same for public officials who own homes and businesses as it would for the public at large, the “public generally” exception could permit the public officials to make or participate in making the decision to adopt the tax.

Legally Required Participation

This is a very rare exception that says if there is no other officer or entity that can make the decision then even a conflicted public official can make the decision. This exception is very narrow and does **not** permit voting to break a tie, participating to achieve a quorum, or participating because an employee is the most knowledgeable person in a particular field.

What Should Public Officials Do If They Have A Conflict?

Public officials who have a financial conflict of interest are disqualified from participating in the decision. Depending on the position that the public official holds, he or she may be required to announce the nature of the financial interest "on the public record" and leave the room while the matter is being discussed and decided. No public official may attend a closed session or obtain any non-public information about the matter in which they have a conflict of interest.

What Are The Penalties?

Any person who knowingly or willfully violates the financial conflict of interest rules is guilty of a misdemeanor and punishable with a fine of up to \$10,000 and possible jail time. A person convicted of a misdemeanor under the California Political Reform Act may lose his or her office and be prohibited from running again for four years. Employees may be subject to discipline.

“SELF-DEALING” IN CONTRACTS

(Government Code Section 1090)

Basic Rule

A public official or employee may not make a contract in which he or she is financially interested. One of the oldest “ethics laws” in California, the purpose is to ensure that “every public officer be guided solely by the public interest, rather than by personal interest.”⁷

⁷ *Thomson v. Call* (1985) 38 Cal.3d 633, 649

What Does It Mean To “Make” A Contract?

California courts take a very broad view of what it means to “make” a contract. Basically, any participation by an officer or an employee in the process by which a contract is developed, negotiated and executed can constitute the “making” of a contract. This can include participating in preliminary discussions, negotiations, planning and soliciting of bids, as well as voting on the contract itself.

What “Financial Interests” Are Involved?

The courts have applied the prohibition contained in Section 1090 to a broad range of financial interests, in some cases broader than those contained in other financial conflict of interest laws. Section 1090 distinguishes between “direct” financial interests (when the public official or employee is the party contracting with the agency) and “indirect” financial interests (when the public official or employee has a financial relationship with the contracting party or will receive some benefit from the contract with the contracting party). There are also a complex set of laws defining so-called “remote interests” and “non-interests.” The nature of the interests determine what actions an official or employee may or may not take regarding the contract.

What If There Is A Financial Interest In A Contract?

A member of a public body (such as a member of a city council, planning commission or other decision-making body) is conclusively presumed to have “made” a contract that is executed by an agency or department under the public body’s jurisdiction. Section 1090 renders such contracts “void” and unenforceable, even if the member has disqualified himself or herself from participating, or the contract is beneficial to the city or non-beneficial to the member. When an employee, rather than a member of a public body, is financially interested in a contract, the employee’s agency is prohibited from making the contract if the employee was involved in the contract-making process.

What Are The Penalties?

Violation of Section 1090 can result in severe penalties, including fines, imprisonment and being disqualified from ever holding office again.

Because of the severity of punishment, the possible invalidation of the contract and loss of public confidence, public officials and employees are strongly encouraged to contact the Office of the City Attorney as soon as they suspect a “1090” problem.

RESTRICTIONS ON SUBSEQUENT EMPLOYMENT

Basic Rules

There are several state laws that regulate what certain public officials can and cannot do after they leave public service and while still working for the City.

“Revolving Door” Restriction For High Level Officials

State law prohibits, for a period of one year after leaving public office or employment, local elected officials and city managers from acting as a paid agent or representative for any person for the purpose of influencing (lobbying) his or her former agency on any administrative or legislative action. Such action includes the

issuance, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.⁸

Restriction on Prospective Employment

No public official, which includes City employees required to file a Form 700 Statement Of Economic Interests, shall make or use his or her official position to influence a governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.⁹ A public official or employee is "negotiating" when he or she interviews or discusses an offer of employment with a potential employer. An "arrangement" occurs when he or she accepts an employer's offer of employment.

Penalties

Any person who knowingly or willfully violates the above rules is guilty of a misdemeanor and punishable with a fine of up to \$10,000 and possible jail time. A person convicted of a misdemeanor violation of these laws may lose his or her office and be prohibited from running again for four years. Employees may also be subject to discipline.

⁸ Government Code Section 87406.3

⁹ Government Code Section 87407

Perks of Office

USE OF PUBLIC RESOURCES

Basic Rule

City officials and employees may not use public resources for personal enjoyment, private gain or advantage. California law provides both criminal and civil penalties for using public resources for personal benefit.¹⁰

What Is A “Public Resource”?

Public resources are not limited to money. They also include such things as staff time, office equipment (telephones, fax machines, photocopiers, and computers), and office supplies (stationery, stamps, and other items). To “use” public resources means merely to cause a gain or advantage for the user, and a loss to the local agency, that can be estimated as a monetary value. The laws do contain a narrow exception for “incidental and minimal” use, such as an occasional telephone call. This exception however should not be relied upon as authorizing personal use of public resources.

Frequently Raised Issues

- 1) **City-Issued Credit Cards:** City officials throughout California have been criminally prosecuted for mis-using public agency credit cards. State law and City policy (as well as common sense) dictates that City-issued credit cards be used only for City business.¹¹ The fact that a public official or employee has reimbursed or intends to reimburse the City for any personal use may not be a defense to a criminal charge of mis-using public resources.
- 2) **Use of City Email and Internet:** City employees have access to a variety of electronic resources to assist in the performance of the City's business. Use of such resources as email, the internet, telephones etc. for all but an occasional or incidental personal use is prohibited.¹² Furthermore, City email and internet use is neither private nor confidential -- all electronic files, whether “deleted” or not -- can be recovered and be made subject to disclosure under the Public Records Act or discovery in litigation.
- 3) **Use of City Titles, Letterheads and Logos:** One area that people rarely consider as a “public resource” are City job titles, letterhead stationary, and the City or department logo. Obviously using City office supplies for a personal or political purpose is illegal. Yet legal issues can arise whenever City employees use their official positions, job titles or City letterhead for personal use or gain. City employees should not use their official status to resolve or influence personal disputes or to obtain favorable treatment.

¹⁰ Penal Code Section 424; Government Code Section 8314

¹¹ City Of Oakland Administrative Instruction 1055

¹² City Of Oakland Administrative Instruction 140

GIFTS

Basic Rule

Employees who must file a "Statement of Economic Interests" (Form 700) may not accept gifts from any one source totaling more than \$420 in a calendar year.¹³ All gifts whose value equals \$50 or more must be reported on the employee's Form 700.¹⁴

What Counts as a "Gift?"

A "gift" is any payment or other benefit that confers a personal benefit for which the recipient does not provide goods or services in exchange of equal or greater value. It includes a discount or rebate on the price of something unless that discount or rebate is also provided in the regular course of business to members of the public.¹⁵

Are There Any Exceptions?

Yes. Here are some of the most common:

- Gifts which are returned to the donor or for which you reimburse the donor as long as you return or reimburse within 30 days of receipt
- Gifts which are donated unused to a 501(c)(3) non-profit corporation or governmental agency within 30 days of receipt
- Gifts from a close family relation (unless they are acting as an agent or intermediary for someone else)
- Gifts of "hospitality" (food, drink, lodging) as long as the owner or member of the owner's family is present when the hospitality is received
- Gifts of relatively equal value exchanged on birthdays or holidays
- Inheritances
- Tickets to political fundraisers and fundraisers for 501(c)(3) non-profit corporations
- Free tickets or passes that you do not use or are not given to another person¹⁶
- Gifts that are provided to the government agency and which provides a personal benefit to a public official (such as a travel payment as long as the payment is used only for official agency business and the agency must control the payment¹⁷)

Passes or Tickets Provided to the City

The City receives and periodically distributes entertainment or sporting tickets to public officials, employees and members of the public. There are a number of requirements that must be fulfilled in order for those tickets or passes not to qualify as a reportable gift to City officials and employees: (1) The City is required to have a written policy stating the public purpose for distribution of the tickets prominently posted on the agency website; (2) the ticket or pass cannot be earmarked by the original source for use by a particular City official or employee; and (3) the City must determine, in its sole discretion, which official may use the ticket or

¹³ Government Code Section 89503(c)

¹⁴ Government Code Sections 87200; 87207

¹⁵ Government Code Section 82028

¹⁶ See generally FPPC Regulation 18942

¹⁷ FPPC Regulation 18944.2

pass. The City must also post on its website certain information about who provided and who used the ticket.¹⁸

If you are a City employee who receives a "free" ticket from the City to an entertainment or sporting event, be sure to inquire from the Office of the City Administrator or City Attorney whether all the necessary requirements have been met otherwise you will be required to treat the ticket as a reportable "gift" subject to the \$420 value limitation.

PERSONAL LOANS TO ELECTED OFFICIALS

Basic Rule

Elected officials may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member or consultant of his or her governmental agency. Also, an elected official may not receive a personal loan exceeding \$250 from any individual or entity that has a contract with his or her governmental agency. (This limitation does not apply to banks or credit card transactions made in the normal course of business and without regard to official status. The limit also does not apply to loans from family members.)¹⁹

HONORARIA

What Is It?

An "honorarium" is a payment made for giving a speech, publishing an article or attending an event.

Basic Rule

Public officials are prohibited from accepting honoraria.²⁰ There are many exceptions to this basic rule, among them are: 1) honoraria returned unused and uncashed to the donor within 30 days; 2) honoraria that are delivered to a governmental agency's general fund; and 3) honoraria that are made directly to a non-profit organization as long as you do not claim a tax deduction or are associated with the donation. Again, there are many exceptions and conditions that you should discuss with the City Attorney's Office before accepting any payment to make a speech, publish an article or show up at an event.

TRAVEL PAYMENTS

Payments made by someone other than your local governmental agency for travel, meals and lodging may be subject to the laws prohibiting or limiting gifts or honoraria to public officials, depending on a number of factors.

Basic Rule

The following types of travel payments may be accepted by public officials without limitation:

- 1) Reimbursement for transportation *within California* for an event at which you give a speech or participate in a panel or seminar.²¹
- 2) Reimbursement for travel inside or outside California for giving a speech or participating on a panel that has a legislative or governmental purpose or is related to public policy. The

¹⁸ FPPC Regulation 18944.1

¹⁹ Government Code Section 87460

²⁰ Government Code Section 89502

²¹ Government Code Section 89506; FPPC Regulations 18950 - 18950.4

reimbursement for lodging is limited to the day immediately before, the day of, and the day immediately following the speech or panel appearance.²²

- 3) Reimbursement not in connection with a speech or panel but related to a legislative, governmental or public policy or purpose that is provided by a governmental authority or a 501(c)(3) organization.

Note that in some cases the prohibition and limits on gifts and honoraria permit the unlimited receipt of transportation payments but **might** constitute a disclosable source of income on a Statement Of Economic Interest (Form 700) and/or form the basis of a conflict of interest in a decision involving that interest.

Warning -- Travel Passes From Transportation Companies

The California Constitution forbids elected and appointed public officials from accepting free or discounted travel from transportation companies.²³ This prohibition does not apply to employees, or to free or discounted travel that is available to other members of the public (such as frequent flier awards or upgrades). The prohibition applies to all travel, whether personal or on City business.

GIFTS OF PUBLIC FUNDS

Occasionally an opportunity or proposal arises to provide City funds to an organization to assist it in performing some worthwhile service. Such an opportunity or proposal should always be evaluated in light of the restriction against making a gift" of public funds.

Basic Rule

The California Constitution expressly prohibits "gifts" of public funds.²⁴

When Does a City Expenditure or Grant Become A "Gift?"

The test of whether a City expenditure or grant constitutes an impermissible gift of public funds is whether there is a valid public purpose justifying it. This issue typically becomes important when the City is contemplating awarding public funds to a charitable organization. Without a valid public purpose, the awarded funds could be viewed as an unlawful gift to the charitable organization.

There are several scenarios in which public funds may be properly awarded to a charitable organization:

- The charity provides or proposes to provide a service that either augments a service the City already provides, or provides a service the City could provide but chooses not to
- There is an identifiable benefit to the City

In all cases where the City is contemplating making an expenditure or an award of public funds, staff should develop and secure approval of the appropriate findings necessary to document the valid public purpose for which the funds will be used.

²² Government Code Section 89506; FPPC Regulations 18950 - 18950.4

²³ Cal. Constit. Art. XII, Section 7

²⁴ Cal. Const. art. XVI, §6

Open Government

OPEN MEETINGS

Meetings of public bodies, such as the City Council and many of Oakland's advisory boards and commissions, are governed by laws requiring that business be conducted openly and only after the public has been notified a sufficient time in advance of any meeting.

Basic Rule

Local legislative bodies shall not convene a meeting unless and until adequate public notice has been provided.

What Is A "Local Legislative Body?"

In Oakland, local legislative bodies include 1) the City Council, Port Board, Planning Commission and Public Ethics Commission, 2) any board, commission, task force or committee established by the City Charter, ordinance or by City Council action, and 3) any advisory board, commission or task force created and appointed by the Mayor which exists for longer than a 12-month period. Any standing committee of the above entities are also considered a local legislative body.²⁵

What Constitutes A "Meeting?"

A meeting is a congregation of a majority of a local legislative body in which any item within its jurisdiction is "heard, discussed, deliberated or acted upon." This definition includes meal gatherings before, during or after a formal meeting.²⁶

It is not necessary that the local legislative body "take action" in order to constitute a meeting. Almost any gathering by a majority of members to receive information, hear a proposal, or discuss views on an issue can constitute a meeting. Meetings can include such gatherings as retreats, workshops, and so-called "team building" or "goal setting" activities.

Beware Of "Serial Meetings"

Use of direct communication or intermediaries that causes a majority to become aware of the views of other members is prohibited.²⁷ An illegal meeting can occur even if members do not gather in the same place at the same time -- Just communicating before a meeting can constitute an illegal meeting if it involves a majority of members. Sending emails is an especially easy way to violate this provision because of the ease of involving more members than originally intended (e.g. the "forward" keys or "reply to all.")

What Constitutes Adequate Public Notice?

For most regularly scheduled meetings of Oakland's local legislative bodies, a copy of the meeting agenda must be posted at least 72 hours before the meeting in a location that is freely accessible to the public 24 hours a day. In addition, a copy of the agenda and all agenda-related materials (staff reports, draft minutes, correspondence etc.) must be filed with the Office of the City Clerk at least 72 hours before the meeting.²⁸

²⁵ O.M.C. Section 2.20.030(E)

²⁶ O.M.C. Section 2.20.030(F)

²⁷ O.M.C. Section 2.20.030(F)

²⁸ O.M.C. Section 2.20.080

For special meetings (i.e., meetings that are called in addition to, or in lieu of, the regular meeting schedule) public notice must be given at least **48 hours** before the stated time of the meeting (excluding Saturdays, Sundays and holidays), by:

- posting a copy of the agenda;
- delivering a copy of the agenda to each member of the local legislative body, news media and any person who has previously requested notice in writing; **and**
- filing a copy of the agenda and all agenda-related materials in the Office of the City Clerk.²⁹

Meeting agendas must specify the date, time, and location of the meeting and a brief general description of each item of business to be transacted or discussed. Agenda items should be informative and give the public sufficient information to decide whether or not to attend a meeting. Agendas must avoid the use of abbreviations or acronyms whose meaning would not be known to the general public.³⁰

For more information about open meeting law, please see the Public Ethics Commission's "How to Notice a Public Meeting and Respond to Requests for Public Records" available from the Ethics Commission's website.

PUBLIC RECORDS

California law and the Oakland Sunshine Ordinance require that public, non-confidential information is made available promptly to persons who request it.

Basic Rule

Public records must be open to inspection at all times during regular business hours. Members of the public are also entitled to obtain exact copies of any public record upon request.³¹

What Is A "Public Record?"

The California Public Records Act ("CPRA") defines a "public record" as any writing containing information relating to the conduct of public business "prepared, owned, used or retained" by a local agency regardless of its physical form or characteristics.³² This means that even electronic documents, such as email or blog postings stored on City computers, can constitute discloseable public records.

Aren't Some Records Confidential?

Yes. There are many exceptions from the rule requiring public disclosure of City records. However many of these exceptions are complicated and must be narrowly applied. The best advice is if you have genuine questions about whether a document can be withheld from public inspection and copying to contact the Office of the City Attorney and review the matter with an attorney.

When Must Public Records Be Disclosed?

The CPRA requires that public records be made available "promptly" whenever there is no question about their public nature. If there is a question whether the record exists or whether the request seeks the disclosure of a public, non-confidential record, then the local agency must notify the requestor within ten days of its determination and provide an estimated date and time when any public records will be produced.³³ (In some

²⁹ O.M.C. Section 2.20.070

³⁰ O.M.C. Section 2.20.030(A)

³¹ Government Code Section 6253

³² Government Code Section 6252

³³ Government Code Section 6253

cases this deadline may be extended an additional 14 days, but never assume you have that much time to respond!)

FINANCIAL DISCLOSURE

(FORM 700)

Basic Rule

Public Officials and designated employees must disclose their financial interests upon assuming office, annually, and when leaving office. This is accomplished by timely filing a "Statement of Economic Interests" with the Office of the City Clerk before the required deadlines.³⁴

Who is a "Designated Employee?"

A designated employee is any employee (or consultant) whom the City Council determines either makes or participates in the making of decisions that may have a material effect on the employee's financial interests.³⁵

What Financial Interests Must Be Disclosed?

All discloseable financial interests are itemized on the "Statement of Economic Interests" (Form 700) that public officials and designated employees are required to complete. They include interests in real property, ownership positions in businesses and other entities, sources of income and gifts.³⁶

What Happens If I Don't File Or Don't File In Time?

Violations of the state law requiring financial disclosure are punishable by both civil and administrative sanctions, depending on the severity of the violation.³⁷ In addition, late filers may be subject to late fee of \$10 per day, up to \$100 maximum, imposed by the City Clerk.³⁸

WHISTLEBLOWER LAWS

What Are They?

A "whistleblower" is someone who brings attention to a crime, wrongdoing or waste. Depending on the circumstances, the whistleblower can make his or her observations known internally within the organization, or externally to those who supervise or have oversight duties over the organization. Sometimes the whistleblower is subject to forms of reprisal or harassment for their actions. Whistleblower protection laws seek to protect those who "blow the whistle" on improper behavior from retaliation.

Basic Rules

State whistle blowing laws make it unlawful for employers to retaliate against employees who refuse to participate in unlawful activities. If an employee can demonstrate that his or her whistle blowing activities were a contributing factor in an adverse employment action, the burden of proof then shifts to the employer

³⁴ Government Code Section Sections 81200 et seq

³⁵ Government Code Section 82048

³⁶ Government Code Section 87302

³⁷ Government Code Section 91000 et seq

³⁸ Government Code Section 91103

to demonstrate that the employer would have taken the action for “legitimate, independent reasons” even if the employee had not been a whistleblower.³⁹

The City of Oakland has adopted a "whistleblower ordinance" for any officer or employee who brings to the attention of the City Auditor information which, if true, would establish 1) a work-related violation of law, 2) fraud, waste or mismanagement, 3) "gross abuse" of authority, 4) specific and substantial dangers to public health, and 5) the use of a City office, position or resource for personal gain. Employees may make their allegations to the City Auditor confidentially. City officers and employees are prohibited from restraining a whistleblower or from taking an adverse employment action when the whistleblower is acting in good faith and with a reasonable belief that improper conduct has occurred.⁴⁰

The City of Oakland also extends whistleblower protection to employees who bring to the attention of the Public Ethics Commission the violation of any laws over which the Commission has authority (e.g., the Lobbyist Registration Act, the Campaign Reform Act and the Sunshine Ordinance).⁴¹

CITY AUDITOR'S FRAUD, WASTE, AND ABUSE HOTLINE

The presence of the FW+A Hotline reinforces the message that all City officials, managers, and employees are expected to follow the highest standards of ethical and legal behavior and to act as stewards of public resources. It also demonstrates the City's commitment to create an environment where fraud, waste or abuse issues are detected early and promptly addressed.

- An effective reporting system can be the most useful tool in reducing losses due to fraud, waste or misuse of City resources, and abuse of position.
- A reporting system administered by the elected, independent Auditor ensures objective review of reports.
- A reporting system also provides for collecting employee and citizens concerns which can improve internal and external communication as well as enhance our City's overall system of internal controls.

Definitions and Examples:

1) Fraud is the intentional misappropriation of City assets by any act including, but not limited to, theft, embezzlement, or misrepresentation. Fraud can be internal or external, in that it can be perpetrated by contractors or vendors as well as by City officials and employees.

Examples:

- Misappropriation of City cash and other funds
- Submitting invoices for fictitious or personal goods and services
- Theft or unauthorized removal of City records or property
- Willful destruction or damage of City records or City property
- Forgery of any document or account belonging to the City
- Falsification of records such as time cards or travel and other expense vouchers
- Impropriety in the handling or reporting of money or financial transactions
- Stealing a check the City issued to another payee
- Computer fraud or information theft

³⁹ There are several state whistleblower laws, but see generally California Labor Code Sections 1102.5 to 1105

⁴⁰ See O.M.C. Chapter 2.38

⁴¹ See O.M.C. Section 2.24.100

- Profiting on insider knowledge
- Accepting gifts from vendors

2) Waste is the needless, careless or extravagant expenditure of City funds or misuse of resources as a result of inefficient or ineffective practices, systems or controls, or misuse of resources for personal use.

Examples:

- Unauthorized use or misuse of City property
- Not working when being paid to work

3) Abuse is the use of employment with the City to obtain personal gain or benefit from the City to which one is not entitled, for the employee or for someone else, such as a friend or family member. Such actions constitute abuse of position and abuse of the public trust.

Examples:

- Obtaining a benefit or service from the City for which they do not qualify
- Providing a benefit or service to someone for which they do not qualify
- Unauthorized reduction of fines or fees
- Suspending or terminating enforcement action based on a personal relationship
- Unauthorized disclosure of confidential and proprietary information

How to Make a Report to the FW+A Prevention Program

The City Auditor has contracted with EthicsPoint, an independent vendor, to provide a secure server and trained intake specialists. EthicsPoint can be accessed by telephone or the Internet

- **888-329-6390**
- www.oaklandauditor.com

The hotline and the website allow individuals to make reports anonymously to a live operator or complete an online form 24 hours a day/7days a week. As a result of The Whistleblower Protection Act, all reports are confidential. In order to preserve the confidentiality of the process, FW+A does not give updates on the investigations.

Reporters are reminded that when they call or submit their information through the website to:

- Provide as much detail as possible including: who, what, when, where, and how
- Be as descriptive as possible: include dates, names, location, amounts and witnesses
- Provide documentation to substantiate your complaint, if possible
- Write down the report key and password and keep them in a safe place (when report is submitted, the system assigns a unique code called a “report key.”)
- Use the report key and password to check their report for questions from the City Auditor.

What Not To Report

- Complaints regarding discrimination - please contact the Equal Opportunity Program;
- Employee grievance - please contact Employee Relations;
- City campaign and lobbying violations - please contact the Public Ethics Commission;
- Conflict of Interest issues - please contact the Public Ethics Commission;
- Workmen's Compensation Fraud - please call 866-FRAUD-42 (866-372-8342);
- Welfare fraud - please call 800-349-9970; and
- Medi-Cal Fraud - please call 800-722-0432.

Fair Process

COMMON LAW BIAS

The California Political Reform Act provides in great detail how public officials or designated employees must conduct themselves when confronted with a decision potentially affecting his or her financial interests. However the law does not stop there. California courts have also ruled that public officials and employees must always act without personal interest and for the benefit of the public, regardless whether specific financial interests are at stake.

Basic Rule

Public officials and employees have a duty to exercise their powers of office and employment for the benefit of the public. They are not allowed to use those powers for private interests.⁴²

What Does This Rule Mean In Practical Terms?

The rule that public officials and employees should exercise their powers of office for public and not private interests manifests in several ways. Officials and employees should avoid making or participate in making decisions in which they have a significant personal interest, even if that interest is not a financial one. They should also avoid decisions in which they have a strong personal bias for or against a person whose interests are affected. In one California case involving concepts of both personal interest and personal bias, a court determined that a city council member improperly voted to deny a project where the court found that the project would have blocked the councilmember's ocean view from his rented apartment, and that the councilmember had previous altercations with the project applicants.⁴³

The key question to ask is whether any personal interest or personal bias makes it improbable that the public official or employee cannot make a fair and impartial decision based on the facts.

Does This Mean I Can't Express a Personal Opinion?

No. California courts distinguish between the kind of bias that requires disqualification from decision-making proceedings, and the mere expression of opinions, attitudes or beliefs about various issues or policies. The first type of bias requires a clear demonstration of personal interest or involvement in the outcome of a decision that effectively constitutes a violation of due process and the right to a fair hearing.⁴⁴ The second type does not rise to an actionable level. However, when participating in any type of hearing at which the rights of others are involved (such as a planning commission or rent board hearing, or a city council appeal), public officials should always be attentive to anything they might say that could be viewed as biased.

INCOMPATIBLE OFFICES

Public officials have a duty of loyalty to their constituents. In those rare cases in which a person may hold or seek two or more public offices, state law must be consulted to determine whether the two offices are compatible with each other.

⁴² See *Nussbaum v. Weeks* (1989) 214 Cal.App.3d 1598

⁴³ See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App. 4th 1152

⁴⁴ See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205

Basic Rule

State law prohibits public officials from holding two or more public offices whose duties are “incompatible” with each other.⁴⁵

How Are Offices Determined to be “Incompatible?”

State law provides that public offices are incompatible whenever:

- Either of the offices may overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- Based on the powers and jurisdiction of the offices, there is a possibility of significant clashes of duties or loyalties between the offices; or
- Public policy considerations make it improper for one person to hold both offices.⁴⁶

The law does not apply solely to elected offices; It can also apply to appointed offices such as a planning commissioner.

Does The Law Also Apply To Employees?

The state law regulating incompatible offices does not apply to positions of employment, however another state law prohibits an employee of a local public agency from serving as an elected or appointed member of the local agency's governing board.⁴⁷ There are also other laws dealing with incompatible public employment, which are discussed in the following section.

INCOMPATIBLE EMPLOYMENT

The City has laws and policies prohibiting employees from engaging in outside employment that are deemed to be incompatible with their assigned duties.

Basic Rule

The Oakland City Charter prohibits any officer or employee of the City from engaging in any “employment, activity or enterprise” which has been determined to be inconsistent, incompatible or in conflict with the duties or functions of the agency or department in which he or she is employed.⁴⁸

Who Determines What Constitutes Incompatible Employment?

Under the City Charter, the City Administrator, City Attorney and City Auditor are responsible for declaring the activities which are considered inconsistent, incompatible or in conflict with the duties of employees under their jurisdiction.

What Factors Determine Whether Outside Employment Is Incompatible?

The City Charter specifies what factors will be used to consider whether an outside employment or activity is incompatible with City work:

⁴⁵ Government Code Section 1099

⁴⁶ Government Code Section 1099

⁴⁷ Government Code Section 53227

⁴⁸ Oakland City Charter Section 1201

- Whether the outside employment or activity involves the use or advantage of City time, facilities, equipment, supplies, "or the badge, uniform, prestige or influence of one City office or employment" or
- Whether the employee would receive payment for doing what he or she is paid to do as part of his or her duties with the City or
- Whether the outside employment or activity would later be subject to the "control, inspection, review, audit or enforcement" by the employee or his or her agency

The City Administrator has published Administrative Instruction 595 that further specifies what type of employment or activity may conflict with one's City duties:

- Using confidential information acquired by virtue of City employment for the private gain or advantage of the employee or other person
- Accepting anything of value from anyone who is doing or is seeking to do business with the City or whose activities are regulated or controlled by the City under circumstances in which it can be reasonably inferred that the object of value was intended to influence the City employee in his or her official capacity or was intended as a "reward" for any official action
- Providing names of city employees, officers or applicants for a mailing list that has not been previously authorized
- Acting as a paid consultant on administrative or personnel matters except as may be approved by the City Administrator

COMPETITIVE BIDDING

Both City and state law provide for the competitive bidding of certain contracts. The purpose of laws is to ensure that valuable City contracts are allocated without favoritism and that taxpayers benefit from fair competition.

General Rule

Public works projects must generally be publicly bid, with the contract going to the lowest responsible bidder. Public officials and employees should consult with both state and City law to determine the appropriate rules when considering whether to solicit competitive bids for certain City contracts.⁴⁹

ANTI-NEPOTISM & ANTI-CRONYISM

Nepotism is the act of providing favoritism to relatives, especially in employment decisions. Cronyism is the same practice extended to friends or political associates. Fraternalization is the development of dating or romantic relationships between supervisors and employees. So-called "anti-nepotism," "anti-cronyism" and "anti-fraternalization" laws seek to prevent family and other personal relationships from entering into hiring decisions and workplace practices.

Basic Rules

The City Charter prohibits the Mayor, members of the City Council, or the City Administrator from appointing a close family member to a compensated position within the City.⁵⁰ The City's "anti-nepotism/anti-cronyism" ordinance prohibits City employees and officials from supervising persons with whom they have a known

⁴⁹ See California Public Contract Code; Oakland Municipal Code Chapter 2.04

⁵⁰ City Charter Section 907

family relationship, consensual romantic relationship or cohabitant relationship.⁵¹ It also forbids the practice of “cronyism”: The participation in an employment decision involving a “close friend, business partner and/or professional, political, or commercial relationship that would lead to preferential treatment or compromise the appearance of fairness.” Finally, Administrative Instruction 72 prohibits a supervisor from dating or having a “romantic relationship” with any employee over whom he or she has supervisory authority. AI 72 also prohibits a supervisor from supervising a spouse or domestic partner, immediate family member or cohabitant.

How Close Must the Relationships Be Before The Law Is Triggered?

For the City anti-nepotism/anti-cronyism ordinance, a “family relationship” subject to the law includes parents, grandparents, great-grandparents, children, grand-children, great-grandchildren, foster children, uncles, aunts, nephews, nieces, first and second cousins, siblings and the spouses or domestic partners of each of these relatives.⁵² For purposes of AI 72, the regulated relationships include a parent, child, sibling, step-parent, step-child, in-law, grandparent or first cousin.

What Is A “Consensual Romantic Relationship” And A “Cohabitant Relationship?”

A “consensual romantic relationship” is “any consensual sexual or romantic relationship with any City officials, managers and employees who may supervise them, directly or indirectly, or who may influence the terms and conditions of their employment.”⁵³

A “cohabitant relationship” means “any relationship where an individual shares a residence with a City official, manager or employee.”⁵⁴

What if I Have or Know About one of These Family, Romantic or Cohabitation Relationships?

If you are engaged in, or know of someone who is engaged in, a family, romantic or cohabitation relationship, the City's ordinance imposes obligations and prohibitions:

- It requires all individuals applying for City employment -- and all City officials and supervisors -- to disclose all known “family relationships, consensual romantic and cohabitant relationships” with City employees
- It prohibits City employees and officials to supervise persons with whom they have a known family relationship, consensual romantic relationship or cohabitant relationship
- It prohibits City officials and employees from engaging in “cronyism” and/or attempting to influence employment decisions based on a regulated relationship
- It directs that any City employee who becomes aware that a City employee or official has attempted to make employment decisions based on regulated relationships “or who has otherwise engaged in acts of cronyism” shall report such instances to the Director of Personnel, the City Attorney or the City Auditor
- Finally, it provides penalties up to and including termination for any individual who “willfully and deliberately” fails to disclose his or her known regulated relationships

⁵¹ O.M.C. Section 2.40.040 (enforcement currently suspended by court order)

⁵² O.M.C. Section 2.40.010 (enforcement currently suspended by court order)

⁵³ O.M.C. Section 2.40.010 (enforcement currently suspended by court order)

⁵⁴ O.M.C. Section 2.40.010 (enforcement currently suspended by court order)

NON-INTERFERENCE

The City Charter divides the duties and responsibilities of government among the City's elected and appointed officials. The Office of the City Administrator is authorized, among other things, to appoint, discipline, assign or remove all department heads and employees under his or her jurisdiction. The City Charter does not grant this authority to members of the City Council.

Basic Rule

Members of the City Council shall not give orders, either publicly or privately, to any employee under the jurisdiction of the City Administrator.⁵⁵

Are There Any Other Limitations?

Members of the City Council shall not 1) attempt to "coerce or influence" the City Administrator regarding a decision relating to any contract, the purchase of supplies or any other administrative action; or 2) direct or request the appointment of any person to, or the removal from, any office by the City Administrator of any of his subordinates or other such officers, or take part in the appointment or removal of officers or employees in the administrative service of the City.⁵⁶

Violation of the above provisions by a member of the City Council shall constitute a misdemeanor and, if convicted, shall result in the immediate forfeit of office.

What Should I Do If An Elected City Official Gives Me An Order To Do Something?

You should immediately contact your supervisor if you feel that an elected official is improperly directing or interfering with the performance of your job duties. If your supervisor does not take immediate action you may report any problems directly to the Office of the City Administrator.

⁵⁵ City Charter Section 218

⁵⁶ City Charter Section 218

Ethical Decision-making

WHAT ARE ETHICS?

The dictionary tells us that ethics are “the embodiment of values which a person or organization believes are important, and which spell out proper conduct and appropriate action.”

Unfortunately, this definition raises more questions about ethics than it answers.

The first set of questions involves the subject of “values.”

Values are concepts which people believe are desirable or useful. “Fairness,” “integrity,” and “honesty” are examples of values that most people would consider desirable or useful.

But the definition of ethics also talks about values that are important to a “person or organization.” Thus values can be determined and held personally, or they can be determined and held by a group or institution, such as a religious or political organization.

The fact that values may be developed personally or collectively often creates interesting dilemmas between what a person believes is right or appropriate, and what a group or institution believes the appropriate standard should be.

Our history and literature are filled with stories about people making principled stands on behalf of their personal values that conflict with the group or society to which they belong. Try watching the movie “To Kill A Mockingbird” or reading the story about Rosa Parks in light of the conflicting values involved. (Remember, not all values are necessarily “good.”)

It is important also to realize that the collision among competing values is not limited to individuals and the groups to which they belong. Values can collide internally too, such as when people are conflicted over their own competing sets of values.

Almost everyone has experienced the dilemma of conflicting internal values. As children, we were often torn between the value of “loyalty” to our friends, and the value of “honesty” when asked to report on our friends’ misdeeds. As adults, we often struggle between conflicting values, like the judge who must reconcile values of justice and mercy.

The next inquiry pertains to how values are established.

Most of us acquire our personal values as we grow up. They are often shaped by the people we know and the environment we live in.

Organizations develop and foster values, too. The values that are important and useful to your family, however, may not be the same values that are important or useful to your company, neighborhood or political party.

Since people belong to any number of different organizations at any given time, we must sometimes acknowledge that the values and ethics applicable in one situation may be different in others.

The third set of issues raised by the definition involves how values are translated into “actions and appropriate conduct.”

For example, how is the value of “honesty” put into a code of conduct that members of a group can follow? What types of conduct should be encouraged or discouraged to promote that value? What happens when members of a group cannot agree on the best way to promote a certain value?

The above questions usually emerge during the essential task of “putting values into practice.” This process is how we as individuals, or as members of various groups, develop appropriate codes of conduct, ethical principles and, more commonly, our laws.

“Ethical behavior,” in summary, is behavior that complies with a code of conduct that is based upon and reflect an established set of values. How these principles are established, supported and applied is what makes the study of ethics so engaging and important.

WHY SHOULD WE CARE ABOUT ETHICS?

If you are reading this question, chances are that you are an Oakland employee, an elected officeholder or a member of one of Oakland's many boards and commissions.

As such, our jobs and offices share at least one central characteristic: We are all members of a governmental organization. In this country, governmental organizations derive their authority from the trust and confidence placed in it by its citizens.

Without this trust, representative democracy could not exist, either because people would not respect the authority of their institutions, or because government would usurp that authority for itself, and cease acting in the interests of its citizens.

Thus a critical task of government officeholders and employees is to preserve and protect the public's trust in government.

Like any trustee, government officeholders and employees owe a special duty of care to those who place the institutions and resources of government under our management and control.

It is this duty to Oakland residents that shapes our responsibilities as officeholders and employees.

But what exactly is our duty? And how do we tailor our conduct to accomplish it?

Not long ago, an elected official stated at a conference that he conformed his behavior to a simple principle: He said he would never do anything that would embarrass his mother if she were to read about him in the newspaper.

While this sounds like a good guiding principle, ethical behavior is often more complicated to evaluate than that. Simple slogans or rules give little guidance for situations in which the choices are not clear. Nor do they recognize the complexity and variety of decisions that we as public servants face on a daily basis.

Public officeholders and employees need to have at least a basic understanding of what will or will not constitute proper behavior in their jobs. And this is where ethics comes in.

Ethics provides the roadmap for behavior that promotes essential public trust in government. It is this trust which we as public employees are bound to serve and on which our careers and livelihoods depend.

AREN'T THERE ENOUGH LAWS ALREADY?

Ethics are not the same thing as laws.

Ethics refer to a broad set of principles that are based on shared values. For example, “All government decisions should be fair” sets forth a general principle about government decision-making that reflects the basic value of “fairness.”

Laws, on the other hand, are written more specifically. They also carry some form of punishment if they are not obeyed. For example, “Government officials may not participate in a public decision in which they have a personal economic interest” is a legal way of expressing the same principle that public officials should make fair decisions.

There is a reason why laws are so specific. Because of the potential for punishment or sanctions, people need to know exactly what conduct is permissible and what conduct may cost them money or land them in jail.

But there is a big drawback in a legalistic approach toward influencing proper behavior. Generally, the more narrow the law, the easier it is to evade. Strategies unfold and loopholes pop-up to keep questionable conduct from breaking the law. And just as every new law that seeks to close a loophole or clarify an ambiguity is passed, it seems a new set of loopholes and countermeasures arise.

Thus it is easy to see how it is possible for behavior to be legal, but not necessarily be ethical. Some commentators refer to this situation as the “legal floor” versus the “ethical ceiling.” Ethics strives for a broader awareness of values and for a higher standard of conduct than mere legal compliance. It seeks to ask the question of whether the contemplated decision or action is really “good” or “right,” rather than merely “legal.”

There is one additional question: How are ethics enforced if they do not carry a punishment the way that laws do?

The simple answer is that they are enforced (or “reinforced”) the same way they are adopted: Through dialogue and consensus. Communication among all members of a group is essential to the development of an ethics program in your office, home or community.

Unlike a law or rule, which can be conceived, imposed and enforced by a few upon the many, ethics relies upon collective discussion and acknowledgement of shared values and their related principles. When these principles are violated, there needs to be a way in which the breach is identified, discussed and hopefully resolved.

Such group dialogue can be a very powerful tool in maintaining and promoting ethical standards. It can also serve as a way to foster better understanding of the type of conduct expected from all the members of a group.

STEPS TO MAKING GOOD ETHICAL DECISIONS

All of us make hundreds of decisions every day. Most do not require much thought, but occasionally we run into a real maze of conflicting values, poor alternatives and possibly harsh consequences for making a poor decision.

As City employees and officials, we must make decisions consistent with our public duties. Thus the things we must consider in making good decisions as public servants may be different from the considerations we make when acting for ourselves, our families or for our friends.

The following four questions are designed to help remind you of important values and principles which should be kept foremost in mind as you make decisions as public servants.

There are many approaches to ethical decision making. Here are some good first steps:

- 1. What are the facts?** Many times it helps just to gather more information to determine the right answer.
- 2. What is the law?** Obviously we must do what the law requires, but remember that the law only sets a minimum standard of behavior. If there is an action within the law that better promotes the public good (as opposed to a private gain), then try to seek that option instead.
- 3. What are the values involved?** Ethics is about putting values into practice. Sometimes the right values stack heavily on one side -- then the answer is clear, though not necessarily easy. Other times values conflict ("fairness to all" vs. "loyalty to friends") and make the decision more difficult. Priority should be given to so-called "public sector" values: Trustworthiness, Responsibility, Respect, Compassion and Fairness.
- 4. What decision better promotes the public good?** Sometimes with difficult decisions there doesn't appear to be a good or correct answer. In such cases we as public servants should choose that course of action that promotes and upholds the public good, even at our own or others' personal expense.

For more information on making ethical decisions visit [Markkula Center for Applied Ethics](#).