

A special meeting of the Board of Aldermen was held Monday, December 5, 2005 at 6:30 p.m. in the Aldermanic Chamber.

President Brian S. McCarthy presided, City Clerk Paul R. Bergeron recorded.

Prayer was offered by City Clerk Paul R. Bergeron, Alderman Gage leading in the Pledge to the Flag.

President McCarthy

I would remind the members of the Board and of the audience to please turn off cell phones and pagers.

The roll call was taken with 13 members of the Board of Aldermen present; Aldermen Plamondon and Shaw were recorded absent.

President McCarthy

Alderman Shaw and Alderman Plamondon are unable to attend due to business commitments.

Corporation Counsel David R. Connell was also in attendance.

COMMUNICATIONS

**MOTION BY ALDERMAN TOLLNER THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY
MOTION CARRIED**

From: Brian S. McCarthy, President, Board of Aldermen
Re: Special Board of Aldermen Meeting

**MOTION BY ALDERMAN TOLLNER TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

From: Paul R. Bergeron, City Clerk
Re: Certification of Recall Petition

**MOTION BY ALDERMAN TOLLNER TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

NEW BUSINESS – RESOLUTIONS

R-05-341

Endorser: Alderman-at-Large Brian S. McCarthy

**ESTABLISHING THE TIME AND PROCEDURES FOR A RECALL ELECTION FOR THE OFFICE OF
THE MAYOR OF THE CITY OF NASHUA**

given its first reading;

Alderman Tollner

I have asked Alderman Vitale if she would read this motion. I may be a party of the circumstances that take place in the next month. I didn't want to make the motion nor will I vote on this. Thank you.

MOTION BY ALDERMAN VITALE THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE SECOND READING OF R-05-341

MOTION CARRIED

Alderman Tollner Abstained

Resolution R-05-341 given its second reading;

MOTION BY ALDERMAN VITALE FOR FINAL PASSAGE OF R-05-341

MOTION BY ALDERMAN JOHNSON TO AMEND R-05-341 IN ITS ENTIRETY BY REPLACING IT WITH THE YELLOW COPY PLACED ON OUR DESKS THIS EVENING

ON THE QUESTION

Alderman Johnson

I had sent an e-mail to Attorney Clarke and she forwarded it to Mr. Bergeron. Basically what it is doing is changing the date. Instead of having it December 7th to start being able to pick up the nominating petition you will be able to start it on the 6th and the ending date is the 19th. You are giving it ten (10) business days versus consecutive days.

President McCarthy

Is there any further discussion?

Alderman MacLaughlin

May I inquire as to what the originator of the amendment was moved by in the original language that prompts the change?

Alderman Johnson

We should be starting tomorrow not the 7th. Mr. Bergeron has agreed with me that they should start picking up the petitions tomorrow versus the 7th although the Mayor is going to court tomorrow. There is no reason why you can't have anybody who is interested in running for Mayor starting to get the nominating petitions.

Alderman MacLaughlin

Just as a follow up on the date of December 19th what date does that replace?

Alderman Johnson

The 16th. We are going business days versus consecutive days now.

Alderman MacLaughlin

Thank you.

Alderman Deane

My question is to City Clerk Bergeron, can't I get a copy of a nomination petition on line at the city web site?

Paul Bergeron

No. The City Charter requires that the petitions be all of the same size. If people were to start printing them out on line we would probably run the risk that they would be turning in 8.5 x 11 petitions whereas these are half sheets that we make available at our office. We have never put them on line in the past. Those provisions were written long before computers or on-line documents, but they would be available once the Board sets the election.

Alderman Deane

If I had a pile of old nominating petitions in my truck for instance I could go out and start having people sign them regardless of whether it was today or tomorrow – unless of course you change the size of it.

Paul Bergeron

The only thing that really is different from this petition than any other petition is the date of the election. Presumably if someone whited out the date of an election -- the petition tomorrow will look the same as it has in the past.

Alderman Deane

Thank you very much.

Alderman MacLaughlin

I would just say that although I understand the vein in which the white out is mentioned, any conceivable interpretation by the Office of City Clerk that a petition may have been altered in any way should be cause for dismissal of its validity is that correct?

Paul Bergeron

If there was any appearance or evidence that the petition was altered after someone may have signed it absolutely. I guess what I was suggesting that if someone were to have whited out an older petition then made photocopies of that the white out wouldn't be evident and would contain the correct address – it is all speculation anyway I guess at this point.

Alderman MacLaughlin

I certainly don't question you. I value the integrity in which you administer our city elections and I trust your judgment completely. It is just as someone who has some very in depth experience with petitioning I hold

that to be a very personal type of exchange between the person soliciting support and the person who not necessarily is placing their name on a petition but certainly would not want to have any type of questioning or authenticity challenges as a result of what will become a rather – well it will be a chaotic thing because it is going to be an abbreviated election should this pass. I am hopeful that even if we're thinking of it along lines of humor and jest that we take this process very seriously because what we are about to do to the city and the institution of Mayor by holding a mid-January contest in the middle of a Mayoral term that we all understood to be four years is a very serious matter and should be held with the highest regard...

President McCarthy

If I might I don't think there was any intent to imply otherwise. What the City Clerk was suggesting is that someone who has petitions can modify one of them to indicate, unsigned petitions, to indicate the dates for this election and use that as the ones on which they collect signatures that would then be valid.

The motion before us is the amendment to R-05-341.

A Viva Voce Roll Call was requested, which resulted as follows:

Yea: Alderman Vitale, Alderman LaRose, Alderman Gage, Alderman Cardin, Alderman MacLaughlin, Alderman Deane, Alderman Lozeau, Alderman Dion, Alderman Rootovich, Alderman Johnson, Alderman Bolton, Alderman McCarthy

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Nay:

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MOTION CARRIED

Alderman Tollner Abstained

President McCarthy

The motion before us is that of final passage of R-05-341 as amended.

A Viva Voce Roll Call was requested, which resulted as follows:

Yea: Alderman Vitale, Alderman LaRose, Alderman Gage, Alderman MacLaughlin, Alderman Deane, Alderman Dion, Alderman Johnson, Alderman Bolton, Alderman McCarthy

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Nay: Alderman Cardin, Alderman Lozeau, Alderman Rootovich

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MOTION CARRIED

Alderman Tollner Abstained

Resolution R-05-341 declared duly adopted as amended.

R-05-342

Endorser: Alderman-at-Large Brian S. McCarthy

RELATIVE TO THE TRANSFER OF \$13,914 FROM ACCOUNT 591-86005 "GENERAL CONTINGENCY" INTO CITY CLERK ACCOUNTS 513-12024, 513-12064, 513-12108, 513-12132, 513-12213, 513-43005, 513-49075 AND 513-59115 TO COVER EXPENSES INCURRED FOR THE MAYORAL RECALL ELECTION ON JANUARY 10, 2006

given its first reading;

MOTION BY ALDERMAN BOLTON THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE SECOND READING OF R-05-342

MOTION CARRIED

Resolution R-05-342 given its second reading;

MOTION BY ALDERMAN BOLTON FOR FINAL PASSAGE OF R-05-342

ON THE QUESTION

Alderman Lozeau

I would just ask the question as to why the expenses that are going to be incurred in the special election of February 14th are not included in this resolution.

President McCarthy

We don't yet know that there will be a special election on February 14th until the results of the January 10th election.

Alderman Lozeau

Thank you.

Alderman Rootovich

May I ask Corporation Counsel a question through the Chair – isn't it true that it is written if three or more individuals run that there will be a runoff election?

David Connell

There will be a primary and then a general is the way it is written now if three or more file.

Alderman Bolton

Isn't it true that if one of those three gets an outright majority that ends the need for the so called runoff election?

Paul Bergeron

No.

Alderman Bolton

That is not the case?

Paul Bergeron

It is no longer the case. In the 2001 amendment to the Charter it simply says that the City Clerk shall declare that a primary is required if three or more candidates file for the office. If only two file then the election that would be held on January 10th would be a general election whereas if three or more file the January 10th election would be a primary and we would then have to come back for funding the general election some time in February.

Alderman Johnson

I had sent an e-mail to Corporation Counsel earlier today questioning the recall because we allow the recall it doesn't reference the new primary and why would we have to have a runoff if somebody does get the majority of the votes since it does not reference it in the recall area?

David Connell

The same reason that occurred in the previous recall. You are doing the best you can to interpret different parts of the Charter so that they make sense. The recall provisions date from 1913, the runoff provision is a later date, and the primary is an even later date. You have to read these together and try to discern what the intent of the entire Charter is taken as a whole. I don't think that the best interpretation would be that this would be completely different kind of election. I think you are supposed to follow the election Charter provisions as closely as possible.

Alderman Dion

I am surprised to hear that Mr. Chairman because I always thought that even though there are 3-10 candidates that if someone gets 51% of the vote they are automatically elected. I always thought that and I thought that was the law.

President McCarthy

I am as shocked as you are Alderman Dion.

Alderman Lozeau

To Mr. Connell, was there a revision to the Ordinance that doesn't specify the 51% or ...

President McCarthy

There was an amendment to the Charter to move the date of the primary forward, and it will appear that a consequence of that, which some of us may not have understood at the time, was that it eliminated the provision which allowed for an outright declaration of a winner in the primary election with 51%.

Alderman Lozeau

Would you happen to know what year that was done in?

President McCarthy

It was 2001.

Alderman Johnson

It was 2002.

Alderman Lozeau

We don't understand a law written in 2002, but we will interpret law written in 1913? Thank you.

Alderman Bolton

It was never 51%. It was always anything greater than 50%, which is a different number entirely.

Alderman Dion

I should have said 51% or better.

Alderman Bolton

Greater than 50% is the correct phraseology. It is in fact possible to win with a ½ a vote more than 50%. Fifty percent may be itself a less than full number. If an odd number of people vote 50% could be 61.5 votes or 62 votes wins.

President McCarthy

To go back to Alderman Lozeau's question, we still don't know whether there will be an election on February 14th until we see how many people file.

Alderman Lozeau

Thank you Mr. President.

President McCarthy

The motion is for final passage of R-05-342. Is there any further discussion?

MOTION CARRIED

Resolution R-05-342 declared duly adopted.

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President McCarthy

Alderman Tollner you have a Personnel meeting scheduled for this Thursday. Will the senior tax exemption be on the agenda for that meeting?

Alderman Tollner

It is on the agenda, but there weren't any plans to date to discuss that on Thursday.

President McCarthy

Okay so you have not made arrangements for Director Lemieux and ...

Alderman Tollner

No they are still working on their presentation.

Before we adjourn I wanted to thank the Board of Aldermen for the note and the flowers they sent to my wife when she was in the hospital. They were beautiful. I am sure Alderman Dion picked them out. You have very good taste. She wanted to send her thanks, and I would like to thank you for your thoughts and consideration. She is home.

Alderman Johnson

If that piece of legislation is not going to be discussed it will just die at the end of the year and be taken up again next year?

Alderman Tollner

Yes. The affective date of when we would have to pass legislation would be before, if I am not mistaken, April. I have been told there is no benefit pro or con in trying to pass it by the end of this term. There is a lot of work for the Financial Department and Maureen Lemieux's office to gather before we have all of the data that we need to have in front of us to make a decision.

Alderman Johnson

Thank you.

ADJOURNMENT

MOTION BY ALDERMAN DION THAT THE DECEMBER 5, 2005, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED
MOTION CARRIED

The meeting was declared adjourned at 6:54 p.m.

Attest:

Paul R. Bergeron, City Clerk