



CITY OF DOVER

CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, February 11, 2009**
Meeting Time: **7:00pm**

Meeting began at 7:40 pm, following a Workshop Session.

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

Councilor Cheney 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 City Clerk Lavertu.

4. PROCLAMATIONS – AWARDS

5. APPROVAL OF AGENDA

Deputy Mayor Trefethen asked for a minor word change to 12.B.1. The name of the truck company vendor should be Schmiel.

Councilor Scott asked that 12.B.2., 12.B.3., and 12.B.4. be moved to after the Mayor's Report. Mayor Myers asked for a vote to move 12.B.2., 12.B.3., and 12.B.4. to after the Mayor's Report.

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

Deputy Mayor Trefethen made a motion to approve the agenda as amended; seconded by Councilor Scott.

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.

Don Medbery, 3 Covered Bridge Lane: He referred to the Resolution regarding the role of the Council. He said with the recession going on the Council should only be discussing the budget. He said Councilor DeDe has a problem with Councilor Callaghan, and that should be discussed with the Ethics Committee or the courts. He said the bigger problem is that Councilor DeDe's project, the McConnell Center, has lost \$433,000 in revenues in the last eighteen months. He said Councilor DeDe needed to spend more time trying to figure how to cover these losses, and less time trying to control the thoughts and voices of the folks he disagrees with. He said Councilor DeDe needed to use his time more wisely on other issues besides recycling bins and snow on the sidewalk. He said those issues are the responsibility of Community Services and not the Ward 2 Councilor.



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Harvey J. Lynch, 26B Lincoln Street: He said a lot of the citizens don't like the dirty politics going on behind the scenes. He said the Council members need to remember that they work for the people of Dover. He told the Council to be careful with the email issue, because he didn't want them to take away his 1st Amendment rights.

Glenn Grasso, 1 Pebble Hill Drive: He said he has been offended at the enormous amount of time being wasted on the email policy. He said it was a simple concept and no different than any other business. He urged the Council to work on City business, instead of this trivial issue.

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

7. PUBLIC HEARINGS

A. ORDINANCE: HENRY LAW PARKING
SPONSORED BY COUNCILOR WESTON

Mayor Myers, seeing no one wishing to speak, closed the Public Hearing.

B. RESOLUTION: REPROGRAMMING OF UNEXPENDED BOND PROCEEDS – CIP APPROPRIATIONS FROM FY2000 THROUGH FY2008 PROJECTS
SPONSORED BY MAYOR MYERS BY REQUEST

Mayor Myers, seeing no one wishing to speak, closed the Public Hearing.

C. RESOLUTION: SUPPLEMENTAL APPROPRIATION FOR LIBRARY ROOF REPAIRS AND AUTHORIZATION FOR BONDING
SPONSORED BY COUNCILOR CALLAGHAN

Mayor Myers, seeing no one wishing to speak, closed the Public Hearing.

D. RESOLUTION: REPROGRAMMING BOND PROCEEDS SEWER FUND FY1999-FY2006 CIP APPROPRIATION
SPONSORED BY MAYOR MYERS BY REQUEST

Mayor Myers, seeing no one wishing to speak, closed the Public Hearing.

8. CITY MANAGER'S REPORT

City Manager Joyal said he had a few things to discuss. First, the Stimulus Bill in Congress may have some opportunity to create some jobs in the City. He said the City will be submitting applications to the State of New Hampshire. He said there was a potential for water/sewer projects that might be eligible for stimulus funding. He said it probably wouldn't have any affect on the budget for this year or next year, but does have the potential for providing the City with an infusion of funds to get some projects going.



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Second, the City has taken possession of the Armory. He said they are evaluating what needs to be done with the building to secure it, checking the heating system, and making sure it doesn't deteriorate. He said the City will be storing equipment in the building.

Third, the City has submitted a request to the congressional delegation to secure the funding to complete the Cochecho River Dredging Project.

Fourth, the City has had 20 snow events, spending \$326,000 on snow removal. He said \$293,000 was budgeted, and he will be making adjustments in the budget to address this. Councilor Weston said she read an article that money from the stimulus package will go to shovel ready projects.

City Manager Joyal agreed.

Councilor Weston asked how many of Dover's wish list projects are shovel ready.

City Manager Joyal said they had \$500 million in projects. He said \$450 million was for the General Sullivan Bridge project, which is already going forward, and the City has asked for complete funding to enable the project to be done as originally intended. He said there were water/sewer projects that have designs in place and are shovel ready. He said the Whittier Street Bridge could be made shovel ready in 60 to 90 days. He said the Horne Street School is possible and could qualify for funding.

Councilor Weston asked about the water tower.

City Manager Joyal said the water tower was not shovel ready. He said the City will seek the funds, but he is not overly optimistic that the State will be doling out money to Dover, given they have other transportation projects that may take priority.

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

Vote: 9/0.

9. MINUTES

A. January 21, 2009

B. January 28, 2009

Deputy Mayor Trefethen made a motion to accept the Minutes as presented; seconded by Councilor McCusker.

Vote: 9/0.

10. MAYOR'S REPORT

Mayor Myers spoke the Resolution that the Council passed several weeks ago regarding sending a letter to the State delegation opposing the downshifting of costs to the local level. The letter has been written, signed, and will be mailed this week. He said he attended the event hosted by Dover Main Street, The Taste of Dover, and it was well attended. He said he went to the Dover High School and St. Thomas Aquinas High School basketball game, and said it seems they have renewed their rivalry. He wanted to thank the City Clerk Lavertu, Chief Colarusso and Sergeant Spiedel in coordinating the parking for the ballroom dancing in the auditorium. The offsite parking made the street parking available for merchants. He congratulated the Junior ROTC program for their annual review by the regional commander. He said the Dover Business and Industrial



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Development Authority has hired an Economic Development Director, Daniel Barufaldi, and he will be starting the first week of March. He said the New Hampshire Municipal Association had a meeting to discuss budget issues, which the Governor will be presenting on February 12, 2009. He read a letter to the Council from Steven Burns regarding his wife's wonderful visit with the Mounted Patrol. (This letter is archived with the minutes for this meeting.) He wanted to remind the citizens of his Coffee with the Mayor session on February 28, 2009, 9:00 – 11:00 am, at Café on the Corner.

Councilor Weston said she read in the Union Leader that they didn't like the Council's opinion on the gas tax.

Mayor Myers said it wasn't presented correctly.

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

Vote: 9/0.

12.B.2. RESOLUTION: DEADLINE FOR IMPLEMENTATION OF ACCEPTABLE USE POLICY

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

Councilor DeDe said this Resolution puts a deadline of March 1, 2009 on signing the Acceptable Use Policy. He said anyone who has not signed the Acceptable Use Policy will not have access to the City server.

Councilor Weston asked what would happen if the person doesn't have access to the City server and someone is trying to get in contact with them.

Mayor Myers said they would have other contact information available from the website.

Councilor Cheney said she had a problem with being cut off from the server if the Acceptable Use Policy isn't signed. She said the Acceptable Use Policy covered everyone, including employees, vendors, and boards, and it didn't seem practical to have the Acceptable Use Policy apply to everyone. She said the City Council only uses the email. She said she had a problem with "no expectation of privacy." She said when a constituent contacts the Council representative through email, that email is private. She said the Acceptable Use Policy is standard for employees, but should not be true for City Councilors. She said she didn't support the Acceptable Use Policy and will not support this Resolution.

Councilor Callaghan said he wouldn't support the Resolution. He said instead of addressing 91-A, which must be honored, the real issue is the expectation of privacy with constituents. He asked if the Council is really going to cut off the constituent's right and ability to contact a Councilor privately. He said there is no plan of what procedure will be followed if email is taken away. He said he signed the older agreement, but felt the new agreement violates his and his constituents' privacy.

Deputy Mayor Trefethen said most of the arguments are about the Acceptable Use Policy, which has already been passed. He said this Resolution is putting a deadline on signing the Acceptable Use Policy. He said the Council has set policies that if there was no quorum, then the information is not to be considered public information. He said the "no expectation of privacy" statement in the Acceptable Use Policy is not the same. He said this would be when the courts become involved and there is a court order to release that information. He said that was an extreme situation and will occur with or without the Acceptable Use Policy. He said cell phone calls between a Councilor and constituent may appear private, but the true is someone can listen in.



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He said there are other methods available to a citizen to contact their Councilor. He said he still receives phone calls and letters. He said he would be voting for the Resolution.

Councilor Scott said he had no problem with the Acceptable Use Policy for employees of the City. He did have a problem with cutting off communications via email between a Councilor and their constituents. He said this removal of privacy is in violation of the 4th Amendment. He said it should be tabled for more review. He said he would not support the Resolution.

Mayor Myers said he had no problem with signing this Acceptable Use Policy, and no problem with putting a deadline date on it.

Councilor Weston asked the City Attorney for clarification on the statement of "no expectation of privacy." She said it did appear to conflict with 91-A.

City Attorney Krans said the policy is broad and consistent with the corporate world.

Councilor Weston asked the City Attorney if he would go on the record stating that any citizen that sends an email to a Councilor, one-on-one, could expect privacy.

City Attorney Krans said absolutely not. He said currently the state of the law and the policy here with this City Council is that one-on-one communications between a constituent and councilor are not disclosable under the law. He said this was because there are specific provisions in 91-A law that say that a governmental record means distribution to a quorum or better. If the law changes, and they change the definition to one-on-one communications, then the Council has no control over that. He said 91-A sets the floor for disclosure. This Council could draw up a resolution to say one-on-one emails between Councilors and constituents are disclosable, but this Council hasn't done that. He said he finds no support for the right to privacy with a constituent in the law. He said he did find full support for the Acceptable Use Policy of not disclosing one-on-one communications. He gave the example of one of the councilors receiving an email from a constituent saying that they were coming to the City Hall with a bomb. He asked if anyone felt they had the right to privacy and that the email shouldn't be revealed. He went over the monitoring the City can perform, and referred to Police Investigations, and that the email wouldn't have a right to privacy. He said the policy now is that one-on-one communications are not disclosable, but was careful not to say private.

Councilor Cheney said she did sign the old agreement, and she felt the new policy did not apply to the Council. She asked to make a friendly amendment of "is directed to cutting off access to Municipal Information Technology Service (MITSS) by current users who have refused or neglected to sign the revised Acceptable Use Policy. Non-employees or elected officials may still be provided an email address which would be forwarded to the email address provided by that user;" seconded by Councilor Callaghan.

Councilor Cheney said it would offer consistency for the constituents.

Councilor Scott said he didn't see how that would guarantee the privacy of the constituents.

Councilor Callaghan said he seconded this amendment because he felt it was a step in the right direction.

Mayor Myers asked for a vote on the amendment to the Resolution.

Vote: 2/7; Failed. Councilors Callaghan and Cheney voted in favor.

Councilor Callaghan said he agreed with the City Attorney that this policy is acceptable to employees, because the computers are owned by the company. He said this is extending that policy to the Council's personal computers.

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



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

Councilor Cheney asked to speak again.

Mayor Myers said he needed a motion to suspend the rules to enable Councilor Cheney to speak for a third time on this Resolution.

Councilor Callaghan made a motion to suspend the rules to allow a Councilor to speak two more times on this Resolution; seconded by Councilor Scott.

Roll Call Vote: 5/4; Passed. Mayor Myers, Deputy Mayor Trefethen, Councilors DeDe and McCusker were opposed.

Councilor Cheney read over the resolution that was presented in February 2006, which was defeated at that time. She also read emails from constituents regarding the policy. She also spoke on the LGC presentation on 91-A, and that the City Attorney said he ordered a copy of it on CD. She felt that this would be looked at as a way to stifle communication.

Mayor Myers asked for a roll call vote on the Resolution.

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

12.B.3. RESOLUTION: WEBSITE/DIRECTORY OPEN GOVERNMENT POLICY

Councilor DeDe moved for its adoption; seconded by Councilor McCusker.

Councilor DeDe said this Resolution authorizes the City Manager to publish city addresses, and private email addresses shall be removed. He said the Acceptable Use Policy was adopted. He said the language and purpose is very clear, and it supports open government. He said there is no constitutional issue with privacy, even though people have tried to make it seem that there is. If the Acceptable Use Policy is not signed, then the City should not encourage them by publishing their emails on the City's website.

Councilor Cheney said she wanted an alternative address on the City's website. She said there was a lot of personal information about the Councilors on the website, including phone numbers, address, and pictures. She didn't understand why the personal email couldn't be on the website. She didn't think it was a good policy and will not support the Resolution.

Councilor Scott said he wants constituents to be able to contact him, and this would cut off communication. He said it looks like a punishment.

Councilor Callaghan said he hopes the citizens see how this will cost more and email all the councilors.

Mayor Myers said this was policy straight and simple. He said the last Resolution vote was 6/3, a supermajority.

Deputy Mayor Trefethen said he does hope to hear from the citizens, because he felt Councilor Callaghan was in the minority and in for a rude awakening.

Councilor McCusker said during the Citizen's Forum that one person talked about this, saying the Council is spending too much time on it. He said he didn't feel there was a conspiracy here, and no one is reading email out of curiosity. He said he had a difficult time with understanding why the Council wouldn't want a city email address if it is serving the residents of Dover. He said signing the Acceptable Use Policy enables you to be available to your constituents, via the email address which is published on the website. He said if you choose not to have a City email address, then you're not going to be allowed to have a second choice, because that was the choice you made.



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Councilor Weston said she wouldn't support this Resolution, because it is in direct conflict with the Acceptable Use Policy.

Councilor Cheney said the Resolution should be voted down or tabled until the Council can learn more about 91-A.

Councilor DeDe said the Acceptable Use Policy was established by the Council, and felt the Council should be the leaders. He said it was inconsistent to have the policy and then make exceptions. He said this Resolution was a natural extension to the prior Resolution that was just passed.

Councilor Weston said Councilor DeDe was wrong. The Acceptable Use Policy allows the Council to forward emails, and this Resolution says it can't be forwarded.

Mayor Myers said he didn't agree with that. If you sign the Acceptable Use Policy, then you can still forward your emails from your City email address.

Deputy Mayor Trefethen made a motion to move the question; seconded by Councilor Weston.
Vote: 9/0.

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

12.B.4. RESOLUTION: RESTATEMENT OF COUNCIL COMMITMENT TO SERVING THE CITIZEN'S OF DOVER

Councilor DeDe moved for its adoption; seconded by Councilor Scott.

Councilor DeDe said this Resolution covers Charter C5-8. He said C5-8 is the only section in the Charter that gives a specific remedy for its violation: removal from office. It defines the role of the City Manager as a person who implements the Council's policies. He said the City Council is forbidden in getting in the way of performing those things. He said he felt there has been a situation where Charter C5-8 was violated, and felt as individual councilors they needed to recognize when it has happened. He said he would withdraw his Resolution.

11. UNFINISHED BUSINESS

A. ORDINANCES IN THE 2nd READING

1. ORDINANCE: HENRY LAW PARKING SPONSORED BY COUNCILOR WESTON

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

Councilor Weston said this Ordinance was to enable the Police Department to enforce signage on Henry Law Avenue, because it must be adopted by the City Council. She was looking for the Council's support.

Roll Call Vote: 7/0. Councilors Callaghan and McCusker were absent from Council Chambers.



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B. RESOLUTIONS

1. RESOLUTION: REPROGRAMMING OF UNEXPENDED BOND PROCEEDS – CIP APPROPRIATIONS FROM FY2000 THROUGH FY2008 PROJECTS (REQUIRED A 2/3 VOTE)

SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved for its approval; seconded by Councilor DeDe. Mayor Myers said this Resolution ties up loose ends.

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

2. RESOLUTION: REPROGRAMMING BOND PROCEEDS SEWER FUND FY1999-FY2006 CIP APPROPRIATION (REQUIRED A 2/3 VOTE)

SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved for its approval; seconded by Councilor Cheney. Mayor Myers said this was a similar Resolution that ties up loose ends.

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

12. NEW BUSINESS

A. CONSENT CALENDAR

1. RAFFLE – Seymour Osman Community Center and Youth Safe Haven

2. RESOLUTION: AWARD PURCHASE ORDER FOR RENTAL OF WORK UNIFORMS, LINENS, MATS ETC.

SPONSORED BY MAYOR MYERS BY REQUEST

3. RESOLUTION: SENIOR CENTER TRIP TO DAYTONA BEACH FLORIDA

SPONSORED BY MAYOR MYERS BY REQUEST

4. RESOLUTION: STATE OF NEW HAMPSHIRE FUELING DEPOT

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 | 12. Legislative Liaison |
| 6. Cable Franchise Negotiations Committee | 13. Coast Bus |
| 7. School Board Liaison | |

Deputy Mayor Trefethen moved to accept the Consent Calendar; seconded by Councilor DeDe. Councilor DeDe asked to pull Committee Report #12, Legislative Liaison Report.



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Mayor Myers asked for a roll call vote on the remaining items of the Consent Calendar.
Roll Call Vote: 9/0.

Councilor DeDe said he handed out an amended Legislative Liaison report to the Council. He said he is proposing that two letters regarding HB641 be sent to the District Representatives and to Amanda Merrill, State Senator. He added that he is not locked into the wording, and is open to wordsmithing from the Council. He discussed HB641 and its consequences to the City. Councilor Weston made a motion to accept the letters; seconded by Deputy Mayor Trefethen.
Vote: 9/0.

Councilor DeDe discussed HB46, which would take away the arbitrary rights of elected officials to determine what happens in negotiations, and would make arbitrator's decisions final. He made a motion to send an email to the District Representatives; seconded by Councilor Weston.
Vote: 9/0.

Councilor Weston made a motion to accept the Legislative Liaison Report; seconded by Deputy Mayor Trefethen.
Vote: 9/0.

B. RESOLUTIONS

1. RESOLUTION: PURCHASE OF SCHMIEL PLATFORM SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved for its approval; seconded by Councilor Callaghan. Mayor Myers invited Fire Chief Perry Plummer to speak on this Resolution. Fire Chief Plummer said the Council passed \$950,000 in the CIP for a new platform. He said they did some research to try to save the City some money. He said they came across an unusual situation. He said Schmiel Manufacturing built a ladder truck, basically with a commitment from another city to deliver it. The paper for the commitment was lost, the city backed out, and Schmiel was left with a \$1 million ladder truck. He said he entered into negotiations with Schmiel and they have settled with the \$950,000 price. He said they have locked in the price until noontime, February 12, 2009. He said if the Council doesn't approve this tonight; it will be sold to a company in Canada for \$43,000 more. His recommendation is for the Council to approve this and buy it.

Roll Call Vote: 9/0.

2. RESOLUTION: DEADLINE FOR IMPLEMENTATION OF ACCEPTABLE USE POLICY SPONSORED BY COUNCILOR DEDE

Motion made to move up on the Agenda.

3. RESOLUTION: WEBSITE / DIRECTORY OPEN GOVERNMENT POLICY SPONSORED BY COUNCILOR DEDE



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Motion made to move up on the Agenda.

4. RESOLUTION: RESTATEMENT OF COUNCIL COMMITMENT TO SERVING THE CITIZEN'S OF DOVER
SPONSORED BY COUNCILOR DEDE

Motion made to move up on the Agenda.

C. ORDINANCES IN 1ST READING – NONE

D. COUNCIL CORRESPONDENCE

1. LETTER FROM JOHN E. CARROLL, PH.D, PROFESSOR OF ENVIRONMENTAL CONSERVATION; dated January 23, 2009.

Deputy Mayor Trefethen moved to have the letter placed on file; seconded by Councilor DeDe.

13. COUNCIL MATTERS OF INTEREST

Councilor Callaghan said he attended the HUB's 15th anniversary on January 30, 2009.

Deputy Mayor Trefethen said he wasn't going to support Councilor DeDe's Resolution for the Restatement of Council Commitment to Serving the Citizen's of Dover, but he understood the basic premise. He referred to 91-A and the Charter, and said the Council is collectively dysfunctional about these areas. He recommended a workshop to discuss these items.

Councilor DeDe said he would like a new plaque made for the McConnell Center. He said if he is going to get all the blame for what goes wrong over there, he wants his name on it.

Councilor Cheney referred to the Resolution for the Restatement of Council Commitment to Serving the Citizen's of Dover, and said it was a highly political move. She thought it was totally out of line. She said she attended the Tolend Road update and was pleased with the report.

Councilor Weston said she also went to the Tolend Road update, and said they hope that this landfill will be cleaned up within 5 to 20 years.

Mayor Myers referred to the Resolution for the Restatement of Council Commitment to Serving the Citizen's of Dover, and said he was disappointed for a number of reasons. He said it started out that Councilor DeDe said he was going to come forth with a censure, and then a few days later he said he was going to come forth with a removal. He didn't support the censure or removal statements. He said the Council should be more careful with words, and be more responsible. He agreed with Deputy Mayor Trefethen about the dysfunction of the Council regarding interpretation of 91-A and the Charter. He didn't think a workshop would help with this. He said

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the Council has to respect the differences in opinions and learn to live with them. He said he did take offense to the Resolution's title. He said he has taken the Oath three times, is committed to the citizens of Dover, and didn't feel he had to restate his commitment to the City.

Councilor Callaghan said he didn't believe he had violated the Charter, and would like someone to come forward formally if they truly believe that he violated the Charter. He said if it is brought up again, he will call a point of order, and will expect the Mayor to do something about it. He agreed that there shouldn't be a workshop, because it's going to be set up by the City Manager and City Attorney. He said the City Attorney does not work for the Council. He said the Council's employee, the City Manager, has an attorney. He said the City Attorney takes whatever his boss says and protects him with it. He felt the Council should hire an attorney that does what the Council wants.

City Manager Joyal said the City has an attorney licensed to represent the City of Dover. He said he assumes certain roles and responsibilities as the City Manager, and he will defend them on behalf of the citizens if there is a need to do that. He said if there was a problem with legal opinions being issued by the City Attorney, they need to be brought forward, because why should the City pay the City Attorney if you don't trust his opinions? He said the same was true of the City Manager.

Deputy Mayor Trefethen said to Councilor Callaghan that he did not say he agreed with Councilor DeDe regarding any misconduct.

14. ADJOURN

Deputy Mayor Trefethen made a motion to adjourn; seconded by Councilor Weston.
Vote: 9/0.