

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: June 29, 2020

TO: Honorable Members of the City Council

FROM: Deputy City Attorney Bret A. Bartolotta

SUBJECT: City Council's Role under the Charter in Adopting the Annual Appropriation Ordinance

INTRODUCTION

On June 8, 2020, the City Council (Council) approved the City's Budget for Fiscal Year 2021 (Adopted Budget). Several Councilmembers and the Independent Budget Analyst (IBA) have since asked whether the Council can amend the Adopted Budget when approving the Annual Appropriation Ordinance (AO). This Memorandum formalizes the verbal responses provided by this Office.

QUESTIONS PRESENTED

1. What is the Council's role under the Charter in adopting the AO?
2. What options does the Council have with regard to monitoring and potentially modifying the Adopted Budget?

SHORT ANSWERS

1. The Council is responsible for ensuring that the content of the Adopted Budget is accurately reflected in the AO. Under the San Diego Charter (Charter), the AO is solely an implementing ordinance that cannot be used to modify the Adopted Budget.
2. Under Charter section 28, the Mayor must "keep the Council advised of the financial condition and future needs of the City," which reasonably includes periodic updates to the Council. Additionally, San Diego Municipal Code (Municipal Code) section 22.0229 (Mid-Year Amendment Ordinance) requires that after six months of actual budgetary data, the Mayor bring to the Council his/her recommendation as to what to do with any General Fund budget surplus or deficit, which the Council may approve or modify up to the total amount of such recommendation. The Council also may adopt a codified ordinance similar to the Mid-Year Amendment Ordinance at any time.

BACKGROUND

The Mayor's release of the Fiscal Year 2021 Proposed Budget on April 15, 2020 began the City's official budget adoption process (Budget Process) outlined in Charter section 69. Over the years, the Office of the City Attorney has released several Reports and Memoranda explaining the Budget Process,¹ which contemplates a balance of power between the Mayor and the Council. Following the Mayor's release of the proposed budget (Proposed Budget) and its presentation to the Council, multiple public hearings are held and the Mayor presents a revised version of the Proposed Budget (May Revise) to the Council based on input from the public. Based on a summary from the IBA and updated actual financial data, the Council ultimately adopts either the May Revise as presented or with revisions thereto (Council's Adopted Budget).

As an additional check and balance, the Budget Process also includes an opportunity for the Mayor to line-item veto any item of the Council's Adopted Budget, which the Council could then override with a two-thirds vote. The Adopted Budget for Fiscal Year 2021 was adopted as presented by the Mayor without the exercise of veto power. Some have expressed an interest in using the AO to modify the Approved Budget which, as explained below, is not permissible.

ANALYSIS

I. THE COUNCIL'S ROLE IN ADOPTING THE ANNUAL APPROPRIATION ORDINANCE

Charter section 69 delineates the City of San Diego's annual budget and appropriation process. With regard to the AO, Charter section 69(k) provides:

No later than June 30, the Council shall adopt an Annual Appropriation Ordinance setting forth the legal levels at which the Chief Financial Officer, as the designee of the Mayor, shall control operational and capital project spending. The preparation of the appropriation ordinance, including the form, arrangement and itemization thereof, shall be determined and prescribed by the Chief Financial Officer and the City Attorney. ***The adopted budget and Salary Ordinance shall be controlling documents in the preparation of the Appropriation Ordinance.*** In the event that the Council fails to adopt the Appropriation Ordinance prior to the beginning of the new fiscal year the spending controls in the prior year's Appropriation Ordinance shall continue, as modified by the adopted budget. (Emphasis added).

This Office was asked whether the phrase "legal levels" gives the Council the flexibility to revisit the Adopted Budget or control the manner in which the Adopted Budget is implemented in the AO. In short, this interpretation is incorrect. Per Charter section 69(k), the Chief Financial Officer (CFO) and City Attorney develop the form, arrangement, and itemization of the AO. The Council thereafter confirms that the CFO and City Attorney drafted an AO that accurately reflects the content of the Adopted Budget. Although the Council may suggest revisions to the AO that do not conflict with,

¹ Most recently, our Office issued the attached Miscellaneous Memorandum (MS 2017-13) on June 9, 2017.

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.

To explain further, the phrase “legal levels” speaks to the adoption of the AO in the context of government finance. In a summary of Government Accounting Standards Board Statement No. 34, the Certificate of Achievement for Excellence in Financial Reporting General Purpose Checklist (General Purpose Checklist), which is published by the Government Finance Officers Association, discusses these levels of control at p.76 as follows:

The legal level of budgetary control is the lowest level at which a government’s management may not reallocate resources without special approval of the governing body. In certain extreme cases, the legal level of budgetary control may be so detailed that it is not practical to demonstrate compliance within the comprehensive annual financial report (CAFR) itself. In such cases, a separate budgetary report may be issued to demonstrate compliance at the legal level of budgetary control, provided the CAFR contains a reference to the existence of this separately issued report. This reference to a separately issued budgetary report, however, does *not* eliminate the need to present budgetary comparisons within the CAFR for all individual governmental funds with legally adopted annual budgets. Rather, the level of detail needed for the individual fund budgetary comparisons need not exceed the level associated with the basic financial statements (that is, expenditures by function). (Emphasis added).

Further, the Letter of Transmittal at page 11 in the Fiscal Year 2019 CAFR discusses the matter as follows:

The Appropriation Ordinance that enacts the budget into law is based on the approved budget and the adopted Salary Ordinance. The City Charter requires that City Council adopt the Appropriation Ordinance for the following year by June 30. All subsequent amendments to the adopted budget require City Council approval except as delegated in the Appropriation Ordinance.

As discussed above, the Letter of Transmittal reinforces the role of the AO as the mechanism by which the Adopted Budget is implemented. This consistency with both the Charter and the General Purpose Checklist is important in that it reassures the City’s direct lenders, purchasers of its municipal bonds, and the municipal securities market in general (collectively, the Market) that the Adopted Budget is an accurate and reliable source of information with regard to the City’s financial plans. If the Council could use its role in adopting the AO to indirectly alter the Adopted Budget, the City’s standing in the Market could be negatively impacted.

II. THE COUNCIL’S OPTIONS WITH REGARD TO THE ADOPTED BUDGET

Between Charter section 28 and the Mid-Year Amendment Ordinance, the Council is entitled to regular updates from the Mayor regarding the financial status of the City and at least once per year, a recommendation from the Mayor regarding what action the City should take to address existing

**Office of
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MEMORANDUM

MS 59

619-236-6220

DATE: June 9, 2017

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Approval of City Budget, Mayoral Veto and Council Override

INTRODUCTION

On June 5, 2017, the City Council considered approval of the City's fiscal year 2018 budget. During the discussion, questions arose with respect to changes to the proposed budget, the Mayor's authority to veto such changes, and the Council's authority to override the Mayor's veto. This memorandum is intended to address these questions.

QUESTIONS PRESENTED

1. Are there any limitations on the Mayor's authority to veto changes to the proposed budget approved by the City Council?
2. Are there any limitations on the actions the City Council may take in an override vote?
3. May the City Council entertain a motion to reconsider the override of the Mayor's veto in the event that an earlier motion has failed?

SHORT ANSWERS

1. Yes. The Mayor has broad authority to approve, veto, or modify any line item approved by the City Council. This allows the Mayor to reconsider items in the Mayor's proposed budget in response to changes made by the City Council. The Mayor may not add new items that were not in the budget approved by the City Council. The budget resulting from the Mayor's veto action must remain balanced.
2. Yes. The City Council's action to override the Mayor's veto is limited to consideration of the items vetoed or modified by the Mayor. Within that limitation, the City Council may set the amount for each item considered anywhere between the amount previously

approved by the City Council and the amount approved by the Mayor, provided that the resulting budget remains balanced. New spending may not be considered in a motion to override the Mayor's veto.

3. Yes. Under the Rules of Council, the City Council may entertain a motion to reconsider a failed motion to override the Mayor's veto if the motion is made by a Councilmember voting on the prevailing side. A motion to reconsider requires a simple majority vote. The vote to override the Mayor's veto requires a two-thirds majority vote.

BACKGROUND

On June 5, 2017, the City Council considered approval of the Mayor's proposed fiscal year 2018 budget. The motion approved by the City Council reduced the City elections budget item by \$5,000,000. This amount was designated for a special election to consider a transient occupancy tax ballot measure proposed by the Mayor. A qualified citizen's initiative measure known as Soccer City could also be placed on the special election ballot if the election is called by the City Council. The City Council used savings from the reduction in the elections budget and other available funds to increase amounts in a variety of other City programs and projects. Prior to the vote on the budget, Councilmember Alvarez asked the City Attorney what the Mayor's veto authority is, stating his understanding that the veto authority is only to eliminate items funded in the Council-approved budget. The City Attorney recited the language in Charter section 69(g) and indicated that the Mayor's authority was broad, allowing the Mayor could make any changes he deemed appropriate. The motion passed 8-1 in favor. The budget approved by the City Council has been vetoed by the Mayor and the City Council has scheduled a meeting to consider overriding the Mayor's veto.

ANALYSIS

THE BUDGET ADOPTION PROCESS¹

San Diego is a charter city and the San Diego Charter is the supreme law of the City, subject only to conflicting provisions in the United States and California Constitutions and to state laws of general application. *Grimm v. City of San Diego*, 94 Cal. App. 3d 33, 37 (1979).

Under the City Charter, the Mayor and City Council share responsibility for the budgeting process. The Mayor is the chief budget officer of the City. San Diego Charter §§ 265, 260, 28. The Mayor is responsible for the annual preparation of a balanced budget and the presentation of the proposed budget to the City Council. *Id.* at § 69. The City Council is responsible for holding at least one public hearing on the proposed budget and for adopting the budget on or before June 15 of each fiscal year. *Id.* at § 69(f). "The Council may increase or decrease any item or add or

¹ The City's current budget process was added to the City Charter when voters approved Proposition F at the November 2, 2004 election. Proposition F became effective on January 1, 2006. Amendments were made to the budget process with the approval by the voters of Proposition E on June 7, 2016. These amendments did not make substantive changes to the budget approval, veto, or veto override process.

remove any item provided that the budget must remain balanced.” *Id.* In effect, the City Council has the authority to adopt an entire alternative budget.

If the City Council has made changes to the budget proposed by the Mayor, the budget adopted by the City Council must be returned to the Mayor within 24 hours of adoption. *Id.* at § 69(f)(2). Thereafter, the Mayor has five business days to “either approve, veto, or modify any line item approved by the Council.” *Id.* at § 69 (g) The City Council then has an additional five business days within which to override the Mayor’s veto. *Id.* at § 69(h). In overriding the Mayor’s veto, the City Council may change any item modified by the Mayor’s veto to any amount within the range of what the City Council adopted and what the Mayor approved. *Id.*

A. The Mayor’s Special Veto Power Related to the Budget

The Mayor’s special veto power related to the budget is clear from the language of the City Charter. Charter provisions are interpreted according to the rules of statutory construction. *First Street Plaza Partners v. City of Los Angeles*, 65 Cal. App. 4th 650, 662-63 (1998). For a voter-approved amendment to a city charter, the interpretation must effectuate the voters’ intent in approving the amendment. *People v. Jones*, 5 Cal. 4th 1142, 1146 (1993). “If the language is clear, there can be no room for interpretation; effect must be given to the plain meaning of the words.” *Building Industry Ass’n of S. Cal. v. City of Camarillo*, 41 Cal. 3d 810, 818 (1986).

The Mayor may exercise a modified line-item veto to make changes to the budget approved by the City Council. “Veto” means “[a] power of one governmental branch to prohibit an action by another branch; especially, a chief executive’s refusal to sign into law a bill passed by the legislature.” *Black’s Law Dictionary* 1795 (10th ed. 2014). The effect of a veto is “negative, frustrating an act without substituting anything in its place.” *Harbor v. Deukmejian*, 43 Cal. 3d 1078 (1987).² The “line-item veto” differs from a traditional veto in that it allows the individual exercising veto power to selectively make changes to the legislation without negating the entire bill. See *St. John’s Well Child & Family Ctr. v. Schwarzenegger*, 50 Cal. 4th 960 (2010); *Black’s Law Dictionary* 1795 (10th ed. 2014).

Veto power, as a limited infringement of executive power on the legislature, may be exercised only when clearly authorized and in accordance with any restrictions on that power. *Harbor*, 43 Cal. 3d. at 1088. Language conferring veto power is strictly construed. *Id.* The Mayor’s veto power over the budget is not merely “a qualified and destructive legislative function.” *Id.* at 1086. Rather, the special budget veto power allows for the modification of any line item approved by the City Council and is considerably more expansive than either a traditional veto or a conventional line-item veto. San Diego Charter § 69(g).

The Mayor’s line-item veto authority allows the Mayor to add or subtract from any “line item” in the budget adopted by the City Council. A line item, or item, is “a specific setting aside of an amount, not exceeding a definite sum, for the payment of . . . particular claims or demands.”

² The Mayor exercises this type of veto power, the power to prevent the City Council’s exercise of its legislative power, over most Council actions. San Diego Charter §280(a) (“The Mayor shall have veto power over all resolutions and ordinances passed by [the] Council with . . . exceptions.”).

Harbor, 43 Cal. 3d at 1089 (citation and internal quotation marks omitted). “Modify” means “to make somewhat different.” *Black’s Law Dictionary* 1157 (10th ed. 2014). Modification allows for both addition and subtraction. If the voters intended for the Mayor’s power to be limited to reducing budgeted amounts, they could have used language similar to that of the California Constitution, where the Governor’s line-item veto may only be used to reduce or eliminate appropriations approved by the Legislature. *See* Cal. Const. art. IV, § 10(e) (“The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill.”)

The budget approved by the City Council is cumulative, including the Mayor’s proposed budget, as modified by the May revision, the approved recommendations in IBA Report No. 17-23 (May 31, 2017), and the City Council’s motion on June 5th, 2017. *See* San Diego Resolution R-2017-606 REV. The Mayor is within his authority to modify any item that remains in Council-approved budget. The budget approved by the City Council contains thousands of items, some of which are in the nature of lump sum appropriations available for a number of purposes within a discrete category. To the extent that lump sum appropriations are approved, the Mayor may modify the total amount but may not specify an intended purpose for any additional sum. *See California School Boards Ass’n v. Brown*, 192 Cal. App. 4th 1507, 1520 (2011).

B. The City Council’s Override of a Mayoral Budget Veto

The City Council may override the Mayor’s veto with a two-thirds vote of the City Council. “In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor.” San Diego Charter § 69(h). Thus, the City Council is limited to items in the proposed budget vetoed or otherwise modified by the Mayor. *Id.* The City Council is not authorized to introduce new spending in the veto override process, and the motion on the veto override must be to approve a balanced budget. *Id.* If approved by a vote of two-thirds of the City Council, the proposed budget, as modified by the City Council, shall become the adopted budget. *Id.* at § 69(i). If the City Council is unable to override the mayoral veto, the Mayor’s budget, as vetoed, becomes the adopted budget, subject to reconsideration of the item.

C. Reconsideration of Failed Veto Override Vote

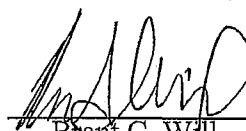
The City Council may entertain a motion to reconsider a failed motion to override the Mayor’s budget veto if the motion to reconsider is made by a Councilmember voting against the motion to override. *Roberts Rules of Order Newly Revised* § 37 (10th ed. 2000). The City Council has enacted procedures for addressing a motion for reconsideration in its rules. *See* San Diego Municipal Code § 22.0101, Rule 2.11. The procedures vary depending on the whether the motion for reconsideration is made on the same day that the veto override vote was taken or on a later day. *Id.* “[A] motion to reconsider any matter may be entertained only at the same meeting that the matter was voted upon by the Council. . . .” Rule 2.11.1. If reconsideration is requested after the day of the override vote, it must be processed and re-docketed under Special Orders of Business. Rule 2.11.2. However, any such request for reconsideration and subsequent motion to override the Mayor’s veto must be made within the five business day period allowed by the Charter. San Diego Charter § 69(h).

CONCLUSION

The Mayor has broad authority to make changes to the budget approved by the City Council. The Mayor may add or subtract amounts from any line item approved by the City Council. The City Council may override the Mayor's veto of the budget approved by the City Council with a two-thirds vote. The motion to override the Mayor's veto may only make changes to items that were modified or vetoed by the Mayor and new spending may not be considered as part of the veto override motion. The budget must remain balanced throughout the veto and override process. In the event that the City Council fails to override the Mayor's veto, the City Council may entertain a motion for reconsideration made by a Councilmember who voted against overriding the veto.

MARA W. ELLIOTT, CITY ATTORNEY

By



Brant C. Will

Deputy City Attorney

BCW:jdf

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cc: Andrea Tevlin, Independent Budget Analyst