

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Roland Smith, City Auditor

From: Tracy Chriss, Deputy City Attorney

Date: August 19, 2003

Deleted: 5

RE: Calculating the 2.5 Percent KIDS FIRST! Set-Aside

INTRODUCTION

The City's Controller advised this Office that he believes the calculation of the two and one-half percent set-aside for KIDS FIRST! should be based upon *budgeted revenues*. Some members of the KIDS FIRST! Committee have asserted that the City has an obligation to utilize *actual revenues* in determining the KIDS FIRST! set-aside. The City adjusted the set-aside to reflect *actual revenues* for at least one year. A letter dated August 19, 1999 from the Budget Office shows that the City adjusted its calculation of the set-aside to reflect actual revenues for the 1997-98 fiscal year. (See Exhibit A, attached hereto.) You requested a legal opinion from the City Attorney regarding this issue.

ISSUE

Does Article XIII of the City Charter require that the City set-aside two and one-half percent (2.5%) of *budgeted revenues* or *actual revenues* for KIDS FIRST! Oakland Children's Fund?

SUMMARY CONCLUSION

The City Charter provides that the City *shall* set-aside two and one-half of its *annual unrestricted general fund revenues* for KIDS FIRST! Oakland Children's Fund. It is this Office's opinion that *annual unrestricted general fund revenues* means *actual unrestricted general fund revenues*. The Charter makes no reference to *budgeted revenues*. Although the City may initially calculate the set-aside based on *budgeted revenues*, the City should adjust the set-aside to reflect *actual revenues* once the City determines what *actual revenues* are. The timing and process by which the City reconciles the budgeted amount with the actual amount is an accounting question, not a

To: Roland Smith, City Auditor
From: Tracy Chriss, Deputy City Attorney
RE: Calculating the 2.5 Percent KIDS FIRST! Set-Aside
Date: August 19, 2003
Page: - 2 -

**Attorney-Client Communication
Privileged and Confidential**

legal issue. Therefore, we offer no opinion on the methodology or timing of the reconciliation process.

DISCUSSION

Section 1300, subpart 2 of Article XIII of the City Charter states that the City shall set-aside "two and one-half percent of the City of Oakland's annual unrestricted general fund revenues" for KIDS FIRST! Oakland Children's Fund. Specifically, that section provides, in pertinent part:

2. Two and one-half percent of the City of Oakland's annual **unrestricted general fund revenues** shall be set-aside for KIDS FIRST! Oakland Children's Fund, and appropriated as specified in this section each year for twelve years beginning July 1, 1997, together with any interest earned on the fund and any amounts unspent or uncommitted by the fund at the end of the fiscal year. (Emphasis added).

A plain reading of the above-referenced charter provision requires that the City calculate the amount of the set-aside using *actual revenues*. The Charter makes no reference to *budgeted revenues*. Nor does the City Attorney's or the City Auditor's analysis of the ballot measure discuss whether the set aside should be based upon actual or budget revenues. The City Attorney's impartial analysis states that "unrestricted general fund revenues are not defined". The City Auditor's Impartial Analysis makes no reference to *budgeted revenues* and does not address the question you posed.

The goal in interpreting a statute enacted by voter initiative is to determine and effectuate voter intent. To determine intent, a court first looks to the words of the statute, giving them their usual and ordinary meaning. Williams v. Superior Court, 92 Cal.App.4th 612, 623 (2001). Where the statute is clear, "the plain meaning" rule applies. That is, the legislature is presumed to have meant what it said, and the plain meaning of the language governs. Dean v. Superior Court, 62 Cal.App.4th 638, 641 (1998). Here, the language of Section 1300 is clear and unambiguous. Setting aside annual unrestricted general fund revenues requires that the City set-aside a specific percentage of its *actual revenues*.

The language in a statute should not be altered to accomplish a purpose that does not appear on the face of the statute or from its legislative history. O'Kane v. Irvine, 47 Cal.App.4th 207, 211 (1996). If the drafters of the KIDS FIRST! initiative had intended that the City use *budgeted revenues* to calculate the 2.5% percent set-aside,

To: Roland Smith, City Auditor
From: Tracy Chriss, Deputy City Attorney
RE: Calculating the 2.5 Percent KIDS FIRST! Set-Aside
Date: August 19, 2003
Page: - 3 -

**Attorney-Client Communication
Privileged and Confidential**

they could have included that language in the Charter provision. Absent such express language, the City should calculate the set-aside using *actual revenues*. Based on the clear and unequivocal language provided in the Charter, the only basis for relying on *budgeted revenues* would be that it is not possible or it would be extremely burdensome and oppressive to determine *actual revenues*. Although the City does not know the *actual revenues* at the beginning of the fiscal year, it ultimately determines the *actual revenues* when it audits the funds during or upon the close of the fiscal year. The reconciliation could be accomplished by adjusting the ensuing year's set-aside appropriately. Notably, the very language of the legislation reflects the intent to reconcile the estimated revenue with the actual amount. Section 1300, subpart 14 of Article XIII of the City Charter states, in pertinent part, that "[e]rrors in the City Auditor's estimate of appropriations for a fiscal year shall be corrected by an adjustment in the next year's estimate." Consistent with the language of subpart 14, the City could initially rely upon *budgeted revenues* and then adjust the set-aside when it determines the *actual revenues*. This office takes no position on the timing and manner of the reconciliation and considers the actual process by which these numbers are calculated a matter of accounting.

CONCLUSION

In conclusion, it is the opinion of this Office that section 1300, subpart 2 of Article XIII of the City Charter requires that the City set-aside 2.5% of the City's *actual unrestricted general fund revenues* for the KIDS FIRST! Oakland Children's Fund. Because the set-aside is made at the commencement of the fiscal year in question, the City's initial set-aside may be based on *budgeted revenues*. However, the City should adjust the amount to reflect *actual revenues* once the City determines what *actual revenues* are.

JOHN A. RUSSO
City Attorney

By:
TRACY CHRISS
Deputy City Attorney

TAC:ke

cc: Bill Noland, Controller, Financial Services Agency
Andrea Youngdahl, Director, Aging Health & Human Services