

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: November 29, 2011

RE: A Report and Two Resolutions:

1. A Resolution Approving a Report From the City Administrator Implementing Building Services Division (“BSD”) Priority Improvement Items in Response to the Motion of the City Council Adopted at the September 20, 2011 City Council Meeting, Including, Neutral Appeals Process for Code Enforcement Appeals, Discontinuing Prospective Code Enforcement Liens, Revising Conflict of Interest Policy for Outside Employment for the BSD, and Conducting an Further Investigation of BSD, and Approving a Requirement to Rebid Change Orders Above Ten Percent for Certain BSD Contracts in Excess of \$2,500 and Adopting an Amnesty Program For Certain BSD Penalties and Interest; and
2. A Resolution Creating a Building Services Improvement Advisory Task Force, Setting Procedures and Criteria for Appointment, and Providing the Terms and Responsibilities of the Advisory Task Force Members

SUMMARY

On September 20, 2011, the City Council requested staff to return with a report and resolution on different items pertaining to priority improvement needs in Building Services operations. These items included the following:

1. Lower the cap on change orders from 31% to 10%.
2. Hold a hearing on houses demolished within the last 5 years.
3. Create an appeals process with a neutral (non-Building Services) hearing officer.
4. Ban prospective liens and set a policy that liens can only be placed after documented notification and abatement failure.

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5. Develop an “amnesty program” for property owners who address the blighted conditions and pay the original fees and costs within 4 months. Then all additional penalties and interest will be forgiven, and liens removed.
6. Convene a Task Force with citizen participation.
7. Ensure that the City Administrator approve demolitions.
8. Refer relevant personnel matters to Closed Session meetings.
9. Conduct an independent investigation of processes, including an A to Z management review.
10. Return to Council on implementation of new processes.
11. Develop a conflict of interest policy on blight.
12. Improve the demolition process.
13. Develop a process to assist property owners.
14. Develop a process on addressing appeal requests never responded to.
15. Develop clear instructions on appeals going forward.
16. Return to Council on policy areas, i.e. prioritizing enforcement (based upon public safety concerns); incorporation of state law; professional standards for inspectors.

This report provides staff updates, recommendations, and a proposed resolution to the above items. In addition, this report provides information on the interim program operations and procedures for Code Enforcement operations while awaiting best practices research from the Management Partners consultants. Council review of the comprehensive plan and program redesign is to be scheduled for March 2012.

FISCAL IMPACT

The amnesty program (Item 5) will impact Fund 2415 and possibly the General Fund. In addition, operating the new amnesty program will require additional staffing resources. There is currently over \$14.66 million in outstanding code enforcement charges. Of the overall outstanding charges, \$3.36 million is from FY 2010-11 in liens transferred to the Alameda County Property Tax Roll. There may be other fiscal impacts from the program redesign and possible changes to the master fee schedule for Building Services. This information will be provided to Council in the comprehensive report to be scheduled for Council in March 2012.

BACKGROUND

This report comes at a time when CEDA has been working to transform its code enforcement programs and services. CEDA recognizes the concerns expressed in the recent Grand Jury report as well as complaints from property owners. CEDA efforts to transform code enforcement operations to serve community revitalization interests pre-date the Grand Jury report. The goal of the new program design is for code enforcement to focus its regulatory activities on priority community revitalization issues, such as blighted foreclosed properties, substandard multi-family housing, and critical public health and safety concerns, while also providing better customer service and education.

KEY ISSUES AND IMPACTS

I. Staff Recommendations and Status Report of Council Motion Items

1. Lower cap on change orders from 31% to 10%.

Blight abatement contracts range typically from about \$300 to \$2500, as well as \$5,000 to \$8,000. Staff recommends that contracts for services obtained to abate blight include a provision that requires change orders not to exceed 10% for such contracts greater than \$2,500. The proposed threshold of \$2,500 and greater is to prevent additional costs to property owners incurred by the staff time involved in conducting re-bids, as well as to address the issue of staffing resources needed to conduct re-bids. Staff also recommends that an exemption to the change order limits be provided for issues related to the clean-up of hazardous materials and for other health and safety needs, in order not to delay such critical clean-up.

2. Hearing on houses demolished within last 5 years.

See companion staff report on this issue.

3. Create appeals process with a neutral (non-Building Services) hearing officer.

CEDA utilizes an outside hearing officer for public nuisance cases given the amount of charges and magnitude of the issues involved, as well as possible outcomes, such as demolition. For blight cases, given the lower range of charges and issues, the administration is reviewing the use of appropriate staff in the City Administrator's office. In addition, staff is looking into the viability of developing a pro bono panel of lawyers to serve as hearing officers.

4. Ban prospective liens and set policy that liens can only be placed after documented notification and abatement failure.

The CEDA director banned the use of prospective liens in summer 2011. A policy is in place specifying that priority liens can only be placed on properties after documented notification, including physical posting of the notice on the property, and documented failure of the property

owner to abate the property. In addition, as part of interim measures, CEDA is not utilizing liens for certain violations, as discussed below.

5. *Amnesty program: for property owners if they address blight, pay the original fees/costs within 4 months; then all additional penalties and interest to be forgiven and liens removed.*

The Council directed staff to develop a program to forgive additional penalties and interest, as well as remove liens on property, for property owners who 1) had addressed the blight; and 2) pay the original fees and costs within a four (4) month window. It is important to note that pursuant to Council direction, this partial amnesty program only applies to property owners who had cured the blighted conditions and pay the original fees and costs. In addition, staff recommends that this “partial amnesty program” apply only to property owners who received citations in the 2010-11 City fiscal year. Considerations for the proposed time limit include equity issues for property owners who had paid their charges, as well as balancing the fiscal impact to the City’s budget.

Staff is also proposing that the “partial amnesty program” include property owners who have received a Notice of Default for a bank loan foreclosure and document that unpaid liens are creating financial hardships that are contributing to the potential foreclosure. Eligibility for these property owners would not be limited to having received code enforcement citations in the 2010-2011 fiscal year.

6. *Convene Task Force with citizen participation*

Staff recommends that the Task Force provides feedback on proposed new procedures and program design and operate until the final comprehensive report is approved by Council (staff anticipates the final report to go to Council in March 2012). Staff recommends that the Task Force consist of twelve members with an emphasis on incorporating the following areas of experience, representation, and/or expertise: Oakland property owners knowledgeable about Building Services operations; Oakland tenants knowledgeable about Building Services operations; a neighborhood improvement association or organization; a related professional association, such as realtors or appraisers; a related public agency, such as the Alameda County Public Health or Lead Poisoning Prevention programs, or HUD; a building inspector employed by another public agency; and the Alameda County Assessor’s office.

Staff recommends that each Councilmember and the Mayor appoint one (1) Task Force member each, for a total of nine (9) members; and that the remaining three (3) members are appointed by the City Administrator in order to ensure that the Task Force as a whole reflects a balance of perspectives and the overall breadth of experience needed. It is also recommended that all proposed Task Force members submit written statements disclosing any potential conflict of interest with providing feedback on proposed Building Services improvements, including financial interests, as part of their application to serve on the Task Force.

Given the public noticing requirements for the Task Force and time urgency of improvement changes, staff recommends that the Task Force hold the following meetings: one (1) half day session for orientation of the Task Force members; two (2) half-day sessions prior to the submission of the Council report to discuss the proposed program design and new procedures and operations; and two (2) half-day sessions subsequent to the presentation of the Council report to discuss implementation issues. Preliminary proposed meeting dates are the following: February 1, 2012, February 15, 2012, February 29, 2012, April 25, 2012, and May 2, 2012.

7. City Administrator approval of demolitions

As part of the new formal procedures for demolition of residential and commercial property, the City Administrator will approve any demolition prior to its occurrence and the City Attorney's office will provide a review to ensure that procedural requirements were met.

8. Refer relevant personnel matters to Closed Session

According to the City Attorney's office, in general, personnel matters relating to individual City employees cannot be discussed in Council closed session. Exceptions to this rule include threatened or pending litigation, or potential liability.

9. Independent investigation of processes, including A to Z management review

Regarding the "A to Z" management review, CEDA is proposing that Management Partners, the competitively selected consultants working on code enforcement procedures and the operations manual, provides the new scope of work. Discussion regarding this scope has taken place and work will begin shortly, as described in more detail in a separate report on the November 29 CED Committee agenda.

10. Return to Council on implementation of new processes

Staff plans on remming to Council with a report on the implementation of the new processes in March 2012.

11. Conflict of interest policy on blight

The administration is reviewing the amendment of Administrative Instruction 595 on Conflicts of Interest to require staff to report any outside employment to the supervisor in order to assess whether a conflict may exist. Such a change would require a "meet and confer" with the applicable labor unions. AI 595 is based on City Charter section 1201 which restricts city employees from engaging in "incompatible employment."

12. Demolition process

According to OMC Chapter 15.08, the City is obligated to demolish properties that are declared a public nuisance and substandard property where the conditions are noted as severe structural damage, hazardous and unsafe conditions, and an imminent danger to the occupants or neighbors

and does not qualify for a receiver program. CEDA has changed the demolition process to include the prior approval of the City Administrator, additional steps to notify the property owner, and review by the City Attorney's office on procedures.

13. Process to assist property owners

Each month, the Building Services Division receives an average of 5,000 permit and complaint inspection calls, 160 customers at the counter and 65 complaints via emails, faxes and referrals. These communications are from cited property owners as well as neighbors or tenants concerned with code violations. Customers are generally referred to other resources by counter staff and inspectors on a case-by-case basis, but there has not been a formal procedure or consistent practice around resource referral. Referral information available include the City's Rent Adjustment Program, tenant assistance services at the East Bay Community Law Center, Alameda County Vector Control Services, County Lead Poisoning Prevention Program, the County Public Health Department's Asthma Start Program, and the City's Residential Lending and Rehabilitation Services.

While there have not been formal procedures regarding payment plans, staff has provided payment plans on a case by case basis to assist property owners. Staff will work with the Finance and Management Agency to formalize policies and procedures around payment plans, including owner eligibility, minimum monthly payments, and monitoring procedures.

As part of the new program design, staff is working to develop new formal procedures and partnerships to provide outside resources to property owners, including working with Alameda County programs and nonprofit service providers. These efforts will include developing a comprehensive resource guide that includes information about free and low-cost housing rehabilitation and tenant advocacy services. In addition, staff will develop written policies and procedures, as well as trainings for code enforcement staff on the available resources.

14. Process on addressing appeal requests never responded to

Staff will review records from the last two (2) years and notify relevant property owners. In addition, the City's website will include information on a number to call and offer an appeal for those with documented appeal forms from the past two years. The time period of two years is recommended for operational purposes.

15. Develop clear instruction on appeals going forward

Updated information on this item will be provided in the March 2012 Council report.

16. Return to Council on policy areas, i.e. prioritizing enforcement (based upon public safety concerns); incorporation of state law; professional standards for inspectors

These items will be part of the March 2012 Council report.

II. Interim Program Plan and Procedures

Staff is proposing to utilize the following interim program plan and procedures while awaiting the development and finalization of a comprehensive program re-design. Public Health Law and Policy, a national public policy organization based in Oakland, recently received a grant from the Kresge Foundation to conduct best practices research in healthy housing and code enforcement for several jurisdictions nationwide, including Oakland. This pro bono research, along with the efforts of Management Partners on new procedures and operations, will assist in the development of the new program design to be presented to Council in March 2012. The following interim program addresses the new goals for Code Enforcement, which include the following:

1. Public health and safety;
2. Community revitalization;
3. Assistance to property owners through referrals to City and outside resources
4. Balancing regulatory and neighborhood quality of life priorities with limited resources; and
5. Securing problematic properties to a baseline standard.

Type of Property/Ownership	Procedures
Single family property owner who's financially struggling	<ul style="list-style-type: none"> • Document financial issues. • Refer to City housing and outside resources. • Rather than using a priority lien, provide non-monetary recorded, constructive notice on property in order to notify interested parties of issues with the properties. • For public nuisance and substandard properties, use potential receivership program or other enforcement vehicle.
Single family property owner (not financially struggling)	<ul style="list-style-type: none"> • Use priority liens if the charges are less than \$1,000. • For charges greater than \$1,000, provide non-monetary recorded constructive notice and utilize the collection vehicles managed by the Finance and Management Agency.
Minor violations of multi-family rental units	<ul style="list-style-type: none"> • Send an "allege letter" which states the alleged violations but not engage in City enforcement action given limited resources and the need to prioritize more serious problems. • Refer to outside resources.

Egregious violations of multi-family housing	<ul style="list-style-type: none"> • Include as charges \$1,000/day civil penalties for blight, housing, and maintenance violations. • Use priority liens. • For collection action, utilize the City Attorney's office including the use of a demand letter and possible legal action. • Utilize a possible receivership program for problem properties.
Commercial and industrial	<ul style="list-style-type: none"> • Partner with business associations on funding clean-up of problem properties with absent owners. • Send abatement notices to both tenants and property owners, with possible liens to incentivize both parties to fix problems. • Utilize a possible receivership program or other vehicle to address problem properties and economic development opportunities.
Bank-owned	<ul style="list-style-type: none"> • Include charges of \$1,000/day civil penalties for blight and \$5,000 total administrative citation for registration. • Given impact on potential buyers, rather than using a priority lien mechanism, provide non-monetary recorded, constructive notice on the property in order to notify interested parties of issues. • For collection action, utilize the City Attorney's office. • Utilize a possible receivership program for problem properties.
Addressing housing conditions that contribute to children's asthma and lead poisoning	<ul style="list-style-type: none"> • Develop a referral program with Alameda County Public Health and Lead Poisoning Prevention and Children's Hospital. • Provide referral to abatement resources. • Possibly use liens or FMA collections to incentivize property owner to fix the problems immediately.

III. Development of New Abatement Proposal

Staff is exploring changing the current abatement bidding process where single projects are competitively bid. The proposal is to select, through a competitive process, one or more abatement firms or nonprofit organizations to conduct abatement work over a span of time, such as one or three years. This new model would reduce abatement and associated City costs, support the generation of jobs for local residents, and potentially leverage other funding support for the abatement operations that nonprofit organizations may be able to raise. Staff is engaged in

follow-up due diligence and plans to return to Council with more information as part of the Spring 2012 comprehensive report.

CONCLUSION

CEDA has been embarking on critical improvement needs, including staff development, an automated and more accessible database management systems, and improving the program design, as well as protocols and procedures. The current opportunities enable the City to transform code enforcement into a tool for community revitalization, while balancing regulatory requirements and customer education and assistance.

SUSTAINABLE OPPORTUNITIES

Economic: Code enforcement improves the economic vitality of neighborhoods and viability of commercial districts by reducing property blight, maintaining rental-unit habitability, controlling land use activities, and enhancing quality of life perceptions of Oakland residents.

Environmental: Code enforcement maintenance regimens promote the abatement, mitigation, and remediation of vector and environmental health hazards, including rodent harborages, lead-based paint, toxics, and respiratory pollutants.

Social Equity: Code enforcement regulation of the State Housing Law contributes to fair housing practices for low and moderate income renters.

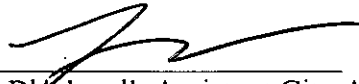
DISABILITY AND SENIOR CITIZEN ACCESS

Code enforcement abatement actions include requiring rehabilitation permits which can necessitate improvements to handicapped accessibility.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Council accepts this report and approves the proposed resolution directing staff to implement the above items.

Respectfully submitted,



Fred Blackwell, Assistant City Administrator
Community and Economic Development Agency

Prepared by:

Raymond M. Dcrania
Deputy Director - Building Official
Building Services Division

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Special Projects Director
Community and Economic Development Agency

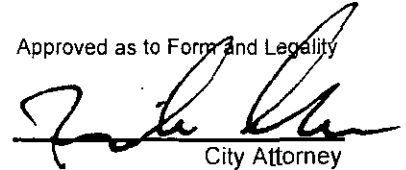
APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:


Office of the City Administrator

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 NOV 18 AM 9:00

Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION APPROVING A REPORT FROM THE CITY ADMINISTRATOR IMPLEMENTING BUILDING SERVICES DIVISION ("BSD") PRIORITY IMPROVEMENT ITEMS IN RESPONSE TO THE MOTION OF THE CITY COUNCIL ADOPTED AT THE SEPTEMBER 20, 2011 CITY COUNCIL MEETING, INCLUDING, NEUTRAL APPEALS PROCESS FOR CODE ENFORCEMENT APPEALS, DISCONTINUING PROSPECTIVE CODE ENFORCEMENT LIENS, REVISING CONFLICT OF INTEREST POLICY FOR OUTSIDE EMPLOYMENT FOR THE BSD, AND CONDUCTING AN FURTHER INVESTIGATION OF BSD, AND APPROVING A REQUIREMENT TO REBID CHANGE ORDERS ABOVE TEN PERCENT FOR CERTAIN BSD CONTRACTS IN EXCESS OF \$2,500 AND ADOPTING AN AMNESTY PROGRAM FOR CERTAIN BSD PENALTIES AND INTEREST

WHEREAS, the City of Oakland is committed to improving the operations and services of the Building Services Division within the Community and Economic Development Agency; and

WHEREAS, in June 2011, the Alameda County Civil Grand Jury issued a report and a series of recommendations regarding improvement priorities for the Building Services Division; and

WHEREAS, in September 2011, the City of Oakland provided a final response to the Grand Jury's report agreeing with most of the recommendations and providing information on its improvement plan; and

WHEREAS, on September 20, 2011, the Oakland City Council issued a motion regarding priority improvement areas for the Building Services Division and requested staff to return with information, proposed recommendations and accompanying resolution; and

WHEREAS, staff has provided an accompanying staff report and proposed recommendations; now, therefore be it

RESOLVED, that the contracts for services obtained to abate blight include a provision that requires change orders not to exceed 10% for such contracts greater than \$2,500 without rebidding the contract, but with the following exemptions: the clean-up of hazardous materials and to address other health and safety needs; and be it

FURTHER RESOLVED, that the City Council accepts the report from the City Administrator accompanying this Resolution that contains the following key administrative changes in administrative procedures:

- That Building Services code enforcement appeals be conducted by non-Building Services staff;
- That the use of prospective liens will be discontinued and a policy will be established that priority liens can only be placed on properties after notification and the failure to abate have been documented;
- That the City Administrator will conduct an independent investigation of Building Services processes, including an A to Z management review;
- That the City Administrator will approve any demolition prior to its occurrence;
- That the City Administrator develops or amends existing conflict of interest requirements to address the outside employment of City code enforcement staff that may create a conflict of interest; and be it

FURTHER RESOLVED, that an amnesty program is hereby authorized to provide for four months the opportunity for property owners who have received code enforcement charges for the 2010-2011 City fiscal year, abated the blighted conditions, and paid the original fees, to then have all additional fees, penalties and interest forgiven and attendant liens removed; and be it

FURTHER RESOLVED, that the above amnesty program be provided to property owners who have received a Notice of Default for a loan from a financial institution and can document that unpaid liens are creating financial hardships that are contributing to the potential foreclosure of property, and if such property owners abate the blighted conditions and pay the original fees, then the City shall forgive all additional fees, penalties and interest and remove attendant liens on the property; and be it

FURTHER RESOLVED, that staff report back to the City Council on other code enforcement policy areas including: the prioritization of code enforcement on public safety concerns, the incorporation of applicable state law, and professional standards for inspectors; and be it

FURTHER RESOLVED, that the City Administrator review the applicable municipal codes to make recommendations as needed for changes in order to implement the policies set out in this resolution with review by the City Attorney as required by the City Charter

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

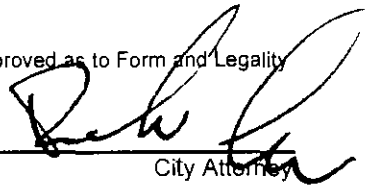
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OFFICE OF THE CITY CLERK
OAKLAND

2011 NOV 18 AM 9:00

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Approved as to Form and Legality


City Attorney

RESOLUTION CREATING A BUILDING SERVICES IMPROVEMENT ADVISORY TASK FORCE, SETTING PROCEDURES AND CRITERIA FOR APPOINTMENT, AND PROVIDING THE TERMS AND RESPONSIBILITIES OF THE ADVISORY TASK FORCE MEMBERS

WHEREAS, the City of Oakland is committed to improving the operations and services of the Building Services Division within the Community and Economic Development Agency; and

WHEREAS, in June 2011, the Alameda County Civil Grand Jury issued a report and a series of recommendations regarding improvement priorities for the Building Services Division; and

WHEREAS, in September 2011, the City of Oakland provided a final response to the Grand Jury's report agreeing with most of the recommendations and providing information on its improvement plan; and

WHEREAS, on September 20, 2011, the Oakland City Council issued a motion regarding priority improvement areas for the Building Services Division, including the development of an advisory task force, and directed staff to return with information, proposed recommendations and accompanying resolution; now, therefore be it

RESOLVED, that the City Administrator's office works with the Council President's office to convene an advisory Task Force with citizen participation that provides feedback on proposed new procedures and program design for the comprehensive report on Building Services priority improvements to Council, anticipated for Spring 2012; and be it

FURTHER RESOLVED, that the Task Force shall consist of twelve (12) members, with an emphasis on incorporating the following areas of experience, representation, and/or expertise: Oakland property owners knowledgeable about Building Services operations; Oakland tenants knowledgeable about Building Services operations; a

neighborhood improvement association or organization; a related professional association, such as realtors or appraisers; a related public agency, such as the Alameda County Public Health or Lead Poisoning Prevention programs, or HUD; a building inspector employed by another public agency; and the Alameda County Assessor's office; and be it

FURTHER RESOLVED, that each Councilmember and the Mayor shall appoint one (1) Task Force member each, for a total of nine (9) members. The remaining three (3) members are to be appointed by the City Administrator in order to ensure that the Task Force as a whole reflects a balance of perspectives and the overall breadth of experience needed; and be it

FURTHER RESOLVED, that all proposed Task Force members submit written statements disclosing any potential conflict of interest with providing feedback on proposed Building Services improvements, including financial interests, as part of their application to serve on the Task Force; and be it

FURTHER RESOLVED, that the Task Force be appointed to serve for up to six (6) months after the comprehensive report on Building Services priority improvements is heard by Council; and be it

FURTHER RESOLVED, that the Task Force shall conduct public meetings at City Hall and that such meetings shall be designated regular meetings which shall be held in accordance with the state and municipal open meeting laws (Brown Act and Sunshine Ordinance). The anticipated Task Force meeting schedule includes one (1) half day session for orientation of the Task Force members; two (2) half-day sessions prior to the submission of the Council report to discuss the proposed program design and new procedures and operations; and two (2) half-day sessions subsequent to the presentation of the Council report to discuss implementation issues. Preliminary meeting dates are the following: February 1, 2012, February 15, 2012, February 29, 2012, April 25, 2012, and May 2, 2012; and be it

FURTHER RESOLVED, that the Task Force shall naturally dissolve after holding follow-up meeting(s) subsequent to the presentation of the comprehensive Building Services report to Council, anticipated for Spring 2012; and be it

FURTHER RESOLVED, that Task Force members shall serve at the pleasure of their appointing authority and a vacancy on the Task Force will exist whenever a member dies, resigns, or is removed; and be it

FURTHER RESOLVED, that the Task Force may not create any standing committees for the purpose of delegating any of the committee duties but may form ad hoc committees as needed; and be it

FURTHER RESOLVED, that the City Administrator or designee shall provide the Task Force with staff assistance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

-

ATTEST: _____

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