CHARLOTTE.

CITY MANAGER'S OFFICE
M E M O R A N D U M

June 29, 2012

TO: Curt Walton, City Manager
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FROM: Dana Fenton, Intergovernmental Relations Manager

SUBJECT: **State Legislative Update**

The North Carolina General Assembly finished the seventh week of its short session yesterday. The House and Senate will be reconvening Monday and possibly Tuesday to override the gubernatorial veto of the amended FY 13 budget, which was announced at a press conference on Friday, June 29, and finish the session. The Governor's office has been laying the groundwork for a veto by announcing the ***Top 20 Budget Flaws*** on June 28 and working Democratic House members to sustain a gubernatorial veto. It has been reported that one and possibly two of the House Democrats who voted to override her veto of the 2011 budget bill are ready to vote to sustain a veto of this year's bill.

In the event a budget veto is sustained, then the path the House and Senate would follow to arrive at an amended FY 13 budget is somewhat murky. The Senate passed and the House has referred to the House Appropriations Committee **S866, a "continuation budget" bill** to keep the State running until a revised amended FY 13 budget could be devised and sent to the Governor. This bill, which is relatively short at 16 pages, makes minor modifications to the FY 13 budget that was passed in 2011 including budgeting of federal grants, state lottery funds for education, employment security reserve funds, and national mortgage settlement funds. Major policy changes legislated in the amended FY 13 budget, such as the capping of the state gas tax, reduced funding for local roads and transit, and pay raises for State employees and teachers are not addressed in the "continuation budget" bill and therefore, would not take effect until an amended FY 13 budget bill is enacted.

HOT TOPIC

State Budget (H950) – Major provisions in the amended FY 13 budget of importance to the City include:

- Blue Line Extension funded with recurring funds of $25 million in FY 13
- State New Starts program is formally ended, and remaining unexpended program balance within the Highway Fund is allocated for the Blue Line Extension project
- 3% reduction in State Maintenance Assistance Program funds for CATS, which is approximately $375,000 to $400,000 annually
- Mobility Fund appropriated $45 million in recurring funds, and $30.5 million in non-recurring funds; the non-recurring funds are from unneeded gap funds previously appropriated for the Garden Parkway and Mid-Currituck Bridge
- Gas tax capped at 37.5 cents per gallon for FY 13

DEVELOPING ISSUES

Extraterritorial Jurisdiction (H1043 - LaRoque) – This proposed legislation from House Select Committee on Extraterritorial Jurisdiction (ETJ) governs how prospective ETJ areas are established. Bill does not appear to impact current ETJ areas like what the City of Charlotte has in place. Referred to House Government Committee where no hearings are currently scheduled. In the last few days, the House amended **S231** to include another study of ETJ issues, which the first was concluded shortly before the 2012 short session. This action was pursued by the League of Municipalities to deter an effort by a State Senator to prohibit the Town of Boone from exercising its ETJ powers. The changes to S231 were rejected by the Senate last evening and the bill is likely headed to a conference committee.

Condemnation/ Protect Homeowners with Underwater Mortgages (H960 – Moffitt, Brawley, R. Moore, Earle) – H960, which is recommendation of House Select Committee on State Owned Assets, amended on House floor to apply to the principal residence of a property owner only, and passed House unanimously. H960 is driven by anecdotes that due to the housing recession some homeowners of "underwater" properties being condemned for transportation projects would have to pay the mortgage company substantial sums of their own money to satisfy a mortgage because the courts could only award up to the fair market value in such actions. H960 provides that for a two year period ending July 1, 2014 the value of the mortgage could be taken into consideration by the courts. Since the City, as well as many other towns and cities, counties, and authorities, utilizes this same section of code being amended for "quick take" condemnations by authority of SL 2001-304, right-of-way acquisition costs for City utility, stormwater, airport and transportation projects could increase above projections if any of the property being acquired through "quick take" is underwater. While the bill will impact the price of City right-of-way acquisition activities over the next two years for such projects where there are underwater residential properties used by the owner as their primary residence, the amendment passed by the House mitigates the impact of the introduced version of the bill. City staff will continue to seek to limit application to full takes. H960 assigned to Senate Commerce Committee where a hearing has not been scheduled.

Zoning / Design and Aesthetic Controls (S731 – Clodfelter) – Legislation requested by the Homebuilders Association of North Carolina to limit the manner in which communities require design elements in residential construction is in a special subcommittee of House Commerce and Job Development. The members of the House subcommittee are Representatives Nelson Dollar (Wake) serving as Chairman, Susi Hamilton (New Hanover), Ruth Samuelson (Mecklenburg), and Bill Brawley (Mecklenburg). City will be working with the Delegation and North Carolina League of Municipalities to seek changes to the bill to ensure that conditional zonings and garage locations are exempted. The proposed exemption for local regulations adopted as a condition of participation in the National Flood Insurance Program has been submitted to the bill sponsor and the two Mecklenburg members of the House subcommittee. As of this time in the session, S731 is still in subcommittee and has not been scheduled for a hearing.

Amend Bail Law / Pretrial Release Programs (S756 – East) – S756, which is being sought by bail bond industry, was amended in House Judiciary C Committee to remove the requirement that defendants post a $1,000 secure bond prior to entering an electronic monitoring program. While this will enable low level and youthful defendants to continue participating in the CMPD electronic monitoring program, the requirement for 48 hours to elapse prior to entry into the Pre Trial Services program still stands. The requirement that all defendants must remain incarcerated for at least 48 hours after arrest before being interviewed by County Pre Trial Services will limit available information for judicial officials setting bonds and conditions of release and raise average daily jail populations. CMPD still opposes S756 as it does not serve to improve public safety. House Leadership removed S756 from the calendar and re-referred it to House Rules where a hearing has not been scheduled.

Rental Residential Property Ordinance – Staff has been monitoring the possibility that recent changes made to the City of Charlotte's Residential Rental Property Ordinance will result in 2011 legislation being amended to prevent cities from further implementing mandatory rental registration programs. City and League of Municipalities staff were informed separately this week by Senator Hunt, the sponsor of the 2011 legislation, and Representative Brawley that neither will seek legislation to limit local authority in the short session. Representative Brawley did say that he might seek legislation in 2012, dependent upon discussions with City of Charlotte leaders on the changes recently legislated by the City Council.

Legislation that was being considered reportedly could, if enacted, roll back the changes made by the City Council on May 29 to strengthen the City's program and that conforms to legislation enacted by the 2011 General Assembly (**S683 – Residential Building Inspections**). Staff has also learned that programs developed in other North Carolina cities may also be addressed in any potential legislation.

Issues raised by the industry with respect to the Charlotte ordinance appear to center around the penalty for non-compliance with required registration, punishing property owners for crimes committed on their properties not of their own volition and the time it takes to report crime data to property owners. In the event legislation is introduced or amended onto other legislation, staff will stress that the City's new ordinance was amended for the following reasons:

- Full Registration: Full registration is required because CMPD is still having difficulty locating owners or landlords, even after using property tax and other commonly available databases. Full registration is vital in order to assist the City in locating owners so that remedial or preventative action can be quickly implemented;
- Misdemeanor penalties: By removing the ability of the City to prevent the owner from renting property and substituting misdemeanor penalties for failing to register or failing to comply with meeting requirements, the City now has the burden of proof to establish a violation.
- Non-Compliance with Registration: – Standard Operating procedure will instruct CMPD staff when to take action against an owner for failure to register. It is the intent of CMPD to take action only when an owner has willfully and knowingly failed to register.
- Quarterly Analysis: By reviewing statistics on a quarterly basis the City can address problems sooner and if the problems are resolved the property can be quickly relieved of imposed remedial obligations.
- Lack of Knowledge: By adding a requirement that the owner either knew or should have known about the problems occurring on the property, the owner has the opportunity to present evidence that they did not know that problems were occurring on the property. In the event clear and convincing evidence is presented, the activity will not be counted against the owner.
- Electronic Access to CMPD data: Although not an amendment, CMPD is implementing a program that will provide electronic data to registered owners and designated contacts that indicates disorder activity has occurred on their property potentially in a daily, weekly and quarterly format.

Billboards (Substitute S428 – Carney, McGrady) – S428, which was crossover legislation from 2011, was amended to make changes to the 2011 Billboard legislation (S183) that preempted local authority over selective vegetation removal within State rights-of-way adjacent to outdoor advertising structures. S428 would return control of such matters to local governments. Representative Carney explained that when the S183 conference report was adopted by the House in 2011, members were of the understanding prior to the vote that the conference report would maintain local control and that members were surprised when NCDOT promulgated rules and regulations that preempted local authority. Reported out of House Environment Committee. City supports restoring local control and therefore supports S428. S428 was re-referred to House Rules.