

Legal Q&A
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Who is considered to be the city's budget officer?

The budget officer is the mayor, except in a city having the city manager form of government, in which case the budget officer is the city manager. TEX. LOC. GOV'T CODE ANN. § 102.001. A city council does not have the authority to reassign the mayor's statutory duties as budget officer to another city official. Tex. Att'y Gen. Op. No. JC-0544 (2002), at 2.

What information must be contained in the budget?

A budget must contain the following information:

- (a) The budget officer shall itemize the budget to allow as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes made for the preceding year. The budget must show as definitely as possible each of the projects for which expenditures are set up in the budget and the estimated amount of money carried in the budget for each project.
- (b) The budget must contain a complete financial statement of the municipality that shows:
 - (1) the outstanding obligations of the municipality;
 - (2) the cash on hand to the credit of each fund;
 - (3) the funds received from all sources during the preceding year;
 - (4) the funds available from all sources during the ensuing year;
 - (5) the estimated revenue available to cover the proposed budget; and
 - (6) the estimated tax rate required to cover the proposed budget.

TEX. LOC. GOV'T CODE ANN. § 102.003.

What is the "proposed budget"?

The procedure for adopting a budget commences with the preparation of a "proposed budget" by the budget officer. TEX. LOC. GOV'T CODE ANN. § 102.002. The proposed budget must be filed with the city secretary prior to the 30th day before the date the city adopts its tax levy for the fiscal year. *Id.* at § 102.005(a). After it is filed, the proposed budget must be made available for

inspection by any person, and if a city maintains a Web site, the proposed budget must be posted on the Web site. *Id.* at § 102.005(c).

When a proposed budget that will require raising more revenue from property taxes than in the previous year is filed with the municipal clerk, the proposed budget must include a cover sheet that includes the following statement in at least 18-point type: “This budget will raise more total property taxes than last year’s budget by (insert total dollar amount of increase and percentage increase), and of that amount (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll) is tax revenue to be raised from new property added to the tax roll this year.” *Id.* at § 102.005(b).

Must a city hold a public hearing on the budget?

Yes. The city council must hold a public hearing on the proposed budget. TEX. LOC. GOV’T CODE ANN. § 102.006(a). Any interested person may attend and participate. *Id.* The public hearing date must occur after the 15th day following the date the proposed budget is filed with the city secretary but before the tax levy is set. *Id.* at § 102.006(b). The city must publish notice of the budget hearing in at least one newspaper of general circulation in the county in which the city is located between ten and 30 days before the hearing. *Id.* at § 102.0065. If the proposed budget will require raising more revenue from property taxes than in the previous year, the published notice must include the same notice provided under Section 102.005 of the Local Government Code. *Id.* at § 102.006(c).

A city council must take some sort of action on the budget at conclusion of the budget hearing. *Id.* at § 102.007(b). This action could be either to adopt the budget or a vote to postpone the final budget vote. Before adopting the proposed budget, the city council may make any changes it considers warranted by law or in the best interest of the taxpayers. *Id.* § 102.007(a).

What is required of the city once the budget is adopted?

When the budget is approved, a copy of the final budget must be filed with the city secretary and with the county clerk. TEX. LOC. GOV’T CODE ANN. §§ 102.008, 102.009(d), and 102.011. In addition, a city that maintains a Web site must ensure that a copy of the budget is posted on the Web site. *Id.* at § 102.008.

If the adoption of a budget will require raising more revenue from property taxes than in the previous year, state law requires the city council to vote to ratify the property tax increase reflected in the budget. *Id.* at § 102.007(c). This vote to ratify a property tax increase is in addition to, and separate from, the vote to adopt the budget or the vote to set the tax rate as required by Chapter 26 of the Tax Code. *Id.* at § 102.007.

Under what circumstances may the budget be amended?

Sections 102.009 and 102.010 of the Texas Local Government Code authorize the governing body to amend the budget. Section 102.009 authorizes “an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of

reasonably diligent thought and attention.” Section 102.010 provides, “this chapter does not prevent the governing body of the municipality from making changes in the budget for municipal purposes.”

Harmonizing these sections leads to the conclusion that an amendment to authorize a new or additional expenditure must be justified by a finding of “grave public necessity,” whereas other budget amendments (for instance, to reduce an expenditure) would not require such a finding. *Rains v. Mercantile National Bank of Dallas*, 188 S.W.2d 798, 803 (Tex. Civ. App.—El Paso 1945), *aff’d on other grounds*, 191 S.W.2d 850 (Tex. 1946).

A court will disturb the city council’s determination of “grave public necessity” only if there is no evidence to support such a finding. *Bexar County v. Hatley*, 150 S.W.2d 980 (Tex. 1941). When a grave public necessity is required to be found, the ordinance should recite the existence of the same and should recite the facts that give rise to the existence of grave public necessity. *Guerra v. McClellan*, 243 S.W.2d 715 (Tex. Civ. App.—San Antonio 1951, mandamus overruled); Tex. Att’y Gen. LO-97-051 (1997), at 2.

A city council must amend the budget by adopting an act of “equal dignity.” Tex. Att’y Gen. Op. No. GA-0431 (2006), at 2. Therefore, a budget ordinance may be amended only by an ordinance, and not by a resolution, motion, or order. *Id.* After an ordinance amending the budget is adopted, the amendment must be filed with the city secretary and with the county clerk. TEX. LOC. GOV’T CODE ANN. §§ 102.009(c) and 102.009(d).