SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(CHARTER AMENDMENT PETITION)

September 8, 2008 **5:00 PM**

Mayor Guinta called the meeting to order.

Mayor Guinta called for the Pledge of Allegiance which was led by Alderman Ouellette.

A moment of silent prayer was observed.

The Clerk called the roll.

Present: Aldermen M. Roy, Gatsas, Sullivan, J. Roy, Osborne, Pinard, O'Neil, Lopez, Shea, DeVries, Garrity, Smith and Ouellette

Absent: Alderman Domaingue

4. Proposed amendment to the Manchester City Charter resulting from a voter petition initiative providing for the insertion of Section 6.15 Limitation on Budget Increases.
Note: A copy of the proposed Charter amendment is attached including the effective date and a brief summary. Also included is correspondence from Bond Counsel, Financial Advisor, and a memorandum from the City Clerk's Office.

Alderman Garrity *moved to send the proposed amendment to the November 2009 election. The motion was duly seconded by* ***Alderman Osborne****.*

Alderman O'Neil stated Tom Clark, I want to confirm a conversation I had with Tom Arnold last Friday night as well as some comments Tom made publicly as well as the conversation with you. What is your legal opinion or the office's legal opinion on the ballot this should be sent to?

Mr. Tom Clark, City Solicitor, stated the statute calls for you to refer it to ballot. That's undeniable. It has to go to the ballot. When you order to a special election, there is no set outside limit in the statute. Other sections do talk about 365 days and our office has counseled the Board that they ought to take a look at that 365 days and use it as a general guideline. The discussions were whether or not September or November was best; I feel more comfortable with the September date. I believe it would pass muster in the courts but I cannot say that the November date would be illegal.

Alderman DeVries stated I have the statute in front of me, Mr. Clark. I assume you do as well. The guidelines for 49-B:5(IV)(c), the first part of it seems to be rather strong verbiage that it shall be within the guidelines. The second part of it is what you are referring to, the 'otherwise municipal officers'. Is that open ended?

City Solicitor Clark responded yes it is. There are no maximum days in that section.

Alderman DeVries asked but wouldn't the beginning part of that paragraph set the guidelines? And (c) is only if there is not an election within those timelines?

City Solicitor Clark responded no, the minimum of 60 days and maximum of 365 days only applies if you are sending it to the general election. Special elections only have to be at least 60 days, but there is no maximum set in the statute. That doesn't apply.

Alderman DeVries stated and you referenced that your opinion is based on the opinions of other counsel that you sought as well, or is that just from your office?

City Solicitor Clark responded that's just from my office.

Alderman DeVries asked and have you given us this opinion in writing?

City Solicitor Clark responded no, I have not.

Alderman DeVries asked but you do feel you can strongly defend this?

City Solicitor Clark responded yes.

Alderman DeVries asked in the November election?

City Solicitor Clark responded I can defend either. I feel that the September date is probably a little stronger but I can defend either.

Alderman DeVries stated so if I understand you, the September date you can strongly defend. The November date is possibly problematic.

City Solicitor Clark stated it is a little more distant. What a court will do I couldn't state at this point but it could be defended.

Alderman DeVries stated so if we wanted to be sure that this is within the parameters of the statute and the intent of the statute, the September date is the date we should set.

City Solicitor Clark stated that is the better date in my opinion, my legal opinion, but as I said, I can't rule out the other date either.

Alderman J. Roy stated my question is for Tom as well. If you look at that section that Alderman DeVries was just referencing, 49-B:5(IV)(c) and we break it into two, the first part essentially we haven't abided by. The first part of that paragraph we haven't abided by. We go to the last sentence which says otherwise the municipal officers shall order a special election. That's what we are doing here tonight correct?

City Solicitor Clark responded correct.

Alderman J. Roy stated we are ordering a special election, so the way I read it is that the last sentence is what takes precedent now that we are in the position that we are in, and you are correct in stating that all it says is it is not to be held less than 60 days from the date that we order this special election, which I am sure is in there so that no one rushes to judgment, as we discussed in length the other night. Would you agree with that?

City Solicitor Clark responded correct. The last sentence controls at this point. Just for clarification, I wouldn't say we haven't abided by the first part. We didn't take action during the first part.

Alderman J. Roy stated okay. You stated it much better than I could. Thank you.

Alderman Garrity stated the reason for my motion for November 2009 election is because history shows that participation is much higher in a general election rather than a primary, and I think we should have as much participation as possible on this question with voter turnout so that is the reason for my November motion. Tom Clark has already stated that he can defend it. Is that right Mr. Clark?

City Solicitor Clark responded yes, I did say that.

Alderman Shea stated I have no qualms at all with the November election, none at all. My point is that if there is a problem in terms of not having it in the usual situation, how do we rectify that? In other words, the City Solicitor has expressed a few concerns right now concerning the November 2009 date. Maybe someone can answer that; I am not sure. The point is how do we rectify it so in fact we can have it on November 4th? Is there some kind of a waiver that can be done? Is there some sort of decision that we as a Board can make?

Mayor Guinta stated I would defer that question to the Solicitor.

City Solicitor Clark asked is the Alderman requesting about this November's general ballot?

Mayor Guinta stated what I think he is asking is if we vote for November 2009 and that date for some reason become problematic, how can we as a Board of Mayor and Aldermen address the issue that would be raised? In my opinion if there is a suit and the judge says you have to put it on a certain day, then you have

to put it on a certain day. If nobody raises an issue then there is no issue. We are getting the best interpretation from Mr. Clark and he is stating that either September or November…he obviously has a potential concern with November but I share Alderman J. Roy's reading that there is no end date; therefore it would be legal.

Alderman Sullivan stated I support the idea of having it in next November's election. I think that is the opportunity when we will give the most people an opportunity to have their voices heard. I guess my question would be if there is…is there anything that would prevent us from voting to send this to next November's ballot but at the same time with the caveat I guess that we request the City Solicitor to seek an advisory opinion from the Attorney General and/or the State Supreme Court as to the legality of having it on that date, and if that date is problematic under the law that we could then basically back shift it to the September election?

City Solicitor Clark responded first of all the New Hampshire Supreme Court will not issue advisory opinions to municipalities; they only do it to the Legislature. Secondly, I think once you have ordered it to the ballot, your job is done. I don't think you can put a caveat on your motion to send it to ballot. I think you send it to the ballot now and if something happens, it happens.

Alderman Sullivan asked if we were to vote tonight on scheduling it for November and a court said that's beyond the 365 day window, which I don't see in the statute so I don't think it will be a problem, but were that to be the case, what would then happen? What would we as a City have to do to rectify the situation?

City Solicitor Clark responded I believe at that point the court would tell us.

Alderman DeVries stated we have not in any way affected the implementation that would have happened on the tax cap proposal no matter what ballot we send this to this evening. The effective date has not been changed. Is that correct?

City Solicitor Clark responded the effective date under RSA 49 (b) is the first day of the fiscal year following its approval by the voters. You send this to the ballot in either September or November, and it will be effective July 1, 2010.

Alderman Lopez asked 2010 or 2011?

Mayor Guinta responded July 1, 2010 which is fiscal year 2011.

Alderman Lopez stated the only question I have for the City Solicitor is this: Is the proper motion to not specify a date even though you talk about whether you talk about the primary date or the general date, should we not for the special date for the election or is that sufficient to say in the general election?

City Solicitor Clark responded if you are talking about the November election, the motion should be to refer it to a special election to be held concurrent with the general election in November 2009.

Alderman Osborne stated Solicitor Clark, as long as it is on a separate ballot, I think that is the big thing, the special election? It wouldn't be on the same ballot as the regular ballot. It would be on a separate ballot, correct?

City Solicitor Clark responded that would be up to the City Clerk and the Secretary of State to decide.

Alderman Osborne asked so it doesn't make any difference if you put it on the same ballot or you don't? Is that it?

City Solicitor Clark stated it most likely will be on its own ballot.

Alderman Lopez asked since that's our election, wouldn't we determine that here? I mean it's not a state election. It's not a federal election. This is a City election.

City Solicitor Clark stated the City Clerk's office said that they will clarify that with the Secretary of State's office.

A roll call vote was requested by **Alderman Gatsas** on the motion to refer the proposed amendment to the Manchester City Charter resulting from a voter petition initiative providing for the insertion of Section 6.15 Limitation on Budget Increases to a special election to be held concurrent with the general election in November 2009.

A roll call vote was taken. Aldermen Gatsas, Sullivan, J. Roy, Osborne, Pinard, Lopez, Shea, DeVries, Garrity, Smith and Ouellette voted yea. Aldermen M. Roy and O'Neil voted nay. Alderman Domaingue was absent. *The motion passed.*

Alderman O'Neil stated just a comment… it has nothing to do with this. It is probably very appropriate that we publicly thank our various public servants: Police, Fire, Health, and Highway…hopefully I am not leaving someone out for their great work this weekend. It really shows; the best of Manchester came out this weekend. We need to publicly thank them.

Mayor Guinta stated they have been working around the clock doing a great job serving the City. I will have a full report for the Board on Tuesday. There are still obviously some ongoing issues both with the Police Department and Crosbie Street, but suffice it to say the residents on Crosbie Street, considering the situation, feel more than thrilled with the level of service we have provided them as a City and the Police Department has done phenomenal work getting that operation… it essentially remained fully operational and functional despite the severe and significant challenges they have. Your request is more than appropriate and again on Tuesday we will have a full report for the Board.

Alderman Pinard stated I would like to go along with Alderman O'Neil but again I want to thank you Mayor for taking the lead and putting all this together kind of in a hurry. Mark Roy…I was there. I saw him running around; he did an outstanding job. Dan O'Neil and Alderman Lopez were there. I think most of the Aldermen were over there at one time or another. It's sad to say that the water…I have had that experience many years ago on Candia Road, so I want to thank you Mayor, and I want to thank the Aldermen for sticking together on an important issue. Thank you Your Honor.

*There being no further business on motion of **Alderman Shea**, duly seconded by **Alderman Pinard**, it was voted to adjourn.*

A True Record. Attest.

City Clerk