



Response to Questions on the FY 2010 Advertised Budget Plan

Request By: Chairman Bulova

Question: What are the advertisement requirements for Public Hearing on the FY 2010 Budget?

Response: The attached memo from the Office of the County Attorney outlines the Public Hearing advertisement requirements.




County of Fairfax, Virginia

MEMORANDUM

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DATE: March 5, 2009

TO: Susan Datta, Director
Department of Management and Budget

FROM: Michael Long, Senior Assistant County Attorney 
Office of the County Attorney

SUBJECT: Requirements for a Public Hearing on the FY 2010 Budget

REF.: Matter ID 100933

THIS MEMORANDUM CONTAINS CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS AND IS NOT TO BE RELEASED TO THE PUBLIC. THIS MEMORANDUM IS EXEMPT FROM THE DISCLOSURE PROVISIONS OF THE VIRGINIA FREEDOM OF INFORMATION ACT. VA. CODE ANN. § 2.2-3705.1(2) (2008).

INQUIRY:

After the meeting of the Board of Supervisors ("Board") on February 23, 2009, you asked me whether the Board is required to conduct separate public hearings on the adoption of the FY 2010 County budget and on the adoption of a proposed real estate tax rate increase for calendar year 2009 or whether the Board may conduct a single public hearing on the adoption of the FY 2010 budget and the proposed real estate tax rate increase.

OPINION:

The Board may conduct a single public hearing for the proposed FY 2010 County budget and the proposed property tax rate increase.¹

¹ As will be noted later, if the County's total annual assessment of real property were to result in an increase of one percent or more in the previous year's total real property tax levy, then Va. Code Ann. § 58.1-3321 (Supp. 2008) would require the Board to conduct a public hearing on that tax rate, and that public hearing would have to be separate from the public hearing conducted on the annual budget.

DISCUSSION:

There are several state statutes that bear on the adoption of a County budget and tax rates. First, Virginia law requires the County Executive to submit a proposed annual budget to the Board with his recommendations. Va. Code Ann. §§ 15.2-811 and 15.2-847 (2008). Second, Virginia law then requires the Board to prepare and approve a budget every year. Va. Code Ann. § 15.2-847. That budget is for informative and planning purposes, and that budget is supposed to contain a complete itemized and classified plan of all contemplated expenditures and all estimated revenues and borrowings for the County for the ensuing fiscal year. Va. Code Ann. § 15.2-2503 (2008). Third, prior to adoption of the budget, a brief synopsis of the proposed budget must be published once in a newspaper having general circulation in the County, and notice given of one or more public hearings at which any citizen of the County shall have the right to attend and state his or her views. Va. Code Ann. §§ 15.2-847 and 15.2-2506 (2008). Fourth, the budget is required to show prior year appropriations, prior year expenditures, the amount expected to be appropriated in the ensuing year, and increases or decreases in the contemplated expenditures in the ensuing year. Va. Code Ann. § 15.2-2504. Fifth, prior to adoption of any local tax increase, the Board is required to have notice of the proposed increase published in a newspaper having general circulation in the County and to conduct a public hearing on the subject of the increase. Va. Code Ann. § 58.1-3007 (2004). Finally, if an annual assessment would result in an increase of one percent or more in the previous year's total real property tax levy, then a public hearing shall be required to avoid a tax rate reduction. If such a public hearing is not conducted, then the Board would be required by statute to reduce the tax rate to a rate that would produce no more than 101 percent of the previous year's total real property tax levy. Any such hearing must not be conducted at the same time as the annual budget public hearing is conducted. Va. Code Ann. § 58.1-3321(B).²

Because the 2009 annual assessment has not increased the total property tax levy this year by one percent or more, the provisions of Va. Code Ann. § 58.1-3321 do not apply to the adoption of the FY 2010 budget, but given that the County Executive has proposed a property tax rate that is higher than the present rate, the County will have to conduct a public hearing on the adoption of a property tax rate. However, because Va. Code Ann. § 58.1-3007 does not contain a specific prohibition against combining the public hearing on the property tax increase, the public hearing required for the increase in the property tax rate can be combined with the public hearing on the adoption of the annual budget. *See Halifax Corp. v. Wachovia Bank*, 268 Va. 641, 654, 604 S.E.2d 403, 408 (2004) (stating that when the General Assembly includes specific language in one section of a statute and omits that language from another section of a statute, then a court should presume that the exclusion of the language was intentional).

² Va. Code Ann. § 58.1-3321 was amended by the 1990 General Assembly to specifically require that the public hearing to be conducted when assessments increase by one percent or more not be conducted at the same time as the public hearing on the annual local budget. 1990 Va. Acts, ch. 579.

With the foregoing in mind, I think that the County can conduct a single public hearing for the proposed increase in the rate of the property tax increase and for the adoption of a budget. That would be consistent with past County practice when such hearings have been combined and when Va. Code Ann. § 58.1-3321 did not require a separate public hearing. However, if the public hearings are to be combined, then the County will need to provide appropriate notice to the public in the required newspaper notice that the Board will conduct a public hearing to consider both the annual budget and a proposed real property tax rate increase.

If you have any questions, please feel free to contact me.

cc: David P. Bobzien, County Attorney
Karen J. Harwood, Deputy County Attorney
Ellen F. M. Posner, Assistant County Attorney
Corinne Lockett, Assistant County Attorney

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