



CITY OF OAKLAND
Office of the City Auditor

INVESTIGATION

DATE: February 10, 2022

TO: Mayor Schaaf, President Bas, Members of the City Council, City Administrator Reiskin, City Attorney Parker, and Oakland Residents

FROM: City Auditor Courtney Ruby, CPA, CFE

SUBJECT: **The City is Not Requiring Applicants for Telecommunication Facilities Permits to Establish a Sinking Fund as Required by Oakland Municipal Code 17.128.030**

Background

“Telecommunications facilities” include fixed, mobile, or transportable structures, including installed electrical and electronic wiring, cabling, and equipment and supporting structures, such as utility, ground network, and electrical structures needed to provide telecommunication services.

Since 1996, the City of Oakland (City) requires applicants applying for telecommunication facilities permits (telecommunication applicants) to establish a sinking fund account. The sinking fund requirement was established to collect monies from applicants to cover the cost of removing the facility if it is abandoned. The Oakland Municipal Code states:

17.128.030 - Removal of telecommunications facilities.

The project sponsor of a proposed telecommunications facility shall be required to provide proof of the establishment of a sinking fund to cover the cost of removing the facility if it is abandoned within a prescribed period. As used in these provisions, the word "abandoned" shall mean a facility that has not been operational for a consecutive six-month period, except where nonoperation is the result of maintenance or renovation activity pursuant to valid city permits. The sinking fund shall be established to cover a two-year period, at a financial institution approved by the City's Office of Budget and Finance. The sinking fund payment shall be determined by the Office of Budget and Finance and shall be adequate to defray expenses associated with the removal of the telecommunications facility.

(Ord. 11904 § 5.01 (part), 1996: prior planning code § 8502)

Investigation History

In January 2019, a Whistleblower submitted a complaint alleging the City is not requiring telecommunication applicants to establish a sinking fund as required by Oakland Municipal Code 17.128.030.

In response, the Office of the City Auditor (Office) performed a preliminary review of the complaint to confirm understanding of the reported allegation.

After completing the preliminary review, the Office launched an investigation. The Methodology section below details the work performed during the investigation.

Investigation Objectives

The objective of the investigation was to substantiate or refute that:

- Oakland Municipal Code 17.128.030 requires telecommunication applicants to establish a sinking fund; and
- telecommunication applicants are establishing sinking funds.

Investigation Findings

The investigation determined Oakland Municipal Code 17.128.030 requires telecommunication applicants to establish a sinking fund.

The investigation also determined that the City never implemented the Municipal Code requirement for telecommunication applicants to individually establish sinking funds, and instead created an internal sinking fund referred to as Fiduciary Fund¹ 7460, (Fund or Fund 7460) for the purposes described in the above ordinance. The sinking fund, Fund 7460, is reported in the City's financial statements.

The City collected applicants' deposits in Fund 7460 for several years. However, in 2012 the City Attorney's Office advised the City's Planning and Building Department to cease collecting the sinking fund deposits because the City was not collecting deposits for any other application type and thus would be deemed discriminatory. Since 2012, the only financial activity in Fund 7460 is interest earnings. As of FY 2020-21, the balance in the Fund was \$2.3 ~~\$4.1~~ million.

¹ Fiduciary Funds are used in governmental accounting to account for assets that are held in trust for others. In other words, these are the funds that are held by the government as a trustee. They are held on behalf of others, and therefore, they cannot be used to fund the government's own expenses.

Investigation Conclusions

The investigation substantiated the whistleblower's allegation that applicants applying for telecommunication facilities permits are not required to establish a sinking fund. Overall, the investigation determined administrative and policy changes are needed to improve the transparency and accountability of Fund 7460 and the Oakland Municipal Code should be updated to reflect current telecommunication regulations, policies, and practices.

Recommendations

1. The City Administrator, in consultation with the City Attorney's Office, should develop and present to the City Council for its consideration, an amendment to the Municipal Code, eliminating the requirement for telecommunication facility applicants to establish a sinking fund and update the Code to reflect current regulations, policies and procedures.
2. The City Administration should direct the Finance Department to review the sinking fund deposits and determine what should be done with the monies previously collected from applicants applying for permits for telecommunication facilities.

Next Steps

Within six months from the date of this report, the City Administration should provide a written report on the status of the recommendations outlined in this investigation report to the Office of the City Auditor. The Office will publicly report on the status of the recommendations to the City Council and the general public after receiving a report from the City Administration and verifying the status of the recommendations.

Methodology

The Office performed a preliminary review of the whistleblower report to confirm understanding of the reported allegations, and determine if all the following four investigation criteria were met:

1. The alleged incident(s) involved City of Oakland property, infrastructure, employees, officials, or otherwise falls within the City's jurisdiction.
2. If true, the concern meets the definition of "fraud," "waste," OR "abuse."
3. The alleged incident(s) occurred within 12 months of being reported.
4. The alleged incident(s) are not known to be the subject of current litigation.

After completing the preliminary review, the Office conducted an investigation to arrive at the findings and conclusions in this report. This investigation included:

- Contacting the City's Finance Department;
- Contacting the Planning and Building Department;
- Interviewing City Attorney's Office staff;
- Reviewing the Oakland Municipal Code; and
- Reviewing documentation provided by the Finance and Planning and Building departments.



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www.OaklandAuditor.com/Whistleblower

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