

June 16, 2015

## FOR YOUR INFORMATION MEMO

To: Mayor and Members of City Council

From: Harry Black, City Manager **HB**

Subject: **Background and Impacts of Failure to Adopt Annual Budget**

---

At the June 15 meeting of the Budget & Finance Committee, questions were raised related to the potential repercussions of a failure to approve a City budget (operating and capital) prior to the end of the fiscal year, June 30, 2015. This memo outlines some of the potential legal and operational impacts resulting from lack of an approved spending plan.

### Charter and State Law Requirements

Pursuant to the requirements of Article III, Section 2 of the City Charter, the Mayor is required to transmit to the City Council a proposed budget prepared by the City Manager prior to the end of each fiscal year, which actions have occurred. Thereafter, “[o]n or about the first day of each [taxing] year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate.”<sup>1</sup>

The City Council is the taxing authority for the City.<sup>2</sup> Council therefore has a clear legal duty under Ohio Revised Code [ORC] § 5705.38 to enact a balanced appropriation measure (“budget ordinance”), either temporarily or with finality, for all certified tax revenues for FY 2016 prior to June 30. Because ORC § 5705.38 does not distinguish between capital and operating budgets, such required appropriation measures necessarily includes a city’s operating and capital budgets for the upcoming fiscal year.

### Potential Operational Impacts

Without an annual, or temporary, budget ordinance in place the City is legally proscribed from expending public funds pursuant to Ohio Revised Code § 5705.41, which states that no subdivision shall “[m]ake any appropriation of money except as provided in Chapter 5705 of the Revised Code...”<sup>3</sup>

Failure to approve a capital budget, totaling \$427 million in FY 2016, would:

- impact the majority, if not all, of the City’s capital projects, including funding of new capital projects as well as implementation of capital projects ongoing from prior fiscal years. Much of this work is contracted which would result in a broader local economic impact; the City would

---

<sup>1</sup> Ohio Rev. Code § 5705.38(A).

<sup>2</sup> Charter of the City of Cincinnati, Art. VIII; Ohio Rev. Code § 5705.01(C).

<sup>3</sup> Ohio Rev. Code § 5705.41(A).



have to issue stop work orders to current contractors performing work, in that spending authorization would not exist for them to continue;

- delay or prevent the required sale of bonds potentially impacting the City's bond rating and ability to take advantage of a currently favorable interest rate environment. Upon the conclusion of the current fiscal year, City Council is legally obligated to enact an annual appropriation by passage of the necessary appropriation measures and related bonding mechanisms;
- mean only essential operations of City departments would continue as of July 1, 2015, potentially impacting public safety, health, processing of general payroll and retirement benefits, and sanitation services to name a few;
- have a clear and direct impact on the City's ability to effectively support the Major League Baseball all Star game week, which begins very soon;
- hamper the effectiveness of the workforce due to the inability to purchase necessary equipment, fleet and IT applications; and
- constitute a genuine emergency necessitating extraordinary action by the City Solicitor. Pursuant to Ohio Revised Code § 733.58, the City Solicitor is required to petition for a Writ of Mandamus when an officer of the City fails to perform any duty expressly required by law.

## **Conclusion**

In the event an annual budget is not passed in time, an option for Council consideration is the City's ability to enact a "temporary budget" for a period of three months as likewise authorized by ORC § 5705.38. Such temporary budget would provide for City funding of necessary municipal appropriations through September 30, 2015. City Council would then be required to approve an annual appropriation measure for the remainder of the fiscal year prior to October 1, 2015.

Ample time remains in order to complete the legislative budgeting process prior to June 30. The City Administration stands ready to continue to work with both the Mayor and City Council to provide support, recommendations and to answer any questions that arise.

cc: Paula Boggs Muething

