# **STATE APPEAL BOARD**

## **In Re: City of Cedar Rapids ) Order**

 **Budget Appeal )**

 FY2016 ) April 24, 2015

BEFORE THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, DAVID ROEDERER; STATE AUDITOR MARY MOSIMAN; AND STATE TREASURER MICHAEL L. FITZGERALD.

A hearing on the above captioned matter was held pursuant to the provisions of Section 384.19 and Chapter 24 of the Code of Iowa on April 7, 2015. The hearing was before a panel consisting of Mr. Luke Donahe, Investment Officer, Office of the State Treasurer and presiding Hearing Officer; Mr. Ted Nellesen, City Budget Director, Department of Management; and Ms. Michelle Meyer, Manager, Office of the State Auditor.

The primary spokesperson for the petitioners was Ms. Lisa Kuzela. The primary spokesperson for the City of Cedar Rapids was City Finance Director Casey Drew.

Upon consideration of the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted to the hearing panel both before and after the hearing, and after a public meeting to consider the matter, the State Appeal Board has voted to sustain the City of Cedar Rapids fiscal year (FY) 2016 budget as described herein.

##### MOTION TO DISMISS

On April 3, 2015, the City of Cedar Rapids filed a Motion to Dismiss the “Cedar Rapids Budget Appeal.” The City claimed that the protest was not signed by a requisite number of registered voters as required by Iowa Code section 384.19 and State Appeal Board (SAB) administrative rules and, as a result, the SAB lacked jurisdiction to hear the appeal.

The SAB only has that jurisdiction conferred to it by statute. Iowa Code section 384.19 (2013) provides that a municipal budget protest “must be signed by registered voters equal in number to one-fourth of one percent of the votes cast for governor in the last preceding general election in the city, but the number shall not be less than ten persons and the number need not be more than one hundred persons.” The parties agree that because 48,567 persons voted in Cedar Rapids for the Office of Governor at the last general election, a valid protest of the Cedar Rapids budget must be signed by 100 registered voters.[[1]](#footnote-1)

The protest at issue here was signed by 112 individuals. The City asserts that the protest contains 11 signatures from individuals who are not registered to vote according to records maintained by the Linn County Commissioner. Additionally, the City challenges various other signatures for failing to comply with rules promulgated by the Board. For example, the City challenges 10 signatures which only list “Cedar Rapids” as the signator’s address. Iowa Administrative Code rule 543—5.5(7) requires that signatures be accompanied by legible and full mailing addresses.

Having considered the Motion and accompanying documentation as well as the arguments made by the parties, the Board denies the Motion to Dismiss. Even under the City’s interpretation, the protest is signed by the requisite number of signatures to confer jurisdiction upon the SAB. Failure to comply with the administrative rules promulgated by the Board requiring a full signature does not deprive the SAB of jurisdiction to hear the protest. Because the City has not put forth conclusive evidence that the protest was not signed by 100 registered voters, the Board denies the motion and will address the substantive objections raised.

##### PROCEDURAL HISTORY

The FY2016 City of Cedar Rapids proposed budget summary was published in the Cedar Rapids Gazette. The budget was adopted at a public meeting held on March 12, 2015.

A petition protesting the certified FY2016 City of Cedar Rapids budget was filed with the Linn County Auditor on March 25, 2015 and was received by the State Appeal Board on March 30, 2015. The petitioners’ objections and their reasons listed on the petition document are as follows:

* An objection to excessive employee salaries.
* An objection to the amount paid for lobbying contracts.
* An objection to the increases to utility rates and the use of revenue received from utility billings.
* An objection to the issuance of $20,105,000 in various General Obligation bonds.
* An objection to the payment of parking fees on behalf of city employees.
* An objection to the use of various special revenue fund revenues:
	+ $2,800,000 in Hotel/Motel tax revenue
	+ Use of Taxing Increment Financing (TIF) revenues
	+ $18,000,000 in Local Option Sales and Service Tax (LOSST)
	+ $3,000,000 transfer of Road Use Tax (RUT) revenue from Special Revenue, RUT Fund to the General Fund
* An objection to the operations of the SAFE-CR program.
* An objection to the method of accounting for Federal Emergency Management Agency (FEMA), Department of Transportation (DOT), and Department of Energy (DOE) reimbursements/grants received from 2008 to present.
* An objection to the omission of anticipated revenues from traffic cameras.
* An objection to the methods for reporting real estate transactions completed by the City.
* An objection to the methods and practices associated with property sales by the City.

##### DISCUSSION

The petitioners and the representatives of the City of Cedar Rapids provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of this information and the public hearing is as follows:

#### PETITIONERS

Ms. Lisa Kuzela represented the petitioners as the primary spokesperson. In her presentation, Ms. Kuzela provided comments in regard to the FY2016 Cedar Rapids budget, summarized below:

* The City of Cedar Rapids is paying an excessive salary to the City Attorney, City Manager and Assistant City Manager. The high salaries are overly burdensome on the City.
* Lobbying activities being pursued and paid for by the City are not in the best interest of the citizens of Cedar Rapids. Specifically, the City is engaging six lobbyists who are registered against a bill to change the SAFE-CR program, which is supported by citizens of the City. The use of lobbyists to bring a casino to downtown Cedar Rapids is not a proper use of taxpayer money and is in direct conflict with a Memorandum of Understanding between the City, County and Cedar Rapids Development Group.
* There is not a valid need for increases to the utility rates. Not enough effort is put in to reducing costs before rates are increased. The reduction of service in the recycling program from weekly pick up to pick up every other week while rates are increasing is proof the increases to utility rates are unnecessary.
* The City is issuing general obligation debt in April 2015. These debts are overly burdensome on the taxpayers of the City. In the opinion of the petitioners, the stated uses for the bond proceeds are “wants” and not needed improvements for the City.
* The City has a policy of paying the cost of city employees parking in downtown ramps. Though this cost did not increase from FY2015 to FY2016, tax money should not be paid to a private parking management company for employees parking in a City-owned ramp.
* The City is using a large portion of the hotel/motel tax revenue to support the operations of several organizations within Cedar Rapids. The organizations are not in need of the hotel/motel revenue. The excessive salaries of the organization executives are not a valid use of these monies. Better uses, such as debt payment or recreation, exist for these dollars.
* The City generally overuses TIF.
* Local Option Sales and Service Tax revenues are used for repair and maintenance of city streets according to the City, but there is not a good accounting for this in the city budget. The LOSST revenues are comingled with dollars from several sources and it makes it hard to track. The City has a history of misleading the citizens about how the LOSST dollars are being spent, and spending outside of the allowable purposes.
* The RUT revenues received by the City are used to support administration of the public works department rather than actual road maintenance. This use of RUT funds appears to fund the excessive salaries within the City.
* The implementation of the SAFE-CR program is detrimental to a large number of the citizens of Cedar Rapids. The program burdens property owners unnecessarily and unfairly. The SAFE-CR program is also retributive on households which have made multiple valid calls to police for assistance.
* The City fails to properly account for revenues from FEMA for three Presidentially-declared disasters in 2008, 2013, and 2014. The City’s accounting practices around these revenues makes it difficult to track the separate revenue streams.
* The revenue expected from automatic traffic cameras seems to be missing from the FY2016 budget. The use of these revenues is hard to track. The City is also not presenting the real estate sales proceeds and fees in a way which is easy to track. The City should provide a separate accounting of these revenues.
* The City is competing with average homeowners for property sales, due to providing City-owned properties to “preferred developers” at low or no cost. This is causing the pool of homes for sale to be increased, and prices of available homes to be decreased.

**CITY OF CEDAR RAPIDS RESPONSE**

City Finance Director Casey Drew acted as the primary spokesperson for the City of Cedar Rapids. In his presentation, Mr. Drew provided comments in regard to the Cedar Rapids budget, summarized below:

* The City of Cedar Rapids has reduced the number of full-time equivalents (FTEs) from FY2015 to FY2016. The process of setting salaries and benefits is completed solely through bargaining or action of the Council. Matters of compensation are local issues to be dealt with by the Council.
	+ A large number of City employees are part of collective bargaining units. Their salary and benefits are collectively bargained between the City and these units.
	+ Non-bargained positions follow a set of guidelines which have been set locally by the Council.
* Lobbyists are being used at the State and Federal level to secure funding and policy outcomes to benefit the citizens of Cedar Rapids. This practice is common among many cities in Iowa.
* Utility rates are set to reflect the costs and long-term obligations of the City’s utility enterprises. The rates for FY2016 are competitive with other neighboring cities and cities across the State.
* The issuance of General Obligation (GO) bonds by the City is regularly scrutinized by rating agencies, and is highly regulated. The petitioners have not offered specific concerns for the GO bonds to be issued. All issuances are in the best interest of the public.
* The City Council has made the choice to pay for employee parking in the downtown lots, as any other user would have to do. Many other locations throughout the City where City employees work have free, surface lot parking. Paying fees for the downtown parking is a method of providing equity with City employees in other locations who are not forced to pay parking fees.
* The petitioners’ issues with the use of LOSST, RUT, TIF and Hotel/Motel Tax revenues are differences in opinion at the policy level. The City is not spending any of these revenues outside of their allowable purposes. This is not a proper matter for a budget protest.
* The SAFE-CR program is vital to address nuisance conditions throughout Cedar Rapids. SAFE-CR promotes a higher quality of life for the citizens of the City, and helps to control taxpayer costs for City funded services. The budget amount of administrative salaries attributed to this program decreased by 14% from FY2015. The costs are reasonable.
* The protest item regarding FEMA is vague and improper for a budget protest. The City provided a breakdown of federal grants and reimbursements from FY2015 to FY2016. These programs are audited regularly, due to the source of the money being at the federal level.
* The City did not omit revenues from real estate transactions/fees and traffic cameras.
	+ Information on the real estate disposal fund is found on pages 408 and 409 of the City’s detailed budget publication, which is available online in PDF form.
	+ Traffic camera revenue didn’t change from FY2015 to FY2016, and can be found as part of the police department general operations. This is on pages 89 to 91 of the City’s detailed budget publication.
* The petitioners’ contention that the City gives away property is incorrect. The Iowa Economic Development Authority requires a significant private investment from the developer, and the City provides the properties in order to keep the purchase price affordable to an income qualified occupant.

**MEMBERS OF THE PUBLIC**

Carolyn Martin, 1115 Staub Court NE –

Ms. Martin offered comment on the lack of transparency at budget sessions with the Council. Council hears concerns, but does not engage in a true conversation by offering a response to questions or criticisms. She also questioned the use of a consent agenda to formalize project lists for the upcoming bonding during Council meetings.

Mari Davis, 407 Wilton Drive NE –

Ms. Davis offered comment on the lack of good responses from all departments of the City. She also stated the budget process does not get enough public input, as the finance committee often meets in the middle of work days. She also stated that the process put in place by the City for handling questions and comments is insufficient. The website commenting function limits the areas which can be commented on.

Ms. Davis also commented on the SAFE-CR program. She felt the SAFE-CR program is too costly, and should be self-sustaining. It has only raised a portion of its operation costs in the form of revenue.

Ms. Davis made a comparison of employee salaries of the City’s employees and a comparable position in the private sector. Using her daughter’s position and $40,000 annual salary as a base line, she states the City pays higher than market rate for many comparable positions.

Ms. Davis also commented on the traffic camera issue. She stated that no plan was addressed for the loss of traffic camera revenue which may occur as the outcome of DOT rulings on the use of interstate traffic cameras.

Dee Baird, CEO, Cedar Rapids Metro Economic Alliance, 501 1st Street SE –

Ms. Baird commented in support of the Cedar Rapids FY2016 city budget. Her group works closely with the City to advance economic and community development of the region, and she feels the City’s practices are vital in advancing development in Cedar Rapids.

Dale Todd, 1821 Grand Avenue –

Mr. Todd offered comment in support of the SAFE-CR program. He stated the program is fighting problem landlords and tenants and the program is not out of line with costs. Mr. Todd stated the program should get the amount of money it needs.

Doug Newman, Downtown Parking Management, 501 1st Street SE –

Mr. Newman offered a statement in support of the way the City is handling their parking expenditures for city employees at the downtown offices. Mr. Newman stated the net revenues of the system are reinvested in the parking system, and is to the benefit of all citizens in Cedar Rapids.

Marilee Fowler, President & CEO, Cedar Rapids Visitor and Convention Bureau, (no address given) –

Ms. Fowler commented on the use of hotel/motel tax in the Cedar Rapids city budget. She stated the support provided from the City is a small portion of the revenues of the organization. Ms. Fowler also stated the salaries offered are necessary to get the type of individuals needed for success. Ms. Fowler felt the petitioners were wrong in their statements about the use of hotel/motel tax funds.

Kris Gulick, City Council Member, 2103 Linn Mar Drive –

Mr. Gulick provided comment on the budget practices of the elected officials. He stated the budget is not even universally agreed on by the City Council. Mr. Gulick stated the City Council and City staff create the budget in an effort to forward the stated goals of the City Council. Mr. Gulick stated the petitioners seem to have issues with the policies of the City, and not with the budget. Mr. Gulick stated that differences in opinion should be sorted out by election.

**FINDINGS OF FACT**

1. Iowa Code section 24.27 provides persons who are affected by any proposed budget, expenditure or levy, or by an item thereof, may appeal. The petitioners met the requirements and, pursuant to sections 24.28, 24.29 and 384.19, a hearing was scheduled and conducted on April 7, 2015.
2. Iowa Administrative Code section 543-5.7 (8), "Hearing", provides "The appeal board shall exclude evidence which is irrelevant, immaterial or unduly repetitious."
3. Iowa Code section 24.30 states in part "It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted ... ".
4. The Cedar Rapids FY2016 budget reflects $1,278,487 (1.48%) more in property taxes than in FY2015. The petitioners did not protest the increase of property tax revenue.
5. The FY2016 budget levy rates did not show an overall increase over the FY2015 budget levy rates.
6. The total budget expenditures for FY2016 decreased by $50,531,365 (-7.69%) from the FY2015 budget expenditures.
7. Iowa Code section 372.8(3)(b) states a city manager may “employ, reclassify, or discharge all employees and fix their compensation, subject to civil service provision and Chapter 35C, except the city clerk, deputy city clerk, and city attorneys.”
8. Iowa Code section 372.13(4) states, “Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of that individual’s qualifications and not on the basis of political affiliation.”
9. Article III, Section 38A of the Constitution of the State of Iowa states, in part, the municipal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly to determine their local affairs and government.
10. Cities retain the right to issue general obligation debt under Iowa Code Chapter 75. The cities may issue debt in accordance with the rules and procedures of Iowa Code Chapter 75, Iowa Code section 384.24, and within the limitations of Article XI, section 3 of the Constitution of the State of Iowa.
11. Iowa Code section 384.84(1) states, “The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise. When revenue bonds or pledge orders are issued and outstanding pursuant to this division, the governing body shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance.”

### CONCLUSIONS OF LAW

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Iowa Code sections 24.28 and 384.19.

### BASIS OF DECISION

Iowa Code section 24.28 states, in part, “At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the previous year and which the objectors propose should be reduced or excluded…”. The Code continues: “…the burden shall be upon the certifying board or the levying board, as the case may be, to show any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare.”

Employee salaries are a local policy matter. In accordance with Iowa Code sections 372.8 and 372.13 the City Council and City Manager are responsible for setting employee salaries. The State Appeal Board is limited in the scope of it orders under Iowa Code section 24.30, which does not include specific salary objections.

The City has an obligation under Iowa Code section 384.84(1) to raise enough revenue to service the outstanding revenue debts, and to meet the legal covenants of those debts. The State Appeal Board will not interfere with the City of Cedar Rapids’ ability to meet the terms of these agreements.

General obligation debt is an allowable indebtedness for a city under Iowa Code chapter 75 and Iowa Code section 384.24. The State Appeal Board lacks authority to prevent the sale of or alter bonds previously issued under the provisions of the referenced Code sections.

The petitioners have failed to satisfy the burden of proof for any requested expenditure reductions.

### ORDER

Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board sustains the City of Cedar Rapids FY2016 budget as adopted.

**STATE APPEAL BOARD**

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Michael L. Fitzgerald David Roederer

Chairperson Vice Chairperson

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Mary Mosiman Date

Member

1. One-fourth of one percent of 48,567 is 122. [↑](#footnote-ref-1)