

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: April 30, 2025

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Legal Analysis of the City's Budget Process and Related Matters

On April 15, 2025, the Mayor released the City of San Diego's Fiscal Year 2026 Draft Budget (Proposed Budget). The Mayor's release of the Proposed Budget is the first step in the budget development process. Subsequent steps in the process include both the public and the San Diego City Council (Council). These questions and answers are intended to help Councilmembers and the public better understand the laws governing the budget process.

ANALYSIS

I. THE CITY'S ANNUAL BUDGET PROCESS

A. What laws govern the City's annual budget process?

San Diego Charter (Charter) section 69 contains the requirements for the City's development and implementation of the City's annual budget. Specifically,

- The Mayor must develop and release the Proposed Budget on or before April 15. Charter § 69(c).
- The Council must hold at least one public hearing on the Proposed Budget (either before the Council or a Council Committee). Charter § 69(d). Historically, the City has provided the public several opportunities to speak on proposed budgets at both Council meetings and Budget Review Committee meetings in the months of April and May. Key Dates for FY 2026 Budget Development and FY 2025 Budget Monitoring can be found on the Independent Budget Analyst's (IBA) website.
- Sometime in May, the Mayor must release the Proposed Budget with any revisions deemed "necessary" (May Revise) based on public or Councilmember input, updated actual revenue and expense numbers provided by the Department of Finance, and other relevant information. Charter § 69(e).

- The Council must approve a budget on or before June 15. Charter § 69(f).

B. Must the budget be balanced?

Yes. “The budget as proposed by the Mayor and as adopted by the Council shall be balanced such that proposed expenditures shall not exceed projected revenues and any other sources to balance the budget.” Charter § 69. Further, the IBA, Chief Financial Officer (CFO), and Department of Finance Director have all advised that best financial practices suggest that one-time revenues should be used to fund one-time expenditures and ongoing expenditures should be supported by ongoing revenues, to the extent possible.

C. Can the Council propose changes to the Mayor’s proposed budget?

Yes. The Mayor must release each fiscal year’s budget by April 15 and may modify the budget in the May Revise. Charter § 69(c, e). At a meeting on or before June 15, the Council may modify the May Revise “in whole or in part.” Charter § 69(f). The Council can increase, decrease, remove, or add any line item to the budget it adopts (Council’s Budget) so long as the budget remains balanced.

D. Must the Mayor accept the Council’s revisions to the Mayor’s proposed budget?

No. If the Council’s Budget includes proposed changes to the May Revise, the Mayor has five business days from the Mayor’s receipt of the Council’s Budget to veto or modify any line item approved by the Council. Charter § 69(g). Any proposed modification by the Mayor to the Council’s Budget may only address changes that the Council made to the May Revise. For example, the Mayor could not add a line item that the Mayor hadn’t previously included in the May Revise. The Mayor also could not remove a line item that had been included in the May Revise and that the Council had not modified as part of the Council’s Budget. Lastly, the Mayor may not insert specific limitations or direction to budget items that were not previously included in the May Revise.

E. What are the Council’s options if the Mayor vetoes or modifies the Council’s Budget?

The Council may override the Mayor’s vetoes or modifications to the Council’s Budget by a two-thirds vote, which must be taken within five business days of the veto or modification. Charter § 69(h). Similar to the limitations on the Mayor’s ability to veto or modify the Council’s Budget (i.e., only changes that the Council made to the May Revise), the Council’s ability to override the Mayor’s vetoes or modifications may not seek to change any aspect of the Council’s Budget other than those line items that the Mayor vetoed or modified. Additionally, a modified amount for a line item proposed by the Council as part of its override of the Mayor cannot be greater than the amount for that line item the Council previously approved as part of the Council’s Budget. For example:

- The May Revise allocates \$10 million to a street repaving project.

- The Council increases the allocation to \$12 million as part of its Council's Budget.
- The Mayor vetoes/modifies the \$2 million increase, reducing the amount to \$11 million.
- The Council can (with 6 or more votes) override the veto/modification and increase the allocation to any amount above \$11 million up to (at most) \$12 million.

See City Att'y MS 2017-13 (June 9, 2017) for a broader discussion of the Mayor's veto power and the Council's ability to override.

F. How is the budget implemented?

Once the Council's time to override any veto or modification expires, the budget as returned to the Mayor and modified by the Council becomes the adopted budget (Adopted Budget). Charter § 69(i). The Council must adopt an Annual Appropriation Ordinance (AO) by June 30 to implement the Adopted Budget. Charter § 69(k). The AO sets forth the legal levels at which the CFO, as the designee of the Mayor, shall control operational and project spending. The CFO and City Attorney develop the form, arrangement, and itemization of the AO. The Council thereafter confirms that the CFO and City Attorney drafted the AO to accurately reflect the content of the Adopted Budget. Though the Council may suggest revisions to the AO that do not conflict with, modify, or introduce new concepts that were not specifically included in the Adopted Budget, it may not use the AO as a vehicle to modify the Adopted Budget. This makes sense, especially because the AO is not subject to Mayoral veto. *See City Att'y MS-2020-18 (June 29, 2020) for greater detail on the AO.*

II. INTRA-YEAR BUDGET AMENDMENTS

A. May the Council initiate intra-year budget amendments?

No. Under the Charter and San Diego Municipal Code (Municipal Code or SDMC), only the Mayor may initiate budgetary actions or amendments. *See Charter § 69; SDMC § 22.0229.*

B. Must the Mayor bring a Mid-Year Budget Amendment Resolution to Council to address any budget deficit or surplus?

Yes. In February, along with the Mid-Year Budget Monitoring Report, the Mayor must bring to Council a related budget amendment resolution (Mid-Year Resolution). SDMC § 22.0229(a). The Mayor must report on actual revenues versus expenditures to those projected in the current year's Adopted Budget and, based on where the City's finances are, make a recommendation to the Council. If there's a surplus (meaning that actual revenues the City has received to date in that fiscal year have been greater than actual expenditures), the Mayor can (but is not required to) budget some of that surplus.

Unlike the Council's authority under Charter section 69(f) to modify the May Revise "in whole or in part," the Council can only modify the Mid-Year Resolution up to the amount the Mayor has proposed. This means that if the Mayor recommends that the Adopted Budget not be amended, the Council cannot propose any changes either.

III. MISCELLANEOUS BUDGET ISSUES

A. What public services must the City provide under the Charter?

This Office recently published a Report to the Committee on Budget and Government Efficiency titled “Update to RC-2011-10 Regarding Public Services Obligated Under the San Diego Charter” (Report). City Att’y Report 2025-1 (Feb. 25, 2025). The Report and its attachment, 2011 City Att’y Report 281 (11-10; Feb. 23, 2011) (2011 Report), provide an overview of some of the municipal services the Charter obligates the City to provide its citizens, such as police protection, fire protection, public works services, building inspection services, park and recreation services, library services, and water services.

As the 2011 Report explains, the Mayor and the Council have the discretion to determine the appropriate level of funding for Charter-mandated municipal services through the Charter’s integrated budgetary process. When exercising this discretion, the Council cannot eliminate funding for mandatory government functions established by the Charter or reduce staffing to a point that Charter-mandated work cannot be accomplished. Additionally, Charter section 11.1 states:

The City Council must give priority in the funding of municipal services to the need of the residents for police protection in considering adoption of this salary ordinance and the annual budget ordinance, and must comply with any collective bargaining laws binding on the City as a public agency employer.

See also Cal. Gov’t Code §§ 3500-3511; 2012 City Att’y Report 207 (12-4; Feb. 1, 2012).

B. Must the Mayor spend money appropriated in the Adopted Budget?

Each situation must be analyzed based on the law and the specific facts. The Mayor and Council have the opportunity to work together to establish procedures to manage expectations and work through potential differences, such as the yearly Statement of Budgetary Principles drafted by the IBA and agreed upon by the Mayor and the Council.

There are several competing legal principles that must be reconciled in any analysis. These principles include:

- The Mayor must implement the Adopted Budget in accordance with the objectives set forth in that budget and the AO. *Detroit Fire Fighters Association v. the City of Detroit*, 537 N.W.2d 436 (Mich. 1995).
- A budgetary appropriation for a specific purpose does not represent an absolute obligation for the Mayor to spend the full amount of the appropriation. While the Mayor must achieve the budgetary priorities set forth in the Adopted Budget, the Mayor also has the discretion to seek economic savings in carrying out the budgetary plan. *Id.* at 445 (RILEY, J., concurring).

- The Mayor, “as Chief Budget Officer of the City, shall be responsible for planning the activities of the City government and for adjusting such activities to the finances available.” Charter § 28. The Mayor’s discretion cannot overrule the legislative aims of the Council in setting budgetary priorities (as evidenced by the Adopted Budget and the AO). *See* Charter § 11.1.
- The Mayor must provide Council written notice of and justify any deviations from the Adopted Budget involving significant reductions in programs or services affecting the community, under both Municipal Code section 22.0230 (Reporting Significant Reductions in Programs or Services) and the FY25 Statement of Budgetary Principles.

See 2007 Op. City Att’y 347 (2007-01; Apr. 6, 2007) for a detailed discussion of the respective roles of the Mayor and Council regarding budget decisions under the City’s “Strong Mayor” form of governance.

C. As the Mayor and Council consider budgetary options, what is their obligation under the Meyers-Milias-Brown Act (MMBA) to the City’s recognized employee organizations and the employees they represent?

The MMBA is the California law, codified at California Government Code sections 3500 through 3511, that requires the City to take certain procedural steps when the City intends to make changes to mandatory subjects of collective bargaining for represented, public agency employees. California law defines the mandatory subjects of bargaining as wages, hours, and other terms and conditions of employment.

The City is presently bound to comply with the provisions of Council-approved memoranda of understanding between the City and each of its recognized employee organizations, which were negotiated under the MMBA (MOU). Each of these approved MOUs expires on June 30, 2026. While budgetary determinations are generally managerial in nature and not subject to collective bargaining, the City must comply with the terms of the approved MOUs.

Further, if a budget proposal impacts a mandatory subject of bargaining, the City must provide notice to the impacted employee organization and give the employee organization an opportunity to negotiate the bargainable impacts of the proposal.

If the Mayor and Council need specific guidance on the application of the MMBA to specific budgetary proposals and discussions, this Office is available to provide further guidance. The Mayor and Council may also instruct the City’s management team for labor relations in a closed session meeting of the Council under California Government Code section 54957.6(a).

CONCLUSION

This Memorandum is intended to help the Council and the public understand the laws governing the City’s budget process and related intra-year budgetary actions. As explained above, the Charter and Municipal Code dictate the roles of the Mayor and Council, and this Office has

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previously issued various memoranda and legal opinions about the budget process. This Office is available should you have any questions.

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