

**City of Oakland**  
**Agenda Report**

To: Office of the City Administrator  
Attn: Deborah Edgerly  
From: Community and Economic Development Agency  
Date: September 20, 2005

Re: A Report concerning workforce development contracts and budgets, and alternative resolutions as follows:

Alternative #1) A Resolution authorizing A) a Memorandum of Understanding with the Oakland Private Industry Council, Inc., (PIC) to serve as the Oakland Workforce Investment System Administrator for up to three years in an amount not to exceed \$1,300,000 for FY 2005-2006; B) a Memorandum of Understanding with the Oakland PIC, Inc., to serve as the One Stop Career Center Operator for up to three years in an amount not to exceed \$1,900,000 for FY 2005-2006; and C) the disbursement of additional funds to the Oakland PIC for subcontracts with adult and youth service providers as approved by the Oakland Workforce Investment Board, for the delivery of support services and training for job seekers and business clients, and for the implementation of other programs for which the Oakland PIC acts as System Administrator.

Alternative #2) A Resolution authorizing A) a Memorandum of Understanding with the Oakland Private Industry Council, Inc. (PIC) to serve as the Oakland Workforce Investment System Administrator for up to three years in an amount not to exceed \$1,300,000 for FY 2005-2006; B) a Memorandum of Understanding with the Oakland PIC to serve as the One Stop Career Center Operator for up to three years in an amount not to exceed \$1,325,000 for FY 2005-2006; C) the disbursement of additional funds to the Oakland PIC for subcontracts with adult and youth service providers as approved by the Oakland Workforce Investment Board, for the delivery of support services and training for job seekers and business clients, and for the implementation of other programs for which the Oakland PIC acts as System Administrator; and (D) the issuance of a Request for Proposals to provide services to formerly incarcerated clients in the amount of \$575,000.

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**SUMMARY**

Following a competitive bidding process, the Oakland Workforce Investment Board (WIB) voted to award the Oakland Private Industry Council, Inc. (Oakland PIC) the roles of both the System Administrator and One Stop Career Center Operator through two separate memoranda of understanding (MOUs). Staff presented the Oakland WIB's RFP award and FY 2005-2006 budget

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decisions to the Oakland City Council on July 19, 2005. The City Council passed a motion directing staff to bring back a resolution for the Council's consideration that would reallocate \$575,000 of the \$1,900,000 the WIB approved for the Oakland PIC's One Stop Operator work to provide a total of \$300,000 to support workforce investment services at the Dr. J. Alfred Smith Training Academy<sup>1</sup> and \$300,000 to support workforce investment services at the Acts Full Gospel Baptist Church Men of Valor program. Further, Council requested that the City Attorney provide a legal opinion on the powers and role of the Council, the Mayor and the WIB in workforce development. The Oakland City Attorney then issued an opinion on the City Council's action and other related issues (**Attachment A**) that concluded that (1) the City Council, Mayor and the Oakland WIB must each agree on such contractual and budgetary matters, and (2) federal procurement regulations require an open competitive process for the award of Workforce Investment Act funds, including the funds proposed to be reallocated from the Oakland PIC. In light of the Council motion, the City Attorney's opinion and the WIB's action, staff has prepared two alternative Resolutions for the City Council's consideration. The City Attorney's Office advised that a resolution that allocated the funds to the Training Academy and Acts Full Gospel without a competitive process for the reallocated funds, as proposed by the Council motion, would not comply with federal law and therefore could not be presented to Council as an option.

### **FISCAL IMPACT**

The funds approved by the Oakland WIB are available in the Workforce Investment Act fund (Fund 2195, Project G207710), and are specifically approved for such awards. There is no direct impact on the City's general fund pertaining to these awards. Funding for System Administration, program operations and other direct services will vary from year-to-year depending on the availability of Workforce Investment Act formula and discretionary funding. Should the City Council, Mayor and WIB fail to reach agreement on the \$575,000 in question, the State Employment Development Department or the U.S. Department of Labor may recapture and reallocate the unused funds.

### **BACKGROUND**

The City Attorney's opinion (**Attachment A**) provides detailed background on the legal and policy issues pertaining to this item.

### **ISSUES AND IMPACT**

The City Attorney's Office has been consistent and clear in its opinion that the Workforce Investment Act (WIA) provisions that grant authority to the Mayor and the Workforce Investment Board over workforce budgeting and contracts do not preempt (supersede) City Charter provisions that grant budget and contracting authority to the City Council. Nor do these Charter provisions preempt WIA authority. Therefore, on matters pertaining to WIA-funded contracts and budgets, the Mayor, the WIB and the City Council must be in agreement. No one entity overrules the other. The Mayor, WIB and City Council must resolve the reallocation issue, or Oakland risks losing \$575,000 in federal funding.

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<sup>1</sup> The Oakland WIB had originally approved \$25,000 to support the Dr. J. Alfred Smith Training Academy as proposed by the Oakland PIC.

Any action to reallocate the \$575,000 to other agencies must be done through a public competitive bidding process that complies with federal procurement requirements. Staff believes that Oakland would not pass the test required to uphold a noncompetitive allocation of such funds.

There seems to be no precedent for resolving the impasse that Oakland is currently experiencing. The U.S. Department of Labor offered little guidance on the matter and stated only that they expect the City to act "responsibly." Both the Department of Labor and the State Employment Development Department that oversees the administration of WIA funding to local areas are aware of our situation. Staff believes that any action that runs counter to WIA regulations will come under very close scrutiny and could jeopardize Oakland's funding and/or designation as a Workforce Investment Area.

Staff has prepared two alternative resolutions for Council's consideration. Alternative #1 would approve the budget and contracts originally approved by the WIB without the reallocation. Alternative #2 would reallocate the \$575,000 from the Oakland PIC, per the July 19 Council motion, and authorize a request for proposals (RFP) process to determine what agencies would be awarded the reallocated funds. The RFP would seek proposals to provide universal and intensive services, with an emphasis on clients who are formerly-incarcerated. Please note that the RFP and the reallocation of funds to other agencies would require the concurrence of the Mayor and the WIB to be effective.

### **SUSTAINABLE OPPORTUNITIES**

Economic: The City must resolve this impasse or risk forfeiting \$575,000 in WIA funding.

Environmental: The project has no direct environmental impact.

Social Equity: Under any circumstance, the vast majority of the clients that receive intensive services from Oakland's workforce development system are unemployed or underemployed.

### **DISABILITY AND SENIOR ACCESS**

Among the targeted populations served by Oakland's workforce development system are low income senior citizens served by the ASSETS Older Workers Program.

### **RECOMMENDATIONS AND RATIONALE**

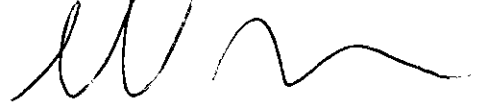
Staff recommends that the City Council adopt one of the two Resolutions and that it authorize the City Administrator to continue the operation of Oakland's workforce development system with the funds that are not in dispute. Staff also recommends that the City Council discuss a process for resolving budgetary and contractual differences with the WIB should those differences continue to exist.

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**ACTION REQUESTED OF THE COUNCIL**

Staff requests that the City Council adopt one of the Resolutions and authorize the City Administrator to take whatever actions are appropriate to maintain the operations of Oakland's workforce development system.

Respectfully submitted,

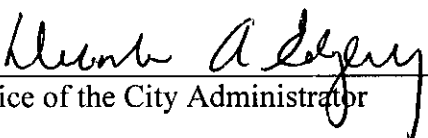


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DANIEL VANDERPRIEM  
Director of Redevelopment, Economic  
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Prepared by: Al Auletta  
Manager, Workforce Development Unit  
CEDA

APPROVED AND FORWARDED TO THE  
CITY COUNCIL



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Office of the City Administrator

CITY OF OAKLAND



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August 12, 2005

**CITY COUNCIL**  
Oakland, California

**MAYOR JERRY BROWN**  
Oakland, California

**RE: ADOPTION OF BUDGET AND CONTRACTS FOR  
WORKFORCE INVESTMENT**

Dear Mayor Brown, President De La Fuente, and Members of the Council:

**I. INTRODUCTION**

At its July 19, 2005, meeting, the City Council considered a resolution authorizing the City Administrator to implement the actions of the Oakland Workforce Investment Board ("WIB") as follows: (1) to negotiate and enter into a Memorandum of Understanding ("MOU") with the Oakland Private Industry Council, Inc., ("PIC") to serve as the workforce development system administrator with an operating budget not to exceed \$1.3 million for FY 2005-2006; (2) to enter into a MOU with the PIC to serve as the one-stop career center operator for an amount not to exceed \$1.9 million; and (3) to authorize disbursement of additional funds to the PIC for subcontracts, services and implementation of certain grant agreements and programs. (Item 16, July 19, 2005, City Council agenda.)

President De La Fuente distributed a motion on the floor that provided for the PIC to receive \$1.325 million as one-stop operator instead of the \$1.9 million allocated by the WIB, and for the \$575,000 difference to be allocated as follows: an additional \$275,000 to Allen Temple Housing and Economic Development Corporation ("Allen Temple"), and \$300,000 to Acts Full Gospel Church/Men of Valor Academy ("Acts Full Gospel"). (The WIB had allocated \$25,000 to Allen Temple, which had been included as a one-stop partner as part of the PIC's one-stop operator proposal. The WIB had not allocated any funds to Acts Full Gospel, which was not part of the PIC proposal.)

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The City Attorney advised the Council that (1) Council could not reallocate the funding that evening in accordance with President De La Fuente's motion because his motion constituted a significant substantive change in the item (and therefore such a reallocation required a new notice under Oakland's Sunshine Law); (2) Council could give direction to staff to bring back a resolution that provides the allocation that President De La Fuente proposed; and (3) this Office would not precipitously render advice on the floor, but would provide a *considered legal opinion regarding the powers and role of the Council, the Mayor and the WIB in the workforce investment system, if the Council were to request such an opinion.*

The Council passed a motion directing staff to bring back a resolution for the Council's consideration that would reallocate the dollars in accordance with President De La Fuente's motion. Further, Council requested that the City Attorney provide a legal opinion on the powers and role of the Council, the Mayor and the WIB in workforce development. During and after the meeting, individual Councilmembers also sought legal opinions on other related issues, including conflicts of interest. This opinion letter answers those questions.

## II. ISSUES

- A. What are the respective roles of the City Council, the WIB, and the Mayor in adopting budgets and approving contracts for the City's workforce investment system?
- B. Would the reallocation of funds from the PIC to Allen Temple and Acts Full Gospel comply with Department of Labor procurement and contracting rules?
- C. Does the PIC have a conflict of interest if it serves as both the system administrator and the one-stop operator for the City's workforce investment system?
- D. Under conflict of interest laws (1) could the executive director of the PIC speak at the City Council meeting on adoption of the budget and the MOUs, given her membership on the WIB; and (2) would the recusal of the PIC's executive director from participation in the WIB's decision-making process address any conflicts of interest?

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### III. SUMMARY CONCLUSIONS

- A. Under federal law (the Workforce Investment Act) and local law (the City Charter), the City Council, the WIB, and the Mayor share the decision-making authority to approve workforce investment budgets and contracts such as the MOUs. No one entity has ultimate authority that overrides the other two entities' authority. **Therefore, to approve the workforce development budgets and MOUs, the Council, the WIB, and the Mayor each must concur on these actions.** If the three entities do not agree, the City ultimately will lose its right to federal job training funds.
- B. Under federal procurement rules, the City must undertake a public and competitive request for proposals process to reallocate the funds to another agency or agencies, unless the City can make a written determination showing why a noncompetitive process is justified in these circumstances. Since the proposed reallocation to Allen Temple and Acts Full Gospel has not gone through a competitive process, and since the City has not made any showing that such a process would be infeasible, the proposed reallocation to these two agencies does not currently comply with federal law.
- C. Under the governmental conflict of interest laws, there likely is no conflict of interest in having the PIC serve as the system administrator and the one-stop operator because PIC employees are not "public officials." Also, nothing in the scope of services itself for the system administrator role would create a legal conflict of interest with the PIC's role as one-stop operator. (Whether it makes sense from a business perspective to have the same entity serve as both the system administrator and one-stop operator—as some have questioned-- is a policy question, not a legal question.)
- D. The PIC executive director does not have a conflict of interest in speaking before the City Council. Any WIB member may contact City Council members and the Mayor and speak before the City Council in their private capacities; such actions would not constitute a conflict of interest or improper influence over the WIB, because the Council is a separate "agency" from the WIB. So long as the PIC executive director did not vote, engage in WIB board discussions or contact fellow WIB members regarding the contract awards, there is no conflict of interest in the WIB's decision on the awards.

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#### IV. BACKGROUND

Since the federal government is the source of most of the City's job training funds, the workforce investment system in Oakland is governed primarily by a federal statute, the Workforce Investment Act of 1998 ("WIA"), codified at 29 USC §2801, et seq., and its implementing regulations, codified at 20 CFR Part 660, et seq. As required by WIA, the Mayor created the WIB in 2000. The WIB is a City board that consists of designated representatives of local businesses, educational institutions, labor unions, job training agencies, and other community based organizations; the WIB is responsible for policymaking and oversight of Oakland's workforce development system. The Mayor has the authority to make appointments to the WIB under WIA; City Council approval is not required.

On April 7, 2005, the WIB voted to designate the PIC, a nonprofit agency, to be both the one-stop career center operator and the system administrator for the Oakland workforce investment system. The PIC has served in these roles in the past. On June 23, 2005, the WIB voted to approve its FY 2005-06 budget, including an allocation of \$1.3 million to the PIC for its operating costs as systems administrator and an allocation of \$1.9 million to the PIC for its operating costs as the one-stop operator.

On July 19, 2005, the City Administrator, per the WIB's action, presented the City Council with a resolution authorizing the City to enter into two Memoranda of Understanding (the "MOUs") with the PIC that govern the PIC's work as one-stop operator and system administrator. The MOUs incorporated the operating budgets approved by the WIB. The Council passed a motion directing staff to bring back a resolution reallocating \$575,000 from the PIC's one-stop operator budget to two other agencies. The proposed reallocation would increase the allocation to the Allen Temple from the \$25,000 included in the WIB budget to \$300,000, and give a new allocation of \$300,000 to the Acts Full Gospel, which had not been included in the WIB budget. The funds would be used to provide services to formerly incarcerated clients.

Gay Cobb, the executive director of the PIC, also is a member of the WIB. At the July 19 Council meeting, Dan Siegel, the PIC's legal counsel, asked this Office to consider whether Ms. Cobb had a conflict of interest in speaking before the City Council. Although the City Attorney's Office has no duty to advise third parties such as Ms. Cobb, this Office announced that it could not determine with certainty whether or not Ms. Cobb would violate Government Code section 1090 if she spoke at the Council meeting because the process involves three parties and the matter might have to return to the WIB for consideration. Further, we stated that Ms. Cobb had the right to speak if she chose to, that the Attorney General and District Attorney would be the final arbiters on the conflict of interest issue, that she should consult her legal counsel, and that a member of her staff could speak to the issues without any prospect of violating conflict of interest laws. Ms.



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Cobb spoke about her concerns about the process and the need for a meeting between the Council and the WIB to address communication and other problems.

## V. DISCUSSION

### A. AUTHORITY OF COUNCIL, WIB, AND MAYOR OVER WIA BUDGETS AND CONTRACTS

1. Federal law grants decision-making authority jointly to the WIB and the Mayor

WIA grants most decision-making authority over workforce development jointly to the local workforce investment board and the chief elected official of the local area, i.e., the Mayor.<sup>1</sup> (It should be noted in this respect that, unlike many policy boards and commissions in Oakland, the WIB is not merely advisory, but holds significant decision-making authority.) Among other things, the WIB is responsible for designating the one-stop operator, and terminating the operator for cause, with the “agreement” of the Mayor. (WIA §121(d); 20 CFR §§661.305(a)(2) and 662.410.) The WIB is responsible for identifying providers of services, and entering into MOUs with one-stop partners with the “agreement” of the Mayor. (WIA §121(c); 20 CFR §§661.305(a)(3), 662.230(c), and 662.300.) The WIB has the authority to develop a budget for workforce development activities, “subject to the approval” of the Mayor. (WIA §117(d)(3)(A); 20 CFR §661.305(a)(4).)<sup>2</sup>

The statute is clear that the WIB and the Mayor each must agree on who the one-stop operator shall be, who the one-stop partners shall be, and what budget allocation shall be made to each of these entities. WIA is silent on what happens if the WIB and the

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<sup>1</sup> WIA provides that the workforce investment board and the chief elected official may enter into an agreement defining their respective roles and responsibilities, although this is not required. (20 CFR. §661.300(c).) The Oakland WIB and the Mayor have not entered into such an agreement.

<sup>2</sup> Among the WIB’s other statutory functions and responsibilities are: (1) setting workforce development policy, in “partnership” with the Mayor; (2) developing and submitting a five-year comprehensive local plan to the Governor, in “partnership” with the Mayor; (3) providing oversight over local employment and training, the one-stop system, and youth service activities, in “partnership” with the Mayor; (4) adopting performance measures, as “negotiated” with the Mayor and Governor; and (5) providing linkages with employers, etc. (WIA §117(d); 20 CFR §§661.300 and 661.305.) The Mayor is exclusively responsible for appointing WIB members, serves as the local grant recipient, and is liable for the misuse of any grant funds. (WIA §117(c)(1)(A) and (d)(3).)

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Mayor cannot reach agreement on any of these matters.<sup>3</sup> We see nothing in the statute or the regulations that gives either the WIB or the Mayor overriding authority over the other in the event of disagreement.

2. Nothing in federal law precludes the Council from exercising its authority under the City Charter to consider and approve WIA budgets and contracts

Federal law grants no decision-making authority to the City Council over workforce investment. The WIA makes no mention of governing boards of local government entities. However, there is nothing in the statute that precludes local governing boards like the Council from exercising the governing authority given to them under local law.

The Oakland City Charter provides that the City Council is the governing body for the City of Oakland. (Charter §207.) The Charter gives the City Council the authority to consider and approve budgets<sup>4</sup> and City contracts.<sup>5</sup> While the Charter

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<sup>3</sup> The City asked legal counsel for the Department of Labor for their interpretation of the statute. The Department declined to give their interpretation, pointed out that the statute was ambiguous, but stated that "we expect you to act responsibly."

<sup>4</sup> On budget authority, see Charter §305(a) ("The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council."); §504 ("The City Administrator shall have the power and it shall be his duty....(f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council."); §801 ("Under the direction of the Mayor and the City Council, the City Administrator shall prepare budget recommendations for the next succeeding fiscal year which the Mayor shall present to the Council, in a form and manner and at a time as the Council may prescribe by resolution. Following public budget hearings, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefore for the ensuing year..."); §804 ("The Council shall create, reduce or eliminate such Funds as are required for proper accounting and fiscal management, or required as a condition of receiving funds from any other government..."); and §806 ("No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council..."). The budgeting authority of Council is not limited to City general funds, but extends to all funds received by the City including federal grant funds in which the City acts as recipient. WIA provides that the chief elected official is the local grant recipient of WIA funds, and authorizes this official to designate an entity to serve as local grant sub recipient and fiscal agent. (WIA §117(d)(3)(B)(i).) In Oakland, the Mayor has designated the City to act as grant sub recipient and fiscal agent for WIA funds.

<sup>5</sup> On contracting authority, see Charter §§504 (g) and (h) ("The City Administrator shall have the power and it shall be his duty.... (g) To prepare or cause to be prepared... contracts for work which the Council may order. (h)... to make recommendations to the

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assigns to the Mayor the special role of encouraging and promoting economic development (Charter §305(c) and (d)), the Charter also provides that the Mayor represents the City in intergovernmental relations "as directed by the Council." (Charter §305(g).) Under its Charter authority, Council has considered and approved WIA budgets and contracts since WIA's inception, as well as budgets and contracts in the past under the *Job Training Partnership Act* ("JTPA"), the predecessor statute to WIA.

3. Federal law does not preempt the Charter's provisions giving Council authority to approve budgets and City contracts

We conclude that WIA does not preempt local laws such as the Charter with respect to contracting and budgeting authority. This Office has opined in the past, in the context of the JTPA, that federal job training laws do not preempt local procedural laws. (See October 27, 1992, legal opinion, attached, at 6-8.)

The doctrine of federal preemption, rooted in the Supremacy Clause of the U.S. Constitution, provides that neither states nor local governments may pass laws inconsistent with federal law. There are three types of federal preemption: (1) "express preemption," where a federal statute expressly prohibits state or local regulation over a matter; (2) "conflict preemption," where compliance with both federal law and the local law is physically impossible or where the local law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"; and (3) "field preemption" or "implied preemption," where the federal regulatory scheme is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it" or where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." (Gade v. National Solid Wastes Management Assoc., 505 US 88, 98 (1992).)

The U.S. Supreme Court has long held the position that preemption is disfavored, and it applies a presumption against the invalidation of local law based on a preemption defense. (Cipollone v. Liggett Group, Inc., 505 US 504, 518 (1992).) Indeed, the general standard is to "start with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act[s] unless that [is] the clear and manifest purpose of Congress." (Id. at 516.) The purpose of Congress is the "ultimate touchstone" of preemption analysis. (Id. at 516.)

We see no compelling indication that Congress intended federal law to preempt the ability of local governments to apply additional decision-making procedures mandated by local law to WIA matters.

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Council in connection with the awarding of public contracts."); and §808 ("The Council shall establish by ordinance the conditions and procedures for any purchase or contract...").

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Express preemption. There is nothing in the WIA language that purports to preempt local law. While the statute does grant decision-making power over workforce investment policy to the local board and the chief elected official, the statute does not say that only the local board and the chief elected official may have decision-making power to the exclusion of other decision-making bodies.<sup>6</sup>

Conflict preemption. There is no contradiction between the grant of authority to the WIB and the Mayor set forth in WIA and the grant of authority to Council set forth in the Charter. Compliance with the decision-making authority established in the two laws with respect to contract and budget approval is not physically impossible; the City can comply with both WIA and the Charter simply by requiring concurrence over these matters by the WIB, the Mayor, and the Council. Nor does the requirement that the Council approve budgets and contracts stand as an obstacle to federal law. While WIA clearly intends that the WIB and the chief elected official have decision-making authority over WIA policymaking, there is nothing that indicates that the WIB and chief elected official must have exclusive decision-making authority or that sharing this authority with other bodies would compromise any legislative purpose behind WIA.

Field preemption. We see no evidence of any legislative intent of Congress to occupy the field of workforce investment policymaking to exclude localities from imposing supplemental decision-making requirements over WIA contracting and budgets, or to otherwise restrict local control over WIA funds, as long as local control is exercised within the parameters of the statute. Indeed, WIA's requirement for local workforce investment boards and local plans indicates Congress' intent that there be significant local control over the workforce investment system.<sup>7</sup> We believe that in

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<sup>6</sup> WIA states that the local grant recipient "shall" disburse workforce development funds at the direction of the WIB, "immediately on receiving such direction from the [WIB]." (WIA §117(d)(3)(B)(i)(III).) We read this provision simply as an affirmative grant of authority to the WIB to authorize disbursements, not as a limitation on the authority over disbursements otherwise held by other agencies.

<sup>7</sup> See 64 Fed. Reg. 18663 (April 15, 1999) (a key principle of WIA is to increase state and local flexibility and to reserve authority to localities to meet local needs) and 20 CFR §§661.110 ("These regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are not narrowly defined, and are subject to State and local interpretation."). See also House Report 105-093, Report of the Committee on Education and the Workforce on H.R. 1385: "Localities are provided with the flexibility and authority to design and to operate local programs that meet the employment, training, and literacy needs of their individual communities, consistent with the statewide policies set by the Governor through the collaborative process." The Department of Labor procurement rules (which apply to WIA funds) require local government sub grantees to "use their own procedural

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adopting WIA, Congress left ample room for a local government to apply its own decision-making requirements to supplement the decision-making structure set forth in the statute.

4. Charter provisions giving Council authority to approve budgets and City contracts do not supplant WIA's grant of decision-making authority to the WIB and the Mayor

Although WIA does not preempt the Charter, by the same token the Charter does not preempt WIA. The provisions in the Charter that establish the Council as governing body for the City do not supercede provisions in WIA that grant decision-making authority over various functions to the chief elected official and the WIB, even though ultimate decision-making authority over contracts and budgets for most other City functions usually resides exclusively in the Council. The home rule powers given to charter cities by the California Constitution, which give such cities broad authority to govern municipal affairs, do not override federal law. The Supremacy Clause of the U.S. Constitution establishes federal law as preeminent in our federal system of government, and there is no circumstance in which local law could take precedence over (i.e., override or preempt) federal law. While we see no conflict between federal law and local law here that would require federal law to preempt local law, neither do we see any legal basis for local law preempting federal law.

5. The Council, the WIB, and the Mayor share final decision-making authority and must agree on WIA matters to receive the funds

Therefore, the lines of decision-making authority established by WIA and by the Charter must be reconciled, so that the lines of authority established by both laws are observed. Because the authority to approve WIA budgets and contracts is assigned by law to the WIB, the Mayor, and the Council, the three entities share final decision-making authority and must agree on these matters. If the Mayor, WIB and City Council fail to reach agreement, the City will not have an approved budget and MOU -- at least as to the \$575,000 at issue -- and therefore could not disburse these funds, either to the PIC, Allen Temple, or Acts Full Gospel. Therefore, the City would risk losing any funds as to which the three parties do not reach agreement, since the awarding agency ultimately would reprogram unused WIA funds to other uses. Based on the Council's proposed reallocation motion, it appears that the three decision-making parties have not yet reached agreement on the allocation of \$575,000 of the funds.

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procedures which reflect applicable State and local laws and regulations," as long as those procedures conform to federal law. (29 CFR §97.36(b)(1).)

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B. COMPLIANCE OF PROPOSED REALLOCATION WITH  
 PROCUREMENT RULES

WIA regulations require local government subgrantees to follow the Department of Labor's general administrative regulations on grants for WIA funds. (20 CFR §667.200(a)(1).)<sup>8</sup> These regulations require, among other things, that local governments conduct procurement transactions "in a manner providing full and open competition." (29 CFR §97.36(c)(1).) Normally, a competitive request for proposals ("RFP") process should be followed.<sup>9</sup> (29 CFR §97.36(d)(3).) The regulations require that RFPs be publicized, identify evaluation factors, and solicit proposals from an adequate number of qualified sources. Local governments must have a method for conducting technical evaluations of proposals and selecting awardees. The regulations provide that awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. (Id.)

The regulations allow procurement by noncompetitive means only when a competitive process is infeasible, and when one of the following is true: (1) the service is available only from a single source; (2) the public exigency or emergency for the requirement will not permit a delay resulting from a competitive process; (3) the awarding agency (i.e., the California Employment Development Department ("EDD")) authorizes noncompetitive proposals; or (4) after solicitation of a number of sources, competition is deemed inadequate. (29 CFR §97.36(d)(4).)

In accordance with these regulations, the City recently entered into a Corrective Action Plan with EDD on procurement after state monitors found deficiencies in the City's procurement practices. The Plan reiterates the regulatory standards, and provides that "[p]rocurement using noncompetitive and/or sole source methods is to be considered the last resort for procurement activities conducted by or for the Oakland [local area]." Any services procured noncompetitively must include a written determination indicating how the procurement met legal standards.

The Department of Labor's procurement rules apply to the proposed reallocation of funds to Allen Temple and Acts Full Gospel because the City would be procuring job training services from those agencies using WIA funds. The reallocations to these agencies have not gone through a public and competitive RFP process. (While Allen Temple was a part of the PIC's proposal, which was responsive to an RFP, the proposed reallocation would increase that agency's allocation more than ten-fold. Since an

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<sup>8</sup> For local government subgrantees, those rules are codified in 29 CFR part 97. Part 95 of the regulations, which has been erroneously cited as applicable to the City, applies only to nonprofits and other nongovernmental entities. (20 CFR §667.200(a)(2).)

<sup>9</sup> We assume that procurement by small purchase procedures and by sealed bids, as allowed by the regulations, would be inappropriate in this context.

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increase of this magnitude would so dramatically and fundamentally change the scope of services Allen Temple would provide, it should be treated as a new proposal for purposes of procurement.) No reason has been given for why a competitive process for reallocating these funds would be infeasible; therefore, the City does not meet the first prong of the test for justifying a noncompetitive process. None of the other four factors justifying noncompetitive procurement under the second prong of the test would apply: (1) there is no documented evidence that job training services to formerly incarcerated clients are only available from Allen Temple and Acts Full Gospel; (2) there is no indication of any public exigency or emergency that would preclude a competitive process; (3) there is no EDD authorization for noncompetitive proposals; and (4) there is no documented evidence that the City has solicited proposals from other sources, or that competition for these funds could be deemed inadequate.

Therefore, assuming that the WIB, Council and Mayor agree on reallocating PIC funds to other agencies, the City would then be required under Federal law to undertake a public and competitive RFP process to award these funds to another agency or agencies, or the City would have to make a written determination showing why a noncompetitive process is justified in these circumstances. As we previously concluded, the WIB, the Council, and the Mayor would then have to agree on the reallocation to the agencies selected through this process.

C. CONFLICT OF INTEREST OF PIC AS SYSTEM ADMINISTRATOR AND ONE-STOP OPERATOR

The PIC serves both as system administrator of Oakland's workforce development system and as operator of the one-stop career center in Oakland. The question asked of the City Attorney is whether the two roles present a legal conflict of interest; that is, does the PIC in its system administrator's role make decisions in a governmental capacity that could affect its financial interests as one-stop operator.

The PIC's role as system administrator is spelled out in the MOU with the City. The MOU provides that the PIC "shall diligently and in good faith provide fiscal and program administration for WIA, and other WIA-related funds . . . subject to City review and oversight." The MOU goes on to enumerate a number of administrative tasks for which the PIC is responsible. The MOU provides that the City, as subgrant recipient and fiscal agent, maintains ultimate fiscal authority and responsibility over WIA funds, and that City staff – i.e., the Workforce Development Division of the Community and Economic Development Agency – is responsible for overseeing and monitoring the workforce system. The WIB also exercises oversight over the system, including the system administrator, under WIA. (WIA §117(d)(4).) The enumerated tasks do not indicate that the PIC as system administrator exercises any oversight or decision-making over its work as one-stop operator.

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The governmental conflict of interest laws such as the Political Reform Act only apply to "public officials" and address only financial conflicts of interest. Consultants may be considered public officials in certain instances. The conflict of interest analysis of the Political Reform Act looks only at the conflicts of interest of individuals, not companies. (Wasko Advice Letter, FPPC No. A-04-270 (2005).) Therefore our threshold analysis looks to whether the PIC employees in their work as system administrator would be "public officials" within the meaning of the statute. We conclude that they are not.

One test asks whether the individual will be serving in a staff capacity with the agency and performs duties that otherwise would be performed by a City designated employee. (Title 2, Division 6, California Code of Regulations section 18701(a)(2)(B).)<sup>10</sup> According to the Manager of the Workforce Development Unit, City staff has advised that the system administrator is considered to be "staff to the City staff." PIC employees are not serving in the capacity of staff to the WIB staff on workforce development matters. Indeed, City staff in CEDA already is performing those staff duties. The system administrator's role is more to assist CEDA staff on an as-needed basis with certain administrative tasks, and such work is done under the ultimate oversight of staff, as well as the WIB. Accordingly it does not appear that PIC employees act in a "staff capacity with the agency," and therefore they are not public officials under this test.

There is a counter argument that the system administrator's employees do serve in a "staff capacity" with the WIB. The City Administrator's Report to Council, dated July 19, 2005, states, "Typically, the entities designated as Workforce Investment Areas, such as cities, counties, or consortia of counties, serve as their own System Administrators. Oakland's bifurcated administrative and program support structure is unique." The MOU says that the PIC will provide "reasonable staff support for the WIB . . ." on a per request basis. However, so long as City staff remains in place and has primary authority over the PIC's work, then there is probably a stronger argument that PIC employees do not "serve in a staff capacity" to the WIB.

The other test for determining whether an individual is a "public official" is whether the individual is making governmental decisions. (Title 2, Division 6, California

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<sup>10</sup> "'Consultant' means an individual who, pursuant to a contract with a state or local government agency:

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302."



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Code Of Regulations section 18701(a)(2)(A.)<sup>11</sup> Governmental decisions include approving a regulation, enforcing a law, authorizing a contract or contract amendment, granting agency approval to a report, study, or similar item, or granting agency approval of policies.

The scope of services of the system administrator does not empower PIC employees with governmental decision-making power over the types of decisions listed in the PRA regulations. PIC employees are responsible only for performing administrative tasks related to the day-to-day functioning of the workforce development system. Policymaking decisions are left to the City Administrator, Mayor, WIB, and City Council. Accordingly, PIC employees are not public officials under this test.

If PIC employees were held to be covered public officials, then the conflict of interest analysis would have to be done on a decision by decision basis. The system administrator's contract duties in the scope of services, at least on their face, do not appear to indicate decisions that would result in a legal conflict of interest. The responsibilities specified in the scope of services do not give PIC employees the power to make decisions in their role as system administrator that would have a financial effect on the PIC as one-stop operator. In order to protect against such a possibility, we recommend adding the following language to the system administrator MOU:

“The Oakland PIC shall have no oversight responsibilities under this MOU with respect to the one-stop career center operations. Such oversight responsibilities shall rest solely with the City, City staff and the WIB. In conducting its work under this MOU, no employee of the Oakland PIC may participate in any decisions or make any recommendation or evaluation that could have a material

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<sup>11</sup> ““Consultant” means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof . . . .”

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financial effect on the Oakland PIC's interest as operator of the one-stop career center."

The City Administrator's report noted that several of the outside proposal readers who participated in the WIB RFP process questioned whether it was appropriate for one entity to perform both as system administrator and one-stop operator. Whether it makes sense from a business perspective to have the same entity serve in both roles is a policy decision, not a legal question. If the policy makers do not want the system administrator and the one-stop operator to be the same entity for business reasons, they are always free as a matter of policy to assign those functions to different entities.

D. CONFLICT OF INTEREST OF PIC EXECUTIVE DIRECTOR PARTICIPATION IN DECISIONS TO AWARD CONTRACTS TO THE PIC.

Government Code Section 1090 provides that a public officer or employee may not make a contract in which he or she is financially interested. It is a violation of Section 1090 for an officer or employee to participate in any way in the development, negotiation and/or execution of such a contract. (Millbrae Assn. For Residential Survival v. Millbrae 262 Cal.App.2d 222 (1968).) A violation of Section 1090 is punishable as a felony. In addition, a contract executed in violation of Section 1090 is void, and the contractor must return to the governmental entity any payments the contractor received.

Local workforce investment boards are specifically addressed in the 1090 law (Government Code Section 1091.2), and WIB Boardmembers, acting in their official capacity, are public officers. A conflict of interest over a contract would occur only if: (1) the particular contract directly relates to services the entity the board member represents or financially benefits the member or the entity he or she represents; and, (2) the member makes, participates in making, or uses his or her official position to influence the decision on the contract. Recusal from these activities (including not voting and not participating, formally or informally, in any board discussion on the item and refraining from contacting other WIB members about the decision making process or decision) would prevent a conflict of interest.

"Using" one's "official position" is not defined by Section 1090. However, a parallel conflict of interest statute, the Political Reform Act, uses the same term and there is an interpretive regulation for that act. Using one's official position to influence includes appearing before, or otherwise attempting to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer." (Title 2, Division 6, California Code of Regulations section 18702.3, emphasis added.) **Improper influence can include merely contacting fellow board members regarding a decision.**

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The MOUs for the one-stop operator and the system administrator for Oakland's workforce system meet the first trigger of Section 1091.2. These services would be provided through contracts with the City. The contracts "directly relate" to services to be provided by the PIC, the entity represented by WIB member, Gay Cobb. (Ms. Cobb would have a financial interest in the PIC as its paid executive director.)

Whether the second condition is triggered is a question of fact. It is our understanding that Ms. Cobb has recused herself from any WIB vote relating to the RFP process and discussions at WIB meetings on the matter. On October 21, 2004, the City Attorney's Office closed an inquiry regarding Government Code 1091.2 finding "insufficient competent evidence supporting a violation of Government Code section 1091.2 requiring an invalidation of a subsequent contract with the Private Industry Council." So long as Ms. Cobb did not participate in the WIB's decision-making process and refrained from contacting other WIB members regarding the WIB decision, there would be no conflict of interest.<sup>12</sup>

As mentioned in the introduction, we advised Ms. Cobb at the July 19, 2005, meeting that the City Attorney's Office could not give a "green light" to her speaking before the Council from a conflict of interest standpoint. However, based on our determination of the roles of the City Council and the WIB, we now conclude that speaking before or otherwise contacting the City Council would not constitute a conflict of interest for Ms. Cobb so long as she is addressing the City Council in her private capacity as PIC director, not as a WIB representative. This is because Ms. Cobb is not a member of the City Council and she therefore would not be attempting to influence her fellow board members, but rather members of the City Council. (Faulconer Advice Letter, FPPC No. I-05-042 (2005).) This is because the Council is considered a separate "agency" from the WIB.

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<sup>12</sup> The City Attorney's Office periodically provides training to the City's boards and commissions on conflict of interest, Brown Act, Sunshine Ordinance and other matters. The most recent training of the WIB on general conflict of interest issues, including Government Code 1090 was in 2000. The City Attorney's Office also has advised the PIC executive director, as well as the WIB as a whole, on a number of occasions orally and in writing of the 1090 issues related to her membership on the WIB.

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## VI. CONCLUSION

In summary, for the reasons explained in this opinion (1) the reduction in the PIC one-stop operator funding proposed by the Council motion would require the concurrence of the Mayor and the WIB, and (2) any reallocation of such funds to another agency or agencies would require either (a) a public competitive RFP process, or (b) a written determination both that a competitive process is infeasible and that a noncompetitive award is otherwise justified under the factors set forth in the procurement rules.

In light of the outstanding legal issues, the following are possible alternative actions that the three decision-making parties could take and their ramifications:

**Alternative #1: The Council and Mayor concur with the WIB's June 23 budget allocation, without a reduction in PIC funding.** This would resolve all legal issues.

**Alternative #2: (a) The WIB and Mayor concur with the July 19 Council proposal to reduce PIC funding; (b) the City conducts a public competitive RFP process for the reallocation of the funds as to which the parties have not reached agreement (Based on the July 19<sup>th</sup> proposed allocation, the amount at issue is \$575,000); and (c) the WIB, Mayor, and Council approve the reallocation of such funds to the agency or agencies selected in the process.** This would resolve all legal issues and comply with federal procurement requirements.

**Alternative #3: (a) The WIB and Mayor concur with the Council proposal to reduce PIC funding; (b) the City documents why a competitive process for reallocating such funds is infeasible; and (c) the WIB, Mayor, and Council approve the reallocation of such funds to Allen Temple and Acts Full Gospel.** This would raise an issue of compliance with federal procurement requirements. Noncompetitive procurement may be used only as a last resort. The documentation as to why a noncompetitive award is appropriate must be compelling.

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**Alternative #4: The WIB, Mayor, and Council do not concur either on the reduction of PIC funding or on the reallocation of such funds to other agencies. Under this scenario the City ultimately would lose federal workforce development funds, at a minimum as to those funds regarding which the three governing entities have not reached agreement. As discussed earlier, based on the proposed reallocation in Council's motion, the amount at issue is \$575,000.**

Respectfully submitted,



JOHN A. RUSSO  
City Attorney

Attorneys Assigned:  
Mark Morodomi  
Daniel Rossi

cc: Oakland Workforce Investment Board  
Al Auletta, CEDA Workforce Development

Attachment:  
October 27, 1992, legal opinion from Jayne Williams to Council Legislation & Long  
Term Planning Committee

CITY OF OAKLAND



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Office of the City Attorney  
Jayne W. Williams  
City Attorney

October 27, 1992

Legislation & Long Term Planning Committee  
Oakland, California

Chairperson Spees and Members of the Committee:

Re: Selected Issues Regarding the Relationship  
Between the City and the Private Industry Council

At the October 6, 1992 meeting of the Legislation & Long Term Planning Committee, the City Attorney was asked to report back on the following issues between the City and the Private Industry Council (PIC):

1. The role of the City Council in reviewing and approving JTPA budgets.
2. Disbursement procedures that should be incorporated into the City/PIC Agreement.
3. The relationship between the PIC and its subcontractors.
4. Whether the Brown Act applies to meetings of the PIC.
5. Whether state conflict of interest laws apply to members of the PIC.
6. Who has the power to remove members of the PIC.
7. Whether the Office of Economic Development and Employment continues to perform any employment responsibilities for the City.

The first three issues are issues that the City Attorney's Office identified as categories of issues that need to be resolved between the City and the PIC in order to finalize the City/PIC Agreement. The Committee asked that certain City staff prepare a memorandum detailing the issues in these categories and making recommendations to the Committee with respect to the City's position on those issues. The Committee also asked that the last four issues listed above also be discussed in that memorandum.

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This report will review the structural flow of Job Training Partnership Act (JTPA) funds into the City of Oakland, their relationship to the first three issues, and the status of staff efforts to resolve those issues. The report will also discuss issues 4, 5, and 6 as listed above. This office refers the response to issue number 7 to the City Manager's Office.

#### Structural Flow of Funds

On July 14, 1992, this office submitted a report to your Committee regarding the relationship between the City and the Private Industry Council. A copy of that report is attached as Exhibit A. The July 14 report described the flow of JTPA funds from the federal government to the state government to the local government, and the flow is graphically depicted in Table 1, attached.

Table 1 shows the step-by-step process for the flow of JTPA funds in the Oakland Service Delivery Area (SDA) after the federal government has approved funds for the State of California. As described in the July 14 Report, the Mayor (as the chief elected official for the Oakland SDA) enters into an agreement with the PIC which determines procedures for the development of a "job training plan", names the "grant recipient", and names the "administering entity." After the job training plan is developed, the first step is for the Mayor and the PIC to jointly submit the job training plan to the State for approval. After the State approves the job training plan, the State enters into a "Grant Agreement" with the grant recipient (i.e., the City in this case). Because the Mayor/PIC Agreement designates the PIC to be the administrative entity, the City needs to enter into an agreement with the PIC in order to (a) allow JTPA funds to be disbursed from the City to the PIC, (b) enable the City to enforce its responsibilities as the grant recipient under the Grant Agreement with the State, and (c) better define what the City's role is in relation to the PIC.

After the PIC receives JTPA funds from the City, the PIC will enter into contracts with various subcontractors and service providers. Because the City is the grant recipient of JTPA funds, the City is the entity that will be responsible for ensuring that all JTPA funds are used in compliance with state and federal regulations governing the use of JTPA funds. The City must therefore ensure that all entities who receive JTPA funds (including the PIC, the OPSC, the PIC's subcontractors and service providers)

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through the City comply with all JTPA regulations that are imposed upon the City through the Grant Agreement. Because the City has no contractual relationship with the PIC's subcontractors and service providers, the only way to enable the City to enforce its responsibilities under the Grant Agreement and the JTPA regulations is to give the City certain rights and powers in the City/PIC Agreement.

Issues Concerning  
the City/PIC Agreement

As was reported on October 6, the three main categories of issues to be resolved before finalizing the City/PIC Agreement are: (i) the role of the City Council in reviewing and approving JTPA budgets, (ii) the City's disbursement procedures for JTPA funds, and (iii) the relationship of the PIC to its subcontractors and service providers. Staff from the City's Finance Department is working with PIC representatives to develop a disbursement procedure that is acceptable to both the City and the PIC. Representatives from the Mayor's Office are similarly working to resolve the other two issues in ways that will be satisfactory to all concerned. This office is informed that these issues may be resolved in the next few weeks. Once those issues have been resolved, this office will proceed to finalize the City/PIC Agreement.

Applicability of the Brown Act  
to PIC Meetings

For purposes of discussing the next three issues (i.e., Brown Act, state conflict of interest, and power of removal), it is important to distinguish between the body known as the Private Industry Council (referred to herein as the "PIC") and the Oakland Private Sector Corporation (the "OPSC"). Although the PIC and the OPSC are often commonly referred to collectively as the PIC, they are really two different bodies. The common reference to both bodies as the PIC has caused a great deal of confusion and disagreement over the scope of jurisdiction that the City Council has over the PIC. For the remainder of this report, all references to the PIC refer only to the body known as the Private Industry Council established by the City Council and not to the OPSC or the board of directors of the OPSC.

The City Council established the PIC by Ordinance No. 9669



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C.M.S. on October 24, 1978 (the "Ordinance")<sup>1</sup>. Section 1 of the Ordinance states:

"Pursuant to §501 of the Charter of the City of Oakland, there is hereby created a Private Industry Council (PIC).<sup>2</sup> It shall be the function and duty of the PIC to **assist and advise** the City Manager and Council in the development, planning and oversight of federal training and employment programs geared to the interests of the private sector as the City Manager and/or Council may direct, or as the PIC may deem advisable; to make reports and recommendations thereon and to formulate policy recommendations and plans for the future development of training and employment matters so that programs can be developed to provide maximum benefits to the citizens of the City of Oakland; and to perform such other duties and functions as the City Manager and/or the Council may from time to time direct." (emphasis added)

The PIC is therefore a City advisory commission. Its powers are limited only to assisting and advising and performing those functions set forth in the Ordinance or that the City Manager or the City Council may direct. Although the Ordinance was adopted during the JTPA's predecessor legislation, the Comprehensive Employment and Training Act, the Ordinance has never been repealed and remains in effect and in satisfaction of the requirements of the JTPA.

Under current law, the Brown Act (Government Code sections 54950 - 54962) applies to City advisory boards, commissions and committees if they are created by some formal action of the City Council or one of its members. (Gov. Code §54952.3.) Virtually

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<sup>1</sup> It should be noted that section 2 of the Ordinance establishes the number of members of the PIC at 15, and the current number of members on the PIC is 23. The federal Job Training Partnership Act does not prescribe a specific number of members that must sit on the PIC. (see 29 USCA §1512(e))

<sup>2</sup> In 1978, section 501 of the Oakland City Charter provided for the creation of boards and commissions. In 1988, section 501 was renumbered to section 601.

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any action taken by the City Council or one of its members, in an official capacity, to create the advisory body is sufficient to constitute formal action. (Joiner v. City of Sebastopol (1981) 125 Cal.App.3d 799.) The PIC was clearly created by formal action of the City Council and is therefore subject to the requirements of the Brown Act.

Applicability of State Conflict  
of Interest Laws to PIC Members

As previously stated, the term "PIC" refers to the body created by the City Council pursuant to Ordinance No. 9669 C.M.S. "PIC" does not refer to the OPSC or its board of directors.

We will address two state conflict of interest statutes for purposes of this discussion. They are the Political Reform Act of 1974, as amended, Government Code sections 87100 et seq., and Government Code section 1090.

Government Code section 1090 prohibits certain specified public officials from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members. Section 1091.2 makes the provisions of section 1090 applicable to private industry councils only when both of the following conditions are met:

- (a) The contract or grant directly bears on services to be provided by any member of a private industry council or any business or organization which the member directly represents, or the contract or grant would financially benefit the member or business or organization which the member represents.
- (b) The affected private industry council member fails to comply with Government Code section 87100.

Government Code section 1090, by expressly conditioning its application in part upon compliance with Government Code section 87100, clearly indicates that the legislature intended that the provisions of the Political Reform Act apply to members of private industry councils in general and therefore to members of the PIC.

Since Government Code section 1090 clearly requires members of the PIC to comply with the Political Reform Act, we need not

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proceed any further in our analysis as to whether the Political Reform Act applies to the PIC. However, we note that in 1982, the Attorney General issued a similar opinion that concluded that the Political Reform Act applied to members of private industry councils such as the PIC. (65 Ops.Cal.Atty.Gen. 41 (1982)) Although this opinion was issued just before CETA was replaced by the JTPA, we believe that the analysis and conclusion of that opinion would remain unchanged under the JTPA.

In short, it is our opinion that the provisions of the state Political Reform Act do apply to members of the PIC, and the provisions of Government Code section 1090 also apply to members of the PIC when the conditions specified in section 1091.2 are met.

**Whether the City Council or the  
PIC has the Power to Remove PIC  
Members from the PIC**

We reiterate that the PIC is a City advisory commission created pursuant to Ordinance No. 9669 C.M.S. and pursuant to City Charter section 501, now renumbered to section 601. Section 601 allows the City Council to create advisory boards and commissions and prescribes the duties of those commissions. It also allows for the removal of members of those boards and commissions "for cause, after hearing, by the affirmative vote of at least six members of the Council." Clearly then, the City Council has the power to remove members of the PIC.

However, we note that the Job Training Partnership Act, 29 USC sections 1501 et seq., also contains a provision for the removal of PIC members. 29 USC section 1512(f) reads:

"Members shall be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council shall be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council."  
(emphasis added)

There is an issue of whether the City Council's Charter created power to remove commission members is preempted by the federally created right of private industry councils to remove their own members under United States Code section 1512(f).

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As a chartered city, the City of Oakland has the right and power to prescribe the method of appointment and removal of its municipal officers. Its right to adopt a charter derives from the California Constitution. Under article XI, section 3 of the California Constitution, "the provisions of a charter are the law of the State and have the force and effect of legislative enactments." Article XI, section 5 of the California Constitution grants chartered cities complete powers over municipal affairs, and, unless limited by the charter, the city council may exercise all powers not in conflict with the state and United States Constitution and federal laws. (Committee of Seven Thousand v. Superior Court (1988) 45 Cal.3d 491.) A chartered city's powers over its municipal affairs includes plenary authority to provide for the method of appointment and removal of its several municipal officers. (Cal. Const., art XI, §5(b).) The officers of the City of Oakland include the members of boards or commissions as may be so designated by ordinance. (Art. IV, §400 of the Charter of the City of Oakland.) Members of the PIC are therefore officers of the City who may be removed in accordance with the City Charter.

Preemption of state law by federal statute or regulation is not favored in the absence of persuasive reasons - either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained. (Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co. (1981) 450 US 311, 67 L.Ed.2d 258).

There is nothing in the Job Training Partnership Act which unmistakably evidences Congress' intent to preempt state law. In fact, because the JTPA clearly calls for a great deal of state and local involvement in the development and implementation of job training programs, it appears to indicate that Congress did not intend to preempt local regulation over all areas covered by the JTPA. It is therefore our opinion that the JTPA does not preempt the City Charter's provision for the appointment and removal of members of the PIC.

The provision of 29 USC section 1512(f) does not conflict with the City Council's power to remove members of the PIC pursuant to the City Charter. We are not aware of any action taken by the PIC to establish such procedures for the removal of any of its members. However, any such procedures must conform with the City Charter's provisions for the removal of members of City commissions.

We are cognizant of the fact that the Oakland Private Sector

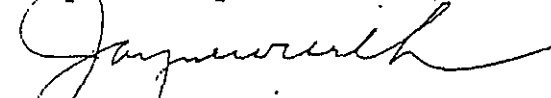
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Corporation is a nonprofit corporation under the laws of the State of California. We are also aware that Article II, Section 1 of the Bylaws of the OPSC require that the directors of the OPSC be appointed by the "chief elected official of the City of Oakland pursuant to the provisions of the Job Training Partnership Act." Section 19 of those Bylaws also provide for the removal of any director of the OPSC for cause, after a hearing, by a majority of OPSC directors at a duly constituted meeting of the OPSC board of directors. We find all of these facts, which relate only to the OPSC, to be irrelevant to our analysis of the removal authority over the members of the PIC.

The OPSC is a separate and distinct legal entity from the City, organized and existing under the laws of the State of California. The PIC is a City advisory body, organized and existing pursuant to the City Charter. The fact that the OPSC has elected to have the members of its board of directors appointed in a manner that effectively makes the members of the PIC the OPSC's board of directors does not change the fact that the PIC is a City advisory body subject to the provisions of the City Charter. If the OPSC chooses to remove one of its board members pursuant to its Bylaws, such an action will have no effect upon the makeup of the PIC. Any member of the PIC who is removed from the board of directors of the OPSC will remain a member of the PIC unless that member has also been removed from the PIC in accordance with the City Charter.

In conclusion, it is our opinion that only an affirmative vote of six members of the City Council can remove any member of the PIC.

Respectfully submitted,

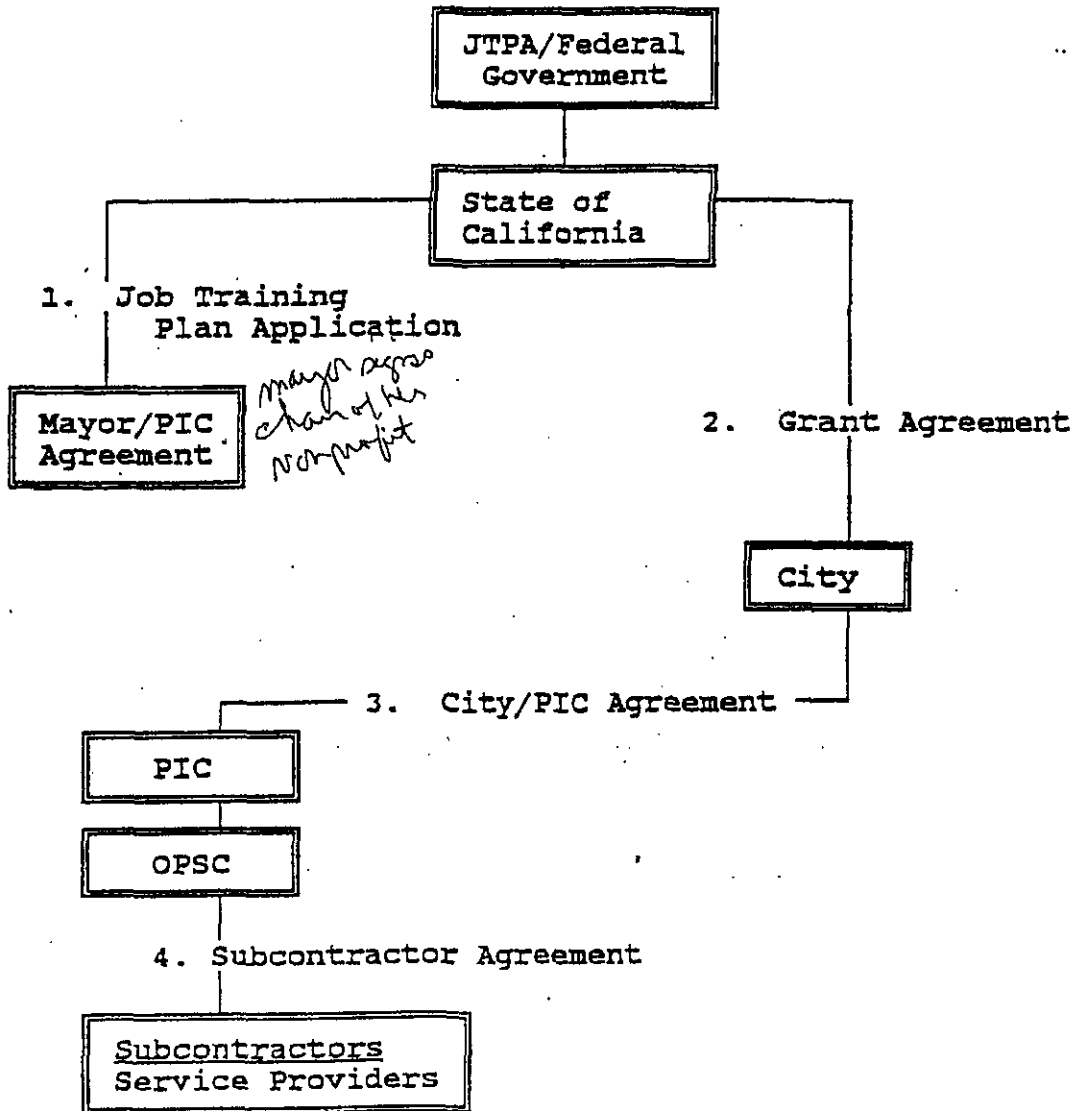


JAYNE W. WILLIAMS,  
City Attorney

Attorney assigned:

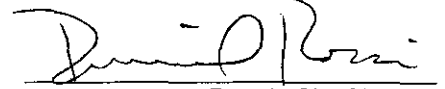
Donnell W. Choy

Table 1



OAKLAND CITY COUNCIL  
05 SEP -7 PM 5:29

APPROVED AS TO FORM AND LEGALITY

  
Deputy City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**A RESOLUTION AUTHORIZING A) A MEMORANDUM OF UNDERSTANDING WITH THE OAKLAND PRIVATE INDUSTRY COUNCIL, INC., (PIC) TO SERVE AS THE OAKLAND WORKFORCE INVESTMENT SYSTEM ADMINISTRATOR FOR UP TO THREE YEARS IN AN AMOUNT NOT TO EXCEED \$1,300,000 FOR FY 2005-2006; B) A MEMORANDUM OF UNDERSTANDING WITH THE OAKLAND PIC TO SERVE AS THE ONE STOP CAREER CENTER OPERATOR FOR UP TO THREE YEARS IN AN AMOUNT NOT TO EXCEED \$ 1,900,000 FOR FY 2005-2006; AND C) THE DISBURSEMENT OF ADDITIONAL FUNDS TO THE OAKLAND PIC FOR SUBCONTRACTS WITH ADULT AND YOUTH SERVICE PROVIDERS AS APPROVED BY THE OAKLAND WORKFORCE INVESTMENT BOARD, FOR THE DELIVERY OF SUPPORT SERVICES AND TRAINING FOR JOB SEEKERS AND BUSINESS CLIENTS, AND FOR OTHER PROGRAMS FOR WHICH THE OAKLAND PIC ACTS AS SYSTEM ADMINISTRATOR**

**WHEREAS**, the Oakland Workforce Investment Board (WIB) is mandated by the Workforce Investment Act of 1998 to oversee the expenditure of Workforce Investment Act funding in partnership with the Chief Elected Official (the Mayor) in a designated Workforce Investment Area such as the City of Oakland; and

**WHEREAS**, the Oakland WIB conducted a competitive bidding process for the distinct roles of System Administrator and One Stop Career Center Operator to support the administrative and program structure of Oakland's workforce development system under the auspices of the City as the Sub-Grant Recipient and fiscal agent for Workforce Investment Act funding; and

**WHEREAS**, the Oakland WIB voted to award the Oakland Private Industry Council, Inc. \$1,300,000 for its role as System Administrator in fiscal year 2005-2006 and \$1,900,000 for its role as One Stop Career Center Operator in fiscal year 2005-2006; and

**WHEREAS**, the City Council has appropriated the funding for these two awards as well as additional "pass through" program funds (Workforce Investment Act Fund 2195; Project G207710) to the System Administrator for direct client training and support services and program sub-contracts for direct client services as approved by the Oakland WIB; and

**WHEREAS**, the two request for proposals through which these two awards by the Oakland WIB were processed states, in accordance with the City Charter, that the City Council must authorize these awards and agreements; and

**WHEREAS**, the Oakland City Council on February 2, 2005 directed staff to prepare a report on the ranking of all applicants in the competitive bidding process; and

**WHEREAS**, the City Council finds and determines that the services provided pursuant to the contract authorized hereunder are temporary and of a professional, scientific or technical nature; and

**WHEREAS**, the City Council finds that this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

**RESOLVED:** That the City Administrator is hereby authorized to negotiate and enter into a Memorandum of Understanding with the Oakland Private Industry Council, Inc. (PIC), for the Oakland PIC to serve as the Oakland Workforce Investment System Administrator for up to three years, with an operating budget not to exceed \$1,300,000 for Fiscal Year 2005-2006; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to negotiate and enter into a Memorandum of Understanding with the Oakland PIC for the PIC to serve as the One Stop Career Center Operator for up to three years, with an operating budget not to exceed \$1,900,000 for Fiscal Year 2005-2006; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to disburse additional Workforce Investment Act funds to the Oakland PIC within available funds and as set forth in the staff report accompanying this resolution: i) for subcontracts with adult and youth service providers approved by the Oakland WIB; ii) for the delivery of support services and training for the direct benefit of job seekers and business clients; and iii) for the implementation of other grant agreements and programs for which the Oakland PIC acts as System Administrator; and be it



**FURTHER RESOLVED:** That the City Administrator and her designee are hereby authorized to take whatever action is necessary with respect to the System Administrator and One Stop Career Center Operator Memoranda of Understanding and disbursements consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA,

2005

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSTAIN-

ABSENT-

Attest: \_\_\_\_\_  
*LaTonda Simmons*  
City Clerk and Clerk of the Council  
of the City of Oakland, California

05 SEP -7 PM 5:29

APPROVED AS TO FORM AND LEGALITY

*David Rossi*  
Deputy City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**A RESOLUTION AUTHORIZING A) A MEMORANDUM OF UNDERSTANDING WITH THE OAKLAND PRIVATE INDUSTRY COUNCIL, INC., (PIC) TO SERVE AS THE OAKLAND WORKFORCE INVESTMENT SYSTEM ADMINISTRATOR FOR UP TO THREE YEARS IN AN AMOUNT NOT TO EXCEED \$1,300,000 FOR FY 2005-2006; B) A MEMORANDUM OF UNDERSTANDING WITH THE OAKLAND PIC TO SERVE AS THE ONE STOP CAREER CENTER OPERATOR FOR UP TO THREE YEARS IN AN AMOUNT NOT TO EXCEED \$ 1,325,000 FOR FY 2005-2006; C) THE DISBURSEMENT OF ADDITIONAL FUNDS TO THE OAKLAND PIC FOR SUBCONTRACTS WITH ADULT AND YOUTH SERVICE PROVIDERS AS APPROVED BY THE OAKLAND WORKFORCE INVESTMENT BOARD, FOR THE DELIVERY OF SUPPORT SERVICES AND TRAINING FOR JOB SEEKERS AND BUSINESS CLIENTS, AND FOR OTHER PROGRAMS FOR WHICH THE OAKLAND PIC ACTS AS SYSTEM ADMINISTRATOR; AND D) THE ISSUANCE OF A REQUEST FOR PROPOSALS TO PROVIDE SERVICES TO FORMERLY INCARCERATED CLIENTS IN THE AMOUNT OF \$575,000**

**WHEREAS**, the Oakland Workforce Investment Board (WIB) is mandated by the Workforce Investment Act of 1998 to oversee the expenditure of Workforce Investment Act funding in partnership with the Chief Elected Official (the Mayor) in a designated Workforce Investment Area such as the City of Oakland; and

**WHEREAS**, the City Council has appropriated the funding for these two awards as well as *additional "pass through" program funds (Workforce Investment Act Fund 2195; Project G207710)* to the System Administrator for direct client training and support services and program sub-contracts for direct client services as approved by the Oakland WIB; and

**WHEREAS**, the two request for proposals through which these two awards by the Oakland WIB were processed states, in accordance with the City Charter, that the City Council must authorize these awards and agreements; and

**WHEREAS**, the City Council finds and determines that the services provided pursuant to the contract authorized hereunder are temporary and of a professional, scientific or technical nature; and

**WHEREAS**, the City Council finds that this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

**RESOLVED:** That the City Administrator is hereby authorized to negotiate and enter into a Memorandum of Understanding with the Oakland Private Industry Council, Inc. (PIC), for the Oakland PIC to serve as the Oakland Workforce Investment System Administrator for up to three years, with an operating budget not to exceed \$1,300,000 for Fiscal Year 2005-2006; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to negotiate and enter into a Memorandum of Understanding with the Oakland PIC for the PIC to serve as the One Stop Career Center Operator for up to three years, with an operating budget not to exceed \$1,325,000 for Fiscal Year 2005-2006; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to disburse additional Workforce Investment Act funds to the Oakland PIC within available funds and as set forth in the staff report accompanying this resolution: i) for subcontracts with adult and youth service providers approved by the Oakland WIB; ii) for the delivery of support services and training for the direct benefit of job seekers and business clients; and iii) for the implementation of other grant agreements and programs for which the Oakland PIC acts as System Administrator; and be it

**FURTHER RESOLVED:** That the City Administrator or her designee is authorized to issue a Request for Proposals ("RFP") for subcontracts to provide additional universal and intensive workforce investment services with an emphasis on formerly-incarcerated clients in the amount of \$575,000; and be it

**FURTHER RESOLVED:** That the issuance of the RFP shall be contingent on approval by the Mayor and the Oakland WIB; and be it

**FURTHER RESOLVED:** That the City Administrator and her designee are hereby authorized to take whatever action is necessary with respect to the System Administrator and One Stop Career Center Operator Memoranda of Understanding, the disbursement of WIA funds, and the Request for Proposals consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA,

2005

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSTAIN-

ABSENT-

Attest: \_\_\_\_\_

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