

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK
OAKLAND
2005 JUN 15 PM 6:09

TO: City Council President Ignacio De La Fuente
and Members of the City Council
FROM: Lupe Valdez
City Council Legislative Analyst
DATE: June 28, 2005

**RE: ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 2,
CHAPTER 2.04 TO ADD SECTION 2.04.018 AUTHORIZING THE CITY
ADMINISTRATOR TO EXECUTE PAY-GO FUNDED CONTRACTS IN
ACCORD WITH OAKLAND'S CONTRACTING RULES AND
PROCEDURES WITHOUT CITY COUNCIL APPROVAL**

SUMMARY

The proposed ordinance would amend Chapter 2.04 of the Oakland Municipal Code, also known as the Purchasing Ordinance, to authorize the City Administrator to approve capital-improvement-related contracts without prior Council approval when they are funded in full by Pay-go funds or by a combination of Pay-Go funds and funds donated by community groups or individuals.

BACKGROUND

Every year, the Mayor and each City Councilmember receives a budget allocation, known as "pay-go" funds, that have been historically utilized for capital improvement projects on city owned property or, in some cases, capital improvements at Public Schools in Oakland. Each Councilmember may designate capital improvement projects that will receive their individual pay-go funding.

KEY ISSUES AND IMPACTS

All contracts for capital improvements to City-owned property paid for by the Mayor's or Councilmember's pay-go funds are currently subject to the City's contracting procedures set forth in Chapter 2.04 of the Oakland Municipal Code (known as the "Purchasing Ordinance") and require City Council approval for contracts over the City Administrator's approval limits. In order to expedite pay-go funded capital improvement projects on City property, the proposed ordinance will authorize the City Administrator to approve such contracts without prior Council approval when they are funded in full by pay-go funds or by a combination of pay-go funds and private funds donated by community groups or individuals.

A combination of the City's internal City Council agenda report preparation and approval process and the legislative calendaring process can require up to two months for contract approval to be completed. Depending on the time of year a project is ready for a Council

report and approval, the two month process can impact the project start date if inclement weather will prohibit construction. Delaying project start dates creates a risk of increasing project costs due to rising labor and materials costs. Authorizing the City Administrator to execute contracts related to pay-go capital improvement projects will insure that projects are started in a timely manner without the risk of cost increases. All other "Purchasing Ordinance" requirements will remain in place.

FISCAL IMPACT

There is no fiscal impact since Pay-Go funds are a budgeted expenditure.

SUSTAINABLE OPPORTUNITIES

Economic: Shortening the contract approval time can help contain project costs.
Environmental and Social Equity: Residents can start to benefit sooner from Capital improvement projects positively impacting the quality of life in Oakland neighborhoods.

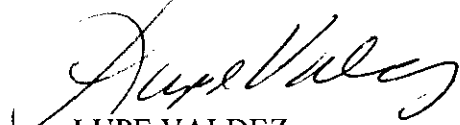
DISABILITY AND SENIOR ACCESS

Senior citizens and the disabled community can begin to benefit sooner from capital improvement projects that improve the quality of their life.

RECOMMENDATION

The City Council is requested to approve the proposed ordinance.

Respectfully submitted,



LUPE VALDEZ
City Council Legislative Analyst

FILED
OFFICE OF THE CITY CLERK
2005 JUN 16 PM 6:09

APPROVED AS TO FORM AND LEGALITY
[Signature]
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER Jane Brunner

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04 TO ADD SECTION 2.04.018 AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE PAY-GO FUNDED CONTRACTS IN ACCORD WITH OAKLAND'S CONTRACTING RULES AND PROCEDURES WITHOUT CITY COUNCIL APPROVAL

WHEREAS, the Mayor and individual City Councilmember's may initiate capital improvement projects utilizing pay-go funds; and

WHEREAS, all capital improvement contracts paid for by the Mayor's or a Council member's pay-go funds are currently subject to the City's contracting procedures set forth in Chapter 2.04 of the Oakland Municipal Code (known as the "Purchasing Ordinance") that require City Council approval for contracts over certain amounts; and

WHEREAS, to expedite pay-go funded capital improvement projects, the City Council wishes to authorize the City Administrator to approve capital-improvement-related contracts without prior Council approval when they are funded in full by pay-go funds or by a combination of pay-go funds and funds donated by community groups or individuals;

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

SECTION 1. Add Definition for "Pay-go Funds." Revise Oakland Municipal Code, Title 2, Chapter 2.04. Article I, Section 2.04.010 to add a new definition for "Pay-go Funds" as follows:

2.04.010 Definitions. The following words and phrases whenever used in this article shall be construed as defined in this section:

"Apprentice" is defined as that term is defined in the Oakland Municipal Code.

"Appropriation Resolution" is defined as a city of Oakland resolution approved by the City Council that includes:

1. A description of the material or service to be obtained under contract;
2. A not-to-exceed contract amount for the material or service;
3. Identification of the funding source for the material or service;
4. An estimated time frame for execution and completion of the contract; and
5. A statement identifying the contract-related program or project as "new" or "previously existing."

“City Administrator” means the City Administrator of the city of Oakland or an officer specifically designated to act for the City Administrator. Authorizations not specified in this article shall be made in writing by the City Administrator and filed with the City Clerk.

“Disadvantaged business enterprise (DBE) is defined as that term is defined in the Oakland Municipal Code.

“Formal bidding, solicitation or proposals/qualifications” means the competitive processes (advertising and bidding or solicitation) required in Sections 2.04.050 (supplies, services or combination) and 2.04.051 (professional services), for the purchase of supplies, services or combination in excess of fifty thousand dollars (\$50,000.00), or for the purchase of professional services in excess of twenty-five thousand dollars (\$25,000.00)

“Informal bidding” means the competitive processes (advertising and bidding or solicitation) required by the City Administrator in a city administrative instruction for the purchase of supplies, services or combination up to and including fifty thousand dollars (\$50,000.00), or for the purchase of professional services up to and including twenty-five thousand dollars (\$25,000.00).

“Local business” means a business firm with fixed offices or distribution points located within city of Oakland boundaries and listed in the permits and license tax paid file with an Oakland business street address.

“Local business enterprise” and “small business enterprise means a business firm with fixed offices or distribution points located within the city boundaries and as otherwise defined under Oakland’s LBE/SLBE construction, procurement and professional services contracting programs.

“Local hire is defined as that term is defined in the Oakland Municipal Code.

“Pay-go Funds” are annual appropriations to the Mayor and each Councilmember to pay for discretionary capitol improvement projects or other expenditures as permitted by the funding source citywide and within council districts.

“Prevailing wages” is defined as that term is defined in the Oakland Municipal Code.

“Professional services” means services which are of an advisory nature that provide a recommended course of action or personal expertise that will result in a transmittal of information to the city, either verbal or written, related to city administration and management or program management, innovation and which must be performed by appropriately licensed consultants, architectural or engineering personnel, or which are so technical or complex in nature that such services must be performed by persons possessing unique or special training, education or skills. Notwithstanding the above, this definition shall not include contracts for services between the city and another public entity.

“Local business enterprise” is defined as that term is defined in the Oakland Municipal Code.

“Purchase” means and includes rental or lease of supplies, as well as purchase.

“Services” means and includes labor, professional services, consulting services, or a combination of services and supplies which shall include public works projects.

“Supplies” means and includes supplies, materials, commodities and equipment.

SECTION 2. Add City Administrator Authorization for Pay-go Funded Contracts. Revise Oakland Municipal Code, Title 2, Chapter 2.04. Article I to add a new section 2.04.018, following section 2.04.017, for Pay-go funded purchase of services, goods and materials as follows:

2.04.017 Pay-go grants—Policy and requirements.

A. Policy—Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.

B. Requirements Applicable to Pay-Go Grants to NonCity Entities. The Mayor and individual Councilmembers may designate grants from their respective balances in the city’s pay-go fund account subject to the following requirements: (1) such grants may be made only for the purposes permitted by the funding source(s) of the pay-go account; (2) such grants and grant agreements shall be authorized, administered and executed by the City Administrator on behalf of the city; and (3) grant agreements shall be required for all grants.

C. City Administrator Must Maintain Separate Record of Pay-Go Grants and Make Annual Report to City Council Identifying Prior Fiscal Year’s Grants. The City Administrator shall maintain a separate record of pay-go grants, including the name of the person who designated the grant, the amount of the grant, the purpose of the grant, and the name, address and any other information sufficient to identify the grant recipient. No later than October of each year, the City Administrator shall provide an informational report to the City Council’s Finance Committee and to the City Council regarding pay-go grants that were made during the prior fiscal year. (Ord. 12637 § 1, 2004)

2.04.018 Pay-go funded purchase of services, goods and materials - Conditions for Exemption from Council Approval.

A. The City Administrator is authorized to purchase services (professional or otherwise), goods, materials or equipment for capital improvement projects, in any amount, designated by the Mayor or individual Councilmembers from their respective balances in the city’s pay-go fund account without review or action by the City Council subject to each of the following requirements:

- (1) such purchases may be made only for the purposes permitted by the funding source(s) of the pay-go account; and
- (2) such purchases shall be paid for in full out of the pay-go funds of the designating Mayor and/or Councilmember(s), or in full by a combination of pay-go and private funds, such as funds raised by community groups or individuals for a park or other community project; and
- (3) such purchases shall be competitively bid or solicited in accord with competition requirements in sections 2.04.050 and 2.04.051 of this ordinance or City Council waiver by resolution shall be obtained; and
- (4) such purchases shall be subject to all City of Oakland contracting programs and policies such as, but not limited to, living wage, prevailing wages, equal benefits, local and small local

business enterprise and nondiscrimination or City Council waiver by resolution shall be obtained as necessary by each of these programs or policies.

B. City Administrator Must Maintain Separate Record of Pay-Go Purchases and Make Annual Report to City Council Identifying Prior Fiscal Year's Purchases. The City Administrator shall maintain a separate record of pay-go purchases including the name of the person who designated the purchase, the amount of the purchase, the purpose of the purchase, and the name, address and any other information sufficient to identify the consultant, contractor or vendor. No later than October of each year, the City Administrator shall provide an informational report to the City Council's Finance Committee and to the City Council regarding pay-go purchases that were made during the prior fiscal year.

SECTION 3. Remaining Provisions Unchanged. Except as amended, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 2.04, shall remain unchanged and in full force and effect.

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 5. 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, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN,
REID AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California