

GAINESVILLE CITY COUNCIL FORGIVES LATE FILING PENALTIES AND INTEREST AMOUNTING TO \$28,036.96 TO Z F INDUSTRIES INC !!!

After finalizing our review of the Z F tax waiver issue applicable to Hall County tax, HCCFEG then requested information on March 1,2010 concerning what action the City of Gainesville had taken on the Z F tax waiver issue since this company was located in the City of Gainesville. After review of the information obtained by open records law it was discovered the City granted Z F Industries Inc forgiveness of interest and late filing penalty associated with the Z F failure to file a personal property tax return for 2009 in an amount of **\$28,036.96**. You may review this info at www.hccfeg.org.

The information we obtained from the City of Gainesville that was utilized in justifying this action taken by the City erroneously made the assumption that the Z F 2008 personal property tax return covered all of the property which would have been included in the 2009 personal property tax return. If the taxpayer had not acquired additional property in 2008 for tax year 2009 this assumption would have been correct. However, in this case various equipment was acquired in 2008 in addition to the total inventory(raw material, goods in process, finished goods, supplies) on hand 01-01-2009 being acquired in 2008 according to our information.

After careful review of the file, it appears the City interpreted OCGA 48-5-20 incorrectly in assuming the late filing penalty was on property previously assessed that Z F owned on the previous assessment date of January 1,2008. This was incorrect in that the assessed 10% penalty was only on inventory consisting of raw material, goods in process, finished products acquired during 2008 as well as machinery and equipment acquired during 2008 according to Hall County tax assessment records.

On 11-06-2009 an article posted online by The Times stated city employees will have to start taking one furlough day per month, city council members will have their pay reduced to provide a savings of \$3,800. The article stated city employees had went two years without a raise and each department will have to cut 5% from their operating costs. On 12-30-2009 an article posted online by The Times was headlined GAINESVILLE OFFICIALS BRACE FOR MORE BELT TIGHTENING IN 2010. This article further stated the City sales tax revenue was more than \$1 million less than 2008 as well as the City had put a halt on capital spending. Is this not a dismal picture of City of Gainesville revenue? Does this not paint a picture of city officials doing every thing possible to cut spending? Sorry folks, but this appears to only be talk as evidenced by this very generous forgiveness gift of \$28,036.96!

IF CITY OFFICIALS WERE REALLY TIGHTENING THE BELT THEN WHY DID THE CITY FORGIVE THIS CORPORATE TAXPAYER \$28,036.96 IN TAX REVENUE WITHOUT LEGAL JUSTIFICATION? HAS THE CITY OFFERED THIS TAX PENALTY FORGIVENESS TO THE HUNDREDS OF OTHER CITY BUSINESSES THAT HAD THIS LATE FILING PENALTY ASSESSED?

IT MAY BE TIME THAT GAINESVILLE TAXPAYERS BEGIN ASKING QUESTIONS AND MONITORING THE ACTIONS OF YOUR OFFICIALS MORE CLOSELY! IT APPEARS YOUR COUNCIL MAY BE ADOPTING THE ETHICS CURRENTLY PRACTICED BY MR. TOM AND THE HALL COUNTY COMMISSION!

Paul S. Barnes, President
Hall County Citizens For Efficient Government
P O Box 5322
Gainesville, Ga 30504
www.hccfeg.org

***Z F INDUSTRIES INC SUPPORT FILE FOR
IMPROPER PENALTY AND INTEREST
WRITE OFF OF \$28,036.96 BY CITY OF
GAINESVILLE.***

***THIS INFORMATION OBTAINED BY
HCCFEG BY FILING AN OPEN RECORDS
REQUEST WITH CITY OF GAINESVILLE***

JAMES E. PALMOUR III
ATTORNEY AT LAW
1294 WEST RIDGE ROAD
SUITE B
GAINESVILLE, GEORGIA 30501
(770) 535-0222
(770) 535-0444 Fax



December 30, 2009

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
KIP PADGETT, CITY MANAGER
ANGELA SHEPPARD, ASSISTANT CITY MANAGER
MELODY MARLOWE, FINANCE DIRECTOR**

**FROM: JAMES E. PALMOUR III *JEP*
CITY ATTORNEY**

**RE: ZF INDUSTRIES - FREEPORT EXEMPTION
AND AD VALOREM TAX**

You have asked whether or not the City can allow ZF Industries' current ad valorem tax bill to reflect a reduction in the amount it would have received had it timely filed for a Freeport exemption. Additionally, you have asked whether the City can forgive any interest or penalties associated with ZF Industries' failure to file an ad valorem return for 2009.

My research reveals the statutes and case law specifically forbid a taxing authority from accepting a late application for a Freeport exemption. The Freeport exemption is found in O.C.G.A. §48-5-48.1 and §48-5-48.2. O.C.G.A. §48-5-48.1(c)(2) provides in pertinent part:

(2) The failure to file properly the application and schedule (for a Freeport exemption) shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(B) The failure to file timely such application and schedule shall constitute a waiver of the exemption until the first day of the month following the month such application and schedule are filed properly with the county tax assessor; provided, however, that unless the application and schedule are filed on or before June 1 of such year, the exemption shall be waived for that entire year.

Further, the Court of Appeals of Georgia has held that a taxing authority does not have the power to accept a late-filed Freeport exemption in direct contradiction to O.C.G.A. §48-5-48.1(c)(2)(B). Committee for Better Government v. Black, 216 Ga.App. 173 (1995).

It is my understanding that ZF Industries will not continue to pursue its appeal of its failure to file for the "Freeport Exemption".

As to whether or not the City may forgive any interest or penalties associated with ZF Industries' failure to file a return of 2009, my research reveals that there is no necessity for the City waiving any interest or penalties as O.C.G.A. §48-5-20 provides:

(a) (1) Any taxpayer of any county who returned or paid taxes in the county for the preceding tax year and who fails to return his property for taxation for the current tax year as required by this chapter shall be deemed to have returned for taxation the same property as was returned or deemed to have been returned in the preceding tax year. Each such taxpayer shall also be deemed to have claimed the same homestead exemption and personal property exemption as allowed in the preceding year.

(2) Any taxpayer of any county who acquired real property by transfer in the preceding tax year for which a properly completed real estate transfer tax form has been filed and the real estate transfer tax required under Article 1 of Chapter 6 of this title has been paid, and where no subdivision of the real property has occurred at the time of transfer, shall be deemed to have returned for taxation the same real property as was acquired by transfer at the same valuation as the real property was finally determined to be subject to taxation in the preceding year. Nothing in this paragraph shall be construed to relieve the taxpayer of the responsibility to file a new timely claim for a homestead exemption and personal property exemption or to file a timely return where improvements have been made to the real property since it was last returned for taxation.

(b) Any penalty prescribed by this title or by any other law for the failure of a taxpayer to return his property for taxation within the time provided by law shall apply only to the property:

(1) Which the taxpayer did not return prior to the expiration of the time for making returns, and

(2) Which the taxpayer has acquired since his last tax return or which represents improvements on existing property since his last return.

THIS
JUSTIFIES
1014
PENALTY
ASSESSED!!!
HCCFEG

The above statutes apply to a city taxpayer as well as to a county taxpayer.

As stated above, under O.C.G.A. §48-5-20(a)(i), a taxpayer who has returned or paid taxes for the preceding year and "who fails to return his property for taxation for the current tax year as required, shall be deemed to have returned for taxation the same property as was returned or deemed to have been returned in the preceding tax year at the same valuation as the property was finally determined to have been subject to taxation the preceding year." Pursuant to this subsection,

ZF Industries is deemed to have automatically returned its property. It is my understanding that the 2008 return covers all of the property which would have been included in the 2009 return. Since, under O.C.G.A. §48-5-20, ZF Industries is deemed to have automatically filed this same property for return in 2009, it is not subject to a penalty or interest. Several Georgia cases, including Cobb County Board of Tax Assessors v. Morrison, 249 Ga. App. 691 (2001); Fulton County Board of Tax Assessors v. Butner, 258 Ga. App. 68 (2002); and Simmons v. Board of Tax Assessors of Effingham County, 268 Ga. App. 411 (2004) also support this proposition.

Since the 2009 return is deemed to have been automatically filed, no penalty and interest can be charged. Therefore, there is no necessity to waive the interest and penalty.

Please advise if you have any questions or I may be of further assistance.

Date Adjusted	Acct #	NAME	Amount of Adjustment	Reason for Adjustment	Code and	Operator	Approval	Tax Year
1/21/2010	8670	SKELTON ROAD GAINESVILLE LLC	1036.02	NSF	NSF	DS		2009
	1165	Z F INDUSTRIES INC	-3256.08					
		TOTALS	-2220.06					

Date Adjusted	Acct #	NAME	Amount of Adjustment	Reason for Adjustment	Code and	Operator	Approval	Tax Year
1/12/2010	10501	Z F Industries	-24780.88	Adj penalty & interest	Correct	DS		2009
	9314	KUBOTA	-130,480.63	ADD BACK RTN CK	Correct	DS		2009
		Totals	-155,261.51					

Dee Dee Stephens

From: Melody Marlowe
Sent: Wednesday, January 06, 2010 3:55 PM
To: Dee Dee Stephens
Cc: Beverly Williams
Subject: FW: ZF

Dee Dee,

When you get back next week, please take a look at what adjustment is needed for the ZF tax account. Based on Mr. Palmour's opinion, ZF should not have to pay a penalty and interest for late filing, and the City will not charge these amounts. His position is that the return was not late since the rules say that when there is a non-file in a year, the return is assumed unchanged from the prior year, so they technically filed. If filed by default to prior year information, then you can't charge a penalty or interest for non-filing.

Please make sure you keep copies of all this information for our records, including Mr. Palmour's opinion that is attached to the end of this email.

*Melody Marlowe
Administrative Services Director
City of Gainesville, Georgia
770-535-6898*

From: Kip Padgett
Sent: Wednesday, January 06, 2010 1:56 PM
To: Tim Evans; Emily Bagwell
Cc: Melody Marlowe; James Palmour
Subject: ZF

Emily and Tim,

Please find attached Bubba's opinion of the fees and interest in regards to ZF's Freeport issue. The City is satisfied with Bubba's opinion and will not charge the penalties and interest in regards to this issue. Thanks.

From: cmoscanner@gainesville.org [mailto:cmoscanner@gainesville.org]
Sent: Tuesday, January 05, 2010 1:51 PM
To: Kip Padgett
Subject: Attached Image

YEAR NOD 2009

HALL COUNTY PERSONAL PROPERTY NOD

MAP 1503500020

8000130

NAME	Z F INDUSTRIES INC 1261 PALMOUR DR SW GAINESVILLE GA 30501
ADDRESS	NOTE: NOD UNDER APPEAL
CITY	

TD	104
CODE	045
ACCOUNT NUMBER	0881610-01
100% PENALTY	313,990

(RA-CA-IA) AIRCRAFT	CL	(RB-CB-IB) BOATS	CL	(CI-II) INVENTORY	CL	(CF-IF) FFME	CL
						7,744,579	IF

REMARKS
TO T/C: 10-05-2009
Unreported Mach&Equip

Hall County Board of Tax Assessors

100% VALU	40% ASSESSMENT
7,744,579	3,097,832

Becky J. Lypinski
[Signature]

As Of: 01-01-2009

City of Gainesville
 Tax Office
 P O Box 2496
 Gainesville GA 30503-2496

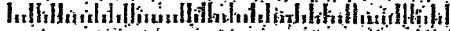


2009 Ad Valorem Tax
 Combined Statement

Important Tax Information Enclosed

Original 2009
 Tax Bill

10Z 689 00 509 509



Z F INDUSTRIES INC
 1261 PALMOUR DR SW
 GAINESVILLE GA 30501-6875

City of Gainesville Tax Office Information

Office Hours: Monday - Friday 8am - 5pm
 Location: 300 Hepry Ward Way, Room 103
 Phone: (770) 535-5639

Property Information

Property ID#: 900000881610
 Owner: Z F INDUSTRIES INC
 Property Description: GAINESVILLE GA
 Type: Personal
 Exemption:
 100% Assessed Value: 34,260,486

IF YOU OWN AND OCCUPY YOUR HOME AND ARE AT LEAST 62 YEARS OLD OR IF YOU ARE A TOTALLY DISABLED VETERAN, YOU MAY QUALIFY FOR ADDITIONAL EXEMPTIONS. PLEASE CALL (770) 535-5639 FOR MORE INFORMATION.

City Tax:

Item	Assessed Value	Exemption	Millage Rate	Amount
General Gov't (Before Credit)	34,260,486	0	2.78	95,244.15
Sales Tax Credit	34,260,486	0	(1.35)	(46,251.66)
General Government (Net)				48,992.49
Debt Service	34,260,486	0	0.48	16,445.03
Parks and Recreation	34,260,486	0	0.75	25,695.36

Total City Tax: 91,132.88

School Tax:

Item	Assessed Value	Exemption	Millage Rate	Amount
School Operations	34,260,486	0	7.41	253,870.20
Bond Debt Service	34,260,486	0	0.30	10,278.15

Total School Tax: 264,148.35

Millage Rates Percentage	City	School	Total
	2.86	7.71	10.37
	25.7%	74.3%	100.0%

INTEREST OF 1% PER MONTH IS CHARGED ON PAST DUE TAXES. NINETY DAYS PAST THE DUE DATE, A 10% PENALTY WILL BE ADDED TO THE ACCOUNT AND A FIFTEEN (15%) PENALTY WILL BE PLACED ON THE PROPERTY. PENALTIES SET BY STATE LAW CAN NOT BE RELIEVED. IF YOU HAVE AN ESCROW ACCOUNT, IT IS YOUR RESPONSIBILITY TO FORWARD THE TAX BILL TO YOUR MORTGAGE COMPANY.

Total Tax

Total Tax	355,281.23
Non-file Penalty	24,780.88
Interest	0.00
Non-Payment Penalty	0.00
FIFA	0.00
Miscellaneous	0.00
Less Prior Payment	0.00

Due Date: 12/28/09 Total Due: 380,062.11

To ensure proper credit to your account, return this portion with payment.

2009 Tax Year

Please make checks payable to City of Gainesville and mail in return envelope to:

Owner: Z F INDUSTRIES INC
 Property ID#: 900000881610
 Property Description: GAINESVILLE GA
 Property Type: Personal
 Account Number: 00010501

Due Date: 12/28/09

Total Due: 380,062.11

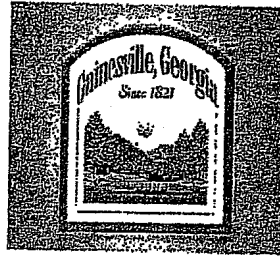
CITY OF GAINESVILLE
 ATTN: TAX OFFICE
 P O BOX 2496
 GAINESVILLE GA 30503



Please do not fold, staple or write in the space below.

20090003050100000038006211122809

OF GAINESVILLE
 X OFFICE
 P O BOX 2496
 GAINESVILLE, GA 30503
 (770) 535-5639



2009 NOD

*Original copy of
NOD Bill -*

Z F INDUSTRIES INC
 1261 PALMOUR DRIVE SW
 GAINESVILLE, GA 30501

PARCEL# 90000088161001

ACCT# 1165

DUE : 2/10/10

	Assessed Value	Exemption	Mill Rate	Amount
City Tax:				
General Government	7,744,579	0	1.43	11,074.75
Debt Service	7,744,579	0	0.48	3,717.40
Parks & Recreation	7,744,579	0	0.75	5,808.43
			2.66	\$20,600.58
School Tax:				
School Operations	7,744,579	0	7.41	57,387.33
School Debt Service	7,744,579	0	0.30	2,323.37
			7.71	\$59,710.70
TOTAL TAX				\$80,311.28
NON FILE PENALTY				\$3,256.08
LESS PAYMENT				0
AMOUNT DUE				\$83,567.36

DIOR Tax Inquiry Next Screen

Stmnt Mult Yrs	Statement - 1 Yr	Comments	Charge Detail	Payment History	Mortgage Code	Owner Search
Organization #	1					
PIN#	900000881610			Account #	10501	
Tax Year	2009	Bill Period	2			

Tran Code	Cy	Charge Description	Type	Levied	Payment/Adjustment	Unpaid
DEBTSV	1	DEBT SERVICE	TAX	16,445.03+	16,445.03-	
GENGOV	1	GENERAL GOVERNMENT	TAX	48,992.49+	48,992.49-	
P&R	1	PARKS & RECREATION	TAX	25,695.36+	25,695.36-	
SCHDEBT	1	SCHOOL DEBT	TAX	10,278.15+	10,278.15-	
SCHOM	1	SCHOOL	TAX	253,870.20+	253,870.20-	
Totals				355,281.23+	355,281.23-	

*Adder Adj
made to 2009
This Bill*

DOR

Tax Inquiry

Next Screen

Stmnt Mult Yrs. Statement - 1 Yr Comments Charge Detail Payment History Mortgage Code Owner Search

Organization: 1 Int/Disc Date: 30110 10/20/09 SPOKE WITH
 PIN: 900000881610 Account: 10501
 Next Year: 2003 Prop. Type: P Print:
 Site Address: GAINESVILLE GA

Year	Levied Tax	Unpaid Tax	Unpaid Fee	ID to DC	Tot Pd/Adj	Balance
2009	355281.23+				355281.23-	
2008	143782.26+				143782.26-	
2007	115283.51+				115283.51-	
2006	130482.43+				130482.43-	
2005	153290.23+				153290.23-	
2004	197962.25+				197962.25-	
2003	276892.27+				276892.27-	
Balance All Yrs						0+

After Adjustments

Owner Name: Z F INDUSTRIES INC
 1261 PALMOUR DR SW
 GAINESVILLE GA 30501
 Auxiliary: COMIES
 ADDT
 Current Tax: 34260486+
 Assoc: 34260486+
 Exmt: AC/SF
 Txbl: 34260486+
 Class: II
 II: S

OK

DIGR Tax Inquiry Next Screen

Stmnt Mult Yrs	Statement - 1.Yr	Comments	Charge Detail	Payment History	Mortgage Code	Owner Search
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Organization # 1

PIN# 90000088161001 Account # 1165

Tax Year 2009 Bill Period 2

Tran Code	Cy	Charge Description	Type	Levied	Payment/Adjustment	Unpaid
DEBTSV	1	DEBT SERVICE	TAX	3,717.40+	3,717.40-	
GENGOV	1	GENERAL GOVERNMENT	TAX	11,074.75+	11,074.75-	
P&R	1	PARKS & RECREATION	TAX	5,808.43+	5,808.43-	
SCHDEB	1	SCHOOL DEBT	TAX	2,323.37+	2,323.37-	
SCHOM	1	SCHOOL	TAX	57,387.33+	57,387.33-	
Totals				80,311.28+	80,311.28-	

OK

*After Adj to
NOD Acct*

D **O** **R**

Tax Inquiry

Next

Screen

Stmnt Mult Yrs Statement - 1 Yr Comments Charge Detail Payment History Mortgage Code Owner Search

Organization 1 Int/Disc Date 30110
 PIN 90000088161001 Account 1165
 Next 0 Prop P Print
 Site Address GAINESVILLE, GA Type

Year	Levied Tax	Unpaid Tax	Unpaid Fee	ID#	Tot. Pd/Adj	Balance
2009	80311.28+				80311.28+	
2000						
1999						
1998						
1997						
1996						
0						
Balance All Yrs						0+

After Adjustments

Owner Name: Z.F. INDUSTRIES INC
 1261 PALMOUR DR SW
 GAINESVILLE GA 30501
 Auxiliary: AULites
 Current Tax: 7744579+
 Class: AC/SE
 Exmt: TX01

OK

⑨

Print This Article

afielding@gainesvilletimes.com

Gainesville officials brace for more belt-tightening in 2010

12/30/09

Gainesville's director of administrative services and keeper of the city's wallet, Melody Marlowe, spent 2009 watching city revenues closely, and making adjustments when needed.

Now, as she begins work on the Fiscal Year 2011 budget, which will guide the city's spending from July 1, 2010, to June 30, 2011, Marlowe might be looking for another notch to tighten the city's belt.

"Other than maintaining where we are, which is pretty flat right now with expenses and revenue, what we've got to contend with next fiscal year is going to be a decline in property values," Marlowe said. "And we're expecting that to affect our property tax revenue."

To city officials, 2010 will bring yet another blow by the economy. Property values in Gainesville and the rest of Hall County will be reassessed based on their Jan. 1, 2010, values, which are presumably lower after a year of skyrocketing foreclosure rates.

"So these properties that have been in foreclosure and sold for much lower values than is on the tax digest, may be adjusted by the tax assessor to a lower amount, which means less property tax revenue," Marlowe said.

Property tax revenues grew, albeit only slightly, in Gainesville in Fiscal Year 2009, which ended June 30, and it was almost the only tax that did.

People spent less, and city sales tax revenues plummeted. A market for new construction virtually disappeared, and the city's revenues from increased property values and building permits did, too.

Businesses closed, and the city collected less occupational tax. The stock market crashed, and the tax the city collects from investments and stock sales, intangible tax, did not even amount to \$200,000 between July 2008 and June 30, 2009.

Franchise fees, or taxes that utilities that operate in the city limits pay based on their revenues from in-city customers, also declined in 2009.

"Gas prices have gone down in '09 and that has a big part to do with it," Marlowe said.

At the end of June, the city's reserves had dwindled to 2003 levels.

A recently released financial report blames much of the city's revenue losses in Fiscal Year 2009 on the local decline in consumer spending; revenues from sales tax were more than \$1 million less than in 2008.

"We planned on seeing it (sales tax revenue) picking up by now — that's why we had to make these further budget reductions," Marlowe said.

In October, when the city's sales tax receipts didn't seem to be improving, city officials implemented furloughs, requiring all employees to take one unpaid day off each month until the end of June 2010.

The move was the last effort the city made in 2009 to cut spending to match revenue losses. Before that, the city tried nearly everything, from cutting pay raises to a hiring freeze and a halt on capital spending, to keep from allowing the economic conditions to impede on employees' current take-home pay.

But the once a month furloughs, from November to June, will save the city about \$400,000, Marlowe said, and hopefully keep the city in good financial standing, said City Manager Kip Padgett.

Padgett, who has been at the city's helm for a little more than a year, said more furloughs may affect the city's level of service, and that he hopes the cuts the city made in 2009 will carry the city through 2010 and through the rest of the recession.

And while that remains to be seen, Marlowe is optimistic.

"The city finances are still in very good shape; just because of the economy, we're being very cautious," Marlowe said.

<http://www.gainesvilletimes.com/news/article/33044>

Gainesville to furlough city employees, cut expenses

City Council members will have their pay deducted

By Ashley Fielding
afielding@gainesvilletimes.com
POSTED Nov. 6, 2009 12:23 a.m.

Employees of Gainesville will now have to take one unpaid day off each month to keep the city's expenses in line with declining sales tax revenues.

City Manager Kip Padgett said the furloughs will be in place until June 30, and will immediately affect all full-time employees except police officers, firefighters and water and wastewater treatment plant operators, whose jobs require 24-hour staffing, seven days a week.

City Council members also will have their pay deducted, Padgett said.

City employees have gone without raises for nearly two years, but the city has held off longer than other local governments on mandatory furloughs. Employees of Hall County government have been taking furlough days for a year.

But when the city received sales tax receipts last Friday, city officials began preparing for another round of cuts, Padgett said.

City officials spent Monday looking at city revenue streams and Padgett discussed the issue with the City Council in a closed-door meeting Tuesday. He announced the new cost-saving measure to city department heads Wednesday.

The city informed the public in a news release Thursday.

"It's always been a possibility out there," Padgett said. "... We have been implementing other cutting measures, but you get to a point where you've cut all you could then you really have to look at furloughs as the next option."

City officials have chosen two Wednesdays in November and December to close city offices, Nov. 25 and Dec. 23.

But beginning in January, all city employees will eliminate eight hours from their work schedules each month, and there will not be a day when city offices are closed, Padgett said.

Keeping city offices open regularly instead of having all employees off on the same day will reduce the furlough's impact on city residents, Padgett said.

"One reason that we want to keep our offices open after January just ... so our doors will be open to the public if they need anything," Padgett said.

The mandatory furloughs will save the city approximately \$450,000, Padgett said. The pay decreases for the City Council will save the city about \$3,800, Gainesville's Administrative Services Director Melody Marlowe said.

Police, fire and Public Utilities employees will also have to cut eight hours from their schedules each month beginning in January.

"We need to give them these two months so they can get their schedules together, because they work such a different schedule than just 8 to 5 Monday through Friday," Padgett said. "They need some time to kind of get their arms around it and get their schedules set up accordingly, so that we can maintain service."

Each department will also be required to make additional cuts, eliminating 5 percent of their operating budget and reducing part-time salaries, a news release from the city said.

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