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AGENDA REPORT

TO: CITY COUNCIL

FROM: Barbara Parker
City Attorney

SUBJECT: Community Jobs Oversight Commission

DATE: October 30, 2012

COUNCIL DISTRICT: #3

RECOMMENDATION

If the Council adopts an ordinance establishing a Community Jobs Oversight Commission to monitor compliance with the Oakland Army Base Construction and Operations Jobs Policies, the Office of the City Attorney recommends that it accept the revisions noted on the redlined Ordinance ("Second Draft Ordinance") attached hereto to conform it to legal requirements.

EXECUTIVE SUMMARY

At its meeting on October 23, the Community and Economic Development Committee considered several versions of an ordinance that would create the Community Jobs Oversight Commission for the Oakland Army Base.

The original draft in the Committee Agenda report, dated October 9, would delegate to the Commission the authority to enforce the City's jobs policies, including taking final enforcement actions against employers who are out of compliance ("First Draft Ordinance"). This version is inconsistent with the Charter because the City Council may not delegate the City Administrator's enforcement authority to a commission. The City Attorney's office issued a public legal opinion on October 23 outlining how the First Draft Ordinance could be revised to conform to legal requirements; the legal opinion is attached hereto for your reference. The City Attorney's Office submitted a revised ordinance in the supplemental packet for the October 23rd CED Committee meeting that complied with legal requirements ("Revised Ordinance").

In addition, before the October 23rd CED Committee, the City Attorney's office met with staff and representatives of community groups who had advocated for the First Draft Ordinance. As a result of that meeting, the City Attorney's Office felt that the parties had tentatively reached agreement on amendments. The parties understood, however, that the community groups' representatives would need to confirm with their members whether the amendments were acceptable.

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This Office thereafter prepared an amended Ordinance ("Second Draft Ordinance"; attached hereto is a redlined version) that reflected what our Office believed was the tentative agreement. The Second Draft Ordinance would enable the Commission to engage in all of the activities the City Administrator chooses to delegate to the Commission, including: (1) the investigation of employers who may be out of compliance with the jobs policies, (2) negotiating compliance plans with employers, and (3) determining specific enforcement actions that should be taken. However, it reserves to the City Administrator the ultimate decision as to enforcement. Only one provision -- the reservation of final enforcement authority to the City Administrator -- distinguishes the Second Draft Ordinance from the First Draft Ordinance.

At the CED Committee meeting the next day, our office distributed the Second Draft Ordinance to the Committee members. However, it became apparent at the meeting that the proposed Second Draft Ordinance was not acceptable to the community groups, and their representatives continued to advocate for the First Draft Ordinance. The Committee approved forwarding to Council the First and Second Draft Ordinances.

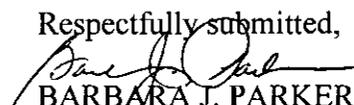
During the meeting members of the CED Committee raised the possibility of a third alternative providing for an appeals process that would allow employers to appeal any Commission enforcement decisions to the City Council. Such a provision also would be inconsistent with the Charter because the City Council may not delegate to itself those responsibilities that fall within the City Administrator's jurisdiction. As we explained in the attached legal opinion, enforcement of City policies imposed under City contracts is an administrative duty exclusively within the authority of the City Administrator under Sections 504 and 218 of the Charter.

In accordance with the CED Committee's direction, our Office has already met with, and plans further meetings with, staff and the community group representatives to consider other options that are consistent with all parties' goals to provide an effective enforcement process and the Charter. We will update the Council at its meeting regarding the outcome of those additional meetings.

PROPOSED OUTCOME

Under the attached Second Draft Ordinance, the Commission will be able to investigate employers, negotiate compliance plans, and make recommendations to the City Administrator as to penalties and enforcement.

For questions regarding this report, please contact Dan Rossi, Deputy City Attorney, at (510) 238-6510.

Respectfully submitted,

BARBARA J. PARKER
City Attorney

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Attachments

1. Public Legal Opinion dated October 23, 2012, Regarding The Power of Army Base Community Jobs Oversight Commission to Enforce Jobs Policies
2. An Ordinance Establishing the Community Jobs Oversight Commission to Monitor Compliance with the Construction and Operations Jobs Policies for the Former Oakland Army Base (“ Second Draft Ordinance”)

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara Parker
City Attorney

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LEGAL OPINION

October 23, 2012

CITY COUNCIL
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE
Oakland, California

**RE: POWER OF ARMY BASE COMMUNITY JOBS OVERSIGHT
COMMISSION TO ENFORCE JOBS POLICIES**

Dear Chairperson Brunner and Members of the Committee:

Introduction

The City Attorney's Office has revised the proposed Ordinance that would create the Community Jobs Oversight Commission to make it consistent with the City Charter. The original draft purports to delegate to the Commission the authority to enforce the City's jobs policies, including negotiating a compliance plan and taking other enforcement actions.

Question

Does the City Council have the authority to delegate to the Commission authority to enforce the City's job policies, including negotiating a compliance plan and taking enforcement actions?

Short Answer

The Charter provides that the City Administrator is solely responsible for enforcing City policies and administering City contracts. The City Council holds the power to set policy and award contracts. But the Council does not have the authority to enforce or otherwise administer City contracts. Therefore the Council cannot delegate enforcement authority to a commission.

Analysis

Enforcement of City policies imposed under City contracts is an administrative duty exclusively within the authority of the City Administrator under Sections 504 and 218 of the Charter. Section 504 outlines the duties and powers of the City Administrator in part as follows:

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.

....
(d) To investigate affairs of the City under his supervision, or any franchise or contract for the proper performance of any obligation running to the City within his jurisdiction.

....
(g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order.

(h) To supervise the purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under his direction or that of the Council are faithfully performed.

Thus, the City Administrator as part of her administrative functions has the power and the duty to enforce City policies, especially with regard to contractors' performance of their obligations under City contracts.

Section 218, the noninterference clause, provides in part as follows:

Section 218. Non-interference in Administrative Affairs. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action.... [emphasis added]

Thus, the administrative power to enforce City policies and to administer City contracts to ensure compliance with City obligations is exclusive to the City Administrator and is not within the Charter authority of the City Council.

The Lease Disposition and Development Agreement ("LDDA") for the project imposes the jobs policies for the redevelopment of the former Oakland Army Base on the developer, as well as its contractors and other employers. The authority to determine whether the developer, contractor, or employer is complying with its obligations under the LDDA to meet hiring goals is within the City Administrator's exclusive Charter authority "to see that all City contracts under his direction or that of the Council are faithfully performed" and "[t]o investigate ... any franchise or contract for the proper performance of any obligation running to the City." Also, the authority to take enforcement actions under the jobs policies, such as negotiating compliance plans or imposing penalties on a developer, contractor, or employer for non compliance, is within the Administrator's exclusive authority "[t]o execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City."

Since the Council does not hold the power to administer contracts or enforce City policies such as the jobs policies, it cannot delegate such authority to the Oversight Commission.

Options

The Oversight Commission could serve in an advisory capacity to the City Administrator with respect to administration and enforcement of the Army Base jobs policies.

Accordingly, we have revised the ordinance to give the Oversight Commission the authority to recommend that the City Administrator negotiate a compliance plan or take other enforcement action if the Commission believes that an employer is failing to comply with the policies. (The revised ordinance in redlined and clean copy form is in the supplemental packet.) It would still be within the Administrator's authority and discretion whether or not to take the recommended action. We also recommend amendment of the provisions in the draft Cooperation Agreement pertaining to the establishment of the Commission to parallel these changes.

However, nothing prohibits the City Administrator from agreeing to consider the commission's recommendations and advice and delegating the commission authority to

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Community and Economic Development Committee
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(1) investigate and provide reports to the City Administrator and (2) negotiate compliance plans with employers subject to City Administrator's final approval.

Very truly yours,



BARBARA J. PARKER
City Attorney

cc: City Council
City Administrator

Attorneys Assigned:
Doryanna Moreno, Chief Assistant City Attorney
Daniel Rossi, Deputy City Attorney
Dianne Millner, Special Counsel

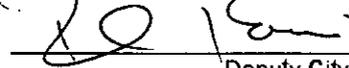
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OFFICE OF THE CITY CLERK
OAKLAND

2012 OCT 25 PM 1:49

REVISED

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

AN ORDINANCE ESTABLISHING THE COMMUNITY JOBS OVERSIGHT COMMISSION TO MONITOR COMPLIANCE WITH THE CONSTRUCTION AND OPERATIONS JOBS POLICIES FOR THE FORMER OAKLAND ARMY BASE

WHEREAS, in 2011 the City of Oakland convened a series of meetings and workshops with community stakeholders who focused specifically on the topic of local hiring with respect to the redevelopment and operation of the former Oakland Army Base; and

WHEREAS, the community stakeholders, through a consensus building process, developed a set of recommendations which provided the framework for the negotiation of a community jobs policy, which sets forth a construction jobs policy and an operations jobs policy for the Oakland Army Base project; and

WHEREAS, on July 3, 2012, the City Council approved entering into a Lease Disposition and Development Agreement (the "LDDA") with developers Prologis and California Capital and Investment Group for the redevelopment of the former Oakland Army Base (the "OAB project"); and

WHEREAS, on June 19, 2012, the City Council approved entering into a Cooperation Agreement (the "Cooperation Agreement") with labor groups and Oakland community-based organizations regarding the jobs policy for the OAB project; and

WHEREAS, the Cooperation Agreement requires, among other things, that the City establish an Oversight Commission consisting of representatives from the Oakland and West Oakland communities, organized labor, government, and employers to assist with monitoring and enforcement of the jobs policy; and

WHEREAS, Section 601 of the City Charter reserves to the City Council the authority to create boards and commissions by ordinance, and to prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and

reimbursement for expenses, if any; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby creates the Community Jobs Oversight Commission (the “Oversight Commission”).

SECTION 2. The purpose of the Oversight Commission is to ensure compliance with the Jobs Policies in connection with the redevelopment of the former Oakland Army Base. The duties and functions of the Oversight Commission are as follows:

- a. To review implementation of the Cooperation Agreement, and to work with the parties to the Cooperation Agreement to attempt to resolve issues that arise in implementation;
- b. To review compliance of employers with the Construction Jobs Policy and the Operations Jobs Policies (together, the “Jobs Policies”), including the review of background exceptions, as set forth in the Cooperation Agreement;
- c. In cases where the Oversight Commission deems an employer to be out of compliance with the Jobs Policies, to directly negotiate with that employer a remedy for the alleged violation, through a negotiated compliance plan, subject to the City Administrator’s ultimate approval;
- d. In cases where a negotiated remedy cannot be reached or has not been reached, to recommend to the City Administrator specific action to enforce the Jobs Policies;
- e. To review any proposed changes to the Jobs Policies or to the terms of the LDDA that are directly related to the Jobs Policies; and
- f. To engage the Implementation Committees described in the Cooperation Agreement for advice and assistance in the performance of investigative functions and negotiation of compliance plans.

SECTION 3. The Oversight Commission shall consist of eleven members. Members of the Oversight Commission shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council. The membership of the Oversight Commission shall consist of the following: (i) one member nominated by the West Oakland Community Advisory Group; (ii) two members nominated by the Revive Oakland Coalition; (iii) two members nominated by the OaklandWORKS Coalition; (iv) two members representing organized labor; (v) two members representing the City; and (vi) two members representing employers. For purposes of this Section, the “Revive Oakland Coalition” shall consist of the following organizations, or their designated successors, acting collectively: the East Bay Alliance for a Sustainable Economy, the Alliance of Californians for Community Empowerment, and Oakland Community Organizations; and the OaklandWORKS Coalition shall consist of the

following organizations, or their designated successors, acting collectively: People United for a Better Life in Oakland, Black Women Organized for Political Action, the West Oakland Environmental Indicators Project, and Bay Area Black Builders. Members of the Oversight Commission shall serve without compensation.

SECTION 4. Commencing with the effective date of this Ordinance, Oversight Commission members shall be appointed to staggered terms, said terms to commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. Except for the initial appointments made immediately following passage of this Ordinance which may be for lesser terms in order to establish staggered terms pursuant to this Section, all appointments shall be for a period of two years. There shall be no limit on the number of terms served.

In the event an appointment to fill a vacancy has not occurred by the conclusion of a member's term, that member may continue to serve as a member of the Oversight Commission during the following term in a holdover capacity for a period not to exceed one year, to allow for the appointment of a member to serve the remainder of said following term.

SECTION 5. The Oversight Commission shall, in consultation with the Mayor, establish additional rules of operation and procedures for conduct of its business by a majority vote of the members present after formation. The Oversight Commission shall make reports, findings and recommendations to the Mayor or the City Council, as appropriate. An annual report will be presented in writing to the City Council. The Oversight Commission may submit recommendations to the Council for consideration, as appropriate.

SECTION 6. Vacancies on the Oversight Commission shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of the expiration of the holdover's prior term of office.

SECTION 7. A member of the Oversight Commission may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the City by permission of the Oversight Commission, shall constitute cause for removal.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE ESTABLISHING THE OAKLAND ARMY BASE JOBS
OVERSIGHT COMMISSION TO MONITOR COMPLIANCE WITH THE
CONSTRUCTION AND OPERATIONS JOBS POLICIES FOR THE
OAKLAND ARMY BASE**

NOTICE AND DIGEST

This Ordinance establishes the Oakland Army Base Jobs Oversight Commission to monitor compliance with the construction and operations jobs policies for the Oakland Army Base as set forth in a Cooperation Agreement between the City and various Oakland community-based organizations.

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

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DRAFT

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DRAFT

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