

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

LEGAL OPINION

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

FROM: John Russo  
City Attorney

DATE: June 29, 2006

RE: **Pay-Go and All Other Agreements Must Be Approved as to Form and  
Legality by the City Attorney Before they are Executed**

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INTRODUCTION

It has come to our attention that some pay-go agreements for services contracts and grants to non City parties were not submitted to the City Attorney's Office for approval as to form and legality before they were executed. We also understand that on occasion the City paid contractors and grantees even though the City Attorney had not approved the underlying pay-go agreements.

During meetings of City Council's Finance Committee, Councilmembers have stated that they do not want the City Administrator to submit pay go agreements to the City Attorney's Office for approval. The Council removed the requirement from the provisions it added to the Oakland Municipal Code to govern pay go expenditures.

QUESTION

We have been asked whether pay-go grant agreements must be approved as to form and legality by the City Attorney if the Oakland Municipal Code provisions governing pay-go expenditures do not include that requirement.

## SUMMARY CONCLUSION

Yes. As we advised the Finance and Management Committee when the committee removed the requirement from the OMC, the City Charter requires that the City Attorney approve all contracts prior to execution.

## ANALYSIS

The City Charter mandates that the City Attorney approve all contracts before they are executed. City Charter section 401(6), entitled, "Powers of the City Attorney" provides:

"He or she shall pass on the form and legality of all contracts of the City before the same are executed."

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 fact that this City Charter requirement is not in the Oakland Municipal Code provisions regarding pay go expenditures is irrelevant and has no legal significance because the City Charter is the City's constitution; it is the supreme law of the City with respect to municipal affairs. Ordinances must be consistent with the City Charter; otherwise they are void. *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); McQuillan Municipal Corporations §15:17.

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).

A City 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 a charter by

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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."

ordinance, resolution or agreement is "prohibited". *San Francisco Fire Fighters v. Board of Supervisors*, 96 Cal.App.3d 538, 549 (1979).

This Office included the City Attorney contract approval requirement in the OMC pay go provisions to serve as a reminder and to provide a checklist of the steps that must be followed, not because the language was necessary to grant the City Attorney the authority to approve contracts as to form and legality.

### **CONCLUSION**

The City Charter commands that the City Attorney approve **all** contracts before they are executed, making no exception for pay-go contracts. It is crystal clear, therefore, that pay-go contracts must be approved by the City Attorney before they are executed. 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 mandate that the City Attorney approve **all** contracts before they are executed. 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.

Attorney Assigned:  
Barbara J. Parker