


OFFICE of the CITY ATTORNEY

TO: Council President Bare and Members of City Council
FROM: Lysia H. Bowling, City Attorney 
DATE: August 19, 2016
RE: Council Budget Analyst – Charter Section 4.02(a)(6)

This memorandum is prepared in response to the City Council's request for a legal opinion regarding whether City Charter Section 4.02(a)(6) requires the hiring of a Budget Analyst.

Following referendum approval of the Charter amendment which created Sec. 4.02(a)(6) in November 2014, the City Council has taken several actions relative to acquiring a Council staff. A workshop was conducted on January 26, 2015, at which various opinions and options were discussed among the members of Council. Council adopted Ordinance No. 05-15 on March 12, 2015, creating sec. 2-2-10 of the City Code and establishing the Office of the City Council, pursuant to the Charter amendment. On August 14, 2016, Council adopted Ordinance 10-16, which created sec. 2-4-52 of the City Code, authorizing the creation of the position of Budget Analyst and providing the qualifications, salary range and duties and responsibilities for the position created.

With respect to the position of Budget Analyst, the Charter provides:

(6) The City Council shall establish an Office of the City Council and shall have as its Staff the following who shall be responsible to the City Council through the President of the Council: (a) Budget Analyst. The City Council is authorized to employ a Budget Analyst or an individual with similar qualifications, pursuant to the City's position classification Code, to assist the budgetary matters of the City Council. The City Council, by ordinance, shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council.

Sec. 4.02(a)(6)(a). Looking closely at this section, I will advise that the word "shall" is usually regarded as mandatory, but the phrase "is authorized" is not. At its workshop following the adoption of the Charter provision, Council was advised by staff at that time that the language was not clear as to whether the employment of a budget analyst was required or was discretionary. In its ordinances establishing the Office of City Council and the Budget Analyst position, Council utilized the phrase "is authorized" rather than any clearly mandatory or directory language.

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The decision to hire a Budget Analyst and to assign specific tasks to that person is uniquely and exclusively a City Council decision. To the extent that there is any perceived ambiguity within the language contained in the Charter pertaining to this position, it would be the prerogative of the Council to resolve that ambiguity by the exercise of its sound judgment. Only the Council can determine its budgetary requirements and the extent of assistance that it may require. Whether the position would be a full time or part time position is within the Council's complete discretion; however, the Charter does specify that if the position is filled, the position must be filled by an "employee" and not by a vendor or an independent contractor.