

CITY OF OAKLAND



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July 18, 2006

Honorable City Council  
Oakland, California

President De La Fuente and Members of the City Council:

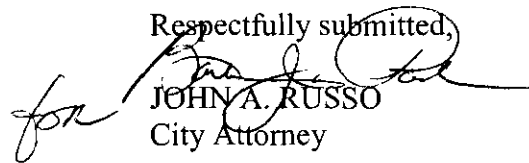
**Subject: Supplemental Report re City Attorney's Opinion Regarding Use of City Council Personnel Funds for Non-Personnel Expenses and Regarding Unauthorized Grants to External Organizations Providing (1) a Chart Explaining When City Council Approval is Required for City Councilmembers' Expenditures and (2) Examples of the Types of Expenditures that Constitute Grants Versus Contracts for Services, Construction, or Purchases**

On June 17, 2006, the City Council requested a number of opinions from the City Attorney. The City Attorney's Office submitted the opinions and the Finance and Management Committee discussed the opinions at its July 11, 2006 meeting. In response to questions from the Committee Chairperson, we re-affirmed that City Council approval is required for all grants, except pay go grants. We also advised that City Council approval *may* be required for contracts for services, goods, equipment or improvements to City property depending upon the amount of the expenditure and whether bid or RFP/RFQ waiver is being sought. (The City Council must waive bidding and RFP/RFQ requirements and the Council must approve all contracts that the City Administrator lacks authority to execute.)

The purposes of this report are two fold. First, we are including in the agenda packet a chart that provides the general requirements for grants and other contracts, including when City Council approval is required and other requirements. (See Exhibit A.) We referred to this chart during discussions at the Finance and Management Committee as a "talking points" document.

Second, because there appears to be confusion about what constitutes a "grant" versus a contract for services, purchases of goods/equipment, or construction, we are submitting Exhibit B which provides examples of grants and other types of contracts to assist in making the

distinction. For example, if a Councilmember provides funding to an outside entity (e.g. a non-profit community organization) to perform work on City property such as a streetscape (planting flowers, etc.), that funding would be a purchase contract for services or materials relative to a City property improvement, not a grant, because the expenditure is for improvements to City-owned property. All expenditures relative to improvements to City-owned property are currently governed by City Charter and Municipal Code purchasing rules.

Respectfully submitted,  
  
JOHN A. RUSSO  
City Attorney

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**GENERAL REQUIREMENTS FOR GRANTS AND CONTRACTS**  
**Prepared by Office of the City Attorney**

<b>What is Source of Funding</b>	<b>When is City Council Approval Required?</b>	<b>Other Requirements for Grants and Contracts</b>
<p>Pay-Go Grant (i.e., funding agreement) to private entity (e.g., private non-profit) or non-city public agency (e.g., OUSD)</p> <p>See attachment for example.</p>	<p>Exempt, does not require Council approval.</p> <p>OMC 2.04.017</p>	<p>- Written agreement required, signed by City Administrator and City Attorney.</p> <p>- Equal Benefits, Living Wage, Campaign Contribution and other programs applicable depending on grant amount.</p>
<p>Non-Pay-Go Grant (i.e., funding agreement) to private entity (e.g., private non-profit) or non-city public agency (e.g., OUSD)</p> <p>See attachment for example.</p>	<p>Requires Council approval.</p> <p>OMC 2.04.016</p>	<p>- Written agreement required, signed by City Administrator and City Attorney.</p> <p>- Equal Benefits, Living Wage, Campaign Contribution and other programs applicable depending on grant amount.</p>
<p>Pay-Go funded contracts for services, goods, equipment or for improvements to City property.</p> <p>See attachment for example.</p>	<p>- Council approval required depending on amount of contract and whether bid or RFP/Q waiver is sought.</p> <p>-Contracts are subject to bidding, RFP/RFQ, award and other regular City purchasing requirements.</p> <p>OMC Chapter 2.04</p>	<p>- City purchase order, services or construction agreement required, depending on nature of contract.</p> <p>- Prevailing Wages and Payment Bonds required for construction contracts.</p> <p>- Equal Benefits, Living Wage, Campaign Contribution and other programs applicable depending on contract amount.</p>
<p>All other contracts for services, goods, equipment or for improvements to City property, regardless of funding source.</p> <p>See attachment for example.</p>	<p>- Council approval required depending on amount of contract and whether bid or RFP/Q waiver is sought.</p> <p>-Contracts are subject to bidding, RFP/RFQ, award and other regular City purchasing requirements.</p> <p>- Contracts may be subject to state or federal purchasing rules if state or federally funded.</p> <p>OMC Chapter 2.04</p>	<p>- City purchase order, services or construction agreement required, depending on nature of contract.</p> <p>- Prevailing Wages and Payment Bonds required for construction contracts.</p> <p>- Equal Benefits, Living Wage, Campaign Contribution and other programs applicable depending on contract amount.</p>

**GRANT, PAY-GO GRANT, PURCHASE & PAY-GO FUNDED PURCHASE CONTRACT  
EXAMPLES**

**Prepared by the office of the City Attorney**

**Grants & Pay-Go Funded Grants:**

Funds provided by the Council, Mayor or individual Councilmembers to a non-city of Oakland entity to be used for general public, civic, education or community purposes. For example:

- funding public purpose programs run by private entities or by other governmental entities
  - nonprofit preschool or after school program
  - county domestic violence counseling program
- funding the purchase of goods or equipment for private or public entities serving a public purpose
  - reimbursing a nonprofit job training program for computers
  - reimbursing homeowners for the cost of trees installed in jointly-owned sidewalks
  - reimbursing an Oakland Unified District school for purchase of trees and plants
- funding improvements to real property owned by a private entity or other public agency
  - reimbursing homeowners for costs of construction of tree wells in jointly-owned sidewalks
  - reimbursing/paying on behalf of an Oakland Unified school for installation of irrigation and plants

**Note:** Federal, state, City and other grant fund sources may have restrictions prohibiting use of the funds as described in the examples above.

**Purchases & Pay-Go Funded Purchases – Contracts for Services, Procurement Or Construction:**

Pay-go funds provided by the Council, Mayor or individual Councilmembers to be used for City purposes or for improvements to any City-owned property such as parks, medians strips or buildings, for example:

- Purchase of professional or other services from an outside entity for a City project
  - contract with community nonprofit to oversee a community requested City park improvement such as installation of park benches and planters
  - contract with a community nonprofit for design services such as architectural or landscape plans and drawings for City park project
- Purchase of licensed contracts services to construct improvements on the City's real property
  - community requested improvements to a City park such as installation of plants, irrigation system or benches
  - community requested improvements to a City-owned building such as recreation or senior center
- Purchase of goods, materials or equipment for use/installation on City property
  - plants, trees, benches, playground equipment or furniture for installation in any City park or building

**Expenditures and Pay-Go Funded Expenditures For Internal City Costs/Fees**

Pay-go transactions involving payment of internal City costs or fees are not subject to grant or purchase contract restrictions or requirements. For example,

- payment of City staff costs such as overtime
- payment of City fees related to a City-owned project such as construction permit, inspection or project management fees