

METHUEN CITY COUNCIL REGULAR MEETING  
TUESDAY, MARCH 3, 2009 – 7:00 P.M.  
GREAT HALL, SEARLES BUILDING

Chair Deborah Quinn called the regular meeting of the Methuen City Council to order at 7:00 p.m. with all members present, with the exception of Councilor Giordano.

ACCEPTANCE OF AGENDA

MOTION BY: Councilor Zanni, seconded by Councilor Kannan to accept the agenda as posted. UPON VOTE: UNANIMOUS.

Invocation/Pledge of Allegiance

There was no Invocation for the evening. Everyone stood for the Pledge of Allegiance, led by the Boy Scouts.

ACCEPTANCE OF MINUTES

MOTION B Y: Councilor Zanni, seconded by Councilor Leone to waive the reading and accept the minutes of February 17, 2009, regular meeting.

UPON VOTE: UNANIMOUS.

PROCLAMATION/CORRESPONDENCE

Chair Deborah Quinn read and presented a Proclamation to the Scouts recognizing their efforts, hard work, and dedication, in particular their participation in the Scouting for Food Program.

MOTION BY: Councilor Zanni, seconded by Councilor Cronin to proclaim. UPON VOTE: UNANIMOUS.

On behalf of Representative Linda Dean Campbell, Mayor Manzi congratulated the scouts and presented a Citation from House of Representatives.

Scout Leader, Jeremy Young, thanked the Council and Mayor for the recognition. He commented that both boy scouting and cub scouting is alive and well in Methuen. Their efforts are to try and teach young boys their civic responsibilities and have a lot of fun doing so. He is very proud of scouts at the Marsh and other scouts (throughout the high school) for their participation.

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MOTION BY: Councilor Leone, seconded by Councilor Zanni to move TR-09-14 out of order as the next item after TR-09-11. UPON VOTE: UNANIMOUS.

Chair Deborah Quinn read a memo from Glenn T. Saba regarding the Ordinance Amending Chapter 10A of the Methuen Municipal Code of Methuen Automatic Door Openers – Requirements.

PUBLIC SERVICE:

Grants: None  
Licenses: None  
Contracts: None

OTHER OFFICERS AND COMMITTEE REPORTS – None

PUBLIC PARTICIPATION

Penny Hamel, 7 Countrylake Road, lifelong resident of Methuen, spoke regarding the automatic door ordinance. She had two family members that spent extended periods of time in wheelchairs and knows what it is like to take someone around that is in a wheelchair. On the other hand, in light of the economic times, this issue really needs to be looked at because as a taxpayer and a resident of Methuen, we should be doing everything that we possibly can right now to attract business and to attract tax dollars to Methuen, not try to drive them away and over the border. She asked Council to put a lot of consideration into this issue, not only the tax burden on the business owners but eventually the tax burden on those of us who live and work and pay taxes in Methuen. If the businesses aren't paying the taxes, it ends up on the residents.

OLD BUSINESS

Resolutions:

TR-09-04 Resolution Providing for Review of Notice to Residents (Req. of Clr. Pappalardo) (amended) (remove from the table)

MOTION BY: Councilor Cronin, seconded by Councilor Leone to remove from the table. UPON VOTE: UNANIMOUS.

MOTION BY: Councilor Cronin, seconded by Councilor Leone to adopt.  
UPON VOTE: UNANIMOUS.

TR-09-11 Resolution Authorizing a Loan Order for the Revitalization of Methuen High School

MOTION BY: Councilor Leone, seconded by Councilor Zanni to adopt.  
UPON ROLL CALL VOTE: UNANIMOUS YES.

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ITEM TAKEN OUT OF ORDER

TR-09-14 Resolution Amending the Fiscal Year 2009 General Government Budget  
MOTION BY: Councilor Cronin, seconded by Councilor Zanni to adopt for first read.

Councilor Pappalardo asked if this shortfall is from the Governor's cuts.

Mr. Kelly explained this is from the Cherry Sheet rescission, \$659,000.

Councilor Pappalardo said this is part of the omnibus Council voted a few weeks ago.  
Mr. Kelly agreed.

Councilor Pappalardo noted the last sheet is money taken out of all the departments to make up the \$659,000. Mr. Kelly responded, yes it is.

Councilor Cronin asked for an explanation of the category "tailings".

Mr. Kelly explained "tailings" is an account monitored every year. Checks are issued to vendors and they are not cashed, unclaimed money. Its actually a stale check, which could be a refund for motor vehicle excise, real estate or a check we issued to a vendor and was not cashed. They exhaust every single avenue they possibly can to find the individual and the check is closed out to that account.

Councilor Cronin asked if, by law, a time parameter has to pass.

Mr. Kelly explained that after sixty days, the check gets closed to that account and then it sits there for a year or two. During that time frame they exhaust every avenue to find the vendor and is certified by the independent auditors.

Councilor Cronin asked about layoffs.

Mayor Manzi said there are no layoffs with the fiscal year 09 package. He and the auditor worked very hard to keep full employment and it was difficult. Not many communities have been able to do so. At least for 09, it looks good for us. He cautioned that there was some word today that the state may be as much as four or five hundred million dollars short, beyond where they are at now. He doesn't know what that means but the economic news nationwide continues to be grimmer.

Councilor Kannan referred to the firefighter overtime account and asked if a fire station is going to be shut down.

Mayor Manzi responded no, we are not, but the fire department is running five short and that is something we would not advocate for, under the best of conditions. It's a dire fiscal situation we are in. He reported that he met with the fire fighters union last Thursday night; and he wants the Council to know they have worked with the city continually. They continue to represent their membership vigorously. When they don't agree with him, they are not afraid to let him know. This union group has been proactive in seeking solutions to the problems that we all have. (No fire station shut down with this.)

UPON VOTE: UNANIMOUS.

Ordinances:

TO-08-09 An Ordinance Amending Chapter 10A of the Methuen Municipal Code of Methuen – Door Openers – Requirements (remove form the table) (amended)

MOTION BY: Councilor Lahey, seconded by Councilor Willette to remove from the table. UPON VOTE: UNANIMOUS.

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MOTION BY: Councilor Lahey, seconded by Councilor Willette to adopt (as amended)

Councilor Lahey said this has been before Council three or four times and he believes he covered everything he wanted to say on it. He extended his appreciation to Sid Harris, Peter McQuillan, Karen Sawyer, and Gerry Deschene for their efforts and putting together the amendment that they all feel is in the best interest of the majority of the citizens and is the most and fair and equitable way to cover all of the small and big businesses, regardless of square footage. Councilor Lahey said it is good legislation and urged the Council to take a vote, as it has been three months since this first came to Council.

Councilor Kannan asked Mr. Harris about Mr. Saba's letter where it states "after discussing the issue with you he agreed the intent was good". She asked Mr. Harris if Mr. Saba spoke to him and he'd be okay with that change. Mr. Harris responded, no.

Councilor Willette stated he supports this legislation. It enhances business because a portion of its customer base is either elderly or disabled. He explained an IRS program available for businesses to right off a portion of accessibility improvements for their business. He encouraged people to explore the IRS website for reductions in relation to accessibility upgrades.

Councilor Leone said when this legislation first came to Council, he and Councilor Cronin expressed concern and had questions regarding the impact on small businesses. They both requested a threshold, with the type of business or the size of the business that would trigger compliance. Although there were many discussions, that issue wasn't addressed.

Councilor Cronin expressed concern if someone wanted to build a strip mall with eight or ten small businesses. That could require eight to ten door openers no matter what size the stores are and could be cost prohibitive. He gave an example of property in east end where there was a proposal for a Dunkin Donuts and a small plaza. He believes there should be a threshold of 5,000 sq. ft.

Councilor Kannan said she spoke about square footage and it was a concern as mentioned by Mr. Saba. Penny Hamel also stated that small businesses are in a hard economic time and suggested starting at 5,000 sq. ft., and as times get better, bring it down accordingly.

Councilor Lahey noted that it's been explained a number of times that various types of door openers are not that expensive. Those who have trouble opening a door would still have trouble whether it is a small business or not. The purpose behind this ordinance is to assist the handicap and the elderly to open a door that requires handicap accessibility.

Councilor Cronin said he supports the concept but in the State of Massachusetts there is an architectural board that controls these matters. They do have rules and regulation set forth to accommodate the handicap. This would be in excess of their regulations. There are already rules in place to aid the elderly and handicap access to these buildings.

Sid Harris commented that this is a simple piece of legislation that the Disabilities Commission brought forth with the help of Mr. Lahey, the Solicitor and other. It got confusing along the way with the words "automatic door openers". He and Mr. Saba had brief conversation when Mr. Saba spoke in front of the Council. He believes Mr. Saba was under the impression that they had to install automatic door openers, which under the regulations required vestibules, automatic system, laser system. There is a maintenance

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issue that goes along with it. They are very very expensive. All they are requesting, that under new construction, for any building that providing goods and services to the public the installation of a push button door operating system. He can't see it being a hardship, not to any small business that would consider building a business here in Methuen or anywhere else. The reason for that is because the Disabilities Commission has paid to have the schools in Methuen retrofitted, they're accessible and to have a push button operating system installed in an existing facility. It only cost us \$2800 per unit. He spoke to some of the contractors that he knows and when someone is building that in new construction, it would only be a fraction of the cost. Now, 5,000 sq. ft, 4,000 sq. ft, 6,000 sq. ft., the problem that he has in his personal experience living in this community all my life that we see change of use constantly. For example, there is a pizza place in a strip mall. Some people may argue well a pizza place doesn't need it. He has a disability and walks with crutches. It would be easier for him and a person with a walker or even the person that has ten pizza boxes to push a button to walk in and out of the store. What happens when that pizza place goes out of business and you have maybe a salon that caters to people with disabilities and our seniors? How about a small restaurant in the strip malls that we see that are less than 5,000 sq. ft. If we look at the business park in Methuen on Pleasant street where there is a small little business, a chiropractor with less than 5,000 sq. ft. We have a business for hearing it is under 5,000 sq. ft. In addition to change of use issues, there are many reasons why 5,000 sq. ft. or less just does not work. Those are the types of business that are going to attract our seniors and obviously people with disabilities. He stated that on April 9<sup>th</sup> at the Day's Inn the Methuen Disabilities Commission is going to be holding a state disabilities conference and this is definitely on our agenda. We would be very very proud to have this type of legislation that we could pass on to other communities so they can consider it in theirs. In most cases this is not a hardship. A push button door opening system assists a lot of people in our community, seniors, disabled, mom and dad walking into a facility with a baby. This is valuable to all the people of our community.

Councilor Willette said the ADA is a federal law that applies to all fifty states. There is not a competitive disadvantage with doing this as compared to New Hampshire because new construction in New Hampshire requires access ramps, disability parking spaces, etc. He doesn't understand why a business wouldn't want to also have a push button door opener.

Councilor Cronin said Sid Harris raised another question when he mentioned change of use and Councilor Willette just mentioned the same thing only his words were, if you haven't renovated your building. If there is a change of use in an existing building we have, is that considered new construction when they renovate that building?

Attorney McQuillan said the intent and purpose of the legislation, given the intent and purpose of the legislation; he would have to answer yes.

Councilor Cronin said if anybody changes the use of an existing building, if they change the storefront from a pizza parlor to a hair salon, they would have to do that?

Attorney McQuillan responded, yes. A conversion of a building is new construction since construction has to take place for the purposes of effectuating the conversion. Any new construction could be a new building on a vacant lot, existing building for the purposes of conversion, if it necessitates any construction for rehabilitation, remodeling, addition, yes.

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Councilor Cronin said that's considered new construction. Attorney McQuillan responded, yes.

MOTION BY: Councilor Cronin, seconded by Councilor Leone to offer an amendment that this would be effective for 5,000 sq. ft. or more

Attorney McQuillan question why it would be 5,000 sq. ft. There has to be a rationale or it could be considered to be arbitrary and capricious. He presumes this figure is being used as benchmark because of site plan review under the zoning ordinance. If a commercial building is going to be 5,000 sq. ft. or more, it has to have site plan review which entails appropriate lighting parking, ingress, egress, and other factors that would be a concern regarding a commercial business but that is really unrelated to the purposes of making the building accessible to the consumers that are contemplated in this legislation. When square footage is established there has to be a rationale behind that and he's not sure what the rationale would be.

Councilor Cronin said his rationale is that he doesn't want to impact the small business or the person that just lost a tenant because the tenant couldn't make it. Now he's going to rent it to somebody that comes in and sells used clothing or a different use and has to change something around, they're going to be forced to install this. He wants to vote in favor of this but is finding it more difficult.

Attorney McQuillan said that could happen in any circumstance, whether it's 5,000 sq. ft. or 500 sq. ft. Speaking on behalf of himself, Karen Sawyer, and Mr. Deschene, the purpose of the legislation was that it is a consumer-oriented legislation. These particular citizens are going to transact their business throughout the city, whether that entity is 5,000 sq. ft. or 500 sq. ft. and they thought it would be appropriate for the legislation to be equal across the board because they are going to transact business at a nail salon, which is customarily very small, and also Market Basket. It is consumer oriented as opposed to business oriented and they thought it would be appropriate and would withstand any legal challenge if it applied across the board. His concern is if amended by placing a specific square footage provision, there has to be a rationale to that.

Councilor Kannan asked what type of language could be included. It says "all newly constructed commercial buildings" but then it changes to if somebody renovates a building that could be a small building regardless of the square footage, 500 or 5,000. She would like it clarified.

Attorney McQuillan said a definition could be added, new construction shall mean the following, from the ground up, or rehab or remodeling or renovation of an existing building.

Councilor Kannan said in the future if we find out there's no more newly constructed buildings in Methuen, it could come back to the Council to amend or change. There are concerns regarding what type of business or what size business.

Councilor Leone stated it very clearly says newly constructed. It does not include renovations. The state building code is very clear as to where the point is between new construction and renovation. Renovation isn't under consideration. It's for newly constructed buildings. If Council wants to change it to make it apply to renovate buildings, they have to do that and have to define what it is. Right now it says newly constructed.

Councilor Kannan said she wanted to make sure that is the case.

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Attorney McQuillan said he would be more than happy to provide the definition under 51C MR for the purposes of new construction.

Councilor Leone strongly objected to Mr. McQuillan participating in Council debate.

Attorney McQuillan said, under Council rules, he is allowed to comment and was asked to do so.

Councilor Lahey said Sid Harris, Karen Sawyer, the Solicitor, and Mr. Deschene have been working on this and are fine with it. This legislation is proposed to make it easier for the disabled, the elderly, those who are in need of door opener for easy access. He would prefer that it include renovations but will accept newly constructed. Chances are whether it is newly constructed or a renovations, the builder has the funds to install a door opener. It would be unfair to deprive residents access to a public business or store because they happen to have a 5,000 sq. ft. or less. The door is just as heavy as the business with 6,000 sq. ft. He urged the Council to be fair, across the board.

Chair Deborah Quinn suggested amending the ordinance to include the square footage for now, to get this on the books. At a later date, Council could revisit this issue.

Councilor Willette - Point of Information – to the Solicitor – asked when talking about all newly constructed commercial buildings or any part thereof, or existing building and they construct a new addition, would they be applied under American's with Disabilities Act to add a ramp?

Attorney McQuillan said the ADA provides that any building that is going to provide access to the general public has to make certain accommodations under the ADA.

Councilor Willette said talking about an existing building that adds an addition (new construction), a renovated building, however you want to encapsulate it, they would then fall under the provisions of the ADA of constructing a new ramp in that location.

Attorney McQuillan said that is correct and his comment that newly constructed incorporated rehabilitation, renovation, what have you is the purpose of, was the thrust behind the language which provides all newly constructed buildings or any part thereof. There should probably be a qualification if Council wanted to add for renovation, rehab, perhaps that is a bit vague. In response to the question, yes, any newly constructed building for the purposes of a use that's going to be open to the general public would fall under the provisions of the ADA.

Councilor Willette recommended reading the legal advisory of the Department of Justice under the Federal American's with disabilities act, which is the law of the land that it includes new construction, renovations, modifications, however you want to phrase it, you would have to upgrade your business. He doesn't want to have a business try to evade their responsibility if they expand their business or add an addition.

Councilor Zanni stated he appreciates the Solicitor's opinion and noted he was asked for his opinion earlier. This legislation is a good one, not only for senior citizens but also for the disabled, as well as moms with children, grandchildren, etc. He suggested adopting this and evaluates it in six months. The legislation reads newly constructed and the Solicitor said state regulations apply as well. Our citizens, senior citizens, disabled, all deserve the same rights that we all have. He urged Council to move forward on this

Councilor Pappalardo commented that this is a good piece of legislation. The intent is very good. We need to protect the disabled and the seniors. Some individuals have oxygen tanks they wheel and that's a problem for them to get through the doors. If individuals are able to build in these economic times, she doesn't believe it's going to be

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difficult for them to install a door opener. She agrees with Councilor Zanni, if there is a problem, lets come back six months from now and review it.

Councilor Cronin said he still needs clarification of what Council is voting. For example, a renovation, new addition, interior renovations, items that require a permit, if that is new construction for that particular site, are they required to install a door opener? If so, it's not right.

Attorney McQuillan said he would take the literal definition of the legislation before Council and construe that as simply newly constructed buildings not an existing building rehabbed or renovated because its not clear on that. As drafted, it does not include those particular circumstances and he would say this is a new building, from the ground up.

UPON ROLL CALL VOTE: (amendment 5,000 sq. ft.) 5 no, 3 yes (Clr. Kannan, Clr. Leone, Clr. Cronin)

UPON ROLL CALL VOTE: (main motion) 7 yes, 1 no (Clr. Leone)

Consideration of Appointments – None

NEW BUSINESS

Resolutions:

TR-09-13 Resolution Accepting Gifts to the City of Methuen in Memory of Methuen Veteran Albert Ciocca

MOTION BY: Councilor Cronin, seconded by Councilor Zanni to adopt (and also send a letter of thanks to the individuals who contributed) UPON VOTE:  
UNANIMOUS.

ANY OTHER BUSINESS FOR THE GOOD AND WELFARE OF THE COMMUNITY

Chair Deborah Quinn offered condolences and prayers to Chief Ken Bourassa and his family on the death of Chief Bourassa's father.

REQUEST OF COUNCILORS

Councilor Cronin asked the Chair to forward a letter to the Mayor to inquire: 1) as to whether or not the communication received regarding the project change at Russell Farm requires Council action, or if its being handled through the Zoning Board or Community Development Board; 2) the status of his request made several months ago to have the police department look into a right turn only heading south on Broadway, at the corner of Osgood Street (Dick's TV). (What's happening is you have two lanes there. People seem to have a drag race because people are parked in front of the post office and they are trying to get ahead of each other. It can be pretty dangerous. That right hand lane I was going to ask to have it a right turn only at particular spot.); 3) he'd like the Mayor to look into the feasibility of relocating the lights at the corner of Ashford and Swan since the Ashford School is no longer operational. These lights could be better used at the corner of Swan at the fire station and maybe install a button to turn the lights red if they have to come out of the station. That intersection is becoming increasingly more dangerous and he'd like to look into the feasibility of moving those lights.

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Councilor Zanni said he'd like the Mayor to consider a four-day workweek. Methuen has a four-hour day on Friday right now. In these economic times, we're looking at fuel consumption, electricity, energy efficiency and how we open up our building.

Councilor Lahey commented Councilor Zanni's idea is a good one. He recalled when he worked for DPW it was proposed to the Mayor at that time and they were turned down. If the Mayor proposes it to the employees, he'd guess that they would agree with the opportunity.

Councilor Pappalardo told Mr. Kelly she is very glad his daughter is home and wished her well. She asked Mr. Kelly for the status of the Snow and Ice account.

Mr. Kelly said prior to yesterday's storm, we were down around \$200,000. He estimated another \$50,000 for the storm. He's estimating a total of \$250,000, which is ahead of where we were last year.

Councilor Pappalardo asked the Chair to write a letter to the Mayor regarding the status of the East Capital Project (whether or not the land the pumping station is on could be sold) and proposed changes on Haverhill Street.

Mayor Manzi returned to the meeting and said he would provide an update on the East Capital Project. He doesn't know if the City will be able to sell the land. He would also speak with her on the Haverhill Street plan.

Councilor Lahey said he spoke with Tom Kelly regarding the Snow and Ice and wanted everyone to realize that last year we spent one million six hundred thousand, according to the paper and before the last storm, we had spent under one million, around 900,000. Mr. Kelly agreed. Councilor Lahey said he found in comparison that last year at this time we called the contractors nine times. This year, we already called them eleven times this year, had more snow storms, more accumulated snow, are paying more per hour for the vehicles and quite a bit more for rock salt, yet we're 700,000 dollars less than we were last year. He commended DPW for really cutting back and saving some money.

Chair Deborah Quinn wished the Mayor a Happy Birthday.

ADJOURN

MOTION BY: Councilor Lahey, seconded by Councilor Zanni to adjourn. UPON VOTE: UNANIMOUS.

The meeting adjourned at 8:10 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 March 16, 2009.

COUNCIL CLERK