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Office of the City Attorney
John A. Russo
City Attorney

April 10, 2008

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CITY COUNCIL
Oakland, California

Honorable President Ignacio De La Fuente and Members of the City Council:

Subject: *Supplemental Report re: Resolution To Reauthorize And Extend An Amendment Of The Charter Of The City Of Oakland (Article XIII Section 1300 Added By: Stats. November 1996 Kids First! Oakland Children's Fund) Establishing The Kids First! Voter Initiative Measure K*

At the April 8, 2008 Life Enrichment Committee meeting, the Committee directed staff to submit a Supplemental Report with the following: (1) a legal opinion clarifying the correct Baseline Percentage of OFCY funding from the General Fund; and (2) the total aggregate amount of City funds for Youth Services.

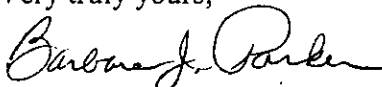
(1) Legal Opinion Clarifying Correct Baseline Percentage of OFCY Funding from General Fund

Enclosed are three opinions that the City Attorney issued related to the calculation of the base line percentage and Kids First! set aside under the City Charter.

(2) Total Aggregate Amount of City Funds for Youth Services

The City Attorney does not know the total aggregate amount of City funds for Youth Services. The amount is most likely known by the City Administrator or the City Auditor. The City Auditor's Office has indicated it will issue a report on the base line percentage calculation in May of this year.

Very truly yours,


for JOHN A. RUSSO
City Attorney


Attorney Assigned:
Mark T. Morodomi
Deborah Bialosky

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: City Auditor Courtney Ruby
Elizabeth Olivarez

CC: City Administrator Deborah Edgerly

FROM: John A. Russo
City Attorney
Mark Morodomi 
Kathleen Salem-Boyd

DATE: January 23, 2008

File No: CAO-990272

RE: **CITY BASELINE APPROPRIATIONS FOR CHILDREN AND YOUTH SERVICES
PURSUANT TO CITY CHARTER ARTICLE XIII, KIDS FIRST! OAKLAND
CHILDREN'S FUND**

In 1996, Oakland voters passed the Kids First! Oakland Children's Fund Initiative ("Kids First"), amending the City Charter and establishing an annual set-aside of 2.5% of the City's annual unrestricted general fund revenues to ensure increased funding for children and youth services. The Initiative established formulas to ensure that existing funding to children and youth services would not be reduced. This memorandum discusses these formulas and clarifies the City Attorney's advice regarding City Charter requirements.

You have requested clarification of the level of appropriations necessary to fulfill the Kids First! Charter mandate that "the City shall not reduce the amount of unrestricted general fund appropriations and expenditures for eligible [children and youth] services in any of the twelve years during which funds are required to be set aside...." (Oakland City Charter, Article XIII, Section 1300, paragraph 14).

Kids First requires that the City maintain funding for child and youth programs and services at a "base amount" that must not fall below the amount appropriated for the 1995-1996 fiscal year. The "base amount" calculation is performed by the City Auditor based on the formula identified in the Article XIII, Section 1300 of the City Charter and requires adjustment each year, "based on calculations consistent from year to year, by the percentage increase or decreases in aggregate City appropriations from the base year, as estimated by the City Auditor." The 2.5% Kids First set-aside is on top of continued, mandated base funding.

In January 1997, this office issued a legal opinion to the Office of the City Auditor relating to the implementation and interpretation of the Kids First base amount funding requirements. (Attached) Because the Charter requires annual adjustment of the base amount by the Auditor, the opinion concludes that there are two base amounts.

The first base amount is the floor amount, which is based on the actual appropriations for children and youth services during the base year. On June 29, 1998, the Auditor reported the floor amount of \$11,891,650 for the 1995-1996 base year. The second base amount is a percentage of the City's appropriations from the unrestricted general fund that is to be calculated by the Auditor each year based on increases or decreases in the aggregate City appropriations from the base year.^{1 2} The annual adjustment requirement signifies the electorate's intent that the Auditor adjusts base amounts annually to reflect the actual, rather than budgeted, appropriations and expenditures from the unrestricted general fund. To simplify the annual calculation required under the Charter, the Auditor's June 1998 report identified the minimum fixed percentage of base amount appropriations as at least 5.68%. In Fiscal Years 1996 and 1998, the Auditor did not use actual appropriations of unrestricted revenues that were required to be included in the calculation of the baseline percent. Recent recalculation of the percentage by the Auditor resulted in a decrease of the baseline percent from 5.68 percent to 5.16 percent of appropriated unrestricted general fund revenues. Thus, to comply with Measure K's required level of appropriations, i.e., the baseline percentage, the City's appropriations for children and youth services must be at least 5.16 percent of the aggregate appropriations from unrestricted general fund revenues.

The City must appropriate the greater of the first base amount and the second base amount. In every year that Kids First is in effect, the City must continue funding the minimum fixed percentage of the City's actual appropriations from the unrestricted general fund (the second base amount). In no event may base funding for child and youth services fall below the 1995-96 floor amount \$11,891,650 (the first base amount).

¹ The Auditor informs this office that, during the base year and in every year since, the amount of the unrestricted general fund revenues has been equal to annual aggregate appropriations of unrestricted general fund revenue. However, if the amount of annual appropriations from the unrestricted general fund revenues does not equal the unrestricted general fund revenues, the Charter requires that the amount of aggregate appropriations must be used to calculate of the base amount for that fiscal year. NOTE: The base year percentage and base year floor amount were calculated based on unrestricted general fund revenues rather than aggregate appropriations. Because these amounts were equal during the base year, the calculations of the base floor and base percentage amounts are accurate and require no adjustment.

² This calculation also does not include "funds granted to the City by private agencies or appropriated by other public agencies and received by the City." (Section 300, paragraph 14.)

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Roland Smith, City Auditor
From: Tracy Chriss, Deputy City Attorney
Date: August 19, 2003
RE: Calculating the 2.5 Percent KIDS FIRST! Set-Aside

INTRODUCTION

The City's Controller advised this Office that he believes the calculation of the two and one-half percent set-aside for KIDS FIRST! should be based upon *budgeted revenues*. Some members of the KIDS FIRST! Committee have asserted that the City has an obligation to utilize *actual revenues* in determining the KIDS FIRST! set-aside. The City adjusted the set-aside to reflect *actual revenues* for at least one year. A letter dated August 19, 1999 from the Budget Office shows that the City adjusted its calculation of the set-aside to reflect actual revenues for the 1997-98 fiscal year. (See Exhibit A, attached hereto.) You requested a legal opinion from the City Attorney regarding this issue.

ISSUE

Does Article XIII of the City Charter require that the City set-aside two and one-half percent (2.5%) of *budgeted revenues* or *actual revenues* for KIDS FIRST! Oakland Children's Fund?

SUMMARY CONCLUSION

The City Charter provides that the City *shall* set-aside two and one-half of its *annual unrestricted general fund revenues* for KIDS FIRST! Oakland Children's Fund. It is this Office's opinion that *annual unrestricted general fund revenues* means *actual unrestricted general fund revenues*. The Charter makes no reference to *budgeted revenues*. Although the City may initially calculate the set-aside based on *budgeted revenues*, the City should adjust the set-aside to reflect *actual revenues* once the City determines what *actual revenues* are. The timing and process by which the City reconciles the budgeted amount with the actual amount is an accounting question, not a

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From: Tracy Chriss, Deputy City Attorney
RE: Calculating the 2.5 Percent KIDS FIRST! Set-Aside
Date: August 19, 2003
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legal issue. Therefore, we offer no opinion on the methodology or timing of the reconciliation process.

DISCUSSION

Section 1300, subpart 2 of Article XIII of the City Charter states that the City shall set-aside "two and one-half percent of the City of Oakland's annual unrestricted general fund revenues" for KIDS FIRST! Oakland Children's Fund. Specifically, that section provides, in pertinent part:

2. Two and one-half percent of the City of Oakland's annual **unrestricted general fund revenues** shall be set-aside for KIDS FIRST! Oakland Children's Fund, and appropriated as specified in this section each year for twelve years beginning July 1, 1997, together with any interest earned on the fund and any amounts unspent or uncommitted by the fund at the end of the fiscal year. (Emphasis added).

A plain reading of the above-referenced charter provision requires that the City calculate the amount of the set-aside using *actual revenues*. The Charter makes no reference to *budgeted revenues*. Nor does the City Attorney's or the City Auditor's analysis of the ballot measure discuss whether the set aside should be based upon actual or budget revenues. The City Attorney's impartial analysis states that "unrestricted general fund revenues are not defined". The City Auditor's Impartial Analysis makes no reference to *budgeted revenues* and does not address the question you posed.

The goal in interpreting a statute enacted by voter initiative is to determine and effectuate voter intent. To determine intent, a court first looks to the words of the statute, giving them their usual and ordinary meaning. Williams v. Superior Court, 92 Cal.App.4th 612, 623 (2001). Where the statute is clear, "the plain meaning" rule applies. That is, the legislature is presumed to have meant what it said, and the plain meaning of the language governs. Dean v. Superior Court, 62 Cal.App.4th 638, 641 (1998). Here, the language of Section 1300 is clear and unambiguous. Setting aside annual unrestricted general fund revenues requires that the City set-aside a specific percentage of its *actual revenues*.

The language in a statute should not be altered to accomplish a purpose that does not appear on the face of the statute or from its legislative history. O'Kane v. Irvine, 47 Cal.App.4th 207, 211 (1996). If the drafters of the KIDS FIRST! initiative had intended that the City use *budgeted revenues* to calculate the 2.5% percent set-aside,

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they could have included that language in the Charter provision. Absent such express language, the City should calculate the set-aside using *actual revenues*. Based on the clear and unequivocal language provided in the Charter, the only basis for relying on *budgeted revenues* would be that it is not possible or it would be extremely burdensome and oppressive to determine *actual revenues*. Although the City does not know the *actual revenues* at the beginning of the fiscal year, it ultimately determines the *actual revenues* when it audits the funds during or upon the close of the fiscal year. The reconciliation could be accomplished by adjusting the ensuing year's set-aside appropriately. Notably, the very language of the legislation reflects the intent to reconcile the estimated revenue with the actual amount. Section 1300, subpart 14 of Article XIII of the City Charter states, in pertinent part, that "[e]rrors in the City Auditor's estimate of appropriations for a fiscal year shall be corrected by an adjustment in the next year's estimate." Consistent with the language of subpart 14, the City could initially rely upon *budgeted revenues* and then adjust the set-aside when it determines the *actual revenues*. This office takes no position on the timing and manner of the reconciliation and considers the actual process by which these numbers are calculated a matter of accounting.

CONCLUSION

In conclusion, it is the opinion of this Office that section 1300, subpart 2 of Article XIII of the City Charter requires that the City set-aside 2.5% of the City's *actual unrestricted general fund revenues* for the KIDS FIRST! Oakland Children's Fund. Because the set-aside is made at the commencement of the fiscal year in question, the City's initial set-aside may be based on *budgeted revenues*. However, the City should adjust the amount to reflect *actual revenues* once the City determines what *actual revenues* are.

JOHN A. RUSSO
City Attorney

By:
TRACY CHRISS
Deputy City Attorney

TAC:ke

cc: Bill Noland, Controller, Financial Services Agency
Andrea Youngdahl, Director, Aging Health & Human Services

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

TO: City Auditor
ATTN: Norma Ng Lau
FROM: Boyd L. Sprehn
Deputy City Attorney
DATE: January 13, 1997
RE: Kids First! Implementation and Interpretation.

I.

ISSUES

Following is a summary and an analysis of the major issues for the implementation of Kids First! Oakland Children's Fund Initiative ("Initiative").

The major interpretive issues presented are: (1) defining the "unrestricted general fund;" (2) interpreting the "base amount," as defined in Section 14 of the Initiative; (3) adjustments, if any, in the base amount from year to year during the life of the Fund; and (4) limitations on expenditures from the base amount.

II.

SUMMARY CONCLUSIONS

The language employed in the Initiative is vague, and includes several undefined terms. Because the language is unclear, the opinions expressed in this letter may be subject to a judicial challenge.

The term "unrestricted general fund" is most appropriately interpreted as consisting of that portion of the City's general fund revenues which are subject to appropriation at the discretion of the Council. Excluded from the unrestricted general fund would be revenues derived from fees or taxes imposed for a special purpose, including cost reimbursement, as these

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funds are legally limited despite being included within the general fund.

The Initiative's language, although employing inconsistent terms, indicates that the "base amount" must be adjusted annually and that the basis of the adjustment must be consistent from year to year. The Office of the City Attorney concludes, that in order to maintain a consistent interpretation of the Initiative from section to section, and over time, that the calculation of the base amount is most appropriately (a) determined from the appropriations made from the unrestricted general fund in FY95-96; (b) that the base amount should be adjusted annually in accord with an increase or decrease in the unrestricted general fund revenues, however, the base amount may not be lower than that expended in FY95-96, even if overall revenues fall; and (c) the base amount funds may be spent at the discretion of the City Council on programs to benefit children and youth.

III.

BACKGROUND FACTS

The Kids First! Oakland Children's Fund Initiative amended Oakland's City Charter to require, beginning July 1, 1997, for a twelve year period, two and one-half percent (2½%) of Oakland's unrestricted general fund revenues be set aside annually for the Kids First! Fund. Use of the Kids First! Fund is limited to new or previously unfunded services to children and youth under twenty-one years old. The Fund may not be used to replace children and youth services funded by the City during fiscal year 1995-96 unless the City previously received federal, state or private agency funds for these services, such funding ceases, and those services successfully bid for funding pursuant to the Initiative.

The City's continuing unrestricted general fund appropriations for eligible children's and youth services, as calculated by the City Auditor, may not be lower than that of fiscal year 1995-96 in any of the succeeding twelve years (the "base amount"). The Initiative further provides that if the Council does not renew the Initiative for an additional twelve years, the Initiative must be resubmitted to the voters.

For your convenience and information, important dates for implementation are listed below:

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February 3, 1997: Appointments to the Children's Planning and Oversight Committee ("Oversight Committee") by Mayor and Councilmembers are due [3 from mayor, 2 from each councilmember; at least one appointee from each set must be not older than 21 years of age];

February 3, 1997: City Auditor is to have completed calculation and published the "base amount," the sum expended by the City for children and youth services in fiscal year 1995-96;

July 1, 1997: Beginning of first fiscal year in which the 2½% set aside ("Kids First! Fund") is mandated;

~~October 1, 1997: First Four-Year Strategic Plan due from Oversight Committee for submission to the City Council; and~~

January 1, 1998: Beginning of first fiscal year for Kids First! Fund.

IV.

ANALYSIS

The Initiative was enacted by the voters as an amendment to the City Charter.

In construing a charter, the judicial function is simply to ascertain and declare what is in terms or substance contained in the charter, not to insert what was omitted or to omit what was inserted.

Squire v. San Francisco (1970) 12 Cal.App.3d 974, 91 Cal.Rptr. 347; also Social Services Union v. City and County of San Francisco (1995, 1st Dist.) 32 Cal.App.4th 751, 38 Cal.Rptr.2d 280.

The Initiative requires the City to expend moneys on behalf of children in youth services in two categories - an amount equal to that currently within the budget (base amount), and new services through the Kids First! Fund. The appropriate calculation of either category is complicated due to the language used in the Initiative, which is not defined generally in state law, through reference to the generally accepted accounting principles, or within the Initiative.

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1. Defining the "Unrestricted General Fund."

Establishing the scope of the "unrestricted general fund" is critical for a determination of the amount required to be set aside for the Kids First! Fund. The Initiative provides, in relevant part:

2. Two and one-half percent of the City of Oakland's annual unrestricted general fund revenues shall be set aside for The KIDS FIRST! Oakland Children's Fund, and appropriated as specified in this section each year for twelve years beginning on July 1, 1997, together with any interest earned on the fund and any amounts unspent or uncommitted by the fund at the end of the fiscal year.

As noted above, "unrestricted general fund" is neither a legally defined term nor a term employed in the generally accepted accounting principles ("GAAP").

The City Attorney concludes that the "unrestricted general fund" is limited to those funds which are located within the general fund, and not subject to any spending limitations. Consequently, subfunds within the general fund, such as those recycling and street cleaning fees collected through Waste Management or Alameda County, any fees collected for cost recovery, or special taxes, should not be included in the calculation of the "unrestricted general fund." This interpretation is consistent with the limitations recently imposed on local governments in Proposition 218, the Right to Vote on Taxes Act, which declares a tax to be a special tax if the tax is imposed with a stated purpose, even if the tax is collected and deposited in the general fund. (Cal. Const., art. XIII C, section 1(d).)

2. Interpretation of the "Base Amount."

Section 14 of the Initiative requires the City, in addition to the 2½ percent set aside for the Kids First! Fund, to also maintain spending for youth and children services at no less than the level provided in the FY95-96 budget. The City Auditor is required to determine this "base amount" by calculating the amount spent on children's programs in FY95-96, exclusive of state or federally mandated funding and grants or dedicated funding. Again, an issue arises as to the which items are appropriate to

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include within the base amount. Section 14, provides in relevant part:

The KIDS FIRST! Oakland Children's Fund shall be used exclusively to increase the aggregate City appropriations and expenditures for children and youth services (exclusive of expenditures mandated by state or federal law). To this end, the City of Oakland shall not reduce the amount of unrestricted general fund appropriations and expenditures for eligible services in any of the twelve years during which funds are required to be set aside under this section below the amount so appropriated for the fiscal year 1995-1996 ("base amount").

[Emphasis added.]

The critical terms in this section are "the City of Oakland shall not reduce the amount of unrestricted general fund appropriations and expenditures." This language clearly limits the calculation of the base amount to the unrestricted general fund, as discussed above.

The Initiative leaves the phrase "aggregate City appropriations" undefined, but limits those appropriations to only those items which are appropriated from the general fund, exclusive of grants and pass through funding, are included. It appears logical to use the same definitions and interpretations in calculating the base amount as is used in calculating the Fund. (Sections 14 and 2.)

Although the addition of language regarding "appropriations and expenditures" clouds the issue somewhat, appropriations are the only legally defensible measure of public spending. Because any expenditure in excess of appropriations is an improper and illegal expenditure of public funds, it would be improper for any unappropriated expenditure to be used to set a level of future mandated spending. While a full appropriation may not be spent, the appropriation is the amount which the Council authorized for expenditure.

Consequently, we conclude that the base amount is to be derived from the City Auditor's calculations of appropriations for children and youth programs from the unrestricted general fund. This interpretation is also appropriate because only those funds in the general fund are fully discretionary, and this

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interpretation is consistent with the Initiative's language creating the Kids First! Funds (2½% set aside") and the language requiring annual adjustment in the base amount.

A secondary issue in the calculation of the base amount is the determination of what qualifies as expenditures on youth and children services. An argument could be made that virtually the entire Parks & Recreation Department budget is such an expenditure. However, a more reasonable and defensible position is to include only that proportion of the budget items as may be attributable to spending on the implementation of programs intended to benefit primarily children and youth. For example, the City maintains recreation centers throughout the City; these centers perform a number of activities, only a portion of which are primarily for the benefit of children and youth. Only that proportion which is spent primarily on children and youth services should be included in the base amount calculation.

3. Adjustments in the Base Amount.

The Initiative also requires that the base amount be recalculated for each succeeding year.

The base amount shall be adjusted for each year after the base year of 1995-1996, based on calculations consistent from year to year, by the percentage increase or decrease in aggregate City appropriations from the base year, as estimated by the City Auditor. Errors in the City Auditor's estimate of appropriations for a fiscal year shall be corrected by an adjustment in the next year's estimate. For the purposes of this subsection, aggregate City appropriations shall not include funds granted to the City by private agencies or appropriated by other public agencies and received by the City.

(Initiative section 14.)

The base amount is required to be adjusted annually, "by the percentage increase or decrease in aggregate City appropriations from the base year." (Initiative section 14.) To achieve consistency throughout this section and the entire Initiative, the term "aggregate City appropriations" necessarily must be limited to the unrestricted general fund. The annual adjustment requirement is contained within Section 14, which incorporates the

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language regarding unrestricted general fund in the initial determination of the base amount.

The annual adjustment of the base amount appears to be an attempt to maintain spending on children and youth outside of the Kids First! Fund at a level no less than that currently spent by the City. There is no language which prohibits the City from spending an increased proportion of its funds; nor is the City mandated to maintain an elevated level of spending. If the City raises its proportion of spending above the current levels, it may, in light of subsequent events, reduce its spending to, but not below, the current proportion of the City's unrestricted general fund.

~~The inclusion of the annual adjustment in the base amount, with the language stating that the City may not spend less than in FY95-96 results in a base amount that is both a fixed percentage of the City's unrestricted general fund budget and a floor amount. In the event that the City's unrestricted general fund revenues decrease, the amount spent on children's programs may be reduced from spending in subsequent years, there is no allowance for reducing spending below FY95-96 levels. This interpretation effectively makes the base amount not strictly an amount, but rather a fixed percentage of the City's budget with a minimum amount, a "floor" below which spending cannot go.¹~~

4. Limitations On Expenditures From The Base Amount.

The base amount funds may be spent at the discretion of the City Council on programs to benefit children and youth. There is no

¹ For example, if the FY95-96 "aggregate City appropriations" were \$200 million, and the City Auditor calculated the "base amount" to be \$20M, the Fund for the first year would be \$5M (2.5% of \$200M), and the \$20M previously spent would also be required as the continuing "base amount." The following chart shows the effect of this interpretation on the City budget, using assumed figures: the first line is FY95-96; the second line is a FY98-99 budget with a decrease in general fund revenues, as might occur with the passage of Prop. 218; the third line is a FY98-99 budget with "aggregate appropriations" increases.

Fiscal Year	City Appropriations	Total Budget Increase	Base Amount (Children & Youth Spending)	Kids First! Fund	Total Children & Youth Increase
95-96	\$200.0M	n/a	\$20.0M	\$5.0M	n/a
98-99 (\$<)	\$160.00	-40.0M	\$20.0M	\$4.0M	-1.0 (-4%)
98-99 (\$>)	\$240.0M	40.0M (20%)	\$25.0M	\$6.0M	6.0M (20%)

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limitation within the Initiative, such as a requirement that existing programs are to be specifically maintained, or that programs currently funded out of other sources may not be funded from the base amount in the future.

V.

CONCLUSION

The term "unrestricted general fund" is most appropriately interpreted as consisting of that portion of the City's general fund revenues which are subject to appropriation at the ~~discretion of the Council. The unrestricted general fund~~ excludes revenues derived from taxes imposed for a special purpose, fees for services provided, which are based on cost reimbursement, and other dedicated revenues as these funds are legally limited despite being included within the general fund.

The Initiative's language, although employing inconsistent terms, indicates that the "base amount" must be adjusted annually and that the basis of the adjustment must be consistent from year to year. In order to maintain a consistent interpretation of the Initiative from section to section, and over time, that the calculation of the base amount is most appropriately (a) determined from the appropriations made from the unrestricted general fund in FY95-96; (b) that the base amount should be adjusted annually in accord with an increase or decrease in the ~~unrestricted general fund revenues~~, however, the base amount may not be lower than that expended in FY95-96, even if overall revenues fall; and (c) the base amount funds may be spent at the discretion of the City Council on programs to benefit children and youth.

Respectfully,

JAYNE W. WILLIAMS
City Attorney

By:
BOYD L. SPREHN
Deputy City Attorney

LEGAL OPINION

TO: City Manager's Office

DATE: January 10, 1997

RE: Kids First! Implementation and Interpretation

cc: Lamont Ewell, Deputy City Manager
Dolores Blanchard, Director, BFA
Shirley Stubblefield, Director, Life Enrichment
Joyce M. Hicks, Assistant City Attorney
Paul Navazio, BFA
Sara Bedford, Life Enrichment
