

**Combined Report on the Findings and Recommendations of the
Permitted Interaction Group
Established to Review Proposals Relating to
Oversight and Powers Over Specific Functions
and the
Permitted Interaction Group
Established to Review the Request by Mayor Caldwell
sent on April 27, 2016 relating to the
Grant In Aid Fund
June 23, 2016**

Members:

Gov. John D. Waihee III, Chair

Reginald Castanares Jr.

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Report of the Permitted Interaction Group (PIG)

- **Oversight and Powers Over Specific Functions**

Proposal #4 Removal of the Corporation Counsel.

Upon review of this proposal and after extensive discussion the PIG has decided that this proposal may be premature. There was no overwhelming response to the proposal either for or against. The Corporation Counsel herself did not have a position. In view of the other proposals to be considered we have decided that the PIG request that the Commission hold or defer this proposal.

Proposal #78 Creation of Funds. Section 9-202 of the Charter

Upon considerable discussion, the members of the PIG have concluded that the Charter in its essence conceived of a balance between the powers of the council and the mayor in the creation of special funds. We believe that the council has the authority to create special funds, and that the mayor may request the creation of special funds. That is inherent we felt in the Charter's provisions. But if there was any ambiguity on this point we have suggested amendments to sections 3-101 and 4-101 to clarify this authority. We also believe the current disagreement over the interpretation and effect of section 9-202 is misplaced and has been enhanced by corporation counsel opinions over the years. Therefore we suggest that section 9-202 be clearly amended to allow either the mayor or council to initiate a special fund. We make this proposal to maintain the balance between the mayor and council envisioned by the Charter, the mayor should be able to veto and the council allowed to override such veto of the creation of the special fund. Research has disclosed that the council is engaged in activity rightfully belonging to the executive branch, but euphemistically referred to as policy positions, when in fact these positions are administrative in nature. We believe that section 9-105(2) which does not allow the council to reprogram monies in the budget but reserves such amendments to the annual executive budget to be solely reserved to the

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mayor requires further consideration, as in the PIGs opinion, the current practice of the council in budgeting administrative positions in the legislative budget may be in part due to this inability to reprogram monies in the executive budget which has not been released. This tension between the executive and legislative branches is a good one, and is the hallmark of our balance in our democracy. That said, there are and should be limits to the extent one branch can infringe or thwart or invade the others perogatives. Thus we begin by reiterating that the legislative and executive branch have specific powers and they should respect and honor that delineation.

Proposals #s 6, 20, and 88. Relating to the Board of Water Supply.

There was considerable discussion over the autonomy and lack of oversight of the Board of Water Supply (BWS) in rate making and bond issuance. PIG members were concerned over the previous problems caused by increased rates to users, and a lack of explanation for such increases and the subsequent waiver of some of such increases upon complaints. Thus the PIG is suggesting that language be inserted in the appropriate sections of sections 7-105 and 7-110 to require that the BWS seek council approval before issuing revenue bonds; and that the council be advised if the BWS is amending its rates, and requiring a certain number of publicized, public hearings to be held before such rate amendments are implemented or approved by the board of the BWS.

Proposal: Prosecuting Attorney Budget

After careful consideration the PIG members have concluded that the current process by which the budget of the office of the prosecuting attorney is approved should be amended to prohibit the ability of the administration to withhold funds otherwise appropriated to the office. That does not mean that the office should not have its budget scrutinized as is current practice, and that the administration cannot reduce or amend

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said budget, nor that the office is prohibited from requesting increases from council, or that the administration and mayor could not veto the budget as is the norm. PIG members feel that once the budget or any supplemental appropriation is enacted, the administration should not be able to otherwise restrict that budget or appropriation.

- **Grant in Aid**

Proposal

Upon extensive discussion the PIG has decided that the effectiveness of section 9-205 has been compromised with the ability of the council to add specific Grants-In-Aid (GIA) which did not receive funds through the process articulated and executed under section 9-205. PIG members are not taking any position on the issuance of GIAs or to whom.

We believe, however, that if a system is established the council should abide with the system so established. If not it makes a mockery of the section, and rewards political prowess, not merit if the current sections provisions are effectively bypassed. We further believe that because of the complexity of issuing GIAs this process is better handled by city ordinances. Thus we suggest that section 9-205 be deleted in its entirety, and the original GIA process preceding its enactment be re-instituted. PIG members do not feel that the GIAs will be affected since the process will reflect the policy prerogatives of the city.

Board of Water Supply

Oversight

Section 1. Powers.

Section 7-105 of the Charter is amended to read as follows:

Section 7-105. Powers, Duties and Functions of the Board of Water Supply

The board of water supply shall:

- (a) Appoint and remove the manager and chief engineer of the department. The manager and chief engineer shall be a registered engineer who shall have had a minimum of five years of training and experience in waterworks activities or related fields, at least three years of which shall have been in a responsible administrative capacity.
- (b) Fix the salary of the manager and chief engineer.
- (c) Have the authority to create and abolish positions.
- (d) Determine the policy for construction, additions, extensions and improvements to the water systems of the city which shall include a long range capital improvement program covering a period of at least six years which shall be adopted after consultation with the director of planning and permitting and which may be amended or modified by the board from time to time.
- (e) Have the authority to acquire by eminent domain, purchase, lease or otherwise, in the name of the city, all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the water systems of the city. The council shall take no action to acquire real property or any interest therein for the department without the written approval of the board.
- (f) Have the authority to recommend to the council the sale, exchange or transfer of real property or any interest therein which is under the control of the department. The council shall take no action to dispose

of such property without the prior approval of the board, and all proceeds from the disposition of such property shall be paid into the special fund of the department. The department may not otherwise sell, exchange, transfer, or encumber any real property or any interest therein which is under its control, nor shall it consider such sale, exchange, encumbrance of any real property or any interest therein without first obtaining the approval of the council and the mayor.

- (g) Have the authority to enter into arrangements and agreements, as it deems proper for the joint use of poles, conduits, towers, stations, aqueducts, and reservoirs, for the operation of any of the properties under its management and control.
- (h) Have the authority to issue revenue bonds under the name of “board of water supply[.]” subject to the approval of the council.
- (i) Modify, if necessary, and approve and adopt annual operating and capital budgets submitted by the manager and chief engineer.
- (j) Prescribe and enforce rules and regulations having the force and effect of law to carry out the provisions of this article of the charter, including
 - (1) the regulation of water systems and necessary appurtenances for subdivisions and other properties and requirements for adequate water supply and storage facilities for domestic use and fire protection,
 - (2) the prevention of waste and pollution of water,
 - (3) the manner in which new wells or shafts may be bored, drilled or excavated, cased and capped or recased,
 - (4) the manner in which wells or shafts shall be maintained, controlled and operated to prevent waste of water or the impairment of potability,
 - (5) the limitation to beneficial uses of all water,

- (6) in times of shortage or threatened shortage of water or of danger to potability of the water of any ground water basin or area by overdraft on such basin, the restriction of the drawing of water in all wells supplied from such basin on a basis proportionate to the proper and beneficial uses served by them respectively, and
 - (7) other matters having for their object the proper conservation and beneficial use of the water resources available for the city.
- (k) Hear appeals from the order of the manager and chief engineer refusing, suspending or revoking any permit for the sinking, drilling or reopening of any well or shaft for the development of underground water supply.

Section 2. Rates

Section 7-110 is amended to read as follows:

Section 7-110. Public Hearings

[The board shall hold public hearings prior to fixing and adjusting rates and prior to the adoption of the budget.]

Prior to fixing and adjusting rates and prior to the adoption of the annual operating and capital budgets, the board shall:

- (a) Hold a minimum of three public hearings; and
- (b) Submit to the council for review and comments such rates and budgets.

Charter Amendments
For
Authority to Establish Special Funds

Section 1. Legislative Authority

Amend Section 3-101 of the Charter to read as follows:

Section 3-101. Legislative Power --

The legislative power of the city shall be vested in and exercised solely by the city council, except as otherwise specifically provided by this charter.

Section 2. Mayoral Authority

Amend Section 4-101 of the Charter to read as follows:

Section 4-101. Executive Power --

The executive power of the city shall be vested in and exercised solely by the mayor, as chief executive officer, except as otherwise specifically provided by this charter.

Section 3. Creation of Special Funds

Amend Section 9-202 of the Charter to read as follows:

Section 9-202. Creation of Funds --

In addition to the funds established by this charter, the council[, on its own initiative] or [on the recommendation of]the mayor upon the approval of the council, may establish other funds[when the council deems it necessary and] when no appropriate class of funds exists.

Budget of the Prosecuting Attorney
Proposed charter amendment to

Section 9-106. Administration and Enforcement of the Budget Ordinances --

1. Administration and enforcement of the legislative budget ordinance: Immediately following the enactment of the legislative budget ordinance, the presiding officer of the council shall submit to the director of budget and fiscal services a schedule showing the expenditures of the legislative branch anticipated for each quarter of the fiscal year. The schedule shall not require the approval of nor can it be altered by the mayor, and the council may proceed without any other authority to incur obligations and make expenditures after the schedule has been submitted. The director of budget and fiscal services shall approve or issue any requisition, purchase order, voucher, warrant or contract, in accordance with the schedule and upon request of the presiding officer of the council. Barring judicial order prohibiting the honoring of any specific requisition, purchase order, voucher, warrant or contract, the director of budget and fiscal services shall process the same for payment within three working days from the date of receipt thereof. Appropriations for the legislative branch shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year.

2. Administration and enforcement of the executive operating budget ordinance:

- (a) The enactment of the executive operating budget ordinance or any supplementary appropriation shall constitute an appropriation of the sums specified therein for the purposes and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse [to]at the end of the fiscal year. Executive agencies authorized to make expenditures under the executive operating budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available.

- (b) Immediately following the enactment of the executive operating budget ordinance, the heads of all executive agencies, including the Prosecuting Attorney, shall submit to the director of budget and fiscal services schedules, supported by work programs, showing the expenditures anticipated for each quarter of the fiscal year.
- (c) The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies. The director of budget and fiscal services shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with an allotment.
- (d) The allotments herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.
- (e) The expenditure schedule submitted by the Prosecuting Attorney shall constitute a budgetary allotment, without the approval by the mayor, which shall, unless a revision thereof by the Prosecuting Attorney, be binding upon the Prosecuting Attorney. The director of budget and fiscal services shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with an allotment. The allotments herein provided may not be altered at any time by the mayor. The mayor shall not direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.
- ([e]f) Any part of an allotment which is not expended or encumbered shall lapse at the end of the allotment period.
- ([f]g) The mayor may transfer an unencumbered appropriation balance or portion thereof within the same department only as prescribed by law. Transfers between departments shall be made only by the council by ordinance upon the recommendation of the mayor.
- ([g]h) The director of budget and fiscal services and the director's surety shall be liable for moneys withdrawn from any operating fund other than in accordance with the executive operating budget ordinance and allotments.

3. Administration and enforcement of the executive capital budget ordinance:

- (a) Appropriations authorized in the executive capital budget ordinance or any supplementary appropriation shall be considered valid only for the fiscal year for which made and for twelve months thereafter, and any part of such appropriations which is not expended or encumbered shall lapse twelve months after the end of the fiscal year. Agencies authorized to make expenditures under the executive capital budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available.
- (b) The director of budget and fiscal services shall be responsible for the enforcement of the executive capital budget ordinance to the same extent that the director is responsible for the enforcement of the executive operating budget ordinance.

Grants-In-Aid

Delete Section 9-205.

[Section 9-205. Grants in Aid Fund --

1. There shall be established a Grants in Aid Fund. Monies in the Grants in Aid Fund shall be used by the city to award grants in aid to federal income tax exempt non-profit organizations that provide services to economically and/or socially disadvantaged populations or provide services for public benefit in the areas of the arts, culture, economic development or the environment.
2. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the estimated general fund revenues which shall be deposited into the Grants in Aid Fund.
3. No less than \$250,000 from the Grants in Aid Fund shall be expended annually in each council district.
4. At any given time, no more than five percent of the moneys in the Grants in Aid Fund shall be used for administrative expenses.
5. Any balance remaining in the fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in the fund shall not be used for any purpose except those listed in this section.
6. The council may waive the requirements of this section of the charter pertaining to the annual appropriation of general fund revenues to the grants in aid fund for any particular fiscal year, when the council finds by a two-thirds vote of its entire membership that an emergency due to a public calamity exists or the city could not otherwise fulfill its legal obligations.
7. There shall be established a grants in aid advisory commission to advise the city on grants issued under this section. The commission shall consist of seven members appointed by the mayor who shall serve for staggered terms of five years and until their successors have been appointed and qualified.

The initial appointments shall commence no later than January 15, 2013, and shall be as follows:

- (a) For a two-year term, two members.
- (b) For a three-year term, two members.
- (c) For a four-year term, two members.
- (d) For a five-year term, one member.

8. The council shall by ordinance establish procedures for the administration and expenditure of the moneys in the fund.]