**To: Buffalo Common Council Members**

**Date: July 27, 2023**

Re: American Rescue Plan Budget Modification

First, on behalf of our organizations and many of our partners, we thank you for your concerns and efforts to move American Rescue Plan funding to the residents, community-led initiatives, and small businesses in Buffalo that need it the most. We have spoken repeatedly with many of you over the last two years about this funding and community-led priorities for distributing it. **We have watched you again and again in Council meetings call for the administration to move forward** with the Request for Application processes for the project funds (food security, community justice and safety, health equity, etc) in the Mayor’s ARP Spending Plan that you adopted in August 2021.

As a result, during Tuesday’s Council meeting, we were grateful for your comments again rightfully expressing frustration and dismay over the Brown administration’s flawed processes for this critical funding:

* We knew that **Council Member Rivera** was correct when he said, “This Council and Finance Committee were basically pleading, ‘Send us these amendments; these community groups are calling our offices. **These funds are vital to them**.’”
* We agreed with **Council Member Wyatt’s** assessment when he said, “…**this whole process of ARP has been extremely frustrating.** And I thank my colleagues who have been at the forefront of pushing at every single meeting, ‘where are we with ARP?’ **We’ve been pushing for two and half years. It should not have come to this**.”
* We agreed when **Council Member Golombek** stressed the importance of following procurement rules so that this funding does not get tied up in litigation: “**I want to make sure that we’re doing everything completely legal, I’s dotted, T’s crossed…I don’t want to approve something that gets challenged in court,** and we end up losing, and this money is kept in a longer limbo for our businesses in the City of Buffalo…I just want to make sure that whatever we are doing is being done correctly, legally, by the book, etcetera.”

Because we share your concerns, we held a press conference on Monday focused on two major issues with ARP funding:

1) **The Brown administration’s request to cut $60M from project funds and move it to general revenue replacement with no specific information provided on budget gaps to be filled**; and

2) **Disturbing reports from many of our partner organizations about potential violations of federal procurement rules in the City’s RFA process.**

**Because of these issues, we are concerned that if you vote to approve the Mayor’s request at today’s special session, this funding could become embroiled in investigation and litigation.**

Here are items that we believe could be investigated or lead to litigation:

1. **Mayor Brown’s high-level staff have made** **inappropriate comments to funding applicants during the official RFA process**, such as, “You won’t get this money, because the Mayor doesn’t like you/your organization.” Since our press conference on Monday, a surprising number of organizations have contacted PPG to share similar stories, and many are hoping to speak to the press or investigators because of their deep concern for fair and legal processes. This raises the following questions:
* **Did the Brown administration run a robust RFA process?**
* **Was there a good faith effort to score and evaluate the applications fairly, as required by federal rules?**
1. **Some ARP money has been distributed to select nonprofit organizations, outside of the RFA process.** As Council Member Wyatt noted in the July 18 finance committee meeting, Dress for Success has already received a payment, though they applied for ARP funds through the RFA process that has not been finalized yet. How did this happen?
* **Was the Mayor personally involved in selecting grant recipients—rather than the process being apolitical and based on merit? If so, then the process was corrupted.**
1. **The budget modification would move $60 million to revenue replacement, with $9.9 *then* moving to Council Member discretionary funds. That means the $9.9 million is not actually revenue replacement.** We support Council Members using ARP money for pressing needs in your districts and we know it’s your job to advocate for your districts. Further, we know many of you are prioritizing needed road and infrastructure improvements with these funds. **However, we believe that the way to achieve this is keeping the money in project funds – infrastructure, park improvements, etc – so that it is still subject to and complying with federal ARP guidelines and procurement rules.**
* **Does it violate federal rules to move $9.9 million from “revenue replacement” to discretionary funds? Is this a misuse of funds, if allocated in this way?**
* **Can the funds go straight to DPW as Council-directed projects? Would this avoid a federal violation?**

**These questions have to be answered.**

In addition, we believe strongly that the Mayor’s administration should provide **a public accounting of the specific budget gaps that require an additional $50 million of ARP funding be moved to revenue replacement.** If we do not demand this basic level of information, how can we expect more responsible or transparent budgeting with the remaining ARP funds?

We share in your sense of urgency to get this money out to community needs. **However, you should not be pushed by Mayor Brown into a false deadline:**

* Whenever the budget modification and ARP recipients are approved by Council, **it will take at least two months for the administration to draft and finalize contracts**. No disbursements will be made during your August recess, even if you do approve the modification.
* In their meeting yesterday on July 26, **the Buffalo Fiscal Stability Authority gave the Common Council until September 5** to adopt the ARPA modifications necessary to balance the budget. They said if the Council does not adopt it, the Mayor must submit adjustments to the City’s four-year budget forecast by September 12.
* **The Mayor has held this money up for two years**; **you should not accept a one-week window to approve a major modification**, especially with so little information about it provided to Council Members or the public.

**If you choose to delay the vote further, we will support you. We will mobilize additional residents and community groups to support you. We will share with our partners that this is not the Common Council’s fault, and that the Mayor is the reason the funds are delayed. We will share that we urged you to take a small amount of extra time to get it right.**

**As you concluded on Tuesday, the City needs to follow the federal procurement rules for this funding. It is simply too important to jeopardize with misuse and mistakes.**

**Residents and community organizations are turning to you because only Common Council has the power to get answers to the questions above. Please do all you can to ensure this “transformational” opportunity for Buffalo is not lost entirely.**