

**ORDINANCE NO. 14- 101**

**THE ANNUAL APPROPRIATION ORDINANCE ADOPTING THE ANNUAL BUDGET AND APPROPRIATING MONIES FOR THE SEVERAL PURPOSES NAMED IN SAID BUDGET FOR THE YEAR ENDING DECEMBER 31, 2015**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The Mayor prepared and presented to this City Council on October 6, 2014, the annual budget for the year ending December 31, 2015, attached hereto as Exhibit A, which details the aggregate sum of revenue and expenditures allowed to each department and fund ("the 2015 Budget"). For the purpose of implementing the annual budget the term "Department" is defined in the General Fund as those specified in City Charter §4-40 and reiterated below:

- a. City Council
- b. Mayor, to include: Communications, Economic Vitality and Housing Services; Human Resources and Risk Management; and Information Technology;
- c. City Attorney
- d. City Auditor
- e. City Clerk
- f. Finance, to include General Costs
- g. Fire, to include the Office of Emergency Management
- h. Municipal Court
- i. Park, Recreation and Cultural Services, to include: Cultural Services; Forestry; Park Operations and Development; and Recreation and Administration
- j. Planning and Development, to include Land Use Review and Real Estate Services
- k. Police
- l. Public Works, to include: City Engineering; Fleet Management; Streets; Traffic Engineering; and Transit

Each fund other than the General Fund is defined as its own Department.

Section 2. Pursuant to City Charter, the City Council hereby adopts the 2015 Budget with the changes noted below and upon the basis of said budget, the several sums of money hereinafter specified are hereby appropriated out of the revenue of the City of Colorado Springs for the year 2015 and out of the respective fund balances to the several purposes herein named to meet the expenses of the City of Colorado Springs for the year 2015.

Line Item		2015 Revenue	Draw from (Add to) Fund Balance	2015 Expenditure
	<b>General Fund Budget as presented on October 6, 2014</b>	<b>\$257,195,842</b>	<b>\$1,500,000</b>	<b>\$258,695,842</b>
1.	Decrease General Costs - Legal Defense Reserve Account			(\$50,000)
2.	Add General Costs - Legal Defense Reserve Account - City Council			\$50,000
	<b>General Fund inclusive of all changes above</b>	<b>\$257,195,842</b>	<b>\$1,500,000</b>	<b>\$258,195,842</b>

Line Item		2015 Revenue	Draw from (Add to) Fund Balance	2015 Expenditure
	<b>City- funded CIP as presented on October 6, 2014</b>	<b>\$11,189,257</b>	<b>\$0</b>	<b>\$11,189,257</b>
3.	Delete National Integrated Ballistic Information Network			(\$162,000)
4.	Increase Sand Creek Substation Replacement/Renovation			\$162,000
	<b>City-Funded CIP inclusive of all changes above</b>	<b>\$11,189,257</b>	<b>\$0</b>	<b>\$11,189,257</b>

	<b>Conservation Trust Fund as presented on October 6, 2014</b>	<b>\$4,420,000</b>	<b>\$1,748,088</b>	<b>\$6,168,088</b>
5.	Decrease Park Watering		(\$1,400,000)	(\$1,400,000)
	<b>Conservation Trust Fund inclusive of all changes above</b>	<b>\$4,420,000</b>	<b>\$348,088</b>	<b>\$4,768,088</b>

	<b>Tails, Open Space and Parks Fund (TOPS) as presented on October 6, 2014</b>	<b>\$7,335,000</b>	<b>\$1,170,164</b>	<b>\$8,505,164</b>
6.	Increase Operating			\$650,700
7.	Decrease Venezia Community Park			(\$550,000)
8.	Increase Draw from Fund Balance		\$100,700	
	<b>TOPS inclusive of all changes above</b>	<b>\$7,335,000</b>	<b>\$1,270,864</b>	<b>\$8,605,864</b>

	<b>Airport Enterprise as presented on October 6, 2014</b>	<b>\$21,721,874</b>	<b>(\$854,511)</b>	<b>\$20,867,363</b>
9.	Decrease Expected Revenue	(\$244,076)		
10.	Decrease Other CIP			(\$67,576)
11.	Decrease Add to Fund Balance		\$176,500	
	<b>Memorial Health System inclusive of all changes above</b>	<b>\$21,477,798</b>	<b>(\$678,011)</b>	<b>\$20,799,787</b>

<b>Special Revenue Funds</b>				
12.	Arterial Roadway	\$250,000	\$0	\$250,000
13.	Ballfield CIP	\$100,000	\$0	\$100,000
14.	Banning Lewis Ranch	\$343,000	(\$332,375)	10,625
15.	Bicycle Tax	\$95,000	\$2,850	\$97,850
16.	Briargate SIMD	\$840,592	\$91,863	\$932,455
17.	Cable Franchise	\$941,000	\$0	\$941,000
18.	CDBG	\$2,500,000	\$0	\$2,500,000
19.	Colo Ave. Gateway SIMD	\$3,064	\$5,066	\$8,130
20.	Emergency Shelter Act Grant	\$170,000	\$0	\$170,000
21.	Gift Trust	\$1,900,000	\$0	\$1,900,000
22.	Home Investment Partnership	\$1,250,000	\$0	\$1,250,000
23.	HOPE III	\$0	\$0	\$0
24.	Lodgers & Auto Rental Tax (LART)	\$4,161,000	(\$12,158)	\$4,148,842
25.	Norwood SIMD	\$679,775	\$191,200	\$870,975
26.	Old Colorado City SIMD	\$100,588	\$34,843	\$135,431
27.	Platte Avenue SIMD	\$9,172	\$35,928	45,100
28.	Public Safety Sales Tax	\$29,652,000	(\$1,114,971)	\$28,537,029
29.	Public Space & Development	\$1,200,000	\$5,600,000	\$6,800,000
30.	Stetson Hills SIMD	\$285,364	\$42,441	\$327,805
31.	Street Tree	\$2,000	\$10,000	\$12,000
32.	Subdivision Drainage	\$4,000,000	\$0	\$4,000,000
33.	Therapeutic Recreation	\$300	(\$200)	\$100
34.	Woodstone SIMD	\$18,834	\$32,566	\$51,400

Line Item		2015 Revenue	Draw from (Add to) Fund Balance	2015 Expenditure
	<u>Enterprise Funds</u>			
35.	Cemeteries	\$1,390,792	(\$8,650)	\$1,382,142
36.	Development Review	\$1,759,438	\$178,801	\$1,938,239
37.	Memorial Health System	\$5,712,112	\$0	\$5,712,112
38.	Parking System	\$4,674,977	(\$32,893)	\$4,642,084
39.	Patty Jewett Golf Course	\$2,173,770	(\$16,181)	\$2,157,589
40.	Pikes Peak - America's Mtn	\$4,750,616	\$500,000	\$5,250,616
41.	Valley Hi Golf Course	\$1,150,842	\$2,389	\$1,153,231
	<u>Internal Services Funds</u>			
42.	Claims Reserve Self-Insurance	\$811,500	\$188,500	\$1,000,000
43.	Employee Ben Self-Insurance	\$33,980,995	\$0	\$33,980,995
44.	Office Services	\$1,758,358	\$0	\$1,758,358
45.	Radio	\$1,058,726	\$440,000	\$1,498,726
46.	Support Services/Fleet	\$0	\$1,391,413	\$1,391,413
47.	Workers' Compensation	\$5,058,851	\$2,941,149	\$8,000,000
	<u>Permanent Funds</u>			
48.	C. D. Smith Trust	\$75,000	\$0	\$75,000
49.	Cemetery Endowment	\$250,000	\$0	\$250,000
50.	Trails, Open Space & Prk Mnt.	\$11,500	\$0	\$11,500
	<u>Grant Funds</u>			
51.	Grants	\$50,000,000	\$0	\$50,000,000
52.	Airport Grants	\$14,000,000	\$0	\$14,000,000

Section 3: In addition to the changes to the 2015 Budget noted in Section 2 above, City Council determines that it is necessary to ensure the transparency of the execution of the 2015 Annual Budget. City Council thereby finds in its legislative capacity that the following changes are "major legislative budgetary determinations", defined as regulation of activity within a program whose appropriations may not be transferred for another purpose.

A. City Council, under the authority granted to it by City Charter §13-90(b), hereby directs the City Attorney to provide City Council, prior to December 31st, 2014, a list of all outside Counsel on retainer for calendar year 2015; the purpose of each retainer; and the not to exceed amount of each contract. Additionally, City Council directs no 2015 funds may be expended on outside Counsel until this list is approved by City Council; nor may any additional outside Counsel be retained during 2015 without prior approval by City Council.

B. City Council hereby directs that no 2015 funds may be expended for severance pay unless specifically authorized by the Civilian Personnel Policies and Procedures Manual.

C. City Council, under the authority granted to it by City Code §1.5.103(b), hereby reserves its right to initiate amendments to the 2015 Annual Appropriation ordinance to reflect corrections of revenue and expenditures to accord with actual fact.

Section 4. Based on the budget so adopted, this City Council by separate ordinance has estimated and declared the amount of money necessary to be raised by tax levy, taking

into account the amounts available from other sources to meet the expenses of the City for the year 2015.

Section 5. Based on the budget so adopted , this City Council by separate ordinance has approved the 2015 Salary Schedule for both Sworn and Civilian personnel.

Section 6. The Mayor, City Council President, and the City Clerk are directed to sign said budget and tax levy estimate as herein adopted, and to file the same with the Chief Finance Officer.

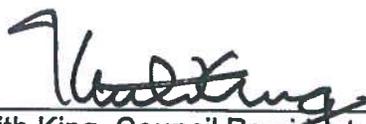
Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all statutes of the State of Colorado or parts thereof in conflict herewith are hereby superseded .

Section 8. This ordinance approving the annual budget and appropriating monies shall be in full force and effect on January 1, 2015.

Section 9. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 10<sup>th</sup> day of November, 2014.

Finally passed: November 25, 2014

  
\_\_\_\_\_  
Keith King, Council President

**Mayor's Action:**

Approved: \_\_\_\_\_

Disapproved: SR 11.26.2014,  
certain specified sections and line items on this 26th day of November, 2014, based upon the following objections:

Mayor's Veto Actions, attached hereto and incorporated herein as page 5 of this Ordinance, and Mayor's Veto Letter dated November 26, 2014, attached hereto and incorporated herein as pages 6 through 9 of this Ordinance.

**Mayor's Veto Actions:**

**Disapproved:** The Mayor disapproves by veto the second sentence of Section 1, which states:

"For the purpose of implementing the annual budget the term "Department" is defined in the General Fund as those specified in City Charter §4-40 and reiterated below;

- a. City Council
- b. Mayor, to include: Communications, Economic Vitality and Housing Services; Human Resources and Risk Management; and Information Technology; City Attorney
- c. City Attorney
- d. City Auditor
- e. City Clerk
- f. Finance, to include General Costs
- g. Fire, to include the Office of Emergency Management
- h. Municipal Court
- i. Parks, Recreation and Cultural Services, to include: Cultural Services; Forestry; Park Operations and Development; and Recreation and Administration
- j. Planning and Development, to include Land Use Review and Real Estate Services
- k. Police
- l. Public Works, to include: City Engineering; Fleet Management; Streets; Traffic Engineering; and Transit"

I hereby disapprove and veto the language in Section 1 set forth above, but not the remainder of Section 1, as being contrary to and in violation of the Charter for the reasons set forth in the Mayor's Veto letter to Council, dated November 26, 2014, attached hereto and incorporated herein by reference.

**Disapproved:** Section 3 in its entirety as unlawful and in violation of the Charter for the reasons set forth in the Mayor's Veto Letter to Council, dated November 26, 2014, attached hereto and incorporated herein by reference.

  
\_\_\_\_\_  
Steve Bach, Mayor



November 26, 2014

Mayor's Disapproval by Veto of Portions of Section 1 and All of Section 3 of Ordinance No. 14 - 101, passed on November 25, 2014, hereby attached and incorporated into Ordinance No. 14 - 101.

Honorable President and Members of City Council:

Thank you for your careful consideration of the 2015 budget I presented to you on October 6, 2014. Your efforts are duly recognized and appreciated. By Charter and Code, my options at this juncture are limited to approving the appropriation ordinance passed by City Council on second reading, disapproving it and returning it to you with my specific objections, or approving and disapproving portions of it by vetoing specific line items. After much deliberation and with the public's best interest in mind, I feel compelled to veto and disapprove those certain sections and line items as set forth in the Mayor's Veto Actions on pages 4 and 5 of the 2015 Budget and Appropriation Ordinance, Ordinance No. 14 - 101 (passed on second reading November 25, 2014), and to veto and disapprove those certain sections and line items of Ordinance No. 14 - 101 as set forth in this Letter. I do hereby attach to and incorporate therein by reference this Letter to Ordinance No. 14 - 101 as part of the Mayor's Veto Actions. I further hereby approve and do not veto any other section or line item of the Ordinance No. 14 - 101 that has not been disapproved or vetoed as described in the Mayor's Veto Action or in this Letter.

The basis for my disapproval and veto of portions of Section 1 and all of Section 3 are set forth below:

**Disapprove and Veto Part of Section 1, and in the alternative, find Section 1 to be in violation of the Charter and the separation of powers set forth in the Charter.<sup>1</sup>**

As set forth in the Mayor's Veto Action, I am vetoing the second sentence of Section 1. Not only does this language violate City Charter and City Code, it violates the separation of powers established by the City Charter and unnecessarily expands government bureaucracy.

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<sup>1</sup> To the extent the second sentence of Section 1 is not deemed to be a specific line item subject to partial veto under Charter §3-70(e), the provision is nonetheless null and void as violative of the City Charter and the separation of powers set forth in the Charter.

First, the Mayor prepares and submits the Budget in “such detail as to the aggregate sum and the items allowed to each department . . . as the Mayor may deem advisable . . . .” Charter § 4-40(i). It is the Mayor’s budget in the form and with aggregate amounts for departments as determined by the Mayor. The City Council’s authority to amend the budget is limited. The Council may amend the budget to “add or increase programs or amounts and may delete or decrease programs or amounts . . . .” City Charter § 7-30(a). The City Council’s Charter authority to amend does not extend to changing the *form* of the budget.

Second, City Council’s proposal to partition the six (6) appropriating Departments presented in the Mayor’s budget into 12 smaller departments represents a significant departure from the City’s historical practices and contradicts the City Charter and Code. The Mayor’s Budget for Fiscal Year 2012 and Fiscal Year 2013, as approved by City Council and as set forth in law, expressly created and set forth five major Departments of the City for budget and appropriations purposes which have worked exceedingly well for our community. City Council is authorized to establish departments “*in addition to* those created by Charter,” but no function assigned to an existing Department “may be discontinued . . . or assigned to any other department.” City Charter § 5-10, City Code § 1.2.312 (emphasis added). All of the functions of the 12 separate “Departments” proposed in Section 1 had already been assigned to the existing five major appropriating Departments presented in the 2012, 2013 and 2014 Budgets and to the six major Departments in the Mayor’s 2015 Budget submitted to Council. This portion of Section 1 is therefore void and unenforceable on its face. During administration of the Budget in 2015, the Executive Branch will treat this provision as unenforceable even in the event of a veto-override.

Third, the vetoed portion of Section 1 usurps the Mayor’s executive authority under Charter §§ 3-10(b), 4-10, and 4-40(i), and violates separation of powers principles by significantly limiting the Mayor’s authority to manage the budgets of City Departments under his direction and control. The Mayor is the chief executive of the City and in that capacity is charged with overseeing the City’s day-to-day operations. Currently, the Mayor may transfer funds within each of the five appropriating Departments as necessary to respond to economic conditions, unexpected natural disasters, or other financial demands that cannot always be foreseen. With the 2015 Budget, I have set forth six appropriating departments, making Parks, Recreation and Cultural Services its own department because it constitutes a large unit of the City government and will still permit a high level of efficiency. However, partitioning the Mayor’s appropriating/budgetary departments into 12 different and more functionally narrow departments deprives the Mayor and future administrations of the ability to make necessary mid-year budgetary adjustments that best serve the public’s interest and the City’s financial well-being.

There is no question that City Council may amend the budget with respect to added or increased, deleted or decreased programs or amounts and then appropriate based upon the approved and amended budget, but City Council cannot explicitly or implicitly interfere with the administration of the funds by crafting creative language and employing mechanisms in the annual appropriation ordinance that would thwart the Mayor’s exercise of legitimate executive authority. *Colorado Gen. Assembly v. Owens*, 136 P.3d 262, 270 (Colo. 2006); *citing, Anderson v. Lamm*, 579 P.2d 620,623-624, 625 (Colo. 1978) (An appropriations bill cannot interfere with the executive authority

to allocate staff and resources, make contracts, enter into agreements, or limit the general administration of the federal funds it receives. The power to appropriate does not give the General Assembly the power of close supervision that is essentially executive in character.)

Finally, without any apparent basis, the attempted restructuring of the City's existing Departments would disrupt current management systems, unnecessarily expand the size of City government, and increase bureaucratic processes within the City.

Based on the foregoing, it is in the best interest of the City for me to disapprove by veto the second sentence of Section 1 in Ordinance No. 14-101, The Annual Appropriation Ordinance.

**Disapprove and Veto Section 3, and in the alternative, find Section 3 to be in violation of the Charter and the separation of powers in the Charter.<sup>2</sup>**

My veto and disapproval of Section 3 in its entirety is based on my objection to that Section's bold and improper intrusion upon executive functions, including the power to enter into contracts. The intended effect of Section 3 is to also allow the Council to exercise close supervision of employee benefits, under the rubric of "major legislative budgetary determinations" that are purportedly shielded from later adjustments. *See Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 521 (Colo. 1985) (any inherent authority the executive may have to administer the budget may not normally be invoked to contradict major legislative budget determinations). Section 3 directly interferes with core executive functions of the Mayor to enter into contracts, determine staffing, allocate appropriated funds and perform other administrative activities as set forth in Charter and Code. The record indicates that the City Council has intentionally mischaracterized these conditions upon appropriations in an effort to assert unlawful and inappropriate "close supervision" over the executive branch in violation of the Charter and the separation of powers set forth in the Charter. *Anderson v. Lamm*, 579 P.2d 620, 623-624 (Colo. 1978) (the legislature "may not attach conditions to a general appropriations bill which purport to reserve to the legislature powers of close supervision that are essentially executive in character"); see also, *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006).

With respect to Section 3(A), the City Council has no Charter authority to direct the administrative actions of the City Attorney or to interfere in the making or administering of contracts for any purpose. City Charter §§ 4-10, 4-40, 4-40(d), 4-40(f)(2), and 4-40(g). Any attempt to require Council approval of any contract prior to the expenditure of appropriated funds sufficient for any pecuniary liability of the City under the contract is an improper intrusion into the Mayor's executive function, and rises to the level of unlawful and inappropriate "close supervision" over the executive branch in violation of the Charter and the separation of powers set forth in the Charter. *Anderson v. Lamm*, 579 P.2d 620, 623-624 (Colo. 1978), *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006).

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<sup>2</sup> To the extent Section 3 is not deemed to be a specific line item subject to partial veto under Charter § 3-70(e), the provision is nonetheless null and void as violative of the City Charter and the separation of powers set forth therein.

With respect to Section 3(B), it purports to prohibit severance pay unless authorized in the Civilian Personnel Policies and Procedure Manual. The Mayor has executive and administrative authority to enter into contracts on behalf of the City. City Charter § 4-10 states that the “Mayor shall be considered the head of the City government for the purpose of executing legal instruments .The Mayor shall execute all contracts and see that all contracts and agreements with the City are faithfully kept and fully performed.” City Charter § 3-10 precludes these actions from being undertaken by the legislative branch. Section 3-10 states, “[e]xcept as otherwise set forth herein, whenever an executive or administrative function or duty shall be required to be performed by ordinance, the same shall be performed by the executive branch and not by the legislative branch.”

Furthermore, although City Charter § 4-40(e) allows the Mayor to delegate the exercise of some of this administrative authority to a Chief of Staff, the Charter is clear that “despite such delegation or appointment, the **responsibility for the proper and effective administration of the City remains always with the Mayor and none other.**” (Emphasis added.) Therefore, the Mayor has Charter authority to enter into and execute agreements and contracts on behalf of the City which includes the executive discretion to enter into employment agreements with prospective and existing City employees and severance agreements with existing employees. A City appropriation cannot violate the provisions of the Charter or usurp the Charter authority given to another branch of City government. See *Flanders v. City of Pueblo*, 160 P.2d 980 (Colo. 1945). Section 3 (B) therefore impermissibly infringes on the executive branch’s executive and administrative authority over personnel matters and its authority to enter into contracts on behalf of the City.

With respect to Section 3(C), by memorandum of July 14, 2014, the City Attorney’s Office opined that City Council does not have authority to self-initiate amendments to an annual appropriation ordinance. The opinion of the City Attorney’s Office is that the Mayor must propose an amendment before the Council may act. The July 14, 2014, memorandum states, “If the Council were to initiate amendments to the annual appropriation ordinance, it would be tantamount to making organizational, operational, and financial decisions that would limit the Mayor’s ability as the executive to adjust the budget and the operations of the City during the fiscal year.” This section of the ordinance attempts to limit and restrict the Mayor’s executive functions and violates the Charter’s provisions concerning separation of powers.

Respectfully, the voters of Colorado Springs have entrusted the Mayor with budgetary oversight of the City and therefore my decision to veto the identified sections and line items has not been taken lightly. In the end, it would be a disservice to the public to tie the Mayor’s hands to run an efficient municipal government if and when budgetary adjustments become necessary, and these proposed provisions would do precisely that.

Sincerely,



The Hon. Steve Bach  
Mayor of the City of Colorado Springs