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May 19, 2022

The Honorable City Council
of the City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Re: Absence of Legal Authority for City Council President's Expenditure of Appropriated Supportive Contribution Funds

Dear Council Members:

As you may be aware, a City Council member has raised concerns regarding the authority of the City Council President to expend funds from the City's Legislative Department operating budget line-item #01095-05 *Special Services*. Specifically, the Council member has alleged in a complaint filed with the CT State Elections Enforcement Commission ("SEEC") that City Council President Aidee Nieves exceeded her legal authority in the expenditure of appropriated City supportive contribution funds.

In response to these allegations and further to our discussions with the Council President, the City Attorney's Office (which was not aware of the underlying and historical practice) has researched the matter and opines that it has found no legal basis for the City Council President to unilaterally expend appropriated supportive contribution funds.

I. Statement of Legal Issue

Whether the City Council President possesses legal authority to expend appropriated supportive contribution funds?

II. Statement of Facts

The City's annual operating budget has a space reserved for listing by name the respective current head of each City department or agency on the opening page of the budget section for each such governmental unit. The traditional practice has been to list the City Council President in the appropriate space designated for the department or agency head of the City's Legislative Department in the City's annual operating budget (e. g., see page 195 of the FY 2021-2022 adopted general fund operating budget).

According to City Council President Aidee Nieves' best recollection, the actions she has taken in expending City funds for supportive contributions (since assuming her office as Council President) have been:

- in accordance with, or substantively similar to, the procedural method and manner for disbursing such funds as she was advised was her responsibility as Council President and head of the City's Legislative Department by Thomas C. McCarthy, her immediate predecessor as City Council President;
- generally geared to distributing funds annually to the same legacy organizations as had traditionally received such funds, while also including new legitimate 501(c)(3) organizations and/or community groups recommended to her by her fellow sitting City Council members;
- exercised in a consistent and uniform manner so as to distribute such funds in a non-discriminatory fashion, without regard to race, ethnicity, religion, political affiliation, or other inappropriate criteria;
- generally consistent each fiscal year, regardless as to whether it was a City Council election year, or an off year;
- never the subject of any City Council vote to authorize the allocation of the appropriated supportive contributions to any specific recipients;
- never the subject of a legal challenge to the City Council President's exercise of authority, prior to the aforementioned recently filed SEEC Complaint on the subject; and
- never previously the subject of written or verbal advice, counsel, recommendation or ruling by the City's Director of Policy and Management (OPM), Director of Finance, City Clerk, City Attorney, or other City official to the effect that an authorization vote by the full City Council as a legislative body is required to disburse budgeted supportive contribution funds.

Each factual representation set forth herein has been confirmed by the City Attorney's Office with one or more of the following current or former City officials and employees: (a) Director of OPM Nestor Nkwo, (b) Assistant City Clerk Frances Ortiz, (c) Legislative Liaison Walter Michael Boyer and (d) former City Council President Thomas C. McCarthy.

III. Relevant Legal Authorities

BPT Charter, Chapter 9 - BUDGET AND FISCAL CONTROLS

Section 1. - Budgeted Agency Defined.

As used in this chapter, "*budgeted* agency" shall mean each board, commission, department, officer, or agency, of the city to which funds are appropriated.

Section 3.

(a) No money, other than that appropriated pursuant to Section 5 of this chapter shall be expended for any purpose, unless a special appropriation therefore by the city council shall first be approved by a two-thirds vote, taken by yeas and nays, of all members of the city council. The city council shall have no power to make any such special appropriation unless the unappropriated revenues of the city are sufficient for the purpose, and the order or resolution making such special appropriation shall state specifically what the unappropriated revenues of the city thus appropriated consist of. No *budgeted* agency shall contract debts in excess of its appropriations, and if any such debt be so contracted it shall not be paid out of any future appropriation . . .

BPT Charter, Chapter 6 - DEPARTMENT OF POLICY AND MANAGEMENT

Section 2 – Certification of Funds.

The director of policy and management shall certify as to the availability of appropriated funds for expenditure and for the payment of every obligation arising by reason of proposed purchases or contracts of every budgeted agency of the city, except purchases or contracts made by the board of education and no purchase order or contract shall be the valid obligation of the city of Bridgeport unless it bears such certificate of the director.

BPT Charter, Chapter 8 – DEPARTMENT OF FINANCE

Section 2.

The director of finance shall be responsible for the disbursement of all moneys and for ensuring that appropriations are not exceeded. He/she shall keep or cause to be kept complete books of accounts showing all financial transactions of the several departments of the city and shall prepare such reports as may be required by the city council, the mayor or the director of policy and management. He/she shall certify as to the funds appropriated, encumbered and expended during each fiscal year and shall audit, or cause to be audited, every invoice, bill or claim presented for payment. He/she shall have full power to require each city officer or employee to furnish all of the information which he/she may possess, and to exhibit to him/her all books, contracts, resolutions, reports or other papers and documents in his/her department or possession, requisite, in the opinion of said director to enable him/her to discharge his duties, and all city officers shall furnish and exhibit the same in such manner and form as he/she may prescribe.

Said director shall sign warrants on the treasurer of the city of the payment of all invoices, bills and claims upon approval of the invoices by the city officer having authority to give such approval, except invoices, bills and claims of the board of education and checks for the payment of debt and interest of the city, and approval of such invoices, bills and claims by the city council shall not be required to authorize said warrants, and the treasurer of the city shall accept and authorize the payment of warrants drawn in accordance with the provisions of this act. He/she shall audit, or cause to be audited, such departmental accounts as he/she shall consider should be so audited.

IV. Analysis

Pursuant to Bridgeport Charter, Chapter 9, the City Council has voted annually to adopt general fund operating budgets that in pertinent part appropriate funds for supportive contributions; and which list the City Council President in the appropriate space designated for the department or agency head of the City's Legislative Department. Via the City Charter's established budget adoption process and pursuant to Bridgeport City Charter, Chapter 9, Sec. 1 (which defines budgeted agency as "each board, commission, department, officer or agency, of the city to which funds are appropriated"); the City Council and the City Administration have traditionally interpreted the Charter budget adoption process as empowering (presumably through implied delegated authority) the City Council President to expend appropriated supportive contribution funds through implied delegated authority. Appropriate City officials have routinely and consistently authorized and approved City Council President expenditures from the supportive contribution budget line, pursuant to Bridgeport City Charter, including Chapter 8, Sec. 2 which states in pertinent part: "Said director [Director of Finance] shall sign warrants on the treasurer of the city of the payment of all invoices, bills and claims upon approval of the invoices by the city officer having authority to give such approval, except invoices, bills and claims of the board of education and checks for the payment of debt and interest of the city, and approval of such invoices, bills and claims by the city council shall not be required to authorize said warrants, and the treasurer of the city shall accept and authorize the payment of warrants drawn in accordance with the provisions of this act."

For budgetary purposes the City Council President has acted in the same manner as the City's department and agency heads; and as such expended appropriated funds from within the Legislative Department operating budget, subject to City Charter (Chapter 9 – Budget and Fiscal Controls) established budgetary and fiscal procedures. While such consistent interpretation of the powers and authority of the City Council President may appear objectively reasonable based upon the established City procedures for operating budget adoption and expenditures; it is the opinion of the Office of City Attorney (having now researched this matter) that the City Council President is not authorized by City Charter or other law to expend, or authorize the expenditure of, the supportive contribution funds.

"It is well-settled rule that when municipal councils or boards of any kind are called upon to perform legislative acts or acts involving discretion and judgment in administering the public affairs, they can only act at authorized meetings duly held. The council or board must meet and act as a board or council." *citations omitted. Jack v. Tarrant, 136 Conn. 414, at 418 (1950)*. See also, 56 *Am. Jur. 2d, "Municipal Corporations, etc."*, §136 at 206 wherein it is stated: "A

municipal or county council can act only as a body and when in session as such. Furthermore, the powers of a municipal council or body must be exercised at a meeting which is properly notices and agreements entered into outside a regular meeting are not binding.”

An exception to the legal mandate that a local legislative body act only as a *body of the whole*, is when there is an express delegation for an individual member to act based upon statute, Charter, ordinance, rule, or express authorization vote by the full body conferring power onto an established committee or an individual member. Such body may only delegate authority it possesses, and which is properly delegable. The placing of the City Council President by name and title in the Legislative Department’s section of the annual operating budget in the space designated for listing the department head does not, in our opinion, constitute an express delegation of authority for the City Council President to authorize expenditure of appropriated supportive contribution funds.

V. Legal Conclusion

For the reasons stated herein, it is the opinion of the Office of the City Attorney that the City Council President does not possess City Charter or other legal authority to expend public funds annually appropriated to the City’s Legislative Department in its operating budget line-item #01095-05 *Special Services* (understood to be commonly referred to as *Supportive Contributions*).

While we engaged in discussions earlier in 2021, the first time that the City Council President was advised verbally by this office that she lacked legal authority to expend appropriated supportive contribution funds was not until on or about November 2021. Furthermore, it is our understanding that no official written directive to the City Council President, the full City Council, or the City budget and finance officials responsible for preparation and implementation of the City’s annual operating budgets has been issued on this subject until this legal opinion. Under all the facts and circumstances of this matter (including long-standing past practice and the form of the annual operating budget document utilized listing the Council President in the space designated for the Legislative Department head); it is our opinion that the current and prior City Council Presidents in exercising such authority were acting both reasonably and with a *good faith* belief that they possessed such authority. However, as stated herein no such authority exists.

Very truly yours,



R. Christopher Meyer
City Attorney

Cc: Lydia Martinez, City Clerk
Frances Ortiz, Asst. City Clerk
Janene Hawkins, CAO
Daniel Shamas, Chief of Staff
Kenneth Flatto, Finance Director

Nestor Nkwo, OPM Director
John P. Bohannon, Jr., Deputy City Atty.
Bruce Levin, Assoc. City Atty.
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