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To: Chair Quan and Members of the Finance and Management Committee
From: Council President Brunner
Date: June 9, 2009
Re: **ORDINANCE AMENDING ORDINANCE NO.7937 C.M.S., ADOPTED FEBRUARY 6, 1969, AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, ARTICLE I, BIDDING, CONTRACTING AND PURCHASING, TO DECREASE AMOUNTS FOR CERTAIN PURCHASES REQUIRING CITY COUNCIL APPROVAL AND DECREASE THE CITY ADMINISTRATOR'S AUTHORITY FOR CERTAIN PURCHASES**

I am proposing an amendment to the City's purchasing ordinance to require that all contracts over \$100,000 come to the City Council for approval. This amendment will give the Council an opportunity to more closely monitor City spending in this difficult budget climate.

The City is currently facing an \$87- 95 million deficit for the next two years. We need to look closely at how the City is spending its funds in order to balance the budget. A City staff report from February 10, 2009 stated that the City had \$78.2 million in outside contracts, which included \$9.4 million from the General Purpose Funds (some contracts were multi-year contracts). Many of these contracts were never considered by the City Council. This proposal will allow for a greater level of scrutiny and transparency.

In 2004, the City Council voted to increase the City Administrator's purchasing authority from \$50,000 to \$250,000 for the purchase of supplies, services or combination of services and supplies (including public works contracts) and from \$15,000 to \$150,000 for professional and consulting service agreements.

My proposal is to decrease the City Administrator's purchasing authority and to commensurately decrease the contract amounts that require City Council approval from \$250,000 to \$100,000 for supplies, services or a combination thereof (including public works projects), and from \$150,000 to \$100,000 for professional services. This amendment does not change the existing lower Council approval requirements for purchases: 1) that are not identified in the capital improvement or operating budget, 2) that are related to affordable housing projects, 3) that will be funded, directly or indirectly, with Redevelopment Agency funds, 4) that are or will be funded, directly or indirectly, by voter-approved measure funds, or 5) for any technological, computer or computerized system services or products, as described in Oakland Municipal Code Section 2.04.020 B.

I recommend that the City Council support the attached ordinance.

Item ____
Finance and Management Committee
June 9th, 2009

FILED
OFFICE OF THE CITY CLERK
OAKLAND

INTRODUCED BY COUNCIL MEMBER _____
2009 MAY 26 PM 6:10

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO.7937 C.M.S., ADOPTED FEBRUARY 6, 1969, AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, ARTICLE I, BIDDING, CONTRACTING AND PURCHASING, TO DECREASE AMOUNTS FOR CERTAIN PURCHASES REQUIRING CITY COUNCIL APPROVAL AND DECREASE THE CITY ADMINISTRATOR'S AUTHORITY FOR CERTAIN PURCHASES

WHEREAS, Oakland Charter Section 808, subsection A, authorizes the City Council to establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, rejection of bids and elimination of advertising and bidding; and

WHEREAS, the City Council has adopted Ordinance No. 7937 C.M.S., as amended, known as the City of Oakland "Purchasing Ordinance" and set forth at Oakland Municipal Code Title 2, Chapter 2.04, Article I, which establishes the procedures for procurement and contracting and establishes contract approval processes and authority of the City Administrator to bind the City by written contract or purchase order; and

WHEREAS, the City of Oakland is facing a budget deficit of \$87-95 million in the GPF for Fiscal Years 2009-2011; and

WHEREAS, the City spends millions of dollars on outside contracts each year, and it is critical the City Council carefully examines all City expenditures in order to balance the budget; and

WHEREAS, the City Council wishes to decrease City Administrator's purchasing authority for supplies, services and/or combination thereof and professional services, and commensurately decrease the amounts for such purchases that require City Council approval;

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

SECTION 1. Revisions. Oakland Municipal Code Title 2, Chapter 2.04, Purchasing System, Article I, Bidding, Contracting and Purchasing, Sections 2.04.020 and 2.04.030 shall be amended as follows:

2.04.020 Authority of the City Administrator

A. City Administrator's Purchase Authority. Except as provided in section 2.04.020.B, the City Administrator shall have authority to bind the City by written contract or purchase order without previous specific action of the Council as follows:

1. **Supplies, Services or a Combination .** Purchases up to ~~two~~one hundred fifty-thousand dollars (\$~~25~~100,000) in any single transaction or term agreement; and
2. **Professional Services.** Purchases up to one hundred fifty-thousand dollars (\$1500,000.00) in any single transaction or term agreement.

B . Limits for Non-Budget Identified, Redevelopment Agency Funded, Affordable Housing, Voter-Approved Measure Funded and Technological, Computer-Related Purchases or Contracts. The City Administrator's contract authority is subject to lower limits for certain types of purchases or contracts.

1. Purchases or Contracts Subject to Lower Limits:

- a. Purchases or contracts related to programs or projects that have not been previously identified in:
 - i) the current, approved CIP Budget, or
 - ii) the approved operating budget; or
- b. Purchases or contracts for services or supplies related to affordable housing projects; or
- c. Purchases or contracts that are or will be funded, directly or indirectly, by the Redevelopment Agency; or
- d. Purchases or contracts that are or will be funded, directly or indirectly, by funds generated by a voter-approved measure; or
- e. Purchases or contracts for any technological, computer or computerized system services, software, equipment, hardware or products.

2. Purchase Limits. The City Administrator is authorized to bind the city by written contract or purchase order for the types of purchases or contracts identified above without previous specific action of the Council as follows:

- a. **Supplies, Services or a Combination.** Purchases up to fifty- thousand dollars (\$50,000) in any single transaction or term agreement;
- b. **Professional Services.** Purchases up to fifteen thousand dollars (\$15,000) in any single transaction or term agreement.

3. Appropriation Resolution. Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in 2.04.020.A.

C. Advertising and Bidding or Solicitation. The City Administrator shall conduct competitive solicitation processes required in this Chapter (Section 2.04.040.B) for all purchases or contracts within City Administrator authority.

D. Reports. The City Administrator shall present the following reports to the City Council on an annual basis:

1. **Redevelopment Agency-Funded Contracts.** A prospective report listing all contracts anticipated within the next year to be directly or indirectly paid from Redevelopment Agency funds.
2. **General Report.** A report listing all purchases and contracts authorized by the City Administrator, or the City Administrator designee, within the City Administrator's contract authority during the prior year.

E. Findings Required for Service Contracts. The City Administrator shall make determinations required by Oakland Charter Section 902(e) for service contracts as follows:

1. **Professional Services Contracts.** Contracts for professional services shall be of a professional, scientific or technical and temporary nature.
2. **Council Approval for Other Service-Only Contracts.** The City Administrator shall submit all other service-only contracts to the Council for approval. Such contracts shall be in the public interest because of economy or better performance and must obtain a vote of two-thirds of the members of the Council.
3. **Loss of Employment or Salary.** Contracts for professional services or services-only shall not result in the loss of employment or salary by any person having permanent status in the competitive service.

F. Local Vendor Preferences. The City Administrator is authorized in the evaluation of all sealed, faxed and telephone bids for the purchase of supplies, to extend a two and one half percent (2.5%) preference to local business enterprises and an additional two and one half percent (2.5%) preference to small local business enterprises in award of all purchase orders.

The City Administrator shall semiannually prepare and submit to the City Council a report on participation by local and small local business enterprises in City contracts for the prior year.

G. Emergency Supply and Services Procurement. In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract or purchase order exceeding two hundred fifty thousand dollars (\$250,000.00) in any one transaction, without advertising or previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

H. Emergency Professional Services and Consultant Agreements. In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract exceeding one hundred fifty thousand dollars (\$150,000.00) in any one transaction, without previous specific action by the City Council, for the payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

I. City Administrator Authority During City Council Annual Recess. Notwithstanding the provisions of subsections A and B of this section, during the month of August through the first City Council meeting in September, known as the annual recess of the City Council, as provided for in the City Council's Rules of Procedures, the City Administrator shall be authorized (1) to bind the city, by written contract or purchase order, involving an expenditure not exceeding five hundred thousand dollars (\$500,000.00), without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, in any one transaction, to be furnished to the city, subject to the availability of funds and procedures set forth in this article, including competitive bidding, and (2) to bind the city, by written contract, involving an expenditure not exceeding three hundred thousand dollars (\$300,000.00) in any one transaction, subject to the availability of funds for the payment for professional services and consultant services furnished to the city and procedures set forth in this article, without previous specific action of the City Council. Contracts for professional services, supplies, services or combination that are in excess of

the City Administrator's authority shall be subject to the City Council's recess agenda process and shall be presented to the City Council for ratification upon return from its annual recess.

J. Apprentice Hiring and Local Hire. The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids for public works projects to require contractors to comply with the city's apprentice hire and local hire programs as set forth in this code.

K. Living Wage. The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for services to require contractors or consultants to comply with the city's living wage ordinance, as set forth under Oakland Municipal Code Chapter 2.28.

L. Prevailing Wage. The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids and/or proposals for public works projects to require bidders/contractors to pay prevailing wages as required under this code.

M. Oakland Specifications for Public Works Construction ("Greenbook"). The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for public works construction to require bidders/contractors to comply with and perform construction in accord with the Oakland Specifications for Public Works Construction ("Greenbook"), as set forth in this code. Notwithstanding the above, nothing herein is intended to limit authority of the City Council to modify the specifications for public works construction by legislative action on a case-by-case basis.

N. Local Business Contracting Programs. The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids for public works projects, for the purchase of supplies and in evaluation of proposals for professional services contracts, to require contractors to comply with, and to extend the benefits of, Oakland's LBE/SLBE construction, procurement and professional services contracting programs, as set forth in this code.

O. Equal Benefits Program. The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids and/or proposals for services to require contractors or consultants to comply with the City's Equal Benefits Program requirements.

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2.04.030 City Council Approval Requirements.

A. Council Award of Purchases or Contracts in Excess of City Administrator's Authority. The Council shall award any purchase orders or contracts in excess of the City Administrator's authority as follows:

1. **City Council Authority.** Except for purchases subject to limits in section 2.04.030.A(2), the Council shall award all contracts in the following amounts:
 - a. **Supplies, Services or Combination.** Purchases in excess of ~~two~~one hundred and ~~fifty~~thousand dollars (~~\$25~~100,000) in any single transaction or term agreement; and
 - b. **Professional Services.** Purchases in excess of one hundred ~~fifty~~thousand dollars (~~\$150~~00,000.00) in any single transaction or term agreement.
2. **Non-Budget Identified, Redevelopment Agency Funded, Affordable Housing, Voter-Approved Measure Funded and Technological, Computer-Related Purchases or Contracts.** The Council shall award all contracts in excess of the City Administrator's limits as follows:

- a. **Supplies, Services or Combination.** Purchases in excess of fifty-thousand dollars (\$50,000) in any single transaction or term agreement;
- b. **Professional Services.** Purchases in excess of fifteen thousand dollars (\$15,000) in any single transaction or term agreement.
- c. **Appropriation Resolution.** Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in 2.04.020.A.

B. Validity of Contracts. Legislative actions of the Council awarding any contract shall not constitute a contract. No contract shall be binding or of any force or effect until signed by the City Administrator. The City Administrator's signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds sufficient to pay the estimated expense of executing the contract.

C. Contract Extensions, Renewals, Amendments. The requirements for City Council approval specified in this section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments exceed 1) the City Administrator's contract approval limit, or 2) the total contract amount approved by Council in a City of Oakland resolution.

SECTION 2. 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 3. 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 4. 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, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

ORDINANCE AMENDING ORDINANCE NO.7937 C.M.S., ADOPTED FEBRUARY 6, 1969, AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, ARTICLE I, BIDDING, CONTRACTING AND PURCHASING, TO DECREASE THE CITY ADMINISTRATOR'S AUTHORITY FOR CERTAIN PURCHASES AND DECREASE AMOUNTS FOR CERTAIN PURCHASES THAT REQUIRE CITY COUNCIL APPROVAL

This ordinance will amend Oakland Municipal Code Section 2.04.020.A decreasing the City Administrator's authority for the purchase of supplies, services or combination thereof from two hundred fifty thousand dollars (\$250,000.00) to one hundred thousand dollars (\$100,000.00), and for the purchase of professional services from one hundred fifty thousand dollars (\$150,000.00) to one hundred thousand dollars (\$100,000.00).

This ordinance will commensurately amend Oakland Municipal Code Section 2.04.030.A decreasing the purchase amounts that require City Council approval for supplies, services or combination thereof from two hundred fifty thousand dollars (\$250,000.00) to one hundred thousand dollars (\$100,000.00), and for professional services from one hundred fifty thousand dollars (\$150,000.00) to one hundred thousand dollars (\$100,000.00).