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MEMORANDUM

To: Mayor Libby Schaaf
Council President Lynette Gibson McElhaney and Members of the City Council

From: Townsend Public Affairs, Inc.

Date: November 29, 2016

Subject: Ongoing update of the 2016-2017 State & Federal Budgets

State Update

The Legislature wrapped up the two-year legislative session early in the morning on September 1. They will reconvene for the first year of the next two-year session on January 2, 2017. TPA has previously sent multiple detailed updates on the state legislative session and state budget.

The Democrats have secured super-majorities in both Houses of the Legislature, and it is possible that we may see progress next year on issues that stalled in the Legislature in 2016. These issues could include transportation infrastructure funding, a statewide park bond, and the extension of the cap and trade program. As previously reported to the City, in late November the Governor, Speaker and Senate President pro Tem released a letter stating that there will be no Transportation Special Session called in 2016. They have pledged to work together and make this a priority issue going forward.

The Legislature will convene for one day on December 5th to swear in new Members, and then adjourn until the first week of January 2017.

If there are any outstanding questions, please let us know.

Federal Appropriations Process

Congress's Fiscal Year 2016 ended on September 30. Instead of passing a bill to fund the government through the end of Fiscal Year 2017 (September 30, 2017), Congress passed a continuing resolution (CR) that funds all government programs through December 9, 2016 at the same levels as FY2016 funding. By midnight on December 9, Congress must pass and approve additional funding (either through another CR or full-year funding with new negotiated funding levels) or else the government will shut down.

After the November 8, 2016 election of Donald Trump to the presidency, Republican Congressional leadership stated they would defer to the President-elect's preference for funding. As of now, that preference is said to be a CR through March 31, which would allow President-elect Trump to review full-year Fiscal Year 2017 funding. However, pushing the deadline to six months into Fiscal Year 2017 will cause negotiations to overlap with Fiscal Year 2018 funding discussions,

which are slated to begin in earnest in February and March for a September 30, 2017 passage deadline.

Traditionally, Congress funds the government by passing twelve individual appropriations bills, each grouped by federal department and negotiated independently by the appropriate committees. However, for the past several years, Congress has been unable to pass all twelve bills in time, and has relied in a series of CRs or omnibus bills, which combine many or all of the twelve individual appropriations bills into one massive full-year funding bill, or minibus bills, which group some but not all appropriations bills together for full-year funding. An omnibus (and sometimes minibuses) can be unwieldy and under-scrutinized compared to the individual twelve bills, but ultimately they fund the government in the same way individual bills would.

As of the time of this report, all indications suggest that Congress will pass a CR extending FY 2016 funding until the end of March in order to afford the Trump administration time to suggest policy and funding level changes for the remaining six months of FY 2017. Compiling an omnibus or minibuses by March 31 will be a challenge for the new administration, especially as it must simultaneously develop the President's FY 2018 budget proposal while likely still awaiting confirmation of key department leadership positions.

In terms of the FY 2017 appropriations process, members and staff will spend the next four months in wide-ranging negotiations pulling together language from all appropriations bills, except the previously passed Veterans Affairs and Military Construction bill. Top-line amounts will be adjusted based on new negotiations, and will be applicable to the remaining portion of the fiscal year. Though not required by law, the final funding levels for each department are likely to fall within the top-line amounts included in the House and Senate appropriations bills noted in the table below.

Congressional Dollar Allocations to Spending Subcommittees (dollars in million)				
Subcommittee/bill	FY 2016	FY 2017 House	FY 2017 Senate	+/- from FY 2016
Agriculture-FDA	\$21,750	\$21,299	\$21,250	-451 to -500
Commerce-Justice-Science	\$55,722	\$56,001	\$56,285	+279 to + 1103
Defense	\$514,136	\$517,130	\$515,950	+1814 to +2204
Energy and Water	\$37,185	\$37,444	\$38,241	+259 to +1056
Financial Services	\$23,235	\$21,735	\$22,393	-842 to -1500
Homeland Security	\$40,955	\$41,055	\$41,201	+100 to +246
Interior-Environment	\$32,159	\$32,095	\$32,034	-64 to -125
Labor-HHS-Education	\$162,127	\$161,558	\$161,857	-569 to -730
Legislative Branch	\$4,363	\$4,436	\$4,399	+36 to +73
Military Construction-VA	\$79,869	\$81,471	\$82,498	ENACTED AT \$82.3 billion for FY 2017
State-Foreign Operations	\$37,780	\$37,185	\$37,189	-591 to -595
Transportation-HUD	\$57,301	\$58,190	\$56,474	-827 to +889
Total	\$1,066,582	\$1,069,599	\$1,069,771	+3017 to +3189

Timeline of Relevant Fiscal Year 2017 Appropriations Dates (consequences of inaction in bold)	
Date	Event
September 29, 2016	Congress passed a continuing resolution to fund the government at Fiscal Year 2016 levels through December 9, 2016.
October 1, 2016	FY 2017 began.

November 8, 2016	<p>Election Day. Republicans will keep control over both the House and Senate, meaning that appropriations committee leadership remained in Republican control. So far, only Senate Democrats have announced appropriations leadership: Senator Patrick Leahy from Vermont will take over the ranking member position from retiring Senator Barbara Mikulski from Maryland. House Democrats and Republicans from both chambers will announce their appropriations leadership in the coming weeks.</p> <p>The election of Donald Trump will reduce the likelihood of presidential vetoes of Republican-led appropriations bills. However, because Senate Republicans lack the 60 votes necessary for cloture, Senate Democrats still retain power to block consideration of appropriations bills they oppose.</p>
December 9, 2016	The last day for which full FY 2016 federal funding has been enacted. A CR or an omnibus will have to be enacted by midnight to keep most of the government running. All signs currently point to passage of a CR to keep government programs running through March 31. Veterans Affairs programs and military construction projects are the exception; they have already been funded through the end of FY 2017.
December 9, 2016	Anticipated last day of session in the 114 th Congress.
December 16, 2016	Scheduled last day of session in the 114 th Congress.
January 3, 2016	Anticipated first day of session in the 115 th Congress; all new members sworn in.
January 20, 2017	Presidential inauguration.
March 31, 2017	Anticipated last day of government funding under CR to be passed by December 9.
September 30, 2017	Last day of the fiscal year. All 12 appropriations bills for FY 2018 must be signed by this date, unless a CR is enacted.

Sanctuary Cities

During the campaign, President-elect Trump pledged to ban federal funding from sanctuary cities. **Please refer to Attachment A below for a list of the City's current federal funding sources.** While the executive branch does have the ability to modify annual spending priorities, the vast array of federal funding programs that provide financial assistance to cities are subject to individual statutes and regulations. Statutory changes would first require legislation to be approved by the House and Senate, which could take years, if approved at all. Regulatory changes can take years as well, especially in a new administration where key leadership positions may take a year or more to fill.

The extent to which federal funding is derived from competitive grants or formula funding also makes a significant difference in the Trump administration's ability to restrict funding to sanctuary cities. Competitive grants are subject to both statutory eligibility requirements and administrative funding priorities. The Trump administration could add funding priorities making it tougher for sanctuary cities to compete, but these priorities must be consistent with the authorizing statute. Efforts to restrict funding for sanctuary cities on matters unrelated to law enforcement or immigration could expose the grant program to lawsuits, potentially freezing funding for the whole program. Such action would be very politically unpopular and raise concerns among Congressional members.

Most major federal funding programs that provide assistance to cities (social services, transportation, community development, etc.) require that funds be disbursed based on formulas

mandated by statute, not administrative priorities. The same applies to other federal programs that provide direct assistance to residents of sanctuary cities, such as Medicare, Medicaid, and SNAP funding. Any changes to this standard would require legislation be passed, which will be very difficult, even under single party control of the White House and Congress. Congressional authorizing committees will be loath to open up longstanding statutes to impose non-germane, immigration-related federal funding restrictions.

Alternatively, Congressional Republicans could attempt to use legislation to defund sanctuary cities, despite inevitable opposition and filibuster from Democrats. To do this, they might take up previously proposed methods of challenging sanctuary cities, such as the "Stop Sanctuary Cities Act" (S. 1814), sponsored by Senator David Vitter (R-LA) and Senator Jeff Sessions (R-AL), which would prohibit certain federal grants from being awarded to sanctuary cities. This bill contends with one of the first challenges the Trump administration must deal with in attempting to restrict federal funding--the lack of a definition of "sanctuary city" in federal law. Without a clear definition of what constitutes a sanctuary city, it is difficult to determine which cities would be impacted, how such a rule would be applied and what the financial impact would be. Regardless of method, the Trump administration may choose to use the definition from S. 1814, which defines a sanctuary city as any city that prohibits the exchange of information to the Immigration and Naturalization Service or fails to comply with a Department of Homeland Security detainer.

Efforts to ban federal funds to sanctuary cities may also face significant legal hurdles based on Supreme Court decisions favoring states' rights. For example, in 2012 when the Supreme Court ruled on the constitutionality of the Affordable Care Act (ACA) case "NFIB v. Sebelius," it created a precedent stating that the federal government cannot coerce states or cities into action by threatening to withhold financial assistance. Based on this standard, federal courts may similarly find restricting non-law enforcement-related funding from sanctuary cities is unconstitutional. Additionally, when the Supreme Court considered the 1997 case "Printz v. U.S." concerning gun purchases, it ruled that federal officials could not compel state officials to do their work for them. Courts may similarly find that the federal government cannot press state (or city) officials into service to enforce federal immigration laws.

Given the political, legislative, and legal challenges that imposing a broad ban on federal funds to sanctuary cities, a more plausible scenario for successfully implementing funding restrictions would be for President-elect Trump to seek new eligibility requirements or funding priorities on law enforcement (Department of Justice) and possibly immigration (Department of Homeland Security) related programs that disqualify or disadvantage sanctuary cities. Because the City currently receives no recurring annual funding from DOJ or DHS programs, there is no imminent threat to the City's budget or finances from these sources. However, should President-elect Trump pursue federal funding restrictions on DOJ or DHS funding for sanctuary cities, the City could potentially become ineligible or a low priority for certain DOJ or DHS grants, such as the COPS program or other law enforcement-related assistance.

FEDERAL FUNDS						
Fund #	Fund Description	Source of Funds	Uses of Funds	FY 2016-17 Annual (Recurring)	One-time/ Prior Year Balances	FY 2016-17 Adj Total
TOTAL				\$ 40,333,720	\$ 89,906,853	\$ 130,240,573
2102	Department of Agriculture	U.S. Department of Agriculture	Year-round lunch program for school children offered through City's Department of Human Services	\$1,140,460	\$1,277,511	\$2,417,971
2103	Department of Housing and Urban Development (HUD) -- Emergency Shelter Grant (ESG)/ Supportive Housing Program (SHP)/ Continuum of Care (COC) Housing Opportunities for Persons with AIDS (HOPWA)	U.S. Department of Housing and Urban Development (HUD)	Emergency shelters, housing for persons with AIDS, and transitional housing programs	\$6,603,590	\$6,619,499	\$13,223,089
2105	Department of Housing and Urban Development (HUD) -- Economic Development Initiative (EDI) Grants	U.S. Department of Housing and Urban Development (HUD)	Commercial grants and loans and associated operational costs to promote economic development	\$0	\$2,194,226	\$2,194,226
2108	Department of Housing and Urban Development (HUD) -- Community Development Block Grant (CDBG)	U.S. Department of Housing and Urban Development (HUD)	Grants to non-profit organizations for housing and community development in low- and moderate-income areas	\$7,076,798	\$5,205,913	\$12,282,711
2109	Department of Housing and Urban Development (HUD) -- HOME Investment Partnerships (HOME)	U.S. Department of Housing and Urban Development (HUD)	Support for first-time homebuyers, housing rehabilitation, and housing development	\$2,148,143	\$3,644,233	\$5,792,376
* 2112	Department of Justice	US Department of Justice (DOJ)	Law enforcement activities, particularly drug law enforcement, including DNA backlog; Community-Based Violence Prevention; Justice Assistance Grant (JAG)	\$0	\$2,039,111	\$2,039,111
* 2113	Department of Justice - COPS Hiring	US Department of Justice (DOJ)	Law enforcement activities, particularly drug law enforcement	\$0	\$3,219,930	\$3,219,930
2114	Department of Labor	Federal funds administered by California Employment Development Department (EDD)	Employment training programs (Senior aides)	\$922,216	\$1,081,450	\$2,003,666
2116	Department of Transportation	State pass-through of Federal Aid for Urban Systems Act funds	Construction and improvements of streets and highways	\$0	\$36,560,457	\$36,560,457
2120	Federal Action Agency	Federal Government	Various social services programs	\$316,610	\$178,153	\$494,763

FEDERAL FUNDS						
Fund #	Fund Description	Source of Funds	Uses of Funds	FY 2016-17 Annual (Recurring)	One-time/ Prior Year Balances	FY 2016-17 Adj Total
2123	US Department of Homeland Security	Urban Area Security Initiative (UASI) Grants	Offset city's costs of supporting the newly established Homeland Security program	\$0	\$6,140,291	\$6,140,291
2124	Federal Emergency Management Agency	Federal disaster relieve fund	Disaster recovery activities; includes SAFER grant and Seismic Retrofit grant	\$0	\$11,440,429	\$11,440,429
2128	Department of Health and Human Services (DHHS)	Federal funds administered by California Department of Economic Opportunity	Various social services programs for low-income residents including Headstart and Community Services Block Grant; also includes ReCAST grant	\$17,973,097	\$7,347,269	\$25,320,366
2166	Bay Area Air Quality Management District	US Department of Commerce Economic Development Administration	To provide funding for Broadway Shuttle and electric vehicle charging stations programs	\$0	\$1,215,381	\$1,215,381
2195	Workforce Investment Act	US Department of Labor	Employment and training services for Oakland residents; overseen by Oakland Workforce Investment Board and the Mayor	\$4,152,806	\$1,733,000	\$5,885,806
2995	Police Grants	Miscellaneous grants or contracts from other government entities	Various reimbursable police activities	\$0	\$10,000	\$10,000

* Federal funding most likely targeted for cuts in sanctuary cities.