

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

TO: Courtney Ruby  
City Auditor

FROM: John A. Russo  
City Attorney

DATE: March 1, 2007

RE: City Auditor's Duty to Perform Audits that were Due before Her Term Commenced

**I. QUESTION**

You asked whether you ("City Auditor Ruby") have a duty to perform audits mandated by the Council, City Charter or ballot measures, if the audits were due before your term commenced.

**II. SUMMARY CONCLUSION**

No. City Auditor Ruby does not have a duty to perform audits requested by the Council, or mandated by the City Charter or ballot measures, if the audits were due before her term commenced. The City Auditor has the option to perform past-due audits, if she so desires. The Council has the power to renew its request that she perform past-due audits under authority granted to the Council by the Charter.

**III. BACKGROUND**

City Auditor Ruby's term of office began at 11:00 a.m. on January 1, 2007. She was entitled to perform the duties and exercise the powers of the Office of the City Auditor when her term of office began because she took the oath of office before the commencement of her term.

We understand that the Council requested that City Auditor Ruby's predecessor, Roland Smith, perform certain audits by dates that had passed when City Auditor Ruby began her term of office. Additionally, we understand that Roland Smith may not have

performed some audits mandated by the City Charter or ballot measures that were due during his term of office. You provided the following examples:

1. Measure K (Kids First! Oakland Children's Fund) – City Charter Section 1300, No. 14 requires that the City Auditor calculate and publish the actual amount of City of Oakland appropriations for children and youth services. Due annually within 90 days following the end of the fiscal year through 2009-10.
2. Measure M (Emergency Medical Services Special Tax) – Pursuant to Measure M and Section 5 of Resolution No. 73311, C.M.S., City Auditor is required to perform an audit of Ballot Measure M funds, annually.
3. Measure N (Paramedic Services Act of 1997) – Pursuant to Measure N and Section 5 of Resolution No. 73312, C.M.S., City Auditor is required to perform an audit of Ballot Measure N funds, annually.
4. Measure O (Library Services Retention and Enhancement Act of 1994) – Pursuant to Measure O, section 10, City Auditor is required to perform an audit of Ballot Measure O funds, annually.
5. Quarterly Reports – City Charter section 403(8) requires that the City Auditor submit, at a public meeting of the full Council, a quarterly report “on the extent of implementation of recommendations for corrective actions made in the City Auditor’s report.”

#### **IV. DISCUSSION**

The City Charter provides that the City Auditor shall serve the same term as the Mayor. City Charter section 403 provides in pertinent part:

“The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor.”

The Mayor serves a term of four years commencing at 11:00 a.m. on the first Monday in January following his election. (See City Charter section 302.)

“Section 302. Term of Office, the Mayor. The Mayor shall be elected to a term of four years beginning at 11:00 a.m. on the first Monday of January following his election.”

City Auditor Ruby’s term commenced at 11:00 a.m. on January 1st, the first Monday in January 2007. The City Auditor was entitled to assume her duties and exercise her powers no earlier than the date and time that her term began. (City Charter sections 403 and 1206.) Prior to the commencement of City Auditor Ruby’s term of

office, her predecessor, Roland Smith was responsible for performing the duties and exercising the powers of the Office of the City Auditor.

Accordingly, City Auditor Ruby has no duty to perform Council-requested audits that were due before 11:00 a.m. on January 1, 2007 when her term commenced.

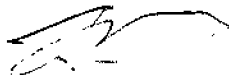
“The City Auditor shall have the power and it shall be his or her duty to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. .... The City Auditor shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor.” (See City Charter section 403.)

Likewise, the City Auditor has no duty to perform City Charter or ballot measure mandated audits, such as the annual and quarterly reports listed in section III of this opinion, that were due before her term commenced.

#### IV. CONCLUSION

City Auditor Ruby assumed the duties of her office and was entitled to exercise the powers of her office at 11:00 a.m. on January 1, 2007 when her four-year term of office began. She does not have a duty to perform Council requested, or City Charter or ballot measure-mandated audits that were due before her term commenced. However, City Auditor Ruby has the option of performing past-due and any other audits that she deems to be in the public interest. The City Council has the power to renew its request that she perform the past-due audits under authority granted to the Council by the Charter.

Respectfully submitted,

  
JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Barbara J. Parker ✓