



CITY OF DOVER

CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, April 23, 2008**
Meeting Time: **7:00pm**

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

Councilor Scott led the pledge of allegiance.

3. ROLL CALL

Present: Mayor Myers, Councilors Weston, Callaghan, Cheney, Dede, McCusker, Scott, Trefethen. Also Present: City Manager Joyal, City Attorney Krans, and City Clerk Lavertu. Councilor Weston filled in as Deputy Mayor.

4. PROCLAMATIONS – AWARDS

5. APPROVAL OF AGENDA

Councilor Trefethen wished to add another resolution: 12.B.2. Resolution Re: Council Commitment and Directive to the City Manager concerning Outdoor Pool; sponsored by Councilors Trefethen and Weston.

Councilor McCusker wished to add another resolution: 12.B.3. Resolution Re: Release of City Attorney Response; sponsored by Councilor McCusker.

Councilor Callaghan wished to add another resolution: 12.B.4. Resolution Re: Council Directive to Operate Jenny Thompson Pool; sponsored by Councilors Callaghan and Keays.

Councilor Dede wished to add another resolution: 12.B.5. Resolution Re: In Support of SB 539 Education Funding; sponsored by Councilor Dede.

Councilor Trefethen made a motion to accept the agenda as amended; seconded by Councilor Cheney.

Vote 8/0.

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.

H. Jerry Lynch, 26B Lincoln Street: He spoke of the public notices of meetings in Foster's Daily Democrat. He also spoke of the McConnell Center. He felt, if it was such a good thing, then why was the City subsidizing people to move into it?

Edward Bleiler, 28 Isaac Lucas Circle: He read a statement into the record.

Donald Medbery, 3 Covered Bridge Lane: He read a statement into the record.

Susan Wydra, 29 Cherrywood Drive: She asked the Council for their support in opening the Jenny Thompson Pool this summer. Her daughters, Sarah and Elizabeth, are on the Seacoast Swim team and it has been a tremendous endeavor for them. It's not the ribbons



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and medals, but the results of their efforts, along with their teammates, that makes swimming fun. It is the incredible coaching, friendships and discipline learned, which helps them with their schoolwork and life's lessons. She asked the Council why it has been so difficult for them to be impressed by the sport of swimming. This pool is the only 15-meter pool in Northern New England. She said it was a lifelong and lifesaving sport. Her intent is no to demean other sports, but the soccer fields and baseball fields are not used by every one of all ages, and do not bring thousands into the area restaurants and hotels. She felt the Council should be asking the Recreation Director why the pool is not running in the black. She felt the pool could be run better. She did not vote for the tax cap. The Council is failing the youth. She is also a member of the Horne Street School PTT, and they are forced to fundraise for the school because of this tax cap.

Dover Resident, Old Rochester Road: She spoke on the issue of the Jenny Thompson pool. She is concerned that without the pool this summer the children won't have anything to do with their time.

Mayor Myers, seeing no one else wishing to speak, closed the Citizens Forum.

7. PUBLIC HEARINGS-NONE

8. CITY MANAGER'S REPORT

City Manager Joyal wanted to update the Council on a few projects. The McConnell Center roof project is underway and should be completed within the next week. Rochester Road and Henry Law Avenue road construction projects are underway with the warmer weather. Crews are out repainting crosswalks. Crews are out at night street sweeping. He invited Eric Steltzer, Chairman of the Dover Energy Advisory Committee, to speak on their final recommendations.

Mayor Myers asked the Council if they had any objection to hearing from the Chairman of the Dover Energy Advisory Committee. Seeing none, he invited Mr. Steltzer to speak.

Mr. Steltzer gave a presentation to the Council about the Dover Energy Action Plan. He asked other members of the committee to speak.

Mr. Overbey, Member of Dover Energy Advisory Committee, spoke on environmental issues and using green products.

Councilor Scott complimented the Committee on an excellent presentation. He said he liked that they were looking at a number of different alternative energy sources, particularly wind power. He felt Dover should put some in, possibly at the schools and on top of buildings, and that it could produce a big potential savings. He put in a geothermal system and it has proven to be very efficient. He thinks some of Dover's building should be considered for geothermal, because the turnaround investment would be substantial.

Mr. Steltzer said a geothermal system works basically the opposite of a refrigeration system. It is more expensive, but the electricity that is needed to heat or cool a house is much reduced. He wants to form some sort of campaign to let the residents know that this technology is out there and it is feasible.



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Mr. Overbey said the return on investment for geothermal is about six or seven years. Solar is about one and a half years. Anything the City does to get our costs down will be a benefit.

Councilor Trefethen asked how the City community affects private developers.

Mr. Overbey said through the City Council, Planning Board and Zoning Board. They would have to affect how we want the community to be, what we want people to do in this community, and to be energy partners with the City.

Mr. Steltzer talked of implementing an ordinance to strengthen green building that will work for everybody.

Mayor Myers said the report is available online. There will be a Public Hearing on May 14, 2008.

Councilor Dede made a motion to accept the City Manager's Report; seconded by Councilor Callaghan.

Vote 8/0.

9. MINUTES

A. APRIL 2, 2008

B. APRIL 9, 2008

Councilor Weston made a motion to accept Minutes; seconded by Councilor Dede.

Vote 8/0.

10. MAYOR'S REPORT

Mayor Myers mentioned emceeding the Great Bay Figure Skating Club annual Ice Crystal Show. He mentioned the Cocheco Waterfront Development Advisory Committee meeting; he received updated information from the developer on the layout, which is available on the website. There will be a Public Hearing on this in the near future. He spoke of his open mike radio show on WTSN. He mentioned the first Parking Garage Committee meeting and their plan to put forward to the Council a business plan to construct a facility that does not impact property taxpayers. He spent the morning of Friday, April 18, 2008 at the New Hampshire Municipal Association, Government Affairs Committee, looking at some of the legislative initiatives and the position they are taking. He spent Saturday morning, April 19, 2008, at a ceremony for the Community Trail.

Councilor Weston made a motion to accept the Mayor's Report; seconded by Councilor Callaghan.

Vote 8/0.

11. UNFINISHED BUSINESS -

A. ORDINANCES IN THE 2ND READING-NONE

B. ORDINANCES IN THE 3RD READING-NONE

C. RESOLUTIONS-NONE



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12. NEW BUSINESS

A. CONSENT CALENDAR

1. TAG-DOVER VFW POST 12060
2. TAG-SEACOAST TITANS
3. TAG-SUSAN G. KOMEN FOR THE CURE
4. TAG-UNH FIGURE SKATING
5. RAFFLE-AMERICAN LEGION DOVER POST 8 - JULY 3, 2008
6. RAFFLE-AMERICAN LEGION DOVER POST 8 - JULY 20, 2008
7. RAFFLE-CITY OF DOVER RECREATION DEPARTMENT
8. PARADE-RESIDENT OF DOVER-NATIONAL PRAYER DAY
9. PARADE-AMERICAN CANCER SOCIETY
10. FIREWORKS-CITY OF DOVER RECREATION DEPARTMENT
11. PROTEST- A.F.S.C.M.E LOCAL 2932 - DATE TO BE CHANGED
12. **RESOLUTION RE: ASPHALT TRENCH PATCHING SERVICES B08067**
SPONSORED BY MAYOR MYERS BY REQUEST
13. **RESOLUTION RE: WATER DRAIN SUPPLIES B08051**
SPONSORED BY MAYOR MYERS BY REQUEST
14. **RESOLUTION RE: SEWER DRAIN SUPPLIES B08052**
SPONSORED BY MAYOR MYERS BY REQUEST
15. **RESOLUTION RE: CATCH BASIN CLEANING**
SPONSORED BY MAYOR MYERS BY REQUEST

COMMITTEE REPORTS

- | | |
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| 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 – Councilor D. Trefethen | 12. Recreation Advisory Board |
| 6. Cable Franchise Negotiations Committee | 13. COAST Bus |
| 7. School Board Liaison | |

Councilor Weston made a motion to adopt the Consent Calendar; seconded by Councilor Cheney.

Mayor Myers asked the Council if they had any items they would like removed for further discussion.

Councilor Cheney asked for 12.A.7.

Mayor Myers asked for a Roll Call Vote on the remainder of the Consent Calendar.

Roll Call Vote: 7/0. Councilor Scott was not present for vote.

Councilor Weston made a motion to accept 12.A.7.; seconded by Councilor Cheney.

Councilor Cheney asked if a permit is required for each raffle, or if a time period can be set so that they can have various raffles.

City Manager Joyal said that is at the discretion of the Council.

Mayor Myers asked the Council if there was any further discussion.

Vote: 7/0. Councilor Scott was not present for vote.



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B. RESOLUTIONS

1. RESOLUTION RE: PROCLAIMING MAY 13, 2008 LIVESTRONG DAY
SPONSORED BY COUNCILOR CALLAGHAN

Councilor Weston moved for its adoption; seconded by Councilor Callaghan.
Vote: 7/0. Councilor Scott was not present for vote.

2. RESOLUTION RE: COUNCIL COMMITMENT AND DIRECTIVE TO THE CITY MANAGER
CONCERNING THE OUTDOOR POOL
SPONSORED BY COUNCILORS TREFETHEN AND WESTON

Councilor Weston moved for its adoption; seconded by Councilor Trefethen.
Councilor Trefethen said this resolution makes a commitment to open the Jenny Thompson Pool this summer. The City needs to find the money someplace else. He is hoping that the savings in the health insurance costs can be redirected to the outdoor pool. There may be some other ways, as the Council goes through the budget, to divert some funds to the operation of the pool. He feels that we need to stay within the tax cap, but need to take care of the City's infrastructure for the future. He spoke of another key issue that the City needs to hire staff before the budget is adopted in mid-June
Councilor Weston said that she found that there are over 32,000 visits each year to the outdoor pool. It would affect both children and the elderly if this program were cut. It also affects the City's economic viability.

Councilor Dede said no one is happy about the pool closing. The City Manager presented a zero growth budget. This resolution commits that the pool will stay open. It doesn't say where the money is coming from. It is going to take six votes, and he doesn't believe there are six votes. The tax cap/spending cap is a reality. The majority of voters voted for it. He said to pass this resolution in its current form may put the City Council in the position to override. If this resolution said that the City Council makes a commitment to attempt to fund the operation of the Jenny Thompson Pool, it would become more palpable. This resolution in its current form is unrealistic. The Council knew there would be a public outcry over this. He said he has a prepared position statement, where he says he doesn't see himself making recommendations to the City Manager, because he believes the City Manager has his priorities correct. He said he would not support this resolution.

Councilor Cheney said the City Manager was working within the tax cap. She said she heard about the pool closing before there was a tax cap. She doesn't feel this has to do with the tax cap. This resolution would send a clear message that something else must go. The Council has to say that this policy about closing the pool is not happening. She said she would fully support this resolution.

Mayor Myers said he understood where Councilor Dede was coming from. He appreciated Councilors Trefethen and Weston bringing this forward. This is unique in the timing involved. The City has to line up staffing for this pool, advertising and screening, and hiring staff to open this pool. He spoke of other comments both from



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Councilors and the Citizens Forum. He said he would support this. He is not cutting capital to do this. He is not cutting money from economic development. He will work with the Council to find savings to fund this.

Councilor Trefethen said this resolution does not direct the City Manager to find the money. The Council will have to find the money. This will not be an override. We must reduce something else.

Councilor Callaghan said he would like to make sure this happened.

Councilor Scott said the recreation budget is the only one that has been cut substantially. The input he is getting from Ward 3 is that people want the pool to continue as it has been. He said he was sure the Council could find the funds elsewhere. He said he would support the resolution.

Councilor Trefethen said the purpose of this resolution is not to figure out the numbers. The Council will have workshops to work on the numbers.

Councilor Weston made a motion to amend the resolution; along with opening the pool, she would like to reinstate the \$15,000 for the Cochecho Arts Festival. There was no second for the motion.

Councilor Weston made a motion to put \$15,000 back into the budget for the fireworks. There was no second for the motion.

Councilor Callaghan made a motion to change the second whereas, to keep the pool open in Fiscal Year 2009, and strike the words summer of 2008; seconded by Councilor Scott.

Councilor Callaghan said he was concerned if the Council doesn't open this pool. He doesn't feel this is a tremendous amount of money.

Councilor Cheney said the Council shouldn't even have this resolution, because we should have told the City Manager not to leave it out of the budget. We're getting a clear message from the constituents to keep the pool open. She supports the amendment.

Councilor Trefethen said that by stating 2008 in the resolution, we're covering two fiscal years. He said he is not going to support this amendment.

City Manager Joyal said the resolution is just giving him guidance to open the pool and hire the staff. The funding is a separate issue that the Council is going to have to deal with when the Council gets ready to adopt a budget. It is not appropriating any money for the pool.

Mayor Myers asked for a vote on the amendment.

Vote: 3/5; Failed. Councilors Scott, Cheney, Callaghan in favor.

Councilor McCusker talked of all the cuts made for the spending cap. He spoke of several programs that were cut that the Council hasn't talked about yet. He is in full support of this resolution. He is a recreation guy. This is as important as other programs that are being chopped. The Police Outreach program is important. Wait until juvenile crime increases because kids don't have things to do. He supports this and hopes the other programs get the same kind of respect.

Vote: 7/1; Passed. Councilor Dede opposed.

3. RESOLUTION RE: RELEASE OF CITY ATTORNEY CORRESPONDENCE SPONSORED BY COUNCILOR MCCUSKER



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Councilor McCusker moved for its adoption; seconded by Councilor Callaghan.
Councilor McCusker read the resolution background into the record. He felt it was something the public should see.
Councilor Callaghan said he completely supports this resolution.
Councilor Scott asked if this sets a precedent.
Mayor Myers said he felt it didn't set a precedent.
Councilor Cheney thanked Councilor Callaghan for bringing this forward. This does not pertain to any of the exemptions of 91.A. She said she would be voting for this.
Roll Call Vote: 8/0.

4. RESOLUTION RE: COUNCIL DIRECTIVE TO OPERATE JENNY THOMPSON POOL SPONSORED BY COUNCILORS CALLAGHAN AND KEAYS

Councilor Callaghan pulled resolution.

5. RESOLUTION RE: IN SUPPORT OF SB539 EDUCATION FUNDING SPONSORED BY COUNCILOR DEDE

Councilor Weston moved for its adoption; seconded by Councilor Dede.
Councilor Dede discussed the Senate Bill 539.
Councilor Weston thanked Councilor Dede for bringing this forward. She supports this resolution.
Councilor Trefethen asked, if this amount of money was actually to be realized, would that additional \$4.3 million be additional money the school gets to spend.
Councilor Dede said it is the Council that approves the School Board's budget.
Councilor Trefethen said he understood that. He was just asking about the formulas.
City Manager Joyal said it would offset the local tax levies for the school. The Council could choose to view this as completely new revenue and pass it to the school, or it could be recognized as school revenue, and offset the impact that would occur on the local property tax.
Vote: 8/0.

C. ORDINANCES IN 1ST READING

1. ORDINANCE – AMENDMENT – ENERGY ADVISORY COMMISSION (TO BE REFERRED TO PUBLIC HEARING ON MAY 14, 2008) SPONSORED BY MAYOR MYERS BY REQUEST

Councilor Weston made a motion to amend the name of Energy Advisory Commission to Energy Sustainability Commission; seconded by Councilor Callaghan.
Councilor Cheney said we need more information and definition of what their function would be.
Mayor Myers asked the City Attorney for some guidance.
City Attorney Krans said it should be redrafted with the name change, and change the scope of their authority.



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City Manager Joyal said the Council should table this resolution, and he would go back to the Committee members and have it redrafted for the next meeting.

Councilor Weston made a motion to table this resolution; seconded by Councilor Dede.
Vote: 8/0.

D. COUNCIL CORRESPONDENCE

13. COUNCIL MATTERS OF INTEREST

Councilor Trefethen wanted to explain why he did not second the amendments on the Arts Festival and Fireworks. He doesn't believe there is a time urgency to do those things. He is not against them. If the Council decides to include them in the budget for next year, then the Council certainly can do that.

City Manager Joyal said the Cocheco Arts Festival and Fireworks have funding for this summer.

Councilor Callaghan asked if there had been any further communication with Somersworth regarding Willand Pond. He has met with Councilor Dale Spainhower from Somersworth and feels he has a keen interest in what is going on.

Mayor Myers said he thought every Councilor received two pieces of correspondence in their mailboxes. One was a letter that the City Manager sent to the City Manager of Somersworth, and one was a letter that he wrote to the Mayor of Somersworth.

City Manager Joyal said it was online also.

Councilor Dede spoke of the Letter to the Editor in Foster's Daily Democrat regarding the Dover Library.

Councilor Weston spoke to Councilor Trefethen regarding his not seconding her motion to amend. She said the second priority should be the Arts Festival, because they need to sign contracts.

Councilor Cheney spoke of the Berry Brook presentation she attended at the Horne Street School. She asked the City Manager if the dam was producing electricity for the owner.

City Manager Joyal said it is producing electricity that the owner sells back to the electric grid.

Mayor Myers talked of the Council dealing with credible information. He mentioned an article in a weekly publication, which Councilor Scott is still the owner of, where it said: "I had an email sent from Ward 3 Councilor David Scott. I have felt that Mike Joyal and the four Councilors that originally opposed the spending cap have been using the threat of an ethics violation to get the other Councilors to vote as they wish. There have been several instances of this and I think this issue should be brought to the attention of the voters."

Mayor Myers said he felt he might be one of the Councilors Councilor Scott was referring to who opposed the spending cap. He said he could be wrong, but if he is included in that group of four, he wanted to ask Councilor Scott publicly, because this was a public mailing to every home, where you or any other Councilor has ever heard him make a threat of an ethics violation against any Councilor in the four plus years he has been sitting on the City Council. He asked Councilor Scott if he was misquoted in his own paper. He thinks he should hear something publicly, to say that was incorrect or ask for some supporting documentation, if he is included in that four, as to where he made a threat of an ethics



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violation to a Councilor. He didn't need it tonight, but he takes his reputation seriously, tries to choose his words very carefully, and he would be very surprised if there was anything where he used the phrase ethics violation in reference to a City Councilor.

Councilor McCusker discussed his resolution that was passed and therefore public.

Councilor Cheney responded to Councilor McCusker comments. She wondered if all correspondence should go to the City Manager, and he would decide if it was confidential and fall under 91.A. The Council is a body and we represent the people. The law is specific.

Councilor Trefethen asked Councilor Cheney to provide that resolution to see what she was talking about. He didn't recall the Council doing a blanket release of anything or changing the policy.

Councilor Cheney said the resolution failed. It said that if there was an opinion coming to this body and it doesn't fall under the law, that it would not be marked confidential.

Councilor Trefethen said the policy of the Council is that anything received from the City Attorney is confidential.

Councilor Cheney said that the Council didn't set that policy. The policy was given to the Council when the City Attorney was hired.

City Manager Joyal clarified that RSA91.A states that legal advice is privileged and confidential. In addition, the City Attorney has professional standards and ethics which he has to abide by, and he has a loyalty to the client, which is the corporation of the City of Dover, of which the Council is the head, to provide the Council with advice which is confidential and privileged. Neither the City Attorney nor City Manager has the ability to say that this is something that we could hand out to the public. If he generates an opinion or letter to the Council as a body, or any City official, it remains privileged and confidential until the Council takes action to release it. This is standard operating practice across the country.

14. ADJOURN

Councilor Dede made a motion to adjourn; seconded by Councilor Cheney.
Vote 7/1; Passed. Councilor Weston was opposed.