CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: December 7, 2009

At its meeting of October 5, 2009, the Commission continued its discussion and review of a series of proposed amendments to its "enabling ordinance", O.M.C. Chapter 2.24. The only remaining issue pertains to proposed Section 2.24.050: Commissioner "Qualifications and Restrictions". The Commission has currently accepted the following language:

2.24.050 QUALIFICATIONS AND RESTRICTIONS

A. Each member of the Commission shall be an individual whose domicile is located within the City of Oakland.

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

1) be employed by an Oakland Agency;

2) act as a local governmental lobbyist;

3) seek election to any Oakland public office;

4) participate in or contribute to an Oakland municipal campaign;

5) publicly endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election; or

Deleted: a resident of Oakland and registered to vote in Oakland elections.

Deleted: During

Deleted: tenure

Deleted: 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.B. Seek election to any other public office, or

Deleted: campaign.

Deleted: C. Endorse,

Deleted: an Oakland election.

6) accept a gift of any value 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 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, 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; 2) the member serves as a director, officer, general partner, or trustee of any business entity doing business with an Oakland agency; 3) the member directly receives more than $500 in the capacity as an employee or contractor from an Oakland Agency during any calendar year. In determining whether a substantial financial interest exists, the Commission shall be guided by the laws, opinions and advice pertaining to financial conflicts of interests pursuant to the California Political Reform Act.

For the past several weeks, Commission staff has traded drafts and comments with representatives of the MGO Democratic Club who earlier presented the Commission with a proposal for modifying the above language. Their most recent submission reads as follows:

Members of the Oakland Public Ethics Commission should set an ethical standard that leads the City by example.

2.24.050 Qualifications and Restrictions

A. Each member of the Commission shall be an individual whose domicile is located within the City of Oakland.

B. During his or her tenure no member of the Commission or PEC staff member shall:

1) be employed by an Oakland agency, hold any other public office, or act as a local governmental lobbyist.

2) receive income reportable on their Statement of Economic Interest that comes from a City agency, local governmental lobbyist, or from a candidate for election to any Oakland office

3) publicly endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

4) participate in or contribute to the campaign fund of any Oakland official.

5) 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 a local governmental lobbyist or from any person or entity who or which has, or is seeking, a contract for goods or services with the City. 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. Payments or benefits that the California Political Reform Act and the regulations adopted pursuant thereto define as a "gift," but which are not subject to the annual gift limitation, shall constitute a gift.

C. During his or her tenure and for one year thereafter no member of the Commission shall be a local governmental lobbyist.

D. During his or her term no member of the Commission shall seek election to any public office.

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

If the Commission is interested in adopting the MGO proposal (or portions thereof), Commission staff submits the MGO proposal (left column) and offers the following modifications (right column) in an effort to reconcile the MGO proposal with what the Commission has previously endorsed:

MGO Proposal	**Staff Suggestion**
Members of the Oakland Public Ethics Commission should set an ethical standard that leads the City by example. 2.24.050 Qualifications and Restrictions A. Each member of the Commission shall be an individual whose domicile is located within the City of Oakland.	Prefatory language is optional. 2.24.050 Qualifications And Restrictions A. Each member of the Commission shall be an individual whose domicile is located within the City of Oakland.

B. During his or her tenure no member of the Commission or PEC staff member shall:	B. During his or her tenure no member of the Commission shall:
1) be employed by an Oakland agency, hold any other public office, or act as a local governmental lobbyist.	1) be employed by an Oakland agency or hold or seek election to any other public office.
2) receive income reportable on their Statement of Economic Interest that comes from a City agency, local governmental lobbyist, or from a candidate for election to any Oakland office	2) receive income otherwise reportable on a Statement of Economic Interests from a City agency, local governmental lobbyist, an elected or appointed official of any Oakland agency, or from a candidate for election to any Oakland office.
3) publicly endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election	3) publicly endorse, support, oppose, or work on behalf of any local candidate or ballot measure in an Oakland election
4) participate in or contribute to the campaign fund of any Oakland official.	4) contribute to an Oakland municipal campaign;
5) 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 a local governmental lobbyist or from any person or entity who or which has, or is seeking, a contract for goods or services with the City.	5) 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 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. Payments or benefits that the California Political Reform Act and the regulations adopted pursuant thereto define	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

as a "gift," but which are not subject to the annual gift limitation, shall constitute a gift.	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 be a Local governmental lobbyist.	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 term no member of the Commission shall seek election to any public office.	Already addressed in Section B.1. (Note: The policy issue here is whether to prohibit Commissioners from resigning their service on the Commission in order to run for elected office during their three-year "term.") 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) this section shall only apply to those Commissioners appointed after the effective date of this section.	E. The provisions of subsection 2.24.050(B)(2) this section shall only apply to those Commissioners appointed after the effective date of this section.

If the Commission is able to reach an agreement on the MGO proposal, Commission staff recommends that the Commission direct staff to incorporate any final changes into a comprehensive redline suitable for adoption at the January, 2010, regular meeting.

Respectfully submitted,

Daniel D. Purnell
Executive Director