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REPORT TO THE BUDGET AND FINANCE COMMITTEE

MID-YEAR BUDGET REVISIONS

INTRODUCTION

In recent months, the City Attorney's office has provided several reports to the Budget and Finance Committee addressing the charter-mandated roles of the City Council and the Mayor in the City's budget process.¹ More recently, the Council President asked the City Attorney's office for advice on how the City Council may assert itself into the budget process in the event that a budget surplus is identified during the fiscal year. This report provides a brief review of some of the material covered in previous reports. It also suggests the adoption of an ordinance that would require the Mayor to provide the Council with recommended changes to the budget in the event the City projects a budget deficit or surplus during the fiscal year.

DISCUSSION

The Mayor is the Chief Budget Officer of the City which means he is "responsible for planning the activities of the City government and for adjusting such activities to the finances available." San Diego Charter § 28. "To this end, he shall prepare annually a complete financial plan for the ensuing year and shall be responsible for the administration of such a plan when adopted by the Council." *Id.* The Mayor's direct knowledge of the City's fiscal condition provides his "ability to propose plans for the Council's approval . . . and . . . for which the Mayor is uniquely qualified since he is the official in charge of carrying out the plans." *Brown v. Fair Political Practices Comm.*, 84 Cal. App. 4th 137, 148 (2000). Further, under the Charter, revisions to the budget and transfers of appropriations must be initiated by the Mayor. San Diego Charter §§ 290(b), 69, and 73.

The City Council has non-delegable legislative power and authority regarding the spending of public money. The Council may not delegate its authority for adopting resolutions and ordinances which spend public monies "including . . . the City's annual budget ordinance or

¹ City Att'y Report 10-35 (Nov. 5, 2010), City Att'y Report 11-1 (Jan. 7, 2011), City Att'y Report 11-15 (Mar. 28, 2011).

any part thereof.” San Diego Charter § 11.1. The City budget is adopted by the City Council, either as proposed by the Mayor or modified by the City Council, and is subject to veto by the Mayor. San Diego Charter § 290(b). Once the budget is adopted it becomes the controlling document for the preparation of the Appropriation Ordinance and the Mayor has no veto power over the Appropriation Ordinance.

The Charter establishes distinct roles for the Mayor and the City Council with respect to the preparation and adoption of the budget and the Appropriation Ordinance. Less clear are the respective roles of the Mayor and the City Council in the event the budget becomes unbalanced after adoption. Implicit in the Mayor’s duty to “adjust [the activities of the City] to the finances available” is a requirement to maintain a balance budget. Charter § 28. The budget need not be balanced at all times throughout the fiscal year but it must be balance at the end of the fiscal year and therefore may require revision. *See generally* Charter § 99, Cal Const. XVI art. 18. As we noted in our January 7 report to the Committee, the budget revision process should follow the budget adoption process laid out in San Diego Charter section 290(b).

While the City Charter is silent regarding revising the City’s budget, this does not preclude the Council from adopting an ordinance establishing a process for revising the budget so long as such process does not conflict with the Charter. “[I]t is well settled that a charter city may not act in conflict with its charter.” *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 170 (1994). However, a charter city may adopt ordinances which conform with its charter. 5 McQuillin Mun. Corp. § 15.17 (3d 2006).

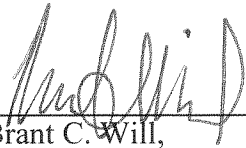
The Charter grants the City Council the authority to impose various obligations or duties on the Mayor. The City Council may require the Mayor to perform certain duties as “required of him by ordinance or resolution of the Council.” San Diego Charter § 28. Per the Charter, the Mayor must “keep the Council advised of the financial condition and future needs of the City.” *Id.* Similarly, the Mayor “must comply promptly with all lawful requests for information by the Council.” San Diego Charter § 32.1. The Mayor is also required “to cooperate fully with the Council and the Office of the Independent Budget Analyst, including . . . supplying requested information concerning the budget process and fiscal condition of the City.” San Diego Charter § 265(b)(13). The Council may adopt an ordinance requiring the Mayor to provide the Council with recommended revisions to the budget at whatever interval the Council determines is advisable, such as midway through the City’s fiscal year. This would allow the City to address any budget surplus or deficit arising during the fiscal year in accordance with the Charter’s budget process.

CONCLUSION

The City Council may adopt an ordinance requiring the Mayor to provide the Council with recommendations to address any identified surplus or deficit in the adopted City budget during the fiscal year.

Respectfully submitted,

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