

**CITY OF OAKLAND**  
**Public Ethics Commission**

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Caryn Bortnick  
Sukey Wilder  
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Daniel D. Purnell, Executive Director

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One Frank Ogawa Plaza, 4<sup>th</sup> Floor, Oakland, CA 94612

(510) 238-3593

Fax: (510) 238-3315

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** May 2, 2005

**RE: A Report And Action To Be Taken Regarding Public Ethics  
Commission Jurisdiction And Administration**

At its regular meeting of February 7, 2005, the Commission directed staff to begin preparing materials to assist the Commission in assessing its jurisdiction and authority under current law.

Attached for Commission review is a comparison of five other California "ethics commissions." Commission staff compared the other jurisdictions in terms of commission composition, method of appointment, commissioner qualifications, restrictions on membership, handling vacancies, relationship with staff, duties and responsibilities, enforcement procedures, conflicts with other local laws, and powers of subpoena. **Attachment 1.**

The cities with ethics commissions comparable with Oakland's are: San Francisco, Los Angeles, San Diego, San Jose and Berkeley.

**I. STAFF COMMENT**

**A. Commission Composition And Method Of Appointment**

Commission memberships range from a low of five members to a high of nine. All commissions stagger the terms of their membership to ensure an ordered turn-over. The length of individual terms varies, from a single four-year term (Berkeley); to a single six-year term (Los Angeles); to up to two four-year terms (San Diego, San Jose). Oakland commissioners serve a single, three-year term with the possibility of a one-year "holdover".

The City of Oakland is fairly unique in the manner in which commissioners are appointed. Oakland is the only commission that "self-selects" a portion of its members. Some commissions are appointed by the Mayor and/or the City Council. Several cities assign a specific appointment to a particular elected official (San Francisco, Los Angeles).

## **B. Commissioner Qualifications**

Most commissioners must be a registered voter in their respective cities. Beyond that basic qualification, some cities establish specific qualifications for membership, such as familiarity with specific subject areas (San Francisco, San Jose) or membership in the legal profession (San Diego, San Jose). San Diego requires that one member be a former elected official. Oakland commissioners are required only to "reflect the interests of the greater Oakland neighborhood and business communities" and be a registered voter.

## **C. Restriction On Commissioner Activities**

All comparable commissions impose some type of restriction on commissioner activities while in office. The restrictions vary widely but most restrict commissioners from holding concurrent elective office and from participating in political campaigns. Some commissions impose restrictions on activities following a commissioner's term of office. Los Angeles, San Diego and San Jose prohibit commissioners from seeking elective office for various periods after serving on their commissions. San Francisco prohibits a city employee, registered lobbyist or campaign consultant from serving on its commission.

Oakland commissioners are prohibited during their terms, and for one year thereafter, from having employment or financial interests with the City, seeking elective office, or participating in Oakland campaigns.

## **D. Filling Vacancies**

Most cities require that commission vacancies be filled within 30 to 60 days. Oakland now requires the Mayor to submit his or her nominee to fill a vacancy for a seat held by a Mayoral appointee within 90 days of the vacancy or the City Council may fill the vacancy.

## **E. Commission And Staff Relationship**

The executive director position for the San Francisco, Los Angeles and San Diego commissions is appointed directly by the commission and serves at its pleasure (San Diego requires City Council confirmation). The San Francisco and Los Angeles executive director has the authority to hire and fire other commission employees. The San Jose and Berkeley commissions are staffed by city employees not hired by the commission. The Oakland executive director is hired by, and serves at the will of, the City Administrator.

The city attorney serves as the legal advisor for all comparable commissions. However some commissions have express requirements in situations involving potential conflicts. Los Angeles permits the commission to hire outside counsel in matters involving the

city attorney. The San Jose commission retains the city attorney for advice on all matters except for the investigation and review of complaints -- the San Jose city council is required to retain outside counsel selected by the commission for this purpose.

The Oakland City Attorney has arranged a reciprocal agreement with San Francisco to provide the Oakland commission with legal counsel in the event of a conflict. The Oakland commission has used this reciprocal arrangement on several occasions during the past five years.

#### **F. Commission Duties And Responsibilities**

All commissions have administrative and enforcement responsibilities for local ordinances pertaining to such subjects as campaign finance, lobbyist registration, public campaign financing, and conflict of interest. In this respect, the Oakland commission has as varied and as broad a scope of responsibility as any other commission. Oakland also has the unique duty and authority for adjusting City Council salaries. No other ethics commission possesses this authority.

There are, however, unique provisions existing in other jurisdictions. The San Francisco commission may, by 4/5 vote, submit a proposal directly to voters on laws involving campaign finance, lobbyist registration, public campaign financing, and conflict of interest. The San Francisco commission is also authorized to hold hearings to determine whether an elective or appointed official warrants suspension or removal for acts of misconduct.

The Los Angeles commission is authorized to investigate violations of local *and* state campaign laws. State violations are referred to state authorities. The Los Angeles and Berkeley commissions may issue advice and opinions that can provide a defense to enforcement actions if properly relied upon.

Both the San Francisco and Los Angeles commissions serve as the respective filing officers for state campaign and conflict of interest filings. This function is provided in Oakland, as in most cities, by the City Clerk.

Only Berkeley and Oakland permit their complaint proceedings to be held in an open public meeting.

All comparable commissions possess the power to subpoena people and documents.

#### **G. Conflict with Other Laws**

Only the Los Angeles charter expressly provides that its ethics provisions prevail against conflicting local laws.

## **II. FUTURE COMMISSION ACTION**

The Commission requested staff to provide some ideas on how to pursue its inquiry on the subject of Commission jurisdiction. There are two primary considerations. The first is to develop a process for bringing such fundamental recommendations to the City Council for consideration and possible submission to the voters. The Commission may wish to appoint a subcommittee to pursue this work initially or periodically consider this topic as a full Commission.

Another option is to appoint, or seek appointment of, a task force of interested persons and stakeholders to further research and develop specific policy proposals. The advantage with this approach is to engage a pool of interested persons who might later be influential in securing passage of any future recommendations. Such a pool of interested persons could foreseeably include representatives of primary stakeholder groups, past Commission members, City staff, elected and appointed representatives, and neighborhood and business leaders. The disadvantage is that the Commission may lose some degree of control over the issues considered and the recommendations made.

The second consideration is identifying potential policy areas. The basic questions in this review are 1) what should the Commission's purpose be, and 2) what powers does it require to achieve that purpose. A logical next step in the Commission's review would be to carefully analyze the language in City Charter Section 202, which establishes the Public Ethics Commission, in light of these two basic questions. Commission staff can prepare such an analysis once the Commission determines how to proceed with its review.

Respectfully submitted,

Daniel D. Purnell  
Executive Director