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Jill Olsen
Assistant Finance Director
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Dear Jill:

You have requested the Department review the situation regarding the City's building enterprise fund for compliance with the requirements of NRS 354.59891. You advised this office that last year, the City's building enterprise fund exceeded 50% of the annual operating costs and capital expenditures of the program, and as a result, the City lowered the permit fees by 35%. However, this year, the volume of permits issued by the City will result in the unreserved working capital to once again exceed 50% of the annual operating costs. The City is planning on reducing the fees once again. Your specific question is what happens if that isn't enough to get below 50% of the annual operating costs.

NRS 354.59891(2) permits a local government to increase its building permit basis equal to the percentage increase in the CPI (Western Urban) from 1988 to the year prior to the increase, except as provided in subsections (3) and (4). A local government could increase its building permit basis by an amount greater than the percentage change of the CPI if it applies to the Nevada Tax Commission ("NTC") to do so. The NTC could allow an increase greater than the change in the CPI only if it finds that there are emergency conditions impairing the ability of the local government to perform basic functions or if the building permit basis is substantially below that of other local governments and the cost of issuing building permits exceeded the revenues. Neither of these conditions exist in the facts you provided, however, if the City did qualify under one of those conditions, the next step would be to apply to the NTC for an increase in the building fees.

There are several criteria the NTC would use to exempt the City from the CPI limitation on permit fee increases, including whether the local government maintains a balance of unreserved working capital in the enterprise fund that does not exceed 50% of the annual operating costs. In other words, the NTC could not exempt the City from the CPI limitation if the unreserved working capital in the enterprise fund was greater than 50% of the annual operating costs.

Let's say for a moment the City could not perform basic functions or the building permit fees of the City were substantially lower than other local governments. The City would then be

eligible to apply to the NTC for an increase in its fees that would be greater than the percentage change in the CPI. The NTC would consider that the City's unreserved working capital in the enterprise fund exceeded 50% of the annual operating costs, and would therefore deny the City an increase in the permit fees. The practical reason is that it would not be necessary to increase building permit fees if the high balance of the unreserved capital could be tapped to support operating costs.

Subsection 5 provides a way to adjust what is considered to be "unreserved" working capital for purposes of calculating subsection 4(d). If the unreserved working capital is greater than 50% for two years in a row, the local government has to reduce the fees in order to ensure the balance does not exceed the amount authorized in subsection 4(d) if it wishes to succeed in its application to the NTC. Both subsections 5 and 6 are intended to clarify the requirements in subsection 4. Subsection 4 is not applicable unless there is an application to the NTC for an increase in fees greater than the change in the CPI. An application to the NTC could not be made unless the City met the conditions in Subsection 3.

Since the City is not considering increasing building permit fees greater than the change in the CPI and does not intend to apply to the NTC for such an increase, it is not necessary for the NTC to consider the unreserved working balance of the enterprise fund. There is no penalty for failure to remain under the 50% balance except that the City would not qualify for an increase in the building permit fees greater than the CPI change, so long as the unreserved working capital continues to exceed 50% of the operating costs.

Sincerely,



Terry E. Rubald
Deputy Executive Director

cc: Kelly Langley, Supervisor, Local Government Finance
Gina Session, Chief Deputy Attorney General