

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2009 JAN 15 PM 12:49

TO: Office of the City Administrator
ATTN: Daniel Lindheim, Acting City Administrator
FROM: Finance and Management Agency
DATE: January 27, 2008

RE: **An Ordinance Amending Ordinance No. 7997 C.M.S., Which Established A Requirement That The City Provide Bond Insurance For Specified City Employees And Officers To Insure The Honest And Faithful Performance Of Their Official Duties, To: (1) Add The City Attorney As A Bonded City Officer, (2) Authorize The City Administrator Or His/Her Designee To Approve The Bond Insurance Agreements, Subject To Approval As To Form And Legality By The City Attorney; (3) Set the Minimum Bond Coverage Limit For Each Such Employee and Officer at Two Million Dollars (\$2,000,000); And (4) Authorize The City Administrator To Provide A Master Official Bond, That Will Cover All Such Employees And Officers At The Same Coverage Levels If The City Administrator Or Designee Determines That It Is In The City's Best Interests To Do So**

SUMMARY

An ordinance has been prepared for consideration by the City Council amending Ordinance No. 7997 C.M.S. which established a requirement that the City provide bond insurance for specified City employees and officers to insure the honest and faithful performance of their official duties, to: (1) add the City Attorney as a bonded City officer, (2) authorize the City Administrator or his/her designee to approve the bond insurance agreements, subject to approval as to form and legality by the City Attorney; and (3) authorize the City Administrator to provide a master official bond, that will cover all such employees and officers at the same coverage levels if the City Administrator or designee determines that it is in the City's best interests to do so.

FISCAL IMPACT

Approval of this ordinance will result in the consolidation of all individual bonds and the current Government Crime Bond. This will reduce the current premium paid for all bonds from \$41,955 per year, based on current rates, to \$23,134 per year. In addition, it will standardize and increase the coverage limits for all covered parties to \$10,000,000. Funds currently exist to cover the cost for this bond insurance within the City's General Purpose Fund (1010); Non-departmental Org (90311); Bonding and Insurance Account (53411). No additional funding is required.

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BACKGROUND

Prior to January 1, 1997, California Government Code Section 36518 required that city clerks and city treasurers be individually bonded and Government Code Section 37209 required bonding of the Director of Finance for duties assumed from the city clerk. Oakland City Charter Section 811 authorized the City Council to require bonds of other officers or employees. (*Attachment A1 – A3*)

City of Oakland Ordinance No. 7997 C.M.S., promulgated on July 8, 1969, established the officers and employees who would be required to be individually bonded (*Attachment B*). It further required that a blanket employee dishonesty bond be procured to cover all other employees not specifically identified in section 1 of the Ordinance. Historically, the bonding requirements of these officials had been met with individual insurance bonds, requiring the purchase of up to twelve (12) separate individual bonds.

A State of California legal review of Government Code Section 1481 (*Attachment B*), allowing the use of a “master bond” covering a group of officials or employees, determined its application was only for County and Special District employees. Cities and other types of public entities were to maintain separate bonds for specified public officials. This required that each person complete an application for the bond and incur additional cost.

Since counties and special districts were already allowed by Government Code to purchase a master bond, it seemed more economical in both time and expense to amend the California Government Code to extend these same benefits to cities. With the passage of Assembly Bill 3472, Section 35, effective January 1, 1997 (*Attachment C*), Government Code 1481 bonding provisions were extended to cities. The legislation requires the City Council to adopt an ordinance or otherwise approve coverage of their officers and employees under one master bond.

To date, the City of Oakland has not exercised its right to adopt the amended changes of this code, thereby reaping the benefit of a single Master Official Bond. Passage of this Ordinance will eliminate the necessity of writing bonds on specifically named individuals for their term of office or tenure, reducing both cost and paperwork.

KEY ISSUES AND IMPACTS

Presently, the City purchases individual bonds for all elected officers and certain appointed officers, in compliance with the Ordinance No. 7997 C.M.S. In addition to the named officers and employees, the City purchases individual bonds for the City Attorney, based on it being an elected position. Coverage limits on these bonds range from \$10,000 to \$500,000, depending on the individual position and their fiduciary exposure. All elected official bonds are renewed at the

beginning of each new term (every four years); however, the appointed officers bonds are renewed on an annual basis.

In addition to the individual bonds, prior to July 6, 2008, the City purchased an Employee Crime or Dishonesty Bond protecting the City from fiduciary loss due to employee theft, thereby satisfying the requirement for a Blanket Employee's Dishonesty Bond. The coverage limits of this bond was \$750,000. It did not extend coverage for an employee's failure to provide faithful performance of their duties. Nor did it cover boards and commissions acting on behalf of the City. Subsequently, the City procured a separate Fiduciary Crime Bond covering the City's two retirement systems, Police and Fire Retirement System (PFRS) and Oakland Municipal Employees Retirement System (OMERS). The coverage limits for this bond was \$2,000,000. It, too, did not provide coverage for Faithful Performance.

Each bond purchased by the City carried a different coverage limit, in conformance with the requirements of Ordinance No. 7997 C.M.S. The coverage limits in the ordinance were established nearly 40 years ago and have not been adjusted for inflation.

POLICY DESCRIPTION

On July 6, 2008 the Blanket Employee Dishonesty Bond became due for renewal. After marketing the program to multiple insurers, it was found that the City could procure coverage through California State Association of Counties Excess Insurance Authority (CSAC-EIA), the public entity insurance pool in which the City participates. With the purchase of the new *Government Crime Bond*, the City was able to combine the two fiduciary crime bonds covering City employees and the retirement boards into a single crime bond. Combined annual premiums were reduced from \$37,629 to \$23,134. Further, coverage limits were increased from \$750,000 and \$2,000,000 respectively to \$10,000,000 and Faithful Performance coverage was extended to all City employees and boards and commissions.

This Bond is also designed to serve as a Master Official Bond as allowed in Government Code Section 1481. Adoption of the proposed ordinance will amend Ordinance No. 7997 C.M.S. and authorize the City Administrator to utilize the new Government Crime Bond as a Master Official Bond, eliminating the need for individual bonds that establish separate limits for each named position. It will allow the provision of coverage to all employees and officers required by the Ordinance at a standardized coverage limit, well in excess of the previously legislated amounts for no additional cost to the City's insurance program. Passage of this Ordinance will result in an additional premium reduction of \$4,326 per year.

Staff recommends a minimum coverage limit of \$2,000,000 be set by ordinance for all covered officers and employees, allowing for the flexibility to adjust limits above the legislated minimum based on market availability of coverage at the time of renewal. As such, the City may obtain

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coverage in excess of the \$2 million limit should market conditions make if financially favorable for the City to do so. At no time will the coverage limits drop below the legislated amount.

SUSTAINABLE OPPORTUNITIES

Economic: No economic opportunities have been identified.

Environmental: No environmental opportunities have been identified.

Social Equity: No social equity opportunities have been identified.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no direct disability or senior citizen access issues associated with this report.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the Council accept this report and approve the accompanying Ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve this Ordinance in order to effect changes necessary to eliminate unnecessary individual official bonds and provide coverage through a Master Official Bond.

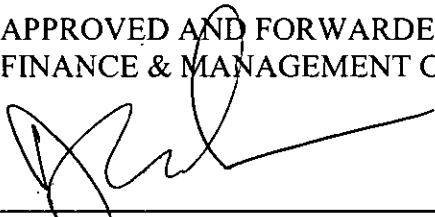
Respectfully submitted,



William E. Noland, Director
Finance & Management Agency

Prepared by:
Deborah Grant, Risk Manager
Risk Management Division

APPROVED AND FORWARDED TO THE
FINANCE & MANAGEMENT COMMITTEE:



Office of the City Administrator

ATTACHMENT A-1
State of California Government Code

36518. Before entering upon the duties of their offices, the city clerk and city treasurer shall each execute a bond to the city. Except as otherwise provided, the bonds shall conform to the provisions of this **code** relating to bonds of public officers. The penal sum of the bond shall be in a reasonable amount recommended by the city attorney and fixed by the city council, by resolution, and may be changed during their terms of office.

ATTACHMENT A-2
State of California Government Code

37209. The duties imposed upon the city clerk by this article may be transferred to a director of finance when such office has been established and the powers and duties thereof defined by ordinance. Such an ordinance shall require the execution by the director of finance of the bond required of the city clerk by Section **36518** of this **code**.

Attachment A-3

Oakland City Charter

Section 811. Official Bonds. The Council shall determine by ordinance which officers and employees shall be subject to group or individual bonds to insure the faithful performance of official duties, shall fix the amount of such bonds and shall provide payment of the premium of such bonds by the City. (Amended by: Stats. November 1988.)

ATTACHMENT B

ORDINANCE NO. 7997 C.M.S.

AMENDED ORDINANCE DETERMINING OFFICIALS' AND EMPLOYEES' BOND REQUIREMENTS.

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

Section 1. Pursuant to the provisions of Section 711 of the Charter of the City of Oakland, the officials and employees hereinafter enumerated shall furnish faithful performance bonds in the respective amounts set forth:

Mayor	\$ 10,000
Councilmen.	10,000
City Manager.	100,000
Auditor	100,000
Finance Director, ex officio City Treasurer and Tax Collector	500,000

Section 2. Each such bond shall contain the condition that the principal will well, truly, honestly and faithfully perform the duties of his office. Every bond must be approved by the City Attorney, and be filed with the City Clerk when approved.

Section 3. A Blanket Employee's Dishonesty bond in the amount of \$500,000 shall be obtained covering employees other than those enumerated in Section 1.

Section 4. The premiums for the foregoing bonds shall be paid by the City.

I certify that the foregoing is a full, true and correct copy of an Ordinance passed by the City Council of the City of Oakland, Calif., on July 8, 1959, effective immediately

Gladys H. Murphy, CITY CLERK

Per _____ Deputy

ATTACHMENT C
State of California Government Code

1481. (a) When deemed expedient by the appointing power, a master official **bond** or other form of master **bond** may be used which shall provide coverage on more than one officer, employee, or agent who is required by the appointing power or the board of supervisors of a chartered or general law county to give **bond**.

(b) Notwithstanding any other provision of law, when deemed expedient by the legislative body of a local public agency, a master official **bond** or other form of master **bond** may be used which shall provide coverage on more than one officer, employee, or agent of the local public agency, whether elected or appointed, who is required by statute, regulation, the appointing power, the governing board of a local public agency, or the board of supervisors of a chartered or general law county to give **bond**.

(c) A master **bond** under this section shall be in the form and for the term which is approved by the appointing power or the legislative body of a local public agency, and shall inure to the benefit of the appointing power, state, or local public agency by whom the officer, employee, or agent is employed as well as the officer or officers under whom the employee or agent serves. If the master **bond** provides coverage on a public guardian or public administrator, then that master **bond** shall be for the joint benefit of the guardianship or administratorship estates, and the county to which the **bond** is issued.

(d) "Local public agency" means any city or county, whether general law or chartered, city and county, special district, school district, municipal corporation, political subdivision, joint powers authority or agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or any board, commission, or agency thereof, or other local public agency, but shall not mean the state or any agency or department of the state.

(e) "Legislative body" means the board of supervisors of a county or city, or the governing board, by whatever name called, of a local public agency.

(f) In the case of the State of California, the form and content of the **bond** shall be subject to the approval of the Director of General Services.

ATTACHMENT D

ASSEMBLY BILL 3472, SECTION 35

AMENDED IN SENATE AUGUST 6, 1996

AMENDED IN SENATE JULY 7, 1996

AMENDED IN SENATE JUNE 27, 1996

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 3472

Introduced by Committee on Local Government (Assembly Members Rainey (Chairman), Ackerman, Granlund, Hannigan, Kuykendall, Margett, Kevin Murray, Napolitano, Setencich, and Sweeney)

March 5, 1996

An act to amend Sections 8762, 8771, and 22350 of the Business and Professions Code, to amend Sections 17, 139, 211, 216, 217, 234, 339, 481.140, 491.160, 511.060, 574, 680.260, 708.170, 715.040, 995.160, 1166a, and 2015.3 of the Code of Civil Procedure, to amend Sections 607f and 1861.1 of the Civil Code, to amend Section 10405 of the Corporations Code, to amend Section 17850 of the Education Code, to amend Sections 8203 and 13109 of the Elections Code, to amend Sections 7579, 12645, 21883, 27601, 52513, and 52976 of the Food and Agricultural Code, to amend Sections 1458, 1431, 1453, 6103.2, 6103.5, 11158, 24004, 24055, 24103, 24150, 24204, 25174, 26524, 26665, 26907, 27263, 27279, 27492, 29610, 54954, 65361, 66416.5, 66417, 68079, 68084, 68546, 68726, 71001, 71085, 71088, 71091, 71140, 71220, 71221, 71264, 71265, 71266, 71267, 71600, 71609, 73399.1, and 73685 of, to amend and renumber Sections 12035 and 12036 of, to add Section 26911 to, and to repeal Sections 12037, 12038, 26617, 29614, 29615, 66452.7, 66455.5,

1 court may prescribe, by the director or the commissioner
2 or any enforcing officer of this chapter, or by the sheriff
3 or marshal. If the court orders the sale of any of the seed
4 and containers which can be salvaged, the costs of
5 disposal shall be deducted from the proceeds of sale and
6 the balance paid into court for the owner.

7 SEC. 33. Section 52976 of the Food and Agricultural
8 Code is amended to read:

9 . 52976. If the owner fails to comply with the order of
10 the court within the time that is specified in the order, the
11 court shall order the secretary, commissioner, sheriff, or
12 marshal to dispose of the seed cotton, cotton plant, or
13 cottonseed and containers, under those terms and
14 conditions as the court may describe.

15 If the court orders the sale of any of the seed cotton,
16 cotton plants, or cottonseed and containers that can be
17 salvaged, the costs of disposal shall be deducted from the
18 proceeds of sale and the balance shall be paid into court
19 for the owner.

20 SEC. 34. Section 1458 of the Government Code is
21 amended to read:

22 1458. The bonds of supervisors, treasurers, county
23 clerks, auditors, sheriffs, tax collectors, district attorneys,
24 recorders, assessors, surveyors, superintendents of
25 schools, public administrators, and coroners shall be
26 approved by the presiding judge of the superior court
27 before the bonds can be recorded and filed.

28 SEC. 35. Section 1481 of the Government Code is
29 amended to read:

30 1481. (a) When deemed expedient by the appointing
31 power, a master official bond, or other form of master
32 bond may be used which shall provide coverage on more
33 than one officer, employee or agent who is required by
34 the appointing power or the board of supervisors of a
35 chartered or general law county to give bond.

36 (b) Notwithstanding any other provision of law, when
37 deemed expedient by the legislative body of a local public
38 agency, a master official bond, or other form of master
39 bond, may be used which shall provide coverage on more
40 than one officer, employee, or agent of the local public

1 agency, whether elected or appointed, who is required by
2 statute, regulation, the appointing power, the governing
3 board of a local public agency, or the board of supervisors
4 of a chartered or general law county to give bond.

5 (c) A master bond under this section shall be in the
6 form and for the term which is approved by the
7 appointing power or the legislative body of a local public
8 agency, and shall inure to the benefit of the appointing
9 power, state, or local public agency by whom the officer,
10 employee, or agent is employed as well as the officer or
11 officers under whom the employee or agent serves.

12 (d) "Local public agency" means any city or county,
13 whether general law or chartered, city and county,
14 special district, school district, municipal corporation,
15 political subdivision, joint powers authority or agency
16 created pursuant to Chapter 5 (commencing with
17 Section 6500) of Division 7 of Title 1, or any board,
18 commission, or agency thereof, or other local public
19 agency, but shall not mean the state or any agency or
20 department of the state.

21 (e) "Legislative body" means the board of supervisors
22 of a county or city, or the governing board, by whatever
23 name called, of a local public agency.

24 (f) In the case of the State of California the form and
25 content of the bond shall be subject to the approval of the
26 Director of General Services.

27 SEC. 36. Section 1853 of the Government Code is
28 amended to read:

29 1853. The execution of the order and the delivery of
30 the books and papers may be enforced by:

31 (a) Attachment as for a witness.

32 (b) At the request of the petitioner, by a warrant
33 directed to the sheriff of the county commanding him to
34 search for those books and papers, and to take and deliver
35 them to the petitioner.

36 SEC. 37. Section 6103.2 of the Government Code is
37 amended to read:

38 6103.2. (a) Section 6103 does not apply to any fee or
39 charge or expense for official services rendered by a
40 sheriff or marshal in connection with the levy of writs of

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 7997 C.M.S., WHICH ESTABLISHED A REQUIREMENT THAT THE CITY PROVIDE BOND INSURANCE FOR SPECIFIED CITY EMPLOYEES AND OFFICER TO INSURE THE HONEST AND FAITHFUL PERFORMANCE OF THEIR OFFICIAL DUTIES, TO: (1) ADD THE CITY ATTORNEY AS A BONDED CITY OFFICER, (2) AUTHORIZE THE CITY ADMINISTRATOR OR HIS/HER DESIGNEE TO APPROVE THE BOND INSURANCE AGREEMENTS, SUBJECT TO APPROVAL AS TO FORM AND LEGALITY BY THE CITY ATTORNEY; (3) SET THE MINIMUM BOND COVERAGE LIMIT FOR EACH SUCH EMPLOYEE AND OFFICER AT TWO MILLION DOLLARS (\$2,000,000); AND (4) AUTHORIZE THE CITY ADMINISTRATOR TO PROVIDE A MASTER OFFICIAL BOND, THAT WILL COVER ALL SUCH EMPLOYEES AND OFFICERS IF THE CITY ADMINISTRATOR OR DESIGNEE DETERMINES THAT IT IS IN THE CITY'S BEST INTERESTS TO DO SO.

WHEREAS, Government Code Section 36518 requires the City Council to establish the penal sum of bond for the positions of City Clerk and City Treasurer; and

WHEREAS, Government Code Section 37209 requires execution of a bond by the Director of Finance where duties imposed by law upon the City Clerk are transferred to the Director of Finance; and

WHEREAS, Oakland City Charter Section 811 requires the City Council to determine by ordinance which officers and employees shall be subject to group or individual bonds to insure the faithful performance of official duties, to fix the amount of such bonds and to provide payment of the premium of such bonds by the City; and

WHEREAS, Government Code Section 1481 allows the use of a "master bond" covering the group of officers and/or employees as required in Charter Section 811; and

WHEREAS, the City of Oakland, Ordinance No. 7997 CMS currently provides for only individual bonds to insure the faithful performance of the official duties of City officers and employees; and

WHEREAS, the individual bond limits legislated in Ordinance No. 7997 CMS were established in 1969 and have not been adjusted for inflation; and

WHEREAS, the bond limits legislated in Ordinance No. 7997 CMS are varied dependant on the position subject to the bonding requirement; and

WHEREAS, the purpose of this amendment to Ordinance No. 7997 CMS is to authorize the use of "master bond" for the group of officers and/or employees covered by Section 811 of the Charter of the City of Oakland; and

WHEREAS, this amendment to Ordinance No. 7997 CMS serves the additional purposes of streamlining the bond approval process and providing further protection to the City by bonding the performance of the City Attorney; now, therefore

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

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

SECTION 2. City of Oakland, Ordinance No. 7997 CMS is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Ordinance No. 7997 CMS is hereby amended in its entirety to read as follows:

Section 1. Pursuant to the provision of Section ~~744~~ 811 of the Charter of the City of Oakland, the ~~officers~~ officials and employees hereinafter enumerated shall furnish faithful performance bonds in the ~~respective~~ amounts no less than Two Million Dollars (\$2,000,000): those set forth herein:

Mayor	\$ 10,000
Councilmenmember.....	\$ 10,000
City Manager- <u>Administrator</u>	\$100,000
Auditor	\$100,000
<u>City Attorney</u> Finance Director, ex officio City Treasurer and Tax Collector	\$500,000

Section 2. Each such bond shall contain the condition that the principal will well, truly, honestly and faithfully perform the duties of his office. Every bond must be approved by the City Administrator, or his or her designee, subject to the City Attorney's approval of the bond as to form and legality, and be filed with

the City Clerk when approved.

Section 3. A Blanket Employee's Dishonesty Bond in the amount of no less than \$500,000 Two Million Dollars (\$2,000,000) shall be obtained covering employees other than those enumerated in section 1.

Section 4. The premiums for the foregoing bonds shall be paid by the City.

Section 5. If deemed expedient by the City Administrator, or his or her designee, a master official bond or other form of master bond may be used to provide the combined coverages referred to in sections 1 and 3.

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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

NOTICE & DIGEST

ORDINANCE AMENDING ORDINANCE NO. 7997 C.M.S., WHICH ESTABLISHED A REQUIREMENT THAT THE CITY PROVIDE BOND INSURANCE FOR SPECIFIED CITY EMPLOYEES AND OFFICER TO INSURE THE HONEST AND FAITHFUL PERFORMANCE OF THEIR OFFICIAL DUTIES, TO: (1) ADD THE CITY ATTORNEY AS A BONDED CITY OFFICER, (2) AUTHORIZE THE CITY ADMINISTRATOR OR HIS/HER DESIGNEE TO APPROVE THE BOND INSURANCE AGREEMENTS, SUBJECT TO APPROVAL AS TO FORM AND LEGALITY BY THE CITY ATTORNEY; (3) SET THE MINIMUM BOND COVERAGE LIMIT FOR EACH SUCH EMPLOYEE AND OFFICER AT TWO MILLION DOLLARS (\$2,000,000); AND (4) AUTHORIZE THE CITY ADMINISTRATOR TO PROVIDE A MASTER OFFICIAL BOND, THAT WILL COVER ALL SUCH EMPLOYEES AND OFFICERS IF THE CITY ADMINISTRATOR OR DESIGNEE DETERMINES THAT IT IS IN THE CITY'S BEST INTERESTS TO DO SO

Enacting this ordinance would authorize the City Administrator to provide a Master Official Bond for all employees and City officers required to be bonded for honest and faithful performance of their official duties and set the minimum coverage limit for each said employee and officer at \$2,000,000.