

# City of Oakland Public Ethics Commission



## Oakland Government Ethics Act Guide

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## INTRODUCTION

Oakland employees and officials are entrusted by the public to use City time, property and money efficiently and in a legal and ethically responsible manner. The City of Oakland Government Ethics Act (GEA) codifies the requirements and regulations of the California Political Reform Act and adds local rules and restrictions. GEA is intended to provide a clear, comprehensive, and locally enforceable framework of law to ensure that:

- 1) Government decisions are made in the best interests of Oakland residents and not for individual or private gain;
- 2) Ethics rules for public servants are clear; and
- 3) The law is fairly and effectively enforced.

GEA applies to all Oakland public servants, including elected or appointed City officeholders, City board and commission members (including Port Commissioners), City employees (full or part-time), and City consultants required to file a Statement of Economic Interests ([FPPC a Form 700](#)).

This **Government Ethics Act Guide** is intended to provide an overview of the Oakland Government Ethics Act and is **advisory only**. To the extent the Guide conflicts with the actual ordinance, administrative regulation or interpretation by the Public Ethics Commission, those authorities govern the implementation and enforcement of the ordinance. All legal citations are to the Oakland Municipal Code (O.M.C.) unless otherwise noted.

The Public Ethics Commission (PEC) is responsible for enforcement and implementation of the Government Ethics Act and is charged with providing advice, assistance, and training to Oakland public servants and candidates subject to the law. We encourage you to reach out if you have questions about this guide or your obligations under the law. We provide resources in multiple formats to meet your needs, including online training, custom trainings by request, and both formal and informal legal advice.

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## FILE YOUR FORM 700

The City of Oakland Conflict of Interest Code (O.M.C. 3.16) designates the public servants required to file a Statement of Economic Interests (Form 700) and disclose all information required pursuant to the California Political Reform Act and the City Conflict of Interest Code. A Form 700 must be filed with the City Clerk's office upon assuming office, annually, and when leaving office.

### *What financial interests must be disclosed?*

All disclosable financial interests are itemized on the Statement of Economic Interests (Form 700) that public servants are required to complete. They include interests in real property, ownership positions in businesses and other entities, sources of income, and gifts received. Form 700 includes instructions with more detail on specific filing requirements.

## GIFTS

Public servants required to file a Statement of Economic Interests (Form 700) may not accept gifts from any one source totaling more than \$250 in a calendar year. All gifts valued at \$50 or more must be reported on the public servant's Form 700 (O.M.C. 2.25.060(C)).

In addition, public servants are prohibited from receiving a gift valued at more than \$50 from a restricted source. Restricted sources include persons doing business with or seeking to do business with the Public Servant's department and persons seeking to influence the public servant in any legislative or administrative action within the prior 12 months.

### *What counts as a gift?*

A gift is any payment or other benefit that confers a personal benefit for which the recipient does not provide goods or services in exchange of equal or greater value. It includes a discount or rebate on the price of something unless that discount or rebate is also provided in the regular course of business to members of the public. Services provided to or on the behalf of a public servant are also considered gifts, such as professional services provided for the public servant's personal benefit.

### **Passes or Tickets Provided to the City**

The City receives and periodically distributes entertainment or sporting tickets to public

#### **Are There Exceptions to the Gift Rules?**

Yes. Here are some of the most common:

- Gifts which are returned to the donor or for which you reimburse the donor if you return or reimburse the gift within 30 days of receipt
- Gifts which are donated unused to a 501(c)(3) non-profit corporation or governmental agency within 30 days of receipt
- Gifts from a close family relation (unless they are acting as an agent or intermediary for someone else)
- Gifts of hospitality (food, drink, lodging) if the owner or member of the owner's family is present when the hospitality is received
- Gifts of relatively equal value exchanged on birthdays or holidays
- Inheritances
- Tickets to political fundraisers and fundraisers for 501(c)(3) non-profit organizations
- Free tickets or passes that you do not use or are not given to another person
- Gifts that are provided to the government agency and which provide a personal benefit to a public official, such as a travel payment, if the payment is used only for official agency business and the agency controls the payment

officials, employees and members of the public. Requirements must be fulfilled for those tickets or passes not to qualify as a reportable gift to City officials and employees:

1. The City is required to have a written policy stating the public purpose for distribution of the tickets prominently posted on the agency website<sup>1</sup>;
2. The ticket or pass cannot be earmarked by the original source for use by a particular City official or employee; and
3. The City must determine, in its sole discretion, which official may use the ticket or pass. The City must also post on its website certain information about who provided and who used the ticket.

If you are a public servant and receive a free ticket from the City to an entertainment or sporting event, be sure to ask the Office of the City Administrator or City Attorney whether all the necessary requirements have been met. Otherwise, you may be required to treat the ticket as a reportable gift subject to the \$250 value limitation.

## CONFLICTS OF INTERESTS

No public servant shall make, participate in making, or attempt to influence a governmental decision if it is reasonably foreseeable that the decision could have a material financial effect on his or her financial interests (O.M.C. 2.25.040(A)).

To prevent conflict of interests from occurring, a public servant should identify and fully disclose the financial interests that may cause a conflict, understand the different types of financial interests that may be the basis for a conflict, and consider whether the decision's effect on the public servant's financial interest is reasonably foreseeable and material.

The law surrounding financial conflicts of interest is complicated. For more information about conflicts of interest and what economic interests are covered, see the California Fair Political Practices Commission (FPPC) Fact Sheet titled, [Recognizing Conflicts of Interest](#) and the other educational materials available at [www.fppc.ca.gov](http://www.fppc.ca.gov). You should also contact the Public Ethics Commission or the Office of the City Attorney to help you determine whether your specific instance triggers a financial conflict of interest.

## CONFLICTS OF INTERESTS IN CONTRACTING

A public servant may not make or participate in making a contract in which he or she has a financial interest within the meaning of California Government Code Sections 1090 – 1097 (O.M.C. 2.25.040(C)).

*What does it mean to make a contract?*

California courts take a very broad view of what it means to make a contract. Basically, any participation by an officer or an employee in the process by which a contract is developed, negotiated

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<sup>1</sup> See City Council Resolution No. 82032

and executed can constitute the making of a contract. In addition to voting on the contract itself, participating in preliminary discussions, negotiations, and planning and soliciting of bids are included.

#### *What financial interests are involved?*

The courts have applied the prohibition contained in Section 1090 to a broad range of financial interests, in some cases broader than those contained in other financial conflict of interest laws. Section 1090 distinguishes between **direct** financial interests (when the public official or employee is the party contracting with the agency) and **indirect** financial interests (when the public official or employee has a financial relationship with the contracting party or will receive some benefit from the contract with the contracting party). There is also a complex set of laws defining so-called **remote interests** and **non-interests**. The nature of the interests determines what actions an official or employee may or may not take regarding the contract.

#### *What if a financial interest exists in a contract process?*

A member of a public body (such as a member of a city council, planning commission or other decision-making body) is conclusively presumed to have made a contract that is executed by an agency or department under the public body's jurisdiction. If a private financial interest exists, Section 1090 renders such contracts void and unenforceable, even if the member has disqualified himself or herself from participating, or the contract is beneficial to the city or non-beneficial to the member. When an employee, rather than a member of a public body, is financially interested in a contract, the employee's agency is prohibited from making the contract if the employee is involved in the contract-making process.

## INCOMPATIBLE OFFICES

Public officials have a duty of loyalty to their constituents. In those rare cases in which a person may hold or seek two or more public offices, it must be determined whether the two offices are compatible with each other.

A public servant, including but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible (O.M.C. 2.25.040(E)).

#### *How are incompatible offices determined?*

Unless simultaneous holding of the particular offices is compelled or expressly authorized by law, offices are incompatible in any of the following circumstances:

1. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body or over a multimember body that includes that other office;
2. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; or
3. Public policy considerations make it improper for one person to hold both offices.

## MISUSE OF CITY RESOURCES OR POSITION

A public servant may not use or permit others to use public resources for a campaign activity or for personal, non-City purpose (O.M.C. 2.25.060(A)).

*What is a public resource?*

Public resources are not limited to money. They also include such things as staff time, office equipment (such as telephones, fax machines, photocopiers, and computers), and office supplies (stationery, stamps, and other items). To use public resources simply means to cause a gain or advantage for the user—and a loss to the City—that can be assigned a monetary value. The law does contain a narrow exception for incidental and minimal use, such as the occasional telephone call. This exception should not be relied upon as authorizing personal use of public resources, however.

## PROHIBITED POLITICAL ACTIVITIES

### Campaigns for Public Office

Public servants, including City staff and officeholders, **may not**:

1. Perform any campaign-related work while on City-paid time, or inside City buildings, or on City computers or email;
2. Directly solicit contributions from other City public servants;
3. Use their position to coerce or induce another person to support or oppose a candidate;
4. Participate in political activities of any kind while in a City work-related uniform.

## FAIR PROCESS

### Bribery

A person may not offer or make, and a public servant may not solicit or accept, anything of value in exchange for the performance of any official act, such as a vote, opinion, or action on a matter brought before the official in his or her official capacity (O.M.C. 2.25.070(A)).

### Nepotism

A public servant may not make, participate in making or otherwise seek to influence a decision of the City regarding an employment or contract action involving a relative (O.M.C. 2.25.070(D)).

## NON-INTERFERENCE IN ADMINISTRATIVE AFFAIRS

The City Charter divides the duties and responsibilities of government among the City's elected and appointed officials. The Office of the City Administrator is authorized, among other things, to appoint,

discipline, assign or remove all department heads and employees under his or her jurisdiction. The City Charter does not extend this authority to members of the City Council.

City Councilmembers and/or their staff may not direct, coerce, or influence any City administrative staff under the jurisdiction of the Mayor, City Administrator, City Auditor, City Attorney, or City Clerk (O.M.C. 2.25.070(E)).

Members of the City Council shall not:

1. attempt to coerce or influence the City Administrator regarding a decision relating to any contract, the purchase of supplies or any other administrative action; or
2. direct or request the appointment of any person to, or the removal from, any office by the City Administrator or any of his or her subordinates or other such officers, or take part in the appointment or removal of officers or employees in the administrative service of the City.

City Councilmembers may, however, make inquiries to request data or information from department directors and authorized staff.<sup>2</sup>

*What should I do if a City Councilmember or Council aide orders me to do something?*

If you believe that a Councilmember is improperly directing or interfering with the performance of your job duties, you may contact your supervisor, the Office of the City Administrator, or the Public Ethics Commission.

## POST-EMPLOYMENT “REVOLVING DOOR” RULES

### Prohibition on Switching Sides

After leaving the City, a public servant may not represent any other person or entity in a transaction where the City is a party if the public servant worked personally and substantially on that particular matter. A particular matter may include a contract, grant, permit, or similar application (O.M.C. 2.25.050(A)).

### One Year Lobbying Ban

For one year after termination of employment or service with the City, a public servant may not communicate with their former department or board with the intent to influence a government decision on behalf of another person or entity. For the Mayor, councilmembers, and their senior staff, the one-year lobbying ban extends to **all** City departments (O.M.C. 2.25.050(C)).

### Restriction on Prospective Employment

A public servant may not make, participate in making, or otherwise seek to influence a governmental decision affecting a person or entity with whom the public servant is discussing, negotiating, or entering an agreement concerning future employment (O.M.C. 2.25.040(G)).

<sup>2</sup> See Administrative Instruction (AI) 597.

## **ENFORCEMENT**

The Public Ethics Commission is responsible for enforcement of the Government Ethics Act. Violations are subject to criminal, civil, administrative, and other penalties, including fines of up to \$5,000 per violation or three times the amount unlawfully received, expended, or not reported properly.