

REGULAR MEETING OF THE CITY COUNCIL, MARCH 14, 2016

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

Attendance was taken by a roll call vote; all members were present except Councillors Freda and Feckley.

The Committee on Records reported that the records through February 8, 2016 were examined and found to be in order. The records were accepted.

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

- C-51 Relative to the appropriation of \$37,000.00 to the Election & Registration Expense Account; same to be transferred from the Stabilization Fund.
- C-52 Relative to the appropriation of \$2,400.00 to the Highway Department Expense Account; same to be transferred from the Collective Bargaining Expense Account.
- C-53 Relative to the appropriation of \$9,000.00 to the Mayor's Expense Account; same to be transferred from the Stabilization Fund.
- C-54 Relative to the appropriation of \$21,133.00 to the Public Works Salary & Wages Account; same to be transferred from the Collective Bargaining Expense Account.
- C-55 Relative to the appropriation of \$6,974.00 to the Sewer Regular Labor Salary & Wages Account; same to be transferred from the Sewer Support Services Expense Account.
- C-56 Relative to the appropriation of \$700.00 to the Sewer Department Expense Account; same to be transferred from the Sewer Support Services Expense Account.
- C-57 Relative to the appropriation of \$14,727.00 to the Water Department Salary & Wages Account; same to be transferred from the Water Department Support Services Expense Account.
- C-58 Relative to the appropriation of \$1,400.00 to the Water Department Expense Account; same to be transferred from the Water Department Support Services Expense Account.
- C-59 Relative to the appropriation of \$1,600.00 to the Wire Department Expense Account; same to be transferred from the Stabilization Fund.

The following PETITIONS were received, referred to the WAYS & MEANS COMMITTEE, given REGULAR COURSE and referred to the Police Department and the Treasurer.

- 25-16 Laurel Krueger: Renew the Second Hand Dealers License for Beldon Jewelers #0240 located at 100 Commercial Road.
- 26-16 Laurel Krueger: Renew the Second Hand Dealers License for Kays Jewelers #1285 located at 100 Commercial Road.

## REGULAR MEETING OF THE CITY COUNCIL, MARCH 14, 2016. continued

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Mayor and the Police Department.

27-16 Richard Marchand: Amend Chapter 10, Section 10-7 of the Leominster City Charter entitled "Solicitation Hours," by deleting it in its entirety and inserting the following:

A properly licensed solicitor or peddler qualified through the Leominster Police Department, may solicit between the hours:

- A. Monday through Friday: 10:00 A.M. through 6:00 P.M.
- B. Saturday, Sunday and holidays from 12:00 P.M. through 5:00 P.M.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Planning Board, the Zoning Board of Appeals, the Fire Department and the Director of Inspections. A hearing was set for April 11, 2016 at 7:00 P.M. Vt. 6/0. Councillor Marchand abstained due to a possible conflict of interest.

28-16 Peter E. Bovenzi, Trustee, Neighborhood Development Trust: Rezone a portion of Assessor's Map 317, Parcel 7A from Commercial District to Residence C District and change the maximum height for principal buildings in Residence C District as set forth in Subsection 22-40.3 from 35 feet to 40 feet.

The following PETITION was received, referred to the PUBLIC SERVICE COMMITTEE and given REGULAR COURSE. A hearing was set for March 28, 2016 at 6:40 P.M. Vt. 6/0. Councillor Cormier abstained due to a possible conflict of interest.

29-16 National Grid and Verizon New England, Inc.: North Street-install 1 jointly owned pole beginning at a point approximately 165 feet west of the centerline of the intersection of Main Street. National Grid to install Pole 24-1 on side of road to feed new customer.

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 7/0 A hearing is scheduled for March 28, 2016 at 6:45 P.M.

23-16 Attorney Peter Campobasso for Alternative Therapies Group, Inc.: Grant a Special Permit to locate and operate a registered marijuana dispensary at 57 Nashua Street, as shown on Assessors Map 464, Lot 5, for retail sale or distribution of marijuana for medical use to qualifying patients.

Councillor Bodanza, Chair of the FINANCE COMMITTEE, read the Financial Report for the City into the record. Account balances are as follows:

Stabilization Account	\$11,678,520.00
Emergency Reserve	\$ 100,000.00

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 5 "yeas", Councillor Cormier and Nickel abstained due to a possible conflict of interest.

C-48 Relative to the appropriation of \$150,000.00 to the Fire Department Overtime Account; same to be transferred from the Stabilization Fund.

ORDERED: - that the sum of One Hundred Fifty Dollars (\$150,000.00) be appropriated to the Fire Department Overtime Account; same to be transferred from the Stabilization Fund.

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATIONS were GRANTED and ORDERED. Vt. 7 "yeas".

C-49 Relative to the appropriation of \$35,000.00 to the Gallagher Building Expense Account; same to be transferred from the Gallagher Building Revolving Fund.

ORDERED: - that the sum of Thirty Five Thousand Dollars (\$35,000.00) be appropriated to the Gallagher Building Expense Account ; same to be transferred from the Gallagher Building Revolving Fund.

C-50 Relative to the appropriation of \$36,413.00 to various accounts listed; same to be transferred from the Collective Bargaining Expense Account.

Health Department Salary & Wages	\$ 3,431.00
City Clerk's Office Salary & Wages	\$ 1,092.00
Treasurer's Office Salary & Wages	\$ 1,030.00
Conservation Department Salary & Wages	\$ 1,199.00
Economic Development Salary & Wages	\$ 1,247.00
Plumbing Department Salary & Wages	\$ 1,504.00
Building Department Salary & Wages	\$ 1,534.00
Wire Department Salary & Wages	\$ 2,904.00
Assessor's Department Salary & Wages	\$ 2,472.00

## REGULAR MEETING OF THE CITY COUNCIL, MARCH 14, 2016. continued

Building Department Overtime	\$ 5,200.00
Collective Bargaining Expenses/clothing	\$ 4,800.00
Collective Bargaining Expenses/vacation buy-back	\$10,000.00

ORDERED: - that the sum of Thirty Six Thousand Four Hundred Thirteen Dollars (\$36,413.00) be appropriated to various accounts listed; same to be transferred from the Collective Bargaining Expense Account.

Health Department Salary & Wages	\$ 3,431.00
City Clerk's Office Salary & Wages	\$ 1,092.00
Treasurer's Office Salary & Wages	\$ 1,030.00
Conservation Department Salary & Wages	\$ 1,199.00
Economic Development Salary & Wages	\$ 1,247.00
Plumbing Department Salary & Wages	\$ 1,504.00
Building Department Salary & Wages	\$ 1,534.00
Wire Department Salary & Wages	\$ 2,904.00
Assessor's Department Salary & Wages	\$ 2,472.00
Building Department Overtime	\$ 5,200.00
Collective Bargaining Expenses/clothing	\$ 4,800.00
Collective Bargaining Expenses/vacation buy-back	\$10,000.00

Upon recommendation of the CITY PROPERTY COMMITTEE, the following COMMUNICATION was GRANTED. Vt. 7/0

C-45 Dean J. Mazarella, Mayor: Declare property on Summit Street, as shown on Assessor's Map 523, Lot 9, as surplus property.

Under New Business, there was a discussion on the following letter that was sent to the Council from Richard Voutour regarding newspaper subscription.

Date: February 24, 2016  
 To: Mayor Mazarella, City Council President, Finance Chair  
 From: Richard Voutour, Director of Veterans Services  
 SUBJECT: Newspaper Subscription

This Department is required by law (MGL Chapter 115, Section 7 & 9) to record and care for Veterans graves in the City. The City Clerk forwards all Death Certificates to this office for any Veteran that died in Leominster. Often times one of our Veterans dies outside the city, so Leominster does not have that death certificate. This helps to ensure all Veterans get a Veterans Grave Marker and a Flag placed on their grave for Memorial Day.

As a side note, we use the paper for outreach. When a Veteran dies, we also send a card to his/her widow letting them know that they may qualify for potential Federal Veterans benefits especially if the Veteran served in Vietnam and died as a result of Agent Orange. According to the records of the Department of Veteran Affairs, the city currently has 593 Veterans receiving VA Compensation, 22 Veterans receiving a VA Non Service Pension, 61 Widows receiving DIC benefits and 27 widows receiving a Widows Pension for a total of \$807,787.00 dollars a month coming to our Veterans/Widows from the Federal VA (over 9 million annually). This is money that is spent locally. This department will receive \$368,646.00 in reimbursement from the Massachusetts Department of Veteran Services for 2015 Chapter 115 Veterans Benefit.

This office continues to be denied the purchase of the newspaper (\$293.80) by the Comptroller as having "**no value to the city**". I have outlined above, the value to the city.

The comptroller's office has informed me that they are willing to expend the money for an electronic version of the Newspaper for a cost of \$144.00. This adds an extra element in having to go searching online, where it is much simpler to just read the Obituary from the newspaper.

I find it incredible that the comptroller has a hard time spending \$293.80 for something required by law, but has no problem spending thousands of dollars on two extra part time position he created in his office. Two employees (who are both wonderful people) retired, and now work in the office part time. I find that to have **no value to the city!**

5 Attachments: General Law Chapter 115, Section 7 and 9, AH564-14 Chart, A/P Voucher Transmittal Form, Sentinel & Enterprise Subscription Notice.

Councillor Lanciani said when he heard this and read this letter he was highly insulted, very disturbed and he immediately called the Mayor's office to let him know how he felt as a Veteran, as a former Veteran's Director for the City of Leominster who served it proudly. To this day Veterans come to him and ask him where they can go for services and who they should see. He said he told the Mayor he would give him the \$300.00 if need be. He said he understands that Mr. Voutour will be getting his newspaper electronically. He said he hasn't called Mr. Voutour. He hasn't been able to talk to the Mayor because he has been out of town. He said he is glad he is getting the information that is vital to running that office. He said it throws a black mark on the City of Leominster in Mr. Richard's capacity to want to take this away from the Veterans.

REGULAR MEETING OF THE CITY COUNCIL, MARCH 14, 2016. continued

Councillor Chalifoux Zephir asked Councillor Lanciani if he was getting the newspaper by paper subscription as he needs it and wants it or is he getting the online version.

Councillor Lanciani said he heard online but didn't get confirmation.

Councillor Chalifoux Zephir said she had similar feelings when she read the letter. She said Mr. Voutour layed out precisely why the paper version is more appropriate for him to do his job and the difference between the paper copy and the online version is \$142.80, certainly not the end of the world. She said she did some research and Comptrollers certainly do have the power by M.G.L. to deny expenses if they are considered excessive, fraudulent or unlawful. She said she talked with an attorney in the Massachusetts Department of Revenue in the Municipal Finance Division. This was spurred by Councillor Lanciani who asked for this to be put on the agenda. The following letter written by Councillor Chalifoux Zephir and submitted to the Mayor's Office.

To the City Solicitor,

After reading Director of Veterans' Services, Richard Voutour's letter (attached) to the Mayor and City Council about the comptroller denying an expense for a newspaper subscription, which the Veterans department needs to perform its work, I ask you the following:

Can a comptroller deny an expense that is included in a city department's budget that was approved by the Mayor and City Council that is not fraudulent, unlawful or in excess of the budgeted line item?

Attached is a copy of MGL Chapter 41 Section 52 that is titled *Approval of bills*. The section in part states the following:

"...The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, *and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive...*"

I understand in this particular case the comptroller stated his reason for denying the expense was the newspaper subscription cost was "excessive" and therefore refused to pay the expense.

After speaking with an attorney at the Massachusetts Department of Revenue in the Municipal Finance Division I was advised that "excessive" under this statute is defined as "being in excess of the appropriation".

Mr. Voutour's department budget included the newspaper subscription expense and was part of the city budget submitted to the City Council by the Mayor and subsequently approved by the City Council. Given that the expense is not fraudulent, unlawful or excessive per MGL Chapter 41 Section 52 how can the comptroller deny the expense?

Councillor Chalifoux Zephir said this letter was sent March 10<sup>th</sup> so she expects to hear back soon.

Councillor Bodanza said he understands the value of this newspaper subscription for Mr. Voutour and is aware of Chapter 41 Section 52, because we know as a Council just because we appropriate money doesn't mean the bill is going to get paid. The way the process works is that we are presented the budget or communication, we vote on the appropriation, then for a check to be cut the Comptroller has to make a finding certified for payment before it goes on the warrant and the check actually gets issued by the Treasurer. Just because we appropriate it doesn't mean it's going to get certified.

Councillor Bodanza said he disagrees with the opinion from the Massachusetts Department of Revenue, Municipal Finance Division that Councillor Chalifoux Zephir spoke to. He said he doesn't disagree with the spirit of Mr. Voutour's request, but with the legal ground that Section 52 precludes the Comptroller as a matter of law from finding something excessive because it happens the bill that is presented to him exceeds the appropriation, He said he doesn't think that is what that means. He believes the Comptroller has the right to do that. Unfortunately it isn't within our preview. Our role in this process is to appropriate and we did that as part of the budget.

Councillor Chalifoux Zephir said did speak with an attorney in the Municipal Finance Division of the Department of Revenue and he was quite clear. She said she is looking forward to getting an opinion from Kopelman & Paige because today it is the Veterans Department with the newspaper they need to do their job with, might be books next week that the Library believes they need for the public that it serves. Could it be something in the Recreation Department that, perhaps the Comptroller thinks it is excessive, even though it's in their budget that was approved by the Mayor and City Council, the Recreation Director had something that she thought be necessary to provide summer programs for all the kids throughout the City. This is really an important question and it has much broader implications. She said we are elected by the people in the City of Leominster and one of the most important functions of the City Council is to approve the budget in addition to the legislative ordinances that we pass and supervise and update. If we pass a budget that somebody down the road does not have any tie to the public who elected us but can indiscriminately go through the budget and declare things excess that we have approved and the Mayor has approved. I have a real problem with that. I want to know about it before it goes any further.

Councillor Nickel said he got the impression that several people would continue to get the newspaper. He would like to know who those other people are. He finds it interesting that the Comptroller who continues to get the newspaper and can sit back and read when the Veterans Agent who has to keep track of this has to wait and go online and actually is kind of blind to this whole process this past couple of weeks.

Councillor Marchand said the sad reality of the whole thing is that the ruling by Kopelman & Paige will cost more than the subscription for the year. It is just a waste. It should have been worked out.

Councillor Cormier said the City Solicitor will be coming down to the next meeting and said he was sure he will be billing us significantly per hour so maybe we can ask him this question and have a discussion.

## REGULAR MEETING OF THE CITY COUNCIL, MARCH 14, 2016. continued

Councillor Bodanza said Section 52 says in relevant part that the Auditor or Officer having similar duties in the City, in our case the Comptroller, and the Selectmen in town shall approve the payment of all bills or payrolls of all departments before they are paid by the Treasurer and may disallow and refuse to approve for payment in whole or in part any claim that is fraudulent, unlawful or excessive and in the case the Auditor or Officer having similar duties or the Selectman shall file with the City Treasurer a written statement of the reasons for the refusal and the Treasurer shall not pay any claim or bills so disallowed.

Councillor Bodanza said it is clear by statute that that's his obligation and if in fact he refuses to pay something that he deems excess he has to make a written finding to that effect.

Councillor Chalifoux Zephir said that is exactly what he did. He got back to the Veterans Director stating on the rejection notice that it was excessive. So he certainly is covering his tracks under the M.G.L. Chapter 41. Again, the definition of excessive as defined by the Department of Revenue Municipal Services Division they would find \$142.00 is excessive. My argument is after we pass a budget once it is in somebody's line item how much discretion does somebody really have to go back and just cut out expenses that we already approved.

Councillor Bodanza said there is no question that his discretion would not be unbridled. In the law people have to use some reasonable level of discretion but as the Councillor from Ward 5 indicated, he understands you are concerned about other issues beyond this newspaper subscription, there is some reality as to the way the process works and unfortunately we are not in control of all those steps in the process. Reasonable minds might differ what is excessive from time to time and unfortunately that is the case here.

Councillor Lanciani said we are sitting here and each of us can remember sitting in that room seven months ago and a bill was suppose to be paid unless it could be proven excessive. He said he as seen nothing, heard nothing but the humiliation of the City of Leominster not paying their bills.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. A hearing was set for April 11, 2016 at 6:55 P.M. Vt. 7 "yeas"

1<sup>st</sup> Reading Ordinance-Amending Chapter 13, Section 13-77 of the Revised Ordinances entitled "Motor Vehicles and Traffic by inserting "Holman Avenue, against westbound drivers at Princeton Street."

In accordance with Section 3.6 of the Leominster City Charter a vote was taken to have the Fire Chief come to the next meeting on March 28, 2016 to discuss income generated and a breakdown of expenses on the second ambulance.

In accordance with Section 3.6 of the Leominster City Charter a vote was taken to have the Mayor, the Department Heads and the City Solicitor come to the next meeting on March 28, 2016 to answer questions that will be sent to the Mayor's Office.

Councillor Marchand asked the Finance Chair for a comparison between this year and last year on what we have saved on snow and ice removal, salting maintenance and heat. He would like to see the comparison in the school department also if they would share that with us. We should have a significant savings and would like to see how that is going to play into the rest of the years.

Councillor Dombrowski asked the Clerk for a list of appointments that have expired.

Councillor Marchand requested a list of employees that are working and have not received a confirmation of appointment. For example the Planning Director.

Councillor Cormier said we don't have jurisdiction over the Planning Director.

Councillor Marchand said in the past there has been confirmation of every department head in this City to my knowledge including Civil Service back to 1989. I understand that it's under the purview of the Planning Department but usually a courteous interview that takes place with the confirmation of the appointment.

Councillor Chalifoux Zephir said, in terms of appointments, when was the Acting Chief Goldman and the Captain initially put into place as the Interim Acting Chief so we can start counting the days before we need to make a final determination.

Councillor Cormier said another person that hasn't been down is the Conservation Agent.

MEETING ADJOURNED AT 8:36 P.M.

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