CITY OF OAKLAND
Public Ethics Commission
Andrew Wiener, *Chair*
Mario Andrews, *Vice-Chair*
Barbara Green-Ajufo
Jonathan Stanley
Alaric Degrafinried
Alex Paul
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Daniel D. Purnell, Executive Director

I. **ONE FRANK OGAWA PLAZA, 4TH FLOOR, OAKLAND, CA 94612** **(510) 238-3593**
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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: January 4, 2010

RE: A Staff Report And Action To Be Taken Regarding Proposed Amendments To O.M.C. Chapter 2.24 (Powers And Duties Of The Public Ethics Commission)

At its meeting of December 7, 2009, the Commission focused its discussion on proposed Section 2.24.050, "Commissioner Qualifications and Restrictions." Specifically, the Commission considered language proposed by the MGO Democratic Club and alternative language submitted by staff. Following public comment and debate, the Commission came to a resolution regarding the language that it would consider recommending to the City Council for adoption. The Commission requested staff to attach a complete "redline" version of all amendments for its final review at tonight's meeting.

Commission staff recommends that the Commission make any final changes to the attached redline and to direct staff to forward the proposal to the City Council for adoption.

Respectfully submitted,

Daniel D. Purnell
Executive Director

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 ~~CREATION~~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 has established the PUBLIC ETHICS COMMISSION.~~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."]

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.~~Oversee compliance with the City of Oakland Campaign Reform Ordinance.~~

~~B. Oversee compliance with the City of Oakland Code of Ethics.~~

~~C. Oversee compliance with Conflict of Interest regulations as they pertain to City of Oakland elected officials, officers, employees, and members of boards and commissions.~~

~~D. Oversee the registration of lobbyists in the City of Oakland should the City Council adopt legislation requiring the registration of lobbyists.~~

~~E. Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.~~

~~F. Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on City of Oakland elections and campaigns.~~

~~G. Make~~

B. Review and make recommendations to the City Council regarding~~amendments to the City of Oakland Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown~~

Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal reportgovernmental ethics laws and to report periodically to the City Councilevery two years concerning the application and effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public governmental ethics laws.ethics.H.

C. Set compensationsalary for the office of City Councilmember which shall be reviewed by the Commission ad adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that pursuant to Oakland City Charter Section 202 and advise the City Council regarding issues pertaining to City Council salaries.which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent (10%) above the base salary as adjusted.

I. Each year, and within the time period for submission of such information for the timely completion of the City's annual budget, provide the City Council

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

J. Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.

K. Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.

L. Issue oral advice and formal written opinions,E. Issue opinions, advice and instruction, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and publicregarding governmental ethics laws as authorized to the Commission by ordinance.

M. Prescribe forms for

F. Prescribe forms, reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.governmental ethics laws as authorized to the Commission by ordinance.

~~N. Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:~~

~~1) Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.~~

~~2) Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.~~

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

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

~~O.~~I. Perform such other functions and duties as may be prescribed by ordinance ~~the Oakland Code of Ethics, Conflict of Interest regulations, ordinances as they may adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the City of Oakland and Campaign Reform Ordinance.~~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 ~~regulations and ordinances related to campaign financing, conflicts of interest, lobbying, and public ethics.~~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. ~~Impose penalties~~Determine the merits of complaints alleging violations and impose penalties, fines ~~as provided for~~ and other remedies as authorized to the Commission by ordinance. The Commission's decision to impose penalties~~ and~~, fines or other remedies for violation of any regulation or ordinance over which the Commission has authority shall be ~~appealable to a mutually agreed upon arbitrator whose decision shall be~~ final. ~~The decision of the arbitrator is not appealable~~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 ~~consist of~~have seven (7) members.

B. ~~The~~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 unanimous vote of the three (3) representatives appointed by the Mayor with confirmation by the City Council. The~~process, by the affirmative vote of at least four (4) members ~~so appointed~~of the Commission. Commission-appointed members shall reflect the interests and diversity of the greater Oakland neighborhood and business communities. Commissioners shall serve without compensation.~~compensation. Prior to appointment~~

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

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

~~C.~~E. Members of the Commission shall be appointed to overlapping ~~terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of~~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 ~~serve for a term of three (3) years, except that for terms~~ terminate when the member's term expires.~~commencing immediately preceding adoption of this Ordinance, two (2) members shall be appointed for a one year term, two (2) members shall be appointed for a two year term, and three (3) members shall be appointed for a three year term. No member may serve more than one consecutive three year term.~~

~~D.~~F. A vacancy on the Commission will exist whenever a member dies, resigns, or is ~~removed, or whenever an appointee fails to be confirmed by the Council within fourteen days of appointment. A vacancy shall be filled no sooner than 30 days and no later than 60 days from the date that~~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 ~~such vacancy occurs. Any member of the City Council who chooses to recommend a person or persons to fill a vacancy of a position appointed by the Mayor and confirmed by the City Council pursuant to section 4(a) shall forward such recommendation to the Mayor for consideration no later than thirty days from the date that a vacancy occurs.~~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.

~~E.~~ 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 ~~unanimous vote of the three (3) members appointed by the Mayor and confirmed by the Council may be removed by the unanimous vote of the three (3) members~~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 ~~appointed by the Mayor and confirmed by the Council. Among other things,~~except for one or more of the following reasons as determined by the Commission: 1) conviction of a felony, ~~misconduct, incompetence, inattention to or inability to perform duties, or~~2) willful or corrupt misconduct in office, 3) inability or unwillingness to perform the duties of office, 4) absence from three (3)~~consecutive~~ regular meetings ~~except on account~~during a twelve month period unless because of illness or when ~~absent from the City~~excused by ~~permission of~~ the ~~Commission, shall constitute cause for removal.~~Commission chairperson, or 5) failure to abide by the qualifications and restrictions set forth in Section 2.24.050.

2.24.050 QUALIFICATIONS AND RESTRICTIONS

A. Each member of the Commission shall be ~~a resident~~ an individual whose domicile is located within the City of Oakland ~~and registered to vote in Oakland elections.~~ .

B. During his or her tenure~~, and for one year thereafter,~~ no member of the Commission shall:

~~A. Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City.~~ 1. Be employed by an Oakland Agency, or hold or seek election to public office ***[OPTION ONE: "to the office of a public agency"]***;

~~B. Seek election to any other public office, or participate in or contribute to an Oakland municipal campaign.~~ 2. Receive income otherwise reportable on a Statement of Economic Interests from an Oakland Agency, from a local governmental lobbyist, from an elected or appointed official of an Oakland Agency, or from a candidate for election to an Oakland office;

~~C. Endorse~~ 3. Publicly endorse, support, oppose, or ~~work on behalf of~~ campaign for or against, including making a contribution or an expenditure supporting or opposing: (a) any Oakland official seeking election or appointment to public office, (b) any candidate for election to an Oakland office, or (c) an Oakland ballot measure ~~in~~;

4. accept a gift from an Oakland elected or appointed official of any Oakland agency, from a candidate for election~~.~~ to any Oakland office, from a designated employee of any Oakland agency, or from

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a local governmental lobbyist. 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. For purposes of illustration, exceptions to the definition of "gift" include, but are not limited to, informational materials, returned, donated or reimbursed gifts, gifts from family members, any devise or inheritance, personalized plaques or trophies, tickets to certain non-profit fundraisers, gifts of home hospitality, certain holiday or birthday presents, and certain intra-state travel payments. 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. During his or her tenure and for one year thereafter no member of the Commission shall act as a local governmental lobbyist.

D. During his or her tenure, no member of the Commission shall have a substantial financial interest in any work, business, property or official action of an Oakland agency. For purposes of this section, a substantial financial interest includes, but is not limited to, the following situations: 1) the member has a controlling ownership interest in a business entity doing business with an Oakland agency; or 2) the member serves as a director, officer, general partner, or trustee of any business entity doing business with an Oakland agency. In determining whether a substantial financial interest exists, the Commission shall be guided by the laws, opinions and advice pertaining to financial conflicts of interest pursuant to the California Political Reform Act.

E. The provisions of subsection 2.24.050(B)(2) and 2.24.050(B)(4) shall only apply to those Commissioners appointed after the effective date of this section.

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 ~~City Manager and the City Clerk, or designees thereof,~~Office of the City Administrator shall provide the Commission with staff and financial assistance~~as necessary~~ to permit the Commission to fulfill the functions and duties as set forth ~~above.~~ 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, to the extent such assistance does not constitute a conflict.~~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-