

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(PUBLIC HEARING)**

August 27, 2002

Following Public Hearing

Mayor Baines called the meeting to order.

The Clerk called the roll.

Present: Aldermen Gatsas, Guinta, Sysyn, Osborne, Pinard, Lopez,
Shea, DeVries, Thibault

Absent: Aldermen Wihby, O'Neil, Garrity, Smith and Forest

Mayor Baines advised that the purpose of the public hearing is to hear those wishing to speak with regard to consideration of amendments to the Manchester City Charter providing that the Board of Mayor and Aldermen be allowed to change municipal election days normally scheduled on religious or secular holidays; that anyone wishing to speak must first step to the nearest microphone when recognized, recite his/her name and address in a clear, loud voice for the record; that each person will be given only one opportunity to speak and any questions must be directed to the Chair.

Mayor Baines requested the Clerk present the proposed amendments to the Manchester City Charter:

(language to be added appears in **bold**, regular print remains)

Section 5.02

“Municipal General Election” shall mean the biennial municipal election to be held on the Tuesday next following the first Monday of November in each odd numbered year at which time the qualified voters shall choose city and ward officers. **If the Tuesday next following the first Monday of November falls on a religious or secular holiday then, upon petition of two hundred (200) persons registered to vote within the city of Manchester, the Board of Mayor and Aldermen may set the municipal general election on another date. The form of the petition shall be set by the City Clerk. The petition shall be submitted to the City Clerk no sooner than the December 1st and no later than the January 2nd prior to the municipal general election. The Board of Mayor and Aldermen shall act the petition within forty (40) days of its receipt by the City Clerk.**

Section 5.03

“Municipal Primary Election” shall mean the biennial municipal primary, conducted by the regular election officers, to be held at the regular polling places in each ward on the third Tuesday of September in each odd numbered year at which time the qualified voters shall nominate candidates for the municipal general election held in November. **If the third Tuesday of September falls on a religious or secular holiday then, upon petition of two hundred (200) persons registered to vote within the City of Manchester, the Board of Mayor and Aldermen may set the municipal primary election on another date. The form of the petition shall be set by the City Clerk. The petition shall be submitted to the City Clerk no sooner than the December 1st and no later than the January 2nd prior to the municipal primary election. The Board of Mayor and Aldermen shall act the petition within forty (40) days of its receipt by the City Clerk.**

Mayor Baines called for those wishing to speak.

Lloyd Basinow, 503 Amherst Street, Manchester stated:

I am opposed to the proposed Charter amendment. This amendment seeks to cure a mental condition frequently to as voter rigamortis or election regression, which does not exist for dedicated, civic minded voters. In my 40 years of political involvement in this City, I cannot recall even one instance where there has been a problem. No legitimate religious sect has a rule restricting one of its members from voting during an election period. This proposal actually opens the door to possible abuse and will only serve to confuse the voters. Even now, we have problems getting them to go to the polls. Why look to create a problem where none presently exists? This Board already has charter authority to set dates for local elections and anyone can inform the Board of a potential election day conflict in time to make a proper adjustment if necessary. I refer you to Section 5.3 of our City Charter. One of the important parts of that is authority to the City Clerk, who by the way is under the jurisdiction of this Board of Mayor and Aldermen as I recall, that he together with the Chief Legal Officer can change to make practicable the election timing if it is in conflict by referring back to the State statute which sets the times for elections. In other words what I am saying is we are bound by the State statutes for the State elections but only as they may be practical for local elections so if there is a perceived problem we do not have to adhere, regarding local elections, to the State election timing. There is really no need for us to start confusing the voters by putting in a whole new Charter amendment. We don't have a problem and we already have the remedy built-in there simply to have this Board instruct the City Clerk to change the timing of the election date if there is a problem. With so many real important problems to resolve, please don't waste the voters time on trivial matters such as this. If we are going to put Charter amendments in, let's put some in that make sense and are really needed, not stuff like this. We can't get the voters to the polls now. By having standard election times and dates, which are established under State statute, and making them practical as much as we can for our local elections, at least we have a format that the voters are used to and have been following for years. I see no reason to change it.

Clerk Bernier stated I want to make the Board aware that when we set the date for this public hearing we assumed that we were going to meet on September 3. The law requires this Board to act on this within seven days. I think that we need to go into unanimous consent of the Board to act on this this evening because we have to act within seven days and the Board is not meeting until September 4. If we don't act on this question within seven days it will be remote and we couldn't put it on the ballot.

Mayor Baines asked so we just need unanimous consent to act on it.

Clerk Bernier answered that is correct.

Alderman Lopez asked does anybody know how the 200 person petition got into this ordinance.

Clerk Bernier asked the petition of 200.

Alderman Lopez answered yes. Under State law the individual would have to go out and get 20% of the voters of a municipal election for an amendment. How can we go out and get 200 people, which is very low...anybody can get 200 people, how did the 200 get into the ordinance?

Clerk Bernier replied the law that you are talking about is the 20% is to put a question on the ballot if the Board of Aldermen want to discuss it. The 200 petitions to change the date was decided by the Committee.

Deputy Solicitor Arnold stated I sat down with Carol Johnson to start to come up with some of the language that we thought would address the concern of the Rabbi who initially expressed his concern to the Board about elections being on religious holidays. The reasoning behind the 200 people was we thought that it would be appropriate that there be some indication from the community that the election ought to be changed. We didn't want to put a big number in there but we didn't want to put in a really low number either because essentially the concern was that we didn't want someone showing up with one concerned citizen or five concerned citizens or ten concerned citizens asking that an election date be moved.

Mayor Baines stated and all it does is put the matter before the Board of Mayor and Aldermen. It says "may consider" and they may decide not to do it.

Alderman Lopez stated my next question is it says "the Aldermen may" so even after somebody gets the 200 signatures the Aldermen can still say forget it.

Deputy Solicitor Arnold replied that is correct.

Alderman Lopez stated I think 200 is very, very low when any citizen has to get 20% of the voters. I know it is a different section, under 49B of the State statute but it still...you put a citizen and I think we had one citizen who went and got 20% of the voters in order to put a referendum question on the ballot in the last five or six years in reference to fluoride treatment and they went out and got the signatures and, therefore, it went on the ballot. I would like to discuss this and vote on this tonight, your Honor.

Alderman Gatsas stated I have a parliamentary question. Instead of adjourning this meeting, can we recess the meeting and bring the issue forward again on September 4 when we reconvene.

Deputy Solicitor Arnold stated the statute says it has to be within seven days of the public hearing.

Alderman Gatsas replied so if we don't close the public hearing but we leave the public hearing open and just recess this meeting instead of adjourning it...

Deputy Solicitor Arnold responded I obviously can't review the case law in such short notice but I wouldn't feel comfortable with that. It does say within seven days of the hearing. I would advise against it because obviously there isn't a plan to take any additional testimony if this hearing were to be recessed.

Alderman Gatsas stated well I think there is because the Chairman of that Committee is not here and I think that addresses some of Alderman Lopez's questions regarding where the 200 came from. I don't know why it wasn't at 50 or 2,000.

Clerk Bernier stated this Board could amend that.

Alderman Lopez moved to act on whether to order the proposed amendment to the City Charter to ballot. Alderman Pinard duly seconded the motion.

Mayor Baines called for a vote. There being none opposed, the motion carried.

Alderman DeVries stated I would like to know from the City Clerk a little bit of a historical perspective on this. Has it been found that this would create conflicts for the election workers more than it would for the voters?

Clerk Bernier replied it is the policy of this Board to make those kinds of decisions. We will take any direction you give us.

Alderman DeVries asked was it a concern of the Rabbi's that the extended length of time that election workers would be expected to put forth on that day that they would be prohibited from pursuing their duties if it was on their religious holiday.

Clerk Bernier replied are you talking about ward workers.

Alderman DeVries answered yes.

Clerk Bernier stated that has never been discussed. To go back to your question all we are doing is if the election were held September 10 and for whatever reason we had to change the date...it is not adding an election. The staff would have to work different dates.

Alderman DeVries responded I did not think you were adding an election. I was just referring to Mr. Basinow's testimony indicating that it really wouldn't be a conflict for the voters because it is not precluded to vote that day if it is religious holiday but I am wondering if it would be a problem should that be the religious belief of an election worker and if they would be precluded from working all day at the polls.

Clerk Bernier replied we have had no complaints in our office regarding this.

Mayor Baines stated can I just ask David Scannell to give us the historical perspective on why this whole thing happened.

Mr. Scannell stated Rabbi Rosner and Ms. Garon from the Jewish Federation came to us last summer and indicated to us that the municipal primary in September was on Roshashonah.

Alderman DeVries asked might Section 5.3 be manipulated to deal with this problem without the ordinance change.

Clerk Bernier answered in the Charter it clearly says when you are going to have the election. What Mr. Basinow is indicating is if there are any election law changes we would modify that in working with the City Solicitor's Office. That would be like the checklist, voter registration, etc. The dates are set in the Charter. It is the third Tuesday in September and that is not changeable.

Alderman Shea stated I remember when it was brought up that I indicated that there was such a thing as an absentee ballot. Obviously the provisions are there for people who care to vote. They can get an absentee ballot. It does not necessarily necessitate having a change of dates. People do it all the time. That is why we have absentee ballots, simply because people aren't available. They go to Florida or they are sick or they are homebound or whatever. I would say that that is the provision that people could use if it conflicts with a religious holiday. They can vote a day before or two days before. I don't really see why there should be provisions in this regard.

Alderman Lopez stated most of the comments that have been made...I don't see any need to change the City Charter for one particular group or two particular groups. The absentee ballots and the election laws are well-defined and we are not depriving anyone from voting. They have that option. We are one republic in this country and the election laws and the laws of the country have been set. We don't change national elections and we don't deprive anyone of voting. We have those election dates set every year and I have to vote no on this amendment.

Alderman Gatsas asked is there a possibility that we recess the meeting and take a phone poll if we must.

Alderman Lopez stated everybody knew that there was a meeting here tonight. They could have had input. If we are going to do this and take a phone poll every time something comes up without making a decision...if there is going to be a precedent set here tonight then we would have to take a phone poll on other things so we can go talk to our people or other Aldermen...

Mayor Baines asked what is the Solicitor's opinion on this.

Deputy Solicitor Arnold answered the statute says within seven days this Board has to order this to the ballot so I think you could do that by telephone poll if you chose to do so.

Mayor Baines asked if the Board voted to do that.

Deputy Solicitor answered yes.

Alderman Lopez stated well that is to send it to ballot not to question whether or not we agree with the amendment and not send it. There are two different issues here I believe.

Alderman Gatsas stated I believe the question that I had was could we take a phone poll within that seven day period to allow the City Solicitor to recognize whether we could recess this meeting until September 4. I think precedence has already been set when we changed...this was not supposed to come to a vote tonight. We changed it by unanimous consent so obviously we are doing things right along here that are a little different so if we leave it at a phone poll to see if we can bring this to the full meeting on September 4 once he does his research...if he says after his research that it can't be recessed until September 4 because it extends past that seven day period then we can conduct a phone poll.

Mayor Baines asked so you are not saying bring it to September 4 you are saying conduct a phone poll and then that vote would be confirmed on September 4 but the vote would be taken before September 4. Am I correct on that?

Deputy Solicitor Arnold answered that is correct.

Alderman Gatsas stated the statement that he just made was that he hasn't been able to do the research as to whether this meeting could be recessed until September 4 and fall within that seven day period. He said he had to do the research to come up with that.

Mayor Baines replied I thought he advised us against doing that.

Deputy Solicitor Arnold responded like I said my gut reaction is that you should not do that. Obviously given the timeframe I have not had a chance to research the law other than

reading the statute in front of me. If we were to determine that recessing and reconvening the public hearing...that the seven days were to start upon the reconvening then obviously you could recess and reconvene. I am not comfortable in saying that tonight without doing some further research.

Alderman Gatsas stated what I am saying is that once he does his research if we recess the meeting and he has done his research and he says that we can't reconvene and take that vote on September 4 then we could do a telephone poll within that seven day period. I assume he is going to find out his the legal information...

Deputy Solicitor Arnold interjected tomorrow

Mayor Baines stated if the Board so desires that is something we could do.

Alderman Guinta stated I have a point or a question regarding absentee ballots. As I understand election law, there are certain guidelines or restrictions to which people can take an absentee ballot. I don't think there is a restriction or an allowance with respect to religious holidays...

Clerk Bernier interjected there is. It is written on the affidavit.

Alderman Guinta asked what does it state exactly.

Clerk Bernier answered that if it is religious holiday, you can vote absentee.

Alderman Guinta asked and it doesn't matter whether you are outside the parameters of...

Clerk Bernier interjected no. It is a state law.

Alderman Pinard stated I agree with Alderman Shea and Alderman Lopez. I think most of you know that I am very close to the Precious Blood. I brought an envelope full of absentee ballot requests for those nuns. If they can take the time out to fill out an absentee ballot I am sure the rest of the community can do the same.

Alderman Lopez stated I just want to address my remarks to the Solicitor. This being a special meeting, Rule 2 of the Board states that with unanimous consent on the subject alone because of the situation where we have seven days under the State statute has come into play so by unanimous consent of the Board present we elected to discuss and dispense with this subject. That is under Rule 2 of the Board. By saying that, I would like to move that we do not order the proposed amendment to the ballot.

Alderman DeVries duly seconded the motion.

Alderman Gatsas stated I think that the issue before us here...if one of us left we wouldn't have a quorum and I would think that the issue should be brought up to the full Board. I think the courtesy of at least recessing this meeting until the City Solicitor finds out whether it is proper or taking a phone poll isn't a big deal.

Mayor Baines replied I agree.

Alderman Gatsas stated so the City Solicitor is saying that you can accept a negative motion.

Deputy Solicitor Arnold replied I am saying that the Board has to work one way or the other.

Alderman Gatsas stated my question is did you advise the Chairman of this Board or the Mayor that he can accept a negative motion.

Deputy Solicitor Arnold replied yes.

Alderman Gatsas asked in this procedure or on any one.

Deputy Solicitor Arnold answered in this procedure.

Mayor Baines stated under Roberts Rules and we do not operate under Roberts Rules but you cannot accept a negative motion.

Alderman Gatsas moved to table. Aldermen Guinta duly seconded the motion.

Mayor Baines requested a roll call vote. Aldermen Gatsas, Guinta, Sysyn, Osborne voted yea. Aldermen Pinard, Lopez, Shea, DeVries, and Thibault voted nay. The motion failed.

Mayor Baines called for a vote on the motion to not order the proposed amendment to ballot. Mayor Baines requested a roll call vote. Aldermen Gatsas and Guinta voted nay. Aldermen Sysyn, Osborne, Pinard, Lopez, Shea, DeVries, and Thibault voted yea. The motion carried.

Mayor Baines advised that all wishing to speak having been heard, the testimony presented will be taken under advisement and considered by the Board of Mayor and Aldermen.

This being a special meeting of the Board, no further business can be presented, and on motion of Alderman Pinard, duly seconded by Alderman DeVries, it was voted to adjourn.

A True Record. Attest.

City Clerk