



CITY OF DOVER

## CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820  
Meeting Date: **Wednesday, August 27, 2008**  
Meeting Time: **7:00pm**

Robert Carrier was sworn in as Councilor by the City Clerk.

### 1. MOMENT OF SILENCE

### 2. PLEDGE OF ALLEGIANCE

Councilor Carrier led the Pledge of Allegiance.

### 3. ROLL CALL

**Present:** Mayor Myers, Councilors Callaghan, Carrier, Cheney, Dede, McCusker, Scott, Trefethen, Weston.

**Also Present:** City Manager Joyal, City Attorney Krans, and City Clerk Lavertu.  
Councilor Weston filled in as Deputy Mayor.

#### A. SELECTION OF DEPUTY MAYOR

Mayor Myers said it was the Council's responsibility to elect a Deputy Mayor from among them. He went through the process, which involved opening up the floor to nominations and allowing those who are nominated for the position to accept or decline. Those who accept have the opportunity to speak to their qualifications or reasons why they would like to be the Deputy Mayor, and then the Council would vote. He said the Council has discussed the options for voting, and said there was a consensus to have a paper ballot. He said he needed a motion from the Council if that was the intent of the Council. He said other options for voting are by voice, roll call, and other archaic methods. He pointed out for the record that a paper secret ballot doesn't allow an opportunity for a motion afterwards to make it a unanimous vote. He opened up the floor for nominations for Deputy Mayor.

Councilor DeDe nominated Councilor Trefethen.

Mayor Myers asked Councilor Trefethen if he was interested.

Councilor Trefethen said yes.

Councilor Callaghan nominated Councilor Cheney.

Mayor Myers asked Councilor Cheney if she was interested.

Councilor Cheney said yes.

Mayor Myers asked the Council if there were any other nominations. Seeing none, he closed the nominations. He allowed the two Councilors to speak in the order in which they were nominated.

Councilor Trefethen said he would bring to the position several years of experience on the City Council. He said his other experiences were being Chairman of the Zoning Board of Adjustment for several years, running meetings and being aware of protocol. He has chaired a few other committees along the way for the City Council. He said he felt he was qualified, would bring an impartial look at things, and would be a very strong proponent of letting people have their say.

Councilor Cheney said she would like very much to serve in the position as Deputy Mayor. She said she has over 16 years of interacting and conducting business with many different people and organizations, such as the American Cancer Society and Raytheon, with



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municipalities, such as Peterborough, Goffstown, the Manchester Chamber of Commerce, and many others. She said this demonstrated her capabilities regarding negotiating and working with others to achieve common goals. She said this would work well in helping set agenda items, and assisting in providing proper background materials, and also with interacting with the citizens of the City, as well as members of the Council. She said in the November, 2007 election the majority of the vote was a case for more conservative spending. She said she felt the citizens and the Council would be best served with someone with similar conservative views. She said it would be the diversity and balance that the Council needs. She said she believed she could bring a balanced viewpoint to those items under consideration and help foster public confidence in the Council.

Mayor Myers asked for a motion on the voting method.

Councilor DeDe moved for a paper ballot; seconded by Councilor Trefethen.

Vote: 4/5; Failed. Mayor Myers, Councilors Carrier, DeDe and Trefethen voted in favor.

Councilor Weston moved for a vote by show of hands; seconded by Councilor McCusker.

Vote: 9/0.

Mayor Myers asked for a vote for Councilor Trefethen.

Vote: 5. Mayor Myers, Councilors Carrier, DeDe, McCusker and Trefethen.

Mayor Myers asked for a vote for Councilor Cheney.

Vote: 4. Councilors Callaghan, Cheney, Scott and Weston.

Mayor Myers congratulated Councilor Trefethen for being elected Deputy Mayor by the Council.

Councilor Weston said that both Councilors were qualified. She said in the very beginning she was approached by Councilor Cheney and gave her word to support her, but she wanted to make a motion to show a unanimous vote for Councilor Trefethen to start this off as a unit, and to show Councilor Trefethen that the Council does have confidence in him; seconded by Councilor Cheney.

Mayor Myers asked for a vote to make this a unanimous vote.

Vote: 9/0.

Mayor Myers asked Deputy Mayor Trefethen to take his seat. He thanked Councilor Weston and asked her to take her council seat. He also said that the vacant chair of Deputy Mayor Trefethen could now be the new seat for Councilor Carrier.

#### 4. PROCLAMATIONS – AWARDS

#### 5. APPROVAL OF AGENDA

Councilor DeDe made a motion to approve the agenda as presented; seconded by Councilor Weston.

Vote: 9/0.

#### 6. CITIZEN'S FORUM

*Citizens are invited to speak on any issue pertaining to the business of the City of Dover. Statements shall be limited to five minutes.*



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**Raymond Bardwell, 199 Spur Road:** He congratulated Deputy Mayor Trefethen. He wanted to give some accolades to the Dover Police Department for their handling of drugs and other devious items being dealt at the Spur Road parking lot. He spoke about his concern of people going into the crosswalks without first looking left or right, and felt it was inviting a problem. He spoke of the Dover website and the Economic Development Director position. He said he has been in business, and felt that a business who wanted to relocate would look at the city's website online. He felt some of the funds could be used to improve the website to show off Dover, and get far better exposure than paying an individual. He said the biggest thing wrong with his theory is that the City does need someone to be in contact with existing companies to retain them. He said they could go to the Planning Department, because that is what their function is, planning for the future of Dover.

**Anastasia McManus, Central Towers:** She said she didn't want to come to the Council, but was driven because of a very practical concern that has not been addressed. She said she has spoken with Councilor DeDe and Recreation Director Gary Bannon about the fact that her apartment overlooks Henry Law Park. She recommended to Mr. Joyal that he never issue a plan that does not include bathroom facilities. She said the Rotary has porta-potties in Henry Law Park for their programs, but they are kept locked up. She said something has to be done, because this is degrading for people in a park that the City is trying to promote. She said people are going behind trees and bushes to relieve themselves. She said this should be planned out before the next program in the Park. She said none of the playgrounds have bathroom facilities either.

Mayor Myers said the Council will follow up on this.

**H. Jerry Lynch, 26B Lincoln Street:** He agreed with Ms. McManus. He said he takes three kids to Henry Law Park and there isn't a place to go. He said there were porta-potties there, but the construction workers put locks on them. He said unless people are willing to pay \$7.00 to go into the Children's Museum, the kids are going to keep using the bushes. He also spoke about the trash bags and the Council's promise last year not to raise the price. He felt that the citizens were getting stiffed with the trash bags again.

**Edward Bleiler, 28 Isaac Lucas Circle:** He said ten weeks ago he asked the City Manager for the total costs for the Butterfield gym renovations. He said the City Manager should be forced to show the numbers this evening. He spoke of the Foster's editorial on the Children's Museum and the parking garage, and said he agreed that it was time to talk about parking. He said the City Manager should have realized that the Museum would cause a parking problem, but said it was the Museum's problem. He said the City gave them a \$6 million building and they should build their own garage. He said if it was a downtown merchant's problem, to have them build a garage. If it was Bob Foster's problem, then let him build the garage. He said not to force the taxpayers to pay for a garage for the merchants, the museum, or Bob Foster. He spoke on the Economic Development Agreement, and said again that it was not needed and the City should hand whatever real estate they want to develop to a private real estate company and save \$85,000. He referred to the Information Technology policy, and said when he emails his city councilor, he doesn't want his email going through City Hall. He said it was no one's business



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but between the councilor and himself, and was his right to privacy. He said the City was opening up itself to another civil rights lawsuit. He spoke on the dissolution of the Arena Fund into the General Fund, and said when the City has a losing enterprise; you either raise your prices or cut your expenses. He said if neither can be done, sell it, and it would raise some revenue for the taxpayers and put the building on the tax roll. He said putting the Arena Fund into the General Fund will do nothing but burden the taxpayers into the indefinite future. He said lastly, he would support naming the North End Fire Station the Liberty North End Fire Station only if Liberty Mutual paid for the building, but since they only gave the City unwanted land to save themselves taxes, he didn't understand why it should be named Liberty. He spoke of the cannon outside the City Hall and its need for restoration. He asked who owned the cannon, where did it come from, and why it wasn't taken care of. He said it was a relic of the past and should be preserved for the future. He passed around photographs of the cannon.

**Jeffrey Brissette, 11 Fieldstone Drive:** He said he was here to talk about a few things that are a concern to him. He referred to the Council's debate over the City Manager's evaluation, and said he would have loved to have piped in with his own evaluation. He said he wanted to talk about the gravel pit. The original contract was negotiated with Mr. Beecher, and he said Mr. Beecher didn't do very well for the City's interests. He got the City \$1.35 per yard. He said the seacoast area sand and gravel pits are a very rare and valuable commodity. He said the materials were worth a minimum of \$5 per yard wholesale. Severino Trucking put an estimate of \$1.3 million (cubic yards) on the remaining materials when the contract was renegotiated. He said if the City took that \$1.3 million (cubic yards) and extended it out at a minimum to \$5.00, that's \$6.5 million. He said if the Council looked at the amended contract that Mr. Joyal put together, and put out the 200,000 yards a year that Severino Trucking estimates that they will use, that brings the City estimated revenues of \$2,155,000, a third of what the City should be getting. He said the original contract was for extraction only, which means the dirt is dug out of the bank, put in a truck, and hauled away. Severino Trucking took it upon themselves at different times to haul ledge in, process the ledge, crush it, and mix it with sand. He said the City didn't get anything for that. He said he provided the City Attorney with many comparative analyses, pricing from local suppliers, suppliers within an hour to the City of Dover, so that he could present that to the City Manager, but the City Manager chose not to present it to the Council. He said the new amended contract gives Severino Trucking 45 days to process material, and asked the City Manager to tell the taxpayers of Dover what they get for the 45 days given to Severino Trucking so they can process materials. He said the citizens didn't get anything. He asked the City Manager if the citizens did receive something, to please explain it. He said advanced notice is supposed to be given to Dean Peschel for any materials that are being hauled into the pit. He said he would like to know if this was done, and when it was done. He said Paragraph 3 of the new contract talks about discounts on a volume basis that Severino Trucking should get on the price of payment. He asked how much more of a discount the City can give Severino Trucking; we're already giving the dirt away. He said the City Manager graciously negotiated for another \$.05 per year for the next ten years, \$10,000. He said he knew a lot about this business and questioned whose interest the City Manager was looking out for with Severino Trucking when he negotiated this contract, and said it wasn't the City of Dover's. He said he doesn't fault the contractor in this situation at all, and would shake Mr. Severino's hand for making a good deal, but he questions the City government's judgment. He



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said the City pays Severino Trucking \$5.50 per yard for our own materials to sand the roads, and that's supposed to be for loading and processing. He said the contract said that the City doesn't have to pay for loading, so he didn't understand why the City was paying for it. His last point that he felt should be important to the Council was that the EPA requires NOIs be filed on any project that is over an acre in size. He said he knows that no NOIs have been filed on the Long Hill Road project, or for Cape Ann, because anyone can check online to see if an NOI has been filed. He said the same thing was happening on Route 108, where the City of Dover and Gove Construction have not filed an NOI. He said it was a requirement by law, by the EPA, to file an NOI, and the City is not exempt from that.

**Donald Medbery, 3 Covered Bridge Lane:** He referred to Mr. Brissette's comments and said he has said the same thing several times to this Council about Severino Trucking. He referred to the Zoning Board Meeting of August 21, 2008. He said at the meeting there were a few gas stations signs brought up on two different resolutions, and they were voted down. He said he found it interesting that the Children's Museum, represented by Mr. Schulte, was prepared to sprinkle magic dust that makes people in the chamber fall over and give Schulte his way. He said Mr. Schulte realized he couldn't lift the heavy weight for a variance for a 69 square foot sign to be allowed, where a 16 square foot sign is what the law allows. He said Mr. Schulte marched in the chamber and felt he was getting his sign, but he said Mr. Schulte was not. The sign is 16 feet and that's what we're going to hold it to – hold the feet to the fire to. He said the Zoning Board pulled the resolution only to say that they would be returning in 30 days to try and get a sign. He said he was there the other day, and there were four signs on the museum. He said he wanted to know if the Planning Board passed those four signs, and he was going to find out by filing a 91-A. He said Mr. Schulte will use all of his lobbying power base, all his arm twisting, so that the Council will vote for the sign. He said the citizens were fed up with everything that is given to the City, especially the Children's Museum. He said he was for the Children's Museum, but the City could have had it for nothing because Portsmouth wanted it out of Portsmouth. He said the City made it look like some big deal. He spoke with people in Portsmouth, including the Mayor, and they were laughing at us. They were fed up with the Children's Museum's whining about this and that. He said he was already fed up with the Children's Museum, because they have parking spaces that the Council gave them that should not have come out of the Henry Law Trust. He said the Henry Law Trust was cast in bronze until the Council sprinkled magic dust on the trustee and overseer. He said the City needed to take a long hard look at parking places and parking garages. He said the City should use the grant for shuttle buses, get some land on the edge of the City for parking, bring those 80,000 people the Council thinks are coming to the City, bring them into the City, and then you just bring them back out. He said he also didn't see why the City should name the fire station after Liberty Mutual. He said the City has given them plenty already. He said it should be named after a famous person in the City. That's the way it was usually done. It certainly didn't belong on a fire station, as far as Liberty Mutual goes, from the little bit of money they gave the City, after all the tax breaks we gave them.

Mayor Myers, seeing no one else wishing to speak, closed the Citizen's Forum.

### 7. PUBLIC HEARINGS



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- A. RESOLUTIONS – NONE**
- B. ORDINANCES – NONE**

### 8. CITY MANAGER'S REPORT

City Manager Joyal said he had a few items he wanted to bring to the Council's attention, and afterwards he had a representative from Comcast present, at the Council's request, to talk about the franchise renewal agreement that was in place, the issue of the franchise fee, and the build-out into the new residential areas. He referred to the Diesel Fuel Bid Resolution and said it would have to be substituted with the Resolution on the Councilors' desks. He also wanted to bring to the Council's attention the recognition that he was advised of last week, that for the past several consecutive years the City has been recognized for achievement in excellence in financial reporting by the Government Finance Officers Association, United States and Canada. He congratulated Dan Lynch, Finance Director, and his staff for once again qualifying for that recognition, a process that takes about six months of evaluation. He said they have continued to live up to the high standards that are set across the country. Dover is one of six or seven communities that have been recognized with this award, and Dover was one of the first communities in the State to have been recognized with this achievement. He addressed the few items that were brought up in Citizen's Forum. First, he talked about trying to educate the public about crosswalks and the pedestrian's responsibility for crossing them safely. He said the Council has been made aware, and it has been written in local news media that the Police Department has been engaged in several different campaigns to monitor crosswalks and traffic, looking at both vehicles that aren't paying attention to their responsibility to yield to pedestrians in crosswalks, and also to pedestrians that are not taking care before entering traffic. He said that the monitoring will continue periodically. He referred to Mrs. McManus' comments about the need for bathrooms at Henry Law Park. He said there wasn't a porta-pottie located in Henry Law Park, or in any other park around the City. He said they have had them in the past, and they were removed from the budget this past year. He said the Chamber of Commerce, in conjunction with the Cocheco Arts Festival, did rent and have some porta-potties made available in Henry Law Park, however they were only made available to the public during the concerts. He said the City will talk to the Chamber of Commerce next year about making sure that those facilities are left open to the public. He said in the meantime, since Councilor DeDe brought this to his attention that Mrs. McManus had these concerns, he has talked to the pool staff about making sure that the pool, when it is open, was making its facilities available to the public. He said they are looking at signage to indicate that there are public restrooms in the pool facility, and additionally the Children's Museum would allow folks to enter and use their facilities when they need to. He spoke to the gravel pit situation, and said there were a whole host of issues that he felt had been addressed, but he can certainly answer questions if there are any remaining. He referred to Mr. Bleiler's comments about the expenses associated with the Butterfield Gym. He asked the Council to recall that he did give that information last week after Mr. Bleiler left the meeting, and he had it available to repeat again. Since the beginning of August, the City had expended \$632,982. He said no additional payments have been processed. He said the City is currently holding a retainage from the contractor, about \$29,000, which has not been authorized to be released. He said the contractor has submitted a request for some additional payments, and the City was discussing those with the contractor, but didn't



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believe they were warranted at this point. He said he would answer questions, and then he would ask the representative from Comcast to speak.

Councilor Callaghan asked about the costs for the Butterfield Gym, and if it was just for the remodeling of the armory, or if it included the move of the gym over to the McConnell Center. City Manager Joyal said it was the cost of the foundation repair, shoring up the Butterfield Building.

Councilor Callaghan said he wasn't sure what Mr. Bleiler was asking for. If the City moved the Butterfield Gym and built it over there – it would seem that would be part of the costs as well. City Manager Joyal said he thought he knew what was being asked. If the Recreation Department had remained in the Butterfield Building, the City would more than likely have had to spend this money there anyway. He wanted to remind folks that the City looked at whether or not the City wanted to retain that building or tear it down and let the Children's Museum build something from scratch. He said it would have actually cost the City more money to tear the building down and provide the utilities and systems that would be needed, than to pay for the repair, and that's not even taking into effect the historical significance of the building.

Councilor Cheney asked the City Manager to talk about the cannon, the NOIs required by the EPA, and also the signage exception that is going forward.

City Manager Joyal said the cannon was outside his office, and he didn't know its history. He said on one of the Dover Main Street clean up days they had some volunteers express some interest in restoring the cannon. He said those people have not resurfaced, and at this point there was nothing planned for restoring it. He asked for volunteers to contact his office if they are interested in restoring the cannon. He said regarding the NOIs, Mr. Brissette brought that to the attention of Mr. Steele and he is looking into that, and when more information is available he will let the Council know. He said it was the responsibility of the two vendors that contracted with the City for those projects to file the NOIs. If it wasn't done, they will follow up on it. He said the Children's Museum sign package that they would like to install at the Butterfield Building consists of two components. One is for signs at the entrance, and the other is a large sign they want to put on the side of a building on Washington Street, covering an air handling unit. He said they are asking the Zoning Board to grant them a variance for that, and that's within the purview of the Zoning Board to be able to do that.

Councilor Cheney said this would be setting precedent, if the Zoning Board allowed putting up barriers so a bigger sign can be put up.

City Manager Joyal introduced Brian Christensen, the City's government affairs representative from Comcast, who was very involved in renegotiating the cable franchise agreement with the City.

Mr. Christensen started with the build-out issue. He said they were currently in the process of getting all their approvals from the utilities for the build-out requirement at the Gulf Road area and Three Rivers Farm. We have one from one of the utilities, and are still waiting for approval from the second utility, and as soon as that is done we can start rolling out cable. At this point, he said, they were still on schedule. He said that the City Manager had said the problem was that the franchise fee that is being reflected on the subscriber's bill is slightly more than 3%. He said Comcast is living up to and honoring the terms and conditions of the franchise that was negotiated about nine months ago with the City. He said specifically what brings the franchise fee up above the 3% are the non-subscriber revenues, home shopping sales and ad sales. In 2001 the FCC affirmed a decision which allowed those non-subscriber revenues to be passed



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through to the subscribers. He had a copy of the FCC order that he would leave for review by the City Council or City Attorney.

Mayor Myers said there were questions about some of the channels that were recently removed from the standard package.

Mr. Christensen said in July a few channels migrated to the digital tier as part of a channel migration, and subsequently Comcast launched about nine high-definition channels with no additional programming costs associated with those channels. He said Comcast offered a free digital cable box for about a month, for any subscriber who wished to receive one, in order to receive some of those channels that had migrated.

Mayor Myers asked if the City had any control over the channel lineup and the setting of prices for the various packages.

Mr. Christensen said according to Federal law there are a few things outside the purview of the local franchising authority, which ultimately the City Council is, and those things are prices, programming, technology, internet and telephone.

Mr. Scott asked again about the franchise fee, and said his bill showed 3.3%, and he doesn't have any bells and whistles. He said the prior Council's approval was 2.75%, and he didn't understand how Comcast could charge that much more.

Mr. Christensen said he believed the franchise fee to be 3%.

Mr. Scott said if it was 3%, he still wanted an explanation for the .3%.

Mr. Christensen said the extra .3% is attributed to the non-subscriber revenue. He used the Home Shopping channels as an example. He said when somebody picks up the phone to order something there is revenue associated with that. He said it is in the definitions that any services derived from the cable system, for example if a person buys a shirt for \$10, that revenue gets attributed to the City of Dover, and Comcast collects 3% of that \$10 and pays it to the City. The way that is done is to apply that with the proportional fractional representation of the number of subscribers in Dover and add that to the 3%.

Councilor Scott asked if that meant a subscriber who never does any of that shopping still pays the additional amount on the franchise fee.

Mr. Christensen said yes, it does.

Councilor Scott asked about the channels that have been eliminated, the religious channel, and said these were people that are retired and are not computer literate, and they can't understand the response they get when they call.

Mr. Christensen said he felt the religious channel was actually a good news story. The channel being referred to is AWTN, and it went from a part-time analog channel to a full-time digital channel with four or five other religious programming channels. In addition, AWTN also has On Demand capabilities, which allows the ability to watch Sunday mass at any time.

Councilor Scott said the citizens were under the impression what they were seeing at the time the contract was negotiated would not cause them to pay extra. He said he wasn't clear what has to be done, but they say it's going to cost them, and they think that is not fair.

Mr. Christensen said he alluded earlier that Comcast was offering a free digital box for a month so the subscriber could get that programming free for one year.

Councilor Scott said after that one year there would be an additional charge.

Mr. Christensen said he couldn't answer that affirmatively.

Councilor Scott asked for the telephone number to call to get whatever is available free of charge.



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Mr. Christensen said it was 1-800-COMCAST. He said he wasn't sure if the promotion was still going on, but it wouldn't hurt to call.

Councilor Scott asked him his number, in case they call and can't get through.

Mr. Christensen said his number was 224-0957, but that he was hardly ever there to answer.

Councilor Cheney just wanted to know when this free offer was made, if the service had already been changed.

Mr. Christensen said the free offer was in June. The channels were supposed to migrate on July 15<sup>th</sup>, but it was actually July 17<sup>th</sup>. He said customers received a direct mail piece from Comcast outlining it, or they could have called 1-800-COMCAST to get the free box.

Councilor Cheney said the users don't usually read these pieces.

Mr. Christensen said he understood that.

Councilor Cheney said she knows the people Councilor Scott was referring to and they couldn't leave their homes, and they watch the religious stations, and they're not just in his ward.

Mr. Christensen said he understood that. It wasn't just a problem in Dover, but was throughout Comcast New England.

Councilor Cheney said that maybe Comcast could offer these free digital boxes again. She said the consumer is seeing that FCC compliance starts sometime next year.

Mr. Christensen said that was a completely different subject, which he would be happy to talk about.

Councilor Cheney said the consumer didn't see the notification, whether or not they bothered – the time has passed. Then all of a sudden their TV is not working for the same price that they were paying for the past years. She said there were a lot of dissatisfied people in the City, and they count on Comcast to deliver a product they have come to trust. She felt that something else should be offered.

Councilor Callaghan said he had heard the same things from his constituents. He referred to Channel 40, when it went to digital, the message on the screen took them to a place that told them they had to pay money in order to get a box, and he hadn't heard anybody say there was a free opportunity to get a box. The perception of all that was that this wasn't supposed to take effect until February of 2009 and Comcast is taking a step forward and taking advantage of this conversion to convert early, so they can sell things earlier and make money.

Mr. Christensen said the reason for migrating channels was the demand for high definition programming. He said they are trying to balance the wants of the consumers and sometimes you couldn't please everybody.

Councilor Callaghan asked if there was a period of time where Comcast wasn't offering it for free when this change came out.

Mr. Christensen said no, the promotion started before the migration came out. He had a letter that was mailed in June, and the channels didn't move until July 17<sup>th</sup>. He said both Councilor Callaghan and Councilor Cheney asked about the FCC mandated broadcast digital transition, and that was confusing the issue. This was Comcast migrating channels to digital. The FCC is mandating that broadcasters transmit digital. He said it wasn't the same thing.

Mayor Myers asked if he could schedule him to come back after the election or first of the year.

Mr. Christensen said he would also mail some information to the Council, with sample constituent's letters, talking points, helpful phone numbers and websites.

Councilor Cheney asked what he could tell the Comcast customers now, when he just heard that the citizens saw they could call a number and pay for a box, because the perception is that



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Comcast did this to get this box in, when we all know that the box might be standardized next year.

Mr. Christensen said the world was definitely going digital.

Councilor Cheney said that's telling customers that they can expect to continually lose stations as Comcast does this conversion.

Mr. Christensen said he didn't believe that was the case. He said they make efforts to make the transition easier for the customer, as we just did with this free digital box offer.

Councilor Cheney asked if he could get the customers another digital box offer and maybe a letter sent to them.

Mr. Christensen said there are different promotions all the time. He didn't think that one was in place right now, but it was for 30 days. He said customers that were affected did receive a direct mailing and they received a bill notice as well.

Councilor Scott asked Comcast to help in this transition, because many people in Dover are dissatisfied. He asked if there is some other number they could call, because they tell him they're on the line 10, 15, 20 minutes.

Mr. Christensen said the number is 1-800-COMCAST, and they have a customer service office on 180 Greenleaf Ave., Portsmouth.

Councilor Scott asked if it could be boosted up a little bit so people aren't waiting.

Mr. Christensen said he didn't believe the lines are that long in Portsmouth, but he would check.

Councilor Scott said not to tell the customer to go online, because many of them don't know how to go online.

Mayor Myers said he had a request which he knew would have to be agreed upon by the Council and Comcast. He said he remembered talking about a 3% franchise fee, but he didn't recall hearing it was 3% plus. He thought the number the Cable Committee, and he was not going to speak for them, heard was 3%, but they probably knew it was 3% plus, and to be 3.3% is very disconcerting to people. His question was, if the Council were to take the position that they wanted this number to be 3% period, would Comcast be agreeable to amending only that piece of the contract?

Mr. Christensen said yes, in the revenue definition there would be three or four words that would need to be struck.

Mayor Myers asked if it was that specific to that topic to make it 3% period.

Mr. Christensen said he didn't have a problem with it.

Mayor Myers said that was something the Council had to look at and discuss, and possibly bring forth a resolution.

Deputy Mayor Trefethen moved to accept the City Manager's Report; seconded by Councilor McCusker.

Vote: 9/0.

## 9. MINUTES

### A. MINUTES FROM – AUGUST 6, 2008

Councilor Cheney said on Page 9 of 17, third paragraph up, "feels the City Manager is everywhere", after the word "confident" the "in" should be "that", and after the words "City Manager" right before the period, "has met her objectives there."



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Mayor Myers repeated the full sentence: "She feels the City Manager is everywhere and feels confident that the City Manager has met her objectives there."

Councilor DeDe said on Page 7 of 17, first sentence in the fourth paragraph reads presently: "City Manager Joyal said Councilor Callaghan contacted him about the details of this." He said it should say "City Manager Joyal said Councilor Callaghan did not contact him about the details of this."

Councilor Callaghan said that was an incorrect statement, the City Manager had been in email contact with him, and it included communications with the City Attorney. He said what was written in the minutes is what he said and is accurate.

Councilor DeDe said he was questioning what the City Manager said. "City Manager Joyal said Councilor Callaghan did not contact him." The correction is for what the City Manager said.

Councilor DeDe made a motion to table the minutes to have the City Clerk go back and look at that one paragraph; seconded by Councilor Callaghan.

Vote: 9/0.

### 10. MAYOR'S REPORT

Mayor Myers said he sent out an email last week reminding the Council of a group photo on September 10, 2008 at 6:15. He also sent a "high importance" email regarding the September 3, 2008 Workshop next week. Part of the Workshop will be dealing with a Legislative Policy Setting meeting, which is coming up at the Local Government Center on September 12, 2008. He spoke about the Cochecho Arts Festival, where he was fortunate enough to take part in a park bench presentation for Pat Sorenson. He mentioned the function he went to for Welsh Floral Carpet, which employs about 30 people. They had an employee whose son was diagnosed with a serious disease and needed time off to take him for treatment in Boston. He said that this company went above and beyond by giving her the time off and letting her make it up when she could. The employees rallied around and the New Hampshire Lymphoma Society came and did a presentation to Welsh Floral Carpet in appreciation of their support for one of their employees.

Deputy Mayor Trefethen moved to accept the Mayor's Report; seconded by Mayor DeDe.

Vote: 9/0.

### 11. UNFINISHED BUSINESS

**A. ORDINANCES IN THE 2ND READING – None**

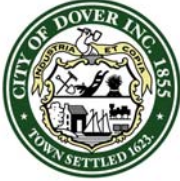
**B. ORDINANCES IN THE 3RD READING – None**

**C. RESOLUTIONS**

**1. ECONOMIC DEVELOPMENT SERVICES AGREEMENT (TO BE REMOVED FROM TABLE AND AMENDED.)**

Deputy Mayor Trefethen moved to removed from the table and amend; seconded by Councilor DeDe.

Vote: 9/0.



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Mayor Myers referred to the packet the Council received with strikethroughs and bold version language changes that had transpired since the workshop the Council had regarding Economic Development's function in the City, and the agreement to have DBIDA enter into the contract. The ideas from the workshop were worked into the new proposed agreement that was before the Council. He asked the Council for their comments, questions, or changes.

Councilor DeDe said one of the concerns he had heard was that there would be no supervision by the City Manager if this person was hired by DBIDA. It was the City Council that directed, by a unanimous vote of the last Council, to look into outsourcing the Economic Development Director position. In fact it was a part of the budget initiative in last year's budget, but because of several different circumstances it didn't come to fruition. He said it was really important that the public understood that this individual being hired by DBIDA is under the supervision of the City Manager in a less direct way. The City Manager does sit on the DBIDA Board, and taxpayer funds are being disseminated to DBIDA for the purpose of hiring someone in a unique position, and it's not a usual union employee position. He said this employee won't receive the usual benefits, but will negotiate their package in terms of fringe benefits. He said the full \$130,000 in the first full year is the entire amount of the budget, from secretarial, supplies, communications, and anything associated with that activity. He said he was confident that the City Manager, sitting on the DBIDA Board, will be paying close attention to what goes on. He said he hardly disagrees with the concept that this isn't the way to go for Dover.

Councilor Weston said she was impressed with the changes that had occurred with the document except Page 4 of 6, Paragraph 2, where it says: "DBIDA shall supervise the performance of the Economic Development Director..." Then you go to Page 6 of 6, it says: "Day-to-day supervision of the Economic Development Direct shall be conducted by DBIDA." She said with day-to-day supervision you have to be there, and DBIDA works once a month. She asked who this person was going to report to if they are sick and decides not to show up, and who is going to say he did show up or didn't show up. She said she could support every other aspect of the agreement, but she doesn't believe day-to-day supervision can be conducted by DBIDA. She said she believed this person should check in with the City Manager.

Councilor Cheney said she had asked at the August 16, 2008 Workshop for an opinion on the administrative services, the payroll services for this position, and if this checked out. Mayor Myers said they reviewed the documentation for the Dover Main Street Director through payroll, and checked it out.

Deputy Mayor Trefethen said there have been suggestions by people during Citizen's Forum and through email about how this position can be provided. He appreciated those suggestions, and he didn't believe the Council was excluding the use of those suggestions by adopting this agreement. He said the more important part of this position is retaining the City's current businesses, and assisting them to expand, find new space, and do whatever they have to do. He said it was for that reason that he would be voting in favor of this Resolution.

Councilor Callaghan said he had a few concerns with this Resolution, but it was greatly improved. His referred the Council to Page 4 of 6, where it says: "the Economic



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Development Director's attendance at local, regional and national business events." He said Councilor DeDe has answered that, that it comes out of the \$130,000.

Mayor Myers said that would be part of the Economic Development budget.

Councilor Callaghan referred to Page 6 of 6, Paragraph 11. He had a concern about the Council's ability to terminate this agreement. He said there wasn't a clause where the Council can say, we're not happy with how this is going. He made a motion to amend Paragraph 11 by adding the words, "and for immediate termination of this agreement by the City Council."

Mayor Myers asked him if he was making the motion right now.

Councilor Callaghan said he was just putting it out and will come back to it. He then referred to the middle of Paragraph 12: "...there is no direct responsibility of the Economic Development Director to the City Council." He said he had a concern about that. He understood the involvement of the City Manager, but he felt that this person should have some direct responsibility to the City Council, because the Council is authorizing the funding and has the responsibility to see that that money was spent wisely. He said he was uncomfortable with having no direct responsibility. He referred to Paragraph 13, and said he would like to add the words, "pending review by City Council." If for some reason this individual leaves, he felt the Council should assess what is happening with the situation. He made a motion to amend Paragraph 11 last sentence: "Failure of DBIDA to provide reports and other information as requested may form the basis for rejection of future funding requests or immediate termination of this agreement by City Council." He said he was saying it could happen now and not after the end of the contract. It could happen immediately. He said if the Council was completely unhappy he wanted it understood that the Council could terminate this agreement immediately. The motion to amend was seconded by Councilor Cheney.

Councilor Cheney said it was one of her concerns, Page 6 of 6, the DBIDA accountability, failure to report future funding is not specific about future funding requests. She said that would mean that they would still have the funding for the term of the contract. "...objection of future funding requests or immediate termination of this agreement." She said she agreed with the amendment.

Deputy Mayor Trefethen said he wondered if Councilor Callaghan would be acceptable to a friendly amendment by inserting: "by a 2/3 vote of the City Council." He said he felt if the Council gets to the point where they feel this isn't working it will be fairly obvious by a vast majority of the Council. On the other hand, he would like to put a safety valve in there.

Councilor Callaghan said that was acceptable.

Mayor Myers said that was offered as a friendly amendment and seconded.

City Manager Joyal said the suggestion was to have a 2/3 vote by the Council to terminate the contract, and the Council may get into an issue with future Councils, changing the voting mix in this without putting it into an ordinance ----

Councilor DeDe said "terminate this agreement," not the contract.

City Manager Joyal said it was more to do with constraining or dictating to a future Council how they would vote on a particular issue.

Councilor DeDe said he understood that the vote on tonight was this agreement. If there was a contract and the Council decides with a 2/3 votes that the Council was not happy with this we would expect that the City would have to buy out the balance of that individual's



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contract, providing he had fulfilled the details of his agreement with DBIDA. One of the other things that surfaced was that this direction seems to be an attempt to give the City Council supervisory control over an individual. He said that doesn't fit with the Charter. Mayor Myers asked a question for clarification from Councilor Callaghan: as long as DBIDA provided the reports and any information that was requested, then the Council would never be able to have that clause trigger in, because reports were provided?

Councilor Callaghan said yes.

Mayor Myers said this was only if DBIDA failed to meet up to their end of the expectations as far as the reporting goes.

Councilor Callaghan said that was right.

Mayor Myers said if the Council wasn't happy, this trigger clause wouldn't kick in at that point.

Councilor Callaghan said he wasn't looking at the information in those reports, just that they weren't provided. He said the Council would probably have to address the issue of the Council being able to terminate this if the Council was not happy with the package.

Mayor Myers said the triggering clause right now would be if DBIDA was communicating or upholding their end of the agreement, and not if the Council didn't like the direction it was going.

City Manager Joyal said the 2/3 vote issue is not something that could be done on the fly.

City Attorney Krans said this was an agreement between the City Council and DBIDA. The City Council breaches the agreement by not coming up with the money. DBIDA breaches the contract by not performing what they are supposed to do. A substantial breach would be not to hire an Economic Development Director and expect to receive the money. Another one would be failure to give a report. He said the language that would seem to work to satisfy Councilor Callaghan is to say that this failure would be a substantial breach of the contract. He said that would give the Council the right on a majority vote to say the Council was not going to fund this anymore because they were in a substantial breach. He said the way to solve this was to identify that the failure of the performance in the last sentence of Paragraph 11 was a substantial breach of the contract. He said that would give the Council the power to withhold funding and shut down the contract, and some leverage to make sure DBIDA does what they are supposed to do.

Mayor Myers said this would give the person in this position some protection, because it was not just political winds changing, it's only if there was a substantial breach in the contract.

The Council could invoke that and then withhold the funding.

City Attorney Krans said the person who was hired as Economic Development Director was going to make sure that DBIDA performed Paragraph 11, because they will know that that was a cause for a substantial breach.

Mayor Myers asked if the trigger would only kick in if there was nonperformance on DBIDA's part.

City Attorney Krans said that was right.

Mayor Myers asked Councilor Callaghan if he was interested in substituting that language, instead of his original amendment.

Councilor Callaghan said he thought so. He had another piece to this that he wanted to address first. He said the Council didn't get an employee agreement, strategic plan, or the job description. He said any one of those things puts together what the City expects this



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person to do, and he would expect that if that person fails to meet the requirements of their job expectations, then DBIDA, or whoever the direct manager was, was going to do the steps to eliminate that person, and then the Council falls into the termination clause. He said the performance question was going to be put into the employee agreement, job expectations and strategic plan, and that those were the benchmarks for that person to stay employed. He agreed that no report would be a substantial breach of contract.

Mayor Myers said he agreed that the performance was between DBIDA and the employee, and the language in this contract was between DBIDA and the City Council.

Councilor Callaghan said to keep in mind that he was unhappy with no direct responsibility of the Economic Development Director with the City Council.

Mayor Myers said that was why he asked that the amendments be separated.

Councilor Callaghan said he wanted to make some connection there.

Mayor Myers said he understood that, but he was asking now about Paragraph 11, on whether he would consider withdrawing his amendment and starting with a fresh one with what the City Attorney proposed.

Councilor Callaghan withdrew his amendment, Councilor Cheney withdrew her second, and Deputy Mayor Trefethen withdrew his friendly amendment.

Mayor Myers asked the City Attorney to put forth suggested language for the amendment.

City Attorney Krans said the last sentence in Paragraph 11 could read; "Failure of DBIDA to provide reports and other information as requested is a substantial breach of this contract and may form the basis of rejection of future funding requests."

Councilor Callaghan asked how that said he could be immediately terminated.

City Attorney Krans said it implies that when one party substantially breaches their obligation, the other party is entitled to withhold payment.

Councilor Callaghan said he didn't remember seeing a breach of contract.

City Attorney Krans said it was one of the basic tenets of contract law.

Councilor Callaghan made a motion to amend to that language; seconded by Councilor DeDe.

Councilor Cheney said she just wanted to point out a typing mistake, where it says Paragraph 3, it should be Paragraph 4.

Mayor Myers said she was correct on that.

Councilor Callaghan said he had to withdraw his motion, because he would like it to read: "Failure of DBIDA to provide required reports shall be a substantial breach of this contract."

He said he wanted to withdraw the motion and make a new motion for that language;

Councilor DeDe withdrew his second for the previous motion.

Councilor Callaghan made a motion to replace the last sentence of Paragraph 11 with:

"Failure of DBIDA to provide required reports shall be a substantial breach of this contract."

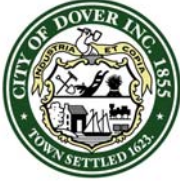
City Attorney Krans said he left out a few words. He suggested: "Failure of DBIDA to provide required reports and other information as requested shall be a substantial breach of this contract."

Mayor Myers asked Councilor Callaghan if he was making that his motion.

Councilor Callaghan said yes.

Councilor DeDe seconded the motion.

Vote: 9/0.



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Councilor Callaghan referred to Paragraph 12 where it said: "There is no direct responsibility of the Economic Development Director to the City Council." He asked for help in this, but he wanted to make a motion to amend for it to say: "There is an indirect responsibility of the Economic Development Director to the City Council."

Councilor Cheney seconded the motion.

Councilor Callaghan said the Economic Development Director shouldn't be solely supervised by a volunteer group for the City. The Economic Development Director should take day-to-day assignments and reviews from DBIDA, but at some point they're going to have to answer to the master, and the master was the Council. He said it was important that the Council maintain that, if for some reason the Council is dissatisfied with the reports. He said the Council should have some line of authority so the Council can manage this employee if they deem it necessary.

Councilor DeDe said this is an overt attempt for the Council to apply supervision over an employee. He said every two years the Council could completely change, and DBIDA members have staggered terms. He said one of the real disadvantages of government in the entire State of New Hampshire is the possibility that every two years you could get a whole bunch of new people. He said realistically the Council should not be in a position of trying to supervise an employee. He said that wasn't the job of the Council. He said the Council's job is to look at the appropriateness of a decision. He felt there was probably unanimity at this Council as to the understanding that an Economic Development Director is something that every city really needs to have to compete.

Councilor Cheney said that she had seconded this motion and would like to speak to it. She said that she felt an indirect responsibility is correct. She said in the language: "...provide information and evidence of successful progress toward performance measures," from DBIDA, which is the entity that will be accountable to the Council directly, that in of itself makes it an indirect responsibility to the City Council. In the Strategic Plan it says in the introduction: "By State law, an assignment by the Dover City Council, DBIDA continues to fulfill its key role in guiding economic development efforts on behalf of the entire City of Dover community." She said it went on to say who was involved in economic development, key words: "local players in facilitating economic development include the leadership of the City Council, Dover Business and Industrial Development Authority, the Dover Planning Board, along with many other entities, including the Dover Chamber of Commerce, Dover Main Street, and Dover Housing Authority." She said the point was the Council's only employee was the City Manager. She said the Council appoints the members of DBIDA, and this Council will change and appoint different people. She said the language in the Resolution specifically indicates that the Council indirectly has an accountable person working through an entity.

Deputy Mayor Trefethen said he would not be supporting the amendment. He felt all of the oversight the Council needs is taken care of in Paragraph 11, which goes back to Paragraph 4 and indirectly to Paragraph 3. He felt the amendment puts the Council in a position that we have with no other employee, except the City Manager. He said the Council doesn't have direct responsibility for any other employee in the City, but this amendment makes an exception to that and he didn't believe the Council wanted to go there.

Mayor Myers said he appreciated the language in Paragraph 11. In Paragraph 12, he was not going to support the amendment where the Council takes on a relationship with an



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employee or responsibility for an employee directly or indirectly. He said he did agree with Councilor Weston's comments that there should be additional language there: "through the City Manager or his designee," because DBIDA is not here day-to-day if the Economic Development Director has a question or wants to follow up on a resource. He said the day-to-day supervision can still be conducted by DBIDA through the City Manager or his designee.

Councilor Callaghan said he would be happy to withdraw the amendment if the Council added the language that the Mayor just alluded to. He said he was after accountability, and he didn't think you could have accountability with DBIDA, since they don't have anything at risk. He withdrew his amendment; Councilor Cheney withdrew her second.

City Attorney Krans asked to provide his thoughts to what he drafted. The City owes an obligation to its employees to treat them fairly. He said the Council knows they have one employee, and the City Manager hires and supervises everybody else employed by the City. He said it was very important that the person hired as the Economic Development Director is not an employee of the City Council or the City of Dover, because that is how the City saves money. He said what determined who was an employee of the City or not was, who directly supervises that employee. To the extent that the Council substitutes the City Manager for DBIDA, or any language that implies that, the Council was laying open the opportunity for this person to say they were an employee of Dover and entitled to all the benefits. He said the agreement was structured so the supervising control was DBIDA, not the City of Dover. Councilor Weston said she could not support Paragraph 12 as written, because this person will come to work with no supervision. She said she wants them to report to somebody that is here all the time, and not a volunteer board that meets once a month. She said the Council was trying to give them \$340,000, and to have the ability to just do whatever this person wants she cannot support. She just wants this person to report to the City Manager if they don't show up for work, and the City Manager can report that. She asked how it could be worded without a problem with the merit plan.

City Attorney Krans suggested: "DBIDA supervises through the Chair or the Chair's designee."

Councilor Weston said that would still leave it too wide open, because they don't know who the Chair is or who the Chair's designee is. She said she still prefers "DBIDA through the City Manager."

Councilor Cheney said this was totally contrary to what the Council talked about during the workshops. The description says: "Works independently on day-to-day activities. He confers with DBIDA Board routinely on policy review questions. Job requirements: strong time management skills." She said we're supposed to be hiring someone of some caliber. She was not saying she was supporting this Resolution, but the Council was not keeping its eye on the direction it has been heading. She said she just wanted this person to come to the Council and talk to them about what was happening in Dover, but this was regressing now to who this person would report to. She said this new person has the DBIDA Board members to call. She said this person will have to be able to manage their work schedule. She said these are people that are goal driven.

Councilor Callaghan suggested that this individual be hired as a 1099, with a contractual employment agreement, thereby not required to receive any benefits from the City, and the individual could report directly to the City Manager and DBIDA. The only problem with that



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is the City has to allow that person to perform the same type of service somewhere else, and not be their sole and only employer.

Mayor Myers said he knew about 1099 employees, and that wasn't something he was comfortable with, because you give up too much control. Mayor Myers asked the City Attorney if there was some sort of language change that would address the concerns of Councilor Weston and himself.

City Attorney Krans said that Councilor Cheney and Deputy Mayor Trefethen hit it on the head when they mentioned Paragraphs 3, 4, and 11, providing comfort to the City Council. Mayor Myers spoke to a few points brought up at this meeting. He referred to Mr. Bleiler's comments during Citizen's Forum that the City should just put the land to a commercial real estate agent. He said that was being done at Enterprise Park with Grubb & Ellis, and they are marketing the City's vacant land. He said the Economic Development Agreement is much more than that. He said Mr. Bardwell brought up some great points. The total budget is for the function of Economic Development. He said the website will be upgraded more with some of the franchise monies that the Council talked about with the Comcast representative tonight.

Councilor Weston asked if Mr. Dargan, Chairman, Dover Business and Industrial Development Authority, could tell the Council how he plans to have the day-to-day oversight of the Economic Development Director.

Mr. Dargan said he expected the employee to be overseen by the City Manager. He said he didn't want to oversee somebody's day-to-day responsibilities. He said that it was his understanding that the City Manager would be involved in some way. He said he was in Portsmouth, Portland, and all over the place, and couldn't oversee the Economic Development Director on a day-to-day basis. He said the person needs to be here in City Hall, they need to be working with the other departments, they need to be fielding phone calls, and being out seeing people. He said that really has to be under the direction of somebody that was here on a full-time basis.

Mayor Myers asked the City Attorney if he was comfortable that this could be worked out in the agreement between the employee and DBIDA.

City Attorney Krans said yes. He said the relationship would be similar to the Council's relationship to its one employee.

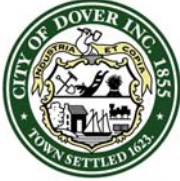
Councilor Weston said Mr. Dargan said he didn't want to supervise, and that his hope was the person would be supervised through the City Manager.

City Attorney Krans said we have a living example here of how a body supervises their one employee on a day-to-day basis, and the Council was going to recreate that with DBIDA with their employee.

Councilor Weston asked the City Attorney's opinion of who the Economic Development Director was going to report to and be supervised by on a day-to-day basis, especially after Mr. Dargan saying he couldn't do it.

City Attorney Krans asked who supervised the City Manager on a day-to-day basis. He said the answer to that is, the quality of the individual you hire doesn't really need day-to-day supervision.

Councilor DeDe said this person that DBIDA is going to hire is going to be a self-starter, or they're going to be a self-failure. He said he wasn't worried about the individual putting in the time, and that he was confident that DBIDA would select a person who understands that.



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He said when a job needs to be done and a dedicated individual is selected, don't worry about how much time they have and how many times we have somebody looking over their shoulder to provide supervision. The results will come as a result of dedication and professionalism.

Councilor Callaghan made a motion to amend the end of Paragraph 13, change the period to a comma and add the words: "pending review and approval from the City Council."

Councilor Cheney seconded the motion to amend.

Councilor Callaghan said if something has gone awry the City Council ought to look at this program and find out what may or may not have happened. If the reasons seem to not affect the overall outcome of the program, then they continue doing the work.

Councilor Scott said that was a good point. He said Paragraph 13 refers to the whole DBIDA program. He said they should have the ability to review the whole program if it doesn't provide what the Council expects it to.

Councilor McCusker said he thought that this was taken care of with the adjustments to Paragraphs 11. He said the Council is trying to pinpoint where it can get more control, but doesn't see any more control than not giving the money.

Deputy Mayor Trefethen asked Councilor Callaghan if this was a review of DBIDA or a review of the employee.

Councilor Callaghan said it was a review of the responsibility and performance of the entire Economic Development Program.

Deputy Mayor Trefethen said it was the performance of DBIDA, not the performance of an individual.

Councilor Callaghan said it could be. He gave an example: This person works for the City for 1½ years and they decide to quit. The Council should look back at that and ask why they quit and if the program should continue.

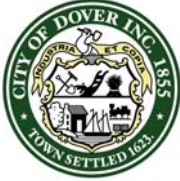
Councilor Cheney asked to offer a friendly amendment on Paragraph 13 to strike the word "initially" and just have it as, "if the Economic Development Director selected by DBIDA terminates ..." She said that would make this contract less time sensitive. She asked Councilor Callaghan for a second to her friendly amendment.

Councilor Callaghan said that he didn't mind.

Councilor Cheney said this paragraph bothered her too, with the words reasonable time frame, but was something she was willing to overlook. She said this document has come a long way, but she felt this contract states that the Council is going to get a written report in some format that the Council can approve. She said she felt the person or DBIDA has to come speak before the Council every month, so they can explain what they're doing. She said she felt this change was good and she would support it.

Mayor Myers said he felt that was the full intention and has been said all along. The difference is they are not reporting directly to the City Council and to the Council's direction, but just updates what they are doing. He said he would not support the wording change, because it puts the Council down the path that it has oversight.

Councilor McCusker said in the last sentence in Paragraph 4 it said: "that the City Council could amend the format of the report at any time to meet the information needs of the City Council." It doesn't say it has to be a written report; it could be a verbal report as often as the Council requests them. He said as far as information goes, Paragraph 4 certainly addresses that.



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Councilor Dede said he wouldn't support the amendment. He couldn't support having a debate every time, because it would restrict anything that was in the works.

Councilor Callaghan said the whole program hinges on this person. He said the Council is entering into an agreement with DBIDA for three years, but if this program comes to a temporary halt the Council should be able to reevaluate it at that point.

Councilor Carrier said he didn't understand why the Council wasn't giving the City Attorney our vote of confidence to do the proper verbiage in this whole contract to protect the City of Dover and hold this person accountable for what we're requesting of them.

Councilor Scott said this should go back to the City Attorney to be redrafted. He made a motion to table Resolution; seconded by Councilor Carrier.

Vote: 4/5; Failed. Councilors Callaghan, Carrier, Cheney and Scott voted in favor.

Mayor Myers said to the City Attorney that he had said some of these changes should not be in this agreement, but also said some of the changes could be worked into this agreement between DBIDA and the employee.

City Attorney Krans said that was correct.

Mayor Myers asked the City Attorney if there was anything he heard that would make him rethink some of the language, specifically in Paragraphs 12 and 13.

City Attorney Krans said he thought Councilor Cheney's suggestion of taking out the word "initially" was a good one.

Mayor Myers asked for a vote on the amendment to Paragraph 13, which consisted of two pieces. One, take out the word "initially", and two, to add "pending review and approval by the City Council," at the end.

Vote: 3/6; Failed. Councilors Callaghan, Cheney and Scott voted in favor.

Councilor Cheney made a motion to remove the word "initially," seconded by Councilor Weston.

Vote: 9/0.

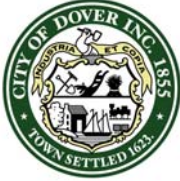
Councilor Callaghan said he was happy with the way the Council was going with this agreement, but was not happy that the Council doesn't have an employee agreement, strategic plan, or the job description all modified in front of the Council. He said he was ultimately not going to support the Resolution. He said the Council should look at the possibility of a 1099 employee, which would solve the question of whether or not he could report to the City Manager. He made a motion to table Resolution under those parameters; seconded by Councilor Scott.

Vote: 4/5; Failed. Councilors Callaghan, Cheney, Scott and Weston voted in favor.

Mayor Myers asked the City Manager if the Council passes this Resolution tonight, if DBIDA would be precluded from looking at a 1099 possibility.

City Manager Joyal said no.

Councilor Cheney asked Mr. Dargan for clarification on Page 5 of 6, "Performance Measures. DBIDA shall establish with the Economic Development Director written performance measures that are attainable and measureable to assist all parties in achieving a positive result regarding the economic development of the program. The written performance measures for DBIDA shall be presented to the City Council for information purposes within 90 days after the Economic Development Director starts working." She wanted to know why it was within 90 days that you will be conferring with this person; to see what they can do?



CITY OF DOVER

## CITY COUNCIL - MINUTES

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Mr. Dargan said it would be a collaborative effort between a new hire and the Board trying to come up with some reasonable and attainable goals.

Councilor Cheney said she didn't see anything in the contract about coming to the Council.

Mr. Dargan said that was in Paragraph 4.

Councilor Weston said she believed Councilor DeDe took punching a time clock to the extreme. She said this person has to be accountable to somebody. She asked Mr. Dargan if he was willing to put in his employee agreement that this person would report to him more than once a month, because she didn't know any institution that gets a report from an employee once a month. She said she could feel comfortable supporting this Resolution if he would assure the Council that your oversight of this person occurs more often than once a month.

Mr. Dargan said he could assure the Council that it will occur more than once a month. It will occur whenever it is needed.

Councilor Cheney asked the City Attorney where it says the Council can amend the format at any time; does that include the frequency?

City Attorney Krans said it did to him.

Councilor Cheney made a motion to change Paragraph 4, after "DBIDA shall submit a written" she wanted to insert, ""and oral" report to the Dover City Council on a quarterly basis..." She said if you go down a few sentences, "The purpose of the..." you can strike the word "written," and change the word "report" to "reports." Councilor Callaghan seconded the motion.

Councilor Cheney said she felt the Council really had to have the written and oral report.

Councilor Callaghan asked to make a friendly amendment to have it say "a written report with presentation to the Council."

Councilor Cheney said she felt her wording covers that and did not accept the friendly amendment.

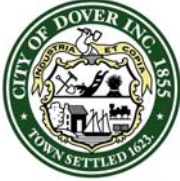
Councilor DeDe said if the person that is hired comes from far enough away, they probably wouldn't be intimidated by this, but if they have been reading the paper they know what this Council is like; they are not coming. He said the Council doesn't need somebody to come in here and give an oral report, subjecting them to the whims of nine people. He said it also smacks of direct supervision, which is not something that the Council is empowered to do. He said the report can be modified to ensure the Council gets a sense of what is going on. Councilor Cheney said that the Council couldn't forget that this is not a department head, a direct report of the City Manager. This was taxpayers' dollars that we're using and we don't express displeasure when people come to talk to us. She said the Council is just getting information. She disagreed that it would be unjust to hear from this individual.

Mayor Myers said this person can come here, and the right person will want to be out front. He said he didn't have a problem with supporting this amendment.

Vote: 8/1; Passed. Councilor DeDe was opposed.

Deputy Mayor Trefethen moved for its adoption as amended; seconded by Councilor DeDe.

Councilor Scott said he couldn't support this Resolution, and the Council was rushing too fast. He said he had two objections. One was economics, and the other was further movement away from representative government. He said Mr. Bleiler and Mr. Bardwell made some valid points in ways to do this at a much lower cost, and that was why he found it difficult to support this Resolution.



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Councilor Callaghan asked about the real estate being sold by a private company. Mayor Myers said it was Grubb & Ellis.

Councilor Callaghan asked where the money went when the real estate was sold. City Manager Joyal said the funds go into DBIDA to pay back the bond for the road that was reconstructed out there.

Councilor Callaghan asked if it couldn't go to fund the Economic Development Director. Mayor Myers said that was the agreement a few years back when the City needed to build a road in order to access parcels.

Councilor Callaghan said he was impressed with the changes to the Resolution, but he wasn't going to support it because it is missing a few components of the puzzle. He said one was, the Council hasn't figured out who this person is reporting to yet, and even from the Chairman of DBIDA we're hearing the conflict of who was going to be doing what.

Councilor Cheney made a motion to amend Paragraph 12, to reintroduce "indirect" responsibility.

Mayor Myers said that exact motion was made and it failed. The same amendment cannot be brought back.

Councilor Cheney made a motion to strike the whole Paragraph 12; seconded by Councilor Callaghan.

Councilor Cheney said that would remove the question of responsibility and the acknowledgement that they know where the funding is coming from.

Councilor Callaghan said he agreed that the Paragraph was a little redundant there, and Councilor McCusker was right when he originally asked for it to be struck.

Mayor Myers said he wouldn't support the amendment. He felt it clarified to all the parties involved, including the new employee, that DBIDA has the employee.

Vote: 4/5; Failed. Councilor Callaghan, Cheney, McCusker and Scott voted in favor.

Councilor Cheney said this Resolution has come a long way, but she felt there were just a few things that have to take place for her to fully support it.

Roll Call Vote: 5/4; Passed. Councilors Callaghan, Carrier, Cheney and Scott were opposed.

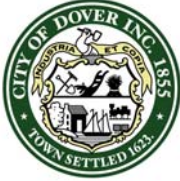
Deputy Mayor Trefethen made a motion to suspend the rules to continue the meeting until 11:00; seconded by Councilor DeDe.

Roll Call Vote: 7/2; Passed. Councilor Callaghan and Scott were opposed.

## 12. NEW BUSINESS

### A. CONSENT CALENDAR

1. **RAFFLE – St. Charles Borromeo Church**
2. **TAG PERMIT – Back River Farm Festival**
3. **TAG PERMIT – Dover Little Green Football, Inc.**
4. **TAG PERMIT – Prime Time All-Stars**
5. **BLOCK PARTY – Dover Knights of Columbus**
6. **ROAD TOLL -- Dover Professional Firefighters Association & Muscular Dystrophy Assoc. of NH**
7. **RESOLUTION RE: DEPOSITORIES FOR CITY FUNDS FOR FISCAL YEARS 2009 and 2010**



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SPONSORED BY MAYOR MYERS BY REQUEST

**8. RESOLUTION RE: INCREASE IN PRICE FOR DOVER TRASH BAGS AND TAGS**

SPONSORED BY COUNCILOR DEDE

**9. RESOLUTION RE: POLICE CRUISER ACQUISITION STATE BID 79-08**

SPONSORED BY MAYOR MYERS BY REQUEST

### **COMMITTEE REPORTS**

- |   |  |
|---|--|
| 1. Appointments Committee                     | 8. City / School Joint Service Committee |
| 2. Arena Committee                            | 9. Solid Waste Advisory Committee        |
| 3. Arts Commission                            | 10. Transportation Advisory Committee    |
| 4. McConnell Center Committee                 | 11. Joint Building Committee             |
| 5. Planning Board – Deputy Mayor D. Trefethen | 12. Recreation Advisory Board            |
| 6. Cable Franchise Negotiations Committee     | 13. Coast Bus                            |
| 7. School Board Liaison                       |  |

Deputy Mayor Trefethen moved for their adoption; seconded by Councilor DeDe.  
Mayor Myers asked the Council is they had anything they wished to be pulled for further discussion.

Councilor Scott asked for 12.A.8.

Mayor Myers asked 12.A.9.

Councilor McCusker asked for 12.A.2.

Mayor Myers asked for a roll call vote on the remaining items of the Consent Calendar.

Roll Call Vote: 8/0. Councilor Cheney was absent from the room.

Deputy Mayor Trefethen moved for 12.A.2. adoption; seconded by Councilor McCusker.  
Councilor McCusker said he had a discussion with the Police Chief prior to the meeting and said it was not necessary, because this was being done on private property. He made a motion to remove 12.A.2. from the City Council Agenda; seconded by Councilor Carrier.  
Vote: 8/0. Councilor Cheney was absent from the room.

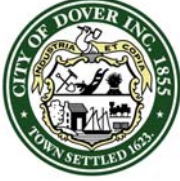
Councilor DeDe moved for 12.A.8. adoption; seconded by Councilor Scott.  
Councilor DeDe made a motion to remove this from the Agenda to set a Public Hearing on September 10, 2008.

City Manager Joyal said it needed to be substituted as a whole with the Resolution on the Councilors' desks.

Councilor DeDe made a motion to substitute as a whole and refer to Public Hearing on September 10, 2008; seconded by Councilor McCusker.

Vote: 8/0. Councilor Cheney was absent from the room.

Deputy Mayor Trefethen moved for 12.A.9. adoption; seconded by Councilor DeDe.  
Mayor Myers said he requested this one be pulled. He referred to the email sent by the City Manager to the Council regarding background information on this Resolution. He said the City received \$20,000 in salvage for the 2 two-year-old cruisers. He said the City bought two new Focus cars for \$23,000 and change. He said the City saved a whole lot from retrofitting cars



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from cruisers into street cars. He said the net savings with fuel and maintenance costs are \$4,600.

Roll Call Vote: 9/0.

### **B. RESOLUTIONS**

#### **1. RESOLUTION RE: DIESEL FUEL B09004B RE-BID SPONSORED BY MAYOR MYERS BY REQUEST**

Deputy Mayor Trefethen moved to substitute as a whole and for its adoption; seconded by Councilor DeDe.

City Manager Joyal said the Council did vote to go with a fixed price at the last meeting, and when they followed up with the vendor the next morning they said they filled out the wrong form, mixed up diesel fuel with heating oil. Since they did inform the City within a reasonable period of time, the City would have a hard time holding them to the price. Therefore, their bid is invalid. He said they went back out to bid and they had two people submit a bid. He said they do not have the option of a fixed price. He said all they have is the option of going with the rack price plus. In this case it is \$.20 over the rack price.

Councilor Scott asked if that meant next month if the price goes down, the City would pay a lower rate plus \$.20.

City Manager Joyal said that was correct.

Councilor Scott asked about the \$78,000 shown on the appropriation.

City Manager Joyal said the City is running the risk to whatever the rate is, and based on the rate that the City knows today, maybe \$68,000, and we'll be lucky if we can keep it under \$68,000.

Deputy Mayor Trefethen asked for a roll call vote on the Resolution.

Roll Call Vote: 8/0. Mayor Myers was absent from the room.

#### **2. RESOLUTION RE: MUNICIPAL INFORMATION TECHNOLOGY ACCEPTABLE USE POLICY SPONSORED BY MAYOR MYERS**

Deputy Mayor Trefethen moved for its adoption; seconded by Councilor DeDe.

Mayor Myers said he had no problem with this Resolution being tabled until September 10, 2008, due to the lateness of the hour and other Resolutions needed to be referred to Public Hearing.

Councilor DeDe made a motion to table; seconded by Councilor Callaghan.

Vote: 8/1; Passed. Councilor Weston was opposed.

#### **3. RESOLUTION RE: AMENDMENT TO COUNCIL RULES – RULE 10: FILING WITH CLERK SPONSORED BY COUNCILOR CHENEY**

Councilor Cheney moved for its adoption; seconded by Councilor Weston.

Councilor Cheney said she had some words to substitute.



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Mayor Myers asked that the Council answer the call of the role to waive this by unanimous consent.

Roll Call Vote: 9/0.

Councilor Cheney said on the Councilors' desks were some word changes. She referred to Rule 10. She made a motion just for Rule 10, because that's the only one we're looking at right now, that this was going to be the rule change. Councilor Dede seconded the motion to substitute that portion of the language in the Resolution. Mayor Myers asked for a vote on the substitution of the background information on Rule 10 of the Resolution.

Vote: 9/0.

Councilor Cheney said this Resolution defines when information is brought to the City Clerk by a Councilor, which doesn't change, by noon on Wednesday, before the week the Council will meet. The second paragraph, which she split off, changes slightly in that she added: "It shall be the duty of the City Clerk to have available for each Councilor" adding, "and the public by Friday at noon for each public meeting." She said she corrected that from reading Thursday. "A brief statement setting forth the number of full description title of all ordinances, resolutions, and documents, to come before the Council for consideration in the form of a City Council Agenda. She said she was doing some housekeeping on this.

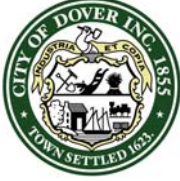
Councilor Callaghan asked for a friendly amendment. He said he feels strongly about this subject, and would like to see this schedule bumped back a day, so that the deadlines are Tuesday and the Council can pick up the materials on Thursday. He said it would make a significant difference for him. Councilor Scott seconded the friendly amendment.

Deputy Mayor Trefethen said he liked the intention of the rule as proposed by Cheney. He said the Council's history shows that we are introducing Resolutions to the Council the night of the meeting on a fairly regular basis. He felt that moving the deadline even one more day earlier does not solve that problem. He preferred the Council went the other way, keep the Wednesday deadline and don't allow amendments to come in at the last minute, unless there is some type of emergency. Councilor Cheney said she would support moving everything back, but only because people go away on weekends and can't get here on Fridays, and if it were available on Thursday they could study it before the weekend. She said she would support this, but she agreed with Deputy Mayor Trefethen that it is very important that the City Clerk get this information by Tuesday. She said the Council or anybody cannot expect her to constantly be making copies, shuffling these things, and reprinting the whole agenda. She said the rules are here to help everybody do business effectively.

Councilor Scott said he supported it also. He said one of the flaws that he has seen working with this Council is that we get information at the last minute, and can't really understand the impact.

Councilor Carrier asked the City Clerk what the impact would be on her to get this ready in a timely fashion.

City Clerk Lavertu said she talked to the City Manager about it actually making it worse. The meeting deadline could be Tuesday and still giving supplies out on



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Friday. She said she is finding the audio recordings, the downloading, having to change files, uploading to Docutron, and the time required by the new Ordinance are taking up more time in the City Clerk's office.

Mayor Myers said he had the same concern as Deputy Mayor Trefethen. He said he felt the Wednesday to Friday works fine. He said he was supportive of the original rule change, but not the changing it to Tuesday to Thursday, because he felt that would cause problems on the other end. He asked for a vote on the amendment to the rule change, and reminded the Council that rule changes required a 2/3 majority vote.

Vote: 3/6; Failed. Councilors, Callaghan, Cheney, and Scott voted in favor.

Councilor Callaghan asked the City Clerk, if the Council did switch to Tuesday, could the Council have the documents ready for Friday morning, but you could finish the package by the end of business on Thursday; would that be an advantage to you?

City Clerk Lavertu said if the Council wanted it done by end of day Thursday, she would get it done. She said we get it done Friday by noon.

Councilor Callaghan said by close of business Thursday wouldn't be too much to ask.

City Clerk Lavertu said we're just having trouble now with PDF files, putting things out on the web. It takes a long time to link them, the way they need to be bookmarked, and at the same time we're trying to load all the audio recordings that are a requirement. She said she's finding it is taking longer than it used to take to make copies and put them in mailboxes.

Councilor Callaghan said the answer to Tuesday to Thursday end of business ----  
City Clerk Lavertu said we will do it if we're told to do it.

City Manager Joyal said whatever the Council wants will get done.

Deputy Mayor Trefethen made a motion to table; seconded by Councilor DeDe.

Vote: 6/3; Passed. Mayor Myers, Councilors Scott and Weston opposed.

#### **4. RESOLUTION RE: AMENDMENT TO COUNCIL RULES – RULE 15 PROCEDURES AND FILING WITH THE COUNCIL SPONSORED BY COUNCILOR CHENEY**

Councilor Cheney made a motion to amend with this language and refer to the next agenda on September 10, 2008; seconded by Councilor Weston.

Vote: 9/0.

#### **5. RESOLUTION RE: AMENDMENT TO COUNCIL RULES – RULE 15.2 COLLECTIVE BARGAINING AGREEMENTS SPONSORED BY COUNCILOR CHENEY**

Councilor Cheney made a motion to amend with this language and refer to the next agenda on September 10, 2008; seconded by Deputy Mayor Trefethen.

Vote: 9/0

#### **6. RESOLUTION RE: RELEASE OF AUGUST 15, 2008 CITY ATTORNEY OPINION**



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### SPONSORED BY COUNCILOR SCOTT

Councilor Scott moved for its adoption; seconded by Councilor Callaghan. Councilor Scott said he felt the Council had the responsibility to let the constituents know what is going on. He spoke with the City Attorney and he agreed that he didn't see any reason why this should not be released to the public.

Mayor Myers asked the City Attorney is that was correct.

City Attorney Krans said that was accurate. He just wanted to add that he marks all opinions as confidential, but on some opinions he also puts on the bottom that he doesn't think the Council should be releasing it, and in this opinion he did not do that. He said when he puts that language he thinks it is very important not to release the opinion.

Roll Call Vote: 7/2; Passed. Councilors DeDe and McCusker were opposed.

### **7. RESOLUTION RE: FISCAL YEAR 2009 BUDGET – AMENDMENT #1 (TO BE REFERRED TO PUBLIC HEARING ON SEPTEMBER 10, 2008)**

SPONSORED BY COUNCILOR MCCUSKER AND DEPUTY MAYOR TREFETHEN

Deputy Mayor Trefethen moved to refer this Resolution to a Public Hearing on September 10, 2008; seconded by Councilor McCusker.

Vote: 9/0.

### **8. RESOLUTION RE: DISSOLUTION OF ARENA FUND INTO GENERAL FUND – FY09 BUDGET AMENDMENT #2 (TO BE REFERRED TO PUBLIC HEARING ON SEPTEMBER 10, 2008)**

SPONSORED BY DEPUTY MAYOR TREFETHEN

Deputy Mayor Trefethen moved to refer this Resolution to a Public Hearing on September 10, 2008; seconded by Councilor DeDe.

Vote: 9/0.

### **9. RESOLUTION RE: NAMING OF THE LIBERTY NORTH END FIRE STATION (TO BE REFERRED TO PUBLIC HEARING ON SEPTEMBER 10, 2008)**

SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved to refer this Resolution to a Public Hearing on September 10, 2008; seconded by Councilor DeDe.

Vote: 9/0.

### **C. ORDINANCES IN 1ST READING – None**

### **D. COUNCIL CORRESPONDENCE**

Councilor Trefethen moved to place the Local Government Center letter on file; seconded by Councilor Cheney.



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Vote: 9/0.

### 12. COUNCIL MATTERS OF INTEREST

Councilor Callaghan said he had received several calls regarding the Dover Trash Bags. He said people are concerned about the rate hikes. He asked for a history of rate hikes. He said he has also heard comments about the quality of the bags going down.

### 14. ADJOURN

Councilor McCusker made a motion to adjourn; seconded by Councilor Carrier.

Vote: 9/0.