EXECUTIVE SUMMARY

Proposed Council Policy for Community Programs and Projects Funds

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: April 15, 2011 **IBA Report Number:** 11-23

Budget and Finance Committee Meeting Date: April 20, 2011

Item Number: 2

On September 24, 2010, the City Attorney issued a Memorandum of Law (MOL) regarding the Budgeting, Appropriation, and Expenditure of Infrastructure Funds. This 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.

As discussed in the MOL, the major deficiency in the Infrastructure Improvement process was the omission, each year, of the Infrastructure Funds in the proposed and final budgets. While the Annual Appropriation Ordinance identified the Infrastructure Funds and its uses each year, the exclusion of the Infrastructure Funds from the budget document meant that no authority existed to appropriate and expend these funds.

To remedy this, the City's budget could include an appropriation within each City Council Office budget for "Community Discretionary Programs and Projects". To minimize the budgetary impact, these amounts could be based on an estimate of projected savings in each Council Office budget for the current fiscal year (consistent with prior practice). These allocations would be subject to a majority affirmative vote of the Council at the time the annual budget is adopted. If approved by the Council, these allocations would be subject to review and approval (and/or veto) by the Mayor, as with all other budgetary decisions of the Council.

It is recommended that a Council Policy for "Community Discretionary Program and Projects" outlining eligible uses and proper procedures be in place and effective prior to the adoption of the Fiscal Year 2012 budget. This report describes specific elements to be included in the proposed policy. The IBA seeks guidance from the Council on the proposed Council Policy. Depending on the feedback and direction received from the Council, the IBA intends to prepare a proposed Council Policy for review and approval by the Council prior to its final vote on the Fiscal Year 2012 budget which is currently scheduled for Tuesday, June 7, 2011.

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OVERVIEW

On September 24, 2010, the City Attorney issued a Memorandum of Law (MOL) regarding the Budgeting, Appropriation, and Expenditure of Infrastructure Funds. This 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 this MOL, requested allocations for use of these funds were suspended during Fiscal Year 2011. Discussions to address pending requests and to determine a more appropriate process for the future have been underway for some time.

This report provides background on the Council Infrastructure Funds established in Fiscal Year 2002, describes the concerns as outlined by the City Attorney, and suggests changes to past practices, including a proposed Council Policy to incorporate an annual budgetary appropriation for each Council District, for community funding to be allocated at the discretion of each Councilmember, during the fiscal year.

FISCAL/POLICY DISCUSSION

Past Practice – Infrastructure Funds

During the Fiscal Year 2002 Budget Deliberations, the Mayor and City Council voted to allocate $1.8 million to the Infrastructure Improvement Fund. The purpose of the Infrastructure Fund, as described in the Fiscal Year 2002 Appropriation Ordinance, 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." The initial $1.8 million in one-time funding for the Infrastructure Fund was distributed as shown in the table.

Mayor/Council Infrastructure Funds – FY 2002	
Office	**Amount**
Council District 1	$0
Council District 2	$65,000
Council District 3	$120,000
Council District 4	$305,500
Council District 5	$400,000
Council District 6	$320,000
Council District 7	$223,000
Council District 8	$0
Mayor	$400,000
Total	**$1,833,500**

In reviewing past Annual Budget Documents and Appropriation Ordinances, the IBA was unable to identify the formula or basis used to determine the individual amounts for the initial funding levels. Additional funding has been allocated to respective Council District Infrastructure Funds from year-end savings achieved within the operating budget for each Council District Office.

Since its inception in 2002, the appropriation of Infrastructure Improvement Funds has been accomplished by: 1) identifying a specific eligible project in the annual CIP document, or 2) requesting the City Manager to transfer funding to an eligible project during the fiscal year. Starting in 2006, with the change in the form of government, a new process was implemented to facilitate transfers to CIP projects or other uses identified by the Council Offices. The new process called for a memo from the Council Office to be submitted to Council Administration, which would provide oversight and tracking of available funds. Council Administration would then route the memo to the Financial Management Director to ensure funds were available and to facilitate the transfer.

In September 2008, former Councilmember Donna Frye submitted a memorandum to the City Comptroller requesting clarification of the appropriate uses of Infrastructure Funds. Although the Comptroller clearly stated that his response did not provide legal advice, he attempted to interpret the enabling legislation for the Infrastructure Funds (language included in the Annual Appropriation Ordinance) and related policies that control their use.

The following provides a summary of the Comptroller's September 2008 Memorandum:

- Pending further clarification from the City Attorney, the Comptroller interprets the language "or other purposes as identified by the Mayor or individual Council District" as found in the Appropriation Ordinance to mean that funds are available for any government purpose and not limited solely to funding infrastructure
- The Appropriation Ordinance limits the use of funds to activities generally considered to be "general fund" activities
- Funds 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
- The Appropriation Ordinance limits the Comptroller's authority to transfer Infrastructure funds outside of the General Fund. Requests to support City Departmental expenses or infrastructure improvements can be made by the Department of Finance while requests to fund activities or external organizations require additional authority
- When using Infrastructure Funds to support outside organizations the City is providing funds or "in-kind services" to a separate legal entity and "sound stewardship of public funds, legal liability considerations and internal control necessitate a written agreement, reviewed by appropriate City departments and may need to be approved by the full City Council"

The guidance provided by the September 2008 Comptroller memo continues to be useful and helps to provide a framework for development of a proposed process and Council Policy.

Fiscal Year 2011 Mid-Year Budget Adjustment

Included in the Fiscal Year 2011 Mid-Year Budget Adjustment were requests totaling $107,625 to address pending Council requests for funding that were suspended at the time the MOL was issued in September 2010.

At the time the MOL was issued, estimates of the remaining Infrastructure Funds for all Council Offices totaled approximately $1.3 million. The final figures for Fiscal Year 2010 continue to be subject to verification/confirmation, as the Fiscal Year 2010 financial information is still under review and adjustment.

As described in the MOL, according to Charter section 84, any unencumbered balance of an appropriation reverts to the fund from which appropriated at the close of each fiscal year. Because of this, prior year funds attributed to the Council Infrastructure Fund have reverted to the General Fund, and will be reflected in its fund balance, also known as the reserve. These funds have not been held separately.

During the discussion of the Fiscal Year 2011 Mid-Year Budget Adjustments at the City Council meeting of March 22, 2011, the CFO indicated the Mayor's willingness to bring forward a budget amendment for Fiscal Year 2012 (in August or September) once savings accumulated by each Council Office during Fiscal Year 2011 has been verified. The budget amendment would appropriate the verified savings for identified projects for each Council Office.

At the Council meeting, the IBA proposed developing a process that could be incorporated into the upcoming FY 2012 budget deliberations. This would allow the Council to properly consider the allocation of funding from projected Council District savings for community discretionary programs and projects, in keeping with the Charter-mandated budget process. This path is preferred by the IBA rather than postponing funding additions to a future budget amendment, subject to initiation by the Mayor after the fiscal year has begun.

As the Fiscal Year 2010 financial information is still under review and adjustment, a final accounting of the General Fund reserve has not been provided. The status of the General Fund reserve is expected to be made available shortly, to assist the Council in its decisions related to the Fiscal Year 2011 and Fiscal Year 2012 budgets. It is important to know the status of the General Fund reserve and the status of the City's reserve goals prior to considering the restoration of the Council Infrastructure Funds.

Proposed Changes to Address Process Deficiencies

As discussed in the MOL, the major deficiency in the Infrastructure Improvement process was the omission, each year, of the Infrastructure Funds in the proposed and final budgets. While the Annual Appropriation Ordinance identified the Infrastructure Funds and its uses each year, the exclusion of the Infrastructure Funds from the budget document meant that no authority existed to appropriate and expend these funds.

To remedy this, the City's budget could include an appropriation within each City Council Office budget for "Community Discretionary Programs and Projects". To minimize the budgetary impact, these amounts could be based on an estimate of projected savings in each Council Office budget for the current fiscal year (consistent with prior practice). The amounts budgeted for "Community Discretionary Program and Projects" would be subject to a majority affirmative vote of the Council at the time the annual budget is adopted. If approved by the Council, these allocations would be subject to review and approval (and/or veto) by the Mayor, as with all other budgetary decisions of the Council.

Next Steps to Implement New Process/Proposed Council Policy

Given recent developments and discussions related to the inability of the City Council to initiate mid-year budget amendments without the concurrence of the Mayor, the IBA believes the development of a Council Policy for this purpose could provide needed flexibility and options for the Council to ensure specific and eligible needs in their

respective communities can be met in a timely manner. The Council Policy could also ensure a uniform and consistent handling of these allocations for each Council Office each year.

The IBA met with representatives of Financial Management and the City Attorney to discuss a new process and the elements of a proposed Council Policy to guide an appropriate funding process for each of the Council Offices to be able to contribute to eligible projects within each of their communities on an annual basis.

For Fiscal Year 2012, it was discussed that the Mayor's Proposed Budget would not include a specific line item within the Council Office budgets for community discretionary projects, presumably due to timing concerns and lack of identified funding. However, it was discussed that the Mayor recognizes this need and is expected to accept the addition of allocations within each Council Office budget. If desired, the Council could take action to propose the addition of allocations for this purpose during the budget process at the time it approves the budget, based on projected savings for each Council Office. The IBA in coordination with Council Administration can update the Fiscal Year 2011 projected savings for each Council Office as a basis to set the budgetary amounts for Fiscal Year 2012 for consideration during the upcoming budget deliberations.

As part of these discussions, it was suggested that the Mayor's agreement to the additions of these allocations to the budget would be subject to the development and adoption of a Council Policy, which is recommended to be in place and effective prior to the adoption of the Fiscal Year 2012 budget.

Elements of the Council Policy could include:

- Eligible uses for funding (similar to prior Comptroller advice)
- Maximum amount for annual allocation per Council District Office (or in total)
- In order to minimize the budgetary impact, the IBA recommends the continued practice of utilizing savings in each Council Office as the basis for determining annual amounts
- Consideration of a minimum amount per allocation (costs to process could exceed small amounts to be granted)
- If existing City function to be supplemented, a memo to CFO to request transfer to operating department should suffice
- If funding allocation to an outside agency, need to meet current existing City contracting requirements, and funding to be provided on a reimbursement basis
- Funding for contribution to an existing capital project can be expended directly from Council Office budget
- Appropriation Ordinance can provide authority to transfer funds to City departments or to supplement an already established capital project
- Creation of a new capital project would require separate Council action

- In keeping with current budget practices, all unexpended amounts at year-end will not carryover to the following fiscal year
- Consideration could be given to re-appropriate unexpended amounts for each Council Office as part of the budget process for the following fiscal year

Mayor/City Council TOT Allocations

In March and June 2010, the City Attorney issued reports regarding the Mayor and City Council TOT Allocations. The City Attorney concluded that the practice of allowing Council members to make individual allocations of TOT without an application procedure was contrary to the express language of Council Policy 100-03, and recommended either waiving or amending the Council Policy as a remedy.

As an alternative, the IBA suggests that the Council could forego the TOT funds that have been allocated to each Council Office, and instead utilize funding to be identified for "Community Discretionary Program and Projects" for eligible activities that may have been funded through the TOT allocations is the past. By utilizing this proposed process and an alternative funding source, the requirements of Council Policy 100-03 would no longer be a consideration.

The FY 2012 Proposed Budget includes $220,000 for Mayor/City Council TOT Allocations which currently has no process or procedure in place to guide its expenditure. The IBA expects to review this allocation and may recommend alternative uses for these funds in our upcoming budget review report, depending on direction provided by the Council.

CONCLUSION

The IBA seeks guidance from the Council on the specific elements of the proposed Council Policy as discussed in this report. Depending on the feedback and direction received from the Council, the IBA intends to prepare a proposed Council Policy for review and approval by the Council prior to its final vote on the Fiscal Year 2012 budget which is currently scheduled for Tuesday, June 7, 2011.

[SIGNED]

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[SIGNED]

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