

CITY COUNCIL WORK SESSION

Code of Ethics/Conflict of Interest/Mandatory Financial Disclosure

June 17, 2014 – 6:30 p.m.

Eileen Dondero Foley Council Chambers

City Council Present: Mayor Lister, Councilors Shaheen, Kennedy, Dwyer, Morgan, Spear and Thorsen

City Council Absent: Assistant Mayor Splaine and Councilor Lown

Staff Present at table: City Manager Bohenko, City Attorney Sullivan

Staff Present in audience: Deputy City Manager Allen

I. Call to Order

Mayor Lister called the meeting to order at 6:35 p.m.

II. Presentation – Robert P. Sullivan, City Attorney

City Attorney Sullivan began by stating that there have been several votes in the recent past that have indicated a desire to have a conversation regarding Code of Ethics, Conflict of Interest and Financial Disclosures. He continued that although these issues are multi-faceted and complicated, he doesn't want the discussion to be too formal or rigid. He then reviewed Chapter 1, Article IX, Mandatory Financial Disclosure of the City Ordinance. He explained that the conflict issue is to disclosure if there are any interests represented by the elected official other than what is in the best interest of those of the people they represent. He stated the disclosure statement is a simple way to bring that out in the open as "sunshine is the best disinfectant" and the disclosure form is the "sunshine". He continued that if there were no other ordinance or City Charter section addressing the Conflict of Interest, then it would be under the State RSA which states they are prohibited from participating in any transaction or pecuniary interest different from the public at large and is what we do have in our ordinance and is why Councilors must recuse themselves from certain discussions and votes.

He then reviewed the response of Judy Silva, Executive Director of NHMA who was asked to provide a list of the cities and towns within the State of New Hampshire that require financial disclosure of its public officials. She reported that she didn't receive much of a response and only Fremont had a small Statement regarding disclosure in its ordinance and Manchester has a disclosure for candidates only. He stated we already have a campaign financial disclosure.

Councilor Kennedy stated she is not comfortable with that conclusion and feels that we should have disclosure statements for land use board members as outlined in the State RSA's because it is not meant only for elected officials.

City Attorney Sullivan continued that there are issues identified by Councilors Kennedy and Thorsen of discrepancies between our Charter and ordinance that requires the Fire and Police Commissions to also file disclosure statements, but in 1988, the City Council said that only the School Board and City Council had to submit them. He then reviewed the 4 options to reconcile this discrepancy:

1. Amend the City's current ordinance:
 - A. Virtually infinite options; so should define who it covers
 - B. Implement the NHMA suggested changes per request of Councilors Kennedy and Thorsen (see attached)

Either of these would require the adoption on an ordinance amendment following the usual process with three readings and a public hearing. The complex part will be for the Council to determine what the ordinance would say.

2. Amend the City Charter

This would require the Council to follow a process mandated by state law to put a charter amendment referendum question on the next available municipal ballot or to set up a special election for that purpose.

3. Take no action and to rely on the ordinance adopted by the 1987 Council at the time the charter provision at issue was approved by referendum vote.

4. Selected Issues:

A. Invasion of Privacy

B. Burdensome to Board and Commission members

C. Recommended approach, identify a problem and address it

NOTE: @ 7:15 p.m. the meeting was recessed to move into the School Board Conference Room and reconvened at 7:20 p.m.

City Attorney Sullivan continued stating that in reviewing these options it should be noted that there are some concerns with some of the land use board members and it may discourage people from becoming involved as these are volunteers to the community. He continued that if there are identified problems that need to be addressed, then they should be addressed through a Charter provision or ordinance amendment instead of anticipating problems.

Councilor Spear stated that there have been situations where Councilors have had to recuse themselves but that they aren't always to do with the financial disclosure issue but more often to do with relationships that usually aren't disclosed until situation arise. He stated the emphasis should be to understand and maintain existing strong language to deal with those situations.

City Attorney Sullivan stated he feels very strongly that we already have a good government in place and great employees and that people read what happens elsewhere. He stated it is always good to have the discussion on Ethics and continue to strive to maintain and improve, but he is not aware of any ethics issues.

Councilor Thorsen stated that this can go in a lot of different directions and supports the idea of focusing on improving existing language and enforcing it. He continued that there are many opinions as to what the disclosure statement should be etc., but the Charter amendment already says something that is not being followed and although there aren't any issues at this time, it is a matter of "housekeeping". He then reviewed his recent letter to the Mayor and City Council outlining his suggestions (See attached).

Councilor Shaheen stated that she wants to make sure it is clear what exactly the desired goal of this is; is it housekeeping to clarify what we already have in place, or are there other issues that are trying to be addressed that haven't been brought forward as problems; i.e., spouses who work for the city; land use board members decisions., etc.

Councilor Dwyer stated she agrees and although she appreciates Councilor Thorsens' attempts to make this clearer, as it was a casually crafted amendment, she wants to be clear on what is being done now. She also agrees with Councilor Spear in that recusals on the Planning Board and others often are because of relationships and it is hard to be aware of every possible connection until it arises.

Councilor Kennedy stated that she would like to clarify that the suggested amendments are more than just housekeeping and would address transparency issues that currently exist with the Boards. She stated she has already recused herself 3 times from the Historic District Commission and feels that the land use boards make important decisions that impact the City, so should fall under the same requirements for disclosure.

Councilor Morgan stated that the issue that needs to be addressed now is that the Charter and the Ordinances are not in-line and should be the first step towards transparency. She stated we should be looking to the State of NH disclosure form as our example. She asked for clarification if the City attorney reviews the Charter amendment proposals. City Attorney Sullivan stated if they come from the City Council, then yes, but if from an outside source, then no. Councilor Morgan stated that if there are signatures to bring these to the ballot, they need to be respected and the people should be involved in the discussions. She stated at this point, we should work towards aligning the City Charter and the ordinances.

Discussion ensued regarding the intent of the amendments. It was discussed that the issue may not only be financial disclosure but relational disclosure and who it would apply to.

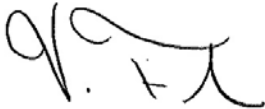
Councilor Spear suggested an annual work session could be held for land use boards to educate them on the Code of Ethics and Conflict of Interest as people come and go from the boards.

Mayor Lister thanked everyone for the presentation and discussion but his issue is that down the road this doesn't discourage people from serving on boards and feels we should show respect to those who are willing to serve.

IV. Adjournment

Mayor Lister closed the Work Session at 8:40 p.m.

Respectfully submitted by:



Valerie A. French,
Deputy City Clerk