

Minutes
City Council Legislative Subcommittee
Friday, February 23, 2024 at 8:30 a.m.
School Board Conference Room A, 1 Junkins Ave., Portsmouth, NH

- I. Greeting: Assistant Mayor Kelley. In attendance were Mayor McEachern, Assistant Mayor Kelley, Councilor Tabor, Councilor Cook, City Manager Karen Conard and Senior Assistant City Attorney Jane Ferrini. Also attending were School Superintendent Zach McLaughlin, Business Administrator Nathan Lunney, School Board Legislative Committee Chair Lisa Rapaport and Susan Sterry, Co-Chair of the Cemetery Committee
- II. Approval of August 23, 2023 Minutes: Councilor Tabor moved and Councilor Cook seconded a motion to approve the August 23, 2023 minutes. The Motion passed on a unanimous vote.
- III. Legislative Principles: Senior Assistant City Attorney Ferrini advise the Committee that the current Legislative Principles as presented and approved by the Council currently apply but asked the Committee to review and consider proposing additional Legislative Principles at a future meeting.
- IV. Resolution on Staffing Mandates: The Committee discussed a Resolution on Staffing Mandates which had been referred by the City Council to the Committee with the authority to act, noting the current staffing difficulties in the health care field in their support. Assistant Mayor Kelley moved and Councilor Cook seconded a motion to approve the Resolution. The Motion passed on a unanimous vote.
- V. Staff and the Committee discussed the following bills.
 - A. Occupancy Fee- HB 1254 (enabling legislation for occupancy fee for public safety). The Committee was advised by Senior Assistant City Attorney Ferrini and the Mayor that the House Committee recommendation was 10 in favor and 10 against, which is more support than similar bills have had in the past and that the vote will be on the House floor next session. The change in this version of the bill as compared to bills introduced in the past, is that the funds raised from the occupancy fee will be earmarked for police and fire services. The Mayor noted that most of the Mayor's group will be signing a letter in support of this bill, and he hopes to reach out to Representative Meuse to speak on the House floor in favor of the bill. He also noted that the Chamber had supported the bill in the past when the funds benefited tourism but now may oppose the bill because it supports public safety. Assistant Mayor Kelley noted this is a standard fee throughout the county and Councilor Tabor said the funds would need to be in a dedicated fund. The Mayor noted that he signed on to a Mayor's letter relative to welfare budgets that supports state funding if local welfare budgets overrun their line item.

- B. Housing- SB 538 (omnibus bill sponsored by Senator Perkins Kwoka- improving zoning procedures to incentivize housing); The Committee discussed waiting until cross over to reassess providing testimony on bills addressing housing. The Committee discussed generally the following bills that if passed, would be state-wide zoning changes, but could make the creation of housing easier. The bills discussed were: HB 1065 (fire sprinklers); HB 1215 (subdivision regulations); HB 1399 (two residential units in single family by right); HB 1400 (maximum number of parking spaces); HB 1291 (accessory dwelling by right); HB 1297 (prohibits zoning ordinances unless for public health and safety reasons); HB 1281 (prohibits zoning from restricting 2 occupants per bedroom).
- C. Flood Relief - SB 590 (request for appropriation from DES for Seacoast flood damage from January, 2024). The Committee discussed that Portsmouth provided the sponsor of the bill information regarding costs incurred as a result of the recent January, 2024 flooding.
- D. Retirement- HB 1279 (payment by State of 7.5% of retirement system contributions for employer for Group I teachers and Group II police and fire). Senior Assistant City Attorney Ferrini reminded the Committee of similar bills in the past where the State contributed 7.5% of employee retirement cost but that this bill would make this contribution permanent moving forward. Senior Assistant City Attorney Ferrini also mentioned that the City will monitor retirement bills that may impact the City's budget and will continue to advise the Committee.
- E. Local Control and General Municipal- Senior Assistant City Attorney Ferrini discussed the following bills included in the packet: HB 1387 and SB 437 (prohibit local amendments to State Building Code); HB 1396 (prohibits inspections of owner- occupied multi-unit housing); SB 63 (limits adoption of health ordinances); HB 1685 (redefines homestead foods and municipalities ability to inspect); SB 553 (public investment limited to NH); HB 1207 (plastic foodware); HB 1284 (quasi- judicial authority of planning board members). It was noted that HB 1207 was inadvertently not included. The Committee discussed the trend of bills trying to take away local control, and discussed several building code bills that would prohibit amendments to the state building code and our Inspection Department's awareness of these bills that they are also tracking.
- F. Education Funding – HB 1583 (increase per pupil adequacy); HB 1586 (education funding foundation budget); HB 1517 (excess SWEPT); HB 1686 (excess SWEPT). The Committee discussed several bills and Senior Assistant City Attorney Ferrini and School Business Administrator Nathan Lunney discussed the recent decisions in the ConVal and the Rand education funding cases. The holdings in both cases were explained by Senior Assistant City Attorney Ferrini. She explained the ConVal case held that the current state base adequacy amount per public was unconstitutional because it was too low and did not account for the cost of providing an adequate education, which is a constitutional right. The Court further held that the floor for that base adequacy amount is now \$7,500 per child.

Senior Assistant City Attorney Ferrini explained that an education funding bill that proposed a \$10,000 base adequacy amount was recently defeated and HB 1586, a bill which changes the whole education funding calculation, would have created over 100 donor towns and was tabled. The Court recently denied the Motion to Stay the ConVal order pending appeal to the Supreme Court. Questions were raised by the Committee relative to what the legislature might do and what municipalities will be required to do if the legislature does not raise the adequacy amount consistent with the Court ruling. The Committee was advised that as a member of the Coalition Communities, 2.0, there will be future meetings with its counsel, and information will be provided to the Committee and City Council as it becomes available.

In addition, the holding in the Rand case was discussed. The Rand case held that the retention of the excess SWEPT was unconstitutional and the Motion to Stay this decision pending appeal to the Supreme Court was denied. In essence, the decision returns the education funding scheme back to donor/receiver town. Business Administrator Nathan Lunney discussed the timing of the order and the difference between tax bills and the time period they cover between cities and towns and noted this year there was no excess SWEPT but there will be excess SWEPT estimated at approximately \$800,000 which will be built into the tax rate set by DRA in Oct/Nov. He also noted that the Court's Order did not recognize that in towns, school districts are separate from towns and in essence present a bill for the town to pay, unlike cities. The Committee had questions relative to how municipalities were to pay this excess SWEPT and when this payment would be due. The Mayor discussed education funding generally and the Legislatures lack of support for alternative taxes, such as income or sales tax and also discussed generally a homestead exemption for SWEPT. He also mentioned that the donor town funding scheme does not address towns with tax caps and land in current use, but that the City should be part of the conversation relative to solutions to the education funding problem. Senior Assistant City Attorney Ferrini explained that the issue of how the DRA will enforce and administer these Orders was in question, and that CC2 will address this and other questions of interpreting these Orders at future meeting to be scheduled by the CC2.

- VI. Creation of Working Group of Legislative Subcommittee. Lisa Rapaport, Chair of the School Board's Legislative Committee, described the School Board's Legislative Committee that promotes the following legislative principles:
- Promote student health and safety
 - Fund public education and public-school construction projects
 - Empower local administrators and educators to set curriculum
 - Maintain the ability of local school boards to set policy for local school districts

Lisa Rapaport asked to have the School Board's Legislative Subcommittee work with this Committee regarding the above-described principles. The Committee created a legislative working group with Assistant Mayor Kelley, Councilor Cook, Superintendent McLaughlin, and Lisa Rapaport (as chair of our School Board Legislative Committee), who will report back to this Committee on education legislation and other legislative issues of interest that address the above listed principles for future advocacy by the Committee.

VII. Public Comment: The Mayor recognized Susan Sterry, who spoke about the recent public hearing regarding the removal of Planning Board member Jim Hewitt and felt that the process should have been a private process as most human resource issues are and suggested that volunteers should be treated more like employees and the process should have been treated as an ethic committee. She further noted that the public comment at the hearing resulted in mudslinging and there should be changes made to any future process. Senior Assistant City Attorney Ferrini noted HB 1284 is a bill that attempts to define “quasi-judicial” and provides significant changes to the hearing process of quasi-judicial boards if there is an allegation of conflict of interest. Councilor Cook stated that the Governance Committee will be looking at volunteer training, with the goal of preventing the need for removal hearings.

VIII Assistant Mayor Kelley moved and Councilor Tabor seconded a Motion to Adjourn at approximately 10:14 a.m. The Motion passed unanimously.

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