

Memorandum

To: Chief of Staff Josh Wescott

From: Corporation Counsel Marcia MacKenzie

Re: Sub. 1 to 2019 Res-284

Date: November 14, 2019

You asked if some language in the above named substitute resolution is consistent with the law as explained in previous opinions of the Corporation Counsel's office. It is not, and I recommend a partial veto to cure the legal defects..

Discussion:

The substitute amendment deals with disbursal of mental health funds through the Request for Proposals (RFP) process. The problematic language states, in relevant part:

(3) The Department of Human Services shall develop criteria for the distribution of funds from the community center mental and behavioral health allocation focused on kids and families as well as the CJ Tubbs Fund for Hope, Healing and Recovery in consultation with the Tubbs family and with input from the following process:

The Chair of the Health and Human Needs Committee shall appoint a subcommittee of at least one county board member who serves on the Health and Human Needs Committee, one board member from Public Protection and Judiciary, a representative of the CJ Tubbs family (or designee they choose), two individuals from the community who have lived experience, a former or current service provider (who is not working for a provider who will apply for the funds).

The subcommittee shall: a) be appointed by December 6, 2019; (b) shall meet by December 20, 2019 to receive a presentation by the Department of Human Services on identified gaps in services and recommended criteria for grants; (c) shall hold a public hearing and approve criteria by January 17, 2020.

The Department of Human Services shall: Issue the Requests for Proposals for the grant programs by January 24, 2020 with a due date of February 28, 2020; Present scoring of proposals to the subcommittee for review and approval and recipients shall be announced by March 13, 2020; Provide staff support and guidance to the subcommittee.

There are several problems with the resolution. In June 2017, I provided a memorandum on the RFP process to the Board Chair and then-committee and commission chairs. That memorandum is attached. It explains the legal delegation of authority related to preparation and awarding of RFPs.

Note that the memorandum states that the DOA has authority over “all aspects of the RFP process.” The memorandum specifically includes items over which DOA has sole authority. Among them are drafting and issuing RFPs, including timing, determining scoring criteria and choosing the vendor. The language in the substitute resolution improperly delegates authority over these items to a subcommittee of Health and Human Needs (HHN) that includes Board members and citizen participants.

The Board may certainly require public input to inform decision making. It may also create a subcommittee that takes information on “identified gaps” in services. What it cannot do is recommend or approve criteria. Nor can it set a timeline for issuance of the RFP. This is well established in the law, as is described in the 2017 memorandum.

I recommend the following veto to cure the legal problems with the substitute resolution:

1. *Line 93:* Insert a period after the word “family,” and delete the remainder of the sentence (which ends on line 94).
2. *Line 102:* Add a period after the word “services” and delete the phrase “and recommended criteria for grants.” Delete the entirety of the language in (c), which ends on line 103.
3. *Lines 106 and 107:* Add a period after the word “Proposals.” Delete all of line 106 after the word ”Proposals” and delete line 107 up to and including “2020.”

These deletions are required by law. Therefore, any veto override would be void and unenforceable as illegal.