

**CITY OF OAKLAND**  
**CITY ATTORNEY'S OFFICE**

LEGAL OPINION

TO: Ronald V. Dellums  
Mayor

FROM: John Russo  
City Attorney

CC: Oakland City Council  
City Administrator  
City Clerk

DATE: May 2, 2008

RE: **Who Has The Power to Make Appointments to the Community Policing  
Advisory Board**

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INTRODUCTION

The Mayor's office (Bouapha Toommaly) asked our office whether an appointment to the Community Policing Advisory Board ("CPAB") by the Oakland Housing Authority requires City Council confirmation. The City Clerk's Office also asked our office if the Council must confirm individual Councilmember's appointments to the CPAB. After we answered these questions orally, your office (Lesley Littleton) requested a legal opinion articulating our advice that individual Councilmembers are not authorized to make appointments to the CPAB. (A copy of Ms. Littleton's request is attached as Exhibit A.)

QUESTION

May individual Councilmembers appoint members of the CPAB if the Council has passed a resolution or ordinance that authorizes individual Councilmembers to appoint CPAB members?

SUMMARY CONCLUSION

No. Only the Mayor has the power to appoint members of the CPAB. City Charter section 601 grants the Mayor the exclusive authority to appoint members of the CPAB and other City boards and commissions, subject to Council confirmation.

## **BACKGROUND**

The City Council originally established the CPAB on June 11, 1996 as a nine member task force “to oversee, monitor and report at least twice yearly on the implementation of this Resolution [entitled, Resolution Establishing Implementation of the City of Oakland’s Community Policing Policy] and to provide recommendations to the Mayor, Council, City Manager and Chief of Police on further steps necessary to carry out its objectives.” (A copy of Resolution No. 72727 is attached as Exhibit B.) The original legislation did not specify who would appoint the task force members or identify qualifications for appointees. The resolution simply provided that the “Mayor and City Council shall establish a nine member Community Policing Task Force”.

On December 17, 1996, the Council passed Resolution No. 73185 which amended section 7.1 of the original resolution to (1) provide that the task force would be expanded to 15 members and (2) specify who would appoint the task force members. (A copy of Resolution No. 73185 is attached as Exhibit C.) As amended, section 7.1 provided for the following appointments to the Community Policing Task Force:

- Three members appointed by the Mayor
- One member appointed by each Councilmember (total of 8 appointees)
- One member appointed by the Oakland Housing Authority Board
- One member appointed by the Oakland Unified School District Board
- Two members appointed by the Oakland Home Alert Steering Committee

Approximately one year later, on November 4, 1997, the Council passed Resolution 73916, which further amended the original resolution establishing the task force by changing the name of the task force to the Community Policing Advisory Board. (A copy of Resolution No. 73916 is attached as Exhibit D.) In changing the organization’s name, the Council made express findings in the “whereas” clauses of the resolution that “the Community Policing Task Force functions more as an advisory board than a task force” and that “it is in the best interest of the City to have the name of the organization more appropriately reflect the duties of the organization.” However, an ordinance never was adopted.

## **ANALYSIS**

After the Community Policing Task Force’s name was changed to reflect that it was functioning as a permanent advisory board, an ordinance should have been adopted, creating the CPAB and providing that its members would be appointed exclusively by the Mayor, subject to City Council confirmation. Article VI, section 601 of the City Charter requires that the Council create boards and commissions by ordinance. Section 601 grants the Mayor the exclusive authority to appoint members of boards or commissions subject to Council confirmation by five affirmative votes. In this section, the division of powers between the legislative and executive functions is clear. The Council has the authority to create boards and commissions and the Mayor has the power to appoint board and commission members. The Council has the power to veto the Mayor’s

appointments by declining to confirm the Mayor's appointments. The Oakland electorate in enacting City Charter section 601 decreed that the Mayor and Council must cooperate in the appointment of members of boards and commissions covered by City Charter section 601.

City Charter Section 601, entitled "Boards and Commissions" provides in relevant part:

"The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article. Members of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council . . . however, . . . if the mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. . . ." (Emphasis added.)

One need only look to the plain meaning of the clear and unambiguous words of Section 601. "Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use. [*Citations.*] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Lungren v. Deukmejian* 45 Cal. 3d 727, 735 (1988))

Once the CPAB's name was changed from a task force to a permanent board, it should have been created by ordinance. However, regardless of whether the Council purported to give individual Councilmembers authority to appoint members of the CPAB by resolution or ordinance, the City Charter dictates that the Mayor has the sole authority to make appointments to the CPAB. Any other appointments that are not submitted on behalf of the Mayor or ratified by him are void. A Council ordinance or resolution "can no more change or limit the effect of a charter than a statute can modify or supersede a provision of the State Constitution." *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 392 (1976). Amendment of the City Charter by ordinance, resolution or agreement is prohibited.

The City Charter is the City's constitution; it is the supreme law of the City subject only to conflicting provisions in the federal and state Constitutions and preemptive state law. Ordinances must be consistent with the City Charter; otherwise they are void. *Domar Electric, Inc. v. City of Los Angeles* 9 Cal.4<sup>th</sup> 161, 170 (1994). A charter city may not act in conflict with its charter. (*Id.* at p. 171.) Any act that is violative of or not in compliance with the charter is void. (*Ibid.*) See also, *Skaggs v. City*

*of Los Angeles*, 43 Cal.2d 497, 501 (1954); *De Aryan v. Butler*, 119 Cal.App.2d 674, 683 (1953); *Howard Jarvis Taxpayer's Assn. v. City of Roseville*, 106 Cal.App.4<sup>th</sup> 1178, 1186 (2003). Violation of the City Charter is a misdemeanor punishable upon conviction by imprisonment in the county jail for up to six months and/or a fine of up to \$1,000. (City Charter section 1208<sup>1</sup>; California Penal Code section 19.)

The supremacy of the City Charter is established by the state constitution. California Constitution Article XI sections 3(a) and 5(a) provide: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." City Charter provisions are controlling in the absence of preemptory state law. *United Public Employees v. City and County of San Francisco*, 190 Cal.App.3d 419, 422 (1987).

### CONCLUSION

The City Charter authorizes the Council to create boards and commissions only by ordinance. The City Charter grants the Mayor the exclusive power to appoint members of the CPAB and it gives the Council the exclusive power to confirm the Mayor's appointments. Thus the Council has the power to veto or reject the Mayor's appointments by failing to confirm them with five affirmative votes. Because the City Charter is the supreme law of the City, it can be amended only by a vote of the electorate. No enactment by the City Council, whether by resolution, motion or ordinance can override the Charter's dictates; nor does any elected official, City officer or employee have the authority to ignore the City Charter's mandates. A charter city may not act in conflict with its charter and any act that is violative of or not in compliance with the charter is void. Violation of the City Charter is a misdemeanor punishable upon conviction by up to six months imprisonment in the county jail and/or a fine up to one thousand dollars.

Next Steps: The Office of the City Attorney will review all of the City's boards and commissions to determine whether their appointment procedures and enabling legislation comply with the City Charter and to assure uniformity and consistency regarding the various entities. By the end of this year, this Office will submit to the Council, a report and appropriate legislation to assure that all of the City's boards and

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<sup>1</sup> "Section 1208. Violation. The violation of any provision of the Charter shall be deemed a misdemeanor and be punishable upon conviction in the manner provided by State Law, unless otherwise expressly provided for in this Charter."

commissions are in compliance with City Charter section 601. In the interim, Councilmembers should seek the Mayor's ratification/endorsement of their recommendations for appointments to the CPAB.

Very truly yours,



JOHN A. RUSSO

City Attorney

Attorney Assigned:  
Izetta C. R. Jackson

**Parker, Barbara**

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**From:** Russo, John  
**Sent:** Thursday, May 01, 2008 5:26 PM  
**To:** Parker, Barbara  
**Cc:** Lindheim, Dan; Littleton, Leslie  
**Subject:** FW: Request for Legal Opinion

Dear Barbara:

Please prepare an opinion regarding appointments to the Community Policing Advisory Board as requested below by the Mayor's Office.

John

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**From:** Littleton, Leslie  
**Sent:** Thursday, May 01, 2008 5:00 PM  
**To:** Russo, John  
**Cc:** Lindheim, Dan  
**Subject:** FW: Request for Legal Opinion

Dear Mr. Russo:

Pursuant to your advice regarding the City Council's appointments to the Community Policing Advisory Board, we would like you to render a legal opinion articulating that advice that the City Council is not authorized to make these appointments. Please take the necessary measures to ensure that the charter is upheld. Thank you in advance for your attention to this matter.

Best regards,  
Leslie Littleton  
Deputy Chief of Staff  
Office of the Mayor  
Ronald V. Dellums

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EXHIBIT A

5/2/2008

OAKLAND CITY COUNCIL

RESOLUTION NO. 72727 C. M. S.

WR

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

WPR:trc

**A RESOLUTION ESTABLISHING IMPLEMENTATION OF THE  
CITY OF OAKLAND'S COMMUNITY POLICING POLICY**

WHEREAS, the people of Oakland require that their municipal government provide police services in the manner calculated to best insure public safety; and

WHEREAS, for the last two decades cities and police departments across the United States have adopted strategies to reduce reliance on 911-response policing and instead utilize approaches known as "Community Oriented Policing," "Problem Oriented Policing," or "Community Policing;" and

WHEREAS, the experience of the police departments which have adopted community policing strategy demonstrates the effectiveness of this approach in both reducing crime levels and increasing public sense of safety; and

WHEREAS, the Oakland Police Department has been a pioneer in the development and utilization of community policing strategies through such programs as Beat Health, Neighborhood Watch, and Home Alert; and assuming a leadership role in comparable efforts by the Oakland Housing Authority; and

WHEREAS, community policing creates a working partnership between the community and the police to analyze neighborhood problems, set priorities, develop strategies, and work together to improve the quality of life in our neighborhoods; and

WHEREAS, community policing focuses on issues of ongoing public concern rather than specific incidents as reported; and

WHEREAS, community policing employs a comprehensive City inter departmental approach to solving neighborhood problems; and

WHEREAS, community policing assists in the empowerment of neighborhoods by relying on the organization of people in our communities to identify problems, prioritize concerns, and develop solutions which are implemented through the cooperation and collaboration of neighborhood residents, public employees, and public officials;

NOW THEREFORE, the City Council of the City of Oakland hereby adopts the following policies for the implementation and institutionalization of community policing:

### Section 1 - Title and Philosophy

1.1. This program shall be known as the Community Policing Program of the City of Oakland.

1.2. Community policing is hereby reaffirmed as the public safety policy and philosophy of the City of Oakland.

### Section 2 - Police Beats

2.1. Police beats shall be established to as nearly as possible conform to the natural boundaries of neighborhoods and communities in the City of Oakland, taking into account historical neighborhood boundaries, natural boundaries such as streams, artificial boundaries such as major thoroughfares and highways, shopping and commercial districts, and public school attendance areas.

2.2. Each police beat should, to the extent feasible, contain between 5,000 and 7,000 residents.

### Section 3 - Neighborhood Councils

3.1. A neighborhood council shall be established in each police beat.

3.2. Neighborhood councils shall strive to include representatives of a variety of organizations sensitive to community needs and interests, such as, but not limited to, community organizations, service groups, Home Alert groups, church organizations, youth groups, labor unions, merchant associations, school parent-teacher organizations, as well as interested members of the community.

3.2.1. Neighborhood councils shall meet regularly, as determined by their members, but at least quarterly.

3.2.2. Meetings of neighborhood councils shall be publicly announced.

3.2.3. All meetings of neighborhood councils shall be public. Whenever feasible, the City's Neighborhood Services Coordinator, dedicated beat officer, and other city staff assigned to the beat shall be directed to attend meetings of the neighborhood council.

3.2.4. Meetings of neighborhood councils shall be democratically run, but need not conform strictly to Robert's Rules of Order.

3.2.5. Neighborhood councils shall, following notice to residents of the police beat and an opportunity for interested persons to speak and vote on proposals, determine their form of organization, including whether to elect officers, the titles of such officers, and whether to select and empower a steering committee to act on behalf of the council between regular meetings.

3.2.6. Each neighborhood council shall adopt written rules to govern the conduct of its meetings. These rules shall be available to all residents of the police beat.

3.3. Neighborhood councils shall make every effort to meet with their Neighborhood Services Coordinators, police officers assigned to their beat, and employees of other city departments to identify neighborhood concerns regarding issues of public health and safety, establish priorities for law enforcement efforts, and develop strategies to resolve public health, safety, and other concerns.

3.4. Neighborhood councils shall cooperate actively with police officers and other public employees and interested individuals and organizations to improve the quality of life in their neighborhoods, through such activities as involvement in litter and graffiti abatement, community patrols, providing supervision for youth recreation activities, monitoring problems at liquor stores, and other actions.

3.5. Neighborhood councils shall be encouraged to establish a community center in each police beat in order to provide a regular place for their meetings and activities, a location for positive interaction between residents and police officers, and a center for the provision of activities and services to residents of that police

beat. To the extent possible public facilities, which can accommodate a large range of activities, such as youth recreation and classes for adults, shall be utilized as community centers. The City Council shall solicit the cooperation of the Oakland Unified School District in making school facilities available for Neighborhood Council meetings without charge to the community.

#### Section 4 - Neighborhood Services Coordinator

4.1. It shall be a goal of the City to assign a Neighborhood Services Coordinator to each community policing beat.

4.1.1. Neighborhood Services Coordinators shall be non-sworn employees of the police department.

4.1.2. To the extent allowed by law Neighborhood Services Coordinators shall be residents of Oakland.

4.1.3. Neighborhood Services Coordinators shall receive sufficient training and supervision to adequately perform their duties.

4.2. The Neighborhood Services Coordinator shall work under the supervision of the police command structure for that community policing beat.

4.3. The Neighborhood Services Coordinator shall have the following responsibilities:

(a) Organization of the Neighborhood Council for that community policing beat;

(b) Acting as staff for the Neighborhood Council in that community policing beat;

(c) Initiating contact with each resident of the beat;

(d) Assessing neighborhood concerns and identifying neighborhood problems;

(e) Working with the Neighborhood Council, other residents, police officers, and employees of other city agencies and other institutions to

establish priorities and develop and implement community policing strategies and other activities to improve the safety and health of the community;

(f) Coordination of special events and programs to assist community development and crime prevention efforts.

## Section 5 - Police Staffing

5.1. All City of Oakland police officers shall be trained in the philosophy and practice of community policing.

5.1.1. Police officers shall be known as "community police officers."

5.2. It shall be a goal of the City to staff each police beat fully with community police officers.

5.2.1. To the extent possible, and if consistent with applicable agreements with employee organizations, assignments of community police officers to beats and shifts shall be made for terms of no less than two years.

5.2.2. Community police officers assigned to each beat shall work with any assigned Neighborhood Council and Neighborhood Services Coordinator in that beat to carry out the objectives of this program.

5.3. Specialized police units shall be decentralized to the extent possible in order to establish continuity of services and relationships between police department personnel assigned to such units and community residents, community police officers, Neighborhood Councils, and Neighborhood Services Coordinators.

## Section 6 - Implementation

6.1. The City Manager or his designated agency head(s) shall be primarily responsible for the implementation of this program.

6.2. The implementation of this program shall require the cooperation of all city departments. The City Manager shall establish an inter-departmental coordinating committee to insure the prioritization of community policing programs and activities by all relevant city departments and employees.

6.3. City staff shall work with other public agencies, the non-profit sector, and the business community to insure the successful implementation of this program.

~~Section 7 - Community Policing Task Force~~

7.1. ~~The Mayor and City Council shall establish a nine member Community Policing Task Force to oversee, monitor, and report at least twice yearly on the implementation of this Resolution and to provide recommendations to the Mayor, Council, City Manager, and Chief of Police on further steps necessary to carry out its objectives.~~

7.2. The City Manager or his designated representative and Chief of Police shall attend task force meetings and provide the task force with all information it deems necessary to carry out its responsibilities.

7.3. The City Council shall seek to provide the Community Policing Task Force with sufficient funding for its activities, including attendance at conferences, observation of community policing programs elsewhere in the country, and retaining consultants to assist it with its responsibilities.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 11 1996, 19

**PASSED BY THE FOLLOWING VOTE:**

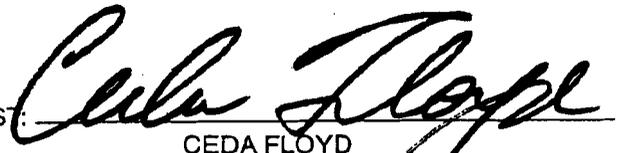
AYES- BAYTON, CHANG, DE LA FUENTE, JORDAN, MILEY, RUSSO, SPEES, WOODS-JONES, and PRESIDENT HARRIS - 9

NOES- NONE

ABSENT- NONE

ABSTENTION- NONE

ATTES:



CEDA FLOYD  
City Clerk and Clerk of the Council

OAKLAND CITY COUNCIL  
RESOLUTION NO. 73185 C. M. S.

*AKM*

*CP*

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

RESOLUTION AMENDING SECTION 7.1 OF  
RESOLUTION NO. 72727 C.M.S. REGARDING  
THE COMMUNITY POLICING TASK FORCE

WHEREAS, on June 11, 1996, the City Council established a nine member Community Policing Task Force; and

WHEREAS, the City Council wishes to expand the Task Force to fifteen members, establish how they shall be appointed and designate a chairperson; and

WHEREAS, the City Council wishes to authorize each Councilperson to appoint one member; and

WHEREAS, the City Council wishes to authorize the Mayor to appoint three members; and

WHEREAS, the City Council wishes to authorize each of the following to appoint one member:

Board of Commissioners of the Oakland Housing Authority,  
Board of Trustees of the Oakland Unified School District; and

WHEREAS, the City Council wishes to authorize the Oakland Home Alert Steering Committee to appoint two representatives; and

WHEREAS, the City Council wishes to designate one of the members appointed by the Mayor as the Chairperson of the Task Force; now, therefore, be it

RESOLVED: That Section 7.1 of Resolution No. 72727 C.M.S. is hereby amended to read as follows:

7.1. The Community Policing Task Force shall be comprised of the following fifteen appointees:

Three members appointed by the Mayor,  
One member appointed by each Councilperson (total of eight appointees),  
One member appointed by the Board of Commissioners of the Oakland Housing Authority,  
One member appointed by the Board of Trustees of the Oakland Unified School District,  
Two members appointed by the Oakland Home Alert Steering Committee.

EXHIBIT C

The Task Force shall oversee, monitor, and report at least twice yearly on the implementation of Resolution No. 72727 C.M.S. and provide recommendations to the Mayor, Council, City Manager, and Director of Police Services on further steps necessary to carry out its objectives.

And be it

FURTHER RESOLVED: That Section 7.1.1 is hereby added to the policies to read as follows:

7.1.1. That the member appointed by the Mayor shall serve as the Community Policing Task Force Chairperson.

Y20/CP Task Force

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 17 1996, 19 \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

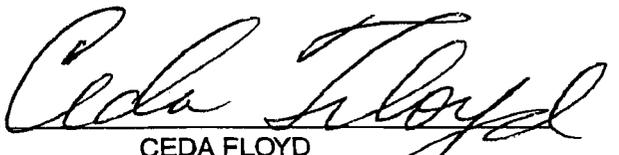
AYES— BAYTON, DE LA FUENTE, JORDAN, MILEY, ~~MOORE, OGAWA~~, <sup>CHANG, RUSCO</sup> SPEES, WOODS-JONES, and PRESIDENT HARRIS — 9

NOES— None

ABSENT— None

ABSTENTION— None

ATTEST:



CEDA FLOYD

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

OAKLAND CITY COUNCIL

SC

RESOLUTION NO. 73916 C.M.S.

RESOLUTION AMENDING Sections 7, 7.1, 7.1.1, 7.2 and 7.3 of RESOLUTION NO. 72727 C.M.S., as amended by RESOLUTION NO. 73185 C.M.S. FOR THE PURPOSE OF CHANGING THE NAME OF THE ORGANIZATION "COMMUNITY POLICING TASK FORCE" TO "COMMUNITY POLICING ADVISORY BOARD"

WHEREAS, Resolution No. 72727 establishing implementation of the City's Community Policing Policy and establishing a Community Policing Task Force responsible for overseeing, monitoring and reporting on the implementation of Resolution No. 72727 was passed by the City Council on June 11, 1996; and

WHEREAS, Resolution No. 73185 C.M.S. amending Resolution No. 72727 C.M.S. by expanding the Task Force membership from nine (9) members to fifteen (15) members was passed on December 17, 1996; and

WHEREAS, ~~the organization referred to as Community Policing Task Force is more appropriately~~ as an advisory board than a task force; and

WHEREAS, ~~it is in the best interest of the City to have the name of the organization more appropriately reflect the duties of the organization; now, therefore be it~~

RESOLVED: That Resolution No. 72727 C.M.S., as amended by Resolution No. 73185 C.M.S., is hereby further amended as follows:

Section 7 - Community Policing Advisory Board

7.1 The Community Policing Advisory Board shall be comprised of the following fifteen appointees:

- Three members ~~appointed by the Mayor,~~
- One member ~~appointed by each Councilperson (total of eight appointees),~~
- One member ~~appointed by the Board of Commissioners of the Oakland Housing Authority,~~
- One member ~~appointed by the Board of Trustees of the Oakland Unified School District,~~
- Two members ~~appointed by the Oakland Home Alert Steering Committee.~~

Exhibit D

The Community Policing Advisory Board shall oversee, monitor, and report at least twice yearly on the implementation of Resolution No. 72727 C.M.S. and provide recommendations to the Mayor, Council, City Manager, and Director of Police Services on further steps necessary to carry out its objectives.

7.1.1 The member appointed by the Mayor shall serve as the Community Policing Advisory Board Chairperson.

7.2 The City Manager, or his designated representative, and Chief of Police shall attend advisory board meetings and provide the advisory board with all information it deems necessary to carry out its responsibilities.

7.3 The City Council shall seek to provide the Community Policing Advisory Board with sufficient funding for its activities, including attendance at conferences, observation of community policing programs elsewhere in the country, and retaining consultants to assist it with its responsibilities.

(Underscoring indicates amendment.)

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 04 1997, 19    

**PASSED BY THE FOLLOWING VOTE:**

AYES- ~~BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES, and~~  
PRESIDENT HARRIS -5

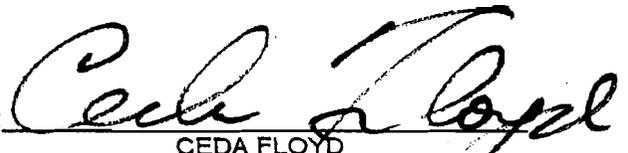
NOES- None

ABSENT- BRUNNER/Miley-2

ABSTENTION- None

Excused- Chang/Reid-2

ATTEST:



CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California