

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK

2005 SEP 29 PM 2: 29

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Finance and Management Agency
DATE: October 11, 2005

RE: RECOMMENDATIONS ON THE CALCULATION OF THE KIDS FIRST! FUND
2.5 PERCENT SET-ASIDE AND RESPONSE TO THE CITY AUDITOR'S KIDS
FIRST! FUND REPORT.

SUMMARY

The September 13, 2005 Finance and Management Committee Agenda included two items regarding the Kids First! Fund: A City Auditor's report analyzing the fund and the Oakland Fund for Children and Youth Planning and Oversight Committee response to the Auditor's report. The Committee deferred hearing the two items regarding the Kids First! Fund in order to give the City Administrator a chance to review and reconcile figures included in the City Auditor's report and to offer an opinion on the correct calculation of the fund set-aside.

A Budget Office reconciliation of the Auditor's figures reveals an overstatement of unrestricted general fund revenues in the report. The City Administrator and Director of Finance and Management recommend calculation of the Kids First! Fund 2.5 percent set-aside based upon **budgeted** unrestricted revenues. In addition, funds, which have become restricted by subsequent legislation, should continue to be included in unrestricted general fund revenues for purposes of determining the correct 2.5 percent set-aside. Excluding these funds (those restricted by subsequent legislation) would greatly reduce the Kids First! Fund.

FISCAL IMPACT

No fiscal impact. The report recommends maintaining the current calculation of the Kids First! Fund 2.5 percent set-aside.

BACKGROUND

The Kids First! Fund resulted from an initiative (Measure K), which was approved by Oakland voters in November 1996. Measure K includes two major requirements. The first is the set-aside of 2.5 percent of General Fund unrestricted revenues for appropriation in the Kids First! Fund. The drafters of the measure wanted to ensure that this set-aside did not supplant the budget that already existed in the City's General Fund. The second requirement therefore, provides for a base level of appropriations and expenditures on youth programs in the General Fund.

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Measure K provides for an appropriation of 2.5 percent of the General Fund budget at the start of the fiscal year. For the first six months of the fiscal year, the oversight committee allocates the appropriations to various non-profit groups. Expenditures of the appropriations are made during the calendar year, which begins in that fiscal year. For example, appropriations for fiscal year July 1, 2005 to June 30, 2006 will be awarded in late 2005 to be spent during the calendar year (January 1, 2006 to December 31, 2006).

The second requirement of Measure K involves maintaining a level of baseline spending; so that, the Kids First! 2.5 percent set-aside does not supplant previous spending on youth programs. This requirement also provides for an annual "true-up" of the baseline spending amount by the City Auditor, based on actual expenditure levels. No annual true up to actual revenues is provided for the 2.5 percent set-aside.

In 2003, the City Auditor requested an opinion from the City Attorney's Office on whether the 2.5 percent set-aside should be based on actual or budgeted unrestricted General Fund revenues. The City Attorney's Office opined, in a memo dated August 19, 2003, that the set-aside should be based on **actual** revenues. The City Administrator and Director of Finance and Management believe that the funding should be based on **budgeted** revenues.

KEY ISSUES AND IMPACTS

Voter Intent

The Kids First! Legislation (Section 14) contains an express provision for an annual true up of baseline spending amounts. **The legislation contains no true-up provision to adjust the 2.5 percent set-aside at year end.** The legislation calls for a set-aside based on 2.5 percent of unrestricted General Fund revenues. This is done prior to the beginning of the fiscal year, so is clearly based on budgeted revenues. Given that no true-up of the 2.5 percent set-aside is called for in the legislation, a "plain reading" of the legislation is that **budgeted** revenues are used (with no year end true up).

The City Attorney's impartial analysis of the legislation states, "unrestricted general fund revenues are not defined." This would indicate that the language is somewhat unclear and ambiguous. If one believes the language to be ambiguous, one would normally look to other indicators of voter intent – the City Attorney's and City Auditor's impartial analyses and arguments contained in the official ballot pamphlet. Neither the City Attorney's or City Auditor's analyses address the issue of budgeted vs. actual revenues. The arguments for Measure K, on the other hand, clearly indicate the use of **budgeted** revenues:

*Currently City Hall spends approximately ½ of 1% of its unrestricted general fund **budget** on programs for children. Measure K requires City Hall to earmark a minimum of 2.5% of the City's unrestricted general fund **budget** on programs for children (emphasis added).*

*It simply directs the City Council to prioritize a portion of the existing City **budget** specifically for children and youth (emphasis added).*

*Please help ensure that Oakland children get their fair share of the City's **budget** (emphasis added).*

A “plain reading” of the language is very clear. Budgeted revenues are used prior to the beginning of the fiscal year to make appropriations to the Kids First! Fund and there is no provision for a true-up of the 2.5 percent set-aside, (whereas an express provision exists for a true-up of the annual baseline spending amount). Other indicators clearly support the use of budgeted revenues. Regardless of the intent of the drafters of the legislation, the intent of the voters, who approved it, is clear.

Other Administrative Issues

The current Kids First! budget amount is allocated to various non-profits through a competitive process. This process is conducted by the Children’s Fund Planning and Oversight Committee (POC) and is subject to City Council ratification. The budget amount is known at the beginning of the year and the contracts are let after the start of the fiscal year.

If a true-up to actual amounts is required, neither the POC nor City Council could be sure of the amount available for contracts with the non-profit groups. Over the past few years, actual revenues have tended to come in over the budgeted amounts. However, this positive variance has been primarily due to one revenue source. Real Estate Transfer Tax (RETT) has consistently surpassed projections, but remains the most volatile of the City’s major revenue sources. Budgeted revenues for RETT have been consistently raised each year. Should the real estate “bubble” burst, the City could experience actual revenues well below projections.

Actual revenues would not be available until well through the calendar year, in which the Kids First! appropriations are spent. It would be extremely problematic, if the Kids First! Fund is required to return its funding to the General Fund, once contracts are let and the majority of the funds expended.

Unrestricted General Fund Revenues

In simple terms, “unrestricted general fund revenues” have been defined to be total General Fund revenues less grants and pass-throughs, fees and other miscellaneous restricted funds. Since the passage of Measure K, other funds have come to be restricted by subsequent legislation. Measure Q, the library parcel tax extension, in March 2004 and Measure Y, the violence prevention measure, in November 2004, both restrict General Fund revenues.

Measure Q requires a minimum General Fund budget level for library services of \$9.1 million. Measure Y mandates minimum staffing for the Police Department of 739 officers. The Police Department's General Fund (Fund 1010) budget, which provides for mandated staffing of 739 officers, totals \$167.8 million. Minimum fire staffing is also mandated by a special agreement dated April 12, 2004. Though Measure Y funds contribute a portion of this cost annually (\$4 million), the Fire Department's General Fund budget (\$102.7 million) is required to cover the remainder of the cost.

General Fund revenues, that have been restricted to fund these three activities, total \$279.6 million. **Excluding these restricted revenues from the Kids First! 2.5 percent assessment would result in a reduction of \$7 million in annual revenues to the Kids First! Fund.** Rather than the \$9.3 million budgeted for FY2005-06, the Fund would receive \$2.3 million. Because of the dramatic impact on the Kids First! Fund, the City Administrator and Director of Finance and Management do not recommend treating these amounts as restricted funds.

Reconciliation of City Auditor's Numbers

The Budget Office reviewed the City Auditor's computation of the 2.5 percent Kids First! set-aside (based on **actual** revenues) and found differences with the Auditor's figures. The major sources of variance are in fees (primarily franchise fees) and a post-closing adjustment, which was not included in the Auditor's figures. As discussed earlier, fees are considered restricted revenues.

The Budget Office's calculation results in a reduction to the City Auditor's amounts due Kids First! of \$1.6 million. The adjusted total amount due would be \$842,077. The difference would average approximately \$120,000 per year, or 1.3 percent of Kids First! revenues. Were an annual true-up to **actual** revenues performed, in three of the seven years, the Kids First! Fund would owe money back to the General Fund:

	City Auditor	Budget Office Corrections	Adj'd City Auditor
FY98	\$ 127,341	\$ (203,997)	\$ (76,656)
FY99	82,616	(208,952)	(126,336)
FY00	264,383	(208,232)	56,151
FY01	795,368	(239,433)	555,935
FY02	476,936	(240,601)	236,335
FY03	123,165	(248,694)	(125,529)
FY04	534,350	(212,173)	322,177
	\$ 2,404,159	\$ (1,562,082)	\$ 842,077

SUSTAINABLE OPPORTUNITIES

None

DISABILITY AND SENIOR CITIZEN ACCESS

None

RECOMMENDATION(S) AND RATIONALE

Staff recommends the Kids First! Fund receives its legally mandated 2.5 percent set-aside based on **budgeted unrestricted general fund revenues**. The Kids First! legislation contains no true-up provision to adjust the 2.5 percent set-aside at year-end. Arguments for Measure K (voter intent) clearly indicate the use of budgeted revenues.

Staff recommends the continued inclusion of Measure Q, Measure Y and Fire Department General Fund revenues in the unrestricted general fund revenues used to calculate the 2.5 percent set-aside. Excluding these restricted revenues would greatly reduce the Kids First! Fund and impact children and youth services.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests Council base the legally mandated 2.5 percent set-aside on budgeted unrestricted general fund revenues. Staff requests Council approve the continued inclusion of Measure Q, Measure Y and Fire Department General Fund revenues in the unrestricted general fund revenues used to calculate the 2.5 percent set-aside.

Respectfully submitted,



William E. Noland

Finance and Management Agency

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

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