

**October 3, 2009**  
**Town Councillor Orientation**

**Town Council Members:** William Alexopoulos, Andrew Azer, Paul Fernandes, Maureen Pasquantonio, Ken Clifton, Arthur Goldstein, Richard Brewer and Paul Meoni. Not present: Jim Burgess

**Also present:** Paul Connors, Chairman, Board of Selectmen and Brian Howard, Town Clerk

**Audience Members:** Roz Vineberg, Jean Duddy, and Lauren DeFilippo

Mr. Connors thanked the Councillors for attending the orientation and explained that he put the meeting together since there is no conduit for the transition, so as the Chairman of the Board of Selectmen, he put the pieces together to give the Councillors an orientation. A city councillor from Brockton will be present to speak. The Town Manager from Franklin was scheduled to speak, however, his appearance has been postponed. The Ethics Committee and the Secretary of State's office will only appear before groups of 30, and since there are not 30 in attendance this morning, that will be subject matter for a future meeting.

Mr. Meoni asked if the new ethics laws were postponed, and that he heard they were still being debated. Mr. Connors said that they are being debated and Mr. Howard stated that other components of the law have been put into place. Mr. Connors said the Ethics Commission will inform the Councillors of the changes once they are in place.

Mr. Connors asked that the Councillors provide Anne Barkhouse with their information to be printed on business cards. Anne is waiting until everyone has submitted their information to place the order. Mr. Goldstein asked if it would be possible for each of the Councillors to have their own town email address. He suggested that the cards not be printed until that is determined. Mr. Connors said that this issue will be part of the day's discussion later on.

Mr. Clifton stated that he doesn't have any interest in waiting too long for cards because he is going to need to communicate with people as soon as possible and asked if it was possible for alternative arrangements to be made. Ms. Pasquantonio suggested using their personal email addresses for the time being until the business cards are printed. Mr. Connors said that the cards will be ordered as soon as everyone's information has been submitted.

Mr. Connors gave the Councillors a draft of the Town Meeting Warrant, which includes an article that was created for Town Meeting with regard to the selection of the Town Manager, correcting the language of the time element from the Charter. It is in the hands of House Counsel and has gone to the Senate Counsel. The article will allow the Council to interview the applicants and make a decision. By putting this in and having

immediate action, there are two things that can happen. One is it could be taken up by the House and the Senate in an informal session and be brought back out within 4 or 5 days and you would make the timeframe that is set out in the Charter. The second component is, if the Board of Selectmen were to unanimously vote to petition the Governor to enact a home rule petition on the Town's behalf. This is after a series of informal meetings with the District Attorney's Office and the Secretary of State's office. Mr. Fernandes asked if the Board of Selectmen votes, will the matter still go before Town Meeting. Mr. Howard answered that it doesn't have to if the Governor has filed the legislation on our behalf and that it is a matter of timing. The Town Meeting Article is a place holder in case the governor's office is slow to respond. It will be withdrawn if the Governor acts on it. The intent of the document is clear, the language is corrective in nature only. It does not change the intent of the Charter. A gap was created where the Councillors have to choose a Town Manager by November 4<sup>th</sup>, but they are not sworn in until January. Mr. Alexopoulos asked what the downside is to hiring the Manager after they are sworn in. Mr. Connors stated that there is the potential to lose a candidate, or two or three. He said that there were originally four candidates, but one took a position somewhere else during the process. By waiting another two months, you are tying up the lives of three people.

Mr. Clifton stated that this is a very important decision and he doesn't see a need to be unduly rushed in one month's time. Mr. Connors stated that it is actually 2 months. Mr. Clifton said that the person who is selected will not be seated until January. Mr. Azer said that he doesn't want to wait until January to thrust someone into the position without a learning curve. Ms. Pasquantonio asked how long the candidates have been involved in the process. Mr. Connors said they were interviewed mid-summer. Ms. Pasquantonio said that to hold them off another two months is a very long time. Mr. Connors said that the finalists were told that the hiring would take place 60 days from the date they were chosen as finalists. Mr. Fernandes asked what the recommendation meant. Mr. Connors said that the Councillors' choice would be made so that the other two finalists could move on, and the Council would reaffirm their vote after being sworn in. The person cannot actually take the job until January 4<sup>th</sup>. Mr. Howard said that the Search Committee did their due diligence by submitting three names. If someone withdraws, the Councillors will only have 2 candidates from which to choose. The sooner it is done, the more options you will have. The Search Committee does not disband until the appointment is made.

Ms. Pasquantonio said that all the Councillors received the questions that were asked by the Search Committee. Mr. Connors said that everything pertinent to the selection of the finalists by the Search Committee was provided to the Councillors. Ms. Pasquantonio said that the next step is to read through and determine what questions were not asked that they would like answers to. Mr. Goldstein said that all three finalists would need to be re-interviewed. All agreed

Senator Joyce's office and the State Representatives are looking for the language that will correct the defect that was created when the election was moved to April.

Mr. Fernandes asked if the Councillors don't like any of the candidates, if there is anything that says that they have to make a choice. Mr. Howard and Ms. Vineberg said that the Charter states that the Councillors would have to choose one of the three. Mr. Connors read from page 43 of the Charter, "within 60 days following the date the list of nominees is submitted, the Town Council shall choose one of the nominees to be appointed to the office of Town Manager."

Mr. Clifton stated that he would like a legal opinion on whether or not the Councillors as a body once they are seated are bound by the option of the three candidates. Mr. Connors said that the Charter is a legal document, which was passed by the legislature, signed by the Governor and voted by the Town.

Mr. Howard handed out the Massachusetts Public Records Law. He said that in most cases, the office will get a public records request, but occasionally residents will approach the Councillors with a public records request. All records in the local municipality are considered public unless it meets one of the exemptions of the law, located in the back of the book. Records include everything from maps, pictures, documents, audiotape, videotape and emails. Minutes that have not yet been accepted, for example, are still public record. They are stamped DRAFT if they are requested.

Email: right now the Secretary of State's Office views email as a 2 year limitation. Setting up a town account is a good idea so that any emails will be maintained. Even if a personal email account is being used to discuss public business, it is still considered a public record. Mr. Howard said he would contact the Selectmen's Office about setting up the email addresses.

A request for a public record should be in writing.

You have 10 days to respond to a request. It doesn't mean that you have to produce the records requested within those 10 days, but you must at least issue them a letter saying that it will be provided and when it will be provided, or if you are denying it, you must state the exemption and then they have 90 days to appeal it. If there is a cost of over \$25, we require payment in advance.

Executive Session minutes – must be released as soon as the issue in question is resolved.

Personal requests for records – Mr. Fernandes asked if it is incumbent on the Councillors to provide them. Mr. Howard said that it all depends on the nature of the request. If you personally have the records being sought, then yes. If not, forward the email to the Town Manager or Town Clerk's office and say that this is a request you received.

There will be a 2 hour public records presentation at another meeting.

By December 28 of this year, all Town Employees, Boards, Committees and Commissions, will be required by law to take an online ethics test, and provide receipt of the test to my office. Town Councillors should take the test and return their receipt to the Town Clerk's Office.

When the Ethics Commission and Public Records division come in to do their presentation, Mr. Howard recommended that it be videotaped, and that, in order to reach the threshold of 30, department heads and chairs of Boards, Committees and Commissions should be invited.

Mr. Connors informed everyone in attendance that the meeting was posted as a public meeting. He suggested that everyone look at their calendars to interview the three candidates over the next month, so that a meeting can be posted. Mr. Howard also informed everyone that the meeting is being recorded so that minutes can be done.

Mr. Meoni asked what would happen if the Councillors go through the interview process and the charter is not revised. Mr. Connors stated that they would have to wait until January 4<sup>th</sup> to take an official vote. Mr. Meoni said that if that is the case, they would have not authority to meet in executive session. Mr. Connors stated that any meetings prior to January would have to be in open session. Each Councillor would have to keep his or her own notes. This meeting, as well as your interviews should be double posted as a Selectmen/Town Council Elect meeting, since there are three current Selectmen.

Mr. Connors stated that he and Mr. Howard met with the District Attorney a week ago to go over the corrective language, but also to request that someone come out to speak about the Open Meeting Law. Alexi Demasco is here representing the DAs office and he will go trough the Open Meeting Law with you, and after he is done, there is a City Councillor who will be speaking to you.

**Presentation by Alexi Tymoczko from the Norfolk County District Attorney's Office re: Open Meeting Law:**

The purpose of the Open Meeting Law is to give the public an access to the deliberative process and the voting process of any kind of municipal organization. The core from the statute is that all meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided. Executive Sessions and exceptions will be discussed later, but the Open Meeting Law mandates that everything you do becomes public. Executive Session does not mean that things are buried, it just changes the timing of when it will be released. Everything you do will eventually be released.

If there is a complaint, it almost always will be the burden of the municipal body to justify why something was private, particularly with executive sessions. The open meeting Law is a minimum requirement of public access.

Groups covered by the Open Meeting Law: Every Board, Commission, Committee or sub-committee of any district, city or town.

What is a meeting? Anything that you have power to talk about as a Council is subject to the open meeting law. Be careful about the on-site inspection piece – be careful that if the inspection bleeds over into a discussion, that would be considered deliberation, not just the actual vote, but everything that goes into the vote.

Email: be very careful about emails between each other. Certain administrative emails, scheduling, agenda items, etc. are okay, but no discussions can take place.

Telephone or Skype usage to obtain a quorum is not allowed under the Open Meeting Law.

Meetings must take place in a public location, not a private home and should be handicapped accessible. No one can be prevented access. Everything must be audible and intelligible. Everyone must be able to hear. Copies of written materials being discussed should be handed out to everyone in attendance.

Sunday and legal Holiday meetings – There is a statutory prohibition on Sundays or legal holidays. Unless something very serious is happening and there is an emergency, you may meet; however, you are only to discuss the emergency. There is no executive session allowed during an emergency meeting.

Joint Meetings – if more than one board is expected at a meeting, each board must post the meeting and keep its own minutes.

Notice: 48 hours, not 2 calendar days. Sundays and legal holidays are not counted. There is no discussion of cancellation in the Open Meeting Law.

Minutes: should include the date, time, place, members present or absent and the action taken. Votes should be recorded exactly. Verbatim transcripts are not required. Executive Session minutes must be released once the issue has been resolved.

Audio and videotaping – the open meeting law allows anyone to video or audio tape a meeting, except in Executive Session. The wire tap statute makes it illegal to secretly tape things. The person doing the recording must disclose that they are doing so, and it can only be stopped if it is disruptive.

Executive Sessions: You may enter into executive session if you are in an appropriately posted proper meeting. First, the meeting is convened in open session, a majority vote to go into executive session, roll call votes will be taken, and the purpose of the meeting must be stated. Whether or not the Board will reconvene into open session should also be stated.

He discussed the nine reasons for entering into Executive Session, all of which are listed in the handout.

The District Attorney's Office receives the majority of complaints from newspapers, private citizens and other council members. They cannot resolve disputes, they only rule on the complaint. Violations of the Open Meeting Law can result in fines and civil action.

It was asked if the Councillors can meet as an entity if they are not yet in office. Mr. Demasco stated that, as far as the open meeting law goes, if the Council is going to engage in deliberations which will later have legal authority, there may be an issue. If the Council is essentially going to make a judgment and then ratify it on the first day in your first day in office, that would be a concern. Subsequent ratification is not something they like to see.

### **Presentation by Tom Brophy, Councillor at Large, City of Brockton.**

His experience on the open meeting law – his quorum is 6. Whenever six get together, one will back out. When you reach the quorum level, you have the potential of violating the open meeting law. He has been a City Councillor for over 20 years. He suggested that each Councillor get a copy of Robert's Rules.

If you are the maker of a motion, you should be recognized first. You have the chance to speak twice on the matter before taking a vote. Once a motion is made and seconded, the motion has been made and it can be spoken on. If it is not seconded, a new motion can be made. A motion to move the previous question can be made and seconded. Once that is done, the debate is over and a vote must be taken.

In Robert's Rules, there is a motion for personal privilege. In Brockton, we use it to recognize the football team, someone who's won an award, things like that. In one instance, a matter was tabled. One of the Councillors got up and made a point of personal privilege, and started talking about the tabled matter. Once it is tabled, you cannot bring it up again. Any rule can be suspended if you have a two-thirds vote. A tie vote is an unfavorable report. If one person recuses themselves or one person is sick, a vote of 4-4 defeats the item.

Reconsideration: you can move for reconsideration right away. In Brockton, we have until the Thursday at noon to file for reconsideration. We have to deal with veto, but you will not have to do that. We have what is known as a Charter Objection. Monday night we had to close our 2 branch libraries due to funding. The City received a grant from the federal government to open for 4 hours after school. The grant came in Monday, and the Mayor called and asked me to late-file the grant, which required for a suspension of rules. Then a motion was made to allow the matter to be approved in one reading. Certain matters require up to three.

Robert's Rules of Order is the boiler plate, but anything specific to Brockton is covered under Brockton's ordinances. Brockton's website lists all of its ordinances online. There are 5 sub-committees of the City Council.

Something coming up before the council would be filed first with the City Clerk by Tuesday at noon before the regularly scheduled meetings. The City Clerk is also the Clerk to the City Council. Once it is filed with the Clerk, it is added to the agenda. The City Council's order of business is to: read the records of previous meetings if requested, communications from the Mayor, communications from city officials or employees, presentation of petitions, reports of city officials and committees, unfinished business of the preceding meeting, motions, orders, resolutions and motions for reconsideration. There is no public comments section at City Council Meetings. The School Committee does that, but the City Council does not. Legal counsel is the clerk of the ordinance committee. He is at all of the Council meetings, especially if there is a controversial issue being discussed. The public is only allowed to speak on matters that are posted as public hearings.

I am for closing down licensed establishments at 1:00 a.m. Of course, the club owners and bar owners are against it. To get more information and support, I tabled it, but I wanted to air the issue again publicly. I took it off the table and set it for the next meeting, and it was defeated. If a motion is made to table, there is no discussion, but you can ask the reason. The president decides whether or not something is in order, so you have the right to challenge the ruling. I've used the table process to kill something. If I have six votes, it's tabled. Knowing the rules is a way to protect yourself and it makes for a better meeting. Preservation of decorum is a very important role. Most subcommittee meetings are an hour. Only finance committee meetings and council meetings are televised.

The Council President is a one year appointment. Every year, they have a caucus at the end of the year. It is an open meeting and nominations are opened for Council President. The President should not be involved in the debates – it is his job to run the meeting.

Mr. Meoni said that Randolph's Charter states that the President is seated for the entire 2 year term. He said that he sees the Town Council as the former Town Meeting and the Town Manager as the replacement to the Board of Selectmen. There was no public speaks at Town Meeting, so in that comparison, he understands why the Town Council may not have public comments during every topic.

Ms. Duddy informed the Town Councillors-Elect that she was a member of both charter committees, and that the committee promised the residents of Randolph that they would have "community speaks" on each agenda. If that changes, Ms. Duddy predicts uproar in the community. At every meeting where council meetings were discussed, a promise was made to every resident of the Town that public comments would remain on the agenda. Mr. Brophy asked her if it was in the Charter, and she stated that she does not believe it is. Ms. Duddy said that at every single meeting that went before the voters

with regard to the Charter, the public was clear that they did not want their right to public comment taken away. If that is done, the voters will see it as a betrayal.

A lot of times things go directly to the council, so the public does not have an opportunity to speak. Even at subcommittee meetings only those who are invited are allowed to speak. If a motion is made to allow someone to speak, then they can speak, but only if a motion is made.

Mr. Brophy provided the Councillors with his cell phone number before ending his presentation.

Mr. Goldstein suggested discussing when they are going to meet next for interviews.

Mr. Connors offered to coordinate the meetings, as there is no one else to act as a conduit since David Murphy is one of the finalists.

Dates were discussed for a time to meet to interview the candidates. Mr. Connors told the members that the deadline is November 4<sup>th</sup>. Mr. Clifton suggested coordinating the meeting through email. Mr. Clifton and Ms. Pasquantonio did not bring their calendars with them. Mr. Clifton again stated that he believes the meeting should be coordinated through emails. Mr. Azer suggested that face to face would be easier.

Thursday, October 15<sup>th</sup> was tentatively scheduled. Mr. Connors asked Ms. Pasquantonio and Mr. Clifton to get in touch with him about whether or not the 15<sup>th</sup> is good for them. He will check with Mr. Burgess as well. Mr. Clifton said that the 15<sup>th</sup> will not work for him.

Mr. Alexopoulos suggested that everyone email him available dates for Wednesday and Thursday nights for the rest of the month. All three interviews will be done in one night. Mr. Goldstein suggested sitting down to determine a pay scale.

The meeting concluded at 11:00 a.m.