

You replied on 2/10/2011 9:05 PM.

**Buckshnis, Diane**

**From:** W. Scott Snyder [ssnyder@omwlaw.com]  
**To:** Buckshnis, Diane  
**Cc:** Council; Cooper, Mike  
**Subject:** RE: Monthly Summaries  
**Attachments:**

**Sent:** Thu 2/10/2011 4:08 PM

Dear Diane

My earlier memos and emails addressed the issue of why the council's direction was separately contained in an ordinance and in a resolution. Given the city's continuing concern over legal expenses, it seems only prudent to not reinvent the wheel. I would call referring you to prior written materials as being cost conscious, not passive aggressive. As those memos explained, the council may require financial reports by ordinance but "not less than quarterly." RCW 35A.33.140. The form of the city's "accounting and cost systems" is established by the state auditor. RCW 35A33.110 [Note: the ordinance cites to Chapter 35A.34 RCW because the city was on a biennial budget at the time, but the two budget chapters have parallel provisions]. For that reason the council's desire for monthly cash accounting was formulated as a "request" to the mayor and staff and put in the resolution.

The prior email also underscored that the mayor is the administrative head of the city. The mayor's powers, duties and responsibilities include:

>"the power of appointment and removal of all appointive officers and employees..." RCW 35A.12.090 Please note that the finance director is an at will employee and may be removed by the mayor without cause. See Personnel Rules 2.9. When discharging an employee in a protected class it is always good practice to validate the "business necessity" for any action by establishing a neutral, nondiscriminatory basis for a personnel decision. The decision is that of the mayor.

>The mayor has "general supervision of the administration of the city..." RCW 35A.12.100 The mayor is also the "chief administrative officer" for the purpose of fulfilling the duties and responsibilities of the budgeting statute. RCW 35A.33.010 (1) The finance director is denominated as the "clerk" in the budgeting chapter, which requires the "clerk" i.e. finance director, to submit quarterly reports. RCW 35A33.010(2)and 35A.33.140.

>The mayor "...shall see that all laws and ordinances are faithfully enforced and that law and order are maintained..." RCW 35A.12.100 The city attorney on the other hand has no administrative role. As city ordinance outlines, the city attorney's role is to "advise" and to "represent" the city in legal proceedings. ECC 2.05.020. This is in accord with RCW 35A.12.020 which authorizes the city to hire or contract for "legal counsel."

At its heart, this question is a separation of powers dilemma for the mayor, council and city. I understand that the concern expressed in your email is likely generated from frustration with not receiving the financial reporting in the form and with the frequency you desire. Applying the statutes and ordinances quoted above to your numbered questions:

Of course, an employee's failure to comply with a duty imposed by statute or ordinance is a performance issue. The mayor is the final judge of a city employee's performance and determines in the case of a department head when and if personnel action should be taken. In my role as an advisor, I have repeatedly discussed the issue of financial reporting with the mayor, in fact two mayors. As I understand Mayor Cooper, he believes that he and staff are substantially complying with Ordinance 3789's requirements and his direction regarding staff priorities. I say substantially, as the mayor has repeatedly acknowledged that limited staffing and other priorities have delayed reports on occasion. The state auditor has not indicated any significant issue with the city's reporting to date and has found its format to be compliant with state law. Regardless, the mayor makes the determination of whether the employee's performance is adequate, and equally important, whether the employee is fulfilling the mayor's direction and meeting his expectations.

See my answer above. The issue of the employee's performance requires disciplinary action is for the mayor to determine. I respectfully suggest that your concern is with the mayor's attention to council requests under the resolution and the mayor's compliance with the requirements of your ordinance and state statute. That is an issue for the voters either at an election or if misfeasance in office is alleged, in a recall proceeding. I will discuss the issue of how the council could define duties for performance by the mayor at the end of this email.

Rudeness in any form can be insubordination. Performance issues are the mayor's to identify and correct through personnel action. As I have discussed with you, Mr. Bernheim and others, I recommend that council members direct their concerns to the mayor for his consideration and action. Again, the mayor exercises the hiring (subject in certain cases to council confirmation) and firing power of the city.

The mayor is by statute charged with seeing the statutes and ordinance are enforced, I advise him (and the council) but have no authority to take any action independent of the direction of the mayor and staff (with respect to administrative actions) or the city council (with respect to the initiation of a civil action).

As noted, the mayor is charged with compliance with ordinance and statute. The Council can define additional duties by ordinance within certain limitations (the requirements cannot conflict with state statute). Therefore, the council could for example establish as a mayoral duty developing a separate set of accounting procedures. The City must comply with the state auditor's accounting requirements in its primary accounting. Assuming adequate funding and staffing necessary produce the separate cash accounting information, the mayor's failure to comply with the ordinance's requirements could be alleged to be misfeasance and under certain circumstances could form the basis for a recall petition. The council has a number of options including:

1. Establishing a separate reporting format by ordinance and funding its preparation, either through staffing or contract. Establishing an additional duty without funding could create a situation in which the mayor is unable to meet the council’s direction, not through alleged misfeasance but rather due to a lack of resources.
2. Contracting directly for financial services through its contracting powers. While employees are under the mayor’s direction, the council can contract for services.

I would be happy to review the council’s options with council at its direction—the scope of that discussion would go well beyond the one hour that is to be devoted to individual council member inquiries,

As a practical matter it is my understanding that the mayor is working with a stake holder group to establish cash accounting reporting. Given the city’s financial situation, working together to reach your objectives seems the most productive approach. I have addressed your numbered question. You ask a number of other questions that I assume are rhetorical—if you need further information or have questions regarding what I have sent, please call me at your convenience.

Scott

**W. Scott Snyder** | Attorney at Law



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**From:** Buckshnis, Diane [mailto:diane.buckshnis@ci.edmonds.wa.us]  
**Sent:** Tuesday, February 08, 2011 3:34 PM  
**To:** W. Scott Snyder  
**Cc:** Council; Cooper, Mike  
**Subject:** FW: Monthly Summaries

Hi Scott,

In doing my research and talking to these other labor attorneys I have the following questions for you:

- 1) If a employee is not following an ordinance, is that considered a performance issue as /she/he is breaking the law?
- 2) If we have shown via a variety of emails (that I have dating back to June) that this employee continues to not perform according to the ordinance in addition to not answers emails, is that not also considered a performance issue?
- 3) If a staff person walks away from a City Council Member while he/she is involved in a question and answer period, is that not considered insubordination?
- 4) Who should have enforced this disregard for complying to the law, the Mayor or the city attorney.

In talking to a few of these labor experts, these issues should have been addressed right after the first time the ordinance was not followed? Who is responsible, the attorney who knows the law or the Mayor who is responsible for the employee?

As you recall in October you sent me the following email which you later called and apologized for the passive/aggressive commentary since no one could find a memo outlining what steps should be taken if an employee is not complying to an ordinance that is pretty straightforward. The items in red definitely have yet to be completed to date nor has the timeliness of the reports been complied with. In addition to the fact the mid-year amendment was never vetted in finance and the Finance Director embedded a significant amendment that was never approved by City Council.

Now, we have even more drama with Mr. Plunkett and myself, so why could this have not been handled back in June when all these questions by me and Mr. Plunkett were being raised? What message are we sending our public? That an employee can do whatever they want despite a law being broken?

Thank you for your time and I found the interview process with other firms to be very insightful.

Diane

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### 3.04.030 Monthly Updates.

The City Council requests that the staff provide to the City Council's finance committee monthly revenue reports. **At a minimum, the following funds are requested to be provided: REET 1 and 2, Sales and Use Tax, Gas Utility Tax, Telephone Utility Tax, Electric Utility Tax.** A monthly General Fund analysis of comparing revenue budget to actual and expenditure budget to actual with the net balance is requested. After review by the Finance Committee, these reports will be available on the City's website under the Finance area. All proposed budget amendments or Council approved changes that will be

included in future budget amendments are requested to be included in the monthly report. Graphs are requested to be integrated into a report to provide trend analyses.

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**From:** W. Scott Snyder [mailto:ssnyder@omwlaw.com]  
**Sent:** Tue 10/12/2010 4:31 PM  
**To:** Buckshnis, Diane  
**Cc:** Council President Bernheim; Monillas, Adrienne; Petso, Lora; Peterson, Strom; Wilson, DJ; Plunkett, Michael; Cooper, Mike; Humann, Debi  
**Subject:** RE: Compliance to financial ordinances?

Dear Councilmember Buckshnis

In previous memos to you and the council I have addressed when the city council has the ability to require a specific financial reporting format and when it must make a request of staff through the mayor. I have also addressed the issue of council's ability to obtain budget or audit services by contract. If the council feels that some form of legal action is necessary to compel performance of a statutory duty, it has the ability to engage its own counsel. If you have not retained those emails and memos, Jana or my secretary can provide them.

I have suggested a meeting with yourself, Council President Bernheim to discuss a businesslike and practical approach to quantifying the council and commission's questions and tracking responses from to insure that the council receives the information that it requires. I have received conflicting information regarding whether a number of questions have been asked and answered. I hope that a frank discussion of your needs and establishment of a format for question and response can resolve your concerns and provide the information that the committee is requesting.

I look forward to speaking with you next week.

Scott

**From:** Buckshnis, Diane [mailto:diane.buckshnis@ci.edmonds.wa.us]  
**Sent:** Tuesday, October 12, 2010 9:47 AM  
**To:** W. Scott Snyder  
**Cc:** Council President Bernheim; Monillas, Adrienne; Petso, Lora; Peterson, Strom; Buckshnis, Diane; Wilson, DJ; Plunkett, Michael; Cooper, Mike; Humann, Debi  
**Subject:** Compliance to financial ordinances?

Hello Mr. Snyder,

As you recall, you assisted me in putting together Ordinance 3789 and Resolution 1226. I had spent hundreds of hours research city websites and look at the Government Finance Officers Association best practices for policies to craft a citizen friendly policy. I shared these policies on a number of occasions with Finance and received no input.

The City Council approved these two documents back in April 2010.

As of this date, we have yet to get the General Fund expressed in dollars and compared to actual as carefully described in Ordinance 3789. Additionally our finance staff continues to ignore these items and move along according to their schedule. As an example, we just received the **monthly** September 2010 summary with the last one given to us being in May 2010.

Further, there are many questions asked of our Finance staff from the levy committee and City Council members that go unanswered. The perception brewing in the levy committee is that finance "doesn't care" about this very important group and one member told me last night she is thinking of resigning as she continue to ask basic questions and receives no attention

except help from Ms. Humman. Three citizens came up to me last night and ask about the budget, the out-of-balance general fund and if the June quarterly will be restated.

While the "suggested path" is to hire a budget analyst to help us get this data, my question is what if the data is not given and now more importantly, we are hiring someone to do a job that staff is being paid to do.

How can we ensure compliance to City Ordinances? What can we do to make them comply?

Thank you for your time.

Diane

-----Original Message-----

**From:** Buckshnis, Diane [mailto:diane.buckshnis@ci.edmonds.wa.us]

**Sent:** Monday, August 16, 2010 11:12 AM

**To:** Cooper, Mike

**Cc:** Council President Bernheim; michaelppp98@yahoo.com

**Subject:** Monthly Summaries

Good Morning,

The Finance Meeting minutes will reflect that even though I tried to engage Mr. Hines on these policies and spent hundreds of hours putting together these citizen friendly documents, his only issue about was accrual accounting as I had used the term modified accrual. Mr. Snyder also asked for a response from him and I don't know if that question was ever answered. Fortunately, Mr. Snyder helped me put these two documents together and complimented me in front of everyone on how citizen friendly these documents are for all to understand.

To date, there are certain items not yet being complied with or timing of reports. If possible can the levy committee get the June and July monthly. Also if we can get the General Fund presented in terms of dollars (which I have sent numerous) examples will be helpful.

Thanks for all your help. If you want, we could postpone the levy committee for a month or two and get through vacations.

Cheers,

Diane

### **3.04.020 Quarterly Reports.**

The Mayor and staff shall provide quarterly reports showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources.

**3.04.030 Monthly Updates.**

The City Council requests that the staff provide to the City Council's finance committee monthly revenue reports. **At a minimum, the following funds are requested to be provided: REET 1 and 2, Sales and Use Tax, Gas Utility Tax, Telephone Utility Tax, Electric Utility Tax.** A monthly General Fund analysis of comparing revenue budget to actual and expenditure budget to actual with the net balance is requested. After review by the Finance Committee, these reports will be available on the City's website under the Finance area. All proposed budget amendments or Council approved changes that will be included in future budget amendments are requested to be included in the monthly report. Graphs are requested to be integrated into a report to provide trend analyses.

**From Resolution - which I am the only one monitoring.**

Provide a means for the City Council to update and monitor these policies with the assistance and cooperation of the Mayor's office and the Director of Finance and Information Services