INVESTIGATION REPORT

OF

COUNCIL BILL O-05-107

REPORT NO. 06-104

CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT AND INVESTIGATIONS

City of Albuquerque

Office of Internal Audit and Investigations

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

June 28, 2006

Accountability in Government Oversight Committee
City of Albuquerque
Albuquerque, New Mexico

Investigation: Council Bill O-05-107
Investigation Number 06-104

FINAL

Introduction

On August 29, 2005 Council passed resolution R-05-322, Requesting the Office of Internal Audit and Investigations to Investigate the Actions of Public Officials and Employees concerning the Handling of Council Bill O-05-107. Resolution O-05-107 was part of the combined 2006 Enterprise Budget documents delivered to Council Services prior to March 1, 2005 and was the rate change proposal for the Solid Waste Management Department (SWMD.)

During the May 2, 2005 Council meeting, O-05-107 failed in a tie vote. On May 16, 2005 the City Clerk attested to the enactment of O-05-107 pursuant to Section 2-11-10 Consideration of Budget Proposal by the Council (Exhibit A.) The City Clerk cited Section 2-11-10 which pertains to the City's Operating Fund when she enacted O-05-107; however, the correct Ordinance should have been 2-11-19 which pertains to the Enterprise Funds. The citation of the wrong ordinance by the Clerk is not relevant to our determination.

According to City Ordinance Section 2-11-19, the Council may amend the budgets of these departments at any time within 60 days from the date received from the Mayor. If the Council fails to approve the budget of these departments within 60 days; the budget as submitted by the Mayor is deemed approved.

Scope

The scope of the investigation is concerned with the events surrounding the enactment of this Ordinance and begins with the introduction of the Combined Enterprise Budget documents to

Council prior to March 1, 2005. The investigation period ends August 29, 2005, when Council enacted resolution R-05-322 which requested the investigation.

Methodology

The methodology used during this investigation included review of documentation pertinent to Ordinance O-05-107 and interviews of appropriate City of Albuquerque employees.

Objectives and Conclusions

Objective: Should the rate Ordinance O-05-107 be considered an integral component of the Enterprise Budget proposal for the purposes of Section 2-11-19?

Conclusion: According to Section 2-11-19, Consideration by the Council of Combined Budgets for Selected Enterprise Funds, the "combined budget, capital program, performance plan, and *rate proposal* for the Air Quality Fund, Aviation Enterprise, Parking Enterprise, Refuse Disposal Enterprise, and Golf Enterprise shall be delivered to the Council no later than March 1…". Council may amend the budgets of these departments at any time within 60 days from the date received from the Mayor.

After interviews with City Management which included the Chief Financial Officer, Budget Officer, City Clerk, Director of Council Services, the City Attorney, review of authoritative literature, and our review of City Ordinances pertaining to budgeting, O-05-107 should be considered an integral component of the Enterprise Budget. Section 2-11-19, section B, states that if Council fails to approve any of the budgets within 60 days from the date received from the Mayor, whether amended, or unamended ***the proposal as submitted is deemed approved***. O-05-107 was determined to be an integral component of the Mayor's budget because Section 2-11-19 specifically references *rate proposal* as part of the Council's consideration of combined budgets.

Objective: Were the actions of Public Officials and City employees, including the Chief Administrative Officer, Chief Financial Officer, Budget Officer, City Attorney, and City Clerk surrounding the enactment of O-05-107 appropriate?

Conclusion: Article VII Section 5 of the City Charter and Sections 2-11-10 and 2-11-19 of the City's Code of Ordinances stipulate a 60 day requirement to approve the budget as amended or unamended.

The May 2nd Council meeting was the last Council meeting date which fell within the 60 day requirement. City Council did not pass O-05-107 on May 2nd and accordingly failed to approve the entire budget as submitted within the prescribed timeframe. Because O-05-107 was not approved by the Council

within the time frame specified by Section 2-11-19, Ordinance O-05-107 was automatically enacted. The action taken by Public Officials and City employees with regard to enacting O-05-107 appears proper.

Objective: Were the actions of the City Clerk in recording O-05-107 outside her scope of authority?

Conclusion: Per Section 6 of the City Charter "An ordinance shall be recorded and preserved by the City Clerk, authenticated by the signature of the presiding officer of the governing body and City Clerk, and bear the seal of the city." Section 6 of the City Charter requires the Council President's signature for all ordinances to be recorded. The signature page utilized by the City Clerk in recording O-05-107 did not have the Council President's signature. Accordingly, it appears the City Clerk's actions in recording O-05-107 were outside her scope of authority.

Other items noted in our investigation.

There are no guidelines within the City Charter or Ordinances 2-11-19 or 2-11-10 as to the proper procedures to be taken by the City Administration if the 60 day requirement is not met by City Council. These procedures should include City Council notification of the enactment and recording processes to be followed by the City Clerk. To avoid future complications regarding the 60 day rule, City Council should consider amending either the City Charter or the Budget Ordinances to address this issue.

We appreciate the assistance and cooperation given by the personnel of the Council Services Department, Office of the City Clerk, Legal Department, and the City Administration.

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Audit Supervisor

REVIEWED and APPROVED:

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Carmen Kavelman, CPA, CISA, CGAP
Director,
Office of Internal Audit and Investigations

APPROVED FOR PUBLICATION:

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Chairperson, Accountability in Government
Oversight Committee

Exhibit A

Applicable City Ordinances

Section 2-11-10 Consideration of Budget Proposal by the Council

(A) After receiving the budget proposal from the Mayor the Council shall schedule at least three public hearings on it. As a result of its deliberations and the information gathered at the public hearings, the Council may amend the budget proposal at any time within 60 days from the date it is received from the Mayor. If the council fails to approve a budget proposal, unamended or amended, within that time limit, the budget proposal as submitted by the Mayor is deemed approved.

(B) The Mayor or his representative shall be present at all public hearings on the budget proposal. The Chief Administrative Officer, or his representative, shall be available to the Council at its request during any of its deliberations on the budget proposal.

(C) Definition. As used in this section **Amend** includes complete revision or substitution.

Section 2-11-19 Consideration by the Council of Combined Budgets for Selected Enterprise Funds

(A) Definition. As used in the section **Amend** includes complete revision or substitution.

(B) Air Quality Fund, Aviation Enterprise, Parking Enterprise, Refuse Disposal Enterprise, and Golf Enterprise. The combined budget, capital program, performance plan, and rate proposal for the Air Quality Fund, Aviation Enterprise, Parking Enterprise, Refuse Disposal Enterprise, and Golf Enterprise shall be delivered to the Council no later than March 1 of each year. The Council shall hold at least two public hearings on these budgets. As a result of its deliberations and the information gathered at the public hearings, the Council may amend the budgets of these departments at any time within 60 days from the date received from the Mayor. If the Council fails to approve any of the budgets of these departments, amended or unamended, within that time limit the proposal as submitted by the Mayor is deemed approved.

(C) The Mayor or his representative shall be present at all public hearings on the combined budget and rate proposal(s). The Chief Administrative Officer, or his representative, shall be available to the Council at its request during any of its deliberations on the combined budget and rate proposal.

(D) At the time of the hearings on the proposal for the Air Quality Fund, Aviation Enterprise, Parking Enterprise, Refuse Disposal Enterprise, and Golf Enterprise the Mayor or his designee shall present to the Council any fee or rate adjustment proposals for the upcoming fiscal year and projected revenue requirements for the following two fiscal years.

Applicable City Charter Articles

Albuquerque – City Charter

Article VII. The Annual Operating Budget, Section 5. If the Council fails to approve a budget within sixty days after it is proposed to the Council by the Mayor, then the budget as proposed by the Mayor is deemed approved by the Council.

Article XI. Ordinances, Section 6 Authentication; Publication; Effective Date; Codification.

(a) An ordinance shall be recorded and preserved by the City Clerk, authenticated by the City Clerk, authenticated by the signature of the presiding officer of the governing body and City Clerk, and bear the seal of the city. The ordinance shall be published one time either in its entirety or by title and general summary of the subject matter contained in the ordinance, whichever the Council elects to do.