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November 18, 2020

Attorney Steven Mednick (via email smednick@snet.net and first class mail)
152 Temple Street
New Haven, CT 06510

Re: Ordinance Re – Disclosure, Accountability and Compliance

Dear Attorney Mednick:

I have reviewed the proposed Ordinance Re-Disclosure, Accountability and Compliance (the "Ordinance") with the Trustees of the City of New Haven City Employees' Retirement Fund ("CERF") and the Pension Administrator, and, while they are appreciative of the efforts being made to promote transparency with respect to settlements with employees that involve CERF, they are concerned about the possible abrogation of their authority which could result from the enactment of the Ordinance as presently drafted. Enclosed please find a redlined version of the Ordinance with the requested changes.¹

There are three areas of concern with respect to the Ordinance as follows:

1. Requirement of Disclosure of Agreements by the Trustees to the Board of Alders

Although the Board of Alders does have authority to enact ordinances that regulate the pension benefits to be paid to Executive Management and Confidential Employees under Conn. Gen. Stat. §§ 7-148(b)(5)(A) and 7-450, the obligations of the Trustees with respect to pension benefits to be paid to other City employees are governed by the collective bargaining agreements entered into under MERA, Conn. Gen. Stat. § 7-467 *et seq.*, the Connecticut Fiduciary Powers Act, Conn. Gen. Stat. 45a-199 *et seq.*, IRS regulations regarding qualified plans, and other relevant state statutes, such as the nonalienability of pension funds statute (Conn. Gen. Stat. § 52-321a). The Board of Alders does not have the authority to require the Trustees of CERF (or the

¹ I understand that there have been revisions to the Ordinance but do not believe that any of the changes address the concerns outlined in this letter.



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Trustees of the Policemen and Firemen's Fund) to make reports to it about Agreements, as is being proposed the Ordinance. Moreover, such requirement is unduly burdensome for the seven trustees of each Fund and is unnecessary, because assumably officials of the City who have made such Agreements will have reported such Agreements to the Board of Alders (within the required 36 hours of making the Agreements) long before the Trustees, who meet once each month, have knowledge of the Agreements.

2. Assumptions Regarding Acceptance of Modifications to the Pension Plans and Enhancements of Pension Benefits

Section 1(a) defines "Action or Approval of a Public Agency" to include the "acceptance of proposed modifications of or enhancement of pension funds by the respective fiduciaries." However, the Trustees do not accept "proposed modifications of or enhancements of pension funds." The provisions of the pension plans are set forth in the collective bargaining agreements and the Executive Management and Confidential Employees' Manual, which the Trustees must follow, and the Trustees do not approve modifications of the pension plans. Additionally, both Funds have adopted policies stating that enhancements of pension funds will not be paid. Accordingly, this provision should be eliminated.

3. Corporation Counsel's Authority to Settle Cases Involving Determinations by the Pension Trustees

Section 2 authorizes the Corporation Counsel to settle cases in which the City is a party which involve determinations by the Trustees. Determinations by the Trustees include decisions that an employee is not disabled, is no longer disabled, is not entitled to service connected disability benefits as well as calculations of benefits, determinations of overpayments and repayment arrangements, and investment decisions, etc. The Corporation Counsel should not be empowered to settle claims arising out of these determinations as such decisions are in the sole purview of the Trustees, and this language should be eliminated.

Thank you for your attention to these concerns, and please share this letter with the Board of Alders.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn W. Kone".

Carolyn W. Kone

Enclosure

cc: Albert Lucas
CERF Trustees
Leanna Ambersley

Legislative Reform: Disclosure, Accountability and Compliance

Outline of the Ordinance Re – Disclosure, Accountability and Compliance

Purpose: To require the disclosure to the Board of Alders of all written and oral "side agreements" including but not limited to agreements, memoranda of understanding, letters of understanding, side letters and the like negotiated by the Mayor or his or her designees related to the terms and conditions of employment and any benefits related thereto, including, but not limited to retirement or pension enhancements, for classified and unclassified personnel whether or not they require approval by any other public agency of the City under the Charter, Special Acts or Ordinances of the City. Moreover, the ordinance also requires submission to the appropriate public agency under the Charter, Special Acts or Ordinances of the City of such agreements, including but not limited to the Board of Alders and the Litigation Settlement Committee, and the various and sundry pension boards or commissions with fiduciary authority over pension funds. The ordinance recognizes the authority under granted to the chief executive officer of the City under C.G.S. §7-474(a) as the representative for the purposes of negotiating agreements; however, clarifies that the authority to negotiate does not confer the authority to enter a final binding agreement, if other legal requirements are required by local law

Commented [BSW1]: The Board of Alders has no authority to require that the Trustees of the Pension Funds make disclosures, except with respect to the pension plan for the Executive Management and Confidential Employees.

ORDINANCE RE – DISCLOSURE, ACCOUNTABILITY AND COMPLIANCE WITH LOCAL APPROVAL PROCEDURES

1. Chapter 2, Art. III, Division 1 of the New Haven Code of Ordinances is amended by adding Section 2-61, as follows:

(a) **Agreement Defined.** As used in this section the term

(1) "Action or Approval of a Public Agency" shall mean actions or approvals required by the General Statutes or the Charter, Special Acts or the Ordinances of the City, including, but not limited to transfers of funds or other required approvals by the Board of Alders, approval of a settlement by the Litigation Settlement Committee¹; or acceptance of proposed modifications of or enhancement of pension funds necessary to the execution and administration of such funds by the respective fiduciaries.

Commented [BSW2]: The Pension Boards do not accept proposed modifications of or enhancement of pension funds. Their jobs are to follow the plans that are the product of collective bargaining or in the case of the Executive Management and Confidential Employees, to follow the Manual provisions regarding pensions that are adopted by the Board of Alders.

¹ Article VI, Sec.4.C Litigation Settlement Committee .There shall be a litigation settlement committee consisting of the Mayor, the Controller, the coordinator for administration appointed by the Mayor, or their designees, two (2) members of the Financial Review and Audit Commission who shall not be of the same political party, elected by their fellow commissioners, and two (2) members of the finance committee of the Board of Alders, who shall not be of the same political party, elected by their fellow Alders. Neither the Corporation Counsel, nor any deputy or assistant Corporation Counsel, may enter into a settlement on behalf of the City of any matter in litigation, the result of which would bind the City to make a payment in excess of five thousand dollars, or such greater amount as the Board of Alders may approve from time to time, unless said settlement has been approved by the litigation

(2) "Agreement(s)", whether in writing or oral shall include but not be limited to contracts, memoranda of understanding, letters of understanding, side letters and the like.

(3) "Disclosing Official or Agency" or "Submitting Official or Agency" shall include any designee of the Mayor, officer, employee, department, board, commission or agency, as defined in Ord. §1-2(15) of this Code, ~~including but not limited to the trustees of any municipal employee pension funds.~~

(b) **Legislative Finding.** The authority of the Mayor as the chief executive officer of the City to negotiate on behalf of the City, including but not limited to the authority granted under C.G.S. §7-474(a), does not confer the authority to enter a final binding agreement, ~~in the event~~ the action ~~pro~~ of another public agency is required to effectuate such agreement.

(c) **Disclosure.** The Mayor and any other Disclosing Official or Agency shall report and disclose to ~~the President, Majority and Minority Leader (or, the third officer as may be required by the Charter) or the Board of Alders (the "Review Committee")~~ all agreements, as defined in Sec. 2-61(a), above, ~~including but not limited to the terms and conditions of employment and any benefits, retirement or pension enhancements for classified and unclassified personnel~~ whether or not they require approval by any other public agency of the City under the General Statutes or the Charter, Special Acts or Ordinances of the City. ~~The terms of any oral agreement shall be reduced to writing by the Disclosing Official or Agency, as defined herein. Agreements pertaining to confidential matters or the privacy rights of individuals as required or permitted by federal or state law may be redacted in order to protect the identity of the employee entitled to the protections afforded by law. Said disclosure shall be made within thirty-six (36) hours of the completion of said agreement.~~

(d) **Compliance.** In the event the agreement requires the Action or Approval of a Public Agency for any reason whatsoever the Mayor and any Submitting Official or Agency shall submit said Agreement to the appropriate public agency for such action in accordance with all legal requirements. All requests shall include, unless not deemed necessary by the ~~Review Committee; appropriate Public Agency,~~ (1) any actuarial cost benefit impact studies; and (2) ~~legal opinions as to whether or not there is consistency with the Plan;~~ (3) an opinion from the Corporation Counsel addressing the legal issues involved in the agreement, including, but not limited to the potential of ~~averting in terms of potential or on-going litigation and~~ (4) an evaluation of the likelihood ~~chance of a court-ordered judicial or administrative award; and~~ (5) the opportunity to vote ~~on the matter prior to final agreement.~~

2. Chapter 2, Art. III, Division 4 of the New Haven Code of Ordinances is amended by modifying Section 2-152(b), as follows:

Upon obtaining the mayor's written consent, and the litigation settlement committee's approval, the corporation counsel shall have the authority to settle, adjust

Commented [B5W3]: The trustees of the Pension Funds do not come within the definitions in Section 1-2(15) because they are not "an officer, employee, department, board, commission or agency of the City of New Haven."

Commented [B5W4]: If the Trustees are included in the definition of Disclosing Official, this paragraph as applied to the Trustees would be unlawful, because except for agreements pertaining to Executive Management and Confidential Employees, the Board of Alders has no authority to create reporting obligations on behalf of the Trustees. Also, it is extremely onerous to require the seven members of each Board to make such disclosures.

Commented [B5W5]: If the Trustees are to be considered "Submitting Officials", this requirement makes no sense. Who will each Trustee be submitting an agreement to. If this paragraph assumes that the Trustees will be approving agreements regarding enhanced pension benefits, this assumption is incorrect. The Trustees have enacted policies prohibiting the implementation of agreements providing for enhanced pension benefits.

or compromise any appeal, action or suit brought by or against the city, or to which the city is a party, including but not limited to administrative proceedings and grievances required by law or contract or any determinations by the Mayor or any officer, employee, ~~claimant or administrator of the City's self-insurance plan or any other person~~

Commented [BSW6]: The Corporation Counsel should not have the authority to settle any claim regarding a determination by the Pension Boards, for example if the Pension Board were to deny an employee disability benefits and the employee brought suit against the City, the City should not have the authority to settle such claim.

3. Title II – Special Laws, Art. XIII, of the New Haven Code of Ordinances is amended by modifying Section 273(1), as follows:

There shall be established in the city of New Haven a reserve fund for the city's self-insurance plan, the purpose of which shall be to equitably provide for the payment of claims against the city arising out of its compensation and public liability, including settlements as set forth in section 278.

4. Title II – Special Laws, Art. XIII, of the New Haven Code of Ordinances is amended by modifying Section 278, as follows:

Said fund shall be used pursuant to section 279 hereinafter for the payment of any judgment, compromise, adjustment, award, or settlement under a voluntary agreement of compensation, including but not limited to workers' compensation agreements, memoranda of understanding, memoranda of agreement, letter of agreement, that may be entered into between the city of New Haven and a claimant and approved by the litigation settlement committee and such other entities whose approval is required by law, pertaining to (a) which is based upon a claim causing compensable injury and which arose in and is chargeable to a year preceding the year of withdrawal; (b) any judgment, compromise, adjustment, award, or settlement that may be entered into between the city of New Haven and a claimant which is based upon the city's public liability responsibility and under a claim which arose and is chargeable to a year preceding the withdrawal; (c) the payment of compensation or public liability claims within the current year aggregating in damages an amount greater than remains in the general fund appropriations for such purposes; or (d) for legal services, when such services shall be provided by persons other than the corporation counsel and his assistants and when such services shall be obtained pursuant to the charter and ordinances, and expert witness services engaged by the city, upon the recommendation of the corporation counsel which the litigation settlement committee may deem an emergency or a necessity involved in the efficient and expeditious carrying out of the city's self-insurance plan.