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**OFFICE OF THE CITY ATTORNEY**

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**OPINION NO. 96-02**

**TO:** Kevin Kadlec, Public Services Director  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** March 27, 1996  
**SUBJECT:** Vehicle Replacement Opinion

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**QUESTION:**

What is the correct process to be followed to submit equipment and Vehicle replacement to the City Council for approval.

**OPINION:**

For purpose of this Opinion, the following background information is set forth. The City maintains a Vehicle Replacement Fund. This fund consists of revenues paid in by various departments representing the depreciation on existing vehicles and equipment. As the Vehicles are fully depreciated, the funds paid in by an existing department are used for replacement of the Vehicle.<sup>1</sup>

The replacement of Vehicles is determined by a depreciation schedule promulgated by the City Manager. Each type of vehicle is assigned a specific depreciation schedule.

As new Vehicles are added to the City's fleet, they are assigned a

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<sup>1</sup> Generally, depreciation of vehicles and equipment is done on a "straight-line" basis taking into account average number of years of useful life based on intensity of use.

depreciation schedule and subsequently amounts are paid in representing the depreciation of the Vehicle.

The City accounts for the fund in a manner consistent with generally approved accounting principals and accounting standards implemented by the governmental accounting standards board. The depreciation schedules are based on those common in the commercial market as well as taking into account actual use of the Vehicle or equipment.

At the same time, the City within the City Code has enacted procedures governing the administration of individual department budgets. These procedures are found in Section 2-181 of the City Code which was adopted as Ordinance 92-18, a copy of which is attached. Under this Ordinance, transfers in and out of restricted areas must be approved by City Council. There are two areas which are designated restricted; Capital and Personal Services. Therefore, no transfer may be made into a budget for a budget unit for the purpose of increasing Personal Services Funding or Capital Funding without specific approval of the budget amendment by the City Council.

Each City function which has a separate budget is a budget unit. For example, the City Attorney's Office consists of four budget units (Civil, Criminal, Deferred Prosecution, and Risk Management.

Within the capital budget, a series of line items are included outlining the specific items which may be purchased with Capital funding. These line items are estimates of the cost of each item and are designed to allow City Management and City Council with a summary of the actual capital items which will be acquired.

I have paraphrased the questions which you have asked within this Opinion. The first question you have asked is in reality a two-part question. First, does a change in the depreciation schedule to lengthen the replacement period for a piece of equipment that results in a slower depreciation rate require City Council approval. Generally, City Council approval is required on all purchases or expenditures in excess of \$15,000.00. In the case of extending the depreciation schedule, no expenditure is being made. Rather, an expenditure is being deferred.<sup>2</sup>

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<sup>2</sup> Extension of a depreciation schedule works as follows: The City may have established a depreciation schedule for a vehicle of five (5) years. Under straightline depreciation the vehicle is depreciated at a rate of twenty percent (20%) of its replacement value each year. The end result is that at the end of five years sufficient money is on deposit to replace the vehicle. If the depreciation schedule is lengthened from five to seven years, the City then begins to depreciate the vehicle at a lesser rate to allow the City to have full funding on deposit in seven years.

The result of a lengthening of a depreciation schedule is a deferral of a purchase. This is basically an administrative decision which results in no expenditure being made. Such decision does not conflict with the provisions of Ordinance 92-18 since the capital funding cannot be transferred by the making of such decisions, it is simply not expended. Therefore, it would be our conclusion that the decision to lengthen the depreciation schedule on a piece of equipment is an administrative one within the authority granted under the City Charter and Code to the City Manager.

The second part to your question is: May the City use the revenues saved by the lengthening of the depreciation schedule on a piece of equipment to acquire another piece of equipment.

It is clear under the provision to Ordinance 92-18 that the capital funding of one budget unit cannot be transferred to another budget unit without City Council approval. Therefore, if a depreciation schedule is lengthened resulting in additional capital funds becoming available, those funds could not be transferred to a different budget unit for use in replacing a capital item without City Council approval of a budget amendment.

However, the question becomes different if the funds are proposed to be used by the same budget unit which made the determination to lengthen the depreciation schedule on a piece of equipment. In essence, the issue then becomes a decision by a department to defer one purchase and proceed with a different purchase of a capital item while not increasing the overall capital budget.

The question then becomes may a capital item be purchased by a department which was not listed within its line item budget but does not exceed the overall capital budget. It is our opinion that a capital purchase may be made from a departmental budget that does not increase an overall capital budget of the budget unit even though it is not listed as a line item acquisition within the capital budget. Finally, in making such a purchase, all procurement regulations must be complied with.

The second question you have asked may be paraphrased as follows.

A City budget unit was scheduled to replace two s under the current depreciation schedule in fiscal year 95-96. In reviewing the proposed replacement, it was determined necessary that the Vehicle should be upgraded. However, the amount of funds within the replacement account are not sufficient to upgrade the Vehicle.

There are no other funds available to transfer within the capital budget unit to provide for the upgraded replacement of the Vehicle. Therefore, the department has elected only to replace one with the upgraded model and extend depreciated period on the other until such funds become available. This is permitted under the City Code.

As note above, the determination of the appropriate length of the depreciation schedule and adjustment to the depreciation schedule is an administrative function within the authority granted to the City Manager. Therefore, the City Manager could extend the depreciation schedule for these Vehicles. However, the more basic question is whether a Vehicle must be replaced with an exact duplicate of the Vehicle unless Council approves otherwise. It is our opinion that such a requirement is not imposed under the City Code.

Frequently, the City replaces Vehicles with different makes, models and sizes of replacement Vehicles. The issue is not the replacement of the Vehicle, but whether sufficient funds are available within the capital budget of the budget unit to authorize replacement. Therefore, it would be our opinion that a City budget unit may allot to replace one of two Vehicles with an upgraded make or model as part of its regular replacement without separate Council approval provided all procurement codes are complied with and the total capital budget unit is not increased.

It would go without saying that if the other Vehicle depreciation schedule is extended and the City becomes aware that upgrades and changes in the Vehicle would substantially increase the cost, the depreciation schedule and the amounts of withholding for the second Vehicle should be adjusted to fully cover its cost at the time of Vehicle replacement. This practice would be consistent with generally accepted accounting principles. Such adjustment would need to be incorporated in the regular budget of the department and would be subject to all of the budget requirements in the City Code.

Regarding question #3, you have indicated that this is a hypothetical question, not an actual circumstance. Rather than attempting to speculate on a hypothetical question, this office will set forth a series of general principles which must be followed in the administration of the Vehicle Replacement Fund. I believe these principles will provide sufficient guidance regarding question #3 as well as other Vehicle replacement questions that may arise.

1. No City budget unit may exceed the total amount of their capital budget without a budget amendment approved by the City Council.

2. As the Vehicle replacement funding falls under capital, no department may exceed their total replacement funding allocated within a fiscal year. No City budget year may exceed their total allocated funding within the Vehicle Replacement Fund in a fiscal year without approval of the City Council.

3. The decision of whether to replace a full pickup with an

extended cab pickup or a compact pickup or rather to replace a medium sized dump truck with a large dump truck is an administrative decision initially. If the procurement is in excess of \$15,000.00, it must be approved by the City Council. If the expenditure results in the depreciation schedules for other Vehicles becoming inadequate due to insufficient withholdings, the department should be required to adjust the appropriate depreciation schedules for other Vehicles to provide for additional withholding and may need to increase withholding on specific Vehicles to provide sufficient funding for full replacement of each Vehicle or piece of equipment at the designated point on the replacement schedule. Obviously, it goes without saying that budget is a policy issue for the City Council and a department's decision to make such adjustment may result in other department programs or functions being unfunded by the City Council in order to provide sufficient revenues for this purpose.

Such administrative decision is within the authority granted to the City Manager to make initially subject to Council's approval of the budget unit's budget.

Finally, the overall accounting principal which should be applied in Vehicle and equipment replacement is that the depreciation schedules should be commercially reasonable taken into account the amount of use and age of the particular piece of equipment and Vehicle and generally accepted standards in the industry for replacement of such Vehicles.

As depreciation schedules are changed and adjusted, the budget unit should be required to provide full funding of the change or adjustment in order to provide that at the time of replacement of the Vehicles, full funding exists within the replacement fund. This practice would be consistent with generally accepted accounting principals in governmental accounting standards.

If you should have any further questions regarding this matter, please feel free to contact me.

cc: Honorable Mayor and Council