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**TO:** Hon. Council President Cliff Ponte and Members of the City Council (*By Electronic Mail Only*)

**CC:** City Council Clerk

**FROM:** Lauren F. Goldberg, Esq.

**RE:** Legal Effect of Vote on Operating Budget

**DATE:** June 28, 2021

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**Question Presented**

You have requested an opinion as to the legal effect of the City Council's vote to reject the FY22 municipal operating budget, as recommended by the Mayor. Specifically, you have inquired whether the City Council has authority to reject the budget as proposed in one vote, as it did on June 22, 2021, or must, instead, vote to reject individual line items, and, therefore, that as the Mayor argues, the entire budget was constructively approved when the City Council did not vote to directly address specific particular line items within the requisite 45 days.

**Short Answer**

In my opinion, the City Council has authority to reject the entire city budget, except those expenditures required by law. City Charter, §6-4; G.L. c. 44, §32. In my view, then, the City Council acted on the budget within 45 days, and the Mayor must present a revised recommended budget to the City Council by June 30, 2021, or else invoke the continuing 1/12th budget for the month of July until such time as the full operating budget is approved by the City Council.

**Detailed Analysis**

**I. Applicable Provisions of Law for the City Budget**

General Laws c. 44, §32 governs the procedure for approval, rejection, or alteration of a city budget. It provides, in pertinent part, that "the mayor shall submit to the city council the annual budget which shall be a statement of the amounts recommended by him for proposed expenditures of the city for the next fiscal year." *Id.* "The city council may by majority vote make appropriations for the purposes recommended and may reduce or reject any amount recommended in the annual budget." *Id.* (emphasis added). "If the council fails to take action with respect to any amount recommended in the annual budget, either by approving, reducing or rejecting the same, within forty-five days after the receipt of the budget, such amount shall without any action by the council become a part of the appropriations for the year, and be available for the purposes specified." *Id.*

The City's Charter similarly provides that "[t]he city council shall adopt the proposed operating budget, which may have amendments, within 45 days following the date the proposed budget is filed with the city clerk." Section 6-4 of the City Charter. "In amending the proposed operating budget, the city council may delete or decrease amounts except expenditures required by law." *Id.* (emphasis added). "If the city council fails to take action on an item in the proposed operating budget within 45 days after its receipt, that amount shall, without any action by the city council, become a part of the appropriations for the year and be available for the purposes specified." *Id.*

**II. Current Factual Circumstances**

In this case, I understand that the proposed FY2022 budget was submitted on May 11, 2021; the budget did not contain any indicators as to what was and what was not "required by law." The City Council voted within 45 days of the submission of the budget to reject the entire proposed budget. I have been asked to evaluate whether the Council had authority to do so in a single vote, as it has been done in the past and in the manner in which it often approves all of the line items of the budget, or whether such action would constitute a "failure" to take action within the requisite 45 days, resulting in a constructively-approved budget.

In my opinion, in accordance with state law, the City's entire operating budget may be rejected by the City Council, and therefore, the City Council has fulfilled its duty to "act" on the budget within 45 days of its being presented. Indeed, this conclusion comports with the Supreme Judicial Court's holding in Superintendent of Schools of Leominster v. Mayor of Leominster, 386 Mass. 114 (1982), in which the Court evaluated whether a mayor could refuse to include a school committee's budget proposal in his recommendations to the city council. In concluding that the mayor could present an independent, reduced school budget recommendation to the council as part of the City's operating budget, the Court observed that, under G.L. c. 44, §32, "[t]he city council may reject the entire city budget or portions of it and recommend to the mayor that more money be budgeted for the schools and; consequently, less for other municipal departments." *Id.* at 118, n.12 (emphasis added).

Therefore, in my opinion, the courts have already concluded that the statute confers authority upon the City Council to "reject the entire city budget," as was done here, or to reject only portions of it. *Id.* In my opinion, therefore, the City Council did take action on the proposed budget within 45 days of its submittal, and the Mayor must now present a revised budget to the City Council by June 30, 2021 or else invoke the month-to-month or 1/12th continuing appropriation if the total budget is not approved by that date. *See* G.L. c. 44, §32.

This conclusion is consistent with the plain statutory language that authorizes the Council to "reject any amount recommended in the annual budget," which would include the entire amount of the budget or just particular amounts recommended in the budget. G.L. c. 44, §32. *See, e.g., Bellalta v. Zoning Bd. of Appeals of Brookline*, 481 Mass. 372, 378 (2019) (when interpreting statute or local law, courts must "ascertain and effectuate legislative intent, as expressed in the statutory language"). It is also consistent with the legislative prerogative of the City Council, which is to appropriate the funds for City operations. *See Flood v. Hodges*, 231 Mass. 252, 256 (1918) (outlining statutory intent of budget process); Entergy Nuclear Generation Co. v. Dep't of Env't Protection, 459 Mass. 319, 329 (2011) (courts give every word in a statute



meaning, and may not interpret a statute “so as to render any part of it superfluous or ineffective”). Finally, this effectuates the underlying purpose of the statute and of the City Charter, which is to encourage the City Council to make decisions as to sound fiscal policy, provide checks and balances on executive branch spending, and avoid which exceeds a city’s income. Flood, supra.

In fact, that is exactly the concern of the City Council here. The Council explained during its many meetings on the proposed budget that it has a significant concern that the budget, as proposed, will use a one-time funding source to pay salary increases (which have not yet been approved by the Council), leading to a structural deficit for next year’s budget. More specifically, the Council’s publically-stated concerns prior to its rejection vote included, for example: stabilization funds and Esser II funds being used as a one-time funding source that will create a structural deficit; increased water and sewer rates that were not passed by Ordinance; funding for “other personnel costs” to fund salary increases that were not passed by Ordinance; \$100,000 for “office space upgrades” that went unexplained; and the general use of \$4.5 million in funding under the American Rescue Plan Act that had not been approved by the Council.

**III. Constructive Approval of Appropriations Required By Law**

Note further, however, that the Charter does impose a limitation on the exercise of the City Council’s discretion in “rejecting” the entire budget, stating that the Council may not reject or reduce the budgetary recommendations for “expenditures required by law.” See City Charter, §6-4. Such expenditures were not identified in the budget sent to the City Council. The Mayor’s interpretation of this requirement, i.e., that the City Council’s vote to reject the entire budget is an illegal vote because of this issue, is misinformed, in my opinion. Reading such provision broadly as the Mayor suggests broadly would eliminate the City Council’s important role as the City’s Legislative Body. Such expenditures required by law may include, in my opinion, the minimum local contribution necessary to fund public schools,<sup>1</sup> the payment of health insurance and retirement benefits to employees, debt service payments for previously authorized debt, and it could be argued further that it would include salaries and benefits provided to union employees in accord with an existing agreement. It would not, in my further opinion, however, include appropriations for additional union salaries and costs not yet approved by the legislative body. See, e.g., G.L. c.150E, §7(b) (“If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining ...”).

**IV. Next Steps**

Notably, the legal arguments advanced in Superintendent of Schools of Leominster v. Mayor of Leominster, 386 Mass. 114 (1982) did not address the circumstances under which a rejected or reduced budget would not be “sufficient to meet the legal obligations imposed by [statute],” as may be the case here. Therefore, in my opinion, it falls upon the Mayor, working with the City Council to move things forward expeditiously, to analyze and identify those

<sup>1</sup> What may be considered mandatory expenditures for a school, as set forth in G.L. c. 71, § 34, are outlined by the Court in Bell v. Town of North Reading, 363 Mass. 505, 512 (1973) and its progeny.



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expenditures that are required “by law” under the General or Special Laws, or the City’s Charter or Ordinances, and what those minimum contributions would be. Accord Pirrone v. Boston, 364 Mass. 403, 411 (1973), where the Court stated, “[i]t is certainly neither impermissible nor unusual for the Legislature to impose responsibilities on public officials who do not have complete authority to decide how much money will be provided them in order to fulfil those responsibilities.”

Where it is the goal of G.L. c.44, §32 to ensure that a budget is in place by the end of June 30, however, and where there is time for the Council to post a meeting for that day, in my opinion, the Council should post a meeting to act on a revised budget. In my further opinion, the Mayor could submit a revised annual budget for the Council’s action, taking into account the concerns raised by the Council at its June 22, 2021 meeting or at previous meetings, or present the Council with a 1/12th budget for at least the month of July. It is clear, based upon the number of meetings held by the Council that it has moved forward at an expeditious rate, consistent with its obligations under the Charter, to take formal action on the budget. The Council’s June 22, 2021 decision to reject the entire budget, with the caveat as to those amounts required to be paid “by law” (the scope of which is addressed above), left the Mayor with eight days to present a revised budget for the Council’s consideration. That did not occur, and has not occurred, to my knowledge. By contrast, the Mayor’s office released a press release over the weekend indicating that the FY2022 operating budget is in full effect.

### Conclusion

In sum, it is my opinion that the City Council acted within its authority to reject the entire city budget, within the requisite 45 days of receipt of the budget, excepting those minimum expenditures required by law. Because the Charter mandates that any expenditures required by law may not be decreased by the City Counsel, the Council must be informed as to what such expenditures are.

As such, it is my further opinion that in accord with the provisions of G.L. c.40, §32, the Mayor must present a revised recommended budget to the City Council by June 30, 2021. If the revised budget is not approved or amended by the City Council by June 30, it is my opinion that the City must utilize the procedures to adopt a 1/12<sup>th</sup> operating budget for the month of July and until such time as the full operating budget may be approved.

Importantly, I note that the Council took the vote at issue on June 22, 2021. If the executive branch had questions about the efficacy of the vote, or the application of the Charter to the vote, there were three days to work with the Council to resolve those questions and concerns. Instead, however, the abrupt press release from over the weekend did not present any proposals as to reconcile the questions on which the Council was still awaiting information, or to negotiate any kind of agreement for moving forward in the best interests of the City, its taxpayers, and residents. While there are, no doubt, legal arguments to be made and issues to consider from the perspectives of the Mayor and the City Council, limiting the conversation before it is even started will not lead toward a budget approved in accord with both the letter and the intent of the law. Further, at no time did the City Corporation Counsel advise the Legislative body as to its opinion that the vote was invalid, despite the fact that the office of Corporation Counsel advises the City and does not only work for the executive branch. Thus, the City Council was required

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to retain the services of independent counsel, on a very limited budget, to opine and provide it with guidance on the resolution of the specific issues beyond those duties owed to it by the City Corporation Counsel.

For those reasons, I suggest that the Council consider the following. First, add to the posting for tomorrow night an item to request that the Mayor submit a month-to-month appropriation budget for the months of July, and then August. Second, to add to the agenda for tomorrow night an item to discuss any submission by the Mayor of items that are required by law to be expended. Finally, I would post a meeting for June 30, 2021, with those same items, to allow for the potential for budget negotiations over the next few days. Such meeting should, in my opinion, be called early enough to allow for robust debate on a revised budget before the deadline for action. There remains time, in my opinion, for the Mayor and Council to craft an appropriate strategy to address this matter prior to 11:59 pm on June 30, 2021.

As always, please contact me with any questions.