

MINUTES
City Council Legislative Subcommittee
Conference Room A
Friday, October 26, 2018 8:30 a.m.

Legislative Subcommittee Members Present: Mayor Jack Blalock, Assistant Mayor Cliff Lazenby, Councilor Chris Dwyer, Deputy City Manager Nancy Colbert Puff, Assistant City Attorney Jane Ferrini. Councilor Josh Denton via phone.

Also Present: Senator Martha Fuller Clark; State Representatives: Gerry Ward, Jackie Cali-Pitts, Laura Pantelakos, Peter Somssich, Rebecca McBeath, Tamara Le; Councilor Rebecca Perkins and City Assessor Rosann Maurice-Lentz.

I. Greeting.

Mayor Blalock called the meeting to order at 8:33 a.m.

II. Review of Minutes from August 22, 2018.

Assistant Mayor Lazenby moved to accept and approve the August 22, 2018 minutes. Councilor Dwyer seconded the motion and the Committee voted unanimously to approve.

III. Report back from Councilor Dwyer on NHMA Legislative Policies and discussion of the submission of legislation on City sponsored policies.

Materials distributed:

- Memorandum dated October 9, 2018 to City Council from Legislative Subcommittee summarizing policy recommendations;
- NHMA 2019-2020 Legislative Policy Positions

Representative Pantelakos asked if there was any stand from the City regarding the amendments on the ballot and Councilor Dwyer answered no.

Councilor Dwyer explained the NHMA 2019-2020 Legislative Policy Positions are a set of concepts that were recently voted on by the NHMA membership which fell into three categories: general, finance and infrastructure. She explained that these policies were adopted by a two-thirds vote of the NHMA membership. Each policy is either an Action, Priority or Standing Policy. Standing policies, she said, are philosophical and NHMA will seek sponsors for bills for Action policies. These Legislative Policy Positions guide NHMA's action on bills that might come forward during the next legislative session.

a. Explanation of Local Authority to Institute Fees.

Councilor Dwyer then spoke about policies of interest to the City. She said “Expansion of Local Authority to Institute Fees” was an Action Policy, so NHMA would be seeking sponsors for a bill next session.

b. Enforcement of Motor Vehicle Registration Laws.

The enforcement of motor vehicle registration laws was an issue that came up from several communities and from Tax Collector Associations. She said Maine has been registering New Hampshire vehicles. The thought is to increase NH penalties because they are low now. For some communities it has been a loss of a substantial portion of their revenue. A town that might have registered a fleet of vehicles loses thousands when they register in Maine and the current penalty is too low.

c. Municipal Authority to Adopt More Recent Codes

d. State Adoption of Building and Fire Codes

Councilor Dwyer stated these two policies came out of the City’s experience in adopting Codes last year. Currently we are not allowed to adopt more recent additions of code than what the State imposes. Another policy encourages the State to move forward on adoption recent versions of Codes. This was in the interest of most communities.

Councilor Denton said he had been tracking HB 1254, a study committee to study the procedures of adoption of state code. Councilor Denton said the report from the Committee would be submitted by November 1st and he had reviewed the draft report. He explained that the report will make several recommendations, including a recommendation to clarify that municipalities can’t adopt Building and Fire Codes that exceed the state code. Another recommendation will be that the State can’t adopt a code until three years after it has been published in order to vet the code. Councilor Denton also noted that the NH Building Code Review Board has adopted the 2015 International Construction Code with amendments. However, the amendments, which Councilor Denton is opposed to, remove some gains made between 2009 and 2015 by the International Energy Code. That will keep energy efficiency at the 2009 level.

f. Enabling legislation for municipalities to regulate short-term rentals.

Councilor Dwyer then spoke about regulation of short-term rentals. She said this issue had more discussion and more overwhelming support than any other policy. There was high support from the Lakes Region and North Country. She also said small towns are also being overwhelmed by abuse of short term rentals.

Senator Fuller Clark suggested trying to find a way to treat and regulate Short Term Rentals as businesses. Councilor Dwyer said they are trying to do that.

Mayor Blalock said there was a concern about Life Safety Code and how someone would know how to get out of a house in an emergency situation.

Senator Fuller Clark said the Short Term Rentals need to be owner occupied.

e. Scientific Technical Standards for Regulatory Legislation.

Councilor Dwyer said “Scientific/Technical Standards for Regulatory Legislation” was a standing policy that the Council had talked about and the membership supported.

Councilor Dwyer indicated that those were the policies that the City had a hand in bringing forth but there are others that the City is also interested in.

Councilor Dwyer discussed **municipal regulation of firearms**. She noted people from smaller towns do not think about schools as being municipal property. Jackie Cali-Pitts mention she is bringing forward a bill next session relative to regulating possession of firearms in a school district. Laura Pantelakos said there won’t be a change on this legislation until there is a change on home rule.

Senator Fuller Clark asked where they ended up regarding **local municipalities being able to control postponement of elections**. Councilor Dwyer referred to the Action Policy “Postponement of Official Ballot Session of Town Meeting” on page 1 #1. The Mayor said that was for the town meetings. Councilor Dwyer said legislation would be put forward, and the Committee discussed generally postponing elections due to snow/emergency.

Assistant Mayor Lazenby raised the issue of **absentee ballots without declared excuse**. He also asked if there had been efforts by the legislature to establish early voting and to curtail any concerns regarding early voting. The Committee discussed the implications. Gerry Ward stated the Secretary of State does not support no excuse absentee ballots. Becky McBeath reminded the Committee that there is opposition in the next election for Secretary of State.

Senator Fuller Clark asked what the final resolve of **same day voter registration** was. Representative Ward said SB3 forms should be used and that it was going to the Supreme Court that day.

IV. Discussions of legislative issues of interest to the City and Delegates.

a. Divestiture Hold Harmless PUC Deregulation.

City Assessor Maurice-Lentz distributed documentation regarding Divestiture Hold Harmless PUC Deregulation, including an excerpt from Settlement Agreement (Hold Harmless Agreement) from PUC Approved in 2015, a Hold Harmless Spreadsheet and a copy of RSA 369-B:3-a.

The City Assessor gave background information on deregulation of the Schiller Station in Portsmouth and the Hold Harmless agreement. Eversource was allowed to file an abatement application in 2015. The minute PUC deregulated, the value of the plant dropped substantially. The hold harmless goes to the 2017 assessment. City Assessor Maurice-Lentz has been in a legal battle with Eversource for years. In 2017 City Assessor Maurice-Lentz said the hold

harmless value was more than \$59 million which was the DRA's allocated value. But now that Eversource filed, they say market value is \$8 million. This results in a \$1.5 million loss of tax revenue to the City. This is not just Portsmouth. This is Bow as well. She said that City Manager Bohenko said that everyone was hoodwinked on this. She said she went to mediation and stated that Eversource was not willing to move on the valuation issue in the suit with the City. She added that Eversource is a totally different company than what was there years ago due to the way this deregulation and hold harmless agreement was devised.

The Mayor agreed that what had passed was largely misunderstood. He said there was confusion between the intent compared to what actually happened. Portsmouth always used DRA values.

Councilor Dwyer asked if PUC devised this knowing the loophole was in it. City Assessor Maurice-Lentz responded that Eversource knew, and she believes PUC knew. Bow lost their legal battle and are suffering. The hold harmless is gone in Bow. They failed to understand the impact. The City Assessor added that Eversource knew the impact and they have no remorse.

Assessor Maurice-Lentz said it gets passed down to rate payers and to taxpayers who are seeing an increase in their tax bills.

Mayor Blalock asked the legislators to understand this issue and correct this devastating situation.

They discussed assessments changing. \$85 Million changing to \$10 million due to deregulation caused sales prices to plummet.

Senator Fuller Clark asked if the properties were sold. The City Assessor answered that properties went through auction. For example the Schiller plant is worth \$15 million, but the new owner paid \$1.8 million.

Deputy City Manager Colbert Puff said they were talking about rezoning that area. Representative Cali-Pitts said they are required to operate as a power plant for 18 months.

The City Assessor said Eversource still had appeals in 2014. Senator Fuller Clark asked if there is a basis for an ongoing court case. The City Assessor said Portsmouth was not involved because there was no basis. Councilor Dwyer said it is a legislative action.

Senator Fuller Clark asked for the language that the City would like changed, noting that there is not much that can be done for 2018 but perhaps for the remaining 2 years of the hold harmless. City Assessor Maurice-Lentz said they will need to draft the language.

The Assessor cautioned that what is going on now is still going on. The argument that the ratepayer will pay less must be balance with the impact to the local

taxpayers in the community. You need to be fair to local community at the same time.

Councilor Dwyer stated the City must legislatively clarify what the intent was. Senator Fuller Clark expressed the need for the review of hearing documentation when this was brought forward.

Senator Fuller Clark asked if there was reference to the hold harmless in the Statute: Chapter 369-B:3-a. City Assessor Maurice-Lentz said it was referred to in the proposal, which is where the hold harmless was. Senator Fuller Clark said that is where it was transferred to the Commission. This happened when it was Eversource. It is different than what Public Service used to be.

The Mayor invited Senator Fuller Clark and the representatives to follow up with the City Assessor on this issue. The Senator said she can get Senate research on that.

Representative Cali-Pitts said they can get minutes on that ruling and added she could work with the Senator on this.

b. Enabling Legislation for Geothermal Energy Tax Exemption, Battery Energy Storage Tax Exemption and Mini Split Heat Pump Tax Exemptions.

Councilor Denton spoke about enabling legislation for Geothermal Energy Tax Exemption, Battery Energy Storage Tax Exemption and Mini Split Heat Pump Tax Exemption. He said he would be glad to work on drafting legislation for that. He invited anyone to reach out to him if they want to work with him on that. RSAs 72:27-a and 72:61-72 spell out what solar power is and spell out what is and what is not allowed. Peter Somssich and Jackie Cali-Pitts agreed to work with Councilor Denton on this.

c. Commercial Clean Energy (C-PACE) District enabling law

Councilor Denton explained C-PACE and said there was a slight change to existing Commercial Clean Energy (C-PACE) District enabling law. He mentioned RSA 53-f:1-8 and added he would like to see enabling legislation on this and suggested that if the statute was amended to reflect that the liens are not subordinate there may be more support.

Senator Fuller Clark and Representative Cali-Pitts said they would be happy to follow up and work with Councilor Denton on the issue.

At this time Councilor Denton signed off.

d. Local control of speed limits

Senator Fuller Clark stated she was trying to meet with the Department of Safety and would report back. Councilor Dwyer said it was of interest to many municipalities. The Senator said she could not make any headway with the bill last year but would try again. Right now the State minimum is 25 mph. The City asked for it to be 20 mph in certain areas. The Department of Safety did not engage in this in the proper way last session when Senator Clark proposed a bill addressing this issue. The Committee discussed the ramifications of posting 20 mph signs while the State minimum is 25 mph. Representative Cali-Pitts noted a study of local speed limits the Police Chief mentioned and did not know if the study had been completed or not. The Mayor suggested they could make an inquiry regarding that study.

e. Support for workforce housing.

Councilor Perkins said she is proposing standing policies that would support workforce housing. She has proposed to Attorney Jane Ferrini simple language regarding increased density or requiring new developments to include some workforce housing like in Massachusetts under 40 B. Councilor Perkins discussed that she would work with the Legislative Subcommittee to draft these standing policies which would be presented to the Council and then brought back to the delegates. Councilor Perkins answered general questions regarding changes the City has made to our zoning ordinance regarding rezoning and density. Councilor Perkins also noted that she was working on the issue in a state-wide effort with NH Housing, Housing Action, Bureau of Elderly Affairs, some developers and the NH Institute of Politics and from that statewide effort there should come some meaningful legislation.

Senator Fuller Clark asked about density requirements, and Councilor Perkins discussed attempts to rezone some areas, taking into account density vs. parking. The goal is to promote a walkable and sustainable community.

Councilor Dwyer said incentives were important. Municipalities would not support state wide zoning, she said, and stressed the importance of finding ways to tie incentives, for example in transportation, as it relates to density.

Mayor Blalock said that the lack of employees in the hospitality industry was partly due to lack of workforce housing. He stressed the tremendous benefit to the State to areas that contribute to the Meals and Rooms Tax and the need in that industry for workers.

Representative Cali-Pitts asked about the Gosling project. Senator Fuller Clark mentioned a fund that was set up that businesses pay into to help on this. Councilor Dwyer said there was a housing fund but values fluctuates, and it was intended for first-time homebuyers, as these are people that are committed to staying in the community. A copy of that report can be obtained from David Moore.

The Deputy City Manager said the Community Development Block Grant has funded first time homebuyers and offers substantial assistance to bridge the gap. She also mentioned a housing trust fund, which at its height was helping 20 people per year which is not insignificant.

The Committee discussed the Pease property, the report from David Mullen regarding the future numbers of projected workers and impact on schools. Representative Somssich stressed the importance of public transportation in evaluation of future plans at Pease. The Mayor said it needed to be a statewide initiative.

Councilor Perkins was interested in future legislation left at this point in the meeting.

f. Economic Development Commission's Alternative Revenue Committee

Assistant Mayor Lazenby mentioned the importance of long term strategies when pursuing alternative sources of revenue with a primary focus on local institution of fees. He mentioned the hotel pillow tax, and suggested including bipartisan sponsors from other parts of the state.

Councilor Dwyer said 2/3 of municipalities agree now through the vote to support the NHMA legislative policy on the issue. Councilor Dwyer said instead we need more of the work we have been doing for 10 years in the legislature. The Assistant Mayor said he is not sure we are there in terms of Concord. Councilor Dwyer said it was up to municipalities to do their work. We don't want business to oppose. We want hospitality people. That is the groundwork. Councilor Dwyer cautioned on pitting towns versus cities.

The Committee discussed getting representatives to vote in their constituents' interests and understanding the legislation. The lobbying of business, hospitality and realtor groups was cited as important and very influential. Broadband was used as an example that was defeated.

Assistant City Attorney Ferrini said Portsmouth received an awards from the Municipal Association about meetings like this. This dialogue is what was lacking in many other cities and towns in the State. The City makes progress but it is a slow process. Basically it is a communication issue.

Senator Fuller Clark said we don't do enough to build the support before we file legislation. She added they need to look at how to build that support – that was the challenge.

Councilor Dwyer noted now some other communities on the Seacoast are starting to bring in their legislators to the towns to brainstorm.

Assistant Mayor Lazenby said there is an opposition and urged caution.

Councilor Dwyer clarified this is a broad concept out of which legislation might come.

The Mayor said enhanced life safety is a benefit to this. Senator Fuller Clark said there was an impact to local property tax. The committee discussed impact fees and how passing legislation would allow for that.

Representative Cali-Pitts asked about getting delegates together from the counties, to find out when that was happening and to bring presentations and suggestions. Councilor Dwyer said that was interesting. Feels like rather than the EDC do a one-off, does it make sense to bring this together? Mayor Blalock said yes. Maybe our representative to the EDC can tie-in. The Assistant Mayor said doing groundwork of showing businesses what is in it for them would be important.

Senator Fuller Clark said they build support after filed but she believes it is better to get support before we file. We need to take a step back to see how we build support beyond the seacoast.

Peter Somssich said residents feel they are the last ones to be considered. The hospitality and businesses should be better neighbors to the city residents

Mayor Blalock suggested following up with EDC, and the Assistant Mayor said he would follow up.

Councilor Dwyer left the meeting at this time.

V. **Report back from Jane Ferrini on draft report from Committee on Education Funding and the Cost of an Opportunity for an Adequate Education HB 356.**

Attorney Ferrini discussed the study committee over the last year, amending the education funding formula and tweaking the definition of education funding. The Education Committee decided to increase the base adequacy figure per child and the figure for free/reduced lunch children. They also included a grant of \$2,500 per kids targeting property poor neighborhoods. She distributed the Committee's draft report along with a memorandum on the draft report and Talking Points distributed to the Committee from Attorney Tobin, one of the lawyers from the Claremont lawsuits.

Attorney Ferrini continued that the problem delegates face is how these long over-due increases will be funded. The base adequacy increases by \$335 per child and \$719 for those children receiving free/reduced lunch. She continued saying it costs on average \$15,000 to educate each child in the state and there is a large gap between that figure and what the State pays as adequacy. She noted in part that the Committee discussed that decisions regarding education are made at the local level. For example, the State suggests 25 children per classroom in elementary school, but in Portsmouth the ratio is 17 children per classroom. This contributes to the gap between state funded adequacy and actual cost. It will be an important issue next legislative session because the Report does not address how to fund the increase in the adequacy formula.

Attorney Ferrini also noted that the attorneys that brought the Claremont decisions have been going to property poor town to talk about the education funding. The statewide education property tax SWEPT funds the schools. The tax is based upon the assessed property in the town. Attorney Ferrini discussed towns that have low/high property values and also mentioned last year's bill that attempted to have the donor towns send excess SWEPT to the State. Attorney Ferrini flagged this as an issue for next session. She suggested that there is discussion in Concord that instead of a bill coming from this report that a commission be formed due to the complex nature of the issues.

Representative Le said she spoke to members of the committee and there seems to be bipartisan support on not moving forward with the formula but establishing a commission. She also noted that New Hampshire is 49th in the state regarding funding that the State provides.

Senator Fuller Clark said it will be important to figure out where the money will come from to be able to readjust the formula. She said she sees the end of stabilization grants and questions what the impact on communities will be and how to resolve that. She said it comes back to the question of whether the State is able and willing to put more money into education.

Tamara Le discussed stabilization grants, with that money being part of the formula, full day kindergarten. The committee discussed the issue of getting money to the communities that need money more than others. Peter Somssich stated if Claremont is an example, there could be a new lawsuit coming.

VI. Discussion of Legislative Service Requests (LSR's) filed to date and discussion of filing LSR's on issues of interest to the City and Delegates.

Representative Pantelakos said we can't file until the end of November.

Senator Fuller Clark suggested another meeting just on LSRs

Assistant City Attorney Ferrini said 167 LSRs had been filed to date and estimated there would be 1,000 by January. December 3rd is the deadline for filing LSRs.

Mayor Blalock said the City was fortunate to have a healthy and effective delegation.

Representative Pantelakos said many representatives were dismayed on how things go in Concord. The Committee considered being present during the budgeting process and Senator Fuller Clark suggested having a legislative meeting in January to determine the kind of support needed.

VII. Adjournment.

Mayor Blalock adjourned the meeting at 10:36 a.m.