

**CITY COUNCIL WORKSHOP
February 16, 2016
COUNCIL CHAMBERS
7:00 PM**

COUNCILORS PRESENT

Councilor Abbott
Councilor Bogan
Councilor Gates
Councilor Gray
Councilor Hamann
Councilor Keans
Councilor Lachapelle
Councilor Torr
Councilor Varney
Councilor Willis
Mayor McCarley

OTHERS PRESENT

City Manager Daniel Fitzpatrick
Deputy City Manager Blaine Cox
City Attorney Terence O'Rourke
John Storer, Director of Public Works
Patrick Mohan, Auditor, Melanson Heath
State Representative Steven Beaudoin
State Representative Tom Kaczynski

COUNCILORS EXCUSED

Councilor Barnett
Councilor Lauterborn

MINUTES

1. Call to Order

Mayor McCarley called the City Council Workshop to order at 7:00 PM. Deputy City Clerk Marcia Roddy took a silent roll call. All councilors were present, with the exception of Councilors Barnett and Lauterborn, who had been excused.

2. Public Input

Mayor McCarley asked if any member of the public wished to address the City Council. There was no public input. Mayor McCarley closed public input at 7:01 PM.

3. Discussion with State Legislative Delegates Regarding Proposed Legislation Affecting the City of Rochester

Mayor McCarley said that the City Council members thought it would be a good idea for them to meet the State Representatives from Rochester and discuss certain bills that are before the legislature, especially as they pertain to the City. She introduced Representatives Steven Beaudoin, James Gray, and Thomas Kaczynski.

City Attorney Terence O'Rourke introduced three bills currently before the Legislature, namely HB 1687 (governmental liability for personal injury on playground structures; HB 1688 (governmental liability for negligence claims); and SB 421 (liability of governmental units *in bodily injury actions*). He had sent a memorandum to the councilors and added that the New Hampshire Municipal Association (NHMA) is opposed to these bills.

Attorney O'Rourke said that these three bills seek to overturn the traditional official immunity for public officials and public employees. He said the impact on Rochester is almost incalculable in that there is no way to know how much this could potentially cost. He said the bill regarding playgrounds would take the municipal immunity and make it a municipal liability. He said that a basically all three bills would change the City's immunity on certain issues to a liability.

Councilor Keans asked Attorney O'Rourke if he has a copy of the current statute as she believes the current statute says a community needs to be negligent in order to be sued. Attorney O'Rourke said that currently municipalities are only liable for negligence that arises from their ownership and motor vehicles.

Councilor Gray said that the bills were written in order to provide people a way to bring suit against a municipality that would otherwise have been prevented by the way the law was written. He said a study committee had been formed to look at this and all three of these bills came from that committee.

***8. Financial Audit FY 2015**

Mayor McCarley proposed taking an agenda item out of order, namely the presentation of the Financial Audit by Patrick Mohan of Melanson Heath, the auditors.

Mr. Mohan presented an overview of the audit, referring to the printed copy given to the City Councilors. He pointed out certain items of importance in several categories of the audit.

Councilor Varney asked if the project tracking would be in Munis and not as a spreadsheet. Mr. Mohan said it already is in Munis.

4. Communications from the City Manager

City Manager Fitzpatrick presented Citations to several employees in recognition of their service to the City. Those present to receive their citations are: Lisa Clark, Public Works Office Manager; Kelly Walters, City Clerk; Marcia Roddy, Deputy City Clerk; Ken Henderson, Highway and Fleet Supervisor; and Mark Sullivan, Senior Staff Accountant. Also recognized, but not in attendance, were Michele Mears, Planning Department, and James Grant, Director of Building, Zoning, and Licensing Services. In addition to the citations, each recipient received a "Dan Fitz Thinks I'm Ok!" pen.

5. Communications from the Mayor

Mayor McCarley introduced Abigail Turgeon, a Spaulding High School Junior who will be serving as the Mayor's intern. Abigail came forward and greeted the Council.

5.1 Proposed New Polling Location for Ward 3, Lowe's

- **Proposed New Boundary Lines for Ward 3 and Ward 4, to include Lowe's within Ward 3**

City Clerk Kelly Walters presented the reasons why relocating the polling location for Ward 3 is necessary. She said that Lowe's is willing to provide an area within the store for voting, similar to what is done at Home Depot. In order to do this, however, the ward lines would have to be changed.

Councilor Keans asked if there were any residences that would be affected by re-drawing the ward lines. Ms. Walters said there were none.

Councilor Keans had concerns in that the census is done every ten years and said she did not believe the City could simply change ward lines that were set at the State level. She did not think that a block of residences could be moved to another ward. Councilor Lachapelle pointed out that there would be no residences affected by this proposed ward line change.

Councilor Varney referred to the map and said that the area blocked off for the change was the Lowe's parking lot and there are no residences there. The area could only be used for stores.

Councilor Keans said that in order to adopt this change it would be important to be sure that it is okay with the State. Councilor Lachapelle agreed and said there are several avenues for checking this out. At this point in time there are no other options for a Ward 3 polling location.

Ms. Walters said that she had spoken with the Superintendent of Schools, Michael Hopkins, regarding the Ward 1 polling location. Mr. Hopkins said that the East Rochester School could be used for the upcoming general election on November 8, 2016. He told Ms. Walters that if the school is needed for the September 13, 2016, state primary that he will need to bring that before the School Board. Ms. Walters said she is asking for a "sense of council" as to whether that would be requested and an answer to that would be in March. This would allow time to move forward with plans for the Ward 1 polling location change.

Mayor McCarley agreed that it would be best if the September and November elections were at the same locations. Councilor Varney commented that the September election would be something like a "tune up" for the November general election.

Ms. Walters said that she had the Primary election results and left copies for the Council.

6. Outdoor Dining Lease Agreement for Factory Court

City Manager Fitzpatrick said that several weeks ago a resolution was passed instructing him to bring back to the Council a lease agreement for Factory Court. It is in the Workshop packet.

Councilor Keans said she sees some inconsistencies in the lease agreement with what was passed in January. In particular, it had been stated "no outside music," but this lease does not mention it. Mr. Fitzpatrick said he did not recall that being part of the instructions for the lease.

Councilor Keans argued that this lease does not follow the guidelines of the ordinance. Mr. Fitzpatrick said this does not come under the jurisdiction of the outdoor dining ordinance as it is not on a sidewalk; it is on a vacant lot owned by the City. The outdoor dining ordinance can provide guidelines, but this is the City leasing a piece of property.

Councilor Keans cited parts of the ordinance that the lease is not in compliance with. She questioned how the lease amount was calculated.

Mr. Fitzpatrick said that it was a negotiated amount and added that he did not use the ordinance to prepare the lease, to which Councilor Keans argued that he should not violate the ordinance. Mr. Fitzpatrick said he cannot use a "sidewalk dining" ordinance for a lease on a piece of property that the City owns and is entering into a lease agreement. He said the lessees have agreed not to block the sidewalk and the passage to the parking lot that abuts the property.

Mr. Fitzpatrick said that if the City Council wants him to lease the property according to the outdoor dining ordinance then he will go back to the restaurant owners and renegotiate the lease. He said he had done it this way as that was his understanding of the instructions given to him. He said he will change the approach to the lease and bring it back to the Council in March.

Councilor Willis said he would like to see a proposed lease using both methods: conforming to the ordinance or leasing as a piece of city-owned property. That way the two can be compared and the best approach can be approved by the City Council.

7. Economic Fund Budgeting

Mayor McCarley said the idea of bringing the Economic Fund budgeting before the City Council is to give the City Manager some direction in how the fund is handled when putting the budget together. She asked if the councilors would like to have Councilor Varney clarify what the purpose is.

Councilor Varney said it does not change the funding in any way, but makes the expenditures in the department more visible and in the correct categories. It makes it a lot "cleaner" and the department's funds are structured the same as any other department.

Mayor McCarley said that if there were no objections the City Manager would follow this guideline in the budgeting process.

9. Department Reports

There was no discussion.

10. Other

Councilor Gray said that due to SB 41, Ch. 175 (2015), Finding #2, which states that "because of recent court rulings as of November 2013, the 60,000 people who work for the towns' and cities' schools and counties are immune from suit for negligence in emissions" and asked if the City Attorney in preparing the letter to the legislators, either in the letter or separately to the City Council, tell how the Court ruling of 2013 affected the negligence and suits.

Councilor Gates asked if there is any type of electronic method that can be used by a councilor who will be absent for an extended period of time to participate in Council meetings and vote on questions legally. Deputy City Manager Cox said that he cannot speak to the legal aspect of it, but from a technological standpoint there have been some methods looked at. There has not been too much success in what has been found, but another possible way of making that happen is being explored. City Attorney O'Rourke said he will check the law on remote participation and will get back to the Council.

Councilor Keans asked how the snow plowing had gone during the last snow storm and how many cars have been towed that were in the way of the plows. Commissioner Storer reported that 27 cars had been called in to the Police Department, but that he did not know how many had actually been towed.

11. Adjournment

Councilor Lachapelle **MOVED** to adjourn the Workshop at 8:27 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Respectfully submitted,

Marcia H. Roddy
Deputy City Clerk