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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

July 21, 2015

HONORABLE CITY COUNCIL
Oakland, California

Re: Ordinance Amending Ordinance No. 13319 C.M.S., Which Amended Oakland Municipal Code Chapter 2.29 to Add the Department of Race and Equity, to Conform the Ordinance to Council's Intent

Dear Council President Gibson McElhaney and Members of the City Council:

Action Requested

The Office of the City Attorney requests that the Council amend Ordinance No. 13319 C.M.S. which amended Oakland Municipal Code Chapter 2.29 to add the Department of Race and Equity. The amendments revise the ordinance to conform to the Council's intent. The Council directed the City Attorney to bring these amendments back to the Council for adoption.

On June 30, 2015, the Council adopted Ordinance No. 13319, which added the Department of Race and Equity to the City's organizational structure.

As we advised in the letter to Council dated June 30, 2015, the proposed amendments provide clarifying language consistent with the intent of the Council, and are necessary to avoid unintended legal consequences. (A copy of the June 30, 2015 letter is attached.)

Background

At the June 22, 2015, Special Council Meeting, the City Council passed a motion introducing a version of the subject ordinance that was passed out on the floor. That same evening around 8:30 p.m., Councilmember Brooks' office emailed the City Attorney's Office a version of the ordinance requesting for the first time that we approve the ordinance as to form and legality. The item was scheduled to for final adoption on June 30th.

ITEM 7.17
CITY COUNCIL
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July 21, 2015

Re: **City Attorney Proposed Revisions to Ordinance No. 13319 C.M.S., Which Amended Oakland Municipal Code Chapter 2.29 to Add the Department of Race and Equity, to Conform the Ordinance to Council's Intent**

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We determined that clarifications were needed to conform the ordinance to Council's intent and avoid unintended legal consequences. We advised Council in our June 30th letter of its options: 1) amend the ordinance on the floor, which would result in reintroduction of the ordinance and a third reading prior to final adoption, or 2) adopt the ordinance "as is" on June 30th and direct the City Attorney to come back with the revisions.

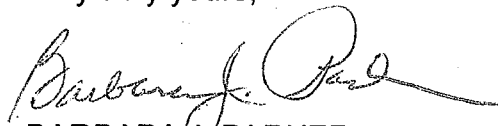
The Council adopted the ordinance "as is" on June 30th and directed the City Attorney to come back with the necessary revisions.

Proposed Amendments

The amendments would make two changes to the ordinance. First, the language explaining the scope of the definitions in Section 2.29.160.1 needs to be revised to limit its application to the Section 2.29.160 and subsections. It currently states that the Race and Equity definitions apply throughout the ordinance, i.e., to all departments and agencies. The proposed amendment reads as follows: "The definitions of this section apply throughout this Section 2.29.160 unless the context clearly requires otherwise."

Second, the proposed amendments would delete Section 2.29.160.4 which reads: "It is the intent of the council that this ordinance is a general statement of city policy that cannot form the basis of a private right of action." Under longstanding principles of statutory interpretation, the statement regarding "no private right of action" in Section 2.29.160.4 could be interpreted to implicitly grant a private right of action with respect all other departmental provisions of Chapter 2.29. This language is not necessary to establish that the amendment does not create a private right of action and therefore should be deleted to eliminate the aforementioned unintended legal consequence.

Very truly yours,



BARBARA J. PARKER
City Attorney

Attachment

cc: Mayor Libby Schaaf
Sabrina Landreth, City Administrator

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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

ORDINANCE AMENDING ORDINANCE NO. 13319 C.M.S., WHICH AMENDED OAKLAND MUNICIPAL CODE CHAPTER 2.29, CITY AGENCIES, DEPARTMENTS AND OFFICES, TO ADD THE DEPARTMENT OF RACE AND EQUITY, SECTION 2.29.160 TO THE MUNICIPAL CODE, TO REVISE OAKLAND MUNICIPAL CODE SECTION 2.29.160.2, DEFINITIONS, AND DELETE OAKLAND MUNICIPAL CODE SECTION 2.29.160.4

WHEREAS, Section 600 of the Charter of the City of Oakland provides that the City Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered; and

WHEREAS, in 1999 the Council passed Ordinance No. 12186 C.M.S. which established in Chapter 2.29 of the municipal code the organizational structure of the City; and

WHEREAS, the Council passed Ordinance No. 13319 C.M.S. on June 30, 2015, to add a new section 2.29.160 to establish the Department of Race and Equity; and

WHEREAS, the City Attorney recommended in a letter to the Council dated June 30, 2015, that the definitions section should be revised to apply specifically to new Oakland Municipal Code Section 2.29.160, and that unnecessary language disclaiming a private right of action should be deleted; and

WHEREAS, the recommended revisions conform the Ordinance No. 13319 C.M.S. to the Council's intent and avoid unintended legal consequences;

NOW, THEREFORE, THE CITY 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.

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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 ~~strikethrough~~ type); there are no changes in the portions of the sections that are not cited or shown in underscoring or strikethrough type.

SECTION 3. Oakland Municipal Code, Chapter 2.29, Sections 2.29.160.2 and 2.29.160.4 of the Municipal Code are hereby amended as follows:

2.29.160 - Race and Equity Agency.

There is established in the city government a Department of Race and Equity which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said Department shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Department of Race and Equity shall be the responsibility of the Director of Department of Race and Equity who shall serve as Director of said agency, subject to the direction of the City Administrator. In the Department of Race and Equity there shall be the following divisions: Race and Equity, Equitable City, Equity Training, Equitable Community engagement, and Project Implementation.

2.29.160.1.

Through adoption of this Ordinance the City of Oakland And the establishment of the Department of Race and Equity the City of Oakland will intentionally integrate, on a citywide basis, the principle of "fair and just" in all the city does in order to achieve equitable opportunities for all people and communities. This ordinance establishes definitions and identifies the specific approaches necessary to implement and achieve the "fair and just" principle that is embedded as a core element of the goals, objectives and strategies of the city.

2.29.160.2.

The definitions in this section apply throughout this Section 2.29.160 unless the context clearly requires otherwise.

- A. "Community" means a group of people who share some or all of the following: geographic boundaries, sense of membership, culture, language, common norms and interests.
- B. "Determinants of equity" means the social, economic, geographic, political and physical environment conditions in which people in our city are born, grow, live, work and age that lead to the creation of a fair and just society.

Access to the determinants of equity is necessary to have equity for all people regardless of race, class, gender or language spoken. Inequities are created when barriers exist that prevent individuals and communities from accessing these conditions and reaching their full potential. The determinants of equity are:

1. Community economic development that supports local ownership of assets, including homes and businesses, and assures fair access for all to business development and business retention opportunities;
2. Community and public safety that includes services such as fire, police, emergency medical services and code enforcement that are responsive to all residents so that everyone feels safe to live, work and play in any neighborhood in Oakland;
3. A law and justice system that provides equitable access and fair treatment for all;
4. Early childhood development that supports nurturing relationships, high-quality affordable child care and early learning opportunities that promote optimal early childhood development and school readiness for all children;
5. Education that is high quality and culturally appropriate and allows each student to reach his or her full learning and career potential;
6. Equity in city practices that eliminates all forms of discrimination in city activities in order to provide fair treatment for all employees, contractors, clients, community partners, residents and others who interact with the City;
7. Food systems that support local food production and provide access to affordable, healthy, and culturally appropriate foods for all people;
8. Health and human services that are high quality, affordable and culturally appropriate and support the optimal well-being of all people;
9. Healthy built and natural environments for all people that include mixes of land use that support: jobs, housing, amenities and services; trees and forest canopy; and clean air, water, soil and sediment;
10. Housing for all people that is safe, affordable, high quality and healthy;

11. Job training and jobs that provide all residents with the knowledge and skills to compete in a diverse workforce and with the ability to make sufficient income for the purchase of basic necessities to support them and their families;
 12. Neighborhoods that support all communities and individuals through strong social networks, trust among neighbors and the ability to work together to achieve common goals that improve the quality of life for everyone in the neighborhood;
 13. Parks and natural resources that provide access for all people to safe, clean and quality outdoor spaces, facilities and activities that appeal to the interests of all communities; and
 14. Transportation that provides everyone with safe, efficient, affordable, convenient and reliable mobility options including public transit, walking, carpooling and biking.
- C. "Equity" means all people have full and equal access to opportunities that enable them to attain their full potential.
- D. "Equity and social justice foundational practices" means those practices that can increase the city's influence on access to the determinants of equity when applied to the city's actions in: siting and delivery of services; policy development and decision making; education and communication within city government; and community engagement and partnerships. Equity and social justice foundational practices are goals for all governmental actions; across citywide strategic goals, objectives and strategies; and across agencies, programs and services. The equity and social justice foundational practices are efforts that enable Oakland government to:
1. Raise and sustain the visibility of the citywide vision of "fair and just" principle and equity and social justice values, policies and foundational practices;
 2. Increase focus on the determinants of equity in order to make progress in the elimination of the root cause of inequities;
 3. Consider equity and social justice impacts in all decision-making so that decisions increase fairness and opportunity for all people, particularly for people of color, low-income communities and people with limited English proficiency or, when decisions that have a negative impact on fairness and opportunity are unavoidable, steps are implemented that mitigate the negative impacts;

4. Foster an organizational culture that promotes fairness and opportunity;
 5. Collaborate across agencies, departments and other organizations;
 6. Build capacity to engage all communities in a manner that: promotes and foster trust among people across geographic, race, class and gender lines; results in more effective policies, processes and services; and supports communities' efforts to develop solutions.
- E. "Fair and just" means the city serves all residents by promoting fairness and opportunity and eliminating inequities through actions to which equity and social justice foundational practices are applied.
- F. "Inequity" means differences in well-being that disadvantage one individual or group in favor of another. These differences are systematic, patterned and unfair and can be changed. Inequities are not random; they are caused by past and current decisions, systems of power and privilege, policies and the implementation of those policies.
- G. "Social justice" means all aspects of justice, including legal, political and economic, and requires the fair distribution of public goods, institutional resources and life opportunities for all people.

2.29.160.3.

To achieve the fair and just principle embedded within the citywide goals, objectives and strategies, the City Administrator shall:

- A. Apply equity and social justice foundational practices to city actions and endeavor to integrate these practices into the city's: strategic, operational and business plans; management and reporting systems for accountability and performance; and budgets in order to eliminate inequities and create opportunities for all people and communities;
- B. Establish an inter-branch team to facilitate accountability of and coordination by all branches, departments, agencies, and offices of city government regarding implementation of the fair and just principle of the city. The Department on Race and Equity shall be responsible for leading the effort. The inter-branch team shall be composed of the directors of all branches, departments, agencies and offices of city government. Further the City Administrator shall support the city's application of equity and social justice foundational practices through:

1. Development of analytical tools to support all branches' departments and agencies in identifying the equity impacts of policies and decisions and ways in which to amplify positive impacts and mitigate negative impacts;
 2. Development of guidelines which can be implemented across all City branches, departments, and agencies for outreach, communication and community engagement to improve the scope and effectiveness of city efforts to ensure that all communities receive information and have the opportunity to shape city policies and services;
 3. Identifying focus areas and supporting the development of policies and actions that improve fairness and opportunity in city government organizational practices, including all employment practices such as hiring, training, retention and promotion and business practices such as contracting, procurement and grant writing;
 4. Providing a forum for exchange of information and identification of opportunities for collaboration across branches' departments and agencies on equity and social justice foundational practices; and
 5. Supporting the identification of annual work plans by city departments and agencies on application of equity and social justice practices, including the items listed in subsection B.1. through 5. of this section; and
- C. Design and publish an annual report for Oakland elected leadership, employees and the public on the status and trends in equity in the city and measures of accountability for work plans and results related to implementation of this ordinance.

SECTION 5. 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 6. Effective Date. This ordinance will take effect immediately if it is adopted by the Council with six affirmative votes; it will take effect seven days after final passage if it is adopted with five affirmative votes. The organizational structure established by this Ordinance will become effective on the effective date of the Ordinance.

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IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the City
of Oakland, California

Date of Attestation: _____

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NOTICE AND DIGEST

ORDINANCE AMENDING ORDINANCE NO. 13319 C.M.S., WHICH AMENDED OAKLAND MUNICIPAL CODE CHAPTER 2.29, CITY AGENCIES, DEPARTMENTS AND OFFICES, TO ADD THE DEPARTMENT OF RACE AND EQUITY, SECTION 2.29.160 TO THE MUNICIPAL CODE, TO REVISE OAKLAND MUNICIPAL CODE SECTION 2.29.160.2, DEFINITIONS, AND DELETE OAKLAND MUNICIPAL CODE SECTION 2.29.160.4

This ordinance amends Ordinance No. 13319 C.M.S. approved by the Council on June 30, 2015 and which established a new Department of Race and Equity. This ordinance will revise section 2.29.160.2 to apply definitions therein only to Oakland Municipal Section 2.29.160 and subsections, and will delete Oakland Municipal Section 2.29.160.4. These revisions conform Ordinance No. 13319 C.M.S. to the intent of the City Council and avoid unintended legal consequences.