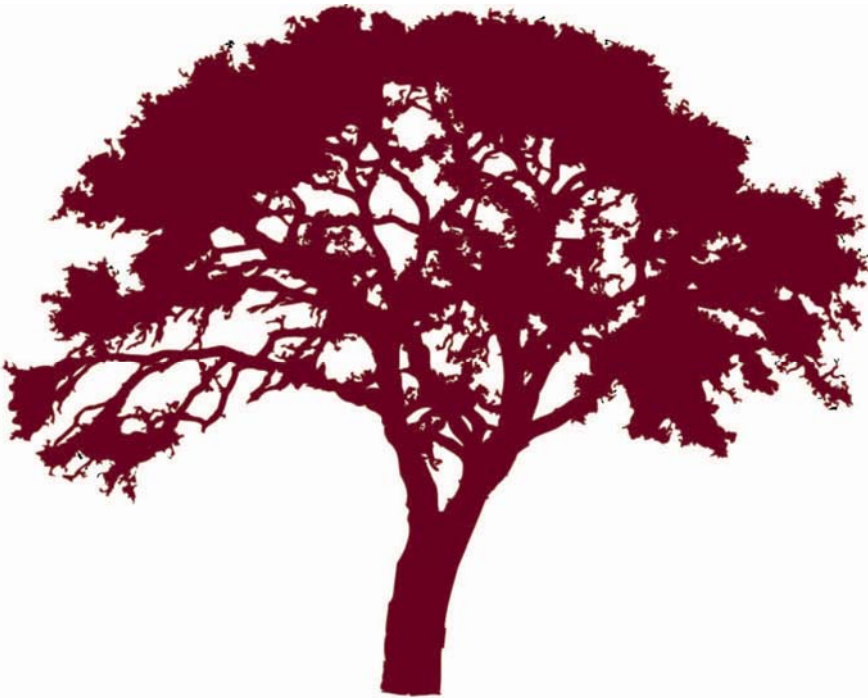


City of Oakland Office of the City Auditor

March 21, 2013

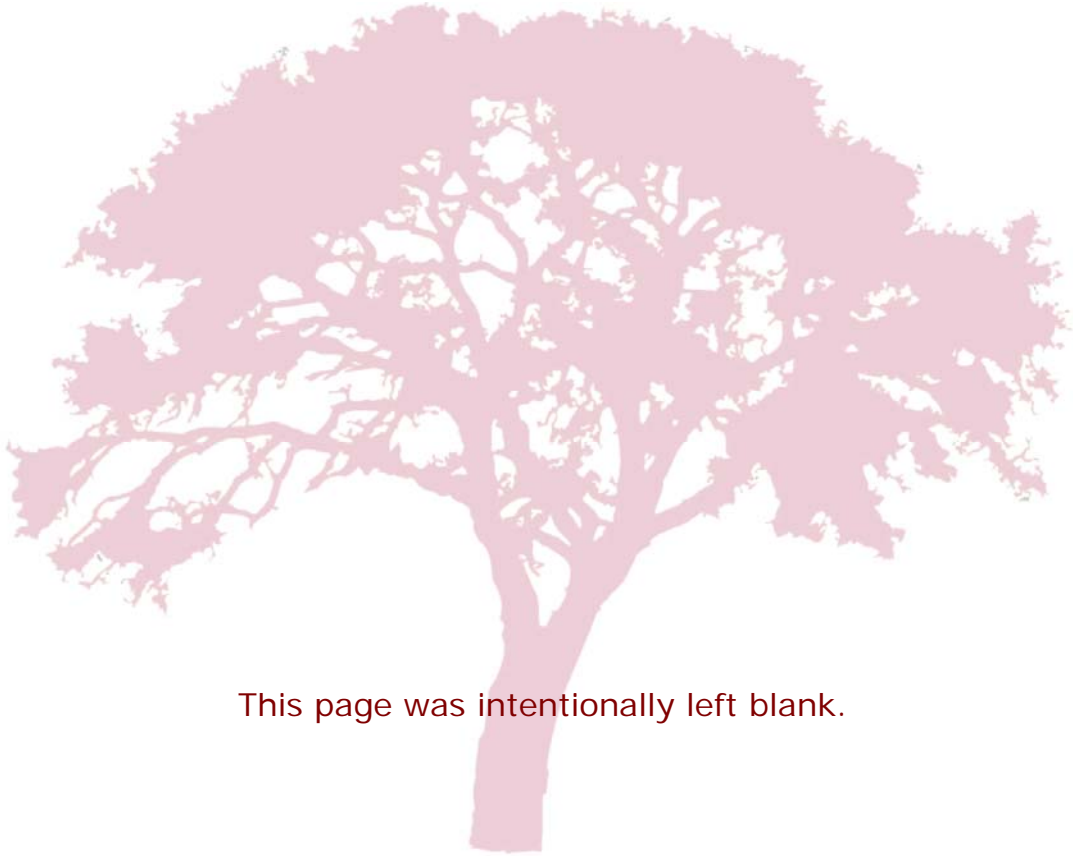
Non-Interference in Administrative Affairs Performance Audit FY 2009-10 – FY 2011-12

The audit found that two Oakland Councilmembers violated law by exerting inappropriate influence in City contracting and operations.



City Auditor
Courtney A. Ruby, CPA, CFE

PERFORMANCE AUDIT



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March 21, 2013

OFFICE OF THE MAYOR
HONORABLE CITY COUNCIL
CITY ADMINISTRATOR
CITIZENS OF OAKLAND
OAKLAND, CALIFORNIA

RE: Non-Interference in Administrative Affairs Performance Audit

Dear Mayor Quan, President Kernighan, Members of the City Council, City Administrator Santana, and Oakland Citizens:

Since 1931, the City of Oakland's Charter has included a bold provision to ensure the appropriate separation of duties and functions and to shield City staff from City Councilmembers' political interference and demands for special treatment.

This provision, Section 218: Non-interference in Administrative Affairs (Section 218), is the underpinning of an ethical structure designed to afford every citizen, employee, and business the opportunity to live, work, and transact business with confidence that no inappropriate influence is being exerted. However, if Section 218 is not enforced— it is rendered ineffective.

For many years there have been signs that problems exist with Councilmember interference, including anonymous reports to the City's Fraud, Waste and Abuse Prevention hotline, as well as the results of Oakland's 2010 and 2011 Ethical Climate Survey. In February 2012, the Administration clearly demonstrated its commitment to enforce Section 218 when it reviewed a Councilmember's involvement in the Rainbow Teen Center.

Given the significance of the allegations that City policies, ordinances and State laws were violated by a Councilmember involved with the Rainbow Teen Center, my Office commenced an audit in April of 2012 to determine whether or not violations of Section 218 occurred. Focused on the entirety of the City Council, the audit examined reported violations occurring in 2009 through 2012, including but not limited to, the Rainbow Teen Center.

After interviewing more than 40 employees, reviewing 27 hotline reports, and examining thousands of Councilmembers' and Council Aides' emails and select phone records, this audit was able to substantiate 14 instances of Councilmembers or their Aides violating the City Charter, Section 218, Non-Interference in Administrative Affairs.

These violations occurred in the following areas:

- One Councilmember interfering with two City recreation centers
- Two Councilmembers interfering with the Oakland Army Base Building 6 demolition and remediation contracting process
- One Councilmember threatening a City employee's work assignment
- One Council Aide improperly requesting reductions in parking fees and fines


This audit was not designed to account for all occurrences of interference nor did it catch all instances of interference during the audit's scope. Instead, it was aimed at confirming reported instances of interference that had occurred while also providing recommendations that will help the Administration and City Council mitigate future violations.

Councilmembers involved in the audit's substantiated findings were offered, as a matter of courtesy, a briefing of the findings and the opportunity to provide a written response for inclusion in the audit. One Councilmember attended the briefing and provided a response for inclusion in the audit report; one Councilmember declined to attend the briefing.

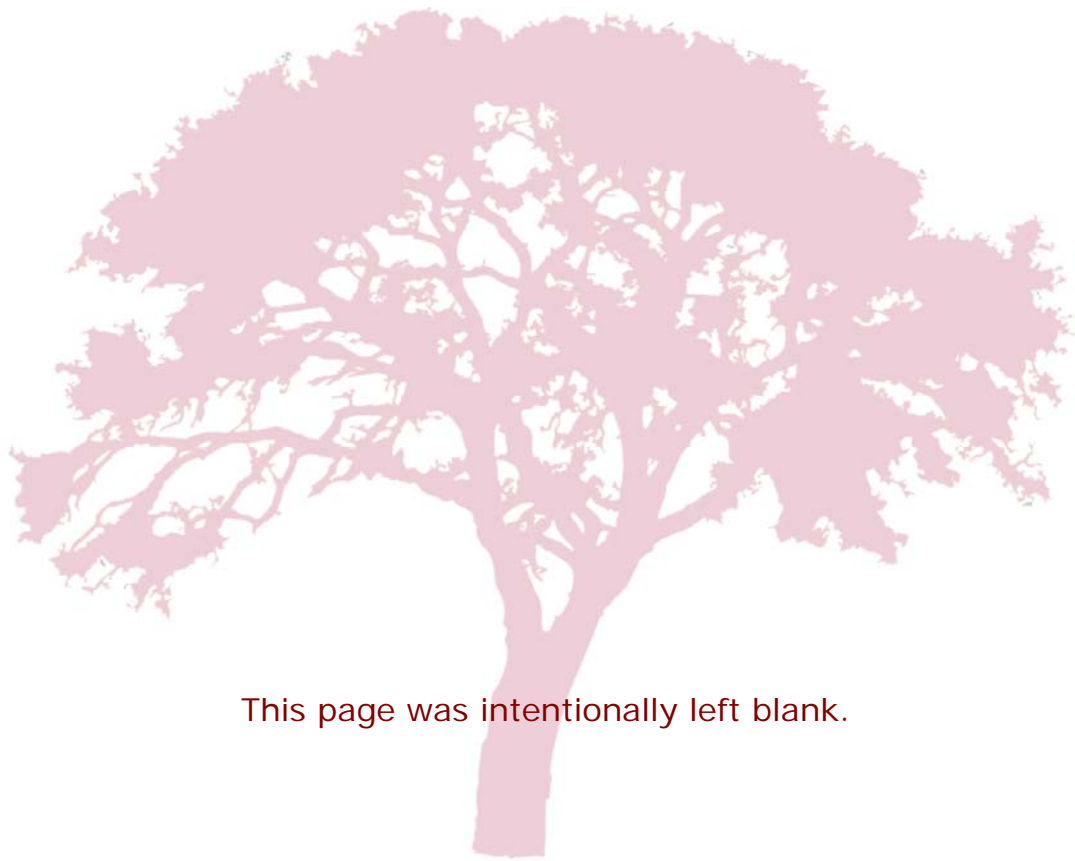
This audit does not make any legal determinations; such matters will be properly referred to the appropriate law enforcement authorities. However, the City Charter is clear on the seriousness of Councilmember interference, stating that "violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member." Conviction can only be determined in a court of law. What, if any, consequences related to these violations have yet to be determined by the appropriate parties.

Hopefully, the information contained in this audit causes all City leaders to reflect upon how we may bolster the ethical structure of Oakland's government and ensure the past is not repeated. It is my hope that as a result of this audit, the Administration and the City Council engage in a powerful dialogue regarding their respective roles and how to best work together to make Oakland thrive. Finally, I hope the City Council uses this opportunity to ensure that the conduct of each member is representative of the body as a whole.

Respectfully submitted,

A handwritten signature in cursive script that reads "Courtney A. Ruby". The signature is written in black ink and is positioned above the printed name and title.

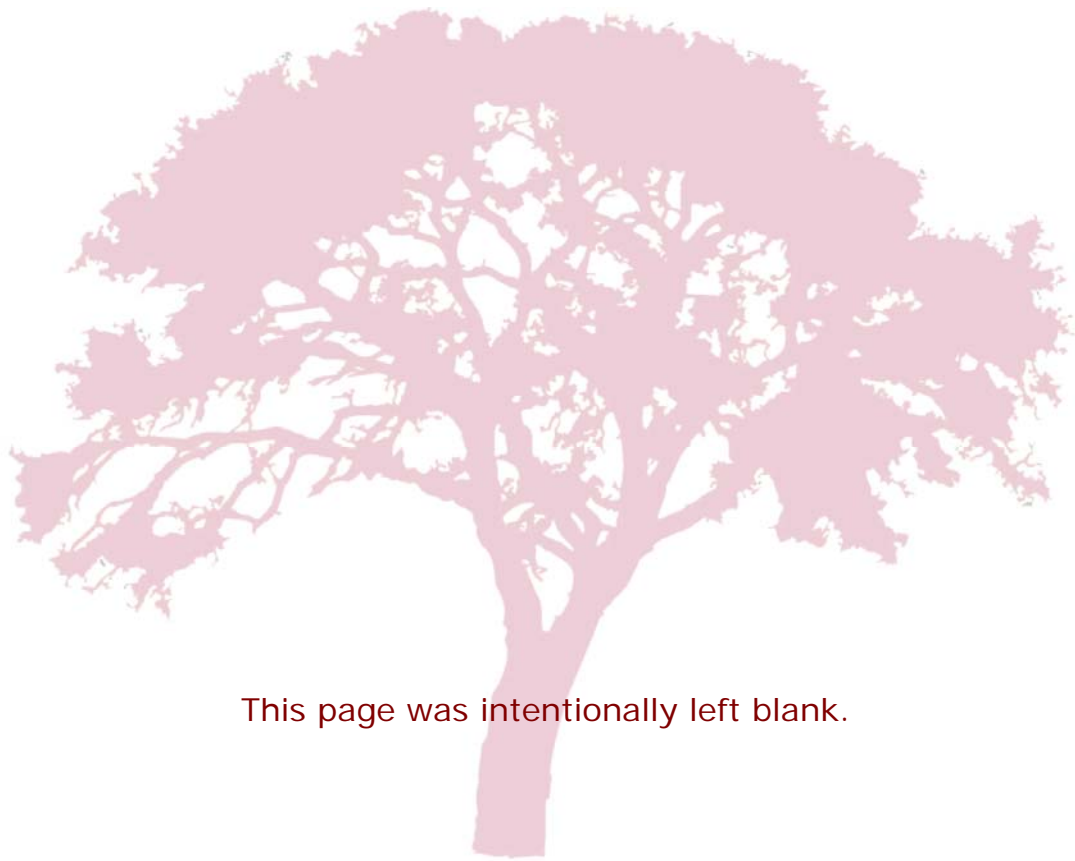
COURTNEY A. RUBY, CPA, CFE
City Auditor



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REPORT SUMMARY

NON-INTERFERENCE IN ADMINISTRATIVE AFFAIRS PERFORMANCE AUDIT: FY 2009-10 through FY 2011-12

OVERVIEW

The audit found two Oakland Councilmembers violated the law by exerting inappropriate influence in City contracting and operations. There were 14 instances of Councilmembers or their Aides violating Oakland City Charter, Section 218: Non-Interference in Administrative Affairs.

Objectives

The Office of the City Auditor conducted a performance audit to determine whether or not there have been violations of City Charter Section 218, Non-Interference in Administrative Affairs between fiscal year 2009-10 and fiscal year 2011-12.

Key Findings

The findings from the audit include:

- Finding 1.1: The District 6 Councilmember interfered in the management and renovations for two Oakland recreation centers: the Rainbow Teen Center (also known at the Digital Arts and Culinary Academy) and the Arroyo Viejo Recreation Center (Arroyo Viejo Center). This included selecting contractors, negotiating and establishing agreement terms for contracts, directing staff to process contracts, setting project deadlines, and hiring staff
- Finding 1.2: Councilmembers from District 6 and District 7 interfered in Redevelopment's contracting process for an Oakland Army Base demolition and remediation contract (Building 6 contract) worth approximately two million dollars
- Finding 1.3: The District 6 Councilmember interfered in administrative affairs by threatening to remove City staff from a Redevelopment project in the Councilmember's district
- Finding 1.4: One Council Aide from District 7 interfered in administrative affairs by directing Parking to fix two of the Council Aide's personal parking tickets
- Finding 2.1: There is a general culture of interference within the City. The audit found that the culture of interference appears to be felt across many City departments and is perceived to come from multiple Councilmembers
- Finding 2.2: One Council Aide from District 7 has continuously acted abusively and unprofessionally towards staff working on the City-County Neighborhood Initiative (CCNI) in Sobrante Park. The Council Aide's actions appears to have created an environment that impacts City staff's (as well as County and community partners) ability to perform their jobs

Key Recommendations

To address the audit's findings, the report includes 22 recommendations. Some of the key recommendations are:

Councilmembers and their Aides should:

- Not be involved in administrative actions such as negotiating, establishing terms, or drafting contracts or grants on behalf of the City
- Complete annual training on Section 218, Non-Interference in Administrative Affairs and should annually certify that he or she has attended the training and agrees to uphold Section 218

Councilmembers should:

- Develop procedures to enforce the Council's Code of Conduct

The Administration should:

- Ensure that its staff know that they should not take direction from any Councilmember and encourage staff to report potential interference
- Establish clear protocols for how staff should prioritize Councilmembers' requests, how Councilmembers' opinions should be incorporated into staff's work, and how staff should work with Councilmembers and their Aides on community projects
- Not tolerate abusive treatment of its staff by Councilmembers or their Aides. The Administration should continue to educate its staff that they should report anytime a Councilmember inappropriately yells at, threatens, or bullies staff

Introduction

Since at least 1931, the City of Oakland's (City) Charter has included a bold provision to ensure the appropriate separation of duties and functions within the City and to shield City staff from political interference and demands for special treatment from City Council members. Charter Section 218, Non-Interference in Administrative Affairs (Section 218) seeks to allow the City's professional staff to do their work protected from political influence, favoritism, and patronage. Section 218 helps to establish a more transparent and ethical government structure affording citizens, employees, and businesses the opportunity to live, work, and transact business with confidence that no inappropriate influence is being exerted in the affairs of the City. However, if Section 218 is not enforced – it renders its intent ineffective.

Under Section 218, Councilmembers are not allowed to interfere in administrative affairs such as contracting, hiring, appointing, or firing City employees, or giving orders to City employees who are under the City Administrator's jurisdiction. A violation of the provisions of Section 218 is a misdemeanor, with conviction resulting in the immediate forfeiture of the office¹. This audit does not make any legal determinations; such matters will be properly referred to the appropriate law enforcement authorities.

The purpose of this performance audit was to evaluate whether Section 218 of the City Charter was violated over the three-year period reviewed and to make recommendations that will help the City Administration (Administration) and City Council mitigate the occurrence of future violations. While the role of a Councilmember includes advocating for Oakland residents, the appearance of, or actual occurrence of interference directly undermines the effectiveness of the City Council, as a whole, to govern, as well as the City Administration (Administration) to conduct City operations.

In February 2012, the Administration clearly demonstrated its commitment to enforce Section 218 when it reviewed a Councilmember's involvement in the Rainbow Recreation Teen Center. Given the significance of the allegations that City policies, ordinances, and State law were possibly violated and the effect of allowing such violations to go unchecked if true, the City Auditor's Office (Office) initiated a performance audit of non-interference in administrative affairs. Prior to this, the Auditor's Office had also regularly heard concerns regarding Councilmember interference. Additionally, the City Auditor's annual ethical climate survey of employees highlighted that interference was an ongoing concern for employees. Without the commitment of the Administration to enforce Section 218, an audit would have been a futile exercise for the Office and City employees.

¹ According to Black's Law Dictionary, a conviction is the verdict that results when a court of law finds a defendant guilty of a crime.

Background

Section 218 of the City Charter is far reaching and demonstrates the City's commitment to the tenets of good government: transparency, integrity, and accountability. Section 218 helped solidify the City's separation of powers and the Administration's responsibility to shield employees from political interference. Overall, Oakland's City Council is responsible for making policies and appropriating funds, while the Administration is responsible for carrying out City policies and running the day-to-day operations.

Despite this mandated protection against political influence, there have been many signs that problems exist with City Council interference. In the past two years, the Office has received numerous, anonymous reports about this issue through the City's Fraud, Waste + Abuse (FW+A) hotline. Both the 2010 and the 2011 Ethical Climate Surveys found that City Council interference is one of Oakland's most troubled ethical areas. In 2011 during budget deliberations, the Office sent the City Council a memo warning them of a potential interference violation should they continue to include specific staffing assignments for the Revenue Division in their discussions. In February 2012, the Administration and the media exposed allegations that one Councilmember had interfered with the contracts, staffing, and funding of a City recreation center.

In response to this most recent allegation of Councilmember interference, the City Attorney issued a memo to all City staff regarding non-interference in administrative affairs and prohibitions set forth in Section 218. On the same day, the City Administrator reminded all City employees of Administrative Instruction (AI) 596, which governs the Code of Conduct for all non-sworn employees. AI 596 includes a summary of Section 218, stating that it is inappropriate for Councilmembers to give staff direction and that staff shall not take direction from Councilmembers. AI 596 also states that an employee should report violations to his or her immediate supervisor, Department manager, Department head, or City Administrator, as appropriate.

Since 2006, Mayors, City Administrators, and City Attorneys have released a total of 12 memos that provide guidance on Section 218 and further clarify the City Council's appropriate roles and responsibilities as defined by the City Charter. See Appendix A for a summary of these memos.

Under Section 218, interference occurs when a Councilmember orders, directs, demands, or pressures City staff. According to the City Attorney, the prohibition established in Section 218 applies to both Councilmembers and their Council Aides. Also, it is the act of ordering, coercing, influencing, or directing City staff that is considered interference under Section 218. Section 218 does not require that the ordering, coercing, influencing, or directing is actually successful. In addition to Section 218, Section 207 of the Oakland City Charter specifically states that the City Council shall have "no administrative powers."²

In consultation with the City Attorney's Office in April 2011, the Office of the City Auditor clarified that:

² Section 207 states that the City Council is the governing body of the City with all powers of legislation in municipal affairs. Section 504 states that the City Administrator is responsible for the day-to-day administrative and fiscal operations of the City and that the City Administrator directs City agencies and departments to ensure the goals and policy directives of the Mayor and City Council are implemented.

Interference includes, but is not limited, to when a Councilmember or Council Aide orders or directs a City staff person:

- To hire, appoint, remove, fire, transfer, or promote an employee
- To rate, choose, or select a person, business, or nonprofit organization for a contract with the City
- To give work to a person, business, or nonprofit organization before a contract is in place
- To issue or deny a permit
- To dismiss a ticket, fine, or fee
- To perform work outside an employee's normal duties
- To prioritize specific jobs and tasks over others
- To meet the Councilmember's deadline to complete a task, job, or response

In a memo released by City Attorney Parker on March 22, 2012, the following statements were issued to provide clarity on what are not permissible Councilmember interactions with City staff under Section 218:

- A City Councilmember may contact City administrative staff only to make inquiries. All other communications about the administration of the City must only be through the City Administrator or Mayor
- A City Councilmember shall not give orders to any administrative employee, either publicly or privately
- A City Councilmember shall not attempt to coerce or influence the City Administrator or any administrative employee in respect to any contract, purchase of supplies, or any other administrative action
- A City Councilmember may not in any manner direct or request the appointment to or removal from office of any person by the City Administrator, City Administrator subordinates, or any other such officers
- A City Councilmember may not in any manner take part in the appointment or removal of any administrative employee

Objectives, Scope & Methodology

Audit Scope & Objectives

The scope of this performance audit focused on fiscal year 2009-10 through fiscal year 2011-12. To ensure this audit did not focus on any one incident of City Council interference or any one Councilmember, the audit established a broad audit scope that included a review of all Councilmembers serving during those three years. Additionally, where appropriate, the audit expanded the timeline to 2008 to ensure that the data under evaluation was viewed in full and proper context.

The objective of the audit was to determine if, within the scope, there have been violations of City Charter Section 218, Non-Interference in Administrative Affairs.

This audit will conclude on whether or not Councilmembers and their Aides complied with Section 218. This audit is not an investigation of any one incident of City Council interference. It is, however, a tool to determine the extent of Section 218 violations and to give recommendations that will help the Administration and City Council mitigate the occurrence of violations.

Audit Methodology

To accomplish this objective, the audit employed a variety of evaluative techniques, interviews, research, and other methods to obtain appropriate data, evidence, and contextual information to support this work.

To identify and assess potential violations of Section 218, interference in administrative affairs, the Office:

- Outreached to all City employees to anonymously report instances of potential interference on the FW+A hotline; 27 hotline tips were received
- Interviewed more than 40 individuals which included interviewing specific employees in areas likely to have instances of interference as well as conducting interviews with employees who contacted the Office regarding their interactions with Councilmembers
- Evaluated more than 67 hotline and interview tips which included researching public records, issuing requests for information from various Departments, and interviewing individuals involved.
- Reviewed all Councilmembers' and all Council Aides' email accounts for evidence of interference and to corroborate reports of interference. Tens of thousands of emails were reviewed.
- Reviewed phone records when deemed appropriate
- Worked with the City Attorney's Office to obtain a clear understanding of Charter Section 218

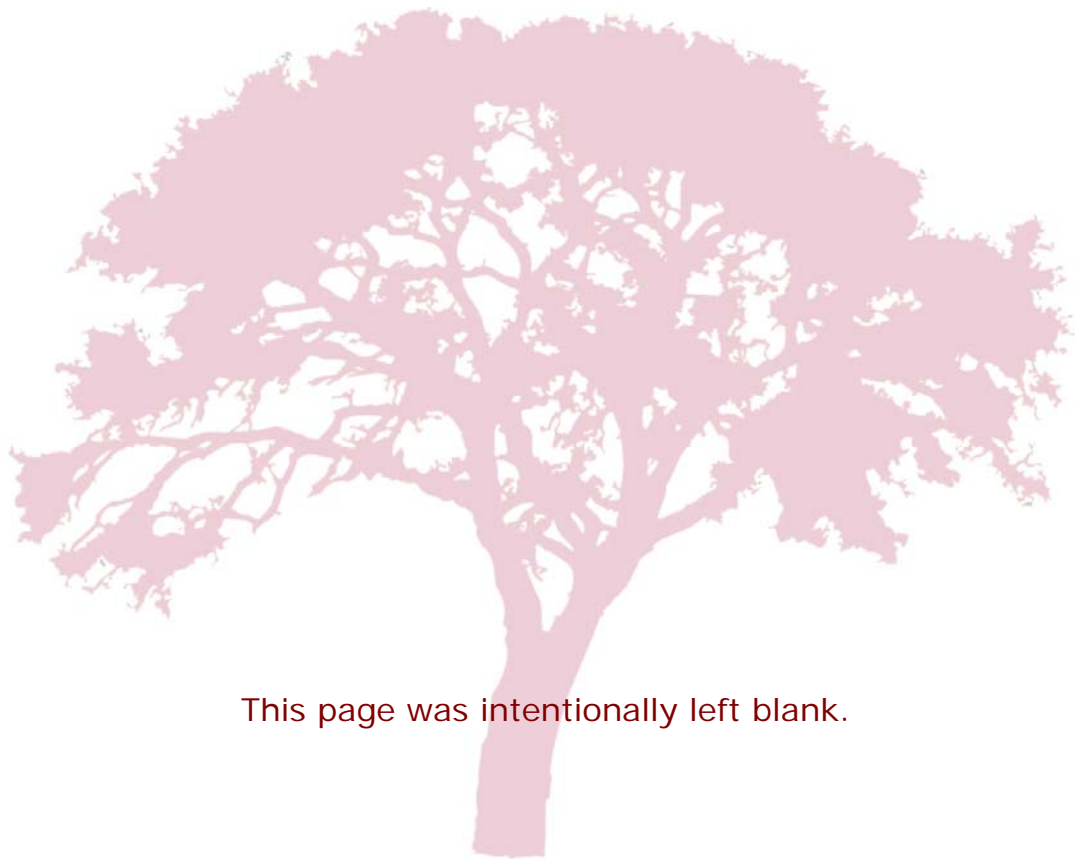
While the audit aimed to identify instances of interference that had occurred during the audit scope, the audit was not designed to account for all occurrences of interference nor did it catch all instances of interference. Given that interference between a Councilmember and a City employee is more likely to occur as a verbal interaction, unless testimony and corroborating evidence could be obtained, incidents were not concluded to be interference. The audit found that many instances of perceived interference were reported; however, upon examination, it was determined that insufficient evidence existed to corroborate the allegation, the incident did not constitute interference as defined in the City Charter, or the potential interference was mitigated through the Administration's adoption or ratification of the Councilmember's involvement.

The Office encouraged City employees to bring forth tips through the City Auditor's confidential FW+A hotline; the confidentiality of all whistleblower reporters is protected under local and state whistleblower protection laws. Even with these considerations, certain staff members were not willing to talk with the Office despite outreach efforts. Some, including staff in senior management positions, declined to speak with the Office because of their perception that there was too much risk, including fear of Councilmembers' retaliation.

Councilmembers involved in the audit's substantiated findings were offered, as a matter of courtesy, a briefing of the findings and the opportunity to provide a written response for inclusion in the audit. One Councilmember attended the briefing and provided a response for inclusion in the audit report; one Councilmember declined to attend the briefing.

This audit was conducted under the authority of the City Auditor as described in Section 403 of the City Charter. The Charter states that the City Auditor shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest.

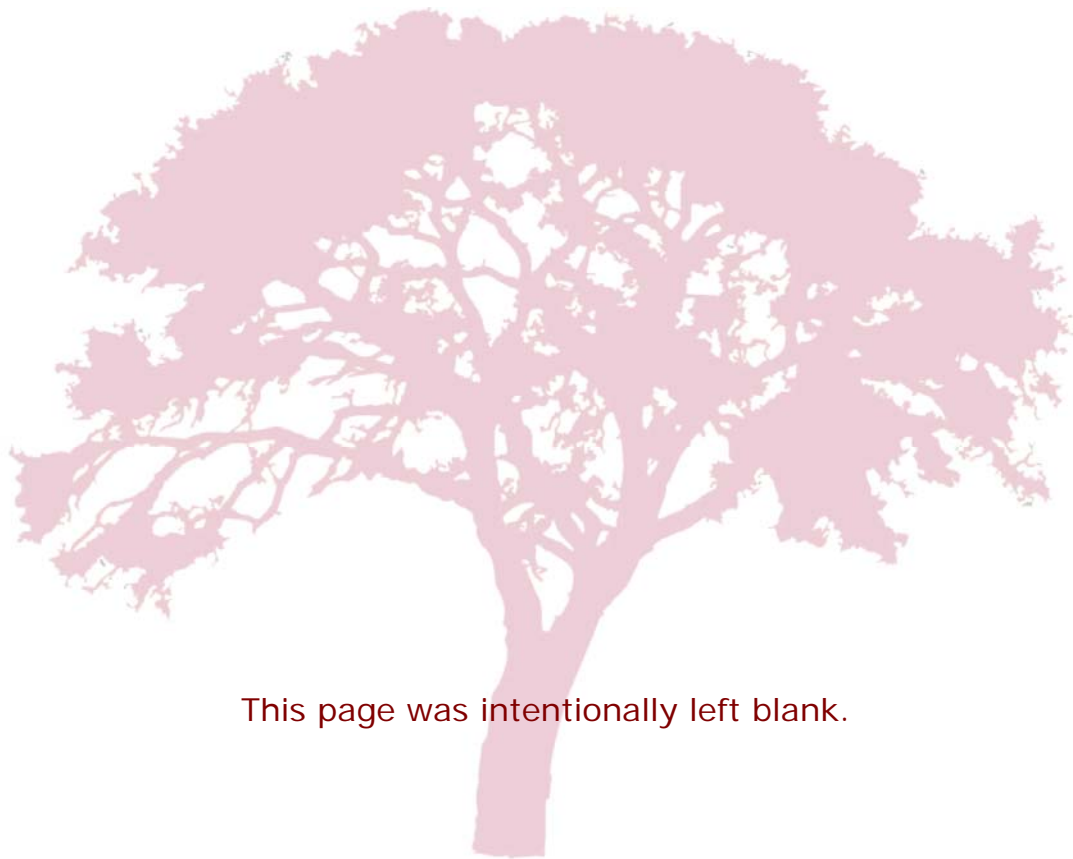
The Office conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). These standards require that the Office plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the audit's findings and conclusions based on the audit's objectives. The Office believes that the evidence obtained provides a reasonable basis for the audit's findings and conclusions based on the audit objectives.



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AUDIT RESULTS



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While more than 67 tips and interviews were evaluated over the course of nine months, the audit was able to substantiate 14 instances of interference by Councilmembers or their Aides. As stated previously, many instances of perceived interference were reported; however, upon closer examination it was determined that:

- Insufficient evidence existed to corroborate the allegation
- The incident did not constitute interference as defined in the City Charter
- Any potential interference was mitigated through the Administration's adoption or ratification of the Councilmember's involvement

The substantiated instances of Councilmembers or their Aides violating Section 218 occurred in the following areas:

- One Councilmember interfered with two City recreation centers
- Two Councilmembers interfered with the Oakland Army Base demolition and remediation contracting process for Building 6
- One Councilmember threatened a City employee's work assignment
- One Council Aide directed Parking to fix the Council Aide's personal tickets

Finding 1.1

Interference in Recreation Centers

The District 6 Councilmember was inappropriately involved in the management and renovations for two Oakland recreation centers: the Rainbow Teen Center (also known as the Digital Arts and Culinary Academy) and the Arroyo Viejo Recreation Center (Arroyo Viejo Center). Recreation centers are City-owned buildings and are managed by administrative staff in Oakland's Office of Parks and Recreation (Parks and Recreation)³. The Councilmember's actions interfered in administrative affairs. Section 218 states that Councilmembers:

- May only make informational inquiries of administrative staff
- Shall not give orders to any administrative staff
- Shall not coerce or influence administrative staff with respect to any contract, purchase of supplies, or any other administrative action
- Shall not be involved in the appointment, hiring, or firing of administrative staff

Rainbow Teen Center

The District 6 Councilmember was involved in three instances of selecting contractors to provide services for the Rainbow Teen Center. In two of these instances, the Councilmember also negotiated the agreements and established the agreement terms. The Councilmember then directed administrative staff in City departments to process these contracts. According to staff, they processed the paperwork as instructed by the Councilmember.

³ Parks and Recreation also contracts with some local non-profits to manage services at recreation centers.

The Councilmember also interfered in administrative affairs when she pressured staff to get a vendor paid quickly, set deadlines for City staff, and hired staff to work at the Rainbow Teen Center.

According to Charter Section 207, the Councilmembers have no administrative powers. Additionally, Charter Section 504(g) states that the City Administrator shall have the power and responsibility for preparing plans, specifications, and contracts for work which the City Council may order. Finally, Section 218 states that Councilmembers shall not coerce or influence administrative staff with respect to any contract, purchase of supplies, or any other administrative action.

As shown in the instances below, the Councilmember of District 6 represented the City in the contracting processes and interfered by influencing administrative staff in two City departments regarding three different City contracts. The Councilmember also interfered by setting deadlines for administrative staff to complete the Councilmember's assignments. Further, negotiating agreements on behalf of the City violated Charter Sections 207 and 504(g), that Councilmembers have no administrative powers.

- In February 2010, the Councilmember established the project scope and agreement terms with a contractor, Pulte Homes, for the Rainbow Teen Center. According to Redevelopment, while they processed the grant agreement for Pulte, they were not involved in establishing the terms of the agreement. This is further corroborated with an email the Councilmember sent informing the Director of the Community and Economic Development Agency about the project, her collaboration with Pulte, and timeline constraints. In March 2010, the Councilmember requested that a staff member from Redevelopment execute a grant agreement between the City and Pulte to reimburse the contractor for its expenses related to the Rainbow Teen Center. The Councilmember also appeared to be in charge of the project timeline. For example, she told Redevelopment staff that the grant agreement should be completed quickly because Pulte was starting work the following day.
- In April 2010, the Councilmember emailed the Director of Parks and Recreation that the Councilmember was going to work with a local non-profit, 100 Black Men of the Bay Area, to provide management services at the Rainbow Teen Center. The Councilmember drafted the agreement between 100 Black Men and the City and told the Director of Parks and Recreation to finalize the agreement within two weeks.
- In June 2010, the Councilmember notified Parks and Recreation that a different non-profit, Leadership Excellence, was going to manage operations at the Rainbow Teen Center rather than 100 Black Men. Parks and Recreation complied with the Councilmember's adjustment and forwarded the agreement to Leadership Excellence to sign. The Councilmember then emailed Leadership Excellence and told them not to sign the contract until she had reviewed it. After that, the City never received a response from Leadership Excellence.

The District 6 Councilmember also interfered in administrative affairs when she ordered sound equipment (supplies) for the Rainbow Teen Center and when she pressured Redevelopment staff to pay the vendor quickly, which required staff

to get three bids retroactively. Under Section 218, a Councilmember shall not attempt to coerce or influence the City Administrator or other such officers with respect to any contract, including the purchase of any supplies. The District 6 Councilmember also signed payment documents to release the funds. Further, signing payment documents on behalf of Redevelopment violated Section 207.

The audit confirmed that the Councilmember similarly interfered in purchasing playground equipment in 2006 for both the Rainbow Teen Center and the Arroyo Viejo Center. The Councilmember's actions required City staff to obtain bids for the Councilmember's purchases retroactively.

The District 6 Councilmember also interfered in administrative affairs by hiring nine individuals to work within a City department, Parks and Recreation. The individuals served as the Recreation Program Director, Recreation Specialists, and a Recreation Leader, all of which are union classified positions. According to Oakland Municipal Ordinance, 2.29.080, the Department of Parks and Recreation is responsible for hiring all staff that work in its recreation centers. While Councilmembers may hire Council Aides, and the Councilmember hired these individuals as Council Aides, only the Department of Parks and Recreation has the authority to hire staff for its facilities and programs. According to Parks and Recreation, the Department was not involved with the hiring of the individuals originally hired to work in the Rainbow Teen Center.

Further, the Councilmember had her hires start working in the Rainbow Teen Center before fingerprinting, drug testing, and background checks had been completed, in some cases not until six weeks after the individual began working in the recreation center. As a result of the Councilmember hiring individuals into department positions, the City was out of compliance with State law that requires anyone having direct contact with minors to have submitted fingerprints for a criminal background check as well as City policy that requires clean drug and tuberculosis tests prior to the first day of employment.

Arroyo Viejo Recreation Center

In two incidents between 2008 and 2009, the District 6 Councilmember interfered with the Arroyo Viejo Recreation Center recording studio.

In November 2008, the District 6 Councilmember left a voicemail for the staff member managing the construction and directed him to stop all construction activities. The staff member complied and replied that he would wait for further direction from the Councilmember.

In March 2009, construction of the recording studio was in progress again. In an email to the District 6 Councilmember, the staff member requested further direction on two items and stated that he needed the information "in order to complete the construction by your deadline of April 8th as you wished."

In addition to these two instances of interference by the Councilmember, it appears that the staff member also likely received direction regarding paint colors, curtains, equipment lists, project plans, and floor plans from the Councilmember during this time period.

Both of these instances violate section 207 of the Charter which states that Councilmembers have no administrative powers. Additionally, Charter Section 504(g) states that the City Administrator shall have the power and responsibility for preparing plans, specifications, and contracts for work that the City Council may order. Finally, according to Section 218, Councilmembers shall not give any orders to any subordinate of the City under the jurisdiction of the City Administrator, either publicly or privately.

Conclusion

Starting in 2008, the District 6 Councilmember interfered in the renovation and management of two City recreation centers. As a result, the Councilmember's actions violated Sections of the City Charter as well as State law regarding background checks for staff working with minors, and circumvented City policies regarding hiring.

Recommendations

- Councilmembers and their Aides should comply with Section 218 of the City Charter, including not directing or ordering administrative staff to meet deadlines set by the Councilmembers. Additionally, Councilmember requests should never result in non-compliance with laws or City policy.
- The Administration should ensure that its staff, especially its Department directors, Economic Development staff, and Accounts Payable staff, know that Councilmembers do not have the power to give them orders. Further, Councilmember's requests should never result in non-compliance with laws or the circumvention of City policy.
- The Administration should regularly remind its staff to report any directions or requests by Councilmembers that have violated or appear to violate any law or City policy, including directions or requests to retroactively process the paperwork for staff hires.
- Councilmembers and their Aides should comply with Section 218 of the City Charter, including not coercing or influencing staff with respect to any contract or purchase of supplies.
- Councilmembers and their Aides should comply with Sections 207 and 504(g) by not conducting any administrative actions. For example, Councilmembers should not be involved in negotiating, establishing terms, or drafting contracts or grants on behalf of the City. Nor should Councilmembers ever sign to release department funds for expenditures.
- Councilmembers should comply with Section 218 of the City Charter, including not hiring individuals to work in City departments or programs.
- Councilmembers and their Aides should complete annual training on Section 218, Non-Interference in Administrative Affairs and should annually certify that he or she has attended the training and agrees to uphold Section 218.

Finding 1.2

Interference in the Oakland Army Base

Both Councilmembers from District 6 and District 7 were involved in Redevelopment's contracting process for an Oakland Army Base demolition and remediation contract worth approximately two million dollars (Building 6 contract). The Districts 6 and 7 Councilmembers' involvement appears to show favoritism to one company, Turner Group Construction (Turner). The Councilmembers' actions interfered in administrative affairs by coercing or influencing staff regarding the contract. Section 218 says that Councilmembers:

- May only make informational inquiries of administrative staff
- Shall not give orders to any administrative staff
- Shall not coerce or influence administrative staff with respect to any contract, purchase of supplies, or any other administrative action

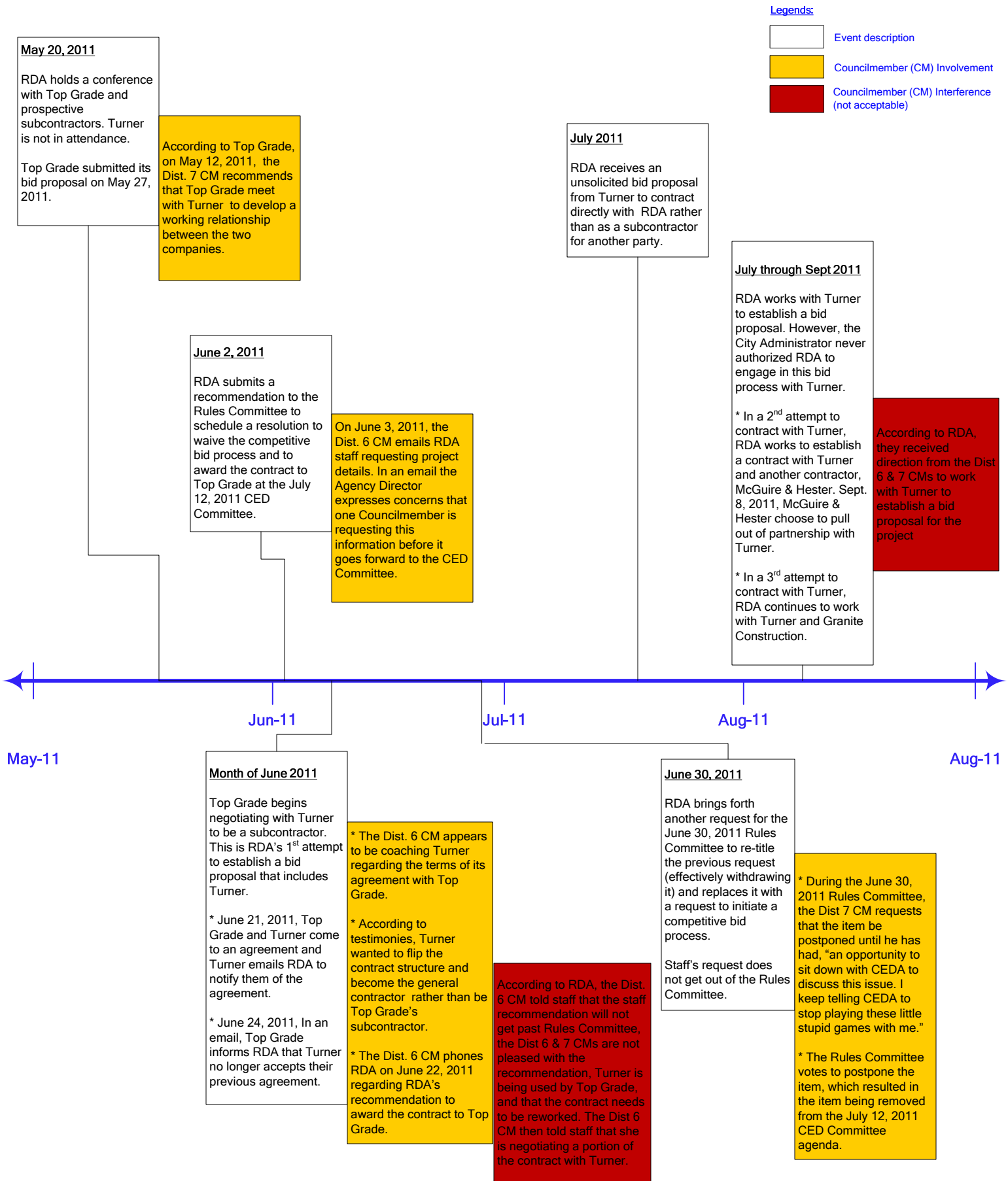
According to Redevelopment, this contracting process was highly irregular and "messy." It is the audit's conclusion that the Councilmembers' inappropriate involvement and interference in the contracting process appears to have significantly contributed to this highly irregular process. Under the standard contracting process for construction contracts exceeding \$50,000, the Administration should have conducted a competitive bid process. However, Redevelopment staff incorrectly began working with Top Grade Construction (Top Grade) for a sole source contract⁴. This occurred because, according to Redevelopment, in an effort to speed up the remediation work on the Army Base, Redevelopment attempted to contract with Top Grade Construction who was a contractor of the master developer of the project.

Regardless of the staff's misinterpretation about whether they could sole source a contract for the demolition work, as shown in Exhibit 1, there was interference in the contracting process when the District 6 Councilmember told staff that their recommendation to work with Top Grade needed to be reworked and that the Councilmember was negotiating a portion of the contract with Turner. There was also interference when the Districts 6 and 7 Councilmembers directed staff to work with Turner to establish a bid proposal.

The following exhibit shows the events of the Oakland Army Base contracting process, where Councilmembers were involved (yellow boxes), and where Councilmember interference occurred (red boxes).

⁴ A sole source contract is approved by City Council in the following circumstances: when the work involved requires specialized services, when bidding the work is impracticable, unavailing or impossible, or in other cases approved by the City Council after determining that it is in the best interest of the City.

EXHIBIT 1: Events of Oakland Army Base Building 6 Demolition and Remediation Project



September 15, 2011

The Dist. 6 & 7 CMs bring forth a recommendation to Rules Committee to add LBE/SLBE requirements to the Building 6 contract, specifically, that prime contractors must include 33% Oakland residents and only certified LBE / SLBE firms.

Between Spetember and November the City Attorney vets the legality of the proposal.

Legends:

- Event description
- Councilmember (CM) Involvement
- Councilmember (CM) Interference (not acceptable)

September 19, 2011

RDA sends a letter to Turner requesting Turner submit its bid proposal by October 3, 2011. This action was never authorized by the Administrator.

According to RDA, Turner expressed to RDA that they were owed, that this contract should be theirs, they had the Dist. 6 & 7 CMs on their side, and that they were here for a fight.

December 6, 2011

Council votes and passes the resolution proposed by the Dist. 6 & 7 CMs to add additional LBE / SLBE requirements.

September 26, 2011

Turner submits its bid proposal to RDA.

September 27, 2011

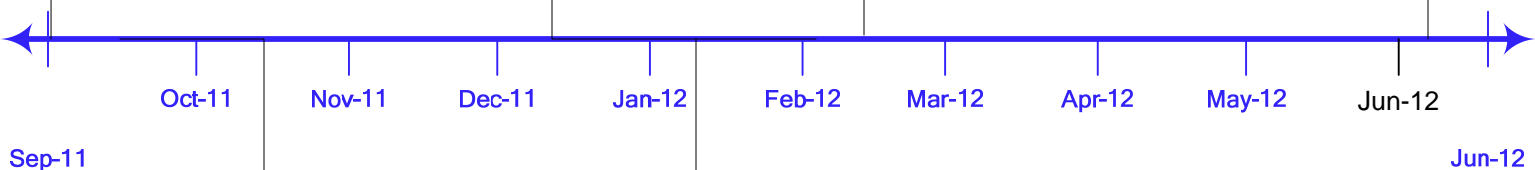
The Administrator emails RDA and questions why staff sent the September 19, 2011 letter to Turner and why RDA continues to work with Turner.

February 14, 2012

RDA rated bids and names Downrite Corporation as the lowest responsible bidder. Out of six bids submitted, only three bids met the amended contract requirements (Downrite Corporation, JH Fitzmaurice, and Turner).

June 19, 2012

Council votes 7-1 (Councilmember Brunner abstained) to adopt the contract with Downrite.



Oct-11

Nov-11

Dec-11

Jan-12

Feb-12

Mar-12

Apr-12

May-12

Jun-12

Sep-11

Jun-12

On October 11, 2011, the Dist. 6 CM and others, including Turner and supporters of Turner, speak to the CED Committee in support of the CM's proposed contract amendment.

October 21, 2011

RDA sends Turner a letter stating that RDA has reviewed the bid and finds that the information provided did not contain sufficient detail to address the project. Further, the City will be putting the project out for competitive bid.

January 11, 2012

RDA holds a pre-bid conference for the contract.

Bids are due on January 26, 2012.

As Exhibit 1 shows in the red boxes, the Councilmembers from Districts 6 and 7 interfered in Redevelopment's contract process in the following two instances:

- In June 2011, the District 6 Councilmember told staff that their recommendation to award the contract to Top Grade needed to be reworked and that the Councilmember was negotiating a portion of the contract with Turner
- In July through September 2011, according to Redevelopment, they received direction from the District 6 and 7 Councilmembers to work with Turner to establish a bid proposal

The Councilmembers from District 6 and District 7 were also consistently involved in Redevelopment's contract process for the Oakland Army Base Building 6 demolition and remediation contract (see yellow boxes in Exhibit 1). While this involvement does not cross the line as interference, it does help illustrate how staff were impacted by the Councilmembers' actions. Further, both the Councilmembers' involvement and interference in the contracting process appear to inappropriately favor Turner.

Recommendations

- Councilmembers and their Aides should comply with Section 218 of the City Charter, including not directing or pressuring staff to remove staff recommendations from City Council or Committee meeting agendas.
- The City Administrator should further educate staff that Councilmembers can not stop staff from bringing their professional recommendations forward and that staff should immediately report when a Councilmember directs, pressures, or demands that staff should not submit their recommendation or that staff should remove a recommendation from the agenda.

Finding 1.3

Interference with One Staff's Work Assignment

The District 6 Councilmember interfered in administrative affairs by threatening to remove City staff from a redevelopment project in the Councilmember's district. According to Section 218, Councilmembers may not be part of the hiring, placement, or firing of City staff.

While staff from Redevelopment were meeting with the District 6 Councilmember regarding a project, the Councilmember threatened to remove one of the administrative staff from the project. According to three Redevelopment staff members, the Councilmember did not like one staff member's proposal, and during the course of the meeting, threatened to remove that staff member from the project. This threat was made in front of the staff member's supervisor. The staff member stated that they felt their job was threatened by the Councilmember.

Recommendations

- Councilmembers and their Aides should comply with Section 218 of the City Charter, including never threatening to fire or remove administrative staff from their positions or an assignment.
- The Administrator should continue to remind all levels of administrative staff that Councilmembers cannot hire, fire, or remove staff from a project and that any threats of such should be reported immediately.

Finding 1.4

Interference with Parking Fines

In January 2012, one Council Aide from District 7 interfered in administrative affairs by directing Parking to fix two of the Aide's personal parking tickets. According to Section 218, Councilmembers and their Aides shall not be a part of administrative actions such as dismissing a ticket, fine or fee.

According to Parking, the Council Aide tried to use the Aide's position in attempt to get the tickets dismissed, first by intimidating the parking enforcement officer and then with Parking management. According to Parking, the Council Aide directed Parking to fix the tickets. The Council Aide further acted inappropriately toward the parking enforcement officer who issued the ticket, including using profanity and trying to slap the ticket out of the officer's hand.

Recommendations

- Councilmembers and their Aides should comply with Section 218 of the City Charter, including never attempting to have parking staff or parking enforcement officers dismiss or reduce the amount of the Councilmember's or Council Aide's personal (i.e., non-work related) ticket.
- The Administration should make it clear to all parking staff and parking enforcement officers, as well as all staff involved with processing or managing other types of fines and fees, that staff should not reduce or dismiss personal (i.e., non-work related) fines or fees at a Councilmember's or Council Aide's request. Staff should always refer Councilmembers and Council Aides to the appropriate process to contest or amend a fine or fee.

RECOMMENDATIONS: Chapter 1

We recommend that:

Recommendation #1	Councilmembers and their Aides should comply with Section 218 of the City Charter, including not directing or ordering administrative staff to meet deadlines set by the Councilmembers. Additionally, Councilmember requests should never result in non-compliance with laws or City policy.
Recommendation #2	The Administration should ensure that its staff, especially its Department directors, Economic Development staff, and Accounts Payable staff, know that Councilmembers do not have the power to give them orders. Further, Councilmember's requests should never result in non-compliance with laws or the circumvention of City policy.
Recommendation #3	The Administration should regularly remind its staff to report any directions or requests by Councilmembers that have violated or appear to violate any law or City policy, including direction or requests to retroactively process staff hires.
Recommendation #4	Councilmembers and their Aides should comply with Section 218 of the City Charter, including not coercing or influencing staff with respect to any contract or purchase of supplies.

Recommendation #5	Councilmembers and their Aides should comply with Sections 207 and 504(g) by not conducting any administrative actions. For example, Councilmembers should not be involved in administrative actions such as negotiating, establishing terms, or drafting contracts or grants on behalf of the City. Nor should Councilmembers ever sign to release department funds for expenditure.
Recommendation #6	Councilmembers should comply with Section 218 of the City Charter, including not hiring individuals to work in City departments or programs.
Recommendation #7	Councilmembers and their Aides should complete annual training on Section 218, Non-Interference in Administrative Affairs and should annually certify that he or she has attended the training and agrees to uphold Section 218.
Recommendation #8	Councilmembers and their Aides should comply with Section 218 of the City Charter, including not directing or pressuring staff to remove staff recommendations from City Council or Committee meeting agendas.
Recommendation #9	The City Administrator should further educate staff that Councilmembers can not stop staff from bringing their professional recommendations forward and that staff should instantly report when a Councilmember directs, pressures, or demands that staff should not submit their recommendation or that staff should remove a recommendation from the agenda.
Recommendation #10	Councilmembers and their Aides should comply with Section 218 of the City Charter, including never threatening to fire or remove administrative staff from their positions or an assignment.
Recommendation #11	The Administrator should continue to remind all levels of administrative staff that Councilmembers cannot hire, fire, or remove staff from a project and that any threats of such should be reported immediately.
Recommendation #12	Councilmembers and their Aides should comply with Section 218 of the City Charter, including never attempting to have parking staff or parking enforcement officers dismiss or reduce the amount of the Councilmember's or Council Aide's personal (i.e., non-work related) ticket.
Recommendation #13	The Administration should make it clear to all parking staff and parking enforcement officers, as well as all staff involved with processing or managing other types of fines and fees, that staff should not reduce or dismiss personal (i.e., non-work related) fines or fees at a Councilmember's or Council Aide's request. Staff should always refer Councilmembers to the appropriate process to contest or amend a fine or fee.

Summary

Beyond the instances discussed in Chapter 1, the audit found a culture of interference, including staff being unclear about Councilmembers' roles and what are appropriate interactions with Councilmembers. It appears that staff frequently strive to meet both Councilmembers' stated wishes as well as the staffs' perception of the Councilmembers' wants. City staff also appear to routinely re-prioritize their workload to immediately accommodate Councilmembers' requests. This has created a general culture of interference within the City, with administrative staff's work being impacted by Councilmembers. Further, the audit found that the lack of specific guidance and personnel structures allowed for unprofessional treatment of employees working in one community program in Sobrante Park.

Finding 2.1

A Culture of Interference

There is a general culture of interference within the City. The audit found that the culture of interference appears to be felt across many City departments and is perceived to come from multiple Councilmembers. The audit found the following areas that appear to perpetuate this culture of interference in the City:

- Some City staff take the path of least resistance in dealing with Councilmembers when strategizing plans and making recommendations
- Some City staff prioritize Councilmembers' requests above other work
- Some Councilmembers or their Aides treat staff poorly, such as yelling at, threatening, and bullying staff
- Retaliation from Councilmembers is a real concern for staff and past budget deliberations have included the elimination of specific jobs
- Some City staff perceive Councilmembers as their "bosses" or "protectors"
- Councilmembers have not enforced their Code of Conduct or censured their colleagues in the past when the Code has been violated

The Office first reported that there appeared to be a culture of interference in the Office's 2010 and 2011 Ethical Climate Survey Report. Staff further reinforced the presence of this culture during the mandatory ethics trainings that was hosted by the City Attorney, Public Ethics Commission, and the City Auditor from September 2010 to June 2011. During these ethics trainings, one of the two themes voiced by staff was a need for enforcement of the Non-Interference prohibition.

Some City staff take the path of least resistance from Councilmembers and appear to prioritize Councilmembers' requests above other work

The audit found numerous instances where staff noted that they defer to Councilmembers' opinions on projects in order to ensure that the project moves forward in a timely manner. The audit also found numerous instances where staff stated that Councilmembers' requests are interpreted as unspoken

direction and that employees prioritize Councilmember requests over other work items. According to staff, this is a typical practice in the City. Further, in the Administration's review of staff's role in the Rainbow Teen Center, the Administration stated that "for various unknown reasons and/or varying accounts, staff focused on providing service and responding to requests without, in some instances considering the bigger picture of violations of policy or setting precedent without the City Council's direction."

While obtaining a Councilmember's input on projects in the Councilmember's district is reasonable, it appears that there is a pattern of staff deferring to Councilmembers' wishes. This pattern indicates that staff either do not have an understanding of the appropriate role of the Councilmembers or that some staff understand but choose to simply defer to Councilmembers unless there is clear direction and intervention from the Administration. This type of culture undermines the professional expertise of the staff.

Some Councilmembers or their Aides treat staff poorly, such as raising their voices at, threatening, and bullying staff

The audit reviewed several instances and allegations that form a pattern of Councilmembers or their Aides treating administrative staff poorly. Treating staff poorly includes getting angry at, threatening, and bullying staff. For example:

- There is a confirmed instance when a Councilmember threatened to remove an employee from a project
- There is a confirmed instance when a Council Aide left angry voice messages for two staff members, implying the Councilmember would not be happy that the staff had met and encouraged a new business interested in a piece of property in the Councilmember's district
- There is at least one confirmed instance when a staff member was treated so poorly by Councilmembers that the staff member needed stress-related treatment
- There is a confirmed instance of a Council Aide using their position of authority in an attempt to intimidate City staff
- There is a series of ongoing, confirmed instances where one Council Aide continues to yell at, bully, and intimidate staff working on a community program in the Councilmember's district

While the City Council has an established Code of Conduct for how it should treat other Councilmembers, City staff, and the public, it does not appear to enforce it or censure members when they violate the Code. According to the City Attorney, the Code of Conduct applies to both Councilmembers and their Council Aides.

Retaliation from Councilmembers is a real staff concern

Not all City staff was willing to talk with the Office regarding Councilmembers' potential interference violations. Some staff, including staff in senior management positions, declined to speak with the Office because of their fear of Councilmembers' retaliation. Examples of retaliation that employees noted

include: a Councilmember providing negative feedback to the employee's supervisor that would affect the employee's next performance review and the Councilmember trying to thwart or undermine any future recommendations, proposals, initiatives, or contracts that the employee might bring to a Committee or to the City Council for a vote.

Some City Staff perceive Councilmembers as staff's "bosses" or "protectors"

While City staff see the City Administration (such as Department heads, Assistant City Administrators, and the City Administrator) change over time, many Councilmembers are re-elected multiple times and some occupy their position for decades. The combined total years served by the eight incumbent Councilmembers through the 2012 election cycle is approximately 95.5 years.

The audit has heard from staff that the result of Councilmembers being in their positions for a long time is that some staff view Councilmembers as "bosses" or "protectors." Without the enforcement of Section 218 or the City Council's Code of Conduct, this staff viewpoint may perpetuate a culture of interference.

The City Council has not enforced their Code of Conduct, defined procedures for such enforcement (including censure), or censured their colleagues in the past when the Code has been violated.

When each Councilmember is elected and sworn in, the Councilmember signs an oath to uphold the City Charter and faithfully perform all duties of office. Additionally, the Council has an established Code of Conduct. However, no procedures have been defined to enforce the City Council's Code of Conduct, including censure of a Councilmember who breaches public trust or improperly attempts to influence legislation, or willingly violates the rules of conduct. According to Resolution 82580 which includes the City Council's Code of Conduct:

...the proper operation of democratic government requires that public officials are bound to observe, in their official acts, the highest standard of performance and to discharge faithfully the duties of their office, regardless of personal considerations. Recognizing that the public's interest must be their primary concern, their conduct in both their official and private affairs should be above reproach...

According to a legal opinion issued by the City Attorney on March 24, 2006 to one Councilmember and released to the full City Council on June 28, 2006, the City Council is responsible for policing its members. Some options on how the City Council may choose to deal with possible misconduct by one of its members include:

- Censure proceedings
- Investigation of a Code of Conduct violation
- Public Ethics Commission investigation
- Audit by the City Auditor

In order to ensure the proper operation of government, the City Council should have a mechanism to capture and address these concerns in a timely fashion and to decide how to proceed, given the options above and given the various situations of misconduct. Councilmembers should raise concerns about Charter violations when they suspect that their peers may not be honoring their oaths to uphold the Charter, including complying with Section 218.

Last, the audit received a variety of tips that were not substantiated, but showed a pattern of areas where there appeared to be confusion on how Councilmembers and staff should communicate in order to avoid both, the appearance of, or actual interference. These areas included:

- Staff reports—staff noted instances of Councilmembers asking to read and edit staff reports and recommendations before they are submitted to the City Clerk
- District meetings—staff noted that it was common practice in the past for Councilmembers to lead district meetings with staff from key service departments. Staff noted in some of those meetings Councilmembers were perceived as giving direction to staff
- Attendance at community meetings – Staff told the Office that Councilmembers or their Aides have come across as pressuring City staff, including police officers, to attend community meetings
- Status reports—staff noted that a Councilmember requested that staff fill out regular matrixes showing the status of projects in the Councilmember's district. While in general, matrixes can be viewed as acceptable inquiry, some staff have noted that a Councilmember's use of matrixes puts pressure on staff, was cumbersome, and impacted the staff's workload
- Cost analyses—some Councilmembers have requested cost analyses from staff. These requests can be cumbersome, reprioritize the staff's workload and the staff asked to prepare the analysis may not be the appropriate person for the task, resulting in incorrect or incomplete analyses
- Pay-Go Funds⁵—in the past it appears that Councilmembers have acted as project managers over City projects to which the Councilmember has given pay-go funds
- Transferring funds—some staff have attempted to transfer funds between departments after communicating with a Councilmember
- Calling staff—some staff appear to be receiving phone calls from Councilmembers or Council Aides on the staffs' personal cell phones or home phones. Some of these calls appear to be outside of the normal business day

While the audit was unable to substantiate interference in any of the patterns listed above, the audit concludes that staff and Councilmembers could use more clarity on how the Administration would like to proceed with communication processes surrounding these key areas.

⁵ Every year, each Councilmember receives a budget allocation, known as pay-go funds. Pay-go funds have historically been used by Councilmembers for their chosen capital improvement projects.

Conclusion

This culture of interference has led to some staff across a number of departments regularly reprioritizing their work to meet Councilmembers or their Aides' requests. Some staff are treated poorly by Councilmembers' or their Aides' yelling at, bullying, and threatening them. It also appears that some staff consider Councilmembers to be their "bosses" or "protectors." Finally, while there is a Code of Conduct for Councilmembers and their Aides, it appears that no one enforces its provision on City Council-staff interactions.

Recommendations

- The Administration should establish clear protocols for how staff should prioritize Councilmembers' requests and how Councilmembers' opinions should be incorporated into staff's work.
- Councilmembers and their Aides should comply with the City Council's Code of Conduct.
- The Administration should not tolerate abusive treatment of its staff by Councilmembers or their Aides. The Administration should continue to educate its staff that they should report anytime a Councilmember inappropriately yells at, threatens, or bullies staff.
- The Administration should regularly encourage staff to come forward and discuss concerns about interference and to report interference. The Administration should also regularly remind staff that they are protected from retaliation.
- The City Council should develop procedures to enforce the City Council's Code of Conduct including censure of a Councilmember or Council Aide who breaches public trust or improperly attempts to influence legislation, or violates the rules of conduct. Such procedures should include a mechanism to capture and address concerns regarding the conduct of Councilmembers in a timely fashion, including compliance with Section 218.
- The Administration should develop clear processes and protocols for how staff and Councilmembers should communicate, including communication regarding staff reports, district meetings, project status requests, pay-go funds, transferring funds, and calling staff after business hours or on personal phone lines.

Finding 2.2

Lack of Involvement and Guidance by the Administration Allowed for Mistreatment of Employees Working in Sobrante Park

One Council Aide for the District 7 Councilmember has continually acted abusively and unprofessionally towards staff working on the City-County Neighborhood Initiative (CCNI)⁶ in Sobrante Park. The Council Aide's actions appear to have created an environment that impacts City staff's (as well as County and community partners) ability to perform their jobs. The Council Aide's abusive actions have been ongoing for more than a year and includes

⁶ The City-County Neighborhood Initiative (CCNI) in Sobrante Park is a committee of City and County staff members who, along with community partners and residents work together to improve neighborhood services. In the Sobrante Park neighborhood, the CCNI has a Resident Action Council, a Time Bank to help residents find others that can help with household projects, and has provided mini-grants, and a series of improvements and community events at area parks.

yelling at CCNI committee members, threatening committee members, publicly demeaning committee members, and attempting to have decisions from the committee go through the Council Aide. The audit heard testimony that staff feared this Council Aide because the Council Aide could hurt their career. There was also testimony that interactions with the Council Aide typically become abusive and confrontational.

While this situation has been ongoing for more than a year, it does not appear the Administration became involved to help mitigate the situation or to shield its staff from the continuing verbal abuse from this individual until December 2012.

Abusive conduct is not interference. However, it is a violation of the City Council's Code of Conduct. Further, as noted in finding 2.1, treating staff poorly adds to the culture of interference.

As a result of the Council Aide's actions and the City staff's reactions to the Council Aide, multiple County and community partners avoid interacting with the City on this project. Several individuals that were interviewed stated that the Council Aide's actions are impeding the progress of the program. While the audit has heard testimony that the Council Aide is helpful and has good intentions regarding the project, overall, it appears that the Council Aide's behavior is inappropriate, unprofessional, and forces staff to continuously defend themselves and their work in order to keep the program moving.

The Administration's lack of involvement and guidance in this situation appears to have allowed for the mismanagement of its employees working on the CCNI in Sobrante Park.

Recommendations

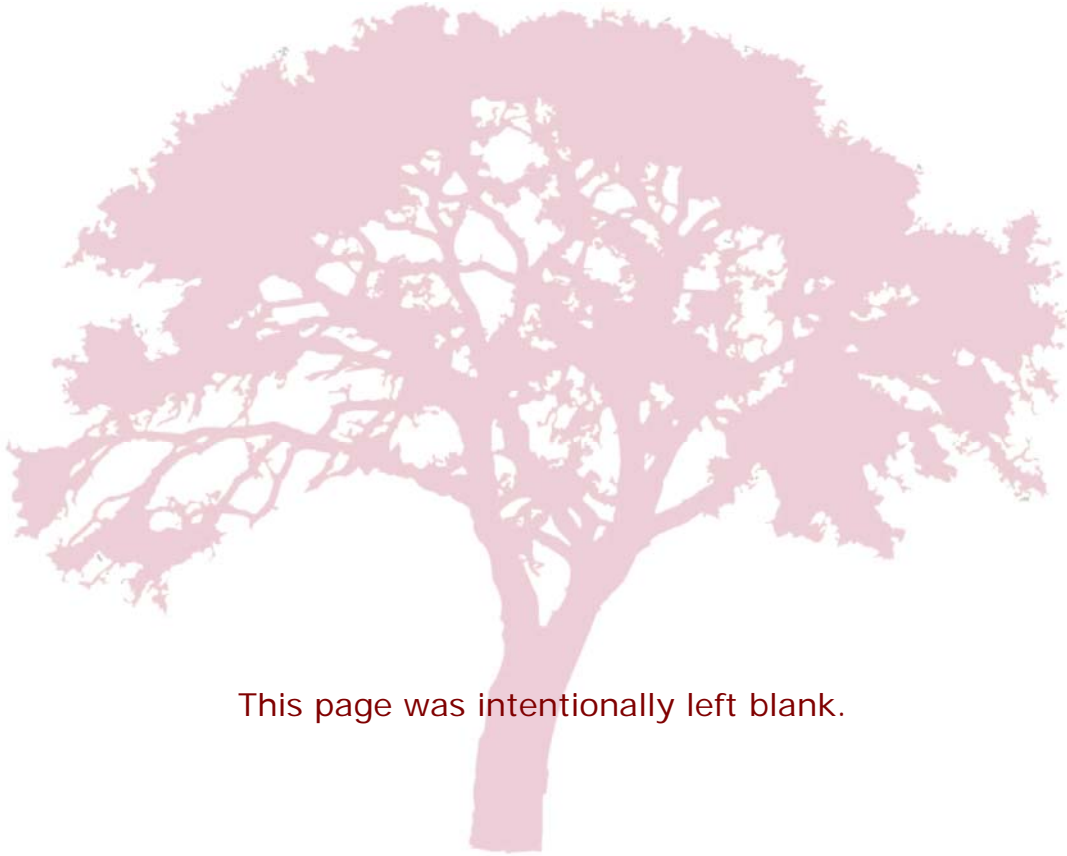
- The City Council should establish guidelines in conjunction with the City Administrator as to how Councilmembers and Council Aides should work with administrative staff on community projects
- The Administration should review how its staff assigned to work on the CCNI in Sobrante Park are being treated and should facilitate improvements to the situation, as needed
- The Administration should implement a general structure on how staff should work with Councilmembers and their Aides on community projects.

RECOMMENDATIONS: Chapter 2

We recommend that:

Recommendation #14	The Administration should establish clear protocols for how staff should prioritize Councilmembers' requests and how Councilmembers' opinions should be incorporated into staff's work.
Recommendation #15	Councilmembers and their Aides should comply with the City Council's Code of Conduct.

Recommendation #16	The Administration should not tolerate abusive treatment of its staff by Councilmembers or their Aides. The Administration should continue to educate its staff that they should report anytime a Councilmember inappropriately yells at, threatens, or bullies staff.
Recommendation #17	The Administration should regularly encourage staff to come forward and discuss concerns about interference and to report interference. The Administration should also regularly remind staff that they are protected from retaliation.
Recommendation #18	The City Council should develop procedures to enforce the City Council's Code of Conduct including censure of a Councilmember or Council Aide who breaches public trust or improperly attempts to influence legislation, or willfully violates the rules of conduct. Such procedures should include a mechanism to capture and address concerns regarding the conduct of City Council members in a timely fashion, including complying with Section 218.
Recommendation #19	The Administration should develop clear processes and protocols for how staff and Councilmembers should communicate, including communication regarding staff reports, district meetings, project status requests, pay-go funds, transferring funds, and calling staff after business hours or on personal phone lines.
Recommendation #20	The City Council should establish guidelines in conjunction with the City Administrator as to how Councilmembers and Council Aides should work with administrative staff on community projects.
Recommendation #21	The Administration should review how its staff assigned to work on the CCNI in Sobrante Park are being treated and should facilitate improvements to the situation, as needed.
Recommendation #22	The Administration should implement a general structure on how staff should work with Councilmembers and their Aides on community projects.



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Appendix A: Communications To the City Council Related to Section 218 Or City Council Roles

February 6, 2003

City Attorney issued a legal opinion to the City Council regarding the City Manager's (now called the City Administrator) powers. The memo included a reminder that Council had no administrative powers and is expressly prohibited from interfering in the administrative affairs/service of the City. (The memo includes several paragraphs reminding the City Council about Section 218 and that violations of this Section can result in forfeiture of office.) The memo also includes a statement that the Administrator holds the power to transfer funds within an agency and City Council approval is required to transfer funds from one agency to another or to appropriate additional money.

June 13, 2003

City Attorney issued an addendum clarifying the February 6, 2003 legal opinion. In the background section the memo restated that the City Council has no administrative powers and is expressly prohibited from interfering in the administrative affairs/service of the City.

May 22, 2006

City Attorney issued a legal opinion to the City Council which included a statement that the Administrator is responsible for controlling and administering the City's financial affairs and that all disbursements of City funds must be approved by the City Administrator or his/her designee (City Charter Section 806) Further, all grants except pay-go grants must be approved by the City Council and pay-go grants shall be authorized, administered, and executed by the City Administrator.

May 24, 2006

City Attorney issued a legal opinion to one Councilmember which clarified the City Council's responsibilities and procedures to deal with possible misconduct, such as inappropriate or unbudgeted use of public funds by one of its members. The City Council can order the following: censure, investigate a violation of the Code of Conduct, Public Ethics Commission investigation, audit by the City Auditor, and reallocation or reduction of a Councilmember's office budget.

June 14, 2006

City Attorney issued a memo to the City Council regarding some City Council offices may not be complying with state law, the City Charter, and City ordinances, policies and procedures in their use of pay-go or other money for improvements and renovations to City owned property. The memo restates that an individual Councilmember has no authority to enter any contract, including a contract for improvements to a City facility. Only the City Administrator has the authority to execute contracts on behalf of the City. The City must bid construction contracts, construction contractors must build public projects in accordance with City and state building codes and specifications, and the contractor must agree to pay state prevailing wages.

June 22, 2006

City Attorney issued a memo to the City Council, as well as the Mayor, City Administrator and Budget Department staff noting that some City Council offices may not be complying with state law, the City Charter and ordinances, policies and procedures when making grants with pay-go and other funds. The memo clarified that the City Charter requires that the Administrator approve all expenditures of City funds and only if they comply with the requirements of the City Charter, state and local laws, and City Council policies and procedures. Further, an individual Councilmember has no authority to enter any contract including a grant agreement.

June 26, 2006

City Attorney issued a legal opinion to the City Council as well as the Mayor, City Administrator and Budget Department staff members expressing that pay-go and all other agreements must be approved as to form and legality by the City Attorney before they are executed.

June 28, 2006

City Attorney issued a letter to the City Council which included a summary of the May 22, 2006 and the May 24, 2006 legal opinions.

June 30, 2006

City Attorney issued a legal opinion to the City Council on the City Administrator's duties regarding the possible misuse of public funds. The Administrator has a duty to not pay requests for expenditures from individual Councilmembers that are inconsistent with the City Charter or any ordinance or policy of the full City Council. The Administrator also has a duty to investigate alleged violations that she suspects may have occurred. If the City Administrator determines an individual Councilmember has made a grant or expenditure without City Council appropriation, the Administrator will report to the City Council and the City Council can decide to deduct the unauthorized amount from the Councilmember's budget for the following fiscal year (City Charter Section 801).

July 18, 2006

City Attorney issued a letter to the City Council which restated that all grants, except pay-go, must be approved by the City Council. The memo further clarifies the difference between grants and contracts. All expenditures relative to improvements to City-owned property are currently governed by City Charter and Municipal Code purchasing rules and require a contract.

December 16, 2009

The Mayor sent a memo to the City Council about Councilmembers' conduct towards administrative staff. If Councilmembers continue to treat staff inappropriately, they will not be permitted to interact directly with staff.

June 30, 2011

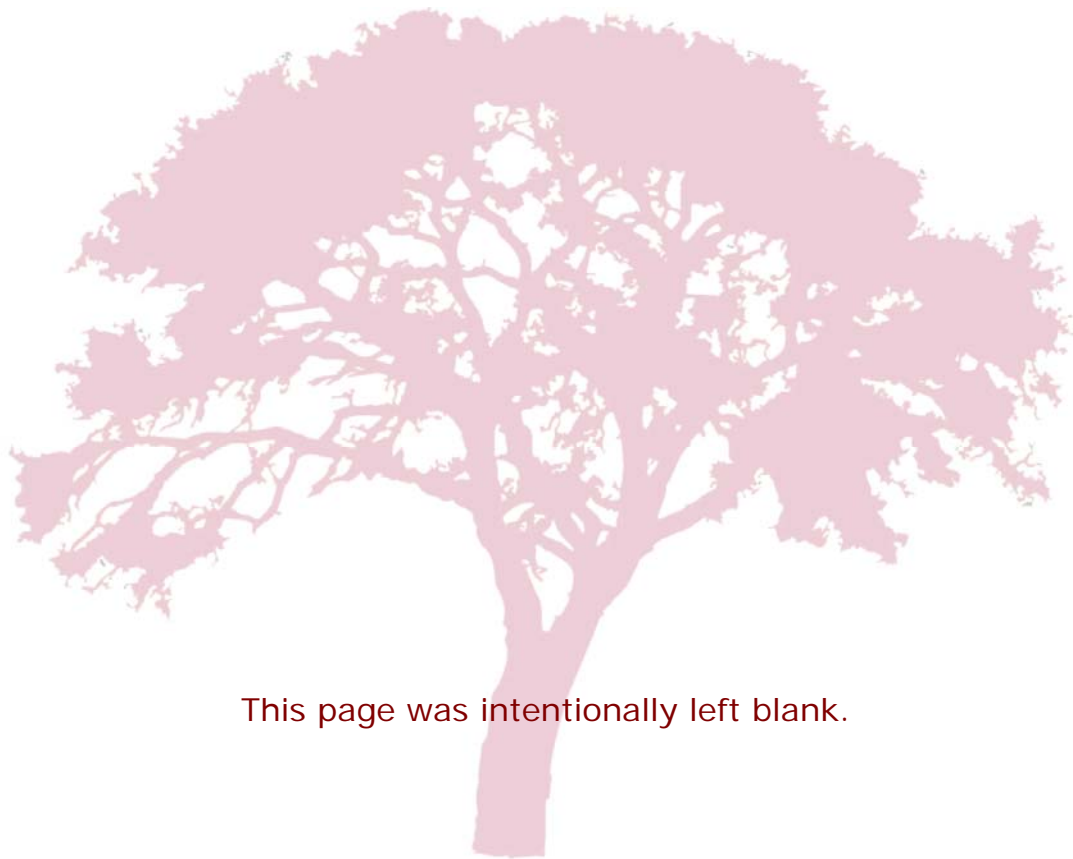
City Auditor issued a letter to the City Council warning that continued involvement in the Revenue Division's staffing assignments is a potential violation of Section 218. The letter included a summary of Section 218.

March 22, 2012

City Attorney issued a letter to all City staff, Councilmembers and City Council member staff about Section 218 including a reminder that it is a violation of the City Charter and a misdemeanor for Councilmembers to interfere in administrative affairs.

March 22, 2012

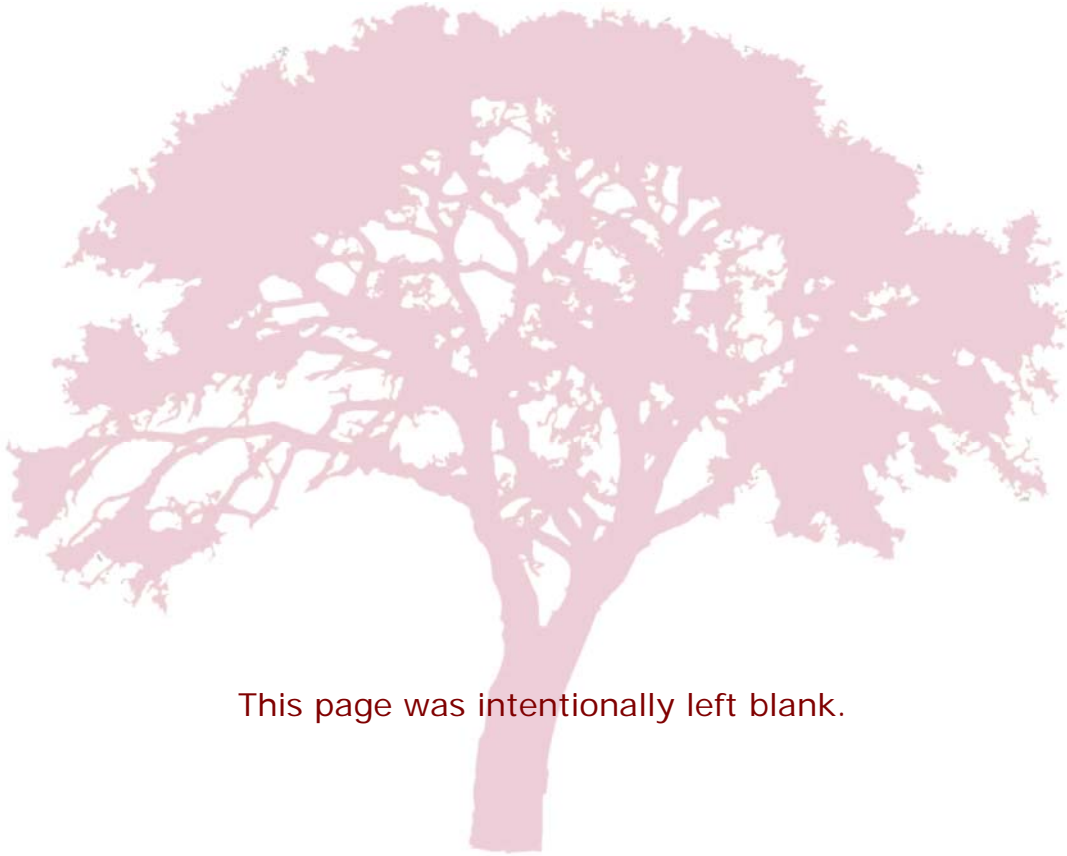
The City Administrator emailed the City Council and all administrative staff regarding the importance of reporting interference and the proper protocol.



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Appendix B: The Charter of the City of Oakland Section 218

Section 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, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, 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 or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator 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 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.

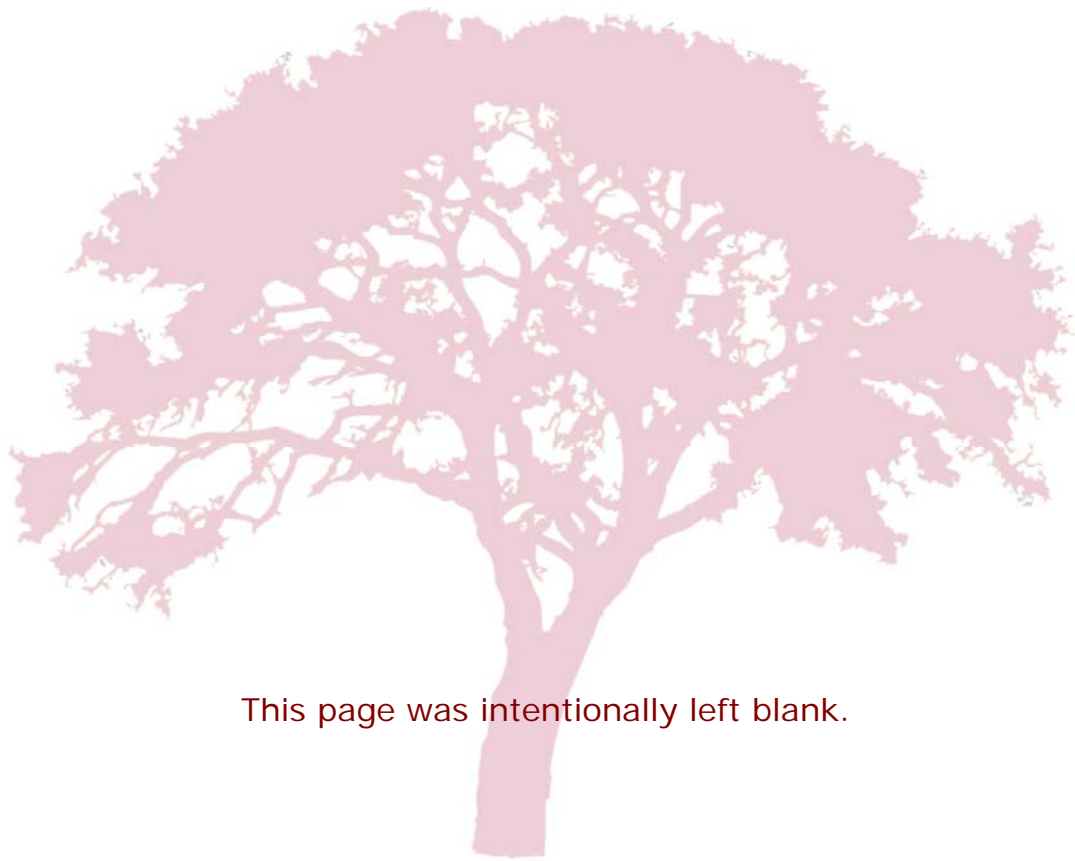


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FINDINGS

The audit found the following:

Finding 1.1	The District 6 Councilmember interfered in the management and renovations for two Oakland recreation centers: the Rainbow Teen Center (also known as the Digital Arts and Culinary Academy) and the Arroyo Viejo Recreation Center (Arroyo Viejo Center).
Finding 1.2	Councilmembers from District 6 and District 7 interfered in Redevelopment's contracting process for an Oakland Army Base demolition and remediation contract (Building 6 contract).
Finding 1.3	The District 6 Councilmember interfered in administrative affairs by threatening to remove City staff from a Redevelopment project in the Councilmember's district.
Finding 1.4	One Council Aide from District 7 interfered in administrative affairs by directing Parking to fix two of the Council Aide's personal parking tickets.
Finding 2.1	There is a general culture of interference within the City that is felt across many City departments and is perceived to come from multiple Councilmembers.
Finding 2.2	One Council Aide from District 7 has continually acted abusively and unprofessionally towards staff working on the City-County Neighborhood Initiative (CCNI) in Sobrante Park. The Council Aide's actions appear to have created an environment that impacts City staff's (as well as County and community partners) ability to perform their jobs.



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RECOMMENDATIONS: Chapter 1

We recommend that:

Recommendation #1	Councilmembers and their Aides should comply with Section 218 of the City Charter, including not directing or ordering administrative staff to meet deadlines set by the Councilmembers. Additionally, Councilmember requests should never result in non-compliance with laws or City policy.
Recommendation #2	The Administration should ensure that its staff, especially its Department directors, Economic Development staff, and Accounts Payable staff, know that Councilmembers do not have the power to give them orders. Further, Councilmembers' requests should never result in non-compliance with laws or the circumvention of City policy.
Recommendation #3	The Administration should regularly remind its staff to report any directions or requests by Councilmembers that have violated or appear to violate any law or City policy, including directions or requests to retroactively process the paperwork for staff hires.
Recommendation #4	Councilmembers and their Aides should comply with Section 218 of the City Charter, including not coercing or influencing staff with respect to any contract or purchase of supplies.
Recommendation #5	Councilmembers and their Aides should comply with Sections 207 and 504.g by not conducting any administrative actions. For example, Councilmembers should not be involved in negotiating, establishing terms, or drafting contracts or grants on behalf of the City. Nor should Councilmembers ever sign to release department funds for expenditures.
Recommendation #6	Councilmembers should comply with Section 218 of the City Charter, including not hiring individuals to work in City departments or programs.
Recommendation #7	Councilmembers and their Aides should complete annual training on Section 218, Non-Interference in Administrative Affairs and should annually certify that he or she has attended the training and agrees to uphold Section 218.
Recommendation #8	Councilmembers and their Aides should comply with Section 218 of the City Charter, including not directing or pressuring staff to remove staff recommendations from City Council or Committee meeting agendas.
Recommendation #9	The City Administrator should further educate staff that Councilmembers can not stop staff from bringing their professional recommendations forward and that staff should immediately report when a Councilmember directs, pressures, or demands that staff should not submit their recommendation or that staff should remove a recommendation from the agenda.

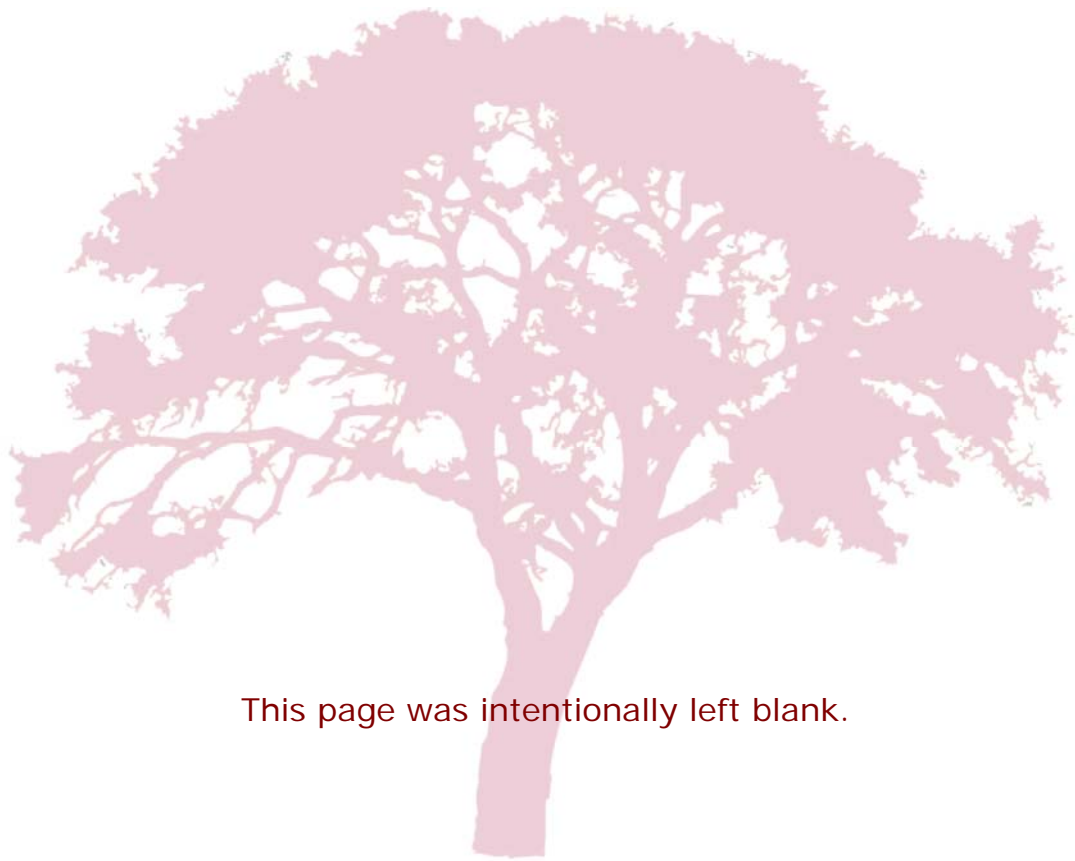
Recommendation #10	Councilmembers and their Aides should comply with Section 218 of the City Charter, including never threatening to fire or remove administrative staff from their positions or an assignment.
Recommendation #11	The Administrator should continue to remind all levels of administrative staff that Councilmembers cannot hire, fire, or remove staff from a project and that any threats of such should be reported immediately.
Recommendation #12	Councilmembers and their Aides should comply with Section 218 of the City Charter, including never attempting to have parking staff or parking enforcement officers dismiss or reduce the amount of the Councilmember's or Council Aide's personal (i.e., non-work related) ticket.
Recommendation #13	The Administration should make it clear to all parking staff and parking enforcement officers, as well as all staff involved with processing or managing other types of fines and fees, that staff should not reduce or dismiss personal (i.e., non-work related) fines or fees at a Councilmember's or Council Aide's request. Staff should always refer Councilmembers and Council Aides to the appropriate process to contest or amend a fine or fee.

RECOMMENDATIONS: Chapter 2

We recommend that:

Recommendation #14	The Administration should establish clear protocols for how staff should prioritize Councilmembers' requests and how Councilmembers' opinions should be incorporated into staff's work.
Recommendation #15	Councilmembers and their Aides should comply with the City Council's Code of Conduct.
Recommendation #16	The Administration should not tolerate abusive treatment of its staff by Councilmembers or their Aides. The Administration should continue to educate its staff that they should report anytime a Councilmember inappropriately yells at, threatens, or bullies staff.
Recommendation #17	The Administration should regularly encourage staff to come forward and discuss concerns about interference and to report interference. The Administration should also regularly remind staff that they are protected from retaliation.
Recommendation #18	The City Council should develop procedures to enforce the City Council's Code of Conduct including censure of a Councilmember or Council Aide who breaches public trust or improperly attempts to influence legislation, or willingly violates the rules of conduct. Such procedures should include a mechanism to capture and address concerns regarding the conduct of Councilmembers in a timely fashion, including complying with Section 218.

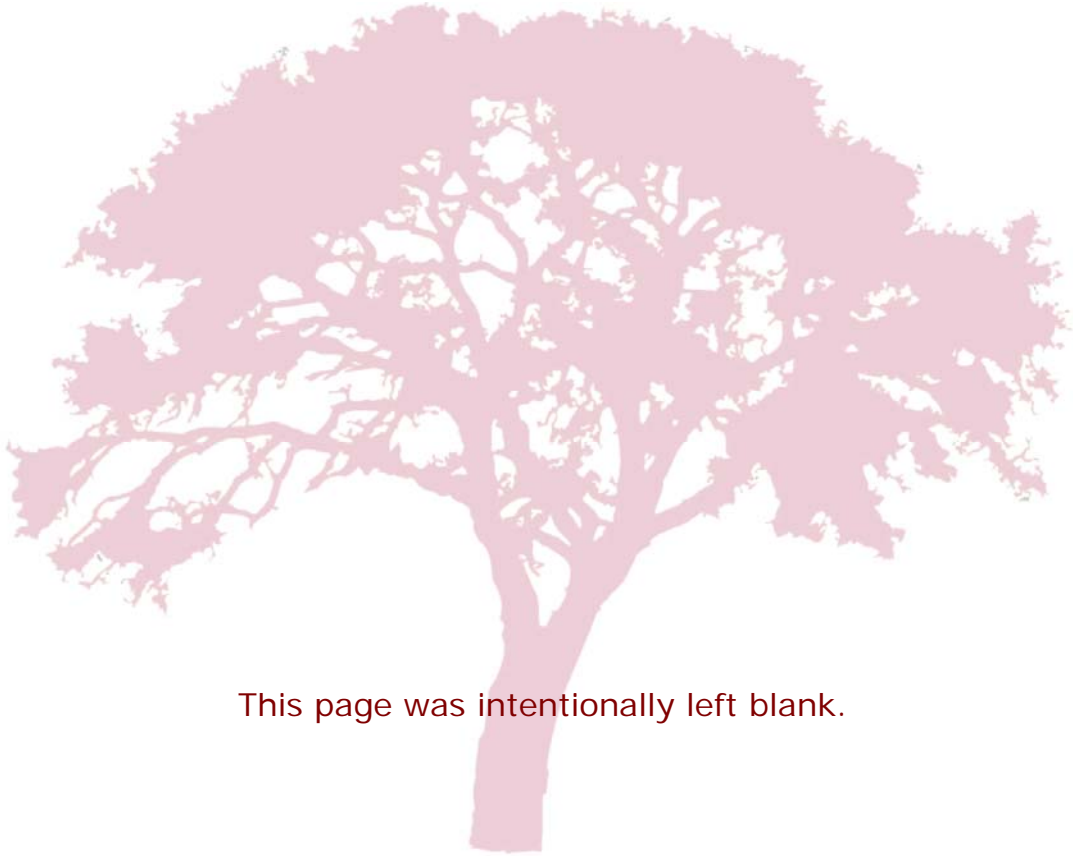
Recommendation #19	The Administration should develop clear processes and protocols for how staff and Councilmembers should communicate, including communication regarding staff reports, district meetings, project status requests, pay-go funds, transferring funds, and calling staff after business hours or on personal phone lines.
Recommendation #20	The City Council should establish guidelines in conjunction with the City Administrator as to how Councilmembers and Council Aides should work with administrative staff on community projects.
Recommendation #21	The Administration should review how its staff assigned to work on the CCNI in Sobrante Park are being treated and should facilitate improvements to the situation, as needed.
Recommendation #22	The Administration should implement a general structure on how staff should work with Councilmembers and their Aides on community projects.



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**ADMINISTRATION'S
RESPONSE**



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2013 MAR -7 AM 10:45



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deanna J. Santana
City Administrator

(510) 238-3302
FAX (510) 238-2223
TDD (510) 238-2007

March 7, 2013

Courtney Ruby
City Auditor
City of Oakland
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612-2007

RE: Response to the Non-Interference in Administrative Affairs Performance Audit

Dear City Auditor Ruby,

The Administration is pleased to submit a response to your recent audit pertaining to non-interference in administrative affairs. The audit focused on potential violations of Section 218 of the City Charter over a three-year period (fiscal years 2009-10 to 2011-12). Section 218 establishes the duties and separation of powers of legislative and administrative officials in the City of Oakland. It is designed to ensure that the City's day-to-day operations--such as contracting, hiring and management of City staff--are shielded from inappropriate political influence. Specifically, Section 218 prohibits City Councilmembers from interfering in the administrative affairs of the City.

The Administration agrees with the statement in the audit report which underscores the intent and importance of Section 218: "the appearance of, or actual occurrence of interference directly undermines the effectiveness of the City Council, as a whole, to govern, as well as the City Administration to conduct City operations."

From the outset of my tenure in August 2011, one of the Administration's major priorities has been to focus on improved governance with respect to Charter alignment and related best practices. In formal and informal communications with City staff--from executive ranks to line staff--I have emphasized that good governance relies on the principle that all parties--elected, appointed or staff--must operate within the ethical boundaries and functional parameters defined in the City Charter.

We are fortunate that the City organization has been receptive to this goal and we are in agreement that there is more work to be completed. During my first week, I sent a letter to all City employees outlining my expectations and management principles: included in that letter was my professional value that ethical leaders shape organizations. Through our efforts, the results of the City Auditor's second annual 2011 Ethical Climate Survey showed that in just one year, the Administration had moved the dial towards greater accountability and improved governance; the survey found "*that employees felt management has improved in creating an environment in which staff is comfortable raising ethical*

CITY AUDITOR COURTNEY RUBY

SUBJECT: Non-Interference in Administrative Affairs Performance Audit

March 7, 2013

Page 2 of 2

concerns, appreciating staff bringing forward bad news and appointing and rewarding people on the basis of performance and contribution." We are pleased that the 2012 Ethical Climate Survey, released in early March 2013, showed additional improvement. The audit stated that:

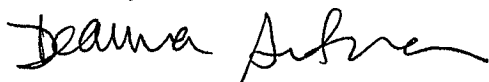
- "The most significant increase occurred in management helping elected officials work within their policy roles and stay out of day-to-day operations."
- It credited "the City Administrator's commitment to business ethics and the focus on non-interference by the City Administrator, City Auditor, and City Attorney" for "impacting the City's ethical culture for the better."
- This trend was underscored by one of the employees who commented that, "I appreciate the City Administrator's open government approach to work and increase in transparent communication with staff, elected officials, and public."

As the audit pointed out, the Administration surfaced a number of issues through our ongoing work or management reviews over the past 18 months which led to this audit. As stated, given that the Administration lacks investigatory and auditing expertise, we focused on management practices that we can strengthen to address these concerns. Although we recognized the need for an independent audit, the request to fund this effort was denied by the City Council. We appreciate the Auditor for conducting this audit, providing a thorough examination and investigation of the facts using the tools, expertise and authority available within the purview of the Auditor's Office. The audit's findings validate the Administration's concerns and point to the need for continued education and training for both City staff and elected officials regarding appropriate, Charter-mandated roles and responsibilities, and about actions that are expressly prohibited under Section 218.

We accept the audit as a work plan for the Administration to advance in the interest of improved governance and best practices. The Administration concurs with the Auditor that City staff must be consistently and routinely informed that they may not take direction from City Councilmembers, and staff must be provided with clear guidance and protocols regarding how to respond to Councilmembers' legitimate requests for information or how to work on community projects. This ongoing communication will clarify the importance of reporting any inappropriate conduct through the proper chain of command without fear of retribution or retaliation. The goal will be an organization that continues to provide quality service that is responsive to the needs of the community and stakeholders, while maintaining appropriate interactions between City Councilmembers and staff.

Once again, we appreciate your work to ensure that Oakland's governing system is operating according to the legal framework of the Charter that will ensure fairness, transparency and effectiveness in meeting the needs of the people we serve.

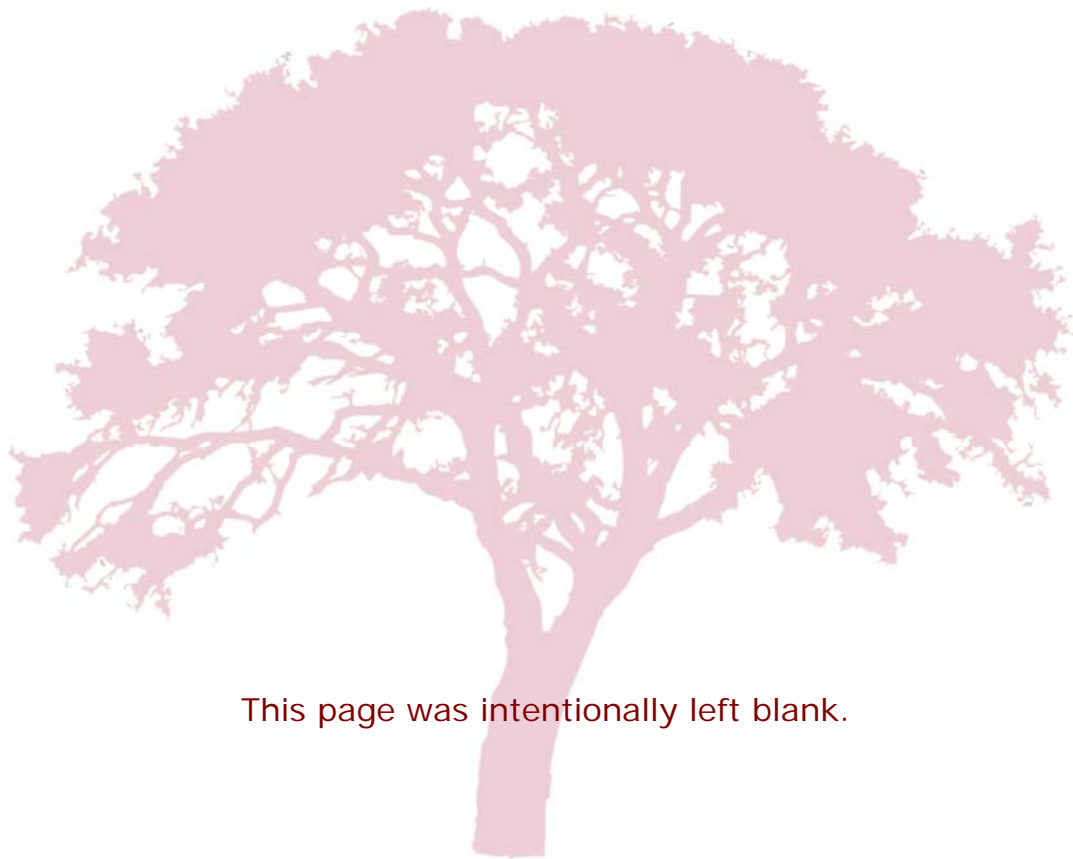
Sincerely,



Deanna J. Santana
City Administrator



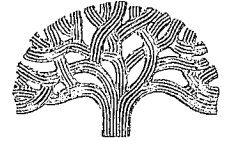
**COUNCIL PRESIDENT'S
RESPONSE**



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FILED
CITY AUDITOR'S OFFICE

CITY OF OAKLAND



2013 MAR -7 PM 4: 02

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

PATRICIA KERNIGHAN
Councilmember
District 2

(510) 238-7002
FAX (510) 238-6910
TDD (510) 839-6451

To: Courtney Ruby, City Auditor

From: Patricia Kernighan, City Council President

Date: March 7, 2013

Re: Audit on Non-Interference in Administrative Affairs

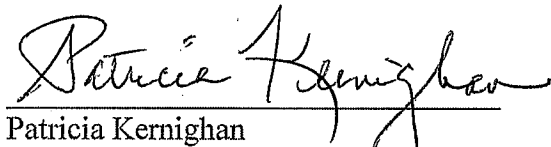
Dear City Auditor,

You have provided me, as President of the City Council, a copy of your audit entitled "Non-Interference in Administrative Affairs," and asked me to submit a written response to the Recommendations therein. Because the President of the City Council is not authorized to speak on behalf of the entire City Council on policy matters without first seeking the input of the full City Council, my response at this time is limited and preliminary.

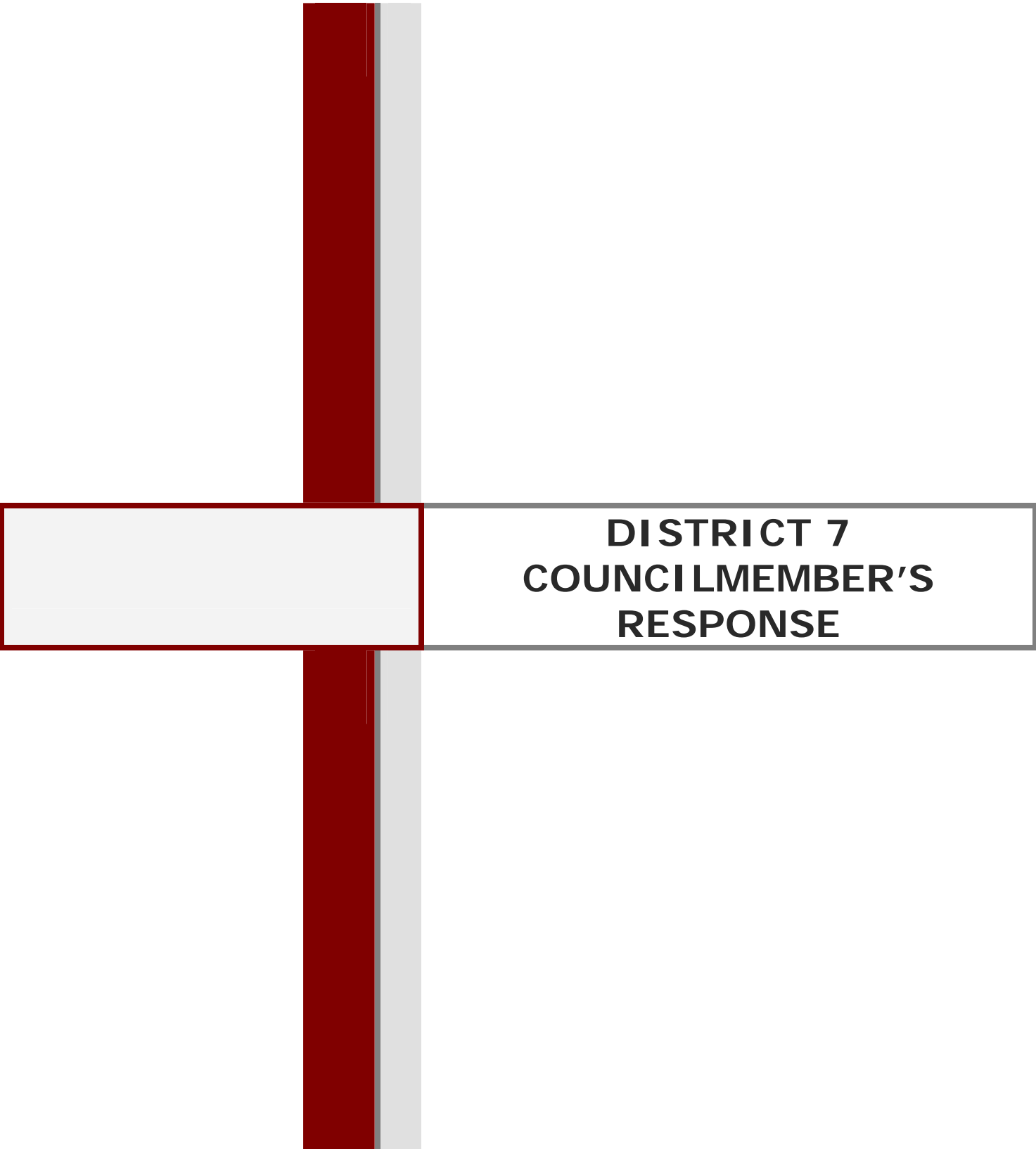
I take note of all the findings and recommendations made in the audit. The issues raised are serious and worthy of great consideration and response, both with respect to the audit's findings of interference as to specific Councilmembers and aides, and as to findings of a general "culture of interference" in administrative affairs at the City. The issues raised by the audit with respect to adherence to City Charter provisions and to the appropriate nature of communications between Councilmembers and Council aides with the staff under the direction of the City Administrator are important and need further exploration and discussion between the City Council and City Administration. In order that this discussion take place and that the full City Council has a means by which to formulate responses to your audit recommendations, I will convene a public meeting of the City Council on that topic. It is my hope that through thorough discussions of the issues, we will arrive at a common understanding that provides clarity and guidance for all concerned as to appropriate standards for communications between individuals in our separate branches of City government. I will also put before the Council the opportunity to review and discuss the Council's own Code of Conduct and what procedures we should adopt to enforce that Code of Conduct. As you noted in the audit, one specific form of enforcement for violations of either the City Charter or the Council Code of Conduct is the use of censure. Currently, there is no adopted process for the imposition of censure. As recommended, I will initiate Council consideration of a set of procedures that Council could use to impose censure on a member of the body when warranted. Finally, I will submit to City Council consideration of a proposal for annual or biannual training

for Councilmembers and Council aides on ethics and compliance with the City Charter and Council Code of Conduct.

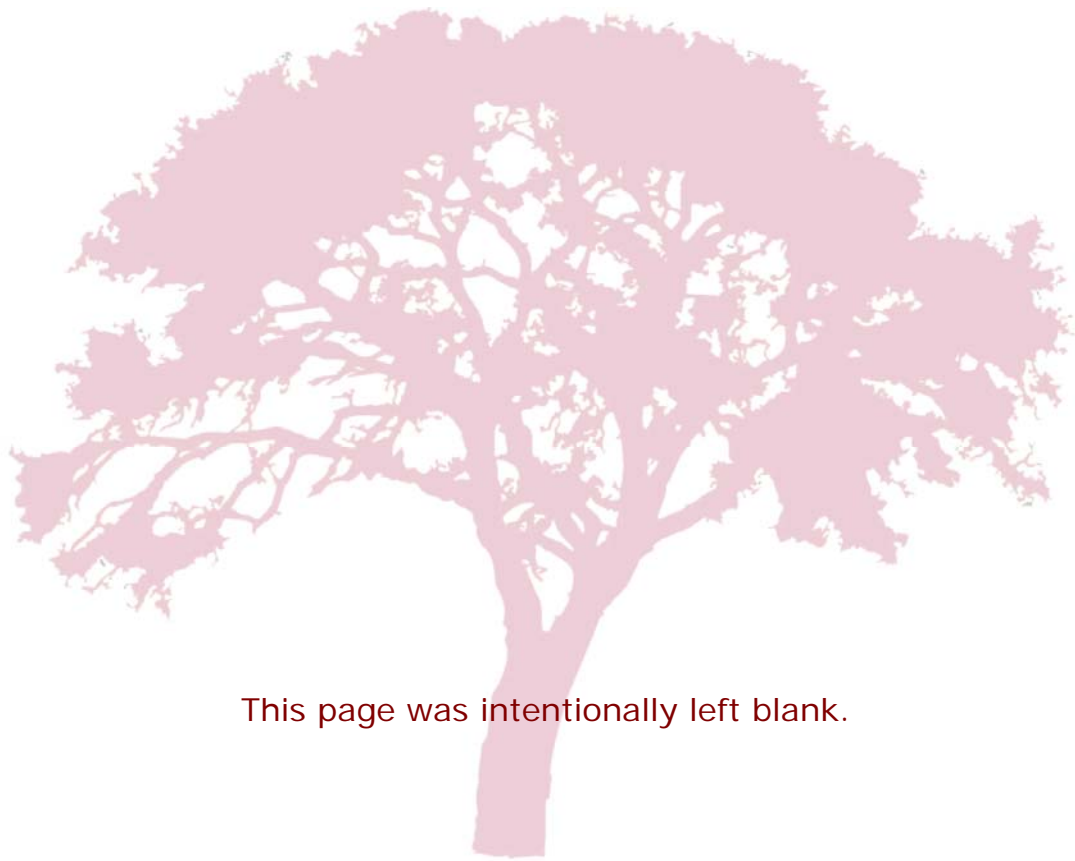
Thank you for conducting this audit on matters that are important to the ethical and effective functioning of our City government, and thus to maintaining the trust of our citizens in the government that serves them.



Patricia Kernighan
Council President, Oakland City Council

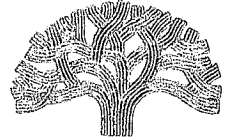


**DISTRICT 7
COUNCILMEMBER'S
RESPONSE**



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CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

LAURENCE E. REID
Vice Mayor
Councilmember District #7

(510) 238-7007
FAX (510) 238-6910

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CITY AUDITOR'S OFFICE
2013 MAR -4 PM 3:39

March 4, 2013
The Honorable Courtney Ruby
Auditor
City of Oakland
One Frank Ogawa Plaza
4th Floor
Oakland, Ca. 94612

Dear Madam City Auditor

As the Councilmember representing the 7th District for the City of Oakland, please accept this formal response to our meeting of February 25th, 2013 at which time you indicated, per your findings under Section 218, the non-interference clause, that I had directed staff to a RFP on behalf of the Turner Group.

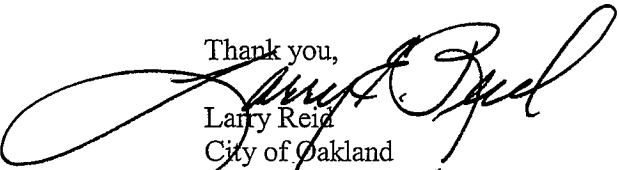
For the record, under no circumstances did I, at any time, direct staff to issue a RFP on behalf of the Turner Group as it relates to the Oakland Army Base Development or any other Development Project within the City of Oakland.

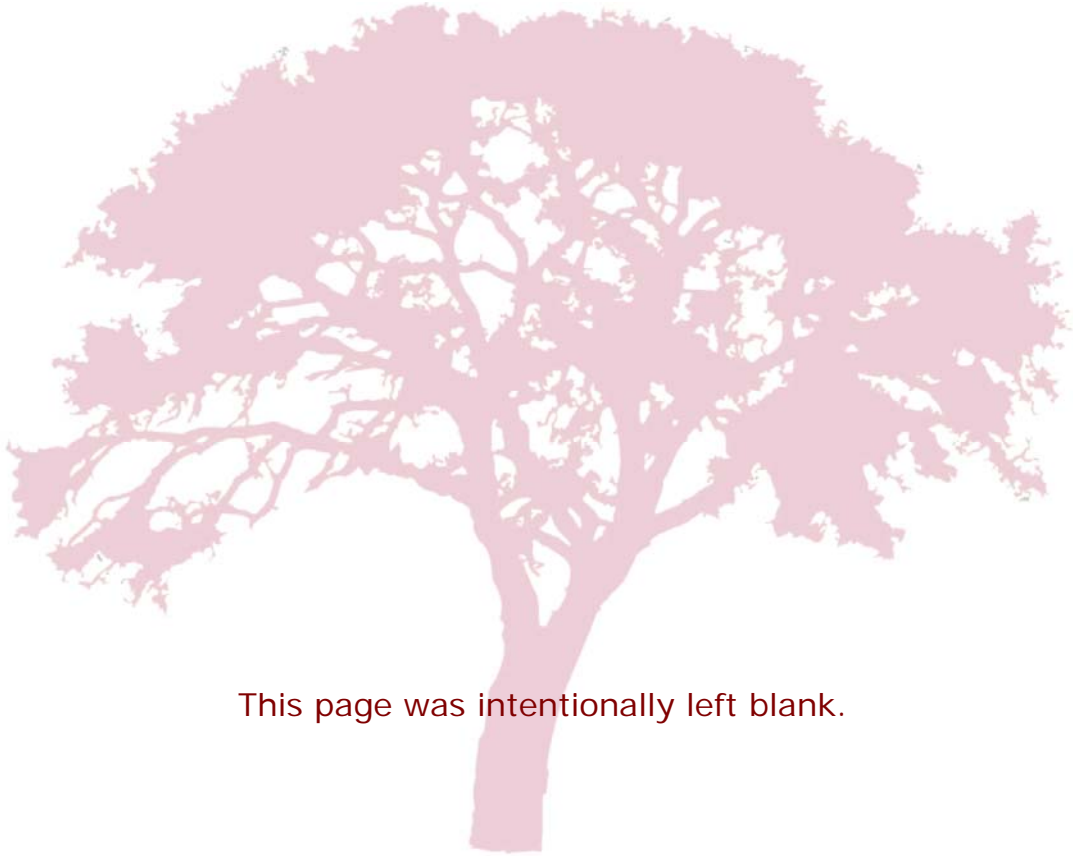
When this item came to the attention of the governing body (Rules and Legislation Committee), there was a concern of the awarding of a contract that had been awarded, though a non-competitive process, in which an outside firm was privileged to the work to be performed, without the possibilities of any locally owned companies to be considered.

From my understanding, there was a contract that was awarded to a local firm that was then rescinded, and awarded to a firm that was not local nor considered to be minority owned or women owned. The concerns of many of us was to re-issue a new RFP so that all local firms could compete and that this would level the "playing field" for all locally owned firms. At no time did I direct staff to issue any RFP's for any one company located in Oakland, and for the record, this was a discussion that was to be considered for a new RFP process for all local firms.

I am available at any time to discuss this with you and to assure you that the process of a Competitive Bidding Process is the concern of my office as well as all of my colleagues.

Thank you,

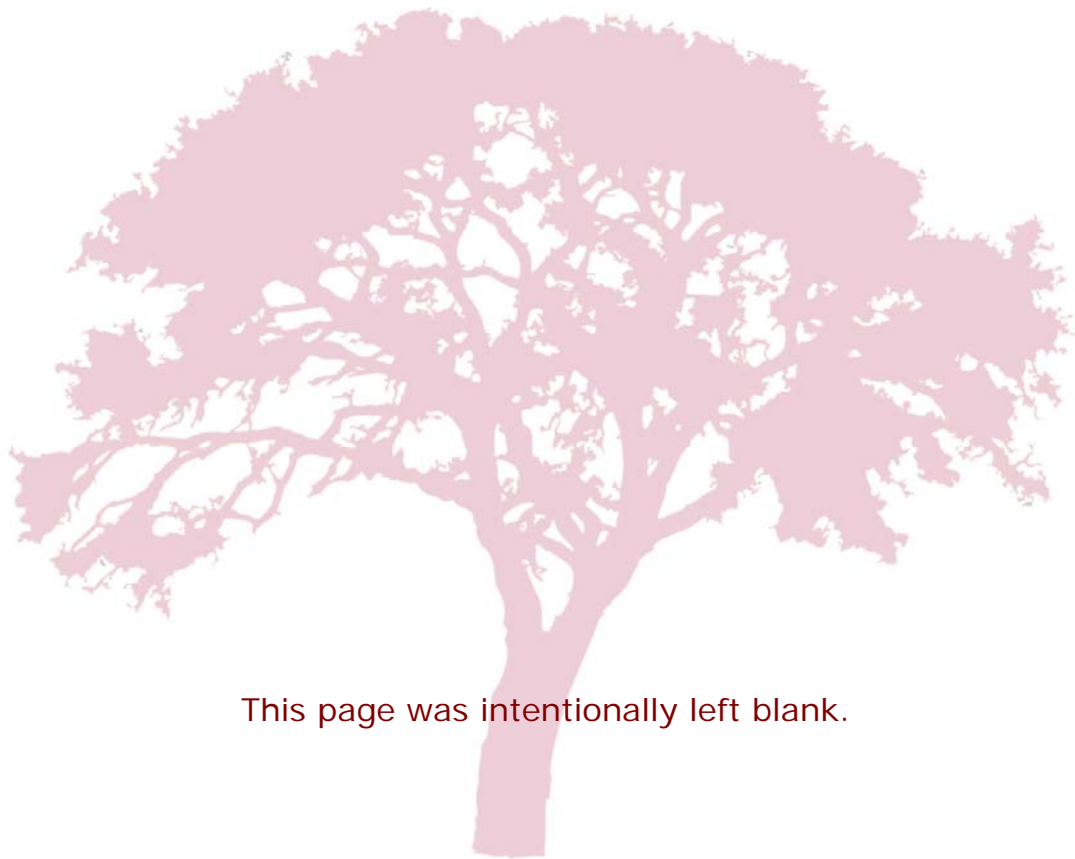

Larry Reid
City of Oakland
Council Member, 7th District



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**OFFICE OF THE CITY
AUDITOR'S RESPONSE**



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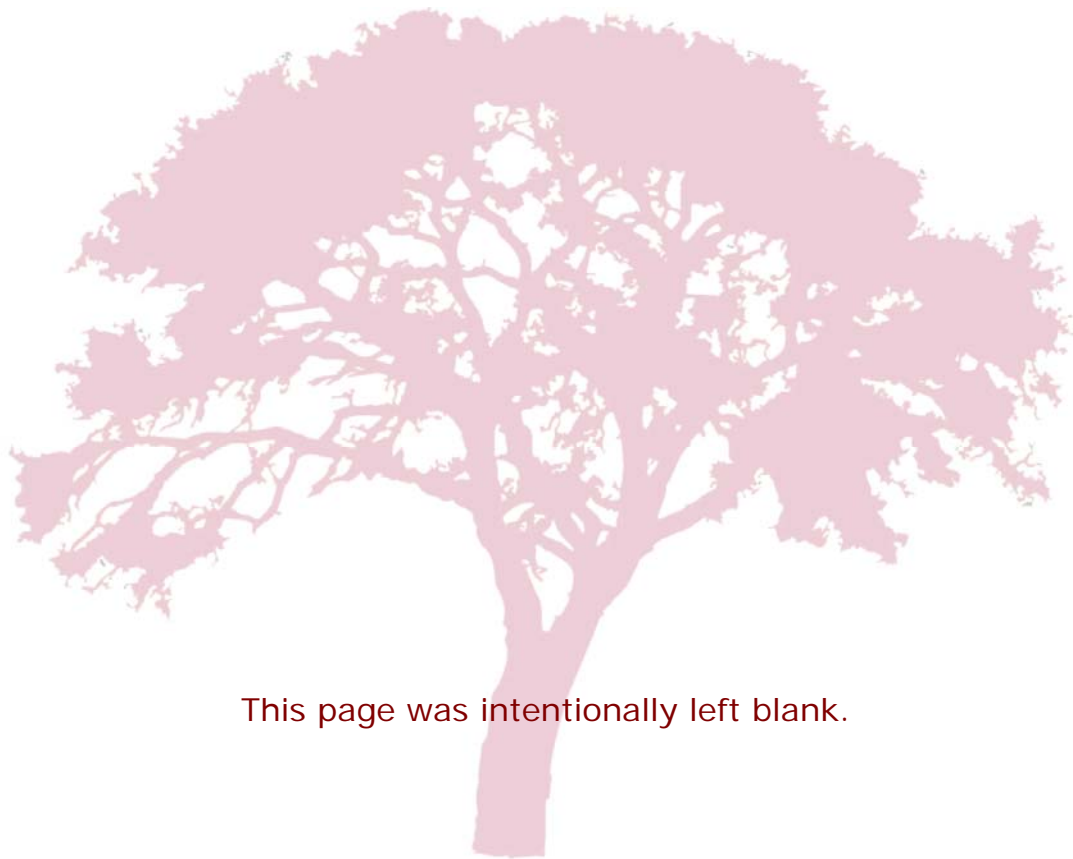
Office of the City Auditor's Response

The audit made 22 recommendations to the City Administration and the City Council. The City Administrator's and the City Council President's responses to the audit recommendations are included in the report.

The City Administrator responded that the Administration concurs with the Auditor that City staff must be consistently and routinely informed that they may not take direction from City Councilmembers, and staff must be provided with clear guidance and protocols regarding how to respond to Councilmembers' legitimate requests for information or how to work on community projects.

The City Council President responded that the issues raised are serious and worthy of great consideration and response, both with respect to the audit's findings of interference as to specific Councilmembers and Aides, and as to findings of a general "culture of interference" in administrative affairs at the City. In order for the full City Council to formulate a response to the audit's recommendations, the Council President will convene a public meeting to discuss. Additionally, the Council President will put before the City Council the opportunity to review and discuss the Council's own Code of Conduct and what procedures they should adopt to enforce that Code of Conduct. Finally, the Council President agreed to submit for City Council consideration a proposal for annual or biannual training for Councilmembers and Council Aides on ethics and compliance with the City Charter and Council Code of Conduct.

The City Auditor's Office will monitor the forthcoming City Council proceedings and request from the City Administrator and the Council President in six months an update on the progress of implementing the report's recommendations so that we may issue a follow-up report to the public regarding the implementation status of the report's recommendations.



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