

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.
GREAT HALL, SEARLES BUILDING

Chairman Lahey called the Special Meeting of the Methuen City Council to order at 6:45 P.M. with all members present.

ACCEPANCE OF AGENDA

MOTION BY: Councilor Cronin, seconded by Councilor Zanni to accept the agenda

MOTION BY: Councilor Leone, seconded by Councilor to move TO-08-9 out of order as the next item of business. UPON VOTE: UNANIMOUS.

TO-08-09 An Ordinance Amending the Methuen Municipal Code – Automatic Door Openers (Req. of Clr. Lahey)

MOTION BY: Councilor Cronin, seconded by Councilor Zanni to remove from the table.

Councilor Cronin said a gentleman came up to the podium to voice some concerns regarding the adoption of this item. He suggested Council leave this item tabled to do more research on it. There aren't any new buildings or proposed construction that would be affected whether it is passed now or not. It might be prudent to add a square foot regulation for smaller buildings. As stated by the gentleman, you have to have a vestibule, which means there are two sets of automatic doors.

Chairman Lahey said if Council is going to discuss the issue, they should remove it from the table.

UPON VOTE: (to remove from the table) UNANIMOUS.

MOTION BY: Councilor Willette, seconded by Councilor Kannan to adopt.

Councilor Cronin suggested Council hold some meetings, have some discussions or have some Councilors look on their own to see if there's any kind of regulation that they can come up to so that we're not adversely affecting a small business being able to locate in Methuen because they might not have enough room to install these doors. He doesn't have a problem with the concept but sometimes we inflict all these rules on these developers or builders, even though they are small that have an adverse affect and maybe they might not come to Methuen rather than go somewhere else. Square footage should be discussed. Just to put it in an overall regulation where it covers everything and then come to find out certain businesses are hurt because of it. It deserves more looking into to, more discussion.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Zanni said he concurs with Councilor Cronin. It's a very good idea and he doesn't have any question at all about instituting something of this nature in our community, but it does need other boards intervention; how they are affected, and maybe have them in take part of the overall operation of such an ordinance that could instituted by the community. He thanked Sid Harris for bringing this forward.

Councilor Leone said he doesn't have a problem with the basic concept. He has a problem with the substance of the ordinance. It is one paragraph and it's in a section of the municipal code that deals with property maintenance, no department is charged with enforcement. There's no board listed or department listed to hear arguments for variances or waivers nor are there penalties listed for non compliance to the ordinance listed anywhere in Chapter 10A. The proposal refers to the State Building Code but the State code has no such requirement for automatic doors. The city doesn't have the right to modify the State code. We can add provisions to it but we can't modify it. The reference to the State code shouldn't even be in the ordinance. His investigation is that the cost of these doors is somewhere between three and ten thousand dollars, depending upon the size and the projected frequency of use. In addition, there is an annual maintenance contract required for most of these set ups because there are very high maintenance requirements. Without a vestibule as Mr. Saba mentioned, these doors tend to waste three times more energy than a conventional door because of the extended open time programmed into the system. To his way of thinking, and he discussed this at some length with Mr. Harris this afternoon the regulation should ultimately be in the zoning ordinance not in the property maintenance code. Doing so gives the Community Development Board a chance to implement it in the Special Permit or site review stage of their deliberation for any commercial buildings. It also gives them – it will end up being a zoning administrator or building inspector who has jurisdiction with the zoning board being the venue of appeal. The ordinance, the way it's written, has no teeth. It's a paper lion, sounds good, and it is good press. There is no way to enforce it.

Chairman Lahey – point of information – asked the Solicitor if the legislation he drew up is just paper legislation and if it can be enforced.

Attorney McQuillan said it can be enforced because if there is any ordinance of any city and town, that doesn't specifically provide for an enforcement order, there is a particular statute, Chapter 40, Section 21D, which allows any city and town to enforce an ordinance to make application before the Lawrence District Court in the civil session and impose a fine of no more than \$100 for violation of any of its ordinances if the ordinance itself does not provide for a sanction or enforcement. As to the enforcement aspect of it, that's already by Statute. It's up to the cities and towns to whether they want one particular officer or department for the purposes of enforcement. He agrees that in Chapter 10A itself there is no enforcing body. But because there is no provision in the ordinance itself does not make it paper legislation. Any ordinance can be enforced by application to the civil session in the Lawrence District Court.

Chairman Lahey asked if enforcement would be covered if Council were to amend the ordinance to make the building inspector the enforcer.

Attorney McQuillan, yes, at the pleasure of the Council, whomever they would like to designate as an enforcement body.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Leone said if we are going to have an ordinance, it belongs in the comprehensive zoning ordinance because all of the enforcement authority is in that ordinance already. Every other type of building use and special building provisions are already in the zoning ordinance. There is a procedure in place that does site plan review on every building over 5,000 square feet. At site plan review we can impose any conditions we want and this can be one of them and if it was in the zoning ordinance it would also apply to buildings that come to site plan review or special permit, existing buildings that may be changing use so you could actually have a greater depth of enforcement and application in the zoning ordinance than in this ordinance. It just needs a little bit more work.

Councilor Kannan said she supports this concept as well. Mr. Saba brought up some excellent concerns, some being cost effectiveness and asked where individuals would go to find out what they had to do. Councilor Cronin brought up a concern regarding square footage. She would like to see a square footage number included and maybe have the building inspector oversee it. That way if they have to go in front of the Zoning Board, if they need a waiver they can make that decision right then and there.

Councilor Willette asked that Sid Harris be recognized in his capacity as Disabilities Access Coordinator. Councilor Willette asked if complaints could be filed to the Architectural Access Board when dealing with new construction for disability accessibility, as jurisdiction from the State stand point.

Sid Harris said for accessibility issues regarding building code yes, not for this issue though. It would be for new construction.

Councilor Willette said this would fall under new construction.

Sid Harris said, no, because it is a city ordinance.

Councilor Willette said, in terms of the Architectural Access Board, it deals with new construction and renovations. It falls under their jurisdiction and any complaints would be forwarded to their attention. Mr. Harris said that's right. Councilor Willette said they have provisions like Councilor Cronin mentioned about square footage that certain triggers would come into effect in terms of improvements. Mr. Harris responded, no.

Councilor Willette said regardless of the square footage, if someone does a renovation or new construction they would have to probably install a ramp, some method of accessibility into the building and now what we're just doing from the city standpoint is handing that provision of having an automatic door opener.

Mr. Harris said he is looking for a clarification. There intent with this, he's heard the word "automatic door opener" especially from the gentlemen that were up here earlier. He thinks people are under the impression that these are doors when you enter the supermarket and they just open up. That's not the type of door that we're looking for. The doors that they're looking for is pushbutton operated, like we have here at city hall, just installed here at the school systems. It's a button that opens, not automatically opens. He's not sure how that is actually written but he's heard the word automatic door openers and that's not what their intention is.

Councilor Willette asked what the proper terminology would be.

Mr. Harris said it would be a "push button" door opener.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Willette asked if that is reflected in the legislation itself. That's an issue he would have if you are talking about what is in the municipal buildings across the city of the push button and it opens up the door.

Attorney McQuillan said the push button as described by Mr. Harris is contemplated in the automatic door definition as contained in 521CMR is the provision of the code of Mass regulations under which the Architectural Access Board operates under and it is also their law which they enforce and they have addition of automatic door opener which also incorporates a push button as described by Mr. Harris.

Mr. Harris said he is correct in saying that. He didn't want people to assume, especially the businessmen in our community that they have to physically put in the doors that automatically open. They are just looking for the ones that are "push button operated".

Councilor Willette asked if there is a distinction between the automatic door opener and the pushbutton or are they one in the same (Architectural access Board)

Mr. Harris said it is under one and the same.

Councilor Willette asked if a small business owner, as opposed to a large-scale business owner, would have that discretion.

Attorney McQuillan said they have the discretion between a photoelectric cell, a mat that triggers the opening, a manual concept, or a push button concept. As far as the Architectural Access Board is concerned all those concepts are incorporated into the definition of an automatic door opener.

Councilor Willette said that would account for the differential in the prices. We're not really talking about the same item, push button vs. automatic door, totally different concepts.

Mr. Harris said these types of doors, push button door openers, could be retrofitted to any existing door.

Councilor Willette said the low scale item would be feasible under the ordinance.

Attorney McQuillan said that's correct.

Councilor Willette further stated if the ordinance is approved, they would have discretion as to what they would want to pick. We wouldn't have the building inspector dictate which device they would have to use so long as it is something that opens up and allows someone who is a patron access. And there is no trigger level in terms of square footage for when certain items can be implemented or mandated under the Architectural Access Board.

Mr. Harris said as long as they are following the access code for that entrance.

Councilor Willette said if they do a new construction or renovation they would fall under that provision or the Architectural Access Board regardless of the square footage.

Mr. Harris indicated that is correct.

Councilor Giordano asked if Methuen is the first community that is going to do this in the state. Mr. Harris responded, yes, every issue they've put forth to the Council over the past ten years has been the first in the state and we're seeing the press. He's actually receiving a lot of calls from a lot of communities that are very interested in this legislation.

Councilor Giordano said his feeling is there is more work to be done to make sure this is done correctly.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Quinn said she supports this, having someone in her home that's handicapped. With the business community coming out now and saying there may be problems, she's wondering if the chair would head a sub-committee to look into it. If we have this many questions, she'd hate to see this fail. It is something she'd like to see approved. She asked if maybe the chair, Sid Harris, and builders could come together as one to try to work this out.

Chairman Lahey said he brought this up roughly a month ago now and after a month this is first time he's had any discussion, any response on the problems it may have, why you want it, why you don't want it. Nobody has told him that they've had any concerns one way or another about it. He too would like to see it done properly and hopes Council delay is for the right reason, not the wrong. He, as the maker, wasn't given the courtesy at least to have someone approach him and inform him of these problems. He'll leave it up to the Council whether to table this or not.

Councilor Willette said he is totally supportive of the legislation and more than willing to vote on this tonight but he's not sure if the votes are here tonight. He would like to at least establish a deadline, the end of next month, an automatic deadline so the first meeting in February Council could vote on the package. There is absolutely no distinction in terms of square footage. If you do a renovation or a new construction, you're following the provisions of the Architectural Access Board. He had a question about the automatic door opener vs. the push button and Mr. Harris clarified the situation. Councilor Willette said he had no problem voting on this tonight but if the consensus from the remainder of the Council is to have a subcommittee or study this further, he wants to at least establish a deadline, not procrastinate on it.

Councilor Leone said one of the answers that Mr. Harris gave that we missed was the fact that because this is a local ordinance the Architectural Access Board has no authority for enforcement. Councilor Leone reiterated there is no authority for enforcement and no authority to grant waivers.

Councilor Willette said what he mentioned was, usually you have a template from the State in terms of square footage on items. He asked Mr. Harris if that's applicable if we have something that we want to adopt similar to the state for other items in terms of improvements and disability accessibility. That's the question he posed to Mr. Harris and received clarification.

Councilor Kannan said she supports this amendment but agrees with Councilor Giordano, if we are going to lead the state initiating this, let's do it the right way, let them follow us. Mr. Saba does do business in Methuen. The over 5,000 square foot is an issue. The public hearing brought a few things to light and it is a good idea if Mr. Harris and others want to meet to discuss this further.

Councilor Zanni said he has no problem voting on this, if Council changes the language "automatic door opener" to "push button" and have somebody that's going to regulate it such as the building commissioner or the zoning board, he has no problem with that. But if Council has other concerns, they could table it.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Pappalardo said she is in full support of this also and would be ready to vote on it tonight. She agrees with the Chairman that had there been questions needed to be raised, it should have come before tonight so that we could have gone to the Solicitor who drew up the resolution and settled it that way rather than to prolong it. We have sub-committees and committees for everything. She agrees with Councilor Zanni if we can amend this tonight and if that's amenable to everybody, let's do this tonight.

Chairman Lahey said as much as he would like to have it pass tonight, he doesn't want to take the chance of it failing. If somebody would like to table for further review with the Solicitor, Councilors could discuss their concerns with the Solicitor.

Councilor Cronin said he agrees with the concept but it needs more work and that's the reason Council had the public hearing, not to circumvent the Chair, or any other reason. Some people asked for a public hearing because they had something to say and that's the reason he voted to have the public hearing. He's not going to deny the public the right to speak. Based on what was said tonight, in his mind, he thinks it needs more work.

Chairman Lahey commented that the public consisted of two people, one who spoke. There are Councilors who had problems with this and it would have been proper and courteous to inform him or at least discuss it with the Solicitor.

Councilor Cronin said he didn't have any problems and would have voted on it last week if it had not been tabled. Evidently somebody made a complaint and wanted to speak. He didn't know what they were going to say until they got here tonight. That's when he made his decision it needs more work. There isn't anything on the books right now that will be affected if the ordinance is put off until the first meeting in February.

MOTION BY: Councilor Cronin, seconded by Councilor Kannan to table until the first meeting in February. UPON VOTE: 8 yes, 1 no (Clr. Giordano)

Councilor Leone asked if the Chair is appointing a sub-committee.

Chairman Lahey said he wasn't planning to.

Councilor Cronin suggested somebody speak with the Building Inspector.

MOTION BY: Councilor Kannan, seconded by Councilor Zanni to enter into Executive Session, and to include the Mayor, the Solicitor, Chief Lavigne and Captain Fram.

UPON ROLL CALL:

Clr. Cronin	yes
Clr. Giordano	no
Clr. Kannan	yes
Clr. Leone	no
Clr. Pappalardo	yes
Clr. Quinn	yes
Clr. Willette	no
Clr. Zanni	no
Clr. Lahey	yes

5 yes, 4 no

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Chairman Lahey announced that upon the close of Executive Session the City Council would resume in open session. The Council went into Executive Session

MOTION BY: Councilor Giordano, seconded by Councilor Willette to come out of Executive Session.

UPON ROLL CALL

Clr. Cronin yes
Clr. Giordano yes
Clr. Kannan yes
Clr. Leone present
Clr. Pappalardo yes
Clr. Quinn yes
Clr. Willette yes
Clr. Zanni present
Clr. Lahey yes
Vote: 7 yes, 2 present

The Council returned to open session at 7:35 p.m.

C-09-14 Police Chief Employment Contract

MOTION BY: Councilor Giordano, seconded by Councilor Willette to remove from the table

Councilor Willette said he'd like to include the length of the contract added to the language within the contract and include it as part of the minutes.

Attorney McQuillan said if Council deems it appropriate to approve the contract, he would insert the perimeter of the contract, which he believes to be July 1st, 2007 to June 30th of 2010.

MOTION BY: Councilor Giordano, seconded by Councilor Quinn to adopt C-09-14.

Councilor Willette offered the amendment to stipulate the length of the contract as stated by the Solicitor. He noted that he spoke with the Solicitor regarding the civil service provision. Methuen had a Home Rule Petition that was signed into law dealing with civil service and the Solicitor indicated that does not have to be incorporated into the contract. Attorney McQuillan said that is correct.

Councilor Leone asked the Mayor or the Solicitor to explain the procedure upon expiration of the contract.

Attorney McQuillan said there is an evergreen clause, which states essentially that if and when the contract expires, until there is a new contract that's renegotiated and executed or a successor is qualified and appointed, the Chief will remain in office under the terms of the contract until either of those occurrences.

Mayor Manzi asked if Councilor Leone was asking about the 90-day provision.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Leone said his question specifically is that we had some difficulty last summer with a contract that expired and that the applicability of the method of payment, the auditor was using to pay the recipient, he doesn't want to have a repeat of that and he also doesn't like contracts that are self extending which apparently Mr. McQuillan is saying an evergreen clause is self extending a contract. The problem he has with contracts is department heads have a three-year term. This should be a three-year contract.

Mayor Manzi said part of the confusion in the contract that Councilor Leone referenced was the lack of an evergreen clause in the contract and that Chief was civil service. This Chief is not civil service. Therefore even though the evergreen clause exists, it's neater and he favors it. The key difference here is that at the end of this contract term, the Mayor, whoever that may be, would be able to recommend a new contract to the City Council and keep this Chief of Police or not and until that Council and Mayor have an opportunity to take a look at that, the provisions of the existing contract ought to remain.

Councilor Leone said he doesn't have a problem with the contract self-extending if the term of office is within the guideline of three years which is what all the other department heads are. (Mayor Manzi said it is) Councilor Leone said he doesn't recall when we made this appointment if it had an end date.

Mayor Manzi said the contract covers that. There is a three-year time frame.

Councilor Zanni said in the end result, we are looking at three years and then this contract the way he reads it will go back to 2007, when the Chief started. And that will become due in June of 2010. Attorney McQuillan said that is correct. Councilor Zanni said there is an evergreen clause here.

Attorney McQuillan said the provision is Section 15; subsection B, on page 7 top paragraph. It essentially says upon the expiration of the contract, again, until a new contract is negotiated and executed or a new successor is appointed, the individual will remain in office and be paid the benefits of the contract until the occurrence of a new contract or a new appointment of a new individual.

Councilor Zanni asked if the Fire Chief's contract has an evergreen clause. Attorney McQuillan said he believes it does, the Fire Chief as well as the DPW Director. Councilor Zanni said the only thing he looks at is Council appoints someone and it's a very important position, no question. The Chief has done a good job to date and he has no problem with that either. What he looks at is a contract that lasts for a period of time as Councilor Leone is stating and ends at a particular time. Then you renegotiate a new contract, whether it is a new Mayor and/or a new council, the person proves themselves. If another contract is warranted then another three years could come up at that time.

Attorney McQuillan said the purpose of the evergreen clause is to prevent or not create a void. It's like a public official being appointed to a board. It's a specific term of office but that individual continues to hold office usually under the terms of the Statute until his or her successor is qualified. It's called a "hold over" it's for two reasons. It's for a transitional period and also not to create a void in a very essential office of the city. The purpose of an evergreen is to make sure that the duties are being performed of the office, not so much the individual but that the duties are being performed and to make sure there is no vacancy.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Zanni said the negotiations are strictly between the Mayor and that party involved for the new contract. Attorney McQuillan said that is correct. Councilor Zanni said the evergreen clause goes in and asked if it extends the contract another three years

Mayor Manzi explained that the evergreen clause just allows the provisions of the contract to stay in force until a new contract is negotiated and agreed to by the parties and that would essentially be for the pay provisions. It does not give the recipient any extended life. For example, all collective bargaining contracts have evergreen clauses so if the contract expires while we're negotiating, the employees continue to derive the same level of benefit that they do under the old contract even though they don't have a contract, until a new contract is negotiated and it would cover the period that was affected by the evergreen clause. For example, in collective bargaining, employees could go a full year without a contract. When the contract is signed and ratified, they would take, if there were a higher benefit, they would take the higher benefit in the retroactive sense for that evergreen period. It simply allows continuity of payment.

Councilor Zanni said he understood as it relates to collective bargaining but Council is looking at an individual as opposed to a group.

Mayor Manzi said it is standardly inserted into Human Resources, individual contracts as well. The Fire Chief has one, most of these contracts, if not all contain evergreen clauses, standard in HR.

Councilor Zanni said all the department heads in our system all have evergreen clauses.

Mayor Manzi said not all department heads have contracts. They have terms of service. Those that have contracts would have evergreen clauses. Those that don't have contracts, just continue to serve under the personnel ordinance that governs their payment. The Treasurer is a department head. She does not have a contract with the City but she operates under the personnel ordinance, which governs her pay scale. Her term of office is three years and she operates without a contract. The fire chief and the Police Chief have contracts. The others standardly do not.

Councilor Zanni asked if there is a reason why we don't have them all under the same umbrella.

Mayor Manzi said they are dealt with through the ordinance that governs their salary. The Charter specifies their term of office and Council votes an ordinance that governs their pay, their hours. It in effect is a contract. It's just a different way of doing it.

Councilor Zanni asked if this contract is approved, in 2010 does this come up before the Council again or is it just automatic. His understanding is that previous contracts even though they have been negotiated by the Council, the Mayor has a right to make changes within that contract. Mayor Manzi responded no.

Attorney McQuillan said the evergreen clause is not a renewal clause. A renewal means a whole new document, a whole new life to the contract. Again that's not the purpose of the evergreen, as relayed by the Mayor. It's a continuation of benefits and payment until a new contract is executed either between the incumbent individual or a new individual who is going to assume the duties of the office. Many of the other department heads including the City Treasurer, the City Clerk, their duties and their term are defined clearly by Statute. In the case of a Police Chief or the Fire Chief, there is a specific statute authorizing the city to contract with them as opposed to contracting with a City Clerk or a City Treasurer. The authority lies in the Statute specifically contract with

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

them as opposed to other city officials who are clearly creatures of statute, duties are clearly defined by Statute and that's what they are they are a creature of Statute as a Police Chief and a Fire Chief

Councilor Zanni said in 2010, at that time negotiating a contract would be through the Mayor and in turn it would come before a new council, whoever that council would be. But in the interim, he/she would still be keeping the original contract that we vote on now as far as benefits and everything else. He asked if that contract would change in any way.

Mayor Manzi said the Mayor could not unilaterally change the contract without the City Council approval. For example if there were to be an amendment in a year that he and the Chief had agreed upon. They would have to bring the contract back up to Council and ask them to approve any amendment. Once Council ratifies the contract, that is the contract, it can't be changed without Council approval.

Councilor Zanni said the only other thing besides evergreen; this contract could be extended for one year, correct?

Attorney McQuillan said there is no provision for an extension in the contract.

Councilor Zanni said you could put on an extension. Attorney McQuillan said it is not part of the contract.

Councilor Pappalardo said she had a few concerns. She recalled that she and other Councilors mentioned they would like to see a two-year contract brought forward for the Chief where it is out of civil service. It is now a three-year contract.

Mayor Manzi said that was discussed. In his mind, it is a two-year contract because they recognized the period of time that she's already acted on an interim basis. He knows that Councilor Giordano had mentioned that and pushed that strongly, in talking to him and other Councilors and publicly said that we would recognize that service.

Councilor Pappalardo said in theory, it really is a three-year contract.

Mayor Manzi said the chief served the extra year. She's already been in the position a year and we are not giving her anything additional. The spirit of that was that we would give her two years from that point and recognizes her one-year of service which she did on an interim basis.

Councilor Pappalardo said if she gets reappointed it would be on a three-year contract. Mayor Manzi responded yes. Councilor Pappalardo said the Chief is actually going to be on a three-year contract.

Mayor Manzi said if there were to be a new contract negotiated, after the expiration of this, a clear indication from the City Council was that since she had served interim and was in a trial period as an interim they would like to start a lower year level. But upon renewal she would have at that point had three full years as Chief. If he were the renewal authority, he would recommend three years for her, yes.

Councilor Pappalardo said that was one of her concerns and doesn't agree with that. The other concern she has, the hours of work are 24/7 but yet she is going to get an 8% night differential.

Mayor Manzi explained it is the only provision in the contract that was discretionary and he negotiated that with the Chief. They prefer to just call it differential. It's not a night differential. She was receiving this differential as a Captain and in negotiating with the Chief; he thought that it would be fair and prudent to give her what she was getting as a Captain. It was his judgment that it was fair to her; fair to the city, and that the overall

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

contract is a good one for both her and the city. He recommends that the differential be left in.

Councilor Pappalardo said she doesn't think the differential should be in the contract and can't see giving \$8300 on top of the \$140,000 that she'd be getting there is nothing against the individual, Chief Lavigne. It's the actual contract. It could be another Chief that we're talking about right now and she would feel the same way. She doesn't think we should be giving \$8300 as carry over from Captain as a differential, whether it's night, day, because her actual hours of duty are twenty four/seven. She is not going to be working twenty four/seven. She designates whatever comes to her, even if there is an emergency and she has to be there, she'll be there but she just doesn't see a need to give the \$8300 differential.

Mayor Manzi said they'd continue to disagree on this point. Chief Lavigne served a three-day period on an interim basis last year, her first day on the job she was on the phone with him at 2:00 a.m. talking about a situation where she was on the scene up on Jackson Street. She was working and he was at home. It is not accurate to assume that she won't be there if there is an emergency and will automatically designating somebody.

Councilor Pappalardo commented that is not what she said. Its 24/7 and she should be there when necessary, but will not be working 24/7 all the time. She'll call her Captain, or Lieutenant if that what needs to be done. She does not agree with the additional \$8300.

Mayor Manzi said his contract was substantially different; substantially better for the former Chief in a couple of different ways, but particularly with regard to the base pay that Chief Lavigne is receiving. Chief Lavigne's base pay is based on the highest paid patrolman times two. The prior contract made allowances for that number to be to include things that statutorily could have been omitted. The prior Chief received a substantially better deal than Chief Lavigne is receiving now.

Councilor Pappalardo said he was getting \$158,000 \$159,000. She's getting maybe ten thousand dollars less and how many years was he Chief.

Attorney McQuillan said she's getting double the highest base salary of a patrolman (\$52,000) by Statute. The base pay is \$102,000 embellished by the Quinn Bill. The previous contract was not double the highest base salary patrolman. It was taking into consideration significant benefits contemplated in collective bargaining agreements, taking them to their full extent, adding those to the basic high salary of patrolman and multiplying that by two. The pay is significantly different.

Councilor Pappalardo said that was a different contract. We are in a different year. That Chief's not there anymore.

Attorney McQuillan said he did not draft that first contract.

Councilor Pappalardo said she understands that. A new contract is drafted and it states the Chief can attend International seminars, whatever they may be, and Massachusetts's seminars. There's no actual cap on the money that's allowed to be spent. For example, she could go to London England. Mayor Manzi said that is not accurate. Councilor Pappalardo asked for an explanation.

Mayor Manzi said it's not true because every item like that is subject to appropriation and every item like that is subject to Mayoral approval so she couldn't fly to London England without the Mayoral permission. Even with his permission, she couldn't fly to London England without an appropriation from the City Council that would cover travel.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Pappalardo noted it is stated in the contract. Mayor Manzi said it doesn't matter. Everything is subject to appropriation. She can't drive to the Cape without his permission. At budget time, Council could place a zero in the travel account and even with the Mayor's approval she couldn't do it.

Councilor Pappalardo asked if the Mayor knew how much the appropriation is right now. (Professional development) and it states, "will be reimbursed by the city for all expenses including travel expenses incurred while attending or traveling to the aforementioned conferences."

Attorney McQuillan said it is in the contract. If you look at page 4, the very last paragraph, it says the City shall reimburse the Police chief for reasonable expenses incurred in connection with her attendance of professional management development courses and/or seminars included but not limited to tuition for college level courses per semester at a college of the chief's choice in her pursuit in attainment of undergraduate degree in criminal justice, subject to the prior approval of the Mayor and subject to appropriation. It is in there.

Mayor Manzi, Councilor everything you do is subject to appropriation. You could vote a contract for delivery of services and if you fail to appropriate money for the contract, the contract is null and void. Every contract has a subject to appropriation clause. Without an appropriation, there can be no expenditure. It's unlawful.

Councilor Pappalardo asked how much has been appropriated in the budget. Mayor Manzi said he would get that information.

Councilor Pappalardo asked for an explanation on compensatory time and if the Chief keeps track of her own time.

Mayor Manzi said compensatory time is tracked through the City Auditor's office

Councilor Pappalardo said she would have to give the City Auditor the time but who keeps track of it. She'll keep track of it.

Mayor Manzi said she would submit requests for compensatory time through the city auditor and so the City Auditor would keep track of what was there.

Councilor Pappalardo stated that she is not going to vote for the contract tonight and it is not anything to do with the Chief; she just has a problem with the \$8300. She didn't vote for two other individuals that the money was in the budget. Council shouldn't be giving the increases. \$140,000 is a good contract for the Chief. She just can't vote on it having not voted for the other two individuals that supposedly the money was in the budget. They got the increase but she couldn't vote for it. We need to save every dollar that we can because we are in some rough times. It's got nothing to do with the individual. She has a problem with the \$8300.

Councilor Leone point of information – the line item in the budget for travel for the police department is only for in-state and it had an original balance of \$13,400 and its still \$11,000 unexpended.

Chairman Lahey said he'd like to take the easy way out and say, yes, you got it; you deserve it, which you do. Unfortunately, he has trouble, not only with this, but also with any department heads that receive differential pay, who receive comp pay, and to some degree even the longevity. For those reasons, and those reasons only, he's voting against this.

METHUEN CITY COUNCIL SPECIAL MEETING
MONDAY, DECEMBER 22, 2008 – 6:45 P.M.

Councilor Zanni questioned why the contract refers to pursuit in attainment of an undergraduate degree in criminal just.

Mayor Manzi said she has a Masters Degree in Criminal justice.

Attorney McQuillan said it might be an oversight- it is a standard boilerplate clause.

Councilor Willette said there are contracts negotiated in good faith. He may not be happy with the teachers' contract which has longevity, pay for professional advancement and bachelor degree, master's degree, step increases, which is different from the private sector, no other public sector employees but those are contracts, and there is a precedent for those contracts. It is across the board, like the Mayor indicated. It's a boilerplate language. Longevity is in certain contracts. You have differential in certain contracts. Incentives are included for advancement in degrees, whether it is undergraduate or Masters Degrees. Things were established over time, either through negotiations or through law that were approved over a period of time. He doesn't want to penalize one individual because we have different contracts. He doesn't see what the problem.

MOTION BY: Councilor Willette, seconded by Councilor Giordano to move the question.

UPON ROLL CALL VOTE:

Councilor Cronin	abs
Councilor Giordano	yes
Councilor Kannan	yes
Councilor Leone	yes
Councilor Pappalardo	no
Councilor Quinn	yes
Councilor Willette	yes
Councilor Zanni	yes
Councilor Lahey	no

ADJOURN

MOTION BY: Councilor Leone, seconded by Councilor Willette to adjourn. UPON VOTE: UNANIMOUS.

The meeting adjourned at 8:20 p.m.

I do hereby certify that at a meeting of which a quorum was present, the foregoing minutes were adopted by the Methuen City Council by a unanimous vote on January 5, 2009.

COUNCIL CLERK