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MEMORANDUM

TO: Mike Weinstein, Chief of Staff
FROM: Michael Fackler, General Counsel
RE: Budget Questions
DATE: September 10, 2025

The Mayor had posed six questions to the Office of General Counsel and requested a binding opinion on these topics. We have worked diligently over the last few days to address these issues; however, the questions posed involve intricate and difficult issues impacting the operation of the Consolidated Government. As such, we are providing this guidance to meet the requested deadline, and we will continue to research the issues in preparation for any binding opinion that may ultimately be necessary.

- I. Can the Mayor veto the Millage Bill (2025-501)? If so, what are the time restrictions to veto the bill?

We have reviewed a previous memo from Mr. Rohan to General Counsel Mullaney which directly addresses the question. A copy of the memo is attached. While we are of the opinion that several statements in the memorandum are perhaps overstatements, we agree with the conclusion that the Mayor cannot veto the Millage Bill, based on the analysis of Fla. Stat. §200.065.

- II. Can the Mayor veto the budget bill ordinance (2025-504) in its entirety? If so, how many votes are needed to override the veto?

This question involves an interpretation of the Charter as well as the interplay between the Charter and the state statute. Reading the Charter alone would lead to the conclusion that the Mayor has the power to veto the budget bill. Section 6.05 of the Charter provides that the Mayor can veto "any ordinance or resolution" except for seven enumerated items, none of which are relevant to this discussion. If the drafters intended to exclude the budget bill, the drafters could

have included the budget bill as an exception: the absence of the budget bill as an exception is strong evidence that the Mayor can veto the bill in total. However, when we consider state statute (enacted after the Charter) and case law interpreting the statutes, we are of the opinion that even in the face of the broad veto authority in the Charter, the Mayor cannot veto the budget bill as explained below.

Frist, Legal Opinion 13-02 answers this question. General Counsel Laquidara answered question of whether the Mayor can veto the budget ordinance: “the Mayor may only line-item veto expenditures in the budget passed by Council.” 13-02 relies heavily on the same reasoning found in Mr. Rohan’s memo on the millage rate, essentially substituting the budget bill analysis with the millage analysis under Fla. Stat. §200.065. Additionally, in a footnote, General Counsel Laquidara considers the argument that the language in Section 6.05 which provides the Mayor may veto “any item” in the budget bill suggests the item veto is the only input that the Mayor has on the budget bill.

We provide a more detailed analysis of the statute and case law. The statute provides that the “governing body” will pass a tentative and final budget: “During the *hearing*, the governing body of the taxing authority shall amend the adopted tentative budget as it sees fit, *adopt a final budget*, and adopt a resolution or ordinance stating the millage rate to be levied.” Fla. Stat. §200.065(2)(d)(emphasis added). As the Charter implicitly provides for a veto of the budget bill, there is an apparent conflict between the Charter and the statute, which contemplates a final budget enacted at the governing body’s hearing. Case law provides that where a charter or proposed referendum conflicts with the statutes outlining the budget and millage rate process, the statutes prevail. *See Board of County Com’rs of Dade County v. Wilson*, 386 So.2d 556, 561 (Fla. 1980) (holding that a proposed referendum to set a millage cap contradicted state statute which provided that the millage “shall be fixed only by resolution of the governing body of the taxing authority”); *Ellis v. Burk*, 866 So2d 1236, 1238 (Fla. 5th DCA 2004) (noting that the statute provided the “exclusive statutory scheme for establish the budget” and a charter provision conflicting with the statute in unconstitutional) (*citing Charlotte County Bd. of County Com’rs v. Taylor*, 650 So.2d 146, 148-49 (Fla. 2d DCA 1995)); *Board of County Com’rs of Marion County v. McKeever*, 436 So.2d 299, 302 (Fla. 5th DCA 1983) (holding that a referendum approved ordinance contradicted Fla. Stat. §200.065(2)(d) and the county commission right and obligation to set the millage rate every year); *see also* Fla. Atty Gen. Opinion, 2001-04, 2001 WL 95147 (Feb. 2, 2001) (finding unconstitutional Hillsborough County’s proposed charter amendment because the amendment contradicted the state statute).

We have also considered the practical aspect and the potential consequences of finding valid the Charter’s implicit veto of the budget bill. When interpreting statutes, courts should interpret statutes to avoid “unreasonable consequences” when possible. *See Pearl v. Lomelo*, 416 So. 2d 489, 492 (Fla. 4th DCA 1982) (*citing Wakulla County v. Davis*, 395 So.2d 540 (Fla. 1981)). It is not farfetched to imagine a scenario where Council passes the budget, which is then vetoed by the Mayor, and Council does not overturn the veto. The City is then in a position without a budget, and the Charter nor statute provides guidance on the next step. Would the process start over with

a new proposed budget? Would Council be forced to revise the budget to satisfy the Mayor's concerns? While arguably political gamesmanship should not impact the legal analysis, the potential consequence of a veto militates against interpreting the Charter and statute in such a way that leads to a potentially irreconcilable standoff.

Finally, we note that providing a veto on the entire budget bill potentially infringes on the separation of powers. Without a doubt, Council as the legislative branch of consolidated Government has the "power of the purse." And, thus, the budget is ultimately the power of the Council. Considering the potential consequences of failing to pass a budget, providing the Mayor with the power to veto the entire budget bill and requiring 2/3 vote arguably places too much budgetary power in the executive branch, essentially giving the Mayor three votes on Council to pass an inherently legislative function.

III. Can the budget bill include the Diamond Amendments?

On this issue, we can find very little guidance. As a starting point, we note that generally speaking the final authority on budget matters and spending lies with the Council. *See* Charter Section 4.02 (all legislative power rests in Council); *see also Pearl v. Lomelo*, 416 So. 2d 489, 492 (Fla. 4th DCA 1982) ("raising and expending sums of money is, in the final analysis, a legislative function to be performed by the council"). Thus, we are of the opinion that absent a specific provision to the contrary, Council controls the budget and thus the spending of the Consolidated Government.

As an initial matter, we rephrase the question. Arguably every amendment to the budget is a "policy amendment" whether the amendment reduces the amount in any line of the budget or across multiple budget items. And we will answer the question as to the three Finance amendments introduced by CM Diamond (the "Diamond Amendments"). The Diamond Amendments prohibit the use of City funds for DEI, unauthorized aliens, and abortion. The Diamond Amendments do not identify any one specific account or a specific amount. We note that there are similar policy amendments in the budget bill, including Section 9.3 prohibiting a City (and independent agency) employee from receiving an auto allowance and a city gas credit card or reimbursement.

Turning to the Charter, we note that Council can "alter" the consolidated budget "on a line-by-line bases or on a total basis." Charter Section 14.02. As a point of comparison, Council may "increase or decrease" the independent agencies' budgets "on a line-by-line basis or a total basis." *Id.* The drafters selected a broader term for Council's ability to change the budget of the Consolidated Government (alter vs. increase or decrease). The Diamond Amendments do not alter the budget on a line-by-line basis, but we conclude that the Diamond Amendments do alter the budget on a total basis,¹ *i.e.*, throughout the entire budget the City cannot use funds in a particular way.

¹ We note that the Charter provides that Council can use either approach. Recognizing Council's broad discretion in budget matters, we believe that Council can use both approaches in the same budget even with the use of "or" in the Charter.

As a result of the conclusion above, we provide a few caveats. Council is not free to insert any policy into the budget to avoid a higher vote threshold to overturn a veto. Our office will have to examine any budget amendment to ensure that the amendment is reasonably related to the budget on a case-by-case basis. Criminalizing camping in a public space for example would likely not be a valid budget amendment. However, as the Diamond Amendments address how the City will spend funds, we believe that they are appropriate in a budget bill. Additionally, we note that Diamond Amendments preclude the expenditure of City funds, but they do not provide any direction on how to accomplish these broad policy directives. Thus, the Mayor and her staff must develop a method and policy to implement the Diamond Amendments. Further, if the Council desires more specificity in the enforcement of that policy, such direction is more appropriate through a Code revision, with the understanding that Council cannot legislate to unreasonably infringe on the Mayor's executive power.

In reaching this conclusion, we have considered several potential concerns. First, as a budget amendment, the Diamond Amendments arguably do not provide sufficient detail as to the impact on the overall budget, perhaps creating an unbalanced budget as required by Chapter 129, Florida Statutes. However, Council's budget is still "balanced" with the Diamond Amendments: the Mayor can spend the same amount of money in each line but just not on the prohibited areas/categories in the Diamond Amendments. Similarly, without a specific amount attached to the Diamond Amendments, the public might not understand the financial impact of the Diamond Amendments. However, we believe the prohibition on all spending for these areas/categories provides sufficient detail to the public as contemplated in Chapter 129, Florida Statutes. Arguably, at least one of the Diamond Amendments (Section 9.8 regarding unauthorized aliens) violates Council Rule 3.107, preventing the reintroduction of the same bill unless it has substantially changed. The Council President interprets the Council rules, and we defer to his interpretation if it is reasonable. And Section 9.8's reach is limited to "[t]he appropriations made and the budgets adopted by Parts I through VIII, inclusive, of this Ordinance." *See* 2025-504 Finance Substitute, Section 9.1. With the possibility of a few exceptions, Section 9.8 impacts only this budget cycle, and accordingly, we believe an interpretation of substantial change would be reasonable. Even if it were an unreasonable interpretation, Council Rule 5.103 prevents an ordinance from being invalid for failure to follow a Council rule.

IV. What is the veto process for the Diamond Amendments?

As noted above, we have preliminarily concluded that the Diamond Amendments can be included in the budget bill, and we look to the Mayor's authority to veto the Diamond Amendments. Since we have also concluded that the Mayor cannot veto the entire bill, we will focus solely on whether the Diamond Amendments are an "item" in the budget bill subject to a separate veto.

The Charter provides that the Mayor can veto "any item" in the budget bill. Thus, we must consider what "item" in the Charter means. We note first that we are unable to find any guidance

on the difference between an item and a line-item.² Further, several prior binding opinions indicate in dicta that item means a line-item. *See* 13-7 (“the Mayor may only line-item veto budget items”); 13-9 (“it is settled the line-items in the schedules are the sole focus for veto on the budget legislation”). While we are hesitant to simply disregard prior statements of General Counsels, we believe it is necessary in this instance for several reasons.

First, neither of these opinions, nor the cited opinion, discuss or explain the replacement of the term “item” with “line-item.” And as the conclusion was not central to the analysis, the statements are dicta and not binding. Further, the 13-9 Opinion relies on several cases and opinions, but in those cases the founding documents provide the executive branch only with a “line-item” veto. Our Charter is broader and provides the Mayor with the ability veto an “item.” Further, in her 13-7 Opinion, General Counsel Laquidara attached Mayor Goldbold’s vetoes in 1986 as examples of appropriate vetoes in the budget process. One of these vetoes was a general provision, and not a line item, much like the Diamond Amendments are general provisions. Finally, and perhaps most importantly, General Counsel Rinaman noted that “Council is prohibited from exerting control over the budget it adopts in such a way as to impair or destroy the Mayor’s veto power.” *See* 71-7. As we have concluded that the Diamond Amendments are a valid exercise of Council’s budgetary authority, then we must likewise conclude that the Mayor can veto the item. If we concluded that the Mayor did not have that authority, then Council would have run afoul of General Counsel Rinaman’s statement limiting Council’s power to modify the budget.

Having concluded that the Mayor can veto the Diamond amendments as an item, we now turn to the question of how many votes are needed to override the item veto. The Charter states that “majority vote of the members of the council” are needed to override the item veto. Thus, ten votes are needed to override the Mayor’s item veto.

V. Can a Council Member with an ethics conflict for the entire budget bill vote to override a veto of an item for which he does not have a conflict?

We provide a few initial comments. First, it is not our practice to opine on ethics questions involving other elected officials or officers. However, understanding the basis of the request, we have worked with the Ethics Office to provide a generic analysis to a hypothetical situation. We also note that the analysis would be our (or more likely the Ethics Office’s) advice to the elected official who must determine whether to abstain from voting. With that said, as the vote on the override is limited to the item(s) vetoed, a conflict on the entire budget would not likely not preclude a member from voting on the override. Of course, if the conflict pervades the veto vote, then the conflict remains.

VI. How long would a general provision, like the Diamond Amendments last?

The Diamond Amendments are part of the General Provisions found in Part IX, and their reach is outlined by Section 9.1: “The appropriations made and the budgets adopted by Parts I through

² Several cases discuss the concept of a line-item veto, but none of those cases provide any context for an item veto.

VIII, inclusive, of this Ordinance are subject to the limitations provided in this Part.” *See* 2025-504 Finance Substitute, Section 9.1. With the possibility of a few exceptions (like an evergreen appropriation), the Diamond Amendments impact only this budget cycle. Each year, of course, Council could include them again.