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CITY OF OAKLAND



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**November 9, 2004**

Chairperson Wan and  
And Members of the Finance Committee  
City Hall  
Oakland, CA 94612

Re: **REPORT REGARDING AN ORDINANCE CONFIRMING  
PROCEDURES FOR GRANTS FROM THE PAY-GO ACCOUNT  
TO NONCITY ENTITIES**

Dear President de la Fuente and Members of the City Council:

### **SUMMARY**

This proposed ordinance would clarify and formalize the process for the designation of grants by the Mayor and individual City Councilmembers from the City's Pay-go Account to noncity entities. We also recommend that City Council establish a policy identifying permissible types of pay-go expenditures. The policy could be adopted by resolution or included in the ordinance.

### **FISCAL IMPACT**

Since this ordinance confirms and codifies past practice, there should be no fiscal impact.

Item \_\_\_\_\_  
Finance Committee

## **BACKGROUND**

It is the province of the full City Council to designate and authorize grants. The Mayor and City Councilmembers wish to clarify and confirm their individual authority to designate grants from the City's Pay-go Account, subject to (1) the City Administrator's execution of any grant agreements and determination that sufficient grant funds are available in the individual's Pay-go account; and (2) the City Attorney's approval of grant agreements as to form and legality.

### **Current Restrictions on Pay-go Account Funds**

Currently the expenditures from the Pay-go Account are limited by the terms imposed by the funding sources. Current funding sources are: (1) Trust Agreement funds; (2) State gas tax funds; and (3) Measure B funds.

### **Trust Agreement Funds**

A trust agreement limits the use of trust money placed in the Pay-go Account to the "acquisition, construction, lease or improvement of equipment, facilities or other property (real or personal) to be owned, leased, held or controlled by the City for any of its municipal purposes . . ."

### **State Gas Tax Funds**

State gas tax funds in the Pay-go Account are limited to

"the research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for non-motorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes . . ."

### **Measure B Funds**

Finally, Measure B funds in the Pay-go Account are limited to local transportation projects involving streets and roads, bicycles, and pedestrians.

## **KEY ISSUES AND IMPACTS**

This ordinance would confirm that the Mayor and individual City Council members may designate grants from their respective balances in the Pay-go Account.

As noted earlier, the City Attorney's Office recommends that the Council establish a policy that identifies the purposes for which pay-go grants may be designated. The policy could be stated in Section (1)A of the ordinance, entitled "Policy – Permissible Pay-go Grants", or the Council could adopt the policy by resolution. This section of the draft ordinance is blank because only the Council can establish the policy.

Section (1)B of the ordinance specifies Councilmembers' and the Mayor's authority to designate grants to third parties. We have presented two options to the Council. Option 1 allows the City Administrator to execute and approve all grants without obtaining City Council authorization and approval of each grant. Option 2 limits the City Administrator's authority to execute and approve grants to a \$100,000; each grant in excess of \$100,000 must be authorized and approved by the City Council.

Section (1)B memorializes that grants must comply with the terms, limitations and any other requirements of the funding source. For example, a funding source may require that the City execute a grant agreement or use the grant funds only for capital improvements. The trust agreement, which currently funds much of the Pay-Go Account, limits expenditures to property "*owned, leased, held or controlled by the City . . .*" Section 1(B) also confirms that the City Administrator will administer grants and execute grant agreements, and that grants and grant agreements must be approved by the City Attorney as to form and legality.

To assure that City maintains a separate record of grants, Section (1)C requires that the City Manager maintain records of grants from the Pay-go Account and make an annual report to the City Council on the grants.

## **SUSTAINABLE OPPORTUNITIES**

Since this ordinance confirms past practice, no new sustainable opportunities are implicated.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

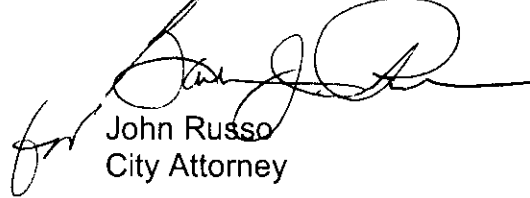
Since this ordinance confirms past practice, no disabled or senior citizen access issues are implicated.

## **RECOMMENDATION**

The City Attorney recommends that the City Council (1) adopt the proposed ordinance and choose either Option 1 or 2 in Section 1(B); and (2)

establish a policy regarding permissible pay-go expenditures, either by resolution or as part of the ordinance.

Respectfully submitted,



John Russo  
City Attorney

**DRAFT**

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CLERK  
APPROVED AS TO FORM AND LEGALITY  
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CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE CONFIRMING PROCEDURES FOR GRANTS FROM THE PAY-GO  
ACCOUNT TO NONCITY ENTITIES**

**WHEREAS**, the designation and authorization of grants is the province of the City Council;  
and

**WHEREAS**, the City Council wishes to clarify, confirm and codify the process for the  
awarding of these grants; and

**WHEREAS**, the City Council wishes to confirm the authority of the Mayor and individual  
City Councilmembers to designate grants from their respective balances in the City's Pay-go  
Account;

The Council of the City of Oakland does ordain as follows:

**Section 1.** Section 2.04.017 shall be added and shall include either Option 1 or Option 2 as  
determined by the City Council:

A. Policy – Permissible Pay-go Grants

Pay-go grants may be designated only for the following purposes:

**[NOTE: The City Attorney recommends that Council adopt a policy that identifies the  
purposes for which pay-go grants may be designated. The policy could be included in the  
ordinance or adopted by resolution.]**

B. Requirements Applicable to Pay-go Grants to NonCity Entities

[OPTION 1]

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 of Oakland; (3) grant agreements must be approved as to form  
and legality by the City Attorney; and (4) grant agreements shall be required for all grants.

[OPTION 2]

1. City Administrator is Authorized to Execute Agreements for Pay-Go Grants of \$100,000 or Less

The Mayor and Individual Councilmembers may designate grants up to and including \$100,000 from their respective balances in the City's Pay-Go Account subject to the following requirements: (1) such grants shall be made only for the purposes permitted by the funding source(s) of the Pay-Go Account;(2) such grants and any grant agreements shall be authorized, administered, and executed by the City Administrator on behalf of the City of Oakland; and (3) such grants and any grant agreements must be approved as to form and legality by the City Attorney.

2. City Council must Authorize Agreements for Pay-Go Grants Exceeding \$100,000

Any grants from the Pay-Go Account that exceed \$100,000 must be submitted to the City Council for approval.

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.

**Section 2.**

This ordinance shall be codified as Section 2.04.017 of the Oakland Municipal Code.

**Section 3. Severability.** If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit hereto is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

**Section 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes; otherwise it shall become effective upon the seventh (7<sup>th</sup>) day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

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

NOTES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California