

BUDGET REVIEW COMMITTEE

August 17, 2009

A meeting of the Budget Review Committee was held Monday, August 17, 2009 at 7:00 p.m. in the Aldermanic Chamber.

Alderman-at-Large Brian S. McCarthy, Chair presided.

Members of Committee present: Michael J. Tabacsko, Vice Chair
Alderman-at-Large David W. Deane
Alderman-at-Large Ben Clemons
Alderman Michael A. Tamposi
Alderman Mark S. Cookson

Members not in Attendance: Alderman-at-Large Lori Wilshire

Also in Attendance: Mayor Donnalee Lozeau
Alderman-at-Large Fred S. Teeboom
Alderman Richard P. Flynn
Alderman Jeffrey T. Cox
Alderman Paul M. Chasse
Michael Gilbar, Chief Financial Officer/Comptroller
Stephen Bennett, Esq., Deputy Corporation Counsel
Donald Conley, Chief of Police, Nashua Police Dept.

Chairman McCarthy

Tonight we have no communications or unfinished business. I will note that under new business resolutions, I do not expect to take up R-09-218, 219, or 220 because Attorney McNamee is not available to discuss those three. Attorney Bennett is here to discuss R-09-217.

COMMUNICATIONS - None

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS

R-09-214

Endorsers: Mayor Donnalee Lozeau
Alderman Jeffrey T. Cox
Alderman Richard P. Flynn
Alderman-at-Large Ben Clemons

AUTHORIZING THE EXPENDITURE OF \$3,362,000 FROM THE SCHOOL CAPITAL RESERVE FUND (ACCOUNT #981-5368) FOR THE PURPOSE OF PAYING SCHOOL BONDED DEBT PRINCIPAL AND AUTHORIZING THE TRANSFER OF \$3,362,000 FROM FY2009 ACCOUNT #592-85025 “DEBT SERVICE, PRINCIPAL SCHOOL BONDED DEBT” INTO FY2009 ACCOUNT #581-99985 “SCHOOL DEPARTMENT, BUDGET ADJUSTMENT”

MOTION BY ALDERMAN CLEMONS TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Mayor Lozeau

Thank you Mr. Chairman. I believe that this resolution has had a significant amount of discussion over the last few weeks as a potential solution for your consideration tonight for the FY09 deficit from the school district. I think most of you know that the current amount in the Capital Reserve Fund is about \$7.8 million. After this transfer, there would be about \$4.5 million. I think, again, you know that based on some of our discussions surrounding security.

I would add something tonight for your consideration. The CFO and I were speaking earlier about the dollar amount. This resolution says \$3,362,000. It occurred to us that right now we still don't have the exact dollar amount. It may be somewhat less than that. We are pretty certain it is not going to be more than that. One of the things I would ask you to consider tonight is to add the words in the first sentence, before the \$3.3 million, to add the words "up to", and in the third line down do the same before that dollar amount, and then to just add the sentence that says "The transfer amount shall be certified by the City's Chief Financial Officer." That way there is some flexibility in there to transfer only what we need, which I believe, should everybody support this, that is really all we want to make sure that happens is the amount needed covers the cost.

If you can think of a better way to do that, I did speak with legal counsel to make sure that would capture what I have described here, and they thought that would be fine. I am happy to answer any questions as if the CFO, Mr. Chairman.

Chairman McCarthy

Are there any questions? I don't think anyone will disagree with that request for amendment so I would ask for an amendment to amend in title and body by inserting the words "of an amount not to exceed" prior to \$3,362,000 wherever it occurs and adding language at the end that says "The transfer amount shall be certified by the City's Chief Financial Officer."

**MOTION BY ALDERMAN TABACSKO TO AMEND R-09-214 IN TITLE AND BODY BY INSERTING THE WORDS "OF AN AMOUNT NOT TO EXCEED" PRIOR TO \$3,362,000 WHEREVER IT OCCURS AND ADDING LANGUAGE AT THE END THAT SAYS "THE TRANSFER AMOUNT SHALL BE CERTIFIED BY THE CITY'S CHIEF FINANCIAL OFFICER."
MOTION CARRIED**

Chairman McCarthy

That brings us back to the main motion of recommending final passage now as amended. Is there any further discussion of that motion?

Alderman Teeboom

First of all my name was not mentioned as also attending by the Clerk so please mention my name. Also mention Alderman Flynn's name whose name was not mentioned by the Clerk.

Alderman Cookson

Mention my name too.

Alderman Teeboom

And Alderman Cox. Anyway I don't have a vote in this committee unfortunately, but I will not endorse this now and I will not endorse it during the Full Board meeting when I do have a vote. I understand why Mayor Lozeau is doing it, but I think she is taking, in a real sense, the easy way out. There are other means to do it; one is to take the money out of surplus, which would ultimately wind up in fund balance, which is projected to be about \$2 million. Another way to do it is to take money out of escrow. There is over \$3 million worth of escrows, \$1.5 million or thereabouts, I forget the exact number, still to be decided by the Aldermen, better part of it approved by the Mayor. That is another way of doing it.

Then there is the fund balance itself. I want to remind the committee that it wasn't very long ago that \$19 million was taken out of fund balance - \$19 million part of which was to cover a deficit in the insurance department. I have not yet been able to track the real amount because searching through the minutes it is next to impossible to track the \$19 million. I asked Alderman Deane to get some details on that.

Chairman McCarthy

I feel compelled to explain that there was never \$19 million transferred out of fund balance. In order to meet statutory requirements around the Capital Reserve Fund, it was dissolved in its entirety of \$19 million into the general fund and that money was then subsequently reallocated to the payment to the budget for that year and an allocation to re-establish the fund with significantly less money in it.

Alderman Teeboom

Not all of the \$19 million went back to the Capital Reserve Fund, only about \$8 million did.

Chairman McCarthy

I believe I just said that as I explained to you the other day.

Alderman Teeboom

Some of the money went to pay for the bonds and some of the money went to pay for other deficits. I am still trying to figure out exactly how the \$19 million worked out. We are not here to debate the \$19 million, however, which is if anybody wants to look at it; it is R-05-275.

The question is, is this the best way to go? The situation we have here is mismanagement ... **audio inaudible...** It is not software. To try to blame this on software is ludicrous, absolutely ludicrous. We have had software problems and we try to fix them, but that doesn't mean that deficit should not have been caught earlier. When this comes before the Full Board I will discuss some of the severance money that was paid out that should have raised anybody's alarm.

Many of the raises were handed out both to the contract and administrative staff. The administrative staff exceeded 33% in some cases where there were promotions from Headmasters to Associate Principals – completely unnecessary given the fact that this contract that we approved effective May '08 was extremely tight and everybody knew it. Everybody knew it. There should have been flags raised from the very beginning. On top of all of that was a severance issue; large amounts of severances. I have the percentages here. The flags were all there and people were

retiring because they wanted to take advantage of severance payments in terms of continued health payments for the remainder of their lives; past 65 if they retire before I believe it is '09. All of the signs were there; severance, raises, contract. They faced a serious problem. They kept on giving raises.

Now here we are looking to take it out of Capital Reserve Fund, which I consider to be the fund for the kids. The first casualty so far has been the security system. Maybe it will come back. It hasn't come back so far because the School Board told me they didn't want to come back, school administration told me they don't want to come back and ask for money while they are trying to face this deficit problem.

I am not going to endorse that. I think the way to answer this problem is to open up the teachers' contract and start pulling back some of these raises. Practical or not, we have to live with this deficit for a while. Have that contract opened. That is what caused the problems to begin with. That is the way I vote. I won't accept any other solution. Thank you.

Alderman Cookson

Thank you Mr. Chairman. First I would like to apologize for me being late. I was co-chairing a cultural planning steering committee in another part of City Hall. If you would be so kind to recognize my attendance this evening I would appreciate that. Then I have at least three questions, through you, to CFO Gilbar.

CFO Gilbar, Alderman Teeboom brought up three other potential solutions to fund this deficit. He mentioned fund balance, he mentioned escrows, and he also mentioned going back into the teachers' collective bargaining agreement. Would you address each one of those potential solutions in comparison to the resolution that is before us and indicate why or why not any of the three solutions proposed by Alderman Teeboom might be a better solution or not an effective solution?

Michael Gilbar

I can answer the first two. The fund balance for current surplus or current year fund balance, we already have a plan in place to use those funds to offset a portion of the tax rate for the FY10 budget. If you tap into undesignated fund balance in general you begin pulling money from an area that the bond rating agencies really will take a look at. The more you deplete the undesignated fund balance the chances of increasing your bond rate go up. We do have a board policy that maintains a minimum balance of 10% of the revenue. We are a bit over that right now. We are around 12-13%. We really preferred not to tap into the undesignated fund balance.

In terms of the teachers' contract I am not really sure how to address that.

Alderman Cookson

Before you touch on teachers' contract could you speak to the escrows? Similar response or...

Michael Gilbar

Yeah. A good chunk of the escrows are paving projects and capital projects that are really necessary and part of the plan to get caught up on the sidewalks and some of the other capital projects that we have; City Hall, etc. They also include payment on one of our unsettled contracts.

Alderman Cookson

Thank you. The third option, the teachers' collective bargaining agreement that was approved by this board, Mayor would you care to respond to that question?

Mayor Lozeau

Certainly. That is not our call on whether or not that contract gets looked at again. That is the School Board's call, and I think they should have the opportunity to make that call. I think that is one of the items on their agenda certainly to discuss.

If the Chairman would indulge me seeing that I had to answer one I would also like to just make a comment on the other two. When we started working together, when we found out that we were faced with this problem, a group of us worked together on what solutions might be. All of those items that Alderman Teeboom has raised and those that you asked questions about were discussed and the pros and cons were weighed about what was best to do. If you boil it all down, from my perspective, first of all I would argue that it wasn't easy, and I also think that I am very pleased that the School Board was willing to step up and say we want to take responsibility for this and we want to work to solve it.

Nobody pointed fingers and they didn't point at the computer system. They didn't do any of that. They talked about it and they took it head on, and I respect that. When we presented this solution to the full board they unanimously adopted it. I think we have to give them the opportunity to do that, but when you boil it all down the bottom line for me was I didn't think it should come out of what I call the city side of the ledger. I thought it should come out of the school side of the ledger. I thought they needed to make choices that were appropriate to solve this, and perhaps when I began this evening I didn't really articulate at length what brought us to this solution because I was just I guess taking for granted that because of my letter and other communications that everybody had heard enough from me, but I do think it is important to make those points. Thank you for giving me the opportunity.

Alderman Deane

Thank you. I was listening with great interest when Alderman Teeboom mentioned his 3 or 4 different scenarios associated with addressing this issue. I for one look back at our undesignated fund balance, which shows the financial health and wellbeing of the city. If there is one thing that I can say that I feel I played a part in was building that fund balance up, and then having an ordinance that passed this board 14/1 to maintain a percentage of our operating budget to be held in undesignated fund balance. That is just good business practice. For those projects that come in that go out for bonding, it helps us with our interest rate, our credit rating. It does a multitude of things and quite frankly there would have to be some catastrophic issue for me to even contemplate taking any money out of there. Similar to say when the Pennichuck roof collapsed. When things like that happen you have cash on hand to deal with those sort of issues.

The escrows were brought in. Those are ongoing projects for the most part. I think they were well vetted by the administration. I am sure the Mayor put each and every project up to the different division directors and department heads and asked them whether they could live with or without those funds for those projects, and I think the way the resolution was crafted up, pretty much the answers were part of the resolution.

Then there is the other funds that we had that were around \$2 million or so that was left over from unexpended appropriations from prior year budget that is part of the tax rate reduction process. That is where those funds are going to be needed.

Liquidating this account by reducing it by up to \$3.3 million is kind of a tough pill to swallow when you look at some of the ongoing problems that the Nashua School District current has. The boilers, for one, are probably the biggest issue right now that they are facing. It appears as though we are going to be borrowing quite a bit more money than had been anticipated with the cash that we have on hand in this account. To do a bottom line reduction on the operating budgets to cover the cost quite frankly I think penalizes these other departments that have spent a lot of time planning how they are going to operate and what the cost is going to be with the services that they provide to the citizens we represent. I don't think that is a fair way to do something.

What I see coming down the road, and when this issue was addressed either with this resolution or whatever the majority of the board supports, what I see coming down the road is their current fiscal year. They have some huge problems. I spoke about this before. I attended that meeting that the Mayor was at. I believe there was a number thrown around that was \$2 million, and Mr. Conrad I believe was quick to state that it is more around \$3 million. They have a big problem this fiscal year and they are going to have a lot of tough choices to make. I just hope that we are not asked to dip back into this fund to cover this year's operating issues.

As the Mayor said, we will give the Board of Education and the administration over at the school district time to untangle all of this and put a plan in place. I will be supporting this resolution. Thank you.

Chairman McCarthy

I have to say I think this solution stinks. It stinks marginally less than every other solution that we have in front of us. What stinks is not the solution it is the problem, and I agree with Alderman Deane on the other three solutions; if we cut the escrows first of all we are cutting the solution to one of the contracts that is in front of us, we are cutting paving, we are cutting other projects that are vitally important to the interests of the city. I don't want to dip into the fund balance, and if we take the last piece of surplus that goes directly to the tax rate that will be set in September, in a year when we really don't want to increase taxes any more than we have to. I don't like any of those.

I don't like taking it out of the Capital Reserve Fund. I don't see much of a choice. I think we need to figure out how to close the books on 2009 and to learn from it, and basically where I want to see us focus our attention is on the FY10 budget, and what we are doing there. I have had some conversations with Mr. Vaughn and I will be having a conversation with Mr. Conrad. I am trying to arrange a meeting where they can come in and explain to us how they think they are going to resolve that and what they may ask us for. I have commented on several occasions that they ought not try to ask us for much. This really is a problem that needs to be solved in the management over there.

The numbers we have in front of us clearly just never stood up correctly so something that we have been told in the last year was grossly incorrect, and I don't know whether it is the analysis of the contract that we were told would be tight but would fit or whether it is the analysis of other items in the budget like special education and severance. I do want to make sure that we see what those numbers have been and what we anticipate them to be. I believe one of the problems is we just have not correctly projected year end expenses for quite some time, and we have been covered by the way things work out on that in the past, but that didn't happen this time.

I certainly want an accounting that this board can be comfortable will still be valid come the end of next June because it doesn't do us any good to have numbers that turn out not to be right in the last Warrant of the year. That is exactly why we are here today. We will be having an evening dedicated to talking to the school administration about that. I had tried to set that up for early next week. I think it is going to be a little out past there because Mr. Conrad will not be quite ready to talk to us at that point. I will let you know when we have that set up.

I will support this. The one piece of good news that goes with it is I think we still have enough money left to do the HVAC projects. With the numbers that the Jordan Institute brought back to us, those actual costs that we will be investing in those schools, we don't know the exact number for Ledge Street yet, but the numbers for Fairgrounds went down dramatically, and if those numbers come out in the ballpark we are looking at, I think the cash that we have on hand in the account and in that project will be sufficient. I am not as concerned about that as I used to be. Would I rather still have the extra \$3.5 million in the Capital Reserve Fund, of course, but as far as I can see this is the most expedient way to get out of this problem and move on to how we are going to solve next year.

Alderman Flynn

Thank you. I don't co-endorse many pieces of legislation. This happens to be one that I did co-endorse. I recognize that the school department doesn't print money. We have to find some way to close the books here as we get to the point where we need to file the record.

My understanding is at least that there is no other resolution coming forward, this is the final closing of the books for the Nashua School District, takes care of the full need for FY09, and any legislation, wherever it might be now or whatever others are thinking about, there is no need to bring forward any other legislation, there is no need to override the Spending Cap. This somehow allows us to move forward. I think the things Alderman Teeboom brought up all of those have some merit. They did require a little bit of thought to decide if they were the right way or not. I am sure that your staff spent quite a bit of time trying to come up with the appropriate balance.

At this point, I did sign up for this as a co-endorser. I think it is a solution and like I say they can't print their own money. Your staff I am sure worked very hard to find some way to close this out for them. Actually for someone like myself to see a resolution to the problem without having to deal with the Spending Cap or the tax rate for that matter with the \$2 million you are talking about applying towards the tax rate, this is a way to move forward. Like I said I don't endorse many. I know they can't print money. I am in. Thank you.

Alderman Clemons

I too co-endorsed this because I believed that it was the best solution to the problem. One thing that I just want to get on the record at least from my perspective is that the administration that is coming in to the school district inherited this problem, and I think it is important to remember that

when they are dealing with the solution for 2010. I think that a lot of us put a lot of trust and a lot of faith into the practices of the past administration, and unfortunately we maybe should have done a little bit closer fact checking. I think we have learned that lesson.

I think it is important to recognize that they are fixing the mistakes of someone else. I think we ought to give them latitude in that regard when they do come forward with solutions whatever they may be. Thank you.

Alderman Tabacsko

Thank you. I just wanted to say that I will support this also for much the same reasons as have already been outlined. It is an ugly problem. Solutions are weak this being the least offensive. I don't know of any other alternative. I feel like this is a way to get it resolved for this year. I am confident that the new incoming administration at the school department is well equipped to deal with the issue for FY10. I think that is in fact the better investment in time right now is to try and make sure that we have this fixed going forward. I will be supporting this. Thank you.

Alderman Cox

I also will be supporting this as a co-sponsor on this, and I thank the Mayor for making what I call the rough decision; not taking the easy way out. It is a very tough decision. It is a city that is very fiscally sound and putting forth a very solid budget without much debate or argument, and things were on track. To have her have to face this, it is not the easy way out. There was no easy way out. A \$3 million mistake if you will, that is a real challenge at a time where we weren't facing these types of difficult challenges, things were on track and going the way they should.

I also want to thank President Vaughn of the Board of Education, Mr. Hallowell who stood up right away and took ownership of this, and I think within 24 or 48 hours of discovering it were working diligently to come up with a plan for FY10 as well as discover where the problem was in '09; every problem not just the ones that were presented by Mr. Mealey. I know that they have a plan in place already between leaving positions vacant and other solutions that are not easy decisions for them to make at all, but it is necessary. They are where they are, and they are working hard to solve that problem. I think right now they already have a plan that will relieve or take care of \$1.6 million of the shortfall for FY10. They are working every day to continue the solution to make it to what we hope isn't \$3 million, but Mark Conrad feels pretty confident that it is going to be in that range.

Thank you Mayor for coming forth, and you brought it right to them. Very clear, very concise, very transparent the way we all should like it, and not overwhelming for many board members to have to override the Spending Cap and do other things that they choose not to do. Thank you.

Mayor Lozeau

You are welcome.

Chairman McCarthy

The motion is to recommend final passage of R-09-214 as amended. Is there further discussion?

MOTION CARRIED

Mayor Lozeau

Mr. Chairman can I just point out that Chairman Vaughn is here tonight and Mr. Hallowell did call and ask if he should attend tonight. I think that goes to what Alderman Cox was saying for the record.

Chairman McCarthy

I thank them for attending, and look forward to discussions with them in the near future.

R-09-217

Endorsers: Alderman-at-Large Lori Wilshire
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox
Alderman-at-Large Ben Clemons

**APPROVING THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE NASHUA POLICE COMMISSION AND THE NASHUA POLICE
SUPERVISORS ASSOCIATION FROM JULY 1, 2009 THROUGH JUNE 30, 2011**

MOTION BY ALDERMAN CLEMONS TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Mayor Lozeau

If I could, I was just going to point out to you that I think this is a contract that is leading the way for many of the others that you are going to be considering this week. I think everybody worked very well together. I think the increases you are going to see here on the costing sheet are reasonable given the times, and I know that you are in good hands tonight with the Chief, the CFO, and Attorney Bennett to walk you through the contract. I am going to excuse myself. Have a good evening.

Chairman McCarthy

Alderman Tabacsko I am going to ask you to take over for a second.

Chairman McCarthy stepped down and Vice-Chairman Tabacsko presided:

Chairman Tabacsko

Attorney Bennett did you want to open up...

Stephen Bennett

I am available for questions. I think the Chief has some introductory comments.

Donald Conley

Thank you. Brief comments; just wanted to point out the contract that is before you this evening represents 32 sworn members of the Nashua Police Department. There are 9 Lieutenants and 23 Sergeants. Upon review of the document myself and I would say the majority of the contracts that

come out of the Police Department are pretty straightforward, and I think this particular contract is quite reasonable. I am here to support it 100%.

Before any questions are asked, I would like to thank Deputy Corporation Counsel Steve Bennett, Sgt. Tom MacLeod and his team, and Deputy Chief Peter Theriault who is here tonight. Their contract expired but for a few weeks ago. To have one this quickly and have it before the Budget Committee for review I think is commendable and I wanted to state that. Thank you.

Chairman Tabacsko

Thank you Chief. I will open it up to questions. Are there questions from the committee?

Alderman Deane

Thank you. I would like Attorney Bennett to just go through the changes in the Articles if he could.

Stephen Bennett, Esq.

Again, when we started negotiations both teams sat down, and it was determined early on that we were going to limit the number of changes to the contract. I believe you have the redlined version of the contract. If you have that you will see a lot of changes. A lot of that was just getting rid of provisions that were no longer in effect. There is a lot of crossed out material that was just getting rid of those provisions that don't pertain anymore.

You will see that in the health coverage. We made no changes to health coverage. You will see a lot of cross outs. We discovered a lot of stuff. There essentially are four areas to look at. The first and simplest is this is a two year contract. It runs until June 30, 2011. The wage increases for those two years are 2.5% for each year. There is a change in the outside details, essentially a \$2 increase.

The prior round of contract negotiations, which I was not involved in, but my understanding is that at that time they froze the outside details, and there was no increase. This increase, approximately \$2, there will be a corresponding increase, which is not part of the contract. Just to let you know, there is going to be an increase in the administrative fees charged to the contractors who ask for these outside details. That increase in the administrative fee will cover the corresponding increase in essentially the retirement contributions we have to make. Even with this increase of \$2 per hour, that puts Nashua, compared to other municipalities across the state and the State police, in the middle range. We were at the lower end of those outside detail ranges, and we will be in the middle if this is approved.

There are some agencies such as the State Police that I think are up around \$60+ per hour for outside details. This will put us up into the high \$40s, which is right in the mid range for other municipalities throughout the state.

There is another change, which has to do with the educational benefits, and that is kind of a cost item change, it is not really as it doesn't affect the overall cost of this contract. There is a \$10,000 pool of money available to this union for educational reimbursement. That is not changing. That still stays at \$10,000 for each year, and that is reflected in the costing done by Mr. Gilbar. What has changed is the amount per course, which will be reimbursed. It was at \$400 for courses. It is increasing to \$800 per course for FY10 and \$900 for FY11.

The purpose of that reimbursement or the intent was to reimburse 50%, and as you look in the language that is what it says. It has changed now to up to 50%. That amount had not changed for a number of years. In taking a survey of the local universities, we were nowhere near 50% for reimbursement of courses. That change, while it doesn't increase the overall amount of money budgeted for this, does address the intent of this ordinance, which was to reimburse for 50% of the cost of the courses.

Those are the changes. As I said, there were only a few provisions, which we really addressed in particular to cost items. There were some other areas of non-cost items, but the teams decided early on just to limit it essentially because of the economic situation.

It is the commission's belief that this contract reflects the economic conditions and that the raise of 2.5% per year is a fair increase for their supervisors.

Alderman Clemons

Thank you. I would just like to say for the record that I think this is a very fair contract. I commend the employees or the union for coming forward and agreeing to what amounts to reasonable raises especially in light of the economy. I think that is to be commended. I think that these are hard working individuals that deserve a cost increase/a salary increase each year. They put their lives on the line for us. I think it speaks volumes that they came back with something that gave them a raise, but also recognized the fact that we are in a tight spot in the city as well. To that I just want to say thank you.

Alderman Teeboom

I think you did a pretty good job there Attorney Bennett. I want to ask you about the 20%, either you or the Chief. The overhead is always a large piece of action in these contracts. This one is 20%. What has been the history of overtime, actual versus what we budgeted in the past and why do we need that much overtime.

Donald Conley

The overtime is based on an average of years. I think what skewed those numbers in previous fiscal years, my belief, was the lack of personnel that we had. We had tremendous coverage costs. A little over two years ago when I took over, I made it a priority to get up to full compliment of authorized strength, 177, and we achieved that in December 2008 bearing in mind the number of officers we hire, there is a learning curve, a training curve, and then if they are really not in the field if you will by themselves working to decrease the coverage costs, but we have started to see the results of that in March of this year where we began to see significant, in my mind and opinion, decreasing coverage costs. That relates directly to overtime.

However, the number that you have there is an average that was prepared by Ms. Karen Smith and it is relative to what we have spent in the past. As of tomorrow at approximately 11:00 a.m. we will be down two officers. We have been diligent in maintaining that authorized strength and we hope to do so in the future, which should continue to impact the overtime.

Alderman Teeboom

What happens if you don't need all of that overtime? What happens to the contract, it just stays? I will ask Attorney Bennett. If you don't spend all of the overtime what happens to that money in this case for FY09 almost \$500,000. If they don't spend all of that what happens to the balance?

Stephen Bennett, Esq.

The supervisor is only entitled to get paid for what they work so that money would, at the end of the year, remain in that account assuming there are no other transfers, but as far as these supervisors are concerned to get that \$500,000 they have to work the overtime to get it.

Alderman Teeboom

Do we escrow that money?

Michael Gilbar

No that generally goes into fund balance if it is unused unless there is some specific reason for escrowing it.

Donald Conley

This year the surplus if you will, that is my term and may not be Mr. Gilbar's term, would go back into I believe the general fund.

Alderman Teeboom

We have a surplus of \$2 million this year that is going to be used against the tax rate.

Donald Conley

I think our share of that was approximately \$318,000, which was not spent of last year's budget.

Alderman Teeboom

So your surplus runs \$318,000?

Donald Conley

As I understand yes.

Alderman Teeboom

Is that correct?

Michael Gilbar

I am not sure. It probably is.

Alderman Teeboom

Is that mostly on overtime or staffing or...

Donald Conley

It is a combination of a lot of things sir.

Alderman Teeboom

Thank you.

Alderman Cookson

Thank you Mr. Chairman. Did I hear correctly that this represented 31 supervisors?

Donald Conley

Thirty two.

Alderman Cookson

Thank you. I had a question with regard to Article 10 – Vacation. If you could just take a brief moment to explain what the change is in vacation – up to 5 vacation days can be carried over to the next calendar year, but all days carried must be taken by May 1st. What is the impact of that and why has that language been changed?

Donald Conley

There should not be any fiscal impact relative to that change. We are open 24 hours a day 7 days a week obviously, and depending upon what may occur, for instance a few months ago we had a homicide and unless you are in Aruba or perhaps Ireland or overseas you are coming back and you are going to have to work, you are going to have to cancel your vacation plans. We wanted to essentially they wanted to have a little flexibility so at the end of the year they had to do that. They wouldn't be forced to have to take that. Let's say you had 5 or 10 remaining days you wouldn't; want to force a number of people to have to take that the last week of December because we have rules and regulations in place which allow only a percentage of the staff or Sergeants, Lieutenants, Patrolmen to be on vacation.

The rules pertaining to how many can be on vacation has not changed. They would just be allowed to take that extra week during that time period; from January to 1 May.

Alderman Cookson

Thank you Chief. And then with regard to Article 14 – Medical & Dental Insurances and Long Term Disability Plan Medical Insurance, Attorney Bennett you indicated in your statement that while there is a lot of language that has been stricken, that particular Article 14 has not changed?

Stephen Bennett, Esq.

It has not. As you will see it mostly pertained to prior years; '05, '06, '07, and '08, and we just decided to save on printing costs by getting rid of all of the unnecessary or lapsed provisions.

Alderman Cookson

Thank you. And we are still identifying named carriers within that insurance?

Stephen Bennett, Esq.

Yes. This contract and several others still have some named carrier.

Alderman Cookson

With regard to Article 16 – Educational Benefits, Paragraph A, maximum amount a department will pay per class in FY10 is \$800. In FY11 it is \$900. Paragraph B states it will reimburse up to 50% of the tuition costs. Are we expecting or understanding that the \$800 and \$900 respectively is 50% of the tuition cost?

Stephen Bennett, Esq.

In taking a survey of the local universities; Southern New Hampshire, University of Massachusetts in Lowell, and others, essentially we are looking at undergraduate courses were going anywhere from \$1,000 to \$1,300 and graduate course anywhere from like I think \$1,300 or \$1,400 top about \$1,800 or \$1,900 per course. As I indicated is shown under B, the intent had been, when this was first approved, was to reimburse for 50%, and we had, over the years, fallen quite a bit behind that.

This will bring them up to – they won't get more than 50% of their courses no matter what. It does cover up to about 50% of most of the local universities graduate and undergraduate courses.

Alderman Cookson

I want to reiterate that just for my understanding. The \$800 may be up to 50% of the reimbursement, but not necessarily 50%. Eight hundred dollars is the maximum amount that is going to be paid, and it is hopefully going to be up to 50%, but may not be.

Stephen Bennett, Esq.

Correct.

Alderman Cookson

Thank you very much. I noticed on page 17 of the contract, paragraphs 3 and 4, it starts with "Acceptable examples, which may be considered related, are degrees in" and then there are two bars before psychology and Liberal Arts. It doesn't look like there were any changes made to the 9 examples within that paragraph, but something may have happened to indicate the change bars. Is that right? They have removed spaces or tabs?

Stephen Bennett, Esq.

That may be it. There were no changes to those listed.

Alderman Cookson

Thank you very much. Thank you, Chief.

Alderman Deane

On Article 26 on the outside details, how was the employees paid? Is that a check that is cut separately from their standard payroll?

Mr. Gilbar

It's cut through payroll but we actually have a special account for it. We bill the contractors for that amount. We get reimbursed what we pay out.

Alderman Deane

Is it a separate check from their normal weekly or bi-weekly paycheck?

Mr. Gilbar

No, it isn't.

Stephen Bennett, Esq.

Not according to the two supervisors sitting over there. They are shaking their heads no.

Alderman Deane

So if you work an inordinate amount of detail hours, then I guess that would push you up into a different tax bracket?

Mr. Gilbar

Probably, yes.

Alderman Deane

And the pension related costs is absorbed in the \$38.75 which is the hourly rate and then you add on the city's portion of that, about 11 percent, is that what are contribution is? How is that figured?

Mr. Gilbar

There's actually, I believe, a straight dollar amount.

Chief Conley

It's \$10.50, if this contract is approved, will be added to that \$38.75.

Alderman Deane

So the \$10.50 is just the city's portion of the \$38.75 or is that both? What's the employee's portion of contribution of that \$38.75? Does that come out of that? How is that figured?

Chief Conley

That would be figured in the overall gross salary for that week, and the state pension would be drawn from the overall gross figure.

Alderman Deane

So we send a bill out for \$48.75. The employee who is working the detail gets \$38.75 and the \$10.50 goes into the pension expendable trust fund? The special revenue fund?

Mr. Gilbar

Yes, it's in that special revenue fund and then we pull that out to the pension.

Alderman Deane

And then the calculation for the employee is figured on their total gross as you said. Okay. I just wanted to know how that was separated out. Thank you.

Alderman Tabacsko

I just wanted to make a quick comment and say this is a very concise and very nice looking contract. It's good to see that it came in so quickly given that the previous contract just expired this year. I just wanted to give my thanks to the Chief and the Commission and the Union and the City. All sides coming together and getting this done quickly. I think it is a good example that's been set. Thank you.

Alderman Flynn

In the pension column for FY10, what is that 10.7 represent? 2.5 percent of that is the salary increases for that year?

Mr. Gilbar

Correct.

Alderman Flynn

Is the balance of that something that the state has told us is going to be the new rate for the next two years?

Mr. Gilbar

Correct.

Alderman Flynn

Is that a final number from the state now or is the state still wavering on what its percentage is going to be?

Mr. Gilbar

No. That's the final number as reflected in there. I believe it's 13.66 percent.

Alderman Flynn

What's 13.66?

Mr. Gilbar

The actual pension amount is 13.66 percent of the salaries which includes the base salary and the overtime.

Alderman Flynn

But the increase is 10.7 percent? That includes the new pay and the state increase, correct?

Mr. Gilbar

Correct. Yes.

Alderman Flynn

On the last couple contracts we had, they were very contentious contracts. The two that stick out in my mind were very contentious, anyhow. We had a lot of breakdown and this form has become very much more familiar to all of us. I think we all appreciate that. But in the past, we had a breakdown in the insurance column as to how much was health care and how much was dental. Is there a reason why we've gone back to a little bit less information in that area?

Mr. Gilbar

No. I could expand that if you want a breakdown. I'm not really sure why we're combining it now.

Alderman Flynn

I would like to see, especially things like dental where I know the city pays 100 percent. I'd kind of like to see what the ongoing rate is for dental and what it's costing us. I personally preferred that breakdown that we had in the last two contracts, at least for that line.

Mr. Gilbar

I do have a breakdown. I can send that to you.

Alderman Flynn

I know this particular contract when it came forward was one of the earliest contracts two years ago or whenever we ended up signing this and then that log jam of contracts that seemed to be held up for quite awhile. There was a tough time there with the first year was zero. There was a lot of negotiation trying to work out something that would be zero but still fair in subsequent years. This was one of the first ones to agree for the city to back off on its share of the medical contribution. I know from my notes going back last evening, it looks like this union had agreed to go to them paying 7 ½ percent of their medical costs for a HMO in July of 2007 and they have been paying 10 percent of their HMOs since July, 2008. At least one of the other contracts that we signed that 10 percent doesn't even become effective until this September when school opens. They have been paying 10 percent towards their HMO 14 months sooner than other contracts. When those that come forward early, it's a little bit hard to evaluate what the value of that contract is. In retrospect I can see now that this union had made some significant compromises and has worked very well with the city. It's much clearer to me today how much they worked with us and how much they were really giving up when we see what other contracts came forward and whatever compromises were made along the way.

In this particular group, when I look at their contract, how do I know what they are paying for drug costs? Maybe there was a sidebar in the back that I missed. I didn't see it in actually any of the four contracts that were in the original packet tonight. How does the bargaining unit know what they are agreeing to for drug costs over the course of the next two years of the contract for their co-pay?

Mr. Gilbar

Those are included in the actual plan coverage for each of the different types of plans for the HMO and the other plans that are offered and are taken. Those are pretty much city-wide. I don't believe there's any difference between the contracts for the specific coverages – drug coverages.

Stephen Bennett, Esq.

I think they are all consistent except I think there the teachers have a different plan.

Alderman Flynn

The teachers have a different health plan as well or just some kind of addendum to their drug plan?

Stephen Bennett, Esq.

I can't say I'm familiar with the teachers' plan. I believe they have the same providers. I believe they have a different level plan, but I haven't been involved.

Alderman Flynn

If I were to be an employee of the city, the standard packet that I'm given for my benefits and within that my medical benefits, that has a statement of what the drug plan is for the city, notwithstanding any other contract amendments. Is that how that works?

Stephen Bennett, Esq.

Correct. I think every time we get a new card it will say what your co-pay is every time you. When there are changes to that, they send you notice. I think they send you out the whole pamphlet plus your card has that indication on it.

Alderman Flynn

I also would like to say that this is one union that doesn't tell us who we have to have for a dental provider. We have some contracts that pretty much pigeon-hole us into no compromises to who we are going to offer for a dental provider.

One area that I was a little surprised in trying to figure out is why your overtime is as low as it is. Is that surprising to you that it's only 20 percent. A lot other groups of individuals seem to be in the high 20s, some even higher. I'm a little surprised that you are able to manage to keep you overtime at 20 percent. Frankly, when I was on the budget committee two years ago, we had a lot of interest. We pretty much addressed a lot of topics. We never really got into overtime too well. It always kind of peaked my interest a little bit, but we never quite got there. I'm pleased to see it. I'm a little surprised at how you managed to keep your overtime at 20 percent considering the experience of your work group. They must be a pretty seasoned, older group that's within this union. You must have good vacation packages or whatever. I imagine they are at the top end of their vacation and those kind of things. Would you have any comments on that, how that 20 percent stands up?

Chief Conley

I think a lot of it certainly has to do with the 32 people that are represented by this contract. The average lieutenant probably has 15-16 years of service. Generally speaking, you're probably not eligible to get promoted to sergeant until you've got 10 years of service with a lot of experience behind you. I think they are good managers, and I think they take good care of themselves, and I think we have rules and regulations in place. Earlier we talked a little bit about vacation time, how many people can be on vacation. We have minimum staffing requirements. The organization is there to address the issue and keep it at a minimum. If we have any surges, any spikes, we could justify that by looking over the previous 24 hours and really seeing what we could do as managers to see how we can do it better next time when faced with the same predicament. As Chief of Police, I consider myself extremely fortunate to have the 32 people that are represented in here. I can't say enough about their work ethic, their integrity. The vast majority of them come to work, don't abuse their sick time and don't use abuse the rules and regulations that impact coverage, which impacts that salary, that cost of overtime that you refer to.

Alderman Flynn

I think this 20 percent is very complimentary of your group. That's all I have. Thank you.

Alderman Cookson

Attorney, in looking at some of the contracts as whole, I see a broadening of the definition of the term "family" to include step-son, step-daughter, daughter-in-law, etc., etc. In this particular contract can you sort of speak to how long this has been in existence for this group. I didn't see any change in this contract, but are we seeing a broadening definition of the term "family."

Stephen Bennett, Esq.

This isn't the first round of contracts where that has been expanded. I think with just there being a higher divorce rate, remarriage, you have a lot of step brothers, step sisters, step fathers, the whole step family, which has become far more common and that's why we made those changes. In fact, that is immediate family. There was also some expansion for significant others. I think the contracts reflect changes in the family units. That's what we are seeing. It goes to treating everybody fairly, that's just what we are trying to do there.

Alderman Flynn

I did have one other thing. In this group, I think it's true throughout the Nashua Police Department, your clothing allowance is not a payout. You don't get a yearly allotment for money for clothing, do you?

Chief Conley

No.

Alderman Flynn

You have to come in with some kind of slips to verify what you're doing. You just don't get money presumably for clothing, correct?

Chief Conley

No. For anything you purchase, you bring in a sales receipt. As I related earlier, our rules and regulations clearly indicate, dictate, what you can and cannot purchase. Quite often it is relating to your current assignment.

Alderman Flynn

That's much better. Thank you.

MOTION CARRIED

Chairman McCarthy

I would ask for a motion to postpone R-09-218, 219 and 220 until our next meeting.

R-09-218

Endorsers: Mayor Donnalee Lozeau
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox
Alderman-at-Large Ben Clemons

**APPROVING THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE CITY OF NASHUA, NEW HAMPSHIRE AND INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA (UAW), LOCAL #2232, PROFESSIONAL UNIT, JULY 1, 2009 THROUGH JUNE
30, 2011**

R-09-219

Endorsers: Mayor Donnalee Lozeau
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox
Alderman-at-Large Ben Clemons

APPROVING THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF NASHUA, NEW HAMPSHIRE, AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL #2232, CLERICAL AND TECHNICAL UNIT, FROM JULY 1, 2009 THROUGH JUNE 30, 2011

R-09-220

Endorsers: Mayor Donnalee Lozeau
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox
Alderman-at-Large Ben Clemons
Alderman-at-Large David W. Deane

APPROVING THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF NASHUA BOARD OF PUBLIC WORKS AND AFSCME, AFL-CIO, LOCAL 365, FROM JULY 1, 2006 THROUGH JUNE 30, 2011

**MOTION BY ALDERMAN TABACSKO TO POSTPONE R-09-218, R-09-219 AND R-09-220 UNTIL THE BUDGET REVIEW COMMITTEE
MOTION CARRIED**

R-09-221

Endorsers: Mayor Donnalee Lozeau
Alderman Michael J. Tabacsko
Alderman-at-Large Ben Clemons

RELATIVE TO THE ACCEPTANCE AND APPROPRIATION OF \$40,175 FROM THE STATE OF NEW HAMPSHIRE INTO SPECIAL REVENUE ACCOUNT #331-6268 "2010 NH DRUG TASK FORCE GRANT" AND TO AUTHORIZE THE TRANSFER OF \$15,000 FROM ACCOUNT #591-86007 "CONTINGENCY, POLICE GRANTS" INTO AFOREMENTIONED SPECIAL REVENUE ACCOUNT

**MOTION BY ALDERMAN CLEMONS TO RECOMMEND FINAL PASSAGE
MOTION CARRIED**

R-09-224

Endorsers: Alderman-at-Large Brian S. McCarthy
Alderman-at-Large Fred S. Teeboom
Alderman Richard P. Flynn
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox
Alderman Mark S. Cookson
Alderman Michael A. Tamposi
Alderman Richard L. LaRose
Alderman-at-Large Ben Clemons

**AUTHORIZING THE USE OF THE GOVERNMENT ACCESS CHANNEL (CHANNEL 16)
OR THE EDUCATIONAL ACCESS CHANNEL (CHANNEL 99) FOR 2009 MUNICIPAL
ELECTION DEBATES AND FORUMS AND AUTHORIZING PAYMENT OF THE
VIDEOGRAPHER'S EXPENSES FROM THE PUBLIC ACCESS CHANNEL ACCOUNT**

**MOTION BY ALDERMAN TABACSKO TO RECOMMEND FINAL PASSAGE OF R-09-224
MOTION CARRIED**

R-09-227

Endorser: Alderman-at-Large Fred S. Teeboom
**ORDERING AN ACROSS-THE-BOARD PERCENTILE CUT IN THE FY2010 ANNUAL
BUDGET OF EVERY CITY DEPARTMENT IN ACCORDANCE WITH NASHUA CITY
CHARTER §56-f**

**MOTION BY ALDERMAN CLEMONS TO RECOMMEND INDEFINITE POSTPONEMENT OF
R-09-227**

ON THE QUESTION

Alderman Teeboom

I wish you had let me speak first because we have a new ordinance that allows those that introduce...

Chairman McCarthy

We have an ordinance which would allow you to amend it. There has to be a motion on the floor before it can be amended which means that it is not proper for me to recognize anyone but a member of the committee who can make such a motion first after the item is taken from the table.

Alderman Teeboom

Absolutely, you're correct. I stand corrected on that. One of the members of the committee makes the motion and then I can amend it. My amendment is to table.

Chairman McCarthy

That's not an amendment. That is a separate motion that, I believe, is not in order at this point.

Alderman Teeboom

A motion to table is not in order?

Chairman McCarthy

You can make a motion to amend the text of the resolution. You cannot make a motion to table as a non-member of the committee under the terms of that ordinance.

Alderman Teeboom

I think amending the motion to table is an amendment to the motion.

Chairman McCarthy

Motions cannot be amended. Another motion can be made. A motion to table would take precedence over the motion to recommend indefinite postponement. However, you can only make a motion to amend the text of the resolution. That's what that ordinance extended our rules to allow.

Alderman Teeboom

I don't recall that exact same language. I thought after the motion was made, subsequent motions are basically amendments to a motion. An amendment is not strictly related to changing the text. Any subsequent motion is an amendment to the first motion.

Chairman McCarthy

That is not, in my opinion as chair, correct. There are a set of motions which can be made which take precedence in various orders. Traditionally we have referred to that as amending a motion, but concept does not really exist. Amendments are amendments to the text that is in front of us.

Alderman Teeboom

Can you hold for a second while we look up Mason's?

Alderman Deane

I don't think you're going to find that in Mason's. I think you're going to find that as an ordinance that we passed. I understood it as in the title or the body, as either the sponsor or a co-sponsor listed first as selected by the board president, whom he chooses, whoever had their hand up first.

**MOTION BY ALDERMAN DEANE TO TABLE R-09-227
MOTION CARRIED**

NEW BUSINESS – ORDINANCES

O-09-72

Endorser: Alderman-at-Large Ben Clemons

CHANGING THE DEFINITION OF THE COMBINED ANNUAL MUNICIPAL BUDGET TO ALLOWING A VOTE TO EXCLUDE APPROPRIATIONS THAT REQUIRED AN EXEMPTION VOTE FROM THE BUDGET LIMITATION UNDER CHARTER SECTIONS 56-c AND 56-d

MOTION BY ALDERMAN CLEMONS TO RECOMMEND FINAL PASSAGE OF O-09-72

ON THE QUESTION

Alderman Clemons

This is basically simple language for a complicated issue. I understand that the Spending Cap is in the City Charter, and I understand there are limitations for what we can do in regards to the rules by which are governed by the Charter. However, one of the topics that constantly comes up when it comes to overriding the Cap, if you will, is that the base budget of the following year will increase by whatever amount we override the Cap. If we override the Cap, for example, \$1,000,000 the base budget of next year will increase by \$1,000,000. What this ordinance seeks to do is to allow by a vote of ten aldermen the ability exempt the exemption, if you will, so exempt the override from the following year's budget. What in effect it would do would allow the vote to override by \$1,000,000 to go into effect for the current fiscal year but then the next fiscal year that would have no impact on that fiscal year. Whether you agree that's it is a good idea or not a good idea to override the Cap, I think we can all agree on the fact that if we were ever in that position where we absolutely had to do it, this might be a nice thing to have so that we don't impact the following year's budget. I think that that is basically the aim of this. I understand from corporation counsel that it would be construed as an expression of the board that makes that vote and that essentially if that were to occur it would be a non-binding ordinance to the next year. However, I feel that we should adopt this anyway because I think what it does is sends a good message to the taxpayers of Nashua that we're trying to keep things constrained, and we are trying to limit the impact of some difficult decisions because I feel when you go to override the Spending Cap, you are making a difficult decision. Whether you agree with it or not, we're in a difficult decision when we go to make that choice. I think this lessens the impact for the taxpayer. I believe that to that degree this expression, if you will, sends the right message. While I understand where corporation counsel is coming from, I also pointed out that we have several ordinances that I consider to be no-effect ordinances that relate to our budgeting process and to our Spending Cap. One of them, which I agreed with and I co-sponsored, was the ordinance that we had last year to change the CPU Index to the CPU-Northeast Index. That could be changed at any time by any board. We could go back to what we were doing before if we so chose to do that. For example, the 2011 budget, if we wanted to repeal that ordinance and start just using the CPU Index instead of the CPU-Northeast, we could do that. This ordinance is the same thing. If a future board of aldermen wants to repeal that could happen. That's my interpretation of how it has no effect, but I think if it was on the books and it was something ten aldermen could vote to agree on, I think that future boards would respect that. I think we would send a good precedence and good practice in place. I would encourage my colleagues to support me in this change. Thank you.

Alderman Tabacsko

A couple of things, one of which is just that the grammar in the first opening statement will need to be addressed. But to the meat of the thing, am I understanding this right, would we be required to bring forth a resolution in order to carry out this exemption that you are contemplating?

Alderman Clemons

No. What this language does is if a resolution comes forward to override the Cap, in that resolution to override the Cap, this ordinance would allow us to put language into said resolution that allows the exemption for the next year. Essentially you have the ordinance in place to give us the mechanism to do that.

Chairman McCarthy

I would point out that we have in fact done this once. In the case that came up earlier where we dissolved the capital reserve fund and then found ourselves having to make a \$11 million appropriation to put money back in it. That also required exempting bonded debt from the Cap. We put such an amendment on there because that was not a chunk of the base budget that we thought we would carry forward. The ordinance doesn't do much but memorialize something that we have done in the past, which I think corporation counsel's opinion that it doesn't really bind the next board to agree with that is correct, but it expresses an opinion of the board that we don't intend for it to be part of the base budget.

Alderman Clemons

To that point and to some degree I agree with that, but I feel as though if this was codified in our ordinances in order to remove that expression, if you will since that's the terminology we're using, you would have to repeal first the ordinance. The ordinance would be codified and in place.

Chairman McCarthy

That is the part that corporation counsel will tell you is not correct. A majority or a super majority of the board does not have the ability to bind a future board to anything less than what they are statutorily allowed to do by state law and by the charter. Essentially if they simply take the action of expanding the budget to that number, the ordinance is implicitly either repealed or simple waived for that case. They are not bound to meet by it because you can't bind that board to something they could have otherwise done.

Alderman Tabacsko

Would this create the presumption that any override of the Spending Cap that the intent would be presumed that we would exclude that? That's a separate voting issue, correct?

Chairman McCarthy

The intent is to make that a feature of the resolution, if the board so desires. If we do this because there is an ongoing expense that exceeds the Cap, you might expect that we would not do it. In the case where there is a one-time expense that will exceed the Cap and we wish to take care of it by an appropriation from the general fund, for example, in the case where we have a roof collapse

and we're making a supplemental appropriation, we would have the ability to put that language in the resolution and in theory it does not then increase the base budget of the following year.

Alderman Tabacsko

I don't have any trouble with that so much as it seems like what this does we already can do. This doesn't bring anything new. So, I'm not sure why we would want to do another ordinance on this because I'm just not convinced that it's gaining anything. Thank you.

Alderman Teeboom

When I saw this I approached and asked to speak with the counsel. Dory Clarke conveyed to me that Alderman Clemons basically taken the approach she had not advised. I don't have copies of his memoranda because the counsel doesn't make available to other aldermen the private memoranda unless Alderman Clemons wants to do so. So, I asked for a legal opinion. Because she was so busy with all this legislation last week, she didn't get around to it but she assured me this morning that her opinion would come out.

I'll address the legal question first. The Spending Cap says all spending shall be taken into account. It's basically tax based. If you look at the language recognizing the final tax rates are set, all spending, total spending, all spending. It's clear. So how can you, what I call cherry-pick, only that portion of an override, which happens to be the override supplement. This exclusion does not account for supplements in the budget if they are under the Cap. They strictly deal with budgetary items over the Cap. So you kind of cherry-pick. And, I said: "How can you cherry-pick a class like that without assigning accounts. How can you take just a sum total, take it out context of the charter?" She said that was a problem to her. She advised Alderman Clemons not to put forth his ordinance. He basically said: "I am entitled to put forth any ordinance I wish. That's my prerogative. I have asked legal counsel advise on that point." She said that's true. Their position in the legal office is that they will advise on legal issues, but if an alderman wishes to push forward an ordinance, all they can do is write an analysis. This led to a lengthy and rather complex analysis because what is a non-binding ordinance? That, itself, opens up Pandora's Box because the ordinance by itself does not say it's non-binding because Alderman Clemons didn't put it in. Chose not to put it in. But it says non-binding. So what does that mean? If you start populating our ordinance books with non-binding ordinances, how do we keep track of it from board to board to board? This is a big problem. However, I'm getting my legal opinion. When I get my opinion, it will be sent to the entire board so we can take it up at the full board no matter how this budget committee acts on it.

Now on the substance of it. This is really a problem. Think about this. If you do a supplementary budget or the primary budget and you override the Cap, not even a supplement, just an override when you do a primary budget, like was done in '07 and '06 and '05 where we actually approved a budget right at the beginning that overrode the Cap. Didn't even go to a supplementary budget. This says you can't count that as an increase to the next budget. That is so binding it boggles the mind. Why would you want to restrict it to this point? If I would exempt the Cap, I would assume there's reason to do so. But the reason to do so, that amount should become the base line for the next budget. So we do the CPI calculation, you take total spending in the current fiscal year. That's what the charter says – total spending in the current fiscal year. Total spending in the current fiscal year is any budget and any supplementary budget approved for this fiscal year – until the fiscal year closes out. Why would you arbitrarily diminish that amount? Why would you possibly diminish that amount? I'm about as conservative as they come, and I would say you don't want to diminish it.

Chairman McCarthy

Alderman Teeboom, if you want an answer to that, the example you gave before is exactly the one of where we had to for various reasons exempt capital expenses in order to take the action we did with the school capital reserve fund and re-appropriate the \$11 million. If you don't exempt that from the next year's base budget, that allows for an additional \$11 million of spending. Bear in mind in the year we did that, there was no real spending. That was moving money that existed from one account to another. The next year that would allow the budget to increase by \$11 million that would have to be generated by taxes over and above the normal growth.

Alderman Teeboom

You don't have to go to \$11 million the next year. You're allowed to go over \$11 million the next year without overriding the Spending Cap.

Chairman McCarthy

And I think in that particular case most of the board was of the opinion we didn't want to even consider – we didn't want a budget put in front of us by the mayor that anticipated expenses that involved that \$11 million in growth.

Alderman Teeboom

That's fine, but that's not my point. My point is if you had \$11 million increase in your budget, you can go to the next budget and vote up to \$11 million more plus the CPI on top of that budget and not exceed the Spending Cap. But you don't have to. That's the option. You always have that option to override or not override or establish whatever budget you want to establish. The point is this ordinance applies an arbitrary restriction. That's what boggles my mind. Why do it? So the charter is clear. Whatever the budget is that is approved forms the base line for the next budget that's allowed to be adopted under the Spending Cap. To take amounts out of that because it may – and the reason Alderman Clemons is doing it, of course, he wants to make it easier to exceed the Spending Cap. I asked why did you come up with this ordinance in the first place. He's trying to make it easier to exceed the Spending Cap. This is certainly not the way to do it. If you want to respond to that, Alderman Clemons, feel free. Just understand that irrespective of what happens here, I am getting my own legal opinion because I understand you have not made available to this budget committee memoranda between yourself and legal counsel.

Chairman McCarthy

I think the content of the opinion is pretty much made clear in the analysis. I call your attention to the last sentence that says: "To the extent that this ordinance seeks to limit the authority of a future board, it is void and has no effect."

Alderman Teeboom

That doesn't appear in the body of the ordinance. When I asked why does that not appear in the body of the ordinance, she said, Alderman Clemons didn't want to put it in.

Chairman McCarthy

I'm simply pointing out I think...

Alderman Teeboom

The analysis does not go along in the ordinance book. The analysis ends up somewhere – probably on the floor.

Chairman McCarthy

I understand that. I'm simply pointing out that I don't think as a board member I have been spared from corporation counsel's opinion of the legislation.

Alderman Teeboom

There's additional opinion is what I'm trying to tell you.

Alderman Clemons

I never spoke with Dory Clarke about this. I spoke with Attorney McNamee so I'm not sure why Attorney Clarke was the one that wrote the analysis, but the only conversations I had was with Attorney McNamee on this. He fully informed me that in their opinion this would be a non-binding ordinance and it is better expressed through a resolution. But my argument was that we have several ordinances that are in place that I feel, at least in my opinion, fall under this category of not binding the next board. I mentioned one of them. The other one, at least in my opinion, would be the ordinance that we passed at the beginning of this legislative term which was saying that we have to maintain ten percent of the undesignated fund balance. The only reason that I bring that up is not because I necessarily disagree with that, although I did vote against the ordinance, but again, you're binding a future board to that decision. If a future board decides that this isn't something that they want to do then they are going to repeal the ordinance and do something different. So, to that extent, all of our ordinances fall under this category, if you look at it that way. I just feel that what this does is makes it easier for the taxpayer when it comes time to have to swallow the hard pill and make the hard decisions that we have to make. It tells them that we have to do this one time, but we're not going to effect the spending next year. I think it is a good thing to do. I don't think it makes it easier for anybody to override the Cap because you are still spending a significant amount of money when you make that vote. But what you're not doing is opening up the door for next year to have the same amount of money spent plus some. That's where I am coming in. This, in my opinion, actually makes the Spending Cap tighter and harder because if an exemption were made then the base budget of next year would increase by that amount and spending could theoretically go up by the same amount and people's tax rates would go up. Doing this would simply give us the option to make sure that none of that back-end stuff happens. We can argue about whether or not it's binding to the nth degree but I think in the end, it is the right thing to do because it protects the taxpayer from having to feel the fallout of an override of the Cap. That's is where I am coming from, and I am very interested to hear, as I never mentioned nor did I ever say, that my intent was to make it easier to override the Spending Cap. I don't know where that information was given to you, Alderman Teeboom, but that is not my intention. In fact, my intention is to make the Cap stronger through this.

Alderman Deane

We have another ordinance and/or policy that we adopted, the ten deadly sins that used to hang here. You're not supposed to refer to alderman by their name. You are supposed to say the previous speaker. But anyways, the two items that were mentioned by the previous speaker, one pertaining to a percentage of fund balance that's carried against our operating budget as well as identifying a CPI were policy that were adopted by a majority of this board. A majority of this board accepted that as a policy. Yes, it can be changed. Yes, you are correct; it does not hold anyone liable to anything. If you would like to take an ordinance out and change it to change that policy, feel free to do so. That can be done. I'm always open for changes and people's ideas. I think that's what makes things interesting. It was stated earlier that it would have no net effect on the taxpayer; well it does because you're spending their money. No matter how you look at it, their money is being spent. So it does have some effect where that money could be used to offset the tax rate. It could be used to offset some borrowing that needs to be done by using cash. There isn't a net effect on the taxpayer, maybe not in the outgoing years if it's not added to the base. That problem that we had in 2005 was a catastrophic problem. We had a \$5 million shortfall in the insurance area. We also had a \$4 million reduction in the state education adequacy revenues that year, for a total of \$9 million. That's why that fund was collapsed. There was misinformation, I believe, given by the consultant that we used when they figured out the working rates for the insurance. I still have the four different presentations that were given by that one consultant, and the numbers in them all changed, upward I might add, from the first presentation that we received. That long discussion for those who were here back then is on the record. When I look at this and I look at the analysis, the last sentence in the analysis pretty much says it all: "To the extent that this ordinance seeks to limit the authority of a future board, it is void and has no effect." If a future board or this board wants to override the Spending Cap or wants to do as we did in '05, we can do that through resolution. We don't need a policy to do it. I look at some of these items on the agenda, further items on the agenda, that were excess revenues that were brought in, one in from the state and one from a lawsuit, which would be a perfect candidate for an argument. The lawsuit money is for damages that we already paid for so that was bonded money because we paid for these services and we got what we settled for because of the defective quality of the installation of the athletic fields at the north high school. The other monies that we got from the state, we already budgeted for so that's been raised by taxes to begin with. That argument can go round and round, but I won't be supporting this ordinance either. I think we have the ability as Alderman Tabacsko alluded to earlier that if we get a majority of folks on this board that want to something, then they can do it.

MOTION BY ALDERMAN DEANE TO RECOMMEND INDEFINITE POSTPONEMENT OF O-09-72ON THE QUESTIONChairman McCarthy

I'm not sure that that is order is a motion is

Alderman Deane

I'm sorry. I'll retract that. The motion for final passage is in order.

MOTION WITHDRAWN

Chairman McCarthy

I want to point out there's a problem I see with the language as well. The section of the ordinance that this appears in is about the preparation of the budget for the current fiscal year under debate. The wording "upon a vote by ten aldermen" appears to me to be the ten aldermen who are about to consider the next year's budget, not the ten who are voting to exempt certain portions of the debt from the Cap. If we wanted to have this express your intent, it would have to be changed in some way to reflect that. I think currently it applies to the wrong board with the way the wording is written because the only temporal reference in paragraph (c) is shall not include prior year appropriations which are the ones that were already exempted.

Alderman Clemons

I'm not going to pretend to feel like this even has a chance this evening so I think we should skip the motions and just vote this up or down.

MOTION FAILED TO RECOMMEND FINAL PASSAGE OF O-09-72

MOTION BY ALDERMAN DEANE TO RECOMMEND INDEFINITE POSTPONEMENT OF O-09-72

MOTION CARRIED

TABLED IN COMMITTEE

R-09-190

Endorsers: Mayor Donnalee Lozeau
Alderman Michael J. Tabacsko
Alderman Marc W. Plamondon
Alderman Jeffrey T. Cox
Alderman-at-Large Ben Clemons
Alderman-at-Large Lori Wilshire
Alderman David MacLaughlin
Alderman-at-Large David W. Deane
Alderman-at-Large Brian S. McCarthy
Alderman Paul M. Chasse, Jr.

ESTABLISHING AN EXPENDABLE TRUST FUND TO ACCEPT A DONATION IN THE AMOUNT OF \$24,144 FROM BAE SYSTEMS FOR THE PURPOSE OF FUNDING EQUIPMENT FOR NASHUA FIRE RESCUE

R-09-212

Endorsers: Alderman Jeffrey T. Cox
Alderman Michael J. Tabacsko
Alderman-at-Large Brian S. McCarthy
Alderman-at-Large Lori Wilshire
Alderman-at-Large Ben Clemons
Alderman Marc W. Plamondon

ESTABLISHING AN EXPENDABLE TRUST FUND FOR THE PURPOSES OF PURCHASING EQUIPMENT, SERVICES AND PRODUCTS TO MAINTAIN THE UPPER ATHLETIC FIELD AT NASHUA HIGH SCHOOL NORTH AND TO APPROPRIATE \$452,991.96 FROM CAPITAL PROJECT FUND 781-3773 “NASHUA SENIOR HIGH SCHOOL NORTH PROJECT” INTO THE EXPENDABLE TRUST FUND

DISCUSSION

Alderman Deane asked if the Board would be within the 30-day time period to consider the CBAs or if a Special BOA meeting would have to be scheduled.

Chairman McCarthy responded that Atty. McNamee was not present this evening. He planned on the CBAs appearing on the August 25th budget agenda.

Alderman Deane asked when the next Board of Aldermen meeting was in September.

Chairman McCarthy remarked that they may need to schedule a Special Board meeting to consider the CBAs.

Alderman Cookson requested that the Budget Review meeting not be scheduled the night before the full Board considers the CBAs.

Chairman McCarthy said he would try to do that but that quite often tends to be the only night that’s free. He scheduled a meeting for next Tuesday evening, and assuming Attorney McNamee can attend that evening, the committee would take up the contracts on that evening.

Alderman Cookson would like the members of the Board as well as the general public to have the opportunity to review the Budget Review Committee minutes prior to the full Board voting on the CBAs.

Alderman Teeboom referred to page 258 of Mason’s, Sec. 395, Test of Amendability. Section 396 lists the motions that cannot be amended, one of which is a motion to postpone indefinitely.

ADJOURNMENT

**MOTION BY ALDERMAN DEANE TO ADJOURN
MOTION CARRIED**

The meeting was declared closed at 8:45 p.m.

Alderman-at-Large Ben Clemons
Committee Clerk