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To: Richard Freedman, Chairperson, Board of Finance  
From: Douglas C. Dalena, Director of Legal Affairs & Corporation Counsel  
Date: May 17, 2022

**Re: Opinion – Mill Rate for Capital Non-Recurring Fund**

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You asked whether the Board of Finance, pursuant to its power to set tax rates (i.e., mill rates), may set the tax rate to include a tax authorized by General Statutes Sec. 7-361 to support funding of future capital projects.

**Answer:**

Yes. Pursuant to Charter Sec. C8-30-10 and General Statutes Sec. 7-361, the Board of Finance may set the tax rate to include no more than four mills each year to provide funds for use on capital projects or other acceptable uses of the Capital Nonrecurring Fund, although the amount of the tax levied each year must not be speculative and must be based on a reasonable estimate of the amounts needed to fund actual projected capital projects.

The tax authorized by General Statutes Sec. 7-361 must be approved by the Board of Representatives, and therefore, we advise that the Board of Finance motion to set the mill rate(s) make the portion of the tax rate being set under Sec. 7-361 contingent upon approval by the Board of Representatives.

**Analysis:**

"A municipality has only those powers that have been expressly granted to it by the state that are necessary for it to discharge its duties and to carry out its objects and purposes." *O'Shea v. Scherban*, No. FSTCV206049244S, 2020 WL 8265333, at \*4 (Conn. Super. Ct. Dec. 11, 2020), *aff'd*, 339 Conn. 775 (2021). "Municipalities have no powers of taxation other than those specifically given by statute, and strict compliance with the statutory provisions is a condition precedent to the imposition of a valid tax." *Empire Ests., Inc. v. City of Stamford*, 147 Conn. 262, 264 (1960).

There is statutory authority for taxation to accumulate funds for capital projects. First, there is statutory authority to establish a reserve fund for such purpose. General Statutes Sec. 7-360 provides: "Upon the recommendation and approval of the budget-making authority, the legislative body of any municipality, by a majority vote, may create a reserve fund for capital and nonrecurring expenditures, costs associated with a property tax revaluation and costs associated with the preparation, amendment or adoption of a plan of conservation and

development pursuant to section 8-23. Such fund shall thereafter be termed ‘reserve fund for capital and nonrecurring expenditures.’”

Second, there is statutory authority to levy a tax to provide funds for such a reserve fund. General Statutes Sec. 7-361 provides: “Upon the recommendation of the budget-making authority and approval by the legislative body, there shall be paid into such reserve fund (a) amounts authorized to be transferred thereto from the general fund cash surplus available at the end of any fiscal year, (b) *amounts raised by the annual levy of a tax not exceeding four mills for the benefit of such fund, and for no other purpose, such tax to be levied and collected in the same manner and at the same time as the regular annual taxes of the municipality* or (c) surplus cash funds already held in reserve and available for such capital or nonrecurring expenditures as are contemplated by the terms of section 7-364. All money so accumulated, as hereinbefore provided, together with all interest that accrues thereon, shall be deposited in a separate bank account by the treasurer of the municipality.” (Emphasis added.)

Stamford has a reserve fund for capital and non-recurring expenditures, (hereinafter referred to as the “Capital Nonrecurring Fund”), established pursuant to Sec. 7-360 and the uses of which are governed by General Statutes Sec. 7-364 and Sec. 23-22 of the Code of Ordinances.<sup>1</sup>

While relevant Charter provisions may supersede general statutes when the two are in conflict and the matter is one of purely local concern, including procedural matters regarding the budget (see *Bd. of Educ. of Town & Borough of Naugatuck v. Town of Borough of Naugatuck*, 268 Conn. 295, 307 (2004)), in this case there is no conflict between the relevant Charter provisions governing taxation and capital spending and the general statutes governing funding of the Capital Nonrecurring Fund. The Charter and Ordinances are consistent with and, in fact, mirror the state statutes that allow a municipality to establish a reserve fund for capital projects.

Typically, the City has appropriated amounts from property sales to the Capital Nonrecurring Fund pursuant to Sec. 23-19 of the Code of Ordinances, but that is not the only permissible source of revenue. As noted above, Sec. 7-361 provides that funds from any of three permissible sources – cash surpluses at the end of a fiscal year, a tax levy of no more than four mills, and

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<sup>1</sup> General Statutes Sec. 7-364 provides: “Upon the recommendation of the budget-making authority and approval by the legislative body, any part or the whole of such fund may be used for (1) *capital and nonrecurring expenditures, but such use shall be restricted to the financing of all or part of the planning, construction, reconstruction or acquisition of any specific capital improvement or the acquisition of any specific item of equipment*, (2) costs associated with a property tax revaluation, and (3) costs associated with the preparation, amendment or adoption of a plan of conservation and development pursuant to section 8-23. Upon the approval of any such expenditure, an appropriation shall be set up, plainly designated for the project, acquisition, revaluation or plan of conservation and development for which it has been authorized, and such unexpended appropriation may be continued until such project, acquisition, revaluation or plan of conservation and development is completed. Any unexpended portion of such appropriation remaining after such completion shall revert to said reserve fund.”

Sec. 23-22 of the Code of Ordinances provides: “Funds in the Capital Nonrecurring Fund may be expended, provided that:

- A. Such expenditures are not in contravention of C.G.S. § 7-359 through C.G.S. § 7-368, inclusive; and
- B. Such funds finance a specific capital project; and
- C. Such expenditure is upon the recommendation of the Board of Finance and with the approval of the Board of Representatives.

surplus cash funds already held in reserve – may be paid into the Capital Nonrecurring Fund. All such transfers require the approval of the budget-making authority (in Stamford, the Board of Finance) and the legislative body (the Board of Representatives).

Charter Sec. C8-30-10 provides in relevant part that the “Board of Finance shall determine and fix the tax rates and service charges upon the ratable estate in each of the tax districts of the City . . . .” In determining and fixing the tax rates, that section requires the Board to provide for various expenses, including all appropriations for the coming fiscal year, actuarially determined pension contributions, payment of deficiencies, payment of indebtedness coming due in the coming fiscal year, and, significantly, “payment of any other items said Board shall deem proper.” Given the explicit statutory authorization in General Statutes Sec. 7-361, and the lack of any prohibitive language elsewhere in the Charter that conflicts with that statute, it is reasonable to conclude that setting of a mill rate to tax for appropriation into the Capital Nonrecurring Fund is authorized by Charter Sec. C8-30-10, provided the statutory requirements including approval by the Board of Representatives, are followed. This can be achieved by a separate Board of Finance motion to set the portion of the tax rate attributable to Sec. 7-361 and to make that portion contingent upon approval by the Board of Representatives, so that portion would not go into effect or be levied and collected absent such approval. If the Board of Representatives approves that portion of the tax rate, it will become effective and, thereafter, can be levied and collected in the same manner and at the same time as the regular annual taxes of the municipality. This approval should take place before the May 25 deadline for the Board of Finance to set the tax (“mill”) rate, and the approval motion before the Board of Representatives should include authorization to deposit the proceeds into the Capital Nonrecurring Fund.

The tax approved pursuant to Sec. 7-361 can be used for no other purpose beyond those authorized in Sec. 7-364. In addition, there are other constraints to consider. The Board of Finance may not set the tax authorized by Sec. 7-361 on a purely speculative basis. “In the absence of statutory authority, a tax cannot be levied for the sole purpose of accumulating funds in the public treasury, such as for remote or future contingencies that may never occur; nor can it be levied in excess of the amount required for the purpose for which it is levied, with the intention of using the excess for another purpose.” *Holmes v. Beckwith*, 11 Conn. Supp. 215, 215 (1942). General Statutes Sec. 7-361 imposes an upper limit of four mills each year, and Sec. 7-367 limits the overall size of the Capital Nonrecurring Fund to no more than the amount of the current year’s tax levy, not including accrued interest. To comply with the limiting language in *Holmes v. Beckwith*, it is also advisable that in determining the amount of the tax, the Board of Finance use the information submitted by the Director of Administration pursuant to Charter Sec. C8-20-4 regarding the projected costs of capital projects in the coming fiscal year and the succeeding six fiscal years, any other cost estimates for specifically identified projects provided to the Board of Finance by the Administration or the Board of Education, such as those identified in the Board of Education’s long-term facilities planning process, and the other sources of funding already available or identified for such projects.

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