

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 14, 2015

Meeting was called to order at 7:36 P.M.

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

The following COMMUNICATIONS were received, referred to the FINANCE COMMITTEE and given REGULAR COURSE.

- C-11 Relative to the appropriation of \$75,000.00 to the Gallagher Building Expense Account; same to be transferred from the Gallagher Building Revolving Account.
- C-12 Relative to the appropriation of \$90,000.00 to the Landfill Expense Capital Outlay Account; same to be transferred from the Stabilization Fund.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Animal Control Officer.

- 6-16 Lynn A. Bouchard: Amend Chapter 12, Section 12-2 of the Revised Ordinances entitled "Fee Schedule" by adding to Item 52- Dog Licenses, a \$50.00 fee for Residential Kennels and a \$100.00 fee for Commercial Kennels.

The following PETITION was received, referred to the CITY PROPERTY AND PROPERTY OVERSIGHT COMMITTEE, given REGULAR COURSE and referred to the Police Department and the Fire Department.

- 7-16 Annmarie Sargent, Recreation Program Director and Greg Chapdelaine, Festival Event Director: Request the use of the parking lot between the Baptist and Unitarian Churches, on Friday August 5, 2016 from 7:00 A.M. to August 6, 2016 at 11:00 P.M. to hold the first annual "Johnny Appleseed Wine Festival" and the second annual "Johnny Appleseed Craft Beer Festival". Also request the use of West Street (from Main Street to Church Street) and the Downtown Common on Saturday, August 6th, 2016 from 7:00 A.M. to 11:00 P.M. to hold the second annual "Johnny Appleseed Craft Beer Festival".

The following APPOINTMENTS were received, referred to the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE and given REGULAR COURSE.

Election Officers – Rosemary Cella, Nicole Cote, Diane Aubuchon and Carmelita Giambrocco – terms to expire August 31, 2016

Upon recommendation of the LEGAL AFFAIRS COMMITTEE the following PETITION was DENIED. Vt. 9/0

- 57-15 James J. Carnivale, Karen L. Carnivale and Jeffrey T. Duval: Modify the Zoning map by changing the district designation from Residential to Commercial for land owned by the petitioners as shown on the Assessors Map 239, Lots 5 and 8, and Map 240, Lots 3 and 4.

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

| | |
|-----------------------|-----------------|
| Stabilization Account | \$12,706,665.00 |
| Emergency Reserve | \$ 100,000.00 |

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

- C-7 Relative to the appropriation of \$125,000.00 to the Fire Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.
- ORDERED: - that the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) be appropriated to the Fire Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.
- RE: Ambulance
- C-8 Relative to the appropriation of \$40,000.00 to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriation Account.
- ORDERED: - that the sum of Forty Thousand Dollars (\$40,000.00) be appropriated to the Library Expense Account; same to be transferred from the Library State Aid Reserved for Appropriation Account.
- C-9 Relative to the appropriation of \$13,000.00 to the Police Department Expense Account; same to be transferred from the Stabilization Fund.
- ORDERED: - that the sum of Thirteen Thousand Dollars (\$13,000.00) be appropriated to the Police Department Expense Account; same to be transferred from the Stabilization Fund.
- C-10 Relative to the appropriation of \$395,000.00 to the Wire Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.
- ORDERED: - that the sum of three Hundred Ninety Five Thousand Dollars (\$395,000.00) be appropriated to the Wire Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.

Under Old Business, a discussion ensued regarding Kopelman & Paige's memorandum on the Supreme Judicial Courts invalidation of the Sex Offender Residency Ordinance and its effect on Chapter 14, Section 14-20 thru 14-20.7 of the Leominster Revised Ordinances.

REGULAR MEETING OF THE CITY COUNCIL, SEPTEMBER 14, 2015, continued

Councillor Marchand said the jest of it is to repeal the law as recommended by Kopelman & Paige. It is no longer legal in the Commonwealth.

Councillor Cormier said there was a case that went before the SJC in Lynn, MA. It was a group of sex offenders that brought it to the Supreme Court and it was defeated. Based on Kopelman & Paige's response, it will probably be in the best interest of the City to immediately cease enforcing it and eventually have it repealed.

Councillor Marchand said he didn't know if there was a timeline.

The City Clerk said no, but they are saying don't enforce it.

Councillor Freda said when she was in Boston they had a discussion on other communities that have the law. Based on Lynn, MA, Lynn is an incredibly dense community and one of the issues, according to a lot of reviews of the law, was that the restriction was 95% of the community. So essentially you were saying sex offenders could not live in the City of Lynn. She is not sure how our plays out in the total complex of the City. She thinks we need to take a look at it. We will probably have to repeal it in the end. We should have a conversation based on the size of our community based on how and if we are really restricting it too much. She suggested to have a conversation with Brian Riley before we repeal it.

Councillor Bodanza said the City Solicitor's office has made it very clear that we can't enforce the ordinance so there is little doubt about that. If you read the SJC decision the finding in that case essentially said that the court determined that the State statute was preclusive in effect. He said what that means is when the State passes a statute that is intended to preclude or occupy the field, local regulation is not permitted, or Home Rule amendment is not permitted. That is the thrust of this case. So the question becomes what authority or jurisdiction we, as Leominster City Council, have in conjunction with the Mayor to pass legislation in this area and I am not sure what that is. I think the responsible thing to do with this is to take a step back and take a look at what possible Home Rule amendment can survive a constitutional challenge in the courts, what that might look like and take some time before we rescind this and look at possibly amending it in the future to something that will survive a challenge in court. Attorney Riley suggests there doesn't seem to be an exposure by the law being on the books alone as long as we don't enforce it. I don't think it's clean to have a law on the books that you are not going to enforce. I think we can wait a little amount of time and search for a solution or amendment that might survive an ultimate court challenge. He said he is concerned reading the case because the basis of the case seems like that the SJC said look at the State statute intended to occupy the entire field and intended to be the matrix of all law that regulates this particular problem in this field and that doesn't leave a whole lot of room for a Home Rule amendment but let's see what happens.

Councillor Cormier said he didn't realize that Lynn actually had 95% of their community that they were barring sex offenders. He said the original petition that we passed into law was 1,000 feet and then we talked about expanding it to 1,500 feet. He said he asked for it to be reduced to 1,250 feet because they had these concerns when passing it.

Councillor Freda said she think we will be hearing something from the Attorney General's Municipal Law Unit as well. We were looking at the protection of schools and what we thought was best. To step back and have a discussion is the right way to go.

Councillor Bodanza said don't get caught up in feet and whether it is reasonable or unreasonable based on the density of the community, that is not what the SJC was talking about. Councillor Bodanza read "We conclude that the Ordinance is inconstant with the comprehensive scheme of legislation intended to protect the public from convicted sex offenders and thereby manifest the sharp conflict that renders it unconstitutional under the Home Rule amendment." He said what they are saying is the State provided a comprehensive scheme to deal with this problem and therefore no Home Rule amendment, whether it is 10 feet or 5,000 feet, is going to pass muster. It's not about density of communities, it's not about number of feet, not about reasonable or unreasonable based on how a community is populated or settled. That is the more significant issue is whether any Home Rule amendment is possible to begin with.

Councillor Nickel said his feeling is in the long run there is not going to be a lot of room for maneuvering.

Councillor Feckley said she agrees with Councillor Freda that this is a big deal and she agrees with Councillor Bodanza that we need to sit back and see what comes out of this and a letter from Brian Riley. Our role is as City Councillors not lawyers. She said Kopelman & Paige should come down and explain to us and the public what this is all about and what the end result may or may not be.

Under New Business, Councillor Nickel said the dedication of the Johnny Ro Park was wonderful event. He said the Councillors attended. The park was created by volunteers not just for Johnny Roberge but for the memory of all the Massachusetts men and women that have lost their lives during this war we have been involved in for so many years.

Councillor Salvatelli said there is a big 5K race this week to support Karen's Closet. He said he has been involved with Karen's Closet for a few years. He said last year they gave over \$23,000 worth of clothing to the school kids in Leominster. We spent \$18,000 for summer and fall clothes and almost \$40,000 in donations. The school has a private place in school where the clothes are stored. These clothes go to children that come to school that don't have boots or jackets and every year they run out. This event is sponsored by Lisciotti Development.

Councillor Marchand said the 22nd Johnny Appleseed Festival will be Saturday, September 26, 2015 from 9:00 a.m. to 5:00 P.M. with a concert from 6:00-8:00 P.M. with fireworks to follow at 8:00 P.M. at Doyle Field and the 100th Anniversary Parade will be Sunday, September 27, 2015 at 1:00 P.M.

Councillor Marchand said there will be a neighborhood meeting on September 15, 2015 at 7:00 P.M. sharp in the conference room at the Library with Twin Cities Community Development Corporation. They will be discussing the redevelopment of the old Carter High School.

Councillor Marchand said the First Annual Police Recognition Awards will take place September 15, 2015.

MEETING ADJOURNED AT 8:40 P.M.

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