

HEARING BEFORE THE CITY COUNCIL, JANUARY 23, 2012

Hearing opened at 6:33 P.M., with Councillor Rowlands, Chair of the LEGAL AFFAIRS COMMITTEE presiding.

All members were present.

The hearing was interrupted by the fire alarm at 6:34 P.M.

Hearing reconvened at 6:48 P.M.

The hearing is continued from December 12, 2011.

The following PETITION was the subject of the hearing:

21-12 Greg Chapdelaine, Purchasing Agent: Rescind the Leominster Ordinance Chapter 2B, Sections 2B-1, 2B-2, 2B-3 and 2B-4, "Preference for city residents on public projects".

Councillor Rowlands said a petition was originally submitted by the Mayor in 1994 and passed into Ordinance form in 1996 and has not been utilized until recently. He said the issue of enforcement is outside the jurisdiction of the City Council and what we have before us is the action on rescinding the Ordinance. As a Committee we asked for a ruling from Kopelman and Paige which stated there were concerns about the legality of our Ordinance relative to precedence established in the Fall River court case. There were some differences in Leominster's situation as compared to Fall River, the percentages requirements of the apprentice program. The City Solicitor felt that those changes were not enough to make it stand up to the legality of being questioned in court. Another letter was sent back to Kopelman & Paige to see if there was an area that we could have wording, either an amendment to change the existing Ordinance or maybe a policy format. He said the Council has not heard back from them.

Mr. Chapdelaine said at the last meeting you asked me to poll some of the other cities who had an Ordinance that was similar to this. He said he spoke with one of the board members of the Purchasing Agents of Massachusetts and was directed to four of the large communities that had something at some point in time. The City of Springfield had a Residency Requirement Ordinance on the books but last fall when the Fall River court decision was handed down, Springfield reversed most of the provisions in the Ordinance that were similar to Fall River that they found to be illegal. The City of Cambridge has an Ordinance on the books which mentions residency minority businesses and women owned businesses goals but not legal requirements. They do have an Ordinance requiring an apprenticeship program. He said the Purchasing Agent from Cambridge is currently in court with Ucanne, the agency that sent us the information about the Fall River case. They are currently in a legal issue with Ucanne and because of that the City Council in Cambridge will be taking up a discussion in the near future regarding the possible rescinding of their requirements and goals. He said Somerville did not have anything although this past year, 2011, they were going to take up a discussion of enacting one but again they are running scared of the Fall River court decision. According to the Director of Purchasing in Worcester they use to have a residency requirement and it worked quite well in their City and contributed that to being a large City. They had a full time Compliance Officer that enforced but with the economy and budget cuts that officer was cut and enforcement was difficult. Mr. Chapdelaine said about four years ago the City Solicitor instructed the Purchasing Department to disregard the Residency Requirement Ordinance as stated on their website. He said he has become aware that Worcester was challenged in court and they lost some court action which required them to rescind that portion.

Councillor Rowlands said we sent out two recommendations, one to legal counsel and one to the Mayor. The Mayor's letter was read as follows:

HEARING BEFORE THE CITY COUNCIL, JANUARY 23, 2012, continued

Dear Lynn,

I am writing in response to the City Council's request for my opinion on Petition 21-12, rescinding the Leominster Ordinance regarding preference for city residents on public projects.

I have spoken at length to people on both sides of this issue. All are in agreement, including me, that we should take every step possible to hire local residents and businesses to work on city projects. However, it is my understanding that legal challenges have arisen in other communities concerning this type of Ordinance. It is important that we understand those legal issues and that the Council makes a determination whether or not to rescind the Ordinance based on the opinions of the City's legal counsel. If the decision is made to rescind the Ordinance, the City can still put a local hiring requirement within individual contracts on future projects on a case by case basis.

If you have any other questions, please feel free to contact me. Thank you.

Sincerely,
Dean J. Mazzarella
Mayor

Councillor Rowlands said a question was raised regarding a policy. The Mayor talked about an option for putting it in on a contract on a case by case basis. He said as a Purchasing Agent, if there was a policy instead of an Ordinance, any ideas on how that policy would be enforced or written that you could put it in on a case by case basis in the contracts?

Mr. Chapdelaine said that should be a follow up question to Kopelman and Paige because if it is not legal as an Ordinance it might not be legal as a policy. Assuming it is, it might be something that would work on very large construction projects because of the larger scope of work and a larger pool of people available. He said he can't prove it but he imagines that would be the area it would work as opposed to now, across the board for any dollar project.

Councillor Rowlands said we did ask for wording from Kopelman & Paige basically saying if there an Ordinance or policy format that would allow some form of residence requirement and we are waiting for that. As for the Library project, was it in the contract?

Mr. Chapdelaine said yes, the wording was included in the contract.

Councillor Rowlands asked if he knew of any other references to this section of the Ordinance or separate language that enforces some sort of residency in the past.

Mr. Chapdelaine said no, the Library is the only one that has come to his attention, and of course the high school and one or two small ones that he has done since then.

Councillor Rowlands said at the last meeting the project manager made it clear that we are not meeting the 25% across the board, however, there are more Leominster people working on that site, that probably would be, if we didn't have this law. There are 2 CTE student graduates that are working and one has become a member of the union.

Councillor Chalifoux Zephir asked if the questions that were sent to Kopelman & Paige included clarifying the policy question vs. mandate and goals vs. the mandate?

Councillor Rowlands said the question was asked is there any wording that will make an amendment to this Ordinance that would make it withstand a legal challenge and what is the possibility of a policy vs. an Ordinance.

Councillor Chalifoux Zephir asked what the City's payment terms were.

Mr. Chapdelaine said about thirty days. He said there are certain payment terms in every contract. Payments can be negotiated. In the case of the high school, typically the Building Committee meets once a month but because the high school is a renovation there are a lot of decisions made on the fly they are meeting twice a month so they are approving invoices twice a month and the school is processing them. The general contractor has no problem with the schedule of payment as they are getting a steady flow of payments.

Councillor Freda said it appears that it is not as simple as we are all trying to make it. She said sitting on the School Building Committee she was bothered by the unions saying they don't have the people to do the jobs. If the unions can't find their own workers to come to the table, who do you depend on to get these people to come forward? She said if a contractor has a project going and someone from Leominster is working on a project in Worcester and he is guaranteed work for a year on that project, he is not going to want to come to Leominster and work a month and then have to wait since the job is not continuous. It isn't as simple as we would like it to be and rescinding it isn't going to be easy either.

Councillor Rowlands said the first question is legality then go to another level.

Ronald Cogliano, President and CEO of Merit Construction Alliance, Kingston MA distributed literature to the Council which is on file in the City Clerk's office. He said Merit Construction Alliance is an organization that represents open shop contractors and their employees in Massachusetts. He said the Utility Contractor's Associate of New England was the one who filed the lawsuit in Fall Rivers. He said they have a history of challenging residency requirements throughout Massachusetts. He said in the packet there is a memo dated September 27, 2011 from David Moore, the City Solicitor for Worcester, to the City Councillors regarding the potential of revitalization of a residency requirement. He said back in 2002 the City of Worcester was engaged in building a new vocational high school and had a residency requirement as part of their bid specifications. Ucaane, an association of union and non-union contractors, filed a lawsuit seeking a temporary restraining order and ultimately an injunction against the City. As a result of the court case, which is in the packet, there is an article from the Worcester Telegram.

HEARING BEFORE THE CITY COUNCIL, JANUARY 23, 2012, continued

In 2010 the City of Holyoke was approached with other provisions of the residency requirements. As you will see information in the packet a quote from Assistant City Solicitor Karen Lancuna also mentions a potential violation of the U.S. Constitution's Privileges and Immunity Clause. Also included is a residency requirement the City of Taunton has. That requirement was also challenged. The City of Taunton decided not to go to court with it and ended up paying \$24,000.00 in attorney's fees to the plaintiff who is a contractor.

Mr. Cocliano said the issue of residency requirement is a complex issue and it doesn't work. It would be great if we could do it for every community but that is not the industry works. He paraphrased an editorial from the Lowell Sun "If the City of Leominster can manipulate the job market to benefit City residents so can every other community. And for every worker hired for a job by virtue of a Leominster address another Leominster resident would lose a job for lack of an address in Worcester, Fitchburg or elsewhere." He said not only did Worcester lose but Lowell lost in 2001 on a residency requirement and Fall River was the ultimate big loser. The City taxpayers in Fall River were on the hook for \$150,000.00 which was negotiated down.

Roger Vautour of 78 Revolution Drive is in opposition. He said if a little enforcement was shown most people would follow through. He said he visited the high school project and was told by Mr. DeBettencourt there were 6 Leominster residents working on the project. He told me that if that language was not in the contract he wouldn't know if there would be any Leominster residents working there. He said we say local jobs, buy local, shop local, it would be nice if we could hire local.

Dave Leger of 103 Weathervane Drive said he is the union rep for the laborers unions out of Fitchburg, MA. He said work has been slow in the area and he sent 25 laborers to Seabrook, NH. At the time he could not fill the one job that came in for the high school project. He said the union took in a CTE graduate and he is an asset to the union. He said he would love to take as many kids from the trade school if possible as long as we have the work. If we don't have an ordinance in Leominster there is no way I could have taken him in.

Ray Bissonnette of 158 Adams Street said they have had 11 Leominster residents on this job. Three of them came directly from the trade school. He said in talking with them they told him if it wasn't for the residency requirement they wouldn't be working at the school. They are on the job because of what this Council has done. He said we need to keep this 25 % to allow the kids at the trade school to have the opportunity to work in the city of Leominster when they graduate.

Councillor Salvatelli asked Mr. Cogliano what his organization is about.

Mr. Cogliano said it is a non profit trade association that represents merit (non-union) shop contractors and their employees throughout Massachusetts. Their members make up 85% of the construction market place in the state as according to the Department of Labor statistics. He said they support prevailing wages and training. Our members are commercial contractors which pay dues which pays for salaries within the organization.

Councillor Freda said it is important to talk about lawsuits that may cost taxpayers dollars but it is just as important to talk about the taxpayers that are trying to secure the jobs.

HEARING ADJOURNED AT 7:38 P.M. AND CONTINUED TO MARCH 12, 2012 AT 6:30 P.M.

Lynn A. Bouchard, City Clerk
and Clerk of the City Council

HEARING BEFORE THE CITY COUNCIL, JANUARY 23, 2012

Hearing opened at 7:38 P.M., with Councillor Rowlands, Chair of the LEGAL AFFAIRS COMMITTEE presiding.

All members were present.

This hearing is continued from December 12, 2011.

The following ORDINANCE was the subject of the hearing:

Relative to amending Chapter 13, Section 77 of the Revised Ordinances entitled "Stop Signs" by inserting "Main Street, against westbound drivers at intersection with Electric Avenue."

No one in the audience spoke in favor or in opposition of this Ordinance.

No Councillors spoke.

HEARING ADJOURNED AT 7:40 P.M.

Lynn A. Bouchard, City Clerk
and Clerk of the City Council

HEARING BEFORE THE CITY COUNCIL, JANUARY 23, 2012

Hearing opened at 7:40 P.M., with Councillor Rowlands, Chair of the LEGAL AFFAIRS COMMITTEE presiding.

All members were present.

The hearing is continued from December 12, 2011.

The following ORDINANCE was the subject of the hearing:

Relative to amending Chapter 16, Section 34 of the Revised Ordinances entitled "Personnel" by adding Account Clerk, S-5, effective January 1, 2012.

Councillor Rowlands said he received a letter from Mr. Harmon requesting this Ordinance be withdrawn.

No one in the audience spoke in favor or in opposition.

No Councillors spoke.

HEARING ADJOURNED AT 7:42 P.M.

Lynn A. Bouchard, City Clerk
and Clerk of the City Council

REGULAR MEETING OF THE CITY COUNCIL, JANUARY 23, 2012

Meeting was called to order at 7:30 P.M.

Attendance was taken by a roll call vote; all members were present.

A recess was called at 7:32 P.M. to continue the public hearings and to hold a public forum.

Meeting reconvened at 7:53 P.M.

The following COMMUNICATIONS were received, referred to the CITY PROPERTY COMMITTEE, given REGULAR COURSE and referred to the City Solicitor and the Department of Public Works.

- C-45 Dean J. Mazarella: Grant an easement to Massachusetts Electric Company for the construction of an Overhead System off West Street.
- C-46 Dean J. Mazarella: Grant an easement to Massachusetts Electric Company for the construction of an Overhead System and an Underground Electric Distribution system off Jungle Road.

The following PETITION was received, referred to the PUBLIC SERVICE COMMITTEE, given REGULAR COURSE and referred to the Department of Public Works and the Wire Inspector. A hearing was set for February 13, 2012 at 6:40 P.M.

- 30-12 National Grid and Verizon New England: Whitney Street - Relocate 2 jointly owned poles on Whitney Street beginning at a point approximately 350 feet south of the intersection of Water Street and continuing approximately 20 feet in a northerly direction.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Conservation Commission, the Director of Inspections, the Planning Board, the Health Director and the Department of Public Works. A hearing was set for February 13, 2012 at 6:45 P.M.

- 31-12 Manoel Loka Leite: Grant a Special Permit to construct a single family dwelling on Elm Street as shown on Assessor's Map 535 as Lot 1B, located within the water supply protection district.

Councillor Robert Salvatelli, Chairman of the Finance Committee, read the Financial Report for the City into the record. Account balances are as follows:

Excess and Deficiency Account (Free Cash)	\$ 3,585,786.00
Stabilization Account	\$ 11,092,716.00
Emergency Reserved Account	\$ 354,034.00

REGULAR MEETING OF THE CITY COUNCIL, JANUARY 23, 2012, continued

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was RATIFIED. (Granted with an Emergency Preamble on January 14, 2008; another vote was required.) Vt. 9“yeas”

- C-40 Dean J. Mazzarella, Mayor: Request that the Snow and Ice Expense Account be authorized to incur liability and make expenditures in FY2012 in excess of the available appropriation in the amount of \$236,600.00 as authorized by Massachusetts General Law, Chapter 44, Section 31D.

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATIONS were GRANTED and ORDERED. Vt. 9 “yeas”

- C-41 Relative to the appropriation of \$2,000.00 to the Health Department Expense Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: - that the sum of Two Thousand Dollars (\$2,000.00) be appropriated to the Health Department Expense Account; same to be transferred from the Excess and Deficiency Account.

- C-42 Relative to the appropriation of \$100,000.00 to the Police Department Overtime Account; same to be transferred from the Police Salary and Wages Account.

ORDERED: - that the sum of One Hundred Thousand Dollars (\$100,000.00) be appropriated to the Police Department Overtime Account; same to be transferred from the Police Salary and Wages Account.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following COMMUNICATIONS were given FUTURE TIME. Vt. 9/0. An email from the City Solicitor was read and is on file in the City Clerk’s office. A Special Meeting was scheduled for February 1, 2012 at 7:00 P.M. with Mayor Mazzarella and Comptroller John Richard in attendance.

- C-43 Dean J. Mazzarella, Mayor: Request that Massachusetts General Law Chapter 32B, Section 20 be accepted as added by Chapter 479 of the Acts of 2008.

- C-44 Dean J. Mazzarella, Mayor: Request that Massachusetts General Law Chapter 32B, Sections 21, 22, and 23 be accepted as added by Chapter 69 of the Acts of 2011.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was TABLED FOR STUDY. Vt. 9/0

- 23-12 Joanne Dinardo and Patrick LaPointe: Approve a Stormwater Ordinance which will provide reasonable guidance for site planning and for the control of pre and post-development stormwater runoff for protecting local water resources from degradation.

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following PETITIONS were GRANTED. Vt. 9 “yeas”

- 24-12 David Rowlands, James Lanciani, Jr., David R. Cormier, John Dombrowski and Robert Salvatelli: Adopt changes to the Leominster Zoning Ordinance Table of Uses for Boarding/Lodging Houses.

- 25-12 David Rowlands, James Lanciani, Jr., David R. Cormier, John Dombrowski and Robert Salvatelli: Adopt changes to the Leominster Zoning Ordinance regarding animal care.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following COMMUNICATIONS were given FUTURE TIME. Vt. 9/0 A hearing is scheduled for February 13, 2012 at 7:00 P.M.

- 28-12 Paul A. DiGeronimo, Johnny Appleseed Realty, LLC: Amend Chapter 22 of the Revised Ordinances entitled “Zoning” by changing a portion of the property on Sawtelle Road, Montrose Street and Woodbury Road identified as Assessor’s Map 523, Lot 14 from Commercial District to Residence B District.

Upon recommendation of the CITY PROPERTY COMMITTEE, the following PETITION was GRANTED. Vt. 9/0

- 29-12 New England Farm Worker’s Council: Request permission to use the City Council Chambers on January 27th, February 24th, March 30th and April 20th, 2012 to take Fuel Assistance applications.

Upon request of the WAYS & MEANS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 9/0

- 17-12 Joanne M. DiNardo, Chair-Energy Committee: Endorse the Green Communities application process including adoption of Criteria 4 “Purchase only Fuel Efficient Vehicles on non-exempt vehicles” and Criteria 5- “Adopt the Stretch Energy Code”, both criteria require City Council approval.

Upon recommendation of the WAYS & MEANS COMMITTEE, the following APPOINTMENTS were CONFIRMED.

Emergency Management – EMS Unit – Daniel Johnson, Joseph Dumas

REGULAR MEETING OF THE CITY COUNCIL, JANUARY 23, 2012, continued

Upon recommendation of the WAYS & MEANS COMMITTEE, the appointment of Stephen Madaus of Mirick O'Connell Attorneys at Law of Worcester as legal counsel for the City Council was CONFIRMED. Vt. 9 "yeas"

Upon recommendation of the WAYS & MEANS COMMITTEE, the appointment of Mark C. Bodanza of the Law Offices of Bodanza and Bodanza as legal counsel for the City Council was CONFIRMED. Vt. 9 "yeas"

The following ORDINANCE was read a second time, adopted as presented, and passed to be ordained. Vt. 9 "yeas"

City of Leominster
In the year two thousand and twelve

AN ORDINANCE

amending Chapter 13 of the Revised Ordinances entitled "Motor Vehicles and Traffic."

Be it ordained by the City Council of the City of Leominster, as follows:

Section 13-77 of the Revised Ordinances entitled "Stop Signs" is hereby amended by inserting Main Street, against westbound drivers at intersection with Electric Avenue.

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following ORDINANCE was given LEAVE TO WITHDRAW. Vt. 9 "yeas"

Relative to amending Chapter 16, Section 34 of the Revised Ordinances entitled "Personnel" by adding Account Clerk, S-5, effective January 1, 2012.

Under Old Business, Councillor Freda requested a letter be sent to the Building Inspector, regarding the heat in the Council Chambers.

Councillor Salvatelli requested a letter be sent to the Economic Development Coordinator asking for the status of AIS.

Councillor Rowland, Chair of the LEGAL AFFAIRS COMMITTEE, moved that the following PETITIONS be removed from the table and placed on the calendar for action. It was so voted 9/0. Committee reports as follows:

- 19-12 Aaron Kennedy, Leominster Police Department: Amend Section 13-88 of the Revised Ordinances entitled "Left turn prohibition" by deleting "Granite Street, eastbound to West Street westbound via cut off" and inserting "Granite Street, eastbound to West Street westbound". GRANTED Vt. 9/0.

- 20-12 Aaron Kennedy, Leominster Police Department: Amend Section 13-34 of the Revised Ordinance entitled "No parking on certain streets" by changing the no parking restriction on Granite Street, south side from "between the hours of 8:00 A.M. and 5:00 P.M." to "between the hours of 8:00 A.M. and 1:00 P.M. and 3:00 P.M. and 5:00 P.M." GRANTED Vt.9/0

MEETING ADJOURNED AT 9:02 P.M.

Lynn A. Bouchard, City Clerk
and Clerk of the City Council