



# *CITY COUNCIL*

## ***Committee of the Whole***

**Monday, March 14, 2016**

**5:00 pm**

**Agenda**

*Although Council committee meetings are open to the public, public comment is not permitted at Council Committee of the Whole meetings. However, citizens are encouraged to attend and observe the meetings. Comment from citizens or professionals during the meeting may be solicited on agenda topics via invitation by the President of Council.*

*All electronic recording devices must be located behind the podium area in Council Chambers and located at the entry door in all other meeting rooms and offices, as per Bill No.27-2012.*

- I. Access to Records/Information in Hansen**
- II. Citizen Initiative Commission – B. Twyman**
- III. Alvernia Area and the DCNR**
- IV. Agenda Review**
- V. Other Matters**



***COMMITTEE of the WHOLE***  
***CITY COUNCIL***

**MINUTES**  
**February 22, 2016**  
**5:00 P.M.**

**COUNCIL MEMBERS PRESENT:**

S. Marmarou, M. Goodman-Hinnershitz, C Daubert, B. Twyman, D. Reed, J. Slifko, J. Waltman

**OTHERS PRESENT:**

L. Kelleher, S. Katzenmoyer, C. Younger, A. Palacios, B. Murray, J. Pianka, A. Cohen

The Committee of the Whole meeting was called to order at 5:00 pm by Mr. Waltman.

Mr. Cituk arrived at this time.

**I. CDBG Action Plan Amendment**

Mr. Waltman stated that the Administration has requested a presentation on HOME funds. He stated that Council support is needed for a proposed project.

Mr. Palacios stated that there are unprogrammed funds available for this project. He stated that HUD requires funds be allocated to specific projects. He stated that the Administration is proposing a project at 122 S 2<sup>nd</sup> St for seniors.

Mr. Cohen, Senior Vice President of Woda Group, distributed packets to Council describing the company and their other projects in PA. He stated that they are proposing the Barley Square Project at 2<sup>nd</sup> and Chestnut Sts as a three story, 60 unit apartment building for low income, active seniors age 62+. He stated that there would be one and two bedroom units.

Mr. Cohen stated that funding for the project would include PA Housing Finance Agency (PHFA). He stated that this is competitive financing and that some local funding is required. He stated that local labor would be used during construction.

Mr. Cohen explained that the Woda Group has 13 properties in operation and three in development. He stated that residents would need to meet the income requirements (less than 60% of local median income). He stated that a social service coordinator would be available.

Mr. Cohen stated that in order to apply for the PHFA financing the project would need letters of support from the City. He stated that the applications are due on March 4.

Mr. Pianka stated that this is an urban project and that the Woda Group was hoping for \$150,000 in CDBG funding.

Mr. Waltman questioned if the project has the Mayor's support. He stated that Council would need to amend the Action Plan. He explained the purpose of HOME funds and questioned the debt structure of the project. Mr. Cohen stated that it would be a 30 year loan.

Mr. Waltman questioned if the project is fully taxable. Mr. Cohen stated that it is.

Mr. Slifko questioned if the project is located in a KOZ area or if other deferred taxes were available. Mr. Cohen stated that he hopes to break ground on the project in March 2017 with completion in March 2018. He stated that LERTA would be available for the first 10 years but that the project is not dependent on LERTA.

Mr. Marmarou questioned if the Woda Group had any other projects in Reading. Mr. Cohen stated that they did not.

Mr. Twyman questioned if this project was discussed in the past. Mr. Waltman stated that it was discussed but only vaguely. No specifics for the project were discussed.

Mr. Twyman questioned why the Administration waited until the deadline to approach Council. Mr. Pianka stated that the City's HUD HOME funding was just released.

Mr. Waltman requested clarification. Mr. Palacios stated that the City just received notice from HUD on their HOME allocation. He stated that there is a slight increase from last year. He stated that he has spoken with the Mayor about this project and a

project at the former site of the Hillside Pool. The Mayor supports both projects and recommends amending the Action Plan.

Mr. Twyman questioned if local construction professionals would be used. Mr. Cohen stated that they would.

Mr. Daubert questioned if the units would be rented to those age 62+ only. Mr. Cohen stated that they would be rented to active seniors age 62+ only.

Mr. Pianka stated that Woda Group has only sold one facility. He stated that they will not build the project, bilk the City, and leave.

Ms. Goodman-Hinnershitz questioned if the units would be sold to individuals. Mr. Cohen stated that they would be rented.

Ms. Goodman-Hinnershitz questioned laundry facilities. Mr. Cohen stated that they will be located on the first floor and possibly on the third floor. He stated that all units will be handicapped accessible and there will be common areas on the first floor. He stated that 10% of the units will be rented to the disabled.

Ms. Reed questioned security at the facility. Mr. Cohen stated that there will be a buzzer system.

Ms. Reed questioned the off street parking. Mr. Cohen stated that there will be 90 spaces as required by the Zoning Ordinance.

Ms. Reed questioned the maximum number of people per unit. Mr. Cohen stated that it would be two.

Mr. Waltman expressed the belief that this project is needed in Reading. He questioned the probability that it would be approved by PHFA. Mr. Cohen stated that a market analysis has been completed. He stated that the analysis showed that the project is needed. He stated that he cannot predict the PHFA decision but that he feels confident.

Mr. Waltman questioned if there were objections from Councilors to moving this forward.

Ms. Goodman-Hinnershitz requested that the Mayor voice support directly to Council as this project is inconsistent with other statements he has made about the use of HUD funds.

Mr. Twyman objected to the small time window. Mr. Cohen stated that he applied to the City in June.

Mr. Slifko stated that the project was approved in November. He questioned why this approval was not sufficient. Mr. Waltman stated that this is final approval and noted the need for letters of support. He stated that Council will also adopt a resolution this evening in support of the project.

Council voiced support of the project and adding a resolution to this evening's agenda.

Mr. Cohen, Mr. Pianka, and Mr. Palacios left the meeting at this time.

## **II. Agenda Review**

Council reviewed this evening's agenda including:

- Resolution approving the settlement agreement between the City and Elm View Apartments

Mr. Younger explained that Elm View Apartments missed a payment that the City has not forgiven. He stated that the City brought foreclosure action. The settlement requires Elm View Apartments to pay the City \$390,000 within 90 days or the City will take possession.

Mr. Twyman questioned the location of this property. Mr. Younger stated that it is at N 4<sup>th</sup> & Elm Sts.

Mayor Scott arrived at this time.

Mr. Waltman questioned the value of this property. Mr. Younger stated that he does not have that information with him but that it is worth more than the amount of the settlement. He stated that if Council approves the settlement agreement that the issue is not appealable.

Mr. Slifko questioned if Elm View Apartments is likely to make the required payment. Mr. Younger stated that he is unsure.

- Ordinance amending the Stadium Commission

Mr. Marmarou expressed the belief that Council should hear information first hand and requested the amendment to add liaisons from Council and Public Works.

Mr. Slifko questioned if these would be voting members. Mr. Marmarou stated that they would be.

Ms. Reed recommended that they be true liaisons and have no voting power.

Mr. Younger stated that the legislation calls all members liaisons.

Mr. Waltman suggested that the Council and Public Works positions be referred to as ex-officio. Ms. Reed agreed and stated that it retains the autonomy of the Commission and removes the politics.

Mr. Johnson arrived at this time.

- Ordinances conveying a right of way and easement on Route 625 to PennDOT

Ms. Reed questioned the specific location. Mr. Johnson stated that it is just past the Dairy Queen on Kenhorst Blvd. There is a bridge in need of reconstruction.

Ms. Reed questioned why the City owns this land in Cumru.

Mr. Younger stated that the City will be compensated by PennDOT for the right of way and easement.

- Ordinance amending the Fee Schedule Section 126 Property Sales

Mr. Waltman requested an explanation. Ms. Kelleher stated that she was not given any additional information.

Mr. Waltman suggested that the ordinance be tabled and that Mr. Natale and Ms. Butler attend the next meeting to explain.

- Ordinance amending the Position Ordinance in the CD Department

Ms. Kelleher distributed the job description as requested by Council.

Mr. Slifko questioned if the Mayor supported this position. Mayor Scott stated that he did.

Mr. Waltman stated that the educational requirements are included and he is now comfortable moving forward. Council agreed.

- Resolution supporting the Barley Square project

Mr. Waltman requested the Mayor voice his support of the project. Mayor Scott stated that he supports the project.

Ms. Goodman-Hinnershitz questioned if the project was consistent with the Mayor's vision. Mayor Scott stated that it is and that he does not want to lose this funding.

Ms. Goodman-Hinnershitz stated that the City needs accessible senior housing.

Mr. Slifko stated that the project will also bring this property back on the City's tax rolls.

### **III. Review Snow Emergency Plan**

Mr. Johnson stated that Public Works is performing its regular review of the plan. He stated that he welcomes Council input.

Mr. Twyman questioned the date of the plan. Mr. Johnson stated that the last update was done in 2014.

Ms. Reed questioned the cost of the clean-up from the January storm. Mr. Johnson stated that the Public Works amount was submitted to the Emergency Management Coordinator but that he did not have the total cost to the City.

Mr. Marmarou stated that the Governor has requested that the President declare an emergency to allow access to FEMA funds. He questioned if outside agencies assist the City. Mr. Johnson stated that PennDOT assisted and that others were hired.

Mr. Marmarou questioned if large businesses or the School District assisted. Mr. Johnson stated that they are also busy but that the City is now working closely with the School District during snow events. Mayor Scott agreed and stated that they were also involved in the planning meetings.

Mr. Twyman questioned Mr. Johnson's opinion about the execution of the Plan during the January storm. Mr. Johnson opined that it went well. He stated that during the January 1996 storm the City essentially shut down. He stated that during this storm the main arteries were kept open. He stated that there were problem areas where cars were abandoned but that overall residents were cooperative.

Ms. Goodman-Hinnershitz stated that the City should be more proactive in encouraging the use of parking garages during storms. Mr. Slifko agreed. Mr. Johnson

stated that the City is also working with churches and schools to use their parking lots so residents have better access and do not need to leave their vehicles downtown.

Mr. Waltman suggested that the large parking area at Price Rite also be considered. Mr. Johnson stated that this is private property and that Price Rite wanted the City to pay a large sum to dump snow there.

#### **IV. Angelica Park and the DCNR**

Mr. Johnson stated that DCNR is supposed to review projects every five years. He stated that although this review was not done the land owner is still responsible.

Ms. Goodman-Hinnershitz questioned the City's options. Mr. Johnson stated that the most likely option is that land of equal value will be designated as conservation.

Ms. Godman-Hinnershitz questioned if it must be new land. Mr. Johnson stated that Mr. Coleman is currently reviewing the specifics.

Mr. Waltman questioned the amount of land. Mr. Johnson stated that it is 100 acres. Ms. Kelleher explained that Angelica Park was acquired as several separate parcels over several years.

Mr. Johnson stated that the DCNR definition of park differs from the City's definition. He stated that their definition includes the locations of the Fire Training Center and the WWTP.

Mr. Waltman questioned if the entire 100 acres must be replaced or only parts that are no longer parkland. Mr. Johnson stated that Mr. Coleman has not yet made that determination.

Mr. Waltman noted the need for the City to proceed with caution. He stated that the City cannot afford to buy 100 acres. He noted the need for the City to understand the amount of the land that is still parkland.

Ms. Goodman-Hinnershitz stated that the City already owns a lot of land.

Mr. Johnson stated that the land must be accessible. He stated that the ballfields will count as parkland if Alvernia makes them more accessible.

Mr. Waltman noted the need for the City to have more details before fully considering this issue. He stated that there has been much controversy at this site in the past.

Mr. Johnson stated that outside engineers are needed and that the City will be requesting more time from the DCNR.

Mayor Scott noted his concern with the start of the new project at Angelica. He suggested that the project not begin while the park is under review. He noted the possible penalties and questioned who would be responsible to pay them.

Mr. Waltman noted the need to work to find a solution. He noted his concern that this would be another situation where the City was forced into action by another governmental entity similar to the consent decree at the WWTP.

Ms. Goodman-Hinnershitz questioned if Berks Nature owned the land on Neversink Mountain. Mr. Johnson stated that it owns some, but not all.

Ms. Goodman-Hinnershitz expressed the belief that all City land will be vulnerable if the City goes into receivership. She noted the need to protect more land and suggested that it be given to Berks Nature so that it is not at risk.

Mr. Waltman requested a legal brief.

Mayor Scott stated that Berks Nature has been notified of the issue and he recommended that work on the project cease.

Ms. Reed stated that many municipalities are also affected since DCNR is performing this review State-wide. Ms. Kelleher agreed and stated that it was called Project 500 and addressed water preservation and mine issues during the 1970's.

Mayor Scott stated that the City should have known about these restrictions.

Mr. Waltman stated that he is willing to work on the compliance issues as long as Reading does not become a mockery.

### **Agenda Review (Continued)**

- Ordinance eliminating the penalty section from the Curbside Waste Fee

Mr. Johnson stated that since RAWA collects the fee for the City, they already have fees in place. He stated that this fee would have been duplicative.

- Ordinance transferring \$20,500 in Solid Waste and Recycling

Mr. Johnson explained that there was a slight shortfall to cover the fourth quarter contract payment. He explained that the transfer is within the Recycling Enterprise Fund.

## **V. Access to Records**

Mr. Waltman reminded all that Council staff no longer has access to property records. He stated that he poled Council to determine if they felt access was necessary. He stated that the issue will not be resolved this evening but that conversation needs to continue. Mayor Scott agreed.

Mr. Waltman stated that conversation can be deferred but that not all Councilors responded to the pole.

Mr. Slifko noted his concern that staff indicated many tasks that they cannot perform without access. He stated that besides those items, this is a Freedom of Information Act (FOIA) issue and believes that the records should be public. He suggested that staff keep a log of when they use the database and the purpose of their action.

Mr. Waltman stated that the body's opinion is needed.

Mr. Twyman expressed the belief that further review is needed. He noted his support of staff logging their use.

Mr. Daubert agreed with the use of a log. He questioned if the Mayor's staff has access. Mayor Scott stated that his office has no need for access. He stated that Councilors may need access but questioned who really wants access.

Ms. Reed expressed the belief that this is a FOIA issue. She stated that the database has been available to staff for many years. She questioned why it was taken away now and stated that it appears to be a control issue and raises red flags.

Mr. Waltman stated that he will have further discussions with the Mayor and report back to the body.

Ms. Goodman-Hinnershitz agreed that this is a FOIA issue and that public access needs to be clarified.

Mr. Waltman stated that Council has a strong history with the information in this database as they assisted with verifying data and ensuring the data was correct.

## **VI. Other Matters**

- Fire on S. 16 ½ St

Mayor Scott stated that 632, 634 and 636 sustained massive fire damage and will need to be demolished. He stated that 638 and 640 are also compromised as they are leaning and may fall when the demolition is complete. He stated that he is requesting review by a structural engineer.

Mr. Waltman stated that this is a big liability risk to the City.

Mayor Scott stated that the City has begun conversation with the resident to provide another property in the area. He stated that she has no insurance since the property next door was abandoned.

Ms. Goodman-Hinnershitz noted the need for quick action.

- Railroad Museum, Post Office and Penn St Properties

Mayor Scott stated that he met with Commissioner Barnhardt and BARTA about purchasing the Franklin St Station for the railroad museum. He stated that he is securing funds from outside Berks County to develop the museum and to fund other projects on Franklin St. He stated that approximately \$5 million is owed on the property and that he is looking for grant funds.

Mayor Scott stated that he is hoping to acquire the Post Office property to use as a police station. He stated that this would attract business and address downtown safety issues.

Mayor Scott stated that there are three developers interested in the Penn St properties. He noted the need for an overall downtown revitalization plan which includes more than housing.

Mr. Slifko questioned if the County and BARTA are interested in discussions about the Franklin St Station. Mayor Scott stated that they are and that he is also looking to link the station to bring rail service back to Reading.

Mr. Waltman noted his support of the railroad museum. He stated that there are many resources and much interest. He suggested forming a steering committee. He questioned the costs of moving the police department to the post office building. Mayor Scott stated that the building is sound and would not need much remodeling to prepare it. He expressed the belief that this would increase development and address the safety issues of visitors.

Mr. Marmarou stated that the post office is near the original location of City Hall.

Mr. Waltman suggested that the Administration prepare a Pro Forma showing investment costs and maintenance costs.

- City Hall Roof Replacement

Mayor Scott stated that an insurance company is inspecting the City Hall roof to determine if there is hail damage.

- Police Chief Candidate

Mayor Scott stated that the candidate is still interested. He stated that the candidate wants a contract but that he is reviewing that with Law as PA is an at-will state. He stated that when the contract is finalized he will bring the candidate forward. He stated that contracts give professionals security but that it may then become an issue for other positions.

Ms. Goodman-Hinnershitz noted the need for the public to understand that Council is working with the Administration. She stated that there was a flyer on her car after the last Council meeting indicating that they were not working together.

Mayor Scott stated that he does not control the public and does not invite speakers or seek the attacks on Council. He stated that he has spoken with these individuals and asked them to take a break to see how things progress.

The meeting adjourned at 6:43 pm.

*Respectfully Submitted by  
Linda A. Kelleher, CMC, City Clerk*



CITY OF READING, PA  
MEMORANDUM

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**TO:** Department Directors; Division Managers  
**CC:** City Council  
**FROM:** Mayor Wally Scott *WJS*  
**DATE:** 3 February 2016  
**SUBJECT:** New Procedures for Accessing Internal Records

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As you may be aware, my administration recently took actions to limit the access to the city data management system for Property Maintenance records. I am providing this memorandum to explain the reasoning behind this policy and to correct some misinformation that has recently been made public.

First, this new policy is not preventing anyone in my administration from accessing records and information stored in the system. What this policy will do is provide a level of accountability, control, and record-keeping that is currently missing from aspects of the process.

Secondly, as it regards City Council staff, the water billing information is retrieved via council request to RAWA staff; Property tax info is, and continues to be, publically accessible via Berks County; and Individual tax information requests are submitted to Berks Earned Income Tax staff either directly or via City Hall Customer Service Center staff. None of these processes have been altered in any way. The change that was made brought the access of Property Maintenance information in to alignment with the aforementioned operations.

Employees continue to have access to information that is essential city business in service to our customers, the citizens of Reading. Clerks in the City Property Maintenance Department have full access to the Property Maintenance related records stored in city databases as access is necessary for the performance of their duties. However, other employees, outside of the Property Maintenance function, and who do not require full time access to perform the day-to-day responsibilities of their position, will be required to make a written request for the specific information or records that they are seeking.

Requiring a written request provides an additional layer of accountability to those who provide sensitive information to the City because it will limit electronic record inquiries to those who are using the system for essential City business while ensuring that city staff are responsive to those requests.

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Obviously, requiring this extra step in the process could potentially hinder legitimate use of the system. However, I can assure you that the procedures we put in place will result in only minimal interruptions.

I hope this memorandum clarifies the issues regarding the actions my administration has taken. I look forward to working with you in improving this process.



**Without Access to the Hansen Database Council Staff:**

- Loses ability to create labels using the property addresses within the database
- Loses the ability to check zoning on a property
- Loses ability to verify information on a Conditional Use application
- Loses ability to check current ownership for a property
- Loses ability to obtain contact information for the current property owner
- Loses the ability to see Building and Trades permits approved
- Loses ability to view property maintenance information on a property
- Loses ability to run various reports within the database such as the Blighted Property report for the BPRC
- Loses ability to respond to Council and citizen inquiries re zoning and rental history, etc.
- Loses ability to check if a property owner has a business license and has paid business privilege taxes.
- Loses ability to check status of QoL tickets issued at a property
- Loses ability to see the complaints made at a property
- No longer has direct access to public information

**City Of Reading**  
**Right To Know Law Policy**

**Purpose**

The purpose of this policy is to assure compliance with the Pennsylvania Right-to-Know Law, 65 P.S. §66.1 *et seq.*, as amended, to provide prompt and efficient access to public records of the City of Reading, to preserve the integrity of records, and to minimize the financial impact to the residents of the City of Reading regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records, and to protect the privacy rights of individuals who submit sensitive information to the City that is considered non-public, confidential, or privileged under the Right-to-Know Law.

This policy replaces all prior inconsistent City policies.

**Records that can be Requested in person without a Right-to-Know Request**

The following records\* can be requested in person by going to the department offices listed below:

- Zoning and Planning- City Hall, First Floor, Room 1-41:
  - Zoning Permits
  - Zoning Hearing Board decisions
  - Zoning Hearing Board applications
  
- Building and Trades- City Hall, First Floor, Room 1-41:
  - Permits (building, plumbing, electric, and mechanical)
  - Certificates of Occupancy
  - Stop Work Orders
  
- Property Maintenance- City Hall, First Floor, Room 1-30:
  - Housing permits

- Quality of Life Ordinance tickets
- Property Maintenance Inspection Reports (issued on Jan. 1, 2005 or later)
- Notices of Violation (issued on Jan. 1, 2007 or later)
- Copies of placards posted on unsafe/condemned properties

\* Due to limitations on our staff, the City reserves the right to limit requests to no more than 3 separate records or for records of more than (3) properties in a 24-hour period. If you need to request more than three separate records at one time, you may be required to submit a Right-to-Know Request.

#### **Requests under the Right-to-Know Law**

1. Requests for public records shall be submitted in writing and signed by the requester. The request shall include the name and address to which the Law Department should address its response. The City will not accept anonymous requests for records.
2. All requests for public records shall be specific in identifying and describing each public record requested.
3. In no case shall the City of Reading be required to create a public record which does not exist or to compile, maintain, format or organize a public record in a manner in which the City of Reading does not currently compile, maintain, format or organize the public record.
4. All requests for access to public records of the City of Reading shall be directed to the Law Department of the City of Reading. The Law Department is located on the second floor in Room 2-54, City Hall, and is accessible to the public between the business hours of 8 AM to 4 PM Monday through Friday, (except on holidays), via facsimile to 610-655-6427, or at [solicitor@readingpa.org](mailto:solicitor@readingpa.org). Requests will be addressed within five days of receipt.
5. The requester should also provide additional contact information such as a telephone number, facsimile number and e-mail address to facilitate the processing of a request.
6. A request may be submitted using the City's "Right-to-Know Law Request Form." Forms are available for pickup outside of the Law Department at the address below.
7. To expedite processing, the written request shall state explicitly – both on the enclosure envelope or fax cover sheet and in the written request – that the communication is made for the purpose of requesting access to public records under the Law.
8. To expedite the City's review of the request and the production of any public records, the request should indicate which department is likely to have the records and the exact records being sought (for example, a request for a housing permit will be processed much quicker than a request to review a housing file).
8. All requests for records shall be mailed or delivered to:

City of Reading Law Department

Room 2-54  
815 Washington Street  
Reading, PA 19601

[solicitor@readingpa.org](mailto:solicitor@readingpa.org)

### Fax

Submittal of a request to any other address or facsimile number does not give rise to any obligation on the part of the City to respond to it, nor can it serve as a basis for the deemed denial of the request.

### **Fees**

If a written request for records is granted in whole or in part, the following fees will be charged to the requester:

- **Fees for duplication of public records shall be as follows:**
  - Photocopy \$0.25 per page
  - Certification of a public record \$5.00 per record to certify
  - Copying records onto electronic media Actual Cost
  - Specialized Documents Actual Cost
  - Postage Actual Cost to the City of Reading of mailing the record
  - Facsimile/Microfiche/Other Media Actual Cost
  
- **Prepayment**
  - Estimate Cost Exceeds \$100 – In the event the estimated cost of fulfilling a request submitted under this Part is expected to exceed \$100, the Open Records Officer shall obtain payment of 50% of the expected cost in advance of fulfilling (copying) the request to avoid unwarranted expense of City of Reading resources.
  - Prior to Release – The City may obtain the Cost of the records prior to releasing the records.
  
- **Redaction** - A fee to redact documents may not be charged. If a requester wishes to inspect rather than receive a copy of a record and the records contains both public and non-public information, the City shall redact the non-public information and shall charge for copies, in accordance with the above fee schedule, it must make of the redacted material in order for the requester to view the public record. Should the requester choose to obtain copies of the redacted documents after reviewing the records, no additional fee may be charged.
  
- **Statutory Fees** – If a separate statute authorizes the City to charge a set amount for a certain type of record, the City may charge no more than that statutory amount.
  
- **Conversion to Paper** – If a record is only maintained electronically or in other non-paper media, duplication fee shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the requester specifically requests for the record to be duplicated in the more expensive media.
  
- *Certification – legal verification of a public record performed at the behest of the requester, does not include notarization*
- *Photocopy – either a single sided copy or one side of a double-sided black and white copy of a standard 8.5"x11" page*

- *Specialized Documents – non-standard sized documents including but not limited to blue prints or color copies*

All costs must be paid by check or money order payable to the "City of Reading".

**Questions:**

Any additional questions regarding this policy may be directed to the City of Reading Law Department at 610-655-6208. Prior to requesting copies of information from the City you may contact via telephone or visit the Law Department in room 2-54, City Hall to obtain a request form, or you can print out the attached request form. Upon return please have the attached request form completed and either drop off or mail the form to 815 Washington Street Room 2-54, Reading PA 19601 and/or fax the completed request form to 610-655-6427. Once received the request will be date and time stamped.

If you have any questions regarding the Right to Know Law you can contact the City of Reading Law Department at 610-655-6208 or visit the attached link to the Open Records Office in Harrisburg, PA.

[Right-To-Know Law Request Form \(Adobe PDF\)](#)

<http://openrecords.state.pa.us/>



THE CHARTER BOARD OF THE CITY OF READING  
IN RE Application of Charter § 209(d) to : Request Received February 5, 2016  
the Office of the City Clerk :

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Advisory Opinion No. 39

**NOTICE**

THE “OPINION OF THE BOARD” SECTION OF AN  
ADVISORY OPINION MAY BE USED ONLY BY THE  
REQUESTOR OF THE ADVISORY OPINION AS A DEFENSE  
IN ANY SUBSEQUENT INVESTIGATION OR PROSECUTION  
ONLY TO THE EXTENT THAT THE QUESTIONS  
PRESENTED TO THE BOARD ARE IDENTICAL TO THE  
FACTUAL ISSUES FACED IN THE UNDERLYING MATTER  
IN WHICH THE DEFENSE IS RAISED. FURTHER, NO  
OTHER PORTION OF AN ADVISORY OPINION MAY BE  
USED IN ANY WAY AS A DEFENSE AND SHALL NOT BE A  
DEFENSE. *See* Bill No. 46-2005, *as amended*, Charter Board  
Ordinance *and* Charter Board Resolution 2-2015.

1

THE CHARTER BOARD OF THE CITY OF READING  
IN RE Application of Charter § 209(d) to : Request Received February 5, 2016  
the Office of the City Clerk :

::

Advisory Opinion No. 39

**ADVISORY OPINION**

**I. PROCEDURAL HISTORY AND QUESTION PRESENTED**

By letter dated February 5, 2016 the City Clerk, Linda A. Kelleher, (“Clerk”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion regarding the application of Charter § 209(d), relating to prohibitions on the powers of City Council. As rephrased by the Board, the Clerk asks whether the Charter permits the City Clerk and her staff to deal directly with all departmental and bureau employees, without the need of involving the Mayor or Managing Director.

The Board answers this question as stated in Section III, Opinion of the Board, *infra*.

**II. DISCUSSION AND ANALYSIS**

**A. Pertinent Charter Provisions**

Article II of the Charter addresses City Council, the City’s legislative branch. Following the broad grant of power in Section 208,<sup>1</sup> the Charter provides several prohibitions on City Council and its members. *See* Charter § 209. The Board is concerned here with Section 209(d), which provides as follows:

(d) Except for the purpose of inquiry, the Council and its Members shall deal with the all [sic] departmental and bureau employees through the Mayor or the Managing Director.

Because the Clerk asks if this prohibition applies to her, and her staff, the Board also looks to Charter § 225, relating to the City Clerk. That section provides:

<sup>1</sup> “All powers of the City not otherwise provided for in this Charter shall be exercised in a manner to be determined by Council. Council shall provide for the exercise and performance of any such other powers and duties in a manner consistent with the terms of this Charter.” Charter § 208, relating to the general powers and duties of City Council.

2

**Section 225. City Clerk.**

Within thirty (30) days of taking office, City Council shall appoint an officer of the City who shall have the title of City Clerk. The City Clerk shall give notice of Council meetings to its members and the public, take the minutes of all City Council meetings, keep the journal of its proceedings, shall have the power of a notary public, shall serve as secretary to the Council and perform such other duties as are assigned by the administrative code, the Council, or state law. The term of City Clerk shall be two (2) years with option to be re-appointed for successive terms. The City Clerk shall serve at the pleasure of Council.

The Administrative Code also assigns duties to the City Clerk. Admin. Code, Part 6, § 5-601, Duties. Notably, the Clerk's duties include serving as the Director of the legislative branch, performing general oversight and coordinating City Council legislative action, making recommendations to City Council on policy and issues affecting the City, serving as liaison between City Council and other officials and acting as a representative of City Council.

## B. Analysis

### 1. *The City Clerk*

The City Clerk is an officer of the City whose duties are ministerial and nondiscretionary.

<sup>2</sup> The Clerk is not a member of City Council and is not part of the body of Council, however she is appointed by Council and serves at the pleasure of Council. It is abundantly clear to the Board, that despite the strong connection between the City Clerk and the Council, the Clerk is not merely an agent of Council. The Clerk's responsibilities, although ministerial in nature, are *her responsibilities*, given by the Charter, and are not the

<sup>2</sup> Three times the Board passed upon the nature of the role of the City Clerk. On re-visitation again, the Board affirms that the role of the City Clerk is strictly ministerial, and non-discretionary. *See In re Investigation of Reading City Council* (Inv. No. 31, Apr. 25, 2011) at 12-14, *aff'd by Reading City Council v. City of Reading Charter Board*, No. 11-14382 (Berks Ct. Com. Pl. Feb. 17, 2012), *aff'd by Reading City Council v. City of Reading Charter Board*, No. 29 C.D. 2012 (Pa. Commw. Ct. Oct. 23, 2012); *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 3; *In re Proposed Ordinance for Initiative and Referendum Process* (Adv. Op. 5, March 6, 2007) at 4.

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responsibilities of City Council assigned to her by that body. True, she is assigned *duties* by Council, which the Clerk must independently fulfill. As an officer of the City,<sup>3</sup> the Clerk is separate from, and not a part of, City Council.

### 2. *The prohibition of Charter § 209(d)*

The prohibition of Charter § 209(d) prevents City employees from being caught in the political, personal, or policy cross-fire between the Mayor and City Council, or between various agendas of individual City Council members. The Mayor-Council form of government created by the Charter places these two bodies in direct competition, at times as a full-on check and balance. The involvement of six (6) City Council members, or the President of City Council, in the day to day operations of the City, or in correspondence or directives to City departments or employees, would cause confusion, delay and waste. From the Board's perspective, the prohibition of Section 209(d) is intended to dovetail with the vesting of the executive, administrative and law enforcement powers of the City in the Mayor, and that the Mayor shall "control and be accountable for the executive branch of City government." Charter § 301. Nevertheless, the prohibition of Section 209(d) is limited. First, the prohibition expressly is placed on only City Council, not on the City Clerk. The Board has already opined that the City Clerk is not part of City Council. However, the non-application of this section to the City Clerk is not license for the Clerk to go beyond the ministerial limits of her office as stated in Charter § 225, or the prior holdings of the Charter Board. *See* footnote 2, *supra*. Second,

Section 209(d) allows City Council to, “for the purpose of inquiry,” “deal with the all [sic] departmental and bureau employees.”

<sup>3</sup> Although an officer of the City, the Board is not in any way placing the City Clerk on par with City Council, the City’s legislative branch. The office of City Clerk is one of service to City Council in assisting its legislative function.

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The power of a legislature to inquire into the operations of government are well known and need no repeating. However, the term “inquiry” should be examined, to give it context here:<sup>4</sup>

Inquiry:

1. examination into facts or principles: research
2. a request for information
3. a systematic investigation often of a matter of public interest

City Council, and, if so directed to do so pursuant to Charter § 225, the City Clerk,<sup>5</sup> are permitted to research, request information and undertake a “systematic investigation” of City government which may well result in dealing with “departmental and bureau employees” directly and not through the Mayor or Managing Director. That is an inherent prerogative of virtually every legislature in a representative democracy.

The Charter Board Ordinance requires that certain standards of interpretation be employed in construing Charter provisions. Ordinance No. 46-2005, *as amended*, at § IV(A). The Board is bound by the plain language of the Charter, and may not interject or interpret a provision unless an ambiguity exists. The object of all interpretation and construction of Charter provisions is to ascertain and effectuate the intent of the authors of the Charter. When the words of a Charter provision are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. *Id.* Further, it is not for the Board, or the courts, to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include. *Summit School, Inc. v. Commw., Dept. of Educ.*, 108 A.3d 192, 199 (Pa. Commw. Ct. 2015).

<sup>4</sup> “Inquiry.” Merriam-Webster.com. Accessed February 22, 2016. <http://www.merriamwebster.com/dictionary/inquiry>.

<sup>5</sup> It is also conceivable that the City Clerk in undertaking the *responsibilities of her office* may, from time to time, deal with “departmental and bureau employees” directly and not through the Mayor or Managing Director.

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The Charter has no prohibition on the City Clerk dealing directly with “departmental and bureau employees” of the City. If the City Clerk, within the duties of her office, must undertake such dealings, she may do so directly and not be required to do so only through the Mayor and Managing Director. However, where the City Clerk is acting at the express direction of City Council, the prohibition stated in Charter § 209(d) clearly applies to the Clerk and her staff, for City Council cannot undertake indirectly through the City Clerk what it cannot undertake directly itself.<sup>6</sup>

### III. OPINION OF THE BOARD

It is the Opinion of the Board that Charter § 209(d), prohibiting City Council from dealing with “departmental and bureau employees” only “through the Mayor or the Managing Director,” does not apply to the City Clerk, or her staff, except in the circumstance where City Council expressly directs the Clerk’s conduct, in which case the City Clerk and her staff are limited by the prohibitions of that section.

Date: March 7, 2016

### NOTICE

THE “OPINION OF THE BOARD” SECTION OF AN ADVISORY OPINION MAY BE USED ONLY BY THE REQUESTOR OF THE ADVISORY OPINION AS A DEFENSE IN

ANY SUBSEQUENT INVESTIGATION OR PROSECUTION ONLY TO THE EXTENT THAT THE QUESTIONS PRESENTED TO THE BOARD ARE IDENTICAL TO THE FACTUAL ISSUES FACED IN THE UNDERLYING MATTER IN WHICH THE DEFENSE IS RAISED. FURTHER, NO OTHER PORTION OF AN ADVISORY OPINION MAY BE USED IN ANY WAY AS A DEFENSE AND SHALL NOT BE A DEFENSE. *See* Bill No. 46-2005, *as amended*, Charter Board Ordinance *and* Charter Board Resolution 2-2015.  
<sup>6</sup> Charter, Amd. I, § 1(a); *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 5.