



July 1, 2011

TO: Tina Volek, City Administrator

FROM: Bruce McCandless, Asst. City Administrator
Brent Brooks, City Attorney

SUBJECT: City spending authority in the absence of an adopted FY 2012 budget

The City's fiscal year begins July 1 and staff strives to provide the City Council with all of the information needed or requested so that the budget can be adopted by that date. The City Council considered the FY 2012 budget at its June 27, 2011 meeting and tabled its adoption until August 8, 2011. Since that date is beyond the start of the fiscal year, you asked us to research and advise you on the City's spending authority until a budget is adopted.

The response to your question lies primarily in 7-6-4025 MCA, which states:

Receipt and expenditure of money prior to adoption of final budget. A local government may receive and expend money between July 1 of the fiscal year and the date the final budget resolution is adopted.

There are no Attorney General opinions or case law on this statute, but we believe that it allows the City of Billings to continue operating, in most respects, the same as it did under the FY 2011 budget. The exceptions and other guidance are outlined below in a Question and Answer format that we hope you will share with employees and the City Council.

Question: Will personnel continue to be paid after July 1?

Answer: Yes. All present personnel will be paid and benefits provided at the same levels as during FY 11. Pay increases or decreases that result from actions such as employment anniversary steps, certifications, promotions or demotions will also be honored.

Question: What about the police officers in the MPEA bargaining unit?

Answer: The City Council approved the MPEA contract on June 27 and it has a July 1 effective date. Even though there is no specific budget authority, pay and benefits for these officers will be in accordance with that contract.

Question: Can I hire personnel?

Answer: Departments can hire or replace personnel for positions that were approved in the FY 11 budget. Personnel that are to be added under the proposed budget may not be hired until the Council approves the FY 12 budget.

Question: Can I continue to pay for operational costs?

Answer: Yes, but the annual expense incurred after July 1 should not exceed the lower of 1) the amount that was approved in the FY 11 budget or 2) the amount proposed for the FY 12 budget. Once the Council approves the FY 12 budget, you may pay operational costs according to that appropriation.

Question: May I purchase equipment or make other capital improvements?

Answer: Capital is defined as equipment that equals or exceeds \$5,000 in value and other facilities or improvements that equal or exceed \$25,000. You may not purchase or contract for capital equipment or other capital improvements that are contained in the FY 12 budget or would be classified as FY 12 expenses. That includes capital where bids were obtained before July 1 but the purchase will be made or the contract will be signed after July 1. Equipment and other improvements that fall below the \$5,000/\$25,000 thresholds are considered operating expenses and may be purchased, subject to the operations expense restriction described above.

Question: Does this capital purchasing restriction apply to preliminary work, such as an engineering contract to design a capital improvement that is planned for later this year or a future year?

Answer: If the design or other preliminary work is considered part of the total project or improvement, the restriction applies. In most cases, this preliminary work and the costs associated with them are considered part of the capital expense and will therefore need to be deferred until the Council adopts the FY 12 budget.

Question: If a capital project is underway in FY 11, can the project continue and can I make payments beyond July 1?

Answer: The City will honor its contracts. Encumbered FY 11 funds may be spent after July 1 if there was a contract in effect on June 30.

Question: Will the City continue making bond/debt payments after July 1?

Answer: Yes, the City has legal, contractual obligations to bondholders that were in effect prior to July 1.

Question: Can I continue applying for and accepting state or federal grants and private donations?

Answer: Yes and this applies to any other forms and sources of revenue, such as fees, assessments and taxes that have already been approved by the City Council. The restrictions described above apply to spending, not to revenue or income.

Question: Could the City Council adopt parts of the budget so that some departments or some types of spending don't have these restrictions?

Answer: The City Council could adopt portions of the budget without approving all of it. Segregating certain operations or functions from the remainder of the budget will require substantial effort by Finance staff, including consultation and coordination with the affected departments/operations. Therefore, the Council would need to clearly articulate what portions of the budget that it wants to consider approving and take a formal vote on that decision. Staff would require at least a few days to prepare the documentation for Council consideration. The Council would need to add this item to a business session agenda, give its instructions, allow time for staff to work and respond at the following business meeting and finally, vote to approve a budget resolution. Given the required lead-time for agendas and staff work, this effort might allow partial budget approval on July 25th.

There may be situations or questions about the budget and spending authority that we have not anticipated, so please ask either of us for additional research and advice on these matters.