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Title: Now, therefore be it resolved that we, the Council, pledge to work with the Mayor in a cooperative fashion to enact a balanced budget by the end of the year once the Mayor has provided, as required by the Home Rule Charter, a balanced budget for this body's consideration.

Sponsors: William Peduto, Gene Ricciardi, Twanda Carlisle, Len Bodack

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Date	Ver.	Action By	Action	Result
12/2/2003		City Council	Adopted	Pass

Presented by Mr. Peduto

Whereas, the Home Rule Charter of the City of Pittsburgh was approved by the electorate of the City of Pittsburgh on November 5, 1974; and,

Whereas, the Home Rule Charter Commission, in its construction of the Charter notes that Pittsburgh's strong-mayor form of government...is a basically sound form, but needs to be strengthened in three areas.

The first area in need of strengthening is checks and balances, that is sufficient strength needs to be provided for each of the various branches of city government to prevent any single branch from abusing its power in the future; and,

Whereas, the Charter's section 204(b), Powers and Duties Of The Mayor, commands the Mayor to "**execute and enforce the provisions of this charter**, the ordinances and resolutions of the City and the laws of this Commonwealth"; and,

Whereas, Article Five of the Home Rule Charter outlines the fiscal operation of the City. It calls for annual operating and capital budgets to be submitted to council approximately 7 weeks in advance of the end of the fiscal year, and for a six year capital program that shall be reviewed and updated annually. The actual language in Article Five is as follows (with **emphasis** added):.

502. OPERATING AND CAPITAL BUDGET

There **shall** be an annual **balanced operating budget** and an annual capital budget.

503. FORM OF OPERATING BUDGET

The proposed operating budget shall be a line item budget or another type of budget authorized by ordinance and shall contain sufficient information on intended accomplishments to allow adequate appraisal of the work of each unit of government during the fiscal year.

504. PREPARATION OF OPERATING AND CAPITAL BUDGETS

The operating and capital budgets **shall be prepared by the mayor**. The mayor or a representative of the mayor shall conduct public hearings to obtain the advice of other officials and citizens as part of the preparation of both budgets. The mayor shall, at least ten days in advance of the commencement of public hearings, provide notice of the time and place of the hearings by publication in a newspaper circulated generally in the City.

505. PRESENTATION AND ADOPTION OF BUDGETS

On the second Monday of the eleventh month of each fiscal year, **the mayor shall present both proposed budgets to council** with a message explaining them. **Council shall adopt** by resolution **an operating budget and a capital budget** before the end of each fiscal year.

506. EFFECT OF BUDGET ADOPTION

The adoption of the capital or operating budget shall constitute an appropriation or setting apart of funds from general resources of the City for the purpose set forth in the budget.

507. AMENDMENT OF BUDGET

Council may amend by resolution **the operating budget** within five weeks after the close of the fiscal year, but not thereafter except with the approval of the mayor. Council at all times may by resolution transfer funds from one code account to another if the total budget amount is not exceeded. **The operating budget shall, in any event, remain balanced at all times**. The capital budget may by resolution be amended by council at any time; and,

Whereas, on November 11, 2003, the Mayor of the City of Pittsburgh, in direct violation of the city's Home Rule Charter, did deliver to this Council an unbalanced operating budget for Council's adoption.

Now, Therefore Be It Resolved, That The Council Enacts As Follows:

Section 1

Findings Of Fact

The Home Rule Charter, at Section 709, requires that all elected officials swear the following oath of office:

I do solemnly swear or affirm that I will support the Constitution of the United States and of this state and the Charter of this city and that I will faithfully discharge the duties of office to

the best of my ability.

The Charter's requirements with regard to the preparation of the city's operating and capital budgets are clear:

There **shall** be an annual **balanced operating budget** and an annual capital budget.

The operating and capital budgets **shall be prepared by the mayor**.

The mayor shall present both proposed budgets to council with a message explaining them.

Council shall adopt by resolution **an operating budget** and a capital budget before the end of each fiscal year.

Council may amend by resolution **the operating budget...** **Council at all times may by resolution transfer funds from one code account to another if the total budget amount is not exceeded. The operating budget shall, in any event, remain balanced at all times. The capital budget may by resolution be amended by council at any time; and,**

The Mayor, pursuant to the Home Rule Charter at Article Five, is obligated to prepare a balanced operating budget for Council's adoption.

On November 11, 2003, the Mayor did prepare and deliver to the Council for its adoption an unbalanced Three Hundred Ninety Eight Million Six Hundred Thousand Dollar (\$398,600,000) operating budget with a budgeted deficit exceeding Fifty Million Dollars (\$50,000,000.00).

In delivering an unbalanced budget to this Council the Mayor has neglected his duty to prepare a balanced operating budget as stated in the Charter. Moreover, this action violates the separation of powers. The Council, is a legislative body. The Charter does not empower Council to prepare an operating budget. This is solely an executive branch function. Furthermore, Council members would violate their oath of office were they to prepare the budget instead of the Mayor.

On November 11, 2003, the Mayor applied for relief under the Commonwealth of Pennsylvania's, The Municipal Financial Recovery Act 47.

The City Solicitor, informed the Council, by way of a memorandum, on November 24, 2003, informed the Council that "Act 47 does not eliminate the [Charter's] balanced budget requirement."

Section 2.

Action of Council

Council recognizes and understands the structural deficit and financial crisis facing this city. The Mayor does not face this crisis alone - the crisis confronts every Pittsburgh resident. Council is also mindful of the fact that this is a nation of laws - not of people. Neither Mayor nor Council can disobey the commandments of our Charter due to this or any other crisis.

Council shares the Mayor's desire to have our state legislature act in order to do away with the gross inequities embedded in Pennsylvania's local taxing laws. Municipalities throughout Pennsylvania are in desperate need of local tax reform. Council pledges to work with the Mayor in order to achieve just and equitable local tax reform from the state legislature.

However, Council cannot perform its function of office if it considers an unbalanced operating budget for adoption. It would be violative of our oaths of office. It would weaken the separation of powers that is woven into the fabric of every level of government in our nation.

Therefore, we, the Council of the City of Pittsburgh, regret to inform the Mayor that we cannot, as a matter of law, give consideration to an unbalanced operating budget that does not conform with the requirements of the Home Rule Charter of the City of Pittsburgh.

We, the Council, pledge to work with the Mayor in a cooperative fashion to enact a balanced budget by the end of the year once the Mayor has provided, as required by the Home Rule Charter, a balanced budget for this body's consideration.

Sponsored by Councilman Bill Peduto, Council President Gene Ricciardi, Councilwoman Twanda Carlisle and Councilman Len Bodack.

PASSED IN COUNCIL DECEMBER 2, 2003