



CITY OF DOVER

CITY COUNCIL - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, August 12, 2009**
Meeting Time: **7:00pm**

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

Councilor Callaghan led the Pledge of Allegiance.

3. ROLL CALL

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

Also Present: City Manager Joyal, City Attorney Krans and City Clerk Lavertu.

Absent: Councilor DeDe.

4. PROCLAMATIONS – None

5. APPROVAL OF AGENDA

Deputy Mayor Trefethen said the Council had been informed by the City Manager that Item 12.A.7. needed to be pulled.

Mayor Myers said the item needed to go before the School Board. He asked for a vote on removing it from the Agenda.

Vote: 7/0. Councilor Weston was absent from Council Chambers.

Deputy Mayor Trefethen asked to pull Item 11.A.3.

Mayor Myers said this item was on a previous Agenda to be referred to a public hearing. He said it would take a unanimous vote to pull this item from the Agenda.

Vote: 8/0.

Mayor Myers asked the City Manager if that automatically pulled the corresponding Public Hearing, if it had to be pulled separately, or if a public hearing has to be held anyway because it was published.

City Manager Joyal said there was no sense in having a public hearing since there was no longer a resolution.

Deputy Mayor Trefethen asked to pull the Public Hearing, Item 7.C.

Mayor Myers asked for a vote on pulling Item 7.C.

Vote: 8/0.

Deputy Mayor Trefethen said he would like to add a verbal Planning Board report to the Committee Reports.

Mayor Myers asked for a vote on adding a Planning Board Report.

Vote: 8/0.

Mayor Myers said the original Agenda packet did not include the original scoring, written comments, or Councilor Scott's addendum regarding the City Manager's evaluation. He said it was amended and published on the City's website.

Mayor Myers asked for a vote on the amended Agenda.

Vote: 8/0.



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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.

Ronald Huml, 199 Mast Road: He spoke regarding the \$200,000 in revenue that was taken out of the School budget. He said the bottom line is expenses, and the \$200,000 in revenue doesn't exist. He said when the Council voted to lower the revenue by \$200,000 that it cost the taxpayers \$200,000. He recommended that the Council reinstate the revenue back to the School budget, and take the \$200,000 in the tax and apply it to the City to cover for part of the \$600,000 shortfall. He said in the past 10 years the School has turned in to the City in excess of \$2.4 million in revenue that went into the Fund Balance. He said that was why the \$200,000 doesn't apply. He said during the years of 2006, 2007, and 2008 the School Department has turned in to the City \$1.1 million. He said he received this information from the School Department. The balance of the \$600,000 shortfall should come from the excess that was scheduled for health insurance, \$184,000, instead of all the nickel and dimes items that were replaced in the budget. He asked, if the Council adds expenses to the tax roll to compensate for shortfalls in revenues, then how is it given back to the taxpayers when revenue comes back? He said it will be in the base, and then the City will receive revenue on top of that. He said that was double dipping. He spoke on abolishing the Arena Commission, and said he agreed that it was no longer required.

Harvey J. Lynch, 26B Lincoln Street: He said he has asked at prior meetings about the benches at the corner of Central Avenue and Third Street. He said he did not receive an honest answer. He said he was approached by City Manager Joyal after the last meeting. He said the City Manager told him that he didn't want him to make any comments about City employees being unfair. He said he asked the City Manager what the chances were about getting the bench back. He said he was told that he could buy it back for the City. He pointed to the two people who were also present during that conversation. He said he filed a 91-A Right to Know request, and found out he wasn't wrong. He said it would have been nice to have been answered like he was a human being in a decent and upright manner. He read his findings regarding the bench to the Council.

John Scruton, 99 Sixth Street: He referred to Page 62 of the Rizzo report that was completed in 2004. He said he keeps hearing that there are problems with parking in Dover. He said it states in the Rizzo report that there were 3,153 parking spaces in Dover. He said if somebody wants a garage in the City they should build it, and it shouldn't fall on the taxpayers. He said the City should concentrate on the core needs: health, safety, schools, and roads. He said spending \$3 million on Indian Brook was corporate welfare and wasn't something the City had to do. He said the City has been on a credit card spending binge for over 10 years. He said he would consider the park bench as part of the core, and it seemed a little bit out of character that there were no funds to pay for a bench. He said the City Manager for Rochester said they budgeted for the revenue shortfall in Rochester because they knew about it. He asked why the City of Dover didn't do that.



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

7. PUBLIC HEARINGS

A. CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS, DOVER ARENA COMMISSION

SPONSORED BY DEPUTY MAYOR TREFETHEN

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

B. CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS, JOINT FISCAL COMMITTEE

SPONSORED BY DEPUTY MAYOR TREFETHEN

Dorothea Hooper, 84 Katie Lane: She urged the Council to retain the Joint Fiscal Committee (JFC). She said she has been a member of the JFC for the six years she has been on the School Board. She said there are only two meetings required each year for this committee, and since the School Board must turn in its budget very early, they need to know the thoughts of the Council once the process has begun. She gave the example that this year they learned that the Council wouldn't approve a budget for more than 2%. She said the JFC also covers other fiscal concerns. She felt that the City should not only keep the JFC, but expand its role, because in these economic times continuing communications is essential.

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

C. CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS, TRANSPORTATION ADVISORY COMMISSION

SPONSORED BY DEPUTY MAYOR TREFETHEN

Item was pulled from the Agenda.

8. CITY MANAGER'S REPORT

City Manager Joyal spoke about the street renaming of Smith Road to Emmet Road, and evidence that the residents did not receive adequate notice. He said a period of two years had transpired from the recommendation to change the street name to when it was brought before the Council. He said normally the process happens much more quickly, and the residents are aware of the process. He said that did not happen this time. He said there was a meeting on Monday, August 10th with the residents, and it was decided to allow the name change to Emmet Road. He said the staff is working on an internal procedure to make sure this type of breakdown doesn't happen again. He said the original resolution that was adopted a few weeks ago had Emmet Road spelled E-m-m-i-t-t, and a new resolution will be brought before the Council with the correct spelling.



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Councilor Scott said he was pleased to see in the City Manager's Report preliminary revenue and expenditures for the first month of fiscal year 2010. He said he would like to see the same thing for the full 12 months of the prior fiscal year.

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

Vote: 8/0.

9. MINUTES

A. July 22, 2009

B. July 29, 2009

Deputy Mayor Trefethen moved for their acceptance; seconded by Councilor Weston.

Vote: 8/0.

10. MAYOR'S REPORT

Mayor Myers said many positive things have been happening in the City. He said he attended the Buddy Ball event, where special needs children get paired up with Dover baseball and softball players. He thanked Councilor Carrier for putting on a great event. He hosted the Music and Arts Festival at the Dover Children's Home. He said he met with a group of German tourists who were in Dover on an exchange type program with host families from Dover. He said he did several ribbon cuttings for the Greater Dover Chamber of Commerce. He said he also attended the Cal Ripken U9 Regionals, hosted by Dover Baseball, which included several teams from all around New England. He mentioned that there are a number of vacancies on boards and commissions, and asked citizens of Dover to apply.

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

Vote: 8/0.

11. UNFINISHED BUSINESS

A. ORDINANCES IN THE 2ND READING

1. CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS, DOVER ARENA COMMISSION

SPONSORED BY DEPUTY MAYOR TREFETHEN

Deputy Mayor Trefethen moved for its adoption; seconded by Councilor McCusker. Deputy Mayor Trefethen said change is good. He said the Arena is running in the black, and didn't see the need to have a Councilor sit on the Committee any longer. He said the other wording reflects that the Arena is under the Recreation Department. He asked for the Council's support on this Resolution.

Councilor Cheney asked if the Council will still receive reports.



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Deputy Mayor Trefethen said they get financials from the City Manager every month, and that won't be affected by this Resolution. He said if anything unusual is happening the Council will be notified by the City Manager or the Recreation Director. Councilor Cheney asked if it would still be on the list of Committee Reports. Deputy Mayor Trefethen said it could fall under the Recreation Advisory Board. Mayor Myers said this Resolution had his support.
Roll Call Vote: 8/0.

2. CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS, JOINT FISCAL COMMITTEE SPONSORED BY DEPUTY MAYOR TREFETHEN

Deputy Mayor Trefethen moved for its adoption; seconded by Councilor Weston. Deputy Mayor Trefethen said he accepted at face value all the comments made to keep this Committee to facilitate communications, but said it didn't change his opinion. He said he has sat on this Committee for 5½ years and every meeting has been difficult to schedule. He said he believed people's intentions were good, but felt there must be a better way to do it.

Councilor Callaghan said he was opposed to abolishing this Committee. He said the Council has heard from several School Board members requesting that the Council not abolish this Committee. He said it was a shame on the Council that it wasn't working. He felt it was wrong to force the School Board to come before the Council at the podium. He said this group should be meeting more frequently.

Councilor Scott said he agreed with Councilor Callaghan that it was important that the City keep this Committee.

Councilor Cheney said she was going to vote no on this Resolution, because she felt the Committee had validity.

Mayor Myers said he would support this Resolution, with a condition that the Council holds several joint City Council/School Board workshops during the year. He said the JFC didn't work because there was no consensus brought to the meeting by either the School Board or the City Council. He said the Council could make it a policy to host a minimum of two or three joint workshops.

Deputy Mayor Trefethen said he respects Councilors Callaghan's and Scott's opinions and their desire to keep this Committee, but he disagreed with their characterization of the intent or result of passing the Resolution.

Councilor Callaghan said he liked the Mayor's idea of joint workshops, but he had a problem that it wasn't formally in place.

Councilor McCusker said it was ironic that someone that never signs up for a committee is in favor of keeping one in place. He said in his 1½ terms as Councilor he has never heard from this Committee. He said it would be more productive to have everyone together in the same room.

Councilor Cheney said it was still the Council telling the School Board that they were abolishing this Committee. She said she still would not support this Resolution.

Councilor Weston said she canvassed the School Board and they all wanted to keep this Committee, and the question was how to fix it. She said she agreed with the Mayor to



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have the joint workshops, but was concerned about what would be on the agendas. She said she talked with Superintendent Dr. O'Connor and he said it would have been helpful if the JFC had met earlier about the additional proposed cuts to the budget. She said the JFC could meet about the agendas for the joint workshops proposed by the Mayor. She said she couldn't support this Resolution, because she felt it wasn't a decision the Council could make.

Councilor Carrier said the City would benefit from having the City Council and the School Board at a round table to discuss many issues. He said he agreed with Councilor Weston's suggestion on having the JFC meet to create the agenda for the joint workshops. He said he agreed with Councilor Callaghan about removing the JFC without anything in place. He said he would have to vote no on this Resolution.

Roll Call Vote: 3/5; Failed. Mayor Myers, Deputy Mayor Trefethen, and Councilor McCusker voted in favor.

3. CHAPTER 3, ARTICLE IV, BOARDS AND COMMISSIONS, TRANSPORTATION ADVISORY COMMISSION SPONSORED BY DEPUTY MAYOR TREFETHEN

Item was pulled from the Agenda.

4. RESOLUTIONS - None

12. NEW BUSINESS

A. CONSENT CALENDAR

- 1. PARADE – Cochecho Valley Humane Society**
- 2. RAFFLE – Cochecho Valley Humane Society**
- 3. RAFFLE – Dover Share Fund**
- 4. BLOCK PARTY – Greater Dover Chamber of Commerce**
- 5. PARADE – Greater Dover Chamber of Commerce**
- 6. RAFFLE – Greater Dover Chamber of Commerce**
- 7. RESOLUTION: DONALD AND RITA MACLEOD MEMORIAL SCHOLARSHIP FUND**
SPONSORED BY MAYOR MYERS BY REQUEST

Item was pulled from the Agenda.

- 8. RESOLUTION: INDIAN BROOK DRIVE LANDSCAPING**
SPONSORED BY MAYOR MYERS BY REQUEST

- 9. RESOLUTION: B09102 HOUSEHOLD HAZARDOUS WASTE COLLECTION SERVICE**
SPONSORED BY MAYOR MYERS BY REQUEST



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- 10. RESOLUTION: B09086 LIQUID PROPANE**
SPONSORED BY MAYOR MYERS BY REQUEST
- 11. RESOLUTION: B09094 #2 HEATING FUEL**
SPONSORED BY MAYOR MYERS BY REQUEST
- 12. RESOLUTION: B09085 OFF ROAD DIESEL FUEL**
SPONSORED BY MAYOR MYERS BY REQUEST
- 13. RESOLUTION: B09071 DOVER TRASH BAGS**
SPONSORED BY MAYOR MYERS BY REQUEST
- 14. RESOLUTION: WOODARD AND CURRAN TO AUTOMATE THE SCADA CONTROL FUNCTIONALITY AT RIVER STREET**
SPONSORED BY MAYOR MYERS BY REQUEST
- 15. RESOLUTION: B10002 LIBRARY CARPET REPLACEMENT**
SPONSORED BY MAYOR MYERS BY REQUEST

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. Legislative Liaison
13. Coast Bus

Deputy Mayor Trefethen moved for the approval of the Consent Calendar; seconded by Councilor Weston.

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

Deputy Mayor Trefethen asked to pull the Planning Board Committee Report.

Councilor Scott asked to pull Items 11.A.10., 11.A.11., 11.A.12., and 11.A.14.

Councilor Weston asked to pull Item 11.A.13.

Councilor Callaghan asked to pull Item 11.A.8.

Mayor Myers asked for a Roll Call Vote on the remaining items on the Consent Calendar.

Roll Call Vote: 8/0.

Deputy Mayor Trefethen moved for the approval of Item 11.A.8.; seconded by Councilor Callaghan.

Councilor Callaghan asked if the owner was going to take care of the land for free.

City Manager Joyal said that was correct.



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Councilor Callaghan asked if there was any obligation or liability to the City. City Manager Joyal said the City had similar agreements with other businesses. He said the property owner wants to make sure there is a nice presentation for his business. He said the owner would be responsible for his actions.

Roll Call Vote: 8/0.

Deputy Mayor Trefethen moved for the approval of Item 11.A.10.; seconded by Councilor Scott. Councilor Scott said his comments pertain to Items 11.A.10., 11.A.11., and 11.A.12., and that he didn't feel they should be on the Consent Calendar. He asked to make a motion that only items that were less than \$25,000 be on the Consent Calendar.

Mayor Myers said there was already a motion on the floor, and he couldn't allow a new motion at this time. He said when the Agenda is created they try to do routine items by nature under the Consent Calendar. He said any Councilor can pull an item for further discussion.

Councilor Scott said the City was burned last year when the rate was set at the top of the market. He felt it should be put out to bid for six months with an option to renew.

City Manager Joyal said the City wouldn't get a better rate for a shorter period, because vendors are looking for a longer commitment as they enter fuel supply agreements with their suppliers. He said there was quite a bit of analysis done on these Resolutions.

Roll Call Vote: 7/1; Passed. Councilor Scott was opposed.

Deputy Mayor Trefethen moved for the approval of Item 11.A.11.; seconded by Councilor Scott. Councilor Scott said the same comments from the previous Resolution apply to this Resolution.

Roll Call Vote: 7/1; Passed. Councilor Scott was opposed.

Deputy Mayor Trefethen moved for the approval of Item 11.A.12.; seconded by Councilor Scott. Councilor Scott said the same comments from the previous two Resolutions apply to this Resolution.

Roll Call Vote: 7/1; Passed. Councilor Scott was opposed.

Deputy Mayor Trefethen moved for the approval of Item 11.A.13.; seconded by Councilor Weston.

Councilor Weston asked if there was going to be an increase in the retail cost for the Dover trash bags.

City Manager Joyal said the Council has not approved a change in the price of bags or tags.

Councilor Weston asked if the City would be absorbing the additional costs.

City Manager Joyal said it would be addressed within the Solid Waste budget.

Roll Call Vote: 8/0.

Deputy Mayor Trefethen moved for the approval of Item 11.A.14.; seconded by Councilor McCusker.

Councilor Scott asked why this had to be done now, and not be pushed off, when there is lack of funding from the State.

City Manager Joyal said this needed to be done in conjunction with the rehabilitation of the River Street Pump Station project that is underway.

Roll Call Vote: 8/0.



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Deputy Mayor Trefethen gave his Planning Board Committee Report. He said the Planning Board met on Tuesday, August 11th. He referred to the work the Planning Board has been doing on the zoning changes for the past two years. He said there was a unanimous recommendation from the Planning Board to forward all of the amendments to the City Council for ratification.

City Manager Joyal said a Resolution will be coming to the Council at the end of this month to be referred to a public hearing on September 10th, with a Council workshop on September 3rd. Councilor Callaghan said he had a hard time supporting this Resolution, because the Zoning Board of Adjustment should have been involved in this process. He said the Planning Board closed the door on amendments, and he felt that wasn't fair.

Deputy Mayor Trefethen said he understood Councilor Callaghan's comments, but felt that for members of the community to take the position that they were totally unaware that this was happening was wrong. He said they need to take responsibility for themselves.

Councilor Weston made a motion to accept the Planning Board Committee Report; seconded by Councilor Callaghan.

Vote: 8/0.

B. RESOLUTIONS

1. 2009 CITY MANAGER'S EVALUATION SPONSORED BY MAYOR MYERS

Deputy Mayor Trefethen moved for its approval; seconded by Councilor Weston.
Vote: 8/0.

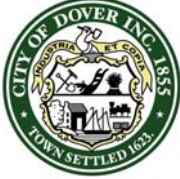
2. 2009 CITY MANAGER'S CONTRACT AMENDMENT SPONSORED BY MAYOR MYERS

Deputy Mayor Trefethen moved for its approval; seconded by Councilor McCusker. Mayor Myers said there were two amendments made to the City Manager's contract. A salary reduction of \$2,317 to \$116,902, retroactive to July 1, 2009. The second amendment allows the City Manager to engage in teaching and/or consulting work. Councilor Callaghan referred to a sentence in the background materials: "Understanding that such arrangements shall not constitute interference with nor a conflict of interest with responsibilities..." He said a few commas were needed to clarify the statement. "Understanding that such arrangements shall not constitute interference with, nor a conflict of interest with, responsibilities..."

Mayor Myers asked the Council if they had an objection to adding the commas. There was no objection.

Councilor Weston said she was against him consulting on the side. She said he had a lot on his plate, and felt if he had extra time, that he should be more involved in some of the organizations that go on in the City.

Councilor Callaghan said he felt the teaching and consulting had to be completely separate from the City so there was no liability.



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Mayor Myers said they would be hiring J. Michael Joyal, Jr. if he was going to do consulting work, and not the City Manager of Dover.

City Manager Joyal said if he did consulting work or teaching it would be on his own time, and any liability would be no different than anything else he did on his own time.

Councilor McCusker asked the City Manager if he coached any sports, which required daily practices, preparation for and playing of games.

City Manager Joyal said he had coached football and assisted-coached baseball.

Councilor McCusker said he didn't see how teaching a class at UNH or consulting on his own time would interfere with his responsibilities as City Manager, because he would still be accessible as he is now.

Councilor Callaghan said wherever J. Michael Joyal, Jr. goes to teach or consult they are going to use his credentials. He said he was going to support this Resolution, but he wanted the City Manager to promise the Council when signing a contract that there is no implication that he is working as a City employee, and takes responsibility for his teaching and consulting.

City Manager Joyal said this would be done on his own personal time, and he felt a responsible court would take that into consideration.

Councilor Cheney said she was going to support this Resolution, because the City Manager has a lot to offer. She felt that the City didn't own his expertise and his growth as a person on the outside.

Councilor Scott said he felt it would be a plus for the City, and he was going to support this Resolution.

Councilor Weston said that Councilor McCusker's comments didn't address her concerns. She said consultants from large corporations have their own LLC so the City or company is protected. She said she doesn't see anything in the Resolution regarding this, and she can't support this Resolution.

Roll Call Vote: 7/1; Passed. Councilor Weston was opposed.

3. COLLECTIVE BARGAINING AGREEMENT IAFF SPONSORED BY MAYOR MYERS BY REQUEST

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

Councilor Scott asked if there was no increase in cost.

City Manager Joyal said it was negligible.

Roll Call Vote: 8/0.

Mayor Myers said the Council just passed a 3-year agreement with the Firefighters Union, which covers from July 1, 2008 to June 30, 2011.

4. COLLECTIVE BARGAINING AGREEMENT DPFOA SPONSORED BY MAYOR MYERS BY REQUEST

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

Roll Call Vote: 8/0.

Mayor Myers said the Council just passed a 3-year agreement with the Fire Officers Association, which covers from July 1, 2008 to June 30, 2011.



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5. COLLECTIVE BARGAINING AGREEMENT DPEA SPONSORED BY MAYOR MYERS BY REQUEST

Deputy Mayor Trefethen moved for its adoption; seconded by Councilor Weston.
Roll Call Vote: 8/0.

Mayor Myers said the Council just passed a 3-year agreement with the Dover Professional Employee Association, which covers from July 1, 2005 to June 30, 2008, and has already expired. He said what this does is bring the cost of living adjustments in line with these employees. He said they are still working without a contract.

6. CHARTER AMENDMENT – TAX ASSESSMENT REVIEW BOARD (TO BE REFERRED TO PUBLIC HEARING) SPONSORED BY COUNCILOR WESTON

Deputy Mayor Trefethen moved to refer this Resolution to a public hearing on August 26, 2009, which is not a usual public hearing date; seconded by Councilor McCusker.

Councilor McCusker asked if there was an email about the new wording on Page 4 of this Resolution, because he saw it in the paper before he saw it in the agenda packet. Councilor Weston said nothing was released to the paper.

Mayor Myers asked Councilor Weston to go over the changes.

Councilor Weston said basically the one change is that the Assessment Review Board was not to be an advisory board.

Mayor Myers said he saw the change as the board would be appointed by the Council and not the City Manager, and that the word advisory was changed to render decisions on abatement requests.

Councilor Weston said that was through the recommendation of the City Attorney.

Deputy Mayor Trefethen said he was on the fence about this Resolution, and he did make some suggestions on the explanatory note. He said this Resolution is truly different. He said this Board is a decision-making board, which will remove power from the City Assessor, City Manager, and indirectly the City Council, because we will lose control of the assessing process. He said changing it to be appointed by the Council makes it very political, depending on the makeup of the Council. He said in the other matter, where the Board would actually have decision-making power, he could see back room deals being made, people looking for favors, and the little guy is going to get lost in the shuffle. He said he understood this Board was supposed to help the little guy. He said he felt Dover had abatements like other towns, but he didn't feel Dover had a problem overall.

Mayor Myers said he was for an advisory board to help people through the process, but he was not for a decision-making board, because he could see it being politicized.

Councilor Weston said she was really insulted that the Councilor referred to back room deals, because it could open up the whole City government so that anybody can do it. She said this board would work in concert with the Assessing Office and not alone. She said there was nothing wrong with having another set of eyes working with the Assessor. She said the Assessor will be doing everything he has been doing, except for the abatements, on his own. She asked the Council to vote to let it go to the voters.



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Councilor Cheney said she was concerned about the comments made by the Councilors, and she said she felt it should go to the voters. She said she was insulted by the Councilors' comments about the voters and their not being able to vote on this. She said she would support this being on the ballot.

Councilor Scott said he felt that some Councilors feel that the public is not very smart, and they have to protect the public from getting politicized. He felt the people are smart and will support this being on the ballot.

Councilor Callaghan said the indication of back room deals really sets him off, and felt that the Council could come up with that scenario with all kinds of committees, commissions, and people employed with the City. He said he felt it was a cheap shot. He said the Council will be setting up the board, and he sees it as being very helpful. He said rules have yet to be written, and the concept of the board shouldn't be the Council's choice alone, and it needs to go to the voters.

Councilor Carrier asked the City Attorney about the legality of three volunteers rendering decisions on abatements.

City Attorney Krans said he was comfortable that the state would allow the advisory board, and he was comfortable that the state would allow this board with its administrative function. He said he told Councilor Weston that she does run the risk that other lawyers will disagree with him, and that it invades the authority of the City Manager. He said he was comfortable that it doesn't at this point, but the risk has increased when the Resolution is changed from advisory to administration. He said the law is a little unsettled in this area and there are no guarantees on whether this will pass muster.

Councilor Callaghan said the Utilities Commission does abatement on water/sewer billing, and they are all volunteers.

Deputy Mayor Trefethen said this wasn't a question of voters making a decision, but whether the Council had vetted this issue. He said the wording of this Resolution is different from what the Council had at the workshop, and it's a different concept. He said we have to take everyone's word that the Dover City News received this information and published it five days before the Council received it.

Councilor Weston said the Dover City News comes out on Thursday.

Deputy Mayor Trefethen said their deadline is Monday. He said it was just a coincidence. He said this was being proposed to benefit a few select people in the City who feel they have a problem with assessments. He said the little guy may benefit from this board, but it was really for the big guys, and he didn't want any part of it.

Councilor Scott questioned the reasoning behind Deputy Mayor Trefethen's comments. He said he helped a person in Ward 3 get an abatement, because he was concerned about going to the Assessing Office. He didn't think this board was for the big guy.

Mayor Myers said the process they talked about at the workshop was a bridge for the little person who needed the help, and he didn't think this new concept was the bridge.

Councilor Scott said the Council should have the public hearing.

Mayor Myers said part of the job of the Council is to do several things: to look at the proposed Charter change, determine if it passes muster with the Council, and if this being rushed. He said he has looked at the numbers in Assessing, and Dover is doing a dynamite job. He referred to the City Attorney's comment that it may not pass muster in



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a court challenge. He said he felt if the voters think the Council is putting something through, the Council should refer it to a ballot question that it is clear, supportable, and is the right thing for Dover. He said he wasn't comfortable in a lot of areas about this Resolution.

Councilor Weston said the whole enchilada would be a Board of Assessors, and that is not what she is proposing. She said the numbers for the Assessing Department are only the numbers for people who actually went into the Assessing Office. She said Attorney Krans was pretty confident that this Resolution passed muster. She asked that the Council allow this to be put on the ballot and go to the voters. She said it does have to get approved by the Attorney General first. She just wanted the opportunity. She felt the City would benefit from it.

Councilor Cheney said she didn't know whether or not she would support this on the ballot, but she did support that it makes it to the ballot.

Councilor Scott said the biggest problem with municipal government, and state government, is apathy. He said when there are things on the ballot it brings people out to vote, and that's a very positive thing.

Councilor McCusker said this Resolution was a definite change to what was proposed at the workshop. He said the proposed Charter amendment is telling the people that the process the City has doesn't work.

Mayor Myers asked for a roll call vote to refer this Resolution to a public hearing.

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

7. CHARTER AMENDMENT – GENERAL LEGAL COUNSEL (TO BE REFERRED TO PUBLIC HEARING) SPONSORED BY COUNCILORS CALLAGHAN AND CHENEY

Deputy Mayor Trefethen moved to refer this Resolution to a public hearing on August 26, 2009, which is not a usual public hearing date; seconded by Councilor Cheney.

Deputy Mayor Trefethen said the Council received a legal opinion regarding this Resolution, and in light of that opinion he felt the Council shouldn't go any further with this Resolution.

Councilor Scott asked if the City spent money to get this opinion.

Deputy Mayor Trefethen said that was correct.

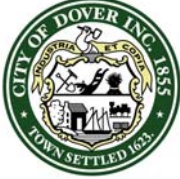
Councilor Scott asked who took the initiative.

Mayor Myers said the City Attorney obviously had a conflict with this issue, and the Council had to go to outside counsel to approve as to form for legal background. He said he believed Councilor Callaghan traded phone numbers and dealt with this issue.

Councilor Scott said he felt the fact that the City Attorney felt he had a conflict was the reason to put this on the ballot.

Mayor Myers said the issue is the legal opinion that was made available to the Council today.

Councilor Callaghan said he has not read the legal opinion yet, and felt it was premature to try to strike this from the process. He said he suggested initially that this not be sent to another attorney, but merely to send the City Manager some questions. He said he



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spoke to the attorney and the information he was getting shocked him. He begged the Council to move this Resolution to public hearing to give the Council a chance to review the legal opinion.

Mayor Myers asked the City Manager to explain the process and why this needed to have a legal review.

City Manager Joyal said this was a proposed Charter amendment, a Resolution that has been placed on the Council Agenda, and Council requires that it be approved as to legal form, approved as to finance, and approved as to formatting. He said this Resolution was dealing with the potential impact of the employment situation with the existing City Attorney, he rightfully advised that he had a conflict and could not render legal advice to the City. Therefore, the City contracts with outside legal counsel to receive an opinion as to legal form in accordance to the process that has been in place. He said he was curious why the City Manager would have a conflict, when his role is to coordinate the administrative affairs of the City, which includes soliciting legal advice for the corporation and the Council as a body. He said when he was advised by the City Attorney that he had a conflict he notified Councilors Callaghan, Cheney, the Mayor, and the Deputy Mayor that he would be arranging for an outside legal counsel.

Councilor Cheney referred to the Charter Commission meeting six years ago where everyone, except one, stood up to say the City Attorney should report to the Council. She said the only person who was against it was the then Assistant City Manager Michael Joyal. She said the City Attorney said he had a conflict, and the City Manager chose another attorney without asking the sponsors of this Resolution. She said the language is good in this Resolution, and even the Deputy Mayor said it should go before the voters.

Mayor Myers said he was against this Resolution at the workshop and still planned to vote against it. He said there was a time when this was an issue, but felt that it has been cleaned up very nicely. He said the City has a very talented City Attorney who works for the betterment of Dover. He said he is not the City Manager's attorney, the City Council's attorney, but the City of Dover's attorney. He said this Resolution says the Council will hire and supervise legal counsel. He knows Councilors Callaghan and Cheney believe that nothing will change. He said Councils change and people's interpretations change. He said he didn't feel the City had a problem. He said if this does go through, the present contract with the City Attorney would be void, and he would be entitled to a hefty severance of \$100,000. He said he also felt the Council wouldn't get quality applicants when the applicants know their tenure is as long as the Council's. He said this Resolution doesn't say that everything will stay the same, or that the City Attorney will stay with the City.

Councilor Callaghan said he was really getting angry. He just opened the legal opinion that he received. He said it was 27 pages of single-spaced writing. He asked the City Manager what he asked of this attorney. He speculated that the attorney was told to write a book to put this Resolution off. He said he wants to choose an attorney to give another opinion. He said no one has had a chance to read this. He said he didn't understand what was in the legal opinion that made the Deputy Mayor change his opinion from supporting this Resolution to not supporting it. He made a motion to release the legal opinion.



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Mayor Myers said the Council has a motion on the floor right now, so it is not allowable right now.

City Manager Joyal said he anticipated that Councilor Callaghan would think he did something nefarious, and therefore he made sure Councilor Callaghan was copied on any and all communications with Attorney Bolt, with the exception of the initial phone call where he asked him if he was available for writing a legal opinion. He said if anyone wants to speculate that he influenced the opinion, then they are dead wrong. He said the City Manager has the responsibility of being the chief advisor to the Council, whether the Council likes it or not. He said if the Council feels that the advice they are getting is inaccurate or incomplete, then the Council needs to take some action and deal with the City Manager. He said he understood past history, but he felt he had proven that he was there to assist the Council. He said when the Council is considering changing the Charter, then it was something that needed to be properly analyzed and reviewed. He said he asked the attorney two questions: if it was in the proper legal form, and if it is allowable under the City Charter or Statutes. He said Councilor Callaghan saw what he asked the attorney.

Councilor Callaghan said he saw what was emailed.

Councilor Weston said if everything the City Manager said was true, then the Tax Assessment Review Board Resolution should have been passed. She asked if there was another avenue for getting a Charter question on the ballot, getting signatures. She said she knew it had to do with a percentage of registered voters. She asked the City Clerk if she knew the process.

City Manager Joyal said he would have to get the City Attorney and City Clerk to put together a schedule.

Councilor Scott said he believed she would need 680 signatures to bypass the Council and get it on the ballot. He said he was very disappointed, as is Councilor Callaghan, that there seems to be an attempt to sidetrack this Resolution. He said if the City had gone with Attorney McLaughlin, he would have been happy to read his opinion. He said he knew nothing about this attorney and the City Manager hired him for the purposes of the City Manager, which is to keep the City Attorney under his control. He said everyone testified that the City Attorney should report to the Council, and he felt this was a back door attempt to try and block it. He felt there wasn't enough time to get the signature, although he supported Councilor Weston's effort to try. He said he felt the Council should act in a proper way, according to what is ethical, and he doesn't believe that is happening.

Mayor Myers clarified that Councilor Scott's Charter amendment was never brought before the Council. He said Councilor Scott chose to go the petition route. He said the number of signatures needed is based on the percentage of voters for the last election. He said 680 is probably not the correct amount, because it was based on another election.

Councilor Scott said it would probably be higher.

Councilor Carrier said the citizens of Dover do not need to hear anger among the Council. He said finger pointing and back door comments were totally unacceptable for the Council, and he was sure the citizens were tired of hearing it. He said the Council needed to calm down and discuss this in a civilized manner. He said the legal opinion



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really summarizes everything on Page 2, before he went more in depth. He said the attorney did do his homework.

City Manager Joyal said one Councilor speculated that he did something inappropriate or potentially unethical, and another Councilor stated that he did something unethical. He said he felt those comments were highly inappropriate and uncalled for, but in light of Councilor Carrier's comments he will leave it at that.

Councilor Cheney said she knows the public wants to see the Council getting along. She said there are times when the Council all votes for something and that makes for happy times. She said it was her job to point out facts. She said this has to be brought forward to a public hearing so the Council can hear what the public has to say.

Councilor Callaghan thanked Councilor Carrier for putting him in check. He said if the Council is going to have discussions then this Resolution shouldn't be killed tonight. Mayor Myers said he was against this Resolution conceptually and on the merits of what it is trying to do, and not what the legal opinion rendered.

Roll Call Vote: 4/4; Failed. Councilor Callaghan, Cheney, Scott and Weston voted in favor.

C. ORDINANCES IN 1ST READING – None

D. COUNCIL CORRESPONDENCE – None

13. COUNCIL MATTERS OF INTEREST

Deputy Mayor Trefethen said he was resigning from the Joint Fiscal Committee, effective immediately.

Councilor Weston wanted to share some information with the Council. She referred to the email that the Mayor sent out to the School Department and the questions he asked. She said one of the question was what would the total amount of savings be if the School Department implemented a wage freeze. She said there were 150 paraprofessionals and 330 teachers, and each one has an individual contract with the School Department, which consists of 43 pages. She read one line into the record: "This contract may not be terminated at any time prior to the expiration without the consent of both parties, and teachers are hereby notified that the School Board will not look favorably upon requests for release in contract for those teaching positions after June 1st." She said she felt the Council dropped the ball. The Council should have told Superintendent Dr. O'Connor that the Council was going to cut his budget when he gave his presentation to the Council on the School Budget. She said it is too late to do it now. She said she asked if anything could be negotiated with a labor attorney, and she said she was told that the contract was a done deal. She said the City will not realize the savings from the teachers.

Councilor Callaghan said he would like to suspend the rules to introduce something new; seconded by Councilor Cheney.

Roll Call Vote: 8/0.

Councilor Callaghan made a motion to release the legal opinion of Attorney Bolt, dated August 12, 2009; seconded by Councilor Cheney.

Councilor Weston said she hasn't had a chance to read it, and asked if there was something that should remain confidential.



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City Manager Joyal said it was pretty straight forward.

Councilor McCusker said he hasn't had a chance to read it, and he will not vote to release something that he hasn't read.

Deputy Mayor Trefethen said he read enough, but he hasn't read it all, and he would be reluctant to release it as well. He didn't think that there should be a rush to do this.

Councilor Carrier said he agreed with the previous Councilor's comments that he hasn't been able to read it.

Mayor Myers asked Councilor Callaghan if the Council could schedule a Special Meeting prior to the Joint Workshop next week, to vote on this one item.

Councilor Callaghan said that would be fine, and pulled his motion.

Councilor Cheney pulled her second to the motion.

Councilor Carrier said there will be another Park Street Park meeting on Saturday at 9:00 am., with the residents and some city officials.

Councilor McCusker spoke to Councilor Weston on her research regarding the School Department. He said he knew the Council had no right to tell the School Board where to make the cuts. He said the Council wasn't making that directive. He said the municipal side did it, and it was more for curiosity that we suggested it to the School Board. He said there was no directive that the Council wanted it to happen.

Mayor Myers said he has not heard back from the School Board.

Councilor Weston said she wanted to clarify her statement. She said during the Council's workshop they were discussing cutting up to \$300,000 from the School's Budget, and references were made to the teachers' wages. She said she had asked how the Council could pick out a number if they don't even know what it is. She said the Mayor asked questions in his email to the School Board, and part of it was curiosity, but when it comes time to cut figures out of the School budget, she asked where the Council thought the School Board was going to cut.

Councilor Cheney said she was not surprised with the outcome for the Charter Resolutions. She said Attorney Krans gave her very appropriate language for the Charter amendment, and he worked on the Charter Commission. She said the City has two more years to get the language right and maybe the Council can get it to the voters at that time, because she felt it was essential

14. ADJOURN

Councilor McCusker moved to adjourn; seconded by Deputy Mayor Trefethen.

Vote: 8/0.