

Council Agenda Item #1: Roll Call

The Caribou City Council held a City Council Meeting, Monday, November 30, 2020 at 6:00p.m. in the Council Chambers with the following members present D. Morrell, H. Kirkpatrick, T. Ayer, N. Cote, J Theriault and J. Smith

Dennis L Marker, City Manager was present via Zoom.

The meeting was broadcasted via Spectrum, and Caribou's YouTube Channel.

Council Agenda Item #2: Invocation/Inspirational Thought

City Manager, Dennis Marker led a prayer.

Council Agenda Item #3: Pledge of Allegiance

Deputy Mayor T. Ayer led the Pledge of Allegiance.

Council Agenda Item #5: Council Organization

Manager Marker explained the resignation letter that has been received from Councilor R. Mark Goughan, and the process that is outlined by the City's Charter. He explained that the charter does not indicate a requirement that the Council would need to accept or reject the resignation letter before it becomes official. The Charter indicates that the Council has 30 days to fill the vacancy on the Council. The last resignation that occurred was Shane McDougal in 2016 or 2017. He stated that there were some concerns with the letter from Councilor Goughan that the basis for the resignation surrounded his attendance at council and committee meetings. Manager Marker explained the attendance of the councilors on Committees, Liaisons and Council meetings.

Discussion by council members regarding their concern that the resignation letter was initially talked about during executive session at the November 16, 2020 council meeting and had somehow gotten to the public. Additional concern was raised that Manager Marker discussed the issue with the department heads when it was supposed to remain confidential. Manager Marker indicated that he had discussed the matter with the city's legal counsel before taking any actions regarding the issue.

Manager Marker explained that he had only spoken to the department heads regarding this because the information was already out through social media. He stated that the letter was public knowledge and was not an executive session item, only the conversation was confidential.

Councilor Morrell and Smith also stated that they thought that the letter and information was to be kept confidential because of it being discussed in executive session.

Councilor Theriault explained that she thought that the email they had received in the morning just like any other email was public information, and that it was the discussion in executive session should stay in executive session.

Councilor Cote stated that she thought it wasn't her personal information to share.

Deputy Mayor Ayer explained that there are three separate issues here. The first issue being the requirement that Councilors attend 80% of assigned committee meetings. A memo from the City Attorney indicates the Council needs to determine which "committees" are to be included in this requirement. The memo suggests that only Council Committee meetings should be part of the review criteria and not any liaison roles or outside entity committees.

Council Agenda Item #7: Public Hearings and Possible Action Items

There were none.

Council Agenda Item #8: Bid Award, Recognitions & Appointments

There were none.

Council Agenda Item #9: Reports of Officers, Boards and Standing Committees

a. Manager's Report

Manager Marker reviewed the Manager's report dated November 30, 2020

Council Agenda Item #10: New Business

a. Introduction of Ordinance #05, 2020 Series, Temporary Sewer Regulations

Councilor J. Smith introduced Ordinance #05, 2020 Series, Temporary Sewer Regulations

b. Introduction of Ordinance #06, 2020 Series, Medical Marijuana Related Land Uses

Councilor J. Smith introduced Ordinance #06, 2020 Series Medical Marijuana Related Land Uses

c. Introduction of Ordinance #7, 2020 Series, Rezoning Properties Near Herschel Street to R-2

Councilor J. Smith introduced Ordinance #7, 2020 Series, Rezoning Properties Near Herschel Street to R-2.

d. Resolution 11-03-2020 Amending the City's Fee Schedule

Resolution is being treated as a first read and will be on the next agenda as old business.

Council Agenda Item #11: Old Business

a. Porvair Filtration Contract Update

Council had a discussion regarding the Contract with Porvair and would like to schedule to meet with a representative via Zoom for the next council meeting to discuss the contract.

b. Resolution 11-02-2020 – Teague Park Loan Against Reserves

Manager Marker briefly explained Resolution 11-02-2020 – Teague Park Loan Against Reserves. Tabled until the next meeting.

Council Agenda Item #12: Reports and Discussion by Mayor and Council Members

a. Discussion About Executive Session Rules and Responsibilities

This information has been previously discussed in the meeting under agenda item #4 Council Organization.

Council Agenda Item #13: Executive Session(s) (May be called to discuss matters identified under Maine Revised Statutes, Title 1, §405.6)

Council did not enter an Executive Session.

Motion made by J. Smith, seconded by J. Theriault to accept city legal council's suggestion that only Budget Workshops and City Council sub-Committees be considered for the 80% requirement (5 Yes, 1 No H. Kirkpatrick) So voted.

** See attached "Exhibit A" letter from the Law offices of Solman & Hunter, P.A

Discussion led by Deputy Mayor Ayer regarding executive session information being leaked from the council.

Councilor Kirkpatrick explained that it will be very difficult in the future to hold executive sessions if the people in it can not be trusted.

Motion made by H. Kirkpatrick, seconded by D. Morrell for the Manager to hire a private investigator to ascertain the leak and how the information got to social media. (6 Voted) So Yes.

Deputy Mayor Ayer explained that the third issue is Councilor Goughan's resignation. Through this discussion the Council has decided that budget workshops and council committees only apply and therefore the basis for Councilor Goughan tendering his resignation may be mute by the end of the year based on his attendance at the required meetings.

Councilor Kirkpatrick stated that he believed that Council had to either accept or not the resignation and that if it was accepted today that they would have 30 days and the calendar year would be over and nobody would need to be assigned to fill the seat.

Councilor Smith mentioned that the resignation only applies to Councilor Goughan's current term of office and will not affect the results from the previous election. Deputy Mayor Ayer confirmed this statement. Manager Marker indicated that Councilor Goughan had expressed a desire to take the oath of office on January 4 with the other Councilors-elect for the 2021-2023 term.

Councilor Cote was concerned that the letter of resignation was tendered on November 16, 2020 and would like to know if the 30 days starts there or the day the resignation began. Manager Marker again noted that the Charter doesn't indicate the Council having to accept a resignation and therefore the vacancy could be considered as the date of submittal to the city. By charter, the Council would need to fill the Council vacancy and elect a new Mayor within 30 days of the vacancy being created.

Motion made by H. Kirkpatrick, seconded by D. Morrell to accept the letter of resignation as of November 30, 2020. (5 Yes, 1 No N. Cote) So voted.

Council Agenda Item #5: Public Forum (15 Minutes)

D. Morrell excused himself from the Public Forum portion of the meeting.

Deputy Mayor Ayer read an email from Gary Aiken that was received by the clerk prior to the meeting.
*** Please see attached as Exhibit B

Council Agenda Item #6: City Council Minutes

a. November 16 Regular Meeting

Motion made by J. Smith, seconded by H. Kirkpatrick to accept the minutes from the November 16 Regular Meeting. (6 Yes) So voted.

November 30, 2020

Confidential - Attorney Work Product

City of Caribou
25 High Street
Caribou, ME 04736

Attention: Dennis Marker, City Manager

Re: Councilor - Forfeiture of Office

Dear City Manager Marker:

I am responding to your request for a legal opinion regarding the interpretation of Sec. 2.06(b)(7) of the Charter with regard to forfeiture of office for failing to attend 80% of budget workshop meetings and meetings of committees.

The applicable language is as follows:

“Sec. 2.06 Vacancies; Forfeiture of Office; Filling of Vacancies.

(b) Forfeiture of office. A Councilor shall forfeit office if he/she:

(7) fails to attend, in a calendar year, at least 80% of budget workshop meetings and meeting of committees to which they have been assigned, unless excused by the council.”

The questions which have arisen are as follows:

1. Which committees are included in the forfeiture provision?
2. Is the 80% minimum attendance figure applied in the aggregate or is a Councilor required to attend 80% of each committee to which he or she is assigned.

Question 1. Which committees are included in the minimum attendance requirement?

Sec. 2.06(b)(7) references budget workshop meetings and meetings of committees, but the term 'committees' is not defined.

Sec. 2.03 of the Charter references 'Council Committees' which are appointed by the Mayor and approved by the Council, but the term 'Council Committees' is also not a defined term.

Narrowly construed, the term 'committees' could mean only those committees in which members of the Council comprise the majority of members and which carry out City business such as the Highway/Protection, Investment, Personnel, Airport and Municipal Buildings committees.

Broadly construed, the term could include Councilor assignments to City Boards such as the Planning Board, Housing Board, Nylander Board and Recreation Board as well as assignments to outside groups such as Caribou Economic Growth Council, Northern Maine Development Commission and Aroostook Area on Aging.¹

Unfortunately, there is no guidance in the Charter as to which interpretation is correct. In my opinion, the narrow interpretation of 'committee' makes the most sense as these are the committees in which members of the Council comprise the majority of members and are committees that conduct nuts and bolts work for the Council. Furthermore, in many instances, the appointments to some of the outside boards are simply liaison appointments without voting authority.

In the end, it is up to the Council to decide this issue. Sec. 2.06 is specific- the Council is the sole judge of the qualifications of its members and of the grounds of forfeiture. Since questions have arisen regarding this issue, the Council should decide which interpretation to adopt. Such a decision will give clarity to all members of the Council as the expectation for committee attendance. There is no right or wrong answer.

¹ Aroostook Waste Solutions is not listed as a 'Council Committee' on the City's website and was not included as a Council Committee in the minutes of 1/13/20.

Dennis Marker

Page -3-

Question #2- Does the 80% minimum attendance apply to workshop meetings and each committee or applied in the aggregate to all workshop and committees to which a councilor is assigned.

There is no guidance or precedent on this issue that I am aware of. Strictly applying the 80% minimum to budget workshop meetings and each committee meetings could be problematic. For example, it is my understanding that there was only one (1) budget workshop meeting in calendar year 2020. If the strict standard is applied, then any councilor who missed this one meeting would be subject to forfeiture from office. Common sense dictates that such a draconian interpretation is not reasonable.

In the end, this is another issue that the Council will have to resolve as the sole judge of the qualifications of its members. This is not an issue for the courts.

As issues like these are identified, a Charter Amendment could be drafted for presentation to the voters at a later date.

Sincerely yours,

RICHARD D. SOLMAN

RDS/lmb

Enclosure

EXHIBIT B

I would like to forward my comments on a number of issues on tonight's agenda.

#4 Council Organization. The precedence has been set that Council will advertise the vacancy, accept applications from interested people, and interview them. Council, by a majority vote of its members, shall appoint a qualified person within 30 days of a vacancy to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. A vacancy in any elected office shall be filled for the remainder of the unexpired term at the next regular or special municipal election or referendum held not less than 60 days from the occurrence of the vacancy. This should probably be filled at next year's budget approval for RSU 39 so it would not require the extra expense of an additional election. I would hope the Council would appoint someone with experience who has an excellent understanding of both the City Charter and the Maine Statutes as the Council does not appear to have the understanding they require in this area.

#11 b. Resolution 11-02-2020 – Teague Park Loan Against Reserves

In I believe January Council set up an emergency fund to cover future emergencies the City might encounter. First of all I don't know how a splash pad which is not being built until next year qualifies as an emergency? Just include it in next year's capital budget. Secondly, how do you borrow money from an emergency fund? What happens if you actually have an emergency? The whole scenario of the money used to put into this fund, which was not allowed per the City Charter has been totally ridiculous.

#12 a. Discussion About Executive Session Rules and Responsibilities

I have voiced my opinion many times regarding the use of executive sessions and how they are to be implemented. So far it has fallen on deaf ears. The Maine statutes require the following.

4. Motion contents. A motion to go into executive session must indicate the **precise** nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business.

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session

At the previous council meeting the following motion was made to go into Executive session.

Motion made by H. Kirkpatrick, seconded by J. Smith to enter executive session at 8:10 p.m. to discuss a Personnel matter regarding the Council and that only current Council members be present under 405.6.A.

This motion like many previous motions by this Council does not contain the **precise** nature of the business being discussed. I am not sure what kind of Personnel matter regarding Council would require an executive session to begin with.

Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session. Since Council do not seem to be that familiar with the Charter and the State Statutes, I've just included this as a reminder.

Gary Aiken

471 Main St.