



MUNICIPALITY OF ANCHORAGE
Office of the Municipal Attorney

Memorandum

DATE: December 10, 2021
TO: Mayor, Anchorage Assembly
THRU: Patrick N. Bergt, Municipal Attorney *PB*
THRU: Deitra L. Ennis, Deputy Municipal Attorney *DE*
THRU: Blair M. Christensen, Assistant Municipal Attorney *BC*
FROM: Ben R. Bowman, Assistant Municipal Attorney *BRB*
Cc: Dean T. Gates, Assembly Counsel
SUBJECT: FUND CERTIFICATION

QUESTION

Can the Assembly pass legislation without prior certification of funds or funding sources by the Chief Financial Officer (CFO)?

BRIEF ANSWER

No. Fund certification, including fund balance and projections of revenue, is solely within the purview and at the discretion of the CFO. Assembly appropriations without fund certification are void and lack the force of law.

BACKGROUND

On November 23, 2021, the Anchorage Assembly approved AO 2021-96: An Ordinance of the Municipality of Anchorage Adopting and Appropriating Funds for the 2022 General Government Operating Budget for the Municipality of Anchorage. On November 30, 2021, Mayor Dave Bronson issued a series of line-item vetoes to

AO 2021-96 including vetoes based upon the inability of the CFO to certify designated funding sources.

DISCUSSION

Pursuant to Anchorage Municipal Code (AMC) 6.10.030:

“The director of the office of management and budget shall present to the mayor the annual budget for the ensuing fiscal year. ***The budget shall be based upon detailed estimates furnished by the agencies of the municipal government*** according to a classification as nearly uniform as possible. **The budget shall present information on recommended appropriations, anticipated expenditures, estimated taxes and other revenues required to support the budget.**

...

The chief fiscal officer shall provide fiscal input to the preliminary stages of the budget preparation, and again when the office of management and budget consolidates agency requests. ***The chief fiscal officer shall provide funding certification prior to the mayor's administrative review, and upon assembly adoption the chief fiscal officer is responsible for budget execution and administration and pre-audits and post-audits...***¹

(Emphasis added). As such, the estimates upon which the budget is based originate from municipal government agencies and the CFO provides funding certification for the budget and subsequent administration after appropriation.

Code and Charter contain additional implication that the CFO is the source and custodian of municipal financial information as generally enumerated in AMC 6.30-50. The CFO is responsible for the collection of all revenues of the municipality including the billing and collecting of taxes and other revenues.² The CFO has broad power in collecting and

¹ See AMC 6.10.030. Emphasis added.

² AMC 6.30.060 “All revenues shall be collected by the chief fiscal officer under such regulations as may be promulgated in accordance with the administrative code.

The chief fiscal officer shall be responsible for billing and collecting all real and personal property taxes, sales taxes and miscellaneous revenues of the municipality. Undesignated remittances may be credited to accounts at the discretion of the chief fiscal officer. Revenue accruing to the municipality not anticipated by the fiscal year budget appropriation shall be reported to the assembly at least quarterly.”

managing these revenues.³ The CFO is also responsible for the financial accounting of the municipality.

“The chief fiscal officer shall install and have supervision over the accounts of all organizational elements of the municipality. Such accounts shall show in detail the financial transactions of all departments.”⁴

The CFO is responsible for the municipality’s financial affairs and accounting:

“The chief fiscal officer is responsible for the administration of the provisions of this title, except where otherwise provided. In addition to the other duties set forth in this title, the chief fiscal officer shall:

- A. Supervise the employees of the department of finance;
- B. *Administer the financial affairs of the municipality, including the keeping of itemized accounts of money received and disbursed and payment of money on vouchers drawn against appropriations, and supervise the tax assessment function of the government;*
- C. *Directly supervise the keeping of the general accounts of the municipality;*
- D. *Review and approve in writing all accounting forms, books and blanks in use and any changes to or introduction of forms;*
- E. *Be custodian of all municipal funds, checks, vouchers and other documents relating to the municipal expenditures, franchises, rents and special privileges, contracts, leases and agreements, copies of which shall be furnished by the municipal clerk;*
- F. *Handle debt administration and investment of municipal funds; and*
- G. *Advise the mayor and the assembly on fiscal policy.”*⁵

The executive branch, primarily through the CFO, generates the financial reporting of the municipality including monthly updates, yearly comprehensive reports, and any

³ See generally AMC 6.30.707 (allowing the CFO to prepare and enter into special assessment agreements), 6.30.080 (allowing the CFO to ‘charge off or correct’ uncollected accounts), 6.30.090 (allowing the CFO to refund moneys erroneously paid to the municipality).

⁴ AMC 6.40.010

⁵ AMC 6.50.010. Emphasis added.

additional reports required by Code.⁶ Thus, the executive branch, primarily through the CFO, is the authority on the financial status of the municipality.

The concentration of financial duties with the executive is further implied in Charter Section 13.05(a):

“If the mayor determines that revenues will be less than appropriations for a fiscal year, the mayor shall so report to the assembly. The assembly may reduce appropriations as it deems necessary. No appropriation may be reduced by more than the amount of the then unencumbered balance.”

While appropriation within the budget is clearly within the purview of the Assembly,⁷ Charter and Code distinguish and designate that the determination of the financial resources, both for current accounting and projected future accounting, rests with the executive in the form of the CFO and Mayor.

The separation of budgetary powers is best illustrated by the dual restrictions on expenditures of municipal money. Per Charter Section 13.08(a):

“No payment shall be made, or obligation incurred except in accordance with appropriations. Obligations otherwise incurred are void. The assembly by ordinance may provide for exceptions in the case of tax refunds and other routine payments.”

This correlates and combines with AMC 6.30.050:

“No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for expenditure of money be passed by the assembly or be authorized by any officer of the municipality, unless the chief fiscal officer shall first certify to the assembly or to the proper officer, as the case may be, that the money required for such contract, obligation or expenditure has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose. Likewise, no officer of the municipality shall authorize commencement of work on any contract, agreement or obligation without first having been notified of funding approval. The sum so certified

⁶ See generally AMC 6.40.015 (requiring the CFO to provide monthly financial reporting to the Assembly), AMC 6.40.030 (requiring the mayor to provide comprehensive annual financial reporting), AMC 6.40.035.D.

⁷ See generally Charter Section 13.05, 13.08.

shall not thereafter be considered unencumbered until the municipality is discharged from the contract, agreement or obligation.

All moneys actually in the treasury to the credit of the fund from which they are to be drawn and all moneys applicable to the payment of the obligation or appropriation involved that are anticipated to come into the treasury before the maturity of such contract, agreement or obligation from taxes, assessments, miscellaneous revenue or from sales of property, federal or state grants, and moneys to be derived from lawfully authorized bonds, for the purpose of such certificate shall be considered in the treasury to the credit of the appropriate fund and subject to such certification.”⁸

To combine these two provisions, no payment or obligation of municipal moneys may be made without Assembly appropriation and no Assembly appropriation of moneys may be made prior to the certification by the CFO that the required moneys exist and are not otherwise appropriated. This split in budgetary power dates back to the beginning of the Municipality and, at least in the case of the requirement for CFO certification of funds, dates to the earlier Greater Anchorage Area Borough.

Per the second clause of AMC 6.30.050, moneys requiring CFO certification include both existing fund amounts and projected revenues. There is no provision in Charter or Code limiting CFO discretion regarding certification. As such, the CFO has the sole discretion to certify the existence of existing municipal moneys and fund balances as well as projected future fund balances or revenues. Appropriations lacking certification of funds by the CFO or passed “Pending Fund Certification” are void and lack the force of law unless the funds are subsequently certified by the CFO at their discretion.

The situation where a proposed funding source was considered during Assembly budget considerations but was unverifiable has arisen before in recent history. As part of 2021-94(S), a funding source to increase funding for the Mobile Crisis Team in the Fire Department budget was proposed. It was determined by the CFO that the proposed funds did not exist. The proposed funding increase was not included in the final 2021 1st Quarter Budget. See below excerpt from AM 194-2021(A) in support of 2021-94(S).

⁸ Emphasis added.

2021 1st Quarter Revised Alcoholic Beverages Retail Sales Tax Program				
#	Department / Agency	Description	Fund	Filled
43				
44	Assembly Amendments			
45	Health	Constant #2 - fund Victims for Justice (\$125K), AWAIC, and other grantees from the Anchorage Health Department funded with reduction in evidence-based grants child abuse and domestic program	206000	
46	Fire	Constant and Zaletel # 1 - Increase funding for the Mobile Crisis Team (MCT) to begin 24 hour, 7 days a week operations for the 4th quarter of 2021 funded by delay of other Alcohol Tax funded programs Upon review of the approved amendment Zaletel Constant #1, the Administration examined the possibility to move and reallocate unprogrammed or unspent funds to the MCT; however it was determined no such funds were available and as a result, the approved amendment was not able to be accommodated and was not included in the final 2021 1Q budget.	206000	
47		Total Assembly Amendments		
48				

CONCLUSION

Pursuant to AMC 6.30.050, the municipality cannot enter any obligation, ordinance or order for expenditure of money by the Municipality of Anchorage either through assembly passage or administrative authorization without prior certification from the CFO that the money required for the obligation has been appropriated to the necessary fund and not otherwise allocated. Any appropriation or obligation lacking certification of funds by the CFO is void and does not have the force of law. Any projected funding sources or amounts, other than those certified by the CFO, cannot be a source of funding for municipal appropriations or obligations.

Money which must be certified as appropriated to a fund and not otherwise allocated includes existing fund amounts and projected revenues. Both of these determinations and the subsequent certification lie within the power of the CFO as generally enumerated through AMC 6.30-50.