Mayor Flynn, Mayor Pro Tem Ramirez, City Council Members and City Clerk Martinez,

Attached please find a letter I sent to the City Attorney on May 19, 2014, regarding the recommendation of the Housing Department to allocate CDBG funds in the amount of $200,000 to an ineligible activity, namely Code Enforcement.

Mr. Martinez, I wish to have my letter to the City Attorney as well as this email received as an official written public comment to be reported at the Public Hearing. I apologize for not reformatting the letter to address the Council directly, but time is short, since I just reviewed the Staff Report and noted no change.

As is explained in more detail in my letter, the City's Code Enforcement Program does not qualify as an eligible activity. It is my understanding that HUD is scrutinizing these expenditures more closely and Oxnard's program is indefensible, as is readily apparent from the rationale for the priorities for allocating investments geographically (see Annual Action Plan, 2014, Attachment No. 3, page 23). That logic simply will not cut it when it comes to Code Enforcement activities since they must meet the test set forth in 24 C.F.R. § 570.202(C).

We all know that many, if not most, neighborhoods in Oxnard house low/moderate income persons. This fact has led to CDBG funding becoming the norm for such things as Code Enforcement and street repairs, and in essence a de facto, albeit illegal, income stream to supplement general fund direct governmental obligations. This has never been the purpose of CDBG. Complaints have fallen on deaf ears for years. However, this manner of allocating CDBG funds is coming to an end and I would say that the City's days are numbered.

I respectfully urge you to reallocate the $200,000 recommended for Code Enforcement to eligible activities, and in particular those activities that address the direct housing needs of our low income residents, whether it be for permanent, temporary or transitional housing programs.

I anticipate that if the City proceeds to allocate CDBG funds to Code Enforcement, our citizens will lose twice: 1) we may end up paying back the funds; and 2) we will have lost the opportunity to spend these valuable dollars on activities that will better serve the needs of our residents. $200,000 is no small change when it comes to federal dollars. Please maximize its value to the citizens of our City and to the City itself.

Thank you for your consideration of this urgent matter.

Sincerely,

Barbara Macri-Ortiz
May 19, 2014

Stephen Fischer, Esq.
Interim City Attorney
City of Oxnard
300 West Third Street, Third Floor
Oxnard, CA 93030

RE: CDBG Annual Action Plan - Code Enforcement Activities

Dear Mr. Fischer:

I am writing you concerning the Housing Department staff recommendation to dedicate $200,000.00 of CDBG funds to the City’s Code Compliance Division of the Oxnard Police Department as a Direct Benefits Activity. It has come to my attention that the proposed use is an ineligible activity under the federal regulations. I direct your attention to 24 C.F.R. § 570.202(c) which sets forth the parameters for the use of CDBG funds for code enforcement activities:

“(c) Code enforcement. Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.” Emphasis added.

The City proposes to use these funds to increase its Code Compliance staff to be able to issue more citations. However, this activity is an ineligible activity under 24 C.F.R. § 570.207(a)(2) because it is a general government expense, i.e. expense required to carry out the regular responsibilities of the City.
In order to be an eligible activity, the code enforcement activities must be targeted at the prevention or elimination of a slum or blighted area, and 1) the code enforcement activity must be designed to address one or more of the conditions which contributed to the deterioration of the area; and 2) the code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

As I understand the prerequisites to meet this test, the City must first officially designate the specific area to be served and such area must meet the definition of a slum, blighted, deteriorated or deteriorating area under State law. There are very specific standards that must be met through a public hearing and review process in order for the City to make such a designation. The designated area must be an area where a majority of the residents are low- and moderate-income persons and the designated area must have a substantial number of deteriorated or deteriorating buildings throughout the area. The City as a whole cannot qualify as such an area.

Furthermore, proper designation of an appropriate area is just the first step. The City’s building inspections for code violations in the designated blighted area must be part of a comprehensive effort to arrest the decline of the area. The City must have both a plan and the resources to perform the improvements, rehabilitation and services that are needed in order to arrest the decline of the area. It is no secret that the City does not have a plan or the financial resources to engage in the improvements, rehabilitation and services that would be necessary to meet the second prong of the requirement, even assuming that it was able to make the proper designation.

Since the City has not undergone a legally adequate process to identify and designate a particular area of the City, and has no plan to dedicate sufficient resources to make the necessary improvements and upgrades that would be required, the City is prohibited from allocating any CDBG funds to cover code enforcement activities.

I would appreciate your bringing this matter to the attention of the Housing Department. I am requesting that the staff recommendation in favor of Code Compliance be withdrawn and that these funds be programmed for activities that directly contribute to addressing the greatest housing needs of the residents of our community, whether through permanent, transitional or temporary housing solutions.

I have also recently learned of ongoing litigation that was brought by a number of
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RE: Allocation of CDBG Funds to Code Compliance
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community groups against the City of Pittsburgh, Pennsylvania, concerning the City’s allocations of CDBG funds which are being challenged as ineligible general government expenses. Depending on the outcome of this litigation, the City of Oxnard’s longstanding practice of spending CDBG funds on street and alley repairs, may also need to come to an end.

For the record, I should also state that I am concerned about a statement that was made at the May 6, 2014, City Council meeting by William Wilkins regarding his CDBG funding recommendations. These recommendations were not provided to the public in advance of the public hearing because as explained by Mr. Wilkins, he wanted to first consult with Council members. From this statement, it can be surmised that he was conducting a serial vote or poll of the council members in violation of the Brown Act.

Finally, since the public hearing was not recessed to a date certain, it appears that the hearing will have to be re-noticed in conformance with public hearing requirements. Please ensure that this procedural requirement is met so that this process will not be further delayed.

Please give me a call if you have any questions. I thank you for your prompt attention to this matter.

Sincerely,

[Signature]

Barbara Macri-Ortiz

cc: Via email
    Interim City Manager Karen Burnham
    Mayor Tim Flynn
    Mayor Pro Tem Carmen Ramirez