



CITY COUNCIL AGENDA REPORT

MEETING DATE: September 19, 2006

ITEM NUMBER:

IX-1

SUBJECT: ADOPTION OF ANNUAL BUDGET

DATE: SEPTEMBER 6, 2006

FROM: KIMBERLY HALL BARLOW

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714-754-5399

RECOMMENDATION:

Introduce and give first reading to the attached Ordinance Amending Chapter II of Title 2 relating to the adoption of the annual budget.

BACKGROUND:

While the duties of the City Manager under the Municipal Code include preparing and submitting the annual budget to City Council and administering the budget after its adoption, the Costa Mesa Municipal Code does not require that City Council adopt the annual budget or appropriate funds for expenditures by any specific date.

ANALYSIS:

"An appropriation is a legislative act setting aside a certain sum of money for a specified object in such manner that the executive officers are authorized to use that money and no more for such specified purpose." *California Assn. for Safety Education v. Brown*, 30 Cal.App.4th 1264 (1994). This requirement originated in Great Britain's Parliament in the seventeenth century. It was adopted by the United States Constitution and, subsequently, nearly every state in the Union, including California.

In the event the City's annual budget is not adopted prior to the start of the new fiscal year, appropriations for expenditures cannot be made except by emergency legislation. Nonpayment to the City's creditors and employees creates hardship to those affected.

In *White v. Davis*, 30 Cal. 4th 528 (2003), the California Supreme Court held that employees who continue to work "do not have a contractual right actually to receive the payment of salary *prior to the enactment of an applicable appropriation.*" Pursuant to the minimum wage provision of the Fair Labor Standards Act (29 U.S.C. § 206), however, prompt compensation for nonexempt employees who do not work overtime at the minimum wage rate is required. Those employees who work overtime must be timely paid in full for straight time plus overtime. 29 C.F.R. § 778.212, *Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993).

While most employees will ultimately be paid for work performed during a budget impasse, they do not have a right to the immediate payment of their full salaries. There is no provision for prompt compensation of exempt employees. Therefore, exempt employees would receive no compensation until the City Council adopts the budget and authorizes the applicable appropriation. This would prevent the City from complying with federal law, thus making the City liable for liquidated damages in the equal amount of employees' unpaid minimum wages or overtime compensation, plus attorney's fees and costs of any action. 29 USCS § 216.

Until the annual budget is adopted by City Council, the City's inability to disburse funds absent an applicable appropriation to pay salaries, fund vital services and operating costs, could cause severe distress and financial injury, especially to small businesses which contract with the City and its own employees who continue to work during a budget impasse without any pay or only minimum wages. The City would also be liable for damages, fees and costs in any action for untimely payment of salaries.

Adopting a code requirement for adopting a budget by a date and time certain also would allow the City to ensure that conflicted participants may participate if necessary to pass a budget and/or that appropriate methods for resolving an impasse may be implemented to ensure that budget is adopted in a timely manner.

ALTERNATIVES CONSIDERED:

The Council could determine not to adopt the proposed revision.

FISCAL REVIEW:

None required.

LEGAL REVIEW:

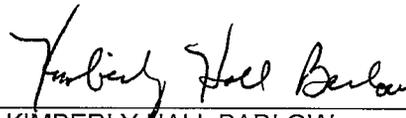
The City Attorney's office has prepared this staff report and the attached ordinance for your consideration.

CONCLUSION:

The proposed amendment to the Costa Mesa Municipal Code is intended to address fiscal concerns and encourage timely adoption of the annual budget. The City Attorney recommends that City Council give first reading to the Ordinance.



ALLAN L. ROEDER
City Manager



KIMBERLY HALL BARLOW
City Attorney

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Ordinance

File Name

Date

Time

ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER II OF TITLE 2 OF THE COSTA MESA MUNICIPAL CODE RELATING TO ADOPTION OF THE ANNUAL BUDGET

WHEREAS, the City Manager is charged with the duty to prepare and submit the annual budget to the City Council; and

WHEREAS, it is also the duty of the City Manager to administer the annual budget after its adoption; and

WHEREAS, there is no provision in the Costa Mesa Municipal Code which obligates the City Council to adopt an annual budget by a prescribed date and time; and

WHEREAS, if, prior to the beginning of the next fiscal year, the budget has not been adopted and funds appropriated for expenditures, the City will be unable to pay its debts and employee salaries.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter II of Title 2 of the Costa Mesa Municipal Code is hereby amended by adding section 2-86 to read as follows:

Chapter II

Sec. 2-86 Adoption of budget.

The City Council shall adopt the annual budget by midnight on June 30 of each year. Until the budget has been adopted, the City Council shall not appropriate any funds for expenditure during the fiscal year for which the budget is to be enacted.

Section 2. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this ____ day of _____, 2006.

Mayor

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 06-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____th day of _____, 2006, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2006, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2006.

City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa