

A regular meeting of the Board of Aldermen was held Tuesday, October 27, 2009 at 7:30 p.m. in the Aldermanic Chamber.

President Steven A. Bolton presided; Deputy City Clerk Patricia Piecuch recorded.

Prayer was offered by Deputy City Clerk Patricia Piecuch; Alderman-at-Large Lori Wilshire led in the Pledge to the Flag.

The roll call was taken with 12 members of the Board of Aldermen present; Aldermen MacLaughlin was not in attendance. Aldermen Clemons and Plamondon arrived after the roll was taken.

#### President Bolton

I know Alderman Plamondon is at the Citizen's Police Academy and will be here as soon as he can.

Her Honor Mayor Donnalee Lozeau and Deputy Corporation Counsel Stephen M. Bennett were also in attendance.

#### REMARKS BY THE MAYOR

##### Mayor Lozeau

Thank you Mr. President. Members of the board, tonight I wanted to just take a moment regarding R-09-245 for the renovation and repair of the cannon at Greeley Park. Let me share some interesting facts about that cannon. It is a German Howitzer also known as a Krupp gun. It was manufactured in 1917. It was actually captured by U.S. forces on September 12, 1918. The gun was dedicated and presented to the city on November 1, 1933 by the Armistice Day Committee along with the American Legion James Coffey Post 3 and the VFW Post 483. The gun is a rare remaining example of a Krupp gun.

It is because of our community's big-hearted volunteers and benefactors that we are able to receive and maintain historic artifacts and many other treasures in our city. I am pleased and grateful to be able to say thank you to Statewide Collision, LLC for their general contribution of both time and dollars. We look forward to it returning to the part in the spring.

Also I would take a moment to remind people that we do have a citywide election November 3<sup>rd</sup>, next Tuesday. While it may seem like a quiet election season, we are very fortunate to have many candidates who have put their name on the ballot for consideration, and it would certainly be very rewarding to them to see a high voter turnout. As I have said frequently, good government should not be a spectator sport. It is a shared responsibility and requires the participation of all of our citizens. On Tuesday, November 3<sup>rd</sup> participation means voting.

Thank you for your kind attention tonight.

##### President Bolton

The record should reflect the arrival of Alderman Clemons while the Mayor was speaking.

RESPONSE TO REMARKS OF THE MAYOR – None

RECOGNITION PERIOD

**R-09-247**

Endorsers: Mayor Donnalee Lozeau  
Board of Aldermen

**EXTENDING CONGRATULATIONS TO CAROLYN WALLEY FOR HAVING  
EARNED THE GIRL SCOUT GOLD AWARD**

Given its first reading;

**MOTION BY ALDERMAN TABACSKO THAT THE RULES BE SO FAR SUSPENDED AS TO  
ALLOW FOR THE SECOND READING OF R-09-247  
MOTION CARRIED**

*Resolution R-09-247 given its second reading;*

**MOTION BY ALDERMAN TABACSKO FOR FINAL PASSAGE OF R-09-247  
MOTION CARRIED**

Resolution R-09-247 declared duly adopted.

READING MINUTES OF PREVIOUS MEETINGS

**MOTION BY ALDERMAN MCCARTHY THAT THE MINUTES OF THE BOARD OF ALDERMEN  
MEETINGS OF OCTOBER 13, 2009, BE ACCEPTED, PLACED ON FILE, AND THE READINGS  
SUSPENDED  
MOTION CARRIED**

COMMUNICATIONS – None

PERIOD FOR PUBLIC COMMENT RELATIVE TO ITEMS EXPECTED TO BE ACTED UPON THIS  
EVENING – None

PETITIONS – None

NOMINATIONS, APPOINTMENTS AND ELECTIONS

*Appointments by the Mayor*

The following appointment by the Mayor was read into the record:

Nashua Green Team

Deborah Novotny (New Appointment)  
65 McKenna Drive  
Nashua, NH 03062

Term to Expire: December 31, 2011

**MOTION BY ALDERMAN COX TO ACCEPT THE APPOINTMENT BY THE MAYOR AS  
READ AND REFER IT TO THE PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE  
MOTION CARRIED**

REPORTS OF COMMITTEE

Finance Committee..... 10/21/09

There being no objection, President Bolton declared the report of the October 21, 2009 Finance Committee accepted and placed on file.

Human Affairs Committee ..... 10/15/09

There being no objection, President Bolton declared the report of the October 15, 2009 Human Affairs Committee accepted and placed on file.

Committee on Infrastructure..... 10/14/09

**MOTION BY ALDERMAN FLYNN TO ACCEPT THE REPORT OF THE COMMITTEE ON INFRASTRUCTURE MEETING OF OCTOBER 14, 2009, PLACE IT ON FILE, AND GRANT THE PETITION FOR STREET ACCEPTANCE FOR EMERALD DRIVE**

ON THE QUESTION

Alderman Tabacsko

Thank you Mr. President. That is part of Ward 5. This has been a long time coming. I have talked to many, I have attempted to reach everyone, but I have only gotten to 6 I think of the 9 homes on the street that have responded, and everyone that I have spoken to agrees that, at this point in time, the work that was promised last November has been done satisfactorily. However, there is a big caveat with that in that the fact is nobody is very happy about the way this process took place.

This street has been in existence for some ten years, and it has been a constant struggle since then. The people in the neighborhood feel that they have simply been pointing out something to the city that will, in the long run, save the city money because it wasn't done correctly in the first place, and they feel that at every turn they were rebuffed and not listened to. That is a shame.

As I said earlier, the fact is the work that needed to be done is done at this point, but I think it is something that we should make a learning experience for future reference from the category of how not to do something. This is one of those. Thank you.

President Bolton

Is there further discussion?

Alderman Deane

Thank you. I tend to share some of Alderman Tabacsko's concerns. This street was first brought to us and tabled on the 22<sup>nd</sup> of February in 2006. For some reason other than those small drainage problems, it seemed to just dwindle into the stratosphere for years and years. I think perhaps the city should look at being a little more proactive in accepting some of these streets and not allowing this to take place.

As we know, I did meet with Alderman Plamondon and people from Hudson Paving and the Mayor's administration at the Public Works Department and we did discuss the work that needed to be done to help with some of the drainage. Unfortunately, some of the runoff issues are still there and it is on private property. The Mayor was kind enough to have members of her administration go through

and make sure there weren't any other violations there. We were told, through a communication from the Mayor's office, that there were not. Hopefully something will start growing on that piece of property that Mr. Johnson owns, some of the washout will stop, and the drains will stay clear. Thank you Mr. President.

Alderman McCarthy

I have to add that the problems go back substantially more than 2006. The first time we rejected the street was back when I was Ward Alderman and that was prior to 2004. At that time, we sent it back and had the first round of changes made to it. When it was first put in the sidewalks were not installed well enough. If you stood on them you would sink in, the catch basins were put in places that were not the bottom of the local area. One of them had to be rotated into the middle of the sidewalk to make it work. The pavement quality itself wasn't so good. The lampposts stuck up at angles that weren't straight. We had a lot of that taken care of. I have dealt with a lot of these acceptances over time and they take far too long because I don't think we do a particularly good job of making sure they are built right in the first place. I think we need to be more proactive about that.

Alderman Tabacsko's street sat unaccepted for ten years because it was not correctly built. Back when I was Alderman I had to deal with an issue where most of the property on the side of that hill wound up in the abutter's law across Ridge Road after a particularly hard storm. Not that we are going to see that many more roads built, but when we see them, we need to be much more diligent about the quality of construction in anticipation of the fact that we are going to have to accept them.

Alderman Teeboom

I got involved in this on the Infrastructure Committee. What it all came down to is a meeting in November of last year when different parties came together, neighbors and the Hudson developer and the attorneys. They all agreed on a course of action and the best we can tell that course of action was met; drainage was put in. What wasn't I think done properly is as a condition of this meeting, after all it is all paper, all assumption, there wasn't a test condition put in that says okay we do all that we plan to do, but we have to pass a final test. Not sure how you pass a test. Candidate Pressly yesterday mentioned through her tenure they brought a truck in loaded with water and checked the drainage. Maybe that is extreme, but you cannot make an assumption in a meeting and everybody says that looks good, we buy off on it, and then when you have finally done all of that find out there was disagreement whether the fix, which they had all agreed to, actually performed the job expected. Therein lays the problem.

I think the city has to be more careful in setting up a test condition and making a test condition and passing a test condition the condition for accepting the street. Thank you.

President Bolton

Is there further discussion? The motion is to accept and place on file the report of the Committee on Infrastructure of October 14, 2009 and grant the Petition for Street Acceptance for Emerald Drive.

**MOTION CARRIED**

CONFIRMATION OF MAYOR'S APPOINTMENTS – None

UNFINISHED BUSINESS – RESOLUTIONS

**R-08-137**

Endorsers: Alderman Jeffrey T. Cox  
Alderman Michael J. Tabacsko

**APPROPRIATING \$1,347,754.73 FROM UNANTICIPATED REVENUE-ACCOUNT #481-629 "SCHOOL DEPARTMENT REVENUE-SPECIAL EDUCATION, CATASTROPHIC AID" INTO ACCOUNT #981-5375 "SPECIAL EDUCATION EXPENDABLE TRUST FUND, AND EXEMPTING THE ANNUAL BUDGET LIMITATION BY \$1,747,755**

**R-09-208**

Endorser: Alderman Jeffrey T. Cox

**RELATIVE TO AUTHORIZING THE EXPENDITURE OF \$2,210,000 FROM THE SCHOOL CAPITAL RESERVE FUND FOR THE PURPOSE OF UPGRADING THE SCHOOL ACCESS CONTROL SYSTEM**

**R-09-237**

Endorsers: Mayor Donnalee Lozeau  
Alderman-at-Large David W. Deane  
Alderman Paul M. Chasse, Jr.

**AUTHORIZING THE ACCEPTANCE OF LAND IDENTIFIED AS TAX MAP 70, LOT 2 FROM DAVID E. ROCHE AND SARAH R. ROCHE**

Given its second reading;

**MOTION BY ALDERMAN DEANE FOR FINAL PASSAGE OF R-09-237  
MOTION CARRIED**

Resolution R-09-237 declared duly adopted.

**R-09-244**

Endorser: Mayor Donnalee Lozeau  
Alderman-at-Large Lori Wilshire  
Alderman-at-Large Ben Clemons  
Alderman-at-Large David W. Deane

**RELATIVE TO THE ACCEPTANCE AND APPROPRIATION OF \$290,929 FROM THE UNITED STATES DEPARTMENT OF JUSTICE INTO SPECIAL REVENUE ACCOUNT #331-6271 "JUSTICE ASSISTANCE GRANT 2009 (MULTI-JURISDICTIONAL)"**

Given its second reading;

**MOTION BY ALDERMAN WILSHIRE FOR FINAL PASSAGE OF R-09-244  
MOTION CARRIED**

Resolution R-09-244 declared duly adopted.

**R-09-245**

Endorser: Mayor Donnalee Lozeau  
Alderman-at-Large David W. Deane  
Alderman Michael A. Tamposi  
Alderman-at-Large Ben Clemons  
Alderman Mark S. Cookson

**RELATIVE TO THE ACCEPTANCE OF DONATED PRODUCTS AND SERVICES IN THE AMOUNT OF APPROXIMATELY \$4,890.30 FOR THE RENOVATION AND REPAIR OF THE CANNON AT GREELEY PARK**

Given its second reading;

President Bolton

I would like the board to be aware that the Board of Public Works issued a favorable recommendation as to this resolution at its special meeting of October 21<sup>st</sup>.

**MOTION BY ALDERMAN TAMPOSI FOR FINAL PASSAGE OF R-09-245  
MOTION CARRIED**

Resolution R-09-245 declared duly adopted.

UNFINISHED BUSINESS – ORDINANCES

**MOTION BY ALDERMAN COOKSON TO TAKE FROM THE TABLE O-08-43**

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

Yea: Alderman Chasse, Alderman Deane, Alderman LaRose, Alderman Tamposi,  
Alderman Cookson, Alderman Teeboom, Alderman Flynn

7

Nay: Alderman McCarthy, Alderman Wilshire, Alderman Clemons, Alderman Cox,  
Alderman Tabacsko, Alderman Bolton

6

**MOTION CARRIED**

**O-08-43**

Endorser: Alderman Mark S. Cookson

**REQUIRING DISCLOSURE OF CONTRIBUTIONS, GIFTS, TESTIMONIALS,  
AND HONORARIA BEFORE VOTING ON THE COST ITEMS OF A COLLECTIVE  
BARGAINING AGREEMENT**

Given its third reading;

**MOTION BY ALDERMAN COOKSON FOR FINAL PASSAGE OF O-08-43**

ON THE QUESTION

Alderman Clemons

I have stated before my opposition to this particular ordinance. There are a couple of reasons, and I will re-state those reasons again. The first is that we passed what I consider to be substantial campaign disclosure legislation earlier this year. That was in the way of getting the campaign finance reports from candidates on the web site so that they were easily accessed by the public in addition to being available in the clerk's office. This posting that we had done previously allows folks in the public to easily access those types of records. I think that is a big step in the right direction.

This particular ordinance in front of us, however, I think is not a very good way to go. I think the main reason is it is very prejudicial in that you are taking one piece of legislation that may come before the board and you are singling out particular Aldermen to disclose this information whereas if there was another set of resolutions that maybe somebody else, another Alderman had taken money from a special interest group, they would not have to disclose that fact in the same manner. I think this is a very prejudicial ordinance. I don't think that it is appropriate. I think we should vote no on this. Thank you.

President Bolton

Is there further discussion?

Alderman LaRose

Was this taken off the table?

President Bolton

Yes.

Alderman LaRose

I missed that. Thank you.

Alderman Cookson

Thank you Mr. President. I couldn't disagree with the comments from the previous speaker any more. Let me tell you what this ordinance does. This ordinance says that "In addition, after the second reading and before the vote of any resolution to approve a cost items of a collective bargaining agreement, each Alderman shall disclose the total sum of all contributions reportable under NRO §23-18, and gifts, testimonials or honoraria, reportable under NRO §23-23, received from the collective bargaining unit's certified representative or its related labor union or political committee."

This is nothing more than an extension of the ordinance that was adopted earlier that Alderman Clemons mentioned, the ordinance that he sponsored, which made the information available at the City Clerk's Office. Unfortunately, not everybody in the public has access to either being able to come into the City Clerk's Office or they don't have access to the internet to be able to access the information on line. The next best thing to do is to let the viewing public, the people, again a larger subset of the people that we represent, the constituents that we represent, know that on some of the biggest cost items to the City of Nashua that this is our position, we chose to accept a contribution from that collective bargaining agreement, and this is what our vote is on that particular collective bargaining agreement. Nobody asked you to take money from a collective bargaining unit's certified representative or its labor union or its political committee. This was the choice. There is no prejudice at all. It is simply letting the public know that this is the decision that we as an Alderman took and we accept the responsibility, and with full disclosure, we tell the public that we have accepted this contribution and we are voting on this particular collective bargaining agreement. Thank you.

**MOTION BY ALDERMAN MCCARTHY TO AMEND 0-08-43 IN THE TITLE BY STRIKING THE WORDS "ON THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT" AND IN THE BODY UNDER SECTION 5-98 BY STRIKING THE ADDED WORDING IN PARAGRAPH 1 AND ADDING A NEW PARAGRAPH 2, WHICH WILL READ "AFTER THE SECOND READING AND BEFORE ANY VOTE ON A RESOLUTION OR ORDINANCE, EACH ALDERMAN SHALL DISCLOSE THE TOTAL AMOUNT OF ALL CONTRIBUTIONS REPORTABLE UNDER NRO §23-18 AND GIFTS, TESTIMONIALS OR HONORARIA, REPORTABLE UNDER NRO §23-23 RECEIVED FROM ANY PARTY WHO MIGHT BENEFIT FROM THE PASSAGE OR REJECTION OF THE RESOLUTION OR ORDINANCE"**

ON THE QUESTION

Alderman McCarthy

I want to fix the problem that Alderman Clemons brought up. If there is indeed a concern about corruption on this board based on the acceptance of donations, campaign donations, and/or honoraria from persons who have an interest in the legislation, let's get to the core of it. Let's make people who take money from Pennichuck in their campaigns and then vote against the city's interest in its water supply state that before they make their votes. Let's make people who take money from those in the real estate industry state it before they take votes on re-zonings. Let's make everybody who has an interest that may not be that of the general public state it before they vote.

President Bolton

Is there further discussion as to the amendment?

Alderman Cookson

I would just like to add that there is no suggestion of corruption at all. I support the amendment that you just made. I think it is a good one. If we want to get to full disclosure and we want to make sure that we are open and accountable to the constituents that vote us into elected office, I think you have made an excellent suggestion and I would support that.

Alderman Teeboom

I have a question to the maker of that amendment.

President Bolton

State the question.

Alderman Teeboom

Would you be ready to support and vote yes on that amendment?

Alderman McCarthy

I certainly intend to vote yes on that amendment.

Alderman Teeboom

Thank you.

Alderman Deane

Could the proposed amendment be repeated if possible?

Alderman McCarthy

The motion was to strike the words "on the cost items of a collective bargaining agreement" from the title so that the title would read "requiring disclosure of contributions, gifts, testimonials or honoraria before voting". In the body, paragraph 1 of section 5-98 would be left as it stands prior to the ordinance, and paragraph 2 would be inserted, which reads "after the second reading and before

any vote on a resolution or ordinance, each Alderman shall disclose the total amount of all contributions reportable under NRO §23-18 and gifts, testimonials or honoraria, reportable under NRO §23-23 received from any party who might benefit from the passage or rejection of the resolution or ordinance.”

Alderman Deane

Thank you. I am thinking now if something is passed I would imagine you would have to be pretty up to date with whatever is happening with say a land use ordinance and who is involved and who might have contributed money to you in order to divulge it. If you don't thoroughly understand the day to day business dealings of some of these companies and who the players are then there could be some mistakes made or unbeknown to who these partnerships or whatever else that might require a little drilling into some of the business formats that are set up of some of these developers for instance using that as an example.

President Bolton

Are you asking someone a question?

Alderman Deane

I was asking that to Alderman McCarthy through you sir.

President Bolton

What is the question?

Alderman Deane

My question is I understand his amendment, but I think there is a lot more due diligence that has to be done on each piece of legislation that is brought before us to know who the people are that may be involved either then or in the future. I am struggling to understand how even with all good intentions anybody on this board would be able to follow suit with that. If something changes after the fact are people going to be pointing fingers at these people that they should have known this and that. I have problems with this amendment. I think the situation could be awful convoluted in the long run. I am not going to support the amendment. I think it will end up churning up more coals and creating more discourse than it is worth.

President Bolton

The only question I heard in there was are people going to be pointing fingers...

Alderman Deane

I have no question sir. I just had a statement. Thank you.

President Bolton

Okay. Very good.

Alderman Clemons

While the amendment does strike a balance as far as fairness goes, I think we are going down a terrible path. Campaign finance laws are intended to provide the public with a record of who is supporting who and what candidates are spending money where. They are not intended, at least in my opinion, to be a function of government in that every time we take a vote we have to disclose who may or may not benefit from this who may have supported you in your last campaign.

If I put a sign on somebody's lawn in the next election and then I vote on a stop sign down the street, do I have to disclose that I put a sign on that person's lawn?

President Bolton

No.

Alderman Clemons

This type of legislation leads us down that road. It is just not the right thing to do. I do have a question, through you President Bolton, to Attorney Bennett.

President Bolton

State your question.

Alderman Clemons

Can you please tell me what form – the way that the ordinance is written right now it says must disclose, but it does not say how. Can you interpret that?

Stephen Bennett, Esq.

I don't have a copy right in front of me now. If it is disclose; written form or orally. I assume you would have to, with what little I know about that proposed ordinance, it would occur prior to the vote. I assume on the night that the motion for final passage was made is a fair interpretation without looking at the proposed ordinance.

Alderman Clemons

Could it not also be construed that it was disclosed at the time that the campaign finance report was due, which is before the vote?

Stephen Bennett, Esq.

I am not sure that would be a fair reading of that ordinance as it has been presented.

President Bolton

Is there further discussion as to the amendment?

Alderman Teeboom

I have some difficulty with this. Almost like you can get into, and I do agree with Alderman Clemons, you can almost get into a witch-hunt. I am looking at the book here, and there is a section in the end

that talks about punishment; “whoever violates this section shall be punished as provided in Section 5-105.” Section 5-105 is two paragraph. The first one says “Any municipal employee who violates any provision of 5-95 to 5-100, which this is part of, shall, upon conviction, be subject to punishment and may be subject to discharge or removal from office.” Punishment may or may not fit the crime. I think it may tend to overreach.

The initial intent I think was to try to let the public know that if you received a contribution from a union and you are about to take a final vote on the collective bargaining agreement concerning that union that you would let them know I got some money. This goes way out into maybe never never land. I would prefer to think about this some more. This is fairly drastic action Alderman McCarthy and I have not seen the written document in front of me. I think I substantially understand what you said, but I would like to see it in writing. I would like to see it submitted in writing to all of us by e-mail. You didn’t do it, but kind of maybe you didn’t know this was going to be moved off the table.

**MOTION BY ALDERMAN TEEBOOM TO TABLE O-08-42 AND THE AMENDMENT PENDING RECEIPT OF ALDERMAN MCCARTHY’S AMENDMENT IN WRITING  
MOTION CARRIED**

Ordinance O-08-43 tabled with the pending amendment.

**MOTION BY ALDERMAN COOKSON TO TAKE FROM THE TABLE O-09-62**

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

Yea: Alderman Chasse, Alderman Deane, Alderman Tamposi, Alderman Cookson, Alderman Cox, Alderman Teeboom, Alderman Flynn

7

Nay: Alderman McCarthy, Alderman Wilshire, Alderman Clemons, Alderman LaRose, Alderman Tabacsko, Alderman Bolton

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**MOTION CARRIED**

**O-09-62**

Endorsers: Alderman Mark S. Cookson  
Alderman-at-Large David W. Deane  
Alderman Michael A. Tamposi, Jr.  
Alderman Paul M. Chasse, Jr.  
Alderman-at-Large Ben Clemons  
Alderman Richard P. Flynn

**RELATIVE TO THE DISPOSITION OF RESOLUTIONS TO APPROVE THE COST ITEMS OF COLLECTIVE BARGAINING AGREEMENTS**

Given its third reading;

**MOTION BY ALDERMAN COOKSON FOR FINAL PASSAGE OF O-09-62**

ON THE QUESTION

Alderman Cookson

Thank you Mr. President. We took this up while I was in Orlando and I participated via conference call last time. I want to just talk a little bit about this particular ordinance very quickly. Again, this ordinance is intended to both provide the public as well as the Board of Aldermen an opportunity to

react to a conversation about collective bargaining agreements that may have happened in such an instance that it goes before a committee on a Monday evening and it comes before the Board of Aldermen the very next Tuesday under suspension of rules. The collective bargaining agreement is not identified on the agenda, the public may or may not know that they have an opportunity to speak about this particular ordinance, share their input on the collective bargaining agreement and it also puts some Aldermen at a disadvantage where they may not have been able to participate in the conversation the preceding night and aren't prepared, they would like to see the transcripts and they would like to have some questions answered before they vote on this collective bargaining agreement.

The essence of this ordinance is not that we can't do it. It doesn't say that we can't bring it before the Board of Aldermen under suspension of rules if there we are running tight on time, if we are running right up against that 30-day time limit. What this ordinance suggests is there is a better way to do it to make the public aware and to make sure that the Board of Aldermen has appropriate time to read the transcripts so that they are prepared to make the best decision and vote on. That is if there is time, if there is time between the Board of Aldermen meeting and before the 30 days runs out that we as the Board of Aldermen take it as a practice to call a special Board of Aldermen meeting, appropriately post it, and allow the public an opportunity to comment on the collective bargaining agreement or that particular ordinance. That is the essence of this particular ordinance. I would appreciate a favorable vote this evening. Thank you.

Alderman Tabacsko

Thank you. I voted against this the last time and I intend to vote against it tonight. I think that everything this attempts to do is already available to us, and this does nothing except add another ordinance to the books.

I don't think that it moves us forward in any way. If what we want to do is what this provides, it is already available to us and we ought to do that. I am voting against this because I don't see it as necessary. Thank you.

President Bolton

The record should reflect the arrival of Alderman Plamondon.

Alderman Teeboom

I have a question Mr. President to you. How much notice do you have to have for a special meeting?

President Bolton

Twenty four hours.

Alderman Teeboom

That is all?

President Bolton

Yes. Is there further discussion?

Alderman Cookson

Just a comment based on the statement provided by the Alderman of Ward 5 – even though we already have that available to us as a practice, what it doesn't allow us to do is notify the public that we are going to be voting on that particular ordinance and it doesn't appear on the agenda. Therefore, we should give the public ample time to come in and present us their opinion on the ordinance or collective bargaining agreement. That is not allowed to us under the suspension of rules.

Alderman Tabacsko

My reference to what is allowed to us is to not suspend the rules and call for a special meeting. That is certainly an option for us, and it was an option in the case that generated this particular legislation. It was voted down by a majority of this board. That is why I am saying it is an option that is available to us to go ahead and call a special meeting, post it, etc. In that case, there happened to have been enough time that a special meeting would have fit. I didn't realize it at the time. I thought we were under the gun trying to get this thing in in order to meet the 30-day deadline, and a majority of the board agreed with me.

The fact that we already have the ability to do it is there and this doesn't do anything except cause additional consternation and inefficiency in the operation of our government. Thank you.

Alderman Clemons

I couldn't agree more with Alderman Tabacsko on this. When we get elected it is our job to make the right decisions. Suspending the rules is something that we should take seriously. On the evening in question, when that happened, we took a vote and the vote was to suspend the rules. If you didn't want to do that then you should have voted no. We should do that every single time and make that decision every single time.

That is how democracy works. That is why we have a representative form of government in this city because we elect our representatives to make the tough decisions like that. Sometimes we have to make decisions that are not popular. Sometimes we have to do things because we are required to do them by the state. In this case, it was we had a 30-day deadline and we needed to meet it.

I was originally a sponsor of this, but as I sat back and I thought more about it I also thought of the fact that there is other legislation out there that could potentially come up where we have to suspend the rules, and my question is if we are going to pass this why wouldn't we pass it for that? Why not eliminate suspending the rules? I just think this is a reactionary piece of legislation to an isolated incident, and I cannot support it.

Alderman Deane

Thank you. Democracy should happen while the sun is out. That is not what happened here. This also happened during Sunshine Week if I remember correctly, and I believe the Telegraph editorial board took this board to the woodshed for doing what we did. There was no sense of urgency. It was clear to me that the fire department was well notified of the intentions of what this board may do because they were all here that evening and it wasn't even on the agenda.

Once again, it was a failure to communicate. I really think the essence of having to pass it in such a big hurry that we couldn't have a special meeting – a few years ago we had more special Board of Aldermen meetings than we had regularly scheduled Board of Aldermen meetings, and we had

ample opportunity to do that and to let the public have an opportunity to be heard if they cared to do so.

I believe the contract was supported by a majority of this board so it wasn't the contract itself it was the process. I don't think this adds any inconvenience to anyone. I think it allows us to allow for clean open government when we are spending the taxpayers' money. Thank you Mr. President.

President Bolton

Is there further discussion?

Alderman Flynn

Thank you Mr. President. I was here that Monday evening. I could have been sick and missed out on the opportunity to get it first hand, but I happened to be here that Monday evening. I had spent quite a bit of time trying to understand that particular contract. I don't know if I had a handout that evening or not, but I know I had spent a lot of time with CFO Gilbar trying to really understand the true costs of that contract.

I was almost the word is flabbergasted that night that that was allowed to transpire. I sat here and I thought for sure that the president of the union was here by mistake. I said I don't know why he would be here; somebody must have given him some bad information. As an Alderman, no one gave me an insight into what was going on, not even an e-mail. I didn't come prepared with any of my information to speak that evening. I don't know why we would want to replicate what happened that evening. I didn't think it was fair to the public. It certainly wasn't fair to me as an Alderman I thought to not have an opportunity to discuss as clearly as possible what my insight was to that contract.

I know the chairman of that committee tried to give a quick report of what happened the previous evening, but that certainly can't do justice to an hour or an hour and a half meeting of what really transpired. I can't understand why we would ever want that to happen again quite frankly. It wasn't fair to several of the Aldermen on this board that other people seemed to be very aware of what was happening ahead of time and we didn't. It certainly wasn't fair to the public. I don't know why we would want to not correct that situation and make certain that at least on items that are \$40 million contracts and things like that that we have every opportunity to have full discussion. I think it is a good piece of legislation. Thank you.

President Bolton

Is there further discussion?

Alderman Teeboom

At the risk of getting a few people mad at me, I need to ask a question to Attorney Bennett if you will allow me.

President Bolton

State the question.

Alderman Teeboom

Attorney Bennett, Attorney McNamee in the past has said that the legal office made the determination that any board cannot dictate to a future board about how it ought to conduct itself under the rules, Mason's rules, including suspension of a rule. I am confused on this because we have several ordinances that say cannot be suspended by any board, which is a rule. Now in fact is it your opinion that we can bind future boards to not be able to suspend the rules particularly in this instance of legislation?

Stephen Bennett, Esq.

Thank you. Not that I have an answer for you.

President Bolton

It is a general rule of law of representative bodies that a representative body has such power as it has been granted by statute or constitution or charter provision, and it cannot of its own doing add to or subtract from that power. It can order its affairs, it can decide when it is going to exercise its power and by what process it is going to exercise its power, but if it has the power to do something it cannot by a majority vote take that power away from future boards. That is the general rule.

Alderman Teeboom

Okay let me ask you then since you were at one point the city attorney, what is your interpretation of the suspension? We are basically saying to a future board, if this passes, you cannot suspend your rules.

Alderman Cookson

Point of Order...

President Bolton

I don't believe it says that.

Alderman Teeboom

If that is okay that is fine with me. I just need to understand this.

President Bolton

I do not believe that there is anything in here that prohibits the rule that this ordinance would establish from being suspended on a proper vote of the board.

Alderman Teeboom

I am not sure you answered my question. Maybe someone else can give it a try.

President Bolton

Well then you have to re-state the question. Your question presupposes that the legislation before us contains within it a provision that it never be suspended. I do not think it contains that provision.

Alderman Teeboom

It says it may not be disposed of under suspension of the rules meaning you cannot suspend the rules for the purpose of calling...

President Bolton

You cannot suspend other rules in order to bring that before the board on a particular evening. Alderman Cookson already explained that the rule that this establishes could itself be suspended.

Alderman Cookson

Thank you. I appreciate that commentary. It doesn't restrict the suspension of rules, it adds a condition that says if there is time between the Board of Aldermen meeting and the 30-day time limit that we have to dispose of a particular contract, then it would be advisable to call a Special Board of Aldermen meeting rather than suspend the rules. It doesn't restrict us from doing it, it just codifies the fact that we as a body would like to practice letting the public have the opportunity to speak and give the Board of Aldermen, each member, an appropriate amount of time to read the transcript and be prepared to ask questions about such an important document.

Alderman McCarthy

I want to try Alderman Teeboom's question a different way because I think I just heard something important. This ordinance would establish a rule, which is in fact itself suspendable.

President Bolton

That is my understanding.

Alderman McCarthy

So if we passed this ordinance a year ago and it had been in effect during the time in question, the motion that the rules be so far suspended as to allow for the introduction of the contract would still have been in order and would in fact have suspended this rule and in fact events would have proceeded exactly the way that they did regardless of whether or not this ordinance was in place, and it would have been in keeping with the ordinances had that occurred.

President Bolton

Yes.

Alderman Teeboom

Okay. Got it.

President Bolton

Is there further discussion?

Alderman McCarthy

I guess in that case I don't see the point. We are adding ordinances that have no affect.

President Bolton

Is there further discussion?

Alderman LaRose

Thank you. But it seems to me what the maker of the ordinance is trying to say is that we should tread slowly on some of these things. We did have the opportunity to have a special meeting. Even you mentioned that we could have had a special meeting had we defeated the motion to suspend the rules.

President Bolton

I was prepared to call such a special meeting.

Alderman LaRose

I think what is happening here is this ordinance is trying to make a suggestion that is the way we should do our business versus suspending the rules to vote on it that very evening so close to the meeting of the budget committee, and give everyone a chance to look at what the contract said and give the chance to the public to come in and state their views. Thank you.

President Bolton

Let me suggest something else just so we are all on the same page. A motion to withdraw a matter from committee is not suspending the rules. That motion requires only a majority vote. Suspending the rules requires a 2/3 majority vote. As long as we understand that and everyone is on the same page. Is there any further discussion?

Alderman Clemons

I just again want to say, and especially in light of the fact that this is a suspendable rule that we are creating, I could not agree more with Alderman McCarthy in that this is something that would have had the same situation take place. Again, I don't see the point in doing this either.

The other thing is I think there are other situations where this would also, if we do pass this, this is something that someone else is going to want something like this for a particular set of things. It could be a stop sign that we are installing somewhere, it could be anything along those lines that comes in under suspension and people feel that well gee I didn't get a chance to come to the meeting and speak. There is a reason that we do things in this Chamber. I am all for sunshine. I think that it is important that we communicate effectively to our constituents; I think it is important that we allow them to speak and to share their views on any particular subject, but I don't think that we should tie our hands also in the process.

Alderman Cookson

I respect the previous speaker's comments. I think there is a big difference between a stop sign and a \$40 million contract. Thank you.

Alderman McCarthy

Apple pie is good. We don't have an ordinance for it. In general, sunshine is good. We think it is good. We try to do things on a schedule where we put legislation to committee, we publish the

minutes, and then we act on it when it comes back. Sometimes there are circumstances that don't require that. It is not just about collective bargaining agreements it is about everything. We need to keep that in mind as a board. We understand that. Five hundred pieces of legislation go through this board in a two-year term. Maybe one of two of them are dealt with that way because it is required by the expedience of the moment.

I think we well understand the point. It doesn't need to be an ordinance and it doesn't need to be an ordinance that has no teeth.

President Bolton

Is there further discussion? The motion is for final passage of O-09-62.

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

Yea: Alderman Chasse, Alderman Deane, Alderman LaRose, Alderman Tamposi,  
Alderman Cookson, Alderman Teeboom, Alderman Flynn

7

Nay: Alderman McCarthy, Alderman Wilshire, Alderman Clemons, Alderman Cox,  
Alderman Tabacsko, Alderman Plamondon, Alderman Bolton

7

**MOTION FAILED**

**MOTION BY ALDERMAN COOKSON TO TABLE**

**MOTION CARRIED**

***Division Taken***

Ordinance O-09-62 tabled.

NEW BUSINESS – RESOLUTIONS

**R-09-248**

Endorser: Mayor Donnalee Lozeau

**RELATIVE TO THE TRANSFER OF \$434,581 FROM ACCOUNT #597-86605**

**“CONTINGENCY – NEGOTIATIONS” AND \$26,961 FROM ACCOUNT #591-86005**

**“CONTINGENCY – GENERAL” INTO VARIOUS DEPARTMENTAL BUDGETS FOR THE  
PURPOSE OF FUNDING APPROVED COLLECTIVE BARGAINING AGREEMENTS**

Given its first reading; assigned to the BUDGET REVIEW COMMITTEE by President Bolton

**R-09-249**

Endorser: Alderman Michael A. Tamposi, Jr.

Alderman Marc W. Plamondon

Alderman Michael J. Tabacsko

Alderman-at-Large Ben Clemons

Alderman-at-Large Brian S. McCarthy

**AUTHORIZING THE ACCEPTANCE OF A PEDESTRIAN EASEMENT DEED ON THE  
NORTHERLY SIDE OF THE NASHUA RIVER FOR PUBLIC ACCESS AS CLASS A AND B  
TRAILS UNDER RSA 231-A**

Given its first reading; assigned to the PLANNING & ECONOMIC DEVELOPMENT COMMITTEE and the PLANNING BOARD by President Bolton

NEW BUSINESS – ORDINANCES

**O-09-82**

Endorser: Alderman-at-Large Fred S. Teeboom

**ESTABLISHING AN ORDER OF BUSINESS FOR SPECIAL MEETINGS,  
STANDING COMMITTEE MEETINGS AND PUBLIC HEARINGS**

Given its first reading; assigned to the PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE by President Bolton

**O-09-83**

Endorser: Alderman-at-Large Fred S. Teeboom

**PROVIDING FOR A MOTION BY THE ORIGINATING SPONSOR FOLLOWING SECOND  
READING OF THE LEGISLATION**

Given its first reading; assigned to the PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE by President Bolton

**O-09-84**

Endorser: Mayor Donnalee Lozeau

**INCREASING THE PERMIT FEE FOR LANDFILL DISPOSAL FOR RESIDENTIAL  
NONCOMMERCIAL VEHICLES**

Given its first reading; assigned to the PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE and the BOARD OF PUBLIC WORKS by President Bolton

PERIOD FOR GENERAL PUBLIC COMMENT

James Cutter, 86 Palm Street

Stated he felt good after a presentation to Mayor Lozeau at the last Aldermanic meeting. The following morning he brought a copy of it to her office as she has continually believed the Legal Department even though he has provided the laws and ordinances proving them wrong. He stated she has not replied to him or provided him with an appointment.

Stated the city's web site has "when the city is sued the city attorney is the defense council" and "when the city's interests are infringed, the city attorney protects them". Stated in his case he is not suing the city or infringing on the city's interest when asking the city to correct their mistakes. Commented his is not a private matter as there are city errors that have made a 7' 3" wide driveway difficult for him.

Remarked according to the city code book 5-38(a) Corporation Counsel is responsible for keeping current with respect to all laws and regulations affecting the city. Stated the legal department keeps avoiding the fact that building permit licenses were approved in error by not having the boundary lines agree with the Deed.

He went on to state originally the building permit licenses for 1950 and 1971 for his neighbors were on the same paper. He has caused the building safety department to correct their records so there is a paper for each year. After a year of persistence, the assessing department has changed the tax map for his neighbors from agreeing with the 1950 building permit license to agree with their Deed. Stated if the tax map has been changed to agree with the Deed, then the building permit licenses have to be changed to agree with the Deed.

Stated after that has been done, his neighbors need to be informed of the changes and return the 3' wide strip of land taken from him. The strip of land is known as privilege and protected by the U.S. Constitution.

He read into the record; “building permits required RSA 676-11 - after a municipality adopts a building code any person who intends to erect or remodel any building in the municipality shall submit the plans to the building inspector for his examination and approval prior to commencing. Plats NRO 36 – all applications for building permits shall be accompanied by a plat in duplicate, drawn to scale showing the actual dimensions of each lot to be built upon and size and location of each building. Tax maps RSA 31-95a – each tax map shall show the boundary lines of each parcel of land. Privilege – RSA 627-9 means those out buildings which are approximately, directly, and intimately connected with a dwelling together with all the land or grounds surrounding the dwelling such as are necessary, convenient, and officially used for domestic purposes. He quoted from the Derry District Court – July 16, 1996 “A driveway leading directly to a house is part of the privilege of the home as traditionally accorded constitutional protection.”

#### REMARKS BY THE MEMBERS OF THE BOARD OF ALDERMEN

##### Alderman Plamondon

Informed the board, the Fairmont Street/Baldwin Street/Little Florida Crime Watch is up and running and proceeding rapidly. He commented on the large turnout to date. Meetings are held the 4<sup>th</sup> Thursday of the month at the Amherst Street School. The next meeting will be January 28<sup>th</sup> at 6:30 p.m.

Prior to that will be the Tree Streets Crime Watch meeting, which is the 4<sup>th</sup> Wednesday of the month at 6:30 p.m. held at 58 Ash Street each month.

Stated his tardiness was due to attendance at the 21<sup>st</sup> Citizen’s Police Academy graduation, which was the largest academy the Nashua Police has conducted with 42 members. The next academy will begin in September. Anyone interested should contact Mr. Ed Lecius at the Nashua Police Department or look for a posting in the Nashua Telegraph.

##### Alderman Teeboom

Stated he attended the quorum for the candidates for Alderman-at-Large the prior evening. Commented the question he found most interesting was about public access television. He remarked candidate Pressly was very elegant in her remarks of why she felt public access television is a terrific idea, candidate Deane was certainly in favor, candidate Cookson is in favor, and candidate Bolton is not in favor. Candidate Bolton provided two reasons why he is not in favor. He remarked if you want to be on television you ought to pay your own way. He also stated a concern with sexual explicit pornographic material on the P channel.

Alderman Teeboom remarked he has seen public access in Lowell, MA, Merrimack, NH, Bedford, NH, Derry, NH, Londonderry, NH, Manchester, NH, Concord, NH, and Keene, NH, and has never seen anything sexually explicit.

Informed the board robotics for the Chamber, the auditorium, school board room, and the studio at the high school was discussed and the process is moving forward.

##### Alderman Cookson

Stated next Monday, November 2<sup>nd</sup>, at 7:00 p.m. at the North High School board room, the residents of Ward 1 and specifically those residents around Nashua High School North as well as the Birch Hill Elementary School are invited to a presentation by Goodman Networks on their proposed Internet access wireless communication facilities (WiMax towers). The issue is currently before the Board of

Education. Being proposed are two 150' towers that will deliver WiMax. Being proposed is the construction of these towers on school property.

Alderman Clemons

Adding to the discussion on the candidates' responses to the question of public access television stated he felt all four candidates answered the question with their true feelings. Felt what was expressed was true to each candidate and their concerns were valid.

Reminded the public that Tuesday, November 3<sup>rd</sup> is election day. All citizens should do their civic duty and get out and vote.

Alderman Wilshire

Commenting on the crime watch meetings within the city stated there are a number of groups that are fairly well attended. Applauded the efforts of Joe Brown and Ed Lecius who attend every meeting.

Invited everyone to the 10<sup>th</sup> Annual Nashua Soup Kitchen & Shelter Dinner & Auction at Sky Meadow on November 21<sup>st</sup>. Tickets are available at [NSKS.org](http://NSKS.org).

Alderman McCarthy

Remarked as he travels if there is a public access channel available he watches it. Although he has yet to see anything that made him stay tuned, when he was in Long Island he was treated to probably the foulest mouthed imitation of Wayne's World without the taste that he has ever run across, and programming he certainly would not want to endorse having in Nashua. Stated he has researched case law and found out in the Midwest, perhaps Kansas City, they were forbidden by the courts from pulling the plug on their cable television public access channel when the American Nazi Party wished to show a hate speech on it and their reaction was to take the test station off the air.

In Salem, NH, when a group wished to air a fun loving romp with nudists through their summer on the beaches and the cable station refused to air it, they were sued by a Nashua resident and lost over a free speech issue. Stated it is not without peril to put such programming on the air.

Extended congratulations to his son. He informed the board over the weekend he had the opportunity to go down to the Pocono Mountains Film Festival and for the second year in a row came back with a trophy. Last year he won best short film and this year he won best music video.

Alderman Deane

Congratulated Laurie Ethier, a volunteer at the Mt. Pleasant Elementary School, who received two awards at the New Hampshire Partners in Education annual Blue Ribbon Breakfast. She was also honored with the Outstanding School Volunteer of the Year award for the Nashua School System.  
President Bolton

Stated his agreement with Alderman Deane in his sentiments regarding the school volunteers and in particular Ms. Ethier.

Reminded Alderman Teeboom he proposed legislation that would have adopted the procedural rules for the use of the Public Access Television station, and that those rules as proposed had a long section explaining that access to the station would not be denied to sexually explicit programming. Remarked that was the source of his initial concern not anything he has viewed himself.

Committee announcements:

Alderman Plamondon

The Committee on Infrastructure will meet tomorrow night at 7:00 p.m. in these chambers.

ADJOURNMENT

**MOTION BY ALDERMAN LAROSE THAT THE OCTOBER 27, 2009 MEETING  
OF THE BOARD OF ALDERMEN BE ADJOURNED  
MOTION CARRIED**

The meeting was declared adjourned at 8:52 p.m.

Attest:

Patricia Piecuch, Deputy City Clerk