

**LEGAL AND LEGISLATIVE COMMITTEE**  
**January 22, 2013**

Councilman Murphy, Chair, called the meeting of the Legal and Legislative Committee to order with Councilmen Benson, Berz, Gilbert, McGary, Ladd, Rico, Robinson and Scott present. Assistant City Attorney Phil Noblett, Management Analyst/Auditor Randy Burns and Council Clerk Carol O'Neal were also present.

Others present included Dan Johnson, Daisy Madison, Vickie Haley, Chief Dodd, Chief Parker and Richard Beeland.

Councilman Murphy stated this Committee was asked to come up with a process or written rules that someone could refer to if they were late in submitting a budget request during the regular budget process; that he did his best to give a starting point of discussion. He noted that Councilwoman Berz raised an issue with him prior to the meeting which should be submitted directly to the executive, anyway, rather than to the Council. He stated the way the rules work the Mayor submits a proposed budget to the Council.

Councilwoman Berz expressed thanks to Councilman Murphy for his hard work on this as it has several aspects for consideration. She stated she does not believe the Council can come up with an appeals process after the fact noting this may be very good, however it would be something to address for next year before the fact. She stated the record shows we started working on this process in September with everyone having input and approving it; that she indicated to Councilman Murphy we do not put in an appeals process after the fact, it is at the beginning. She stated she does not believe public funds can be limited only to people who have requested in the past as there may be an issue there. She stated also that she is curious as to why the requests are coming to Council as it is the Mayor's budget, an executive budget. She stated as she understands checks and balances, the Mayor should be preparing the budget based on requests from whomever and then we should be approving or disapproving based on our reasons. She stated that is how the legislative checks the executive and is a little concerned this all came to fore almost as special consideration as class legislation for one agency noting that the larger issue is why requests originate coming to the Council when it is not our budget as it is the Mayor's budget. She stated we should start educating ourselves right away so when the Mayor makes his recommendations we will be in a good position to make some comment and approve or disapprove; that this seems a little "bass awkward" to her.

Admin. Madison stated it is her understanding the Mayor puts forth his administration's budget, then the citizens and other organizations have the opportunity to make their direct appeal to Council; that traditionally they are sent to Randy Burns for handling and as a practical matter we actually get them and make them part of the Mayor's budget for simplicity and practicality purposes.

Councilwoman Berz stated she does not know when it started; that the Council's only role is to inform themselves so they are able to make decisions once the Mayor comes forward with the budget.

Admin. Madison stated it would not be totally true to say the Council only has to act on what the Mayor puts forward as the Council can always add or take away.

Councilwoman Berz stated that is not what she asked as she knows the Council can do that and asked why the requests originate with the Council as that is what has put the Council in this position.

Admin. Madison stated she will have to check the ordinance under the *Charter*, but it is her thought it specifically states that the citizens have a right to make the request of the legislative body; that the procedure is that the request is made to the Council through Randy Burns and they get a copy and incorporate it into the budget. She stated why it is done that way she cannot say but in the event the Mayor chooses not to put it in the budget the Council will have direct knowledge of it.

Councilwoman Berz stated that makes perfect sense; that when she hears "that is the way we have always done it" gets her concerned. She stated we should do everything we can to educate ourselves and if a Mayor does not put something in a budget the Council has every right, however, the budget and all that originates from the executive and we should be there educated in case we do want to add something. She stated because we are not following proper process we find ourselves being the power house of whether or not to accept something and that bothers her but it is the will of whatever the Council wants.

Councilman Murphy inquired as to what is stated in the *Charter*. Assistant City Attorney Noblett stated having dealt with other issues this afternoon, not this issue, he is not sure this is a *Charter* provision that would authorize a direct appeal to the Council and would like to look at that and get back with an answer as soon as he can get back to a book and look at it.

Councilwoman Ladd expressed total concurrence with Councilwoman Berz' comments. She stated she does not think we should now implement an appeal process this year as it should have been part of the overall package and is totally opposed to an appeal process. She stated this is a request; the policy is very clear, plain and upfront, and if someone misses a deadline this should have been important enough to their organization that they had enough of the right people with the experience and skill "keeping their eye on this". She stated if this is a huge chunk to their annual revenue stream, they should have put in place the proper management procedures to make sure they did not miss this date. She stated in all her years of business she cannot ever imagine requesting or being allowed to submit a proposal for a bid late and still be considered as it is not the way to do business and these organizations understand that and they know better. She stated she is not for an appeal process of any kind, but especially not introduced this late in the game with already receiving acknowledgement from so many that did receive and did respond timely.

Councilman Benson expressed his thought that this city should stand their word on the deadline; that it is a sad situation with Orange Grove coming up short, but does not believe this Council is inhibited at all about special allocations any time during the year when there is a desperate need. He stated there are many places they can go for special allocations because of their oversight of our deadline as they can go to United Way, the County Commissioner's discretionary money in that district or come here at another time and show strong justification for a supplementary allocation and we would have the authority to do it. He stated it is his thought we should not tear up the structure we have here and just put in practice for one year, especially we cannot be retroactive in tearing it up.

Dan Johnson stated Councilman Benson is correct; that the Council can change and would imagine during this allocation process for social services organizations can still change at that point. He stated it is pretty open and does not see it as that strict; that the Council did change a deadline on the agencies as some get in a rut and expect it in February like it was last year; that there were a lot of changes that took place during this year's process and the Council can change it pretty fluidly any time they want to.

Councilman McGary expressed appreciation for Mr. Johnson's comments noting it is a very fluid process and acknowledged the good work of Councilwoman Berz as Chair of the Budget Committee. He stated it is unfortunate one entity sparked this conversation and is not apologetic they sparked the conversation.

Councilman McGary stated due to their error now the Council is starting a conversation that appears to some we are showing favor; that he wholeheartedly agrees the appeal process should be looking forward not backward. He stated after hearing the comments he does not see a need for this body to be so stringent in regard to the deadline as we do not know extenuating circumstances as any number of things can happen in an organization's "life" that prohibits them from meeting deadlines. He stated it is his understanding the deadline was for organizations that want to bypass submitting an application or have no interest in receiving funding from this body; that for an organization that has received funding in the past and desires to continue to be considered for funding, to be considered as if they were negligent he does not know if that is his feeling on the subject nor think it would be necessary to say that and the entity has spoken for themselves as to why this has happened. He expressed appreciation to Councilman Murphy for starting this process and hoped thoughts would continue noting it is not necessary to make a decision tonight and would like to have time to "chew" on this for feedback; that it will be important we make a distinction that accepting the rules would be going forward, not backward. He stated in looking at what has been submitted in item "5" -- what is being said is "if a good cause reason is accepted there will be a filing fee and the fee could be reduced from the portion allotted". He stated he wants to be clear there is a difference between acceptance and allocation as (he) stated last week; that if an organization is late and we choose to accept, that is acceptance with no promise upon acceptance they will receive funds; that it is very, very important we clearly demarcate the allocation is not the same as acceptance.

Councilman Murphy stated we needed something to keep people from coming in way past the deadline right before the budget passes; that he does not think the Council can influence allocation at this point; that he was hearing they wanted to make sure people did not totally "blow off" deadlines.

Councilman McGary stated if there is an appeals process it should be limited, as well; that it should be limited to 14 or 20 days and does not see it going on indefinitely.

Councilman Rico stated we learn by our mistakes; that we made a mistake by not getting this up before we made a final decision. He stated partly it is our fault for not having a system in case this happens because it has not happened before; that we partly are the blame for not setting up these rules before we did. He stated we should give them another chance; now we have it but did not have it before and we should learn from our mistakes.

Councilman Murphy noted the rules we set up are rules with the Council and could be altered by a majority of the Council at any time and to say this is some appeals process, it is an appeals process to a rule we apparently established a deadline we could just as easily change. He stated he established this process because everyone kept saying they want a system for considering these and did the best he could; that the recommendation is going forward the week after we pass the final budget we do set down as a resolution all the rules that we intend to have govern the forthcoming budget addressing some of the points that were made that people ought to have advance notice about what rules will apply.

At this point Councilman Murphy called for a consensus of the plan proposed.

Councilwoman Scott stated being late on applications has happened numerous times over numerous years and this is the only time the Council has sat down to talk about whether to follow the rules and the deadlines or allow them to be changed as they have been changed almost every year until this year. She stated no matter what happens on April 15 she always knows when that day is; that if there is any possibility she will not be able to file her income tax on time on that specific date she gets her "act together" ahead of time. She stated she personally supports the idea of having a firm deadline and going with the deadline so that people know now and forever more that that is the deadline; that she does not believe there needs to be a policy that allows it to "dance around" left, right, up, down, sideways; it ought to be a deadline and that is what we should go with as we have limited resources to "divvy" out to a great number of entities that want to be served. She stated if they are not ready with the application to come out for the money offered up from tax payers on the day . . .

Councilman Murphy asked if that is a "yes" or "no".

Councilwoman Scott stated she does not think there should be a policy that changes it left, right . . . **"no"**. She then expressed "thanks" to Councilman Murphy for limiting her freedom of speech!

Councilman Murphy stated if anyone else goes on that long he would do the same, unless overruled!

Councilwoman Robinson stated it grieves her that we would not be willing to allow for a measure of human error on this as it was not anything deliberate and it made her sad the day after discussion the headline in the newspaper was *"Orange Grove is Celebrating its 60<sup>th</sup> Anniversary"*. She stated she felt awfully small to think we would deny them their funding because of human error.

Councilman Murphy asked if that is a “yes” to the proposal for flexibility. Councilwoman Robinson responded “**yes**”.

Councilman Rico responded “**yes**”.

Councilwoman Ladd responded “**no**”.

Councilman Mc Gary responded “**no**”.

Councilman Gilbert stated he disagrees with the entirety of the document as there is some he agrees with some he disagrees. He stated by not agreeing to the entire document he responded “**no**”.

Councilman Murphy asked if he is for some measure of flexibility or mercy; if there is a point in continuing to talk or not.

Councilman Gilbert stated based on what is going through now we will find out in a few minutes!

Councilwoman Berz responded “**no**”.

Councilman Benson stated **we should honor our deadline** and if they want to come back in six months or six weeks and ask for some help we can listen to them and make a decision. He stated he does not know why we are spending time on this!

Councilman Murphy responded we are spending time because we were asked to do so by members of this body; this committee was asked to take it up. He stated he **would adopt** the rules he wrote for the Council.

Councilman McGary stated he wanted to be clear that he thinks this is a conversation this body should have going forward and expressed hope the subject comes up in regard to this particular entity; that unfortunately he cannot go back as he wants to go forward.

The meeting was adjourned.

**(A full digital audio of the Committee meeting of this date is filed in the Clerk of Council’s Office)**