

DRAFT Minutes of Cmte. on Planning & Development – Jt. Mtg. of Cmtes. on Licenses & Permits and Planning & Development

November 26, 2019, 6:30 p.m.

City Council Chambers

Attendees: Cllrs. Connell, Eigerman, Giunta, Khan, McCauley, Shand, Tontar, Vogel, Zeid

Cllr. Eigerman (Chair, Plng. & Devt’): [Introduction.] Joint public hearing to be held by Planning Board and Cmte. on Planning & Development December 4, 7:00 pm. Public testimony tonight, too, limited to two minutes each person.

Cllr. Vogel (Chair, Lics. & Permits): [Introduction.]

Cllr. Giunta (Co-Sponsor): Order 043 is exact working of para. 1 from Question 1 approved by City voters as to Chapter 9 of Newburyport Municipal Code. Ordinance 045 is exact wording of para. 2 from Question 1 as to Newburyport Zoning Ordinance (NZO). Ordinance 044 would correct use tables and other sections of NZO. Tonight’s meeting and Dec. 4 joint hearing of Planning Board and Cmte. on Planning & Development are dictated by City Council’s internal rules and state law.

Cllr. Connell (Co-Sponsor): Voters had “two bites at the apple.” In 2016, statewide Question 4 decriminalized cannabis, which he supports. Through local Question 1 this fall, Newburyport voters opted not to allow retail sale of cannabis here. Good idea to reset our code to where it was before we adopted zoning to allow marijuana shops. Council session ends 12/31/2019. Two tracks: (1) adopt in two meetings, including special meeting after December 9, or (2) adopt December 9 by waiving our rules, which is not nefarious. What is preference of Cllrs.?

Connie Preston, 18 Ashland St.: Was treasurer of “No” committee. We were inexperienced. Took guidance from City Clerk and Office of Campaign and Political Finance by phone, and filed one day late. Does not seek to overturn result of election, but some people feel disenfranchised. Everyone should follow the rules, including “Yes” committee, which also filed late. The only way everyone can feel good about result is to delay action until OCPF report is done.

Matt Kane, 63 Curzon Mill Rd.: To delay action on these bills would be to disenfranchise the electorate.

Ann Dykes, 12 Munroe St.: I believe the “Yes” committee filed late in error. The rules matter to ensure truth in disclosures. Investigation pending. Only a 250-vote margin. The billboard on Low Street in favor of Question 1 was not reported.

Ayesha Berlind, 24 Beacon Ave.: When a vote is held, results should be honored.

Katherine Gendron, 8 Brooks Ct.: Delay action on bills until OCPF investigation complete.

Paula Estey, 3 Pine St.: Everything is so rushed.

Jeannette Isabella, 100 Water St.: If OCPF investigation finds something, what would change about the election result?

Lynn Schow, 75 High St.: Thanked the Council for effectuating the will of the voters.

Hazem Mahmoud, 52 Ferry Rd.: There was double the turnout from non-mayoral city election in 2015. The Council has looked at this issue from every angle. 100 other municipalities, most recently Merrimac, have opted out. Investigations of candidates go on even while they are in office.

Lynn Schow, 75 High St. (after all other speakers): “Children’s Healthcare” filed a report with the City Clerk / OCPF regarding the billboard on Low St., today.

Public testimony closed.

Cllr. Giunta: OCPF investigations are confidential and normally result in a report. If there is sanction, it is a fine, or (rarely) referral to Attorney General for prosecution. Election is not invalidated.

Cllr. Zeid: Voters have spoken: only question is do we amend code now or in January. The language is already done. What would change with more time? Vote should be unanimous. There has not been rushing. Council began work on retail marijuana January 2018. We need to move forward. Second (special) meeting in December not a problem.

Cllr. Shand: Would Councillors newly seated in January have to recuse themselves?

Cllrs. Eigerman and Connell: Not legally or ethically.

Cllr. Tontar: Taking a “moral” position. Would Opt-Out people have felt same about corrective legislation if the election result had been reversed? What if advertising campaign had been paid for by pot shop in Salisbury? Election was stained. Recognizes that OCPF does not overturn election results. If we run right through this, then we have set a precedent. Wants some recognition of contribution by Opt-Out committee. Also, wants each councilor to say if violations of finance disclosures are a problem.

Cllr. McCauley: Supports Ordinances 043 and 045 because they track Question 1 language verbatim. Also supports amending NZO tables.

Cllr. Vogel: Shall Lic. & Permits Cmte. vote these out to Full Council with no recommendation?

Cllr. McCauley: Wants to recommend approval.

Cllr. Vogel: Will be a 1-1 vote then. Wants Full Council to debate on the floor.

Cllr. Zeid: Cllr. Tontar has concluded that there was a violation, but both committees missed filing deadline. I don't think any apologies are due.

Cllr. Tontar: Acknowledges both committees violated disclosure regulations.

Cllr. Giunta: These were two grass-roots groups not knowing the rules, not politicians. They will do better next time. No criminal intent. In-kind donations by everyone. I do not expect any apologies.

Cllr. Tontar: Does it disturb you that a for-profit business donated to the "yes" committee?

Cllr. Giunta: That is lawful for ballot measures.

Cllr. Khan: Doesn't know how committees were run. Nothing is going to change result of election. I have to file campaign finance reports correctly. Lessons learned. Supports Ordinance 044 but wants to wait on (zoning) Ordinances 045 and 046.

Cllr. Connell: Public has a compelling interest in knowing source of donations. Local legislature does not handle these matters, by design. The Daily News did not cover this issue running up to the vote, and then spurred controversy afterward. Must demand better of local newspaper.

Cllr. Vogel: Is "betwixt and between." Has taken much feedback from his coffee shop customers. "Yes" committee misreported cash donations as "in kind" donations. Feels funny to ignore the law. Council is "spiking the ball" before red challenge flag is thrown.

Cllr. Giunta: Disagrees with Cllr. Vogel's interpretation of "in-kind" donation.

Cllr. Zeid: Still cannot understand how those against these three bills say they do not challenge election. Those councilors dissatisfied with election should vote "no."

Cllr. Vogel: There is "cloud" over election, like cloud on real estate title, because don't know what happened. Too much for Council to do before end of term.

Cllr. Zeid: Irresponsible for municipal code to be inconsistent with election result. Pass all corrective legislation or none.

Cllr. Eigerman: To answer Cllr. Tontar, yes, campaign finance laws important and violations bad. Advocacy groups "yes" and "no" cannot drag City Council into a residents-only referendum. We have no role. If election was invalid, then go to court

and get injunction. Not likely. Court cannot ever know what messages motivated each voter. Court cannot invalidate part of election, but all of it, including Council elections. Council has an affirmative duty to ensure that municipal code matches policy set by voters in an election. Council has no role in deciding violations of campaign finance rules. Newburyport has had anonymous mailers and websites attacking mayoral candidates. Advocacy committees are not even candidates; no court will ascribe misdeeds by advocacy group to the voters. “Spiking the ball” metaphor is inapt because the call cannot be overturned.

Cllr. Tontar: Campaign finance laws broken here. I take seriously because OCPF will to overturn election. Before Council takes votes, needs to “celebrate democracy.” Has not heard compelling reason for Council to go forward.

Cllr. McCauley: Every election has irregularities. It’s a problem but it is not the Council’s problem. We need to match city code to election result.

Cllr. Zeid: Has not heard compelling reason for Council not to go forward. Why should Council wait for OCPF? Better for community to start healing, immediately.

Cllr. Giunta: Very emotional vote by electorate. City is “fragile” in period after residents’ vote while code still allows marijuana retail. Invites litigation.

Cllr. Tontar: City was equally fragile for a year before recent ban while zoning allowed marijuana shops. Abstained from vote in 2018 to place ban on ballot because of confusing language.

Cllr. Eigerman: The City Solicitor wrote the ballot language, what would have been point of sending it back to City Solicitor?

Motion to adjourn by Cllr. Shand seconded by Cllr. Giunta, and passed 3-0 (Eigerman, Giunta, Shand).