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CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE No. 12946 C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 12502 C.M.S. TO CLARIFY GENERAL PURPOSE FUND (GPF) RESERVE REQUIREMENTS; REQUIRE A MAYORAL DECLARATION OF FISCAL EMERGENCY AND APPROVAL BY COUNCIL OR A COUNCIL DECLARATION OF FISCAL EMERGENCY BEFORE THE GPF RESERVE CAN BE DRAWN DOWN; REQUIRE THAT EXCESS REAL PROPERTY TRANSFER TAX REVENUES BE USED TO BUILD UP THE GPF RESERVE, PAY BACK NEGATIVE INTERNAL SERVICE FUND BALANCES, ESTABLISH SET-ASIDES FOR OTHER POST-EMPLOYMENT BENEFITS (OPEB) AND POLICE AND FIRE RETIREMENT SYSTEM (PFRS) LIABILITIES, AND FUND CAPITAL IMPROVEMENTS PROJECTS; REQUIRE THAT ONE-TIME REVENUES BE USED TO REPAY NEGATIVE FUND BALANCES IN INTERNAL SERVICE AND OTHER FUNDS; AND PROVIDE CRITERIA FOR PROJECT CARRYFORWARDS AND ENCUMBRANCES IN THE GPF.

**WHEREAS**, on June 17, 2003, the City Council adopted Ordinance No. 12502 C.M.S., which repealed the original reserve policy for the City's undesignated general fund balance and adopted new operating budget and capital improvement budget policies, and a higher minimum level of reserves; and

**WHEREAS**, to ensure fiscal prudence and responsibility, the City desires to amend its reserve policy to clarify the established reserved requirements and to establish criteria for the use of GPF reserve, use of excess Real Estate Transfer Tax (RETT) revenue, and use of one-time revenues; and

**WHEREAS**, to minimize drawdowns from the GPF reserve by previously approved project carryforwards and purchase order encumbrances, the City wishes to add specific criteria for such carryforwards and encumbrances in the General Purpose Fund; now, therefore,

### THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

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 ~~strike-through~~ type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

SECTION 3. Ordinance No. 12502 C.M.S. is hereby amended in its entirety to read as follows:

**SECTION 2A. General Purpose Fund Reserve Policy**

1. Council hereby declares that it shall be the policy of the City of Oakland to provide in each fiscal year a reserve of undesignated, uncommitted fund balance equal to seven and one-half percent (7.5%) of the General Purpose Fund (Fund 1010) appropriations for such fiscal year (the "General Purpose Fund Reserve Policy").

2. Each year, upon completion of the City's financial audited statements, the ~~City Manager~~City Administrator ~~will~~ shall report the status of the General Purpose Fund Reserve to City Council and on the adequacy of the 7.5% reserve level. If in any fiscal year the General Purpose Fund Reserve Policy is not met, the ~~City Manager~~City Administrator shall present to Council a strategy to meet the General Purpose Fund Reserve Policy. Each year, the City Administrator shall determine whether the 7.5 % reserve level requires adjustment, and recommend any changes to the City Council.

3. The amounts identified as the undesignated General Purpose Fund Reserve may be appropriated by Council only to fund unusual, unanticipated and seemingly insurmountable events of hardship of the City, and only upon declaration of fiscal emergency. For the purposes of this Ordinance, "fiscal emergency" may be declared (1) by the Mayor and approved by the majority of the City Council or (2) by a majority vote of the City Council.

**SECTION 3B. Capital Improvements Reserve Fund**

1. There is hereby established a fund in the Treasury of the City of Oakland to be known as the "Capital Improvements Reserve Fund" (~~the "Capital Improvements Contingency Fund"~~).

2. ~~Commencing with the 2003-05 budget~~On an annual basis, an amount equal to \$6,000,000 shall be ~~deposited~~ held into the Capital Contingency Improvements Reserve Fund (~~the "Capital Improvements Reserve Requirement"~~). Revenues received from one-time activities, including the sale of real property, shall, ~~unless otherwise directed by Council~~, be deposited into the Capital Improvements Reserve Fund, unless otherwise provided in Sections D and E of this ordinance or otherwise directed by a majority vote of the City Council. Interest earnings on monies on deposit in the Capital Improvements Reserve Fund shall accrue to said fund and be maintained therein.

3. Monies on deposit in the Capital Improvements Reserve Fund shall, ~~unless otherwise directed by Council~~, may be appropriated by Council to fund unexpected emergency or major capital maintenance or repair costs to City-owned facilities and to fund capital improvement projects through the Five-Year Capital Improvement Program only if not already allocated to a specific project.

4. Each year, upon completion of the City's financial audited statements, the City Administrator shall report the status of the Capital Improvements Reserve Fund to City Council. If in any fiscal year the required Capital Improvements Reserve Fund threshold of \$6,000,000 is not met, the City Administrator shall present to Council a strategy to meet the said threshold.

**SECTION 4C.** ~~Prior to appropriating monies from the contingency or reserves established by this Ordinance, the Budget Office shall prepare an analysis of the proposed expenditure and the City Administrator shall present such analysis to the City Council. Upon review and approval of the proposed expenditure by the City Council, and appropriate fiscal emergency declaration necessary for the use of GPF reserve, the City Manager Administrator will have the authority to allocate from the contingency or reserves. For the purposes of this Ordinance, "fiscal emergency" may be declared (1) by the Mayor and approved by the majority of the City Council or (2) by Council majority vote.~~

**SECTION 5.** ~~The City Manager shall annually as part of the budget process prepare and submit to the City Council a report detailing the activity and status of the contingency or reserves established pursuant to this Ordinance. Interim reports may be prepared as requested by the Council.~~

**D. Use of Excess Real Estate Transfer Tax (RETT) Revenues To Build Up the GPF Reserve, Pay Back Negative Internal Service Fund balances, Establish Set-Asides for Other Post-Employment Benefits (OPEB) and Police and Fire Retirement System (PFRS) Liabilities, and Fund Capital Improvements Projects.**

To ensure adequate levels of the General Purpose Fund reserves and to provide necessary funding for municipal capital improvement projects, the City shall require that excess Real Estate Transfer Tax revenues be defined and used as follows:

- 1) The "excess" Real Estate Transfer Tax (RETT) revenue is hereby defined as any annual amount collected in excess of the "normal baseline" collection threshold of \$40 million.
- 2) The excess Real Estate Transfer Tax collections, as described in this section, shall be used in the following manner:
  - a. Replenish General Purpose Fund (GPF) reserves until such reserves reach to 10 percent of current year budgeted GPF appropriations.
  - b. After such reserves have been replenished, the order of use of the remaining excess collection is as follows: 50 percent to repay negative internal services funds balances; 30 percent set aside for the Police and Fire Retirement System (PFRS) liability until this obligation is met; 10 percent to establish a trust for Other Post-Employment Retirement Benefits (OPEB); and 10 percent to replenish the Capital Improvements Reserve Fund until it reaches \$10,000,000.
- 3) Use of the "excess" RETT revenue for purposes other than those established above may only be allowed upon declaration of a fiscal emergency by the Mayor and a majority vote by the City Council. For the purposes of this Ordinance, "emergency" may be declared (1) by the Mayor and approved by the majority of the City Council or (2) by a majority vote of the City Council.

**E. Use of One Time Revenues To Repay Negative Fund Balances in Internal Service and Other Funds; and Provide Criteria for Project Carryforwards and Encumbrances in the GPF.**

- 1) From time to time, the City may receive "one time revenues", defined as financial proceeds that will not likely occur on an ongoing basis, such as sales of property or proceeds from the refinancing of debt, but not including additional Real Estate Transfer Tax revenues discussed in Section "D" above.
- 2) Fiscal prudence and conservancy requires that one time revenues not be used for recurring expenses, that outstanding negative balances in various City funds be paid off, and that municipal capital projects addressing health and safety issues be adequately funded. Therefore, upon receipt of one time revenues, such revenues shall be used in the following manner, unless legally restricted to other purposes: 50 percent to pay off negative fund balances in the Internal Service Fund, and another 50 percent to pay off negatives in all other funds.
- 3) Use of the "one time revenues" for purposes other than those established above may only be allowed upon declaration of a fiscal emergency. For the purposes of this Ordinance, "emergency" may be declared (1) by the Mayor and approved by the majority of the City Council or (2) by a majority vote of the City Council.

#### **F. Criteria for Project Carryforwards and Encumbrances in the General Purpose Fund.**

Previously approved but unspent project appropriations ("carryforwards"), as well as funding reserved to pay for purchases or contracts that are entered into in the current year but are not paid for until the following year ("encumbrances"), draw down funding from reserves. Fiscal prudence requires that such drawdowns be limited in the General Purpose Fund (GPF). Therefore:

- 1) Funding for non-operating projects and purchases shall be restricted within the General Purpose Fund; capital purchases and projects in particular shall not be funded from the General Purpose Fund.
- 2) In cases when non-capital, operating projects and purchases must be funded in the General Purpose Fund, these shall be included in an annual budget and supported with new annual revenues.
- 3) Carryover of unspent project carryforwards and encumbrances in the GPF from one year into the next, with no new funding, will be allowed only on an exception basis.
- 4) In the beginning of each fiscal year, before project carryforwards and encumbrances are carried over from the prior year, and no later than August 1:
  - The Budget Director shall liquidate all unspent project carryforwards and encumbrances in the GPF and advise affected City departments of said action.
  - The Budget Director shall provide a report of all unspent project carryforwards and encumbrances to the City Council for review and direction.
- 5) Departments may request to retain some or all of the liquidated GPF carryforwards and encumbrances, only if and when such balances are deemed essential to the delivery of city projects, programs and services, and only if the liquidation of such balances would be in violation of legislative or legal requirements, could lead to health or safety issues, and/or would greatly impact essential City projects, programs and services.
- 6) A request to retain some or all of the liquidated carryforwards or encumbrances must be submitted in writing to the Budget Director within five (5) working days of receiving an

advisory from the Budget Office about said liquidations, and must detail specific reasons necessitating such a request, including but not limited to those stated in item (3) above.

- 7) The Budget Director, upon review of a department's request, shall recommend an action to the City Administrator within five (5) working days of receiving the department's request.
- 8) The City Administrator, in consultation with the Budget Director, shall make a final determination of any and all requests for exceptions by departments, by August 20, and all requesting departments should be so notified by August 30.

SECTION 4. This ordinance shall be effective immediately, if passed by the affirmative vote of at least six City Council members; if this ordinance is passed by the affirmative vote of five City Council members, it will be effective seven days after final passage.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 30 2009, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES--- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID and PRESIDENT BRUNNER — 8

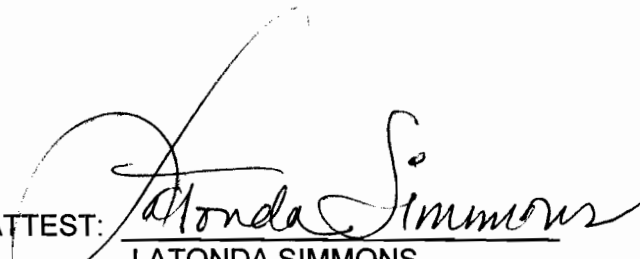
NOES--- 0

ABSENT--- 0

ABSTENTION--- 0

Introduction Date: JUN 16 2009

ATTEST:

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

Attestation: July 9, 2009