

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: 2

Item: Appropriation Ordinance and Recent Efforts to Address the Issue of Mid-Year Budget Authority

Since the issue of budget authority relative to mid-year changes between the executive and legislative branches surfaced last October, the following efforts have been made to address this issue within the Appropriation Ordinance:

IBA Appropriation Ordinance Proposal (First Reading: February 5, 2007)

- “Section 1. That section 14 of the Appropriation Ordinance is amended as follows:

Section 14. Budget change authority granted to the Mayor requires City Council approval if such action is expected to result in reducing, substantially or materially, altering or eliminating a program or service level being provided to the community, based upon the Fiscal Year 2007 Budget.”

This ordinance was passed by a vote of 5–3 and was scheduled for second reading on March 5, 2007.

Council President Peters’ and Council President Pro Tem Young’s Compromise Proposal (Proposed March 5, 2007)

- “Any cumulative reduction in spending resulting from Mayor action in an amount of 10% or \$4 million, which ever is less, in a particular department will require an amendment to the Appropriation Ordinance by the City Council. This may be triggered by either the first budget adjustment that meets this threshold or a later budget adjustment that has the cumulative of exceeding this threshold.”

- “Immediately upon elimination of any program or service affecting the community, not requiring an amendment to the Appropriation Ordinance as described above, the Mayor shall inform the City Council and City Clerk by providing a memo fully describing the change, any resulting service impact and the corresponding fiscal impact.”

This proposal was supported by Mayor Sanders and several community groups.

IBA Proposed Revisions to Compromise Proposal (March 5, 2007)

- “~~Immediately upon~~ **Prior to reduction or** elimination of any program or service affecting the community, not requiring an amendment tot the Appropriation Ordinance as described above, The Mayor shall inform the City Council and City Clerk by providing a memo fully describing the change, any resulting service impact and the corresponding fiscal impact.”

These items were continued to the City Council meeting of April 10, 2007.

City Attorney Opinion Issued

On April 6, 2007, the City Attorney issued an opinion on the matter of budget authority, which concluded the following:

“The Mayor has only that authority that the Charter provides or the Council grants by ordinance or resolution. However, the Mayor has inherent discretion, if not a duty to seek economic savings. This discretion may not extend so far as to usurp legislative authority. Adopting a budget is a legislative function of the Council. In contrast, proposing and implementing a budget are functions granted to the Mayor. Both parties have important roles after adoption of the budget and the appropriation ordinance. Mid-year adjustments are anticipated by the Charter, and both parties must participate. The Mayor must make recommendations to the Council, which must approve and authorize the transfer of appropriations. The parties may not act unilaterally to frustrate the duties and responsibilities of the other.

As this review illustrates, there is no bright line to draw in the absence of specific facts that determine exactly where the Mayor’s and the Council’s authority begins and ends in all City fiscal matters. Each has specific duties and powers. Yet, for the City to function effectively, both must act in the interdependent manner established by the Charter. Whether one party improperly contravenes the authority of the other necessarily must be determined on a case-by-case basis.

Although the Mayor and Council have experienced some challenges under the new system of governance, the answers to most questions are found in the Charter. For the most part, the Charter provisions contemplate a system that should work – a system of checks and balances, cooperation, oversight and independence. Nonetheless, improvements could be made to the Charter, including clarifying the process for mid-year adjustments to the appropriation ordinance under the Strong Mayor. These issues will likely be addressed by the Charter Committee and the Council in the next several months. In the meantime, we will assist the Mayor and Council on specific issues as they arise.”

At the City Council meeting of April 10th, quoting Section 11.1 of the City Charter, which states that Council responsibility with respect to the raising and spending of taxpayer money cannot be delegated, the City Attorney verbally opined the proposals under consideration did not meet this legal test.

Next Steps

Our office, along with the Mayor’s office and the City Attorney, are continuing to explore language for the FY 2008 Appropriation Ordinance, or an alternative ordinance, that would effectively, cooperatively and legally address the role of both the executive and legislative branches with regard to mid-year budget changes. We have formed a working group made up of myself, Jay Goldstone, Julie Dubick, Mary Lewis, Mark Blake, Larry Tomanek, Penni Takade, Tom Haynes and Jeff Kavar. It is the preliminary general consensus of this group that this issue can be effectively addressed through either the Appropriation Ordinance or a separate ordinance.

For Fiscal Year 2008, it is our goal to develop consensus language for either the Appropriation Ordinance (AO), or for a separate ordinance to be presented along with the AO, utilizing as a starting point the most constructive and most agreed upon language from earlier proposals. We will be meeting weekly in an effort to bring a draft to the Budget & Finance Committee as currently scheduled on July 11, 2007.

[SIGNED]

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