INTRODUCED BY COUNCILMEMBER

_____

APPROVED AS TO FORM AND LEGALITY

_____

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 2.24 OF THE OAKLAND MUNICIPAL CODE PERTAINING TO THE FUNCTIONS, DUTIES, AUTHORITY, AND COMPOSITION OF THE PUBLIC ETHICS COMMISSION

WHEREAS, City Charter Section 202(5) provides that the City Council shall "by ordinance" prescribe the function, duties, powers, jurisdiction and the terms of office for the Public Ethics Commission; and

WHEREAS, the amendments set forth below will achieve greater consistency with the provisions of City Charter Section 202 and further clarify and articulate the functions and duties of the Public Ethics Commission; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Chapter 2.24 of the Oakland Municipal Code is hereby amended to read as follows:

2.24.010 DEFINITIONS

For purposes of this chapter, the following definitions shall apply:

A. "Commission" shall mean the Oakland Public Ethics Commission as established pursuant to Oakland City Charter Section 202.

B. "Doing business with an Oakland Agency" shall mean soliciting, bidding on, submitting proposals or qualifications for, or entering into or performing, a contract for goods, equipment, services or financial assistance with an Oakland Agency. "Doing

business with an Oakland Agency" shall also mean the soliciting, applying for or receiving more than $500 in public funds from an Oakland Agency within a consecutive twelve-month period."

C. "Governmental ethics laws" shall mean local laws governing campaign finance and communications, public financing of campaigns, lobbyist registration, public meetings and records, elections, conflicts of interest, disclosure of economic interests, use of public resources, incompatible office holding and employment, nepotism and ethical behavior.

D. "Oakland Agencies" shall mean the City of Oakland, Oakland Redevelopment Agency, Port of Oakland, and the Oakland Unified School District.

2.24.020 FUNCTIONS AND DUTIES

It shall be the function and duty of the Public Ethics Commission, for and on behalf of Oakland Agencies, residents of the City of Oakland and its elected officials, officers, employees, boards and commissions to:

A. Monitor, administer and enforce governmental ethics laws as authorized to the Commission by ordinance.

B. Review and make recommendations to the City Council regarding governmental ethics laws and to report periodically to the City Council concerning the application and effectiveness of governmental ethics laws.

C. Set salary for the office of City Councilmember pursuant to Oakland City Charter Section 202 and advise the City Council regarding issues pertaining to City Council salaries.

D. Provide the City Administrator with an assessment of the Commission's staffing and budgetary needs.

E. Issue opinions, advice and instruction, in consultation with the City Attorney when necessary, regarding governmental ethics laws as authorized to the Commission by ordinance.

F. Prescribe forms, reports, statements, notices, and other documents related to governmental ethics laws as authorized to the Commission by ordinance.

G. Develop informational resources and training programs pertaining to governmental ethics laws.

H. Solicit, promote and receive public comment on governmental ethics laws.

I. Perform such other functions and duties as may be prescribed by ordinance and that are consistent with Commission responsibilities under the City Charter.

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

2.24.030 AUTHORITY

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

A. Initiate and conduct investigations, audits and public hearings.

B. Issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before the Commission. The Commission may find a person in contempt as provided by the general law of the State for failure or refusal to appear, testify, or to produce required books, papers and documents.

C. Determine the merits of complaints alleging violations and impose penalties, fines and other remedies as authorized to the Commission by ordinance. The Commission's decision to impose penalties, fines or other remedies for violation of any regulation or ordinance over which the Commission has authority shall be final. Parties cannot appeal to the City Council. A party may seek judicial review of a final decision of the Commission pursuant to California Code of Civil Procedure Section 1094.5 within the time frames set forth therein.

D. Issue letters of guidance or concern to Oakland Agencies, their officials, officers, candidates for elected office, employees, local bodies and any other persons regarding an alleged violation of a governmental ethics law that the Commission is authorized to enforce where it appears, after an investigation, that there is an issue sufficient to justify a formal evidentiary hearing but the Commission chooses not to proceed with a hearing.

E. Issue written opinions and written advice with respect to a person's duties under governmental ethics laws that the Commission is authorized to enforce so long as the procedures for issuing such opinions and advice have been approved pursuant to Section 2.24.070. No person who relies in good faith upon a written opinion issued by the Commission shall be subject to enforcement proceedings by the Commission provided that the material facts are as stated in the opinion request. The good faith reliance upon written advice from Commission staff shall be a complete defense in enforcement proceedings by the Commission provided that the material facts are as stated in the advice request.

2.24.040 COMPOSITION, TERMS OF OFFICE

A. The Oakland Public Ethics Commission shall have seven (7) members.

B. Members of the Commission shall be appointed as follows: Three (3) members who represent local civic organizations with a demonstrated history of involvement in local governance issues shall be nominated for appointment by the Mayor, with confirmation by the City Council, pursuant to Section 601 of the City Charter. Four (4) members shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of the Commission. Commission-appointed members shall reflect the interests of the greater Oakland neighborhood and business communities. Commissioners shall serve without compensation.

C. Prior to the nomination of a Commission member by the Mayor, each member of the City Council may provide the Mayor with a list of up to three individuals qualified to serve on the Commission. In appointing members to the Commission, the Mayor may consider the recommendations of the City Council.

D. Four (4) members shall constitute a quorum of the Commission.

E. Members of the Commission shall be appointed to overlapping terms beginning on January 22 and ending on January 21. Each Commission term of office shall be three (3) years. The tenure of a member on the Commission shall terminate when the member's term expires or upon resignation or removal.

F. A vacancy on the Commission will exist whenever a member dies, resigns, or is removed. For vacancies caused by the normal expiration of a Mayoral appointee's term, the Mayor shall submit his or her nomination to the City Council no later than 30 days before the end of the term. For vacancies caused by a Mayoral

appointee's death, resignation or removal from office, the Mayor shall submit his or her nomination to the City Council within 60 days after the death, resignation or removal from office.

G. There shall be no limit on the number of terms a person may serve on the Commission provided that any term be separated by a period of at least one year from the last date of service on the Commission. No person removed from the Commission pursuant to Sections 2.24.040(H) or 2.24.040(I) shall be eligible to serve on the Commission after his or her removal.

H. A member appointed by the Mayor may be removed pursuant to Section 601 of the Oakland City Charter.

I. A member appointed by the Commission may be removed by the affirmative vote of at least four (4) members of the Commission. No member of the Commission shall be removed except for one or more of the following reasons as determined by the Commission: 1) conviction of a felony, 2) willful or corrupt misconduct in office, 3) inability or unwillingness to perform the duties of office, 4) absence from three (3) regular meetings during a twelve month period unless because of illness or when excused by the Commission chairperson, or 5) failure to abide by the qualifications and restrictions set forth in Section 2.24.050(A).

2.24.050 QUALIFICATIONS

A. During his or her tenure, each member of the Commission:

1. shall be an individual whose domicile is located within the City of Oakland;
2. shall not be an employee of an Oakland Agency, or hold or seek election to public office; and
3. shall not act as a local governmental lobbyist.

B. During his or her tenure, no member of the Commission shall make, participate in making, or influence a Commission decision that directly involves:

1. an Oakland Agency, an elected or appointed official of an Oakland Agency, a local governmental lobbyist, or a candidate for election to an Oakland office, that or who is (a) the source of income to a Commissioner, or (b) the source of a gift to a Commissioner, in an amount or manner that would require the Commissioner to report such income or gift on a Statement of Economic Interest; or

2. any Oakland official seeking election or appointment to public office, any candidate for election to an Oakland office, or any Oakland ballot measure, in or for which the Commissioner publicly endorsed, supported, opposed or campaigned for or against; or

3. any work, business, property or official action of an Oakland Agency in which the Commissioner has a substantial financial interest. For purposes of this subsection, a substantial financial interest means: (a) the Commissioner has a controlling ownership interest in a business entity doing business with an Oakland Agency; or (b) the member serves as a director, officer, general partner, or trustee of any business entity doing business with an Oakland Agency.

As used in this subsection, "gift" shall have the same meaning , and be subject to the same exceptions, as provided in the California Political Reform Act and the regulations adopted thereto, as amended. Payments or benefits which the California Political Reform Act and the regulations adopted thereto define as a "gift" but which are not subject to the annual gift limitation shall not constitute a "gift" for purposes of this subsection.

C. For purposes of 2.24.050(B), a Commissioner shall publicly state, at any noticed public meeting of the Commission, the nature of any interest or action specified in subsection 2.24.050(B) that prohibits him or her from making, participate in making, or from attempting to influence a Commission decision. Such Commissioner shall then leave the room until the Commission has completed its consideration of the Commission decision in question.

D. In determining whether a Commissioner shall be prohibited from making, participate in making or attempting to influence the making of a Commission decision, the Commissioner shall be guided by the laws, opinions and advice pertaining to financial conflicts of interest pursuant to the California Political Reform Act.

2.24.060 ELECTION OF CHAIRPERSON AND MEETINGS

At the first regular meeting of each year the members shall elect a chairperson and a vice chairperson. The Commission shall hold regular meetings at an established time and place suitable for its purpose. Other meetings scheduled for a time or place other than for regular meetings shall be designated as special meetings. Written notice of special meetings shall be provided the members, the Council, and the public press at least seventy-two hours before the meeting is scheduled to convene.

2.24.070 RULES, REGULATIONS AND PROCEDURES

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

2.24.080 STAFF ASSISTANCE

The Office of the City Administrator shall provide the Commission with staff and financial assistance to permit the Commission to fulfill the functions and duties as set forth above including, but not limited to, staffing and funding the positions of Executive Director, an Executive Assistant, and additional personnel as circumstances require. The Executive Director shall be a classified position subject to the civil service rules of the City of Oakland however the City Administrator, or his or her designee, should use his or her best efforts to consult with the Commission prior to the hiring or termination of the Executive Director.

2.24.090 LEGAL ASSISTANCE

The City Attorney is the Commission's legal advisor. The City Attorney shall provide the Commission with legal .assistance in conformity with the California Rules of Professional Responsibility and applicable state law. In the event of a conflict, the City Attorney, after consultation with the Commission, shall retain outside counsel.

2.24.100 PROTECTION AGAINST RETALIATION

A. No officer or employee of the City shall use or threaten to use any official authority or influence to effect any action as a reprisal against a City officer or employee for acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

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

2.24.110 SEVERABILITY

The provisions of this ordinance are severable. If any word, clause, sentence, paragraph, provision, or part of this ordinance, or the application of this ordinance to any person, is declared invalid, preempted or unconstitutional by any court, the court's ruling shall not impair or invalidate any other portion of this ordinance. The City Council finds and declares that it would have adopted this ordinance without the invalid, preempted or unconstitutional word, clause, sentence or provision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, NADEL, QUAN, REID, KAPLAN, KERNIGHAN, AND PRESIDENT BRUNNER

NOES-
ABSENT-
ABSTENTION-