November 6, 2014

Paul Cobb, Publisher
Ken Epstein, Editor
Oakland Post
405 14th St Suite 500 #1215
Oakland, CA 94612

Re: Oakland Post’s Article on City’s Prompt Payment Ordinance

Dear Messrs. Cobb and Epstein:

A few clarifications are in order concerning the article in your October 29 – November 4, 2014 issue on the City’s Prompt Payment Ordinance (“Councilmembers Endorse Prompt Payments to Nonprofits”). The article quoted Councilmember Brooks as saying that “Though [the Prompt Payment Ordinance] should have applied to nonprofits, the City Attorney ruled that it only applied to private contractors,” and quoted Councilmember Kaplan as stating that she did not understand why the City Attorney is requiring a clarification of the Prompt Payment Ordinance to cover nonprofits.

In fact, this Office never ruled that nonprofits are not covered by the Prompt Payment Ordinance. We determined that the Ordinance does not apply to grant agreements, since the Ordinance’s language covers agreements for the purchase of goods and services by the City and never mentions grant agreements.

City law distinguishes between City grant agreements which provide financial support to an organization that provides services to the community at large, and City “purchase contracts” which hire a firm/entity to provide services or sell goods to the City as a municipal organization. Oakland-based nonprofit organizations that enter into such “purchase contracts” with the City are fully covered by the Prompt Payment Ordinance.

The article goes on to quote Councilmember Brooks as questioning why she was not consulted about the “legislative intent” of the Prompt Payment Ordinance. An analysis of legislative intent is necessary only if the plain language of the law is unclear.
Here, the language in the Prompt Payment Ordinance is clear that its intent is to apply the Ordinance’s protections are only to purchase contracts. Also, our Office’s review of the Council’s legislative intent when it passed the Ordinance in 2007 does not support the conclusion that the Council intended that the Ordinance apply to anything other than contracts to purchase goods and services. The staff reports for the Ordinance when it was proposed, including the report prepared by Councilmember Brooks herself, make no mention whatsoever of grant agreements. The Ordinance was modeled closely after state law, which covers only purchase contracts and does not apply to grant agreements.

Our Office fully supports expanding the Prompt Payment Ordinance to cover grant agreements and to extend its protections to nonprofit grant recipients. In fact, this Office was responsible for drafting the ordinance pending before the City Council that would amend the Ordinance to cover grant agreements. The City Council is taking the proper course by bringing the issue forward as a formal amendment to the Ordinance in an open meeting with the opportunity for full public input, rather than relying on the City Attorney to interpret the existing Ordinance in a way that is not supported by the plain language of the law.

I request that you publish this letter in your next edition to correct the record.

Very truly yours,

BARBARA J. PARKER
City Attorney

cc: City Councilmembers
    Mayor Jean Quan
    Henry L. Gardner, City Administrator