



CITY OF DOVER

## CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820  
Meeting Date: Wednesday, January 28, 2009  
Meeting Time: 7:00pm

### 1. MOMENT OF SILENCE

### 2. PLEDGE OF ALLEGIANCE

Councilor Weston led the Pledge of Allegiance.

### 3. ROLL CALL

**Present:** Mayor Myers, Deputy Mayor Trefethen, Councilors Callaghan, Carrier, Cheney, DeDe, McCusker, Scott and Weston.

**Also Present:** City Manager Joyal, City Attorney Krans, and Deputy City Clerk Mistretta.

### 4. PROCLAMATIONS – AWARDS – NONE.

### 5. APPROVAL OF AGENDA

Councilor Cheney made a motion to accept the agenda as presented; seconded by Councilor Weston.

### 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.*

**Mary Hebbard, 97 Spruce Lane:** She spoke of her concerns regarding the January 14, 2009 City Council meeting minutes and the inaccuracies of her statements during Citizen's Forum. She asked the Council to have her written statement be substituted into the minutes in its entirety. She spoke again on her husband's term as Vice-Chairman of the Dover Utilities Commission (DUC), and his wish to be reappointed. She said he has been a member of the DUC for six years. She said he was the only member left that had practical experience in utilities, and that he knew what it took to dig a trench. She said he always came to meetings early and prepared. He asked a lot of questions, is not afraid to speak his mind, and does his utmost to stand up for the citizens of Dover fairly and impartially. She said Rick would like to be reappointed to the Dover Utilities Commission, and asked the Council to vote for his reappointment.

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

### 7. PUBLIC HEARINGS – NONE

### 8. CITY MANAGER'S REPORT

City Manager Joyal said he would like to take this time to have City Attorney Krans and Information Technology Director, Annie Dove, speak on the Acceptable Use Policy and what is expected in using the City's information systems.

Councilor Callaghan said this wasn't on the agenda and he wasn't prepared for it.



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Mayor Myers said the City Attorney was just speaking on the Acceptable Use Policy that was approved by the Council several months ago.

Councilor Scott asked what was the rule about discussing something that isn't on the agenda. Mayor Myers said it was part of the City Manager's Report.

City Attorney Krans spoke on the Acceptable Use Policy that was adopted several months ago by the City Council, and which specifically dealt with City emails. He said the City Manager asked him and Annie Dove to attend a meeting for every Board, Commission, and Committee in the City. They started in November of 2008, and this was 19 of 22. He said there were two main reasons why the City has an Acceptable Use Policy: 1. Volunteers, elected officials, and staff should use the City server to conduct City business, which contributes to the openness of our City government. The City is required by State statute to have an open government. 2. It creates a barrier between private lives and public lives. He handed out the Acceptable Use Policy to the Council and went over it with them. He said the most important part of the policy is the four words under Privacy: "no expectation of privacy." He asked Annie Dove to speak regarding the technical aspects of the Acceptable Use Policy.

Ms. Dove went over the procedure of what happens when the Acceptable Use Policy is signed. First it went to the City Clerk, who verifies that the person is on a board or commission, elected official or employee. Second it goes to the IT Office for an email account to be created. She went over the procedure for using the City email account.

Councilor Callaghan asked if there had been any changes made to the Acceptable Use Policy since he turned in a letter from his attorney saying the document was illegal.

City Attorney Krans said no.

City Manager Joyal said only a few board members have not signed the Acceptable Use Policy at this time, along with a few Councilors. He asked that it be done as soon as possible so the Acceptable Use Policy will be complied with. He said there was no enforcement of the policy, but if it is not signed then an email account will not be provided.

Councilor DeDe made a motion that a resolution be brought forward that anyone who has not signed the Acceptable Use Policy will be denied access to the City Server; seconded by Councilor McCusker.

Deputy Mayor Trefethen said there should have been a request for a workshop if there was an issue with the Acceptable Use Policy.

Councilor DeDe said the Acceptable Use Policy is a common practice.

Councilor Cheney said this was exactly what she wanted to avoid. This was the City Manager's Report and she felt it wasn't the appropriate time to discuss this matter. She said there were several facets that have to be discussed and clarified before access is denied because the Acceptable Use Policy wasn't signed. She suggested that the Council move on with the set agenda.

Mayor Myers said he didn't have a problem with the Acceptable Use Policy, because he only used the City server. He wanted to clarify that if someone forwards their emails from the City server to their personal accounts, they have to expect to comply with the order to turn over that information. He said they could put the emails in a special folder on their computers.

Councilor DeDe made a motion to make an amendment to make the Acceptable Use Policy effective February 1, 2009; seconded by Councilor McCusker.

Councilor Callaghan referred to the comment regarding a workshop, and said he requested one when he received instructions from his attorney saying that the Acceptable Use Policy was



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illegal and he should not sign it. He again said that this wasn't on the agenda, and he felt it was an inappropriate time to discuss this, and now there is a resolution being put forward. He said the Council should not vote on this without having the time to review this information. He said he would vote against it.

Councilor Cheney said she was concerned with formulating this off-the-cuff resolution, that this was the City Manager's Report and not the proper time or place for this discussion. She requested that this discussion be tabled until a proper resolution is provided.

Mayor Myers asked if the majority of the Council felt that a workshop was needed. The consensus was no. He said he felt it was perfectly acceptable to do this during the City Manager's Report, because the Council is not adopting a brand new policy. He said Councilor DeDe was just putting forth a motion to have a deadline. He asked Councilor DeDe and McCusker if they were willing to withdraw their motion, in order to put something in writing for the next agenda on February 11, 2009.

Councilor DeDe said he would withdraw his motion.

Councilor McCusker said he would withdraw his second to the motion. He said this was an administrative duty of the City Manager, and that was the reason it was brought up during the City Manager's Report. He said if you don't have anything to hide you wouldn't have a problem with the Acceptable Use Policy. He said if you're uncomfortable with something in your email, then you should censure what the email was being used for. He said he would vote for this, and people who refuse this should not have access to the City server.

Councilor Weston said City Attorney Krans and Annie Dove went to the Transportation Advisory Commission (TAC) meeting on Monday, January 26, 2009 to discuss the Acceptable Use Policy. She said the members were just told to sign it and hand it back to the Chairman. She said they weren't allowed time to review it and ask questions. She said she took offense to the suggestion that she had something to hide. She just had some questions that she wanted answered. She requested more time to let TAC review the information, before putting a deadline on when to sign the Acceptable Use Policy.

City Manager Joyal said the purpose of the presentation was to review the policy that the Council adopted, just as City Attorney Krans and Annie Dove have done with all the other boards and commissions. He said no one was being forced to sign it. He said he was requesting direction from the Council on what to do if somebody doesn't want to sign it. He said it was legal, because no one had to sign it.

Mayor Myers said Councilors Weston and DeDe will be putting a resolution together for the February 11, 2009 City Council Meeting. He asked if the Council had any further discussions regarding the City Manager's Report.

Councilor Callaghan said he had emailed a request to the City Manager to explain why he received an email from the City Manager citing that he was in violation of Charter C5-8. He said it was in response to his request for a DVD copy of the January 14, 2009 City Council meeting. He said he requested a copy due to allegations he heard about remarks said during the meeting. He said several emails followed his request, and then he received one that said he was in violation of Charter C5-8. He said he disagreed with that, and asked the City Manager if he was prepared to clarify why Charter C5-8 was cited.

City Manager Joyal said Charter C5-8 said: "Neither the Council nor any member thereof shall give orders to nor interfere with the performance of the duties of any of the administrative officers or employees, either publicly or privately." He said if an elected official is made aware



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of a potential liability to the City, he has a responsibility to make sure it was properly addressed to protect the interests of the citizens of Dover. He said that was the responsibility of the City Manager and not the City Council. He said the email showed an indication of the potential for a lawsuit, he couldn't ignore it, and he took appropriate action to follow up on it. He said he had received an email from Councilor Callaghan to the Council indicating that there wasn't a potential for a lawsuit, and he thanked him for it.

Councilor Callaghan said he felt the City Manager had jumped the gun a little bit, by misinterpreting what he said.

City Manager Joyal said to Councilor Callaghan that there is an obligation, and that he was absolutely incorrect in assuming that he doesn't have an obligation, to report. He said the City's insurance policy has a provision that says: "In the case of an occurrence, accident, wrongful act, loss, incident or other event that is a claim, or is likely to result in a claim, as a condition precedent to the property liability trust obligations under this agreement. The Claims Department of the Property Liability must receive notice of such claim or event that is likely to result in a claim as soon as practicable after the member has such notice." He said it went on to say: "Failure to provide proper notice to property liability trust was ample reason for them not providing liability coverage to the City." He said that creates direct financial exposure to the taxpayers of the City.

Deputy Mayor Trefethen made a motion to accept the City Manager's Report; seconded by Councilor Carrier.

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

### 9. MINUTES

#### A. MINUTES

1. January 7, 2009
2. January 14, 2009

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

Councilor Callaghan made a motion to insert the text of Mary Hebbard's comments during Citizen's Forum of the City Council meeting on January 14, 2009; seconded by Councilor Scott.

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

Mayor Myers asked for a vote on accepting the Minutes as amended.

Vote: 9/0.

### 10. MAYOR'S REPORT

Mayor Myers said he spoke at the County Budget Hearing. He said he will be meeting with the Municipal Advisory Committee this Friday. He said he did several ribbon cuttings for the Dover Chamber of Commerce.

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

Vote: 9/0.



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### 11. UNFINISHED BUSINESS

#### A. ORDINANCES IN THE 2<sup>nd</sup> READING-NONE

#### B. ORDINANCES IN THE 3<sup>rd</sup> READING

##### 1. ORDINANCE: CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS – PARKING COMMISSION (TO BE SUBSTITUTED BY AMENDMENT) SPONSORED BY MAYOR MYERS

Deputy Mayor Trefethen made a motion to remove from the table and adopt; seconded by Councilor DeDe.

Mayor Myers explained the one housekeeping issue on Page 4.

Councilor Callaghan said he was a firm believer that all members should be residents.

Roll Call Vote: 6/3; Passed. Councilors Callaghan, Cheney and Scott were opposed.

#### C. ORDINANCES IN THE 5<sup>TH</sup> READING

##### 1. ORDINANCE: CHAPTER 137, POLITICAL EXPENDITURES AND CONTRIBUTIONS (TO BE REMOVED FROM TABLE) SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen made a motion to remove from the table and adopt; seconded by Councilor Weston.

Mayor Myers asked for a vote on removing from the table.

Vote: 9/0.

Mayor Myers went over the changes with the Council.

Roll Call Vote: 9/0.

#### D. RESOLUTIONS

##### 1. RESOLUTION: ESTABLISHMENT OF RECREATION FACILITIES CAPITAL RESERVE FUND SPONSORED BY MAYOR MYERS BY REQUEST

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

Vote: 9/0.

##### 2. RESOLUTION: ESTABLISHMENT OF FIRE & RESCUE FACILITIES CAPITAL RESERVE FUND SPONSORED BY MAYOR MYERS BY REQUEST

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

Vote: 9/0.



CITY OF DOVER

## CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820  
Meeting Date: Wednesday, January 28, 2009  
Meeting Time: 7:00pm

### **3. RESOLUTION: ESTABLISHMENT OF POLICE FACILITIES CAPITAL RESERVE FUND**

SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved for its adoption; seconded by Councilor Callaghan.  
Vote: 9/0.

### **4. RESOLUTION: SETTING OF PROPERTY TAX VETERANS' CREDIT FOR FY2010.**

SPONSORED BY DEPUTY MAYOR TREFETHEN

Deputy Mayor Trefethen moved for its adoption; seconded by Councilor Carrier.  
Deputy Mayor Trefethen said several years ago a previous Council made the commitment to gradually increase the veterans' credit until it reached the state limit of \$500. He said this is the third year in a row that he has brought forth an additional \$50 credit for the veterans.

Councilor Callaghan asked if the formula was fixed, or if it could be raised \$100 to be at the \$500 limit.

Deputy Mayor Trefethen said the Council could do that, but everybody else would be picking that up that difference.

Councilor Callaghan said with the economy where it was he would feel good about raising it \$100.

Councilor Scott said he felt he should recuse himself.

Mayor Myers said he agreed with Councilor Callaghan's sentiment, but felt they would get to that limit in one more year.

Deputy Mayor Trefethen said he just wanted to clarify that the veterans' credit has State requirements to qualify, not City requirements.

Vote: 8/0. Councilor Scott was recused.

## **12. NEW BUSINESS**

### **A. CONSENT CALENDAR**

**1. TAG – Dover Southside Little League**

**2. RAFFLE – Dover Main Street**

**3. ROAD RACE – Moms On The Run**

**4. RESOLUTION; CHANGE ORDER TO NORTH END FIRE STATION PO 22-249298**  
SPONSORED BY MAYOR MYERS BY REQUEST

**5. RESOLUTION: B08039 ELECTRICAL SERVICES CONTRACTOR YEAR 2**  
RENEWAL SPONSORED BY MAYOR MYERS BY REQUEST



CITY OF DOVER

## CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting  
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Meeting Time: 7:00pm

### COMMITTEE REPORTS

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

Deputy Mayor Trefethen moved for the adoption of the Consent Calendar; seconded by Councilor Callaghan.

Mayor Myers said he would like to pull the Appointments Committee Report. He asked for a vote on the remaining items of the Consent Calendar.

Roll Call Vote: 9/0.

Deputy Mayor Trefethen moved for the adoption of 12. Committee Reports: 1. Appointments Committee; seconded by Councilor DeDe.

Mayor Myers went over the Appointments Committee Report with the Council. He said the Appointments Committee brings forth the following appointment recommendations:

- Shannon Hill to be appointed to the Dover Energy Advisory Committee.
- Edward Spuler to be appointed to a regular seat on the Dover Utilities Commission.
- Martin Coyle to be moved from an alternate seat to a regular seat on the Dover Utilities Commission.
- Ted Mortiner to be appointed to an alternate seat on the Dover Utilities Commission.

Councilor Callaghan made a motion to split the question; seconded by Councilor Scott. Mayor Myers asked for a vote on splitting the question into four separate appointments.

Councilor McCusker asked why Councilor Callaghan wanted to split the question.

Councilor Callaghan said there was one individual who he felt was a stronger candidate on the Dover Utilities Commission than the other recommended individuals.

Councilor Cheney said she was in favor of splitting the vote.

Councilor Scott said he had received several phone calls expressing concern about two members of the Appointments Committee being able to purge a very valuable person on the Dover Utilities Commission who has served for several years.

Vote: 5/4. Mayor Myers, Deputy Mayor Trefethen, Councilor DeDe and Councilor Carrier were opposed.

Councilor Callaghan made a motion to appoint Shannon Hill to the Dover Energy Advisory Committee; seconded by Councilor Scott.

Vote: 9/0.

Councilor Callaghan made a motion not to appoint Ed Spuler to the Dover Utilities Commission; seconded by Councilor Scott.

Councilor Callaghan said he felt the regular seat being held by the Vice-Chair should stay intact. He didn't believe Ed Spuler would bring the same knowledge and



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Meeting Time: 7:00pm

experience as the current Vice-Chair. He said he would like to table Ed Spuler's appointment at this time.

Mayor Myers asked if that was a motion to table.

City Attorney Krans said it should be two questions: First, to appoint someone. Second, to table the motion. He said he felt that Councilor Callaghan shouldn't make the motion to appoint since he isn't for the appointment.

Councilor Callaghan withdrew his motion.

Councilor Scott withdrew his second to the motion.

Councilor McCusker made a motion to appoint Ed Spuler to a regular seat on the Dover Utilities Commission; seconded by Councilor Carrier.

Councilor Callaghan made a motion to table the motion; seconded by Councilor Scott.

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

Councilor Scott asked if the appointment of Ed Spuler removes Rick Hebbard.

Mayor Myers said Rick Hebbard's term has expired, and Ed Spuler will be filling in the vacancy on the Dover Utilities Commission.

Councilor Callaghan said if the Council approves the appointments as they are, then it would preclude Rick Hebbard from being reappointed. He said Ed Spuler only applied for appointment at the request of the Chairman of the Dover Utilities Commission, and didn't seem to have the enthusiasm needed to volunteer for the position. He read from Mary Hebbard's comments that were handed out to the Council during Citizen's Forum. He said he felt this wasn't being handled correctly. He said he didn't think Ed Spuler should be appointed.

Councilor Scott said it isn't about Ed Spuler, but about fairness.

Councilor Cheney said she wouldn't support the appointment of Ed Spuler, because the Council should support a citizen who wants to serve and was doing a good job. She said the only reason Ed Spuler applied was because someone asked him to.

Deputy Mayor Trefethen said when he was on the Zoning Board of Adjustment he applied to be on the Planning Board. He said the Council at that time voted in somebody who had just moved to Dover six months earlier and didn't have any experience at all. He said the Council has the right to vote in who they want. He said there have been a number of appointees who applied for the reason that someone else on the committee asked them to apply.

Councilor Carrier said he totally respects what the Appointments Committee does and the recommendations they make. He said he was torn. He didn't want to ax any kind of volunteerism. He said he ran against Ed Spuler for Ward 1 Councilor last August, and felt he was knowledgeable and would do a great job on the Dover Utilities Commission.

Mayor Myers asked for a vote on the appointment of Ed Spuler.

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

Councilor DeDe made a motion to move Martin Coyle from an alternate seat to a regular seat on the Dover Utilities Commission; seconded by Councilor Weston.

Councilor Callaghan said this was the last opportunity to have the current Vice-Chair reappointed. He made a motion to table this appointment; seconded by Councilor Scott.

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

Councilor DeDe made a motion to move the question; seconded by Councilor Weston.

Vote: 6/3; Passed. Councilors Callaghan, Cheney and Scott were opposed.



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Meeting Time: 7:00pm

Mayor Myers asked for a vote on the appointment of Martin Coyle to a regular seat on the Dover Utilities Commission.

Vote: 6/3; Passed. Councilors Callaghan, Cheney and Scott were opposed.

Deputy Mayor Trefethen made a motion to appoint Ted Mortiner to the alternate seat on the Dover Utilities Commission; seconded by Councilor DeDe.

Vote: 6/3; Passed. Councilors Callaghan, Cheney and Scott were opposed.

### B. RESOLUTIONS

#### 1. RESOLUTION: LEGISLATIVE MESSAGE TO DISCOURAGE DOWNSHIFTING TO TAX PAYERS

SPONSORED BY MAYOR MYERS

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

Vote: 8/0. Councilor Callaghan was absent from Council Chambers.

#### 2. RESOLUTION: SUPPLEMENTAL APPROPRIATION FOR LIBRARY ROOF REPAIRS AND AUTHORIZATION FOR BONDING (TO BE REFERRED TO A PUBLIC HEARING ON FEBRUARY 11, 2009).

SPONSORED BY COUNCILOR CALLAGHAN

Deputy Mayor Trefethen moved to refer to a public hearing on February 11, 2009; seconded by Councilor Cheney.

Vote: 8/0. Councilor Callaghan was absent from Council Chambers.

#### 3. RESOLUTION: REPROGRAMMING BOND PROCEEDS SEWER FUND FY99-FY06 CIP APPROPRIATION (TO BE REFERRED TO PUBLIC HEARING ON FEBRUARY 11, 2009)

SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved to refer to a public hearing on February 11, 2009; seconded by Councilor Cheney.

Vote: 8/0. Councilor Callaghan was absent from Council Chambers.

### C. ORDINANCES IN 1ST READING

#### 1. ORDINANCE: HENRY LAW PARKING (TO BE REFERRED TO PUBLIC HEARING ON FEBRUARY 11, 2009)

SPONSORED BY COUNCILOR WESTON

Councilor Weston moved to refer to a public hearing on February 11, 2009; seconded by Councilor Cheney.

Vote: 8/0. Councilor Callaghan was absent from Council Chambers.



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### D. COUNCIL CORRESPONDENCE

#### 1. LETTER FROM DOVER PROFESSIONAL FIRE OFFICERS ASSOCIATION

Deputy Mayor Trefethen moved to place the correspondence on file; seconded by Councilor DeDe.

Vote: 8/0. Councilor Callaghan was absent from Council Chambers.

### 13. COUNCIL MATTERS OF INTEREST

Councilor DeDe referred to the discussion on Charter C5-8, and said had an example of a violation, a letter sent to all the members of the Planning Board by Councilor Callaghan. He said the City Manager has directed the City Attorney go to all the boards and commissions to explain to them the new Acceptable Use Policy. He went over the contents of the letter with the Council. He said members of the Planning Board were solicited by a City Councilor not to do what the City Manager has instructed the City Attorney and IT Director to accomplish in bringing the email usage into the 21<sup>st</sup> Century. He said this was in direct violation of C5-8. He said he will be preparing a resolution that will call for censure of Councilor Callaghan's actions. He said if it happens again, he will prepare a resolution that Councilor Callaghan be removed from the Council, because he is in violation of C5-8.

Councilor Cheney referred to the 91-A Commission, and the webcast of a lecture she tried to attend. She asked the Council if they could purchase a copy of the webcast, so the Council could view it as a body and learn about the updates to 91-A.

### 14. ADJOURN

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

Vote: 9/0.