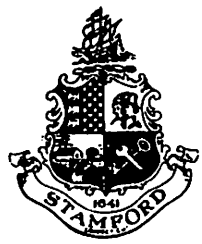
MAYOR
DANNEL P. MALLOY



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# Memorandum

**To:** Mayor Malloy

**CC:** Tom Hamilton, Director of Administration

**From:** Thomas M. Cassone, Director of Legal Affairs

**Date:** March 7, 2003

**Re:** Administrative Reductions in Capital Accounts

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You have asked how the Administration may reduce a previously appropriated capital account under the Charter or Code of Ordinances, where capital projects have been previously approved and nearly completed, but due to the way the project was executed, excess spending authorization was contained in the original appropriation. Funds were not borrowed in excess of the amount actually utilized, so there are no "unexpended funds" available for disposition, but rather it is merely the spending authorization that is sought to be reduced. I believe for the reasons that follow, that the closeout provisions of Code §8-2 permit the Mayor to recommend partial closeouts, which would effectively reduce the spending authorization in a given capital account.

The Charter does not specifically address the actions proposed. C8-20-7 is entitled "Restrictions on Capital Project Authorizations at Other Times", i.e., outside the Capital Budgetary process. In it, there is a prohibition of amending the Capital Budget, once passed, *by adding a project or adding funds to an existing project* without a request by the Mayor, an advisory opinion from the Planning Board and the approval of the Board of Finance and the Board of Representatives. There is no prohibition of amending the Capital Budget *by reducing it* in C8-20-7. C8-20-9 also specifies that the approvals by the Boards of Finance and Representatives required for such increases shall require four votes for the Board of Finance and a 2/3rds majority of the entire membership of the Board of Representatives. C8-20-10, entitled "Capital Project Sunset Provision", provides for the automatic rescission of authorizations for entire Capital Projects under certain circumstances, including those that have not been commenced for specified periods, and so is not relevant to the question posed. C8-

TMC-5C

TMC-56

20-11, entitled "Excess Capital Project Funds" proscribes the use of excess funds in a capital account for operating expenses, but does not discuss the proposed reduction of a capital account. None of the other Charter provisions pertaining to Capital Projects discuss the reduction of a Capital Account.

Similarly, none of the other provisions of the Charter pertaining to the fiscal boards reserve to them any power to reduce the spending authorization in a capital account by any procedure outlined therein. Yet where, as here, the authorizations have proven to be excessive in the execution of the project, there certainly should be a procedure to reduce the capital appropriation without having to completely closing out the project, which may be in progress, and re-appropriate it at a different level. §8-2 the Code of Ordinances provides for such a process. It allows for the Mayor to recommend the closing out of capital projects completed *and those that are not completed.* While §8-3 permits the reauthorization of such unexpended funds for (arguably) the same or other capital projects, as pointed out above, there are no "unexpended funds" in the accounts in question. Therefore, it is my opinion that by following the procedures outlined in §8-2, the spending authorizations in specified capital accounts may be reduced.

Briefly, I believe that under §8-2 the Mayor may recommend the partial closeout of any capital project, subject to the prerogative of the Planning Board, Board of Finance or Board of Representatives by a 2/3rds vote of those present and voting, to reject the recommendation within 60 days of their respective receipt of a report from the Mayor, including a detailed statement of the relevant Department Head outlining the partial closeout and its intended benefit to the City. I draw the conclusion that "partial closeouts" are permitted under this section primarily because of the use of the words "completed or not completed" in the ordinance. Had "not completed" been only intended to mean not commenced, then the sunset provisions of the Charter would suffice to address the situation. Also, it makes little sense that the Mayor and these Boards can appropriate such an account, but be unable to reduce the spending authorization during the course of the project, should the need arise.

I hope this answers your question.