
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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City Council's Authority to Initiate a Mid-Year Revision of the Budget and Amendment to the Appropriation Ordinance

BACKGROUND

The City Council adopted the City's first Reserves Policy in July 2008. Since its inception, the Policy has stated the following with respect to the mid-year use of the Appropriated Reserve:

“Recommendations to use these funds would be brought forward by the Mayor or the City Council and would require approval by a majority of the City Council.”

In September 2010 the CFO proposed a number of revisions to the Reserves Policy including eliminating the language allowing the City Council to independently make recommendations and take action to access the Appropriated Reserve mid-year. This revision was proposed as a result of discussions with the City Attorney's Office. After further discussions with the IBA, the CFO agreed to reinstate the following language for the Appropriated Reserve:

“Recommendations to use these funds would be brought forward by the Mayor or the City Council consistent with the Budget Principles agreed to by the Mayor and City Council and would require approval by a majority of the City Council.”

Per the Budget Principles, this language would have reinstated Council's ability to make independent decisions to use the Appropriated Reserve after first requesting a recommendation of the Mayor. If the Mayor did not respond, the Council could proceed with their desired action.

This change and other revisions were discussed at the September 15, 2010 Budget and Finance Committee meeting. At that meeting, the City Attorney's Office addressed the issue of the City Council's authority to initiate uses of the City's reserves and raised concerns related to Charter Section 73 which could limit the Council's authority in this area.

The IBA noted that the Statement of Budgetary Principles was agreed upon by the Mayor and the City Council to address this exact situation. Statement 3 "Principles-Appropriation Ordinance" requires the Council to first request a funding recommendation of the Mayor; the Mayor has 30 days (or a later alternative date as determined by the Council) to respond. If the Mayor does not respond within the deadline, the Council in consultation with the IBA, may "make and adopt changes applicable with Charter provisions."

Furthermore, Statement 6 of the Principles states that "The Council may restore a program or service which has been recommended for elimination or reduction by the Mayor by docketing and considering such action upon the request of four Council members."

In response to concerns raised by the City Attorney's Office, the Committee requested the City Attorney to "a) provide a legal analysis regarding the Statement of Budgetary Principles, the Reserves Policy and the City Charter and determine steps to harmonize the three documents; and b) determine what actions could be taken to permanently permit the City Council to initiate requests for the use of the reserves."

City Attorney's November 5, 2010 Memorandum

On November 5, 2010 the City Attorney issued a Report to the Budget and Finance Committee which stated the following:

"Charter Section 73 recognizes that there may be a situation where funds appropriated for a particular purpose are greater than needed, while other appropriations may be insufficient to meet actual needs. Charter Section 73 states: Upon the written recommendation of the Manager, the Council may at any time transfer all or part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated for the same Department or office...."

“A transfer of funds under Charter Section 73 is only available where there are excess funds available for redistribution without affecting the purpose of the original appropriation and would therefore not require amending the budget or the Appropriation Ordinance. The Council is limited to approving or denying the Mayor’s recommended transfer.”

The City Attorney also notes in this memorandum that the Charter is silent with respect to mid-year budget revisions, and:

“as such, the budget revision process would be similar to the process used to adopt the annual budget as set forth in Charter section 290(b) and would begin with the presentation of a revised budget to the Council by the Mayor.”

Based on this, the requirement for the Council to first secure a proposal from the Mayor to utilize the Appropriated Reserve during the year, would also apply to any future mid-year budget reduction process to address a projected deficit. Had the Council desired to take the approach used in December 2009 to address the FY 2012 budget mid-year, rather than waiting for the regular budget process, the Council would have been prohibited from doing so without first receiving a proposal from the Mayor. The City Attorney restated this position in a subsequent report to the Budget and Finance Committee issued on January 7, 2011.

To date the IBA has been advised verbally by the City Attorney’s Office that a charter amendment will likely be required to remedy this situation.

FISCAL/POLICY DISCUSSION

This issue was docketed for further discussion at the February 9, 2011 Budget and Finance Committee meeting but was continued to a future meeting due to time constraints and is now docketed for the March 2nd Committee meeting.. During the discussion of City Council Budget Priorities at the February 14, 2011 Council meeting this issue surfaced again. Several Council members raised concerns about the limited authority of the Council with respect to mid-year budget revisions based on the City Attorney’s recent interpretation of the charter. The City Attorney was asked to relook at this matter and provide guidance on a possible remedy, notwithstanding a Charter amendment, such as including language in the Appropriation Ordinance to effectively address this matter.

Councilmember DeMaio and the IBA have made the point on several occasions that a clear distinction exists between the Appropriated Reserve and the Emergency and Unassigned Reserves. Funding for the Appropriated Reserve is specifically identified and appropriated to a single line item account “Appropriated Reserve” in the adopted budget. This is not the case for the Unassigned and Emergency Reserves which are NOT appropriated. Also, in the case of the Appropriated Reserve, the Mayor has the

opportunity each year to veto this specific line item during the regular budget process. To date he has not done so.

The City's Reserve Policy states that an Appropriated Reserve may be maintained for the purpose of paying for unanticipated operational needs that arise during the fiscal year, but which **were not anticipated during the budget process**. The suggestion put forth by the City Attorney- to specifically identify in the Appropriation Ordinance how the Appropriated Reserve will be used during the fiscal year- is contrary to the purpose of an Appropriated Reserve and is not practical. From a financial management perspective, the goal is to NOT expend the reserve, allowing it to fall to fund balance at the end of the year, as a resource for the next fiscal year. The Appropriated Reserve should only be used if a clear need has been identified mid-year that could not have been anticipated at the time of budget adoption.

It is unreasonable for a legislative body to have a single shot at getting the budget "perfect" with no opportunity to make independent mid-year revisions if determined necessary. A budget is a spending plan based on hundreds of critical policy and financial decisions made in June prior to the new fiscal year. As the budget rolls out during the course of the fiscal year, new and updated information becomes available which may warrant reconsideration of a particular decision. Given the current interpretation, Council has no ability to even consider reversing a budget decision that has been shown to have a negative impact on the community or react to a critical community need or a revenue short fall. Nor do they have the ability to address an emergency situation without first receiving a proposal from the Mayor.

This appears inconsistent with the annual budget process whereby the Charter vests the legislative body with the authority to make final revisions to the Mayor's proposed budget as well as the ability to override any Mayoral veto of the budget, hence giving the Council final budget decision making authority.

Alternative Solutions for Consideration

A. Revising the Statement of Budgetary Principles

The Statement of Budgetary Principles is an agreement developed between the Mayor and City Council and adopted by the Council which recognizes the respective fiscal roles of the Mayor as Chief Executive Officer and the Council as the legislative and policy setting body; and in light of these roles, establishes a frame work for administration of the adopted budget during the course of the fiscal year and facilitates communication on fiscal matters between the two branches.

With respect to mid-year revisions and the Appropriation Ordinance, the Principles state the following:

“The Council shall have no authority to make or adopt changes in the Fiscal Year (2011) Budget without first receiving a funding recommendation of the Mayor. The Mayor will provide such funding recommendation within either 30 calendar days of the Council request, or such later period as contained in the request of the Council. If the Mayor does not respond within the deadline, the Council, in consultation with the IBA, may make and adopt changes consistent with applicable Charter provisions. “

As discussed earlier in this report, when discussions regarding this matter first surfaced in November, the Mayor’s Office expressed continued support for this language and had agreed to reinstate the following language into the City’s Reserves Policy:

“Recommendations to use these funds (ie Appropriated Reserve) would be brought forward by the Mayor or the City Council consistent with the Budget Principles agreed to by the Mayor and City Council and would require approval by a majority of the City Council.

We understand the Mayor’s Office remains supportive of such language being inserted into the Reserves Policy. However, it should be noted that in the case of disagreement between the two branches regarding the use of the reserves, the Principles are not binding and the Charter would trump the Principles. Furthermore, this same issue would need to be negotiated with each new Mayor providing no stability with respect to the City Council’s authority to make mid-year budget revisions.

B. Identifying New Language In the Appropriation Ordinance

At the February 14 City Council meeting, Councilmember DeMaio requested the City Attorney to advise the Council on how the legislative body could craft Appropriation Ordinance language so that the Council has the ability to direct budgetary allocations mid-year using the Appropriated Reserve. As discussed earlier, the City Attorney has indicated that the uses of the Appropriated Reserve would need to be specifically identified in the Appropriation Ordinance to allow the Council to access the reserves without first having a Mayoral recommendation. Given the very nature and purpose for establishing an Appropriated Reserve-i.e. to fund unanticipated operational needs- this does not appear to be a practical solution.

Alternatively, we recommend the Budget and Finance Committee request the City Attorney to explore whether including new language, which defines possible broad policy uses of the Appropriated Reserve, would satisfy legal requirements. Such language might include:

- To restore a service or program in order to address detrimental impacts to the community of a prior budget reduction

- To increase a service or program in order to address a critical community need
- To provide matching funds for an unanticipated grant that will benefit the community
- To maintain a critical service or program in the event of a revenue shortfall;
- To address a community emergency for which the Mayor has not recommended use of the Emergency Reserve

These are examples only and such language would need to be carefully considered to ensure it is not overly restrictive.

Charter Amendment

The City Attorney's Office has indicated to the IBA that a Charter amendment may be necessary to provide the Council the authority to make mid-year revisions to the budget. This issue could be considered as part of the charge of a future Citizens' Charter Review Commission. A number of other issues with respect to the Strong Mayor/ Strong Council form of government require further clarification as well. On February 14, 2011 Councilmember Todd Gloria issued a memo to the Council President requesting that this and other charter issues be referred to the Rules Committee for possible submission to the voters in 2012.

On March 8, 2011 the residents of Los Angeles are being asked to vote on a Charter Amendment which would create two accounts within the existing Reserve Fund for the purpose of discouraging the use of emergency funds for mid-year budget needs rather than true emergencies and to tighten the criteria for the use of the Emergency Reserve:

- A Contingency Reserve Account would be established as the source of funding for unanticipated expenditures and revenue shortfalls; the Council must establish by ordinance policies for its funding and use. This funding would be in excess of the required funding amounts for the Emergency Reserve Account. No amount of funding would be mandated annually. Its use would require a majority Council vote.
- An Emergency Reserve Account would be established with specific funding requirements. To access this account the Council would be required to make a finding of "urgent economic necessity" by a 2/3 vote with Mayoral concurrence or/in the event of a Mayoral veto, by a 3/4 vote of the Council.

The Contingency Reserve Account in LA would be comparable to the City's Appropriated Reserve. It should be noted that the concept of establishing a small Appropriated Reserve in order to avoid the use of Emergency Reserves was initiated and

implemented by the City Council and IBA in 2008. The City also has an Emergency Reserve and Unassigned Reserve which both require a recommendation of the Mayor and approval by City Council, all three reserves are counted toward the annual funding requirement which is 7% of General Fund revenues for the current fiscal year. An interesting concept for consideration from the LA Charter amendment is requiring a higher threshold for Council approval for use of the Appropriated Reserves in the event that the Mayor does not concur.

CONCLUSION

This report is for information and discussion and to receive further direction from the Committee with respect to this matter. Councilmember Gloria has recommended that this matter be referred to the Rules Committee to be considered with other potential charter changes. The Budget and Finance may want to further flush out this budget-related matter prior to forwarding it to the Rule Committee for their consideration.

[SIGNED]

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