

A Special Meeting of the Board of Aldermen was held Monday, June 13, 2022, at 7:00 p.m. in the Aldermanic Chamber and via Zoom teleconference which meeting link can be found on the agenda and on the City's website calendar.

President Lori Wilshire presided; Interim Deputy City Clerk Tara King recorded.

Prayer was offered by Interim Deputy City Clerk Tara King; Alderman-at-Large Michael B. O'Brien, Sr., led in the Pledge to the Flag.

Let's start the meeting by taking a roll call attendance. If you are participating via Zoom, please state your presence, reason for not attending the meeting in person, and whether there is anyone in the room with you during this meeting, which is required under the Right-To-Know Law.

The roll call was taken with 10 members of the Board of Aldermen present: Alderman O'Brien, Alderman Sullivan, Alderman Klee, Alderman Lopez, Alderman Jette, Alderman Clemons, Alderwoman Kelly, Alderman Dowd, Alderman Cathey, and Alderman Wilshire.

Alderman Moran, Alderman Comeau, Alderman Gouveia, Alderman Thibeault, and Alderwoman Timmons were recorded absent.

Also in attendance: Mayor Donchess, Steve Bolton, Corporation Counsel

NEW BUSINESS – RESOLUTIONS - None

R-22-039

Endorser: Alderman Patricia Klee
Alderman Thomas Lopez
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman-at-Large Lori Wilshire

AUTHORIZING PENNICHUCK CORPORATION AND PENNICHUCK WATER WORKS, INC. TO BORROW FUNDS FROM THE STATE OF NEW HAMPSHIRE REVOLVING LOAN FUND

Given its first reading; Assigned to the PENNICHUCK WATER SPECIAL COMMITTEE by President Wilshire

DISCUSSION

- Spending Cap

Chairwoman Wilshire

Tonight we're having a discussion on the spending cap. CFO Griffin if you'd like to join us. Also joining us this evening are Attorney Bolton, Mayor Donchess and Director Cummings. Who wants to start? Mr. Griffin?

John Griffin, CFO/Treasurer/Tax Collector

Thank you Madam President and members of the Board Aldermen. Tonight we are here to have a discussion on the spending cap. I've spoken a little bit about some of the ingredients of the spending cap but working with Miss Graham today I thought it very proper to provide you with a copy of the resolution that includes a page of the Charter which we follow as well as the detailed calculation in the spending cap. So I can go over the mechanics if you like, explain what's included, and then we can have a discussion of why we're here. Thank you.

So if we look on page 4, this is actually the presentation and model that I used from 2010 when I arrived to - when the spending cap was deemed unenforceable by the different Courts in the State of NH. Essentially what we're trying to do is pick a base year. So as you recall when the spending cap was, or the tax cap, or whatever it was called was reinstated, we needed a base year. The base year we chose was Fiscal '22. Several of you remember that base year. We took the general fund appropriations, the enterprise funds, the special revenue funds including grant funds. Grant funds act a little bit different than special revenue funds but they are for a specific purpose, for specific funding, and they don't lapse at the end of a given fiscal year. They do not lapse to surplus.

Now in addition to Fiscal '22, you also want to consider things that happened during Fiscal '22, which are called "supplemental appropriations". Supplemental appropriations can supplement the general fund, which we had a few

totaling \$2.33 million, enterprise funds which total \$1.85 million, capital project funds. Capital project funds are in here because the Board of Aldermen is approving the borrowing allowing the Mayor and I, City Treasurer to borrow funds to construct several of our projects. The total amount is listed as \$76,399,000. I am going to pass out, if you'll let me, an exhibit that details each one of those Resolutions and the amount of the Resolutions. Some of the Resolutions you're going to be very familiar with - \$21 million for the TIF for the Riverwalk Project, \$37.5 million for the bond paving program, but there are others as well. They add up and they're for good purposes. So essentially you get the total - supplemental appropriations you add the two together and you get that little over half a billion and then you move on to Fiscal '23 which is the Mayor's proposed budget.

Using the same ingredients you've been reviewing over the last several weeks – the general fund appropriation proposal, enterprise funds, special revenue funds including the grants. Because of the amount of ARPA funds we received fortunately by the US Treasury and what's called the ESSR funds on the school side, we've had a reduction in the number of grants but we still have the mainstays which I've reviewed with the Committee a few weeks ago reviewing the grants that we have. The interesting part of the grants is the Board of Aldermen not only accepts the grants but they appropriate the grants. So it's very important note as we proceed with this discussion.

So if we move forward with the Fiscal '23 the total appropriations at the front first two pages of this particular Resolution is the \$406,663,584. The reason why there's nothing in the supplementals is you haven't had the opportunity to supplement the budget yet. As we do, part of the calculation would be to add that supplemental appropriation and inform the Board how much under the cap we remain. Very consistent with the prior calculations of spending caps that I'm familiar with. We get into the calculation, we have the total Fiscal '22 appropriations, which is the original appropriation of the budget and the supplemental appropriations. You take that number and the cost of living or the adjustment that we are allowed to make is referred to as "the State and Local Government Implicit Price Deflator". It was a replacement of what you may recall the CPIU Northeast. The residents of the City voted for that thinking that might be a better description of how your budget should increase relative to State and local government spending. So that number is 2.8. So if you take the 2.8, multiple it by the total appropriations online 19, you get about \$14.1 million, add that to the appropriations, and add that to the base which is \$520 million, or to get \$520 million subtract the current budget on line 5 under the Fiscal '23 column. You end up with about \$113 million under the cap for this calculation.

So this approach is what is what I refer to as "gross basis budgeting" from the municipal guidance. I think the issue is that the municipal guidance for accounting and finance sometimes differs from the possible uniqueness to a spending cap calculation. Attorney Bolton and I have had discussions on that and he is prepared to explain that difference but what I wanted to do is go through the mechanics. If I may, I will pass out that exhibit that will further detail the calculation of the supplemental appropriations that have been passed through the Fiscal '22 period.

So if I may, the first thing I want to do is apologize for how small this font is but I really didn't have time to put it on – it really looked good on 11x17. Essentially this is the entire calculation. It's got the description left hand side. It's got the Resolution numbers. It's got the broken out by General Fund, Special Revenue Funds, Grant Funds, TIF District. People are very interested in that being budgeted and appropriated. Capital Project Funds – that's the lion's share of that Supplemental Appropriation. You're probably familiar with most of those Resolutions and then the Enterprise Funds. From time to time are supplemented during the year, but the totals are on lines 23 and the creation of base budgets on line 26. You can see that on the right-hand side if we take the total base budget times that percentage, we get the new cap value.

So that Madam President is a brief overview of how I calculated the spending cap analysis, why I thought it was important that it get put next to the Resolution because everything ties together, and also included in the Resolution were the guidance of the Mayor and Corporation Counsel. I put in there the spending cap pages so you don't have to look at the big book and figure out what page it's on, etc. So with that, I'd be happy to answer any questions.

President Wilshire

Questions? Alderman Dowd?

Alderman Dowd

Just out of curiosity based on what's happening with the economy right now, where is the SNLIPD going up or down?

John Griffin, CFO/Treasurer/Tax Collector

The SNLIPD is going up. And to that point if I may, that particular metric is a three year average. So if you can

imagine, it was a lot lower three years ago than it was last year. So my expectation is that it will increase next year.

Alderman Sullivan

Thank you. In preparation for tonight, and I would appreciate someone explaining to me, I understand the tax cap was passed in 1993 and it went away for a little while and now it's back. I would love an understanding of that timeline but before I do that, I was looking at some budgets from prior years specifically Fiscal Year '17, '18 and '19 where the layout for the spending cap when the spending cap was in effective for those three Fiscal Years, it wasn't laid out the way that the Fiscal Year '23 is laid out. By that, I mean in the upper section you had your general fund and then it was broken out by Enterprise Fund, Solid Waste, Waste Water, and then City Special Revenue Funds, School Special Revenue Funds, and then below it you backed out the Enterprise Fund for both Solid Waste and Waste Water. Then you backed out City Special Revenue Funds and School Special Revenue Funds. I don't see that in Fiscal Year '23. I'm curious why we didn't do that because that took the total appropriations from Fiscal Year 2017 from \$289 million, less \$29 million, with a total appropriation of \$260,526,617 and that is where they applied the cap on top of that. So I'm just curious why we didn't do that for Fiscal Year '23?

John Griffin, CFO/Treasurer/Tax Collector

Madam President and other members. I think Corporation Counsel who was with us in his position in '17 and so on, he is our expert on the cap. I can say that when I came in 2010, I inherited a very complicated, in my opinion, not simple cap structure which you just referenced where things were taken out of the calculation through ordinance.

Alderman Sullivan

Could you understand why I would be confused where in three consecutive years we took it out and the cap went away, and now the cap is back, and now we're not taking them out?

John Griffin, CFO/Treasurer/Tax Collector

The only thing I can say to that, if I may and I was actually relieved, that the cap didn't have - I was under the impression and Corporation Counsel could further the details - but I was under the impression that we were finally going to be able to go to gross budgeting and include everything with nothing subtracted. That's my professional opinion but there's a better answer with regard to the process from creation, to ordinance changes that changed the calculation many, many years before I was here, and then finally the decision that the current spending cap that we had at the time was unenforceable. So we went back to just budgeting without a page that talked about the spending cap. This is a reintroduction with what's called "gross budgeting". Putting in all the appropriations so people have an understanding of what you folks are appropriating and not carving out things.

Alderman Sullivan

So we just changed it. We just changed the way that we're going to factor it in. We went from this system to gross budgeting which you mentioned and that's how we're factoring it? I'm trying to connect the dots.

John Griffin, CFO/Treasurer/Tax Collector

I understand. Let me see if I can give it a shot. The prior spending cap, the one that I came in with, had items that were subtracted by ordinance from the calculation. I don't see anything to subtract going forward because I'm relying on a spending cap in place with all appropriations appropriate and there's no need to subtract anything. I don't know if that's a better answer for you Alderman Sullivan but there's no need of subtracting anything because everything is included.

Alderman Sullivan

I'm just not understanding. You are saying "by Ordinance". The Ordinance is what made us subtract these specific funds in those three years that I mentioned and now those Ordinances...

John Griffin, CFO/Treasurer/Tax Collector

If I may Madam President and members. We didn't even include the bonds back then. So there's no need to subtract. Some of the confusing part of the former spending cap was what to do with the Wastewater Treatment Plant and the costs associated with it. The Special Revenues are added, subtracted, because they don't have an impact on

the calculation at the end of the day. This particular spending cap has all the appropriations in it from last year and this year and then you apply the metric which is the State and Local Government Implicit Price Deflator Multiplier and then you get a new number.

Alderman Sullivan

I understand how we get it. My bigger question is what are we building that number off of - that multiplier? I understand what the multiplier is but if we're taking total appropriations and in prior years we subtracted certain monies to bring down those total appropriations, and then we built the spending cap off that net number, and now we're not taking anything out of those total appropriations, and then we're applying it 2.8% increase off of that. It really just misses the mark for me.

Then the other question I have is the grant funds. So you're saying grant funds if we get \$100,000 from the State or the federal government, that's a grant. We're counting that as an appropriation because it goes to a specific cause? Are you counting that as \$100,000 or are you counting that as \$200,000?

John Griffin, CFO/Treasurer/Tax Collector

Madam President, I would count that as a \$100,000.

Alderman Sullivan

Because we are getting it.

John Griffin, CFO/Treasurer/Tax Collector

Right but some of these questions are more the legal interpretation of the spending cap. This isn't something that the Comptroller and I would be learning at the Department of Revenue Administration. This is the interpretation of a cap. It's not a tax cap. It's a spending cap and what I like about it is it didn't subtract anything. As a purist accounting person where every appropriation that you folks rule on is in the cap.

President Wilshire

Attorney Bolton would like to weigh in.

Steve Bolton, Corporation Counsel

I think I can help with some of these questions. Taking the grant question first. The grant is revenue but when we spend it, it's an expenditure. There are many things like that throughout the budget. You've got a whole section on revenues and another larger section on expenditures. So the motor vehicle funds that are collected when people register their cars downstairs, that's revenue for the City but then that gets spent. That part of the money that funds those appropriations on the expenditure are half the budget. Similar with grants, revenue comes in. Part of the arrangement with the State but more likely the federal government is we get that money because we promised to do certain things with it. We promised to spend it on the program that we spend it in. When this Board approves the acceptance of that, they're approving that agreement and authorizing the expenditure of money for the purpose therein contained. So that's an expense. That's part of what the City Charter refers to as "total expenditures" and that's what builds the base.

There's another reason why grants should not be treated specially, or subtracted, or something and that's because the State Statute would allow that in a City Charter. In fact, RSA 49-C:33 I says "a tax cap provision in the City Charter may provide for specific exclusions for dedicated enterprise or self-supporting funds, or accounts, capital reserve funds, grants, or revenue from sources other than local taxes, or interest in principal payments on municipal bonded debt, or capital expenditures which shall be by a super majority vote as determined in the Charter". So the Charter could say that you're going to subtract grants. Our Charter does not say that, meaning grants have to be included.

Now there is an Ordinance that was passed back in '94, had some amendments over time that attempted to say what things should be subtracted. I have long been of the opinion that those Ordinances were contrary to the City Charter. You cannot change a City Charter by Ordinance. Clear you can't. The Charter talks about total expenditures. It doesn't say anything about subtracting out grants, or special revenue, or other things. It could but it doesn't. Since it doesn't, those things have to be included.

Alderman Sullivan

My only question was why did we do it for three years in a row and now we're not doing it?

Steve Bolton, Corporation Counsel

I think it was illegal to do it for those three years. Former Alderman Teebow and then Alderman Moriarty took the City to court over that. In that case, the court found it did not have to reach the question of whether the budget in that year, I believe that year was '18, those Ordinances should have been followed as they were then in effect. The court didn't reach that question because it found the entire spending cap itself did not comply with State law. State law last year in 2021 was amended to essentially say "regardless of what the Supreme Court said, that spending cap is okay, go with it". So we're going with the spending cap as is contained in the budget. What was done in prior years, I think, was illegal.

Mayor Donchess

Now I see the confusion. I get why it's confusing. I can state and you haven't given a timeline. So this is my understanding subject to correction by either of our other two experts - Attorney Bolton or Mr. Griffin. But if you look at the spending cap, it is very basic. It says in Section 56c of the Charter. "In establishing a combined annual municipal budget for the next fiscal year, the Mayor and Board of Aldermen shall consider total expenditures" and that's the only guidance it gives - "total expenditures". That's it and then it goes on to say "the percentage increase etc." Total expenditures, that the only language in the Charter that really says what's in and what's out. Now that is a very, very broad term. It includes every check, every appropriation, every bond issue, everything.

So back in the 90's when this passed, people saw the difficulty of that broad concept and there would be huge volatility because of capital expenditures and bond issues. So the Board of Aldermen at that time passed interpretive language. Here's what it means - this is in and this is out. There were Ordinances that defined what was in and what was out. For example, the enterprise funds were out but one of those Ordinances said that only half of the wastewater fund was in and half was out. The Board of Aldermen and the City continued to follow those interpretive Ordinances and I always considered them myself to be valid. Attorney Bolton did not, but he is the expert. I thought it was reasonable that the City was interpreting what that broad term meant.

Well then several years back, the wastewater fund was half in and half out, the Board of Aldermen passed an amendment saying well look the wastewater fund is not tax dollars. It's a separate - it's not property taxes so it makes no sense to have it half in and half out, so we'll put it all out. So they amended the Ordinance to say the wastewater fund is no longer part of it. That was challenged in court and the Superior Court decided, without the City's request, the City never requested to invalidate the cap but the Court on its own volition decided the spending cap is invalid because it doesn't contain an override.

Okay. Then the legislature got into the act and over the unanimous objection of the House Delegation at least, everyone was against it, unanimous opposition. The Legislature adopted an Act which attempted to put the spending cap back into effect. In doing so, suggested that only the language of the Charter is meaningful. Ordinances cannot amend, or interpret, or change, or anything else. That all these Ordinances that have been passed in previous years which resulted in those deductions which you were pointing out. Only the Charter language means anything. So the Ordinances no longer apply and therefore, we do not have those Interpretive Ordinances anymore. We don't have the thing that says "this is in and this is out". All we have is this simple language in the Charter that says "Total expenditures should be included". What Attorney Bolton was saying right at the end is yes you could exclude enterprise funds, or grants, things like that but the Legislature in its wisdom made it clear that those kinds of exclusions would have to be in the Charter itself. They can't be in an Ordinance and they're not in the Charter. So the difference is the Legislature changed the landscape and said that, in essence, these interpretive Ordinances that had been passed and applied resulting in those deductions are no longer applicable. All we've got is the language total expenditures. Mr. Griffin, the CFO, is telling you what total expenditures are. He is applying the strict language of the Charter.

Now is that is inaccurate, which it could be, if that requires correction please make the correction.

Alderman Sullivan

Around grant funds and building our appropriations off of grant funds, I'll just ask this in a common sense way. Do you think counting grant funds, money that we got in 2022 and then spent - I understand that, and included those as total appropriations to build our spending cap off of, do you think that's a good decision? Because to bring it back to

my home budget if I got a loan or a grant for \$25,000 and I went out and bought something and then I had to whatever I did and then that relied on normal income, those payments would then be in my home budget. If I didn't get that grant again the next year, then I'd be hamstrung because I wouldn't be able to afford it. Does that make sense?

Steve Bolton, Corporation Counsel

No and let me tell you why. When we don't think we're going to get the same amount of grants, we reduce the amount we're assuming for grants in the next years' budget. So if you look at what Mr. Griffin has given you, you see that the amount of grants last year in '22 was, Special Revenue Funds including grants, last year was approximately \$96 million. This year, it's down to approximately \$60 million. So you can see when your anticipation of what you're going to get in grants changes, you make that assumption in your budget. So in your home budget if you have a \$25,000 grant or windfall from something else and you didn't think you were going to get it the following year, exactly you don't plan or spending it the following year just as this budget and this calculation does.

Alderman Sullivan

Okay. I appreciate you pointing that out.

Mayor Donchess

And you're right, it doesn't make sense. That's why these ordinances had been passed. Again, I always thought they helped. I always equated it with Congress passes laws that help to interpret things like the 14th Amendment or whatever. But the Legislature invalidated ordinances that help make this more workable saying that only the language of the Charter applies. So we come up a result that has the problems that you've just identified.

Alderman Clemons

Thank you. This bring up something I want to talk about, which is I did a calculation. Just a quick calculation here and I took the \$59 million that we're budgeting this year for the FY '23 budget for grants. I multiplied by a factor of 3%, so that comes out to be approximately \$1.787 million. Are what you're telling me here is that in Fiscal '24 if the spending cap calculation is 3%, we cannot accept any grants above \$59,581 plus the \$1.787 million because we have to stay under the spending cap?

Steve Bolton, Corporation Counsel

No. You have to stay under the spending cap in the gross budget, but it doesn't apply line for line.

Alderman Clemons

Assuming the other lines go up by the same 3%, would that be true? In another words, here's a better way of putting it. If we come into a \$20 million grant or a \$16 million grant like we did this year with the ARPA Funds, right, we can't take that money? Is that correct or we can take a portion of it only?

Steve Bolton, Corporation Counsel

It would be theoretically possible to get into that situation, but there are things that can be excluded by vote of ten Aldermen and that would be capital projects. I have to get the Charter out so I can remember exactly what it is. You can exclude the principle and interest payments on municipal bonds or you can exclude expenditures for capital improvements. Typically we have a significant amount of expenditures to capital improvement. So if you exclude that, that gives you some wriggle room but in fact, you do not have an override provision that you can go to for essentially and unlimited ceiling. There will be a ceiling of debt some level even if you take advantage of excluding everything that you can exclude.

Alderman Clemons

So would a grant (theoretically) that went to fund let's say firefighters gear for example, would that be a capital improvement that could be excluded from the spending cap?

Steve Bolton, Corporation Counsel

I would say probably not unless you were telling me that the gear that you're talking about has a lifespan of 10 or 15

years.

Alderman Clemons

So what I am coming to the understanding here is that we are this Fiscal Year '23 we have \$113 million under the spending cap. It seems to me that if we don't receive a significant sum of grants in the next year or before July 2023 that we could be in trouble?

The other question I have is around the same lines and that's for the Enterprise Funds. If we see an uptick in revenue, we can only spend – we can take the revenue in but we can only spend a portion of it out, correct?

Steve Bolton, Corporation Counsel

You could run into that issue. I mean you've got a significant gap here between the limit on total expenditure and the amount of this proposed budget. I guess I didn't understand you before saying that if we don't by June 30 get a large number of grants we're in trouble because I don't see that.

Alderman Clemons

Well here's my question. Rather than talk about grants, let's talk about the revenue fund. So as we all know, the sewer system has continually plagued us with different - especially the overflow – has plagued us for years on having to raise the rates for example so we can pay for projects. Are we constrained with how much we can raise the rates because we are constrained with how much we can spend the following year on any particular project because of the spending cap?

Steve Bolton, Corporation Counsel

Capital expenditures can be excluded.

Alderman Clemons

Okay. So they would have to be excluded and that would take a vote of ten Aldermen?

Steve Bolton, Corporation Counsel

Right but you never constrained on raising the rates. I mean your constrain is what you think is prudent and what you think your constituents would be agreeable to. So the revenue side there's no cap on the revenue side. The cap is on the expenditure side.

Alderman Clemons

I guess my point is though is that if we are constrained on the spending side of it, you would only raise rates if you thought you were going to do some big project or something you were anticipating in the future but if you don't have ten Aldermen come to agree to do that to exclude that out of the spending cap calculation, you probably wouldn't want to raise rates anyway. I don't know. These are the conversations that come back with having the spending cap the way that the State has decided that we must apply it. I agree with the Mayor and I agree with what Alderman Sullivan was saying which is that it doesn't make sense to have these calculations in there and I think the Ordinances we had in place before were us recognizing or the Board of Aldermen recognizing that the Charter language is too strict and too harsh. I've always felt that way as an Alderman. I always thought it was ridiculous that - and there have been cases, there have been instances when I've been on this Board of Aldermen when we have received \$500,000, \$1 million and it can't be spent because we're up against the spending cap, especially in those low inflation years. It's probably not going to be an issue in the next coming years but it happens. I've seen it happen. I think it's something that we need to think about how we want our Charter to read in the future. I don't necessarily mind the spending cap that or spend some kind of – I don't really like the spending cap to be honest with you but if there is a spending cap, we really need to think about not including grants and enterprise funds.

Steve Bolton, Corporation Counsel

If you are asking me if I think it makes perfect sense, I've never said it makes perfect sense. If you are asking me if I think it could be better written, yeah I do.

Alderman Clemons

And I would agree with you. Thank you.

Alderman Cathey

Thank you Madam Chair. I believe this question will be for Attorney Bolton among many questions. In the language of the SB52 it states that "such a tax cut shall provide for an override threshold". Am I to understand that piece of legislation is dictating to us to create an override when it says "shall"? Like it's telling us you have to put this into the language of your tax cap laws or it just saying it can include it?

Steve Bolton, Corporation Counsel

No. The Statute requires that there be an override. That's what the Supreme Court of New Hampshire held in 2019. The spending cap in Nashua's Charter was invalid because it did not have such an override provision. Last year in 2021, the Legislature passed a law that said essentially, not in these precise words, but essentially said that any tax or spending cap passed prior to 2011 was valid regardless of any other problem. So the fact that it doesn't have the override which would otherwise be required, the Legislature basically said it's valid anyway.

Alderman Cathey

So does that mean that we are in violation of this Statute that was passed in SB52 because we did not create an override provision in our Charter to an Ordinance? Is that something that we need to do?

Steve Bolton, Corporation Counsel

No, it has to be in the Charter.

Alderman Cathey

Has already exist in the Charter.

Steve Bolton, Corporation Counsel

It has to be in the Charter.

Alderman Cathey

But we could add one?

Steve Bolton, Corporation Counsel

If you amend the Charter.

Alderman Cathey

But we're not being told we have to now go do that?

Steve Bolton, Corporation Counsel

Well as the Supreme Court decided in 2019 without it, that provision in the Charter was invalid. The Legislature basically said no the Charter is valid even without it. So we don't have to do anything. Basically we've got the Charter language as it is basically to do the best we can to make sense of it. It's already been pointed out in some places it may not make perfect sense.

Alderman Cathey

Thank you. For my own edification and maybe for others, are there any accounting principles, laws whether they're federal, or State, or even local that dictate how our accounting system works? Because to Alderman Sullivan's point, there is a difference between what they did then and what we're doing now. And so for me, I need to go to what is the underlying principle and process for how municipal budgets are completed whether it's in Nashua or anywhere around

the Country, what guardrails do we have that we say we have to include capital projects, or we don't have to include? Do we have to include enterprise funds or we don't? Is there some metric, or some guideline that we can point to, or can we sort of pick and choose how we would like to?

Steve Bolton, Corporation Counsel

I think the Municipal Budget Act has something to be said on what the budget is.

John Griffin, CFO/Treasurer/Tax Collector

Madam President and other members of the Board, this certainly very descriptive, detailed requirements on the proper municipal accounting. This is an off book calculation that somebody was interested in making. That's why when it passed, me being a kind of practical person I said who is in charge? Who was actually going to tell us how this should be constructed? Fortunately I had Attorney Bolton and Mayor Donchess and they said read this very literally and present. It's not even in the budget book because all the accounting is proper in there. It's literally a calculation that folks decided through Charter amendments and so forth are proper. So what I want to explain to everybody here, don't worry about the accounting. We've got like 15 years of unmodified opinions. We've got AAA bond ratings. We've got an excellent presentation of our information. This is like one paragraph in the official statement of the City and maybe even the GFO submittal to get the Award for Excellence on Financial Reporting. So you're not going to find it. You're not going to be able to call anybody up at the DRA and talk to them about it because there's a lot of tax caps and spending caps.

Now I come from Massachusetts where good, bad, or indifferent where we had Proposition 2 1/2 back in 1982. Extremely prescriptive, but a lot of outs. So here we're just trying to take the best information we can and craft a budget. But if I thought for one minute that anything in here was going to effect the accounting of the City, I got a problem with that.

Alderman Cathey

Thank you. I appreciate that Mr. Griffin. I was just curious because as Aldermen I know a little bit about accounting but not enough to know the rules and regulations of how these budgets are put together so I appreciate that.

To clarify an earlier statement I believe it was Mayor Donchess. The Ordinances that we used to have that were related to the spending cap, those Ordinances no longer exist and/or apply to our current situation. Am I understanding that correctly?

Mayor Donchess

As I understand it, they no longer apply because the Legislature said you have to go by the Charter language only and you cannot alter it, interpret it, or modify it by an Ordinance.

Alderman Cathey

We can't alter the spending cap Ordinance?

Mayor Donchess

Correct.

Alderman Cathey

Two questions, kind of together. One - I'm guess why we would include grants only because I don't see them as expenditure. I see them as revenue and even when we spend them now, it's sort of like we're the conduit for how the federal or State government is spending money so it's not really us.

And then two, wastewater is funded by users fees so how does that play in? That's not necessarily I guess related to expenditures because we're getting revenue in to cover the cost of what we're spending. So how do those two things factor into the budget and how they apply to the cap when I feel like the cap is supposed to constrain us from spending taxpayer money and grant money and wastewater money is not that. At least to my understanding, but I could be incorrect.

Steve Bolton, Corporation Counsel

Well I think that was the goal but that's not what it says. It talks about total expenditures. Furthermore, the State Statute about spending caps says you can exclude certain things by a simple majority vote of the Aldermen if your Charter allows it. Our Charter only allows it in those two places where I mentioned - the interest and principle of bonded debt and capital expenditures. So yes, would it make sense to treat things that have no impact on taxes differently? It may well make sense. Our Charter does not make that distinction.

Alderman Cathey

Thank you Madam Chair. Mr. Griffin the Capital Project Funds you mentioned one was the Riverwalk Bonding Project, and the Paving Bonding Project, and I'm sure there are a lot of other project listed in there. To my recollection or understanding, those bonds have not been sold at least for all the paving project or the Riverwalk project and in the case of the paving projects, it's my understanding even though we have the approval for the bonds you're not going to sell them all right away because it's a five year project. So how do those numbers get to be calculated into a 2022 budget when they actually haven't been – you haven't gone out and sold the bonds and won't do so until maybe the 2023 year or maybe even beyond. So how does that get to apply to the 2022 because that sort of changes the numbers?

John Griffin, CFO/Treasurer/Tax Collector

Madam President and members of the Board. Great question. I struggled with it but you are appropriating the spending of \$37.5 million at that evening or day that you approved it. You're approving the \$21 million. The spending cap total expenditures, the spending cap language didn't talk about vintaging, when you are going to spend it. Can you imagine the calculations and the date of selling bonds, versus using general fund, and it became overly complicated. So the Comptroller and I with the team basically said let's put it all. It's an authority to spend.

Corporation Counsel - the plan could be expedited potentially notifying you folks if we wanted to be aggressive with the paving or the Riverwalk. We wanted to turn a 3-year project into a 2-year. So I relied on the fact that you folks appropriated the authority to borrow and spend money on the project.

Steve Bolton, Corporation Counsel

I mean is it an even more fundamental problem because you could say that about a lot of things. When departments are preparing the budget in February for each individual department, there's another five months of payroll that hasn't been expended yet. You've got to go by something. If you can't go by what's been authorized to be expended, then you'd have to wait until July 1st to add up all the checks that were actually written and you wouldn't know what the spending cap number is until after we were required to have a budget by August 1st. We'd certainly like to have it by July 1st when the fiscal year starts but if you go by when you actually expend the money, it's just practically as a practical matter impossible to know those numbers in time to prepare a budget.

Alderman Cathey

I understand that and it makes sense. As a process and procedure guy, I'm always wanting to protect against future instances. So my mind goes to what if someone wanted to artificially inflate the numbers and ask for an appropriation that they may or may not need so we have more room in the spending cap. I'm not saying anyone is doing that, but I'm just sort of thought exercise. Should we not come up with some way to protect that in the future?

Steve Bolton, Corporation Counsel

You. You vote against that appropriation. That's why you're here.

Alderman Cathey

I'm thinking more like - I don't know – that's sort of off the top of my head. If we say we need \$21 million for Riverwalk, then we go and sell bonds but we only sell \$17.5 because we figure out that's what we need not \$21 million. Well that effects the budget and then obviously the cap because it's \$4 million extra dollars. So I didn't know. I don't know. I'm just trying to think through the accounting principle wise how that works, why it works that way.

Steve Bolton, Corporation Counsel

The good news is eventually it gets paid back because if you don't spend it, it's there. It doesn't just go to the general fund. It has to be either transferred to another capital project which the Aldermen find necessary to do or it gets paid back to retire the payments on those bonds - retire that debt or a portion of it. So it's not a waste and assuming there's no theft or misappropriation involved, it effectively lowers to the extent it's not needed and never spent it lowers taxes in the future.

Alderman Klee

Thank you Madam President. This conversation to somewhat does frustrate me a little as a State Rep. I worked very hard to get the language of the State to become and change SB52 to allow for Nashua override. The only municipality in the entire State that does not have that and sadly many residents from Nashua came and spoke and as well as a certain Senator and so on. So it did not happen. The clear question here - I shouldn't say that. I should make a statement is that the spending cap is not the same thing as a tax cap. Just because we have a spending cap does not mean that the taxes won't go up. People conflate the two things. I know logic says if I don't spend a lot of money, then I don't need a lot of money and so on. I disagree that grants should be excluded. Grants are still expenditures. It may be free money and in end we may look at it and say it was a wash, money coming in and money going out but how is that different from any other revenue source that we have? If we can get enough money in a particular revenue source, why shouldn't we be able to spend all that money and that's not the way things work.

The way it works is that part of the spending cap is you have a limit of how much you can do on the spending cap. In this particular year, it's 2.8% and it's a rolling three year average. So if you have a good year, or a bad year, or whatever, it's going to effect that. It's very frustrating trying to work on a budget in that particular way especially in a year where there has been a lot of grants that have been given. I can tell you that the City has a \$1 million grant for Locke Street and I sweat it all the time. Are we going to suddenly hit the spending cap and now we can't use that money? This has been promised since 2017, 2018 and that would be a horrible thing to do to these people. But just putting that aside when our police and everybody works very hard to get grant money and the citizens say okay yeah that's a good thing because it's not costing me anything out of pocket, it means that something else can't be purchased. Something else can't get done because we got this free money. We tried very hard in the legislation to put just that statement in that the override would be allowed in the one municipality. It got voted down because it was not understood. I can see in looking at the horseshoe that it is a very confusing wording and so on. It is what it is. The only way I know to change a Charter is to have a vote on it. The truth is if you go to the people and say let's change the spending cap, or let's remove the spending cap, or let's change it to a tax Cap, there's going to be an equal amount of people that are going to go out there and say no, no, no don't do that because this is nefarious and so on. So do we leave it? Do we change it? How do we educate people?

The bottom line is it's there. I think that what Mr. Griffin has done is keeping it as simple as possible. As frustrating as it is, I appreciate the work that you're doing. The City does not have an override no matter what anybody tells us we do not have an override. If you look at 56-D, the exception to the budget limitation is very, very limited and that's what we're stuck with and that's what we're living with. Basically, pardon my language, but they gave the perforable finger to our Supreme Court Justice when they put SB52 through and it was meant to hit Nashua and only Nashua because it did not affect anybody and anybody who says or thinks differently is wrong.

Alderman O'Brien

Well stated.

Alderman Clemons

Thank you. I had a lot of thoughts but my question comes to the end of what Alderman Klee had just said and that is has anyone challenged or is there going to be a challenge that you know of or to the Constitutionality of that Law? Because if what you are telling me is that the State Supreme Court said one thing and the Legislature said another that usually leads to the Court deciding who wins. So I don't know if you think that...

Steve Bolton, Corporation Counsel

It's not quite that simple Alderman Clemons. The Court interpreted what the Legislature had said. The Legislature then amended the Statute so it said something slightly different with the clear intent to change the interpretation that the Supreme Court gave. One - I know of no effort to challenge that; and two - I don't think any challenge would be successful. The Legislature had the perfect right to change its Statute.

Alderman Clemons

So just to clarify that, there is nothing constitutionally in the NH State Constitution that they based their decision on. It was purely Statutory?

Steve Bolton, Corporation Counsel

Yes.

Alderman Clemons

Okay. I guess I'm going to limit my comments to this tonight but what I think here is I do believe that the grants, and the enterprise funds, and those types of things should not be included. I would be in support of changing our Charter to state such a thing because I have been on the Board of Aldermen when we have received income from a windfall or from something else and we have had Aldermen who couldn't see the forest for the trees and realized that yes you're overriding the spending cap. However, you're not affecting the taxes. This is money that you know in some cases it was money that the City didn't even foresee coming. Came into the coffers and when I say appropriate it, we couldn't put it to anything. It just went and sit in an account. Period end of story. You may think that's okay and maybe in some cases it is but when there are needs in this City, and we have multitudes of needs, that's a problem.

Where I really see this being a problem and when I look at that difference on this sheet between almost \$96 million and \$60 million dollars in one year, if that goes the other way, we can't do anything about that and we're going to have to turn down grants because grants are meant to be appropriated. When we accept a grant, it doesn't come in to just sit in an account. It comes in to be spent. So if we have a year that's like that under this Charter, that's going to be a major problem. We're going to have to turn around and tell the taxpayers of this City sorry we couldn't accept the \$25 million that came from the federal government or the \$10 million that came from the federal government that would have helped supplement some of the things that you wanted to see happen in this City. We couldn't do that because we have a spending cap that's so foolishly written that it doesn't allow for exception. So I will be looking into putting before the voters something to change this and to make sure that doesn't happen again.

Alderman Dowd

Yes, just a couple of things maybe for clarification. I spent a lot of time working on the bonding in the City and it is true, the bonds are passed in this chamber by 10 votes. It immediately becomes an obligation. The City Treasurer can go out the next day and sell the bonds if he wanted to. It doesn't make sense but he could. We typically have - there's a lot of process in the bonding. The only thing to be concerned about is the debt service from the bond, which is far, far including the bonded debt is far, far what is allowed by the State or even local ordinance. Not even close but we do the bonding to keep the City where it should be relative to infrastructure and other things whether it's paving, new fire station, new DPW building, or whatever it is it's justified and it's passed by this Board.

The other thing is we heard about if we get a \$1 million or \$5 million grant from the federal government that we might not be able to spend it. If we get a \$5 million grant from the EPA to do something at the Wastewater Treatment Plant, we don't have a choice. We have to do it. I don't know how that factors into the spending cap but your hands are tied because it's a government mandate.

Having said that the other thing is that I was trying to point out but probably not too well since some people are interpreting it the wrong way. This spending cap calculation and the spending cap itself has nothing to do with our budget meetings other than we cannot have a budget that spent more than \$113 million where it is today. Trust me, no one is even going to try to do that. The budget that we're trying to pass is based on what our Divisions need to provide the services in a fundamental way for next year. There aren't a lot of significant increases. So we're going through the budget, we're listening to the Division Directors, we're seeing where things make sense, and there may be some things missing but I don't see it changing significantly. In which case, it has nothing to do with the spending cap because we aren't going to come even close. We're not even come within maybe \$113 million of spending cap. I think we're in a position now where we have our trust in our financial experts, or legal experts, and the Mayor on how the City Charter reads, and how the Court cases went, and how the State ruled. To me, that's a solid argument for the way we've calculated the spending cap but it shouldn't be as big a concern because no matter how you figure it, we aren't going to be close to it with our budget this year. Not within a \$100 million, \$113 million so it's not something we have to solve today or worry about today. People want to try and change the Charter, that is a huge, huge undertaking but that's not going to happen in the next few days. For one thing, it takes an election.

Alderman Jette

Thank you Madam President. So I have several questions. First question to CFO Griffin. If I understand you

correctly, the number on your calculation on line item 14 if I'm reading this correctly, 14 total appropriations. That's based upon the Charter provision of 56C which says total expenditures. Is that correct?

John Griffin, CFO/Treasurer/Tax Collector

Madam President - John Griffin, CFO/Treasurer/Tax Collector. That's correct.

Alderman Jette

And the number on line item 25 - total proposed appropriations for Fiscal Year 2023, does not include any - there have been no exceptions. Charter Provision 56D allows for exceptions as Attorney Bolton pointed out, the principle and interest on municipal bonds and capital expenditures, you haven't deducted anything from that number by using those exceptions. Is that also correct?

John Griffin, CFO/Treasurer/Tax Collector

That's correct. The first line item #2 general fund that includes all the debt service, the general fund. Line #3 - enterprise funds, that's including all the debt service. So it's only when you get a tighter differential between the allowable and the proposed would you ever even consider coming in with - you don't need it. You don't need to have the Board of Aldermen exclude that debt.

I think if I may, just a little bit of history because I asked this question of Deputy Corporation Counsel Dorothy Clarke, I asked did we ever come in and ask for an exclusion. And whoever was on the Board in '03, '04, '05 where as you recall a lot of inflation, the first thing that Administrative Services Director Maureen Lemieux did was ask for the exclusion so you didn't have to worry about it. As Alderman Clemons appropriately said about getting a windfall, it was subject to check. The City received \$20 million from it was called "a Claremont Decision - education". Those members who were staunch - I'm voting no on every exclusion, voted for it because they could see the benefits of putting \$20 million in an account or in a fund. I just wanted to share that because I waiting to say that, but you only want to exclude if you're close or think you're close because subject to my understanding, you can only exclude once and that's why Director Lemieux took the whole thing. Let's do the debt service, the capital, the bonding, let's throw it all in as an exclusion then you don't have to worry about it.

Alderman Jette

So when you say you can only exclude it once per Fiscal Year?

John Griffin, CFO/Treasurer/Tax Collector

Correct.

Alderman Jette

Could I ask you, do you have any idea if we did exclude principle and interest for municipal bonds, which also includes school bonds and capital expenditures, do you have any idea how much money that would be?

John Griffin, CFO/Treasurer/Tax Collector

The debt service on general funds is about \$17 million. Debt service on Wastewater is about \$4 million subject to check. Solid Waste is another \$2.3 or 4. The capital is interesting because we usually don't budget for capital and I was going to get into that in a minute other than the \$1 million or so dollars that you see. Usually what we do during the year is when we need to we introduce bonding legislation. So what I'd like to add is to the extent we need more bonding in Fiscal '23, that's going to add to the supplemental appropriations and will subtract from the \$113 million. That's how the math works. So henceforth every time there's a bonding authorization, I'm going to explain it in my fiscal note that you're - actually I'm going to explain it in the submittal of the bonding resolution how much you're under the cap because it just keeps subtracting from the capital - the difference between the available cap and what we have.

Alderman Jette

Okay. So it sounds to me that given the constraints of our current spending cap of Charter provisions, there seems to

be even though we don't have an override provision, there seems to be quite a bit of room there if we voted to exclude principle and interest on bonds and capital expenditures. There seems to be quite a cushion there to me.

If I could ask another question of Attorney Bolton. The last paragraph of 56C in the Charter says "This provision shall not prevent the Mayor and the Board of Aldermen from appropriately funding any programs or accounts mandated to be paid from municipal funds by State and federal Law". What do you think that would include?

Steve Bolton, Corporation Counsel

Well there are plenty of things we're required to do, mandated. One that we hear a lot is the payments to the State pension system. That's a payment we're required by State law to make and it's unfunded by the State. Municipalities are required to make that payment. There are other things of similar nature. So we're required to do it. I think the proponents of these cap limitations would say well you pay those first and then you have to make do with what's left. I don't think that creates an exclusion by itself. So we've never had to argue that one way or the other. I think it was put in there so they could say it didn't affect our ability to make mandated payments. I'm not sure that is always going to be true but I don't think it's affected it yet.

Alderman Jette

One more. I think this is the last. It may have been you said something about or I guess you didn't disagree with somebody's statement that this is not the best written – these Charter provisions are not the best written legislation you've even seen. I'm intrigued by the word "consider" - In establishing continued annual municipal budget for the next fiscal year the Mayor and the Board of Aldermen shall consider total expenditures not to exceed an amount equal to the combined annual budget of the current fiscal year increased by the" and it goes on. So that word "consider" is an interesting choice. I looked up that word in the dictionary and it says "think carefully about something before making a decision". It doesn't really say you can't spend this money. It just says you have to think about it before you do. So I don't think that's ever been considered by a court or ever been ruled by a court, but I think it's an interesting...

Steve Bolton, Corporation Counsel

There were a couple arguments the other way. Again, I think it could have been better worded but I think the intention of the author or authors was to require that provide a limitation. The last sentence of the first paragraph says "the Board of Aldermen shall act upon budget proposals in accordance with this paragraph". Well the requirements are in the next paragraph but anyway. So to say what shall be considered might be interpreted to exclude the ability to consider anything else. So I think that's one argument that says when they say consider they mean that's the only thing that will be considered. Then later on, they go and say you can go below this but you can't go above it.

The other thing someone might say is look this was a clear intent was to place a limit on expenditures. They didn't go through all this to come out with something that was meaningless. If you just say "considers", then you may decide not to do it. Essentially renders everything meaningless but anyway, I've never advised anyone to rely on the word "consider" as giving them a choice to accept or reject but that's just my opinion. So if you want to say that you can consider other things, that's up to you.

Alderman Jette

I'm just raising the possibility that we can consider the very things that are listed here but after having considered them, someone could say that we could go ahead and do something differently after having considered them.

Steve Bolton, Corporation Counsel

If you want to do that, that's up to you. I think you might end up talking to people in black robes about it eventually.

Alderman Jette

I think there's plenty of room in the legislation. I don't think it's as dire as I among others have initially thought because there are the exceptions in 56D. Then there's that final paragraph of 56C that says you have to do what the State and federal government mandates. Thank you Madam President.

Chairwoman Wilshire

You're welcome. Alderman Cathey?

Alderman Cathey

Thank you Madam Chair. I agree with Alderman Clemons. The grants should not be included. It does not make sense to me that we would add them in as an expenditure and much to other Aldermen's points about grants having to be used. I know there is a lot of restrictions on a lot of grants. Some of them are time-based so we may lose it after that year and never get it back. So to me, it doesn't make any sense. If I had a house budget and then I'm walking down the street and find a \$100 bill, I could go home and add it to my budget if I want to and then spend it and call it an expenditure or I can just take my wife out to dinner and my budget isn't affected one bit at all. It just doesn't make any sense to me. So I would be in favor of at least taking care of the grant issue because it just makes no sense to me.

In considering tonight's meeting, I'm not really worried about solving the budget cap or worrying about the spending cap. My main goal was to understand the cap because as an Alderman and a man who likes to do things correctly, I don't want to pass any budget without understanding everything I can about fiscal responsibilities of the City, and what things our budget is subject to, and what things our budget is not subject to. Even if we're 1000% under the cap, I don't care. I want to know what the cap is, how it applies, how it does not apply because there is a lot of information flying around. So if I call myself an Alderman who cares about the voters of this City, then I'm going to find out everything I can about anything that has to do with the budget whether that's spending cap, accounting Procedures. It doesn't matter so I can make the best decision come budget time. Yeah that might not have anything to do with the cap, that's fine. I still want to know what the cap is. I still want to know how it applies. Still helpful. So I think this meeting is super beneficial at least to me. It was only beneficial to me. Sorry you're all here. I appreciate it.

The last comment I'll make or I have a question. Have we ever been over the cap in a significant way? Grants notwithstanding but just in a regular budgetary proceedings? Have we ever when we had the cap back in the day is anyone familiar with like we ever had an issue where we were way over the cap and we had to cut jobs, or cut funding to City thing, or have we always been pretty under the cap considerations?

Steve Bolton, Corporation Counsel

There have been years in the early 2000's when the provisions to exclude principle and Interest on bonded debts and/or capital expenditures. Those exclusions were applied in some years. Once those exclusions were applied, the level of expenditures permitted is obviously higher. We've always been under that raised ceiling.

Alderman Cathey

So we've never really had a significant issue with the cap where we had to really rein in our spending as it were?

Steve Bolton, Corporation Counsel

Well in order to get to that level that was under the cap, some hard choices occasionally had to be made. Some employees went without an annual increase in compensation. Some desired expenditures were delayed. We got in trouble one year with the Federal government over the number of English as a second language teachers was inadequate. So there were struggles to meet those levels at times but no we were never over the resulting limitation after exclusions were applied.

Alderman Cathey

Thank you.

Alderman Sullivan

Thank you Madam President. What would prevent us from just passing something on the Charter that would say that the general fund could not be over a certain amount and just leave it to one line item and just be done with it?

Steve Bolton, Corporation Counsel

Well you can't pass amendments to the Charter. It has to be done by...

Alderman Sullivan

It was a hypothetical question just to try to make it easy because we've been dancing around this a lot about what to exclude, what not to exclude.

Steve Bolton, Corporation Counsel

Well then I don't understand your question. (inaudible) you don't have the authority to do it.

Alderman Sullivan

What I am saying is if you had the general fund to make it simple, you would just say the general fund cannot exceed that 2.8% number year over year and that's it just be done with it. That would be your spending cap.

Steve Bolton, Corporation Counsel

But that has to be done by a change to the Charter.

Alderman Sullivan

I understand that. I was asking what would be the down side of doing that my hypothetical question.

Steve Bolton, Corporation Counsel

I guess you could get into an argument about what should be included in the general fund or not. So you might have to think about what kind of definition you apply to that. But if you wish to propose that as a Charter amendment, I don't see much of an impediment to that.

Alderman Sullivan

I don't. I was just questioning why.

President Wilshire

All set Alderman Sullivan?

Alderman Sullivan

Yes.

Alderman Klee

Thank you Madam President. In 56C that last paragraph that was kind of bounced around that said, "This provision shall not prevent the Mayor and the Board of Aldermen from appropriately funding any programs or accounts mandated to be paid from municipal funds by State and federal law", perhaps it's just my interpretation but I feel that this was put in so that the City can't say well we spent all our money and now we can't afford to do this otherwise it's going to put us over the spending cap. Therefore, this was put in there that says you basically will pay those bills first and the rest of your bills last. Is that a correct interpretation Attorney Bolton?

Steve Bolton, Corporation Counsel

That is certainly one possible interpretation.

Alderman Klee

I feel that I take it that way. It's kind of like we can't go bankrupt on any kind of a – a person can't go bankrupt in a federal obligation so I take it in that respect that you pay your federal and State bills first. The other comment that I kind of wanted to make. Two comments. One is when this was written, I understand that there was some sitting Aldermen that wrote it but was it a citizens group that created this that went through the Secretary of State or did it actually come from the Board of Aldermen?

Steve Bolton, Corporation Counsel

It was a citizens' initiative that put this on the ballot, yes.

Alderman Klee

So the wording of it is how the citizens put it there not how it was necessarily worked appropriately and so on. I just wanted to kind of get that – I thought that was the case but I didn't want to make that statement without...

Steve Bolton, Corporation Counsel

One of our frequent commentators claimed to have been the sole author. I have heard other people say they contributed to the drafting of it. Frankly if I were in the room when it was drafted, I would not be taking credit at all.

Alderman Klee

I completely understand that. And then to the comment about we've never really gone over the spending cap. Would it be fair to say we don't go over the spending cap because when we do our budgeting we're keeping that in mind? In other words, we didn't take care of necessarily the streets, or the paving, and so on. That was something that happened after this kind of got lifted because we knew it didn't fall within the spending cap. So to say that we did not hit the spending cap is probably kind of an unfair. We went forward with knowing the spending cap was there. Would you feel comfortable saying that Mr. Griffin?

John Griffin, CFO/Treasurer/Tax Collector

Yes Madam President and members of the Committee. Having presided kind of when the recession of the second great recession was mid-way 2011, 2012, 2013, inflation was very low, cost of living wasn't as high. Clearly the first thing I do for the Mayor is calculate the spending cap because I knew what the numbers were. I kept track of it so I could definitely provide how tight the submittals were. I think one was under \$1,000 one year. So if you start with the spending cap, you reduce spending to get there.

Tax cap on the other hand, you know what your revenue is to be able to spend. Spending caps are a little bit problematic and decide as Attorney Bolton says, deciding what's in and out of the general fund is going to be a challenge but that is okay. You start with that. So when I first came here, I advised the Mayor this is the total amount and we had to work with the Police Department, Fire Department, Department of Public Works and there really wasn't a lot of money available to do anything material. As you've heard, we used to have a \$2 million capital improvement budget where \$1 million was given to pave roads. Just not effective. The other million – well what you see now, we don't have a robust capital improvement program. That's why you get a lot of bonding authorizations. It was tight. It was tight. We were fiscally constrained because as you know, the CPIU at the time that was changed to the S&LIPD. It really kind of chocked the ability to add to the budget.

Alderman Klee

So just for clarification, basically we backed into the budget and said this is all we can spend, not necessarily this is all we have without going up on taxes, but all we can spend based on these constraints. Is that correct?

John Griffin, CFO/Treasurer/Tax Collector

There was a significant limitation on the ability to spend on things that were needed.

Alderman Klee

Again, that is what makes the difference between a tax cap versus a spending cap. They are not the same thing. A tax cap, we could stay within the tax cap if we have increased revenue and that would not affect the people. A spending cap actually can affect how we can do our job to keep our infrastructure straight. Is that correct?

John Griffin, CFO/Treasurer/Tax Collector

Correct. Both are challenging – tax caps. There are several individuals that love to come in and add revenue streams and then you find out early it costs you more to get the revenue that what is intended. But they're both very challenging having like I said, resided in 2-1/2 in Massachusetts it's challenging. But I do have that information and I see some folks that wouldn't mind sharing it because it's literally lifting the information off all these budgets on a spreadsheet and you can see. It's very challenging to do supplement appropriations when you don't have any room

left under the cap. In my tenure here, the exclusions were looked at more of an override. So there was kind of a challenge to not want override and not want to exclude. So that's what I lived with from '13 to '17 and then the spending cap was deemed unenforceable by the courts. Thank you.

Alderman Lopez

If (inaudible) be present, Attorney Bolton. Earlier we were talking about has the City ever actually exceeded the spending cap and it was sort of described that previously there were ordinances put in place to kind of dodge the spending cap by redefining what went under it, but I also believe that I understand that we can't do that now. Is that the case?

Steve Bolton, Corporation Counsel

Yes.

Alderman Lopez

So we can't take the short cuts that the previous Boards took and we probably shouldn't have in the first place.

But then my second question was, I think to Attorney Bolton but maybe to CFO Griffin, we were talking about overrides with regards to Infrastructure or maybe exclusions with regard to infrastructure improvements. So if we build a fire station, then we could potentially get ten votes and do that but what about personnel expenses? Would those be considered part of the budget that can't be removed from the spending cap so would we be able to afford to staff those firefighters?

Steve Bolton, Corporation Counsel

That might be a problem. Now right now we're \$113 million away from hitting the cap. So right now you might be able to squeeze it in but we may not always be in the same fiscal circumstances. So yes, personnel expenses are not capital. They're ordinary expenditures and there's no exclusion for that.

Alderman Lopez

Thanks for clarifying.

Alderman Dowd

Just a couple of things. I think every cities in New Hampshire their Charters are different. They're not all identical, correct?

Steve Bolton, Corporation Counsel

That is correct.

Alderman Dowd

In Manchester, this is the first year in a number of years where they haven't overridden whatever cap they have. So their cap isn't working too well either.

Having been around for a while, I can tell you that the road structure in Nashua - let me use a different term - went downstream severely and that's why we have spent I think it's \$75 million to bring the roads back up to speed. We have sort of promised that we would allocate enough money after this bond is done to stay ahead of the roads because because of the cap, we weren't able to do the road paving that we were supposed to do. Other infrastructure failed. When we replaced Nashua High with the current Nashua High South, I can tell you from personal observation that building was in terrible, terrible shape. The only thing that we were able to survive for the new buildings was one wall and the stairwells. I don't need to go in a lot of detail.

The other thing it hurt was CERF. They had developed this CERF program because our vehicle replacement under former Mayors because of the spending cap went to hell in a handbasket. Even the CERF isn't up to where it should as we've explained several times. So the cap has not been a friend to anyone. It boils down to pay me now or pay me a lot more later. When we built the two high schools, we built them to last. If you go in the high schools now, they

look brand new and they are functioning perfectly well but they're 20 years old. The high school before that didn't even last 15. So you have to spend your money wisely and having that constraint on it that was opposed didn't do the City any favors and it didn't do any taxpayers any favors either.

Alderman Cathey

Thank you Madam Chairwoman. I just noticed that there was no public comment tonight. Can I motion for public comment before we adjourn?

President Wilshire

You can.

Alderman Cathey

I'd like to make a Motion to add Public Comment.

**MOTION BY ALDERMAN CATHEY TO ADD PUBLIC COMMENT
MOTION CARRIED**

Alderman Cathey

Thank you.

President Wilshire

You're welcome. Any further discussion, any further questions, clarifications, anything? Okay. I will open the floor for public comment. 3 minutes, name and address for the record. Anyone that wishes to give public comment regarding the spending cap.

PUBLIC COMMENT

Mike Ortolano

Mike Ortolano, 41 Berkeley Street. This whole issue has been really interesting and kind of enlightening to listen to what's going on with this spending cap versus tax cap. You know sometimes it's best to simplify as much as possible up front. I mean it was kind of hard to determine that, in fact, we're not really - this is an issue that doesn't appear to be affecting the budget this year, right? The spending cap as I understand it there's such a large gap between what would be possible and where you hit a limitation. If I understand it right, the interpretation of the Board or at least Attorney Bolton and the CFO is that we have no problems. If that's the case, that's kind of nice because it doesn't make a lot of sense to me that grant money which if you get \$50,000 and then you're supposed to spend \$50,000 but you're allowed to go like 3% above the \$50,000, you know, are you permitted to? It's just kind of the math of it. It doesn't make a ton of sense to me.

The other thing that I see is sometimes there are alternative interpretations. One of the nice things about public comment and being able to bring other people in is that you can get these alternative interpretations put on the table so that everybody can see where the differences are. A lot of times it ends up the same place, but it makes you feel like the process is a lot more transparent, you know, it's other than it's my way or the highway sort of dialogue. My understanding would be and I'd like confirmation...

Alderman O'Brien

One minute.

Mike Ortolano

...I'd like confirmation that I have it right is that this is kind of an irrelevant issue to this specific budget cycle and if it isn't, then it would be nice to see the alternative interpretation so at least the Board is acting with full knowledge of there are different ways to look at this thing and maybe the Board would consider alternatives. I'll go 30 second short.

Laurie Ortolano

Laurie Ortolano, 41 Berkeley Street. I want to thank the Board for holding this meeting. It was very informative, interesting to hear the perspective, and I appreciate the questions everyone brought to the table. I would have liked to have heard some of the people who worked on the spending cap speak and have an opportunity to have a little bit of time to present their positions because I think interpretation is always a little complicated and it's not a black and white issue. I hate to see things come down to arguments that are we're going to court on it, we're going to sue on it, we're force it through that hole. I'd like to see more consensus building done so that is not the case. It's not often productive and these are complex issues.

I tend to agree that I do not think the grant money belongs in the calculation. I think grants are different. They really are different. There's the money you're appropriating for departments to run and operate and then grants come in and it's not money that you are necessarily in need of appropriating. When I looked up "expenditure", the term "total expenditure", and "municipal expenditure", GAL, or any type of organization, accounting organization, it really talks about the monies required by schools, police, fire, all your departments. No language that I reviewed it for definitions on my phone came up with grant money included. So I do think that's separate and I think that's a legitimate point.

I'm not certain we're at that \$113 million under the cap. I think there is some skew there that I don't fully understand and I'd like to understand that a little bit more. Yeah I'd like to see us work together more with the public and gather the views of those that have been around longer...

Alderman O'Brien

One minute.

Laurie Ortolano

...and value the input that they have because there is perspective there. For whatever reason in 2017, 2018, 2019, we went along with the calculation done this way. We had virtually the same management leadership team here that applied it that way and then it changed in 2023 and for somebody looking in from outside, it's a red flag. It's a little bit of a hey what's going on here? Why the need for the switch?

Alderman O'Brien

30 seconds.

Laurie Ortolano

So again, thank you very much for holding this. I think it was informative for everyone. Appreciate the time you all gave this. Thank you.

Scott McCullough

Ladies and Gentlemen, my name is Scott McCullough, 49 Congress Street, Apt. 6. I'd like to say thank you to the Board of Aldermen who showed up - Lopez and Kelly I think it was. Thank you very much. My goal is if you guys can help, if Lopez can help, I need to raise - I'd like to raise \$1,500 to get these awesome Best Buddies shoes. The ear piece is probably not this time because they are \$2,500 that I have to raise. I think he can help me. I greatly appreciate it and I'd like to come to the chamber maybe sometime in September. Miss Co-Chair if that's alright with you Lori. I called you and left you a message. If you could check your schedule and let me know what the best time to come to the Chambers and present an award. I'd like to present an award and do a thing on the big screen and show you what Best Buddies is all about. When is a good time? Maybe some time in September if you could let me know please. Thank you.

Matthew Gouthro

Matthew Gouthro, 104 Fawn Lane in Nashua. I really want to thank you guys for hosting this opportunity to listen to how the spending cap is being put together. I agree with many of the Aldermen who spoke up concerning grant funding. I think anytime we can offset the tax payer dollars with grant funds, I think it's an optimal solution that we should all be in favor of. I think that this is a great opportunity for us to look at doing stuff like that. I came from a City four years ago in Florida. It's about the same size as Nashua and we had a full time staffer that was looking for these grant fund opportunities. So I think if we can find opportunities to offset taxpayer dollar with grant funds, I think it would be beneficial for us and for our budget, especially if we're looking at the cost of living increases and everything

that we're seeing right now in today's economy. I think we should definitely dig deeper into grant funding for these expenditures. Thank you.

Fred Teeboom

Yes Madam. I did not prepare in the chamber because I did not know that you'd allow comment. I asked to attend this meeting and present the spending cap as it has always been intended. That is a control of taxes and fees. Grants have nothing to do with taxes and fees. The thing about gross budgeting from CFO Griffin is a farce, is false, is misleading, is untrue.

I presented to this Board in writing the spending cap calculations should be about \$5.7 million over the cap. As far as putting in projects that haven't even been bonded yet and make it part of the spending calculation is absolutely insane. It's ridiculous. What you're doing is a gross injustice for what has been a cap for many, many years. I resent it. I resent what you're doing. I think we're going to be heading straight to court and this time if we do go to Court, I'm going to ask for a fine for every Aldermen that participates in this discussion and adheres to this farce presented by CFO Griffin. Thank you.

President Wilshire

Okay. Seeing no one else, I have Alderman O'Brien.

ADJOURNMENT

**MOTION BY ALDERMAN O'BRIEN THAT THE JUNE 13, 2022, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED
MOTION CARRIED**

The meeting was declared adjourned at 8:54 p.m.

Attest: Tara King, Interim Deputy City Clerk

FY2023 - Base Spending Cap Calculation

| Line No. | Description | Resolution # | FY2023 - Base Spending Cap Calculation | | | | | 5/4/22 | |
|----------|--|--------------|--|-----------------------|----------------------|-------------------|-----------------------|-------------------------------------|-----------------------|
| | | | General Fund | Special Revenue Funds | Grant Funds | TIF District (\$) | Capital Project Funds | Enterprise Funds | Total |
| 1 | Adopted Budget: | | | | | | | | |
| 2 | FY22 Adopted Budget | R-21-142 | \$ 368,438,438 | \$ 18,570,313 | | | \$ - | \$ 38,344,285 | \$ 425,353,036 |
| 3 | Adopted Budget Reclassification | R-21-159 | \$ (77,411,477) | | \$ 77,411,477 | | | | \$ - |
| 4 | Total Adopted Budget | | \$ 291,026,961 | \$ 18,570,313 | \$ 77,411,477 | | \$ - | \$ 38,344,285 | \$ 425,353,036 |
| 5 | | | | | | | | | |
| 6 | Supplemental Appropriations: | | | | | | | | |
| 7 | Transfer of Unanticipated Revenue to East Side Recreational Facilities ETF | R-21-158 | \$ 750,000 | | | | | | \$ 750,000 |
| 8 | Transfer of Unanticipated Revenue to (BDA) Business & Industrial Authority ETF | R-21-160 | \$ 250,000 | | | | | | \$ 250,000 |
| 9 | Authorizing the City to enter into an agreement with Liberty Utilities | R-21-169 | \$ 38,394 | | | | | | \$ 38,394 |
| 10 | Repurpose of LED Street Light Bond Proceeds to DPW Sidewalk Infrastructure Improvements | R-21-187 | | | | | \$ 440,225 | | \$ 440,225 |
| 11 | Solid Waste Department Bonding Resolution for Improvements, Refuse Truck & Wheel Loader | R-21-189 | | | | | | \$ 1,859,440 | \$ 1,859,440 |
| 12 | Unanticipated Revenue sale of Burke Street Property | R-21-190 | | | | | \$ 3,650,000 | | \$ 3,650,000 |
| 13 | Repurpose of Broad St Parkway Bond Proceeds to DPW Facility Project | R-21-191 | | | | | \$ 2,000,000 | | \$ 2,000,000 |
| 14 | DPW Facility Project \$3 Million Bond Resolution | R-21-192 | | | | | \$ 3,000,000 | | \$ 3,000,000 |
| 15 | Bond Resolution Design & Construction of School Street Riverwalk | R-21-193 | | | | | \$ 21,000,000 | | \$ 21,000,000 |
| 16 | Bond Resolution - Franklin Street School Building Improvements | R-22-016 | | | | | \$ 5,000,000 | | \$ 5,000,000 |
| 17 | Bond Resolution - to fund the second Five Year Phase of a Ten Year Pavement Management Project | R-22-020 | | | | | \$ 37,500,000 | | \$ 37,500,000 |
| 18 | Transfer of Assigned Fund Balance to School District - Teachers Contract | R-22-022 | \$ 1,300,000 | | | | | | \$ 1,300,000 |
| 19 | Bond Resolution - Replacement and Upgrade of Radio Communications Equipment | R-22-027 | | | | | \$ 3,700,000 | | \$ 3,700,000 |
| 20 | | | | | | | | | |
| 21 | | | | | | | | | |
| 22 | | | | | | | | | |
| 23 | Total Supplemental Appropriations: | | \$ 2,338,394 | \$ - | \$ - | \$ - | \$ 76,290,225 | \$ 1,859,440 | \$ 80,488,059 |
| 24 | | | | | | | | | |
| 25 | | | | | | | | | |
| 26 | Total Base Budget: | | \$ 293,365,355 | \$ 18,570,313 | \$ 77,411,477 | | \$ 76,290,225 | \$ 40,203,725 | \$ 505,841,095 |
| 27 | | | | | | | | | |
| 28 | | | | | | | | S&L IPD - 3 Year Average | 2.80% |
| 29 | | | | | | | | | \$ 520,004,646 |



RESOLUTION

RELATIVE TO THE ADOPTION OF THE FISCAL YEAR 2023 PROPOSED BUDGET FOR THE CITY OF NASHUA GENERAL, ENTERPRISE, SPECIAL REVENUE AND GRANT FUNDS

CITY OF NASHUA

In the Year Two Thousand and Twenty-Two

RESOLVED by the Board of Aldermen of the City of Nashua that the Fiscal Year 2022 Proposed Budget for the General Fund of the City of Nashua be and is hereby adopted, and that the following amounts are hereby appropriated for the several accounts and for other needs of the City of Nashua General Fund for the fiscal year beginning July 1, 2022, and ending June 30, 2023, and for the purpose of Section 50-a et seq. of the Nashua Revised City Charter, as amended, each item of this budget shall be considered as a separate appropriation. The proposed General Fund appropriation amount is \$302,998,903 with estimated General Fund Revenues of \$72,322,078 including estimated state funding for education in the amount of \$41,110,000.

That the Fiscal Year 2023 Proposed Budget for the Enterprise Funds of the City of Nashua be and is hereby adopted, and that the following amounts are hereby appropriated for the several accounts and for other needs of the City of Nashua Enterprise Funds for the fiscal year beginning July 1, 2022 and ending June 30, 2023, and the purpose of Section 50-a et seq. of the Nashua Revised City Charter, as amended, each item of this budget shall be considered as separate appropriation. The proposed Enterprise Funds appropriation amount is \$44,082,794 (inclusive of anticipated Capital Appropriations), with estimated Enterprise Funds Revenues of \$38,222,735 and any additional funding for capital and CSO-related expenditures from retained earnings, bonding and/or State Revolving Fund Loans.

That the Fiscal Year 2023 Proposed Budget for the Special Revenue Funds of the City of Nashua be and is hereby adopted, and that the following amounts are hereby appropriated for the several accounts and for other needs of the City of Nashua Special Revenue Funds for the fiscal year beginning July 1, 2022 and ending June 30, 2023. The proposed Special Revenue Funds appropriation amount is \$36,607,613 with estimated Special Revenue Funds Revenues of \$36,607,613 for the City of Nashua. The proposed Special Revenue Funds appropriation amount is \$22,974,364 with estimated Special Revenue Funds Revenues of \$22,974,364 for the Nashua School District.

RESOLUTION**R-22-035**

Neither the approval and adoption of this budget, or any appropriation contained herein, or to any City department or agency, including the Nashua School District, whether as proposed or amended, shall be deemed to mean that the City has approved any program or responsibility for funding in accordance with Part I, Article 28-a of the Constitution of the State of New Hampshire. Notwithstanding any appropriation herein, the city hereby expressly declines to approve funding for any program or responsibility for which it is entitled by law to payment from the State of New Hampshire pursuant to Part I, Article 28-a of the State Constitution, whether it has previously been determined that the City is entitled to said funding or not.

Pursuant to NRO § 5-145, E, the accumulated sum of all appropriations of the FY2023 combined annual municipal budget pursuant to Nashua City Charter §56-c is \$406,663,584. The FY2023 dollar amount under the limit established by City Charter Section 56-c is \$113,341,062. Please find attached the Combined Annual Municipal Budget Calculation for the FY2023 Proposed Budget and the City of Nashua Charter and Related Laws pertaining to §56-c and §56-d.

City of Nashua

Charter and Related Laws

§ 56-c. Limitation on budget increases ³²

Recognizing that final tax rates for the City of Nashua are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35(1), the mayor, the board of aldermen, and all departments in the City of Nashua including the mayor's office, aldermanic office, legal department, administrative services division, community services division, community development division, school department, public works division, fire department, police department, public libraries, parking garages and cemeteries shall prepare their annual budget proposals and the Board of Aldermen shall act upon such proposals in accordance with the mandates in this paragraph.

In establishing a combined annual municipal budget for the next fiscal year, the mayor and the board of aldermen shall consider total expenditures not to exceed an amount equal to the combined annual budget of the current fiscal year, increased by a factor equal to the average of the changes in the Gross Domestic Product Implicit Price Deflator (IPD) for State and Local Government Consumption Expenditures and Gross Investment of the three (3) calendar years immediately preceding budget adoption as published by the Bureau of Economic Analysis ³³

This provision shall not prevent the mayor and the board of aldermen from establishing a combined annual municipal budget below this limit.

This provision shall not prevent the mayor and the board of aldermen from appropriately funding any programs or accounts mandated to be paid from municipal funds by state and federal law.

§ 56-d. Exception to budget limitation³⁴

The total or any part of principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be exempted from the limitation defined in paragraph 56-c upon an affirmative vote of at least ten (10) aldermen. This decision shall be made annually.

In addition, capital expenditures deemed necessary by the mayor and the board of aldermen, subject to recommendation by the capital improvements committee (ref. Paragraph 77- a of the City Charter) may similarly be exempted from this limitation upon an affirmative vote of at least ten (10) aldermen.

**City of Nashua Combined Budget Analysis to the
FY23 Proposed Budget**

Combined Annual Municipal Budget Calculation (per Nashua City Charter § 56-c)

| <u>Line</u> | <u>Description</u> | <u>FY2022</u> | <u>FY2023</u> |
|-------------|--|-----------------------|-------------------------|
| 1 | <u>Appropriations</u> | | |
| 2 | General Fund | \$ 291,026,961 | \$ 302,998,903 |
| 3 | Enterprise Funds | 38,344,285 | 44,082,704 |
| 4 | Special Revenue Funds (includes Grants) | 95,981,790 | 59,581,977 |
| 5 | Total Appropriations | \$ 425,353,036 | \$ 406,663,584 |
| 6 | | | |
| 7 | | | |
| 8 | <u>Supplemental Appropriations</u> | | |
| 9 | General Fund | \$ 2,338,394 | \$ - |
| 10 | Enterprise Funds | 1,859,440 | - |
| 11 | Capital Project Funds | 76,290,225 | - |
| 12 | Total Supplemental Appropriations | \$ 80,488,059 | \$ - |
| 13 | | | |
| 14 | Total Appropriations | \$ 505,841,095 | \$ 406,663,584 |
| 15 | | | |
| 16 | <u>Spending Cap Calculation</u> | | |
| 17 | FY2022 Total Appropriations | | \$ 425,353,036 |
| 18 | Add: FY2022 Supplemental Appropriations | | 80,488,059 |
| 19 | FY2022 Total Appropriations | | \$ 505,841,095 |
| 20 | | | |
| 21 | Last 3-Years Annual Average S&L IPD | | 2.8% |
| 22 | Allowable Spending Over Prior Year Total Appropriations | | \$ 14,163,551 |
| 23 | | | |
| 24 | Maximum Appropriations Allowed (Line 20 plus Line 23) | | \$ 520,004,646 |
| 25 | Total Proposed Appropriations - FY2023 | | 406,663,584 |
| 26 | Total Appropriations Under the Spending Cap | | \$ (113,341,062) |

LEGISLATIVE YEAR 2022

RESOLUTION: R-22-035

PURPOSE: Relative to the adoption of the Fiscal Year 2023 proposed budget for the City of Nashua general, enterprise, special revenue, and grant funds

SPONSOR(S): Mayor Jim Donchess

COMMITTEE ASSIGNMENT: Budget Review Committee

FISCAL NOTE: The tax rate cannot be determined at this time. The entire budget is a comprehensive package and each component impacts the tax rate.

ANALYSIS

This resolution adopts the Fiscal Year 2023 Budget for the City's general, enterprise, special revenue, and grant funds. For the purpose of Section 50-a et seq of the Nashua Revised City Charter, as amended, each item of this budget shall be considered as a separate appropriation.

A public hearing on the budget shall be held before its adoption by the Board of Aldermen with at least seven days' notice. Nashua City Charter § 56-a; NRO § 5-8.

Nashua City Charter § 56-b provides that the Board of Aldermen may reduce any item in the mayor's budget by a majority vote, but an increase or addition requires a vote of two-thirds of the members of the board. Court decisions concerning Nashua's Charter suggest that a court may find that this provision, when applied to the budget resolution itself, is inconsistent with state statutes and therefore unenforceable. See memorandum of Corporation Counsel dated March 8, 2018.

The budget shall be finally adopted not later than August 1, 2022. Nashua City Charter § 56-b

**Approved as to content,
account structure, numbers,
and amount:**

Financial Services Division

By: /s/ John Griffin

Approved as to form:

Office of Corporation Counsel

By: 

Date: May 10, 2022