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Attachment

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OAKLAND

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2014 JUN 13 AM 8:40

CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C. M. S.

ORDINANCE AMENDING ORDINANCE NO. 13170 C.M.S. WHICH SETS FORTH THE COUNCIL'S GENERAL PURPOSE FUND (GPF) FINANCIAL POLICIES TO AMEND THE REQUIREMENTS FOR AUTHORIZATION TO USE ONE-TIME OR EXCESS REAL ESTATE TRANSFER TAX REVENUES FOR PURPOSES OTHER THAN ESTABLISHED THROUGH THIS ORDINANCE, TO ALLOW AUTHORIZATION OF SUCH USES BY RESOLUTION APPROVED BY A SUPER MAJORITY VOTE OF THE CITY COUNCIL.

WHEREAS, Ordinance No. 13134 C.M.S., passed October 2, 2012, restricts the use of excess Real Estate Transfer Tax revenues first to increase General Purpose Fund (GPF) reserves from seven and one-half percent (7.5%) to ten percent (10%) of budgeted General Purpose Fund appropriations, and then in specified percentages to reduce negative fund balances, reduce liabilities for the Police and Fire Retirement System (PFRS), pre-fund Other Post-Employment Benefits (OPES), and replenish the Capital Improvements Reserve Fund; and

WHEREAS, Ordinance No. 13170 C.M.S., passed June 27, 2013, allowed excess (one-time) Real Estate Transfer Tax revenues to be used on one-time expenditures; and

WHEREAS, using certain one-time revenues on ongoing expenditures from time to time may not rise to the level of declaring a fiscal emergency, however is an action that should not be taken without thoughtful deliberation and consensus;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

Section 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**, additions are indicated by underscoring and deletions are indicated by ~~strike-through~~ type; portions of

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the regulations not cited or not shown in underscoring or strike through are not changed).

Section 3. Ordinance No. 13170 C.M.S. is hereby amended as follows:

A. General Purpose Fund Reserve Policy

1. Council hereby declares that it shall be the policy of the City of Oakland to provide in each fiscal year a reserve of undesignated, uncommitted fund balance equal to seven and one-half (7.5%) of the General Purpose Fund (Fund 1010) appropriations for such fiscal year (the "General Purpose Fund Reserve Policy").
2. Each year, upon completion of the City's financial audited statements, the City Administrator shall report the status of the General Purpose Funds Reserve to the City Council and on the adequacy of the of the 7.5% reserve level. If in any fiscal year the General Purpose Fund Reserve Policy is not met, the City Administrator shall present to Council a strategy to meet the General Purpose Funds Reserve Policy. Each year, the City Administrator shall determine whether the 7.5% reserve level requires adjustment and recommend any changes to the City Council.
3. The amounts identified as the General Purpose Funds Reserve may be appropriated by Council only to fund unusual, unanticipated and seemingly insurmountable events of hardship of the City, and only upon declaration of fiscal emergency. For the purposes of this Ordinance, "fiscal emergency" may be declared (1) by the Mayor and approved by the majority of the City Council, or (2) by a majority vote of the City Council.
4. Prior to appropriating monies from the reserve established by this Ordinance, the City Administrator shall prepare and present such analysis to the City Council. Upon review and approval of the proposed expenditure by the City Council, and appropriate fiscal emergency declaration necessary for the use of GPF reserve, the City Administrator will have the authority to allocate from the reserves.

B. Capital Improvements Reserve Fund

1. There is hereby established a fund in the Treasury of the City of Oakland to be known as the "Capital Improvements Reserve Fund."
2. On an annual basis, an amount equal to \$6,000,000 shall be held in the Capital Improvements Reserve Fund. Revenue received from one time activities, including the sale of Real Property, shall be deposited into the Capital Improvements Reserve Fund, unless otherwise provided in Sections D and E of this ordinance or otherwise directed by a majority vote of the City Council. Interest earnings on monies on deposit in the Capital Improvements Reserve Fund shall

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accrue to said fund and be maintained therein.

3. Monies on deposit in the Capital Improvements Reserve Fund may be appropriated by Council to funds unexpected emergency or major capital maintenance or repair costs to City-owned facilities and to fund capital improvement projects through the Five-Year Capital Improvement Program.
4. Each year, upon completion of the City's financial audited statements, the City Administrator shall report the status of the Capital Improvements Reserve Fund. If in any fiscal year the Capital Improvements Reserve Fund threshold of \$6,000,000 is not met, the City Administrator shall present to Council a strategy to meet said threshold.

~~C. Prior to appropriating monies from the reserves established by this Ordinance, the Budget Office shall prepare an analysis of the proposed expenditure and the City Administrator shall present such analysis to the City Council. Upon review and approval of the proposed expenditure by the City Council, and appropriate fiscal emergency declaration necessary for the use of GPF reserve, the City Administrator will have the authority to allocate from the reserves. For the purposes of this Ordinance, "fiscal emergency" may be declared (1) by the Mayor and approved by the majority of the City Council, or (2) by a majority vote of the City Council.~~

D.C. Use of Excess Real Estate Transfer Tax (RETT) Revenues to Pay for One Time Expenses. Build up the Reserve, Pay Back Negative Internal Service Fund Balances, Establish Set-Asides for Other Post-Employment Benefits (OPEB) and Police and Fire Retirement System (PFRS) Liabilities, and Fund Capital Improvements Projects.

To ensure adequate levels of the General Purpose Fund reserves and to provide necessary funding for municipal capital improvement projects and one-time expenses, the City shall require that excess Real Estate Transfer Tax revenues be defined and used as follows:

- 1) The excess Real Estate Transfer Tax (RETT) revenue is hereby defined as any annual amount collected in excess of the "normal baseline" collection threshold of \$40 million.
- 2) The excess Real Estate Transfer Tax collections, as described in this section, shall be used in the following manner:
 - a. To pay for one-time expenses; to replenish General Purpose Funds (GPF) reserves until such reserves reach to 10 percent of current year budgeted

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GPF appropriations.

- b. After such reserves have been replenished, the order of use of the remaining excess collection is as follows: 50 percent to repay negative internal services funds balances; 30 percent set aside for to fund the Police and Fire Retirement System (PFRS) liability until this obligation is met; 10 percent to establish and fund a trust for Other Post- Employment Retirement Benefits (OPEB); and 10 percent to replenish the Capital Improvements Reserve Funds until it reaches \$10,000,000.
- 3) Use of the "excess" RETT revenue for purposes other than those established above may only be allowed by a super majority vote (6 out of 8) of the City Council through a separate resolution. upon declaration of a fiscal emergency. For the purposes of this Ordinance, "emergency" may be declared (1) by the Mayor and approved by the majority of the City Council, or (2) by a majority vote of the City Council.
- a. The resolution shall be supported by a statement explaining the necessity for using excess RETT revenues for purposes other than those established above and;
 - b. The resolution authorizing expenditures using excess RETT revenue for proposes other than those above shall include a finding of necessity by the City Council; and
 - c. The resolution shall also include steps the City will take in order to return to utilizing one-time RETT revenues as described above.

E. D. Use of One Time Revenues To Repay Negative Fund Balances in Internal Service and Other Funds; and Provide Criteria for Project Carryforwards and Encumbrances in the GPF.

- 1) From time to time, the City may receive "one time revenues", defined as financial proceeds that will not likely occur on an ongoing basis, such as sales of property or proceeds from the refinancing of debt, but not including additional Real Estate Transfer Tax revenues discussed in Section "DC" above.
- 2) Fiscal prudence and conservancy requires that one time revenues not be used for recurring expenses, that outstanding negative balances in various City funds be paid off, and that municipal capital projects addressing health and safety issues be adequately funded. Therefore, upon receipt of one time revenues, such revenues shall be used in the following manner, unless legally restricted to other purposes: to pay for one-time expenses, to payoff negative fund balances in the Internal Service Fund, to payoff negatives in all other funds, or shall remain as

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fund balance in the appropriate fund.

- 3) Use of the "one time revenues" for purposes other than those established above may only be allowed by a super majority vote (6 out of 8) of the City Council through a separate resolution. upon declaration of a fiscal emergency. For the purposes of this Ordinance, "emergency" may be declared (1) by the Mayor and approved by the majority of the City Council, or (2) by a majority vote of the City Council.
 - a. The resolution shall be supported by a statement explaining the necessity for using one-time revenues for purposes other than those established above; and
 - b. The resolution authorizing expenditures utilizing one-time revenue for proposes other than those above shall include a finding of necessity by the City Council; and
 - c. The resolution shall also include steps the City will take in order to return to utilizing one-time revenues as described above.

F. E. Criteria for Project Carryforwards and Encumbrances in the General Purpose Fund.

Previously approved but unspent project appropriations ("carryforwards"), as well as funding reserved to pay for purchases or contracts that are entered into in the current year but are not paid for until the following year ("encumbrances"), draw down funding from reserves. Fiscal prudence requires that such drawdowns be limited in the General Purpose Fund (GPF). Therefore:

- 1) Funding for non-operating projects and purchases shall be restricted within the General Purpose Fund; capital purchases and projects in particular shall not be funded from the General Purpose Fund.
- 2) In cases when non-capital, operating projects and purchases must be funded in the General Purpose Fund, these shall be included in an annual budget and supported with new annual revenues.
- 3) Carryover of unspent project carryforwards and encumbrances in the GPF from one year into the next, with no new funding, will be allowed only on an exception basis.
- 4) In the beginning of each fiscal year, before project carryforwards and encumbrances are carried over from the prior year, and no later than August 1:

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- The Budget Director shall liquidate all unspent project carryforwards and encumbrances in the GPF and advise affected City departments of said action.
 - The Budget Director shall provide a report of all unspent project carryforwards and encumbrances to the City Council for review and direction.
- 5) Departments may request to retain some or all of the liquidated GPF carryforwards and encumbrances only if and when such balances are deemed essential to the delivery of city projects, programs and services, and only if the liquidation of such balances would be in violation of legislative or legal requirements, could lead to health or safety issues, and/or would greatly impact essential City projects, programs and services.
- 6) A request to retain some or all of the liquidated GPF carryforwards or encumbrances must be submitted in writing to the Budget Director within five (5) working days of receiving an advisory from the Budget Director Office about said liquidations, and must detail specific reasons necessitating such a request, including but not limited to those stated in item (3) above.
- 7) The Budget Director, upon review of a department's request, shall recommend an action to the City Administrator within five (5) working days of receiving the department's request.
- 8) The City Administrator, in consultation with the Budget Director, shall make a final determination of any and all requests for exceptions by departments, by August 20, and all requesting departments should be so notified by August 30.

Section 4. This ordinance shall be effective immediately if passed by the affirmative vote of at six (6) or more City Council members; if this ordinance is passed by the affirmative vote of five (5) City Council members, it will be effective seven (7) days after final passage.

In Council, Oakland, California, _____, 2014

PASSED BY THE FOLLOWING VOTE:

Ayes- BROOKS, GALLO, KALB, KAPLAN, MCELHANEY, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

Noes-

Absent-

Abstention-

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Attest:

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