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**OFFICE OF THE CITY ATTORNEY**

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**Legal Opinion 2008-017**

**TO:** John Engen, Mayor; City Council; Bruce Bender, CAO; Brentt Ramharter, Finance Director; Beckie Christiaens, Assistant Finance Director

**FROM:** Jim Nugent, City Attorney

**DATE:** December 3, 2008

**RE:** City Budget Reports, Recommendations and Amendments During Fiscal Year

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**FACTS:**

City Council member John Hendrickson requested legal research and an opinion pertaining to budget savings requested during the fiscal year by Mayor John Engen. This inquiry arises from Mayor John Engen's October 2008 request to city departments to provide budget savings of approximately 3.75% within their respective Fiscal Year 2009 departmental budgets. During the past three decades, similar requests have been made by mayors on several occasions during a fiscal year. Council member Hendrickson is concerned budget amendments are in essence occurring.

The city council is always able to consider and adopt policy motions and/or resolutions pertaining to and/or in response to any such mayoral budget recommendations. Pursuant to the statutory process for adopting municipal budgets, often there are only 10 to 10 ½ months left in the fiscal year when the city council adopts the budget.

**ISSUES:**

- (1) What are a mayor's statutory budget duties and responsibilities pertaining to a municipal budget?
- (2) What is the statutory process for amending budgets?

**CONCLUSIONS:**

- (1) Pursuant to Mont. Code Ann. § 7-3-203(10) a mayor shall "execute the budget adopted by the commission [city council]."

(2) Pursuant to § 7-6-4006(4) “the governing body [city council] may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings.”

**LEGAL DISCUSSION:**

The City of Missoula Charter, effective January 1, 1997, sets forth the following provisions pertaining to the city budget.

The City council shall be the policy-making body of the City of Missoula.

Charter, Art II (*City Council*), § 1.

**Budget.** The City Council shall review on an annual basis the City budget submitted to it by the Mayor. Following the City Council's review of the budget and adoption of any amendments proposed thereto, the City Council shall adopt the budget by resolution and levy the necessary taxes and establish any fees not already in place to fund the budget in accordance with the laws of the State of Montana.

Charter, Art II (*City Council*), § 7.

The Mayor shall execute all ordinances and resolutions passed by the City Council.

Charter, Art III (*The Mayor*), § 4.

**Annual budget.** The Mayor shall present to the City Council, on an annual basis, a budget for the operation of the City for the City Council's consideration and approval. The budget presented to the City Council by the Mayor shall indicate in sufficient detail all proposed services and programs along with the costs thereof. In addition, the budget submitted by the Mayor to the City Council shall contain an estimated levy of the necessary taxes and fees to carry out the budgeted activities.

Charter, Art III (*The Mayor*), § 7.

Montana municipal government statutes applicable to the mayor (executive)/city council (commission) form of local government have several provisions that address some aspects of municipal government operations that partially address various aspects of the legal issues raised.

Mont. Code Ann. § 7-3-203, in pertinent part provides:

**7-3-203. Duties of executive.** The executive shall:

...

(3) administer affairs of the local government;

...  
(6) report to the commission on the affairs and financial condition of the local government;

...  
(8) report to the commission as the commission may require;

...  
(10) execute the budget adopted by the commission; and

Mont. Code Ann. § 7-3-215(2) provides:

7-3-215. Preparation of budget. The executive may:

...  
(2) prepare the budget in consultation with the commission and department heads.

Pursuant to Mont. Code Ann. § 7-4-4303(3) the mayor has the power to supervise the discharge of official duty by all subordinate officers. Mont. Code Ann. § 7-5-4102, pertaining to the conduct of municipal government and the powers and duties of the mayor related to administration and executive functions, provides:

**7-5-4102. Powers and duties of mayor related to administration and executive function.** (1) The mayor may:

(a) communicate to the council, at the beginning of each session and more often if considered necessary, a statement of the affairs of the city or town, with recommendations that the mayor considers proper;

(b) recommend to the council measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances that the mayor considers expedient;

...  
(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town

Mont. Code Ann. Title 7, chapter 6, part 40 is entitled *Local Government Budget Act*. Mont. Code Ann. § 7-6-4006 provides:

**7-6-4006. Appropriation power -- requirements.** (1) A governing body may appropriate money and provide for the payment of the debts and expenses of the local government.

(2) Money may not be disbursed, expended, or obligated except pursuant to an appropriation for which working capital is or will be available.

(3) Appropriations may be adjusted according to procedures authorized by the governing body for: (a) debt service funds for obligations related to debt approved by the governing body;

(b) trust funds for obligations authorized by trust covenants;

(c) any fund for federal, state, local, or private grants and shared revenue accepted and approved by the governing body;

- (d) any fund for special assessments approved by the governing body;
  - (e) the proceeds from the sale of land;
  - (f) any fund for gifts or donations; and
  - (g) money borrowed during the fiscal year.
- (4) The governing body may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings. Budget amendments providing for additional appropriations must identify the fund reserves, unanticipated revenue, or previously unbudgeted revenue that will fund the appropriations.

Mont. Code Ann. § 7-6-4030 provides:

**7-6-4030. Final budget -- resolution -- appropriations.** (1) The governing body may amend the preliminary budget after the public hearing and after considering any public comment.

(2) The amended budget constitutes the final budget. The final budget must be balanced so that appropriations do not exceed the projected beginning balance plus the estimated revenue of each fund for the fiscal year.

(3) The governing body shall adopt the final budget by resolution. The resolution must:

(a) authorize appropriations to defray the expenses or liabilities for the fiscal year; and

(b) establish legal spending limits at the level of detail in the resolution.

(4) The effective date of the resolution is July 1 of the fiscal year, even if the resolution is adopted after that date.

Mont. Code Ann. § 7-6-4031 provides:

**7-6-4031. Budget amendment procedures.** (1) The final budget resolution may authorize the governing body or a designated official to transfer appropriations between items within the same fund.

(2) The annual budget appropriations may be amended as provided in 7-6-4006(3) and 7-6-4012.

(3) Except as provided in 7-6-4006, 7-6-4011, 7-6-4012, 7-6-4015, and 7-6-4032 or in the case of an emergency under Title 10, chapter 3, a public hearing is required for an overall increase in appropriation authority.

Mont. Code Ann. § 7-6-4006(3) cross referenced in § 7-6-4031(2) is set forth above.

Mont. Code Ann. § 7-6-4012 cross referenced in § 7-6-4031(2) provides:

**7-6-4012. Fee based budgets -- adjustable appropriation.** (1) In its final budget resolution, the governing body may authorize adjustments to appropriations funded by fees throughout the budget period. Adjustable appropriations are:

(a) proprietary fund appropriations; or

- (b) other appropriations specifically identified in the local government's final budget resolution as fee-based appropriations.
- (2) Adjustments of fee-based appropriations must be:
  - (a) based upon the cost of providing the services supported by the fee; and
  - (b) fully funded by the related fees for services, fund reserves, or nonfee revenue such as interest.

There is no statute expressly addressing these circumstances where the mayor requests city department heads to strive for budget savings of a certain specified target amount during the remainder of a fiscal year. It is not clear pursuant to Montana state law if such a request from the mayor in essence constitutes a municipal budget amendment. Pursuant to state law the city council may amend the city budget. Also, it is clear the city council may always take any such requests and/or recommendations under consideration and if necessary adopt a city policy and/or resolution pertaining to the mayor's recommendations.

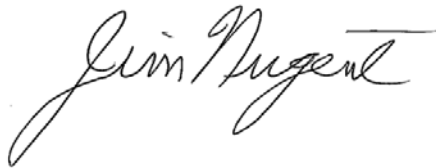
Therefore, if the city council desires to take Mayor Engen's current recommended departmental budget savings under consideration, the city council may do so. Further, city council consideration could include conducting one or more public hearings on the mayor's budget savings recommendations.

**CONCLUSIONS:**

(1) Pursuant to Mont. Code Ann. § 7-3-203(10) a mayor shall "execute the budget adopted by the commission [city council]."

(2) Pursuant to § 7-6-4006(4) "the governing body [city council] may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings."

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Jim Nugent, City Attorney

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