

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: President Fortunato Bas and Members of the City Council

FROM: Barbara J. Parker
City Attorney

CC: Mayor Libby Schaaf
City Administrator Edward Reiskin

DATE: May 31, 2021

SUBJECT: Council's Remedies Regarding Mayor's Failure to Publish Proposed Budget by May 1 Deadline in the City's Consolidated Fiscal Policy Ordinance No. 13487 C.M.S.

Dear President Fortunato Bas and Members of the Council:

Please see the attached public legal opinion on the subject matter.

The opinion addresses the relative powers of the City Council and the Mayor under the City Charter and the City's Consolidated Fiscal Policy Ordinance No. 14387 C.M.S.

This is a public opinion because this issue requires interpretation of the City Charter, regarding the relative powers of the City Council and the Mayor. Like all public opinions, this opinion will be posted on the City Attorney's web site at www.oaklandcityattorney.org and can be found by clicking on the "Public Legal Opinions" link on the home page.

Very truly yours,



BARBARA J. PARKER
City Attorney


Attachment

3068026v1

MEMORANDUM

VIA EMAIL

TO: Barbara J. Parker, Oakland City Attorney

FROM: Karen Getman 

DATE: May 31, 2021

RE: The Mayor's Role in the Budget Process

You have asked whether the City Council has remedies to address a Mayor's failure to submit a proposed budget by the deadline provided for in the Council's Consolidated Fiscal Policy Ordinance No. 13487 C.M.S. ("Consolidated Fiscal Policy.") It is highly unlikely that a court would provide relief in such a situation. However, there are steps the Council could take to inquire into the reasons for, and/or express dissatisfaction with, the Mayor's inaction.

FACTS

The City Charter requires that the Council adopt a balanced budget for the next Fiscal Year ("FY") no later than the end of the current FY cycle (June 30). City Charter § 801. The Charter further provides that "the Mayor shall present to the Council [a proposed balanced budget for the next FY], in a form and manner and at a time as the Council may prescribe by resolution." *Id.* If the Council fails to adopt a balanced budget by the June 30 deadline, the prior FY budgeted expenditures remain in effect until the Council adopts a new budget.

The City's Consolidated Fiscal Policy provides the form, manner and time frame for submission of the Mayor's proposed budget.

The Mayor issued the proposed budget for FY 2021-2023 on or about May 6, 2021. The City's Consolidated Fiscal Policy (section 3, subpart 6) requires that the Mayor publish and make publicly available the proposed budget by May 1. The Council held the biannual budget workshop on March 8, 2021. The Consolidated Fiscal Policy (section 3, subpart 2) requires that the Council conduct a biannual workshop in February.

ANALYSIS

Any judicial action seeking to mandate the Mayor's submission of a proposed budget for the upcoming fiscal year is moot, given that the proposed budget has now been submitted for Council consideration. *Cf. Yorty v. Los Angeles City Council*, 239 Cal. App. 2d 138,

141 (1966) (mayor's action for writ to mandate the City Council provide additional funds for positions in the Mayor's office became moot once the fiscal year had ended). This opinion addresses whether such an action could be taken should the situation recur. This opinion builds on the principles set forth in the City Attorney's public legal opinion dated February 12, 2021, regarding the relative powers of the City Council and the City Administrator with respect to the annual budget adopted by the Council. (The City Attorney's public legal opinions are published on the City Attorney's website: <https://www.oaklandcityattorney.org>.)

As set forth in that opinion, under the Oakland City Charter, the Mayor is "the chief elective officer of the City" and the Council is the City's "governing body . . . vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California." Charter §§ 305, 207. The City Administrator, acting under the direction of the Mayor, "control[s] and administer[s] the financial affairs of the City" while "keep[ing] the Council at all times fully advised as to the financial condition and needs of the City." *Id.* § 504(e), (j). The Council has no administrative powers and cannot interfere in administrative affairs. *Id.* §§ 207, 218.

While the Mayor is the chief executive officer of the City, the Mayor also is authorized by the Charter to perform "substantial legislative functions," many of which are within the Mayor's sole purview, such as casting tie-breaking votes and requiring reconsideration of ordinances. *Brown v. Fair Political Practices Com.*, 84 Cal. App. 4th 137, 148 (2000). This is particularly true with respect to the enactment of the annual city budget. Under the Charter, both the City Council and the Mayor have defined roles in the budget process. The City Administrator, working under the direction of the Mayor and Council, prepares budget recommendations for the next fiscal year "which the Mayor shall present to the Council, in a form and manner and at a time as the Council may prescribe by resolution." Charter § 801; see also *id.* § 305(a). The Council, after holding public hearings, "shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year *Id.* § 801. Should the Council fail to adopt a budget, "the appropriations for current operations for the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted." *Id.*

The development of the City's budget thus entails both executive/administrative and legislative functions, but the enactment of the budget is a legislative matter committed to the sole policy judgment of the Council. *Scott v. Common Council of the City of San Bernadino*, 44 Cal. App. 4th 684, 690 (1996).

Budgetary functions are generally legislative. "The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for

distribution among those demands. It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available.”

Steiner v. Superior Court, 50 Cal. App. 4th 1771, 1788 (1996) (quoting *County of Butte v. Superior Court*, 176 Cal. App. 3d 693, 699 (1985)).¹

Here, the Mayor’s submission of a proposed budget also involves the exercise of discretion and is not merely a ministerial action. As set forth in the Consolidated Fiscal Policy Ordinance, No. 13487 CMS, the preparation of the proposed budget involves compiling and assessing information from a wide variety of sources. The Mayor, working with the City Administrator, must collect information from the public and various city agencies, review estimated needs and revenue forecasts, consider Council Member priorities, and put that information into the context of a budget proposal that reflects the policies enacted by the City Council. There are many subtle and broad variations in how that might be done, and the Charter commits to the Mayor’s discretion how to prepare and present the budget. As the court of appeal recognized in *Brown v. Fair Political Practices Com.*, 84 Cal. App. 4th at 148:

[T]he power to recommend legislation is an important executive responsibility, analogous to the presidential authority conferred by article II, section 3 of the federal Constitution. However, recommending legislation is a discretionary rather than a mandatory exercise of executive authority.

That distinction between discretionary and ministerial or mandatory executive authority is crucial. The courts can grant a writ of mandate to compel an executive officer to perform a

¹ In *Steiner*, the district attorney sought to remove from office two county supervisors for failing to adequately supervise the county treasurer, who made speculative financial investments that plummeted the county into bankruptcy. The court of appeal upheld the supervisors’ objections to the accusations, holding that separation of powers principles precluded the courts from enforcing a statute that penalized the legislators for acts or omissions committed as part of their legislative functions, except in extraordinary circumstances of willful misconduct.

ministerial or mandatory duty. They cannot compel an exercise of discretion by an executive officer.²

The Consolidated Fiscal Policy requires the Mayor to publish the proposed budget to the public by May 1 and requires the Council to conduct a hearing on the proposal by May 15. Ord. § 3(6). Although the Mayor is required to perform an action (submit the proposed budget) by the deadline, what she is required to do necessarily involves the exercise of her executive discretion. “Even if mandatory language appears in [a] statute creating a duty, the duty is discretionary if the [public entity] must exercise significant discretion to perform the duty.” *Sonoma Ag Art v. Department of Food & Agriculture*, 125 Cal. App. 4th 122, 127 (2004).

Were the submission of the budget simply a ministerial act, then a writ or injunctive relief in the courts might be possible to compel submission by that date. See *Torres v. City of Montebello*, 234 Cal. App. 4th 382, 398 (2015) (writ available to compel mayor of general law city to complete the ministerial act of signing a contract approved by the city council). However, when the Mayor prepares and submits the proposed budget, the Mayor’s actions are discretionary, not ministerial, and are not subject to judicial compulsion.

Thus in *Braude v. City of Los Angeles*, 226 Cal. App. 3d 83 (1990), a disgruntled member of the city council filed suit as a citizen-taxpayer against the council for having passed an ordinance allowing a development project to proceed, and filed suit against the mayor for having signed the ordinance rather than vetoing it. The court found that the council member lacked standing to sue the council on which the member sits. *Id.* at 91. The council member also lacked standing to sue the mayor for the performance of a discretionary decision to approve the ordinance because such a suit would raise significant separation of powers concerns. *Id.* at 91-92. As *Braude* indicates, the doctrine of separation of powers severely

² California Code of Civil Procedure sets forth the procedure and prerequisites for the courts to compel an executive officer to perform a ministerial or mandatory duty.

§ 1085 (a) provides: A writ of mandate may be issued by any court to . . . a person, **to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station** . . .

§ 1086 provides: The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.

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limits the ability of the judiciary to interfere with legislative or executive officials in the exercise of their discretionary functions.

Here, an action for writ of mandate or injunctive relief would involve the courts in just such a forbidden act. The courts would be asked to command that the Mayor take specific executive action, i.e. introduce a proposed budget resolution requiring the exercise of her discretion, something that the separation of powers forbids them from doing. The courts would not even be able to assert as justification the necessity to prevent immediate or irreparable harm to the public from the Mayor's inaction, as the Charter provides for continuation of the prior budgeted expenditures during a budget impasse.

However, the Council has other options to adopt a budget if the Mayor does not perform the Mayor's duty to propose a budget. The Council could direct the City Administrator to provide an analysis of the projected revenues and expenditures and then exercise the Council's policy making budgetary authority. The Council also could hold public hearings inquiring into the reasons for the Mayor's failure to act and publicly express its dissatisfaction.

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