

CITY OF OAKLAND

Office of the City Attorney

Addendum Clarifying February 6, 2003 Legal Opinion

TO: President De La Fuente and
Members of the Oakland City Council

FROM: John A. Russo
City Attorney

DATE: June 13, 2003

RE: Addendum Clarifying February 6, 2003 Opinion Regarding City Manager's Powers

I. QUESTIONS

The City Attorney's Office previously provided a legal opinion to the City Council regarding whether, for the purpose of eliminating or reducing a budget deficit, the City Manager has the power without City Council authorization to:

- (1) decline to spend appropriated funds;
- (2) layoff employees when the Council has budgeted funds for their salary/benefits;
- (3) reduce levels of service at fire stations; and/or
- (4) close certain branch libraries.

This addendum clarifies the February 6, 2003 opinion and provides language that will explicitly require that the City Manager obtain City Council authorization prior to taking actions, in order to eliminate or reduce a budget deficit, that would change the priorities, relative funding, programs and/or levels of service established by the City Council's Policy Budget. (A copy of the February 6, 2003 opinion is attached.)

II. BACKGROUND

In this Office's February 6, 2003 opinion, we advised that the City Manager must exercise his administrative powers in accordance with the City Council's policies, legislation and applicable law. The City Charter clearly and unequivocally requires that the City Manager administer the City's administrative affairs under his purview in accord with City Council policy.

City Charter section 207 establishes the Council as the City's governing body. All powers of legislation reside in the Council. The Council adopts the City's budget and sets the compensation for employees, officers and officials. (The City Charter provides exceptions to the Council's compensation-setting authority for certain elected officials and employees.) The City Council, however, has no administrative powers and is expressly prohibited from interfering in the administrative affairs/service of the City. Notwithstanding the prohibition on administrative interference by the Council, the City Charter commands that the City Manager keep the Council *at all times fully advised* as to the City's financial condition and needs. (City Charter § 504.)

We also advised that in the absence of conflicting municipal policy/legislation, the City Manager has the authority to eliminate or reduce a budget deficit by refraining from spending appropriated funds, terminating employees, reducing levels of service at fire stations and/or closing certain branch libraries. These actions are within the scope of the City Manager's administrative powers, which include the judgments and quasi-legislative policy determinations incidental to executing City policies, administering the budget, and managing the City's financial affairs.

Finally, we emphasized that if the City Council had not previously set a clear, specific policy with respect to a particular issue or matter, it could at any time establish a policy with which the City Manager must comply in administering the City's financial and other affairs.

III. CONCLUSION

First, we note that the February 6, 2003 legal opinion was presented in the context of a budget deficit that the City Manager was attempting to eliminate or reduce in accordance with his power and duty "to control and administer the financial affairs of the City". (City Charter § 504(e).) It is only in order to properly and efficiently administer the City's financial affairs that the City Manager would have the authority to propose or implement budget cuts/reductions.

The City Council's FY 2001-03 budget resolutions specifically authorize the City Manager to transfer funds within an Agency, but prohibit transfer of funding from one Agency to another. The City Manager must obtain approval from the Council before he/she, in order to eliminate or reduce a budget deficit, (1) substantially or materially alters the relative agency¹ allocations of funding set out in the Policy Budget, (2) changes the levels of service expressly prioritized and funded by the Policy Budget, or (3) suspends or eliminates entirely programs funded by the Policy Budget.

The Policy Budget expresses the Council's policies and priorities by funding particular programs and levels of service. By adopting the Policy Budget and passing the budget resolution the Council established as a matter of policy the programs, services and the relative allocations of funding for each department/agency and program.

¹ For the purposes of this opinion, departments that do not fall within an agency are considered to be separate agencies.

The following language will specifically require that the City Manager obtain Council approval if he wishes to change the levels of service or programs funded by the Policy Budget or the relative funding of programs/services, departments and agencies:

“RESOLVED: that the policy budget for FY 2003-05 expresses the Council’s policy regarding the levels of service and the programs that the City will provide during FY 2003-05 and the relative funding for such programs/services, departments and agencies; and be it

FURTHER RESOLVED: that the City Manager must obtain approval from the City Council before he/she (1) substantially or materially alters the relative agency¹ allocations of funding set out in the Policy Budget, (2) substantially or materially changes the levels of service expressly prioritized and funded by the Policy Budget, including but not limited to layoffs and/or freezes that would substantially or materially (a) change levels of service or (b) affect programs, or (3) eliminates or suspends entirely programs funded by the Policy Budget; and be it

FURTHER RESOLVED:²

FURTHER RESOLVED: that, notwithstanding the foregoing, the City Manager may exercise his/her discretion so as to reduce across-the-board funding levels and/or implement freezes if the funding reductions/freezes do not materially or substantially change the programs or levels of service established by the Policy Budget; provided that he/she advises the City Council of such action(s) as soon as reasonably possible; and be it

FURTHER RESOLVED: that, subject to the foregoing limitations, the City Manager/Mayor may transfer funding within an Agency, but may not transfer funds between Agencies.”

The City Attorney’s Office is available to craft language for the budget resolution that will assure that the Council’s policy direction is crystal clear and that the City Manager will be

² Should Council decide to identify specific priorities or top priorities, this Office will draft appropriate language for an additional “Further Resolved” that could be added to the Policy Budget resolution.

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obliged to obtain City Council approval prior to implementing any budget reductions or other actions that would conflict with the Council's policies.

Very truly yours,

JOHN A. RUSSO
City Attorney

Attachment: February 6, 2003 legal opinion
Attorney Assigned: Barbara J. Parker

cc: Mayor Brown
City Manager Bobb

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bcc: Russo, Morodomi