CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 JUL 10 PM 4:22

To: Office of the City Administrator
Attn: Dan Lindheim
From: Police Department
Date: July 22, 2008

Re: **A Report and Proposed Resolution Authorizing the City Administrator, or Designee, to 1) Enter Into a Memorandum of Understanding, for the Period of September 30, 2008 through October 1, 2009 and Renewable Annually, with the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Oakland Police Department (OPD) to Cooperate in the Operation of a Joint Oakland Firearm and Gang Task Force (Task Force), and 2) Accept and Appropriate Reimbursement Funds From the US Department of Justice Asset Forfeiture Fund to the Oakland Police Department for Investigator Overtime and Other Asset Forfeiture Fund Authorized Reimbursements in Accordance with the Existing Federal Sharing Agreement**

SUMMARY

Staff has prepared a report and proposed resolution authorizing the City Administrator, or designee, on behalf of the City of Oakland, to execute a Memorandum of Understanding (MOU) between the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the OPD to establish a Joint Oakland Firearm and Gang Task Force (Task Force). As participating agencies, OPD will be required to assign two police officers, and ATF shall assign three agents to Task Force operations (fulltime) for the duration of the MOU, for the period beginning September 30, 2008 through October 1, 2009. The purpose of the Task Force is to establish cooperation between federal and local law enforcement in address crimes involving firearms and explosives and/or gang related activity.

The duration of the MOU shall be renewable every 12 months under joint agreement between the participating agencies. Either agency may withdraw from the MOU with a 30-day notice to the other participant.

FISCAL IMPACT

Approval of this resolution will authorize the City Administrator to execute an MOU between the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the OPD to establish a Joint Oakland Firearm and Gang Task Force (Task Force) for the period of September 30, 2008 through October 1, 2009.

Approval of this resolution will also authorize OPD to assign two currently authorized (per 2007-09 Adopted Budget) police officers to the Task Force. OPD shall bear all personnel costs for these officers, including but not limited to salaries, retirement, expenses, disability and all other employment-related benefits incident to their employment. OPD plans to assign all firearms and

gang related cases to these police officers while they are assigned to the Task Force. The assignment of these cases to the Task Force investigators will relieve the burden on the other criminal investigators who are currently assigned these cases. Non-firearm and non-gang related cases that would have been assigned to the Task Force investigators will be reallocated among the other investigators in the Criminal Investigation Division. This plan does not require additional overtime or hiring of any replacements to cover the Task Force assigned investigator's current and anticipated case loads.

Not withstanding the above provisions, at the discretion of the ATF Resident Agent-in-Charge, the ATF may provide funds from the US Department of Justice Asset Forfeiture Fund for the payment of OPD Task Force related activities pursuant to 28 U.S.C. § 524(c)(1)(I) and as outlined in the Federal Sharing Agreement. Eighty-five percent of funds received for Federal Asset Forfeiture are deposited into Federal Asset Forfeiture – City Share Fund: 2912, Org:101140, Account: 43219, Project H76010, Program: PS12 and 15% of funds received are deposited into Federal Asset Forfeiture 15% Set-Aside Fund: 2910, Org: 101140, Account, 43219, Project H76020, Program PS12

BACKGROUND

Violent crime continues to plague the City of Oakland with firearms and/or gang activity involved in a majority of these incidents. Recognizing the need to bring greater resources to bear on this ever increasing problem, the Oakland Police Department (OPD) has sought to enter into partnerships with federal agencies. These partnerships have proven beneficial to local communities by contributing federal assets (e.g., experienced agents, prosecutors, strict sentencing guidelines, federal grand jury, federal search and arrest warrants, federal asset forfeiture funds) to solving local crime problems that are sometimes outside the means of the local jurisdiction.

The City of Oakland continues to experience an increase in crimes involving the use of firearms and related to gang activity. Historically, OPD has staffed a gang investigative unit of two to four police officers and a supervising sergeant of police. With the redeployment of personnel from investigative assignments to field duties, these gang investigator positions were eliminated. Unfortunately, the City has experienced a resurgence of gang related activity and an increasing number of homicides and shootings can be attributed to gang activity of all types.

There is currently one police officer assigned to the Department's Criminal Investigation Division, Weapons Unit; his primary duties are to prepare in-custody weapons cases for charging by the District Attorney's Office. Due to the high volume of cases, the activity of this unit is simply reactive to arrests made by officers in the field when they detain a suspect in possession of an illegal weapon.

Project Exile

This Task Force approach is similar in scope and purpose to the federal program known as *Project Exile*, which was intended to aggressively, innovatively, and creatively address the ever

growing tide of violence in cities across the country. Taking advantage of stiffer bond rules and sentencing guidelines in Federal Court, all felons with guns, guns/drug cases and gun/domestic violence cases were federally prosecuted without regard to numbers or quantities. The project fully integrated federal, state and local investigative resources and federal and state courts to ensure the prompt arrest, incarceration, detention without bond, prosecution and sentencing of armed criminals. Project Exile, coupled with an aggressive media campaign, sought to offer affirmative prosecution of armed criminals while alerting potential criminals of the greater repercussions of involvement in criminal activity using a firearm.

KEY ISSUES AND IMPACTS

Establishment of the Firearm and Gang Task Force, and the dedication of two police officers will greatly contribute to restoring a comprehensive gang investigation unit, which will assist with the identification, tracking and apprehension of gang members involved in violent crimes, especially those involving the use of firearms. The Task Force will aggressively pursue individuals involved in the illegal trafficking of firearms in an effort to remove firearms from the streets of Oakland before they are used in a crime. While there are no storefront firearms dealers presently in Oakland, gang members and other violent felons manage to obtain firearms illegally from various sources within California as well as other states. The Task Force will seek to identify the suppliers of these firearms, which are obviously intended for criminal use by the purchasers. Identification and prosecution of the suppliers of illicit firearms will have a marked impact on the availability of firearms and therefore should reduce of violent crime and related gang activity throughout the City.

The use of firearms and the involvement of gangs have significantly increased the level of violence in Oakland in recent years. By joining in partnership with the ATF, OPD will:

1. Participate in a dedicated Firearms and Gang Task Force staffed with five (5) criminal investigators, three (3) provided by the ATF;
2. Deputize two (2) police officers as special deputy US marshals who are able to seek federal search and arrest warrants, have access to federal grand juries, and have the ability to seek federal prosecution of select firearms and gang related crimes;
3. Obtain the advantage of stiffer bond rules and sentencing guidelines in federal court;
4. Potentially receive reimbursement for investigative overtime from the US Department of Justice Asset Forfeiture Fund; and
5. Potentially receive revenues for additional investigation from Asset Forfeitures.

Participation in this Task Force with the ATF will greatly benefit the City, by providing OPD with additional resources to address firearms and gang related crimes. The City benefits from the partnership by gaining the participation of three ATF agents who will focus their investigative efforts on dealing with the aforementioned criminal activity within the City of Oakland or in other areas that have a direct impact on the City.

PROGRAM DESCRIPTION

OPD and ATF will establish an Oakland Firearms and Gang Task Force to comprehensively address firearm and/or gang related crime within, and directly impacting the City of Oakland. The Task Force will be a joint venture under the executive control of the OPD Assistant Chief of Police and the ATF Oakland Resident Agent-in-Charge. Police officers assigned to the Task Force shall be subject to all rules and regulations of OPD, in addition to those of the ATF and US Marshal's Service when acting as deputized special deputy US Marshals.

Under the MOU, cases will be jointly investigated and neither participating agency will act unilaterally. Primary consideration for investigation will be given to cases involving the use of firearms and/or explosives and those indicating the involvement of criminal gangs. Investigators will target assets for criminal and civil forfeiture when appropriate. Potential disputes will be mediated between the persons having executive control for their respective agencies as listed above.

The ATF's authority to enter into this partnership is derived from Title 18, USC, Chapter 44 (Firearms) and Chapter 40 (Explosive Materials). Operating within the scope of the MOU, the Task Force will restore the City's ability to comprehensively address illegal firearms and gang activity, reducing the overall violence on the streets of Oakland.

SUSTAINABLE OPPORTUNITIES

Economic: The potential utilization of US Department of Justice Asset Forfeiture Funds to cover OPD overtime expenses may reduce the overall impact of this Task Force to the City. The City also gains three fulltime federal agents who will be assigned to the Task Force and investigating crimes involving firearms, explosives and/or gangs directly impacting the Oakland community. In essence, the City gains the services of these agents without any appreciable cost realized.

Environmental: There are no environmental opportunities associated with this report.

Social Equity: Children are among the growing number of victims of crimes perpetrated by gang members and/or involving firearms. Providing the community with a Task Force specifically targeting crimes involving firearms, explosives and or gang activity will reduce the incidents of these crimes, ensure efficient and timely investigation when these crimes do occur and ultimately reduce the victimization of these most vulnerable of our community if not entirely eliminate these crimes.

DISABILITY AND SENIOR ACCESS

There are no ADA or senior citizen access issues identified in this report.

RECOMMENDATION /ACTION REQUESTED OF THE COUNCIL

Staff recommends acceptance of this report and approval of the resolution authorizing the City Administrator, or designee, to 1) enter into a Memorandum of Understanding, for the period of September 30, 2008 through October 1, 2009 (renewable annually) with the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Oakland Police Department (OPD), to cooperate in the operation of a joint Oakland Firearm and Gang Task Force, and 2) accept and appropriate reimbursement funds from the US Department of Justice Asset Forfeiture Fund to the Oakland Police Department for investigator overtime and other asset forfeiture fund authorized reimbursements in accordance with the existing federal sharing agreement.

Respectfully submitted,

FOR Wayne G. Tucker
Chief of Police

Prepared by:
Lieutenant Kenneth W. Parris
Criminal Investigation Division

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:

Office of the City Administrator

Item: _____
Public Safety Comte.
July 22, 2008

Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 JUL 10 PM 4:24

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR A DESIGNEE, TO 1) ENTER INTO A MEMORANDUM OF UNDERSTANDING, FOR THE PERIOD OF SEPTEMBER 30, 2008 THROUGH OCTOBER 1, 2009 AND RENEWABLE ANNUALLY, WITH THE US DEPARTMENT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF) AND THE OAKLAND POLICE DEPARTMENT (OPD) TO COOPERATE IN THE OPERATION OF A JOINT OAKLAND FIREARM AND GANG TASK FORCE (TASK FORCE), AND 2) ACCEPT AND APPROPRIATE REIMBURSEMENT FUNDS FROM THE US DEPARTMENT OF JUSTICE ASSET FORFEITURE FUND TO THE OAKLAND POLICE DEPARTMENT FOR INVESTIGATOR OVERTIME AND OTHER ASSET FORFEITURE FUND AUTHORIZED REIMBURSEMENTS IN ACCORDANCE WITH THE EXISTING FEDERAL SHARING AGREEMENT

WHEREAS, the Oakland Police Department (hereinafter "OPD") wishes to enhance its ability to investigate and prosecute firearms and gang-related crimes; and

WHEREAS, the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (herein after "ATF") has offered to enter into a Memorandum of Understanding with OPD to establish a joint Oakland Firearms and Gang Task Force (herein after "Task Force") from September 30, 2008 through October 1, 2009, renewable annually; and

WHEREAS, entering into a Memorandum of Understanding with the ATF benefits the City by providing additional investigative resources to address firearms and gang-related crimes at no cost to the City; and

WHEREAS, the ATF has agreed to deputize two OPD police officers assigned to participate in the Task Force as Special Deputy US Marshals; and

WHEREAS, deputizing OPD investigators as federal agents provides them access to federal search and arrest warrants, federal grand juries and ability to seek federal prosecution of select firearms and gang-related crimes; and

WHEREAS, federal law provides the advantage of stiffer bond rules and sentencing guidelines in federal court; and

WHEREAS, the only costs associated with participation in this Task Force are the existing personnel costs associated with two (2) Police Officers being assigned fulltime to the Task Force; and

WHEREAS, the ATF may provide reimbursement for investigator overtime and other investigative expenses from the US Department of Justice Asset Forfeiture Fund; and

WHEREAS, Oakland City Charter section 504(l) empowers the City Administrator to represent the City in its "intergovernmental relations" and to negotiate contracts, which includes Memorandums of Understanding, with other government entities subject to approval by the Council; now, therefore, be it

RESOLVED: That, pursuant to Oakland City Charter section 504(l), the City Council authorizes the City Administrator to enter into a Memorandum of Understanding with the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives from September 30, 2008 through October 1, 2009, renewable annually; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator, or a designee, to accept all funds disbursed to the City of Oakland from the US Department of Justice Asset Forfeiture Fund in support of the Oakland Firearm and Gang Task Force in accordance with the terms of the Federal Sharing Agreement; and be it

FURTHER RESOLVED: That 85% of funds received for Federal Asset Forfeiture shall be deposited into Federal Asset Forfeiture – City Share Fund: 2912, Org:101140, Account: 43219, Project H76010, Program: PS12 and 15% of funds received shall be deposited into Federal Asset Forfeiture 15% Set-Aside Fund: 2910, Org: 101140, Account, 43219, Project H76020, Program PS12; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to renew, modify, extend, or amend any necessary agreement or other documents entered into in furtherance of this resolution, provided that no additional funds shall be allocated without prior Council approval; and be it

FURTHER RESOLVED: That all Memorandums of Understanding authorized hereunder shall be approved by the City Attorney for form and legality prior to execution and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council,
of the City of Oakland, California