

## COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS

**June 14, 1999**

**6:30 PM**

Chairman Pariseau called the meeting to order.

The Clerk called the roll.

**Present:** Aldermen Pariseau, Rivard, Thibault, Girard, O'Neil

**Messrs:** J. Brisbin, L. Lafreniere, T. Arnold, Alderman Cashin,  
K. Clougherty, A. Paras, K. Devine

Chairman Pariseau addressed Item 3 of the agenda:

Communication from Deputy Finance Officer Sherman responding to inquiries made by Alderman Clancy at the April 20th meeting of the Board relative to departmental usage of the HTE system.

Alderman Girard asked what is your recommendation, Mr. Chairman.

Chairman Pariseau answered I would probably recommend that we send a letter to these departments to see why they are not using the HTE features to their fullest.

Mr. Clougherty stated since this letter went out, we have talked to the departments and we had one-on-one meetings with several of them and we will continue to do that. We are having a meeting with all of the departments on Wednesday to talk about the year-end closing and using primarily the work order because the work order is key for the new relationship with the School to make sure that we get all the chargebacks. We will be covering that with them. We are making progress in that area and if you want us to report back to you at the next meeting on the status, we will be happy to do that.

Alderman Thibault stated do I understand that you are going to ask all of these departments to come there.

Mr. Clougherty replied we do that every year as part of the normal closing. We walk through all of the things and it is mainly the Accounting Clerks and Payroll people so that they understand how to close out at the end of the year. We will

cover that in addition and schedule additional meetings so that we can get everyone moving along.

Alderman Thibault asked when is that going to happen.

Mr. Clougherty answered Wednesday and we have already met with a couple already.

Alderman Thibault asked should we monitor this activity.

Mr. Clougherty answered we think that by reporting back to you on a monthly basis, we can tell you what progress we are making.

On motion of Alderman Thibault, duly seconded by Alderman Girard, it was voted to have the Finance Department report back to this Committee each month regarding utilization of the HTE system.

Chairman Pariseau addressed Item 4 of the agenda:

Communication from the Library Director submitting a copy of the Library's Internet Policy, which was revised, on 4/19/99.

Alderman Girard moved the item for discussion. Alderman Thibault duly seconded the motion.

Chairman Pariseau asked why would we allow patrons of the Library to solicit pornography through the Internet and be afraid of the ACLU. Quite frankly, it is the taxpayers who are paying for this service and I don't think that we should allow any patron of the Library to have access to that kind of stuff in my opinion. I wouldn't have any problems trying to filter the activities and see what the ACLU does. We can't be afraid of a lawsuit, especially when it comes to taxpayers money.

Mr. Devine stated we have a number of people from the Library here to address specifics of technicalities, but I had asked Mr. Brisbin earlier if I could come here and try to find out what the purpose of this meeting was and find out what your concerns are. The Library Internet Policy is a living document. It has been changed and it will be changed countless times as technology advances, as human need for knowledge advances, as for what is available for research on the Internet. The Internet is a fantastic tool for legitimate research. Whether it is to research as I did recently on the Internet the real background of Pearl Harbor because my father-in-law was dying and he had been a Pearl Harbor survivor and I was able to access over the Internet recently declassified documents. They talked about his

unit and what his unit did to build a communications network. These are documents that aren't readily available in printed form, even in the largest municipal library. So, the ability to get legitimate research over the Internet is fantastic. As you point out, the Internet has access to all sorts of information. What some might consider legitimate, others might not. What you or I might consider pornography, art majors might think not. Does it mean that we should censure it, no. That would be a slippery slope we shouldn't go down. You mentioned the ACLU. No one on the Library Board and by statute...

Chairman Pariseau interjected I mentioned that only because the Director says that there is a City risk.

Mr. Devine stated he points it out to you because these are legitimate issues that come up. You have to understand that you are dealing in an age where news is slow. A local newspaper might want to write an article from a particular standpoint. You have been victimized by those whether they are right or wrong. Every Aldermen has. They don't always look at the positive. They try to look at the negative. What we have here as I said is a living document. The extent and purpose of tonight's meeting is for you, as concerned Aldermen of the City and leaders of the City, to express your concerns and ask the Trustees to consider these concerns the next time they are going to revise the policy. The Trustees of the City Library welcome that input. By statute, we are forced, as Trustees, to set forth the policy of the Library in Manchester just as the Trustees in Concord are running theirs. We would be pleased to hear any input at all. We don't set policy as Trustees based on fear of litigation. As Chair, litigation is my life and a trial does not make me afraid but I respect the First Amendment of the United States Constitution and the First Amendment of the United States Constitution says that we must be very aware of censorship. We cannot, constitutionally, pass a policy that says there will be no access to pornography. The Supreme Court of the United States says we don't even know how to define pornography so we have to be very careful. What we did instead is far more creative. We took a positive spin here and we put in our policy that the access and viewing of our Internet services in the City Library for citizens are for "educational and research purposes." The staff is well aware that if a teenager were to be in there, and I am sure that your concern is teens...

Chairman Pariseau interjected well no, not only teenagers. You have got complaints with the...I don't know what you call those people at the Library and really it is scary. They go there, I assume, for one reason so if it was filtered, they wouldn't be hanging around the Library.

Mr. Devine replied filtering isn't the answer. We selected it reluctantly but the real sense of duty is to youngsters in the City for the workstations in the children's

area. We don't want filtering in the adult research areas and I will tell you why. Filtering doesn't work. It is wrong headed; it really is. There was a time I was in favor of it. I have come completely around. What bumped me around was that my mother just had a very bad bout of breast cancer. She is still suffering. I was able to do a lot of research and, in fact, take her to Mass General and get a new treatment for her based on Internet research that wasn't available anywhere else.

Chairman Pariseau replied I don't have a problem with that type of thing.

Mr. Devine responded the filter won't let you research the word "breast". If you put a filter in, you cannot research any website talking about breasts. It is a no-no word. As soon as you get to the next level where the word is breast, it will take it right out. This is not the way to go. The way to go is to proactively work with the parents of these people, the teenagers, 16-18. The parents have to work with their children regarding what they want to research and what they don't. The real problem and the reason this got revised had nothing to do with pornography. We weren't having a real pornography problem with the Internet. We had a problem with usage where multiple users would gang up around the terminal, each taking a block of a session that you can reserve so that others couldn't ever get access. That was the real impotence for changing this policy and it was only after we did that that somehow the focus has become pornography. That wasn't the problem in the two years we have had the Internet there. That wasn't the problem at the City Library. I don't think anyone at the Library considers that legitimate research if people are in there pouring through pictures of naked people and I think that if the Librarian walked by and saw that, they would instruct that patron and tell them to stop and that is not what the terminals are for. For the first time, our policy now has sanctions. We didn't have them before. Now we can ban them from using the terminals. Before we had something that said you shouldn't do these things, but gave us no right to stop them. Now we can stop them. Again, that turned out not to be a problem in our real experience. The problem was hoarding of the terminals and now we have taken care of that. Now if people abuse that right, we can ban them from using the terminals. We also now have the right that if they damage the equipment, they can be prosecuted under State law. Before, that wasn't in our policy. We were trying to address the problems that our two-year experiment with the Internet has shown us really exist in our Library.

Chairman Pariseau asked, John, why is this here. I got a call from Mark from the *Union Leader* on Thursday evening advising me that this was going to be on our agenda and I knew nothing about it. I still don't know why it is here.

Mr. Brisbin answered because we had a new policy and previously the Aldermen had taken a real keen interest and that is why we do have filtering in the children's workstations. That was championed by Tom Roberts two years ago. We thought

that as long as we were making some minor modifications to the policy, we thought why not send it out, plus...

Chairman Pariseau asked for information.

Mr. Brisbin answered absolutely and you can find articles of value in every major newspaper in the country and every library facing it and there are key legal decisions about it so I thought I would keep Aldermen abreast of some of the key legal positions.

Alderman Girard stated for the record, I called and spoke with Mr. Brisbin some time ago regarding Internet policies. I did not ask him to forward this to the Board. It was for my own curiosity and I had some questions.

Mr. Brisbin replied he is right and I thought that if he was interested perhaps others were interested.

Alderman Girard stated I have several questions regarding the policy. I think, to agree with the Chairman, there are appropriate and inappropriate uses for the Internet and I think the Library Policy here has in something of a clever manner gone to address that. While the Supreme Court wasn't necessarily sure it could define what obscenity was, it did leave it up to community standards and I believe we fashioned a section off of zoning ordinances around this community standard here in the City. While the First Amendment says something about government not abridging speech, it doesn't say that because *Hustler Magazine* exists the Library much purchase it and make it available to patrons of the Library so I think my thinking along Internet access and pornography and others what I consider deviant materials I don't think is necessarily protected under community standards but that having been said, I do have several questions about the policy.

Mr. Devine stated as a principal, I don't disagree with you but something that you just said needs real thought. You said things I find offensive and who in this room is going to be the decider of what is offensive and what isn't.

Alderman Girard replied I believe the way the State law is written it is to allow the community to set standards. I believe the Supreme Court gives the communities or the States the ability to set those standards and define them so it is not me personally so much as it is the community at large. How you define that necessarily, I think is probably up to the policy making boards that govern the Library and the policy making boards that govern the City. Perhaps somebody wants to have a referendum and we seem to be on a referendum craze lately so you could go through all different methods but as a community, the City of Manchester defined standards when it created the current sex shop zoning ordinance and the

Board of Aldermen had certain findings when it created that ordinance in order to set that community standard. I think you are all aware of the processes that exist for a community to make that determination.

Mr. Devine responded I just never compared the Library to a sex shop.

Alderman Girard replied I am not necessarily comparing the Library to a sex shop but the idea that because it exists we must provide access to it seems to be an interpretation of the First Amendment that is a little too broad for my taste because it opens up the Internet and it is one of the questions that I have. I know your policy used to forbid the use of e-mail and chat rooms and I don't see where it continues to do that now. Just because the Internet gives people the ability to...

Mr. Devine interjected all of the filtering that was in place that Aldermen requested is still in place. Nothing has changed in that way. The one line here from Mr. Hayward's article where he says it is impossible to block access to websites such as Yahoo! that provide e-mail and chat rooms. It is swiss cheese. We can't forbid it so we had to take the language out indicating that we could. Somewhere down the line and I have Susan Duchesne here to speak a little bit about it when the firewall for the city network goes out, we will have greater capacity to limit it but there will be a downside. I would like Diane Prew to address that as to what the firewall can be used for that purpose. You cannot give the Library an e-mail address.

Chairman Pariseau stated we do not have any control over what policy the Library...

Alderman Girard stated we have some questions that we should be able to ask, Mr. Chairman. Mr. Arnold is the Library subject to directives of the Board of Mayor and Aldermen.

Attorney Arnold replied yes I think it is.

Alderman Girard continued in as much as the Library is subject to our directives, Mr. Chairman, if there are parts of the policy that we do not agree with, we want to see change...the Board within its right to make a directive to change the policy.

Chairman Pariseau replied it is not up to this Committee, this was just sent to us for information purposes. It is on the agenda so I do not know what our responsibilities are with regard to either accepting or not accepting the Library Trustees' policy. Mr. Brisbin just sent it as a matter of information. It should not even be on the agenda. If we as individuals have concerns with this policy, then I would address them to the full Board as the policy makers.

Alderman Girard replied the Committee on Administration is the appropriate Committee to review these policies. It has to deal with Information Systems, city policies, governing policies, Internet active computer issues which is what this Committee deals with.

Mr. Devine stated this is a good place to share it, because this is a complex issue. You have a statue of John Stark here and we had a fourth grader blocked from the John Stark website because it was a filtered workstation that the child was at. We filter for children.

Susan Duchesne from the automation library at the Manchester City Library stated I would like to answer Alderman Girard's question about e-mail and chatrooms. We physically cannot prevent people from doing e-mail on such public sites as *Hot mail* and *Yahoo mail* and *Netscape mail*, we cannot prevent them. You can get to them just as you would get to any other website. There are various chatrooms that are in that same category that we cannot prevent people from getting to.

Alderman Girard interjected just because you cannot physically prevent people from getting to those sites does not mean that people have to be permitted to visit them. I do not know that we should be providing people or allowing people to use e-mail or chatrooms or anything else just because you cannot...if you were to walk by and see people using their e-mail, why would not that, why can't the policy say we do not give you quarters to make phone calls with, we are not going to allow you to use e-mail.

Mr. Devine replied the only way to use the Internet, the only effective way to use it is search engines, *Yahoo*, *Netscape*, those are search engines. If you go to those pages, to use your search so you can put in a topic you are trying to research, every one of those pages have a button right in the corner up at the top, our toolbox saying "chat" we thought in our innocence, back in '97, that we would not get involved with that because in '97 there were not half the search engines, none of them had a button saying "chat". We did not have "chat" upfront in our graphic user interface that is right up front. That no longer works because every search engine has its own links to chat. If what you are saying is we should not allow people to go to those sites, then we would be excluding them from search engines.

Alderman Girard interjected no I am not saying they should not be allowed to go to those sites, I am saying specifically they should not be allowed to use those functions because under the logic that...

Mr. Brisbin asked do you think we have staffing to check on the reading and viewing habits of every patron that comes in the door.

Alderman Girard replied, Mr. Brisbin, I hope that you have staff periodically checking the stations to make sure they are being used in compliance with...

Mr. Brisbin interjected we do, and we have a security guard as well.

Alderman Girard stated I am not suggesting, Mr. Brisbin, that you should have somebody standing over everybody's shoulder. However, during your periodic checks of the workstations to make sure they are being used appropriately and not abused, that if somebody were sending e-mail or anything else they were doing that with what is not part of the policy that you...

Mr. Brisbin interjected we have and we do but we cannot...

Alderman Girard interjected not with e-mail and chat rooms.

Mr. Brisbin interjected yes we do, but we cannot effectively say that we are going to do it in every case and we do not have the staffing to do it in every case.

Alderman Girard asked do you or don't you allow e-mail or chatrooms to be used?

Mr. Brisbin replied we cannot prevent them from coming in when we notice the people are using them we say you are not supposed to be using it for that.

Alderman Girard asked I thought I was just told that you do allow it now because you cannot stop it.

Mr. Brisbin replied we tell them positively what we want it used for, education and research purposes.

Alderman Girard stated the old policy used to exclude or prohibit use of e-mail and chatrooms, this policy does not seem to do that.

Mr. Devine replied because it is an unworkable policy. You are going to have a list of 200 things that every person who is an opinion maker in the city thinks should not be done. One person is going to say I do not want any research in there about gay people, one is going to say Jewish faith, we cannot go that way, Alderman.

Alderman Girard stated I do not think that is the suggestion that is not what I am trying to say, Mr. Devine. The fact of the matter is the chatrooms and e-mails and

things are specific uses, they are not research, educational, they are specific uses. They are communications uses and I do not see a bank of telephone booths that people can use free of charge because it is their public library so that they can call around the country or do whatever it is that they want to do over the telephone with whomever it is they want to do it. It is a real reach, it is not a legitimate one at all to suggest that somehow limiting communication use and e-mail and chatrooms are going to be prohibiting people from researching the Jewish faith.

Mr. Devine asked could it not be a little narrow-minded, sir, to say that e-mail and chatrooms are not research. In my office, which is totally computerized every person there; we do vast amounts of research via chatroom and e-mail. My clients will attach their documents via e-mail to me and I to them, we e-mail cases for them to consider, this is research, people do this in the Library. Chatrooms you can set up research chatrooms, we do it in our office. I have not gone to the Library yet and done it there but if I do not get it from that terminal, then the one I have at my home or my desk at the office. We cannot think of chatrooms as the air well sex rooms anymore. The Internet has moved way beyond that. There are legitimate research uses of both e-mail and chatrooms, there are.

Alderman Thibault stated I am a little confused, Mr. Chairman. I always felt that the reason the Board of Mayor and Aldermen elected Library Trustees was to have them look over and set policies for the libraries. Is not that what their function is? If we want to change that, you were right when you said it should go to the full Board and not to this Committee because if we want to change the Trustees' job as far as Library Trustees, that should come from the full Board because we cannot make that decision here.

Alderman Girard replied no one suggested that we could not.

Alderman Thibault asked what is the point of even discussing it. Let's bring it to the Board if they want to discuss it there, discuss it there. That is where I would make a Motion for that to happen.

Alderman Girard asked, Mr. Chairman, what is the point of having a Committee work on anything that the Board refers to it. The Board sends things to Committee in order for them to review and make recommendations...

Alderman Thibault asked the Board sent this here.

Alderman Girard replied that is how it got here, Mr. Thibault. You voted on it at the last agenda to send it to this Committee.

Alderman Thibault replied it does not belong here, it belongs to the full Board to make the decision as if we trust the Library Trustees or not. If we do not maybe it is time to change it. That is the way it should go. We are playing with this here and we will play here all night and not get anywhere.

Mr. Devine stated we have these discussions at library circles we do not often get a chance to have them with you, that is part of the reason I sent the information for you. I want Susan to just finish that John Stark story, it was awfully interesting.

Ms. Duchesne stated, as you know, fourth graders throughout the State of New Hampshire studied the history of New Hampshire. We had a child in the children's room who wanted to go to a very good New Hampshire history site but he could not because it included information on one of the Isles of Shoals which is called *Smuttynose* so therefore that whole site was blocked so he could not find his information about John Stark. We had to set him up at one of the adult terminals in the New Hampshire room and get him to that site, make sure he stayed there so that he could get his information about John Stark. It goes on and on.

Mr. Devine stated the other side of the coin is we have things that are coming in on filtered worksites.

Ms. Duchesne replied no filter is 100% trustworthy because you create the filter today and then there are new Internet sites that get around it. They come out tomorrow and they are getting around the filter. You cannot update a filter every day. There is also something that is really nasty called Internet spoofing where people actually steal valid Internet addresses from search engines like *Altavista* and they will put in their sites so that instead of the valid information that you expect you are getting, you will get something that you do not want to see. There are sites that there are certain words that you would not think of filtering like the word "beaver". You could get something nasty if you look up that word but you would not think of filtering that word. It is a false sense of security.

Mr. Devine stated we can agree or disagree on the roles of the Aldermen and Trustees about setting policy that is fine that is good government. But the Trustees are more than willing...we have an Aldermanic representative at every single Trustees meeting every month and any of you are always welcome. I have seen some of you come to those meetings to find out what is going on. Anyone who wants to come to the Library Trustees with proposals for us to consider, an Internet policy or any other policies are welcome to come. We entertain any and all suggestions.

Alderman Thibault asked Attorney Arnold in view of the two recent court decisions that they have found filtering to be unconstitutional or at least illegal. Where do we stand with that?

Asst. Solicitor Arnold replied I would have to research that, I would not want to cast an opinion now as to the status constitutional law without doing research.

Alderman Thibault stated we should get to know that because that is important. I agree with what you are saying about...we ought to look at that and find out what that is about. If the Supreme Court has decided that we cannot do that why should we go against that. I do not want to get into the kids thing, I think that is fine, I do not have a problem with that. My problem is that they have already done two court decisions on it are we going to take them to court because of this.

Mr. Devine stated our problem is not teens use of it, it is not having enough teens using the Library, that is what the problem is. We also have done a lot with Library security and it is one of the places in town that if a teen comes in during school hours, we call the school. We get the teen's name, we call the school, why is this child not there, we call Officer Keefe and we take care of things. We do keep the lively interest in the activities of teens and we also work very diligently with the Police Department on our Library rules to make sure that what happens in the Library is legal.

Alderman Girard asked I do have some specific questions about the policy, I was not trying to get off track but if I may ask them, they are fairly simple questions. How long is an Internet session? The policy makes referrals to a session, how long is a session?

Mr. Devine replied thirty minutes.

Alderman Girard stated it did not say in the policy.

Susan Duchesne stated on the main floor of the Library it is one hour, in the West Branch it is one-half hour and in the children's room it is one-half hour.

Alderman Girard asked why is it different at the main branch than at the west branch?

Susan Duchesne responded because the person who manages the West Branch prefers a half-hour and there is only one terminal there where as we have five terminals.

Alderman Girard asked do people have to have a Manchester library card in order to access the Internet.

Susan Duchesne replied no. It is stated in the policy that they do not. They have to have either a library card or a photo ID.

Alderman Girard asked why would it not be required?

Mr. Devine replied you do not access to homeless for example, we have run into problems with that.

Chairman Pariseau asked do these people take out books?

Mr. Brisbin replied no, with many of the shelters they do accept responsibility and they will give a forwarding address so when the person in temporary residence there goes to a more permanent residence...

Chairman Pariseau interjected what is the difference between a homeless person, not having a card, not being able to take out a book and yet they are able to use the Internet.

Mr. Devine replied the difference is that publicly owned materials that are purchased with tax money get back to us. They come in, they use the Net and often to find jobs and research other things as well hopefully to get themselves back on track.

Chairman Pariseau asked do you really believe that?

Mr. Devine replied I do believe it happens in some cases, in many cases no it does not happen.

Alderman Girard continued why don't you allow people to download information to a disc?

Susan Duchesne replied this was a policy set by the Board of Trustees.

Alderman Girard interjected I agree that if you are having people put floppies into the computer you have a risk of contaminating the computer with a virus but...

Susan Duchesne interjected we have virus protection software, it is not a concern.

Alderman Girard stated so we do not really know why the Trustees say you cannot download material to a disc?

Mr. Devine replied that policy was set two years ago when we believed it was a significant system virus.

Alderman Girard asked “use of the Internet ease is viewing and printing accesses provided for educational research purposes, other uses may be in violation of State or Federal laws and the user will be held accountable for his/her actions”. How is one held accountable?

Mr. Brisbin replied we had an individual who was on a porn site, an adult who called over two underage young ladies to see what he was viewing and we did have the security guard contact the Police and the Police did question him. There was a possibility of charges being filed. In that case he was held accountable.

Alderman Girard asked was he allowed to use the terminal and have Internet access again?

Susan Duchesne replied that is one of the reasons why we changed the policy because at that time period we were not limiting the number of people at the Internet either so if we saw three or four people clustering around an Internet terminal, there was no need to think there was anything going on so we updated it so that now it says that if two people are going to be on or anymore than one they must also sign their names so that anytime you see more than one person...

Mr. Brisbin stated that particular individual had to leave for at least a day, I don't think we saw him for a week or more. The Police did give him a warning until maybe following up but charges were not filed so it did not go beyond that.

Alderman Girard asked children's room Internet stations are for children's use only but you do not say what the age of the children are.

Mr. Devine replied some people feel comfortable there until they are fourteen or fifteen. Others are ready for adult research materials for whatever project they are working on and are much earlier than that.

Susan Duchesne stated we state seventh grade and up because you can be in seventh grade even though you are older or younger, it is debatable, that is why we decided seventh grade. There are also developmentally disabled people in there.

Mr. Brisbin stated we have twenty seats in the children's room and often times we have a lot of developmentally disabled who feel more comfortable there but it is a disadvantage to the community's children because there just are not enough seats, there is not enough space.

Alderman Girard asked if someone under this policy is using the Internet for pornography purposes, they come in their point is to access pornography sites, is that a violation of this policy and do you impose the sanctions that the policy threatens?

Mr. Brisbin replied we go up to the person and tell them it is not for that purpose, it is for educational and research purposes and they cease and desist. But it happens rarely.

Alderman Thibault stated send it to the full Board and have them look at it.

Chairman Pariseau stated they have already had the opportunity and they referred it here.

On motion of Alderman Thibault, duly seconded by Alderman Girard, it was voted to send it to the full Board.

Chairman Pariseau addressed item 5 of the agenda:

Communication from the Mayor's Special Committee on Downtown Cleanliness advising that they are currently considering three options for changing the current system of Downtown trash collection.

On motion of Alderman Girard, duly seconded by Alderman Thibault, it was voted to table item 5.

Chairman Pariseau addressed item 8 on the agenda:

Communication from the Assumption Greek Orthodox Church seeking authorization for the placement of a banner across Hanover Street, between Chestnut and Elm Streets, announcing GreekFest '99 from August 1 - 22, 1999.

On motion of Alderman Thibault, duly seconded by Alderman Girard, it was voted to approve the placement of a banner as requested.

Chairman Pariseau addressed item 9 on the agenda:

Communication from OGBE Communications, on behalf of Healthsource NH, seeking authorization for the temporary placement of a 60-foot banner across Elm Street on August 12, 1999 marking the start of the 7th Annual Healthsource Corporate Road Race.

On motion of Alderman Girard, duly seconded by Alderman Thibault, it was voted to approve temporary placement of banner as requested.

Chairman Pariseau addressed item 10 on the agenda:

Communication from Laurie Forbush regarding certain sales practices used by MediaOne.

Chairman Pariseau stated they are going to come in and adjust your television, make sure your cable is running properly and it is just to get their foot in the door and sell you other stuff and I told them I was not interested.

Alderman Girard asked if MediaOne is out there doing this so...

Alderman Thibault stated he has not heard any complaints.

Alderman Girard asked should we send them a letter and let them know that we do not approve of these types of tactics.

Chairman Pariseau stated we can send them a letter saying we do not support their sales techniques.

Alderman Girard stated this is dishonest, ask them if they are doing any sort of phone solicitation, make sure they disclose the purpose of the call.

Chairman Pariseau stated they call and they want to set up an appointment so that they can come in and adjust and make sure my cable is running okay. I thought they really came in to see if I had two TVs hooked up to cable. I told them that I could not do it their night, Saturday at the time would have been better. Then they called back again to set up on Saturday in the meantime, I got a complaint from a constituent so I asked the person to come in, they tried to sell me stuff, I am not interested. This is the same type of...

Alderman Girard stated it has happened to you and others.

Alderman Thibault asked if there was any way to control it.

Alderman Girard suggested to send a letter.

Chairman Pariseau asked do you want to send them a letter.

Alderman Thibault asked that we do not approve of their tactics.

Chairman Pariseau replied that we do not approve of their sales practices.

On motion of Alderman Girard, duly seconded by Alderman Thibault, it was voted to send a letter to MediaOne stating the Committee does not approve of their sales practices.

Chairman Pariseau addressed item 11 on the agenda:

Communication from MediaOne submitting a copy of its Fourth Annual Progress Report on Capital Spending for System Upgrades and Rebuilds for 1998 under the Social Contract.

On motion of Alderman Thibault, duly seconded by Alderman Girard, it was voted to receive and file.

Chairman Pariseau addressed item 12 on the agenda:

Communication from Attorney Pestle submitting model documents to help Municipalities and municipal attorneys relative to cable franchises and cellular towers.

On motion of Alderman Girard, duly seconded by Alderman Thibault, it was voted to refer to the City Solicitor and the contracted attorney.

### **TABLED ITEM**

Communication from Deputy City Clerk Bergeron submitting proposed changes to the Taxicab Ordinance.  
(Tabled 3/10/98)

This item remained on the table.

Chairman Pariseau addressed items 6 and 7 of the agenda:

Revised agenda item to “communication from Artemis Paras submitting comments to a revised Draft Building Code Ordinance Proposal.”

Ordinance Amendment:

"Amending an Ordinance Establishing Minimum Regulations Governing the Design, Construction, Alteration, Enlargement, Repair, Demolition, Removal, Maintenance and Use of All

Buildings and Structures; Providing for the Issuance of Permits, Collection of Fees, Making of Inspections; Providing Penalties for the Violation Thereof; Known as the Building Code; and Repealing the Existing Building Code of the City of Manchester, New Hampshire."

(Note: public hearing held on 4/12/99.)

Chairman Pariseau commented I still feel the Housing Code should receive a Public Hearing. It is currently two separate Ordinances on the books. To advertise amending or changing the Building Code with no reference to the Housing Code, I have a problem. As I said tonight at the Public Hearing if we made reference to the Housing Code, we would have at least another forty people there expressing their concerns, although they would not be able to understand it because I still do not. I do not know what you are trying to do and I think maybe we ought to start over again because as you stated at the Public Hearing that you were going to come in the Fall with more changes. I do not understand what you want to do.

Mr. Lafreniere stated certainly there was no attempt to be anything but full disclosure on this. In fact, what I had attempted to do at the introduction in the communication I had originally sent to the Board was to disclose and inform a consecutive summary all of those issues that I felt represented significant policy changes or represented the issues of interest in the form of amendments to the Ordinance from what we currently have on the books now. Certainly I understand the concern about whether we have adequately addressed the notice requirements in terms of providing notification to the interested parties. However, I certainly had attempted from the start of this process to disclose fully that tie-in. There is a natural link between the Building Code and the Housing Ordinance. That link was formalized even more directly when the two departments were merged. The administration of the Ordinance of the two Ordinances became under a single envelope, under the same administration. What we have attempted to do here is take this opportunity in our normal process where we try to update these codes, we like to update them more frequently than every ten years, but at this point we do update these codes on a regular basis and the opportunity presented by doing that afforded us the potential to bring in a national standard as opposed to a local proprietary code in the form of the Housing Code that has a myriad of conflicts with the Building Code.

Chairman Pariseau asked why can't we dovetail the Housing Code as a separate entity. Consolidated you have housing and also building. Your Housing Code people do not do building inspections or do they?

Mr. Lafreniere responded in some cases, yes.

Chairman Pariseau asked how does a housing code guy go out and say some plumbing is okay.

Mr. Lafreniere responded we have been striving, especially the last year in particular, to establish a policy and procedure to cross-train all our personnel. Housing Code staff is probably more than most individuals in the department, required to be as cross-trained as possible and to be familiar with all the various sub-trades of the building industry because they are looking at it all. They are going into the buildings and they are looking at the structural parts of the building. They are looking at the handrails, electrical, plumbing, heating system, zoning compliance. So they are looking at it all and it is imperative that they are familiar with all of these various sub-trades.

Chairman Pariseau asked does the Plumbing Inspector do housing inspections?

Mr. Lafreniere responded on occasion, yes. What happens is rather than send two inspectors out to confirm the violation has been corrected, if the violation is plumbing in nature and there has been a plumber on the job site, we would not necessarily send the housing inspector back out to confirm what the plumbing inspector has already confirmed in his inspection and vice versa, if the housing inspector can confirm that the violation has been addressed, and it is a building issue or plumbing or electrical then we would try to capture the efficiency of sending out a single inspector as opposed to sending out multiple inspectors.

Chairman Pariseau asked if the national BOCA Code is a separate entity, you are going to take the '97 version of that for your Building Code which is addressed by Ordinance 151. We have the National Maintenance Code, which is the Housing Code that in the city is Ordinance 150. You are taking that 150 and mushing it in with 151.

Mr. Lafreniere responded it is important to understand the hierarchy of the codes and how they are structured because under 151 currently, the building regulations, is the Building Code (1987) but underneath the Building Code are subchapters which include the mechanical, electrical code, plumbing and so on...as subchapters of the Building Code. Our proposal is to recognize that the only way we know to ensure compatibility between those codes is to utilize another chapter of the Building Code and make that the existing structures code and replace our existing proprietary Housing Code in a format where we insure there are not any inconsistencies between the code. We are not chartering new territory, we are not covering new ground because all of our other codes, although we reference them in separate chapters of the Building Code, we reference the same way already.

Chairman Pariseau asked why is it your intent to eliminate the Housing Code and incorporate it in the Building Code.

Mr. Lafreniere responded to ensure that the two documents are compatible.

Chairman Pariseau stated can't you make reference in the Housing Code...

Mr. Lafreniere responded what I am having a difficult time understanding is why would you not want to do the same...if you are rendering fault with that course why would you not want to do the same thing with all of the other codes and have separate chapters for every code that we administer. All of these codes as long as they are duly referenced and people can access the information that is provided therein, can know what the standards are readily by referring to the section under the Building Code. I do not understand the procedural advantage.

Chairman Pariseau stated the BOCA Code is separate from the Maintenance Code. Are we not following the National...

Mr. Lafreniere responded not any differently at all than the Plumbing Code or Electrical Code or Mechanical Code, they are all separate documents that are referred to as chapters of the Building Code. They are all separate books. I did not bring them with me but I can tell you there would be a stack of books this high that are all referenced as chapters of this book.

Chairman Pariseau asked you want to throw out the existing Housing Code.

Mr. Lafreniere responded the existing local attempt at that and recognizing the nationals...

Chairman Pariseau asked it was never part of the Public Notice.

Mr. Lafreniere responded it was part of the Public Notice, we recognize the fact that it was not specific reference. The comment you made earlier about having potentially a lot less interest that demonstrated itself in the form of people speaking at the Public Hearing, that takes me by surprise because we had spent a considerable amount of time talking with some of the interest groups in that arena about that proposal before the Public Hearing. There was more awareness than you may realize.

Chairman Pariseau stated if they were made aware that your proposal is only to effect residential and you are not doing anything with commercial and/or industrial buildings.

Mr. Lafreniere stated which is entirely consistent with the way we do it now. We were not proposing to expand our horizons beyond what we do now. What we want to do is take the...

Chairman Pariseau stated you do not have any "Housing Codes" relative to commercial and/or industrial property.

Mr. Lafreniere responded no we do not administer existing structures codes on commercial property.

Chairman Pariseau asked so businesses can get away with murder.

Mr. Lafreniere responded they are covered under the Fire Codes, which is typically administered by the Fire Department. We are talking about the Life Safety Code and Fire Prevention Code. We felt to introduce another code...

Chairman Pariseau asked how about the stairways and stuff in commercial property is that still under the Fire Code.

Mr. Lafreniere responded yes.

Chairman Pariseau asked industrial and commercial.

Mr. Lafreniere responded yes.

Chairman Pariseau asked how do those codes jive with what you are proposing here for the Building Code.

Mr. Lafreniere responded the National Code making organizations have come a long way towards being consistent with regard to how these regulations dovetail together. Locally, the Fire Department has adopted the BOCA Fire Prevention Code, which is fully compatible with the BOCA Building Code. The State has adopted NFPA1. NFPA1 is the National Fire Protection Association's version of the Fire Protection Code. National Fire Protection Association is a different code-making panel than BOCA and there are some conflicts there.

Chairman Pariseau stated there are a lot of conflicts because the way I understand it is that...

Mr. Lafreniere responded interest in that right now because the Fire Marshal has been taking a very active stand with regard to his ability to delegate authority to the local Fire Department and act in the capacity final any disputes. There is a real diversity of opinion on the nature of that authority and whether it subrogates home

rule on our ability to administer local codes. That is an issue that I do not think we are prepared to address, certainly in this proposal. The National Fire Protection Association has not developed building codes, so they deal with the National Fire Protection Codes which are referenced in this document, referenced in the Building Code currently in the proposal but they do not have a Building Code per say. We cannot ensure that we have full compliance with what the State is doing but that State/Local conflict is not something that is going to be resolved in this proposal.

Chairman Pariseau stated we cannot resolve that. I am so confused, Leon, I just do not...

Mr. Lafreniere responded it certainly is not our intent. If I could give you a quick sense of history about how this thing has gotten to this point, because I think that it may give you some...

Chairman Pariseau stated well I know it has been an ongoing project for a year and a half.

Mr. Lafreniere responded yes a couple of years.

Alderman Girard stated it has been more like five.

Mr. Lafreniere stated to recognize importance we are trying to stay current with our BOCA Codes and it's something that has fallen behind where we have been dealing with a lot of other projects and reached our level of capacity in terms of administrative capacity. What we tried to do here was follow a procedure that is consistent with the procedure, the way we have always done it before.

Chairman Pariseau stated that is our problem, I do not think that procedure is following the BOCA Code procedure.

Mr. Lafreniere responded I am quite sure it is, we took great pains to take a...and the support of the City Solicitor's Office to review that very issue and Tom is here to help speak to that. We do recognize as with any document that...

Chairman Pariseau asked but they have a sample ordinance, a sample way of adoption to adopt an ordinance. You have the number, you have the title and we do not even have that here with the one that you gave us.

Mr. Lafreniere responded but that is not part of the ordinance nor is it in anyway mandated. What we have done is...

Chairman Pariseau asked do you think this Board ought to have known that Building Code is Ordinance 151 and Housing Ordinance is 150.

Mr. Lafreniere responded in terms of the way it was noticed, I do not disagree that it would be better...

Chairman Pariseau stated ...to amend an ordinance and what you are doing here, in my opinion, is amending all other ordinances, it would be like you amending the Traffic Ordinance. We do not know what you wanted to amend. You were not aware that it effected the Housing Code until you stated that at the Public Hearing, page 6 of the minutes.

Mr. Lafreniere responded but I had sent communications a couple of months earlier to the Board about that very issue pointing out the issues...

Chairman Pariseau stated that is the whole crux of my concern was here we are changing the Building Code and you want to slide in deleting the Housing Code and no one was made aware of it through Public Notice or anything else.

Mr. Lafreniere stated I apologize to you if I missed that as part of the proposal but I can assure you that the...

Chairman Pariseau stated it was not part of the notice.

Mr. Lafreniere stated the notice, of course, I recognize was not developed by our department but it was intended to be descriptive in nature as opposed to referencing specific provisions descriptive to the point where it deals with all ordinances that are regulating the construction alteration minor repair, maintenance and use of buildings.

Chairman Pariseau stated I will go back to St. Catherine's issue when it went to the Supreme Court and the Judge threw it out because there was a reference that the matter was on record at the City Clerk's Office. It upheld the City's position. This did not even say that.

Mr. Lafreniere responded I do believe that it does. The City Solicitor has certainly concurred with that opinion that it back references fully...

Alderman Girard stated there are two things that I would like to say here, and I have some first-hand experience but as a property owner I am glad to see...

Chairman Pariseau asked is that a conflict of interest for you.

Alderman Girard responded I do not think so. As a property owner I can say that any attempt that the department makes to bring the Housing Code and Building Codes into conformity with each other without conflict, I thoroughly support because the...

Chairman Pariseau stated but there was no reference...

Alderman Girard stated the current Housing Code is, frankly, too stupid for words but I will agree however with you that in the Public Notice, and I think the Building Commissioner agrees with us, that the Public Notice because in Manchester we have always separated the Building Code from the Housing Code, they have always been treated as two different entities. The Public Notice was not seen by property owners in Manchester as something that would be effecting the regulations governing their buildings because they did not see the current Housing Code in that Public Notice. I would like to suggest that we recommend that the Board of Aldermen re-notice, not the entire Building Code because I think the people who showed up to speak at the Public Hearing regarding the Building Code part of the code clearly understood that there were changes made by public input. But that we noticed the public to say that the City is considering wholesale changes in the Housing Code so that we can get that public input. I am a member of the Property Owners Association here in town and I have...

Chairman Pariseau asked is that part of Lloyd Basinow's crew.

Alderman Girard responded no it is not Lloyd Basinow's crew. It is a statewide organization with a local chapter. I took the proposed revisions in the Housing Code to some of the people in the Property Owners Association and they were not aware that those changes were being proposed so they had no opportunity to review it before the meeting. They had no opportunity to bring it to their membership to review it so they could have input. I would like to support what you are trying to do here, Mr. Chairman, and if you are looking for a motion that we re-notice the changes to the Housing Code so that the public is made fully aware that we are considering changes to the Housing Code in addition to the Building Code and that we are looking to unify the two as one overall existing structures code is...

Chairman Pariseau responded that is my whole argument with Leon. Right now, this is as clear as mud. The whole thing, yes I would take a motion that we instruct the Building Commissioner to conduct a Public Hearing relative to the Housing Code.

Alderman Girard stated I think the Board is going to have to conduct that. We can have the Building Commissioner do the notification process.

Mr. Lafreniere stated, Mr. Chairman, I believe that the Solicitor's Office represented here by Attorney Arnold, does have some information regarding the requirements for hearing as well as whether they feel this hearing process was appropriate and adequate.

Alderman Girard asked do you have a copy of the notice that was in the paper. Would you read it to us please?

Mr. Lafreniere responded the thing that I thought Tom may speak to those, the Public Hearing requirement just so that you did understand that. It may not change any direction here but just so you understand. The discussion I held earlier with him today, I understand a Public Hearing is not a requirement. I am not suggesting that we not hold one, I am just saying that in the context of making this decision, I want you to understand that every attempt was made here to not only meet the law, but to exceed it.

Chairman Pariseau asked but your intent was to reveal the Ordinance 150, which is the Housing Code. That was not made clear to me or to the majority of the Board, nor to the public. This is what you have got to do. This new reference to a property maintenance, no one knew what that was. Now it is going to replace the Housing Code after the Public Hearing.

Mr. Lafreniere responded as I have indicated to you when we had discussions, it is a very important adoption, and we are going to be living with it for awhile.

Alderman Girard stated I am not even sure I understand the motion that I made is the motion on the floor to have the Board host another Public Hearing to get public input on changes to the Housing Code, is that what we are looking to do.

Alderman Thibault responded I think he is saying that the Housing Code is going to be incorporated in the Building Code.

Alderman Girard stated I understand that...I quickly read the notice and the notice does not make specific reference to the Housing Code.

Clerk Bergeron stated the motion was to recommend to the Board of Mayor and Aldermen, that re-notice be made to the public that the City is considering wholesale changes to the Housing Code.

Alderman Girard stated he would like to explain. I understand...

Chairman Pariseau stated you just want them to say that the City is contemplating changing the Housing Code, send your comments to the Building Commissioner rather than conducting...

Alderman Girard responded no, I am in favor of the public hearing. I quickly took a look at the notice that was published in the...the notice that was published spoke specifically to the Building Code. As a property owner that is governed by the Housing Code I would not automatically think that the Housing Code is involved in that. What we have got to do, since there is this confusion, since there is that uncertainty, is hold another Public Hearing so we can advertise that there are changes proposed to the Housing Code and get the public's comment on those changes. I do not have a problem...the Building Commissioner and I have had significant discussions about some of the points within the Housing Code. What we want to do is...

Alderman Thibault stated it is pretty good what they tried to do there.

Chairman Pariseau read the notice: "Amending an Ordinance establishing minimum regulations, governing the design, construction, alteration, enlargement, repair, demolition, removal, maintenance and use of all buildings and structures; providing for the issuance of permits, collection of fees, making of inspections; providing penalties for the violation thereof; known as the Building Code; and repealing the existing Building Code of the City of Manchester, New Hampshire."

It says nothing about the Housing Code.

Chairman Pariseau stated, Artemis, I know you had an item on...

Mrs. Paras stated I respect you withholding the motion until I had an opportunity to speak to you. I have been interested in this project from the moment the notice appeared in the paper. Those of you who heard me speak at the public hearing know that I have been interested. I have been tracking everything, reading the minutes and checking with Paul Bergeron on the history of these codes, he knows I called him, in fact he said that my questions were fun. What I found interesting this evening, I appreciate the comments made by Leon Lafreniere to the Board representing the Building Department. Because I read the proposal very carefully, this was my working copy, as a result of hearing this evening that there seems to be an understanding that there is a provision in the BOCA Building Code for a Maintenance Code, a specific chapter only under the referenced standards and only one particular section. What is important is that in the proposal that was on file at the City Clerk's Office, there is a very important chapter, it is called Chapter 34 Existing Structures. I had mentioned to Leon when I met with him and with the City Solicitor's Office, one of the problems with this whole format was

that it was not a legislative format. We do not know what we are deleting from an existing code and what we are replacing it with. In other words, it just says here on page 18, Existing Structures 3401.2 Maintenance and Repairs. Delete the first sentence of paragraph and replace as follows. But you Aldermen do not know what that first sentence of the paragraph means. If I explain these few things, there will be a clarification here as to what is the basic problem. 3041.2 of the BOCA Code Existing Structures. Chairman Pariseau, at this point I would like you to direct a simple question to Leon, I need to have something clarified, I just thought of something; when Leon met with me per motion of Alderman Cashin and you seconded it with the City Solicitor's Office, did I understand correctly that back in 1989 when we finally passed the 87 edition of the BOCA Code, that we did not adopt the existing structures chapter or code. I thought I heard you say something to that point, what was it, Leon.

Mr. Lafreniere responded in 1989 when the 1987 edition was adopted we did adopt an existing structures provision, some six months to a year later we came back and made a request to the Board to delete the provisions of the existing structures code at that point. The reason being that it was very difficult to administer sections in 1987 code regarding how to deal with existing structures and as they applied to Building Codes and rehabilitations. We took that out at that time, but originally in '89 it was in there.

Mrs. Paras responded I thought I understood you to say that. This is for the new edition, but for all of these years now we did not have an existing structures chapter, correct.

Mr. Lafreniere responded we had a chapter but we deleted the provisions regarding Housing...

Mrs. Paras stated so you did administer them.

Mr. Lafreniere responded except we have that existing Chapter 150 in the Code of Ordinances for the housing.

Mrs. Paras stated just for the housing, I am talking now the Building Code because this chapter in the Building Code and it is the same type chapter for language existing structures. The reason this is very important to me and it should be to every single Alderman is that a City like Manchester has many, many existing structures that are continually re-sold and go before zoning for changes in occupancy. What I found out was that with the '87 edition, the Certificate of Occupancy which is the legal document that is given to an owner of property to determine that this owner complies with all applicable standards and requirements. I am not talking Certificate of Compliance; this is the CO. You have got to have a

legitimate CO. With the '87 edition, there is a provision in the '87 Code, which is what we are still using that the CO is not mandatory, it has to be requested. I wonder how many properties we have in this City that the Building Permit CO did not get translated into the Assessor's Office to keep an updated record of current assessed values. Now look at 3401.2 or try to delete the first sentence: the owner shall be responsible for the maintenance and repair of structures in accordance with the maintenance requirements of this Code, meaning the Building Code, the Property Maintenance Code and the Fire Prevention Code listed in Chapter 35. Chapter 35 is what is called the Reference Standards Chapter. It took me a long time to figure this all out. You have all of these acronyms NFPA, etc. I learned you go to the codes, the Building Code section and under codes and then I found BNPMC 96 (BOCA National Property Maintenance Code) what is the reference in the code section number 102.2. You take a little journey and you go here to the scope. What is the scope of the property maintenance code? Now we are referencing another code. This code, the section that is referenced in the reference standards is to protect the public health, safety and welfare in all existing structures, please note all existing structures, residential and non-residential. This is very important, and on all existing premises by establishing minimum requirements and standards for the premises. As you know we have maintenance of premises standards in our current Housing Code. We have to consider the way the code is written the Property Maintenance Code for all existing structures residential and non-residential. What does Manchester decide to do – we are not going to use a standardized form that has been adopted at a national level through an approved code change revisions. These changes just do not happen willy-nilly, they follow certain procedures. So Manchester now is saying we are going to delete Section 101.2 so we are deleting the major scope section of the National Maintenance Property Code. We are going to reinvent the wheel, we are doing something that is reserved for the national level and now this is what our code is going to read. Do not even bother to revise this, if we have problems with the existing Housing Code, let the people who have had problems identify the problems and see what we can do to strengthen it. Do not do something like this because I do not even think BOCA would approve of that because I wrote a letter to BOCA National in Illinois, I spoke to the technical assistance department on the telephone as a result of my letter, Gary Nelson. I learned that Manchester is a paying member, we pay dues. But Leon, you have to get your name up on there as a lead person, it is still Mr. Gaudreault, I would urge you to call. So now let me read you what Manchester is going to do with the scope. We are going to write this scope to protect the public health, safety and welfare in all existing residential rental structures and on all existing premises. What do we have on our hands, we heard something about constitutional rights, etc? Manchester is creating a discriminatory code because you are saying okay under this particular code whose scope is for all buildings regardless of type you are now saying Manchester has been given license to re-write a nationally adopted code, we are going to re-invent

the wheel, we are going to make this our Housing Code by limiting it only to residential rental properties. I agree with Leon there are conflicts, but you are going to have conflicts like you have never had, I would ask if you want to go this route that you get a certification from Leon or the City Solicitor's Office to certify that they read through all of this code because every provision follows the scope. A code has a scope and Leon will remember when I went to meet with him and the City Solicitor, I did not tell you everything I did but I handed him a worksheet, I scribbled it quickly the day I met what was the scope, what was the intent of your code proposal. When I left them, I told them, I think you are trying to do too much here and you do not have adequate information, support documentation. I have some here and this will explain my point. I did a summary but we have already discussed a lot of this, so we do not need to go into it. We all understand now that we have two distinct ordinances classified under two distinct chapters in our City Code of Ordinances. They are each titled differently, they each have a different title but what is more important, they each have what is called a unique applicable enacting style. Here is the Housing Code that was adopted in 1966 and the enacting style...we have to use words that fit what we are talking about otherwise it is mishmash and we do not know what we are doing. This is an ordinance out of the Housing Code requiring the repair, closing or demolition of dwellings unfit for human habitation and to establish and enforce minimum standards for use and occupancy of dwellings in the City of Manchester. This is a different code with a different enacting style. This is not the enacting style of the Building Code. The current proposal as it effects the current status of these codes is unclear. The proposal never limited itself to updated language for Chapter 151. The proposal speaks to the use of Chapter 150, the Housing Code and its applicable provisions for fine and enforcement proceedings on pages 18 and 20 of the proposal. When I came before the Board of Mayor and Aldermen, I was not aware that the City had refortified all of the City Ordinances. I want to thank Leon's department and the City Clerk's Office; you have all been helpful in supplying me with the information that I sought so that I could understand the intricacies of this proposal. It was like trying to go through a maze and find out what in the world are we doing and talking about. When you read pages 18 and 20 of the proposal, there was no mention; it just said Chapter 150 of the City Code of Ordinances. I am still on page 18, this is when you are going to be deleting out of the Property Maintenance Code and write your own language. Then you go to penalty; Alderman Girard, this may interest you, you are a property owner-106.2 Penalty: "any person who shall violate a provision of this code...or as allowed by Chapter 150 of the City of Manchester New Hampshire Code of Ordinances." There was no reference to Chapter 150 being titled the Housing Code of the City of Manchester. To make it easy for you, I just used one of Leon's statements because I think I know what he is trying to do, but I am questioning if we can do it. Florida is very unhappy with the codes; they are adopting and enacting their own State Building Code. When Leon says here at the bottom of my cover page,

he said in the minutes page 6, the next area is somewhat two-fold and that is the adoption of the BOCA National Property Maintenance Code and retire the existing Housing Code and replace it with the Property Maintenance Code. Committee Members and Tom and Leon, please note that this BOCA National Property Maintenance Code the City is intending to adopt is not the National Property Maintenance Code. It is a code that is only using the title but in reality it is the Housing Code with a lot of the language transferred from the Housing Code...my point can be proven by your reading the complete proposal. To make my point a bit stronger, I gave you samples of ordinances, this is how the ordinance proposal was indicated for the legal notice and Alderman Pariseau kept talking about we are not amending an ordinance, in fact if we are appealing a building code we are actually readopting the same chapter with the amendments so we did not even get that right. What worries me is that the thinking at the City level, they covered themselves legally because they are saying we have this statement, all inconsistent ordinances are repealed. So under Section 2 the '87 edition of the BOCA National Building Code as amended by the City as well as all other ordinances or part of ordinances in conflict herewith are hereby repealed. Please keep in mind that that statement only applies to that particular code in question. We cannot take that statement and give us free license and do whatever we want to repeal. I do not believe it does because that is like a canned statement I found it in the Housing Code that this ordinance shall take effect upon its passage and all ordinance or parts of ordinance inconsistent therewith are hereby repealed. I find it just about everywhere. To show you two more pages and then I am finished with the complete summary. The next is a sample ordinance for the adoption of the 96 BOCA National Building Code. Please note that it has ordinance number in the upper right hand corner. For us we did not have an ordinance number, it would be chapter. That would be the logical approach. When you have a chapter here when we are talking building we would use Chapter 151.01. Notice the enacting style, but what is most important is under Section 2 to make sure that we do not faultily repeal a Housing Code that is already on the books, notice it says that ordinance number lets indicate what number are we talking about or chapter number. Then it says what is the full title of the present ordinance: Adoption of the Building Code that is one title or Housing Code title. It is in the sections in your code of ordinances and this is all under Title 15 specifically, Housing Code, Building Department. I cannot understand how the Building Department is under Land Usage. That is a word that does not conform anywhere else that I can discover. I do not know where that word came from. You can see where...

Chairman Pariseau asked why is Building Department under Land Usage.

The Clerk responded I can explain that one. The Charter required that the City establish definitions for its different departments. The Solicitor's Office prepared a number of ordinance changes outlining the different departments that were

established and what their responsibilities were. We had to create a place to define the Building Department and that is why it was put in 149 which does not match up with Title 15 but that defines and states that there is an established Building Department.

Mrs. Paras stated in the Airport Zoning Code, the definition for variance is not copied correctly. I want you to go back to what was in our proposal, there is no reference to any ordinance chapter. We do not have it, so you do not know what you are dealing with, which ordinance are we dealing with. For the Property Maintenance Code, which is the last page of this set, you will notice that it has an ordinance number. We have never had a Property Maintenance Code so we do not know what the chapter or number is because we have never had one. The enacting style is not identical to the Building Code, it is a different style. It talks about the adoption, then again inconsistent ordinances repealed. Do you see where it says "present ordinance number" the whole title of the present ordinance. I know that the city wants to do this correctly, there is no reason why they would not. It is just that everything is in a state of flux now. The Plumbing and Mechanical Codes have stopped being national codes as the edition is 1993. They have already moved into international. We have a problem with State Statute, Assistant City Solicitor Arnold, will agree with me, I spoke with somebody from the Office of State Planning, there is a State Law that says how to adopt a national code by reference. We have not amended the State Law to include the word international, there may be a problem with that, I do not know I am not an attorney. The point I am making is each of these codes, whether national or international has its own enacting style and we have to adopt it. Not only by reference, as Leon Lafreniere says, however there is another small phrase that we have to adopt by reference by ordinance otherwise they are not legal. The International Mechanical Code has its own enacting style, so we would have to find out, to adopt the International Mechanical Code as you are so suggesting, for '96, he is suggesting also a '93 Plumbing Code. We have to have these done correctly. For the fees, I got the building regulations from Nashua, they put their fees under each of the code sections. If there is a tradesman who wants to know what am I going to be charged, goes right to the particular code section, sees the fees and knows what it is all about. It has been a real pleasure working on this self-imposed assignment, I exceeded...

Chairman Pariseau stated as a representative of the general public, what do you think we ought to do.

Mrs. Paras responded as a representative of the general public, because Mrs. Paras is also a taxpayer and I know that we want to do things right. I am a law abiding citizen, in the interest of public accountability, that the City of Manchester...first you ought to have a written statement of policy, Alderman Girard would agree

with me, in regard to how we adopt these national/international codes, what do we want to see, what do we expect of Leon. I would ask for written procedures that can come forth with assistance from the City Solicitor's Office, write out procedures so everybody understands carefully without any question as to what is expected of each one so when we go to hearings, I know if I go for a proposal, I am going to see the language that I think I am supposed to see. I do my best to play by the rules that says go to the City Clerk's Office by what is on file. I go but then I cannot find it, then I hear something else. We should start establishing minimum standards of doing city business for public accountability. This whole proposal exceeded the scope and the intent of its original plan. It has a bigger plan in mind, then everyone should have been properly notified. If we are going to do all of this adopting of national codes, we have got to do it right. Which chapter are we referring to. We have it started on the books, we do not have a Plumbing Code in here, not that I am aware of, correct Leon. Do we have a mechanical by ordinance number?

Mr. Lafreniere responded it is under 151.

Mrs. Paras stated that is generic building regulations, I am talking about a specific Mechanical Code or a specific...

Mr. Lafreniere stated it is a sub-chapter of the Building Code just like all of the other ones. Regarding the enacting style, as you call it, that is formatted so as to permit a community to adopt individually these codes should they not want to adopt the series.

Mrs. Paras asked but by ordinance, we have to do it?

Mr. Lafreniere responded that is correct. If you choose to adopt them through the Building Code as sub-chapters it is not required to go this additional step.

Mrs. Paras stated but now we are changing the language in the existing structures chapter of the Building Code books and we are changing and we are taking things beyond what we should and this is what worries me because as a member of the public, what certification can you give me if somebody had to go into the department, I am going to have a problem. Then they are going to say well no it says this, the provision says this, this is a conflict, no over here it says that. We cannot...you have a scope in a code and every provision usually supports the scope. So in conclusion, Alderman Pariseau I would say we took a quantum step here when we tried to revise the scope of the national code and my recommendation would be...maybe what we need is public information meetings, exploratory meetings. I personally would not support this type of a proposal, that is my own opinion because of the...

Chairman Pariseau stated you do not have to vote.

Mrs. Paras continued because of the reasons I stated.

Alderman Thibault asked Attorney Arnold what is your legal definition of what has happened here?

Asst. Solicitor Arnold responded I am not quite sure what you are asking.

Alderman Thibault asked do I understand that you feel that the proposal, the way that Leon has it and the way you read it, that it is right the way it is or do you feel that she brings up points here that certainly should be researched?

Asst. Solicitor Arnold responded these national codes are in proper form. The notice to the public met technical requirements. As Leon pointed out, there is no requirement for a public hearing at all, but certainly the Board can hold them at its pleasure. If the Board wanted to hold further public hearings, giving specific notice of the Building Code, then you can do that also.

Chairman Pariseau asked why do you feel it is not necessary to have a public hearing for the Housing Code like there was on the Building Code?

Asst. Solicitor Arnold responded I do not think there is a technical public...there is not requirement for either.

Chairman Pariseau stated well we had one on the Building Code, I would encourage to go along with Alderman Girard's motion that we recommend to the full Board that we have a public hearing.

Alderman Thibault stated that is why I asked the question, I wanted to know where he sat on it and what he thought.

Asst. Solicitor Arnold asked did I answer your question?

Alderman Thibault responded yes, I think you did. As far as you are concerned it does not have to go to public hearing, either one. Legally you feel it is all right the way it is. However, if I hear Alderman Girard's question here that the Housing Code should go to public hearing the same way as the Building Code, then I have no problem with that either.

Mrs. Paras asked which Housing Code you would be sending to public hearing, is this going to be the alteration to...

Chairman Pariseau responded the new proposed...

Mrs. Paras asked but what is it going to be, is it going to be in this format, Leon?

Mr. Lafreniere responded I believe that is the proper format. The process that we have gone through to review this code has been tedious at best. It has been agonizing at worse, it is a very difficult process to make sure that you have all of the different pieces linked properly, that you have not missed things. We do miss things occasionally, so to have another set of eyes and especially one that is so thorough and diligent, Mrs. Paras was helpful. She pointed out some issues that we did need to take a look at and we have a couple of technical corrections that we want to make as a result of that process. That being said, as this goes to public hearing I would like to ask the Board if they would consider trying to initiate this additional public hearing process at the earliest convenient time to bring this process to a conclusion. The reason that I make that request is because there are a number of issues extraneous to the adoption of the Building Code itself that hinge on the adoption. We are currently, as you are well aware, in the throws of trying to implement the building permits module of the HTE system. We cannot do that until we get this behind us. It takes so much effort to do the input that we did not want to do the input for the old codes that were not going to be in effect, so I had them put the input in on the new codes anticipating that there may be some revisions as it came through the public hearing process. We are on hold there until we get the codes resolved in terms of the direction. The other issue is the revenue side; we did have our FY2000 revenue estimates predicated on the adoption of the new codes. We were hoping that the code process would come to conclusion prior to this. That is just another piece of the puzzle that we would like to try to bring to some closure. I am not requesting, please do not misunderstand, that we try to fast track something to the point that we once again run into problems.

Chairman Pariseau asked when do you feel that you could have everything in place to conduct that public hearing?

Mr. Lafreniere responded nine o'clock tomorrow morning. We are ready to go and I would have brought all of those technical revisions with me tonight, unfortunately the system went down.

Chairman Pariseau stated what I am suggesting is we have a meeting of the Board of Mayor and Aldermen on Thursday night under new business if we did that on Thursday, I do not know if we have any opposition to...

Mr. Lafreniere asked to set it for a new public hearing? That is what we would be doing?

Chairman Pariseau responded yes.

The Clerk asked, Chairman Pariseau, has there been some discussion about asking that the public hearing be held on changes being made to the Housing Code. I think the Building Commissioner has indicated that the two are woven together and any public notice we issue I would feel more comfortable to make reference to changes in the existing Building and Housing. If the two in essence were going to hearing at the same time, otherwise the Committee would then be subject to the same types of criticisms for failing to notify the public that the ordinance would be...

Chairman Pariseau stated I would probably use the same notice you sent out for the initial public hearing but include the Housing Code.

Mr. Lafreniere stated we have talked about the potential...

Chairman Pariseau continued that would cover...do you go along with that or Building/Housing Code whatever...

Alderman Thibault stated and if not Thursday night, July 6<sup>th</sup> we are meeting, is that soon enough? Would that hold you back too much?

Chairman Pariseau asked it would be amending an ordinance establishing minimum regulations governing the design...as well known as the Building Code and add another sentence dealing with the...

Mr. Lafreniere responded we want it to be very clear and apologize for the turmoil that it has caused. It certainly was not our intent to be anything but full disclosure with this process.

Mrs. Paras asked Mr. Lafreniere do you think there has to be an enacting...for the Housing Code too where you are dealing with the PM Code?

Chairman Pariseau responded we ought to have some procedure in place as far as the Board of Mayor and Aldermen is concerned relative to ordinance development. We do not have any in our...have to rely on the City Solicitor's Office to come up with the wording for that as far as setting policy on public hearings, to adoption or amending the ordinances. All departments, not only Building would have an idea what the Board expects. It has to be complete.

Mr. Lafreniere asked would there be a chance that this process be held until that be developed or that...

Chairman Pariseau responded no we are going to go on with this one on Thursday, we are going to see what we can present to the full Board.

Alderman Thibault asked can it be brought into this meeting, that is a special meeting, usually nothing can be brought in.

Chairman Pariseau responded as long as we do not have any...

Alderman Girard stated Committee Reports can be brought in under new business as long as there is...

The Clerk responded we can prepare the committee report and have it available for the Aldermen to act on if it is accepted.

Alderman Girard asked, Mr. Lafreniere, why did you change the language about the applicability of the code from all dwellings to rental dwellings?

Mr. Lafreniere responded to adopt the existing structures code that would greatly increase the scope of what our current mission is. Right now we govern regulate new construction, additions and alterations to property. Proactively through our Housing Certificate of Compliance Program, existing residential rental properties. If we were to then enact a similar program where we inspected all non-residential properties, it would greatly increase the scope, increase our staffing requirements certainly, but it would also duplicate some of the current services that are now administered by the Fire Department through the Fire Prevention Code and their efforts with their compliance programs on the...for example, the permits those sorts of things. We were trying to make sure we did not fall into the trap of building in a redundant bureaucracy as well as trying to recognize that there was an established scope, an established mission for the department and we did not feel that we wanted to go into this process with the idea of increasing that.

On motion of Alderman Girard, duly seconded by Alderman Thibault, it was voted that the revised draft Building Code Ordinance be referred to public hearing and that public notice include reference to the existing Building and Housing Codes of the City of Manchester.

There being no further business to come before the committee, on motion of Alderman Thibault, duly seconded by Alderman Girard, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee