

**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 *for John Russo*  
City Attorney

DATE: June 22, 2006

RE: **REQUIREMENTS FOR GRANTS, INCLUDING PAY-GO GRANTS;  
CHECKLIST**

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**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 make grants with pay-go or other funds. This memorandum reiterates the requirements and provides a checklist.

**II. Grants Must Comply with the Requirements of the City Charter,  
State and Local Laws and City Council Policies and Procedures**

We have issued and delivered to all Councilmembers a legal opinion confirming that the City Charter requires that the City Administrator approve all expenditures of City funds and that the City Administrator may approve expenditures only if they comply with the requirements of the City Charter, state and local laws and City Council policies and procedures. (See May 22, 2006 Opinion on City Attorney's Website.)

The requirements outlined below protect the City Councilmembers and the City from claims that the grants violated state or local laws. For example public money may be expended only for public purposes. Expenditures that are not for a public purpose (i.e., expenditure of city funds for a private purpose) violate the state law that prohibits gifts of public funds. In the absence of a grant agreement, the City has no way to obligate the grantee to use the money for the intended public purpose, will have difficulty recovering funds that have been spent inappropriately and would not have the right to audit the

grantee's books. The City's and Councilmembers' reputations could be tarnished and the City and the individual Councilmember could be exposed to liability. We would have no agreement to present to City residents or to any investigating agency/body demonstrating the terms of the agreement.

Grants must comply with the following requirements.

1. The grant, whether the funding source is pay-go or some other funding source, must be for a public purpose.
2. The grant, whether the funding source is pay-go or some other funding source, must be permitted by the funding source and by City Council policy. (Oakland Municipal Code ("OMC") sections 2.04.017(A) and (B).) (Pay-go may generally only be granted to benefit just a City entity or a public school.)
3. All grant agreements, whether the funding source is pay-go or some other funding source, must be approved as to form and legality by the City Attorney before they are executed. (City Charter section 401(6).)
4. An individual Councilmember has no authority to enter any contract, including a grant agreement. Only the City Administrator has the authority to execute pay-go grants on behalf of the City. (OMC sections 2.04.016 and 2.04.017.) And, the City Council must approve all grants, regardless of the amount, except for pay-go grants. (OMC section 2.04.016 and 2.04.017.)<sup>1</sup>
5. The OMC includes the following specific requirements for pay-go grants:
  - "Section 2.04.017 Pay-go grants - Policy and requirements.
  - A. Policy – Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.
  - B. Requirements Applicable to Pay-Go Grants to Non-City Entities. The Mayor and individual Councilmembers may designate grants from their respective balances in the city's pay-go fund account subject to the following requirements: (1) such grants may be made only for the purposes permitted by the funding source(s) of the pay-go account; (2) such grants and grant agreements shall be authorized, administered and executed by the City Administrator on behalf of the city; and (3) grant agreements shall be required for all grants."

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<sup>1</sup> All grants from sources other than pay-go accounts must be approved by the City Council because the OMC Chapter 2.04 provides all of the authority the City Council has delegated to the City Administrator regarding grants. That delegation of authority does not include power to execute grants from sources other than pay-go funds without City Council approval.