

CITY OF OAKLAND
Office of the City Attorney
Legal Opinion

TO: City Council President Brunner and Members of the City Council

CC: Dan Lindheim, City Administrator
Marianna Marysheva-Martinez, Assistant City Administrator
Cheryl Taylor, Director of Budget Office
Felicia Silva, Budget Administrator
Howard Jordan, Acting Police Chief
David Kozicki, Deputy Chief Police
Gilbert Garcia, Principal Financial Analyst, OPD

FROM: John Russo, City Attorney

DATE: March 31, 2009

SUBJECT: Budgeting Measure Y Funds to Pay Police Officers Assigned to Neighborhood Beat Positions that the City Filled Before the Voters Approved Measure Y

I. INTRODUCTION

The purpose of this memorandum is to memorialize advice we orally provided to the Oakland Police Department (OPD) and Budget Office regarding the use of Measure Y funds to pay officers assigned to positions that the City originally filled before the voters passed Measure Y.

II. QUESTION

May the City budget Measure Y funds to pay the salaries and benefits of police officers currently assigned to the 14 neighborhood beat positions originally filled prior to the adoption of Measure Y?

III. SUMMARY CONCLUSION

Yes, as long as: (a) the officers are assigned to neighborhood beat positions described in Part 1, Section 3, of Measure Y, and (b) the City continues to appropriate funds sufficient to maintain 739 sworn officer positions pursuant to Part 2, Section 4, of Measure Y.

IV. FACTUAL BACKGROUND

OPD has informed the City Attorney's Office of the following facts.

There are 57 neighborhood beats. Prior to the adoption of Measure Y, OPD had filled 14 of the 57 neighborhood beat positions with sworn officers (who are also known as Problem Solving Officers, or PSOs).

Since the adoption of Measure Y, OPD has filled all 57 neighborhood beat positions. OPD has filled a total of more than 63 Measure Y positions (which includes neighborhood beat positions, per the terms of Measure Y).

The City has not used Measure Y funds to pay the salaries and benefits of officers who have been assigned to the 14 neighborhood beat positions that were filled prior to the adoption of Measure Y. OPD and the Budget Office have asked whether Measure Y funds could be used to pay the salaries and benefits of all police officers assigned to neighborhood beat positions since Measure Y states that the Measure Y revenues can be used to hire and maintain officers for neighborhood beat positions.

V. ANALYSIS

Measure Y, the Violence Prevention and Public Safety Act of 2004, provides the City with revenues, for a ten year period, to fund specified police, fire and other services. (See Measure Y, Part 1, Section 3, and Part 2, Sections 2 & 5.)

Part 1, Section 3, describes the permitted uses of Measure Y funds. With respect to police services, Section 3 states that the City may:

Hire and maintain a[t] least a total of 63 police officers assigned to the following community-policing objectives:

a. *Neighborhood beat officers:* each community policing beat shall have at least one neighborhood officer assigned solely to serve the residents of that beat to provide consistent contact and familiarity between residents and officers, continuity in problem solving and basic availability of police response in each neighborhood.

* * *

The purposes of Measure Y include providing funds to fill, and to keep filled, at least 63 community policing positions, including the neighborhood beat positions. (See Part 1, Sections 1 & 3.) No provision of Measure Y expressly prohibits the use of Measure Y funds to pay an officer based upon when the position to which he or she is assigned was originally filled (e.g., prior to or after the adoption of Measure Y). Measure Y has no cap on the number of positions

that Measure Y may fund, as long as those officers are serving the objectives described therein. (See Part 1, Section 3 (permitting Measure Y funds to be used to “[h]ire and maintain a[t] least at total of 63 police officers”).)

Having filled at least 63 community policing positions described in Measure Y, the City may budget Measure Y funds to the salaries and benefits of all officers who are assigned to neighborhood beat positions described in Part 1, Section 3.

However, Measure Y does prohibit the City from collecting Measure Y taxes “in any year that the appropriation for staffing of sworn uniformed police officers is at a level lower than the amount necessary to maintain the number of uniformed officers employed by the City of Oakland for the fiscal year 2003-2004 (739).” (Part 2, Section 4.) To avoid any potential challenge to the City’s right to collect the taxes, we strongly advise that the City appropriate and set aside non-Measure Y funds in amounts sufficient to fund 739 sworn positions.

VI. CONCLUSION

The City may budget Measure Y funds to pay the salaries and benefits of police officers currently assigned to the 14 neighborhood beat positions that the City originally filled prior to the adoption of Measure Y, subject to the facts and conditions described above.

Very truly yours,

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