OAKLAND ETHICS AND GOOD GOVERNMENT WORKING GROUP

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

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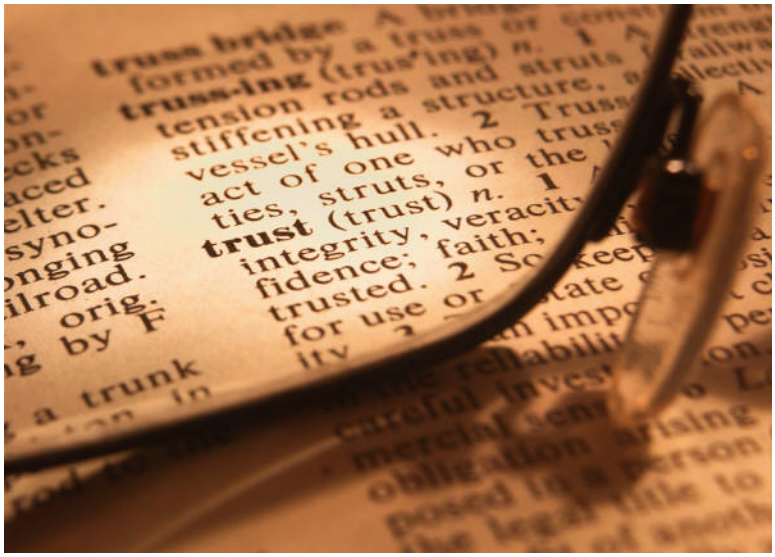

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Introduction

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:

Topic area	*Existing Oakland law*	*Examples of relevant issues*
PEC structure, authority, and resources	i. Charter Section 202; ii. Municipal Code Chapter 2.24	structure; enforcement authority; independence issues dedicated funding/staffing
Election campaigns	i. Campaign Reform Act; ii. Limited Public Financing Act; iii. False Endorsement in Campaign Literature Act	contribution limits; public financing; voluntary expenditure ceilings; campaign finance disclosure

Topic area	*Existing Oakland law*	*Examples of relevant issues*
Transparency	Sunshine Ordinance	open meetings; public records access & retention; transparency
Lobbying	Lobbyist Registration Act	disclosure of lobbying; restrictions on lobbyists; disclosure of spending to influence gov. decisions
Government ethics	i. Conflict of Interest Code; ii. City Council Code of Conduct	misuse of public resources; conflicts of interest in gov. decisions; post-employment restrictions; protecting competitive bidding with gov. contracts; nepotism & corruption
Whistleblower protection	Ordinance Prohibiting Retaliation Against City Employees Who Act as Whistleblowers [*PEC not currently able to enforce this law.*]	protections for gov. employees who are whistleblowers

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.

[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" section[2] 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:

[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[3] ("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[4], 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

[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.

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[5] 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

[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 response~~ding~~ 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[6], 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.

[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[7] 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.

[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 in 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 a 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

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.

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

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