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CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

REBECCA KAPLAN
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Date: January 2, 2019
To: Members of City Council and Members of the Public
From: Council President Kaplan
Re: File No. 18-2542

Resolution Implementing Recommendations Of The City Auditor Regarding Oakland Promise, And Amending Resolution No. 85809 C.M.S. (Actions Taken By The Mayor During The Oakland City Council 2015 Annual Recess) Authorizing The City Administrator To Enter Into A Memorandum Of Understanding (MOU) With The East Bay College Fund To Implement The Oakland Promise Initiative

Dear Colleagues on the City Council and Members of the Public,

For the last few months, we've had ongoing public comment from community members that have expressed questions and concerns about the legal standing of the some of the non-profits that receive funds, space, and other resources from the City of Oakland. On November 19, 2019, our City Auditor Courtney Ruby issued the following report that answered some of the questions raised by the public. The report, "*Oakland Promise Investigation: Response to Whistleblower Allegations and the City Council's Questions*" (herein referred to as "Audit") documents troubling violations of our Oakland Municipal Code. For example, the Audit concluded that:

"employees of an Oakland Promise partner organization used the space for approximately two years, without the City and the partner organization formally agreeing to lease terms, insurance requirements, or rent payments and that the use of City Hall space did not comply with the Oakland Municipal Code (OMC 2.42.110) which gives the City Council the responsibility of approving leases and requires City property to be leased for payment.

This and other examples led the Auditor to make the following recommendations:

1. The Mayor and the City Administration should comply with the Oakland Municipal Code in providing space to other organizations;
2. The City Council should request the Administration to annually report on leases or other arrangements with organizations using City facilities, and this report should include the level of subsidy these organizations are receiving from the City;

Rules Committee
January 16, 2020
Item # _____

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3. The City Council should develop a formal policy on appropriate justifications for allowing other organizations to use City facilities;
4. The City Council should establish a policy for non-City employees working at City facilities to have a formal agreement that protects the interests of both parties; and
5. The City Council should develop a policy that establishes when in-kind contributions of personnel are appropriate, and the policy should require such in-kind contributions be formally authorized in advance and any risk to the City appropriately addressed.

This Resolution seeks to address and begin the process of codifying these recommendations and clarifying the City's relationships with all non-profits so that the public does not perceive malintent and so that all organizations seeking funding from the City appear to have equal access. The Resolution does address specific concerns about Oakland Promise/East Bay College Fund but overall the focus is the larger context of good governance across all of our non-profit relationships.

The Resolution empowers the City Council to request:

1. The City Auditor provide estimates of the fair market value of the space and equipment which had been provided to non-profits;
2. the Administration to annually report on leases or other arrangements with organizations using City facilities, and this report should include the level of subsidy these organizations are receiving from the City and not give space out without providing Council justifications;
3. Ensures formal written agreement that protects the interests of both parties when non-city workers operate in publicly held spaces.

The Resolution also requests that the City Attorney either report back or create an ordinance that:

1. Declares a policy that our City Administrator not serve in any leadership role (whether as a member of the Board, Advisory Board, or otherwise), in any organization which seeks or receives funding from the City of Oakland, unless explicitly approved by the Council;
2. Declares that it is our Policy that the recess authority shall not be used to change powers explicitly granted to the Council and recess actions include specific findings warranting why the item cannot come before the Council; and
3. Clarifies agreements made pursuant to the August 2015 recess action, the current status of any Board and any City Appointees.

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Please also find the following supporting attachments:

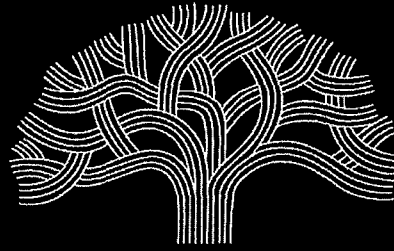
- 1) Oakland Promise Investigation: Response to Whistleblower Allegations and the City Council's Questions Audit;
- 2) 2015 August Recess Action and East Bay College Fund MOU;
- 3) City Attorney Memo on Mayor's Recess Authority, 9/11/19; and
- 4) East Bay Times article on Oakland Promise.

For questions regarding this report, please email Bobbi Lopez, Policy Director for the Council President, at blopez@oaklandca.gov or call at 510.238.7082.

Sincerely,

Rebecca Kaplan
Oakland City Council President

Rules Committee
January 16, 2020
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CITY OF OAKLAND
Office of the City Auditor

INVESTIGATION

DATE: November 19, 2019

TO: Mayor Schaaf, President Kaplan, Members of the City Council, City Administrator Landreth, City Attorney Parker, and Oakland Residents

FROM: City Auditor Courtney Ruby, CPA, CFE

SUBJECT: **Oakland Promise Investigation: Response to Whistleblower Allegations and the City Council's Questions**

Background

About Oakland Promise

In 2014, Oakland Promise formed as a partnership between the Oakland Unified School District (OUSD)¹ and the East Bay College Fund (EBCF)² to improve educational and career prospects for Oakland youth and families.

In 2015, the Mayor's Office joined OUSD and EBCF, and assumed a leadership role in collaborating with these organizations, including the Oakland Public Education Fund (Ed Fund)³. The Mayor's Office publicly launched the Oakland Promise multi-agency partnership in January 2016.

¹ Oakland Unified School District (OUSD) administers public education in Oakland. According to its mission statement, the district seeks high academic achievement while serving the whole child, eliminating inequity, and providing each child with excellent teachers, every day.

² The East Bay College Fund (EBCF) was a nonprofit organization. According to its mission statement, EBCF aspired to involve the whole community in providing college access services, scholarships, mentoring, and support networks to assist these young people in realizing their full potential.

³ The Oakland Public Education Fund (Ed Fund) is a tax-exempt nonprofit organization that raises money for Oakland public schools.

For several years, Oakland Promise existed as a partnership of organizations that individually and collaboratively developed programs toward the shared goal of tripling the number of low-income Oakland public school graduates who complete a post-secondary education.

In 2016, the partnership gained more organizational capacity when one of the partner organizations – the Ed Fund – lent its status as an established nonprofit organization to set up a restricted account to receive donations and make payments on behalf of Oakland Promise, an unincorporated association.⁴ This fiscal sponsorship⁵ arrangement enabled Oakland Promise to obtain funding to staff and administer its programs.

On June 27, 2019, the California Secretary of State filed articles of incorporation designating Oakland Promise as an independent nonprofit organization.

Appendix A outlines the evolution of Oakland Promise, including partnership milestones.

Investigation History

In June 2019, the Office of the City Auditor (Office) received multiple whistleblower reports⁶ alleging the Mayor’s Office directed the City Administration to provide unauthorized office space, staffing resources, and financial contributions to Oakland Promise.

The Office performed a preliminary review of these reports to gain an understanding of the allegations and assess whether the allegations met the Whistleblower Program’s criteria to proceed with an investigation. In July 2019, the Office launched a formal investigation of the allegations related to Oakland Promise.

On August 26, 2019, Oakland’s City Council requested the Office of the City Auditor provide information about the allocations of City funds and City facilities to Oakland Promise.

This report addresses the whistleblowers’ allegations and the City Council’s questions, and summarizes the results, findings, and conclusions of this investigation.

⁴ An Unincorporated Nonprofit Association forms whenever at least two individuals agree to pursue a common lawful purpose that is not for profit.

⁵ Fiscal sponsorship refers to the practice of non-profit organizations offering their legal and tax-exempt status to groups—typically projects—engaged in activities related to the sponsoring organization’s mission. It typically involves a fee-based contractual arrangement between a project and an established non-profit.

⁶ Included in some of the whistleblower reports were allegations regarding Measure AA. The City Auditor’s policy is to not investigate allegations that are in litigation. During the time of the investigation, Measure AA was in litigation.

Investigation Objectives

The objectives of this investigation were to: 1) determine if the Mayor's Office directed the City Administration to provide inappropriate contributions to Oakland Promise, 2) determine if contributions to Oakland Promise were transparent and accountable to the public, and 3) clarify areas of public concern. To meet these objectives, the Office sought to answer the following questions raised by the whistleblowers and the City Council:

1. Did the Mayor and City Administration follow the Municipal Code in providing work space to Oakland Promise?
2. Does the Mayor's Director of Education work for the City or Oakland Promise? Was the Mayor's Director of Education position authorized and implemented in accordance with City rules? How is this position funded? What are the costs to the City?
3. How was Oakland Promise able to receive financial contributions when it was not a nonprofit organization?
4. What contributions has the City authorized and provided to Oakland Promise? How does the City's share of contributions to Oakland Promise compare to those of Oakland Promise's other partners?

To answer these questions, the Office completed work summarized in the "Methodology" section of this report on page 17.

Investigation Conclusions

This investigation substantiated:

- ✓ **The claim that the Mayor’s Office directed the City Administration to provide work space to Oakland Promise without following Municipal Code requirements (OMC 2.42.110). Specifically, we found:**
 - Employees of an Oakland Promise partner organization used the space for approximately two years, without the City and the partner organization formally agreeing to lease terms, insurance requirements, or rent payments.

- ✓ **Some aspects of the City’s involvement with Oakland Promise were not authorized, lacked transparency, and presented additional risks and costs to the City. For example:**
 - For 16 months, the Mayor’s Office allowed an Ed Fund employee to lead Oakland Promise as the “Mayor’s Director of Education” without executing an agreement to ensure the City’s interests were promoted and protected.
 - Since fiscal year 2017-18, the Mayor’s Office has assigned the City-funded Mayor’s Director of Education position to work for Oakland Promise, without authorization from the City Council as an in-kind contribution to Oakland Promise, and at a cost to the City exceeding \$700,000.

- ✓ **The City’s financial contributions to Oakland Promise – though complex and hard to follow – were neither prohibited nor irregular.**
 - The City Council authorized \$1,518,054 of financial contributions to Oakland Promise through the Oakland Fund for Children and Youth (OFCY)⁷ for the “Brilliant Baby” and “College and Career Access and Success” programs. As of the date of this report, the City paid \$1,117,011 toward these Oakland Promise programs.
 - The City Council has authorized \$2,150,000 from the City’s General Purpose Fund to Oakland Promise’s “K2College” program. As of the date of this report, none of the authorized funding for Oakland Promise’s “K2College” program has been paid.

⁷ The Oakland Fund for Children and Youth “was established in 1996, when Oakland voters passed the Kids First! Initiative (Measure K), an amendment to the City Charter, to support direct services to youth under 21 years of age. In 2009, Measure D replaced Measure K and reauthorized funding for the Oakland Fund for Children and Youth for an additional twelve years (2010-2022). Measure D established OFCY funds as 3% of the City’s unrestricted General Purpose Fund and required a three-year strategic plan to guide the allocation of funds.

Investigation Questions & Findings

1. Did the Mayor and City Administration follow the City's Municipal Code in providing work space to Oakland Promise?

SUMMARY

In 2016, the Mayor's Office directed the City Administrator's Office to provide work space on the 11th floor of City Hall for employees of an Oakland Promise partner organization. The City Administrator's Office provided this space for about two years without a lease or any other formal agreement specifying terms such as rent for the use of the space. This arrangement did not comply with the Oakland Municipal Code (OMC 2.42.110), and contrasts with other third-party organizations that have used City-owned real property.

The Municipal Code requires the City to officially review and authorize the use of City-owned real property by outside entities, and establish lease terms and rent payments

Oakland Municipal Code section 2.42.110 outlines requirements and guidance for the City's handling of outside entities' use of City-owned "real property," which generally gives the City Council the responsibility of approving leases and requires City property to be leased for payment. It further states that rent payments should reflect fair market value unless the City Council determines that renting the space below market value provides compelling benefits to the City or community at large.

For some arrangements, including entities using less than two thousand square feet of leasable space (such as the work space in question), the City Administrator is authorized to negotiate and execute the documents necessary for the lease of such real property.

The Mayor's Office directed the City Administrator's Office to provide space in City Hall without establishing lease terms and rent payments

In 2016, the Mayor's Office directed the City Administrator's Office to provide work space on the 11th floor of City Hall for an Oakland Promise partner organization's employees. The City Administrator's Office provided three work stations equipped with phones and phone extensions, computers, and internet. Up to five employees of this Oakland Promise partner organization used the work space and equipment for approximately two years.

Regarding this work space arrangement, the City Administration did not follow the Municipal Code. The City did not provide us with contracts, resolutions, lease documents, including insurance requirements, or any other authorizing documents related to the use of the space. These documents are important to ensure the City's interests are protected. Additionally, no documents were found formalizing the use of computers, phones, and internet service for the staffers working on behalf of Oakland Promise.

Other third-party entities using City-owned real property have formal agreements and were charged rents

Providing Oakland Promise with space and the use of City equipment without formal consideration, and without terms for compensating the City, is inconsistent with the arrangements the City has with other nonprofits using City owned real property at the Civic Center Complex.

In a June 14, 2019 memo to the Mayor and City Council, the City's Finance Director identified multiple leases to third-party nonprofit tenants at the Civic Center Complex totaling over 24,000 square feet. We found other nonprofits occupying Civic Center space were offered rents below what the market would demand, and the use of space was formally authorized and documented. These nonprofits also provided verification of insurance coverage.

2. Does the Mayor's Director of Education work for the City or Oakland Promise? Was the Mayor's Director of Education position authorized and implemented in accordance with City rules? How is this position funded? What are the costs to the City?

SUMMARY

The Mayor's Director of Education works for Oakland Promise and the position was separately funded by the Ed Fund and the City of Oakland through three different funding sources (See Exhibit 1).

When the Mayor's Office publicly announced the new Director of Education in June 2015, it was not an authorized City position. A person identified as the Mayor's Director of Education physically worked within the Mayor's Office but was employed by the Ed Fund. The terms for this arrangement were not formally developed or agreed upon by the City or the Ed Fund.

During fiscal year 2016-17, the Mayor's Office sought and received authorization from the City Council to add the position of the Mayor's Director of Education, and secured funding for it through a grant from the Ed Fund. The Ed Fund employee, who had already been identified as the Mayor's Director of Education, applied for the new City position and was subsequently hired to fill it. For fiscal years 2017-18 and 2018-19 (right after the Ed Fund grant expired in June 2017), the Mayor's Office secured funding for the position from the City's General-Purpose Fund through the City's biannual budget process.

Adding the Mayor's Director of Education position to the City's workforce has cost the City's General Purpose Fund \$704,374 as of November 7, 2019. The role was previously funded by the Ed Fund at no cost to the City.

The Mayor's Director of Education works for Oakland Promise

The Mayor's Director of Education works on behalf of Oakland Promise. This is apparent from public presentations, witness accounts, and job duties assigned to the Mayor's Director of Education between fiscal years 2015-16, through 2018-19. Yet, Mayor's Office did not specifically identify the Director of Education as an in-kind contribution to Oakland Promise until June 2019. This disclosure was made in a public report to the Joint City Council and Oakland Unified School District Education Partnership Committee.

Initially, the Mayor's Director of Education was not a City employee

Beginning in July 2015, the Mayor's Director of Education worked within the Mayor's Office as an Ed Fund employee. The City Council did not authorize this, and the City Administration did not formalize this arrangement with a written agreement such as a memorandum of understanding (MOU). This arrangement continued for 16 months, until November 2016, when the position was added to the City's workforce.

As Exhibit 1 shows, the position worked for the City of Oakland and the Ed Fund and was funded by three different sources: the Ed Fund, an Ed Fund grant, and the City’s General Purpose Fund.

Exhibit 1: The Mayor’s Director of Education has been an employee for 2 separate organizations and has been funded by three different sources

| Employer (funding source) | July 2015- Nov. 2016 | Nov. 2016 – Jun. 2017 | July 2017 - Present |
|--|-----------------------------|------------------------------|----------------------------|
| Ed Fund (Ed Fund) | 16 months | | |
| City of Oakland (Ed Fund grant) | | 8 months | |
| City of Oakland (General Purpose Fund) | | | 28 months |

Source: City Auditor’s summary based on review of financial records, payroll records, grant terms, and City budget documents.

Authorized and formal written agreements are essential for non-employees working within City departments

The arrangement in which an Ed Fund employee worked in the Mayor’s Office without a written agreement, contrasts with how the City has handled other non-employees working within City departments. For example, a City of Portland employee temporarily worked for the City of Oakland between December 2015 and June 2016 to help establish the City’s new Department of Race & Equity. In that case, the City Administration informed the City Council, which unanimously approved a resolution authorizing the City Administrator to enter into a MOU with the City of Portland. The MOU between Portland and Oakland included terms such as compensation, the handling of confidential information, liability issues, and insurance requirements.

A written agreement between the Ed Fund and the City would have provided clarity and transparency to the working arrangement and defined the terms, expectations, and risks for both parties. In addition, an agreement would have been useful in formally outlining the interests being promoted.

The Mayor’s Director of Education position was created and funded by a grant from the Ed Fund for much of Fiscal Year (FY) 2016-17

In September 2016 – three months into FY 2016-17 – the Mayor’s Office sought and received approval from the City Administration to add a new “limited duration grant-funded” City position with the title of “Mayor’s Director of Education.” On October 4, 2016, the City Council passed Resolution 86400, which officially authorized the City Administration to appropriate \$207,000 in grant funds from the Ed Fund to be used to fully fund the position for the remainder of fiscal year 2016-17. At this time, the Mayor’s Director of Education became an official City position. The Ed Fund employee who had previously been identified as the Mayor’s

Director of Education, subsequently applied for the position and was selected to fill it. This arrangement spanned eight months — November 2016 through June 2017.

Since FY 2017-18, the Mayor’s Director of Education has been funded from the City’s General Purpose Fund resulting in \$704,374 in personnel costs to date

The City Council authorized \$550,093 for the Mayor’s Director of Education position in the 2017-19 Adopted Policy Budget through the City Council-approved biannual budget process. Funding for the position was not changed during the 2019-21 budget process, and the position continues to be funded from the General Purpose Fund.

City financial records show that the Mayor’s Director of Education has accounted for \$704,374 in direct personnel-related costs from the City’s General Purpose Fund between July 1, 2017 and November 7, 2019.

Other employees working for Oakland Promise in City Hall remained employees of Oakland Promise partner organizations.

3. How was Oakland Promise able to receive financial contributions when it was not a nonprofit organization?

SUMMARY

Oakland Promise’s nonprofit partner organizations received contributions directly. For example, the City of Oakland provided funding to the nonprofit organizations, EBCF and the Ed Fund, specifically for Oakland Promise programs (See Exhibit 3). In addition, between 2016 and 2019, the Ed Fund provided fiscal sponsorship for Oakland Promise, allowing the Ed Fund to receive and spend funds on behalf of Oakland Promise. These funding arrangements for Oakland Promise were legitimate.




To better understand the evolution of Oakland Promise and its multi-agency partnership, see Appendix A.

Initially, Oakland Promise was a multi-agency partnership

Oakland Promise was a multi-agency partnership that included the Mayor’s Office, OUSD, EBCF, the Ed Fund, and various other partners.

These individual organizations developed and implemented their own programs, and collaborated on some, including some Oakland Promise programs. Exhibit 2 details some of the organizations that were included in the Oakland Promise partnership, and the different Oakland Promise programs they individually and jointly implemented.

Exhibit 2: A partnership of nonprofits and government agencies led different Oakland Promise programs

| Partner organization leads | Sector | Oakland Promise programs |
|---|---|---|
| Oakland Unified School District (OUSD) |  Public Education | K2College Future Centers* |
| East Bay College Fund (EBCF) |  Philanthropy | *College Scholarships and Completion College and Career Access and Success |
| Oakland Public Education Fund (Ed Fund) |  Philanthropy | Brilliant Baby *Future Centers *College Scholarships and Completion |

Source: City Auditor’s summary based on program materials, memoranda, City financial records, and accounts of employees of Oakland Promise partner organizations.

*Note: Some Oakland Promise programs were led by multiple organizations.

The Ed Fund was Oakland Promise’s fiscal sponsor, lending its status as a nonprofit organization and more

On October 13, 2016, The Ed Fund became a fiscal sponsor of Oakland Promise. The Ed Fund established a restricted account to receive charitable donations of cash and other property, and to make disbursements for Oakland Promise. The fiscal sponsorship agreement was critical to Oakland Promise’s evolution as it allowed Oakland Promise to receive and disburse funds on behalf of the project and retain employees to support each of its individual programs.

The fiscal sponsorship agreement also delegated oversight of program activities to the Project Administrator, who was the Ed Fund employee known as the Mayor’s Director of Education. Ultimately, Oakland Promise, as the sponsored project of the Ed Fund, was subject to the direction and oversight of the Ed Fund Board.

On June 30, 2018, an amended and restated fiscal sponsorship agreement was executed to clarify roles, amend the fee structure, and affirm the continued operation and fiscal sponsorship of the project. At this time, the “Oakland Promise” project was more formally defined in this fiscal sponsorship agreement as The Oakland Promise Leadership Council⁸ (OPLC), an unincorporated nonprofit association. This amended agreement stated the Ed Fund Board of Directors would delegate oversight of program activities to OPLC, subject to the ultimate direction and fiduciary responsibility of the Ed Fund Board. Additionally, the Ed Fund provided administrative, financial, human resources, and grant management services to OPLC for a fee. This fiscal sponsorship agreement with the Ed Fund was terminated effective June 30, 2019.

Oakland Promise is now a registered nonprofit organization

As of June 27, 2019, Oakland Promise is a registered nonprofit as a result of EBCF changing its name to Oakland Promise, modifying its articles of incorporation, and registering with the Secretary of State. The first Chief Executive Officer (CEO) for Oakland Promise assumed her position effective July 1, 2019.

⁸ Oakland Promise retained its name and was not replaced by the “Oakland Promise Leadership Council” outside of the formal fiscal sponsorship agreement.

4. What contributions has the City authorized and provided to Oakland Promise? How does the City's share of contributions to Oakland Promise compare to those of Oakland Promise's other partners?

SUMMARY

The City Council has separately authorized funding to Oakland Promise through the annual grant process for the Oakland Fund for Children and Youth (OFCY), and the City's biannual budget process.

Through the City's annual grant funding process, the City Council authorized \$1,518,054 of OFCY funding for Oakland Promise's "Brilliant Baby" and "College and Career Access and Success" programs between fiscal years 2016-17 and 2019-20. As of September 2019, the City has paid \$1,117,011 of these OFCY funds (See Exhibit 3).

Through the City's biannual budget process, the City Council authorized \$2,150,000 for Oakland Promise's "K2College" program from the City's General Purpose Fund between fiscal years 2016-17 and 2019-21. None of the authorized funding for "K2College" has been spent (See Exhibit 4).

The City's full contributions to Oakland Promise exceed those identified in public reports. The City contributed over \$4 million to Oakland Promise including in-kind contributions (See Exhibit 6).

Oakland Promise was structured as a multi-agency partnership with multiple agencies receiving and spending on Oakland Promise's behalf. We could not compare the City's total financial contributions to Oakland Promise against other agencies without identifying, receiving records and verifying all the individual partners related financial records.

The City authorized grant funding through the Oakland Fund for Children and Youth to Oakland Promise programs

For fiscal years 2016-17 through 2019-20, the City Council authorized funding for Oakland Promise's "Brilliant Baby" and "College and Career Access and Success" programs through OFCY's annual grant process. This funding respectively passed from the City directly to the Ed Fund and EBCF, which individually received funds on behalf of Oakland Promise programs through City Council-approved resolutions. Exhibit 3 details the amounts authorized and spent as recorded in the City's financial records.

Exhibit 3: Between fiscal years 2016-17 and 2019-20*, the City authorized \$1,518,054 from the Oakland Fund for Children and Youth to Oakland Promise programs, and made \$1,117,011 in payments

| Fiscal year | EBCF "College & Career Access and Success" | | Ed Fund "Brilliant Baby" | | Total | |
|--------------|--|--------------------|-----------------------------|------------------|--------------------|----------------------|
| | authorized | spent | authorized | spent | authorized | spent |
| 2016-17 | \$213,000 | \$210,001 | \$133,800 | \$127,400 | \$346,800 | \$337,401 |
| 2017-18 | \$213,000 | \$178,067 | \$208,800 | \$167,090 | \$421,800 | \$345,157 |
| 2018-19 | \$219,390 | \$219,388 | \$215,064 | \$215,064 | \$434,454 | \$434,452 |
| 2019-20* | \$0 | \$0 | \$315,000 | \$0 | \$315,000 | \$0 |
| Total | \$645,390 | **\$607,457 | \$872,664 | \$509,554 | \$1,518,054 | **\$1,117,011 |

Source: City Auditor's summary of City Council-approved resolutions and City financial records

*Note: Fiscal year 2019-20 amounts reflect only part of the current fiscal year's financial records

**Note amounts are rounded up to the nearest dollar making totals minimally different from those in Oracle

The City Council allocated funding to Oakland Promise programs through the City's General Purpose Fund

Funding was authorized from the City's General Purpose Fund to Oakland Promise's "K2College" program through the City's biannual budget process for fiscal years 2016-17 through 2020-21. None of the "K2College" funding has been disbursed as disbursing these funds would have incurred fees in accordance with the fiscal sponsorship agreement. According to Oakland Promise's CEO, the City can disburse these funds to Oakland Promise, now that it is a nonprofit organization.

Exhibit 4: Between fiscal years 2016-17 and 2020-21, the City authorized \$2,150,000 from its General Purpose Fund to Oakland Promise's "K2College" Program

| Fiscal Year | Authorized | Spent |
|--------------|--------------------|------------|
| 2016-17 | \$150,000 | \$0 |
| 2017-18 | \$500,000 | \$0 |
| 2018-19 | \$500,000 | \$0 |
| 2019-20 | \$500,000 | \$0 |
| 2020-21 | \$500,000 | \$0 |
| Total | \$2,150,000 | \$0 |

Source: City Auditor's summary of information outlined in City budget documents and financial records

The City's full contributions to Oakland Promise exceed those identified in public reports

In August 2015, City Council passed Resolution 85751, authorizing the City Administrator to enter into a memorandum of understanding (MOU) with the East Bay College Fund to implement Oakland Promise. A memo issued from the Mayor to City Council initiating the MOU, stated that the "MOU has no cost implications to the City of Oakland."

It wasn't until June 2019, that a public report summarized the City's financial and in-kind contributions to Oakland Promise.

On June 17, 2019, the Mayor's Office reported contributions from the City of Oakland to Oakland Promise, to the Joint City Council and Oakland Unified School District Education Partnership Committee. The report (Exhibit 5) included the \$1.15 million in financial contributions the City had authorized for K2College between fiscal years 2016-17 and 2018-19.⁹ It also included the in-kind contributions of office space, office equipment, and the Mayor's Director of Education position that had not been previously authorized. The report did not associate any cost to the in-kind contributions. Additionally, the Mayor's Office did not include the \$1,518,054 in City financial contributions authorized through the annual OFCY grant process.

Exhibit 5: The June 2019 presentation of the City's contributions to Oakland Promise by the Mayor's Office

10. Show the direct and indirect financial contributions, including the use of office space, use of city resources (computer, phone, internet, etc.) for how many people, was rent paid? Show these direct & indirect contributions both from City and OUSD

Both the City of Oakland and Oakland Unified School District have been incredible supporters and partners of the Oakland Promise, providing direct dollars and other in-kind services. These include:

City of Oakland:

- \$1.15M total from 2016-19 for Kindergarten to College Program
- 11th Floor of City Hall Office Space from 2016-2018
- Desktop computers, phone, and internet service for approximately 5 Oakland Promise Staff (note: additional Oakland Promise staff had laptops purchased through philanthropically-funded dollars and used the free City of Oakland public wifi)
- Mayor's Director of Education funded by the City for 17-18 & 18-19 (note: the Governing Board and incoming CEO of Oakland Promise, not the Mayor's Director of Education, has decision-making authority on the Oakland Promise now and moving forward. The OUSD Superintendent, Mayor and Mayor's Director of Education are ex-officios are non-voting members of the governing board.

Source: Screenshot from the June 6, 2019 informational report presented to the Joint City Council Oakland Unified School District Education Partnership Committee

⁹ On June 24, 2019 the City Council authorized an additional \$1 million from the General Purpose Fund to K2College during the 2019-2021 biannual budget process.

Exhibit 6: The City contributed over \$4 million to Oakland Promise including in-kind contributions

| Contributions | Financial/In-kind | Amount |
|---------------------------------|--------------------------|---------------------|
| OFCY Brilliant Baby grant | Financial (authorized) | \$ 872,664 |
| OFCY College & Career grant | Financial (authorized) | \$ 645,390 |
| City General Fund for K2College | Financial (authorized) | \$ 2,150,000 |
| Mayor’s Director of Education | In-kind (unauthorized) | \$ 704,374 |
| Office space and equipment* | In-kind (unauthorized) | <i>unknown</i> |
| Total Contributions | | \$ 4,372,428 |

Source: City Auditor’s summary of information outlined in City budget documents and financial records, and City Council-approved resolutions

*We did not estimate the value of the 11th floor work space and use of City equipment.

We could not compare the City’s total share of Oakland Promise financial contributions to those of other partner organizations

Oakland Promise, as a multi-agency partnership, had contributions made to different partner organizations on its behalf. Therefore, without identifying, receiving records, and verifying all individual Oakland Promise-related financial records, we could not quantify the funds under management by the various partner agencies.

According to Oakland Promise’s new CEO, the organization has compiled, and quantified financial transactions made to and by the Ed Fund on behalf of Oakland Promise throughout the years, and those contributions will be verified during an upcoming independent financial audit.

Recommendations

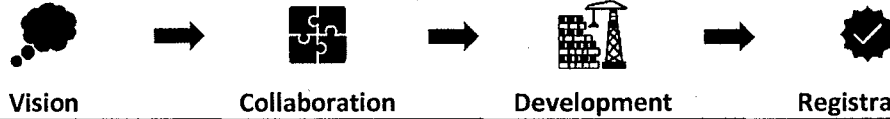
1. The Mayor and the City Administration should comply with the Municipal Code in providing space to other organizations.
2. The City Council should request the Administration to annually report on leases or other arrangements with organizations using City facilities. This report should include the level of subsidy these organizations are receiving from the City.
3. The City Council should develop a formal policy on appropriate justifications for allowing other organizations to use City facilities.
4. The City Council should establish a policy for non-City employees working at City facilities to have a formal agreement that protects the interests of both parties.
5. The City Council should develop a policy that establishes when in-kind contributions of personnel are appropriate. The policy should require such in-kind contributions be formally authorized in advance and any risk to the City appropriately addressed.

Methodology

After completing the preliminary review, the Office conducted an investigation to arrive at the findings and conclusions in this report. This work included:

- Reviewing memoranda of understanding, contracts, etc. related to the City's agreement with third-parties' use of space
- Reviewing the City Charter, City Municipal Code, and administrative procedures
- Reviewing the State Constitution
- Interviewing City staff members
- Interviewing members of the public
- Interviewing staff members of Oakland Promise and partner organizations
- Reviewing City financial records
- Reviewing news articles
- Reviewing relevant meetings of the City Council and committees, as well as related documents

Appendix A: The 5 Year Evolution of Oakland Promise



| | Vision | Collaboration | Development | Registration |
|--|---|---|---|---|
| Milestones | 2014: Oakland Promise partnership began | 2015: The Mayor’s Office became a strategic leader 2015: MOU between City of Oakland and EBCF clarified roles and responsibilities | 2016: Oakland Promise publicly launched with 4 programs: Brilliant Baby, K2College, Future Centers, College Scholarships and Completion 2016: Fiscal sponsorship agreement defined the “Oakland Promise “project” and the Ed Fund agreed to receive assets and incur liabilities on behalf of Oakland Promise. Mayor’s Director of Education identified as “Project Administrator” 2018: Fiscal sponsorship agreement amended. The Oakland Promise Leadership Council (OPLC) identified as “an unincorporated nonprofit association.” New fee schedule is posted | 2019: Ed Fund transferred OP assets to EBCF 2019: The fiscal sponsorship agreement with OPLC/Oakland Promise dissolves 2019: EBCF changed name to “Oakland Promise” 2019: “Oakland Promise” became a registered nonprofit organization |
| Cross-sector partners | OUSD EBCF | OUSD EBCF Ed Fund Mayor’s Office | OUSD EBCF Ed Fund Mayor’s Office | OUSD EBCF Ed Fund Mayor’s Office Oakland Promise nonprofit org |
| Partners that could receive City money and carry out programs | EBCF | EBCF | EBCF Ed Fund | EBCF Ed Fund Oakland Promise nonprofit org |

Source: City Auditor’s summary based on program materials, memoranda, financial sponsorship agreements, legal filings, and accounts of employees of Oakland Promise’s partner organizations.



WHISTLEBLOWER HOTLINE

To File a Complaint

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1-888-329-6390 (Interpreter available)

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Office of the City Auditor

1 Frank H. Ogawa Plaza • 4th Floor, City Hall • Oakland, CA 94612
(510) 238-3378
CityAuditor@OaklandCA.gov



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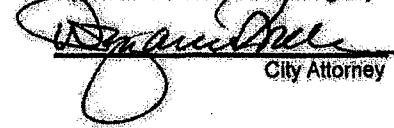
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Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. 85809 C.M.S.

Introduced by Councilmember

RESOLUTION RATIFYING ACTION TAKEN BY THE MAYOR DURING THE OAKLAND CITY COUNCIL 2015 ANNUAL RECESS IN CONFORMANCE WITH THE COUNCIL'S RULES OF PROCEDURE CODIFIED IN RESOLUTION NO. 82580 C.M.S., PASSED MARCH 2, 2010

WHEREAS, the City Council has taken its annual recess beginning August 1, 2015 and ending September 7, 2015; and

WHEREAS, pursuant the Council's Rules of Procedure codified in Resolution No. 82580 C.M.S., passed March 2, 2010 wherein certain authority to take action on behalf of the City Council is delegated to the Mayor during the annual recess, the following action was taken:

August 18, 2015 – City of Oakland Recess Agenda

1. A Resolution Fixing The Rate Of Property Tax and Levying A Tax On Real And Personal Property In The City Of Oakland For Fiscal Year (FY) 2015-2016 For Voter Approved Measure M (The Emergency Medical Services Retention Act), Measure N (The 1997 Paramedic Services Act), Measure Q (The Library Services And Retention Act), And Measure Z (The Public Safety And Services Act Of 2014)
2. A Resolution Amending Resolution No. 84522 CMS Authorizing a Contract with Causa Justa to Administer the Oakland Day Labor Program, to Extend the Contract to November 30, 2015
3. Resolution Fixing the Rate of Property Tax and Levying a Tax on Real and Personal Property in the City of Oakland for Fiscal Year 2015-2016 for Voter-Approved Indebtedness

August 25, 2015 – City of Oakland Recess Agenda

1. A Resolution Authorizing The City Administrator To
 - 1) Enter Into Grant Agreements To Provide Operational Support To Senior Centers For Fiscal Years 2015-2016 And 2016-2017 With:

- A) Family Bridges In The Amount Of \$159,360,
- B) Unity Council In The Amount Of \$350,592,
- C) Vietnamese American Community Center Of The East Bay In The Amount Of \$36,720,
- D) Vietnamese Community Development Inc. In The Amount Of \$36,720; and

2) Enter Into A Grant Agreement With Service Opportunity For Seniors In An Amount Of \$50,000 For The Meals On Wheels Program To Provide Meals To Seniors For Fiscal Year 2015-2016

2. A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Understanding (MOU) With The East Bay College Fund To Implement The Oakland Promise Initiative Which Will Provide Children And Families "Cradle To Career" Educational, Financial, And Other Support For Higher Education Opportunities

3. Resolution Authorizing The Examination Of Prepaid Mobile Telephony Services Surcharges And Local Charge Records;

now, therefore, be it

RESOLVED: That the Oakland City Council does hereby ratify the above-mentioned action taken by the Mayor during the City Council annual recess commencing August 1, 2015 and ending September 7, 2015.

OCT 06 2015

IN COUNCIL, OAKLAND, CALIFORNIA, _____

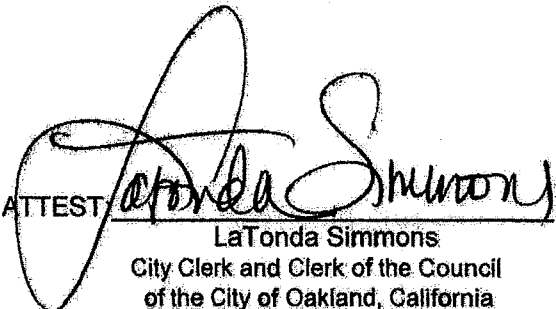
PASSED BY THE FOLLOWING VOTE:

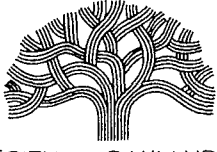
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLÉN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST 
 LaTonda Simmons
 City Clerk and Clerk of the Council
 of the City of Oakland, California



CITY OF OAKLAND

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OAKLAND

2015 AUG 13 AM 8:54

AGENDA REPORT

TO: SABRINA B. LANDRETH
CITY ADMINISTRATOR

FROM: Mayor Libby Schaaf

SUBJECT: MOU with East Bay College Fund

DATE: August 11, 2015

City Administrator
Approval

Date

8/12/15

COUNCIL DISTRICT: City- Wide

RECOMMENDATION

Mayor Schaaf recommends that the City Council adopt a resolution to enter into a Memorandum of Understanding (MOU) with the East Bay College Fund to Implement the Oakland Promise Initiative which will provide children and families cradle to career education, financial, and other support for higher education opportunities.

East Bay College Fund is providing significant funding and support to the Oakland Promise Initiative. It is important that the Board of Directors have a clear understanding and collaboration with the City, as they scale their program in conjunction with the Mayor's Oakland Promise initiative. Additionally these discussions will begin at the board's annual retreat the first week of September.

OUTCOME

This MOU is to provide clarity of roles and responsibilities between the Mayor's Office and East Bay College Fund for the sole purpose of implementing the Oakland Promise Initiative, a cross-sector partnership between the Oakland Unified School District (OUSD), the Mayor's Office, and the East Bay College Fund (EBCF). The vision for the Oakland Promise initiative is that we as a community will ensure every child in Oakland graduates high school with the expectations, resources, and skills to complete college and be successful in the career of their choice. The MOU provides that the Oakland Mayor's Office will appoint one voting member to the EBCF Board of Directors, subject to the approval of the EBCF Board.

BACKGROUND/LEGISLATIVE HISTORY

EBCF is a college access and persistence organization, focused on graduating underrepresented Oakland students from college. EBCF awards over \$1,000,000 in scholarships annually and has over a decade of experience with Oakland students, providing college advising, counseling, mentoring, and persistence services high school through college. The EBCFs college graduation rate is 80% - four times the national average of this demographic. Oakland Promise will leverage and scale these assets of EBCF to support students across the city.

ANALYSIS

Oakland Promise: Cradle to Career

Imagine that every child in Oakland was on a track to college from the day they were born. How? By creating an expectation that college is possible, helping Oakland parents and children save and plan for college at every stage of a child's life, and providing the critical guidance and support needed to access college and persist to earn a degree. *The vision of the Oakland Promise is that we as a community will ensure every child in Oakland graduates from high school with the expectations, resources, and skills to complete college and be successful in the career of their choice.*

WHY?

Completing post-secondary education—an associates or undergraduate degree, or career technical education certificate—has tremendous impact on earning power and upward mobility. Low-income children are five times more likely to move up the income ladder as adults if they achieve a college degree.ⁱ However, too many Oakland students do not believe that college is a real possibility in their future. Almost four in ten Oakland high school students do not complete high school, and among our low-income graduates who do attend college, only 13% graduate within six years.

When children know they have money set aside from an early age for college or career technical education, they and their parents embrace a college success expectation and feel inspired to invest in this goal. *Research shows that children with \$500 (or even less) in a college savings account are three times more likely to attend college and four times more likely to graduate.ⁱⁱ In Oakland, 80% of low-income teens who receive advising, mentors, college scholarships and retention support through the East Bay College Fund secure their college degrees.ⁱⁱⁱ*

HOW WILL OAKLAND PROMISE WORK?

At key stages—at birth, the start of kindergarten, and in middle school and high school—the Oakland Promise will help parents and children save, build their financial know how, and connect to needed support systems and resources. The Oakland Promise initiative will invest in Oakland's children in every stage of their lives:

Brilliant Baby: A dual child and parent savings strategy will help a target group of low-income mothers prepare their babies for academic success. College savings accounts will be established with seed funding for the newborns and mothers will be supported to build their own savings, increase their financial know how, and optimize their babies' early years of development.

Kindergarten to College: Beginning in kindergarten, all of Oakland's public school children and their parents will have the opportunity to save for college and earn matching deposits. Every child enrolled in kindergarten will automatically receive a college savings account with an initial deposit and incentives for them and their families to save. For kindergarteners who already have

savings accounts from the Brilliant Baby program, deposits will be made into those accounts. Financial skills and a college going culture will be supported in the classroom throughout grade school.

Middle School through College to Career: Beginning in middle school and continuing throughout high school, Oakland's students will be supported to enroll in and complete college or career technical education programs. The East Bay College Fund will expand to offer advising, scholarships and persistence support to all qualifying Oakland students. Each middle and high school campus will have a Future Center staffed by college advisors to help students explore college options and apply for colleges and financial aid. High-value scholarships of \$2,000 for career and technical education and up to \$16,000 for four-year schools will be available to qualifying students. And mentors will provide ongoing and intensive support to persist through and graduate from college.

PUBLIC OUTREACH/INTEREST

Discussions have occurred with the East Bay College Fund, Oakland Unified School District and Councilmember Annie Campbell Washington, as well as potential funders. No additional public outreach is required at this time.

COORDINATION

The Office of the City Attorney was consulted in preparation of this report.

COST SUMMARY/IMPLICATIONS

This MOU has no cost implications to the City of Oakland.

FISCAL/POLICY ALIGNMENT

Achieving the Oakland Promise initiative would allow the City to better meet the goals outlined by the Mayor and Council President in their budget priorities:

- Holistic Community Safety
- Sustainable and Vibrant Infrastructure
- Equitable Jobs and Housing
- Responsive and Trustworthy Government

SUSTAINABLE OPPORTUNITIES

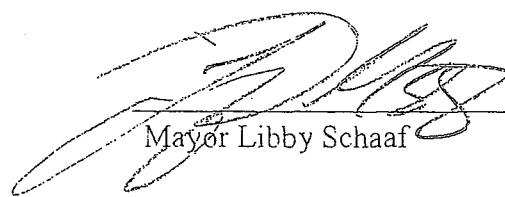
Economic: The Oakland Promise will help parents and children save, build their financial know how, and connect to needed support systems and resources. The Oakland Promise will invest in Oakland's children in every stage of their lives.

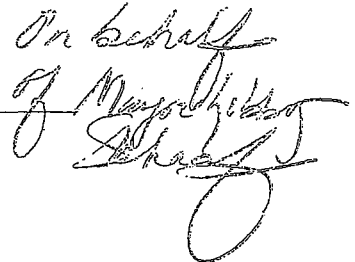
Environmental: No environmental opportunities have been identified.

Social Equity: The Oakland Promise initiative will ensure better educational outcomes for all of Oakland's young people allowing them to access 21st careers.

For questions regarding this report please contact Shereda Nosakhare, Deputy Chief of Staff at (510) 238-7439.

Respectfully submitted,


Mayor Libby Schaaf

On behalf of Mayor Libby Schaaf


Reviewed by: Tomiquia Moss
Chief of Staff, Office of the Mayor

Prepared by:
Shereda Nosakhare
Deputy Chief of Staff, Office of the Mayor

Attachment A: MOU between East Bay College Fund and City of Oakland
Attachment B: Oakland Promise Vision

ⁱ Diana Elliott, Pew Charitable Trusts, Economic Mobility Project presentation at the Asset Learning Conference, 2014.

ⁱⁱ Assets and Education Initiative and University of Kansas School of Social Welfare, *Building Expectations, Delivering Results: Asset-Based Financial Aid and the Future of Higher Education*, 2013.

ⁱⁱⁱ East Bay College Fund, 2015 Outcomes report

**Draft - Memorandum of Understanding for Implementation of the Oakland Promise
between the Mayor's Office And
East Bay College Fund**

Introduction:

Since September 2014, the Oakland Unified School District, has been working to build an Oakland Promise Initiative with East Bay College Fund (EBCF). In January 2015, the Mayor's Office became strategic leaders in championing Oakland Promise as a cross-sector partnership.

Purpose: The purpose of this Memorandum of Understanding (MOU) is to provide clarity of roles and responsibilities between the Mayor's Office and East Bay College Fund for the sole purpose of implementing the Oakland Promise Initiative, a cross-sector partnership between the Oakland Unified School District, the Mayor's Office and the East Bay College Fund. The vision for the Oakland Promise initiative is that we as a community will ensure every child in Oakland graduates high school with the expectations, resources, and skills to complete college and be successful in the career of their choice.

This MOU shall be effective as of September 1, 2015.

Organizations:

The Oakland Mayor's Office is committed to developing a community that will ensure that every child graduates high school with the expectations, resources and skills to complete college and be successful in their career of choice. The Mayor's vision, "bully pulpit", fundraising, and convening expertise are leading the Oakland Promise Cradle to Career.

East Bay College Fund (EBCF) is a college access and persistence organization, focused on graduating underrepresented Oakland students from college. EBCF awards over \$1,000,000 in scholarships annually and has over a decade of experience with Oakland students, providing college advising, counseling, mentoring, and persistence services high school through college. The EBCF's college graduation rate is 80% - four times the national average for this demographic. Oakland Promise will leverage and scale these assets of EBCF to support students across the city.

Oakland Unified School District (OUSD) is committed to have every student graduate with the skills to be college, career, and community ready. OUSD, as Oakland's educational leader, is committed to increasing the number of students entering college and career programs and persisting to a degree.

Definition of Terms used in this document:

Oakland Promise- Cradle to Career College Program, a cross-sector collaboration between the Oakland Unified School District, Oakland Mayor's Office, East Bay College Fund, Brilliant Babies, and K2College.

Oakland Promise Advisory Committee- A convening of organizations leading key components of Oakland Promise that advises on the planning, implementation, and evaluation of the Oakland Promise. They will be responsible for making sure that we generate the necessary revenue and meet appropriate timelines to make the Oakland Promise occur with high quality and appropriate scale. This group is composed of representatives from the Mayor's Office, Oakland Unified School District, Oakland Public Education Fund, the East Bay College Fund and others providing technical support as needed.

CAPS Program- the working title used in this document to describe what was formerly called Oakland Promise that East Bay College Fund is leading--the Future Centers/College Access work (in partnership with OUSD), Persistence, and Scholarships

External Communication:

I. Marketing

Mayor's Office, EBCF and OUSD agree to use the name "Oakland Promise" for the entire cradle to college effort.

The Oakland Promise Advisory Committee will create marketing collateral for The Oakland Promise/Cradle to College to reflect the interface of all aspects of the work from birth to career that will include the CAPS Program. Collateral specifically describing the CAPS Program work will highlight the Mayor's Office and OUSD and will include district, city, and EBCF logos. Representatives from each body will have an opportunity for input. The Oakland Promise Advisory Committee will agree on basic talking points and promote appropriate social media and will cross market between institutions as appropriate.

II. Leadership/Governance:

1. There is a working Oakland Promise Advisory Committee to advise on overall Oakland Promise strategy. Representatives include the Oakland Mayor's Office, OUSD, Oakland Public Education Fund, East Bay College Fund and others who are responsible for the Oakland Promise services to the participating age groups. East Bay College Fund will participate as leader of the middle school to career effort.
2. EBCF is the governing, fiduciary, and implementing organization for CAPS Program, the middle school to career program of Oakland Promise. This includes all Oakland Promise Scholarships and persistence services and, in partnership with OUSD, all Promise Future Centers.
3. EBCF and OUSD will develop MOU's with college partners, and EBCF will ensure implementation of the services.
4. Oakland Mayor's Office and OUSD will each appoint one voting member to the EBCF Board of Directors, subject to the approval of the EBCF Board. (Typically 16-20 members total, meeting bi-monthly)
5. Annually, an independent auditor will audit EBCF's finances and the results will be distributed to partners.
6. EBCF's College Access and Persistence programming will be evaluated annually by an independent program evaluator and shared with partners (currently Root Cause Evaluators).
7. EBCF is responsible to convene other groups working in the college access and persistence field for best coordination and implementation, to sub-contract support for additional services if needed, collect and provide data

on objectives, and serve as lead agency responsible to implement the services and fulfill the outcomes of the Oakland Promise middle school through college (CAPS).

III. Fundraising

1. EBCF currently awards over \$1,000,000 in scholarships annually and provides over \$500,000 in services. It has over a decade of experience with Oakland students, providing mentoring and persistence services district-wide through college. Oakland Promise will leverage and scale these assets of EBCF to support students across the city.
2. Fundraising for CAPS Program is conducted in a unified and supportive approach. All partners understand that in order for Oakland Promise to be successful, students must not only enter college but also persist and graduate. Therefore, to sponsor a Future Center, the donor must also sponsor a portion of the scholarships and persistence services for the students at that school.
3. In discussions with major donors and industry partners all partners will include requests for volunteers and mentors to serve in the CAPS mentoring program whenever possible.
4. The main Advisory Committee partners will request a letter of support from each partner for grant writing purposes and will provide the same for partners, including the City of Oakland.
5. Partners will work together to support outreach and follow-up to donors.

IV. Contribution of Partners

East Bay College Fund:

1. EBCF anticipates a contribution of \$1,500,000 or more annually in a combination of scholarships, persistence services, and funding match with OUSD for advisors.
2. EBCF, with OUSD, will convene college access and persistence partners across the city to connect Oakland Promise services and scholarships and to build best practices, reinforce each other's efforts, and ensure all of Oakland's students are served.
3. EBCF will provide \$15,000 match with OUSD for a FT College Advisor for three large school Future Centers.
4. EBCF, in combination with Oakland Promise funding, will administer multi-year scholarships for students attending community college and 4-year colleges, including transfer support for students transferring from community college to four-year schools. EBCF will connect the scholarships to the persistence services and best practices in college success to help students complete their degrees. Anticipated amounts are up to \$3,000 for community college and up to \$16,000 for

4-year colleges. Students who transfer in three years will qualify for up to \$8,000 in additional 4-year college funding.

5. As governing board, EBCF will determine the amount of scholarships and the requirements, which are subject to change based on funding and consideration of best practices in persistence. The EBCF Scholarship committee will have the right to make exceptions to their policy on based on individual special circumstances, and to deny or discontinue funding an individual student.
6. EBCF will develop a college-student led committee to help design and advise on CAPS services provided by Oakland Promise.
5. EBCF will share access, scholarship and persistence data with OUSD and the Oakland Promise Advisory Committee.
6. EBCF will negotiate and maintain MOU's with colleges to support persistence and scholarship matching funds to support Oakland Promise. EBCF will work with implementation of college agreements on an individual student level.
7. EBCF, with Promise funding, will offer college persistence services for every OUSD student from spring of senior year through college:
All College students 2 and 4-year schools:
 - Additional support services through persistence programs offered by colleges under MOUs with EBCF to provide services for Oakland students. The vision is that each Oakland student would receive additional academic counseling, tutoring, cohort services, and scholarship matching funds as an Oakland Promise student attending a partner college.
 - Financial aid and financial literacy support. Support for annual completion of the FAFSA, review of financial aid packages and support for challenges and appeals, and annual financial training.
 - CREWS Peer Mentoring Cohorts that provide bi-weekly support for freshman and sophomore students from Oakland upper-classmen on their college campus or online.
 - Reboot counseling services to students who drop or stop out of college and want to return
 - Retreats twice a year throughout college to gather Oakland students together to support each other, learn hard and soft skills of persistence, and celebrate their successes each year.**Additional services for four-year college students:**
 - Persistence counseling support throughout college, including a minimum of six sessions per student, starting in the summer before college.
 - A mentor to support all students attending college in California (with the aim to include all students nation-wide) throughout their college journey, with personal support, college navigation advice, financial aid, and career development/networking.

Oakland Mayor's Office:

1. Oakland Mayor's Office will convene and lead the Oakland Promise Advisory Committee that will advise the overall Oakland Promise.
2. Oakland Mayor's Office will use its "bully pulpit" to help educate the community about college access and persistence challenges and how Oakland Promise will transform individuals, families and the city.
3. Oakland Mayor's Office will engage in fundraising with OUSD & EBCF to industry and individuals to help fund the CAPS Program with an overall goal of \$35,000,000 and a minimum goal of \$5,000,000 per year. EBCF will oversee and administer funding for scholarships and persistence.
4. Mayor will appoint a representative to serve on the EBCF board of directors, which is the governing body (over seeing scholarship and persistence) subject to approval of the EBCF Board.
5. Oakland Mayor's Office will provide communication support, marketing collateral, engagement opportunities, and support for promotion and collaborate on annual fundraising events for Oakland Promise.
6. Mayor's office will engage and publicize larger CAPS Program events including Decision Day, Awards Night, and Retreats and share with EBCF any cross-marketing materials for EBCF to promote.

V. Funding Decisions and Process

1. Scholarship amounts and eligibility may need to be adjusted at times depending on fundraising and agreeable adjustments for major funder priorities. The EBCF Board will make decisions on the amounts of scholarships and the scholarship eligibility criteria, taking into consideration any advice from the Oakland Promise Advisory Committee.
2. Oakland Promise scholarships criteria will be nimble and will grow in phases, focusing at the start with the most at need, with the ambition to eventually serve all Oakland students. The following outlines the anticipated projection from narrow to broad:
 - Low-income, to middle-income, to expand to all students
 - Determination of which schools will host Future Centers at what phase is determined by 1) need (student financial, other programs on campus), 2) School leadership, and 3) committed funds from schools and donors.
 - Minimum 2.0 GPA for 2 year college and 2.7 GPA for 4-year colleges, with the expectation to expand to serve all students above 2.0 GPA

- Attending colleges with MOU's with EBCF that will provide additional scholarships and services (Original focus on UC's, CSUs, and private colleges in California, with some HBCU, some privates out of state), to all colleges in the US
- Students attending 3 or more years of OUSD; to all students
- NOTE: To be eligible for Promise Funding EBCF may require additional step, including the following: students must demonstrate that they have applied to a minimum of 5 colleges including a CSU and community college, applied to 3 additional scholarships, and applied by the Promise Scholarship deadline in order to receive Promise Scholarship.
- NOTE: To be eligible for on-going Promise Funding each year of college EBCF will set eligibility requirements and have a mechanism for individual cases: 1) FT enrollment, 2) minimum 2.0 GPA, 3) complete of FAFSA or Dream App, and 4) participate in a minimum of services provided by the college and/or EBCF.

All parties are dedicated to making Oakland Promise CAPS successful and agree to the above understanding.

In Agreement:

 Sabrina Landreth
 City Administrator of Oakland

Date

 Diane Dodge
 Executive Director
 East Bay College Fund

Date

Approved as to Form and Legality:

 Office of the City Attorney

Date

2
 Mayor's
 Recess Agenda
 AUG 25 2015

THE OAKLAND PROMISE

Cradle to Career

OUR VISION: We as a community will ensure every child in Oakland graduates high school with the expectations, resources, and skills to complete college and be successful in the career of their choice.



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools. Thriving Students.



THE OAKLAND PROMISE *Cradle to Career*

0-5

K-12

COLLEGE/CAREER

A. OUTCOMES



HOPE: COLLEGE AS EXPECTATION

3RD GRADE LITERACY

HIGH SCHOOL GRADUATION

COLLEGE GRADUATION

KINDERGARTEN READINESS

8TH GRADE ALGEBRA

COLLEGE ENROLLMENT

CAREER OUTCOME TBD

B. OAKLAND PROMISE INITIATIVES

Brilliant Baby

K2College

Future Centers

College Scholarships

College Completion

C. SUPPORTING INITIATIVES to reach goal of college graduation and career success

Alameda County Home Visiting Program
Talk Read Sing (0-3)
Oakland Starting Smart and Strong Initiative
High Quality, Accessible Pre-K
Early Head Start / Head Start
Oakland Starting Smart and Strong Initiative

Technicity
Restorative Justice
Collective Impact
Oakland Reads 2020
Access to Schools & Libraries
Measure N
Linked Learning
Intensive Support Schools Initiative
Oakland Community Schools
African American Male Achievement

Alameda County Alliance for Men and Boys of Color
Social Emotional Learning & Restorative Practices
Latino Men and Boys Initiative
African American Young Women and Girls Initiative

Classrooms2Careers
Oakland 100
Pathways

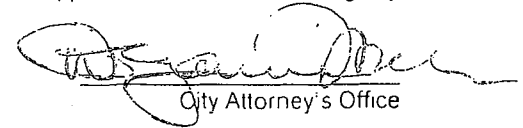


OAKLAND UNIFIED SCHOOL DISTRICT
Community Learning to Succeed



We will also work with a range of partners to help us reach our goals.

2015 AUG 13 AM 9:00


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE EAST BAY COLLEGE FUND TO IMPLEMENT THE OAKLAND PROMISE INITIATIVE, WHICH WILL PROVIDE CHILDREN AND FAMILIES "CRADLE TO CAREER" EDUCATIONAL, FINANCIAL AND OTHER SUPPORT FOR HIGHER EDUCATION OPPORTUNITIES

WHEREAS, if 100 Oakland Unified School District students start the ninth grade together, sixty-seven will graduate high school and ten will graduate college within five years; and

WHEREAS, the East Bay College Fund was established in 2002 with the mission to help resilient public school students, under-represented in higher education, access and succeed in college, expanding their life opportunities; and

WHEREAS, the East Bay College Fund aspires to involve the whole community in providing college access services, scholarships, mentoring, and support networks to assist these young people in realizing their full potential; and

WHEREAS, eighty percent of Oakland Unified School District students participating in the programs offered by the East Bay College Fund graduate from college, which is four times the national average; and

WHEREAS, the purpose of this MOU is to provide clarity of roles and responsibilities between the Mayor's Office and East Bay College Fund for the sole purpose of implementing the Oakland Promise Initiative, a cross-sector partnership between the Oakland Unified School District, the Mayor's Office and the East Bay College Fund; and

WHEREAS, the vision for the Oakland Promise initiative is that we as a community will ensure every child in Oakland graduates high school with the expectations, resources, and skills to complete college and be successful in the career of their choice; and

WHEREAS, the Oakland Promise initiative is a cradle to career strategy that includes targeted investments in low-income newborns and their moms, a universal college savings program in our public elementary schools, and enhanced college advising, college scholarships and persistence support for our high school graduates; and

2
Mayor's
Recess Agenda
AUG 25 2015

WHEREAS, Rule 6 of the Council's Rules of Procedure provides that the Council President "shall [] [e]xcept for those appointments reserved for the Mayor pursuant to the City Charter or other enabling legislation, [] recommend appointments to regional and local boards and agencies, as appropriate, subject to confirmation by Council resolution"; and

WHEREAS, the MOU provides that the Oakland Mayor's Office will appoint one voting member to the EBCF Board of Directors, subject to the approval of the EBCF Board; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator, or designee, to enter into a Memorandum of Understanding with the East Bay College Fund that outlines the obligations and responsibilities regarding the implementation of the Oakland Promise initiative; and be it

FURTHER RESOLVED: That the MOU process for appointment of the city representative to the EBCF board is hereby approved; and be it

FURTHER RESOLVED: That the City Administrator, or designee, is hereby authorized to complete all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend the proposed MOU with the East Bay College Fund and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve said proposed MOU with East Bay College Fund, as to form and legality.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLÉN, 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

2
Mayor's
Recess Agenda

AUG 25 2015

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: Council President Rebecca Kaplan and Members of the City Council
FROM: City Attorney Barbara J. Parker
DATE: September 11, 2019
RE: Mayor's Recess Authority Under Rule 21 of the Council's Rules of Procedure, Resolution No. 87044, C.M.S.

I. Introduction

Council President Kaplan has asked the City Attorney to provide the Council a memorandum addressing questions about the Mayor's authority to take action during the Council's annual recess in advance of the September 17, 2019 Council meeting, at which the Council will consider the resolution ratifying actions taken by the Mayor during the Council's 2019 annual recess (Item No. 11). This memorandum addresses the Council President's questions.

Rule 21 of the Council's Rules of Procedure delegates authority to the Mayor to take certain actions during the Council's annual recess, provided that such actions (1) cannot be deferred for Council action after the recess; and (2) are publicly noticed and the public is provided an opportunity to submit written comments prior to approval. The text of Rule 21 and provisions of the Purchasing Ordinance (O.M.C. Ch. 2.04) are attached.

II. Questions and Answers

Question No. 1:

What specific types of actions, are, and are not, allowed by Recess action?

Answer:

A. Rule 21 of the Council's Rules of Procedures authorizes the Mayor.

**Re: Mayor's Recess Authority Under Rule 21 of the Council's Rules of Procedure,
Resolution No. 87044, C.M.S.**

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- "to take such actions as would normally be taken by the City Council during the period of the annual recess except for those matters specifically set forth herein", provided
 - the matters approved clearly set forth reasons in the agenda reports and resolutions why approval cannot be deferred for Council approval after the recess;
 - and the agenda reports and resolutions are published on a two-week summer recess agenda.
- to approve professional services, procurement and construction contracts up to the recess limits set forth in the Purchasing Ordinance (OMC 2.04.020.H, provided:
 - professional services contracts do not exceed \$500k and procurement or construction contracts do not exceed \$300K;
 - the Mayor complies with advertising, bidding or RFP/Q and other requirements of the Purchasing Ordinance; and
 - approved contract amounts have been budgeted in the current fiscal budget.
- to convene emergency meeting(s) of the Council to take . . . emergency actions . . . necessary . . . for the immediate preservation of the public peace, health or safety.

(Note: Charter Sec. 208, which supersedes the Council Rules of Procedure, authorizes the Mayor or City Administrator to call a special meeting for a single subject, which would include emergency meetings to address actions needed for the preservation of public peace, health or safety. Further, state law and Council-approved emergency response policies/procedures further prescribe the Mayor's emergency powers.)

B. Rule 21 prohibits the Mayor from taking the following actions during the summer recess:

- "approve an ordinance" - For example:
 - the Mayor cannot amend a City ordinance because Charter Sec. 212 requires that ordinances be amended by ordinance;

Handwritten signature and initials in the left margin, possibly reading 'SK' and '9/31'.

Council President Rebecca Kaplan and Members of the City Council
September 11, 2019

Re: **Mayor's Recess Authority Under Rule 21 of the Council's Rules of Procedure,
Resolution No. 87044, C.M.S.**

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Question No. 3:

As you know, our law states: "All matters approved by the Mayor during the Council recess must clearly set forth the reason(s) why approval cannot be deferred for Council approval following the recess." Where do we find those documents setting forth those findings? Whose role is it to evaluate it? Are those documents to be in the published packet for the public?

Answer:

To provide public notice of proposed actions and facilitate public comment, Rule 21 requires the Mayor to cause a two-week agenda to be posted at regular posting locations (online, City Hall display cases) listing actions she proposes to take. Summer recess agenda items are posted in the customary manner - i.e., agenda reports and resolutions are prepared and made available via agenda links to the public before final action. The Mayor is required to receive and consider written comments by the public before taking final action. A record of the final actions, agenda reports, supporting legislation and written public comments considered by the Mayor must be filed with the City Clerk.

Summer recess agenda reports and resolutions should state the reasons the items cannot be deferred to Council after the recess in addition to any other findings required for approval. The need to take action during the recess is an administrative determination. In our experience, staff makes the determination based on facts/circumstances and recommends action to the City Administrator, who may agree or decide to put the item over for Council action.

Question No. 4:

Given the law requiring detailed presentation to Council of recess approvals, and since recess approvals do not go through a committee before coming to Council, why would they be listed on "Consent"?

Answer:

The Rules Committee has discretion to place the recess report and resolution on the consent or non-consent calendar. Item 5 of Rule 24, entitled Rules and Legislation Committee's Powers re Agenda Items, provides:

The Rules and Legislation Committee shall have sole authority in establishing specific agenda items to be placed on the agenda. Rules and Legislation Committee shall establish the consent and non-consent items of the City Council agenda. (emphasis added.)

Council President Rebecca Kaplan and Members of the City Council

September 11, 2019

Re: **Mayor's Recess Authority Under Rule 21 of the Council's Rules of Procedure, Resolution No. 87044, C.M.S.**

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Question No. 5:

When some power or authority is, by existing law, held by the Council, can the Mayor/Administration use the Recess authority to take that power away from the Council? Or to re-assign it to somebody else? To re-assign it to somebody else permanently, beyond the time of the recess? If such a change of powers is embedded in a recess item, would it have to be listed in the Title? Would it be legally valid?

Answer:

As we explained in the answer to Question No. 2 above, the Council may fail or vote not to make findings or confirm recess actions of the Mayor, in which case activities resulting from her actions should cease. We would need to advise the Council of any legal ramifications or further Council actions that may be necessary or advisable on a case-by-case basis.

Question No. 6:

As an example, Oakland Municipal Code Section 2.42.110 sets forth requirements of Council Approval when the City offers public land or buildings at below market rents. Can the recess authority be used to authorize or waive the requirement of Council approval for a below-market lease? Could the Recess authority be used to re-designate someone else, instead of the Council, as the authority who can approve below-market leases?

Answer:

No, because the Council is required to approve by ordinance any lease with rent at below fair market value. Rule 21 prohibits the Mayor from approving ordinances during the Council's annual recess.

Council President Rebecca Kaplan and Members of the City Council
September 11, 2019

Re: Mayor's Recess Authority Under Rule 21 of the Council's Rules of Procedure,
Resolution No. 87044, C.M.S.

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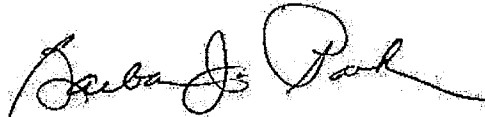
Question No. 7:

Who is the legal representative for the Oakland City Council, in terms of evaluating these issues and ensuring the appropriateness of items for the recess agenda?

Answer:

Whether an action can be deferred for Council approval after the recess is an administrative determination. The City Attorney approves recess resolutions for form and legality, which includes review to determine that all necessary findings are included such as a statement of the reasons the item cannot be deferred.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barbara J. Parker". The signature is fluid and cursive, with a large initial "B" and "P".

BARBARA J. PARKER
City Attorney

cc: Doryanna Moreno, Chief Assistant City Attorney
2835807v1

PURCHASING ORDINANCE
(Oakland Municipal Code Ch. 2.04)

MAYOR/CITY ADMINISTRATOR PURCHASING AUTHORITY DURING ANNUAL RECESS

2.04.020.H: 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.

2.04.051 Competitive process and qualification-based awards for professional services contracts.

- A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Fifty Thousand Dollars (\$50,000.00). The City Administrator, or the City Administrator's designee, shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed fifty thousand dollars (\$50,000.00) and are exempt from bidding under Subsection 2.04.050.1.1. The City's RFP and RFQ processes shall be set forth in a City Administrator's administrative instruction. The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City.
- B. Waiver—City Administrator Authority, City Council Authority. Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to fifty thousand dollars (\$50,000.00). Upon a finding by the City Council or its designee that it is in the best interests of the City, the City Council may waive said RFP/Q requirements for contracts in any amount.

COUNCIL'S RULES OF PROCEDURE, RULE 21

MAYOR/CITY ADMINISTRATOR AUTHORITY DURING ANNUAL RECESS

Council Rule 21. Actions During Council Recess

The Mayor is authorized to take such actions as would normally be taken by the City Council during the period of the annual recess except for those matters specifically set forth herein. The Mayor is further authorized to convene emergency meeting(s) of the Council to take such emergency actions as may be necessary, for the immediate preservation of the public peace, health or safety. All matters approved by the Mayor during the Council recess must clearly set forth the reason(s) why approval cannot be deferred for Council approval following the recess. The Mayor's contract approvals must conform with and be limited to the requirements of the City's purchasing requirements as set forth in Chapter 2 of the Oakland Municipal Code. The Mayor is not authorized to take any actions for which the adoption of an ordinance is required. Further, the Mayor's approvals shall be limited to authorizations within previous adopted budgeted amounts. The Mayor is not authorized to appropriate funds without prior Council authorization and approval. The Mayor is further directed to make a full and complete report to the City Council, at its first regularly scheduled meeting in October, of actions taken by the Mayor pursuant to this Resolution, at which time the City Council may make such findings and confirm said actions of the Mayor, as may be required.

Action(s) taken by the Mayor during the annual recess shall be implemented in a manner to provide public notice and an opportunity for public comment and input on matters to be approved. In keeping with the intent of the Sunshine Ordinance (OMC §§ 2.20.010 et seq.) the Mayor will cause a two-week agenda to be posted at regular posting locations. The Mayor, through the City Clerk, shall facilitate the receipt of written comments by the public on any matter presented to the Mayor for consideration. The Mayor shall review and consider all written comments in making his/her decision on the matter. A record of the final action of the Mayor shall be filed with the City Clerk along with any supporting legislation, reports and comments received on that matter. A summary of final action taken shall be posted at the regular agenda posting locations.

News > Politics

Audit: Oakland Promise used city funds without proper approval

The city provided the organization free workspace and paid its director's salary and benefits for two years, the report said.



Oakland Mayor Libby Schaaf takes the stage at the second annual Party for Oakland Promise in 2016. A new City Auditor's report said the organization improperly used city funds and resources. (Photo by Hasain Rasheed)

By ALI TADAYON | atadayon@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: November 20, 2019 at 5:22 pm | UPDATED: November 21, 2019 at 5:06 pm

OAKLAND — Oakland Promise — Mayor Libby Schaaf's multifaceted initiative to significantly increase the number of college graduates from the city — improperly used City Hall office space and used city funds without proper authorization, according to a new city auditor's report.

Though the program's merits have often been celebrated, it came under fire earlier this year when the City Council declared Measure AA — a \$198-per-house, \$135-per-apartment annual parcel tax measure on last November's ballot intended to boost funding for Oakland Promise — had passed despite falling short of a two-thirds majority. Oakland was sued over the City Council's decision and lost; an Alameda County Superior Court judge deemed the parcel tax unenforceable.

Amid the controversy surrounding Measure AA, local activists began to question the legality of the program itself: It wasn't a city department, yet it used city money and its employees had rent-free offices in City Hall. In August, the City Council requested the city auditor's office to look into Oakland Promise.

Among the findings in the auditor's report, released Wednesday, was that the city had allowed Oakland Promise employees to work out of City Hall since 2016 without any formal agreement. According to the city's regulations, the City Council is responsible for approving leases and requires city property to be leased, in most cases, for payment at fair-market value.

But the mayor's office directed the city administrator's office to provide workspace for about two years for Oakland Promise's nonprofit partner organization — the East Bay College Fund — in City Hall, including three desks equipped with phones, computers and internet access, according to the report. There was never a contract or lease agreement.

Oakland Promise officials announced earlier this year that the organization was merging with the East Bay College Fund to become a nonprofit.

Auditor Courtney Ruby also found that Oakland Promise used more than \$700,000 of city funds to pay a staffer's salary and benefits without proper authorization.

Since the start of the 2017-18 fiscal year, the City Council has authorized a total of \$704,374 to pay for the salary and benefits of David Silver, the mayor's director of education. But Silver was actually working for the Oakland Promise, so the money was technically an "in-kind contribution" but never authorized as such.

The in-kind contributions were never transparent in public reports, Ruby said. The grants that the city awarded the Oakland Promise were lawful and transparent, though.

Mayor Libby Schaaf's spokesman, Justin Berton, issued a statement Wednesday thanking Ruby for the report and accepting its findings.

"We regret that in the eagerness to launch a generation-changing education initiative, we unintentionally failed to properly document the legal use of City Hall office space and a grant to support an employee's salary," Berton said.

Ruby recommended that Schaaf and the city administration comply with Oakland regulations as they pertain to providing space in City Hall to third-party organizations, and that the City Council request that the administration file an annual report on leases or other arrangements it makes with organizations.

Ruby also recommended that the council make a formal policy on allowing organizations to use city facilities, which would include requiring non-city employees to sign a formal agreement with the city "that protects the interest of both parties." Ruby's final recommendation was that the City Council establish a policy for how in-kind contributions are authorized.

The mayor's office agrees with all of the recommendations, Berton said.

Tags: Education, Local government, Oakland City Council, Regional



All Tadayon All Tadayon is an award-winning journalist covering Oakland for the Bay Area News Group. He joined the team in 2017 after working as a crime reporter in Riverside and Idaho Falls, Idaho.

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By 

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2020 JAN -2 PM 3:06

Approved as to Form and Legality

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KAPLAN

RESOLUTION IMPLEMENTING RECOMMENDATIONS OF THE CITY AUDITOR REGARDING OAKLAND PROMISE, AND AMENDING RESOLUTION NO. 85809 C.M.S. (ACTIONS TAKEN BY THE MAYOR DURING THE OAKLAND CITY COUNCIL 2015 ANNUAL RECESS) AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE EAST BAY COLLEGE FUND TO IMPLEMENT THE OAKLAND PROMISE INITIATIVE

WHEREAS, the Council's Rules Of Procedure codified in Resolution No. 87044 C.M.S., Rule 21, the Mayor is authorized to take actions during council recess but is limited "to the requirements of the City's purchasing requirements as set forth in Chapter 2 of the Oakland Municipal Code," "is not authorized to take any actions for which the adoption of an ordinance is required," and is "limited to authorizations within previous adopted budgeted amounts without prior Council authorization and approval;" and

WHEREAS, in addition the Mayor must make the case of "why approval cannot be deferred for Council approval following the recess," under the Council's Rules Of Procedure codified in Resolution No. 87044 C.M.S.; and

WHEREAS, Section 504 of the Oakland City Charter, states that the City Manager shall "devote his entire time to the duties and interest of the City;" and

WHEREAS, the Oakland Municipal Code 2.42.110, requires that "real property must be leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market rental value, unless the City Council has made a finding and determination that the lease of the property for less than its fair market rental value is in the best interests of the City;" and

WHEREAS, the City Attorney issued, on September 11, 2019, a public legal opinion stating that Rule 21 of the Council Rules of Procedure "prohibit the Mayor from taking the following actions during the summer recess: approve an Ordinance; take actions without setting forth the reasons in the agenda reports and resolutions why the actions cannot be deferred to the Council following recess; appropriate funds without prior Council authorization and approval; approve purchases or other contracts that are not budgeted or exceed amounts budgeted in the current fiscal budget; or award contracts

for the purchase of professional services, goods, supplies, products or construction labor and material without following requirements of the Purchasing Ordinance;" and

WHEREAS, under Resolution No. 85751 C.M.S., the Mayor through the recess action, authorized "the city administrator to enter into a memorandum of understanding (MOU) with the East Bay College Fund to implement the Oakland Promise initiative stating that there were "no cost implications to the City of Oakland;" and

WHEREAS, the Recess action taken in August of 2015 has been interpreted to enable senior city officials to work for outside organizations without proper authorizations, the use of city facilities without pay and without approval or tracking, and created a system of preferential treatment compared to other organizations in accessing city funds by stating in the 2015 MOU that the Mayor's office leads the Advisory Committee which is "responsible for making sure that we generate the necessary revenue" and further states that the Oakland Mayor's office would use its "bully pulpit" to promote Oakland Promise and whereby the Oakland City Administrator sits on the Advisory Committee; and

WHEREAS, on November 19, 2019, City Auditor Courtney Ruby issued the following report, "*Oakland Promise Investigation: Response to Whistleblower Allegations and the City Council's Questions*" (herein referred to as "Audit") that documented outright noncompliance with the Oakland Municipal Code; and

WHEREAS, the Audit concluded that "employees of an Oakland Promise partner organization used the space for approximately two years, without the City and the partner organization formally agreeing to lease terms, insurance requirements, or rent payments and that the use of City Hall space "did not comply with the Oakland Municipal Code (OMC 2.42.110) which gives the City Council the responsibility of approving leases and requires City property to be leased for payment; and

WHEREAS, the Audit also concluded that for 16 months, the Mayor's Office allowed an Ed Fund employee to lead Oakland Promise as the "Mayor's Director of Education" without executing an agreement to ensure the City's interests were promoted and protected and then in fiscal year 2017-18, "the Mayor's Office assigned the City-funded Mayor's Director of Education position to work for Oakland Promise, without authorization from the City Council as an in-kind contribution to Oakland Promise;" and

WHEREAS, the Audit also revealed that "the City's full contributions to Oakland Promise exceeded those identified in public reports;" and

WHEREAS, the Audit made recommendations to remedy the issues covered in the report; and the Council wishes to clear up any confusion regarding the scope of authorizations and fairness; and

WHEREAS, the recommendations by the City's Auditor are as follows:

1. The Mayor and the City Administration should comply with the Oakland Municipal Code in providing space to other organizations;
2. The City Council should request the Administration to annually report on leases or other arrangements with organizations using City facilities, and this report should

include the level of subsidy these organizations are receiving from the City;

3. The City Council should develop a formal policy on appropriate justifications for allowing other organizations to use City facilities;
4. The City Council should establish a policy for non-City employees working at City facilities to have a formal agreement that protects the interests of both parties;
5. The City Council should develop a policy that establishes when in-kind contributions of personnel are appropriate, and the policy should require such in-kind contributions be formally authorized in advance and any risk to the City appropriately addressed; now, therefore, be it,

RESOLVED: That the City Council clarifies and resolves the August 2015 recess action authorizing the City Administrator to enter into a memorandum of understanding with the East Bay College Fund ("Fund") to implement the Oakland Promise Initiative under Resolution No. 85809 C.M.S., to rescind any implication or (mis)understanding that such Resolution authorized the giving of City of Oakland facilities, space, equipment or personnel without specific Council authorization, to prohibit providing in-kind or City facility space without Council approval, and to prohibit any distribution of pending funds allocated to the Oakland Promise Kindergarten to College program until the City Administration is able to provide a report of specific planned uses of funds to the City Council.

FURTHER RESOLVED: That the Council requests that the City Auditor provide the Council with an estimate of the fair market value of the space and equipment which had been provided, and be it,

FURTHER RESOLVED: That the Council declares that it is our Policy that the City Administrator shall not be assigned to serve in any leadership role (whether as a member of the Board, Advisory Board, or otherwise), in any organization which seeks or receives funding from the City of Oakland, unless explicitly approved by the Council. The City Attorney is directed to return to Council within 30 days with a proposed Ordinance to more strongly codify this policy, and be it,

FURTHER RESOLVED: That the Council declares that it is our Policy that the recess authority shall not be used to change powers explicitly granted to the Council and shall not be used to undermine the right of the public to participate in important decisions. That recess actions must include specific findings warranting why the item cannot come before the Council, and may not include any provision to change powers of the Council to approve free rent, to approve giving favorable treatment in funding to a particular applicant, or to move the power to appoint Board and Commission members away from the Council, nor to move or change any other power of the Council or the public or of a Board or Commission. That Attorney approval of the legality of a recess action shall not be given unless the item legally can come and meets the requirements of a recess action. The Council hereby directs that the City Attorney shall report back to Council within 30 days with an Ordinance to more strongly codify these policies, and be it,

FURTHER RESOLVED: That any interpretation of the August 2015 recess action to move the power to appoint members of outside Boards and Commissions out of the hands of the Council is hereby rescinded and declared void, and be it,

FURTHER RESOLVED: That the Council directs that the Administrator and the Attorney shall report back to the Council within 30 days regarding the current status of any agreements made pursuant to the August 2015 recess action, the current status of any Board and any City Appointees, written confirmation regarding to what extent the actions in the 2015 MOU have been terminated, whether any current city officials are serving in any roles or positions whatsoever with Oakland Promise, including as "Advisory Board" or "Steering Committee" and the status of such roles, and any further action needed by Council to ensure proper appointment of any Board members and any further needed amendments to strike any portions of the 2015 Actions, and be it,

FURTHER RESOLVED: That the City Council requests the Administration to annually report on leases or other arrangements with organizations using City facilities, and this report should include the level of subsidy these organizations are receiving from the City;, and that prior to granting any subsidy arrangement, the Administration shall provide to The City Council specific justifications for allowing the organization to use City facilities at a reduced rate; and be it,

FURTHER RESOLVED: That the City Council directs that when non-City employees work at City facilities, there must be a formal written agreement that protects the interests of both parties.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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