



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

March 22, 2023

President Linda Morad and Honorable Members
of the New Bedford City Council
City Hall
133 William Street
New Bedford, MA 02740

Re: Items 0475, 0477 and 0480

Dear President Morad and Members of the Council:

This letter responds to the Council's affirmative votes at its last regular meeting on March 9, 2023, to place three non-binding referenda on the November ballot (Items 0475, 0477 and 0480).

The referenda would seek voter opinion on the City's continued utilization of the Community Preservation Act, the length of the Mayor's term of office, and whether the City should adopt some form of rent control. Each of these measures, if ultimately enacted into law, would have profound implications for the operation of City government, the municipal budget, historic preservation and open space, and the City's ability to facilitate the development of housing for those who need. They raise complex policy questions for which the public would reasonably expect a thorough quantification of their likely impact, a review of relevant policy literature, the input of the Administration, and a robust public debate of alternatives.

The Council failed to take any of these basic steps of legislative deliberation. The items appeared on the Council's agenda two days before its last regular meeting. The Council gave no prior notice of their filing to my Administration, which would be responsible for implementing them. There had been no sign of public demand for action on the ideas underlying them. Yet the Council took up all three items at the first opportunity, skipping the committee process, whose very purpose is to allow for a deliberate analysis of policy questions. The Administration was not invited to participate in the consideration of the items, nor was public comment received. The Council engaged in a discussion that lasted less than an hour, including a total of five minutes and five seconds on the question of the Mayor's term of office. Nevertheless, the Council passed the items nearly unanimously, a fact that, if nothing else, begs questions about the Council's compliance with the state's Open Meeting Law.

In the days that followed, some councilors responded to public criticism of their votes by contending that no deliberation was necessary because the Council's purpose was to place the questions before the voters. They maintained that the public should decide the matters on their own. The public will recognize this, however, as a cop-out. It is unrealistic and irresponsible to suggest that voters will take time out of their everyday lives, for instance, to undertake an analysis of current trends in New

Bedford's housing market, review various policy solutions that could address the risks associated with escalating rents, estimate the cost to tax payers of each solution, and entertain numerous other considerations, all so that they can arrive at an informed answer to a yes-or-no question concerning the complex subject of rent control.

In a republican form of government, voters elect people to do that work for them. Public policy must be informed of course by public sentiment, and there are ample means of gleaning it, including neighborhood meetings, talk show discussions, social media, public polling and casual encounters in the public square. But it's our job as elected representatives to make the effort to understand the public interest, and to determine in light of reason and experience how it may be preserved and promoted through our official actions. In one of the most influential explanations of the role of the elected representative in a republic, the Irish parliamentarian and political philosopher Edmund Burke emphasized that the representative fails to serve the people when he or she relies only on public sentiment to make policy decisions:

Certainly, gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiassed opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.

See Letter to the Electors of Bristol, 1774.

The short-circuited process that culminated in the Council's affirmative votes for the proposed referenda reflected little effort to exercise any judgment on their merits. As I believe the public deserves a more informed and deliberate vetting of the questions by the Council, I hereby veto all three items. In so doing, I express no opinion about their legal sufficiency, as there has not been enough time to undertake a proper legal analysis. In any case, if the Council truly believes that these measures are worthy of enactment, I offer a few points you might consider.

The voters adopted the Community Preservation Act in 2014, making New Bedford one of the first cities in the state to do so. The Act allows cities and towns to pool resources for the purpose of preserving historic properties, upgrading and enhancing open space, and creating income-restricted housing units, through funding from a surcharge on property tax bills and automatic matching grants from the state. Under the auspices of the CPA Committee, and with the support of the Administration and Council, the CPA has been a boon to New Bedford. It has enabled the City to complete a total \$15.6 million in preservation and open spaces projects, of which the City leveraged a total \$7.2 million of state and private funds – by any standard, a healthy return on investment. Projects have been funded in every ward, and they include upgrades in all three of the City major parks; historic preservation funding for the Strand Theater, the Hazelwood Bowling Green and Verdean Vets Hall; and improvements at Abolition Row Park, Sean Gagnon Playground and Dias Field. These projects represent some of the most visible work performed by City government. If historic preservation groups and the various park “friends”

groups have an opportunity to weigh in, they would tell you that the CPA has been a resounding success. Housing advocates might question why the Council is seeking to eliminate a funding source whose purpose is to make housing more attainable.

The City's adoption of a four-year mayoral term is of more recent vintage. Through the process prescribed by state law, New Bedford voters approved the four-year term in 2017, after decades of public discussion about the need to modernize the length of the term of the office. The four-year term has been in effect for just one mayoral election. There has been no evident groundswell of support to reverse existing policy. By all appearances, in the public's mind, the question of the length of the term is settled. The notion of going back to voters now in a non-binding resolution in an apparent attempt to gain momentum for an about-face will serve only to frustrate voters, and convey that this is a City that cannot make up its own mind on a question concerning the basic structure of city government. The instability this would project to those who might consider investing here would tend to undermine our efforts to grow opportunity for our residents. It will stir up cynicism at a time when we should be doing everything we can to engender public trust and confidence in government.

The reality is that the voters' adoption of a four-year mayoral term brought us in line with the prevailing practice in the United States. Of the dozens of American cities with populations greater than 100,000 which have "strong mayor" forms of government (in which the mayor holds administrative authority over municipal operations) and are regional centers (where the mayor is expected to lead regional economic development efforts), we have found only two cities (New Haven, Connecticut and Manchester, New Hampshire), which still have two-year mayoral terms. The four-year mayoral term is nearly universal because it is widely accepted that running the operation of a mid-size to large city, which invariably have vast municipal workforces and budgets, requires extensive planning and execution such that two years is not nearly enough time for voters to accurately evaluate the results. With twice as much time spent campaigning, less time is committed to governing in a two-year election cycle, and the pressure for political considerations to dictate operational decisions become more intense. With an election always just around the corner, two-year mayors tend to be more risk averse, while community organizations may be less inclined to work in concert with City government, opting instead to wait out the mayor's time in office.

Many in this city fought long to secure the stability that comes with a four-year term, recognizing that it would lead to more effective governance. If certain councilors believe the voters were wrong and that the mayor's term should be shorter, those councilors are at liberty to gather the signatures necessary to place the matter on the municipal ballot, as was done in 2017. Proceeding instead with a non-binding referendum will only raise questions about its real purpose.

As for the rent control proposal (or "rent stabilization" as it has been euphemistically dubbed), the Council moved forward with a measure that purports to remedy the scarcity of attainable housing, but would have the opposite effect. Rent control has been thoroughly discredited as a means of making housing more affordable. In 1994, Massachusetts, one of the most heavily Democratic states, passed a referendum abolishing rent control on the grounds that it failed to address the state's housing needs. Today, there are few cities in the United States where it still exists, and nearly all of them are in major metropolitan areas.

While the concept of protecting renters by capping their rents is superficially appealing and straightforward, rent control has been broadly panned by economists as undermining the very purpose

for which it was conceived, that is, to make housing more affordable. As one of America's leading right-of-center economists and former Chairman of the President's Council of Economic Advisors, N. Gregory Mankiw, noted in his seminal textbook, Principles of Economics, nearly all economists agree that a "ceiling on rents reduces the quality and quantity of housing available." Notable among the left-of-center economists, Nobel laureate Paul Krugman, writing in the New York Times, has said that rent control decreases housing supply and increases urban blight.

Like any other good that is bought and sold, housing is subject to the basic laws of supply and demand. In general, it's the private sector, not the government, that builds and renovates housing, and like any business, private developers seek to maximize their profits. By limiting the amount of revenue that developers can generate, rent control tends to discourage investment in new housing, and thereby depresses supply. As supply drops and demand remains at least constant, landlords will charge more for their units, renting only to those tenants who are willing and able to pay the higher rents and leaving housing units unaffordable for the remainder of renters. The most effective way rather to make housing more attainable are policies that help increase housing supply.

Even though the rent control referendum would not have the effect of law, it has already prompted ominous signals from investors. In the past week, my office received calls from real estate developers who have said even the publicity surrounding the Council's vote this month gives them and their colleagues pause about investing in New Bedford. If the Council is bent on exploring rent control as a means of making housing more attainable, it should hear from everyone, especially the developers of residential housing, about what might happen. More than anyone else, the developers will be able to explain to the Council what effect rent control would have on the City's supply of housing. It should also hear from the City's Inspectional Services and Housing and Community Development directors about what it would take to construct and maintain a registry of the City's 23,533 rental units, and the cost of enforcing rent control restrictions on each one of them.

Although the cost of housing in our city is being driven largely by economic forces beyond our City's reach, I believe there are steps we can take to make the situation better. The City's Department of Housing and Community Development is finishing up a comprehensive housing plan based on input from public hearings in the past several months, along with that of city councilors, developers and other businesses, and will be released later this month. The thrust of the plan will be a set of policies aimed specifically at enabling more housing units to be built throughout the region. I hope to work with the Council to ensure that we are taking all the appropriate steps to make that happen.

Sincerely,



Jon Mitchell