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MEMORANDUM

Date: August 20, 2007

To: Josie Lavita, Director
Financial Planning
7E, City Hall

From: Wendy Walberg
Solicitor

Reference: Cost containment measures

You have asked for my input regarding whether the City Manager was authorized in requesting Division Heads to implement cost containment measures.

Cost Containment

In a memorandum dated July 20, 2007 the City Manager requested all City divisions to employ cost containment measures immediately. These include the following:

1. A hiring freeze within all areas of the corporation. The only exceptions to the hiring freeze will be for positions where there are:
 - a. legislated requirements for staffing ratios
 - b. health and safety requirements; or,
 - c. 100% funding for the position from other orders of government or external agencies
2. Service level adjustments that save operating budget dollars by reducing service levels (hours of service, etc); but not the elimination of entire services.
3. Elimination of discretionary spending; including, but not limited to, all business travel, conferences, consulting contracts, purchases of equipment, furniture, supplies, etc.

4. Cancellation of all advertising and production of print materials with significant circulation unless such materials are critically required for the delivery of services. Consultation with the Director of Strategic Communications should take place prior to the placement of any advertising or production of materials during this period.
5. Deferral of any 2007 new or enhanced services and any capital projects where contracts have not yet been awarded related to service improvement and capital projects that will have future operating budget impacts.

The Mayor's Role

The City Manager prepared this memo at the request of the Mayor. The memo states that the "Mayor has asked that all Divisions immediately implement cost containment measures with the goal of reducing operating and capital costs for the remainder of 2007." Sections 133 and 134 of the City of Toronto Act, 2006 describe the role of the Mayor but do not empower the Mayor to give direction to City staff. The City Manager's powers to regarding "cost containment" must, therefore, be found in by-laws or statutory provisions granting authority directly to her.

Budget Shortfall

Section 227 (3)(b) of the City of Toronto Act, 2006 requires that each year's budget "provide that the estimated revenues are equal to the estimated expenditures." You have informed me that because Council deferred consideration of new taxes from its July meeting to its October meeting the City will experience a budget shortfall of at least 80 million dollars in 2008, even if Council decides in October to adopt the new taxes. If adopted in October, the earliest that the new taxes could be collected would be several months after the start of 2008. In the interim the City would experience a budget shortfall. It is this anticipated shortfall that has prompted the City Manager to request that cost containment measures be undertaken now. The City Manager decided that there was not time to seek Council approval of the cost containment measures.

Recommendation

Since implementation of many of the cost containment measures could involve reducing services below levels contemplated in the budget or previously approved by Council, I recommend that Council be asked to retroactively ratify the City Manager's actions at its September meeting. It is possible that cost containment implementation could exceed the City Manager's jurisdiction, and the ratification would protect her.

The City Manager's Authority

The City of Toronto Act, 2006 (s. 140) provides that the City Manager is responsible for the following things:

- (a) exercising general control and management of the affairs of the City for the purpose of ensuring the efficient and effective operation of the City; and
- (b) performing such other duties as are assigned by the City.

The following sections of the City of Toronto Municipal Code grant powers to the City Manager and could apply to cost containment implementation:

§ 169-1. Senior official; deputy managers.

...

B. The City Manager provides organizational leadership to staff and is responsible for the efficient and effective delivery of services.

§ 169-2. Administration and operation responsibilities.

The City Manager is the head of the administrative and operational aspects of the government of the City of Toronto and is responsible to the Council for the proper administration of the affairs of the City, including organizational restructuring, in accordance with the by-laws adopted by the Council.

§ 169-4. Management of resources.

The City Manager shall manage the human, fiscal and physical resources of the City.

§ 169-5. Power to appoint, promote, demote, suspend and dismiss.

The City Manager shall appoint, promote, demote, suspend and dismiss, subject to the provisions of any personnel regulations adopted by Council or collective agreements applicable to employees of the City, all employees of the City except the first level of senior management, the Auditor General and staff of the Auditor General's office and statutory officials.

§ 169-9. Limitation of powers.

Nothing in this article shall be deemed to empower the City Manager to exercise or encroach upon the powers of Council or its committees or upon the statutory duties of its officers.

The City of Toronto Act, 2006 and the City of Toronto Municipal Code grant the City Manager broad powers to manage the City administration including its financial operations. These broad powers are limited by the prohibition on exercising them in any manner which would encroach upon the powers of Council.

The Power to Reduce Spending (“Cost Containment”)

Subject to the caveat below, the broad powers of the City Manager can be interpreted to include implementation of cost containment measures. For example the hiring freeze is generally within her broad powers to hire found in Municipal Code chapter 169 (section 5). The City Manager’s authority to manage fiscal resources should also empower her to direct reduced discretionary spending as well as reduced spending on advertising and non-essential print materials.

Those implementing the cost containment measures should, however, take care to avoid cutting services in a manner which would be contrary to a previous decision of Council. The Municipal Code provides that the City Manager may not “exercise or encroach upon the powers of Council”. As well, her powers do not extend to budgetary matters. Only Council may adopt or amend a City budget (the City of Toronto Act, 2006 expressly prohibits delegation of these powers). The “cost containment” measures, therefore, must not contradict the approved budget for the year.

The City Manager did not require specific service reductions. Rather she **requested** Division Heads to find ways to reduce services, thereby reducing costs. In searching for these potential service reductions, the Division Heads themselves must exercise discretion so as to avoid acting outside of their authority as City staff. They must ensure that any service reduction and other cost containment implementation is consistent with Council decisions.

Contractual obligations (including but not limited to collective agreement obligations), must be considered as well. Reducing a service or expenditure should be avoided when it would involve breaching a contract and, in these cases, must only be done with the concurrence of Council. Even where there is no written contract in place, an obligation can be created where an offer has been made by the City. Each case must be examined to determine the City’s obligations and the consequences of implementing cost containment measures.

This should not be interpreted as an opinion with respect to any particular cost containment measure. Legal Services should be consulted for advice regarding particular service reductions or other cost containment measures as required.

Wendy Walberg
Solicitor

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