MEETING AGENDA

1. Roll Call and Determination of Quorum.

2. Staff and Commission Announcements.

3. Open Forum.

CONSENT ITEMS

   a. May 5, 2014, Meeting Minutes (Attachment 1 – Minutes)
   b. June 2, 2014, Meeting Minutes (Attachment 2 – Minutes)
   c. June 9, 2014, Special Meeting Minutes (Attachment 3 – Minutes)

ACTION ITEMS

5. Oakland Government Ethics Act. The Commission’s ad hoc Ethics subcommittee will present a draft Oakland Government Ethics Act for review, comment, and consideration of approval by the Commission.
   a. Attachment 4 – Memorandum
   b. Attachment 5 – Proposed Draft Oakland Government Ethics Act
   c. Attachment 6 – PEC Staff Analysis of the Proposed Government Ethics Ordinance

6. Enforcement Program. The Commission will review, discuss, and potentially approve Commission staff recommendations for action on the cases listed below. An updated list of

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1 Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.
pending cases is attached, highlighting the cases to be acted upon at this meeting, along with a detailed case analysis of the case in which no violation was found.

(Attachment 9 – Memorandum; Attachment 10 – Enforcement List of Pending Cases; Attachment 11 – Case 13-06 Analysis)

a. Delinquent Non-Filers
   i. 14-05 (Miller-Cole)
   ii. 14-04 (Spearman)
   iii. 14-03 (Juarez)
   iv. 14-02 (Juarez)

b. Compliance Obtained – Closure with no fine
   i. 14-01 (Gallo)

c. Compliance Obtained – Closure with warning letter
   i. 13-09 (Hovland)

d. Closure – No violation
   i. 13-06 (City Council)

e. Dismissal – No PEC enforcement jurisdiction
   i. 12-12 (Public Works Department and Oakland Fire Department)

f. Closure – Action completed
   i. 09-12 (Various City Departments)

g. Closure – Upon request of Complainant
   i. 09-03 (City Council)

INFORMATION ITEMS

7. Executive Director’s Report. The Executive Director reports on significant activities of Commission staff in May that are not reflected in the meeting agenda.

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 OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, July 7, 2014
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

City Clerk (510) 238-3611. 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.

6/26/2014
Approved for Distribution

Date
REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:33 p.m.
Members present: Commissioners Kimberley, Rivera, Shefler, and Wyatt.
Staff present: Lauren Angius.

2. Staff and Commission Announcements.

3. Open Forum.

There were no speakers.

CONSENT ITEMS


The Commission approved 4-0 the February 3, 2014, Regular Meeting Minutes and the March 28, 2014 Special Meeting Minutes.

ACTION ITEMS

2. City Council Salary Adjustment as Required by Law.

The Commission discussed a resolution to approve the Charter-required increase in City Council salaries according to the increase in the Consumer Price Index. The Commission approved the resolution 4-0.

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

3. **Limited Public Financing Program.**

Ms. Angius provided a brief update on the Limited Public Financing Program for the 2014 election. Commissioners discussed and asked questions about program administration and fund allocation to eligible district candidates.

4. **Subcommittee Reports.**

Chair Kimberley announced that the Sunshine subcommittee is in the process of scheduling a meeting that will most likely occur within the next couple months.

Commissioner Shefler announced that the Ethics subcommittee had a highly effective meeting a few weeks before to discuss draft language for the proposed Ethics Ordinance. Commissioner Shefler stated that the subcommittee would meet again to finish discussing the Ordinance draft and finalize its language.

INFORMATION ITEMS

5. **Frequently Asked Questions: Campaign Related Activities by Elected Officials, Candidates, City Officers and Employees.**

The Commissioners reviewed this publication, which was co-authored and published by City Attorney Barbara Parker and the Commission’s Executive Director Whitney Barazoto in order to provide answers to frequently asked questions regarding campaign related activities by elected officials, candidates, and City officers and employees.

6. **Enforcement Program.**

The Commission took the complaint log under advisement.

7. **Executive Director’s Report.**

Ms. Angius answered questions about the Executive Director’s Report, which details significant activities of the Commission staff in March – April.

The meeting adjourned at 7:12 p.m.
REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:31 p.m.

Members present: Commissioners Kimberley, Rivera, Smith, Whitman and Wyatt.

Staff present: Whitney Barazoto, Lauren Angius and Laura Mandler.

2. Staff and Commission Announcements.

3. Open Forum.

There were no speakers.

CONSENT ITEMS


The Commission delayed the approval of the May 5, 2014, Regular Meeting Minutes until the Commission’s next regular meeting.

5. Approval of Resolution 14-02, superseding Resolution 14-01 to correct a typographical error in the amount of salary increase for the Office of City Councilmember.

Chair Kimberley moved and Commissioner Rivera seconded to approve the resolution 4-0 (Commissioner Smith abstaining).

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


Ms. Barazoto introduced Emily Vaughan, graduate student at the U.C. Berkeley Goldman School of Public Policy, who gave a presentation outlining her review of the City of Oakland’s public engagement practices and recommendations for enhancing the City’s engagement with its citizens.

Commissioners asked questions of Ms. Vaughan, and Ms. Barazoto thanked her for her service to the Commission and the City of Oakland.

There was one speaker: Ralph Kanz.

ACTION ITEMS


Chair Kimberley moved and Commissioner Shefler seconded to approve 5-0 the penalty of $500 for the Joe Tuman for Mayor 2014 campaign committee for failing to sign and submit Oakland Campaign Reform Act Form 301 before accepting contributions at the limit allowable to those who accept voluntary campaign expenditure limits.

There were two speakers: Ralph Kanz and Barbara Newcombe.

8. Enforcement Program.

The Commission took the complaint log under advisement.

INFORMATION ITEMS


The Commissioners discussed the City Auditor’s performance audit of the Commission’s Limited Public Financing Program and commended staff for the program administration improvements highlighted in the audit.
10. Subcommittee Reports.

Committee Chair Kimberley announced that the Sunshine subcommittee is planning to schedule a meeting to discuss the City’s work on the Records Management Program and track its implementation progress.

Committee Chair Whitman announced that the Ethics subcommittee has been working with Councilmember Kalb and his staff to provide feedback on their draft Charter Amendment. Also, the Ethics subcommittee has been crafting an Ethics Ordinance over the last several weeks and looks forward to presenting a draft Ethics Ordinance to the Commission soon.

11. Executive Director’s Report.

Ms. Barazoto introduced Laura Mandler, the Commission’s new law clerk.

The meeting adjourned at 8:05 p.m.
1. **Roll Call and Determination of Quorum.**

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

   Members present: Commissioners Kimberley, Tejeda, Rivera, Smith, Whitman and Wyatt.

   Staff present: Whitney Barazoto, Lauren Angius and Laura Mandler.

2. **Staff and Commission Announcements.**

3. **Open Forum.**

   There was one speaker: John Klein.

**ACTION ITEMS**

4. **Proposed City Charter Amendment Relating to the Public Ethics Commission.**

   Councilmember Dan Kalb presented his proposal to amend the City Charter as it relates to the Commission’s authority, resources, and duties. The Public Ethics Commission discussed the draft Charter amendment in detail and asked Councilmember Kalb questions.

   Chair Kimberley moved and Commissioner Wyatt seconded to approve 6-0 the Commission’s support for the Charter amendment draft, with the Commission’s edits discussed at the meeting.

   There were eight speakers: Andrew Wiener, Laura Baker, Elise Bernstein, Darlene McCray, Marion Taylor, Mimi Pulich, Karen Asbelle, and Ralph Kanz.

The meeting adjourned at 9:30 p.m.
TO:      Public Ethics Commission
FROM:   Ethics Ad Hoc Subcommittee (Commissioners Whitman, Shefler, and Wyatt)
DATE:   June 25, 2014
RE:      Draft Oakland Government Ethics Act

Overview

The Public Ethics Commission (PEC or Commission) is reviewing draft language for an Oakland Government Ethics Act, as proposed by the Commission’s ad hoc Ethics subcommittee. Attached is the draft language, a staff analysis of the potential legislation to assist the Commission in its deliberation, along with a few helpful resources.

Background

The Public Ethics Commission devoted attention in 2013 to building the Commission’s capacity: assessing staffing needs, evaluating the Commission’s authority and jurisdiction, and identifying gaps in the law and the need for new or amended ordinances. At its March 2013 retreat, the Commission discussed the need for enhanced authority and resources, and on July 24, 2013, the Public Ethics Commission held a public discussion reviewing its structure and authority under each of its governing ordinances. The Commission issued a letter to City Council on September 3, 2013, requesting among other things, the adoption of a local ethics ordinance.

Following the PEC’s letter to City Council, the Commission created an ad hoc Ethics subcommittee to begin drafting an ethics ordinance. The Ethics subcommittee set out to develop a proposed ordinance that would achieve the following goals:

1. Provide a clear and comprehensive framework of rules for City staff and officials
2. Codify and consolidate locally all existing ethics laws currently in place at the state and local level
3. Include additional requirements that address needs that are unique to Oakland
4. Authorize the PEC to enforce the provisions in the ordinance

The subcommittee conducted a publicly noticed and accessible meeting on April 24, 2014, though the ad hoc subcommittee of three commissioners is not subject to open meetings requirements, and the subcommittee participated in several conference calls to continue to refine the language of the proposed legislation.
Along with public input, best practices in other City and State ethics commissions, the subcommittee also reviewed the May 8, 2014 report of the Oakland Ethics and Good Government Working Group convened by Councilmember Dan Kalb. The Working Group proposed changes to the City Charter as well as provisions that the group believes should be in a potential ethics ordinance. The report is attached to this memorandum for informational purposes.

This proposal comes forward at a time when the City Council is about to review an amendment to the Oakland City Charter to strengthen the PEC’s authority, structure, and staffing, as proposed by Councilmember Kalb and the Working Group. That measure contemplates the attached proposed ethics ordinance in the language and the duties articulated in that proposal, which is scheduled for review by City Council on July 15, 2014.

The Ethics subcommittee presents the attached draft ethics ordinance for input and review by the public and the Public Ethics Commission. The subcommittee encourages the public to weigh in on the details of the proposal by contacting Commission staff directly via email to ethicscommission@oaklandnet.com or by joining in the public discussion on July 7, 2014.

**Recommendation**

The Ethics subcommittee recommends the PEC review, discuss, and potentially approve the draft Oakland Government Ethics Act.

**Attachments:**

1. Proposed draft Oakland Government Ethics Act
2. PEC Staff Analysis of proposed Oakland Government Ethics Act
City of Oakland Government Ethics Act

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

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

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

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

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

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

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

Now, therefore, be it ordained;

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

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

II. **Findings and Declarations/Purpose**

III. **Definitions**

   A. “Public servant” includes:

      1. any elected or appointed City officeholder, including any City officeholder elected but not yet sworn in, and

      2. any City board or commission member, including the Board of Port Commissioners, and

      3. any full-time or part-time employee of the City, and

      4. any consultant of the City who is required to file a Form 700 Statement of Economic Interests pursuant to the City of Oakland Conflict of Interest Code and the California Political Reform Act.

IV. **Conflicts of Interests and Personal Gain**

   A. **Financial Conflicts of Interests.** A public servant shall not make, participate in making, or seek to influence a decision of the City in which the public servant has a financial interest within the meaning of the California Political Reform Act, Government Code Section 87100 et seq., and any subsequent amendments to the California Political Reform Act, and pursuant to City Charter section 1200. All provisions of California Government Code Section 87100 – 87505 and City Charter section 1200, as they relate to public servants, are incorporated by reference into this Act.

   B. **Statement of Economic Interests (Form 700) Disclosure.** The Mayor, City Council Members, City Administrator, City Attorney, City Auditor, City board or commission member, and any employee or consultant designated in the City of Oakland Conflict of Interest Code, as amended, shall file a statement of economic interests pursuant to the California Political Reform Act, as amended, and shall disclose all information required pursuant to the California Political Reform Act, as amended, and the City of Oakland Conflict of Interest Code, as amended.

   C. **Conflicts of Interests in Contracting.** A public servant shall not make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 – 1097 and any subsequent amendments to these Sections. All provisions of California Government Code Section 1090 – 1097, as the Sections relate to City of Oakland public servants, are incorporated by reference into this Act.
D. **Confidential Information.** A public servant shall not willfully and knowingly disclose for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, as prohibited by California Government Code Section 1098.

E. **Incompatible Public Offices.** A public servant, including but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible, as prohibited by California Government Code Section 1099.

1. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
   
a. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body or over a multimember body that includes that other office.

   b. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.

   c. Public policy considerations make it improper for one person to hold both offices.

2. When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second.

3. This subsection does not apply to a position of employment, including a civil servant position.

4. This subsection shall not apply to a governmental body that has only advisory powers.

F. **Conflict in Office.** As prohibited by City Charter section 1202, the Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while he is a member thereof, until at least one year shall have expired after the expiration of the term for which he was elected.

G. **Influencing Prospective Employment.** A public servant shall not make, participate in making, or otherwise seek to influence a governmental decision affecting a person or entity with whom the officer or employee is discussing or negotiating an agreement concerning future employment.

V. **Leaving Public Service “Revolving Door” Restrictions**

A. **Permanent Post-Service Restriction on Representation in Particular Matters.**
1. Prohibition. A former public servant, after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any other private entity before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter in which all of the following exists as it relates to the particular matter:

   a. the City is a party or has a direct and substantial interest; and
   
   b. the public servant participated personally and substantially as a City public servant; and
   
   c. the particular matter involved a specific party or parties at the time of such participation.

2. Restriction on assisting others. No former public servant, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another private entity in any proceeding in which the officer or employee would be precluded under Subsection (A) from personally appearing.

3. Exception for testimony. The prohibitions in Subsections A(1) and A(2) do not prohibit a former public servant from testifying as a witness, based on the former officer's or employee's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

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

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

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

d. a representative of the City.

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

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

D. Waiver by the Public Ethics Commission.

1. At the request of a current or former public servant, the Public Ethics Commission may waive any of the restrictions in Subsections (A) and (B) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage.

2. At the request of a current or former public servant, the Ethics Commission may waive any of the restrictions in Subsections (A) and (B) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business union or association.

3. At the request of a current or former public servant, the Ethics Commission may waive the prohibition in Subsection (C) if the Commission determines that imposing the restriction would cause extreme hardship for the City officer or employee.

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

A. Misuse of City Resources or Position.

1. As prohibited by California Government Code section 8314, a public servant may not use or permit others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law.

   a. Definitions. For purposes of this section, the following definitions apply:

      i. “Personal purpose” means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to
City business. “Personal purpose” does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

ii. “Campaign activity” means an activity constituting a contribution as defined in California Government Code section 82015 or an expenditure as defined in California Government Code section 82025. “Campaign activity” does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.

iii. “Public resources” means any property or asset owned by the City, including but not limited to land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City-compensated time.

iv. “Use” means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.

b. Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on government activities, operations, or policies, provided that the informational activities are otherwise authorized by the laws of the City and the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

2. No public servant or candidate for elective office may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City public servant or candidate or any other person.

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

1. Political Activities. As prohibited by California Government Code section 3203, no restrictions shall be placed on the political activities of any public servant, except as otherwise provided in federal, state or local law.

2. Political Influence. As prohibited by California Government Code section 3204, no public servant who holds, or who is seeking election or appointment to, any office or employment in the City shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then
possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the City, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

3. Solicitation of Contributions. As prohibited by California Government Code section 3205, a public servant or candidate for City office shall not knowingly, directly or indirectly, solicit a political contribution from another City public servant, or from a person on an employment list of the City. Nothing in this Section shall prohibit a City public servant from communicating through the mail or by other means requests for political contributions to a significant segment of the public which may include City public servants.

4. Activities While in Uniform. As prohibited by California Government Code section 3206, a public servant shall not participate in political activities of any kind while in his or her City work-related uniform.

C. Restrictions on Gifts. A person shall not offer or make, and a public servant shall not accept, a gift when it is reasonably foreseeable that the public servant could be influenced by the gift in the performance of an official act.

1. A public servant shall comply with the gift requirements and restrictions in the Political Reform Act, as amended, and the California Constitution, as amended, except that the total annual gift limit for public servants shall be $100.

2. In addition to the gift limits and reporting requirements imposed by the Political Reform Act, as amended, and section (C)(1), a public servant shall not solicit or accept, and a person who is a restricted source shall not offer or make, any gift or loan valued at more than $25 cumulatively in a calendar year from a person who the public servant knows or has reason to know is a restricted source, except loans received from commercial lending institutions in the ordinary course of business.

   a. Restricted Source. For purposes of this section, a restricted source means:

      i. a person doing business with or seeking to do business with the department of the public servant; or

      ii. a person who during the prior 12 months knowingly attempted to influence the public servant in any legislative or administrative action.

   b. Gift. For purposes of this subsection, the term gift has the same meaning as under the Political Reform Act, California Government Code Section
81000 et seq., and the regulations adopted thereunder, including any subsequent amendments. Gifts exempt from the limits imposed by California Government Code Section 89503 shall also be exempt from the prohibition set forth in this subsection.

3. A lobbyist, lobbying firm, or any other person or entity shall not act as an agent or intermediary in the making of any gifts or arrange for the making of any gift by another person to any public servant.

4. A public servant may request the Commission to provide that public servant with written advice concerning the legality of accepting any specific gift. Such request shall contain sufficient information to allow the Commission or its staff to properly consider the matter. The Commission or its staff shall provide written advice in response to such a request within a reasonable time after the Commission’s receipt of the request.

VII. Fair Process

A. Prohibition on Bribery. No person shall offer or make, and no public servant shall solicit or accept, anything of value in exchange for the performance of any official act.

B. Prohibition on Payment for Office or Appointment. It is unlawful for any public servant to give or promise to give to any person any portion of his or her compensation or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for, or elected to any office or employment.

C. Prohibition on City Public Servant Influencing Contracts with Former Employer. In addition to the requirements of Government Code Sections 87100, et seq., no public servant shall knowingly make, participate in making, or attempt to use his or her official position to influence any governmental decision directly relating to any contract where the public servant knows or has reason to know that any party to the contract is a person by whom the public servant was employed immediately prior to entering government service within 12 months prior to the time the official acts on the matter.

D. Decisions Involving Relatives.

1. Nepotism. As prohibited by Oakland City Charter section 907, the Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City Administrator or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship.

2. A public servant may not make, participate in making or otherwise seek to influence a decision of the City regarding an employment or contract action involving a relative. Nothing in this section shall prohibit a public servant or employee from acting as a personal reference or providing a letter of reference for
a relative who is seeking appointment to a position in any City department, board, or commission other than the officer or employee’s department, board, or commission or under the department, board or commission’s control.

a. A department head who is prohibited under section D(2) from participating in an employment action involving a relative shall delegate in writing to an employee within the department any decisions regarding such employment action.

b. For purposes of this section, the term “relative” shall mean a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin, and includes any similar step relationship or similar relationship created by adoption.

3. A public servant may not supervise another public servant who is also a relative. This prohibition applies to the regular assignment for each public servant’s position and does not apply to temporary assignments such as working an overtime or traded shift, or substituting for a fellow employee.

VIII. Public Ethics Commission Role and Responsibilities

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

1. All public servants who must file a Form 700 Statement of Economic Interest shall receive training regarding government ethics laws no less than once every two years facilitated by the Public Ethics Commission in partnership with the Office of the City Attorney.

2. The Commission, with the assistance of the City Attorney, shall issue an ethics resource guide for City public servants which shall be updated periodically.

B. Enforcement. A person who violates this Act is subject to criminal and civil penalties. In the event criminal violations of the Act come to the attention of the Commission, the Commission may forward the information to the appropriate enforcement agency.

1. Criminal Penalties. Any person who knowingly or willfully violates any provision of this article is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this chapter, or who aids and abets any other person in the violation of any provision of this article, shall be liable under the provisions of this section.

a. No person convicted of a misdemeanor under this article shall act as a lobbyist or as a City contractor for a period of four years following the date of the conviction unless the court, at the time of sentencing, specifically determines that this provision shall not be applicable.
b. For the purposes of this section, a plea of nolo contendere shall be deemed a conviction.

2. Civil Penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the Public Ethics Commission or the City Attorney for an amount up to $5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

   a. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

   b. In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant.

   c. No action alleging a violation of this article may be filed more than four years after the date the violation occurred.

3. Administrative penalties. Any person who violates any provision of this chapter shall be liable in an administrative proceeding before the Commission held pursuant to the Commission’s Complaint Procedures. The Commission may impose administrative penalties in an amount up to $5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Commission may issue warnings to City officers and employees.

4. Injunctive Relief. Any person residing within the City, including the City Attorney, may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this article.

   a. Any person, other than the City Attorney, before filing a civil action pursuant to this subsection, shall first file with the Public Ethics Commission a written request for the Commission to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Commission shall respond within ninety (90) days after receipt of the request indicating whether it intends to file an injunction. If the Commission indicates in the affirmative and files an action within sixty (60) days thereafter, no other action may be brought unless the action brought by the Commission is dismissed without prejudice. If the Commission needs additional time to determine whether to file an action or needs additional time to file the action, the Commission may, by resolution indicating evidence of good cause, extend the time period by another 60 days.

5. Costs of Litigation. The court may award to a party, other than an agency, who prevails in any civil action authorized by this article, his or her costs of litigation,
including reasonable attorneys’ fees. If the costs or fees are awarded against the City, the payment of such award shall be the responsibility of the City.

6. Limitation of Actions. No person may bring a criminal or civil action alleging a violation of this chapter against any other person more than four years after the date of the violation.

7. Violations Related to Enforcement.

   a. False Charges. A person shall not knowingly and intentionally furnish false or fraudulent complaints, evidence, documents, or information to the Public Ethics Commission, District Attorney or City Attorney, or knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Commission, District Attorney or City Attorney of an alleged violation of this Chapter.

   b. Duty to Cooperate and Assist. A public servant shall cooperate and assist with an investigation into an alleged violation of this Act, upon the request of the Public Ethics Commission, District Attorney or City Attorney.

IX. Miscellaneous Provisions

   a. Severability. The provisions of this Act are severable. If any provision of this Act is held invalid, the remaining provisions shall not be affected.
Analysis of Proposed Government Ethics Act  
Prepared by PEC Staff  

Summary  
Under existing law, there is no ethics-related City ordinance that gives the Public Ethics Commission (PEC or Commission) the authority to enforce government ethics laws. The City Charter and corresponding municipal code (OMC 2.24) charge the PEC with general duties such as conducting trainings, developing educational materials, issuing advice and written opinions, and recommending changes to local laws. There is no government ethics ordinance that provides City staff and officials with clear ethics rules to follow or that gives the PEC the ability to enforce ethics laws.  
The proposed Government Ethics Act would consolidate and codify myriad state and local ethics laws into one comprehensive local ethics ordinance that clearly outlines ethics-related rules for City staff and officials, empowers the PEC with the authority to enforce against violations, and articulates the PEC’s education and training responsibilities.  

Background  
City Charter section 202 establishes the Public Ethics Commission which shall be “responsible for responding to issues with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including Oakland’s … conflict of interest code, code of ethics… and to make recommendations to the City Council on matter relating thereto…” Oakland Municipal Code section 2.24.020 outlines the PEC’s functions and duties and includes among them the following ethics-related responsibilities:  
- Oversee compliance with the city Code of Ethics.  
- Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.  
- Make recommendations to the City Council regarding amendments to the city Code of Ethics, Conflict of Interest Code, and report to Council concerning the effectiveness of local ordinances and regulations related to, among other issues, public ethics.  
- Make recommendations to the City Council regarding the imposition of fees and the adoption of additional penalty provisions for violation of local ordinances and regulations related to, among other issues, public ethics.  
- Issue oral advice and formal written opinions with respect to a person’s duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.  
- Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.  
- Develop informational and training programs regarding, among other things, conflict of interest and public ethics. These include seminars and educational manuals to include summaries of state and local ethics laws and reporting requirements applicable to city officer, members of boards and commission, and city employees.
OMC section 2.24.030 further authorizes the PEC to impose penalties and fines “as provided for by ordinance.” There is no ethics ordinance that provides the foundation necessary for the PEC to impose penalties and fines.

There also is no existing Code of Ethics; however, a City Council Resolution exists that includes a Code of Conduct for Councilmembers, but enforcement is limited to censure of a Councilmember by the full Council. Further, while the City also has a Conflict of Interest Code (OMC section 3.16.010), there is no penalty or enforcement mechanism available in the ordinance and no mention of the Public Ethics Commission.

The result is that the Public Ethics Commission has no authority to issue penalties for ethics-related violations such as voting when one has a conflict of interest, using public resources for private or campaign purposes, or accepting unlawful gifts. These types of complaints commonly come to the PEC for investigation but must be dismissed due to lack of enforcement jurisdiction or referred to another agency.

Proposal

The proposed ethics ordinance aims to accomplish the following four goals:

1. Provide a clear and comprehensive framework of ethics rules for City staff and officials
2. Codify and consolidate locally all existing ethics laws currently in place at the state and local level
3. Include additional requirements that address needs that are unique to Oakland
4. Authorize the PEC to enforce the provisions in the ordinance

Specifically, the new ordinance includes the following provisions:

I. Title
II. Findings and Declarations/Purpose
III. Definitions
IV. Conflicts of Interest and Personal Gain
   A. Financial Conflicts of Interests
   B. Statement of Economic Interests (Form 700) Disclosure
   C. Conflicts of Interests in Contracting
   D. Confidential Information
   E. Incompatible Public Offices
   F. Conflict in Office
   G. Influencing Prospective Employment
V. Leaving Public Service “Revolving Door” Restrictions
   A. Permanent Post-Service Restriction on Representation in Particular Matters
   B. One-Year Restriction on Communicating with Former Department
   C. Employment by a Party to a City Contract on Which the Public Servant Worked
   D. Waiver by the Public Ethics Commission (re: sections IIA, IIB, and IIC)
VI. Perks of Office and Misuse of City Resources or Position for Private Gain
   E. Misuse of City Resources or Position
F. Prohibitions Related to Political Activity and Solicitation of Contributions
G. Restriction on Gifts

VII. Fair Process
H. Prohibition on Bribery
I. Prohibition on Payment for Office or Appointment
J. Prohibition on City Public Servant Influencing Contracts with Former Employer
K. Decisions Involving Family Members

VIII. Public Ethics Commission Role and Responsibilities
A. Prevention
B. Enforcement

IX. Miscellaneous Provisions
A. Severability

Attached is a spreadsheet that provides the details of each provision, its effect, the original source of the law that is being codified locally, if applicable, and additional comments about the provision.
# Analysis of Proposed Government Ethics Act – Specific Substantive Provisions
Prepared by PEC Staff

<table>
<thead>
<tr>
<th>PROVISION</th>
<th>RULE</th>
<th>SOURCE</th>
<th>PRACTICAL EFFECT/COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IV. Conflicts of Interest and Personal Gain</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>A. Financial Conflicts of Interests</td>
<td>A public servant shall not make, participate in making, or influence a decision in which he or she has a financial interest, as defined by the CA Political Reform Act (PRA).</td>
<td>CA Gov Code 87100-87505; Oakland City Charter sec. 1200</td>
<td>Codifies the existing conflict of interest rule of the CA Political Reform Act (PRA) and incorporates the related provisions locally by reference; also references the same conflict of interest provision of City Charter section 1200. (Rec 1.2 of the EGG Working Group)</td>
</tr>
<tr>
<td>B. Statement of Economic Interests (Form 700) Disclosure</td>
<td>Requires officials and designated public servants to file a Form 700 Statement of Economic Interest pursuant to the CA PRA.</td>
<td>CA Gov Code 87100 – 87350; Oakland Conflict of Interest Code</td>
<td>Consolidates existing Form 700 disclosure requirements already applicable, authorizing the PEC to enforce. (Rec 1.1 of the EGG Working Group)</td>
</tr>
<tr>
<td>C. Conflicts of Interests in Contracting</td>
<td>A public servant may not make a contract in which he or she has a financial interest.</td>
<td>CA Gov Code 1090-1097</td>
<td>Codifies existing conflicts of interest in contracting provisions of the CA Government Code and authorizes the PEC to enforce.</td>
</tr>
<tr>
<td>D. Confidential Information</td>
<td>A public servant may not disclose confidential information acquired in the course of his or her official duties to another person for pecuniary gain.</td>
<td>CA Gov Code 1098</td>
<td>Codifies existing state law and authorizes the PEC to enforce. (Rec 1.11 of the EGG Working Group)</td>
</tr>
<tr>
<td>E. Incompatible Public Offices</td>
<td>A public servant may not hold two public offices that are incompatible.</td>
<td>CA Gov Code 1099</td>
<td>Codifies existing state law and authorizes the PEC to enforce.</td>
</tr>
<tr>
<td>F. Conflict in Office</td>
<td>Neither the Mayor nor members of City Council may hold other City</td>
<td>Oakland City Charter 1202</td>
<td>Mirrors existing Charter language into the Ethics Act, authorizing the PEC to</td>
</tr>
<tr>
<td>G. Influencing Prospective Employment</td>
<td>A public servant may not make or influence a government decision affecting a future employer.</td>
<td>CA Gov Code 87407, Reg 18747</td>
<td>Restates state law more simply, authorizing the PEC to enforce. (Rec 1.12 paragraph 2 of the EGG Working Group, but based on state law instead of Los Angeles Municipal Code)</td>
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<td>-------------------------------------------------------------------------------------------------</td>
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<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>V. Leaving Public Service “Revolving Door” Restrictions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Permanent Post-Service Restriction on Representation in Particular Matters</td>
<td>Prohibits a public servant from leaving the City to work for a private party on the other side of a particular issue in which they personally and substantially participated while employed with the City. Certain exceptions apply, and this rule is subject to waiver by the PEC upon the request of the public servant.</td>
<td>San Francisco Campaign and Governmental Conduct Code 3.234</td>
<td>New provision to Oakland (Rec 1.12.1 of the EGG Working Group)</td>
</tr>
<tr>
<td>B. One-Year Restriction on Communicating with Former Department</td>
<td>Restricts a public servant, for one year after they leave City service, from influencing their former department or unit on behalf of another person. This rule is subject to waiver by the PEC upon the request of the public servant.</td>
<td>SF Campaign and Gov Conduct Code 3.234</td>
<td>New provision to Oakland (Rec 1.12.2 of the EGG Working Group)</td>
</tr>
<tr>
<td>C. Employment by a Party to a City Contract on Which the Public Servant Worked</td>
<td>Prohibits a public servant from working for a person or entity that entered into a contract with the City within the preceding two years where the public servant personally</td>
<td>SF Campaign and Gov Conduct Code 3.234</td>
<td>New provision to Oakland (Rec 1.12.3 of the EGG Working Group)</td>
</tr>
</tbody>
</table>
and substantially participated in the award of the contract. This rule is subject to waiver by the PEC upon the request of the public servant.

### D. Waiver by the Public Ethics Commission

Authorizes the PEC to waive the restrictions in sections V(A) – V(C) under certain circumstances such as finding no undue influence or unfair advantage, or the restriction would cause extreme hardship for the public servant.

[SF Campaign and Gov Conduct Code 3.234](#)

This allows an “out” for situations where these restrictions might be too onerous for the individual or not in the interest of justice because of the circumstances. It would require the PEC to establish a process to grant waivers and ensure consistent application of waivers. (Rec 1.12 of the EGG Working Group)

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

#### A. Misuse of City Resources or Position

A public servant may not use or permit others to use public resources for campaign activities or for personal or non-City purposes not authorized by law.

A public servant may not use his or her authority or power of position for private advantage.

[CA Gov Code 8314](#)

Codifies state law locally and authorizes the PEC to enforce. (Rec 9 of the EGG Working Group, but based on state law/8314 instead of LA Code)

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

A public servant’s political activities shall not be restricted, except as otherwise provided in federal, state, or local law.

A public servant may not use his or her office or authority to help secure a position with the City in exchange for a vote or other political influence.

A public servant may not solicit a

[CA Gov Code 3203](#)

[CA Gov Code 3204](#)

Codifies state law locally and authorizes the PEC to enforce. (Rec 10 of the EGG Working Group, but based on state law instead of SF Code)
### C. Restriction on Gifts

Restricts a public servant from receiving a gift when it is reasonably foreseeable that the public servant would be influence by the gift.

Requires a public servant to comply with the gift requirements and restrictions in the Political Reform Act.

Imposes a $100 annual gift limit for public servants, except gifts from restricted sources, such as lobbyists and persons doing business with or seeking to do business with the City, which would be limited to $25 in gifts per year per source.

**CA Political Reform Act; and a blend of SF Campaign and Gov Conduct Code 3.216 and LA Code 49.5.8**

Codifies state gift rules locally and imposes lower annual gift limits, authorizes PEC to enforce.

Note: the state-imposed gift limit is $420 per calendar year for all gifts, although the state has a $10 annual gift limit for lobbyist gifts to state legislators.

State legislation is currently pending that would lower the annual gift limit to $200.

Los Angeles imposes a $100 gift limit for City officials from restricted sources and a $25 limit on gifts from lobbyists.

San Francisco has a no-gifts rule for restricted sources but allows many exceptions.

(Rec 5 of the EGG Working Group)

### VII. Fair Process

#### A. Prohibition on Bribery

No person shall offer or make, and no public servant shall solicit or accept, anything of value in exchange for the performance of any official act.

**CA Penal Code 68, SF Code 3.216**

Codifies general bribery law and CA Penal Code section 68, and mirrors SF Code, and authorizes the PEC to enforce.

(Rec 6 of the EGG Working Group)

#### B. Prohibition on Payment

A public servant may not give or receive a political contribution from another public servant, except as part of mass communications to a large group of the general public.

A public servant may not participate in political activities while in uniform.

**3205 CA Gov Code 3206**

Codifies general bribery law and CA Penal Code section 68, and mirrors SF Code, and authorizes the PEC to enforce.

(Rec 6 of the EGG Working Group)
### VIII. Public Ethics Commission Role and Responsibilities

| A. Prevention | Requires the PEC to provide advice, assistance and training to City public servants and candidates who would be subject to the Ethics ordinance. | Oakland Municipal Code 2.24 (PEC Enabling Ord) | Specifies the educational duties referenced in the PEC’s enabling ordinance to state the PEC’s specific duties regarding ethics education. (Rec 15 of the EGG Working Group) |
| B. Enforcement | Adds criminal, civil, and administrative penalties for violations of the Government Ethics Act, and adds an injunctive relief | CA PRA 91000 et seq.; SF Code 3.242, LA Code 49.5.19 | Adds new ethics enforcement penalties and remedies not currently existing in Oakland. Penalties are modeled after the CA Political Reform Act and SF and |
remedy for any person residing in the City. Imposes a statute of limitations for actions to be brought within four years of the date of the violation. Prohibits the filing of false charges and imposes a duty to cooperate with an investigation upon request.

**IX. Miscellaneous Provisions**

| a. Severability | Clarifies that the provisions of the new ordinance are severable, so that, if any provision is held invalid by a court, the remaining provisions still apply. | (Standard) | LA. (Rec 17 of the EGG Working Group) |
OAKLAND ETHICS AND GOOD GOVERNMENT WORKING GROUP

Proposed Oakland Ethics Reforms: Public Ethics Commission Charter Reforms and Governmental Ethics Ordinance

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May 8, 2014
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Introduction

The Oakland Public Ethics Commission (PEC) was formed in 1996 with the goal of ensuring “fairness, openness, honesty, and integrity” in City government. Numerous observers and commentators, including the Alameda County Grand Jury, have noted that the PEC has insufficient resources and statutory authority to adequately fulfill its mission of enforcing ethics laws. In 2013, the PEC itself wrote to the City Council regarding its limited authority, requesting (1) a local ethics ordinance, similar to those enacted in various other local jurisdictions, (2) enhanced resources for adequate staffing, and (3) evaluation of its structure and authority, specifically with regard to its independence within the City government. Various other local jurisdictions in California have Ethics Commissions with significantly more authority, responsibilities, and resources than Oakland’s PEC.

Councilmember Dan Kalb campaigned for office in 2012 in part on restoring confidence in City Hall, improving government transparency, and strengthening the PEC. Shortly after being elected, Councilmember Kalb began work on convening a working group of local experts on ethics and good government. The group was formed with the purpose of researching best practices in comparative ethics law and identifying needed reforms regarding the structure and powers of the PEC and the laws under its regulatory purview. Important components of this research and policy development included seeking and receiving input from the public and conferring with the PEC’s Executive Director, both of which remain ongoing.

In response to the 2012-2013 Final Report of the Alameda County Grand Jury, the Oakland City Council wrote, in relevant part:

“Enhanced powers and authority for the PEC would be helpful to enforcing ethical behavior and legal requirements for Oakland public officials. Work is in progress toward this goal: Even prior to the Grand Jury report, Councilmember Kalb began convening a working group of experts on ethics and good government to work with him and the PEC Director to research, draft, and consider various enhancements and expansions of powers, authority, and independence of the PEC. The Commission will be asked to hold public hearings on these recommendations. After the recommendations have been publicly vetted with and possibly supplemented by the PEC, they will be brought to the City Council for discussion and adoption.”

To that end, the subject matter examined by the Ethics & Good Government Working Group included the following:

<table>
<thead>
<tr>
<th>Topic area</th>
<th>Existing Oakland law</th>
<th>Examples of relevant issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>PEC structure, authority, and resources</td>
<td>i. Charter Section 202; \nii. Municipal Code Chapter 2.24</td>
<td>structure; enforcement authority; independence issues dedicated funding/staffing</td>
</tr>
<tr>
<td>Election campaigns</td>
<td>i. Campaign Reform Act; \ni. Limited Public Financing Act; \ni. False Endorsement in Campaign Literature Act</td>
<td>contribution limits; public financing; voluntary expenditure ceilings; campaign finance disclosure</td>
</tr>
<tr>
<td><strong>Topic area</strong></td>
<td><strong>Existing Oakland law</strong></td>
<td><strong>Examples of relevant issues</strong></td>
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<tr>
<td>Transparency</td>
<td>Sunshine Ordinance</td>
<td>open meetings; public records access &amp; retention; transparency</td>
</tr>
<tr>
<td>Lobbying</td>
<td>Lobbyist Registration Act</td>
<td>disclosure of lobbying; restrictions on lobbyists; disclosure of spending to influence gov. decisions</td>
</tr>
<tr>
<td>Government ethics</td>
<td>i. Conflict of Interest Code; ii. City Council Code of Conduct</td>
<td>misuse of public resources; conflicts of interest in gov. decisions; post-employment restrictions; protecting competitive bidding with gov. contracts; nepotism &amp; corruption</td>
</tr>
<tr>
<td>Whistleblower protection</td>
<td>Ordinance Prohibiting Retaliation Against City Employees Who Act as Whistleblowers [PEC not currently able to enforce this law.]</td>
<td>protections for gov. employees who are whistleblowers</td>
</tr>
</tbody>
</table>

The efforts of the Working Group consisted of brainstorming sessions with the office of Councilmember Kalb (which were attended by PEC Executive Director Whitney Barazoto), a televised public input meeting held at City Hall on September 30, 2013, reviewing public input submitted to Councilmember Kalb, and independent research and policy development by the Working Group members, both individually and in sub-groups addressing the different topic areas noted in the table above. Councilmember Kalb’s Policy Manager, Oliver Luby, assisted in providing research materials to the Working Group and consolidating the recommendations.

This report is Part I of the blueprint proposals developed by the Working Group and the office of Councilmember Kalb. The report covers recommendations for (1) amendments to the Oakland Charter provisions pertaining to the PEC and (2) establishment of an Oakland Government Ethics Ordinance, comparable to ethics ordinances previously adopted in various municipal jurisdictions throughout California. The forthcoming Part II of the Working Group’s blueprint will cover recommended proposals for amendments to existing Oakland good government laws (election campaigns, lobbying disclosure, etc.).

Following the publication of the Working Group reports, Councilmember Kalb will work to develop legislative proposals, which will be publicly disseminated to solicit input and submitted to the PEC for vetting in open session. Such public vetting and related refinement of the proposals will be done before the legislation is scheduled for the standard review and deliberation by the City Council. Councilmember Kalb has also consulted and continues to consult with expert advisors who have agreed to comment on draft proposals and offer substantive suggestions on improving Oakland’s ethics and good government laws. This report reflects the comments of many of those advisors.
I. **Amendments to the Oakland Charter section governing the Public Ethics Commission: structure & powers of the Public Ethics Commission**

The 2012-2013 Final Report of the Alameda County Grand Jury issued in June 2013 includes the Grand Jury’s Government Committee’s report “Misgoverning the City of Oakland.” The report states that “local independent oversight of public ethics is essential.” The report lists the Public Ethics Commission (PEC) as one of the remedies for addressing government misconduct but describes problems that limit the ability of the PEC to effectively fulfill this role.

First, the Grand Jury noted that the PEC’s limited staffing and resources affects its viability. The report contrasts the Oakland PEC with San Francisco’s ethics commission, which has a staff of 17 and annual operating budget of approximately $2.2 million. By comparison, the FY 13-15 Budget approved by the Oakland City Council provided just two full time staff for the PEC (including its Director), a slight staffing increase over past budgets, with an annual operating budget of merely $300,000.

Second, the Grand Jury noted that the PEC’s enforcement powers are limited, including for violations of Oakland City Charter Section 218 (non-interference in administrative affairs by the City Council). The report further noted that the ethics commissions of San Francisco and Los Angeles have robust enforcement powers.

The Grand Jury’s observations regarding the PEC concluded with this formal Recommendation: “The Oakland City Council must provide the Public Ethics Commission with sufficient financial resources to properly investigate allegations of ethics violations.”

Subsequently, the PEC itself issued a letter dated September 3, 2013 to the City Council regarding its recommendations for a comprehensive ethics program, which included two priority areas: (1) a local ethics ordinance [addressed below in Section II of this document], and (2) additional PEC staffing. The materials included with this letter indicated that the PEC needs a minimum of three additional FTEs in order to be able to accomplish its current duties.

Additionally, the PEC letter discussed the issue of PEC independence. The letter notes that because an ethics agency may potentially investigate City officials and employees, there is an inherent structural conflict of interest if the same officials have budgetary or other control over the PEC. As the letter explains, this flaw “diminishes the Commission’s effectiveness as well as the public’s perception of the fairness and neutrality of the process.”

“Local Government Ethics Programs,” a 2013 publication of City Ethics\(^1\) written by Robert Wechsler, Director of Research, lists several best practices for the establishment and administration of a government ethics regulatory agency. The recommendations include independence, administrative authority to enforce ethics requirements and impose penalties for violations, a guaranteed program budget, and oversight of the governmental ethics disclosure requirements.

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\(^1\) City Ethics is a non-profit organization that provides a centralized location for information and resources for local government ethics programs.
With those observations in mind, the Ethics & Good Government Working Group formed by Councilmember Dan Kalb recommends improvements to the PEC’s composition, independence, staffing, duties, and enforcement powers. Specifically, the Working Group recommends the following amendments to Charter Section 202 governing the PEC, as well as related changes to Oakland Municipal Code Section 2.24.010 et seq. (“Public Ethics Commission”). [See below under F., “Revisions to PEC Ordinance, Including Placing Provisions in the Charter.”] In addition, the Working Group recommends amending Charter Section 217, which addresses limits for penalties established by Oakland ordinances and has implications for programs under the jurisdiction of the PEC. [See below under D.6.]

A. COMPOSITION & REMOVAL

1. Diversify the appointing authority for the PEC:

The PEC’s current Commissioner appointment structure is an effective model for agency governance because it combines appointments by an elected official with appointments that are self-selected by the body. Appointments by elected officials are a common best practice for such commissions because they provide a measure of democratic accountability, while the self-selected appointments provide a check on the influence wielded by elected officials.

We propose replacing the provision granting the Mayor’s power to appoint three Commissioners with a provision that would grant the Mayor, City Attorney, and City Auditor with the authority to each appoint a single Commissioner. Those three elected officials would be prohibited from appointing individuals who volunteered for or were paid by their most recent campaign. This modification of the current appointment structure would decentralize and diversify the elected official appointment authority, similar to the appointment structures employed by ethics commissions in San Francisco, Los Angeles, and elsewhere, thereby reducing the occurrence or appearance of a single elected official having excessive sway over the agency. The PEC’s appointment of remaining Commissioners would be retained, as would the requirement that the member appointed by the Mayor represent a local civic organization with a demonstrated history of involvement in local governance issues.

In lieu of the current requirement that all PEC appointments be confirmed by the City Council, we propose that the Council may reject PEC appointments made by the elected officials within 45 days of receiving written notice of the appointment.

Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days may be filled by the City Council, in the same manner as provided in Charter Section 601.

2. Modification of removal of PEC Commissioners:

Currently, Oakland Public Ethics Commissioners are subject to different standards of removal depending upon their appointing authority. Members appointed by the Mayor may be removed pursuant to Section 601 of the Charter, which provides “Members of … commissions … may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council.” For other PEC members, the PEC ordinance provides:
“A member appointed by the unanimous vote of the three members appointed by the Mayor and confirmed by the Council may be removed by the unanimous vote of the three members appointed by the Mayor and confirmed by the Council. Among other things, conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Commission, shall constitute cause for removal.”

To clarify when removal is authorized, we recommend adoption of a Charter provision that, with respect to the PEC, takes the place of Section 601. This recommendation is based on the language of the Los Angeles Charter, while incorporating the best of the current Oakland provisions as well as utilizing the San Francisco model of appointing authorities functioning as removal authorities with the concurrence of the local legislature. The proposed Charter provision is as follows:

“Members of the Commission may be removed by their appointing authority, with the concurrence of the Council by majority vote, only for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Commission, or violation of this Charter section, after written notice of the grounds on which removal is sought and an opportunity for a written response.”

3. Allow PEC Commissioners to serve for two three-year terms instead of just one term:

Currently, PEC Commissioners serve for a single three year term and may not be appointed to consecutive three-year terms, though they may serve additional time if filling a vacancy for a partial term. By contrast, Los Angeles City Ethics Commissioners serve for five-year terms and San Francisco Ethics Commissioners serve for six-year terms. Since PEC Commissioners develop valuable specialized expertise regarding the technical operations of the PEC, we propose that PEC Commissioners be permitted to be appointed to serve a second, consecutive three year term.

B. COMMISSIONER & STAFF QUALIFICATIONS

In addition to proposing that the Commissioner “Qualifications” section2 of the PEC Ordinance be moved into the Charter [see below under F., “Revisions to PEC Ordinance, Including Placing Provisions in the Charter”], we recommend the following:

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2 OMC Section 2.24.050 provides that PEC Commissioners must be Oakland residents registered to vote in Oakland. In addition, the Section provides that the PEC Commissioners are prohibited from doing the following during their tenure and for one year thereafter: (1) be employed by the city or have any direct and substantial financial interest in any work or business or official action by the city; (2) seek election to any public office, or participate or contribute to an Oakland municipal campaign; (3) endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.
1. **Additional conflict-of-interest requirement:**

Regarding the prohibitions that apply to PEC Commissioners (OMC Section 2.24.050), we recommend an addition based on the San Francisco Charter. Under this provision, Commissioners would not be permitted to:

> “Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist.”

2. **Requirements for PEC staff:**

We recommend that the conflict-of-interest qualifications that currently apply only to Commissioners ("no member of the Commission shall" from OMC Section 2.24.050) be extended to all PEC staff, provided that (1) staff would not be prohibited from employment with the City and (2) the one-year post-employment restriction would apply only to the Executive Director.

3. **Application requirements:**

We propose that Commissioner applicants be required to attest in their application for appointment to the PEC to attendance at a minimum of two PEC meetings prior to appointment to the PEC. In addition, we propose the following additional requirements modeled on San Francisco’s Charter:

> “The Commissioner appointed by the City Attorney shall have a background in public law, preferably with experience in governmental ethics or open government matters. The Commissioner appointed by the City Auditor shall have a background in campaign finance or the auditing of compliance with ethics laws, or a related field.”

**C. INDEPENDENCE AND CHECKS & BALANCES**

1. **Dedicated PEC staffing/funding:**

Though existing law indicates that the City of Oakland is obligated to provide sufficient resources to the PEC to accomplish its mandates, such funding has never been fully authorized. Moreover, Oakland’s Charter does not contain any specific references to requirements for minimum staffing or resources for the PEC, not even mentioning an Executive Director. By contrast, the enabling law of the San Diego Ethics Commission requires that minimum staffing be provided for the agency and states “The City shall appropriate a reasonable budget for the

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3 These currently include employment by the City, financial interest in City actions, seeking office, or Oakland election campaign contributions, involvement, support, or opposition.

4 Formal opinions issued by the City Attorney’s office on April 25, 2006 (“City Auditor Budget Cuts”) and May 27, 2010 (“Minimum Budget Requirements for City Auditor’s Office Under the Oakland City Charter”) indicate that the City Council is obligated to provide minimum funding to City agencies sufficient to accomplish their Charter-mandated duties. In addition, OMC Section 2.24.080 requires the City Administration to provide to the PEC the staff assistance necessary to fulfill the PEC’s function and duties as specified in OMC Section 2.24.020.
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Commission” (San Diego Municipal Code Section 26.0411). In addition, the Charter provisions governing the San Francisco Ethics Commission and Los Angeles City Ethics Commission require an Executive Director and contemplate the appointment of additional staff. Moreover, the Charter provisions governing the independent campaign finance reform regulatory agency for New York City—the New York City Campaign Finance Board—provide not only for staffing but also state that the Mayor must adopt the Board’s budget request without amendments before submitting the proposed budget to the City Council.

We propose that the Charter (1) mirror San Diego’s “reasonable budget” provision and (2) include a PEC minimum staffing requirement for seven staff positions (7 FTEs), including both the five positions identified by the PEC as essential for minimum functioning of current duties and two additional positions to address transferring Filing Officer duties from the City Clerk’s office to the PEC [See below under D.4.] and assist with other new responsibilities pursuant to the government ethics ordinance [See below under II]. These positions include Executive Director, Deputy Director, Investigator/Auditor, three Program Analysts (including two to address new duties), and Administrative Assistant. Councilmember Kalb and his working group believe that additional FTEs are likely to be necessary to fully administer and enforce all the laws under its jurisdiction.

This minimum staffing requirement could include a provision that allows for suspending the staffing set-aside during an extreme fiscal emergency facing the City.

Note: For the forthcoming Part II blueprint report from the Working Group, we are exploring a proposal that could be used to address the dedicated funding requirement for the PEC: An annual regulatory fee on local candidate campaign committees based on the amount of their cumulative contributions of $100 or more.

2. Executive Director appointment & removal:

We propose replacing the current system where PEC Executive Director is a civil service appointment hired only by the City Administrator with a system giving greater independence to the PEC. Upon a vacancy, the Commission should conduct a search for the Executive Director with staff assistance provided by the Human Resources Department. Next, the Commission would vet applicants and select two or three finalist candidates for the Executive Director position. Lastly, the final candidate should be selected by the City Administrator, with the Director serving at the pleasure of the Commission. The proposed framework would not prohibit the City Administrator from being able to communicate with the PEC and recommend various forms of discipline of the executive director.

(Note: The Ethics Commissions of both San Francisco and Los Angeles have complete authority to hire and fire their executive directors.)

3. Other staff – Selective Certification:

We propose that the Charter authorize selective certification for most PEC positions, under the same meaning as provided by Section 5.03 (“Selective Certification”) of the Civil Service Rules. This would establish that service in PEC positions would require additional and special qualifications and experience beyond the minimums required of the job classifications, in order
to prevent bumping and replacement of specialized personnel with others who do not have the requisite expertise with governmental ethics regulation. However, the Administrative Assistant position would not be subject to selective certification and would fall under the standard civil service framework. We propose that the Deputy Director position serve at the pleasure of the Executive Director. Other employees of the PEC shall be civil service.

4. **Legal counsel:**

OMC Section 2.24.090 currently (“Legal assistance”) states:

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

While some independent regulatory or oversight agencies have legal representation provisions similar to the PEC, receiving counsel from the jurisdiction’s general counsel, others have their own counsel that is independent of the governmental attorney’s office. There are practical and policy advantages for both options.

Work on development of a balanced and effective model remains on-going. We will continue to review both existing attorney conflict of interest law and procedures and models in other jurisdictions before we make a final recommendation in this area.

5. **Independent agency:**

We propose that the Oakland Charter mirror Los Angeles Charter Section 702 (“Duties and Responsibilities of the Ethics Commission”), sub-section k, which states in relevant part:

“to have full charge and control of its office, to be responsible for its proper administration, to submit [bi-]annually a proposed budget and to expend the funds of the office.”

**D. ENFORCEMENT PROVISIONS**

Currently, the only references in the Oakland Charter to the PEC’s enforcement powers are the following:

Section 202(a): “There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including, Oakland’s Campaign Finance Reform Ordinance, conflict of

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5 For example, the San Diego Ethics Commission has its own legal counsel independent from the San Diego City Attorney’s office. Similarly, the Los Angeles City Ethics Commission may employ or contract for staff counsel and the Los Angeles Charter contains a budgetary provision for “special prosecutors” appointed by the City Ethics Commission.
interest code, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matters relating thereto.”

Section 202(b)(5): “The City shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission, in accordance with this Article.”

We recommend that Section 202(a) be amended as follows: “There is hereby established a Public Ethics Commission which shall be responsible for the administration, implementation, investigation, enforcement, and responding to issues relating with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, and others with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including: Oakland’s Campaign Finance Reform Ordinance, Lobbyist Registration Act, conflict of interest code, code of ethics, the Sunshine Ordinance, other ethics related ordinances as determined by the City Council, and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matters relating thereto.”

Additionally, our recommendations for additional enforcement-related provisions are below.

1. Expand jurisdiction to include Charter Sections 218, 907, 1200 & 1202, protection of whistleblowers, & an ethics ordinance:

In addition to the various ordinances and rules that currently fall under the PEC’s jurisdiction, we propose giving the PEC oversight of some additional existing laws. First, we propose that the PEC be empowered (by supermajority vote of its members) to formally reprimand, censure, or impose certain administrative remedies (to be defined) on City Council Members for violations of Charter Section 218 (“Non-Interference in Administrative Affairs”). The PEC shall first develop regulations that specify due process and other procedures necessary for consideration of censure or formal reprimand, and administrative remedies.

Second, we propose that the PEC be empowered to investigate and enforce Charter Section 907 (“Nepotism”), which applies to the Mayor, City Council, and City Administrator. This would include the authority to impose administrative remedies.

Third, we propose that the PEC be empowered to investigate and enforce Charter Sections 1200 (“Conflict of Interest”) and 1202 (“Conflict in Office”). This would include the authority to impose the following penalties: For Section 1200, the penalties authorized in that section (which are provided by state law); for Sections 1202, administrative remedies.

Fourth, we propose that the PEC be empowered to investigate and impose remedies specified by ordinance for retaliation against whistleblowers. This power would be distinct from the City Auditor’s ability to investigate whistleblowing.

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6 Charter Section 1200 prohibits conflicts of interest that are prohibited by state law. The state law providing conflict of interest prohibitions includes the Political Reform Act and Government Code Section 1090.
[The forthcoming Part II report from the Working Group will include a proposal for amending the Ordinance Prohibiting Retaliation Against City Employees Who Act as Whistleblowers to provide the specific penalty range that the PEC may enforce.]

Fifth, we propose that an “Ethics Ordinance” be added to the list of programs under the jurisdiction of the PEC. [See below under Section II of this blueprint report.]

2. **Ensure penalty powers for all ordinances & rules under the PEC:**

While some of the ordinances under PEC jurisdiction provide penalties that the PEC is authorized to enforce, others provide the PEC with limited or no power to impose penalties. As indicated in the PowerPoint presentation at the PEC’s July 2013 meeting, the programs for which the PEC has no authorized penalty power include the Oakland Conflict of Interest Code and the City Council Code of Conduct. This shortcoming regarding the Conflict of Interest Code is addressed below under Section II of this document (“Establishing an Oakland Government Ethics Ordinance & Related Provisions”). With regard to the Code of Conduct, we propose that the PEC be empowered, by a supermajority vote of its members, to formally reprimand or censure those who are determined to be in violation, after appropriate and thorough due process procedures.

(In addition, the PEC enforcement of the Sunshine Ordinance is very limited. Expanded enforcement options will be proposed in the forthcoming Part II report from the Working Group.)

3. **Uniform enforcement powers & requirements:**

In addition to proposing that the “Authority” section of the PEC Ordinance be moved into the Charter [see below under F., “Revisions to PEC Ordinance, Including Placing Provisions in the Charter”], we propose the following:

a. Enable the PEC to:
   i. issue advisory letters;
   ii. issue warning letters;
   iii. issue recommendations to appointing authorities that an official or employee be disciplined, suspended, or removed for a violation of law under the PECs jurisdiction;
   iv. submit referrals to other enforcement authorities, including the Alameda County District Attorney, CA Fair Political Practices Commission, and CA Attorney General.
   v. order remedial action for violations, including but not limited to disgorgement.
   vi. enforce civil and administrative remedies for laws under its jurisdiction as prescribed by ordinance.

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7 Such authorities would be limited to the Mayor, City Administrator, City Council and individual members, City Attorney, City Auditor, and any City Board or Commission outside the jurisdiction of those entities.
b. Remove the provision that the PEC’s decision to impose penalties or fines may be appealable to an arbitrator and provide that the PEC’s decisions will be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;

c. Enable citizens to pursue private lawsuits to enforce ethics laws when the City government does not act, modeled on the state’s existing program (Political Reform Act), subject to a required notice period to the City authorities and limited to the most severe violations (as defined under each ethics ordinance);

d. Require the PEC to develop and publish both a penalty matrix and its standards for exercising prosecutorial discretion, in order to provide clarity and clear expectations to the public and the regulated entities.

e. Require that PEC staff preliminary investigative review of allegations remain confidential until any of the following occurs:

   i. dismissal;
   ii. closure;
   iii. withdrawal;
   iv. referral without other action;
   v. settlement;
   vi. announcement of mediation;
   vii. expiration of the Statute of Limitations period;
   viii. initiation of a full investigation;
   ix. placement of the item on a PEC meeting agenda

4. Assign all ethics-related filing officer duties to PEC:

San Francisco and Los Angeles consolidate ethics-related enforcement, training, and filing officer duties, including acting as repository for public disclosure reports and facilitating online transparency, under a single agency. This includes campaign finance and economic interest disclosures (provided by the California Political Reform Act and local law) as well as lobbyist disclosures (provided by local law). Having both enforcement and filing under the same agency is more efficient and practical, since enforcement activities can begin immediately when there is a failure to file. Therefore, we propose that the filing officer duties be transferred from the City Clerk’s office to the PEC, utilizing the following new PEC function and duty provision based on the San Francisco and Los Angeles Charters:

“Act as the filing officer and otherwise receive and retain documents in any instance where the City Clerk would otherwise be authorized to do so pursuant to Chapters 4 and 7 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), as amended, the Oakland Conflict of Interest Code, and the Oakland Lobbyist Registration Act.”

Note: Election and nomination paper filing requirements would continue to be done at the City Clerk’s office.
5. **Referral of uncollected per diem late filing fees to collections:**

For the non-investigatory, automatic, per diem late filing fees for ethics-related disclosure programs (campaigns, Form 700s, and lobbyists), we propose that unpaid fees for which collection attempts have been made must be referred after 90 days to the City’s revenue collection office, as is done in San Francisco.

6. **Amend penalty limits provided by Charter Section 217:**

Oakland Charter Section 217 (“Penalty for Violation of Ordinances”) already states:

“The Council may make the violation of its ordinances a misdemeanor, which may be prosecuted in the name of the People of the State of California or may be redressed by civil action, and may prescribe punishment for such violations by a fine not to exceed $1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.”

The wording of that section creates some uncertainty about its effect. In addition, a $1,000 limit on fines appears to be historical artifact, with limits on municipal fines in many jurisdictions for various types of violations exceeding $1,000. The Oakland Campaign Reform Act currently provides for administrative fines in excess of $1,000. Similarly, the Ethics Ordinance discussed in Section II of this report is modeled on ordinances in other jurisdictions that contain penalty provisions authorizing fines in excess of $1,000 (example: up to $5,000). The Working Group believes that the maximum amount of a civil fine authorized by local law for a type of violation should be determined by the specific ordinance governing that type of violation, rather than having the Charter impose a $1,000 maximum across all types of violations and regulatory programs.

Notwithstanding Charter Section 217, we propose that Charter Section 202 provide that ordinances under the jurisdiction of the PEC are not subject to Section 217’s $1,000 limitation on fines and shall be the amounts specified by ordinance.

**E. AMENDMENTS OF LAWS OVERSEEN BY PEC**

To prevent future City Councils from making deletions to provisions of law or other changes to programs under the jurisdiction of the PEC that are antithetical to the mission and purpose of the PEC, we recommend a legislative requirement similar to one in place in San Francisco. Specifically, we propose the addition of a Charter provision which requires the Council, prior to enacting any amendments to ethics legislation, to (1) make a finding that the proposed changes further the goals and purposes of the ordinance or program in question and (2) provide detailed specifics substantiating the finding.

We also recommend that, absent an urgency finding, the City Council be required to submit proposed amendments to Oakland’s ethics laws (Conflict of Interest Code, Campaign Reform Ordinance, etc.) to the PEC for review and comment, prior to passage of the amendments by the City Council. [Currently, the PEC is empowered to make recommendations to the City Council]
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regarding changes to these laws, but the Council is not required to alert or solicit feedback from the PEC regarding proposed changes.]

F. REVISIONS TO PEC ORDINANCE, INCLUDING PLACING PROVISIONS IN CHARTER.

While some jurisdictions enable their Ethics Commission pursuant to ordinance, others such as San Francisco and Los Angeles enable their Ethics Commission by Charter provision. Oakland is the only jurisdiction that splits up its enabling authorization into both the Charter and a separate ordinance. We recommend that Oakland correct that situation and that the PEC Ordinance essentially be folded into Charter Section 202, including with the revisions noted above.

Regarding the PEC “Functions and duties” currently listed in the enabling ordinance, we recommend the PEC also be granted the authority to review and make recommendations regarding all City systems used for the public disclosure of information required by any law under the jurisdiction of the PEC.

II. Establishing an Oakland Government Ethics Ordinance & Related Provisions

The current Oakland municipal laws regarding governmental ethics are woefully inadequate. Even cursory examinations of ethics statutes of other cities like San Francisco, Los Angeles, and San Diego reveal much more robust and comprehensive statutes. The Ethics & Good Government Working Group formed by Councilmember Kalb has three primary recommendations on this key topic, all of which are intended to be prospective and would not be applicable to past allegations or events occurring prior to the passage of the legislation:

Recommendation 1: The City of Oakland should adopt an ethics ordinance drawing upon existing ordinances in San Francisco, Los Angeles, and San Diego, as well as any other appropriate sources or models. [See Section A below.]

Recommendation 2: The Public Ethics Commission (PEC) functions and duties should include oversight and enforcement of Oakland Charter Section 218 (“Non-interference in Administrative Affairs”), including the power to formally reprimand, censure, or impose certain administrative remedies on a Councilmember or other local elected official found to be in violation. This government ethics recommendation is addressed above under Section I of this document (“Amendments to the Oakland Charter Section governing the Public Ethics Commission”). The PEC would develop regulations and procedures accordingly, including due process procedures for a formal reprimand and censure.

Recommendation 3: The PEC should have the authority to impose a formal reprimand or censure for violations of the Council Code of Conduct. This government ethics recommendation is addressed above under Section I of this document (“Amendments to the Oakland Charter Section governing the Public Ethics Commission”). A modification to the Code of Conduct is discussed below under Section B.
A. Components of Recommendation 1 – a new Oakland Ethics Ordinance

The PEC’s September 3, 2013 letter to the City Council requests that the PEC be given specific authority to investigate and enforce violations related to the following:

- Use of public resources for private or political purposes
- Conflicts of interest in decision-making
- Leaving public office to work for a company doing business with the City within a restricted post-employment time period (‘Revolving door’ rules)
- Bias, Nepotism, Cronyism
- Serving in two incompatible positions
- Bribery
- Embezzlement
- Preventing or inhibiting competitive bidding on contracts

Furthermore, the PowerPoint presentation at the PEC’s July 2013 meeting noted that the PEC has no authority to enforce the Oakland Conflict of Interest Code (the requirements for Form 700 (Statement of Economic Interest) disclosure in Oakland). By contrast, the Los Angeles City Ethics Commission and San Diego Ethics Commission are empowered to enforce violations of their Conflict of Interest Codes.

With those observations in mind, we propose that the Oakland Ethics Ordinance be comprised of the following provisions:

1. Enforcement of Oakland Conflict of Interest Code (Disclosure of economic interests):

We propose that the PEC be empowered to enforce violations of the Oakland Conflict of Interest Code (which provides the Form 700 filing obligations for City officials and employees), as is done in Los Angeles and San Diego.

2. Incorporation of state conflicts of interest laws:

We propose that the Oakland Ethics Ordinance incorporate by reference state conflict of interest prohibitions (Cal. Gov. Code Sections 87100 et seq. (Political Reform Act) and 1090 et seq.), as San Francisco has done in Section 3.206 of the their Campaign & Governmental Conduct (“CGC”) Code, thereby reaffirming the authority of the PEC to enforce at the local level the state conflict of interest laws already incorporated by reference into Charter Section 1200. [See Section I.D.1 of this document.]

3. Disclosure of personal, professional, & business relations:

We propose that the Oakland ordinance mirror San Francisco CGC Code Section 3.214, requiring City officers (to be defined) to disclose on the public record any personal, professional, or business relationships with individuals who are the subject of a governmental decision being made by the officer, with the word “individual” used in Section 3.214 being replaced with “person.”
4. **Requirements regarding involvement in governmental decisions:**

We recommend that the Oakland ordinance include the following provisions currently in force in other jurisdictions:

a. A prohibition on top City officers contracting with the City (San Francisco CGC Code Section 3.222);

b. A prohibition on top City officers representing private parties before other City officers (compensated advocacy) (San Francisco CGC Code Section 3.224);

c. A prohibition regarding City officers influencing governmental decisions on contracts for persons who previously employed the officers within the past 12 months (Los Angeles Municipal Code Section 49.5.13).

5. **Restrictions on gifts:**

We propose that Oakland mirror Los Angeles Municipal Code Section 49.5.10, which limits the offering, soliciting, and accepting of gifts and outside travel expenses to City officials (a) with the intent to influence the official, (b) from registered lobbyists, or (c) from restricted sources. Restricted sources shall be defined as provided by Los Angeles law, with the relevant period for seeking to influence decisions being the prior 12 months (as provided under the Gifts restrictions in San Francisco law (SF CGC Code Section 3.216)).

6. **Prohibit payment for government services (bribery):**

To allow the PEC to enforce existing bribery laws, we propose that the Oakland ordinance mirror comparative law on bribery, such San Francisco CGC Code Section 3.216(a) or California Penal Code Section 68.

7. **Prohibit payment for office:**

We propose that the Oakland ordinance mirror San Diego Municipal Code Section 27.3572, which prohibits officials from giving or promising anything of value in exchange for being nominated, appointed, voted for, or elected.

8. **Nepotism & decisions involving family members:**

Currently, the City’s Prohibition on Nepotism in City Employment does not provide for penalties other than personnel remedies (such as termination) and its “Enforcement” provisions are limited to collecting information, reporting, and “implementing alternative arrangements,” mostly via the “Director of Personnel.” Moreover, this Nepotism law is not being enforced pursuant to a 2012 lawsuit settlement.

We propose that the Oakland Ethics Ordinance reference Oakland Municipal Code Chapter 2.40 (“Prohibition on Nepotism in City Employment”) and empower the PEC to enforce that Section’s prohibitions. Additionally, we propose that the currently barred Oakland Nepotism ordinance be amended consistent with the requirements of the settlement, in order to provide Oakland with a reasonable and functioning Nepotism law.
Separately, we propose that the Oakland ordinance mirror the requirements of San Francisco CGC Code Section 3.212 (“Decisions Involving Family Members”), which prohibits officers and employees from making or seeking to influence the City’s employment decisions regarding their relatives (as defined).

9. Misuse of City position or resources:

We propose that the Oakland ordinance mirror Los Angeles Municipal Code Section 49.5.5, which prohibits City officials and employees from misusing their City position or City resources, whether for private gain or political campaign purposes.

10. Prohibitions related to political activity:

State law prohibits engaging in political activity in uniform, engaging in political activities on city property, and using city equipment for campaign activities, however, the PEC is not currently authorized to enforce these provisions. We propose that the Oakland ordinance mirror San Francisco CGC Code Section 3.230 (“Prohibition on Political Activity”), including requirements related to solicitation of contributions (unless duplicative of #9 above), political activities in uniform, and political activities on City time or premises. This would allow the PEC to conduct enforcement regarding impermissible political activity.

11. Prohibition of improper disclosure of confidential information:

We propose that the Oakland ordinance mirror Los Angeles Municipal Code Section 49.5.3, which prohibits current or former officers or employees of the City from using or disclosing for pecuniary gain or personal advantage or privilege confidential information acquired in the course of official duties. (This new Oakland law will contain a provision that states that nothing in this section shall be interpreted as limiting other confidentiality restrictions.)

12. Revolving door & future employment provisions:

First, we propose that the Oakland ordinance mirror San Francisco CGC Code Section 3.234 (“Post-employment and Post Service Restrictions”), in order to prevent former City officials and employees from (1) working for others on projects on which they had previously worked as City employees, (2) communicating on behalf of others with their former agency or department for a specified period of time after leaving City service, and (3) accepting employment within a specified period of time from those who they awarded contracts to during their City service.

Second, we propose that Oakland mirror Los Angeles Municipal Code Section 49.5.12 (“Future Employment of City Officials”), which restricts City officials from using their government decisions to secure future employment.

13. False Charges:

We propose that the Oakland ordinance mirror San Francisco CGC Code Section 3.238 (“Filing of False Charges”), which would prohibit the filing of false charges related to the Oakland Ethics Ordinance with the PEC or another enforcement authority.
14. Requirements related to misleading information, withholding information, & a duty to cooperate:

We propose that the Oakland ordinance mirror San Francisco CGC Code Section 3.240. This would prohibit providing false or misleading information to the PEC or other enforcement authorities or withholding information relevant to a PEC investigation of an Ethics Ordinance violation. Additionally, this section would impose on City officers a duty to cooperate with PEC investigations of alleged violations of the Ethics Ordinance.

15. Training & guide:

We propose that Oakland mandate that all City officers receive a local ethics training not less than once every two years, which will be provided by the PEC in partnership with the City Attorney. A model for this requirement is Los Angeles Municipal Code Section 49.5.18. Additionally, we propose that the PEC, in consultation with the City Attorney, be required to issue a “Good Government Guide” for City officials.

16. Curbing efforts to prevent competitive bidding:

In order to safeguard competitive bidding on contracts, we propose that the Oakland ordinance mirror Los Angeles Municipal Code Section 49.5.21 (“Effect of Campaign Money Laundering Violation on Contracts and Fee Waivers”).

17. Enforcement:

We propose mirroring the enforcement provisions of Los Angeles Municipal Code Section 49.5.19, including criminal and civil penalties, injunctive relief, and costs of litigation; but with the addition of administrative penalties, mirroring San Francisco CGC Code Section 3.242(d).

B. Components of Recommendation 3 – addressing the Council Code of Conduct

As discussed in Section I.D.2. of this report, the PowerPoint presentation at the PEC’s July 2013 meeting notes that the City Council Code of Conduct is one of the programs for which the PEC has no authorized enforcement power. In addition to giving the PEC reprimand and censure authority regarding the Code of Conduct, we recommend that the Code of Conduct be made applicable to the Mayor, City Attorney, City Auditor, and the City Administrator.
APPENDIX

ETHICS & GOOD GOVERNMENT WORKING GROUP
Office of Oakland City Councilmember Dan Kalb

Jay Costa
Jay Costa is the Program Director at MapLight, a nonprofit, nonpartisan research organization that reveals money's influence on politics. As Program Director, Jay leads the organization's web and data projects. He previously served on San Francisco's Sunshine Ordinance Task Force, chairing the group's Education, Outreach, and Training Committee, and on Berkeley's Fair Campaign Practices Commission and Open Government Commission.

Judith Cox
Judy Cox served on the League of Women Voters of Oakland Board for several years and as its president for three years. With six others, she ran the campaign for ranked choice voting in Oakland in 2006, which succeeded with a two-thirds win. She has worked for 10 years for clean money elections, is co-chair of the local group for clean money and the Disclose Act, and advocated for limited public funding of elections in Oakland. She was president of the MGO Democratic Club for three years and has served on the board for seven. She is also a member of National Women’s Political Caucus Northern Alameda County branch.

Sheila Dugan
Sheila Dugan is the Marketing and Communications Manager at EveryoneOn, a nonprofit working to eliminate the digital divide. As a 2013 Code for America fellow, Sheila was on a three-person team collaborating with the City of Oakland on the development of a web application to manage public records requests. She worked on broadband infrastructure development and adoption issues at the Center for Innovative Technology and Connect South Carolina before joining Code for America. In 2011, Sheila was appointed a Virginia Governor’s Fellow and served under the Secretary of Technology in the Office of the Governor. She earned a master’s degree in public policy at The College of William and Mary and a bachelor’s degree in political science from Brown University.

Katherine Gavzy
Katherine Gavzy has been the President of the League of Women Voters of Oakland for 3 years, and active with the League here since about 1996. She was also on the Board of the League of Women Voters in Pasadena. She has advocated for enhanced staffing and authority for the Oakland Public Ethics Commission. Katherine graduated from Smith College in Northampton Massachusetts with a degree in history. Her professional experience includes 20 years with Bank of America as a financial analyst and manager, 5 years as a Foreign Service Officer, and 5 years as a landscape contractor, including bidding on and performing public works contracts.

Victor Ochoa
Victor Ochoa is a lawyer whose office is located in Oakland. He was the 2005 President of the Alameda County Bar Association, a past Chairperson of the Oakland Public Ethics Commission, a past Executive Director and Board President of Centro Legal de la Raza in Oakland, a non-profit legal services provider, and a past Board President of La Clinica de la Raza in Oakland, a nonprofit healthcare services provider. He graduated from Stanford University in 1974 and from the Martin Luther King, Jr. Hall School of Law at UC Davis in 1977. He was admitted to the State Bar of California in December 1977.
Michelle Romero
Michelle Romero is the Claiming Our Democracy Director at The Greenlining Institute, where she works to strengthen democracy by ensuring communities of color can participate, directing projects dealing with voting rights, redistricting, and ballot initiative reform. As a co-founding member of the Future of California Elections Collaborative, she worked to improve the state’s voting materials and public assistance agencies’ compliance with the National Voter Registration Act. Michelle earned her B.A. from the University of California, Santa Cruz. She currently serves on the Board of California Common Cause and the Advisory Board of MapLight.

Sandra Sanders-West
Sandra Sanders-West is a Minister at Taylor Memorial United Methodist Church and earned her master’s degree in divinity at the Pacific School of Religion. She also works with the West Oakland Community Collaborative at the Prescott Joseph Center. Sandra previously served as the Executive Director for Advocates for Women (2010 – 2013) and a Neighborhood Services Coordinator in the Oakland Police Department (1998 – 2011).

Fumi Sugihara [Note: Ms. Sugihara had to withdraw from continued active participation in the Working Group due to health reasons.]
Fumi Sugihara was a member of the first Oakland Public Ethics Commission. She was born in Los Angeles, CA and spent World War II in an internment camp because she was Japanese American, where she learned about fairness and injustice. Fumi attended Wellesley College and the University of Chicago. She has done significant volunteer work on the boards of local, state (Texas and Oregon), and the national League of Women Voters.

Zabrae Valentine
Zabrae Valentine is the immediate past executive director of the California Forward Action Fund and co-founding deputy director of California Forward. Prior to establishing California Forward and the Action Fund, she directed The Commonwealth Club of California's Voices of Reform Project. Zabrae previously served as a senior program officer for the National Democratic Institute in Malawi, supporting legislative and policy analysis and budget monitoring, and as a senior legislative aide to U.S. Senator Tom Daschle. She currently serves on the Board of California Common Cause and is the chair of the Rockridge Community Planning Council.

Acknowledgements

In addition to the invaluable service of the Working Group, Councilmember Kalb would like to thank the following individuals who provided review or input on the content of this document:

Mary Bergan, Heather Holt, Helen Hutchison, Ralph Kanz, Charles Marsteller, Barbara Newcombe, Chris Peeples, LeeAnn Pelham, Randy Riddle, Bob Stern, Jon Sylvester, James Wheaton, and Andrew Wiener.

Councilmember Kalb would also like to Oakland City Attorney Barbara Parker for providing legal advice and consultation.

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

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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
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.

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\(^1\) 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.\(^\text{6}\)

**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

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\(^\text{6}\) 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.”

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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.  

**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.  

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.

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8 Government Code Section 87406.3
9 Government Code Section 87407
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”?\(^\text{10}\)

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.

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\(^10\) 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 person\(^ {16}\)
- 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 payment\(^ {17}\)

**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

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\(^ {13}\) 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.\footnote{FPPC Regulation 18944.1}

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.)\footnote{Government Code Section 87460}

**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.\footnote{Government Code Section 89502} 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.\footnote{Government Code Section 89506; FPPC Regulations 18950 - 18950.4}

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
reimbursement for lodging is limited to the day immediately before, the day of, and the day immediately following the speech or panel appearance.\textsuperscript{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 \textit{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.\textsuperscript{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\textsuperscript{24} of public funds.

**Basic Rule**

The California Constitution expressly prohibits “gifts” of public funds.\textsuperscript{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.

\textsuperscript{22} Government Code Section 89506; FPPC Regulations 18950 - 18950.4
\textsuperscript{23} Cal. Const. Art. XII, Section 7
\textsuperscript{24} Cal. Const. art. XVI, §6
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.\(^{28}\)

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\(^{25}\) 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

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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.

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\(^{34}\) 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.\textsuperscript{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.\textsuperscript{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).\textsuperscript{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

\textsuperscript{39} There are several state whistleblower laws, but see generally California Labor Code Sections 1102.5 to 1105
\textsuperscript{40} See O.M.C. Chapter 2.38
\textsuperscript{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](http://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/7 days 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.
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.  

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.  

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. 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.

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44 See BreakZone Billiards v. City of Torrence (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:

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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. Fraternization is the development of dating or romantic relationships between supervisors and employees. So-called “anti-nepotism,” “anti-cronyism” and “anti-fraternization” 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

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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

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\(^{51}\) 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.

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\(^{55}\) City Charter Section 218

\(^{56}\) City Charter Section 218
**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](#).
Attached is a list of pending complaints as of June 25, 2014. There are 29 cases pending review by the Commission. Several cases have been resolved in recent months, and as a result, staff recommends formal Commission action on 10 cases (highlighted in gray on the attached list) that fall into the following categories:

1. Delinquent Non-filers – Closure

On February 3, 2014, the Commission considered how to proceed with the first group of seven campaign statement non-filers under the new electronic filing requirements of the Oakland Campaign Reform Act passed in March 2013, which gave the PEC the authority to enforce filing requirements. Because this was the first round of electronic filing and PEC oversight of the electronic filing of these forms, the Commission decided to issue a letter to each non-filer allowing 30 days to file the required campaign statements or be subject to a $500 fine. These letters went out on February 6, 2014. The following committees still have not filed their committee termination forms or their campaign statements for the January – June 2013 filing period:

- 14-05 (Miller-Cole)
- 14-04 (Spearman)
- 14-03 (Juarez)
- 14-02 (Juarez)

The Commission’s determination on these cases already was discussed at the February meeting; however, pursuant to the Commission’s Complaint Procedures, the Commission must take formal action to close the cases.

Recommendation: Staff recommends closure of the cases 14-05 (Miller-Cole), 14-04 (Spearman), 14-03 (Juarez), and 14-02 (Juarez) with the attaching $500 fine authorized by the PEC, subject to the respondent’s request to hold an administrative hearing and proceed with a full review and potentially larger fine.

Note: Commission staff created a new Enforcement page on the PEC’s website where information about delinquent non-filers can be found, along with other cases where fines have been imposed and paid. The new page can be found at www.oaklandnet.com/pec, by clicking on “Enforcement” on the left pane of the home page.
2. Compliance Obtained – Closure with no fine

The 14-01 (Gallo) committee responded to Commission staff’s initial notification of non-filing that was sent to all non-filers in advance of the PEC’s February meeting and filed the necessary campaign statements:

- 14-01 (Gallo)

Recommendation: Because Mr. Gallo filed his campaign statements before the PEC reviewed the matter and offered the 30-day no-fine window to all non-filers, staff recommends closure of case 14-01 (Gallo) with no fine, consistent with the PEC’s discussion at the February meeting.

3. Compliance Obtained – Closure with warning letter

On October 29, 2013, PEC staff received an inquiry regarding a campaign flyer opposing a ballot measure on the November 13, 2013 special election ballot. The flyer lacked disclosure of who paid for the advertisement but included a website address, which then listed email contact information. On November 4, staff opened case 13-09, sent an email to the address listed and received a response from Madeline Hovland within hours. Ms. Hovland stated that she was not aware that she needed to file campaign statements for distributing a flyer and creating a website to advocate against a local ballot measure. She worked with PEC staff and staff of the California Fair Political Practices Commission to determine which forms were required, and she filed her statements on November 12, 2013.

Recommendation: Because Ms. Hovland responded immediately to PEC inquiries and then complied with the law by filing her campaign statements within days, and because she has no prior history of noncompliance with the PEC, staff recommends closure of PEC case 13-09 (Hovland) with a warning letter.

4. Closure – No violation

On August 1, 2013, the Commission received PEC complaint 13-06 (City Council) alleging that on July 30, 2013, the City Council had purposefully scheduled two controversial items at the end of the meeting to prevent public comment on those items.

Attached is a case analysis of the allegation with a resulting conclusion that, because there is no law barring the scheduling of agenda items in a particular order, City Council did not violate the Oakland Sunshine Ordinance or the California Brown Act.

Recommendation: Because there was no violation in this matter, staff recommends closure of case 13-06 (City Council) with no violation.

5. Dismissal – No PEC jurisdiction

On November 1, 2012, the Commission received PEC complaint 12-12 (Public Works Department and Oakland Fire Department) alleging that staff of the Public Works Department and the Oakland Fire Department abused their City authority and misused public funds by deciding to cut trees on City property at the request of a single adjacent property owner. The Commission has no authority to enforce violations of misuse of public resources or abuse of City authority by employees.

Recommendation: Staff recommends dismissal of complaint 12-12 due to lack of enforcement jurisdiction.
6. Closure – Action Completed

On September 16, 2009, the Commission received complaint 09-12 (Various City Departments) alleging that various City staff violated the Oakland Sunshine Ordinance and the California Public Records Act by failing to produce or failing to timely produce copies of public records. PEC staff conducted a review and mediation with the complainant and respondent in 2009, and in 2010, the Commission determined after several meetings that it would not to hold an administrative hearing on the specific allegations but instead conduct a series of public hearings on the issue of improving access to City records.

The hearings began in early 2011 and continued through May 2011, with one remaining hearing on Records Management yet to occur when the PEC’s Executive Director and Executive Assistant departed and the PEC was without staff for a year. In 2013, the PEC picked up the issue of access to public records, held its Transparency hearing in June 2013, and held a specific meeting devoted to the City’s Records Management Program in December 2013. The PEC issued a letter to City Council demanding specific steps be taken to implement Records Management training and management. Some of what was requested in the PEC’s letter has been initiated and partially completed by the City Clerk’s office, and additional actions remain and will continue to be monitored by the PEC’s Sunshine subcommittee going forward. Meanwhile, the remaining public hearing on Records Management – and the reason this case had remained open per the PEC’s determination in 2010 – has been completed.

**Recommendation:** Because the final action for which case 09-12 remained open was completed by the PEC in December 2013, staff recommends closure of case 09-12.

7. Closure – Upon request of Complainant

On October 10, 2013, Commission staff received an email from the complainant stating that he would like to withdraw complaint 09-03 (City Council), regarding the allocation of speaker time during open forum at City Council meetings.

**Recommendation:** Staff recommends closure of complaint 09-03 due to the complainant withdrawing his complaint.

**Recommended Motion**

Staff recommends the Commission review and approve all of the case resolution actions listed in this report.
# Public Ethics Commission
## List of Pending Complaints

<table>
<thead>
<tr>
<th>Date Rec’d</th>
<th>Case #</th>
<th>Complainant</th>
<th>Respondents</th>
<th>Date of Alleged Violation</th>
<th>Alleged Violation</th>
<th>Status</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/23/2014</td>
<td>14-10</td>
<td>Jeffrey Cash</td>
<td>Rebecca Kaplan, Coalition for Safe Streets and Local Jobs</td>
<td>2010-ongoing</td>
<td>Alleges candidate used ballot measure funds to pay for expenses associated with her candidacy for City elective office in violation of the Oakland Campaign Reform Act.</td>
<td>Staff is reviewing</td>
<td>H/M 3</td>
</tr>
<tr>
<td>5/6/2014</td>
<td>14-09</td>
<td>Cyrus Farivar</td>
<td>OPD &amp; Amber Fuller</td>
<td>PRR on 2/9/2014</td>
<td>Alleges violation of the Sunshine Ordinance and California Public Records Act by the Oakland Police Department in responding to a public records request.</td>
<td>Staff is reviewing</td>
<td>H/M 3</td>
</tr>
<tr>
<td>2/11/2014</td>
<td>14-07</td>
<td>PEC-initiated</td>
<td>Michael Johnson for Council</td>
<td>July 25, 2013 and ongoing to present</td>
<td>Alleges failure to file OCRA Form 301 before accepting higher contributions at the limit allowable for candidates who accept the voluntary expenditure ceilings per Form 301.</td>
<td>Staff is investigating</td>
<td>H/S 2</td>
</tr>
</tbody>
</table>

*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).
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<tr>
<td>9/11/2013</td>
<td>13-08</td>
<td>Rashidah Grinage</td>
<td>Mayor Jean Quan, City Administrator Deanna Santana, City Attorney Barbara Parker</td>
<td>Ongoing</td>
<td>Alleges a violation of the Ralph M. Brown Act and Oakland Sunshine Ordinance by holding private meetings to “re-legislate through labor negotiations what was public policy decided in Open Session under the Ralph M. Brown Act.” (Related to decisions being made about whether to place intake positions within the Oakland Police Department or the Citizens’ Police Review Board.)</td>
<td>Staff is reviewing</td>
<td>H/L 4</td>
</tr>
<tr>
<td>8/1/2013</td>
<td>13-6</td>
<td>Miguel Vargas</td>
<td>City Council</td>
<td>July 30, 2013</td>
<td>Alleges a violation of the Ralph M. Brown Act by the City Council in structuring the agenda to limit public comment.</td>
<td>Closure – No violation See staff memo attached</td>
<td>M/S 3</td>
</tr>
<tr>
<td>7/23/2013</td>
<td>13-5</td>
<td>John Klein</td>
<td>Office of the Mayor</td>
<td>June 25, 2013 to present</td>
<td>Alleges a violation of the California Public Records Act by holding private meetings to “re-legislate through labor negotiations what was public policy decided in Open Session under the Ralph M. Brown Act.”</td>
<td>Staff is investigating</td>
<td>H/S 2</td>
</tr>
<tr>
<td>7/15/2013</td>
<td>13-4</td>
<td>Retired Oakland Police Officers Association, Police &amp; Fire Retirement System Board</td>
<td>Retired Oakland Police Officers Association, Police &amp; Fire Retirement System Board</td>
<td>6/19/2013</td>
<td>Alleges a violation of the Oakland Sunshine Ordinance and the Ralph M. Brown Act by holding a closed session meeting on June 19, 2013.</td>
<td>Staff is investigating</td>
<td>H/M 3</td>
</tr>
<tr>
<td>Date Rec’d</td>
<td>Case #</td>
<td>Complainant</td>
<td>Respondents</td>
<td>Date of Alleged Violation</td>
<td>Alleged Violation</td>
<td>Status</td>
<td>Priority</td>
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<tr>
<td>6/10/2013</td>
<td>13-3</td>
<td>Ralph Kanz</td>
<td>City Council Members: Brooks, Reid, Gallo, Kalb &amp; Gibson-McElhaney.</td>
<td>6/10/2013</td>
<td>Alleges a violation of the Oakland Sunshine Ordinance and the Ralph M. Brown Act by five Councilmembers meeting to agree to hold a special meeting on June 13, 2013.</td>
<td>Staff is investigating</td>
<td>M/S 3</td>
</tr>
<tr>
<td>11/1/12</td>
<td>12-13</td>
<td>Judith Cox and Pamela Drake</td>
<td>Ignacio De La Fuente</td>
<td>9/28/2012</td>
<td>Alleges respondent violated Oakland's Campaign Reform Act by accepting campaign contributions in violation of the $700 contribution limit.</td>
<td>Staff is reviewing</td>
<td>H/M 3</td>
</tr>
<tr>
<td>11/1/12</td>
<td>12-12</td>
<td>Okhoo and Ernest Hanes</td>
<td>Mitch Thomson (City Arborist, Tree Section, Public Works Agency) and Camille Rodgers (Vegetation Management Inspector - Oakland Fire Department)</td>
<td>3/20/2009 - 3/29/2012</td>
<td>Alleges respondents abused their City authority and misused public funds.</td>
<td>Dismissal – No PEC jurisdiction</td>
<td>H/M 3</td>
</tr>
<tr>
<td>10/18/12</td>
<td>12-11</td>
<td>Scott Alonso</td>
<td>Ignacio De La Fuente</td>
<td>July 26, 2012</td>
<td>Alleges respondent used his Councilman elected position and City resources for a campaign press conference.</td>
<td>Staff is reviewing</td>
<td>H/S 2</td>
</tr>
<tr>
<td>4/26/12</td>
<td>12-04</td>
<td>City Auditor/Anonymous</td>
<td>City Council Member Ignacio De La Fuente</td>
<td></td>
<td>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)</td>
<td>Staff is reviewing</td>
<td>H/L 4</td>
</tr>
<tr>
<td>4/4/12</td>
<td>12-03</td>
<td>City Auditor/Anonymous</td>
<td>Downtown Oakland Association and Lake Merritt/Uptown District Assoc.</td>
<td>Dec 2009 and annually thereafter</td>
<td>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</td>
<td>Staff is reviewing</td>
<td>M/M 4</td>
</tr>
<tr>
<td>8/23/11</td>
<td>11-03</td>
<td>City Auditor/Anonymous</td>
<td>City Council Member Ignacio De La Fuente</td>
<td>June 2011</td>
<td>Complaint expresses concerns about the source of concert tickets allegedly in the possession of respondent</td>
<td>Staff is reviewing</td>
<td>H/L 4</td>
</tr>
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<tr>
<td>4-4-11</td>
<td>11-01</td>
<td>PEC initiated</td>
<td>ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse</td>
<td>Various; approx. betw 3/1/107/10 and 7/27/10</td>
<td>OCRA; §3.12.140 – Alleges two contractors made impermissible campaign contributions to candidates in the Nov 2010 election</td>
<td>Staff is investigating</td>
<td>H/L 4</td>
</tr>
<tr>
<td>11-1-10</td>
<td>10-28</td>
<td>Ralph Kanz</td>
<td>Ala. Demo. Central Comm.; OakPAC</td>
<td>October 29, 2010</td>
<td>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</td>
<td>Staff is investigating</td>
<td>H/M 3</td>
</tr>
<tr>
<td>10-13-10</td>
<td>10-26</td>
<td>Ralph Kanz</td>
<td>Jean Quan Floyd Huen</td>
<td>June 30, 2010 and ongoing</td>
<td>OCRA; §3.12.050; 3.12.090 – Alleges failure to report and include information regarding respondent’s loans to own campaign</td>
<td>Staff is investigating</td>
<td>H/M 3</td>
</tr>
<tr>
<td>10-13-10</td>
<td>10-25</td>
<td>Ralph Kanz</td>
<td>Don Perata</td>
<td>June 30, 2010 and ongoing</td>
<td>OCRA; §3.12.090(A)(D) – Alleges campaign was given extension of credit of over $1500 for more than 90 days</td>
<td>Staff is investigating</td>
<td>H/M 3</td>
</tr>
<tr>
<td>9/14/10</td>
<td>10-21</td>
<td>Jean Quan</td>
<td>Don Perata, Paul Kinney; California Correctional Peace Officers Association; Ronald T. Dreisback; T. Gary Rogers; Ed DeSilva; Richard Lee</td>
<td>Ongoing</td>
<td>OCRA violations – Alleges respondent campaign exceeded the voluntary expenditure limit during the November 2010 election</td>
<td>Staff is investigating</td>
<td>H/L 4</td>
</tr>
<tr>
<td>3/23/10</td>
<td>10-07</td>
<td>Sanjiv Handa</td>
<td>Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil Tagami</td>
<td>January 1, 2007 to present</td>
<td>Lobbyist Registration Act – Alleges respondents failed to register as lobbyists</td>
<td>Staff is investigating</td>
<td>H/L 4</td>
</tr>
<tr>
<td>3/3/10</td>
<td>10-05</td>
<td>David Mix</td>
<td>Oakland City Council</td>
<td>3/2/10</td>
<td>Oakland Sunshine Ordinance – Alleges City Council Rules Committee failed to make an “urgency finding” to schedule a decision (per Section 2.20.080)</td>
<td>Staff was directed to explore settlement in lieu of hearing.</td>
<td>M/M 4</td>
</tr>
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<td>09/16/09</td>
<td>09-12</td>
<td>Marleen Sacks</td>
<td>Office of the City Attorney (Mark Morodomi)</td>
<td>ongoing</td>
<td>Sunshine Ordinance; Public Records Act – Alleges failure to provide multiple public records upon request</td>
<td>Closure – Action Completed</td>
<td>M/M 5</td>
</tr>
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<td>This item was retained pending hearing re: Records Management Policy, which occurred December 3, 2013.</td>
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<tr>
<td>2/7/09</td>
<td>09-03</td>
<td>John Klein</td>
<td>City Council President Jane Brunner</td>
<td>February 3, 2009</td>
<td>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</td>
<td>Closure – Withdrawn by Complainant</td>
<td>M/M 4</td>
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<td>Complainant withdrew complaint on October 10, 2013.</td>
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</tbody>
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