

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION

LEGAL COUNSEL DIVISION

MEMORANDUM

**TO:** Janeese Lewis George  
Councilmember  
Council of the District of Columbia

**FROM:** Megan D. Browder *MDB*  
Deputy Attorney General  
Legal Counsel Division

**DATE:** December 13, 2023

**SUBJECT:** Legal Advice Re: SNAP Funding  
(AL-23-523)

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This memorandum responds to your request that the Office of the Attorney General (the “Office”) respond to the following questions: “(1) Without Council approval, can DHS [the D.C. Department of Human Services] or the Mayor divert money that is appropriated only for SNAP to other DHS programs? (2) Without Council approval, can DHS or the Mayor lawfully thwart the SNAP benefit increase, effective January 1, 2024, by refusing to implement it?”<sup>1</sup> For the reasons set forth below, we conclude that the Mayor may not unilaterally divert or withhold funds appropriated for the SNAP benefit increase.<sup>2</sup>

**Background**

Earlier this year, the Council enacted the Give SNAP a Raise Amendment Act of 2022.<sup>3</sup> That law, among other things, amended the Food Stamp Expansion Act of 2009 to increase the locally funded SNAP benefit by 10%.<sup>4</sup> The increase was subject to appropriations.<sup>5</sup>

Section 7102 of the Fiscal Year 2024 Budget Support Act (“BSA”),<sup>6</sup> titled the “Revised Revenue Funding Act of 2023,” provides:

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<sup>1</sup> Letter from Councilmember Janeese Lewis George to Att’y Gen. Brian Schwalb (Dec. 1, 2023).

<sup>2</sup> We sought the views of the Mayor and, in a conversation on December 7, 2023, were told that, as has been publicly reported, any decision not to spend the SNAP funding would be due to spending pressures in other areas.

<sup>3</sup> Effective March 10, 2023.

<sup>4</sup> *Id.* § 2(d).

<sup>5</sup> *Id.* § 3(a).

<sup>6</sup> Effective September 6, 2023 (D.C. Law 25-50; 70 DCR 10456).

(a) To the extent that Fiscal Year 2023 local revenues certified in the September 2023 quarterly revenue estimates exceed the local revenue estimate of the Chief Financial Officer dated February 28, 2023, excess local funds shall be allocated and expended pursuant to the Appropriation of Additional Resources section of the Fiscal Year 2024 Local Budget Act of 2023, passed on 2nd reading on May 30, 2023 (Enrolled version of Bill 25-203), and this section.

(b) The first \$39,612,000 of one-time funds shall be allocated to the Department of Human Services to be spent as follows:

(1) To provide, from January 1, 2024, until September 30, 2024, a temporary locally funded minimum benefit to each household participating in SNAP, in addition to any locally funded minimum benefit that a household may receive under section 5084(a) of the Food Stamp Expansion Act of 2009, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 4-261.04(a)), not to exceed 10% of the household’s federal maximum monthly allotment; . . . .

Similarly, the Fiscal Year 2024 Local Budget Act of 2023 (“LBA”)<sup>7</sup> states that, “if and to the extent that the September 2023 quarterly revenue estimate for local funds in Fiscal Year 2023 exceeds the revenue estimate of the Chief Financial Officer of the District of Columbia dated February 28, 2023,” “[t]he first \$39,612,000 of funds authorized to be obligated and expended . . . shall be allocated to the Department of Human Services to be spent . . . [t]o provide, from January 1, 2024, until September 30, 2024, a temporary locally funded minimum benefit to each household participating in SNAP, in addition to any locally funded minimum benefit that a household may receive under section 5084(a) of the Food Stamp Expansion Act of 2009.”<sup>8</sup>

On September 29, 2023, the Office of the Chief Financial Officer (OCFO) released the September revenue estimate,<sup>9</sup> which indicated that estimated Fiscal Year 2023 local revenue exceeded the February 2023 estimate by 1.9 percentage points, or \$185,800,000.<sup>10</sup> On October 13, the OCFO certified that the Revised Revenue Funding Act of 2023 had been funded, and the Council confirmed the same three days later.<sup>11</sup>

## Analysis

Because the statutory language with respect to the SNAP benefit increase is mandatory, and it has been included in an approved budget plan, the Mayor must expend the funds as the Council directed and cannot unilaterally use them for other purposes.<sup>12</sup> In the District Charter, “Congress chose to create, as a general proposition, the familiar tripartite structure of government for the District” that mirrors the federal

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<sup>7</sup> Effective August 29, 2023 (D.C. Law 25-47; 70 DCR 12880).

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Glen Lee, CFO, to the Honorable Muriel Bowser, Mayor, and the Honorable Phil Mendelson, Chairman, on September 2023 Estimates (Sept. 29, 2023), [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/release\\_content/attachments/Sep\\_2023\\_Estimate\\_letter\\_09292023\\_FINAL.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/release_content/attachments/Sep_2023_Estimate_letter_09292023_FINAL.pdf).

<sup>10</sup> The February 2023 local revenue estimate of \$9,712,000,000 for Fiscal Year 2023 was adjusted to \$9,897,800,000. *Id.* at 1.

<sup>11</sup> Notice of Applicability of Legislation, 70 DCR 13935-13936 (Oct. 20, 2023).

<sup>12</sup> By contrast, the BSA and LBA use permissive language with respect to funds that “may” be used to update information technology systems. *E.g.*, Sec. 7102(b)(2) of the BSA.

government: the legislature makes the laws and the executive executes them.<sup>13</sup> Similarly, the executive and executive agencies “must follow statutory mandates so long as there is appropriated money available and the [executive] has no constitutional objection to the statute.”<sup>14</sup> Here, the SNAP increase requirements are mandatory. Once the OCFO revenue estimate showed excess revenues, the excess funds were required to “be allocated and expended” in the manner the Council described.<sup>15</sup> Specifically, the “first \$39,612,000 of one-time funds” must be allocated to DHS “to be spent” to provide “a temporary locally funded minimum benefit to each household participating in SNAP . . . not to exceed 10% of the household’s federal maximum monthly allotment.”<sup>16</sup>

To be sure, the Home Rule Act “charge[s]” the Mayor with “the administration of the financial affairs of the District.”<sup>17</sup> Part of that duty is to “[s]upervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded.”<sup>18</sup> In one case, *Hazel v. Barry*, the D.C. Court of Appeals upheld the Mayor’s decision to reduce the budget of the D.C. Public Library, an independent agency.<sup>19</sup> The Court held that “the Mayor not only has the authority to reduce funding below the level of appropriations in order to balance the budget, but is required to do so.”<sup>20</sup>

Whatever its continuing force, the reasoning and holding of *Hazel* are readily distinguishable from the circumstances here. First, the *Hazel* court cited caveats in the appropriations statutes that the appropriated amounts “unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor.”<sup>21</sup> The Fiscal Year 2024 LBA does not include any similar language and the Revised Revenue Funding Act explicitly states that the SNAP funds “shall be allocated and expended.” Second, provisions of the Home Rule Act added by the District of Columbia Financial Responsibility and Management Assistance Authority Act in 1995—after *Hazel* was decided—allow the Mayor to submit a reprogramming request for Council approval.<sup>22</sup> And third, the Home Rule Act provisions granting the Mayor financial authority have been qualified by the creation of the OCFO. For example, the Mayor has authority over “the administration of the financial affairs of the District” “except to the extent” that such authority is given to the District’s Chief Financial Officer (CFO).<sup>23</sup> Under the Home Rule Act, the CFO “[s]upervis[es] and assum[es] responsibility for financial transactions to ensure adequate control of revenues and resources” and is responsible for “[a]ppportioning the total of all appropriations and funds made available during the year for obligation so as to prevent obligation or expenditure in a manner which would result in a deficiency or a need for supplemental appropriations during the year.”<sup>24</sup> We are unaware of any mayoral authority to *unilaterally* divert funds legislatively mandated

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<sup>13</sup> *Wilson v. Kelly*, 615 A.2d 229, 231 (D.C. 1992); *see also* D.C. Official Code § 1-301.44(b) (Council recognition of “the principle of separation of powers in the structure of the District of Columbia government”).

<sup>14</sup> *In re Aiken Cnty.*, 725 F.3d 255, 259 (D.C. Cir. 2013) (emphasis omitted). In the District, a Home Rule Act or Charter objection may be an additional reason not to follow a legislative mandate.

<sup>15</sup> Sec. 7101(a) of the BSA.

<sup>16</sup> *Id.*

<sup>17</sup> D.C. Official Code § 1-204.48(a).

<sup>18</sup> *Id.*

<sup>19</sup> *Hazel v. Barry*, 580 A.2d 110, 113 (D.C. 1990).

<sup>20</sup> *Id.* (citing D.C. Official Code § 1-204.42(a)(1); 1-204.48(a)(9); 1-206.03(d)). We note that the Court limited its holding to the D.C. Public Library and stated that it “does not necessarily extend to funding disputes involving other agencies, entities, or branches of the District of Columbia government.” *Id.* at 111.

<sup>21</sup> *Id.* at 111-12.

<sup>22</sup> *See* D.C. Official Code § 1-204.46(d). *See* D.C. Official Code § 47-363 (setting forth reprogramming request details). The Home Rule Act similarly gives the Mayor authority in some circumstances to reduce the budgets of independent agencies, although that provision is inapplicable here because DHS is a subordinate agency. *Id.* § 1-204.53(a)-(b).

<sup>23</sup> *Id.* § 1-204.48(a).

<sup>24</sup> *Id.* § 1-204.24d.

and appropriated for a specific purpose to another purpose or, generally, to refuse to spend funds that the Council has specifically directed be spent. Indeed, the Home Rule Act’s conferral of authority to the Mayor to reallocate or reduce funding in specific circumstances—expressly requiring Council approval—strongly suggests that the Mayor has no independent authority to do so otherwise, at least absent the imminent threat of an actual spending deficiency not addressed by the OCFO.<sup>25</sup>

If you have any questions regarding this memorandum, please contact Katy Robinette, Assistant Attorney General, Legal Counsel Division, at (202) 664-4791, or me at (202) 724-5524.

MDB/kar

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<sup>25</sup> *Lindh v. Murphy*, 521 U.S. 320, 330 (1997) (describing “negative implications raised by disparate provisions”).