

CITY OF OAKLAND

PROPOSED ORDINANCE

A proposed Ordinance amending the Oakland Municipal Code to require wireless telephonic service providers to apply the City of Oakland's Utility User's Tax ("UUT") in accordance with the Federal Mobile Telecommunications Sourcing Act of 2000.

CITY OF OAKLAND MEASURE O	
O MEASURE O: Shall the Oakland Municipal Code be amended to require wireless telephonic service providers to change the methodology of computing the current City of Oakland Utility User's Tax ("UUT") to be consistent with the Federal Mobile Telecommunications Sourcing Act of 2000?	YES
	NO

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE O

In 1992, the City of Oakland adopted a 7.5% telephone Utility User's Tax ("UUT"). The tax requires telephone providers to collect the tax from telephone users. The current UUT applies to calls that originate or terminate in Oakland. Wireless telephone service providers have claimed that it is difficult to determine whether a cellular call originates or terminates in Oakland.

In 2002 the Federal Mobile Telecommunications Sourcing Act of 2000 ("the Act") became effective. The Act allows cities to apply the UUT to all cellular calls if the customer's "primary place of use" is within Oakland. The primary place of use is the customer's billing address.

Adoption of the Act's standard would make it easier for cell phone providers to comply with the City's UUT requirements; it also would be easier for the City to monitor compliance with the requirements of the UUT. If adopted by the voters, this measure would not change the existing UUT rate of 7.5%.

s/JOHN A. RUSSO
City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE O

Since 1992, the City of Oakland has required that telephone companies collect a 7.5% Utility User's Tax ("UUT") from customers whose service addresses are in Oakland. The current tax applies to all calls that "originate" or "terminate" within the City of Oakland.

Cellular telephone companies have claimed that it is difficult to determine where cellular phone calls originate and terminate, especially since many cellular telephone providers offer monthly flat rate pricing packages. The City has experienced difficulty determining whether cellular telephone companies are paying the correct amount of Utility User's Tax.

This measure would not change the existing telephone Utility User's Tax rate of 7.5%. Instead it would calculate the UUT using the same standard the federal Mobile Telecommunications Sourcing Act of 2000 ("Act") established. The Act allows a city to apply the UUT to all cellular telephone charges if the customer's "primary place of use" is within the City of Oakland. The primary place of use is the customer's residential or business billing address. Adoption of the federal rules would create a "level playing field" so that the City could verify that all cellular telephone providers collect the tax at the same rate.

If this measure is adopted, more of a cellular customer's calls may be subject to the UUT because the tax would apply to all charges to cellular phones with Oakland billing addresses.

s/JOHN A. RUSSO
City Attorney

CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE O

"Shall the Oakland Municipal Code be amended to require wireless telephonic service providers to change the methodology of computing the current City of Oakland Utility User's Tax ("UUT") to be consistent with the Federal Mobile Telecommunications Sourcing Act of 2000?"

SUMMARY

This measure will amend Section 4.28.030 of the Oakland Municipal Code, so that providers of wireless telephonic services (cellular phones, pagers, etc.) will be required to collect the City of Oakland's Utility User's Tax ("UUT") from all customers on a consistent basis. Presently, the tax applies to only those calls that either originate or terminate in Oakland, and are made by customers whose service address is in Oakland. Since it is difficult for a provider to determine the precise location from which a call is placed, some providers are not collecting the tax in accordance with existing code provisions. As a result, the City is not receiving all the revenue to which it is entitled, and customers are not being treated consistently – some customers are paying the tax, whereas others are not. Under the proposed measure, the tax would apply to all wireless calls, regardless of where they originate or terminate, as long as the customer's business or residential address is in Oakland. This should make it easier for providers to collect the tax from all customers, and for City staff to ensure that they do.

FISCAL IMPACT

Based on our analysis of data obtained by the City of Oakland's Financial Services Agency, we estimate that the City will gain approximately \$1,350,000 in revenue annually through passage of this measure. The increased revenue will come from customers who are presently not paying the tax but ought to be. Although our estimates are based upon the best data available at this time, it is difficult to make such estimates with precision; therefore, the actual results may vary from our estimates.

s/ROLAND E. SMITH, CPA, CFS
City Auditor

FULL TEXT OF MEASURE O

WHEREAS, the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA") is a federal law that clarifies how a local Utility User's Tax ("UUT") can be applied to cellular telephone users and is applicable to wireless customer's bills issued after August 1, 2002; and

WHEREAS, the MTSA provides a simplified formula for imposing a user's tax on wireless telephone services, so that if the jurisdiction's territorial limits encompass a customer's place of primary use, all calls are subject to the tax regardless of where a wireless call originates or terminates; and

WHEREAS, the City of Oakland's current utility user's tax for cellular telephone use does not incorporate the new MTSA standard and requires that the tax be applied only to calls that "originate" or "terminate" in Oakland; and

WHEREAS, the City of Oakland's current UUT formula is cumbersome and complicated because it requires tracking cellular calls based on their point of origination and termination, making it difficult for the City to monitor compliance; and

WHEREAS, by applying the MTSA standard to the collection of UUT revenues in the City of Oakland, revenues would increase because the MTSA standard would apply to all calls when a customer's place of primary business is in Oakland, and not just calls originating or terminating in Oakland; and

WHEREAS, adoption of the MTSA standard imposing the tax on the entire amount of the customer's bill represents a change in taxing methodology that must be approved by the voters pursuant to Proposition 218; and

WHEREAS, for the reasons stated hereinabove, the Finance and Management Agency, Revenue Division, is proposing to amend Section 4.28.030 of the Oakland Municipal Code to conform the City of Oakland's Utility User's Tax ("UUT") as applied to cellular telephones with the sourcing rules of Section 117 of the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA").

NOW, THEREFORE, BE IT RESOLVED:

In order to achieve uniformity, minimize the loss of revenue to the City of Oakland and to provide a simplified and uniform methodology for collecting the UUT on cellular telephone calls, the City Council finds and determines that the City of Oakland's Utility User's Tax ("UUT") should be amended as it applies to wireless (cellular) telephone usage so that the tax conforms to the Sourcing Rules of Section 117 of the Federal Mobile Telecommunications Sourcing Act of 2000 ("MTSA").

FURTHER RESOLVED: This new methodology for imposing the tax on the entire amount of the customer's bill subject to the MTSA represents a change in taxing methodology that must be approved by the voters pursuant to Proposition 218.

FURTHER RESOLVED: That the City Council does hereby submit to the voters at the March 2, 2004 general election the text of the proposed ordinance, which shall be as follows:

"SECTION 1. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 2. Section **4.28.030** of the Municipal Code is hereby amended to read as follows:

4.28.030 Telephone Users Tax imposed.

A. There is imposed a tax upon every telecommunications service customer whose place of primary use is within the jurisdictional boundaries of the City of Oakland, ~~every person with a service address in the city~~, other than a telephone corporation, (as defined by and licensed by the California Public Utilities Commission), using ~~intrastate, interstate, or international~~ telephone communication services including, but not limited to, cellular telephones and facsimile transmissions ~~for communications originating or terminating in the city~~. The tax imposed by this section shall be at the rate of seven and one-half (7.50) percent of all charges made for such services and shall be paid by the person receiving such services, and collected by the provider of such services.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "telephone communication services" include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as such section existed on July 1, 1968.

C. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed by Section 4251 of Title 26 of the United States Code, as such section existed on July 1, 1968, without regard to subsection (b) thereof. (Prior code § 5-23.03)"

**NO ARGUMENTS IN FAVOR OR AGAINST
MEASURE O SUBMITTED.**

PROPOSED CHARTER AMENDMENT

Measure amending the Oakland City Charter to (1) Retain the Mayor-Council form of government, commonly called the "Strong Mayor", and elected City Attorney; (2) Change how salaries for Councilmembers, the City Attorney and the City Auditor are set; (3) Change how vacancies on boards and commissions are filled; (4) Require Mayor to hold public meetings; (5) Change Mayor's term limit to two consecutive terms; and (6) Make other changes in the Charter

- Eliminates the rule that the Mayor vacates his or her office by missing ten consecutive City Council meetings.
- Requires the City Council to elect a Vice-Mayor each year.
- Requires the Mayor to advise the City Council before removing the City Administrator.
- Changes the title of the City Manager to "City Administrator."

s/THOMAS J. OWEN
Deputy City Attorney
City and County of San Francisco

CITY OF OAKLAND MEASURE P

P MEASURE P: Shall the City Charter be amended to retain the Mayor-Council form of government ("Strong Mayor") and elected City Attorney and provide (1) that no person may be elected Mayor for more than two consecutive terms; (2) Mayor must annually hold four public meetings; (3) that Council make appointments to boards and commissions when vacancies are unfilled; (4) limitations and voter-approval requirements for Councilmember salary increases; and (5) formula setting City Attorney and Auditor salary increases?	YES
	NO

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE P

- Repeals the sunset provision of 1998's Measure X, to retain the Mayor-Council ("Strong Mayor") form of government and elected City Attorney without another vote at the November, 2004 election.
- Changes the term limit for Mayor from two terms to two consecutive terms.
- Authorizes the City Council to fill vacancies on City commissions if the Mayor does not fill the vacancy within 90 days.
- Reduces the number of votes needed for the City Council to pass an ordinance on reconsideration from six votes to five votes.
- Authorizes the Public Ethics Commission, beginning with Fiscal Year 2003-2004, to adjust annually the salary for Councilmembers to match increases in the consumer price index; the Commission could grant increases beyond the change in the consumer price index, but any portion of the increase over five percent would require voter approval.
- Eliminates the prohibition on paying the Mayor more than the City Manager.
- Authorizes the City Council to set the salaries of the City Attorney and the City Auditor at not less than 70 percent nor more than 90 percent of the average salaries of the city attorney and the city auditor in California cities within the three immediate higher and the three immediate lower cities in population to Oakland.
- Requires the Mayor to deliver an annual State of the City address to the City Council, and to hold four town hall meetings each year for the public.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE P

Repealing the Measure X sunset provision. The provisions of 1998's Measure X, creating a Mayor-Council (or "Strong Mayor") form of government, will expire after the November, 2004 election if not renewed by the voters at that time. The proposal would repeal that sunset provision, retaining the Mayor-Council form of government and elected City Attorney without another vote at the November, 2004 election.

Term limit for Mayor. No person may now be elected to the office of Mayor more than twice. Under the proposal, no person could be elected to the office of Mayor for more than two consecutive terms.

Vacancies on commissions. The Mayor now fills vacancies on City commissions. Under the proposal, if the Mayor did not appoint a successor within 90 days, the City Council could fill the vacancy.

Approving ordinances on reconsideration. If the Mayor now sends an ordinance back to the City Council for reconsideration, the Council must approve the ordinance by at least six votes for the law to take effect. Under the proposal, the Council could approve an ordinance on reconsideration by five votes.

Councilmembers' Salaries. The Public Ethics Commission now sets the salary for Councilmembers, not to exceed 110 percent of a base salary set in 1997. No increase can take effect without voter approval. Under the proposal, the Commission would, beginning this year, annually adjust the salary for Councilmembers to match increases in the consumer price index. The Commission could grant increases beyond the change in the consumer price index, but any portion of the increase over five percent would require voter approval.

Mayor's salary. The proposal would eliminate the current rule against paying the Mayor more than the City Manager.

City Attorney and City Auditor salaries. The City Council now sets the salaries of the City Attorney and the City Auditor. The Charter does not limit the amount of those salaries. Under the proposal, the salaries of the City Attorney and the City Auditor could not be less than 70 percent nor more than 90 percent of the average salaries of their counterparts in California cities within the three immediate higher and the three immediate lower cities in population to Oakland.

Mayor's State of the City Address and town hall meetings. The proposal would require the Mayor to deliver an annual State of the City address to the City Council, and to hold four town hall meetings for the public.

Mayor's attendance at City Council meetings. The proposal would eliminate the current rule that the Mayor vacates his or her office by missing ten consecutive City Council meetings.

Electing the Vice-Mayor. The City Council now elects a Vice-Mayor at its first meeting in even-numbered years. The proposal would require the City Council to elect a Vice-Mayor each year.

Removal of City Manager. The proposal would require the Mayor to advise the City Council before removing the City Administrator.

City Manager/City Administrator. The proposal would change the title of the City Manager to "City Administrator."

s/THOMAS J. OWEN
Deputy City Attorney
City and County of San Francisco

**CITY AUDITOR'S IMPARTIAL FINANCIAL
ANALYSIS OF MEASURE P**

**REMOVES VOTER APPROVAL REQUIREMENT FOR
CERTAIN CITY COUNCIL SALARY INCREASES**

The Public Ethics Commission will adjust City Council salaries each year by the increase in the consumer price index (CPI) over the preceding year. The Commission may adjust salaries beyond the CPI increase up to 5%. Any increase in excess of 5% is subject to voter approval.

The consumer price index applicable is not specified.

**CITY CHARTER LIMIT ON ANNUAL INCREASE IN
CITY COUNCIL SALARIES WILL BE REPEALED**

The City Charter provision limiting annual changes in City Council salaries to 10% will be repealed. No replacement limit is provided.

**CITY CHARTER LIMIT ON SALARY OF MAYOR
REPEALED**

The City Charter provision limiting the Mayor's salary to the salary of the City Manager will be repealed. The formula for determining the Mayor's salary is retained.

CITY ATTORNEY SALARY TO BE REDUCED

The salary of the City Attorney will be set by the City Council to an annual amount within a mandated range of 70% to 90% of the average salaries paid to City Attorneys in the three cities immediately smaller and the three cities immediately larger than the City of Oakland. There is no provision for cost of living increases.

These cities range in population from 274,100 to 481,000 compared to Oakland's population of 412,200. The computation of the amount based on year 2003 information would require a reduction of the City Attorney's salary from 19% to 37%. The adjustment will be required for the new term of office commencing in January 2005.

CITY AUDITOR SALARY TO BE REDUCED

The salary of the City Auditor will be set by the City Council to an annual amount within the mandated range of 70% to 90% of the average salaries paid to City Auditors in the three cities immediately smaller and the three cities immediately larger than the City of Oakland. There is no provision for cost of living increases.

These cities range in population from 274,100 to 481,000 compared to Oakland's population of 412,200. Only 2 of the 6 cities have the position of City Auditor, one elected and one appointed. The computation of the amount based on year 2003 information for the 2 cities with a City Auditor would require a reduction of the City Auditor's salary from 15% to 34%. The adjustment will be required for the new term of office commencing in January 2007.

OTHER CHANGES

The fiscal impact of the change in the City Manager's title, *required public meeting performances of the Mayor*, notice of removal of the City Administrator, appointment to boards and commissions, reconsideration of ordinances and the Mayor term limit change are indirect and based on events and data that will become known in the future.

The fiscal impact of all the provisions is based on future economic conditions which cannot be determined at this time.

s/SEFTON BOYARS
Certified Public Accountant

ARGUMENT IN FAVOR OF MEASURE P

Don't give up your right to vote for the person who runs the City. Vote YES on P.

Now, more than ever, we need leadership. Facing a huge state deficit, the new governor and many legislators are trying to take money from local government. They want to solve their problems at our expense. That's why it is absolutely necessary to have a strong mayor fighting for the citizens of Oakland—just like the strong mayors of San Francisco and Los Angeles. Oakland needs a mayor—with authority—to protect its financial interests.

Under the old system, the city council met in closed session and picked Oakland's chief executive called the city manager. Instead of an independently elected mayor, Oakland got a contract employee as the top person at city hall. This was undemocratic and it blurred responsibility as nine council members pushed the manager in different and conflicting directions. The result was drift and bad decisions that cost us hundreds of millions of dollars.

The League of Women Voters helped establish a broad-based citizens group that examined the Strong Mayor provisions of the Charter. The group held extensive public hearings and carefully crafted a set of changes that form Measure P. These changes reduce the power of the mayor to veto ordinances, give the council greater authority over appointments, and require public meetings with the mayor to ensure citizen participation in mayoral decisions.

We have had the mayor-council form of government for almost six years. It is a balanced form of government just like the great cities of Boston, New York and Chicago. Please Vote YES on P to retain:

- 1) A mayor publicly accountable to the voters;
- 2) A strengthened city council; and
- 3) An elected city attorney to guard the public trust.

s/JERRY BROWN

Oakland Mayor

s/ROBERT L. JACKSON

Bishop and Founder, Acts Full Gospel Church

s/DANNY WAN

Oakland Councilmember

s/IGNACIO DE LA FUENTE

President Oakland City Council

s/JOSEPH J. HARABURDO

President & CEO, Oakland Chamber of Commerce

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE P

Let's get a few things straight!

- Measure P does NOT mean a strong City Council, it means a weak and increasingly ineffective one. Oakland started out with a corrupt Mayor/Commissioner system that collapsed when several officials were sent to San Quentin. The people wrote a new Charter that adopted the City Council/City Manager system. That system is used in the overwhelming majority of cities in the state and nation – to end the cronyism, favoritism and corrupt bosses that had been seen in Chicago, New York, Boston and San Francisco, under “strong mayors.”
- Holding a handful of informal meetings with the public does NOT make an absentee mayor accountable. Only when a mayor takes part in day-to-day decision making, and publicly votes on policy issues at the City Council, is there real accountability.
- We have two elected officials who should be truly independent: the City Auditor and City Attorney. They are meant to represent US, not the politicians. But Measure P goes a long way toward reducing their independence.
- In the next six years of the “strong mayor” system, the city has rung up some of the biggest budget deficits in its history.

Measure P is supported by the politicians, the vested interests and the want-to-be mayoral candidates. We should clear the decks, return to a system that gives us the greatest representation!

VOTE NO ON MEASURE P !

s/ARTHUR B. GEEN

Executive Vice President

Alameda County Taxpayers Association

ARGUMENT AGAINST MEASURE P

The time has come for Oakland voters to shoot down the failed, ill-conceived "strong mayor" scheme, once and for all. Further tinkering will not improve a flawed system – just make it more unresponsive and clunky!

- Municipal experts have for years favored the City Council/City Manager system, which grew out of the corruption and arrogance of "strong mayors" across the country. City Council members are our direct representatives, best able to understand our needs. We should not weaken and handcuff the Council!
- Where is the leadership under a "strong mayor" system? An absentee mayor, making only rare City Council appearances, does not have the needed grasp of day-to-day city operations. So, highly-paid administrators need to be hired. But they would not have the authority of a City Manager, and they would not respond to the City Council!
- Oakland grew and prospered under the Council/Manager system! Let's get back on track!

VOTE NO ON MEASURE P!

s/ARTHUR B. GEEN

Executive Vice President

Alameda County Taxpayers Association

REBUTTAL TO ARGUMENT AGAINST MEASURE P

Under the strong mayor provisions of the city charter, Oakland has avoided the costly mistakes of the past—and is now recognized as among the top ten cities in America.

The reason is clear. Given seven members of the city council from seven separate and diverse districts, there must be one elected official, responsible for the city as a whole. Such a charter arrangement works well because our strong neighborhood representation is balanced by an elected chief executive. The two branches of city government—mayor and council—equally strong, work for the greater good of the city.

Remember the costly mistakes under the weak mayor form of government: a contracted city manager earning more than \$250,000 a year and layers of unneeded bureaucracy. That has now been changed. Why? Because you have an elected mayor in charge of the city hall who is accountable directly to you.

A strong mayor is intimately involved in the day-to-day operations of the city government, not just a figurehead, who does nothing more than chair meetings.

Look at the results. New housing is being built in West Oakland and East Oakland for the first time in decades. The number of affordable units is up 50%. Lake Merritt is being restored and neighborhoods are revitalized.

Oakland has had its first elected city attorney, accountable only to you the voters.

Don't give up your democratic right to vote for your chief executive and your city attorney. Vote Yes on P.

s/JERRY BROWN

Oakland Mayor

s/DEBORAH EDGERLY

Oakland City Manager

s/DEVIN SATTERFIELD

Neighborhood Arts Coordinator

FULL TEXT OF MEASURE P

WHEREAS, in 1998 Oakland voters passed Measure "X", commonly referred to as the strong Mayor initiative, which amended the Oakland City Charter; and

WHEREAS, Measure "X", among other things, (1) removed the Mayor from the City Council and made the Mayor part of the City's administrative service; (2) provided that the City Manager shall serve at the pleasure of the Mayor; (3) requires voter approval of City Council salary increases and (4) provided for an elected City Attorney; and

WHEREAS, Measure "X" includes a sunset provision which requires that the Council place on the November 2004 ballot the question whether the voters wish to retain the changes to the Charter that relate specifically to the adoption of Measure "X", and the sunset provision further provides that if the voters do not pass the measure, Measure "X" shall lapse and have no further effect, except that the elected City Attorney shall remain in effect until January 1, 2009; and

WHEREAS, notwithstanding the aforesaid sunset provision, Council may submit to the voters a Charter amendment that would amend the provisions of Measure "X" and/or repeal the sunset provision; and

WHEREAS, on March 6, 2003 the City Council adopted a proposal submitted by the League of Women Voters to form a Measure "X" Limited Charter Review Committee that would prepare a report and recommendations for the Council's consideration related to Measure "X" on the following issues: (A) Balance of Powers among Branches of Government, (B) the Elected City Attorney, (C) Setting Pay for Elected Officials, (D) Term Limits for Elected Officials, (E) Mayor's Attendance at Council Meetings, (F) Number of Councilmembers and At-Large Representatives, and (G) City Council Structure and Procedures, (H) Role of the City Manager; and

WHEREAS, the Council considered the Measure "X" Limited Charter Review Committee's recommendations and report and decided to submit to the voters various Charter amendments related to Measure "X", including a repeal of the sunset provision if the voters pass the amendments; and

WHEREAS, the proposed Charter amendments, among other things,

- (1) Council Salaries: would provide that the Public Ethics Commission shall annually adjust Councilmembers' salaries by the increase in the consumer price index ("CPI"), permit the Commission to increase Councilmembers' salaries beyond the increase in the CPI up to a total of five percent without voter approval and require voter approval of the portion of any increase in excess of five percent;
- (2) Mayor's Salary: delete the provision that provides that the Mayor's salary shall not exceed the salary of the City Manager;
- (3) City Manager's Title: change the title of the "City Manager" to "City Administrator";

- (4) Public Meetings by Mayor: require that the Mayor conduct four public meetings during each year and appear before the Council to deliver a general address on the state of the City (Charter already requires that the Mayor present budget recommendations to the Council in a form, manner and at a time prescribed by Council resolution);

- (5) Formula for City Attorney's and City Auditor's Salaries: provide that the City Council set the City Attorney's and City Auditor's salaries using the same formula that the Charter prescribes for the Mayor; namely the City Attorney's salary shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland; and the City Auditor's salary shall not be less than 70% nor more than 90% of the average salaries of the City Auditors of California cities within three immediate higher and the three immediate lower cities in population to Oakland;

- (6) Removal of City Administrator: require that the Mayor advise the Council before removing the City Administrator;

- (7) Appointments to Boards and Commissions: provide that the Council may fill vacancies on boards and commissions if Mayor does not submit a candidate to fill the vacancy within 90 days of the occurrence of the vacancy; and

- (8) Reconsideration of Ordinances: provide that Council may pass an ordinance with five votes that is presented for reconsideration due to the Mayor's suspension of the taking effect of the ordinance; and

- (9) Mayoral Term Limits: change the Mayor's term limit to two consecutive terms; and

WHEREAS, it will be necessary to amend sections 202, 203, 216, 300, 302, 304, 305, 401, 403, 503, 601, and also amend various other sections of the Charter to change the title of City Manager to City Administrator; and

WHEREAS, all other provisions of the City Charter shall remain the same; now, therefore, be it

RESOLVED: That the text of the proposed charter amendment shall be as follows:

THE OAKLAND CITY CHARTER IS AMENDED TO READ:

SEC. 202. PUBLIC ETHICS COMMISSION; COUNCIL SALARIES.

(a) There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including, Oakland's Campaign Finance Reform Ordinance, conflict of interest code, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to

the City Council on matters relating thereto, and it shall set City Councilmember compensation, as set forth herein.

(b) The members of the Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents.

(1) Initial appointments. The first seven members of the Commission shall be appointed as follows: Three (3) members who represent local civic organizations with a demonstrated history of involvement in local governance issues shall be nominated for appointment by the Mayor and confirmed by the City Council; and four (4) members shall be appointed following a public recruitment and application process, by the unanimous vote of the three (3) representatives appointed by the City Council. The four (4) members so appointed shall reflect the interest of the greater Oakland neighborhood and business communities.

(2) Subsequent Mayoral appointments. A vacancy in any of the three (3) positions nominated for appointment by the Mayor and confirmed by the City Council shall be filled in the same manner and upon consideration of the same criteria as for the initial Mayoral appointments.

(3) Subsequent Non-Mayoral appointments. A vacancy in any of the four (4) positions initially selected by the unanimous vote of the three (3) Mayoral appointments shall be filled, following a public recruitment and application process, by a candidate who receives the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood and business communities.

(4) Staggered Terms. Both categories of member shall be appointed to staggered terms.

(5) Functions, duties, powers, jurisdiction and terms. The City shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission, in accordance with this Article.

(c) Beginning with Fiscal Year 2003-2004, the Public Ethics Commission shall annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding year. The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters.

~~(e) The Public Ethics Commission shall set the compensation for the office of Councilmember which shall be reviewed by the Commission and adjusted, as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent (10%) above the base salary, as adjusted. No increase in compensation for Councilmembers shall take effect unless it has been approved by a vote of the people.~~

SEC. 203. NOMINATION AND ELECTION OF COUNCILMEMBERS.

Seven Councilmembers shall be nominated from dis-

tricts and one shall be nominated at large. The Councilmember-at-large shall be nominated and elected by the qualified electors of the City at large. The District Councilmembers shall be nominated and elected by the qualified electors of their respective districts. The districts shall be as they exist upon the taking effect of this section, until revised by ordinance. In the year 1993, and every ten years thereafter, and whenever any substantial territory is annexed to or consolidated with the City, the Council shall form new districts not exceeding seven. Districts shall be composed of contiguous territory, as equal as possible in population, and as geographically compact as practicable. No change in the boundary of a district shall operate to exclude an incumbent from office before the expiration of the term for which he was elected or appointed. ~~No increase in compensation for Councilmembers shall take effect unless it has been approved by a vote of the people.~~

SEC. 208. MEETINGS OF THE COUNCIL.

At 11:00 a.m. on the first Monday following January 1 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at ~~its~~ the first meeting in January ~~of each year in even-numbered years~~, the Council shall elect a Vice-Mayor from among its members to serve for a one-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City ~~Administrator~~ ~~Manager~~ or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice.

SEC. 216. EFFECTIVE DATE OF ORDINANCE.

An ordinance receiving upon final adoption the affirmative vote of at least six members of the Council shall be effective immediately, unless a later date is specified therein. All other ordinances, unless a different date is required by this Charter, shall be effective upon the seventh day after final adoption; provided, that within three days after said date of final adoption, the Mayor may file in the Office of the City Clerk written notice to the Council that he has suspended the taking effect of the ordinance, stating in said notice the reason or reasons for his action, which notice the City Clerk shall forthwith deliver to the members of the council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is approved by the affirmative vote of at least ~~five~~ ~~six~~ members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective.

SEC. 218. NON-INTERFERENCE IN ADMINISTRATIVE AFFAIRS.

Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator Manager, Mayor and other appointed or elected officers are responsible, solely through the City Administrator Manager, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator Manager or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator Manager or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator Manager, or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

SEC. 300. THE MAYOR.

The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, and without any additional compensation or fees provided for in Section 202 of this Charter. The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, ~~but shall not exceed the salary of the City Manager of the City of Oakland as certified by the City Clerk.~~ The Mayor's salary shall be reviewed by the City Council in odd-numbered years and may be adjusted by the Council as provided for herein.

SEC. 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. The Mayor elected to Office to serve a term beginning 1985 shall serve in Office until 11:00 a.m. on the Monday following January 1 in 1991. In 1990 municipal elections will be held to select City Officers for four year terms, including the Office of Mayor. No person shall be elected to the office of Mayor for more than two consecutive terms ~~twice~~, and no person who has held the office of Mayor, or acted as Mayor, for more than two years of a term for which some other person was elected Mayor may ~~shall~~ be elected to more than one more consecutive term as Mayor ~~the office of Mayor more than once~~.

SEC. 304. VACANCY: WHAT CONSTITUTES.

The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the Coun-

cil, ~~absents himself from any ten consecutive regular meetings except on account of own illness or when absent from the City by permission of the Council~~, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor.

SEC. 305. FUNCTIONS, POWERS AND DUTIES.

The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

(a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator Manager under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.

(b) Recommend to the Council such measures and legislation as he deems necessary and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.

(c) Encourage programs for the physical, economic, social and cultural development of the City.

(d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.

(e) Appoint the City Administrator Manager ~~and the City Attorney~~, subject to confirmation by the City Council, remove the City Administrator Manager ~~and the City Attorney~~, and give direction to the City Administrator Manager. The Mayor shall advise the Council before removing the City Administrator. Beginning with the 2000 Municipal Election, the City Attorney shall be elected as provided in Section 401.

(f) Serve as ceremonial head of the City.

(g) Represent the City in inter-governmental relations as directed by the Council.

(h) Provide community leadership.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she may deem expedient and proper. The Mayor and such staff as he/she may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote his full time and attention to

the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which he is not actively engaged and which are not in conflict with the performance of his duties and responsibilities.

SEC. 400. DESIGNATION AS OFFICER.

In addition to the Councilmembers and the Mayor, the officers of the City shall be the City ~~Administrator Manager~~, the City Attorney, the City Clerk, the City Auditor, and such department heads, members of boards or commissions and executive officers of such boards and commissions as may be so designated by ordinance. The City ~~Administrator Manager and the City Attorney~~ may be hired by contract, for a term not to exceed four years, but no such contract shall prevent the Mayor from removing the City ~~Administrator Manager or the City Attorney~~ from office at any time.

SEC. 401(1). CITY ATTORNEY.

The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

SEC. 401(6). POWERS OF THE CITY ATTORNEY.

The City Attorney shall serve as counsel to the Mayor, City Council, and each and every department of the City, except departments specifically enumerated by this Charter as an independent department of the City, in their official capacities pursuant to state law and the Charter, and as counsel, shall assert and maintain the attorney-client privilege pursuant to state law. He or she shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to him or her and shall render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City ~~Administrator Manager~~ or any other officer, board or commission of the City. He or she shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the Mayor or City ~~Administrator Manager~~ or any official board or commission of the City. He or she shall act as Counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity. He or she may, whenever a cause of action exists in favor of the City, commence legal proceedings, subject to ratification by the City Council, when such action is within the knowledge of the City Attorney, or, he or she shall commence legal proceedings when directed by the City Council. He or she shall pass on the form and legality of all contracts of the City before the same are executed. He or she shall not settle or dismiss any litigation brought for the City nor settle

any litigation brought against the City which may be under his control unless upon his written recommendation he or she is authorized to do so by the Council. He or she shall administer the office of City Attorney, and shall have the power to appoint, discipline and remove all officers and employees of his or her office subject to the provisions of Article IX of the Charter. The Council may empower the City Attorney, at his or her request and without regard to the provisions of Article IX, to employ special legal counsel, and he or she shall have the power to appoint appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorneys recommendation and the approval of the Council, when he or she has a conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense.

SEC. 402. CITY CLERK.

The City Clerk shall be appointed or discharged by the City ~~Administrator Manager~~ subject to confirmation by the Council. He shall be the Clerk of the Council and keep an accurate public record of all ordinances, resolutions and motions, shall have custody of the official seal and all official records committed to his care, make affidavits and administer oaths without charge in matters affecting the business of the City, conduct elections, and perform the other duties of a City Clerk under general law where not inconsistent with this Charter or the ordinances of the City.

SEC. 403. CITY AUDITOR.

The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible to the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor. The salary of the office shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. 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 Manager~~ 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 report to the Council instances of noncompliance with accepted accounting principles where recom-

recommendations for compliance have not been implemented by the City Administrator Manager after reasonable time and opportunity. 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. For these purposes the public interest shall include, but not be limited to:

(1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting, and other data generated within the organization.

(2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.

(3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.

(4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.

(5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.

(6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.

(7) Responding to requests for audit and reviews.

(8) Submitting, at a public meeting of the full City Council, a quarterly report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's report.

(9) The City Auditor shall conduct performance audits of each department as specified in the City budget.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401.

SEC. 500. APPOINTMENT.

The Mayor shall appoint a City Administrator Manager, subject to the confirmation by the City Council, who shall be the chief administrative officer of the City. He shall be a person of demonstrated administrative ability with experience in a responsible, important executive capacity and shall be chosen by the Mayor solely on the basis of his executive and administrative qualifications. No member of the Council shall, during the term for which he is elected or appointed, or for one year thereafter, be chosen as City Administrator Manager.

SEC. 501. COMPENSATION AND TENURE.

The City Administrator Manager shall receive the salary fixed by the Council. He shall be appointed for an indefinite term and shall serve at the pleasure of the Mayor.

SEC. 502. ACTING CITY ADMINISTRATOR MANAGER.

The City Administrator Manager shall designate two or more of his assistants or department heads, in the sequence in which they are to serve, as Acting City Administrator Manager to serve as City Administrator Manager in the temporary absence or disability of the City Administrator Manager.

SEC. 503. POWERS OF APPOINTMENT AND REMOVAL.

The City Administrator Manager shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction. He may delegate to directors or other department heads responsible to him/her the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter.

SEC. 504. DUTIES.

The City Administrator Manager shall have the power and it shall be his duty:

(a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City.

(b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as he chooses or which he is directed to attend by the Council, and to participate in discussion at such meetings.

(c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.

(d) To investigate affairs of the City under his supervision, or any franchise or contract for the proper performance of any obligation running to the City within his jurisdiction.

(e) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction.

(f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council.

(g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order.

(h) To supervise the purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under his direction or that of the Council are faithfully performed.

(i) To prepare and submit to the Council such reports as it may require.

(j) To keep the Council at all times fully advised as to the financial condition and needs of the City.

(k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction.

(l) When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval.

(m) To devote his entire time to the duties and interest of the City.

(n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution.

SEC. 600. ADMINISTRATIVE ORGANIZATION AUTHORIZED.

The Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator Manager are to be administered. Any combination of authorized duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration, may be authorized by such ordinance. All departments or other administrative agencies so created shall be administered by the City Administrator Manager or by a department head or other officer appointed by and responsible to him/her.

SEC. 601. BOARDS AND COMMISSIONS.

The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article. Members of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of the expiration of the holdover's prior term of office.

SEC. 711. SUPERVISION OF LEASES, ETC.

The Board shall take over and control, and shall have the power to grant, all leases, concessions, easements, privileges, spur tracks and other permits, wharfing-out rights, and waterfront or other franchises relating to the harbor or port and located within the "Port Area" and receive the income therefrom, but this shall not include franchises for the construction and maintenance of rail-

roads, power lines, gas mains and other utilities of a general nature which may extend through other portions of the City into the Port Area and which are within the jurisdiction of the Council pursuant to the provisions of Article X of this Charter, and subject to the supervision of the City Administrator Manager.

It shall be the duty of the Board to see that all provisions of such leases, concessions, easements, privileges, permits, rights or franchises within its jurisdiction are faithfully observed, and it may cause to be instituted such actions or proceedings in the name of the City as may be necessary to enforce the provisions thereof, or to revoke, cancel, or annul them when they have become forfeitable in whole or in part, or are illegal, or void or voidable.

SEC. 713. PUBLIC STREETS.

Whenever the Board shall determine that it is necessary to open, close, improve, alter or vacate a public street or part of a public street within the "Port Area," a certified copy of the resolution so determining such necessity shall be filed by the Board in the Office of the City Clerk, with the request that the City Administrator Manager and the Council initiate and carry to completion the proceedings necessary to effect said proposal.

SEC. 715. ANNUAL BUDGET.

The Board shall annually, on or before the fourth Monday of May, or not less than one week prior to the submission of the annual appropriation ordinance by the City Administrator Manager, should the Council advance the date therefor, but not later than the third Monday of July, carefully prepare a budget setting forth the estimated receipts of the Port, and revenue from other sources, for the ensuing year, and the sums of money necessarily required for the administration of the department, and for maintenance, operation, construction and development of the port and its facilities for the ensuing year, and stating the amount necessary to be raised by tax levy for said purposes. Said budget when so prepared, shall be certified by the President and Secretary of the Board, and a certified copy thereof shall, on or before said date, be filed with the Council, one with the City Administrator Manager, and one with the Auditor.

SEC. 728. LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES.

(1) Scope and Definitions. The following definitions shall apply throughout this Section:

(A) "Port" means the Port of Oakland.

(B) "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of \$50,000 worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.

(C) "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than \$50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed \$50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) Any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

(D) "Employee" means any individual employed by a PAB in Port related employment.

(E) "Person" includes any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

(F) "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

(G) "Port Aviation or Port Maritime business" means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

(2) Exemptions from Coverage. In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

(A) An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

(B) An Employee who spends less than 25 percent of his work time on Port-related employment.

(C) A person who employs not more than 20 employees per pay period.

(3) Payment of Minimum Compensation to Employees. Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

(A) Minimum Compensation. The minimum compensation shall be wages and health benefits totaling at least the rate of the living wage ordinance of the City of Oakland.

(B) Credit for Health Benefits. The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland.

(4) Notifying Employees of their Potential Right to the Federal Earned Income Credit. Each PAB shall inform each Employee who makes less than twelve dollars (\$12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

(5) Preventing Displacement of Workers. Each PAB, which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if, these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may not be terminated by the new PAB during the first 90 workdays except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential and office employees.

(6) Waiver.

(A) A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port board. The explanation must set forth the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(B) The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(C) Such waivers are disfavored, and will be granted

only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(D) Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

(7) Retaliation and Discrimination Barred; No Waiver of Rights.

(A) A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

(B) Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

(8) Enforcement.

(A) Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars (\$500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

(B) If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

(C) Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant num-

ber of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

(D) Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

(E) Notwithstanding any provision in Article VI of this Charter to the contrary, the City ~~Administrator~~ Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to ensure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to ensure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

(9) Private Rights of Action.

(A) Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

(B) Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

(C) The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

(D) No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

(E) No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(10) Severability. If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applica-

tions not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.

SEC. 801. BUDGET.

Each department, office and agency of the City shall provide in the form and at the time directed by the Mayor and City Administrator Manager all information required by them to develop a budget conforming to modern budget practices and procedures as well as specific information which may be prescribed by the Council. Under the direction of the Mayor and Council, the City Administrator Manager shall prepare budget recommendations for the next succeeding fiscal year which the Mayor shall present to the Council, in a form and manner and at a time as the Council may prescribe by resolution. Following public budget hearings, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year, failing which the appropriations for current operations of the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted.

SEC. 805. ACCOUNTING SYSTEM.

The City Administrator Manager shall establish and maintain a system of financial procedures, accounts and controls for the City government and each of its departments, offices and agencies which shall conform to generally accepted principles of accounting which shall be adequate to account for all monies on hand and for all income and expenditures in such detail as will provide complete and informative data concerning the financial affairs of the City and in such manner as the Council may prescribe and as will be readily susceptible to audit and review.

SEC. 806. RECEIPTS AND EXPENDITURES.

All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator Manager or of another officer duly authorized by him/her. No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council; nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification. The City Administrator Manager or other officer authorized by him/her to make disbursements shall be represented by the City Attorney in all legal matters in connection therewith, except as provided otherwise in Section 401.

SEC. 807. GOODS AND SERVICES.

The City Administrator Manager or an officer authorized by him/her shall purchase or contract for equipment, materials, supplies and public works required by the City in the manner prescribed by ordinance, except as otherwise provided herein.

SEC. 808. BIDS AND AWARDS.

(a) The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with.

(b) Every two years, the City shall conduct a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place. If such disparity evaluation evidences such discrimination, the City Council, in order to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation, for the bidding and awarding of purchases and contracts. Any such program shall continue only until the discrimination has been remedied. The City Administrator Manager or an officer authorized by him or her shall require all awardees and bidders to comply with the established program.

SEC. 810. DEPOSIT AND INVESTMENT.

The City Administrator Manager shall arrange for the deposit in the City Treasury or in designated banks of all funds collected by any department or agency of the City, according to a schedule prescribed by him/her. After taking into account the amounts required to meet the current and pending requirements of the City, the City Administrator Manager may arrange for the term deposit or investment in securities authorized by law of any balances available for such purpose and the yield therefrom shall be credited as revenue to the general fund unless otherwise provided by law or directed by the Council.

SEC. 901. ENFORCEMENT AND ADMINISTRATION.

The provisions of this article, and of the ordinances and rules adopted to give effect thereto, shall be enforced by a Civil Service Board. The Board shall be constituted and appointed as provided in Article VI. The Board shall be responsible for the general supervision of the personnel system, without impairment of the responsibility and duty of the City Administrator Manager, department heads and other supervisory personnel to exercise the administrative discretion vested in them by this Charter, or by ordinance.

SEC. 902. THE COMPETITIVE SERVICE.

The Council may establish departments, divisions, offices and positions of employment by ordinance, and may change or abolish the same and prescribe their powers, functions and duties. The Council may by resolution provide for temporary employment of services when required. The competitive Civil Service shall include all offices and employments in the City government except:

(a) Offices required by this Charter to be filled by election or to be appointed by the Mayor and City Council.

(b) One secretary and all professional and administrative assistants in the office of the City Administrator Manager, the Mayor's secretary and an assistant and such

otherstaff as authorized by Council; one secretary and one assistant to the City Attorney and the Auditor respectively; and the heads of such other departments and an assistant to each as may be provided for by ordinance. The City ~~Administrator Manager~~, the Mayor, the City Attorney, and the Auditor shall respectively appoint such exempt personnel.

(c) Department heads, one secretary to the executive director, the secretary of the board, commercial representatives and freight and cargo handlers and checkers employed by the Port Department; also such others engaged in the handling of ships and shipping as are found by both the Board of Port Commissioners and the action of the Civil Service Board as provided for pursuant to Article VI to hold positions peculiar to the operations of the Port as a commercial enterprise.

(d) Part-time employees who are regularly employed for less than one-half the established working hours throughout the year; or those who are employed in any seasonal employment for not more than 120 days in any consecutive 12 months.

(e) Individuals or organizations engaged by contract after a finding by the Council or the Board of Port Commissioners, as the jurisdiction may be, that the service is of a professional, scientific or technical nature and is temporary in nature, or after finding by vote of two-thirds of the members of the Council or said Board that the performance of the service by contract, regardless of nature or term, is in the public interest because of economy or better performance; provided, that no such contract for service shall result in the loss of employment or salary by any person having permanent status in the competitive service.

(f) Such additional positions as may be excepted upon the recommendation of the Council, approved by the Civil Service Board as provided for pursuant to Article VI.

SEC. 907. NEPOTISM.

The Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City ~~Administrator Manager~~ or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship.

SEC. 1201. INCOMPATIBLE EMPLOYMENT.

Each officer and employee shall, during his hours of active duty, devote his whole time, attention and efforts to his office or employment, and he may not be required to perform any service except for the benefit of the City. No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with his duties or with the duties, functions and responsibilities of the department or other agency in which he is employed. The City ~~Administrator Manager~~, or the City Attorney, or the Auditor, as to personnel under their respective jurisdictions, shall declare the activities which will be considered inconsistent, incompatible or in conflict with, or inimical to, the duties of such personnel as City

employees. In making this determination, consideration shall be given to employment, activity or enterprise which: (a) involves the use for private gain or advantage of City time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of one's City office or employment; or (b) involves receipt by the officer or employee of any money or other consideration for the performance of any act required of him/her as a City officer or employee; or (c) involves the performance of an act in other than his capacity as City officer or employee which act may later be subject directly or indirectly, to control, inspection, review, audit or enforcement by him/her or by the agency in which he is employed.

SEC. 1213. SUNSET PROVISION.

~~At the general election to be held in November, 2004, the City Council shall cause to be placed on the ballot a proposed Charter amendment the sole effect of which, if passed, shall be to retain the changes made to the Charter that relate specifically to the 1998 adoption of Measure X. If that proposed Charter amendment is put before the voters and not passed, then all of said changes to the Charter shall lapse and have no further effect, except that Sections 401(1) through 401(6), as adopted by the voters in 2002, relating to the City Attorney shall remain in effect until the end of the City Attorney's four year term at 11:00 a.m. on the Monday following January 1 of 2009, at which time Sections 401(1) through 401(6) shall lapse and have no further effect and shall be replaced by Section 401 as it existed prior to amendment by the 1998 adoption of Measure X.~~

SEC. 1300.

1. This law establishes a fund that will help young grow to become healthy, productive and honorable adults. This fund shall be called the KIDS FIRST! Oakland Children's Fund, and it shall be maintained separately and apart from all other City funds.

2. Two and one-half percent of the City of Oakland's annual unrestricted general fund revenues shall be set-aside for the KIDS FIRST! Oakland Children's Fund, and appropriated as specified in this section each year for twelve years beginning July 1, 1997, together with any interest earned on the fund and any amounts unspent or uncommitted by the fund at the end of any fiscal year.

3. Monies in the KIDS FIRST! Oakland Children's Fund shall be used exclusively to provide services to children and youth less than twenty-one years old, above and beyond services funded prior to the adoption of this section. To this end, monies in the KIDS FIRST! Oakland Children's Fund shall not be appropriated or expended to pay for services funded by the City of Oakland during fiscal year 1995-1996, except and solely to the extent of services for which the City of Oakland ceases to receive federal, state or private agency funds which the funding agency required to be spent on services in question.

4. Monies in the KIDS FIRST! Oakland Children's Fund shall be used exclusively for:

a. Career & Leadership Development, including job training; year-round work experience; career internships; and community organizing projects;

b. Academic & Cultural Development, including pre-school programs; academic enrichment programs; college preparatory services; arts and music programs; outdoor adventure activities; and sports programs;

c. Physical & Behavioral Health, including school health centers; neighborhood teen clinics; counseling and mentoring programs; conflict resolution; prenatal care; and parenting classes.

5. All monies in the KIDS FIRST! Oakland Children's Fund shall be appropriated to private non-profit and public entities through an open and fair competitive bid process.

6. All monies in the KIDS FIRST! Oakland Children's Fund shall be appropriated to private non-profit and public entities for programs that:

a. implement services in a comprehensive, coordinated, and culturally-appropriate design;

b. establish measurable and ambitious youth development outcomes;

c. integrate youth in their development, operation, and evaluation; and that

d. emphasize collaboration between private non-profit and public entities.

7. Monies in the KIDS FIRST! Oakland Children's Fund shall not be appropriated or expended for:

a. any service which merely benefits children and youth incidentally;

b. acquisition of any capital item not for primary and direct use by children and youth;

c. acquisition of, other than by lease for a term of twelve years or less, any real property;

d. maintenance, utilities or any similar operating cost of any facility not used primarily and directly by children and youth;

e. any service for which a fixed or minimum level of expenditure is mandated by state or federal law, to the extent of the fixed or minimum level of expenditure.

8. Not later than 90 days after the election which approved this section, and by December 15th of each calendar year thereafter, the Mayor shall appoint three Oakland residents, one of whom shall be a resident not older than 21 years, and each City Councilmember shall appoint two Oakland residents, one of whom shall be a resident not older than 21 years, to serve as members of the "CHILDREN'S FUND PLANNING & OVERSIGHT COMMITTEE." The appointees shall demonstrate a strong interest in children and youth issues; and possess sound knowledge of, and expertise in, children and youth policy development and program implementation.

9. The "CHILDREN'S FUND PLANNING AND OVERSIGHT COMMITTEE" shall be responsible for:

a. preparing three Four-Year Strategic Plans that outline specific outcome goals, objectives, and service priorities for each four-year period beginning January 1, 1998, January 1, 2002, and July 1, 2006;

b. soliciting program funding proposals from private and public non-profit entities through an open and fair competitive bid process;

c. submitting to the Oakland City Council for its adoption 60 days after the submission, three Four-Year Strategic Plans and their corresponding program funding recommendations, with the first plan submitted by October 1, 1997, the second plan submitted by October 1, 2001, and the third plan submitted by October 1, 2005;

d. presenting to the Oakland City Council for its adoption 60 days after the submission annual independent process and outcome evaluation reports not later than October 1st of each calendar year beginning October 1998.

10. The allocation of grants to private non-profit and public entities under this law shall comply as closely as practicable with the goals, objectives and service priorities of these Four-Year Strategic Plans. Appropriation for the City fiscal year shall be awarded for use during the calendar year which begins therein. For example, appropriations for the fiscal year July 1, 1997 to June 30, 1998 shall be awarded for use during the calendar year January 1, 1998 to December 31, 1998, and so on.

11. The "CHILDREN'S FUND PLANNING AND OVERSIGHT COMMITTEE" shall hold no less than one properly noticed public hearing prior to its adoption and submittal to the Oakland City Council of a Four-Year Strategic Plan and corresponding program funding recommendations. The Oakland City Council shall hold no less than one public hearing prior to its adoption of a Four-Year Strategic Plan, corresponding program funding recommendations, and evaluation reports.

12. No more than five percent of the monies in the KIDS FIRST! Oakland Children's Fund may be used by the City ~~Administrator~~ Manager each fiscal year to administer the Fund.

13. No more than three percent of the monies in the KIDS FIRST! Oakland Children's Fund shall be set-aside each fiscal year to conduct an independent process and outcome evaluation of the Fund.

14. The KIDS FIRST! Oakland Children's Fund shall be used exclusively to increase the aggregate City appropriations and expenditures for children and youth services (exclusive of expenditures mandated by state or federal law). To this end, the City of Oakland shall not reduce the amount of unrestricted general fund appropriations and expenditures for eligible services in any of the twelve years during which funds are required to be set aside under this section below the amount so appropriated for the fiscal year 1995-1996 ("base amount").

Not later than 90 days after the election which approves this section, the City Auditor shall calculate and publish the applicable base amount, specifying by department, program and services each amount included in the base amount. The base amount shall be adjusted for each year after the base year of 1995-1996, based on calculations consistent from year to year, by the percentage increase or decreases in aggregate City appropriations from the base year, as estimated by the City Auditor. Errors in the City Auditor's estimate of appropriations for a fiscal year shall be corrected by an adjustment in the next year's estimate. For purposes of this subsection, aggregate City appropriations shall not include funds granted to the

City by private agencies or appropriated by other public agencies and received by the City.

Within 90 days following the end of each fiscal year through 2009-2010, the City Auditor shall calculate and publish the actual amount of City of Oakland appropriations for children and youth services (exclusive of expenditures mandated by state or federal law).

15. If any provisions of this section, or its application to any person or circumstances, shall be held invalid or unenforceable, the remainder of this section and its application shall not be affected; every provision of this section is intended to be severable.

16. This section may be extended for an additional twelve years beginning July 1, 2009 by a simple majority vote of the City Council. If the City Council does not itself extend this section, then the City Council shall place the questions of whether to extend this section on the November 2008 ballot for a vote of the electorate.

SEC. 1417.

The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions, and transmit the same to the City Administrator ~~Manager~~, who shall cause the same to be included in his annual estimate of the probable expenditures of the City.

SEC. 1421.

There shall be employed in the Department of Public Health and Safety such number of matrons and substitute matrons of the City Prison as the Council shall from time to time prescribe by ordinance; providing, that such number of matrons shall be not less than three and that such number of substitute matrons shall not be less than one. All appointments of matrons and substitute matrons shall be made by the City Administrator ~~Manager~~ from the eligible list of the Civil Service Board. The compensation of said matrons shall not be less than \$2,676.00 per annum each. Such compensation shall be paid in equal monthly installments. The compensation of said substitute matrons shall be at the rate of not less than \$2,676.00 per annum each, to be paid only for the time during which said substitute matrons shall actually perform the services of matrons. There shall be deducted from each monthly installment of salary due pursuant to the provisions of this Article, a sum equal to five per cent of such monthly installment, which sum so deducted shall be retained by the Treasurer of the City and forthwith paid by him/her into the Police Relief and Pension Fund. Such matrons and substitute matrons shall be entitled as if officers or members of the Police Department to all of the rights, privileges and benefits conferred by Sections 92, 1423, 1400, 1401, 1402, 1405, and 1408-1418 inc. of the Charter upon officers or members of the Police Department.

SEC. 1516.

The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions and transmit the same to the City Administrator ~~Manager~~ who shall cause the same to be included in his annual estimate of the probable expenditures of the City, and the Council shall, on application of the said Board of Trustees, provide the necessary money for the demands of this pension fund.

SEC. 2016.

The Council shall enact any and all ordinances necessary, in addition to the ordinance authorized in Section 2000, for the proper operations of the aforementioned Retirement System. The Board of Administration shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City Administrator ~~Manager~~ at such time as he may direct. The amount necessary for the administration of the aforementioned Retirement System shall be paid out of the Oakland Municipal Employees' Retirement Fund.

SEC. 2601.

In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the Police or Fire Departments, the systems heretofore existing under the provisions of Articles XIV and XV of this Charter are hereby combined into one system to be known as the Police and Fire Retirement System and the funds heretofore created, existing and known as the Police Relief and Pension Fund and the Firemen's Relief and Pension Fund, are hereby combined in a common fund to be known and designated as the Police and Fire Retirement Fund. This System and fund shall be managed and administered by a Board hereby created to be known and designated as the Police and Fire Retirement Board, which shall be the successor of and shall have the powers and duties heretofore possessed and exercised by the Board of Trustees of the Police Relief and Pension Fund and Board of Trustees of the Firemen's Relief and Pension Fund. This Retirement Board shall consist of seven (7) members as follows: the Mayor of the City; one active member of the Police Department, or a retired member elected by the active and retired members of the Police Department if no active member of the Police Department is elected to serve on the Board; one active member of the Fire Department, or a retired member elected by the active and retired members of the Fire Department if no active member of the Fire Department is elected to serve on the Board; a life insurance executive of a local office, a senior officer of a local bank; a community representative; and a Police-Fire retired member who shall be elected from the retired members of the Fire Department for a first three (3) year term commencing the first day of the month next following his or her election, and from the retired members of the Police Department for the next successive three (3) year term, and thereafter alternately from the retirement rolls of each of said departments for successive three (3) year terms. The election of the first such Police-Fire retired member by the vote of the retired members of the Fire Department shall be held within ninety (90) days following the effective date of this amendment in the manner heretofore established by and under the supervision of the Retirement Board. In the event an active or retired Police-Fire member does not serve out his or her three (3) year term, his or her successor shall be elected from the department which has most recently elected him/her for the remainder of said unexpired three (3) year term. All members elected from the Police and Fire Departments or from

the police-fire retirement rolls shall be elected by vote of the active or retired Police and Fire Retirement System members of the respective departments as the case may be, and the Retirement Board may from time to time revise the manner of conducting such elections. The representative of a life insurance company, the representative of a bank, and the community representative shall be appointed by the City Council upon the recommendation of the Mayor. The Mayor, with the approval of the City Council, may designate a City officer or official to serve in his or her place and stead as a member of the Retirement Board for the term of his or her office. The terms of the incumbent board members who are serving terms immediately prior to the effective date of this amendment shall not be affected by this amendment, and those members shall be entitled to serve the balances of their respective terms on the Retirement Board; the terms of office of the future elected member of the Fire Department, of the future elected member of the Police Department and of the future insurance and bank representatives shall be five (5) years and shall follow successively the end of the term of the respective incumbent member of the Fire Department, member of the Police Department, and insurance and bank representative members; the first term of office of the community representative shall be two (2) years commencing the first day of the month next following the effective date of this amendment, and thereafter such member shall be appointed for successive five (5) year terms. The Mayor or his or her designated alternate shall serve the term of the Mayor. In the event of a vacancy, a successor shall be elected or appointed as the case may be for the unexpired portion of the term vacated. Election or appointment of successors as hereinabove provided shall be held or made not more than ninety (90) days prior to the expiration of the term of office of the member to be succeeded, or in the event of a vacancy in an office prior to the termination thereof not more than ninety (90) days immediately following the occurrence of such vacancy. The members of the Board shall serve without compensation.

(a) The City Attorney shall attend all meetings of the Board in person or by authorized representative.

(b) The Board shall hold regular meetings monthly and special meetings at any time upon the call of its President. A majority of the members of the Board shall constitute a quorum for the transaction of business. The powers conferred by this Article upon the Board shall be exercised by order or resolution adopted by the affirmative votes of at least four (4) members of the Board. At the regular meeting in September of each year, the Board shall select one of its members to act as President for the ensuing year. The Board shall keep a written record of its proceedings which shall be public.

(c) The Board shall appoint a Secretary who shall hold office at its pleasure and who shall have the power to administer oaths and affirmations and issue subpoenas in all matters pertaining to the administration and operation of the System. The Board shall also appoint an actuary who shall hold office at its pleasure, and medical examiners in connection with disability retirement, and such addi-

tional clerical and other assistants as the City Council may authorize. All regular and permanent employees of the Board shall, with the exception, of the Secretary, Actuary and Medical Examiners, be appointed under the provisions of Article XIII of this Charter.

(d) The Board shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City ~~Administrator~~ *Manager* at such time as he may direct. The amount necessary for the administration of the System shall be paid out of the Police and Fire Retirement Fund.

(e) The Board shall possess power to make all necessary rules and regulations for its guidance and shall have exclusive control of the administration and investment of the fund established for the maintenance and operation of the System, subject to the terms, conditions, limitations and restrictions hereinafter set forth. All funds received by the Board not required for current disbursements shall be invested in, but not limited to:

(1) Those investments of a character legal for banks in the State of California.

(2) Interest bearing obligations of the United States Government, any agency of the United States Government, any bank which is a member of the Federal Deposit Insurance Corporation, or any corporation whose bonds are eligible for investment by banks in the State of California.

(3) Common stocks provided that:

a. The total of such investments together with the total of all holdings of shares of diversified management investment companies (Mutual Funds) (4 next below) shall not exceed fifty (50) percent of the book value of all invested funds of the retirement system.

b. Such stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended. Such registration shall not be required with respect to the following stocks:

1. The common stock of a bank which is a member of the Federal Deposit Insurance Corporations and has capital funds, represented by capital, surplus, and undivided profits of at least fifty million dollars (\$50,000,000);

2. The common stock of an insurance company which has capital funds, represented by capital, special surplus funds, and unassigned surplus of at least fifty million dollars (\$50,000,000).

c. Such stocks shall, at the time of purchase, have paid cash dividends for not less than five years next preceding the date of investment or prior to the purchase of such stocks, the Board shall expressly approve purchase of same by motion adopted with not less than five (5) Board members voting in favor of such purchase.

d. Not more than 2% of the book value of the invested funds of the retirement system may be invested in common stock of a single corporation.

e. The total number of shares held in any single corporation shall not exceed 5% of the issued and outstanding common shares of such corporation.

(4) Shares of diversified management investment companies (Mutual Funds) provided that:

a. The total of such investments together with the total of all holdings of shares of common stocks (3 next above) shall not exceed fifty (50) percent of the book value of all invested funds of the retirement system.

b. Such diversified management investment companies shall be registered under the "Investment Company Act of 1940" and shall each have total assets of at least \$50,000,000.

(5) Preferred stocks and securities convertible into common stocks, provided:

a. That of the funds invested in such stocks or convertibles not more than 2% of the book value of the invested funds of the Retirement System may be invested in such stocks or convertibles of a single corporation; and

b. That the total number of such shares or convertibles held in any single corporation shall not exceed 5% of the issued and outstanding preferred stock or convertibles of such corporation; and

c. That the corporations in whose preferred stock or convertible securities the funds of the Retirement System are invested shall be only those whose common stock would qualify for investment of funds of the Retirement System under subsection 3 above; and

d. That such investments authorized by this sub-section 5 does not exceed ten percent of the book value of the invested funds of the Retirement System.

(6) F.H.A. mortgages, certificates and shares of state or federal chartered savings and loan associations if insured as defined in Title IV of the National Housing Act, provided that such investments shall not exceed fifteen percent of the book value of the invested funds of the Retirement System.

(7) Equity or mortgage debt investments in existing real property or in property to be constructed, except that no mortgage investments may be funded until the improvements on the property are substantially complete. Such investments shall not exceed twenty percent of the book value of the invested funds of the Retirement Systems. The Board shall obtain the opinion of competent real estate advisors that such investment is prudent and that it meets the current investment guidelines of the Board, before committing to make such investment, and provided:

a. The Board is owner in fee title and/or a lease-hold in the real property and/or real property and improvements in and upon which such investment is to be made, with the exceptions of convertible and take-out loans and mortgage pool investments.

b. Before making such an investment the Board shall appoint a qualified real property appraiser acceptable to the City ~~Administrator~~ Manager who shall examine the property of the plans and specifications of any improvement proposed to be constructed and who shall determine and report to the Board whether the project in his opinion will have a fair rental value sufficient to return the investment together with interest over a period of time not to exceed 30 years.

In order to make the provisions of this section relating

to the investment of retirement funds completely effective, the Board is authorized for investment purposes only to purchase, sell or lease real property or to enter into options therefor and when necessary for investment purposes to enter into contracts for the construction of buildings and may repair and maintain such property and do any and all things necessary to protect the investment including, but not limited to, purchasing insurance against the loss of the property or the loss of use and occupancy of the property. It may also take any other action necessary to carry out the investment provisions of this section. In the construction of buildings, the Board shall follow, substantially and insofar as applicable, the procedure and limitations prescribed by law for the construction of buildings by the City of Oakland.

The Board may secure from competent investment counsel, not a member of the Board, such counsel and advice as to investing the funds of the Retirement System as it deems necessary. Discretionary powers granted such investment counsel will be at the option of the Board. The Board shall pay for such counsel and advice such compensation as it deems reasonable, payable from Retirement System funds.

The City Treasurer shall be the custodian of the Retirement Fund, subject to the exclusive control of the Board as to the administration and investment of said fund. All payments from the said fund shall be made by the Finance Director as authorized by the Board. All demands against said fund shall be presented, audited and paid as provided in the Charter of the City.

Interest on any cash and on any investments constituting a part of the said fund shall be paid into said fund as received. Except as herein provided, no member and no employee of the Board, shall have any interest, direct or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of said Board, directly or indirectly, for himself/herself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by said Board; nor shall any member or employee of said Board become an endorser or surety or become in any manner an obligor for moneys invested by the Board.

(f) Board shall have such additional power and authority as is conferred by Section 20* of this Charter.

(g) If any section, word, clause or provision of this Article shall be held unconstitutional, the remaining sections, clauses, words or provisions thereof shall not be affected thereby. All the provisions of this Article are to be liberally construed.

SEC. 2610.

(a) Any member of the Police or Fire Department who is incapacitated for the performance of duty by reason of any injury received in, or illness caused by or arising out of the performance of duty may be retired not sooner than one (1) year after said member first became incapacitated by reason of said injury or illness unless the member requests and the Board grants earlier retirement; and, if not qualified for service retirement shall receive a retirement

allowance equal to seventy-five percent (75%) of the compensation attached to the average rank held by such member during one (1) year immediately preceding such retirement. Such retirement allowance shall be paid until the date upon which said member would have completed twenty-five (25) years of service and qualified for service retirement had such member rendered service without interruption, and on and after said date said retirement allowance shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the compensation attached to the average rank held during the one (1) year next preceding retirement. If at the time of retirement for disability, the member is qualified for retirement for service, said member shall receive a retirement allowance computed under the provisions of Section 2608.

(b) Any member of the Police or Fire Department who is incapacitated for the performance of duty for any cause not included in the provisions of the preceding paragraph (a) and who shall have completed at least five (5) years of service in the aggregate, shall be retired upon a retirement allowance calculated under Section 2608, if he has attained the age of fifty-five (55) years, otherwise upon a retirement allowance equal to one and one-half percent (1-1/2%) of the compensation attached to the average rank held by such member during the three (3) years next preceding such retirement for each year of service, provided that said retirement allowance shall not be less than thirty-three and one-third percent (33-1/3%) of said compensation. The question of retiring a member under this section may be brought before the Board on the Board's own motion, by recommendation of the City Administrator ~~Manager~~ or by petition of said member or his guardian.

(c) The Board may at any time order any member who has been retired for disability to be examined by one or more physicians appointed by the Board for that purpose, and if it is found that the disability has ceased, shall order that the retirement allowance shall cease and said member shall be restored to the service in the rank occupied at the time of retirement.

(d) The retirement allowances payable pursuant to this section are subject to the limitations provided by Section 2620. This subsection shall be null and void and without further effect should the United States Internal Revenue Code Section 415 be amended to exempt municipal pension plans from the stated benefit limitations.