

CITY OF OAKLAND
Office of the City Attorney

Legal Opinion

TO: Public Safety Committee

CC: City Council;
Violence Prevention and Public
Safety Oversight Committee

FROM: John A. Russo
City Attorney

DATE: January 3, 2008

SUBJECT: Allocations of Measure Y Money Between Violence Prevention and
Public Services

I. INTRODUCTION

On November 2, 2004, the voters of the City of Oakland voted to adopt the Violence Prevention and Public Safety Act of 2004, also known as Measure Y. This measure provided for the collection of a dedicated parcel tax and a parking tax surcharge to pay for additional programs and services to increase police staffing, enhance fire safety, and expand violence prevention programs. The taxes in Measure Y became effective on January 1, 2005, and "shall continue in effect for 10 years." (Measure Y, Part 2, Section 5.)¹

Measure Y sets up a multi-step allocation process for use of the tax proceeds. First, up to \$4 million is allocated for fire services. (Part I, Section 3(3).) Of the remaining money (the "Anti-violence Money"), at least 40% percent must be allocated for violence prevention social services. (Part 1, Section 3(5).) The remainder is allocated to police services and equipment. (Part 1, Section 3(1).)

At its November 27, 2007, meeting, the City Council Public Safety Committee requested this opinion from the City Attorney's Office regarding the permitted annual allocation of money collected under the Measure Y tax.

¹ All references are to Violence Prevention and Public Safety Act of 2004, also known as Measure Y, enacted at the November 2, 2004, election, unless otherwise indicated.

II. QUESTION

May the City Council allocate more than 40 percent of Measure Y Anti-violence Money in any given year to violence prevention social services?

III. BRIEF ANSWER

Yes, but only if the allocation in excess of 40 percent will not prevent the City from hiring at least 63 police officers to conduct the policing objectives set forth in Measure Y. Since the City has not yet hired all 63 Measure Y officers, the City must be able to set aside sufficient funds so it can reach the targeted 63 officers and to show that it is in fact exercising its best efforts to hire the 63 officers in the interim.

IV. ANALYSIS

To determine whether Measure Y allows the City Council to allocate more than 40% of Measure Y Anti-violence Money to violence prevention social services, we examine the language of Measure Y. Section 3(5) of Measure Y provides that “not less than 40% . . . each year” of the amount spent on policing and violence prevention social services be spent on violence prevention social services.

Mandated Apportionment to Social Service Programs: Of the total proceeds spent on programs enumerated in this Section 3, Paragraphs 1 and 2, not less than 40% of such proceeds must be allocated to programs enumerated in this Section 3, Paragraph 2 each year this Ordinance is in effect. (Part 1, Section 3(5)).

The use of the language “not less than” denotes a minimum, not a maximum. Accordingly, this language allows more than just 40 percent of the proceeds to be spent on violence prevention social services.

But this is not the end of the analysis. The voters in voting for Measure Y expected that the Measure Y money would be used for both violence prevention services and more police, and not allow for just one of these programs. The “Use of Proceeds” section of Measure Y begins by stating that the tax proceeds of the measure may only be used as part of an “integrated program of violence prevention and public safety intervention” (Part 1, Section 3.)

Section 3(1) requires that tax proceeds be used to “[h]ire and maintain at least a total of 63 police officers”

The tax proceeds raised by this ordinance may only be used as part of the following integrated program of violence prevention and public safety intervention, in accordance with the following specific purposes:

1. Community and Neighborhood Policing: Hire and maintain at least a total of 63 police officers

(Emphasis added.)

Despite the “not less than 40 percent” language, the City certainly cannot allocate 100 percent of the Anti-violence Money to social services and 0% to police. The language, “The tax proceeds raised by this ordinance may only be used . . . in accordance with the following specific purpose: Hire and maintain at least a total of 63 police officers”, requires the City to make continuous and best efforts to hire and maintain 63 officers so long as there is available Measure Y money.

Measure Y does not specify a deadline for when the 63 officers must be hired. However once hired, the language indicates an expectation that the officers will be maintained with Measure Y money.

We determine the intent of a law first and foremost from the plain meaning of the actual language of the law. The actual language states that the Measure Y tax proceeds will be used for both the hiring of 63 officers and the provision of violence prevention social services. If the language is clear and unambiguous, the plain meaning of the language controls. But if the language of the law is considered to be ambiguous, then a court may examine the legislative history of a law to discern intent. (Board of Supervisors v. Lonegran, 27 Cal.3d 855, 866 (1980).) The legislative history of a voter approved initiative is the ballot pamphlet. (Id.; Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d. 208, 245-246 (1978); 2A Sutherland Statutory Construction § 48:19 (6th Ed.) (2005).) Here the arguments in favor of Measure Y support the concept that the revenue from Measure Y was to support a comprehensive program of both social services and police officers.

Following this narrow defeat, community leaders, city officials, and neighborhood groups came together to develop what is now a more comprehensive response to violent crime in our community, Measure Y.

Measure Y is a smart, fiscally responsible plan that funds the expansion of effective violence prevention programs and increases the number of police officers in Oakland neighborhoods. (Ballot Pamphlet Argument in Favor of Measure Y.)

* * *

Measure Y is a balanced solution that will increase public safety in Oakland. Measure Y has been carefully crafted to fund BOTH effective violence prevention programs AND expand the number of police officers to crack down on crime hot spots and gang activity. (Ballot Pamphlet Rebuttal to Argument Against Measure Y.)

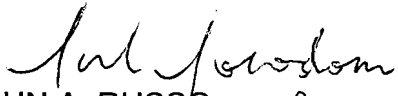
Both the express language of Measure Y and the legislative intent of the voters indicate that Measure Y would fund both violence prevention social services and police officers.

Accordingly, the City is required to use its best efforts to hire the 63 Measure Y officers. If the City forecasts that allocating more than 40 percent of the money to violence prevention services will prevent the City financially from hiring and maintaining 63 officers, then the City is not exercising its best efforts if it makes a greater than 40 percent allocation. Therefore, in any given year, the City may allocate more than 40% of the Measure Y Anti-violence Money so long as the allocation in excess of 40% does not in any way inhibit the City's ability to "hire and maintain" the 63 police officers, including the allocation of the necessary money to "hire and maintain" the officers. This opportunity may change from year to year if the projection changes because of a change in facts such as cost of living increases or labor agreements. If any more than a 40% allocation of violence prevention money will prevent the hiring of 63 Measure Y officers or maintaining the officers it has hired and projects to hire during the life of the tax, then the additional allocation to violence prevention social services would violate Measure Y.

VI. CONCLUSION

In any given year the City may allocate more than 40 percent to violence prevention social services if the allocation in excess of 40 percent will not prevent the hiring and maintenance of 63 Measure Y officers

Very truly yours,


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