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January 29, 2013

COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE  
Oakland, California

**Re: Possible Action on a Report Directing the City Administrator to Convene a Revolving OCIP (Owner Controlled Insurance Participation) Working Group from January 13, 2013 through March 2013 (Item No. 6 on January 29, 2013 CED Committee Agenda)**

Dear Chairperson Reid and Members of the CED Committee:

Introduction

At its December 6, 2013 meeting, the Rules Committee approved Councilmember Brooks' request to schedule the following item to CED Committee: that Council pass a motion directing the City Administrator to convene a working group from January through March 2013 with membership from various departments of the City, the Successor Agency and Port to evaluate OCIP programs, provide a feasibility analysis, research best practices for an OCIP, provide recommendations for an OCIP policy and implementation, draft a request for proposals and contract language, provide program design addressing safety and loss control measures, administration, claims-management and adjudication and funding sources and a City Administrator report at the first CED meeting in January with a membership roster and schedule of meetings. The request was distributed on the dais at the meeting.

Our Office advised the Rules Committee that the proposed action violates the City Charter which provides that the Council has no administrative powers and prohibits interference in the administrative affairs of the City which are under the jurisdiction of the City Administrator and other administrative officers. We explained that the Council can direct the City Administrator to bring back a report on the OCIP feasibility, etc., but it cannot tell her how to accomplish that administrative task. The proposed action directs the City Administrator to establish a working group and identifies the staff who must be members of the working group as well as non-city representatives. We offered to consult privately with Councilmember Brooks to develop a proposed item and agenda title that would achieve the Councilmember's goals in a manner that is consistent with the Charter. The request was denied and the Rules Committee scheduled the item without revision.

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Subsequently, the City Administrator sought our review in preparing the CED report. We once again advised that the direction in the original item conflicted with the Charter. We provided a revised directive in accord with the City Administrator's desire to provide an informational report on staff's research and other efforts to obtain OCIP coverage for a greater number of the City's public works projects; such a recommendation from CED Committee and such a directive from Council would be consistent with the Charter because the City Administrator would retain the authority to convene a staff working group, if she so desires, assign employees to the group and determine what areas the group studies and how they carry out the work. The City Administrator elected to include both directive statements in the report as alternative actions.

The City Administrator's report was originally scheduled for the January 15, 2013 CED Committee but continued to the January 29<sup>th</sup> meeting (Item 6) because Councilmember Brooks was out of town on the 15<sup>th</sup>.

## Purpose of this Report

The purpose of this report is to advise the CED Committee that the Council and the committee lack authority to tell the City Administrator how to carry out her administrative duties. The Council cannot dictate who will serve on any working group that the City Administrator chooses to establish, nor can the Council direct the City Administrator to convene a working group of city staff. This purported direction would invade the administrative affairs which are under the City Administrator's purview. The Council has two options: (1) it can direct the City Administrator to provide a report evaluating OCIP programs, providing a feasibility analysis, researching best practices for an OCIP, providing recommendations for an OCIP policy and implementation and further direct the City Administrator to secure input from the Port and the Successor Agency – the City Administrator would exercise her judgment/discretion to determine how she completes the administrative task; or (2) Council can establish a working group and designate members who are not members of city staff – City Administrator and the City Attorney would provide staff support and legal advice to the working group. We recommend that the CED Committee recommend one of these options if it wishes to move forward Councilmember Brooks' proposal.

This Office fully supports measures and policies that will increase the City's ability to secure goods and services from small, local and diverse companies and entities.

## Analysis

City Charter Section 207 sets forth the powers of the Council making it "the governing body of the City," authorized to "exercise the corporate powers of the City ... subject to the expressed limitations of this Charter ... vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California" and authorized to "fix the compensation of all City employees, officers

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and officials except as otherwise provided by this Charter." Section 207 also provides that the Council "shall have no administrative powers."<sup>1</sup>

City Charter Section 218 provides that "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" through the City Administrator or such other officers and prohibits the Council or individual councilmembers from giving orders "to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately" or from attempting 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."<sup>2</sup>

City Charter Sections 503 and 504 set forth the duties of the City Administrator. Section 503 provides the "City Administrator shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction" including the power to "appoint, assign and reassign ... all directors or heads of departments and all employees under his jurisdiction."<sup>3</sup> Charter Section 504 further establishes duties of the City Administrator providing, in part, that 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. . . .  
.....
- (c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable. . . .  
.....
- (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.
- (i) To prepare and submit to the Council such reports as it may require.  
.....
- (k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction.  
.....

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<sup>1</sup> See attached excerpt of Charter Section 207.

<sup>2</sup> See attached excerpt of Section 218.

<sup>3</sup> See attached excerpt of Charter Section 503 provides:

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- (n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution.<sup>4</sup>

The Council actions proposed by Councilmember Brooks are contrary to the above sections of the City Charter. The Council can establish general policy to make insurance covering the City's public works projects more available to small contractors. But insurance program feasibility analyses, recommendations for implementation and program design, the preparation of requests for proposals and contracts for the provision of services and the work assignments of department staff are administrative operational and functional tasks within the administrative jurisdiction of the City Administrator; and in some cases these tasks are expressly contemplated by the Charter. (See Charter Sections 503 and 504 (g), (h) and (k)). The Charter grants the City Administrator authority to determine how she wishes to employ staff to research, evaluate and implement Council policies.

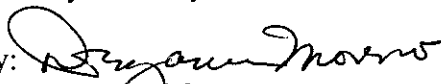
The directive to the City Administrator based on advice from our Office to provide an informational report on OCIP research and current options for obtaining coverage for city public works projects is consistent with the Council's and City Administrator's Charter powers and duties. As noted above, it also accomplishes the goal of the proposed item that Rules scheduled.

Conclusion

The Council may establish a working group to research how to increase OCIP availability for smaller public works projects. The Council could establish membership from outside the municipal organization with staff support to be provided by the City Administrator and legal advice from the City Attorney. However, assignment of staff to a Council working group is within the City Administrator's jurisdiction.

Very truly yours,

Barbara J. Parker  
City Attorney

By:   
Doryama Moreno  
Chief Assistant City Attorney

cc: City Council  
City Administrator

Attachments: Oakland Charter Section 207  
Oakland Charter Section 218  
Oakland Charter Section 503  
Oakland Charter Section 504

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<sup>4</sup> See attached excerpt of Charter Section 504.

not exceed 128 days or go beyond the date the new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the Vice Mayor fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the Vice Mayor shall be entitled to return to his/her seat.

(Amended by: Stats. November 1998, November 2000, March 2002 and February 2007.)

**Section 206. Vacancy, What Constitutes.** An office of Councilmember shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or of the district from which he was nominated, absents himself continuously from the City for a period of more than thirty days without permission from the Council, absents himself from any ten consecutive regular meetings except on account of his illness or when absent from City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Councilmember.

(Amended by: Stats. November 1988 and November 2000.)

**Section 207. Powers of the Council.** The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter.

(Amended by: Stats. November 1988 and November 2000.)

**Section 208. Meetings of the Council.** At 11:00 a.m. on the first Monday following January 1 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each year, the Council shall elect a Vice-Mayor from among its members to serve for a one-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice.

(Amended by: Stats. June 1988 and March 2004.)

**Section 209. Quorum.** Five members of the Council shall constitute a quorum for the transaction of business, but a lesser number may adjourn.

**Section 210. Council Action.** The Council shall provide by resolution for the order of business and the rules of procedure for the conduct of Council meetings. The Council shall act by ordinance or resolution or motion. The "ayes" and "noes" shall be taken on the passage of all ordinances and resolutions and entered upon the journal of the Council's proceedings. Each proposed ordinance or resolution shall be introduced in written or printed form. The affirmative vote of five members of the Council shall be required to adopt any ordinance or resolution, except as otherwise provided by this Charter or by general law.

**Section 211. Enactment of Ordinances.** In addition to such other action of the Council as is required by statute or by this Charter to be by ordinance, every act of the Council establishing a penalty or granting a franchise shall be by ordinance. The enacting clause of all ordinances shall be: "The Council of the City of Oakland does ordain as follows:"

**Section 212. Adoption and Amendment of Ordinances.** Except for emergency ordinances, no ordinance shall be adopted by the Council on the day of its introduction, nor within five days thereafter, nor except at a regular or adjourned regular or special meeting. If an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall not be adopted except at a regular or adjourned regular or special meeting held not less than five days after the date of such alteration. Any section or subsection of an ordinance may be amended solely by the reenactment of such section or subsection at length as amended.

**Section 213. Emergency Ordinances.** Any ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members. Appropriations to meet an urgent need for public expenditure, to protect the public health, safety, or welfare may be made as an emergency ordinance.

**Section 214. Publication.** Before final adoption of an ordinance, its title, a digest thereof, a notice showing the vote on its introduction and the date, time, and place of hearing on its final adoption, and notice that three full copies thereof are available for use and examination by the public in the Office of the City Clerk, shall be published once in the official newspaper of the City at least three days before said hearing date. Notice of the adoption of an emergency ordinance, the vote thereon, its title, and a digest thereof shall be similarly published once within three days after its adoption. The notices and digests shall be prepared by the City Attorney.

**Section 215. Codification.** The duly adopted and effective ordinances of the City may be compiled and arranged as comprehensive codes, which may be adopted by reference by the passage of an ordinance for such purpose.

**Section 216. Effective Date of Ordinance.** An ordinance receiving upon final adoption the affirmative vote of at least six members of the Council shall be effective immediately, unless a later date is specified therein. All other ordinances, unless a different date is required by this Charter, shall be effective upon the seventh day after final adoption; provided, that within three days after said date of final adoption, the Mayor may file in the Office of the City Clerk written notice to the Council that he has suspended the taking effect of the ordinance, stating in said notice the reason or reasons for his action, which notice the City Clerk shall forthwith deliver to the members of the Council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is approved by the affirmative vote of at least five members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective.

*(Amended by: Stats. November 1998 and March 2004.)*

**Section 217. Penalty for Violation of Ordinances.** The Council may make the violation of its ordinances a misdemeanor, which may be prosecuted in the name of the People of the State of California or may be redressed by civil action, and may prescribe punishment for such violations by a fine not to exceed \$1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

**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; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

*(Amended by: Stats. November 1988, November 2000 and March 2004.)*

**Section 219. Ordinance: When Required.** In addition to other actions required by law or by specific provision of this Charter to be done by ordinance, those actions of the Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency as authorized in Article VI of this Charter.
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.
- (3) Levy taxes except as otherwise provided in this Charter with respect to the property tax levied by adoption of the budget.
- (4) Regulate the rates charged for its services by a public utility.
- (5) Authorize the borrowing of money except as otherwise provided in Section 812 of this Charter.
- (6) Convey or lease, or authorize the conveyance or lease for longer than one year, of any real property of the City, or any interest therein, or the acquisition of real property, the purchase price of which is more than Five Thousand Dollars (\$5,000.00).
- (7) Amend or repeal any ordinance previously adopted.

Provided, acts other than those referred to hereinabove under this section, or other than may be specifically otherwise provided for in other sections of this Charter, may be done either by ordinance or by resolution.

Oakland, California, Code of Ordinances >> - THE CHARTER OF THE CITY OF OAKLAND >> ARTICLE V - THE CITY MANAGER >>

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**ARTICLE V - THE CITY MANAGER** 

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**Section 500. Appointment.** The Mayor shall appoint a City Administrator, subject to the confirmation by the City Council, who shall be the chief administrative officer of the City. He shall be a person of demonstrated administrative ability with experience in a responsible, important executive capacity and shall be chosen by the Mayor solely on the basis of his executive and administrative qualifications. No member of the Council shall, during the term for which he is elected or appointed, or for one year thereafter, be chosen as City Administrator.

*(Amended by: Stats. November 1988, November 1998 and March 2004.)*

**Section 501. Compensation and Tenure.** The City Administrator shall receive the salary fixed by the Council. He shall be appointed for an indefinite term and shall serve at the pleasure of the Mayor.

*(Amended by: Stats. November 1988 and March 2004.)*

**Section 502. Acting City Administrator.** The City Administrator shall designate two or more of his assistants or department heads, in the sequence in which they are to serve, as Acting City Administrator to serve as City Administrator in the temporary absence or disability of the City Administrator.

*(Amended by: Stats. November 1988 and March 2004.)*

**Section 503. Powers of Appointment and Removal.** The City Administrator shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction. He may delegate to directors or other department heads responsible to him/her the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter.

*(Amended by: Stats. November 1988 and March 2004.)*

**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.
- (b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as he chooses or which he is directed to attend by the Council, and to participate in discussions at such meetings.
- (c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
- (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.
- (s) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction.
- (f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council.

- (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.
- (i) To prepare and submit to the Council such reports as it may require.
- (j) To keep the Council at all times fully advised as to the financial condition and needs of the City.
- (k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction.
- (l) When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval.
- (m) To devote his entire time to the duties and interest of the City.
- (n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution.

*(Amended by: Stats. November 1988 and March 2004.)*