



6:00 P.M.
CITY MANAGER'S OFFICE
EXECUTIVE SESSION

The City Council will meet in Executive session to discuss Legal Matters – Bleiler

NOTE: **This meeting is not open to the public per RSA 91-A:2-I-(c)**

WORKSHOP SESSION:
7:00 P.M.

1. PLEDGE OF ALLEGIANCE

Those present: Councilor's Cheney, Ciotti, DeDe, Deputy Mayor Hindle, Mayor Myers, Councilors Scott, Trefethen, Turner. Also present City Manager Joyal and City Attorney Krans. Councilor Keays, is absent.

2. REVIEW - CHARTER, MERIT PLAN AND ADMINISTRATIVE CODE PROVISIONS

The city manager turned the meeting over to Attorney Krans saying this meeting is a result of our goal setting session. Krans thanked them saying on March 4th the council had a goal setting session with 3 goals that came out of that meeting. The City of Dover documents are the Charter, Merit Plan and Administrative Code. He pointed out the city has been sued about some of the issues that will be covered tonight. The cover of the power point presentation has a statement that was made at the goal setting session by Councilor Trefethen that says we won't get much done until we straighten things out. It may only mean that at least until we clarify and agree to disagree on some items. (See power point presentation in folder of 3/29/2006 council packet) We have control over our charter. We had a Charter Commission last year and that is one way to amend the charter. Also we could have the city council do an amendment and bring it forward for the voters to vote on. Our merit plan can now be voted on by the city council; this is another change made by the charter commission. It now has to be voted up or down by the city council. Starting with the State Constitution; part 1 article 39 says "the people have to vote on the form of government in their locality". And Part 1 Article 8 "all power resides in the people". State statute is important. The basic is RSA 49-c which tells what a charter is to look like. There are 2 choices and one can be a mayor-alderman form of government or a city manager-city council form of government. Everything we do we only do by state law. He continued explaining the administrative code which falls inside the frame of the charter. Also inside the structure is the merit plan which describes jobs, people that work within the City of Dover. If we expand this outside of the charter is the state statutes and constitution. Trefethen asked is there anything in the charter that outlines the contents of the merit plan and code. Krans says it is basically a local document but we have a lot of control over it. The city manager added



from RSA chapter 49-c:21, departments-administrative code. He read the RSA. Trefethen continued so the 9 months mentioned is not from Joyal taking over but 9 months from when we adopted a charter. Krans says we are in the part that says subsequent too. The purpose of the merit plan is to be fair and equitable. It is not a plan that talks about the system.

Cheney clarified that it can be changed on the recommendation of the city manager.

Krans says it goes back to all power resides with the people; the people equals 80% and endorses the charter form of government. The charter commission's first order of business was to endorse the city manager-city council form of government. The council sets policy by hiring a city manager, adopting a budget, etc. The city manager is the chief position in the city. The city council hires one employee; the city manager hires everyone else. The reverse is true when the council wants to address a concern about the way government is going. There are opportunities where those roles get very close such as in C5-8. These are prohibited by the city charter for the council to do.

He now mentioned the merit plan that has to do with jobs and job classification. Our current merit plan was passed on 1-9-1999. There are really 3 documents that are involved in the merit plan and there may be a difference of opinion here. The pay plan, classification plan and merit plan are one. There is another school of thought that they are 3 separate plans. In the 1999 there is a provision for administrative rules. We do not currently have any administrative rules in it. DeDe asked what he was talking about when he says administrative rules, the city manager clarified that the harassment policy is one of the rules, as stated in Article 4.

Krans proceeded to compare the 1987 and 1999 merit plans. In definition #8 "as such for the purposes of recruitment and retention of this type of personnel, the city manager may provide these employees with additional benefits or incentives."

This is the clause that allows the city manager to enter into contracts with the department heads. In addition there was an attempt to separate the pay and class plans; in addition in the 1999 plan the class is eliminated. Page 2 definition #8 took out language linking the pay plan and classification plan.

Krans wants them to think about the power of the city council as a whole and he wants them to think about the power of the city manager as a group to make or not make changes to the merit plan. He has called Rochester and Somersworth and they do not have this situation. Because of the 1999 change in the merit plan the power is out of balance. There needs to be an overlap.

This is how the proper working of government is supposed to work.

He listed his recommendations:

1. Clarify that the merit plan consists of the merit plan, the classification plan, the pay plan and administrative rules.



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2. Require the City Council to review and have prior approval of all cost items of employment and severance agreements with 30 days notice.
 3. Create an ad hoc council committee to study the merit plan including the classification plan and pay plan.

Recommendations for the administrative code:

1. Add specific language that the city manager sets the exact salary of the department heads on an annual basis subject to any contractual agreements. The first can be accomplished in 14 to 60 days. At present the council does not have input into the department head pay plan. Cheney says so they would in fact become one document. She wants to know more about what the administrative rules are. The city manager referred her to page 4 of section 4 on administrative regulations.

Discussion ensued between councilors about how the merit plan can be changed and the conflicts therein. Trefethen says if we can get all the language straightened out we have the power to change it but only in the proper venue.

Turner asked if 3.3B is valid in the Charter. Krans says the City Manager is in charge of department head salaries. Trefethen asked Krans to explain the 14 to 60 days. Krans says it is not a complicated process the 60 days is because the council has that long to approve or disapprove the proposed change. If the council could agree to adopt the two most important items that he recommended, it would balance the power.

Trefethen says there is two parts to this presentation of how it is now and how it could be. He thinks we should proceed with Kran's recommendations. The question still remains on if we are in agreement on the way it is. This is what we are operating under even though the charter has added some new wrinkles. He thinks there should be some understanding of the three documents and the situation right now. This is what we are operating under. He does not think we have this agreement. Cheney says the city manager has stated he wants to fix the merit plan. She wants to help him to start this and then after the budget season make it a better merit plan. She asks if the council can change the administrative code. Krans thinks the state statute overrides the administrative code. Krans says you can pass a resolution asking to change the merit plan. The city manager interjects there are certain authorities reserved for the city manager and if the council approved a directive that was outside of the scope of the city manager. His role is to preserve the city charter. Trefethen stated so we cannot direct you but we can ask that he amend the administrative code.

Krans says we meet every week and the city manager talks for about 10 minutes. The other 3 hours the councilors talk; you have the microphone and you have the power to make arguments for or against. The idea of directing or forcing is really not necessary. Communication is an effective way.



Hindle thanked Krans for the presentation and says the changes are warranted. During our goal session of March 4th he asked to have a committee from back in 1998 that Mayor Reynolds was a part of to review the labor negotiations of the city. These 3 plans the charter, the administrative code and merit plan are all part of the structure. He would like to form this committee after the budget sessions. In C7-6 Krans pointed out we have an advisory board and it is not used to often.

Trefethen asked if there is one set of opinions that says the merit plan and class plan and pay plan are one document and when we approve a new merit plan we are approving all 3. The other opinion is we approve the merit plan only and which set of opinions are we operating under. Krans says the second set. The city manager has had total control over the pay and classification plans. There have been 3 councils since the 1999 plan was passed and they have not done anything to change this.

Cheney sees a couple of changes that will make the spheres on the power point slide a lot closer; Krans says if you make these two changes; the adhoc committee can continue to study the issues. Hindle says you need a majority of the council to move forward. Trefethen says the real point is you must have 5 votes and the first step is to have a resolution and there have been neither on this issue. DeDe disagrees saying the changes brought forth are by city manager not by a councilor. He thinks there is a weakness in the statutes. He thinks there will positive changes that will occur.

The Mayor says he would like to recognize Charlie Reynolds and Bob Steele in the audience and if either one would like to come forward and express their opinions on this issue.

Mr. Reynolds proceeds to explain his thoughts on his 20 years involvement in this city. He worked for the first city manager under the first city charter. The ways the merit plan was practiced he referred to C7-2 and C7-3 which makes it crystal clear to him. These two sections as reflected in the 1987 merit plan practiced that the merit plan included the 3 documents of class, pay and merit. He gets a little bit dazzled by the confusion. He agrees with Krans that for the sake of clarifying this we need to adopt this. Also there was some discussion about who should set the department heads salary. It is pretty clear there is a minimum and maximum for the city manager to decide what he is going to pay. Anything outside of the parameters is inappropriate. Pursuant to C-7-3 that says the merit plan includes this schedule of pay shall include a minimum and maximum that shall be approved by the city manager. Cheney thinks the merit plan clouds the intent of the charter. So if any reference is made it should refer to the charter. Reynolds agrees the charter always trumps the merit plan. The Mayor asked Reynolds what he thinks changed; he thinks they just confused the issues. So does he think the changes outlined tonight will clear the clouded areas. There should not be a conflict with the board of directors and the CEO which is the city manager and the city council and



sometimes that gets forgotten. Turner asked about the paragraph on compensation in the charter was not changed; he wondered if there was any discussion on this section. Reynolds does not recall any discussion. DeDe commented on Article 4 section 3 of the 1987 merit plan on page 8; there is a section on "added effective 10/26/1990", he read from this section that says "the city manager shall consult with the city council". This language is missing from the 1999 merit plan.

Bob Steele came forward saying he had come with no intention of speaking; and he can remember his Dad said never speak unless spoken to first. The city was the first city in NH to adopt a city manager-city council form of government. He gave the history of the early city manager's and how they were usually trained as civil engineers. He has had the opportunity to know every city manager that Dover has had except Bob Price. Then in the early 60's they hired Don Chick then Gerry Clark and by the time Beecher came there was a total of 9 city managers. He gave Krans credit on his presentation. He reiterated the merit plan should be put back on track. He has his own idea of how that happened; at the time in 1985 the department heads were disgruntled with the city council and formed a union so he cautioned them he thinks part of the negotiating chip was to make amendments to the merit plan and the opportunity to make contracts with the department heads; that is where this started. The reason we have unions in the business world today is because of a poor manager. He thinks they are back on track; you all have to work as a team with the city manager and represent the City of Dover as a whole. You all have to work together; he urged them to listen, be considerate and work with each other. Reynolds wants to correct a bit of Steele history saying he too was the city manager for a short time.

3. ADJOURN

Hindle moved seconded by DeDe to adjourn at 8:45 PM with all in favor.

**Judy Gaouette,
City Clerk**