

State of New Hampshire

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
Docket No. to be assigned

226-2024-CV-00278

Citizens of Nashua, Pro SE

Fred S. Teeboom
Lead Petitioner
Author of the Nashua Spending Cap
Former Alderman-at-Large

and

Paula Johnson
Former Alderman-at-Large,
Former School Board Member
Former State Representative

v.

City of Nashua Officials

James W. Donchess, Mayor of Nashua, NH

Steven A. Bolton, Corporation Counsel

John L. Griffin, CFO/Treasurer/Tax Collector

Rosemary Evans, Accounting/Compliance Manager

Richard A. Dowd, Chairman of the Aldermanic Budget Committee

Lori Wilshire, President of the Board of Aldermen

COMPLAINT

PETITION THE COURT TO ISSUE A WRIT OF MANDAMUS

Ordering the defendants to lawfully determine the cap on spending for next year's annual budget, fully compliant with the Nashua City Charter.

Defendants.

The defendants are long-serving senior officials of the Government of the City Of Nashua with detailed knowledge and experience with municipal budgeting and finance who know, or should know, how to lawfully enforce the city's charter law concerning the cap on annual spending.

The facts supporting this Petition are:

1. In the Nashua municipal election of 1993, voters endorsed a change to the City Charter to place a limit on the increase of the next year's annual budget over the current year's annual budget (hereinafter referred to as the "Spending Cap"), which may be exempted with a super-majority vote of the Board of Aldermen.¹
2. In year 2011 the NH Legislature authorized local governments to enact tax/spending caps, subject to cited restrictions.
3. Defendants have taken an oath to uphold and faithfully enforce NH State laws and Nashua Charter laws.
4. City government has generally complied with Nashua's Spending Cap until after Mayor Jim Donchess was elected in 2016.²
5. A series of annual budget manipulations by the defendants for the purpose of raising the cap on spending without needing a super-majority exemption vote, beginning with the introduction of the annual budget in year 2017, led to protracted litigation which ultimately prompted the NH Legislature to restore the 1993 Nashua Spending Cap in year 2021.³
6. Following restoral of the Spending Cap, defendants continued to misrepresent the Spending Cap as defined in the City Charter and continued to manipulate the budget calculations so that the cap on spending was greatly raised without needing a supermajority exemption vote.⁴
7. The annual budget proposed for next year (FY2025) is declared to be **\$4.1 million below the cap**, whereas if f calculated faithfully to the City Charter, the cap is actually **\$21.9 million above the cap** (a difference of \$26 million).

¹ See Nashua Charter paragraphs 56-c and 56-d.

² Annual budgets adopted prior to year 2017 adhered generally to the city's charter laws and were typically about **\$1 million below the cap**. Between 1994 and 2016 only eight annual budgets were exempted from the cap with a super-majority vote by the Board of Aldermen.

³ See RSA 49-B:13, II-a, amended effective August 2021.

⁴ In year 2022 the city adopted an annual budget for FY2023 declared to be **\$113.3 million below the cap**, and in year 2023 an annual budget for FY2024 declared to be **\$43.7 million below the cap**.

Reason for the Writ of Mandamus.

1. The proposed FY2025 budget was introduced in May, 2024 and is currently under review by the Board of Aldermen, with a statutory deadline for adoption not later than 1 August, 2024.⁵
2. Defendants will claim the complaint is moot for the Court to order a Writ of Mandamus to the City of Nashua to adopt the annual FY2025 budget in lawful compliance with the Nashua Charter Spending Cap after the budget has been adopted.

This Complaint is not Res Judicata.

Previous complaint brought in this Court against the City of Nashua for unlawfully calculating the cap on spending was rejected for the following reasons:⁶

- (1) The Writ of Mandamus was not directed at a person.
- (2) The plaintiff failed to produce a witness, other than himself, with competent expertise to convince the Court the cap on spending was wrongfully calculated.
- (3) The plaintiff failed to cite applicable city ordinances.
- (4) The plaintiff's argument contained contradictions.

Consequently the Court failed to examine the merits of the complaint, but noted that *“the plaintiff has raised legitimate concerns about the city’s “base amount” (combined annual budget of the current fiscal year) calculation.”*⁷

This Complaint is based on the city’s current approach to determine the cap.

Defendant CFO John Griffin presented to the Board of Aldermen in year 2022 the city’s new approach for determining the cap on spending which is wholly at odds with the how the cap on spending is to be determined as prescribed in the Nashua Charter.

Contrary to previous argument as to what is included (e.g. Grants) and excluded (e.g. Special Revenues and the Sewer Fund) from the annual budget for purpose of determining the cap, the city’s approach now is to **stack the current budget with substantial added funding after the annual budget has been adopted**, thereby greatly increasing the allowable spending under the cap in the next year’s annual budget without requiring a super-majority exemption vote.⁸

Relief Sought.

The plaintiffs petition the Court to issue a Writ of Mandamus prior to 1 August 2024 ordering the defendants to lawfully determine the cap on spending for next year’s annual budget, fully compliant with the Nashua City Charter.

⁵ See Nashua Charter par. 56-b.

⁶ See Hillsborough Superior Court Case No. 2022-CV-00252, decided February 24, 2023.

⁷ See footnote #5 in 2022-CV-00252.

⁸ The City Charter directs that the city’s proposed budget for the following year is to be compared with the current year’s adopted budget. The City Charter makes no mention of supplemental funding after the annual budget has been adopted for purpose of determining the cap on spending.

Respectfully submitted,

May 28, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on 28 May, 2024 I served, on behalf of the Plaintiffs, this **Complaint and Petition for Writ of Mandamus** on Defendants Mayor Jim Donchess, Corporation Counsel Steven Bolton, CFO John Griffin, Accounting/Compliance Manager Rosemary Evans, Alderman Lori Wilshire and Alderman Richard Dowd, each via electronic mail and each with a paper copy via USPS mail addressed to Nashua City Hall, 229 Main Street, Nashua NH 03060; also to the City of Nashua Corporation Counsel Steven. Bolton via the NH Superior Court's electronic filing system.

/s/ Fred S. Teeboom
Fred S. Teeboom, Plaintiff Pro Se
Lead Petitioner