

CITY OF OAKLAND



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CITY HALL

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Councilmember – District 6
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June 25, 2015

To: President Gibson McElhaney and Members of the Council

From: Councilperson Desley Brooks

RE: Agenda Item #5 Ordinance Creating The Department of Race and Equity.

Members of the Council:

I am writing to provide context for the City Attorney's letter dated June 25, 2015, regarding item 5 on the Council agenda. As you are aware, the City Attorney's office is to review proposed legislation for legality and form. Dory Anna Moreno of the City Attorney's office verbally advised me that the above referenced ordinance meets the requirements as to legality and form.

The "amendments referred to in Ms. Parker's letter are simply to change the word "ordinance" to the word "section" in two sentences in the Ordinance. Ms. Moreno further advised that the Council may pass the Ordinance as drafted and then amend the ordinance after final passage to make these minor amendments.

Respectfully submitted,

A handwritten signature in black ink that reads "Desley Brooks".

Desley Brooks
Council Member, District 6



2015 JUN 26 AM 9:17

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

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FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

June 30, 2015

Oakland City Council
City of Oakland, California

Re: City Attorney Formatting Revisions to Ordinance Amending Oakland
Municipal Code Chapter 2.29 to Add the Department of Race and Equity

Dear Council President Gibson McElhaney and Members of the City Council:

Item 5 on the Council's June 30th agenda presents for Council's consideration final adoption of the subject ordinance.

We write to give you a heads up that we have determined that amendments to the subject ordinance are necessary to avoid unintended legal consequences. The amendments reformat the ordinance and provide clarifying language consistent with the intent. The Council has discretion to (1) make the amendments at its June 30th meeting or (2) to adopt the ordinance in its current version and amend it subsequently. If the Council makes amendments on June 30th, this would re-introduce the ordinance and require a third, final reading to adopt the ordinance.

We understand that Councilmember Brooks agrees that the clarifying amendments are consistent with her intent and that they should be adopted. However, she wishes to adopt the version that was introduced on June 30th and then direct the City Attorney to bring the amendments back to the Council.

Background

At the June 22, 2015, Special Council Meeting, the City Council passed a motion introducing a version of the subject ordinance that was passed out on the floor. That same evening around 8:30 p.m., Councilmember Brooks' office emailed the City Attorney's Office a version of the ordinance for our signature, approving the ordinance as to form and legality. This was the first time the Councilmember submitted the ordinance to our Office.

Re: City Attorney Formatting Revisions to Ordinance Amending Oakland Municipal Code Chapter 2.29 to Add the Department of Race and Equity

June 30, 2015

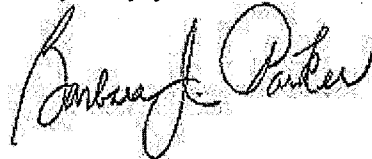
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Article II of the City Charter sets forth the process for adoption or amendment of an ordinance. Section 212 provides: “[i]f an ordinance is altered after introduction (except for correction of typographical or clerical errors), it shall not be adopted except at a regular or adjourned regular or special meeting held not less than five days after the date of such alteration.”¹

The revisions are not corrections of typographical or clerical errors, but as we explained above, formatting errors that require clarifying revisions to avoid unintended legal requirements. First, the language explaining the scope of the definitions in Section 2.29.160.1 states that the Race and Equity definitions apply throughout the ordinance, i.e., to all departments and agencies. We propose to amend that section to read as follows: “The definitions of this section apply throughout this Section 2.29.160 ordinance unless the context clearly requires otherwise.”

Second, under longstanding principles of statutory interpretation, the statement regarding “no private right of action” in Section 2.29.160.4 could be interpreted to implicitly grant a private right of action with respect all other departmental provisions of Chapter 2.29. Section 2.29.160.4 reads: “It is the intent of the council that this ordinance is a general statement of city policy that cannot form the basis of a private right of action.” This language is not necessary to establish that the amendment does not create a private right of action and therefore should be deleted to eliminate the aforementioned unintended legal consequence.

Very truly yours,



BARBARA J. PARKER
City Attorney

cc: Mayor Schaaf
City Administrator

¹ **Section 212. Adoption and Amendment of Ordinances.** Except for emergency ordinances, no ordinance shall be adopted by the Council on the day of its introduction, nor within five days thereafter, nor except at a regular or adjourned regular or special meeting. If an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall not be adopted except at a regular or adjourned regular or special meeting held not less than five days after the date of such alteration. Any section or subsection of an ordinance may be amended solely by the reenactment of such section or subsection at length as amended. (Emphasis added.)

2015 JUN 26 AM 9:05 OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

Title: An Ordinance Amending Chapter 2.29 Of The Oakland Municipal Code Entitled, "City Agencies, Departments And Offices", Which Established The Organizational Structure Of The City Under The City Administrator's Jurisdiction In Accordance With The Requirements Of The City Charter Section 600, To Create The Department Of Race and Equity By December 2015, That Will Report Directly To The City Administrator; Establishing definitions and implementation steps related to a citywide strategy of a fair and just city.

WHEREAS, Section 600 of the Charter of the City of Oakland provides that the City Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered; and

WHEREAS, in 1999 the Council passed Ordinance No. 12186, C.M.S. which established in Chapter 2.29 of the municipal code the organizational structure of the City; and

WHEREAS, the FY 2015-17 Policy Budget will provide for organizational restructuring to promote equity and operating efficiency; and

WHEREAS, Oakland is a diverse community. Communities of color and immigrant and refugee communities are growing. Today, approximately 1-in-2 students in Oakland's public schools are students of color.

WHEREAS, Recent decisions in Ferguson and New York involving the criminal justice system have revealed with a renewed and sharper focus the deep divide in our society with persistent systemic inequalities; and

WHEREAS, racial inequities exist across all indicators for success, across the county, including in Oakland. These inequities are deep and pervasive and exist not only within the criminal justice system, but also in education, health, jobs, housing, and many other areas; and

WHEREAS, many in the United States, even those who embrace egalitarian norms, harbor unconscious negative associations based on race; and

WHEREAS, because of the government's role in serving the public, government is uniquely positioned to address the pervasiveness of unconscious biases, first by recognizing and acknowledging bias, and secondly by working to reduce bias, both individually and within government; and

WHEREAS, efforts to address unconscious bias and proactively advance racial equity can repair and strengthen the relationship between law enforcement and communities of color; thereby strengthening the ability for police departments to serve and protect all communities; and

WHEREAS, the City recognizes the need to eliminate disparities based on race, ethnicity, national origin, English language proficiency, gender, gender identity, sexual orientation, religion, socio-economic status, source of income, geographic location of residence, familial status, disability, age, physical and mental illnesses, and other factors; and

WHEREAS, On December 9th the Oakland City Council unanimously passed a resolution recognizing our collective responsibility to advance racial equity; and

WHEREAS, the City recognizes the need to eliminate disparities based on race, ethnicity, national origin, gender, gender identity, sexual orientation, religion, socio-economic status, source of income, geographic location of residence, familial status, disability, age, physical and mental illnesses, and other factors; and

WHEREAS, data indicates that racial and ethnic disparities are vast across all indicators, supporting the need for the City to implement system measures that lead with race and ethnicity to be an initial priority of the City and the Department of Race & Equity; and

WHEREAS, race and equity will be key priorities internally, and the City work externally, with partners in government, private businesses, non-government organizations, academia and each community member; and

WHEREAS, Achieving equity requires the intentional examination of policies and practices that, even if they have the appearance of fairness, may marginalize individuals or groups and perpetuate disparities or injustices, and

WHEREAS, Working towards equity requires an understanding of the historical contexts and active investment in social structures over time so that all communities can experience their vision of success; and

WHEREAS, Achieving equity requires commitment, collaboration, and clear, transparent communication among City Departments that serve as the primary structures for managing how resources are divided and how public services are provided; and

WHEREAS, advancing equity for all Oaklanders will require coordination with other Race and Equity work not only in government but also in private business, nongovernment organizations, academia community groups, and the media; and

WHEREAS, economic development, job creation, and the stable employment of people in our city are essential to achieving equity; and

WHEREAS, advancement of equity may require resources to be shifted and reallocated; and

WHEREAS, we commit to remove the structural barriers that prevent our society from being just and inclusive – and towards one that cares about and provides justice for the lives of all people.

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

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

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by strike through type); there are no changes in the portions of the sections that are not cited or shown in underscoring or strike-through type.

SECTION 3. Chapter 2.29 of the Municipal Code is hereby amended to read as follows:

Section 2.29.010 Purpose.

The rendition of efficient and effective services in the city is best accomplished through the establishment of agencies, each of which shall function under the leadership of a single Director and shall consist of departments or divisions. Said Director and any department or division head shall serve as "department head" within the meaning of Article IX of the City Charter.

Section 2.29.160 Race and Equity Agency.

There is established in the city government a Department of Race and Equity which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said Department shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Department of Race and Equity shall be the responsibility of the Director of Department of Race and Equity who shall serve as Director of said agency, subject to the direction of the City Administrator. In the Department of Race and Equity there shall be the following divisions: Race and Equity, Equitable City, Equity Training, Equitable Community engagement, and Project Implementation.

SECTION 2.29.160.1. Through adoption of this Ordinance the City of Oakland And the establishment of the Department of Race and Equity the City of Oakland will intentionally integrate, on a citywide basis, the principle of "fair and just" in all the city does in order to achieve equitable opportunities for all people and communities. This ordinance establishes definitions and identifies the specific approaches necessary to implement and achieve the "fair and just" principle that is embedded as a core element of the goals, objectives and strategies of the city.

SECTION 2.29.160.2. The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise.

A. "Community" means a group of people who share some or all of the following: geographic boundaries, sense of membership, culture, language, common norms and interests.

B. "Determinants of equity" means the social, economic, geographic, political and physical environment conditions in which people in our city are born, grow, live, work and age that lead to the creation of a fair and just society. Access to the determinants of equity is necessary to have equity for all people regardless of race, class, gender or language spoken. Inequities are created when barriers exist that prevent individuals and communities from accessing these conditions and reaching their full potential. The determinants of equity are:

1. Community economic development that supports local ownership of assets, including homes and businesses, and assures fair access for all to business development and business retention opportunities;
2. Community and public safety that includes services such as fire, police, emergency medical services and code enforcement that are responsive to all residents so that everyone feels safe to live, work and play in any neighborhood in Oakland;
3. A law and justice system that provides equitable access and fair treatment for all;
4. Early childhood development that supports nurturing relationships, high-quality affordable child care and early learning opportunities that promote optimal early

childhood development and school readiness for all children;

5. Education that is high quality and culturally appropriate and allows each student to reach his or her full learning and career potential;

6. Equity in city practices that eliminates all forms of discrimination in city activities in order to provide fair treatment for all employees, contractors, clients, community partners, residents and others who interact with the City;

7. Food systems that support local food production and provide access to affordable, healthy, and culturally appropriate foods for all people;

8. Health and human services that are high quality, affordable and culturally appropriate and support the optimal well-being of all people;

9. Healthy built and natural environments for all people that include mixes of land use that support: jobs, housing, amenities and services; trees and forest canopy; and clean air, water, soil and sediment;

10. Housing for all people that is safe, affordable, high quality and healthy;

11. Job training and jobs that provide all residents with the knowledge and skills

to compete in a diverse workforce and with the ability to make sufficient income for the purchase of basic necessities to support them and their families;

12. Neighborhoods that support all communities and individuals through strong social networks, trust among neighbors and the ability to work together to achieve common goals that improve the quality of life for everyone in the neighborhood;

13. Parks and natural resources that provide access for all people to safe, clean and quality outdoor spaces, facilities and activities that appeal to the interests of all communities; and

14. Transportation that provides everyone with safe, efficient, affordable, convenient and reliable mobility options including public transit, walking, car pooling and biking.

C. "Equity" means all people have full and equal access to opportunities that enable them to attain their full potential.

D. "Equity and social justice foundational practices" means those practices that can increase the city's influence on access to the determinants of equity when applied to the city's actions in: siting and delivery of services; policy development and

decision making; education and communication within city government; and community engagement and partnerships. Equity and social justice foundational practices are goals for all governmental actions; across citywide strategic goals, objectives and strategies; and across agencies, programs and services. The equity and social justice foundational practices are efforts that enable Oakland government to:

1. Raise and sustain the visibility of the citywide vision of "fair and just" principle and equity and social justice values, policies and foundational practices;
2. Increase focus on the determinants of equity in order to make progress in the elimination of the root cause of inequities;
3. Consider equity and social justice impacts in all decision-making so that decisions increase fairness and opportunity for all people, particularly for people of color, low-income communities and people with limited English proficiency or, when decisions that have a negative impact on fairness and opportunity are unavoidable, steps are implemented that mitigate the negative impacts;
4. Foster an organizational culture that promotes fairness and opportunity;
5. Collaborate across agencies, departments and other organizations;
6. Build capacity to engage all communities in a manner that: promotes and foster trust among people across geographic, race, class and gender lines; results in more effective policies, processes and services; and supports communities' efforts to develop solutions.

F. "Fair and just" means the city serves all residents by promoting fairness and opportunity and eliminating inequities through actions to which equity and social justice foundational practices are applied.

G. "Inequity" means differences in well-being that disadvantage one individual or group in favor of another. These differences are systematic, patterned and unfair and can be changed. Inequities are not random; they are caused by past and current decisions, systems of power and privilege, policies and the implementation of those policies.

H. "Social justice" means all aspects of justice, including legal, political and economic, and requires the fair distribution of public goods, institutional resources and life opportunities for all people.

SECTION 2.29.160.3. To achieve the fair and just principle embedded within the citywide goals, objectives and strategies, the City Administrator shall:

A. Apply equity and social justice foundational practices to city actions and endeavor to integrate these practices into the city's: strategic, operational and business plans; management and reporting systems for accountability and performance; and budgets in order to eliminate inequities and create opportunities for all people and communities;

B. Establish an inter-branch team to facilitate accountability of and coordination by all branches, departments, agencies, and offices of city government regarding implementation of the fair and just principle of the city. The Department on Race and Equity shall be responsible for leading the effort. The inter-branch team shall be composed of the directors of all branches, departments, agencies and offices of city government. Further the City Administrator shall support the city's application of equity and social justice foundational practices through:

1. Development of analytical tools to support all branches' departments and agencies in identifying the equity impacts of policies and decisions and ways in which to amplify positive impacts and mitigate negative impacts;
2. Development of guidelines which can be implemented across all City branches, departments, and agencies for outreach, communication and community engagement to improve the scope and effectiveness of city efforts to ensure that all communities receive information and have the opportunity to shape city policies and services;
3. Identifying focus areas and supporting the development of policies and actions that improve fairness and opportunity in city government organizational practices, including all employment practices such as hiring, training, retention and promotion and business practices such as contracting, procurement and grant writing;
4. Providing a forum for exchange of information and identification of opportunities for collaboration across branches' departments and agencies on equity and social justice foundational practices; and
5. Supporting the identification of annual work plans by city departments and agencies on application of equity and social justice practices, including the items listed in subsection B.1. through 5. of this section; and

C. Design and publish an annual report for Oakland elected leadership, employees and the public on the status and trends in equity in the city and measures of accountability for work plans and results related to implementation of this ordinance.

SECTION 2.29.160.4. It is the intent of the council that this ordinance is a general statement of city policy that cannot form the basis of a private right of action.

SECTION 4. This ordinance will take effect immediately if it is adopted by the Council with six affirmative votes; it will take effect seven days after final passage if it is adopted with five affirmative votes. The organizational structure established by this Ordinance will become effective on the effective date of the Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____,

2015 PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REED, GIBSON-MCELHANEY

NOES –

ABSENT –

ABSTENTION –

ATTEST _____ LATONDA SIMMONS
City Clerk and Clerk of the
Council Of the City of Oakland