

Legal Q&A

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Q. Who is considered to be the city's budget officer?

A. The budget officer is the mayor, except that in a city having the city manager form of government, 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.

Q. What information must be contained in the budget?

A. A budget must contain the following information:

1. 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.
2. The budget must contain a complete financial statement of the municipality that shows:
 - a. the outstanding obligations of the municipality;
 - b. the cash on hand to the credit of each fund;
 - c. the funds received from all sources during the preceding year;
 - d. the funds available from all sources during the ensuing year;
 - e. the estimated revenue available to cover the proposed budget; and
 - f. the estimated tax rate required to cover the proposed budget.

TEX. LOC. GOV'T CODE ANN. § 102.003.

Q. What is the proposed budget?

A. 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 website, the proposed budget must be posted on the website. *Id.* at § 102.005(c).

When a proposed budget is filed with the municipal clerk that will require raising more revenue from property taxes than in the previous year, 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).

Q. Must a city hold a public hearing on the budget?

A. 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. *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(a). This action could be either to adopt the budget, or it could be a vote to postpone the final budget vote. It is generally accepted that the city need not adopt the budget at the end of the hearing. 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(b).

Q. When must the budget be adopted?

A. Interestingly, Chapter 102 of the Local Government Code doesn't impose a specific deadline. The statute does provide that a city may only levy property taxes in accordance with a budget. *See* TEX. LOC. GOV'T CODE ANN. § 102.009(a). Most attorneys take this statement to mean that a city's budget must be adopted before the city's property tax rate, assuming the city levies a property tax. A city must adopt its property tax before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the city. TEX. TAX. CODE § 26.05(a). Taken together, these statutes essentially require a city that levies a property tax to adopt its budget before September 30 or the 60th day after the certified roll is received by the city.

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

A. 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.

In 2013, legislation passed that requires all adopted budgets to include a cover sheet. The cover sheet must contain the following items:

1. A statement, in 18-point or larger type, that contains specific statutory language depending upon whether the budget will raise more, less, or the same amount of revenue from property taxes as the previous year's budget;
2. The record vote of each member of the governing body by name voting on the adoption of the budget;
3. The following city property tax rates for the preceding and current fiscal years:
 - a. The property tax rate;
 - b. The effective tax rate
 - c. The effective maintenance and operations tax rate;
 - d. The rollback tax rate; and
 - e. The debt rate; and
4. The total amount of city debt obligations secured by property taxes.

TEX. LOC. GOV'T CODE ANN. § 102.007(d).

When the budget is approved, a copy of the final budget must be filed with the city secretary and the county clerk. TEX. LOC. GOV'T CODE ANN. §§ 102.008, 102.009(d), and 102.011. In addition, a city that maintains a website must ensure that a copy of the budget, including the cover sheet, is posted on the website and the record vote on the cover sheet is posted on the website at least until the first anniversary of the date the budget is adopted. *Id.* at § 102.008(a). The city council is required to ensure that the cover page of the budget is amended to include the requisite property tax rates required by statute for the current fiscal year if the rates are not included on the cover page when the budget is filed with the city secretary. *Id.* at § 102.008(b).

Q. Under what circumstances may the budget be amended?

A. 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 together 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 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 or 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 only be amended by an ordinance, and not by a resolution, motion, or order. *Id.* After an ordinance is adopted amending the budget, 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).