

CITY OF OAKLAND
Office of the City Attorney

Legal Opinion

TO: Mayor Ron Dellums

CC: Deborah Edgerly, City Administrator
Marcia Meyers, Director of Personnel Resources
Wayne Tucker, Chief of Police
Lenore Anderson, Public Safety Director, Office of the Mayor

FROM: John Russo, City Attorney

DATE: February 7, 2008

SUBJECT: Use of Measure Y Funds to Recruit Measure Y Officers

I. INTRODUCTION

On November 2, 2004, the voters of the City of Oakland voted to adopt the Violence Prevention and Public Safety Act of 2004, also known as Measure Y. This measure provided for the collection of a dedicated parcel tax and a parking tax surcharge to pay for additional programs and services to increase police staffing, enhance fire safety, and expand violence prevention programs. The taxes in Measure Y became effective on January 1, 2005, and "shall continue in effect for 10 years." (Measure Y, Part 2, Section 5.)¹

Measure Y sets up a multi-step allocation process for use of the tax proceeds. First, up to \$4 million is allocated for fire services. (Part 1, Section 3(3).) Of the remaining money (the "Anti-violence Money"), at least 40% percent must be allocated for violence prevention social services. (Part 1, Section 3(5).) The remainder is allocated to police services and equipment. (Part 1, Section 3(1), hereinafter the "policing money".)

The Mayor's Office has asked the following question.

¹ All references are to Violence Prevention and Public Safety Act of 2004, also known as Measure Y, enacted at the November 2, 2004, election, unless otherwise indicated.

II. QUESTION

May the City use Measure Y community and neighborhood policing funds, including the existing community and neighborhood policing fund balance, to pay for the recruitment and associated costs for hiring police officers to assure that the community policing functions envisioned in Measure Y are implemented and maintained?

III. SUMMARY CONCLUSION

Yes, the City may use Measure Y community and neighborhood policing funds, including the existing community and neighborhood policing fund balance, to pay for the recruitment and associated costs for hiring police officers so long as the officers are assigned to one of the four community policing objectives stated in Measure Y. To the extent that any Measure Y funds advanced for recruitment are used for the hiring of non-Measure Y officers, the General Fund must reimburse the Measure Y Fund for the equitable and proportionate costs of the recruitment of the non-Measure Y officers.

IV. LEGAL ANALYSIS

The "Use of Proceeds" section of Measure Y provides the permissible uses of the Measure Y policing fund.

Section 3(1) requires that tax proceeds be used to "[h]ire and maintain at least a total of 63 police officers"

The tax proceeds raised by this ordinance may only be used as part of the following integrated program of violence prevention and public safety intervention, in accordance with the following specific purposes:

1. Community and Neighborhood Policing: Hire and maintain at least a total of 63 police officers assigned to following specific community-policing objectives:

(Part 1, Section 3, emphasis added.)

Section 3(1) goes on to specify four "objectives" that the 63 officers may be assigned: neighborhood beat officers, school safety, crime reduction teams, domestic violence and child abuse intervention.

Measure Y states that the policing fund's tax proceeds may be used to "hire" at least 63 police officers. Accordingly, any costs associated with the hiring of Measure Y police officers are permissible under Measure Y.

Recruitment, testing, and academy education are essential steps in the process of hiring an Oakland police officer. Candidates must apply, pass a series of tests and have successfully graduated from the police academy before they can be hired as police officers. Accordingly costs of recruitment, testing, and instructing candidates in the police academy may be paid with Measure Y policing money. Recruitment may require travel necessary to go to locations where candidates may be. It may also include marketing and advertising. Hiring costs may also include the cost of temporary facilities for testing and instruction, any additional costs of instructors or field training officers, and costs of background investigations and medical examinations for new officers. Compensation of the Measure Y officers is also permissible, including any compensation packages and relocation costs.

The City however may only use Measure Y policing fund proceeds to pay for the costs of hiring Measure Y officers, not for any Oakland police officer. Measure Y officers are those officers who will be assigned to one or more of the four Measure Y objectives: neighborhood beat officers, school safety, crime reduction teams, domestic violence and child abuse intervention. (Section 3(1).) To the extent that any Measure Y funds advanced for recruitment are used for the hiring of non-Measure Y officers, the General Fund must reimburse the Measure Y Fund for the equitable and proportionate costs of the recruitment of the non-Measure Y officers.

The City may dedicate an entire police academy class for the instruction of Measure Y officers. If it does, then all the costs of that class would be used for the "hiring" of Measure Y police officer. If a police academy has Measure Y and non-Measure Y officer candidates, then the City may only use Measure Y proceeds to pay for the instruction costs of only the Measure Y candidates.

V. CONCLUSION

Measure Y policing funds, including any existing balances, may be used to pay all costs associated with the hiring of Measure Y officers.

Very truly yours,


JOHN A. RUSSO *for*
City Attorney

Attorney assigned: Mark T. Morodomi

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