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2014 OCT 16 PM 4:17

AGENDA REPORT

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: Deborah Lusk-Barnes

SUBJECT: Amendment to City's
Prompt Payment Ordinance
To Include Grants

DATE: October 10, 2014

City Administrator
Approval

Date

10/16/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt an Ordinance amending the City's Prompt Payment Ordinance, codified in Oakland Municipal Code Chapter 2.06, to clarify and add language specifically identifying requirements for prompt disbursements of grant funds to grant recipients (*Attachment 1*).

EXECUTIVE SUMMARY

The City's Prompt Payment Ordinance was adopted in 2008 with the intent to apply the prompt payment provisions to all Oakland-based businesses and organizations, for profits and nonprofits that provide goods, equipment and/or services to the City of Oakland municipal organization. The underlying assumption was that prime contractors and consultants, subcontractors and subconsultants, and nonprofit entities must not be exposed to greater liability if funds are not disbursed in a timely fashion.

When grant funds are awarded to the City, the awards come with very specific fiduciary responsibilities. In many cases, the check and balance flow is disrupted or halted when required funding conditions do not support pay requests or invoices. By the same token, there are occasions when the turnaround lag time rests purely with the City.

The proposed amendments would require the City to timely issue financial disbursements to its grantees and make untimely disbursements subject to late penalties similar to the penalties for late payments to contractors from whom the City purchases goods and services.

The proposed amendments also include a definition of "grant agreement" so that it is clear that prompt disbursements of grant funds to grant recipients must occur and may be enforced.

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OUTCOME

Adopting these recommended revisions will require prompt disbursements to recipients of City grants. However, according to City subject matter experts with the fiduciary responsibility for grant funds, penalty payments may be an ineligible use of grant funds for which the city is not entitled to reimbursement by most state and federal grant funded programs. As such, the City must accommodate penalty payments from another allowable fund. Finally, and perhaps most important is the timeline or the point at which the "clock starts" for calculating penalties. This action rests on the point at which invoices or pay requests may be declared either "disputed" or "undisputed".

BACKGROUND/LEGISLATIVE HISTORY

Oakland's Prompt Payment Ordinance, Ordinance No. 12857 C.M.S. was adopted January 15, 2008 and codified in Oakland Municipal Code Chapter 2.06.

The Ordinance applies to Oakland-based prime and subcontractors from whom the City directly or indirectly buys goods, equipment and/or services under purchase contracts, e.g. pens and paper, lease-financed vehicles, computers and other equipment, construction work and professional services. The Ordinance also applies to nonprofit organizations that enter into purchase contracts with the City.

ANALYSIS

If the City proceeds with a prompt payment policy for grant recipients, staff recommends that Oakland's Prompt Payment Ordinance be amended to extend to grant recipients along the same lines as the policy for businesses and nonprofit organizations that provide goods, equipment and/or services to the City under purchase contracts. To summarize, the recommended revisions include but are not limited to the following:

1. Grant recipients would be entitled to collect a late penalty (interest) on disbursements that are not timely made in accordance with disbursement requirements in their grant agreements.
2. The City would be required to disburse funds to grant recipients within twenty two (22) business days of receipt of invoices or requisitions for funds, provided the invoices are not disputed – i.e., do not contain errors or discrepancies, do not include grant-ineligible expenditures, include all documentation required under the grant agreement, etc.
3. Grant recipients would be required to pay timely their subcontractors and to timely disburse grant funds on a twenty-two (22) business day cycle, and would be subject to late penalties.
4. Disputed invoices would be subject to investigation by the Prompt Payment Liaison.

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5. Grant recipients would be required to post a check covering the cost of late payment/disbursal complaints by their subcontractors or sub-grantees.
6. The City would be required to include provisions explaining grantee and subcontractor rights to late penalties in grant-related requests for proposals and in grant agreements.
7. Grant recipients would be required to include provisions explaining subcontractor and grantee rights to late penalties in their subcontracts and subgrants.
8. Payment of grant recipient late penalties would come from city general purpose funds if and to the extent the source of the grant funding does not permit the use of grant funds to pay such penalties.

The late penalty would be the same as it is for late payments on purchase contracts - ten percent (10%) of the improperly withheld amount per year for every month that payment is not made and based on simple daily interest.

Given the City's fiduciary duties associated with disbursal of federal and state grant funds, the amendments must allow city staff to determine the validity of invoices as well as an expedited process for grant recipients to question such determinations.

Also, internally, when an invoice is processed in a timely fashion by the responsible department and it then moves up the processing chain for payment by another department, valuable time may be lost in the processing continuum.

Staff believes the City can use the same twenty (20) working day time frame to assess the validity of grant recipient invoices that it uses for invoices submitted pursuant to purchase contracts. The City department would have ten (10) days to process an "undisputed" invoice and the Controller would have ten (10) days to disburse funds.

It should be noted that there have been approximately four prompt payment complaints over the last year and of those four one was a grant recipient. Since the adoption of the Prompt Payment Ordinance, prompt payments to vendors have significantly improved. Compliance staff follows up as issues of payment are raised and if the invoice is undisputed, work with the using agency to release payments.

PUBLIC OUTREACH/INTEREST

Based on anecdotal feedback, grant recipient nonprofit entities that provide community services are keenly interested in prompt payment and as such support this revision.

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COORDINATION

The following departments and nonprofits provided feedback as well as substantive language crafting: (1) Human Services (2) Community Development Block Grant (CDBG) (3) Workforce Investment, (4) Controller's Bureau, (5) City Attorney and (6) Oakland Private Industry Council (PIC) on behalf of PIC and several nonprofits.

COST SUMMARY/IMPLICATIONS

In most instances, penalty payments are not an allowable costs on grants. As such, a separate fund must be established to absorb the cost of penalties when applied to grant funds for which penalty payments are prohibited.

The assessment of interest penalties is performed by the Controller's Bureau in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made. The formula is based on simple daily interest.

EXAMPLE:

Simple Daily Interest

The following formula can be used to determine simple daily interest:

$$P(r/360*d)$$

- P is the amount of principal or invoice amount;
- r equals the Prompt Payment interest rate; and
- d equals the number of days for which interest is being calculated.

For example, if payment is due on April 1 and the payment is not made until April 11, a simple interest calculation will determine the amount of interest owed to the vendor for the late payment. Using the formula above, an invoice in the amount of \$1,500 paid 10 days late and at an interest rate of 6.5% would be calculated as follows:

$$\$1,500 (.065/360*10) = \$2.71$$

FISCAL IMPACT

The departments will identify an eligible fund to cover the penalty payments.

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SUSTAINABLE OPPORTUNITIES

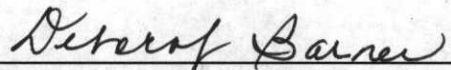
Economic: A shortened payment cycle for local prime contractors and local subcontractors and nonprofit entities may attract and encourage more businesses to move to Oakland and small Oakland businesses to participate in City contracts because timely payments are essential to the successful operation of a small business and nonprofit.

Environmental: There are no sustainable environmental opportunities.

Social Equity: Anecdotal data suggest that small local certified minority and women owned businesses as well as local nonprofits are most impacted by late payments. This policy will minimize the financial burdens created by late payments.

For questions regarding this report, please contact Deborah Lusk-Barnes (510) 238-6270 or dbarnes@oaklandnet.com.

Respectfully submitted,



Deborah Barnes, Director
Contracts and Compliance
City Administrator's Office

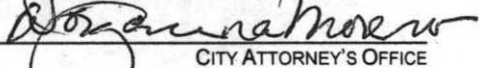
--Attachment 1- Ordinance Amending Prompt Payment Ordinance

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.06 TO ADD REQUIREMENTS TO MAKE PROMPT DISBURSEMENTS OF GRANT FUNDS TO GRANT RECIPIENTS

WHEREAS, the Oakland City Council enacted a prompt payment ordinance in January 15, 2008, now codified as Chapter 2.06 of the Oakland Municipal Code, which requires that local businesses contracted by the city for goods and services be timely paid by the City and pay their subcontractors and suppliers timely; and

WHEREAS, the Oakland City Council now wishes to enact similar requirements for its grant recipients requiring the City to make prompt disbursements of grant funds; and

WHEREAS, the City of Oakland is committed to supporting, maintaining and fostering the development of a healthy business and public service community in Oakland; and

WHEREAS, Oakland for profit and nonprofit contractors, subcontractors, grantees, and sub grantees receiving grant funds experience payment delays and related issues that may result in cash flow problems affecting the viability of those entities and result in delayed or poor performance;

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

SECTION 1. Oakland Municipal Code Chapter 2.06, *Prompt Payment*, is hereby amended and restated to impose prompt payment requirements for recipients of City grants, as follows (additions are noted as underlined text; deletions are noted as strikeout text):

2.06.010 Definitions.

The following definitions apply to this chapter:

"City" as used in this chapter, means the City of Oakland as a municipal organization, city agencies or departments or city officials authorized by the City Council or City Administrator to enter into purchase contracts or grant agreements on behalf of the City of Oakland when acting in his/her official capacity.

"Claim" means a bill, invoice or written request for payment provided by the vendor. Written request includes "contract" as defined below.

"Claimant" means a Local Prime Contractor, Subcontractor or grant recipient that files a claim with the city for overdue payment or disbursement of funds and associated interest penalties.

"Contractor" as used in this chapter means a Local Prime Contractor, Subcontractor, or grant recipient.

"Disputed Invoice" means an improperly executed invoice, any invoice that contains errors or requires additional evidence of its validity, or any invoice that contains expenditures or proposed expenditures that are ineligible or that do not otherwise comply with reimbursement or disbursement requirements of the grant funding source. If an invoice is "disputed", the payment/disbursement shall not be subject to late penalties until the dispute is resolved.

"Goods" means products, goods, materials, equipment or other tangible items rendered pursuant to a purchase contract.

"Grant agreement" means any enforceable City of Oakland agreement executed expressly to provide grant funding to any nonprofit or for profit entity or individual to support the grant recipient's provision of services to members of the public or the community at large, whether the original source of such funding is the City or some other source. Notwithstanding the above, "grant agreement" as used in this chapter shall not include loan agreements, or agreements to provide support for the purchase, improvement, or development of real property. Grant agreements must be approved and executed in accordance with all applicable contracting requirements of the City of Oakland. Claimants shall not be entitled to relief hereunder, for payment delays that occur prior to the proper execution of a grant agreement.

"Grant recipient" means a for-profit or nonprofit entity or individual that is awarded grant funding pursuant to a grant agreement approved by the City Council.

"Invoice" means a bill or claim that requests payment for goods and/or services rendered to the municipal organization pursuant to a city purchase contract by a Local Prime Contractor or by a Subcontractor, or bill or claim that requests disbursement of grant funds for services, art or other products, goods and materials rendered to

residents, businesses and other third parties pursuant to a grant agreement or by any grant recipient.

"Local Business" as used in this chapter and in accord with the City of Oakland Local and Small Local Business Enterprise Program means a for-profit or nonprofit business, including but not limited to local artists: (a) with a substantial presence in the City of Oakland's geographic boundaries, (b) with a full operation conducting business for at least twelve (12) consecutive months in the City of Oakland, (c) with a valid City of Oakland business tax certificate or exemption from City of Oakland business tax, and (d) that is an independent business headquartered in Oakland. Individuals contracted for services to the municipal organization have to be businesses to establish they are Local Businesses.

"Local Prime Contractor" means a "Local Business" as defined above that is in direct or in privity of contract with the City of Oakland.

"Managers and Operators" means a non-profit or for-profit business that is contracted by the City of Oakland to operate and/or manage city programs, programs open to the public on City of Oakland property, city facilities or concession businesses on City of Oakland property.

"Purchase contract" as used in this chapter means any enforceable City of Oakland agreement executed expressly for the purchase, lease or rental of goods and/or services, including purchase orders, sub-purchase orders, delegated purchase orders, service agreements or subcontracts. Purchase contracts must be approved and executed in accordance with all purchasing requirements of the City of Oakland. Claimants shall not be entitled to relief, hereunder, for payment delays that occur prior to the proper execution of a purchase contract.

"Services" means any and all services rendered pursuant to a purchase contract or grant agreement including, but not limited to, professional, scientific or technical services benefitting the municipal organization, and services benefitting members of the public, or the creation or development of cultural or artistic work.

"Subcontractor" means a subcontractor, supplier, vendor, sub-grantee or any business or organization, other than the prime contractor, that delivers goods and/or services in connection with a purchase contract or grant agreement.

"Undisputed Invoice" means an invoice properly executed by the claimant for goods and/or services rendered in connection with a purchase contract or grant agreement for which additional evidence is not required to determine its validity. Undisputed invoices include:

1. A once disputed invoice which has been corrected or for which additional evidence of its validity has been provided and received by the city, the prime contractor or subcontractor or grant recipient responsible for issuing payment.
2. An improper invoice whether goods and/or services have been received by the city, the prime contractor or subcontractor responsible for issuing payment, but

the city, the prime contractor or subcontractor or grant recipient responsible for issuing payment fails to notify the claimant that the invoice is improper within fifteen (15) working days of receipt of the invoice.

2.06.020 Purpose.

The purpose of this Prompt Payment Ordinance is to establish policies and procedures to assure that local contractors and grant recipients and all subcontractors working on City of Oakland purchase contracts or grant agreements receive prompt payment or disbursement of grant funds, and to enhance and increase local business contracting and community service opportunities with the City of Oakland by establishing: (1) shortened payment requirements for City of Oakland businesses and all subcontractors and grant recipients, regardless of location, that provide goods and/or services in connection with a City of Oakland purchase contract or grant agreement, and (2) a City Liaison to serve as a single point of contact to address payment and disbursement delays and other issues relative to City of Oakland purchase contracts or grant agreements. The city and grant recipients are exempt from any provisions of this chapter that conflict with requirements of the grant funding source.

2.06.030 Local business, and subcontractor and grant recipient payment liaison.

- A. The city will appoint a single point of contact (Liaison) to address invoice payment or other issues raised by City of Oakland Local Prime Contractors, Subcontractors, or grant recipients in connection with City of Oakland purchase contracts for goods and/or services or grant agreements, or invoice payment issues raised by a subcontractor in connection with a City of Oakland Manager/Operator contract. The Liaison position will be assigned to perform duties within the Office of Contracts and Compliance. The Liaison will be the city's central point of contact for Local Prime Contractors, and Subcontractors and grant recipients, and will be responsible for coordinating the actions required to resolve issues with city agencies and departments and Manager/Operators.
- B. The Office of Contracts and Compliance will establish a city-wide procedural mechanism to identify local contractors, will inform such businesses of the program through electronic means as well as through existing and ongoing training programs and workshops, and will issue a statement of the requirements of this ordinance with bid notices and requests for proposals/qualifications.

2.06.040 Local prime contractors and grant recipients, contractor retention.

- A. Local Prime Contractors. The City of Oakland shall pay all Local Prime Contractors for goods and/or services rendered pursuant to a purchase contract within twenty (20) business days after receipt of an undisputed invoice. In the event an invoice is disputed, the city shall notify the subcontractor and Liaison in writing within five (5) business days of receiving the disputed invoice that there is a bona fide dispute, in

which case the city may withhold the disputed amount but shall pay the undisputed amount.

- B. Retention. The city shall not withhold any monies as project retention associated with the rendering of goods under a purchase contract.
- C. Grant Recipients. The City of Oakland shall issue disbursements of grant funds to grant recipients within twenty (20) business days after receipt of an undisputed invoice. In the event an invoice is disputed, the city shall notify the grant recipient and Liaison in writing within five (5) business days of receiving the disputed invoice that there is a bona fide dispute, in which case the city shall withhold the disputed amount and may withhold the full amount if the grant funding source requires that the disputed expenditures be fully resolved prior to any disbursement of grant funds. The foregoing notwithstanding, this chapter shall not apply to grant payments/disbursals when the original funding source for the grant is eliminated, until and unless the city identifies and appropriates funds from an alternative source for the grant. If an outside funding source for a grant agreement requires its review and approval before payments are made to a grant recipient, this period shall be suspended for any period of review by said outside funding source.

2.06.050 Subcontractor payment, retention, mobilization fees.

- A. Prompt Payment. All Manager/Operators, city prime contractors and subcontractors and grant recipients shall pay their subcontractors for goods and/or services rendered in connection with a purchase contract or grant agreement within twenty (20) business days of receipt of the subcontractor's undisputed invoice. In the event an invoice is disputed, Manager/Operators, prime contractors and subcontractors and grant recipients shall notify the Liaison in writing within five (5) business days of receiving the disputed invoice that there is a bona fide dispute, in which case the prime contractor or subcontractor or grant recipient may withhold the disputed amount but shall pay the undisputed amount, provided that grant recipients may withhold the full amount if the grant funding source requires that the disputed expenditures be fully resolved prior to any disbursement of grant funds. The foregoing notwithstanding, this chapter shall not apply to grant payments/disbursals when the original funding source for the grant is eliminated, until and unless the city identifies and appropriates funds from an alternative source for the grant.
- B. If a subcontractor files a claim for all or a portion of a disputed invoice pursuant to Section 2.06.080 below, Manager/Operators or contractors or grant recipients shall be required to post with the city cash, a certified check, or a bond in an amount sufficient to cover the disputed amount and penalty. Upon the Liaison's determination that the invoice is valid, the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor or grant recipient the cash, certified check or bond shall be returned to the contractor. If the Manager/Operator or contractor fails or refuses to post security, the Liaison may withhold funds from the next progress payment sufficient to cover the claim, or if the claim is made under a grant agreement from the next disbursement provided it is allowed by the grant funding source.

- C. Affidavit Reporting Subcontractor Payments. Contracts in which subcontracting is used shall require the prime contractor or subcontractor or grant recipient, within five (5) business days following receipt of a payment from the city, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.
- D. Retention.
1. Manager/Operators, prime contractors and subcontractors and grant recipients shall not withhold any monies for project retention associated with the rendering of goods; and
 2. Manager/Operators, prime contractors and subcontractors and grant recipients shall release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within five (5) business days of payment.
 3. The retention and release requirements in this subsection shall not apply to grant recipients to the extent they conflict with requirements of the grant recipients' grant funding source.
- Manager/Operators, prime contractors and sub-contractors and grant recipients shall file notice with the city within five business days of release of retention.
- E. Mobilization Fee. Prime contractors and subcontractors and grant recipients shall pay subcontractors that will render goods and/or services their portion of mobilization fees within five (5) business days of being paid such fees. Prime contractors and subcontractors and grant recipients shall file notice with the city within five business days of payment of mobilization fees to a subcontractor.
- F. Website Posting. Information regarding the city's retention release and payment of mobilization fees shall be posted on the city's website within five (5) business days of such payment or release. Information regarding Manager/Operators, prime contractor and subcontractor and grant recipient retention release and payment of mobilization fees, and affidavits reporting subcontractor payments shall be posted on the website within five (5) business days of the filing of such notices and affidavits with the city.

2.06.060 Interest penalty.

- A. If any amount due by the city to a Local Prime Contractor for goods and/or services rendered pursuant to a purchase contract not timely paid in accordance with this chapter, the Local Prime Contractor is entitled to interest penalty in the amount of ten (10%) percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the Local Prime Contractor agrees to release the city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Local Prime Contractors that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.
- B. If any amount due by a Manager/Operator to a claimant for goods and/or services rendered pursuant to a Manager/Operator purchase contract is not timely paid in accordance with this chapter, the claimant is entitled to interest penalty in the

amount of ten ~~(10%)~~ percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the Manager/Operator and city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Claimants that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.

- C. If any amount due by the city to be disbursed to a grant recipient pursuant to a grant agreement is not timely paid in accordance with this chapter, the grant recipient is entitled to interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the grant recipient agrees to release the city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Grant recipients that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.
- D. If any amount due by a prime contractor or subcontractor or grant recipient to any claimant for goods and/or services rendered in connection with a purchase contract or grant agreement is not timely paid in accordance with this chapter, the prime contractor or subcontractor or grant recipient shall owe and pay to the claimant interest penalty in the amount of ten ~~(10%)~~ percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor or grant recipient from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.
- E. For grant agreements, payment of interest penalties shall come from city general purpose funds if and to the extent the source of the grant funding does not permit the use of grant funds to pay such penalties.

2.06.070 Bid solicitations, request for proposals/qualifications, contracts.

- A. All notices inviting bids, requests for proposals/qualifications and city contracts for the purchase of goods and/or services, and grant agreements, and requests for proposals/qualifications and contracts for Manager/Operators as defined in Section 2.06.010, above, shall contain the following or substantially equivalent language:

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the contractor or its subcontractor and claimant, in which case the contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison and, and upon the filing of a compliant, contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If contractor or its subcontractor fails or refuses to deposit security, the city will withhold an amount sufficient to cover the claim from the next contractor progress payment. The city, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the city.

For the purpose of posting on the city's website, contractors, grant recipients and ~~its~~ subcontractors are required to file notice with the city of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and contractor or grant recipient is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the city. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

- B. Any contractor or subcontractor or grant recipient that delivers goods and/or services, pursuant to a purchase contract or grant agreement, shall include the same or similar provisions as those set forth in this Section in their subcontracts.

2.06.080 Complaint and investigation.

- A. Any claims made pursuant to Sections 2.06.040 and 2.06.050 above are subject to investigation and notice of violation and demand for payment and interest penalties by the Liaison. A Local Prime Contractor, or Subcontractor or grant recipient who alleges violation of any provision of this chapter may report such acts to the Liaison.
- B. Complaints shall be handled as follows:
 - 1. The claimant shall submit a completed complaint form and copies of invoices or billing documents that have been submitted to the city, to a city purchase contractor or grant recipient or to a Manager/Operator. To expedite investigation, the claimant shall also submit any documents in their possession showing that his/her goods and/or services or other deliverables have been rendered to and inspected or reviewed and accepted by the city or grant recipient or Manager/Operator in connection with the claim.

2. The Liaison shall collect a security deposit in the form of cash, certified check, or bond in an amount sufficient to cover the claim from the Manager/Operator or contractor or grant recipient that has disputed the invoice. If a Manager/Operator or contractor or grant recipient that is required to post security fails or refuses to do so, the Liaison may withhold funds from the next progress payment sufficient to cover the claim, except that in the case of grant recipients such withholding shall be done only if it is not in conflict with requirements of the grant recipient's grant funding source. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor the cash, certified check or bond shall be returned to the contractor or grant recipient.
3. The Liaison shall contact the city agency, department, Manager/Operator or contractor or grant recipient responsible for payment within five (5) business days of receipt of the complaint form to investigate the claim. The Liaison's determination of whether an invoice is valid shall be based on the following:
 - (i) Whether the invoice conformed to requirements defined in Section 2.06.020 of this chapter, at the time of submission to the contractor,
 - (ii) Whether there is a discrepancy between the invoice or claimed amount and the provisions of the purchase contract,
 - (iii) Whether there is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of goods and/or services to the city or the community at large, or the city's acceptance of such goods and/or services,
 - (iv) Whether the city agency, prime contractors, ~~or subcontractors~~ or grant recipients responsible for payment provided timely notice of the disputed invoice as required under 2.06.050 (A), and
 - (v) Whether additional evidence supporting the validity of the invoice or claimed amount must be provided by the claimant, and
 - (vi) Whether the expenditures or other claims set forth in the invoice submitted by the grant recipient complies with the requirements of the grant funding source.
4. There shall be no appeal of the Liaison's determination in favor of the complainant. If, however, the Liaison determines that the complainant's invoice provides insufficient evidence for payment, the complainant shall be advised of the additional information required for payment and given an opportunity to provide the same.
5. When the Liaison determines that a violation of this chapter has occurred, the Liaison shall assess interest penalties at the rate provided in Section 2.06.060 of this chapter and issue a demand to the city employee responsible for administering the related purchase contract or grant agreement, the Manager/Operator, the prime contractor, ~~or the subcontractor~~ or grant recipient responsible for the late payment. The city shall issue a check for the amount of the undisputed claim and interest penalties assessed by the Liaison to the Local Prime Contractor or grant recipient within (5) five business days of the date of the Liaison determination. The city may seek review by the City Administrator

of Liaison determinations for claims submitted by Local Prime Contractors or grant recipients.

2.06.090 Administrative procedures and regulations.

The City Administrator shall develop administrative procedures and regulations for determining city, Manager/Operator, prime contractor, ~~and subcontractor~~ and grant recipient compliance with, and full implementation of, this chapter including, but not limited to, establishment of an interest penalty scheme and investigation procedures.

2.06.100 Exemptions.

City and Manager/Operator purchase contracts and city grant agreements are exempt from this chapter when:

- A. Issued in response to a local disaster or emergency, provided: (i) the emergency or disaster is acknowledged by a public declaration of emergency or disaster of the United States, State of California, County of Alameda, Oakland City Council or City Administrator, (ii) the purchase contract is issued without advertising or competitive bid pursuant to the City Administrator's emergency authority in Oakland Municipal Code Chapter 2, Sections 2.04.020 (G) or (H), and (iii) the purchase contract or grant agreement is completed within the declared period of emergency or disaster.
- B. State or Federal laws preempt the local or other regulation of the purchase or grant funding, in which case State or Federal mandates shall take precedence.

2.06.110 Applicable to new contracts.

Except for procurement or construction contracts for which fixed, sealed bids were required on a date prior to the date of final adoption of this chapter set forth below, the provisions of this chapter shall apply to any purchase contract or Manager/Operator contract, or amendment, extension, change order or modification of such contracts, entered into or consummated after the effective date of the ordinance codified in this chapter, or, in the case of grant agreements, to any grant agreement, or amendment, extension or modification of such grant agreement, entered into or consummated after the effective date of the ordinance amending this chapter to cover such grant agreements.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. 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.

1495688

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

Attest: _____

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

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER
2.06 TO ADD REQUIREMENTS TO MAKE PROMPT DISBURSEMENTS
OF GRANT FUNDS TO GRANT RECIPIENTS**

NOTICE AND DIGEST

This Ordinance amends and restates Chapter 2.06 to the Oakland Municipal Code, the Prompt Payment Ordinance, to add requirements for prompt payment of grant funds to grant recipients under City grant agreements.