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CITY OF OAKLAND



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November 5, 2013

Oakland City Council
Oakland, California

Re: Resolution Recognizing the Devastating Effect of the Foreclosure Crisis on Local Communities, Supporting the City of Richmond's Strategy of Local Principle Reduction to Assist Homeowners in Risk of Foreclosure Remain in Their Homes, and Declaring Oakland's Intention to Study Whether it Should Embark Upon a Similar Strategy

Dear President Kernighan and Members of the City Council:

I. Purpose of this Report

On November 5, 2013 the City Council will hold a special meeting at 4:30 pm. to consider the above-referenced resolution sponsored by Councilmembers Brooks, Gallo and Reid. The purpose of this report is to provide the City Council amendments to the resolution that are necessary for the resolution to comply with the City Charter. The revisions do not change the substance of the resolution. The resolution is attached with the red line amendments that will comply with the Charter.

II. Background

On October 24, 2013, pursuant to City Charter Section 208, three members of the council, Councilmembers Brooks, Reid, and Gallo requested scheduling of a special City Council meeting at 4:30 p.m., Tuesday, November 5, 2013 to consider a proposed resolution that supports the City of Richmond's Local Principle Reduction strategy to address mortgage foreclosures and declares the City's intent to study such a program for Oakland.¹

¹ Section 208. Meetings of the Council. At 11:00 a.m. on the first Monday following January 1 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each year, the Council shall elect a Vice-Mayor

None of the resolution's sponsors requested that the City Attorney's Office review the resolution. On October 30, 2013 Councilmember Brooks copied the City Attorney's office on the resolution in a request to the City Clerk submitting the resolution for the October 31 special meeting agenda packet. In a call later that day from staff with Councilmember Brooks on the line, the Councilmember asked our office what in the resolution triggered a staff report. We responded that the City Administrator exercised her discretion to issue a staff report. We also advised the Councilmember that we would send her edits necessary to assure the resolution comports with the City Charter, which we did later that day. Councilmember Brooks then made inquiries concerning the changes our Office recommended and we sent her revised recommendations on October 31st.

III. Analysis

A. To Comply with the City Charter Provisions of the Resolution that Purport to Grant the Council or its President Administrative Powers/Duties must be Amended to Provide that the City Administrator Perform Such Duties

The Oakland City Charter ("City Charter") is the supreme law of the City of Oakland ("City"). It grants the City the power to make and enforce all laws and regulations in respect to *municipal affairs*, subject only to the restrictions and limitations provided in the Charter. The Charter authorizes the City to exercise Home Rule powers as to municipal affairs that the California Constitution grants to charter cities (Section 6 of Article XI of the Constitution of the State of California). (City Charter § 106.)

As the City Attorney opined in the February 6, 2003 public legal opinion regarding City Manager's powers², municipal corporations, such as the City of Oakland, are not bound by the separation of powers principles in the federal or state constitution. *McQuillin Mun. Corp* § 10.06, p. 313 (3rd Edition). Strict separation of powers is not constitutionally required for local governments. 13 Cal Jur 3d (Rev) Part §101, p. 224. Therefore, the City Charter determines the roles of the City Council, Mayor and City Manager.

from among its members to serve for a one-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice. (Emphasis added.)

² This opinion is available on the City Attorney's website under the opinion archive list for 2003.

Oakland's City Charter clearly separates the legislative (Council) and administrative (City Administrator) powers. Section 207, among other things, provides that the Council has no administrative powers.³ The City Administrator is the chief administrative officer of the city and responsible for executing and enforcing all laws, policies and ordinances of the Council and to administer the City's affairs, and responsible for the proper and efficient administration of all affairs under his/her jurisdiction.⁴ Consistent with this, the Charter mandates that the City Administrator attend all Council and committee meetings (unless excused), participate in discussions at such meetings, recommend to the Council such measures and ordinances as she deems necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as she finds desirable, investigate affairs of the City under her supervision or any contract for the proper performance of any obligation running to the City, and prepare contracts for work which the Council may order.⁵ In contrast the Council has no administrative powers and is prohibited from interfering in administrative affairs under the City Administrator's and other appointed and elected officers' jurisdictions.⁵

³ **Section 207. Powers of the Council.** The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter. (Emphasis added.)

⁴ **Section 503. Powers of Appointment and Removal.** The City Administrator shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction. He may delegate to directors or other department heads responsible to him/her the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter.

⁵ **Section 504. Duties.** The City Administrator shall have the power and it shall be his duty:

- (a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City.
- (b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as he chooses or which he is directed to attend by the Council, and to participate in discussions at such meetings.
- (c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
- (d) To investigate affairs of the City under his supervision, or any franchise or contract for the proper performance of any obligation running to the City within his jurisdiction.
- (g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order.

⁶ **Section 218. Non-interference in Administrative Affairs.** Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of

The proposed resolution in the third resolved states that “the City Council will seek an outside expert to, at no cost, provide the City Council with an analysis that includes:” If the intent is to engage an outside expert, even at no cost, this is an administrative function that, under the City Charter, rests with the City Administrator, not the City Council. (Charter sections 207, 218 and 504.) Councilmember Brooks has clarified that the intent is to acknowledge that outside entities are conducting research that they will be bring to the Council for consideration. With that in mind, we recommend that the text in the third resolved be changed to: “the City Council will consider research from an outside expert, at no cost, that provides . . . an analysis that includes”

Similarly the fourth resolved asks the Council President to seek information from an outside source. This resolved states: “the Council President will present a letter of inquiry to the Alameda County Assessor to determine how many homeowners are currently at risk of foreclosure in Oakland.” Councilmember Brooks has informed us that this is intended as inquiry. However, the language essentially directs the Council President to carry out a research or investigative function relevant to the analysis staff must conduct to evaluate/develop an underwater mortgage foreclosure program for Oakland. Research is an administrative, not a policy, function. Therefore, we recommend that the fourth resolved paragraph be changed to read: “. . . the Council requests that the City Administrator prepare and submit a report to the Council that provides information showing how many homeowners are currently at risk of foreclosure in Oakland.”

Although the particular terms of this resolution may appear to be harmless or insignificant, compliance with the Charter’s non interference clause is not optional; the voters in enacting the Charter mandated the separation of powers of the Council (legislative branch) and the City Administration. This separation of powers is underscored by section 207 of the City Charter which provides that the Council “shall have no administrative powers” and by City Charter section 218 which prohibits the Council from interfering in the administrative affairs.

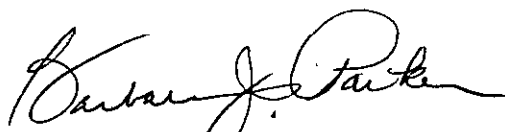
the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

IV. Conclusion

If the Council supports the goals of resolution proposed by Councilmembers Brooks, Gallo and Reid, the Council should approve the revised resolution attached to this report which comports with the City Charter.

We also suggest revision of the title as it appears to have syntax errors.

Very truly yours,



BARBARA J. PARKER
City Attorney

Attorney Assigned:
Richard Illgen

Enclosure: Revised redlined Resolution

cc: Deanna Santana, City Administrator

FILED
OFFICE OF THE CITY CLERK
OAKLAND

13 NOV - 1 AM 10:04

Revised Redlined Version by City Attorney
to comport with City Charter

Approved as to Legality & Form

DRAFT
City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S

INTRODUCED BY COUNCILMEMBERS DESLEY BROOKS, NOEL GALLO, & LARRY REID

RESOLUTION RECOGNIZING THE DEVASTATING EFFECT OF THE FORECLOSURE CRISIS ON LOCAL COMMUNITIES, SUPPORTING THE CITY OF RICHMOND'S STRATEGY OF LOCAL PRINCIPLE REDUCTION TO ASSIST HOMEOWNERS IN RISK OF FORECLOSURE REMAIN IN THEIR HOMES, AND DECLARING OAKLAND'S INTENTION TO STUDY WHETHER IT SHOULD EMBARK UPON A SIMILAR STRATEGY

WHEREAS, the financial crisis has devastated local communities as nine million Americans have lost their jobs, 10 million families have owed more on their mortgages than their homes are worth, and state and local governments have faced crippling budget crises; and

WHEREAS, the City of Richmond, California was particularly hard hit by the foreclosure crisis, where roughly half of all homeowners with mortgages in the City are underwater, meaning the homeowner owes more on his or her mortgage than the home is worth; and

WHEREAS, homeowners who are severely underwater on their mortgages are 150% to 200% more likely to default on their mortgages; and

WHEREAS, the foreclosure prevention efforts that have been implemented thus far at the local, state, or federal levels have failed to adequately address the crisis; and

WHEREAS, the City of Richmond is boldly advancing a Local Principal Reduction program to acquire underwater mortgages in private label securities at their current market values and then refinance the new loans with reduced principal in order to bring the mortgages in line with current market values; and

WHEREAS, The City of Richmond is offering to purchase the loans at fair market value, but may consider using eminent domain to acquire the loans if its offers are not accepted; and

WHEREAS, the City of Richmond would pay fair market value to the investors of the underwater mortgages even if it used eminent domain to acquire them; and

WHEREAS, the City of Richmond's use of eminent domain to acquire underwater mortgages would serve the public purpose of preventing blight and preserving the community and tax base; and

WHEREAS, Wall Street banks and the financial industry's leadership have chosen to threaten the City of Richmond and other cities who are working on this innovative program with retribution if they move forward with their plans in an effort to bully local communities into backing off from utilizing the legal mechanisms at their disposal to address the crisis and to prevent further devastation;

WHEREAS, City Charter Section 504(i) provides that the City Administrator shall have the power and it shall be her duty to prepare and submit to the Council such reports as it may require; now, therefore, be it

RESOLVED: That the Oakland City Council stands united with the Mayor and City Councilmembers of Richmond and any other city or community that attempts to utilize similar lawful methods at their disposal as they work to save homes and save neighborhoods; and be it

FURTHER RESOLVED: That the Oakland City Council calls on Wall Street banks, the Securities Industry and Financial Markets Association (SIFMA), and the Federal Housing Finance Administration which oversees Fannie Mae and Freddie Mac, to stop threatening communities with reprisals and litigation and instead work with them to negotiate principal reduction for underwater mortgages to current market values in order to stop the housing crisis, strengthen local economies and help keep families in their homes; and be it

FURTHER RESOLVED: That as a first step towards exploring the potential applicability of the Richmond strategy to Oakland, the City Council will consider seek ~~request the City Administrator to accept~~ research from an outside expert ~~to~~, provided at no cost, that provides the City Council with an analysis that includes: 1) the number of underwater mortgage loans in Oakland that are held in Private Label Security trusts, 2) the amount of mortgage principal reduction that could potentially be provided to homeowners as a result of implementing a strategy similar to the one that the City of Richmond is advancing, and 3) the potential benefit to the community and local economy if such a strategy were to be advanced in Oakland; and be it

FURTHER RESOLVED: ~~That the Council President will present a letter of inquiry to the Alameda County Assessor to determine~~ requests that the City Administrator prepare and submit a report to the Council that provides information showing how many homeowners are currently at risk of foreclosure in Oakland; and, be it

FURTHER RESOLVED: That, upon receiving a report from the City Administrator and an outside expert, the Council will ask the City Attorney to assess any legal risks to the City if it were to pursue the strategy; and, be it

FURTHER RESOLVED: That before any policy change or administrative action which encourages the use of eminent domain for properties undergoing foreclosure is implemented the Council will hold a hearing to consider this policy or action.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS GALLO GIBSON-MCELHANEY, KALB, KAPLAN , REID, SCHAAF
and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION -

ATTEST _____

LaTondaSimmons
City Clerk and Clerk of the Council
of the City of Oakland, California