

# THE SUN

San Bernardino County's Newspaper

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## Sun, The (San Bernardino, CA)

February 7, 2009

Section: News

### SB police, firefighters may not be shielded from budget axe

*Andrew Edwards and Stacia Glenn, Staff Writers*

SAN BERNARDINO - The city may fire dozens of police officers and firefighters as officials struggle to balance the budget of an increasingly cash-starved city. Mayor Pat Morris said cuts to Police, Fire and other city departments will hurt San Bernardino, but he also said those cuts are unavoidable as the city's tax revenues plummet.

"Across the city, it's going to have a substantial negative impact," Morris said.

"This is beyond sobering. This meltdown is an international disaster ... it hit most terribly on Main Street," he said later.

Police and Fire are the sacred cows of local politics. Public safety is generally placed above such other city responsibilities as road repairs and parks and recreation in the minds of civic leaders. In San Bernardino and other cities, cops and firefighters have organized themselves into politically-potent unions that provide coveted endorsements.

But 2009 is shaping up to be more than just another election year for San Bernardino. It is a time when falling real estate values and a shrinking retail tax base are making it practically impossible for city officials to maintain essential services.

City data shows that officials expect to take in about \$25.6 million in sales tax revenue during the current fiscal year. That's about \$5 million less than what was anticipated in the city's budget.

San Bernardino administrators are working under the assumption that a \$9 million general fund shortfall will develop by the time the fiscal year ends June 30 and are preparing deep budget cuts for most city departments.

The proposed cuts could eliminate 130 jobs from San Bernardino's budget, and interim City Manager Mark Weinberg says the situation is so grim that sworn police officers and firefighters cannot be excluded from potential layoffs.

"Front-line public safety response service must still remain our top priority. But given that Police and Fire operations now comprise 70 percent of the General Fund budget, it is inevitable that these departments must contribute toward reducing the deficit," Weinberg wrote in a memo to the City Council.

Weinberg has submitted a twin proposal for layoffs, and the council voted 5-1 Monday to prepare for the firings.

Under Weinberg's preferred proposal, police would lose more than \$5.4 million in funding. That's the largest cut for any city department and would result in the letting go of 29 officers, a figure that includes four sergeants and five detectives.

It would also bump seven sergeants and 15 detectives down a rank, dropping their pay along with them.

On the civilian side, the department could lose five community service officers, a records technician and a senior office assistant.

The Police Department is also slated to lose funding for helicopter patrols, the Police Activities League, monies that go to the Young Visionaries Youth Leadership Academy and overtime for corridor patrols.

Bitlidi, who insisted the department would maintain its current 28-beat policing model, would not directly comment on how a reduction in officers may impact crime.



## Fiscal shame

Download story podcast

07:47 PM PDT on Wednesday, March 11, 2009

Copying the reckless fiscal practices of state government is not the budget solution San Bernardino needs. It might be legal for the city to borrow against its special-purpose funds to fill budget gaps, but that strategy hardly represents sensible policy for the city.

The city attorney's office issued a report last week stating that San Bernardino could borrow against the money in the city's water, sewer and refuse funds.

City Attorney Jim Penman said, for example, that the city might be able to borrow against the \$18 million reserve in a sewer fund for up to two years interest-free — provided the city can show a source to repay the money.

The city needs to close a \$9 million shortfall in its \$150 million general fund by June 30, the end of this fiscal year. Already, city officials have eliminated 96 jobs, including 55 layoffs. The City Council has approved broad reductions in city services, as well.

But while the prospect of extra money might seem attractive, Mayor Pat Morris rightly described the borrowing concept as "fiscal insanity." The city would be using borrowed money to pay ongoing expenses, which is an unsustainable financial strategy. San Bernardino would get an immediate cash infusion, but by burdening future budgets with the obligation to repay the money.

State budget writers routinely use such gimmicks to fill shortfalls, but the state's woeful financial condition dramatically illustrates the foolishness of that approach. Surely San Bernardino can find a better role model for fiscal management than an irresponsible Legislature.

Leveraging the city's special-purpose funds is simply a bad idea. San Bernardino is better off closing its budget gap honestly, and not borrowing against the future.





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Sun, The (San Bernardino, CA)

February 16, 2009

Section: News

## SB Council scheduled to vote on budget cuts, new fees

Andrew Edwards, Staff Writer

SAN BERNARDINO - It's D-Day - with "D" standing for "decision" - for a City Council that needs to decide whether or not to slice more than \$3 million from its current budget. Of course, the above statement assumes that the council will be able to reach an accord on budget cuts and fee hikes before the midnight hour.

"I keep telling 'em Wednesday," quipped 6th Ward Councilman Rikke Van Johnson, who expects a large public turnout for the debates. "Chambers are going to be full. As they should be. This is a serious situation."

Although the public portion of today's council meeting is scheduled to begin at 3 p.m., it may take a more than a few hours for the body to wrap up its other budget and decide how to avoid insolvency.

Money woes have been on the minds of City Hall figures as the recession developed, but took on special urgency earlier this month when interim City Manager Mark Weinberg unveiled a package of proposals designed to solve a \$9 million operating deficit.

Weinberg's initial recommendations were stark. He presented a plan that called for the elimination of 130 city jobs. Layoffs would have included police, firefighters and just about everyone responsible for taking care of San Bernardino's parks.

He also proposed that the city close its three branch libraries and cut funding for recreational activities. The cuts would have diverted funding from the Center for Individual Development, which serves the disabled.

Those proposals have been changed. On Friday, the city released a modified budget plan that would preserve police jobs by imposing controversial furloughs for cops.

Members of the San Bernardino Police Officers Association are expected to rally against the furloughs before today's council meeting at City Hall.

Weinberg's second plan would also employ volunteers to keep branch libraries in operation and use private funding to sustain the Center for Individual Development through June 2010.

The new plan would also cut the number of potential parks layoffs from 26 to 14. Overall, there could be fewer than 60 layoffs under the new plan.

But San Bernardino residents and employees can still expect to feel some pain.

In addition to the proposed cuts, Weinberg is also asking the council to greenlight a package of new and raised fees that is projected to raise about \$500,000 during the next fiscal year, which starts July 1.

The new fees include mandatory cat licenses, upping Code Enforcement's weed abatement fee by \$210 per parcel, increasing the Police Department's false burglary alarm charges by \$75 or more and installing parking meters downtown.

"People (city employees) are losing their jobs. That's more of a concern to me than a cat licensing fee," Johnson said.

See end of  
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Beyond fees, Weinberg is asking the council to consider new taxes, such as raising the city's hotel tax from 10 to 12 percent and creating new taxes on distribution centers and quarries.

"It is staff's strong opinion that significant revenue measures will be necessary to provide a stable revenue stream in ... (fiscal) 2010-11 and beyond," Weinberg wrote in a Feb. 12 memo to Mayor Pat Morris and the council.

Weinberg's recommended actions would also shutter City Hall on Fridays beginning March 1. The move - which goes along with an across-the-board pay cut of 10 percent for city staffers - is intended to save nearly \$800,000 by the end of June.

The Fire Department does not escape cuts in the new proposal. The plan released Friday would slice 24 firefighters and a battalion chief from the department, and reduce staffing on fire engines from four to three crew members. Eliminating the fire positions could result in 14 layoffs.

In all, the planned cuts are projected to shave about \$3.4 million from the current budget and nearly \$19.5 million from next year's spending.

Thus far, 7th Ward Councilwoman Wendy McCammack has been the most skeptical council member in regards to Weinberg's proposals.

She has her own request for council action on tonight's agenda that asks her colleagues to consider alternatives to Weinberg's idea.

She has previously said that city officials should consider additional fee revenues and the possibility of borrowing from various pots of money to benefit the general fund as ways to avoid layoffs.

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# CITY OF SAN BERNARDINO - REQUEST FOR COUNCIL ACTION

From: Councilwoman Wendy J. McCammack

Subject: Discuss and take possible action on alternative opportunities/proposals to prevent drastic reductions to public safety and other critical city services.

Dept. Council Office

Date: February 11, 2009

## Synopsis of Previous Council Action:

During the budget workshop on February 2, 2009, the City Manager asked the City Council to consider closing the 2008-2009 budget gap, and to anticipate closing a looming 2009-2010 budget deficit, by allowing the City's administration to issue pink slips to all affected departmental employees. With a motion made by Councilman Kelley and on a 5-1 vote, permission was granted. Mr. Weinberg also asked that the discussion on other budget reduction measures be continued to the February 16, 2009 Council meeting.

## Recommended Motion:

To discuss and take possible action on alternative opportunities/proposals to close the 2008 2009 budget revenue shortfall and direct the City Manager to direct the Finance department to make any budget amendments necessary to implement any action taken by the City Council including any and all funding sources or expenditure reductions.

  
Signature

Contact Person: Councilwoman McCammack

Phone: 5068

Supporting Data Attached: To be provided

Ward: All

FUNDING REQUIREMENTS:

Amount:

See attached

Source: (Acct. No.) To be determined

(Acct. Description) To be determined

Council Notes:

Agenda Item No. 18 D

2-17-09



To: Mayor and Common Council

From: Councilwoman Wendy McCamack

Date: February 17, 2009

Re: 2008-2009 Budget gap: This is not the perfect plan, but a compromise in closing the shortfall.

As part of today's discussion, I ask you to please consider the City Manager's two, very different, recent budget proposals. The first one was presented to the Mayor and Common Council at the last Council meeting on February 2 which originally slated a loss of 130 positions. The second one appeared on my doorstep Friday evening, and after working tirelessly for the past three-plus days, this document is before you in an attempt to combine all/or many of the ideas that have been negotiated up to the very last minute including this morning by the Mayor and City Manager. The Mayor's editorial piece appearing in yesterday's Sun basically supports the City Manager's second proposal. Along with all the other last minute information that we are being asked to consider today, I felt it necessary to put a compromise in writing for all to review with viable alternatives.

The documents I have provided address these two, very different proposals. I will also illustrate, by department, how we can be in concert with some of their ideas and still close the current fiscal year budget gap without drastic city-wide layoffs, reductions in police and other critical revenue generating services, closure of most of our community centers, libraries and the CID or borrowing any money.

Some of the items listed on the Mayor/City Manager's modified budget strategy, can legally be funded by other city resources. There are also revenue strategies or shifts that have not been publicly discussed yet that are not one-time funds but ongoing somewhat restricted revenue sources. These budget transfers, which I have discussed privately with the City Manager, and during budget meetings and other previous discussions, will offset the increase in critical needs spending without further compromising our fiscal integrity for this year or next. Also, there are some discretionary spending cuts that have not been proposed, at least not publicly, to date that we should consider before closing any city facility. This alternate proposal employs employee cost-cutting measures and management techniques used by many successful business people and other governmental agencies and I respectfully ask for your consideration.

1. Code Enforcement: At the last council meeting the City Manager proposed promotions of two Code Compliance Officers from a level One to a level Two. Yet the "modified" budget strategy before us tonight includes vacating two Code Compliance II positions. If these positions are revenue generating, then it seems prudent to fund the positions and expect that their revenue generation will offset part of the cost of their positions. Another positive economic impact of code officers is their ability to force property owners to be compliant which inevitably means higher property values which means higher property tax revenues and lower commercial/residential vacancies. We were also expecting revenue to offset the cost of the Single Family Inspection Program as a result of Councilman Kelley's efforts and to date it is still not underway in a manner that he intended. Records show the program is not recovering its costs. Vacating code officer positions will only make it worse. Combining several departments such as Community Beautification and Community Services is cost saving and an excellent way to share costs. The 08-09 costs to implement above strategy before net revenue generation is approx. \$81,054.
2. Fire Department: The rank and file has offered revenue generating suggestions as well as reductions in discretionary expenditures without risking the public's or firefighter's safety. Their proposal suggests savings this fiscal year and larger savings next fiscal year without drastic reductions to first responder positions but reductions in upper management and discretionary positions. With their revenue enhancement suggestions and their offer of stepped-up responsibilities by the rank and file, their share of closing the budget gap is very close to being met. This plan was distributed to the Council last week. Also, closing the injury cases more quickly can easily save the department \$10,000 per month which is an area of the budget we have not aggressively addressed. Fire and Police rank and file also suggested over a year ago that City Administration research and implement, as other jurisdictions have, charging insurance companies for traffic accident reports and HazMat clean up. This revenue source that has not yet been fully implemented,



although suggested over a year ago. The 08-09 costs to implement above strategy not including additional net revenue generated or cost savings above strategies is approx. \$382,952.

3. **Libraries:** The public outcry to stop the closure or reduction of the facilities, hours and professional staffing levels should not fall on deaf ears. Mr. Brinker suggested that by combining community centers with libraries we might realize excellent cost-sharing opportunities. This should be explored further. We grant CDBG money to non-profits for similar activities. Why can't we grant our own programs some of that same money? Relying on hundreds of volunteers, as noble as it sounds, is an extremely difficult situation to manage at the levels being suggested. In the end that proposal does not seem capable of meeting the public demand for the facilities where critical job search for the unemployed, homework/research, early childhood reading, computer time necessary to file unemployment claims (as the Employment Development Dept. directs the unemployed to do) and many other critical services occur at our libraries on a daily basis. A compromise proposal is to keep all branch managers and existing staff, less pending retirees. Floating remaining staff and combining parks/community center staffers between all the branches possibly housing community centers inside the libraries to manage more efficiently a less ambitious volunteer force until they are properly trained. This also should be explored further. This proposal keeps all libraries open at current service hour levels. The 08-09 cost to implement the above strategy is approx. \$180,600.
4. **Police:** Approximately 16 of the 20 reductions in PD spending were part of the suggestions made by the rank and file. The POA also suggested other benefit items that were offered to the Chief and the City Manager. The dollar amounts the POA offered met or exceeded the City Manager's expenditure savings while maintaining front-line officers (less only two positions). According to the rank and file, those concessions were not enough for the City Manager. Please find attached a proposal that fully staffs the current 28 (as well as a 20) beat plan proposal with enough front-line officers to provide quick response times. The furloughs suggested by the City Manager will in effect reduce the boots on the street by 33.9 officers annually (not including the proposed reduction in front-line officers of 6 positions with last year's reduction and now an additional reduction of 16). So in effect we could see a net loss of 55.9 front-line officers at any given time with the modified City Manager's proposal. The most critical crime fighting tool according to all the recognized and respected sources is front-line responders. Also, please see a letter written by an officer (attached) which will at least put into an honest and unabridged perspective of the City Manager/Mayor/Police Chief's unfortunately unproductive negotiations. Just two weeks ago we were originally asked to give pink slips to as many as 178 employees, yet today we are told it is not that bad. It seems that if eight different law enforcement agencies are willing to hire away from us almost half of our police force (SB County Sheriff's deputies will be receiving an 11% raise) than we just wasted a half-million dollar recruitment investment and hundreds of thousands of dollars in training our crime-fighting team which may or may not leave us with the most qualified force. The recruiters say they are offering them jobs if we don't want them. I also understand the Chief is contacting those other agencies, leaving those recruiters questioning whether they should make the effort to hire any of our officers. As an aside, the 3% at 50 benefit was pushed by the Chief and the Mayor who touted it as a recruitment and retention tool to prospective officers and now the Mayor claims it costs too much? We pay thousands per month filling positions with extra Captains, Assistant Chiefs and Lieutenants while we take our time to close out injury cases. This waste needs to be addressed quickly and has been suggested almost two years ago. Another cost-saving suggestion is to close the jail all together. It provides a savings of almost \$500,000 per year. See attached other cost-cutting suggestions totaling approx. another \$250,000. That includes selling the Hummer the PD was to use as a recruitment vehicle. These strategies offer additional revenue of \$286,566.
5. **Parks Recreation and Community Services:** We just spent \$200,000 on the Parks Master Plan and now it gets thrown to the wind? As is the case with the last hired, the newest should go, so should Operation Phoenix centers instead of the older established and successful community centers. The older centers have been successfully providing critical youth and senior services to our community for years. The libraries have also been safe havens for many of our youth and can be combined to serve as additional community



centers combining expenses yet providing all the critical resources our Operation Phoenix centers cannot. This combining strategy, again, suggested by Councilman Brinker may have real possibilities. Our youth should be hanging out in Libraries. Yet, as both Libraries and Parks are provided less and less annual funding, under the direction of Kevin Hawkins, they can co-function fiscally responsibly. The other Parks and Recreation programming in many cases is supported by the customer. Programs that pay for themselves should not be unfunded or disbanded and some may need a little more funding help than others. There is an obvious need and customer demand to many of the services we currently provide, and most importantly the CID. But what is being overlooked is that many of the non-profits we fund through CDBG funding can also be funding our own programs and frankly should be, before we fund fly-by-night programs with no history or empirical data showing the success. See the news article attached. This proposal is to close all the Operation Phoenix centers and combine their assets and staffers with the Libraries. Some staffers have mentioned that usage has dramatically reduced and it has become more of a free babysitting service instead of a youth-diversion tool meant to provide educational/recreational resources. Libraries may be able to do both. We should leave open Nicholson, Casa Ramona, the CID (without exhausting private funds and keeping the director) and the Norton Center as it has paying customers (which according to the Park's Director is the best facility we have). Until we are able to more accurately identify 2009-2010 funding sources, outsourcing park maintenance is premature, in my opinion. We have always received better service by holding employees accountable than through contractors who have provided mediocre service and do not get fired until the end of their contractual term. That just further exposes taxpayer-owned assets to further deterioration. We are money ahead to keep the maintenance in house for the most part. There is some expertise that should be contracted out, but only in limited cases. There was no savings slated this fiscal year for this piece of the PRCS plan. The 08-09 net cost over City Manager's modified proposal is \$87,986.

We, as a council, also not in possession of a crystal ball but aware of state revenue-raising ideas, may very well receive a larger share of the sales tax and VLF revenues in the next 6 to 12 months. So for us to enact measures today in anticipation of the 2009-2010 budget may be dangerously premature. There are also other sources of revenue as explained below, that we either currently have or may have with voter approval that will also lessen the fiscal hurdle we must overcome for 2009-2010. The above alternative proposal costs approx. \$446,026 more than the Mayor/City Manager's proposal for 2008-2009 but please find below revenues that may be able to offset those expenditures without borrowing or raising revenue projections, but simply transferring monies from funds to which the city currently has access. In my humble estimation, for this fiscal year, it is approximately 4.25 million, and next year double that in revenue to which we currently have access or will by the next fiscal year other than the Finance Director's projections.

Revenue suggestions: Some or all of these ideas need further exploration regarding timing and appropriateness.

- A. If the State is to pass legislation that increases the sales tax that could mean (if we still receive 12% of the total) an additional 4 million may be realized based on calculations from Finance's current budgeted sales tax, (probably 09-10).
- B. If the increased VLF is to occur, that will provide us with another increased pro-rata share of a revenue source we currently receive (again probably 09-10).
- C. There is approximately 3 million in one-time Tax Increment monies left unspent. We were able to use 1.6 million last year to close a gap and we avoided spending all the reserves. Currently there are several non-essential projects on the wish list including 738,000 and 1 million to cover performances at the CA Theatre (they were supposed to be self-supporting) 1 million for a sewer line for the courthouse (not sure why would the City/EDA pay for a State project?), a \$100,000 bus stop (isn't Omnitrans responsible for that?), and \$300,000 to 1.8 million for the Woolworth tenant improvements. These items require further Council exploration.
- D. There is currently approximately \$250,000 in 08-09 unspent CDBG revenues.
- E. There is approx. an additional 1 million due the city from the violators who run red lights. The enforcement-end of this citation is not being aggressively pursued in the court system. Through vendor and City elected official-pressure, asking for full enforcement of the law would go a long way to receiving revenues the taxpayers are owed.



- F. There is approx. \$110 million in the special revenue funds. More detailed research needs to be done to legally transfer in additional revenues that will NOT drain those funds but be appropriate.
- G. There are over 21 pages of EDA owned property that could be sold over time to replace revenues transferred from the agency to the General Fund.
- H. This past Saturday evening Congressman Baca spoke of retention of existing or creation of approx. 8,200 jobs (30% of which could come to SB) in his district alone, slated for in the Economic Stimulus bill being signed today by the President. He also spoke of infrastructure money in that bill for his district, like the Mount Vernon Bridge, our roadways and other capital projects. 2500 retained or new jobs could be our 30%. See attached other expected windfalls.
- I. Sponsorship revenues sold by placing advertising on City-owned assets (similar to Arrowhead Credit Union freeway sign idea) has been proposed over and over again, yet still no action. Mr. Hawkins revisited this issue in a proposal months ago.
- J. 20 percent set aside monies can be used for services that relate directly to low and moderate income populations. There are millions in those pots through EDA and IVDA just waiting for us to request.
- K. As a VERY LAST RESORT, there is approx. \$31,000,000 in uncollateralized city-owned property that could (in an emergency) be borrowed against before selling city assets for less than their highest potential value including the sale of the city-owned asset Refuse Department. In speaking to a commercial lending institution (Union Bank) and after a long complex conversation, I gathered the following information: As an example, borrowing within the next 60 days \$25,000,000, I was quoted a one year rate of anywhere between 2.1% and 4.5% depending on several criteria. If we were customers, it was on the lower end. If we had enough Tax Increment to pledge or assets to collateralize, the rates were also on the lower end. There are no huge start-up fees to this type of loan. The end result? It is cheaper in the long run to borrow the money then to sell an undervalued city asset for one-time revenue as the value of those assets will grow beyond your debt.





FOR ALL ADVISORY MEMO ONLY.  
FOR FORMAL LEGAL OPINION  
WITH FULL LEGAL RESEARCH PLEASE  
REQUEST IT IN WRITING.

INTER OFFICE MEMORANDUM  
**OFFICE OF THE CITY ATTORNEY**  
CITY OF SAN BERNARDINO

Legal Memo No. 09-023

TO: Mark F. Weinberg, City Manager  
FROM: John F. Wilson, Senior Assistant City Attorney *JFW*  
DATE: February 11, 2009  
RE: City Borrowing from Enterprise Funds  
CC: Mayor and Common Council, City Attorney

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Question

City Manager Mark Weinberg has requested an opinion regarding the legalities associated with the City borrowing money from its enterprise funds including the water, sewer and refuse funds, or from the Redevelopment Agency?

Summary

Nothing in the Charter of the City of San Bernardino precludes a transfer of revenues from one City fund to another. The fund from which revenues are transferred cannot be reduced to the extent that lawful yearly demands on the fund cannot be met. Loans from the Water Department require the cooperation of the Board of Water Commissioners. Otherwise, any transfer of funds must be made in such manner as not to violate the provisions of Proposition 218. Apparently, a loan of less than one year term may be made from the RDA to the City when such loan is for purposes not related to the redevelopment activities of the Agency.

Discussion

For purposes of this analysis, the intent "to borrow" from a fund is distinguished from the intent to "to transfer" from a fund. A "transfer" is deemed to be accomplished when money is moved from one fund to another absent the intent to restore those monies at a future date. To "borrow" the money is deemed to be a "temporary transfer" of money from one fund to another with the intent to restore the money at a specified future time, with or without the payment of

AGENDA ITEM  
#18  
02/17/09



interest. A legal prohibition against the transfer of money will generally act as prohibition against the temporary transfer of money unless otherwise specified in the law (see e.g. California Constitution Article 16 §6). Absent some legal limitation, the City Council has the authority to move money from one fund to another through an appropriate budget action.

Where the money contained in a fund from which the transfer is to be made derives from special assessments based on the value of benefits conferred on property (e.g. water, sewer, and refuse collection), development fees exacted in return for permits or other government privileges, or regulatory fees imposed under the police power (e.g. fees for building permits, business licenses, etc.) Proposition 218 (including Prop. 13 and Prop.62) may become an issue. The issue arises when the fees or assessments charged are in excess of the cost to provide the benefit provided. Evidence that this has occurred is present when there is a direct statement by the government entity assessing the charge that some portion will be used for the general fund or for purposes other than providing the benefit. Evidence may otherwise be found in the circumstance that the money is expended for purposes other than providing the benefit for which it is collected. A transfer of funds, temporary or otherwise, may constitute evidence of such expenditure.

In the context of a transfer of funds, it appears that a violation of Prop. 218 is avoided to the extent that the record reflects that money transferred does not have its source in an overcharge for the benefit. The recommended way of demonstrating this is through the creation of record which shows that the transfer is actually a reimbursement of costs of services provided by the fund receiving the transfer. Absent such a record, a possible alternative approach is an accounting that shows that the transfer reduces the money remaining in the fund after the transfer to a level below that necessary to meet outstanding or anticipated demands on the fund. This latter approach would be consistent with a temporary transfer. Money could be transferred from one fund to another with the express proviso that the money be returned before the maturing of demands on the fund from which the money is transferred (see *Auerbach v. Board of Supervisors* (1999) 71 C.A. 4<sup>th</sup> 1427).

Absent prop. 218 considerations, the transfer of money between funds in a charter city is generally a matter of local law (See *Rancho Santa Anita v. City of Arcadia* (1942) 20 C. 2d 319; *Collier v. City and County of San Francisco* (2007) 151 C.A. 4<sup>th</sup> 1326; ). In San Bernardino, section 135 of the Charter of the City of San Bernardino provides in pertinent part that:

The provisions of the laws of the State of California relating to ...the establishment and operation of funds and the transfer of revenue between funds which apply to general law cities shall be applicable to and given full force and effect in the City, provided that the Mayor and Common Council are empowered to and may, by ordinance, prescribe and provide for such matters and other matters directly related thereto and such ordinance after its adoption shall prevail over said provisions of the general law.



To the extent that the transfer of money is not limited by general law or the Charter, the City Council may take action to accomplish a transfer of money between funds (*Auerbach id.*).

Section 134 of the Charter describes the Sewer Service Charges to be assessed by the City and requires their deposit into the Sewer Fund. The section otherwise sets forth the manner of collection of the charges and priority of use. Section 149 describes what shall be paid from the Sewer Fund. The language of the two sections is interpreted as describing what, at a minimum shall be paid from the fund and specifying that as to the enumerated charges the Sewer Fund shall be the source of their payment. The language is not read to create a prohibition on other uses of the money in the fund.

Charter Section 164 along with sections 146, and 163(3), prescribes the management of the Water Fund. Section 164 specifically addresses the issue of a transfer of money from the Water Fund to the General Fund of the City. There it is stated that, "...except that the Common Council may, in its discretion, monthly transfer from the Water Fund to the General Fund not more than ten percent (10%) of the revenues of the Water Department during the preceding month...." The appropriate application of this permission granted in the City Charter to extract money for general fund use from the revenues of the Water Department could be the subject of a Prop. 218 Supreme Court case. For the purposes of this analysis I attempt to answer the limited question of whether the 10% is a cap on the money that may be temporarily transferred from the Water Fund to the General Fund. The language is read as controlling as to the authority and the limits of the transfer as opposed to the temporary transfer of money from the Water Fund. Given that reading, to the extent that any money in excess of 10% is transferred and replaced from and replaced in the Water Fund in a timely manner, the cap has not been violated. The question is then as to the length of time the money may be held. The safer course would be to exclude the Water fund as a source of transferable monies in amounts in excess of the 10% cap. It must be emphasized that the Prop. 218 questions (including Prop. 213 and Prop. 62) must be given due consideration before any transfer of money under this section.

The Refuse fund appears as Account Number 527-410 in the City budget. It appears to be a creature of accounting developed to track the costs of Integrated Waste Management within the Public Services Department. The fund is not created by Charter save to the extent that under Section 143, the Mayor and Common Council may generally designate special funds. The adoption of the budget containing the reference to the Refuse fund is such designation. Given the origins of the fund, the use of the money contained in the fund may be directed through adoption by the Mayor and Common Council of an amending document with equal dignity to that by which the budget was adopted (*Collier v. City and County of San Francisco, id.*).

The Redevelopment Agency is a governmental agency, separate and distinct from the City. Borrowing from the RDA would need to be conducted as between different government agencies. Government Code Sections 53820 et seq. through 53850 et seq. establish mechanisms for temporary borrowing between government agencies. There is a question as to whether the Redevelopment Agency is a "Local Agency" for purposes of these statutes.

California Constitution Article 16 §18 sets forth the municipal debt limit. It generally provides that a city shall not incur indebtedness in any manner or for any purpose exceeding in any year, the income and revenue provided for that year without the assent of two-thirds of the voters. This has been interpreted to mean that a public entity may incur such contractual liability without voter approval if the contract creates no immediate indebtedness for aggregate installments, confines liability to each installment as it falls due, and each year's payment is for consideration actually furnished that year (*City of San Diego v. Rider* (1996) 47 C.A. 4<sup>th</sup> 1473). This is the basis upon which the City enters lease-purchase agreements for the long term purchase of real property, capital improvements, vehicles, etc.

#### Conclusion

The Mayor and Common Council may make temporary transfers of money between the funds of the City under such conditions as avoid violations of Prop. 218 and are otherwise in conformance with the Charter. Because the Redevelopment Agency is not a part of the City, different rules apply. Statutory authority exists for short term loans between government entities. It is not clear that the RDA is a local agency permitted to make loans under those statutes. The limitations on the use of tax increment funds would appear to be a source of constraint on the ability of the Agency to make a loan to the City for uses not limited to the Agency's redevelopment purposes. Any borrowing from the Agency would be subject to the debt limitation provisions of California Constitution Article 16 §18. However, a properly structured loan document can overcome the prohibitions of this statute.

additional CC: City Clerk  
City Treasurer  
Water Department General Manager  
EDA Interim Executive Director  
EDA Special Counsel



sbsun.com

## City cannot take on expenses

Councilman Rikke Van Johnson

Posted: 05/11/2009 07:05:31 PM PDT

At the conclusion of the city manager's budget report/workshop on Feb. 2, the mayor and City Council of San Bernardino authorized the city manager to take the necessary preliminary steps to reduce City Hall operating hours and the size of the city's work force in an effort to address the city's deepening fiscal crisis.

The estimated shortfall of more than \$9 million was due to lower than anticipated revenue growth and higher than expected expenditures. This shortfall came on the heels of a \$17.3 million deficit that was dealt with prior to the financial crisis this country experienced in October 2008. Because of this huge unexpected monetary loss, many city personnel were laid off. Not one fireman has been laid off!

The City Council recently entertained an agenda item to hire 12 positions in the Fire Department that were eliminated by vacancies and/or attrition. If we add the fire positions right now, where do we cut? Presently, the money necessary to fund these positions is not available.

At our last council meeting a suggestion was proposed that we tap into our reserves to fund the additional fire positions. Right now, our reserves are very unhealthy for a city of our size.

The minimum standard for a municipality is 10 percent. Our city's budget reserve is currently hovering precariously around 2 percent, which is at the moment the lowest in the Inland Empire. I don't think it would be prudent to tap into our reserves at this time.

So where do we cut, in Parks and Recreation? In 1980 our population was 117,000 with 90 employees in Parks and Recreation. Today our city's population is more than 205,000. Yet the Parks and Recreation department now has only 23 employees covering park space that has doubled since the '80s.

Do we cut in the Police Department? That department has already experienced losses to attrition and unfilled vacancies.

When you put one department under a microscope, it is easy to make a case for improvement. However, when making a proper judgment in regards to all of the services that our city provides residents, tough decisions must be made taking everything into account.

I have two brothers-in-law who are firemen. They are both fortunate to work in departments that can afford to have four firemen serve on each engine. So I understand the need for additional firemen to serve our community.

I am very willing to re-examine a "strategic phase-in process" where we add additional fire positions incrementally to reach a staffing level where we have four firefighters per engine in the City of San Bernardino.

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In this region some municipalities operate with three firefighters on an engine, others have four. San Bernardino is presently economically challenged. We currently staff three firefighters per engine. To staff four firefighters on an engine today is not financially feasible.

Our city continues to pursue grant opportunities to aid in funding our Fire Department. However, fire grants are very competitive and highly restrictive.

Our city is in the midst of an economic crisis where it's necessary to cut back to the absolute bare minimum, and not take on additional budget burdens - no matter how well intended. Public safety is a priority to me, as well as all of the other essential services that our city provides.

*Ward 6 Councilman Rikke Van Johnson is mayor pro tem of San Bernardino.*

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