

CITY OF OAKLAND



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PUBLIC LEGAL OPINION

June 18, 2019

HONORABLE CITY COUNCIL
City Hall, Second Floor
Oakland, California 94612

**Re: City Attorney's Public Legal Opinion Regarding Legal Issues
Raised by the Finance Department's June 6, 2019 "Response
to Council President's Proposed Budget Amendments"**

Dear President Kaplan and Members of the City Council:

I. INTRODUCTION

This public opinion addresses potential legal issues raised by the Finance Department's June 6, 2019 "Response to Council President's Proposed Budget Amendments Version 1.2" ("Finance Department's June 6, 2019 Report").

The Finance Department's June 6, 2019 Report states that Council President's proposed budget raised potential legal issues regarding (1) the eligibility of certain items budgeted for Measure KK funding, (2) compliance of certain expenditures with Proposition 26; (3) eligibility of certain expenditures for funding out of the Development Services Fund 2415; and (4) eligibility of certain expenditures for funding out of the Jobs/Housing Impact Fee Fund 7450.

II. USE OF MEASURE KK FUNDS

The Finance Department's June 6, 2019 Report states:

- "Proposed Budget illegally syphons Measure KK affordable housing bonds (Fund 5331) to hire an in-house paving and sidewalk crew in Oakland Public Works" (p. 2);
- "Items No. 8 and 9 (in-house paving and sidewalk crew) are not eligible expenditures from the Measure KK affordable Housing bond fund." (p. 9);

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- “Many of the [capital improvement] projects recommended in the Council President’s budget are ineligible for Measure KK funding” (p. 9) and
- “Measure KK specifically allowed for the use of funding for a seismic project that was non-specific to a Department, in this case the Oakland Museum. It is unlikely that the ADA project at the Museum is an eligible use of Measure KK funds. The Oakland Zoo is not eligible for Measure KK bond funds.” (p. 9-10);
- “A Driver Training Simulator for OPD is not eligible for Measure KK funding as it is equipment, not infrastructure” (p. 9); and
- “Signage for Lake Merritt is not likely a capitalizable asset, thus it is not eligible for Measure KK funding” (p.9).

Measure KK specifically prohibits the shifting of funds between the enumerated project categories (i.e., Affordable Housing and Streets and Roads) until, at least, 2026. (Measure KK, § 2(E).) Thus affordable housing funds cannot be used for streets and roads projects and streets and roads funds cannot be used for affordable housing projects.

Upon review of the “Council President’s Budget Amendments Version 1.2”, it appears that the budget does improperly allocate affordable housing funds for streets and roads projects. However, upon review of the “Council President’s Budget Amendments Final” filed with the Office of the City Clerk on June 6, 2019, it appears that the allocation of affordable housing funds for streets and roads projects in the “Council President’s Budget Amendments Version 1.2” was an inadvertent error. In the “Council President’s Budget Amendments Final”, the allocations for affordable housing projects and streets and roads projects are on two separate pages and reflect different funding sources that appear to be appropriate funding sources for the identified projects.

California law and Measure KK itself restrict how Measure KK funds may be used. Measure KK funding is available only for capital improvement projects or the acquisition of real property. We do not have sufficient information to determine whether the proposed signage for Lake Merritt or the Driver Training Simulator would qualify as capital improvement projects. Nor do we have sufficient information to determine whether the Council President’s proposed budget allocates Measure KK funds to ineligible projects, as the Finance Department’s June 6, 2019 Report indicates is the case with respect to the Oakland Zoo and likely the case for the ADA project at the Oakland Museum.

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III. COMPLIANCE WITH PROPOSITION 26

The Finance Department's June 6, 2019 Report states:

"The Council President's budget . . . moves \$6.4 million in Fire Prevention costs to an alternative funding source (to be identified) and repurposes the revenues generated from these activities to other General Purpose Fund expenditures. This is a clear violation of Proposition 26." (p. 2).

Proposition 26, prohibits the imposition of new or increased taxes, assessments, or fees without voter approval unless one of the enumerated exceptions to the voter-approval requirement applies. An attempt to collect or increase a tax, assessment, or fee without voter approval would violate Proposition 26 in the absence of an applicable exception.

To the extent, the Council President's proposed budget purports to allocate funds from a tax, assessment or fee that would be imposed without voter approval, the proposed budget will create a potential Proposition 26 problem. However, if the Council President's proposed budget proposes to allocate funds based on the assumption that voters will pass a particular tax, assessment, or fee in the future, Proposition 26 is not implicated.

Nevertheless, the City Charter mandates that Council adopt by resolution a balanced budget, i.e., "a budget of proposed expenditures and appropriations necessary therefor for the ensuing year . . ." and "a budget conforming to modern budget practices and procedures . . ." (City Charter § 801.) The City Attorney defers to the expertise of the City Administrator/Department of Finance on the issue of whether allocation of funds based on speculation that voters will pass a particular tax, assessment, or fee in the future "conforms to modern budget practices and procedures" and provides expenditures and appropriations necessary for a balanced budget.

IV. USE OF THE DEVELOPMENT SERVICES FUND 2415

The Finance Department's June 6, 2019 Report states:

"Item Nos. 2, 3, and 4 [Tenant & Landlord Education Assistance on Code Compliance, Renter Landlord Mediation and Assistance, Proactive Rental Inspection Program- Rent Adjustment Program, respectively] are not eligible expenditures in Fund 2415. They are more aligned with the Rent Adjustment Program (RAP). City Council recently approved a RAP fee increase for FY 2019-20 that included additional resources for landlord mediation and education assistance and outreach." (p. 8);

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This is correct. The Council created the Development Services Fund by ordinance in 2006. (City Ordinance No. 12741 C.M.S.) Pursuant to Ordinance No. 12741, the fund receives revenue from various “[l]icenses, fees, and permits from housing and commercial planning and construction-related activities.” (Ordinance No. 12741, Section 3 and Mayor’s Proposed Policy Budget, F/Y 2019-2021, p. E-44, “Fund Sources and Descriptions.”) The Ordinance specifically excludes Residential Rent Adjustment program fees from the Development Services Fund. (City Ordinance No. 12741 C.M.S., Section 3.)

The Ordinance restricts expenditures from the Development Services Fund to paying direct and indirect costs of the services and programs supported by the revenue received by the Fund. (City Ordinance No. 12741 C.M.S., Section 3.) Because the Development Services Fund receives no revenue from “Residential Rent Adjustment,” Development Services Fund revenue cannot be expended on services or programs for Residential Rent Adjustment. Therefore, Ordinance 12731 prohibits the Council President’s proposed use of funds from the Development Services Fund for “tenant and landlord education assistance on code compliance,” “renter landlord mediation and assistance,” and “proactive rental inspection program-rent adjustment program.”

Currently, Ordinance 12741 requires that any transfer of funds from the Development Services Fund to the General Fund be considered and treated as an interest bearing loan. Council could consider amending Ordinance 12741 to allow for periodic non-loan fund transfers from the Development Services Fund to the General Fund to *reimburse* the General Fund for any Development Services costs paid out of the General Fund. Although we have been unable to confirm that some Development Services costs are being paid out of the General Fund, if that is occurring, California law would permit the City to reimburse its General Fund for such costs and doing so would provide additional general purpose funds for allocation in the budget.

V. JOBS/HOUSING IMPACT FEE (FUND 7450)

The Finance Department’s June 6, 2019 Report states:

The Council President’s proposal uses Affordable Housing Impact fees for services to the homeless. While RPTTF revenues (boomerang) are eligible to be used for services aimed at rehousing homeless resident, impact fees are not. (p. 10)

It is not clear that the Council President’s proposed budget uses Affordable Housing Impact fees for services for the homeless. Upon review of the “Council President’s Budget Amendments Version 1.2”, it is clear that the budget allocates funds from the Affordable Housing Trust Fund (Fund 1870) for various homeless services.

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According to the Mayor's Budget, Fund 1870 receives funds from "penalties for blight authorized by Ordinance No. 13139 & 25% of residual [Residential Property Tax Trust Fund] RPTTF". (Mayor's Budget, p. E-38.)

We agree that RPTTF revenues may be used for homeless services. Oakland Municipal Code section 15.62.040C, provides that RPTTF funds may be used for outreach, counseling and legal services aimed at rehousing homeless residents. Thus, to the extent that the "Council President's Budget Amendments Version 1.2" relied on the description of the source of funding for Fund 1870 provided in the Mayor's Budget, it appears that the Council President's intent was to properly allocate RPTTF funds for homeless services not revenue from Affordable Housing Impact fees.

Very truly yours,



BARBARA J. PARKER
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Attorney Assigned:
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cc: Mayor Libby Schaaf
Sabrina Landreth, City Administrator
Katano Kasaine, Finance Director
LaTonda Simmons, City Clerk

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