


TO: Tyisha Walker, President
Board of Alders,
FROM: Toni N. Harp, Mayor 
DATE: June 22, 2017
RE: FY 17/18 Budget

Dear President Walker and Members of the Board of Alders,

After receiving the FY2018 City Budget approved June 7, 2017 by the Board of Alders (BOA), I was concerned with several aspects of the BOA-approved document as drafted and I believe, in my judgment and on the advice of counsel, that their passage would violate existing City Charter, state statute, ordinance, and contract provisions, and would expose the City to civil action and liability.

Many of these sections were not public or shared with City Finance staff or legal counsel before the final budget meeting when they were approved. Had they been, staff and counsel would have shared their concerns that, as drafted, these portions were inappropriate or in conflict with Charter and statute.

In many cases, these sections propose for the legislature to directly administer functions of the executive branch related to staffing and operational decisions that the Charter properly leaves to duly appointed professionals. Particularly in the areas of public safety, opening these decisions to the political process is unwise and outside legislative powers.

Therefore, in accordance with the New Haven City Charter, Article III, Sec.2. B. (2), I have acted to disapprove and veto portions of the FY 2017/2018 budget approved by the Board of Alders and have communicated so in writing to the City Clerk within the time set by Charter.

Here, I submit to the Board of Alders my reasons for such disapproval.

Policy Amendments (please find attached a copy of the document)

1. Re: Police and Fire Overtime

Using FY16-17 trends, it is estimated that the 'sequestered' threshold for Police overtime would be met by mid-August which, considering the legislative process, would

require a submission at the first meeting of the fiscal year. This is not only inoperable, considering potential suspension of funding, but by this amendment the City's legislative authority is acting ultra vires, attempting to administer the fire and police departments, whose operations are the function of the City's executive and administrative agents. As crucial matters of public safety, administration of these departments should remain with public safety professionals, as dictated by Charter.

2. Re: Police Executive Powers

This Policy Amendment is vetoed (disapproved) because it is an attempt by the BOA to directly administer the Police Department, in violation of the rightful powers of judgment given to the Police Chief and the executive branch, as dictated by Charter, and brings an unwelcome political dimension to key public safety staffing decisions.

3. Re: Salaries

This Policy Amendment is vetoed (disapproved) because having previously approved the ranges for salaries of Executive Management and Confidential Employees, the BOA may not require proposed salary increases within an appropriately approved range be submitted for review.

4. Re: Education Funding

This Policy Amendment is vetoed (disapproved) because the BOA has no authority to sequester Board of Education funding. The budget, as approved by the Board of Alders and transmitted by the City Clerk to the Mayor, includes the amount intended to be 'sequestered' within the line item of the Board of Education's allocation. Once allocated to the Board of Education, the BOA cannot control or withhold funding, as established by state statute and case law.

5. Re: Corporation Counsel Legal Contracts

This Policy Amendment is vetoed (disapproved) because the BOA has no authority to condition the expenditure of funds allotted by the budget to the Office of Corporation Counsel on the production of reports not referred in the Charter to the President of the BOA. Furthermore, the details of pending inquiries and investigations, particularly into personnel matters, are rightly confidential. All work of this Department, headed by an appointee of the Mayor and staffed by lawyers whose appointments per the City Charter are annually approved by the Mayor, would halt if such a proposal was allowed. Pending legal cases would go un-lawyered resulting in losses to the City that would otherwise be avoided or mitigated. The City's potential liability exposure for not providing legal defense could amount to millions of dollars.

Recognizing the concerns of the President of the Board of Alders that motivated this request, I extend an invitation to the President to meet with my Corporation Counsel and myself to discuss these issues, with respect for maintaining the confidentiality of personnel information.

6. Contract Approval Powers

This Policy Amendment is vetoed (disapproved) because it conflicts with and contradicts existing legislation. In addition, such a policy would hamstring the operations of the Corporation Counsel.

The insertion of the political process into the award of individual legal contracts would be inappropriate, contradict the professional discretion given the Corporation Counsel by the Charter, and be against the interest held by the City and taxpayers in city government receiving unbiased expert legal advice.

7. Corporation Counsel Office Funding

This Policy Amendment is vetoed (disapproved) because the BOA has no authority to condition the expenditure of funds allotted by the budget to the Corporation Counsel office on the production of reports not referenced in the Charter to the BOA. All work of this Department, headed by appointee of the Mayor and staffed by lawyers whose appointments, per the City Charter, are annually approved by the Mayor, would halt if such a proposal was allowed. Pending legal cases would go undefended or not prosecuted resulting in losses to the City otherwise avoidable or mitigated. Potential liability exposure for not providing legal defense for the City could amount to millions of dollars. Furthermore, the details of pending inquiries and investigations, particularly into personnel matters, are rightly confidential and their disclosure before resolution or disciplinary action could result in legal action against the City, per both contract and state law.

Additionally, while #5 and #6 relate to legal contract costs, this amendment also seeks to prevent personnel expenses, including salaries, from being paid for work performed. This would either be a clear violation of labor law or the terms of the union contract, which was approved by the Board of Alders.

8. Re: Police Salaries

This Policy Amendment is vetoed (disapproved) because it violates the powers of the Police Chief and executive branch as set by City Charter. Additionally, this policy would violate the terms of the union contract approved by the BOA and delay the promotion of key public safety professionals, whose absence currently costs the city in overtime for officers – Police Lieutenant overtime cost the city over \$565,878 in FY16-17 year to date, largely due to the shortage of personnel at the required rank.

Furthermore, the proposed insertion of the BOA into the civil service hiring process politicizes the staffing decisions of key public safety positions that should be left to the

judgment of public safety personnel. Additionally, outside of the civil service process and professional judgment of the Police Chief, this insertion could open both the City and members of the Board to legal action related to staffing decisions.

9. Re: Salary Approval Timelines

This Policy Amendment is vetoed (disapproved) because having approved the ranges for salaries of Executive Management and Confidential Employees, the BOA may not require salary increases within the appropriate approved range be submitted to them.

10. Re: Funding Process for the CT Open

This Policy Amendment is vetoed (disapproved) because the requirements of the budget process are dictated by Charter and Ordinance. Functionally, this amendment would not change any requirement for the Mayor's FY18-19 Proposed Budget or the final BOA Approved Budget - in each case funding for the next fiscal years must return to the BOA for approval. However, singling out an individual line item or funded agency for future treatment is a policy concern for the budget process.

In addition to these, I have a broader concern for both the practice and Charter authority of policy amendments, especially those not vetted by public hearings or legal opinions and which are not written in statutory language. The Charter specifically sets forth what the Board of Alders shall do in connection with approving or disapproving the Mayor's budget. The conditional approval of funding – whether by policy amendment or sequestration – is not a power authorized by Charter, especially when that funding is jointly governed by union contract or state law. By proposing to do so, the BOA is acting ultra vires, attempting to directly administer operations that the Charter dictates as functions of the City's executive and administrative agents.

Working in partnership, the BOA and this administration have had success steering New Haven on a path of increasing safety, educational outcomes, fiscal stewardship, and prosperity. In this case, I have found cause to disagree with some decisions of the BOA and am legally bound to express that disagreement. But I am no less proud of the collaboration and spirit of cooperation that can be found throughout the rest of the budget for this coming fiscal year. We have made strong commitments to improving the lives of our constituents and investments in the financial health of the city. Together, we can keep New Haven moving forward.