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OAKLAND

2008 NOV -7 AM 5:03

CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Council President Ignacio De La Fuente
City Council Member, District 5

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November 12, 2008

Re: Ordinance Amending Oakland Municipal Code Title 2.04, *Purchasing System*, which Addresses Purchasing and Pay-Go Procedures, and a Resolution Amending Resolution 80777 C.M.S. to remove Pay-Go Expenditure Provisions.

Dear Council Members:

Pay-go is a discretionary appropriation that allows Council Members and the Mayor to fund capital improvement projects both within their districts or city-wide. Pay-go was originally established in FY 1999-00 for Council Members and in 2001, the City Council approved a separate Pay-go allocation for the Office of the Mayor under the same terms and funding source. Pay-go projects allow Council offices and the Mayor to respond to community needs, leverage other funding and capitalize on the efforts of volunteers and community organizations.

On July 17, 2007, the City Council approved Resolution 80777 C.M.S which specified approved uses of Pay-go funds. Since Resolution 80777 C.M.S was adopted, there is continued confusion and concern about what types of expenditures are Pay-go eligible or not, and whether Pay-go funds may be granted to private entities.

Codifying Pay-go regulations in an ordinance rather than a resolution and providing more specific Pay-go guidelines, as proposed here, will provide clearer direction to the City Council, City Administrator, staff and the public as to the Council's restrictions on the use of Pay-go, will reduce concerns about favoritism or abuse of public funds and will restore the public's trust in the Pay-go program.

Resolution 80777 Pay-Go Policy

On July 17, 2007, the City Council approved Resolution 80777 C.M.S. which specified legitimate uses of Pay-go funds. The resolution clarified that legitimate uses of Pay-go funds are as follows (subject also to the purposes permitted by the funding source of the Pay-go account):

Capital Improvements:

- a) To pay for or augment funding for a City of Oakland capital improvement project, or for the planning of a capital improvement project; and
- b) To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or other public entity for use on a capital improvement project, or the planning of a capital improvement project, within the City of Oakland; and

Furniture, Equipment, Materials:

- c) To pay for or augment funding for purchase of furniture, equipment or other materials to be used by participants in a program operated by the City of Oakland; and
- d) To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or another public entity to be used for furniture, equipment or other materials to be used by participants in a program operated by the public school or public entity.

Amendment to Title 2, Section 2.04 *Purchasing Systems*

Since Resolution 80777 C.M.S. was adopted, there has been continued confusion and concern about what types of expenditures are Pay-go eligible and whether Pay-go funds may be granted to private entities. The current policy also allows expenditures outside the Pay-go policy by submitting a resolution to the City Council for approval.

Oakland Municipal Code, Title 2, Section 2.04 *Purchasing System* sub-sections 2.04.017 and 2.04.017 establishes basic guidelines for Pay-go expenditure processing. Amending these sections will improve control over Pay-go funds. Amending the Purchasing System Ordinance would also provide needed clarity to Council Members, the City Administrator, the Budget Office and other City Departments.

Section 2.04.017.A of Title 2 states “Policy—Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.”

This proposed amendment to the Purchasing System Ordinance sections 2.04.107 and 2.04.018 codifies provisions of Resolution 80777 C.M.S and adds new guidelines that were not part of Resolution 80777 C.M.S. The Pay-go purposes stated in this section shall operate as restrictions on pay-go expenditures or Pay-go grants, regardless of the pay-go account funding source and shall apply to any and all pay-go expenditures or grants made by the Mayor and each City Councilmember. New guidelines I propose include:

- a) Restricting Pay-go grants to public schools and public entities, eliminating the allocation of pay-go funds to public non-profits of any type.
- b) Authorized Capital Improvements excludes 1) food, clothing, entertainment 2) services, personnel or banners (except those to facilitate capital improvements) 3) operating expenses or 4) any of the foregoing as payment for an in-kind exchange/purchase of capital improvements, furniture or equipment.

- c) Authorized Furniture/Equipment excludes the rental or lease of furniture or equipment for a party, festival, street fair, or other social gathering event.
- d) Authorized Furniture/Equipment *does* include Cable, DSL or other telecommunications or internet services needed to facilitate the use of equipment purchased with Pay-go funds.

Resolution amending Resolution 80777 C.M.S.

In addition to the ordinance amendment, a resolution is included to amend Resolution 80777 C.M.S. to remove provisions relating to Pay-go that would now be located in Title 2, Section 2.04 *Purchasing Systems*. It is necessary to delete the Pay-go provisions in Resolution 80777 C.M.S. to avoid legislative duplication of the policy which is unnecessary and would cause confusion for Councilmembers, the City Administrator, staff and the public.

Recommended Action

I recommend that we adopt these amendments to Oakland Municipal Code Title 2, Chapter 2.04, Purchasing Systems Ordinance, and Resolution 80777 C.M.S. to provide better control and integrity over the use of Pay-go funds.

Sincerely,

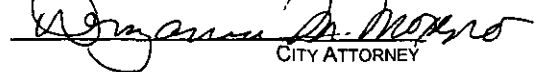


Ignacio De La Fuente

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OFFICE OF THE CITY CLERK
OAKLAND

INTRODUCED BY COUNCIL MEMBER
2008 NOV - 7 AM 4:23

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTIONS
2.04.017, PAY-GO GRANTS-POLICY AND REQUIREMENTS, AND
2.04.018, PAY-GO FUNDED PURCHASE OF SERVICES, GOODS AND
MATERIALS-CONDITIONS FOR EXEMPTION FROM COUNCIL
APPROVAL, TO CODIFY THE CITY COUNCIL PAY-GO POLICY**

WHEREAS, the City Council adopted Resolution No. 80777 C.M.S. on July 17, 2007, establishing the following policy for the expenditure of pay go funds ("Pay-go Policy"):

Capital Improvements:

- a) To pay or augment funding for a City of Oakland capital improvement project including planning and pre-construction services for projects such as, but not limited to, feasibility studies and design, landscaping, architectural and engineering services and all services and materials needed to construct a capital improvements such as, but not limited to, contractor services, lumber concrete, gravel, plants and other landscape materials, fountains, benches, banners, signs, affixed artwork and any other design and decorative elements of the project; and
- b) To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or other public entity for use on a capital improvement project within the City of Oakland, including planning and pre-construction services for projects such as, but not limited to, feasibility studies and design, landscaping, architectural and engineering services and all services and materials needed to construct a capital improvements such as but not limited to, contractor services, lumber, concrete, gravel, plants and other landscape materials, fountains, benches, banners, signs, affixed artwork and any other design and decorative elements of the project and

Furniture, Equipment:

- c) To pay for or augment funding for purchase of furniture and equipment, including computer equipment and software, to be used by participants in a program operated by the City of Oakland; and

- d) To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or another public entity to be used for furniture and equipment, including computer equipment and software, to be used by participants in a program operated by the public school or public entity; and

WHEREAS, the City Council intended the Pay-go Policy to “operate as restrictions” on pay-go expenditures or grants and to apply to all pay-go expenditures and grants of the Mayor and City Council; and

WHEREAS, the City Council wishes to re-affirm, clarify and codify the Pay-go policy restrictions on the use of pay-go funds in the Oakland Municipal Code and will delete Pay-go Policy provisions in Resolution No. 80777 C.M.S.;

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows:

Section 1. Amend Oakland Municipal Code, Title 2.04, *Purchasing System*:

The City Council hereby amends Oakland Municipal Code Title 2.04, Sections 2.04.017 to add the City Council Pay go Policy, and renumbers Sections 2.04.017 and 2.04.018 as follows:

2.04.017 Pay-go Expenditure Policy¹

The pay-go purposes stated in this section shall operate as restrictions on pay-go expenditures or pay-go grants, regardless of the pay-go account funding source and shall apply to any and all pay-go expenditures or grants made by the Mayor and each City Councilmember. Pay-go funds may be used for capital improvements, furniture and equipment in accord with the following restrictions:

Capital Improvements:

- a) **To pay or augment funding for a City of Oakland capital improvement project including planning and pre-construction services for projects such as, but not limited to, feasibility studies and design, landscaping, architectural and engineering services and all services and materials needed to construct a capital improvements such as, but not limited to, contractor services, lumber concrete, gravel, plants and other landscape materials, fountains, benches, banners, signs, affixed artwork and any other design and decorative elements of the project. “Capital improvements” as used in this section shall not include: 1) food, clothing or entertainment, 2) services, personnel or banners, except as authorized in this section, 3) operating expenses, or 4) any of the foregoing as payment for an in-kind exchange/purchase of capital improvements; and**

¹ The Pay-go Policy originally stated in Resolution No. 80777 C.M.S. is set forth in non-bold, underscored text. Clarifying amendments to the original policy are set forth in **bold**, underscored text. Current Pay-go provisions in the Oakland Municipal Code are set forth in unmodified text.

b) To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or other public entity for use on a capital improvement project within the City of Oakland, including planning and pre-construction services for projects such as, but not limited to, feasibility studies and design, landscaping, architectural and engineering services and all services and materials needed to construct a capital improvements such as but not limited to, contractor services, lumber, concrete, gravel, plants and other landscape materials, fountains, benches, banners, signs, affixed artwork and any other design and decorative elements of the project. "Furniture" and "Equipment" as used in this section shall not include: 1) food, clothing or entertainment, 2) services, personnel or banners, except as authorized in this section, 3) operating expenses, or 4) any of the foregoing as payment for an in-kind exchange/purchase of furniture or equipment. "Public school" and "public entity" shall only include government entities and shall not include private non-profits of any type.

Furniture, Equipment:

c) To pay for or augment funding for purchase of furniture and equipment, including computer equipment and software, to be used by participants in a program operated by the City of Oakland, excluding the rental or lease of furniture or equipment for a party, festival, street fair, or other social gathering event; and

d) To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or another public entity to be used for furniture and equipment, including computer equipment and software, to be used by participants in a program operated by the public school or public entity, excluding the rental or lease of furniture or equipment for a party, festival, street fair, or other social gathering event. "Public school" and "public entity" shall only include government entities and shall not include private non-profits of any type; and

e) To pay for Cable, DSL or other telecommunications or internet services needed to facilitate the use of equipment purchased with pay go funds.

2.04.0187 Pay-go grants—Policy and Requirements.

~~A. Policy—Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.~~

BA. Requirements Applicable to Pay-Go Grants to Non-City Entities. 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

and subject to the restrictions in Section 2.04.017 above; (2) such grants and grant agreements shall be authorized, administered and executed by the City Administrator on behalf of the city; and (3) grant agreements shall be required for all grants.

GB. 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.

**2.04.0198 Pay-go funded purchase of services, goods and materials—
Conditions for exemption from Council approval.**

A. The City Administrator is authorized to purchase services (professional or otherwise), goods, materials or equipment for capital improvement projects, in any amount, designated by the Mayor or individual Councilmembers from their respective balances in the city's pay-go fund account without review or action by the City Council subject to each of the following requirements:

1. Such purchases may be made only for the purposes permitted by the funding source(s) of the pay-go account, subject to the restrictions in Section 2.04.017 above; and
2. Such purchases shall be paid for only with pay-go funds or by a combination of pay-go and private funds, such as funds raised by community groups or individuals for a park or other community project; and
3. Such purchases shall be subject to all city of Oakland contracting laws, programs and policies such as, but not limited to, living wage, prevailing wages, equal benefits, local and small local business enterprise and nondiscrimination or City Council waiver by resolution shall be obtained as necessary by each of these programs or policies.

B. City Administrator Must Maintain Separate Record of Pay-Go Purchases and Make Annual Report to City Council Identifying Prior Fiscal Year's Purchases. The City Administrator shall maintain a separate record of pay-go purchases including the name of the person who designated the purchase, the amount of the purchase, the purpose of the purchase, and the name, address and any other information sufficient to identify the consultant, contractor or vendor. 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 purchases that were made during the prior fiscal year.

Section 2. Remaining Provisions Unchanged. Except as amended herein, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland

Municipal Code Title 2, 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 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 on final adoption; 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, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN,
 REID AND
 PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

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

2008 NOV -7 AM 4:24

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER Ignacio De La Fuente

RESOLUTION AMENDING RESOLUTION NO. 80777 C.M.S., WHICH ESTABLISHED POLICIES FOR REALLOCATION OF PERSONNEL FUNDS, REPORTING OF TRAVEL EXPENDITURES AND FOR EXPENDITURE OF PRIORITY PROJECT AND PAY-GO FUNDS, TO DELETE PAY-GO EXPENDITURE PROVISIONS

WHEREAS, the City Council adopted Resolution No. 80777 C.M.S. on July 17, 2007, establishing policies pertaining to reallocation of personnel funds, annual reporting of travel expenditures and for the expenditure of priority project and Pay-go funds (Pay-Go Policy); and

WHEREAS, the Pay-go Policy adopted under Resolution No. 80777 included provisions that are duplicative of requirements of the Oakland Municipal Code, Title 2, Section 2.04 that require Pay-go expenditures and grants to be administered by the City Administrator and that grant agreements be required for all such grants; and

WHEREAS, the City Council wishes to codify the Pay-go Policy in Oakland Municipal Code, Title 2, Section 2.04, in which case it is necessary to delete duplicative Pay-go Policy provisions in Resolution No. 80777 C.M.S.; now, therefore, be it

RESOLVED: That the City Council amends Resolution No. 80777 C.M.S., adopted July 17, 2007, to delete all Pay-go Policy provisions as follows:

~~2. Pay-go Account Expenditures and Grants~~

~~The City Council hereby funds and determines that it is in the City's interest, the public interest and to the betterment of Oakland businesses, residents and the community to spend Pay-go account funds to facilitate or support programs operated by the City of Oakland or capital improvement projects of the City of Oakland, and programs operated by public schools and other public entities within the City of Oakland and capital improvement projects of the Oakland Unified School District and of other public entities within the City of Oakland; and~~

~~The City Council hereby authorizes Pay-go account funds to be used for the following purposes:~~

~~Capital Improvements:~~

- ~~a) To pay or augment funding for a City of Oakland capital improvement project including planning and pre-construction services for projects such as, but not limited to, feasibility studies and design, landscaping, architectural and engineering services and all services and materials needed to construct a capital improvements such as, but not limited to, contractor services, lumber concrete,~~

gravel, plants and other landscape materials, fountains, benches, banners, signs, affixed artwork and any other design and decorative elements of the project; and
b) ~~To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or other public entity for use on a capital improvement project within the City of Oakland, including planning and pre-construction services for projects such as, but not limited to, feasibility studies and design, landscaping, architectural and engineering services and all services and materials needed to construct a capital improvements such as but not limited to, contractor services, lumber, concrete, gravel, plants and other landscape materials, fountains, benches, banners, signs, affixed artwork and any other design and decorative elements of the project and~~

~~Furniture, Equipment:~~

- e) ~~To pay for or augment funding for purchase of furniture and equipment, including computer equipment and software, to be used by participants in a program operated by the City of Oakland; and~~
- d) ~~To provide a grant to a public school, including a school chartered by the State of California or Oakland Unified School District, or another public entity to be used for furniture and equipment, including computer equipment and software, to be used by participants in a program operated by the public school or public entity; and~~

~~Pay go purposes stated above shall operate as restrictions on Pay go expenditures or Pay go grants, regardless of the Pay go account funding source; and~~

~~Pay go purposes stated above shall apply to any and all Pay go expenditures or grants made by the Mayor and each City Councilmember; and~~

~~All Pay go expenditures and grants shall be administered by the City Administrator on behalf of the city, and grant agreements shall be required for all such grants; and~~

FURTHER RESOLVED: That the City Administrator shall submit for Council consideration an ordinance amending Oakland Municipal Code, Title 2, Section 2.04 to add non-duplicative provisions of the above-deleted Pay-go expenditure policy.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____
PASSED BY THE FOLLOWING VOTE:

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

NOES -
ABSENT -
ABSTENTION -

ATTEST:

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