

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor Jerry Brown
President De La Fuente
City Councilmembers
Deborah Edgerly, City Administrator
William Zenoni, Interim Budget Director

FROM: John Russo
City Attorney

DATE: June 14, 2006 File No:

RE: PAY-GO -- REQUIREMENTS FOR CONSTRUCTION AND RENOVATIONS ON
CITY PROPERTY; CHECKLIST

I. Introduction

It has come to our office's attention that some City Council offices may not be complying with state law, the City Charter and City ordinances, policies and procedures when the City Council members use pay-go or other money for improvements and renovations to City owned property. This memorandum reiterates the requirements and provides a checklist.

**II. Requirements for Construction and Renovations on City Property
Using Pay-Go Money**

The failure to meet the requirements, below, may put the public at risk to accidents or injuries from substandard construction, expose the City and the individual Councilmembers to individual liability and subject the City and individual Councilmembers to state labor fines. In addition, the City may be ignoring certain workers' rights and local contractors' rights protected under state and local law as well as other policies enacted by the Council. (e.g. prevailing wage laws, performance bond requirements, living wage, equal benefits, small and local business programs.)

These requirements must be met before any construction or renovation occurs and certainly must be met before the City pays the contractor.

The following are the requirements for any construction or renovations to City facilities or property, even with pay-go money.

1. An individual Councilmember has no authority to enter any contract, including a contract for improvements to a City facility. Only the City Administrator has the authority to execute contracts on behalf of the City. (Oakland Municipal Code (OMC) sections 2.04.020 and 2.04.030.) Absent a valid contract, the City may legally refuse to pay for any construction.
2. Written contracts are required. (OMC section 2.04.020(A))
3. The City Attorney must approve all contracts before they are executed. (City Charter section 401(6).)
4. The construction or renovations must be permitted by the pay-go or other funding source. (OMC 2.04.018(A)(1).)
5. Only state-licensed contractors can construct improvements. (California Bus. and Prof. Code section 7025, et seq.)
6. The City must bid construction contracts and award to the lowest, responsible bidder unless bidding is waived by the City Council. (Oakland Municipal Code 2.04.050.(A), (E) and (I).)
7. The contractor must pay payment bonds covering 100% of the contract price. (California Civil Code section 3247, et seq.)
8. Construction contractors must build public projects in accordance with City and state building codes and specifications (e.g. obtain all applicable construction permits)– which may be set forth in the *Greenbook, State of California Standard Specifications for Public Works Construction*, the *City of Oakland Standard Details for Public Works Construction* and/or state codes and the Oakland Municipal Code.
9. The contractor must agree to pay state prevailing wages. (California Labor Code sections 1720, et seq. and 1770, et seq., and City of Oakland Resolution No. 57103 C.M.S.)

This office will not approve for payment any contractor bills unless the contracts for the contractor's services comply with state and local law and the City's policies and procedures.

We will be issuing a second memorandum providing guidelines for grants of City funds, including those made from pay-go funds.