CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

TO: Mayor's Office

CC: Measure Y Oversight Committee
City Administrator

FROM: Mark T. Morodomi
Supervising Deputy City Attorney

DATE: January 24, 2008

SUBJECT: Powers of the Measure Y Oversight Committee

I. BACKGROUND

The voters of the City of Oakland voted on November 2, 2004 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 parking tax surcharge to pay for additional programs and services to increase police staffing, enhance fire safety, and expand violence prevention programs. Measure Y also contained provisions for the appointment of an 11-member Violence Prevention and Public Safety Oversight Committee, with three members being appointed by the Mayor and one member appointed by each City Councilmember. The Mayor's Office has requested an opinion on the scope of the Violence Prevention and Public Safety Oversight Committee's powers.

II. QUESTION

What are the powers of the Violence Prevention and Public Safety Oversight Committee ("Oversight Committee")?

III. SUMMARY CONCLUSION

Regarding Measure Y programs the Oversight Committee has the power to "review the annual audit, evaluate, inquire and review . . . ." and can make "recommendations" to the Mayor and City Council for new "regulations, resolutions, ordinances . . . ." (Measure Y, Part 2, Section 3.)

IV. LEGAL ANALYSIS

The Oversight Committee Has Oversight Powers.

The powers of the Oversight Committee are enumerated in Measure Y, Ordinance No. 12690, and its own bylaws. To the extent any of the authorities conflict, the City Charter trumps Measure Y, Measure Y trumps Ordinance No. 12690, and Ordinance No.12690 trumps the committee's bylaws.

Measure Y states:

> Section 3. OVERSIGHT
>
> To ensure proper administration of the revenue collection and spending, and the implementation of the programs mandated by this ordinance, the Mayor shall appoint three members of a "Violence Prevention and Public Safety Oversight Committee" and each councilmember shall appoint one member. The committee shall review the annual audit, evaluate, inquire and review the administration, coordination and evaluations of the programs and make recommendations to the Mayor and the City Council for any new regulations, resolutions or ordinances for the administration of the programs to comply with the requirements and intent of this Ordinance. (emphasis added.)

Accordingly, the Oversight Committee has the power to "review the annual audit, evaluate, inquire and review . . . ." The committee has the authority, therefore, to conduct evaluations, inquiries, and reviews of the Measure Y programs. The committee also can make recommendations to the Mayor and City Council for new "regulations, resolutions, ordinances . . . ." The Oversight Committee may advise the Council of its evaluations and assessments, and it may make recommendations to the Mayor and the Council. But the Oversight Committee does not have authority to direct staff to make changes in Measure Y programs or administration or coordination. The Oversight Committee's power is limited to apprising the Council and Mayor of its concerns, findings and making recommendations regarding the administration of the programs and other matters based on its review, evaluations and audits.

The language of Measure Y imposes no requirement that any proposal that involves Measure Y money be reviewed or approved by the Oversight Committee. However, the Oversight Committee has the option to place on its agenda discussion and "review" of any proposal. Under Measure Y, such review is not a precondition for any action by any other entity. Measure Y does not give the Oversight Committee the authority to enter into contracts, draft contracts, allocate money, or direct the assignment of police officers. The City Administrator and City Council maintain their powers under the City Charter and City ordinances to make contracts and allocate money under established City procedures.

The Powers of the Committee Belong to the Committee, Not Individual Members.

As quoted above, the "Committee" holds various powers. Individual Committee members are not the Committee. For the Committee to act, a majority of the Committee members must authorize the action. (In re Dunscomb, 58 Cal.App. 610, 613 (1922) (Individual member of Berkeley City Council has no power to subpoena because the individual has "the same but, no greater, power than any of the other members, and that body must function as a whole, and not by its members separately.")

It has been argued that the Oversight Committee members should have powers similar to the City Council members and that City Council members individually conduct inquiries or direct staff. First, the Non-interference Section of the City Charter prohibits City Councilmembers from directing administrative staff. (City Charter Section 218.) Second, the City Council has more power than the Measure Y Committee to make inquiries. The City Council is the legislative and governing body of the City. (City Charter Section 207). As such, the individual members have the inherent authority to individually obtain information in order to pass laws and govern the City. (City Charter Section 218 acknowledges that individual members have the power of inquiry.) In contrast, the Oversight Committee has no power to pass laws or govern. Its only power is to make inquiries and recommendations. Since that power is conferred upon the "committee" under Measure Y, the committee itself must act to exercise its power.

V. CONCLUSION

The Oversight Committee has the power to evaluate, inquire and review and to make recommendations to the Mayor and City Council for new regulations, resolutions, ordinances regarding the administration of Measure Y.

Very truly yours,

JOHN A. RUSSO
City Attorney

By: _____
Mark T. Morodomi
Supervising Deputy City Attorney

MTM:ww