

**OAK RIDGE CITY COUNCIL  
SPECIAL MEETING**  
Municipal Building Courtroom

September 17, 2013—5:00 p.m.

AGENDA

I. ROLL CALL

II. RESOLUTIONS

A RESOLUTION AUTHORIZING A ONE-TIME TRANSFER NOT TO EXCEED \$250,000.00  
FROM THE CITY OF OAK RIDGE GENERAL FUND TO THE OAK RIDGE SCHOOLS.

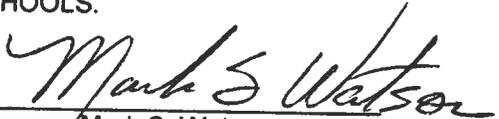
III. ADJOURNMENT

ADMINISTRATIVE MEMORANDUM  
13-09

DATE: September 16, 2013  
TO: Diana R. Stanley, City Clerk  
FROM: Mark S. Watson, City Manager  
SUBJECT: SPECIAL CITY COUNCIL MEETING

In accordance with Article II, Section 2, of the Charter of the City of Oak Ridge, you are hereby requested to call a special meeting of the Oak Ridge City Council for Tuesday, September 17, 2013 at 5:00 p.m. in the Courtroom of the Municipal Building for consideration of the following resolution:

A RESOLUTION AUTHORIZING A ONE-TIME TRANSFER NOT TO EXCEED \$250,000.00 FROM THE CITY OF OAK RIDGE GENERAL FUND TO THE OAK RIDGE SCHOOLS.

  
Mark S. Watson

CITY COUNCIL MEMORANDUM  
13-18

DATE: September 16, 2013  
TO: Honorable Mayor and Members of City Council  
FROM: Mark S. Watson, City Manager  
SUBJECT: ONE-TIME TRANSFER NOT TO EXCEED \$250,000 FROM THE CITY OF  
OAK RIDGE TO THE OAK RIDGE SCHOOLS

Introduction

The City Manager and the City Council have been requested by the Oak Ridge Board of Education to provide supplemental funding for the purpose of meeting compliance with State of Tennessee BEP formula calculations.

Funding

The City of Oak Ridge is seeking approval for a General Fund transfer of not to exceed \$250,000 from City fund balances to assist Oak Ridge Schools.

Background

In mid-August, the City Manager was informed by the School Superintendent that calculations made by the State of Tennessee, Department of Education, Office of Local Finance did not meet state requirements. Notification was made to the Oak Ridge Schools and subsequent meetings of the City Manager, the Superintendent of Schools, and respective Finance Directors occurred. Background information was provided to help the City of Oak Ridge understand the calculation process.

On September 11, 2011, the City of Oak Ridge advised the Oak Ridge Schools of our continuing desire to support all students, faculty and the appropriate services provided. The City has received a request from Superintendent Borchers for additional \$250,000 to meet this obligation. Since it has been reported that the Board of Education intended to close the schools on October 1, 2013, the City Council requested clarification to that fact and communications that were received from the State of Tennessee threatening to withhold monies and closing our schools. This information has been provided in the attached agenda information.

The City Council has been asked to consider this request in a special called meeting.



Mark S. Watson

Attachments

# CITY OF OAK RIDGE



OFFICE OF THE CITY MANAGER

POST OFFICE BOX 1 • OAK RIDGE, TENNESSEE 37831-0001

September 11, 2013

Dr. Bruce Borchers  
Superintendent of Schools  
304 New York Avenue  
P. O. Box 6588  
Oak Ridge, Tennessee 37831-6588

RE: School Funding

Dear Dr. Borchers:

On behalf of the Oak Ridge City Council, I am able to respond to you and the Oak Ridge Board of Education (BOE) as to the Council's strong intent to resolve the present deficiency of \$250,000 associated with the State Maintenance of Effort (MOE) calculations. The City Council has asked me to convey their intent to address this matter positively with the Oak Ridge Board of Education for the benefit of Oak Ridge students, parents, and all concerned.

Since this matter was brought to our attention on August 13, 2013, along with the October 1, 2013 deadline, numerous questions have arisen about the MOE process. Although some questions remain regarding local funding, the City Council is prepared to assist the Oak Ridge Board of Education in meeting their responsibility to the Tennessee Department of Education.

In an effort to facilitate immediate action, the City Council has asked me to request a formal letter from the Oak Ridge Board of Education, or yourself, regarding a request for funding from the City, the reasons for the request, and Board decisions to close school operations on October 1, 2013 if funding is not obtained. This will be utilized for our records and audit requirements.

Formal action regarding your request will require one meeting of City Council to approve a funding resolution. We are prepared to call this meeting next week. Due to notification requirements for a special called meeting, we need to receive your letter no later than noon on Monday, September 16, 2013.

Since T.C.A. 49-3-314(c) states that "the commissioner may, in the commissioner's discretion, withhold a portion or all of the state education finance funds that the LEA is otherwise eligible to receive" City Council is further requesting copies of any notices or communications as required by the above statute constituting formal notice from the Commissioner of the State Department of Education confirming that he has approved withholding State funds in whole from the Oak Ridge City Schools beginning on October 1, 2013.

Thank you for your prompt attention to this matter. I look forward to working toward its resolution.

Very truly yours,

A handwritten signature in black ink that reads "Mark S. Watson".

Mark S. Watson  
City Manager

cc: Mayor Beehan and Members of City Council  
Kenneth R. Krushenski, City Attorney  
Dr. Amy Fitzgerald, Government and Public Affairs Coordinator



OAK RIDGE SCHOOLS  
304 NEW YORK AVE.  
P.O. BOX 6588  
OAK RIDGE, TN 37831-6588

Telephone: 865.425.9001  
Fax: 865.425.9070

Dr. Bruce T. Borchers  
Superintendent  
Email: [btborchers@ortn.edu](mailto:btborchers@ortn.edu)

September 16, 2013

Mark Watson, City Manager  
City of Oak Ridge  
200 S. Tulane Ave.  
Oak Ridge, TN 37830

Dear Mark:

Oak Ridge Schools has been notified by the State of Tennessee that they have failed both parts of the Maintenance of Effort Test for local revenue. Local revenue considered in the test includes county property, sales and mineral taxes, local interest on investments and lease/rental income, Public Law 874, and City General Fund Transfers. The second tier shortfall (based on per-pupil funding) for Oak Ridge Schools is \$393,918.

According to T.C.A. §49-3-316, any local fiscal body that has not adopted a budget by July 1 that conforms to the requirements of state law and the rules of the State Board of Education shall maintain operations under a continuing budget until October 1. Continuing budgets shall not be valid beyond October 1 for the purpose of receiving funds. While §49-3-314 allows the Commissioner to withhold funds for specific, identified problems within a local budget, §49-3-316 controls in a situation where no effective budget exists. Unfortunately, our current budget does not conform to state law based on maintenance of effort requirements. We were notified by Commissioner Huffman's office on July 30, 2013, that our budget will be nullified if not corrected by September 30, 2013, along with the State withholding \$1.8M/month in state funding to the Oak Ridge Schools.

Upon review of FY13 actual receipts, I am recommending a budget amendment to the School Board, to increase property and sales tax budgeted revenues for FY14 from the counties of Anderson and Roane. This reduces the shortfall to \$250,000.

As discussed extensively in our four meetings since August 13, the shortfall originated in City Council's decision in May 2012 to reduce school funding by \$766,470. While other local tax receipts have closed much of that gap, we respectfully ask that the City honor the requirements of state law and increase FY14 funding to the schools by \$250,000. To avoid the consequence of withholding of state funds, Council's official intent to increase the school's allocation by \$250,000 for FY14 must be verified in writing by September 20, 2013, so that the school's budget can be amended with two school board readings and the amended budget sent to the State by September 30, 2013.

I thank you for your prompt attention to this matter and look forward to its resolution.

Sincerely,

Bruce Borchers, Ph.D.  
Superintendent

cc: Members of the Oak Ridge Schools Board of Education  
Members of the Oak Ridge City Council  
Parker Hardy, President and CEO, Oak Ridge Chamber of Commerce  
The Honorable Justin Wilson, Comptroller of the Treasury  
Marianne Durski, Assistant Commissioner, TN Department of Education  
The Honorable Randy McNally, State Senator  
The Honorable John Ragan, State Representative

**STEPS INVOLVED IN THE FY'14 MAINTENANCE OF EFFORT (MOE)  
TEST FOR Oak Ridge SCHOOLS**

- On August 1st each year, a number of State Reports are due to the State of TN from school systems.
- Among these are the “Annual Financial Report” for the previous year and the “Budget Detail Report” for the current school year.
- The State performs a Maintenance of Effort test, comparing budgeted local revenues from one budget year to the next. In order to pass the test, the school system must have budgeted for the current year, equal to or greater than, the local revenues budgeted for the previous year.
- If a system fails this first tier of the test AND has experienced a drop in average daily membership (ADM), a second tier of the test is available and administered to determine if the local revenue per student is equal to or greater than the previous year.
- Oak Ridge Schools has been notified by the State of TN that they have failed both parts of the MOE Test for local revenue. Local revenue considered in the test includes county property, sales and mineral taxes, local interest on investments and lease/rental income, Public Law 874, and City General Fund Transfers. The second tier shortfall for Oak Ridge Schools is \$393,918.
- Upon review of FY13 actual receipts in these categories, the School Board is recommending a budget amendment to increase property and sales tax budgeted revenues for FY14 from the counties of Anderson and Roane. We also are recommending decreasing the mineral tax line item from Anderson County. All other line items would remain as budgeted originally. This will still leave a shortfall of \$250,000. The schools do not have the ability to fund the \$250,000. Use of fund balance revenue is not an option. The only remaining revenue stream included in the MOE formula is the City General Fund transfer. The schools are compelled to turn to the City of Oak Ridge fund this shortfall as the school system, pursuant to law, has no taxing authority.
- The State will withhold BEP (Basic Education Plan) funding on a monthly basis beginning October 1st, until the situation is resolved. For Oak Ridge that means a loss of \$1,869,900 per month. Unobligated Fund Balance reserves do not qualify as local revenue to satisfy the MOE test. Even if this were possible and the fund balance were depleted, it would leave the school district with major cash flow issues for future operations.
- The city’s seeming reliance on the language of Tennessee Code Annotated, § 49-3-314(c) is misplaced. Relying on this language, there seems to be some belief by officials of the city that the Commissioner of Education may withhold only a portion of state formula dollars if MOE is not met. However, a review of all of the laws that apply in this situation yields a very different result. According to T.C.A. § 49-3-316, any local fiscal body that has not adopted a budget by July 1 that conforms to the requirements of state law and the rules of the State Board of Education shall maintain operations under a continuing budget until October 1. **Continuing budgets shall not be valid beyond October 1 for the purpose of receiving funds.** While § 49-3-314 allows the Commissioner to withhold funds for specific, identified problems within a local budget, § 49-3-316 controls in a situation where no effective budget exists. It is axiomatic that the Commissioner cannot send state appropriations to fund a local education agency when the fiscal body has failed to adopt a budget that conforms to state law and has waited beyond the statutory mandated deadline to do so. Or, to place a fine point on it, the Commissioner cannot disburse state dollars to fund a budget document that does not exist.
- The Superintendent has been in communication with the City Manager regarding this issue since we received confirmation by the State that the submitted budget did not meet MOE requirements. Officials in the School District have explained to the City Manager the intricacies of the school funding formula, the results of the test, and the penalties for non-compliance.

## **MAINTENANCE OF EFFORT AND THE CONNECTION TO ORHS DEBT AND SALES TAX COLLECTIONS**

- In FY13, the City passed their budget with an allocation of \$14,629,302 to the schools. In their next action that evening, they reduced the allocation to the schools by \$766,470, resulting in an allocation \$13,862,832.
- As a result of taking this action, the city has made the conscious decision to cease funding the debt for the high school from the sales tax revenues generated by the public referendum. In lieu thereof, the city has diverted general fund revenues from the school budget to fund the debt payments.
- The aforementioned action resulted in a school budget that was out of balance. In an attempt to balance the budget, the school board later amended the school budget to (1) reflect the reduction in the City allocation, and (2) reflect “keeping” the sales tax that would have been sent to the City in accordance with the referendum – an amount estimated to be \$482,589. Even then, the school budget was still out of balance by an amount and reflected a shortage in local revenues of \$283,881. (This figure is the equivalent of the sales tax generated in Anderson County, outside of Oak Ridge which is, by law, required to be apportioned with the school district for school operations.)
- In an effort to address the shortfall, the board included an additional \$289,513 in Anderson County sales tax revenue as part of the FY13 amended budget, along with a reduction in property tax revenue of \$5,632. The \$289,513 was received in FY12 and had been booked in FY12 as a potential liability, pending the outcome of school and city discussions regarding sales tax collections and ORHS debt. The school system auditor recommended the reclassification as revenue for FY13, due to a lack of resolution to the sales tax issues with the city.
- The overall total of the school budget for FY13 remained the same, however, the sales and property tax revenue line items were adjusted as mentioned above, along with the city revenue allocation. In FY14, the City allocation remained the same as the amended version of FY13. The actual reduction occurred between FY12 and FY13. The board waited until April to complete balancing amendments to their budget in hopes that the sales tax issues would be resolved. Those amendments reached the state in a report due in August 2013. Hence, the actions of the city council on May 29, 2012, in diverting school general fund revenues to cover the high school debt has served to exacerbate the school revenue problem.

## **MOVING FORWARD TOWARD RESOLUTION OF MOE AND APPROPRIATION OF SALES TAX FOR ORHS DEBT IMMEDIATE MOE ACTIONS REQUIRED:**

- The city’s FY14 Budget must be amended to increase the allocation to the schools by \$250,000 to meet the Maintenance of Effort (MOE) test for FY14. To avoid the consequence of withholding of state funds, Council’s official intent to increase the school’s allocation by \$250,000 for FY14 must be verified in writing by September 20, 2013, so that the school’s budget can be amended with two school board readings and the amended budget sent to the State by September 30, 2013.
- The school system FY14 Budget must be amended to reflect the increase in the City’s allocation to the Schools of \$250,000. Other amendments must be made to the sales, property and mineral tax revenue line items. The overall increase to revenue must total \$393,918.
- The school system’s FY14 Budget Detail Report to the State must be amended by September 30th, 2013, in order to prevent a denial of State BEP payments to the Schools that will begin on October 1, 2013.
- Should the MOE situation not be resolved by September 30th, ORS has been advised by legal counsel of the fundamental problems associated with the use of fund balance to continue operations and, therefore, the only option would be to temporarily close school on October 1st until a resolution is reached.

## **FUTURE ACTIONS REGARDING ORHS DEBT AND SALES TAX COLLECTIONS:**

- The Board of Education proposes that the parties return to and honor the terms of the referendum adopted by the voters of the City of Oak Ridge and that the practice of diverting school general fund revenue to finance this entire debt cease immediately. Additionally, Anderson County sales tax collected within the City of Oak Ridge should be tracked and calculations made to determine the referendum-supported amounts that should be earmarked to ORHS Debt Retirement.
- In a recent article, the city manager is cited as proposing to continue the use of school general fund revenues to fund bond payments on the high school. Besides the fact that the city cannot cite a mere scintilla of legal authority for diverting the funds for this purpose, the city manager's assertions to the contrary notwithstanding, an interesting fact has emerged. When pressed for a complete amortization schedule on the high school debt, the city produced a three line response stating that the debt on the school had been reduced by \$4,706,513.31 of which \$4,006,513.31 had been paid by the Education Foundation. Interestingly, from FY07-FY13 the schools sent the City \$4,101,193.54 and in FY13 and FY14 so far, the City has withheld \$894,215 in sales tax revenues, for a total to date of \$4,995,408.54 to fund this debt. Factually, the city has received a surplus of \$4,995,408.54 in school funds ostensibly to cover debt when said funds, by the city's own provided documents, have not been applied to the debt.
- School officials will continue to obtain monthly information from the Anderson County Trustee who breaks down the sources of revenue collection. This information will be used to calculate the portion of the sales tax from the City of Oak Ridge collections that was earmarked by the referendum for ORHS Debt. (City collections multiplied .181818). Those amounts will be forwarded monthly from the Schools to the City.
- Should the City prefer an outside auditor or a Comptroller's review of the calculations, the Schools will make work papers available for that purpose. Should the auditors identify any necessary adjustments, appropriate reconciliations will be made at year end between the Schools and the City of Oak Ridge.
- The City should make available to the Schools ORHS Project specific debt retirement schedules that clearly indicate the length of the term that school revenues generated under the referendum will be required to satisfy the ORHS debt. Any future debt schedule changes made by the City (refinancing, etc.) should be made available to the Schools. The intent of the referendum was for ORHS Debt, not for any other, or previously outstanding school debt.
- The original ORHS Project Budget was approved at \$60,800,000. The Design Group contributed an additional \$200,000 to the project and a private citizen donated an additional \$200,000 in cash for the orchestra pit construction. This made the total budget for the ORHS Building Project \$61,200,387. The Schools stayed within the spending limits of the budget and in fact, came in under budget by \$973.
- The \$7.5 million in additional debt issued by the City in 2010 was for the purpose of capitalizing interest on the debt during construction. This amount should not have been calculated onto the original ORHS project budget total. In fact, it is clear according to the 2005 GFOA Blue Book, that "no interest should be capitalized in connection with capital assets used in Governmental activities," so this action did not comply with practices outlined in GASB Statement No. 34.

The MOE issue, which is most pressing, will be the easiest to solve in this long and tangled scenario. However, for the benefit of absolute transparency to the taxpayers who fund the school system and, indeed, the entire city budget, the other issues need to be addressed. Proposed political solutions to these problems will only serve to further keep the public in the dark and out of the conversation about the present revenue situation faced by the city and the school system. The school board invites any interested citizen to engage us in an open, frank dialogue regarding the matters herein detailed.



STATE OF TENNESSEE  
DEPARTMENT OF EDUCATION  
6<sup>th</sup> FLOOR, ANDREW JOHNSON TOWER  
710 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243-0375

**BILL HASLAM**  
GOVERNOR

**KEVIN HUFFMAN**  
COMMISSIONER

September 11, 2013

Dr. Bruce Borchers  
Oak Ridge Schools  
304 New York Avenue  
PO Box 6588  
Oak Ridge, TN 37830

Dear Dr. Borchers,

We have reviewed the budget for Oak Ridge Schools for FY2013-2014 and applied the Maintenance of Effort (MOE) test to the budget. We find that the budget fails the MOE test at both level 1 and level 2. Level 1 is a straight budget-to-budget comparison, and since the FY2013-2014 budgeted local revenue is \$671,319 less than FY 2012-2013, the test fails at level 1.

However, since Oak Ridge Schools had a decrease in funded average daily membership (ADM) for FY2013-2014, we apply the level 2 test, which is a per pupil MOE. In FY2012-2013 the per pupil budgeted local amount was \$6,290 (total budgeted local revenue divided by the funded ADMs of 4,460.29). If the FY2013-2014 per pupil amount is equal to or greater than that number, the test would pass at level 2. The per pupil local revenue amount for FY 2013-2014 is \$6,201 (total budgeted local revenue divided by the funded ADMs of 4,415.81).

You will have until October 1 to submit a budget that passes both the 3% fund balance test and the MOE test. The current budget does pass the 3% fund balance test. If that is not in place by October 1, BEP funds will be withheld until a budget is submitted that passes both tests.

Please let us know if we can be of any assistance to you during the budget process, or if you have any questions about the MOE test. I can be reached at [maryanne.durski@tn.gov](mailto:maryanne.durski@tn.gov) or at 615-532-9510.

Sincerely,

A handwritten signature in cursive script that reads "Maryanne M. Durski".

Maryanne M. Durski  
Executive Director, Office of Local Finance

NUMBER \_\_\_\_\_

**RESOLUTION**

A RESOLUTION AUTHORIZING A ONE-TIME TRANSFER NOT TO EXCEED \$250,000.00 FROM THE CITY OF OAK RIDGE GENERAL FUND TO THE OAK RIDGE SCHOOLS.

WHEREAS, the Oak Ridge Schools have requested supplemental funds from the City of Oak Ridge to account for a current shortfall in order to satisfy Maintenance of Effort tests administered by the State of Tennessee Department of Education; and

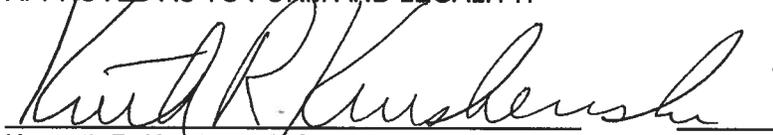
WHEREAS, the City is agreeable to a one-time transfer of supplemental funds from the General Fund to the Oak Ridge Schools in an amount not to exceed \$250,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

That the City is hereby authorized to make a one-time transfer of supplemental funds not to exceed \$250,000.00 from the City of Oak Ridge General Fund to the Oak Ridge Schools.

This the 17th day of September 2013.

APPROVED AS TO FORM AND LEGALITY:



\_\_\_\_\_  
Kenneth R. Krushenski, City Attorney

\_\_\_\_\_  
Thomas L. Beehan, Mayor

\_\_\_\_\_  
Diana R. Stanley, City Clerk