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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** June 13, 2011

**IBA Report Number:** 11-36

**Budget & Finance Committee Meeting Date:** June 15, 2011

**Item Number:** 1

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# Council Policy 100-06: City Council Funding of Community Projects, Programs and Services

## OVERVIEW

In September 2010, the City Attorney issued a Memorandum of Law (MOL) regarding the “Budgeting, Appropriation, and Expenditure of Infrastructure Funds.” The MOL discussed the City’s practice of carrying over annual savings from each Council Office budget for use in a subsequent year to allocate to community projects at the discretion of each Councilmember in their district. The City Attorney opined that this process was inconsistent with the requirements of the budget process as outlined in the City Charter. Because of the MOL, requested allocations for use of these funds were suspended during Fiscal Year 2011, and the balance of the Infrastructure Funds fell to the City’s General Fund Reserve.

At the Budget and Finance Committee meeting of April 20, 2011, the IBA presented Report No. 11-23 regarding “Proposed Council Policy for Community Programs and Projects Funds” which discussed the background of the Council Infrastructure Funds first established in Fiscal Year 2002, described the concerns as outlined by the City Attorney, and suggested changes to past practices, including a proposed Council Policy.

Since that time, the IBA has worked with Financial Management and City Attorney staff, and also met with representatives of several Council Offices, and has responded to questions, addressed feedback and also incorporated suggestions that have been received. Based on the work to date and changes that are proposed, it was determined that additional review of the proposed policy by the Budget and Finance Committee would be useful and productive, prior to Council consideration. The proposed Council Policy is provided as an attachment to this report.

On Monday, June 6, 2011, the Council adopted the FY 2012 Budget, including the IBA's recommendations, with specific revisions. The IBA's recommendations included the addition of specific allocations for each Council Office for Community Projects, Programs and Services, based on estimated savings for FY 2011 as reported in the FY 2011 Year-End Monitoring Report including requested appropriation adjustments, totaling \$1.6 million for all Offices. This action is consistent with the City Attorney advice by utilizing the annual budgetary process as prescribed by the City Charter to incorporate funding in the annual budget for this purpose.

City Council Offices			
FY 2011 Estimated Savings			
Year-End Budget Monitoring			
		Year-End	
		Requested	Revised
	Est Savings	Adjust	Savings
CD1	218,032		218,032
CD2	167,688	25,000	192,688
CD3	182,778		182,778
CD4	162,167		162,167
CD5	197,249	25,000	222,249
CD6	144,764	9,000	153,764
CD7	175,023		175,023
CD8	267,617	38,000	305,617
<b>TOTAL</b>	<b>1,515,318</b>	<b>97,000</b>	<b>1,612,318</b>

The FY 2012 Budget includes the FY 2011 revised savings amount, as shown in the table to the right, for each Council Office, ranging from \$153,000 to \$306,000, totaling \$1.6 million.

## FISCAL/POLICY DISCUSSION

During development of the proposed Council Policy, it was suggested that the policies for similar funding programs at the County of San Diego should be reviewed and some elements could be considered helpful and serve as a model for the City.

### County of San Diego Board of Supervisors Policies

The IBA reviewed the policies of the County of San Diego Board of Supervisors for the Neighborhood Reinvestment Program (B-072) and the Community Enhancement Program (B-58). These programs have been the subject of multiple reports of the San Diego County Grand Jury, as recently as April 2011, and the IBA considered the findings and recommendations of the Grand Jury to ensure potential shortcomings or perceived weaknesses in the City's proposed policy are avoided.

The County's Neighborhood Reinvestment Program (NRP) provides funds to County departments, public agencies and to non-profit community organizations for a wide-range of one-time needs determined to serve a public purpose. Funding levels for this program have ranged from \$5 to \$10 million annually, and according to the Grand Jury Report, is funded from the previous year's fund balance as a result of unexpended budgetary savings. The expenditure allocations are determined based on a standard application process, and uniform eligibility requirements. The total amount of funding is evenly distributed among the five supervisorial districts. The policy describes appropriate uses of the NRP which include grants to County departments, public agencies, and non-profit community organizations serving a public purpose, in order to benefit County neighborhoods and communities. Funding may be allocated for capital improvements, and equipment, materials, goods or supplies, except food or beverages, or items used for fund raising activities.

The County's Community Enhancement Program (CEP) allocates 100% of the Transient Occupancy Tax (TOT) funding received by the County, utilizing a competitive application process for cultural and economic development activities, and is evenly distributed among the five supervisorial districts. The County's CEP is comparable to the City's Council Policy 100-03 regarding Transient Occupancy Tax.

Both County programs utilize a standardized application process and the County's Chief Financial Officer/Auditor and Controller's Office is responsible for executing and administering agreements, processing payments, determining whether terms of agreements are fulfilled, and maintaining lists of funding recipients, and providing recipient tracking information on the County website.

The Grand Jury's findings focused primarily on the process related to allocating funds to outside organizations, and recommended strengthening procedures to increase transparency; suggested the reporting of outcomes; and requiring audit trails to ensure that funds have achieved the purposes claimed in the initial applications.

### Proposed Council Policy

According to Council Policy 000-01 which establishes procedures for the preparation of Council Policies, Council Policy statements shall include: a) a brief background description of the problem, b) the purpose of the policy, c) the policy statements, d) other criteria or procedural sections as required, and e) cross reference notations as to appropriate provisions in the City Charter, Municipal Code, Administrative Regulations, etc.

Typically, Council Policies are concise and provide broad, general statements; most range in length from one to three pages. The IBA strived to develop a policy document that is appropriately broad to allow for various, eligible purposes that are likely to encompass a vast array of desired uses of these funds over the long-term, while at the same time, proposing specific requirements to guide each Council Office with a simple, though comprehensive process. It is not the intent of the IBA to provide a policy which unnecessarily restricts the Council; however, it is imperative that guidelines are legal; consistent with current City requirements, policies and procedures; and can be consistently applied by all Council Offices.

### Funding Levels

The proposed Council Policy states that proposed funding levels for annual allocations for "Community Projects, Programs and Services" for each Council Office will be included in the Mayor's Proposed Budget, and that these amounts will be initially determined based on estimated savings to be achieved related to the administration of each Council Office by the current fiscal year-end.

Utilizing savings as the basis of setting the next year's funding level provides an incentive for each Council Office to minimize its annual administrative expenditures, while providing a funding source for specific eligible needs that will benefit the communities served by the Council Office.

Based on the timing of the annual budget process, amounts to be included in the Mayor's Proposed Budget will likely reflect projections consistent with the Mid-Year Budget Monitoring Report. If significant variances occur in the projections over the course of the budget finalization process, it is possible that recommendations to revise these amounts could be made.

The final amounts budgeted for "Community Projects, Programs and Services" would be subject to a majority affirmative vote of the Council at the time the annual budget is adopted. Once approved by the Council, these allocations would be subject to review and approval (and/or veto) by the Mayor, as with all other final budgetary decisions of the Council.

Following the close of the fiscal year, it is possible that actual savings achieved by each Council Office may vary (either positively or negatively) from the estimated savings already approved in the next year's budget. These variances can be reported in the quarterly budget monitoring report, and could result in recommendations from the Mayor to the Council to revise Council appropriations to reflect actual savings, as a mid-year budget adjustment, depending on financial circumstances at that time, and prior year results for the General Fund and reserves.

Consistent with current budget practices, unexpended funds as a result of savings do not automatically carryover from year to year. As currently written, unexpended "Community Projects, Programs and Services" funds will not be considered in the savings estimates when determining the amounts for addition to the following year's budget. Unexpended funds in this area would revert to the General Fund reserve at the close of the fiscal year. Only savings achieved from the administrative budget for Council Office will be considered eligible for addition to the following year's budget and become the amount to be authorized for "Community Projects, Programs and Services."

#### Eligible Uses

The purpose of the previous Infrastructure Fund, as described in the Fiscal Year 2002 Appropriation Ordinance when it was first established, was for "financing capital improvements and major maintenance of streetlights, sidewalks, traffic signals, libraries, parks and recreation facilities, and roadways or other purposes as identified by the Mayor or individual Council District." These purposes continue to be eligible uses under the new policy.

Because the available amounts for each Council Office will be determined each year as part of the budget process and are likely to vary, this funding should be considered a one-time resource, and planned uses should be one-time in nature. Authorizing the use of this funding for ongoing services or personnel costs should be avoided, as it may not be able to be sustained over time. Priorities are likely to change from one year to the next, and funding decisions could be impacted when newly elected Councilmembers take office. Discontinuation of funding for an ongoing service can cause service interruptions, and could jeopardize funding for employees providing a service.

Funding for Community Projects, Programs and Services can be used to supplement the appropriations of any existing General Fund activity or a new activity that would typically be supported by the City's General Fund, and may be expended for any government purpose.

Funding decisions should also consider the likelihood and ability of the task or project to be completed within the fiscal year the allocation is made. Since unexpended funds are not carried over, care should be made to not transfer funds to departments that are then unable to complete the request, and the unexpended funds could be lost at year-end.

Upon request of the respective Councilmember, available appropriations in non-personnel expense accounts in the Council Office administrative budget may be reallocated to supplement the funding level of the Community Projects, Programs and Services account within the current fiscal year. However, it is not intended for the Community Projects, Programs and Services funds to be utilized for administrative expenses of the Council Offices.

#### *Process to Authorize Expenditure*

Funding requests to supplement City Departmental expenses or existing capital improvement projects can be made of the Chief Financial Officer via memorandum from the respective Councilmember.

#### Contracting with Outside Organizations

As described earlier in this report, the County programs utilize a standardized application process and the County's Chief Financial Officer/Auditor and Controller's Office provides oversight and administration.

Recent Council-initiated funding allocations to non-profit community organizations have proven to be problematic with respect to contractual requirements and administration. Accordingly, the City Attorney has advised the IBA that the current process is not recommended to be continued or formalized in the proposed Council Policy. The City Attorney has suggested a standardized application process similar to the County or as outlined in the City's current TOT Policy 100-03, and development of a new standard contract, if it is the Council's desire to allocate funding to non-profit community organizations that do not already have a contract with the City. If Councilmembers wish to augment an existing contract with a Council District allocation, a more simple process can be developed, perhaps by a memorandum from the Councilmember to the administering department, since those organizations receiving funding have already completed an application or other process, met the contractual requirements, and been approved for funding.

Based on this advice, the IBA has drafted the proposed Council Policy excluding the option to allocate funds by contracting with outside organizations; eligible uses will be limited to supplementing City department appropriations.

If it is a priority and desire of the Council to be permitted to utilize funding to provide grants to non-profit community organizations, Council direction is sought to develop an appropriate application process, identify necessary resources and staffing, and to work with the City Attorney on the legal framework. In the event a process can be developed, the proposed Council Policy can be modified in the future to incorporate additional uses and details of the application or allocation process.

#### Annual Appropriation Ordinance

Financial Management is currently preparing the FY 2012 Appropriation Ordinance, based on the FY 2012 budget resolution adopted by the City Council on June 6, 2011. The IBA is providing input, and a request has been made to include a new section in the Appropriation Ordinance to address the proposed Council Policy, and to include necessary authorizations to allow for transfers of appropriations to City departments to occur administratively in order to effectively implement the policy.

## CONCLUSION

On Monday, June 6, 2011, the Council adopted the FY 2012 Budget, including the IBA's recommendations, with specific revisions. The IBA's recommendations included the addition of specific allocations for each Council Office for Community Projects, Programs and Services, based on estimated savings for FY 2011, totaling \$1.6 million for all Offices. This action is consistent with the City Attorney advice by utilizing the annual budgetary process as prescribed by the City Charter to incorporate funding in the annual budget for this purpose.

The IBA strived to develop a policy document that is appropriately broad to allow for various, eligible purposes. It is not the intent of the IBA to provide a policy which unnecessarily restricts the Council; however, it is imperative that guidelines are legal, consistent with current City requirements, policies and procedures, and can be consistently applied.

The City Attorney has advised the IBA that the current practice related to Council-administered contracts is not recommended to be continued or formalized in the proposed Council Policy. Currently, the Council has no authority to initiate and administer contracts separately from the Mayor. Based on this advice, the IBA has drafted the proposed Council Policy excluding the option to allocate funds by contracting with outside organizations.

The IBA recommends the Budget and Finance Committee forward the proposed Council Policy to the Council for its consideration. Specific feedback and direction from the Committee can be addressed and incorporated, if necessary, into the materials to be

brought the City Council for its approval. It is hoped that the proposed Council Policy will be adopted by the Council prior to the start of FY 2012.

If it is a priority and desire of the Council to be permitted to utilize funding to provide grants to non-profit community organizations, Council direction is sought to develop an appropriate application process, identify necessary resources and staffing, and to work with the City Attorney on the legal framework. In the event a process can be developed, the proposed Council Policy can be modified in the future to incorporate additional uses and details of the application or allocation process.

**[SIGNED]**

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Elaine DuVal  
Fiscal & Policy Analyst

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APPROVED: Andrea Tevlin  
Independent Budget Analyst

Attachment: Proposed Council Policy for “CITY COUNCIL FUNDING  
COMMUNITY PROJECTS, PROGRAMS AND SERVICES”