



# CITY OF PITTSBURGH

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## *Department of Finance*

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*William Peduto, Mayor*

*Paul Leger, Director of Finance*

November 5, 2015

Nicholas Verischetti, ICA Chair  
Burns White  
Four Northshore Center  
106 Isabella Street  
Pittsburgh, PA 15212

### **VIA EMAIL AND SURFACE MAIL**

Dear Mr. Varischetti,

This letter will serve as the City of Pittsburgh's formal response to your letter of October 26, 2015 wherein you purport to provide notice of the ICA's disapproval of the City of Pittsburgh's 2016 proposed budget "by unanimous vote of the Board of the Intergovernmental Cooperation of Authority at its public meeting held on October 21, 2015." You also state that "[t]he Board determined that the proposed budget lacked sufficient information" and provide a "detailed list of reasons."

Please be advised that the City of Pittsburgh does not recognize the ICA's purported disapproval of the City's proposed 2016 budget under applicable law. Nor does the City recognize the ICA's purported disapproval of the 2015 budget that was approved by the ICA in 2014. The October 21 meeting, and any action taken during the meeting, is invalid, ineffective and void for the reasons discussed below. As such, the City's proposed 2016 budget is deemed approved under Act 11.

### **Act 11: Meeting and Quorum Requirements**

The ICA was created and operates pursuant to the Intergovernmental Cooperation Authority Act for Cities of the Second Class ("Act 11"). 53 P.S. §§ 28101-28707. Act 11 provides that "[t]he powers and duties of the authority shall be exercised by a governing board composed of five members." 53 P.S. § 28202(a)(1). The five board members are appointed. 53 P.S. § 28202(a)(1)(i)-(v). By comparison, the *ex officio* board members identified in the statute "may not vote and shall not be counted for purposes of establishing a quorum." 53 P.S. § 28202(a)(1)(vi).

In addition to quarterly meetings, "a meeting of the board shall be called by the chairperson if a request for a meeting is submitted to the chairperson by at least

two members of the board.” 53 P.S. § 28202(d). “A majority of the board shall constitute a quorum for the purpose of conducting the business of the board” and “[a]ll actions of the board shall be taken by a majority of the board.” *Id.*

A specific power granted to the ICA is “[t]o make bylaws for the management and regulation of its affairs and adopt rules, regulations and policies in connection with the performance of its functions and duties which, notwithstanding any other provision of law to the contrary, shall not be subject to review pursuant to the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act.” 53 P.S. § 28203(c)(10). The ICA exercised this power and adopted bylaws requiring a quorum of three board members to conduct business.

Act 11 sets forth procedures and requirements for the ICA’s review of the City’s financial plan and budget, establishing two scenarios: review and approval or review and disapproval. 53 P.S. § 28209(g) and (h). Relevant to the present circumstances, when the ICA fails to take action within 30 days, the City’s proposed budget “shall be deemed approved.” The deemed approval occurs unless the chairperson receives a written request during the 30 day review period from two Board members for a meeting and the ICA Board then takes valid action to disapprove the budget at the meeting. 53 P.S. § 28209(g).

### **Summary of Reasons that ICA failed to take valid action**

The October 21, 2015 meeting was not authorized by or conducted in accordance with Act 11. The ICA Board may schedule a meeting other than a previously scheduled quarterly meeting, including a meeting to review the City’s proposed budget, upon written request by two members of the Board to the chairperson. 53 P.S. §§ 28202(d), 28209(g). Because no such request was made by two members to the chairperson, the October 21 meeting was not authorized under Act 11.

The ICA Board lacked a quorum to conduct business on October 21, 2015. When a board does not have a quorum but proceeds to conduct business or take action, any action taken is void. Such is the case here. The quorum requirement is confirmed by applicable case law, the text of Act 11, the ICA’s bylaws and its prior admissions on the subject. In addition, the quorum (consisting of at least three Board members) is reinforced by Act 11’s requirement at least three board members (two members and the chairperson) participate in the scheduling of a budget review meeting in the first place.

The two ICA Board members who participated in the October 21 meeting did not actually vote on any motions, including those purporting to disapprove the 2015 and 2016 budgets. Instead, motions were made by one board member and seconded by the other. However, there was no discussion on the motions and the chairperson **did not call for a vote** on the motions.

Assuming that you continue to ignore each of the prohibitions summarized above, the City will briefly address some of the other invalid assertions put forth by the ICA.

The ICA bases its disapproval of the 2016 budget on the false premise that the City failed to comply with prior “conditional” approvals. Act 11 does not authorize the “conditional” approvals claimed by the ICA in the first place. See 53 P.S. §§ 28209(g), (h). Similarly, Act 11 contains no provision that would allow the ICA to revoke or somehow disapprove the 2015 budget approved last year. See 53 P.S. §§ 28101-28702. Because the ICA’s position has no legal basis, the City will refrain from discussion about the ever changing “conditions” identified in your letter and on various other occasions.

Additionally, the ICA has advanced no legally valid reasons under Act 11 for disapproval of the 2016 budget. See 53 P.S. §§ 28209, 28210. Contrary to the ICA’s prior approvals and the provisions of Act 11 and Act 71, you claim that the ICA’s unlawful withholding of gaming revenue now serves as a basis for budget disapproval. Moreover, the ICA fails to identify any inaccurate or inappropriate budget assumptions. While the ICA’s repeated claims of inadequate information do not provide a statutory basis for budget disapproval, the City is compelled to note that these allegations are simply false. The City has continually provided full and complete information regarding the budget proposal and related queries.

Regrettably, your invalid attempt to disapprove the City’s proposed 2016 budget and the 2015 budget approved last year confirms a prediction and pattern of unlawful retaliation for the City’s exercise of its right to seek legal redress. That intent and pattern was apparent by your written threat to initiate a baseless mandamus action in September and reinforced by the threat of budget disapproval articulated in the ICA’s Petition for Writ of Prohibition in October. The ICA should cease and desist its continued unlawful conduct.

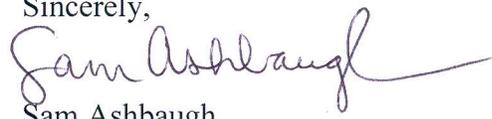
### Conclusion

The last day of the 30 day review period for budget review was October 21, 2015. Only legally valid Board action by the ICA Board on or prior to that date could serve as a valid and effective disapproval of the City’s proposed budget. Because no valid or effective action to disapprove under Act 11 occurred, as summarized above, the proposed 2016 budget is “deemed approved.” The City will proceed accordingly.

Sincerely,

  
Paul Leger,  
Finance Director

Sincerely,

  
Sam Ashbaugh  
Director, Office of Management and Budget

CC: William Peduto, Mayor  
Governor Tom Wolf  
Secretary Dennis Davin  
Kevin Acklin, Chief of Staff  
Lourdes Sanchez Ridge, City Solicitor  
Brian Gabriel, Counsel  
Henry Sciortino