

**CITY OF OAKLAND** DEC -2 PM 1:27  
**AGENDA REPORT**

TO: City Council, Finance and Management Committee  
FROM: Office of the City Attorney  
DATE: December 14, 2010

**RE: ORDINANCE MOVING OAKLAND MUNICIPAL CODE (OMC) SECTIONS 2.04.016 AND 2.04.017 TO NEW OMC CHAPTER 2.07, "GRANT AWARD APPROVAL," RENUMBERING SAID SECTIONS TO 2.07.100 AND 2.07.110, AMENDING OMC SECTION 2.04.015 AND CLARIFYING THAT THE PURCHASING ORDINANCE DOES NOT APPLY TO GRANT AWARDS**

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**SUMMARY**

As currently organized, the Oakland Municipal Code may cause the mistaken impression that the City's Purchasing Ordinance provisions (OMC section 2.04.010 et seq.) apply when the City gives grants to nonprofit and other organizations and to the public at large.

The purpose of the proposed amendments is to make it clear that City's Purchasing Ordinance provisions apply to the City's purchase of goods and services for the City's own use, not to grant awards to support nonprofit and related organizations that provide service programs to the public at large.

**FISCAL IMPACT**

None.

**BACKGROUND**

The City awards numerous types of grants to organizations that serve the public at large: KIDS First! The Oakland Fund for Children and Youth; Community Development Block Grants; Violence Prevention and Public Safety Act of 2004; Three Percent Hotel Tax Surcharge for Oakland Convention and Visitor Bureau, Chabot, Space and Science Center, and Oakland Zoo; United States Department of Housing and Urban Development Supportive Housing Program; and scores of other grants.

Each of the grant programs has its own award procedures, specified by federal or state law or regulations or specified by the local enacting legislation. The City placed the grant award provisions in the OMC to underscore the requirement that the Council must approve all grants. (See OMC sections 3.04.016 and 2.04.017.) Because sections 2.04.016 and 2.04.017 were

placed in Chapter 2.04 of the Municipal Code, there may be a misimpression that the City's Purchasing Ordinance creates an additional layer of procedures for the award of grants.

## **KEY ISSUES AND IMPACTS**

The purpose of these amendments is to make it clear that City's Purchasing Ordinance provisions apply to only the City's purchase of goods and services for the City's own use, not to grant awards to support nonprofit and related organizations that provide service to the public at large.

Each grant program must continue to follow its own award rules, regulations, and procedures as specified by the federal government, state government, or other funding source. These title and number amendments make clear that the Purchasing Ordinance does not override those federal, state, and other funding source rules, regulations, and procedures or create additional procedures for the award of grants.

## **SUSTAINABLE OPPORTUNITIES**

*Economic:* There are no economic opportunities created because of the amendments.

*Environmental:* There are no environmental opportunities created because of the amendments.

*Social Equity:* There are no social equity opportunities created as the result of the technical changes.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

The proposed amendments have no direct impact on access by seniors and people with disabilities.

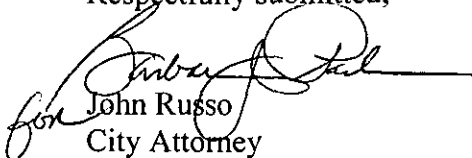
## **RECOMMENDATION(S) AND RATIONALE**

The City Attorney's Office recommends that the Council adopt the proposed amendments to the Oakland Municipal Code for the reasons that we discussed in this report.

## **ACTION REQUESTED OF THE CITY COUNCIL**

The City Attorney's Office requests that the City Council adopt the amendments to the Oakland Municipal Code.

Respectfully submitted,

  
John Russo  
City Attorney

Attorney Assigned: M. Morodomi

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

10 DEC -2 PM 1:27

*M. Mowdom*

City Attorney

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE MOVING OAKLAND MUNICIPAL CODE (OMC) SECTIONS 2.04.016 AND 2.04.017 TO NEW OMC CHAPTER 2.07, "GRANT AWARD APPROVAL," RENUMBERING SAID SECTIONS TO 2.07.100 AND 2.07.110, AMENDING OMC SECTION 2.04.015 AND CLARIFYING THAT THE PURCHASING ORDINANCE DOES NOT APPLY TO GRANT AWARDS**

WHEREAS, as currently organized, the Oakland Municipal Code may cause the mistaken impression that the City's solicitation processes required for the purchase of goods and services (OMC section 2.04.010 et seq., the "Purchasing Ordinance"), e.g., the competitive bidding/RFQ/RFP processes, apply to the awarding of grants by the City to nonprofit and similar organizations providing service programs to the public at large; and

WHEREAS, the City has never intended that its goods and services solicitation processes, e.g., the competitive bidding/RFQ/RFP processes, apply to the awarding of grants by the City to nonprofit and similar organizations providing service programs to the public at large and has never required the application such processes to the awarding of grants; and

WHEREAS, these amendments clarify that City's solicitation processes for the purchase of goods and services in the Purchasing Ordinance apply to the purchase of goods and services by the City for the City's own use, and have not applied and do not apply to grant awards to support nonprofit and similar organizations providing service programs to the public at large; and

WHEREAS, these amendments clarify that the award of pay-go grants to third parties are distinct from the expenditure of pay-go funds for City goods and services; and

WHEREAS, each grant program must follow its own award rules, regulations, and procedures as specified by the federal government, state government, or other funding source; and

WHEREAS, these title and numbering amendments move these sections of the Oakland Municipal Code to a new chapter, entitled "Grants Award Approval"; and

WHEREAS, these title and number amendments make clear that the Purchasing Ordinance does not override those federal, state, and other funding source rules, regulations, and procedures; therefore

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

**SECTION 1.**

There shall be a new in a new Chapter 2.07 "Grant Award Approval," and the following Oakland Municipal Code Sections are renumbered as follows:

2.04.016 renumbered to 2.07.020

2.04.017 renumbered to 2.07.030

**SECTION 2.**

There shall be a new Section 2.07.010 -- Definitions, to read as follows:

"Pay-go" shall have the same meaning as defined in Section 2.04.010. See Section 2.04.018 for use of Pay-go for the purchase of services (professional or otherwise), goods, materials or equipment for capital improvements to City-owned facilities and not grants.

**SECTION 3.**

Oakland Municipal Code Section 2.04.015 is hereby amended to add, delete, or modify sections as set forth below. Additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the ordinance not cited or not shown in underscoring or strike-through type are not changed.

All The provisions of this chapter shall apply to city contracts for public works projects, public works construction projects, procurements and purchases (as defined in Section 2.04.010), and to services including, but not limited to, contracts for services that are professional, technical or scientific in nature as well as contracts for any other services. However, this chapter has not applied to and shall not apply to agreements for grants awards received or given by the City of Oakland to support nonprofit and similar organizations providing service

programs to the public at large, nor shall it apply to pay-go grants to non-City entities which are governed by Chapter 2.07.

SECTION 4. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

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

DATE OF ATTESTATION: \_\_\_\_\_