



# ***COMMITTEE of the WHOLE***

## ***CITY COUNCIL***

**MINUTES**  
**March 10, 2014**  
**5:00 P.M.**

### **COUNCIL MEMBERS PRESENT:**

D. Sterner, S. Marmarou, M. Goodman-Hinnershitz, D. Reed, C. Daubert

### **OTHERS PRESENT:**

L. Kelleher, S. Katzenmoyer, T. Butler, R. Johnson, C. Snyder, D. Cituk, F. Lachat, V. Spencer, L. Murin, M. Bembenick, D. Kersley, A. Johnson, A. Booth, F. Denbowski

The Committee of the Whole meeting was called to order at 5:03 pm by Councilor Reed.

### **I. Charter Board Ordinance Amendment**

Ms. Kelleher distributed a memo regarding the amendment being considered through her research and work.

Ms. Goodman-Hinnershitz stated that there are two proposals – one from the Administration and one from Council. She stated that both proposals include a mediation process. She stated that she, Ms. Kelleher, and Mr. Acosta met with the Bar Association regarding their mediation process. She stated that the Bar Association has also offered to help mediate the process to determine a final amendment. She expressed concern with the position of the investigative officer as there is no investigation in mediation and that often there are setbacks when investigating during mediation.

Mr. Lachat stated that the Administration's proposal eliminates the investigative officer and replaces it with an evidentiary officer who would review complaints for sufficiency only and then the mediation process would begin. He stated that if the complaint does not settle in mediation, the complainant would be responsible for all legal costs.

Ms. Goodman-Hinnershitz stated that it would be beneficial for all parties to be at the table rather than a back and forth process. She suggested that she and Mr. Acosta work with the Administration through the Bar Association.

Ms. Reed questioned the cost of the mediation. Ms. Kelleher stated that it would \$900 per complaint. Ms. Goodman-Hinnershitz stated that the Bar Association did not indicate that there would be a cost associated with assisting in the amendment process. She noted the need to confirm if there would be a cost for this service.

Mr. Marmarou requested an example of the costs of a complaint. Ms. Reed stated that it would be a case by case basis. Ms. Goodman-Hinnershitz stated that this information is included in Ms. Kelleher's memo.

Mr. Sterner noted the need for a process before mediation. He suggested that the two parties meet with the City legal office before mediation. Mr. Lachat stated that this would depend on who is involved. He stated that a solicitor conflict is possible but he noted that he would be glad to facilitate meetings before complaints are filed.

Mr. Sterner suggested that this process be used on minor issues. Mr. Lachat expressed the belief that it should occur before a complaint is filed.

Mr. Sterner questioned if this process is included in the draft amendment. Mr. Lachat stated that it is not but that it can be added.

Mr. Sterner suggested that complaints may be filed based on misinformation and that this type of meeting may reduce the number of complaints filed.

Mr. Spencer stated that in the current language, the parties are requested to mediate the issue but that an investigation has already begun by that point.

Mr. Lachat suggested updating the complaint form to include a section certifying that an attempt was made to resolve the issue before the form is filed. He stated that the discovery process during an investigation is often filled with animosity. He stated that the section requiring confidentiality will also be amended.

Ms. Goodman-Hinnershitz noted her agreement with Mr. Sterner. She noted the need to start the process with the least conflict possible and proceed as needed and the need to avoid litigation when able. She suggested that a meeting before a complaint is filed may be more difficult when a member of the public is involved. Mr. Lachat suggested that this process be a practice but that it not be included in the ordinance.

Mr. Marmarou questioned if there would be a limit set on costs. Ms. Goodman-Hinnershitz stated that this will be addressed with the Bar Association.

Mr. Sterner questioned when the Charter Board would become involved in the process. Mr. Lachat stated that they will hear the issue if it is not resolved during mediation. He stated that removing the investigation and the investigative officer will reduce costs.

Ms. Goodman-Hinnershitz explained that the Bar Association has a panel of seven certified mediators that would be used. She stated that the Bar Association would choose the panelist with the best fit for the complaint. She stated that she is very pleased with their cooperation and that it was a very productive meeting.

Ms. Reed questioned the next step. Ms. Goodman-Hinnershitz suggested a meeting with herself, Mr. Acosta and representatives of the Administration with the Bar Association. She expressed her thanks to Mr. Lachat and Ms. Kelleher for their work on this issue.

Ms. Kelleher stated that her memo includes a cost break-down of complaints from 2012 – current. She stated that she is contemplating having a complaint go from the mediation stage directly to the Court of Common Pleas. She stated that the most recent advisory opinion she requested regarding vacancies in the Mayor’s and Auditor’s offices resulted in a non-opinion and cost \$5,600. She suggested that the Charter Board serve for educational purposes and to review the Charter language and make suggestions to Council for referendum questions instead of a separate Charter Review Commission.

Ms. Goodman-Hinnershitz stated that this would need to be done through voter referendum as it would eliminate much of the Board’s powers.

Mr. Spencer questioned who wrote the Charter Board ordinance. Ms. Kelleher stated that it was the transition team – Eugene Green, Scott Hoh, and Peter Archey. She stated that Mr. Hoh resigned his position and John Slifko was appointed.

Ms. Reed questioned when this occurred. Ms. Kelleher stated that it was effective in 2005. Mr. Lachat explained that the process began in 2002 and was not effective until 2005.

Mr. Sterner voiced his support of Ms. Kelleher’s suggestion. Mr. Lachat also agreed. He stated that the City is currently funding a court system. He stated that there are no other home rule municipalities that have this system and that it is not needed. He supported mediation and stated that if there is no settlement, perhaps going straight to court is the best approach.

## **II. UGI Meters**

Ms. Goodman-Hinnershitz reminded Council of all the discussions about this issue over the past several years. She stated that UGI is destroying the City streets and that it is a City-wide problem. She stated that questions about their project remain and nothing has changed. She stated that the streets are in disrepair and that Lancaster had exceptions made for its historic district areas.

Mr. Booth stated that HARB has received many complaints from residents and met with UGI in March 2013. He stated that the issue remains unresolved. He stated that the opinion of UGI is that they are governed by the PUC and not the local municipality. He stated that the

proposed rule of PUC allows for exceptions in historic districts but that the rule has been pending since 2011. The exception would allow for the meters to remain indoors for historic districts. He stated that HARB has been working with Mr. Coleman from the Law office who suggested a meeting with Council. He stated that HARB has prepared a draft amendment for this critical issue. He suggested that the draft also be reviewed by City trades.

Mr. Marmarou stated that he recently converted from oil to gas but that his meter was placed indoors. He stated that they do not come to his home to read the meter.

Mr. Booth stated that if the meter is moved outside in historic districts it should not be visible from the right of way or be in a below ground vault.

Mr. Marmarou stated that UGI told Council that this was necessary due to conditions which caused several explosions. He stated that they are ugly on the streetscape and stated that a person has broken their ankle because of one.

Ms. Johnson stated that the outdoor meters are not appropriate for the City's row homes especially those with narrow sidewalks.

Ms. Goodman-Hinnershitz expressed the belief that UGI has become a bully but that fighting them in court would be expensive. She expressed the belief that Reading has let its citizens down and that UGI does not consider the public interest. She stated that even if the historic exception is made, it does not protect the rest of the City. She expressed the belief that the streets will not be repaired appropriately.

Mr. Booth noted his understanding that as soon as PUC adopts the rule, the City can enact this ordinance.

Ms. Goodman-Hinnershitz noted the need for closer follow up by the City engineering staff. She expressed the belief that this underground work may interfere with the rest of the geology in the area and may be the cause of the increase in water main breaks.

Mr. Spencer stated that UGI's rationale has always been an issue. He questioned how one area could differ from others if this is truly a public threat. He stated that they have never given a plausible explanation.

Mr. Booth stated that vehicle damage and vandalism could also be problematic.

Ms. Johnson described an example where a resident refused to allow the meter to be moved and only the regulator was placed outdoors. She stated that there is disparate treatment with residents.

Ms. Goodman-Hinnershitz expressed the belief that UGI did not wish to enter some City homes because of their conditions and that this was the impetus to move them all outdoors.

Mr. Sterner stated that a different type of meter was discussed with UGI in the past. Ms. Reed stated that there has been no follow through by UGI.

Mr. Daubert stated that the meter at his home was relocated last spring. He stated that this is not minor work and it is very inconvenient to the homeowner.

Mr. Marmarou stated that it also exacerbates parking because of the large equipment.

Ms. Goodman-Hinnershitz noted the need for a City-wide strategy as UGI is destroying its infrastructure.

Ms. Johnson questioned if HARB had Council support. Council stated that it did.

Mr. Spencer noted the need for the City to understand the safety ramifications if meters are not relocated. Ms. Butler stated that she will follow up with Mr. Coleman. Ms. Johnson stated that Mr. Coleman has spoken with the solicitor from Lancaster who indicated that UGI was cooperating but that they no longer are.

Mr. Sterner noted the need to revisit the different style of meter. Mr. Booth stated that they also discussed covers. Council stated that UGI also discussed covers with them but that, again, there has been no follow through. Ms. Butler noted the need for both a HARB approach and a City-wide approach.

Ms. Reed questioned if HARB would like Council assistance with their amendment. Mr. Booth stated that they would like Council assistance. Mr. Sterner stated that he will work on this project.

Ms. Reed thanked Mr. Booth and Ms. Johnson for their work on this issue.

### **III. Curbside Waste Program and Fee**

Ms. Reed suggested that there be no vote on these ordinances without the President and Vice President of Council in attendance. Council agreed.

Ms. Snyder stated that the Administration's strategy included changing the regulations as they were part of the problem. She stated that the strategy also includes a billing plan and a communication plan.

Mr. Johnson stated that there are two ordinances before Council this evening – changes to the solid waste ordinance and a fee schedule amendment.

Mr. Lachat stated that this amendment does not address everything but only one issue was brought out in Court. He stated that there is a high probability that the City will be challenged again but that this amendment allows for residents to keep their private haulers. He stated that there are many parts to this issue. He stated that curbside waste stresses the collection of other items in addition to recycling and that State law allows for the collection of waste.

Ms. Snyder stated that there are other efforts that are ongoing to mitigate the City's risk. She stated that the City is working with Senator Schwank and PFM on the issue. She stated that if Council enacts this legislation and the City loses another challenge, it will affect many across the State.

Mr. Denbowski explained that the City looked at other programs and found that Newbury Township in York County best reflected Reading's needs. He stated that the Newbury Township legislation has been upheld in Court. He stated that the two options will minimize the effects on residents.

Mr. Denbowski explained that the spring clean up is a new program which will place dumpsters around the City for residents to discard bulk items, electronics, and tires. He stated that the dumpsters will be supervised to prevent situations as occurred in the past. The spring clean up is different from the Great American Clean Up.

Mr. Denbowski stated that he is currently working with the haulers on a verification system for those with private trash collection.

Mr. Acosta arrived at this time.

Ms. Goodman-Hinnershitz stated that there is a \$17 per month difference between the two programs. She questioned how much a typical resident would pay. Mr. Denbowski stated that the average cost is \$3 per bag. He stated that private haulers tend to work better for those with little waste.

Ms. Goodman-Hinnershitz questioned if the fee was increasing. Mr. Kersley stated that it was since the annual fee must be collected in eight billing cycles. He stated that the cost assumes that Council will enact the fee this evening to begin collection in May. He stated that the April RAWA bill will include a flyer describing the programs and the fees and will be in both English and Spanish.

Mr. Sterner questioned if the fee would decrease in 2015. Mr. Kersley stated that it would.

Mr. Sterner questioned how the hauler would verify customers. Mr. Kersley stated that the hauler would report their customer lists annually. The resident would only need to verify their hauler if they are not included on the list.

Mr. Acosta voiced his concern that this legislation does not resolve all the issues. He questioned why it should be acted upon this evening. Ms. Snyder stated that it will allow the City to bill for the first quarter of 2014. Mr. Lachat stated that the refund issue is still possible but that there is no case law since the decision was vacated. He stated that a challenge would have different circumstances this time.

Ms. Snyder stated that the City has already transferred \$500,000 from the general fund to cover the cost of recycling for 2014. She stated that this is a serious financial issue. Mr. Acosta stated that this is no excuse. He noted the need to serve notice to the employees if necessary and reduce the program. He stated that without the bankruptcy ruling this would be a completely different conversation. He expressed the belief that this is sneaky and that the public is very distressed over the issue and the fee collection.

Mr. Sterner stated that he sees Mr. Acosta's point but that not passing the legislation now will simply increase the burden on residents later.

Mr. Lachat stated that the City is working with Senator Schwank on State legislation to correct Act 101. He stated that if this is passed the fee is legal. He reminded Council that the ruling could have been overturned on appeal. Mr. Acosta stated that without Republican support, the amendment to Act 101 will not pass.

Mr. Daubert questioned if this legislation was in line with other municipalities. Mr. Lachat stated that it is.

Mr. Daubert stated that State support is possible if a challenge will affect many more than Reading in the future. Mr. Lachat stated that changes now show forward progress. He stated that this case was bizarre and that in future challenges the City would have a much stronger case. He stated that the City now has foresight to better prepare and address the Court's concerns.

Mr. Sterner stated that this is a crazy situation with many "what ifs". He stated that it will cost the City another \$500,000 if Council does not take action.

Mr. Spencer stated that this amendment will align Reading with the other State programs.

Ms. Goodman-Hinnershitz questioned if Mr. Spencer supported this legislation. Mr. Spencer stated that he did. He stated that a future ruling against Reading would be a ruling against many municipalities.

Mr. Acosta questioned how many municipalities have similar legislation. Mr. Lachat stated that Reading is unique in its private hauler system. He stated that having a single hauler system would make this issue much simpler. He stated that there are other municipalities with private haulers.

Mr. Acosta expressed the belief that passing this legislation is a mistake and that he will not be supporting it. He expressed the belief that Council was being held hostage and that the City can no longer afford its program. He noted the need to change the program and that many are watching this situation very closely.

Ms. Goodman-Hinnershitz stated that Reading has an unusual system. She stated that the voters decided they wanted the private hauler option and that it is a hybrid system. She stated that the Court pushed the City into a corner and that there currently is no political will to change to a single hauler system. She noted the need to be very clear with the public in communication and suggested the Mayor hold a press conference. She stated that if Council does not pass the legislation the City must be ready to deal with the consequences. She expressed the belief that residents may be “penny wise and pound foolish” with the fee.

Mr. Daubert stated that collecting the fee monthly also assists.

Ms. Snyder questioned if Council would support billing under the old system if the legislation is not enacted this evening. Mr. Acosta stated that he would not. He stated that the program needs to be adjusted. He stated that there is talk about a class action suit and the public is blaming Council for this when it is not a Council issue. He stated that the program is not sustainable without the fee and that residents must understand the consequences of not having a fee.

Mr. Sterner stated that if the program is adjusted people will put their recycling in the trash. Ms. Snyder agreed and stated that this will cause the fee for trash pick up to increase.

Mr. Acosta suggested that Councilors drive their neighborhoods on pick up day to see how many properties do not participate in the recycling program. He stated that this is not being addressed.

Mr. Johnson reminded Council that there are two pieces of legislation before them – one to amend the solid waste ordinance and one setting the new fee.

#### **IV. Agenda Review**

Council reviewed this evening’s agenda including:

- Award of Contract for Keffer Park

Mr. Sterner questioned if the parks were addressed in rotation. Mr. Johnson stated that they are. He stated that this project will be funded with CDBG funds.

- Ordinance transferring funds to IT

Ms. Snyder stated that in the past these funds were split between Public Works and IT but that full responsibility for the item has moved to IT. She stated that the transfer moves the funds to allow IT to fully supervise the program.

- Ordinance transferring funds to CD

Ms. Snyder stated that this is a timing issue as HUD has not yet released funds. She stated that this was also done in 2013.

- Resolutions appointing Council representatives

Mr. Acosta suggested that Council vote on these resolutions in a block. Council agreed.

- Resolutions naming representatives to the Water Authority

Mr. Acosta stated that he has tallied the votes. He stated that Mr. Fisher and Mr. Schlegel will be appointed. He stated that Mr. McHale came in third.

Mr. Acosta suggested that Council vote on these resolutions together. Council agreed.

## **V. Executive Session**

Mr. Acosta announced the need for an executive session to discuss litigation. Council entered executive session at 6:28 pm and exited at 6:52 pm.

The meeting adjourned at 6:52 pm.

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