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CITY OF OAKLAND



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Office of the City Attorney
John A. Russo
City Attorney
Mark T. Morodomi

June 28, 2006

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Honorable President Ignacio De La Fuente and
Members of the City Council
City Hall
Oakland, California

Re: Opinion Regarding Use of City Council Personnel Funds for Non-Personnel Expenses and Regarding Unauthorized Grants to External Organizations

Dear President De La Fuente and Members of the City Council:

On June 27, 2006, the City Council requested the following opinions from the City Attorney:

- (1) Previous opinions given the Council regarding the above referenced topic;
- (2) *Whether funds in the Council Office budgets can be reallocated to external agencies without Council approval;*
- (3) *Clarification of what are the areas of responsibility and the procedures the Council and City Administrator should follow to fulfill its fiduciary and ethical role over the possible misuse of public funds; and*
- 4) An opinion on whether an independent investigation on the use of the funds is required.

Responses By City Attorney

- (1) The previous opinions are attached. (Tabs A-D.) (Tab D sets forth the procedures for grants and pay-go construction.)
- (2) The answer to this question is discussed in the two City Attorney opinions dated May 22, 2006. (Tab A.) *In short, the answer depends on the language of the budget resolution. Under the original FY 2005-07 budget resolution the City Administrator has the power to reallocate with our City Council approval. Under*

the FY 2003-05 and FY 2006-2007 budget resolutions, the City Administrator does not.

- (3) Our opinion dated May 24, 2006, answers the question about the responsibilities and procedures of the City Council. (Tab B.) Our opinion, dated June 30, 2006, sets forth the City Administrator's duties. (Tab C.)
- (4) Whether an independent investigation should be initiated is within the sound judgment of the City Council, City Administrator, or City Auditor. The law does not require an investigation. However, the City Council is the governing body of the City (City Charter §207); the City Administrator is responsible for the fiscal affairs of the City (City Charter §504(a)(e)); and the City Auditor must conduct audits when requested by the City Council (City Charter §403).

As stated in our May 24, 2006, opinion, any investigation/audit should be independent and not be conducted by the City Council.

Very truly yours,

John A. Russo
City Attorney

By: 
Mark T. Morodomi
Supervising Deputy City Attorney

MTM:ww

TAB A

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE
LEGAL OPINION

TO: President De La Fuente and Members of the
City Council

FROM: John A. Russo
City Attorney

DATE: May 22, 2006

RE: **Use of Funds that the FY 2005-07 Budget Resolution and Adopted Policy Budget
Appropriated to Cover City Council Personnel Expenses for Non-Personnel
Purposes**

I. INTRODUCTION

Based on recent allegations in the media about the expenditure of funds by Councilmembers, the City Council asked whether funds appropriated for personnel expenses (salaries, benefits, etc.) can be expended for non-personnel purposes.

In the spring of 2004, this Office prepared an opinion on this question based on the FY 2003-05 budget resolution, the Adopted Policy Budget for FY 2003-05 and the City Charter. (A copy of that opinion in final form is attached as Exhibit A.) This opinion is based on the FY 2005-07 budget resolution and Adopted Policy Budget and relevant provisions of the City Charter.

The FY 2005-07 budget resolution and Policy Budget do not change our opinion and analysis from the standpoint of Council authority over the budget. Councilmembers and other City officers must expend funds "for the purpose and in the manner specified by appropriation of the Council" as required by the City Charter.

II. QUESTION

You asked whether City Councilmembers could expend for non-personnel purposes funds that the City Council's Adopted Policy Budget ("Policy Budget") appropriates for personnel expenses.

II. SUMMARY CONCLUSION

Yes, so long as the Councilmember seeking to transfer funds secures the City Administrator's approval as required by the City Charter. This is true because the City

Council's FY 2005-07 budget resolution grants the City Administrator authority to expend -- for non-personnel purposes -- funds that the FY 2005-07 Adopted Policy Budget appropriates for personnel expenses. Unlike the FY 2003-05 resolution, the FY 2005-07 budget resolution specifically authorizes the City Administrator to "transfer operating appropriations between activity programs during the fiscal year provided that such funds remain with the agency/department in which the funds were approved by City Council".

Even within this broad delegation of authority, the City Administrator may approve the expenditure only if it complies with the requirements of the City Council policies and Rules of Procedure, the City Charter and other applicable laws. Oakland Municipal Code provides that the City Council must approve all grants with the exception of "pay-go grants". (OMC sections 2.04.016 and 2.04.017.) All contracts must be approved as to form and legality by the City Attorney. (City Charter section 401(6).) Certain types of contracts must be in writing.

III. BACKGROUND FACTS

On June 21, 2005, the City Council adopted the City of Oakland Policy Budget for fiscal years ("FY") 2005-07. (See Resolution No. 79291 C.M.S., attached hereto.)¹ The Policy Budget "appropriates" funding for each program, department, agency, and office, including specific funding for "personnel services" and "operations and maintenance" to implement and administer each program/office. The Policy Budget defines "personnel services," "appropriation," "appropriation resolution," and "operations and maintenance" as follows:

"Appropriation" - "An authorization made by the City Council that permits the City to incur obligations and to make expenditures of resources". (Pg. B-7, FY 2005-07 Adopted Policy Budget.)

"Appropriation Resolution" - "The official enactment by the City Council to establish legal authority for City officials to obligate and expend funds." (Pg. B-7, FY 2005-07 Adopted Policy Budget.)

"Operations and Maintenance" - "Expenditures related to operating costs including supplies, commodities, contract services, materials, utilities and educational services." (Pg. B-9, FY 2005-07 Adopted Policy Budget.)

"Personnel Services" - "Expenditures related to employee compensation including wages and salaries, fringe benefits, premiums, allowances and special/supplemental pay such as shift differentials." (Pg. B-9, FY 2005-07 Adopted Policy Budget.)

Constituent affairs and policy analysis are the only programs that the Policy budget funds for the City Council. (Pg. G-2, FY 2005-07 Adopted Policy Budget.). The Policy Budget appropriates total funding for the programs for each Council district and the At-Large Council seat and allocates the appropriated funding solely to "personnel services" and "operations and

¹ A copy of the FY 2005-07 Budget Resolution is attached as Exhibit B.

maintenance”.² (See e.g. Pgs. G-8 and G-11, FY 2005-07 Adopted Policy Budget.) Thirty-one and one-half (31.50) FTE³ are authorized for the two programs. (Pgs. G-2 and G-6, FY 2005-07 Adopted Policy Budget.)

In its resolution adopting the FY 2005-07 Policy Budget, the Council declared:

WHEREAS, the City Council has given careful consideration to the adoption of a budget and financial plan for the use of funds for Fiscal Years 2005-2007 as set forth in the “FY 2005-07 Proposed Policy Budget” document and Attachment A-1 reflecting City Council modifications, which together constitute the “FY 2005-07 Adopted Policy Budget; now therefore be it

RESOLVED: That the City Administrator is authorized to expend in accordance with the laws of the state of California and the City of Oakland on behalf of the City Council new appropriations for departments and activity programs as incorporated in the “FY 2005-07 Adopted Policy Budget”, attached hereto: and be it

FURTHER RESOLVED: that the City Administrator may transfer operating appropriations between activity programs during the fiscal year provided that such funds remain with the agency/department in which the funds were approved by City Council; and be it

FURTHER RESOLVED: that the City Administrator may transfer capital appropriations between the Capital Improvement Program and operating departments to the extent that such transfers are necessary to fund capital-related activities of the operating departments. (Emphasis added.)

As we explain below, because the FY 2005-07 budget resolution authorizes the City Administrator to transfer operating appropriations between activity programs, personnel services funding can be expended for non-personnel purposes.

IV. ANALYSIS

A. The City Charter Grants Budget Authority to the Council

The City Charter grants the City Administrator the power and provides that “it shall be his duty” to control and administer the City’s financial affairs. (City Charter section 504.) All disbursements of City funds must be approved by the City Administrator or his/her designee. (City Charter section 806.) However, the City Charter gives the City Council the authority by appropriation to determine the City’s budget. Section 801 of the City Charter provides:

² Operations and Maintenance includes overhead charges and offsetting recoveries related to personnel services. (B-9, G-11-15, FY 2005-07 Adopted Policy Budget.)

³ 3.50 FTE for each Councilmember and an additional 3.50 FTE for administration. (G-2, FY 2005-07 Adopted Policy Budget.)

“Following public budget hearings, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year. . .”

The Council’s budget and budget resolutions establish the City’s financial plan and budget policy. *City Charter requires that City funds be expended only for the purposes and in the manner specified by City Council appropriation.*

City Charter section 806, entitled “Receipts and Expenditures” provides:

All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator or of another officer duly authorized by him. **No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council;** nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification. The City Administrator or other officer authorized by him to make disbursements shall be represented by the City Attorney in all legal matters in connection therewith, except as provided otherwise in Section 401. (Emphasis added.)

Therefore, the City Council has the power through the budget appropriation process to determine, as a matter of policy, whether the City Administrator must obtain its approval before she authorizes expenditure of funds appropriated for personnel expenses for non-personnel purposes. Put another way, the Council determines how much budgetary discretion/power, if any, it wishes to delegate to the City Administrator.

B. FY 2005-07 City Council Budget Resolution Cedes Wide Discretion over Budget Implementation to the City Administrator.

Because City funds must be expended “for the purpose and in the manner specified by appropriation of the Council,” it is the Council’s budget resolution and the adopted budget documents that state the purposes of the Council’s budget appropriations and the manner in which the Council requires that the purposes of the appropriation be accomplished. The FY 2005-07 budget resolution specifically authorizes the City Administrator to “transfer operating appropriations between activity programs during the fiscal year provided that such funds remain with the agency/department in which the funds were approved by City Council.”

The Policy Budget does not define “operating appropriations”, but it does define “appropriation” and “operating budget”:

“appropriation” - “An authorization made by the City Council that permits the City to incur obligations and to make expenditures of resources”. (Pg. B-7, FY 2005-07 Adopted Policy Budget.)

“operating budget” – The financial plan for the provision of City services and basic governmental functions. The operating budget contains appropriations for such

expenditures as personnel services, fringe benefits, commodities, services and minor capital expenses. It does not include Capital Improvement Project expenditures.

Based on these definitions, the operating appropriations constitute all funds the Council appropriates in its operating budget to operate/run the City. Those funds include appropriations for personnel services, fringe benefits, commodities, services and minor capital expenses. Accordingly, the FY 2005-07 budget resolution gives the City Administrator the power to move personnel services funding into operations and maintenance and vice versa. Operations and maintenance funding can be used to cover the costs of contract services and other operating costs. (See definition on Pg. 2.)

The City Administrator must exercise her broad powers in accordance with the City Charter and other applicable laws, such as the Purchasing Ordinance. For example, City Charter Article VIII, entitled Fiscal Administration, requires that the City Administrator maintain a system of financial procedures, accounts and controls for City government which shall conform to generally accepted accounting principles and that the budget she develops for Council's adoption shall conform to modern budget practices and procedures. The City Administrator has the duty to execute and enforce all laws and ordinances and policies of the Council, including the policies expressed by the budget resolution and the Adopted Policy Budget. (City Charter section 504(a).)

Oakland Municipal Code Chapter 2.04 requires that professional services and other procurement contracts be in writing and that the Council approve all grants except for pay-go grants.

2.04.016 City Council approval of grant awards.

Notwithstanding any authority granted herein, all grant awards made from money or funds donated, given or granted to the city from any public or private source shall be approved by the City Council regardless of the amount of grant award. (Ord. 12634 § 2 (part), 2004)

2.04.017 Pay-go grants—Policy and requirements.

A. Policy—Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.

B. Requirements Applicable to Pay-Go Grants to Non-City Entities. The Mayor and individual Councilmembers may designate grants from their respective balances in the city's pay-go fund account subject to the following requirements: (1) such grants may be made only for the purposes permitted by the funding source(s) of the pay-go account; (2) such grants and grant agreements shall be authorized, administered and executed by the City Administrator on behalf of the city; and (3) grant agreements shall be required for all grants.

C. City Administrator Must Maintain Separate Record of Pay-Go Grants and Make Annual Report to City Council Identifying Prior Fiscal Year's Grants. The City Administrator shall maintain a separate record of pay-go grants, including the name of the person who designated the grant, the amount of the grant, the purpose of the grant, and

the name, address and any other information sufficient to identify the grant recipient. No later than October of each year, the City Administrator shall provide an informational report to the City Council's Finance Committee and to the City Council regarding pay-go grants that were made during the prior fiscal year. (Ord. 12637 § 1, 2004)

2.04.020 Authority of the City Administrator.

A. City Administrator's Purchase Authority. Except as provided in Section 2.04.020.B, the City Administrator shall have authority to bind the city by written contract or purchase order without previous specific action of the Council as follows:

1. Supplies, Services or a Combination. Purchases up to two hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement; and
2. Professional Services. Purchases up to one hundred fifty thousand dollars (\$150,000.00) in any single transaction or term agreement.

In the absence of the specific authorization in the FY 2005-07 budget resolution, the City Administrator would have been required to obtain City Council approval to expend for non-personnel purposes funds that the City Council's Policy Budget appropriated for personnel expenses. As we discussed in detail in the prior opinion (Exhibit A, hereto), this is so because the Policy budget is a very detailed and specific document. It appropriates funding for specific purposes (e.g. council services, fire services, police services, and various programs).

For example, the FY 2005-07 budget states the purpose of the budget appropriations for the City Council Offices as the delivery of council services through two programs: constituent affairs and policy analysis. (Pg. G-2; FY 2005-07 Adopted Policy Budget); and the budget states the purpose of the budget appropriations for the Fire Services Agency as the delivery of fire services through a number of programs, including but not limited to emergency medical services, dispatch communications, and fire suppression/field operations.

The budget also identifies the "manner in which" the purposes will be accomplished; namely by hiring a certain number of personnel and providing for various operations and maintenance expenses, such as supplies, contract services, commodities, materials and educational services. The Policy Budget includes detailed appropriations for each Office, Department, and Agency, including specific appropriations for personnel services. The budget identifies the number of FTEs, authorized classifications and the precise funding for the FTEs.

The elaborate detail of the Policy Budget is simply a guideline since the FY 2005-07 resolution permits the City Administrator to transfer operating appropriations (i.e., the budget) between activity programs.

In stark contrast to the FY 2003-05 budget resolution, the Council's FY 2005-07 resolution cedes to the City Administrator control over the budget. Although this grant of broad discretion to the City Administrator is technically and legally consistent with the City Charter, it abrogates any ability of the Council to control positions and programs. The City Administrator, not the Council, is vested with the power to change the policies both in terms of the programs that the Council authorized and the levels of service and positions it approved to provide the

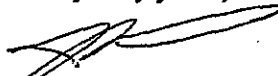
programs/services. The FY 2005-07 accomplishes a major transfer of authority to the City Administrator that the previous resolution specifically prohibited.

V. CONCLUSION

The City Charter grants the City Administrator the authority to expend City funds only for the purposes and in the manner specified by a City Council appropriation. The FY 2005-07 budget resolution grants to the City Administrator power to expend for non-personnel purposes funds that the FY 2005-07 Adopted Policy Budget appropriates to cover personnel expenses. Nevertheless, the City Administrator must approve expenditures in compliance with the requirements of the City Charter, City policies and procedures and applicable laws.

Because the City Charter vests the Council with power to determine the budget by City Council appropriation, the Council may change its appropriation policy by amending the budget resolution to provide the scope of discretion to the City Administrator that it deems appropriate.

Very truly yours,



JOHN A. RUSSO
City Attorney

Attorney Assigned:
Barbara J. Parker

cc: Deborah Edgerly
William Noland
LaRae Brown
Bill Zenoni

CITY OF OAKLAND

Office of the City Attorney

LEGAL OPINION

TO: President De La Fuente and
Members of the Oakland City Council

FROM: John A. Russo
City Attorney

DATE: May 22, 2006

RE: Use of Funds Appropriated FY 2003-05 for City Council
Personnel Expenses for Non-Personnel Purposes

I. INTRODUCTION

In Spring 2004, the City Council President requested an opinion regarding whether City Councilmembers could expend for non-personnel purposes funds that the FY 2003-05 Adopted Policy Budget appropriated for personnel expenses. At that time, we prepared and distributed a draft opinion based on the FY 2003-05 budget resolution and policy budget. In conjunction with Councilmember Quan's recent request for an opinion on this question, we issue now the earlier draft opinion in final form.

II. QUESTION

You asked whether City Councilmembers could expend for non-personnel purposes funds that the City Council's FY 2003-2005 Adopted Policy Budget ("Policy Budget") designates for personnel expenses.

II. SUMMARY CONCLUSION

The FY 2003-05 budget resolution and Policy Budget require that City Councilmembers and other City officers, officials and employees obtain City Council approval to expend for non-personnel purposes funds that the City Council's Policy Budget designates for personnel expenses.

EXHIBIT A

III. BACKGROUND FACTS

On June 19, 2003, the City Council adopted the City of Oakland Policy Budget for fiscal years ("FY") 2003-05. (Resolution No. 77895, C.M.S.) The Policy Budget "appropriates" funding for each program, department, agency, and office, including specific funding for "personnel services" to implement and administer each program/office. The Policy Budget defines "personnel services" and "appropriation" as follows:

"appropriation" - "An authorization made by the City Council that permits the City to incur obligations and to make expenditures of resources". (Pg. B-8, FY 2003-05 Adopted Policy Budget.)

"personnel service" - "Expenditures related to employee compensation including wages and salaries, fringe benefits, retirement and special pay such as shift differential." (Pg. B-10, FY 2003-05 Adopted Policy Budget.)

Constituent affairs and policy analysis are the only programs that the Policy budget funds for the City Council. (Pg. G-4, FY 2003-05 Adopted Policy Budget.) The Policy Budget appropriates total funding for the programs for each Council district and the At-Large Council seat and allocates the appropriated funding solely to personnel services and operations and maintenance.¹ (See e.g. Pgs. G-10 and G-11, FY 2003-05 Adopted Policy Budget.) Thirty-one and one-half (31.50) FTE² are authorized for the two programs. (Pgs. G-1 and G-8, FY 2003-05 Adopted Policy Budget.)

In its resolution adopting the FY 2003-05 Policy Budget ("Budget Resolution"), the Council declared:

"RESOLVED: That the City Manager is authorized to expend in accordance with the laws of the state of California and the City of Oakland on behalf of the City Council new appropriations for departments and activity programs as incorporated in Exhibit A [FY 2003-05 Adopted Policy Budget], attached hereto: and be it

FURTHER RESOLVED: that the policy budget for FY 2003-05 expresses the Council's policy regarding the levels of service and the programs that the City will provide during FY 2003-05 and the relative funding for such programs/services, departments and agencies; and be it

FURTHER RESOLVED: that the City Manager must obtain approval from the City Council before he/she (1) substantially or materially alters the relative agency allocations of funding set out in the Policy Budget, (2) substantially or materially changes the levels of service expressly prioritized and funded by the Policy Budget, including but

¹ Operations and Maintenance includes overhead charges and offsetting recoveries related to personnel services. (G-11, FY 2003-05 Adopted Policy Budget.)

² 3.50 FTE for each Councilmember and an additional 3.50 FTE for administration

not limited to layoffs and/or freezes that would substantially or materially (a) change levels of service or (b) affect programs, or (3) eliminates or suspends entirely programs funded by the Policy Budget; and be it

FURTHER RESOLVED: that, notwithstanding the foregoing, the City Manager may exercise his her discretion so as to reduce across-the-board funding levels and/or implement freezes if the funding reductions/freezes do not materially or substantially change the programs or levels of service established by the Policy Budget; provided that he/she advises the City Council of such action(s) as soon as reasonably possible; and be it

FURTHER RESOLVED: that, subject to the foregoing limitations, the City Manager/Mayor may transfer funding within a department, but may not transfer funds between departments, except that the amounts maintained in the Emergency Contingency Account and the Public Support Contingency Account may be transferred at the direction of the City Council only; . . ." (Emphasis added.)

As we explain below, the FY 2003-05 budget resolution and Adopted Policy Budget permit only the City Council to authorize expenditure of personnel services funding for non-personnel purposes.

IV. ANALYSIS

The City Charter grants the City Manager the power and provides that "it shall be his duty" to control and administer the City's financial affairs. (City Charter section 504.) All disbursements of City funds must be approved by the City Manager or his/her designee. (City Charter section 806.) City funds may be expended only *for the purposes and in the manner specified by City Council appropriation.*

City Charter section 806, entitled "Receipts and Expenditures" provides:

All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Manager or of another officer duly authorized by him. **No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council;** nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification. The City Manager or other officer authorized by him to make disbursements shall be represented by the City Attorney in all legal matters in connection therewith, except as provided otherwise in Section 401. (Emphasis added.)

The Policy Budget appropriates funding for each Office, Department, and Agency, including specific appropriations for personnel services. The budget identifies the number of FTEs, authorized classifications and the precise funding for the FTEs. City Charter section 806

therefore requires that the City Manager expend funds that the Policy Budget appropriates for personnel services to pay employees' salaries and benefits.

The only exceptions to the FY 2003-05 Adopted Policy Budget appropriations are outlined in the Budget Resolution. The Budget Resolution gives the City Manager discretion to:

- (1) transfer funds from one program to another within a department or agency; and
- (2) impose a hiring freeze and across-the-board budget cuts, IF such action does not substantially or materially change the levels of service or programs expressly prioritized and funded by the Policy Budget.

Because the Budget resolution allows the City Manager/Mayor to transfer funding within a department/agency, a Councilmember could decide to transfer his/her personnel services funding from constituent affairs to policy analysis so that all of the Councilmember's employees would work on only one of those programs. However, a Councilmember could not, and the City Manager lacks authority to, expend personnel services funding for non-personnel purposes.

Councilmembers and any other City officer, official or employee, who desire to use personnel services funding for programs or other non-personnel purposes, must obtain City Council approval therefor, because such expenditure would change the policies the Council established in the Policy Budget. In its Budget Resolution, the Council declared that the Policy Budget "*expresses the Council's policy regarding the levels of service and the programs that the City will provide during FY 2003-05 and the relative funding for such programs/services, departments and agencies*".

V. CONCLUSION

The City Charter grants the City Manager the authority to expend City funds only for the purposes and in the manner specified by a City Council appropriation. Expenditure for non personnel purposes of funds that the FY 2003-05 Adopted Policy Budget appropriates for personnel services would change the allocations, authorizations and appropriations that the Council established in its Policy Budget. Based on the language of the FY 2003-05 budget resolution which appropriates funds to provide for the budget expenditures, the City Council must approve the expenditure for non personnel purposes of funds appropriated for personnel services.

Very truly yours,



JOHN A. RUSSO
City Attorney

Attorney Assigned: Barbara J. Parker

cc: Deborah Edgerly
William Noland

OAKLAND CITY COUNCIL

Resolution No. 79291

C.M.S. FILED
OFFICE OF THE CITY CLERK
2005 JUN 16 PM 9:29

RESOLUTION AUTHORIZING A BIENNIAL BUDGET AS THE FINANCIAL PLAN FOR CONDUCTING THE AFFAIRS OF THE CITY OF OAKLAND FOR FISCAL YEARS 2005-2007; AND APPROPRIATING CERTAIN FUNDS TO PROVIDE FOR THE EXPENDITURES PROPOSED BY SAID BUDGET

WHEREAS, the City Council has reviewed departmental and non-departmental budgets in public hearings in view of estimated resources available for Fiscal Years 2005-2007; and

WHEREAS, the City Council has given careful consideration to the adoption of a budget and financial plan for the use of funds for Fiscal Years 2005-2007 as set forth in the "FY 2005-07 Proposed Policy Budget" document and Attachment A-1 reflecting City Council modifications, which together constitute the "FY 2005-07 Adopted Policy Budget"; now, therefore, be it

RESOLVED: That the City Administrator is authorized to expend in accordance with the laws of the State of California and the City of Oakland on behalf of the City Council new appropriations for departments and activity programs as incorporated in the "FY 2005-07 Adopted Policy Budget", attached hereto; and, be it

FURTHER RESOLVED: That the City Administrator may transfer operating appropriations between activity programs during the fiscal year provided that such funds remain within the agency / department in which the funds were approved by City Council; and, be it

FURTHER RESOLVED: That the City Administrator may transfer capital appropriations between the Capital Improvement Program and operating departments to the extent that such transfers are necessary to fund capital-related activities of the operating departments.

JUN 21 2005

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, REID, QUAN, AND PRESIDENT DE LA FUENTE - 8
NOES- 0
ABSENT- 0
ABSTENTION- 0

ATTEST:

Latonda Simmons
LATONDA SIMMONS

City Clerk and
Clerk of the Council
of the City of Oakland, California

EXHIBIT B

ION

COUNCIL AMENDMENTS TO FY 2005-07 BUDGET
of Council Amendments

Land

CHECKS/ENHANCEMENTS **FY 05-06** **FY 06-07** **Comments**

funding for Animal Shelter (offset by revenues below)	\$0.25	\$0.25	Net cost includes funding for 1.0 Veterinarian, 1.0 Veterinarian Tech, 1.0 Animal Care Coordinator, 2.0 Police Records Specialists, a dishwasher, a washer / dryer System, and \$36K for training (total of \$0.35 million per year), net of reductions in veterinarian, hospital and K-9 care contracts (total of \$0.1 million per year)
the Limited Public Financing Program	\$0.22	\$0.00	Funding set aside for the Limited Public Financing Program (June 2006 election), per City Council action on June 7, 2005
back 8 deleted Rangers	\$1.08	\$1.13	Adding back 7 filled Rangers positions, plus one extra
funding for Parks Maintenance	\$0.42	\$0.45	Include 1.0 Public Works Supervisor, 4.0 P/T Gardeners, 2.0 Gardener Crew Leaders
ore 2.0 Librarians	\$0.20	\$0.21	Librarians will be restored in the Dimond and Rockridge branches
ore 0.6 Museum Curatorial Specialist PPT	\$0.04	\$0.04	
2 Police Services Technicians for the donated Vehicle Unit	\$0.14	\$0.15	
back Litter Enforcement and Maintenance	\$0.58	\$0.61	
funding for OBRA Coordination - FY 2005-06	\$0.22	\$0.00	
exemption from Business License registration businesses with gross receipts below \$2,500	\$0.08	\$0.08	
funding for speed bumps	\$0.26	\$0.26	Funding to come from the Prop 42 allocation proposed for release by Governor for FY 05-06
back Literacy person	\$0.10	\$0.10	Measure Q
streetscape improvement crew, funding (trees, sidewalks, etc.)	\$0.55	\$0.57	Includes 1.0 Tree Supervisor, 2.0 Tree Workers / Drivers, 2.0 Tree Trimmers, and O&M for trees, stakes, concrete-cutting, etc.
er the LLAD budget gap of \$3.0 million in FY 05-06 and \$4.3 million in FY 2006-07	\$3.00	\$4.30	
or Capital Improvement - Miscellaneous: (1) re the \$931,227 appropriation from FY 06-07 to 05-06, add to the \$145,232 appropriation in FY 05-06; (2) Allocate the resulting \$1,076,550 for specific neighborhood projects	\$0.93	(\$0.93)	Minor Capital Improvement - Miscellaneous project can be found on page D-145 in the FY 2005-07 Proposed Policy Budget, or page B-23 of the 2005-2010 Proposed CIP
TOTAL ADDITIONS	\$8.09	\$7.22	

CITY COUNCIL AMENDMENTS TO FY 2005-07 BUDGET

Summary of Council Amendments

City of Oakland

FUNDING SOURCES		FY 05-06	FY 06-07	
A	Add revenue expectation for Animal Shelter, to partially offset add-back's above	\$0.25	\$0.25	Revenues will come from additional spay / neuter, licensing and seminar services
B	Using FY 2004-05 GPF surplus	\$1.60	\$1.60	A total of \$3.2 million is anticipated to be available from the \$8.5 million GPF surplus in FY 04-05 (after using \$0.6 million for the Croson study, \$3.0 million for LLAD and \$1.7 million to bring back workers laid off in Aug 2004)
	Using additional funds from Pension Refinance	\$0.60	\$0.50	Additional \$1.1 million is expected to be available from the Pension Refinance upon the upcoming deal closure
C	Eliminate funding for Sun Server lease - paid for with CIP	\$0.63	\$0.63	Lease payments will be made from capital sources
D	Use OBRA fund balance to fund one year of OBRA coordination funding	\$0.22	\$0.00	
F	Use additional Proposition 42 funding proposed to be released by Governor	\$0.26	\$0.26	
G	Use unspent balances in FY 04-05, which will carry over into the fund balance	\$0.10	\$0.10	The 5% reserve will still be kept in the Measure Q fund
H	Use unanticipated, unallocated funding from GO refinance	\$0.55	\$0.57	Additional funding became available after deal closed on Wed, June 15
I	Using FY 2004-05 GPF surplus to bridge the budget gap in the LLAD fund - FY 05-06	\$3.00	\$0.00	
	Using repayment from ORA to help bridge the budget gap in the LLAD fund - FY 06-07	\$0.00	\$1.00	
	Using unallocated interest from 2000 lease to help bridge the budget gap in the LLAD fund - FY 06-07	\$0.00	\$1.50	
	Using yet unidentified one-time sources to help bridge the budget gap in the LLAD fund - FY 06-07	\$0.00	\$1.80	
J	Shift additional capital funds from FY 06-07 to FY 05-06 to balance above shift	\$0.93	(\$0.93)	
TOTAL FUNDING		\$8.15	\$7.26	
NET TOTAL CHANGES		\$0.96	\$0.06	

Oakland Redevelopment Agency

No amendments

ADDITIONAL BUDGET-RELATED DIRECTION TO STAFF: SEE THE BOTTOM PORTION OF THE COUNCIL AMENDMENT SUMMARY

CITY COUNCIL AMENDMENTS TO FY 2005-07 BUDGET

Summary

City of Oakland

		REVENUE CHANGES	EXPENDITURE CHANGES	NET IMPACT ON BUDGET
FY 1: 2005-06	Technical Adjustments	\$0.00	(\$0.00)	\$0.00
	Council Amendments	\$7.43	\$4.37	\$3.06
	Total	\$7.43	\$4.37	\$3.06
FY 2: 2006-07	Technical Adjustments	\$0.00	\$0.00	\$0.00
	Council Amendments	\$6.57	\$2.21	\$4.36
	Total	\$6.57	\$2.21	\$4.36

Oakland Redevelopment Agency

		REVENUE CHANGES	EXPENDITURE CHANGES	NET IMPACT ON BUDGET
FY 1: 2005-06	Technical Adjustments	\$0.00	\$0.00	\$0.00
	Council Amendments	N/A	N/A	N/A
	Total	\$0.00	\$0.00	\$0.00
FY 2: 2006-07	Technical Adjustments	\$0.00	\$0.00	\$0.00
	Council Amendments	N/A	N/A	N/A
	Total	\$0.00	\$0.00	\$0.00

CITY COUNCIL AMENDMENTS TO FY 2005-07 BUDGET
Details - Council Amendments

Taylor, Oakland

General Purpose Fund (#1010)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Notes
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	
ADD-BACKS/ENHANCEMENTS							
Fund the Limited Public Financing Program	\$0.22				(\$0.22)	\$0.00	Funding set aside for the Limited Public Financing Program (June 2006 election), per City Council action on June 7, 2005
Add back 8 deleted Rangers	\$1.08	\$1.13			(\$1.08)	(\$1.13)	Adding back 7 filled Rangers positions, plus one extra
Add funding for Animal Shelter (offset by revenues - see below)	\$0.25	\$0.25			(\$0.25)	(\$0.25)	Net cost includes funding for 1.0 Veterinarian, 1.0 Veterinarian Tech, 1.0 Animal Care Coordinator, 2.0 Police Records Specialists, a dishwasher, a washer / dryer System, and \$36K for training (total of \$0.35 million per year), net of reductions in veterinarian, hospital and K-9 care contracts (total of \$0.1 million per year)
Add funding for Parks Maintenance	\$0.42	\$0.45			(\$0.42)	(\$0.45)	Include 1.0 Public Works Supervisor, 4.0 P/T Gardeners, 2.0 Gardener Crew Leaders
Restore 2.0 Librarians	\$0.20	\$0.21			(\$0.20)	(\$0.21)	Librarians will be restored in the Dimond and Rockridge branches
Restore 0.6 Museum Curatorial Specialist PPT	\$0.04	\$0.04			(\$0.04)	(\$0.04)	
Add 2 Police Services Technicians for the Abandoned Vehicle Unit	\$0.14	\$0.15			(\$0.14)	(\$0.15)	
Add exemption from Business License registration for businesses with gross receipts below \$2,500			(\$0.08)	(\$0.08)	(\$0.08)	(\$0.08)	
FUNDING SOURCES							
Add revenue expectation for Animal Shelter, to partially offset add-back's above			\$0.25	\$0.25	\$0.25	\$0.25	Revenues will come from additional spay / neuter, licensing and seminar services
Using FY 2004-05 GPF surplus			\$1.60	\$1.60	\$1.60	\$1.60	A total of \$3.2 million is anticipated to be available from the \$8.5 million GPF surplus in FY 04-05 (after using \$0.6 million for the Croson study, \$3.0 million for LLAD and \$1.7 million to bring back workers laid off in Aug 2004)
Using additional funds from Pension Refinanca			\$0.60	\$0.50	\$0.60	\$0.50	Additional \$1.1 million is expected to be available from the Pension Refinanca upon the upcoming deal closure
Subtotal - GPF	\$2.36	\$2.23	\$2.37	\$2.27	\$0.01	\$0.04	

Comprehensive Clean-Up Fund (#1720)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Explanation
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	
ADD-BACKS/ENHANCEMENTS							
Add back Litter Enforcement and Maintenance workers	\$0.58	\$0.61			(\$0.58)	(\$0.61)	
FUNDING SOURCES							
Eliminate funding for Sun Server lease - paid for with CIP	(\$0.63)	(\$0.63)			\$0.63	\$0.63	Lease payments will be made form capital sources
Subtotal - Gas Tax	(\$0.05)	(\$0.02)	\$0.00	\$0.00	\$0.05	\$0.02	

COUNCIL AMENDMENTS TO FY 2005-07 BUDGET
- Council Amendments

Oakland

A Fund (#2192)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Explanation
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	
ADD-BACK'S/ENHANCEMENTS							
Add funding for OBRA Coordination - FY 2005-06 only	\$0.22				(\$0.22)	\$0.00	
FUNDING SOURCES							
Use Fund Balance			\$0.22		\$0.22	\$0.00	
Subtotal - OBRA	\$0.22	\$0.00	\$0.22	\$0.00	\$0.00	\$0.00	

Scaping & Lighting Assessment District Fund (#2310)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Explanation
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	

N/A - Keep Proposed budget as-is, cover the budget gap of \$3.0 million in FY 2005-06 and \$4.3 million in FY 2006-07 as indicated below

FUNDING SOURCES							
Using FY 2004-05 GPF surplus to bridge the budget gap in the LLAD fund - FY 05-06			\$3.00		\$3.00	\$0.00	
Using repayment from ORA to help bridge the budget gap in the LLAD fund - FY 06-07				\$1.00	\$0.00	\$1.00	
Using unallocated interest from 2000 lease to help bridge the budget gap in the LLAD fund - FY 06-07				\$1.50	\$0.00	\$1.50	
Using yet unidentified one-time sources to help bridge the budget gap in the LLAD fund - FY 06-07				\$1.80	\$0.00	\$1.80	
Subtotal - LLAD	\$0.00	\$0.00	\$3.00	\$4.30	\$3.00	\$4.30	

Traffic Congestion Relief Fund (#2141)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Explanation
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	
ADD-BACK'S/ENHANCEMENTS							
Add funding for speed bumps	\$0.26	\$0.26			(\$0.26)	(\$0.26)	Funding to come from the Prop 42 allocation proposed for release by Governor for FY 05-06
FUNDING SOURCES							
Use additional Proposition 42 funding proposed to be released by Governor			\$0.26	\$0.26	\$0.26	\$0.26	
Subtotal - Traffic Congestion Relief	\$0.26	\$0.26	\$0.26	\$0.26	\$0.00	\$0.00	

Measure Q Fund (#2240)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Explanation
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	
ADD-BACK'S/ENHANCEMENTS							
Add back Literacy person	\$0.10	\$0.10			(\$0.10)	(\$0.10)	
FUNDING SOURCES							
Use unspent balances in FY 04-05, which will carry over into the fund balance			\$0.10	\$0.10	\$0.10	\$0.10	The 5% reserve will still be kept in the Measure Q fund
Subtotal - Measure Q	\$0.10	\$0.10	\$0.10	\$0.10	\$0.00	\$0.00	

CITY COUNCIL AMENDMENTS TO FY 2005-07 BUDGET
Details - Council Amendments

City of Oakland

Capital Reserve Fund (#5510)

Item Description	Expenditure Change		Revenue Change		Net Change (Rev - Exp)		Explanation
	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	FY 2005-06 Change	FY 2006-07 Change	
ADDBACKS/ENHANCEMENTS							
Add streetscape improvement crew, funding (trees, sidewalks, etc.)	\$0.55	\$0.57			(\$0.55)	(\$0.57)	Includes 1.0 Tree Supervisor, 2.0 Tree Workers / Drivers, 2.0 Tree Trimmers, and O&M for trees, stakes, concrete-cutting, etc.
Minor Capital Improvement - Miscellaneous: (1) Move the \$931,227 appropriation from FY 06-07 to FY 05-06, add to the \$145,232 appropriation in FY 05-06; (2) Allocate the resulting \$1,076,550 for specific neighborhood projects	\$0.93	(\$0.93)			(\$0.93)	\$0.93	Minor Capital Improvement - Miscellaneous project can be found on page D-145 in the FY 2005-07 Proposed Policy Budget, or page B-23 of the 2005-2010 Proposed CIP
FUNDING SOURCES							
Use unanticipated, unallocated funding from GO refinance			\$0.55	\$0.57	\$0.55	\$0.57	Additional funding became available after deal closed on Wed, June 15
Shift additional capital funds from FY 06-07 to FY 05-06 to balance above shift			\$0.93	(\$0.93)	\$0.93	(\$0.93)	
Subtotal - Capital Reserve	\$1.48	(\$0.36)	\$1.48	(\$0.36)	\$0.00	\$0.00	

TOTALS CITY \$4,377,431 \$5,222,100 \$7,143,100 \$6,572,100 \$3,106,100 \$4,126,100

Oakland Redevelopment Agency

No amendments

ATION

AN MOTION: 2006-2007 CITY BUDGET

	ADD/RESTORE	BUDGET ITEM					
GENERAL FUND	1,390,747	Restore 3 Public Works Crews for Illegal Dumping(7), Parks Maintenance(5), Trees(5)= 17 FTE/Equip					
	1,670,000	Park Rangers 8 FTE					
	150,000	Restore Branch Librarians, 2 FTE (Diamond and Rockridge Libraries)					
	142,000	Abandoned Car: Police Techs, 2 FTE					
	50,000	History Curator (pt)					
	38,000	Animal Center Staff Training					
Total GP Add'g	2,878,747						
	81,000	Waive Registration Fee for Businesses Grossing Under \$2500					
LIABILITIES	\$2,959,747						
PRIORITIES	400,000	Middle School Sports (Hold Over)					
NEUTRAL	90,000	Adult Literacy Staff					
	354,224	CA's Recommendation: Veterinarian, Vet Aide, Animal Care Coordinator, Animal Records Spec (2) and linked fee increases for licenses, reception fees, rabies observation, protective custody, & animal disposal.					
	220,000	OBRA Coordinator for 1 Year					
	na	Retain Walking Officers					
	na	Retain School Officers					
	20,000	Reduce Preschool	PayGo				
KEY POLICIES							
e City will make concerted efforts to deploy & re-employ laid-off workers; the City Administrator will make regular status reports to Council.							
e City Administrator shall prepare biannual reports on staff vacancies beginning this fall.							
e City Administrator shall prepare options and initiatives to rework departments and employees for fiscal efficiency.							
e Council asks the City Administrator to make fiscal management and budget compliance a major component of Management Evaluations.							
e City Council formalizes the role of the Library Commission as the oversight committee for Measure Q.							
e City shall purchase hybrid and fuel efficient autos whenever practicable.							
e Midterm Budget proposals will be presented to Council no later than April 2006.							
BUDGET MIDTERM POLICIES STILL TO BE RESOLVED							
e City Administrator & Finance Committee will prepare proposals to permanently fund the growing LLAD budget gap, \$6M in 2007.							
e City Administrator shall explore all options for the Henry J. Kaiser Convention Center and bring a proposal to the Council for the center's future after number 51, 2005.							
e City Administrator shall bring a report to the Council on organizational options for the administration of the Animal Shelter.							
e OEDA Director and City Administrator shall return to the Council with proposal for a Development Fund to employ more staff to facilitate economic development, primarily funded through fees and other revenue generating operations.							
e City Administrator shall return to the Council with a report on our performance fees.							

TAB B

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Jean Quan, City Councilmember

From: John Russo, City Attorney

Date: May 24, 2006

RE: Responsibilities and Procedures of Council in Response to Alleged Inappropriate or Unbudgeted Use of Public Funds by Councilmember

I. Introduction

The May 1 and 15, 2006, Matier and Ross columns in the San Francisco Chronicle allege that Councilmember Desley Brooks "steered . . . public money meant to cover staff salaries to four politically influential organizations . . ." Councilmember Quan has asked the following question regarding responsibilities and procedures in this matter.

II. Questions

"What are the areas of responsibility and the procedures the Council should follow to fulfill its fiduciary and ethical role over the possible misuse of public funds in this report?"

III. Summary Conclusion

The City Council has the following options to deal with possible misconduct by one of its members: censure proceedings, investigation of a violation of a Code of Conduct, audit by the City Auditor, Public Ethics Commission investigation, and reallocation or reduction of a Councilmember's office budget.

IV. Analysis

Responsibilities of the City Council Members in Making Expenditures

As the "facts" you have presented to us are merely from a newspaper column, it would be unwise for the City Attorney's Office to opine on the legality of past alleged transactions.

We have already opined on the general requirements imposed by City Council budget resolutions in our two opinions dated May 22, 2006. In sum, the conduct alleged in the newspapers columns probably did not violate the 2005-07 Policy Budget (Resolution 79291 C.M.S.), but may have run afoul of other restrictions on the use of City of Oakland money.

The City Council may choose to investigate or initiate other action if it suspects violations of the City's grant making requirements or Purchasing Ordinance, or suspects an improper use of taxpayer money for political campaigns.

Responsibilities of the City Council to Police Its Own Members

The City Council is the governing body of the City and exercises the corporate powers of the City. (City Charter Section 207.) Councilmembers each take an oath to support the City Charter. (City Charter, Section 1206.)

The City Council's Code of Conduct also calls upon the City Council to "maintain the highest standard of public conduct by refusing to condone breaches of public trust . . . and by being willing to censure any member who willfully violates the rules of conduct contained in this Code of Ethics." (Code of Conduct 1.)

Procedures

The City Council has the following courses of action as options.

Censure

Censure is the "formal resolution of a legislative, administrative, professional or other body reprimanding a person, normally one of its own members, for specified conduct." (Black's Law Dictionary (1983); see also Braun v. City of Taft, 154 Cal. App. 3d 332, (1984) (court while setting aside the City Council's censure of one of its members seemed to assume that a city council had authority to censure a member; Roberts Rules of Order, Newly Revised, p. 642 (10th Edition 2000) (censure motion as a remedy for misconduct.) The

May 24, 2006

Re: Responsibilities and Procedures of Council in Response to Alleged Inappropriate or Unbudgeted Use of Public Funds by Councilmember

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person who is to be censured is entitled to due process, with notice and an opportunity to respond. (Little v. City of North Miami, 805 F.2d 962 (11th Cir. 1986) (City Council censures professor; due process required because of possible injury to property right, one's reputation); see Richard v. City of Pasadena, 889 F. Supp. 384, 391-93 (C.D. Cal. 1995) (censuring for content of speech may be unconstitutional).)

The City Council may censure one of its Councilmembers for violating a City Council resolution, ordinance, or the City Charter.

The City Council Code of Conduct

In addition to any other resolutions or ordinance, under the City Council Code of Conduct, "Each member of the City Council has a duty to:

1. Respect and adhere to . . . the rule of law, the principles of public administration and high ethical conduct in the performance of public duties.

* * *

6. Faithfully perform all duties of office.

The penalty for violating the Code of Conduct is censure. (Code of Conduct 12.)

Audit by the City Auditor

As noted above, the only "facts" available are hearsay statements in a series of newspaper columns. Any sanction imposed personally upon a Councilmember, including censure, requires due process. Due process requires submission and consideration of evidence by the City Council.

The City Auditor's Office is the branch of Oakland government that has been granted the power to investigate the misuse of public funds. Section 403 of the City Charter gives the City Auditor the jurisdiction to conduct an audit to determine any violation of the City Council's budget appropriation resolutions.

May 24, 2006

Re: Responsibilities and Procedures of Council in Response to Alleged Inappropriate or Unbudgeted Use of Public Funds by Councilmember

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The City Auditor has the duty to conduct audits requested by the City Council. The City Auditor also has the duty to "ascertain compliance with the Council's resolutions and policies . . . as well as applicable State and Federal laws and regulations."

The City Auditor shall have the power and it shall be his or her duty to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; The City Auditor shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations. (Charter Section 403.)

We understand that other City Councilmembers may have also made expenditures outside the budgeted categories. **Accordingly, we recommend that you direct the City Auditor to conduct an audit of all City Council offices and their compliance with the Council's various ordinances and budget resolutions.** This type of circumstance is precisely the reason the people of Oakland have chosen, through the City Charter, to create an office of an independent, elected City Auditor. Moreover, as an independent auditor is essential in such a politically charged accusation, the City Auditor will be viewed as more independent than any auditor hired by the City Council.

May 24, 2006

Re: Responsibilities and Procedures of Council in Response to Alleged Inappropriate or Unbudgeted Use of Public Funds by Councilmember

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Public Ethics Commission Investigation

The City Council may refer this matter to the Public Ethics Commission ("PEC") for investigation of those matters that are within the Commission's jurisdiction. The PEC has jurisdiction over the City Council's Code of Ethics (as discussed above), the Sunshine Ordinance, and the Oakland Campaign Reform Ordinance.

The Public Ethics Commission has the power to "Oversee compliance with the City of Oakland Code of Ethics,"¹ Censure, however, may only be imposed by the City Council. (Code of Conduct 12.)

In addition, the use of public funds for unbudgeted purposes appears to have occurred in other City Council offices as well. This common conduct may be evidence of a "consensus" established between City Councilmembers to disregard the budget resolution. If such a consensus occurred outside a publicly noticed meeting, then the PEC would have jurisdiction to investigate whether a chain meeting had occurred in violation of the notice provisions of the Brown Act and the public meeting provisions of the Sunshine Ordinance.

Reallocation of a Councilmember's Budgeted Funds

The City Council holds the legislative power of the City. (Charter section 207.) That power includes the wide discretion to make appropriations and adopt budgets. (Charter Section 801; Hicks v. Board of Supervisors, 69 Cal.App.3d 228, 232; County of Butte v. Superior Court (Brooks) 176 Cal.App.3d 693 (1985).) The City Council in its discretion may deduct the amounts from the budget of or reduce the appropriation of a department in its ongoing or future budget processes.

Very truly yours,



John Russo
City Attorney

Attorney Assigned: Mark T. Morodomi

MTM:ww

¹ The Code of Ethics was the Code of Conduct's former name.

TAB C

CITY OF OAKLAND
Office of the City Attorney

Legal Opinion

To: President De La Fuente and Members of the City Council

From: John Russo, City Attorney

Date: June 30, 2006

RE: City Administrator's Duties Regarding The Possible Misuse Of Public Funds

I. Introduction

On June 27, 2006, the City Council requested opinions on a series of questions regarding the duties of various City branches or officials in the face of possible misuse of public funds.

II. Question

What are the areas of responsibility for the City Administrator and what are the procedures the City Administrator should follow to fulfill her fiduciary and ethical with respect to over the possible misuse of public funds?

III. Summary Conclusion

The City Administrator has a duty to not pay requests for expenditures from individual City Councilmembers that are inconsistent with the City Charter or any ordinance or policy of the full City Council. The City Administrator also has a duty to investigate alleged violations that she suspects may have occurred.

IV. Analysis

Responsibilities of the City Administrator in Making Expenditures Requested by City Councilmembers

The City Administrator has the duty to "Enforce all laws and ordinances and policies of the Council." (City Charter § 504(a).) She also has the duty to "control and administer the financial affairs of the City." (City Charter § 504(e).)

Section 504. Duties. The City Administrator shall have the power and it shall be his duty:

(a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City.

...

(e) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction.

Accordingly, the City Administrator has the duty to deny requests for expenditures by individual Councilmembers that are inconsistent with the City Charter or any ordinance or policy of the full City Council.

Responsibilities of the City Administrator to Investigate the City Council Members' Past Expenditures

The City Charter's duty to "enforce all laws and laws and ordinances and policies of the Council" also applies to the City Administrator's actions regarding violations that may have already occurred. (§504.)

Investigation. If the City Administrator is suspicious that a Councilmember committed a violation then, under her duty to "enforce," the City Administrator must take action to determine whether a violation actually occurred. This could include referral to the City Auditor, an investigation by the City Administrator, or referral to the appropriate enforcement agency. The City Administrator may also make inquiries to the recipient of unauthorized expenditure.

Sanction. If the City Administrator determines that a City Councilmember has made an expenditure in violation of the City Charter, ordinance or policy of the City Council, then the City Administrator has a duty to take an enforcement action. (City Charter §504.) The nature of the enforcement action will depend upon what authority is violated.

If the City Administrator has determined that an individual City Councilmember has made a grant or other expenditure without City Council appropriation, the City Administrator should report her findings to the full City Council. The full City Council may then decided to deduct the unauthorized amounts from that Councilmember's budget for the following fiscal year. (City Charter §801.) The City Administrator may also request return of the unauthorized funds from the recipient and pursue legal action for recovery.

If the City Administrator determines that a Councilmember has made a pay-go expenditure that violates the pay-go funding source's conditions, then the City Administrator should report the violation to the City Council. The City should then repay the City's pay-go account with other funds, so as not to be in violation of the conditions of the funding source. The City Council may reduce the offending Councilmember's pay-go budget by a corresponding amount the following fiscal year. (City Charter §801.)

V. Conclusion

The City Administrator's role in municipal expenditures is not merely ministerial. She has a Charter mandated duty to ensure that expenditures are legally sound and authorized by the budget. In all instances, the City Administrator must prevent the payment by her staff of unauthorized expenditures and take proper corrective and/or staff disciplinary action in the event such expenditures are made.

TAB D

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor Jerry Brown
President De La Fuente
City Councilmembers
Deborah Edgerly, City Administrator
William Zenoni, Interim Budget Director

FROM: John Russo *for John Russo*
City Attorney

DATE: June 22, 2006

RE: **REQUIREMENTS FOR GRANTS, INCLUDING PAY-GO GRANTS;
CHECKLIST**

I. Introduction

It has come to our office's attention that some City Council offices may not be complying with state law, the City Charter and City ordinances, policies and procedures when the City Council members make grants with pay-go or other funds. This memorandum reiterates the requirements and provides a checklist.

**II. Grants Must Comply with the Requirements of the City Charter,
State and Local Laws and City Council Policies and Procedures**

We have issued and delivered to all Councilmembers a legal opinion confirming that the City Charter requires that the City Administrator approve all expenditures of City funds and that the City Administrator may approve expenditures only if they comply with the requirements of the City Charter, state and local laws and City Council policies and procedures. (See May 22, 2006 Opinion on City Attorney's Website.)

The requirements outlined below protect the City Councilmembers and the City from claims that the grants violated state or local laws. For example public money may be expended only for public purposes. Expenditures that are not for a public purpose (i.e., expenditure of city funds for a private purpose) violate the state law that prohibits gifts of public funds. In the absence of a grant agreement, the City has no way to obligate the grantee to use the money for the intended public purpose, will have difficulty recovering funds that have been spent inappropriately and would not have the right to audit the

grantee's books. The City's and Councilmembers' reputations could be tarnished and the City and the individual Councilmember could be exposed to liability. We would have no agreement to present to City residents or to any investigating agency/body demonstrating the terms of the agreement.

Grants must comply with the following requirements.

1. The grant, whether the funding source is pay-go or some other funding source, must be for a public purpose.
2. The grant, whether the funding source is pay-go or some other funding source, must be permitted by the funding source and by City Council policy. (Oakland Municipal Code ("OMC") sections 2.04.017(A) and (B).) (Pay-go may generally only be granted to benefit just a City entity or a public school.)
3. All grant agreements, whether the funding source is pay-go or some other funding source, must be approved as to form and legality by the City Attorney before they are executed. (City Charter section 401(6).)
4. An individual Councilmember has no authority to enter any contract, including a grant agreement. Only the City Administrator has the authority to execute pay-go grants on behalf of the City. (OMC sections 2.04.016 and 2.04.017.) And, the City Council must approve all grants, regardless of the amount, except for pay-go grants. (OMC section 2.04.016 and 2.04.017.)¹
5. The OMC includes the following specific requirements for pay-go grants:
 - "Section 2.04.017 Pay-go grants - Policy and requirements.
 - A. Policy – Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.
 - B. Requirements Applicable to Pay-Go Grants to Non-City Entities. The Mayor and individual Councilmembers may designate grants from their respective balances in the city's pay-go fund account subject to the following requirements: (1) such grants may be made only for the purposes permitted by the funding source(s) of the pay-go account; (2) such grants and grant agreements shall be authorized, administered and executed by the City Administrator on behalf of the city; and (3) grant agreements shall be required for all grants."

¹ All grants from sources other than pay-go accounts must be approved by the City Council because the OMC Chapter 2.04 provides all of the authority the City Council has delegated to the City Administrator regarding grants. That delegation of authority does not include power to execute grants from sources other than pay-go funds without City Council approval.

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor Jerry Brown
President De La Fuente
City Councilmembers
Deborah Edgerly, City Administrator
William Zenoni, Interim Budget Director

FROM: John Russo
City Attorney

DATE: June 14, 2006 File No:

RE: PAY-GO -- REQUIREMENTS FOR CONSTRUCTION AND RENOVATIONS ON
CITY PROPERTY; CHECKLIST

I. Introduction

It has come to our office's attention that some City Council offices may not be complying with state law, the City Charter and City ordinances, policies and procedures when the City Council members use pay-go or other money for improvements and renovations to City owned property. This memorandum reiterates the requirements and provides a checklist.

**II. Requirements for Construction and Renovations on City Property
Using Pay-Go Money**

The failure to meet the requirements, below, may put the public at risk to accidents or injuries from substandard construction, expose the City and the individual Councilmembers to individual liability and subject the City and individual Councilmembers to state labor fines. In addition, the City may be ignoring certain workers' rights and local contractors' rights protected under state and local law as well as other policies enacted by the Council. (e.g. prevailing wage laws, performance bond requirements, living wage, equal benefits, small and local business programs.)

These requirements must be met before any construction or renovation occurs and certainly must be met before the City pays the contractor.

The following are the requirements for any construction or renovations to City facilities or property, even with pay-go money.

1. An individual Councilmember has no authority to enter any contract, including a contract for improvements to a City facility. Only the City Administrator has the authority to execute contracts on behalf of the City. (Oakland Municipal Code (OMC) sections 2.04.020 and 2.04.030.) Absent a valid contract, the City may legally refuse to pay for any construction.
2. Written contracts are required. (OMC section 2.04.020(A))
3. The City Attorney must approve all contracts before they are executed. (City Charter section 401(6).)
4. The construction or renovations must be permitted by the pay-go or other funding source. (OMC 2.04.018(A)(1).)
5. Only state-licensed contractors can construct improvements. (California Bus. and Prof. Code section 7025, et seq.)
6. The City must bid construction contracts and award to the lowest, responsible bidder unless bidding is waived by the City Council. (Oakland Municipal Code 2.04.050.(A), (E) and (I).)
7. The contractor must pay payment bonds covering 100% of the contract price. (California Civil Code section 3247, et seq.)
8. Construction contractors must build public projects in accordance with City and state building codes and specifications (e.g. obtain all applicable construction permits)– which may be set forth in the *Greenbook, State of California Standard Specifications for Public Works Construction*, the *City of Oakland Standard Details for Public Works Construction* and/or state codes and the Oakland Municipal Code.
9. The contractor must agree to pay state prevailing wages. (California Labor Code sections 1720, et seq. and 1770, et seq., and City of Oakland Resolution No. 57103 C.M.S.)

This office will not approve for payment any contractor bills unless the contracts for the contractor's services comply with state and local law and the City's policies and procedures.

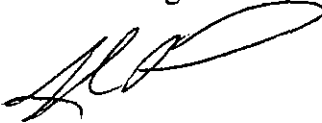
We will be issuing a second memorandum providing guidelines for grants of City funds, including those made from pay-go funds.

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

LEGAL OPINION

TO: Mayor Jerry Brown
President De La Fuente
City Councilmembers
Deborah Edgerly, City Administrator
William Noland, Director, Financial
Services Agency
William Zenoni, Interim Budget Director

FROM: John Russo
City Attorney



DATE: June 26, 2006

File No:

RE: **Pay-Go and All Other Agreements Must Be Approved as to Form and
Legality by the City Attorney Before they are Executed**

INTRODUCTION

It has come to our attention that some pay-go agreements for services contracts and grants to non City parties were not submitted to the City Attorney's Office for approval as to form and legality before they were executed. We also understand that on occasion the City paid contractors and grantees even though the City Attorney had not approved the underlying pay-go agreements.

During meetings of City Council's Finance Committee, Councilmembers have stated that they do not want the City Administrator to submit pay go agreements to the City Attorney's Office for approval. The Council removed the requirement from the provisions it added to the Oakland Municipal Code to govern pay go expenditures.

QUESTION

We have been asked whether pay-go grant agreements must be approved as to form and legality by the City Attorney if the Oakland Municipal Code provisions governing pay-go expenditures do not include that requirement.

SUMMARY CONCLUSION

Yes. As we advised the Finance and Management Committee when the committee removed the requirement from the OMC, the City Charter requires that the City Attorney approve all contracts prior to execution.

ANALYSIS

The City Charter mandates that the City Attorney approve all contracts before they are executed. City Charter section 401(6), entitled, "Powers of the City Attorney" provides:

"He or she shall pass on the form and legality of all contracts of the City before the same are executed."

Violation of the City Charter is a misdemeanor punishable upon conviction by imprisonment in the county jail for up to six months and/or a fine of up to \$1,000. (City Charter section 1208¹; California Penal Code section 19.)

The fact that this City Charter requirement is not in the Oakland Municipal Code provisions regarding pay go expenditures is irrelevant and has no legal significance because the City Charter is the City's constitution; it is the supreme law of the City with respect to municipal affairs. Ordinances must be consistent with the City Charter; otherwise they are void. *Skaggs v. City of Los Angeles*, 43 Cal.2d 497, 501 (1954); *De Aryan v. Butler*, 119 Cal.App.2d 674, 683 (1953); *Howard Jarvis Taxpayer's Assn. v. City of Roseville*, 106 Cal.App.4th 1178, 1186 (2003); *McQuillan Municipal Corporations* §15:17.

The supremacy of the City Charter is established by the state constitution. California Constitution Article XI sections 3(a) and 5(a) provide: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." City Charter provisions are controlling in the absence of preemptory state law. *United Public Employees v. City and County of San Francisco*, 190 Cal.App.3d 419, 422 (1987).

A City Council ordinance or resolution "can no more change or limit the effect of a charter than a statute can modify or supersede a provision of the State Constitution." *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 392 (1976) Amendment of a charter by

¹ "Section 1208. Violation. The violation of any provision of the Charter shall be deemed a misdemeanor and be punishable upon conviction in the manner provided by State Law, unless otherwise expressly provided for in this Charter."

ordinance, resolution or agreement is "prohibited". *San Francisco Fire Fighters v. Board of Supervisors*, 96 Cal.App.3d 538, 549 (1979).

This Office included the City Attorney contract approval requirement in the OMC pay go provisions to serve as a reminder and to provide a checklist of the steps that must be followed, not because the language was necessary to grant the City Attorney the authority to approve contracts as to form and legality.

CONCLUSION

The City Charter commands that the City Attorney approve **all** contracts before they are executed, making no exception for pay-go contracts. It is crystal clear, therefore, that pay-go contracts must be approved by the City Attorney before they are executed. The City Charter is the supreme law of the City. It can be amended only by a vote of the electorate. No enactment by the City Council, whether by resolution, motion or ordinance can override the Charter's dictates; nor does any elected official, City officer or employee have the authority to ignore the City Charter's mandate that the City Attorney approve **all** contracts before they are executed. Violation of the City Charter is a misdemeanor punishable upon conviction by up to six months imprisonment in the county jail and/or a fine up to one thousand dollars.