

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

I. CALL TO ORDER – On Tuesday, October 15, 2019, at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Alan Minthorn, Lynn Copeland, Micah Smart (arrived at 6:47 p.m.), and Nathan Johnston. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

V. PUBLIC COMMENT

- Don Pilon, 16 Glenhaven Circle – Good evening everyone. Something has come to my attention that is very concerning to me. Mr. Mayor, when you became the mayor you began these Wednesday afternoon sessions where you would greet the public in Mr. Sutherland’s office and people would come in and talk to you about issues they thought were/are important. What has evolved over the time of your 2-year mayorship you afternoon meetings have grown in scope. Councilor Johnston as Deputy Mayor has now been involved in these meetings and I believe that Councilor Archer has also become involved in these meetings. Discussion has grown out of these meetings for example. I understand there is a FOIA request on this issue to find out what is going on in these meetings and that has not been answered. The issue I have is that in these meetings there is some discussion about creating the agenda for the next meeting, what is going to be on the agenda and those kinds of things. But that was not the intent of meet the public and discuss your constituents’ concerns. So, you broadened the scope of these meetings with these 2 additional councilors. Your discussing issues on the agendas or creating the agenda for the next meeting. These other council members have not been informed about these things, included, or even know about these agenda items being discussed mayor and city administrator afternoon meetings. It is kind of a gray area, but it sounds like an illegal council meeting that has not been publicized to the public or to your council members that this is an actual meeting that is being conducted. I think that MMA or Tim Murphy needs to rule on this. I don’t think it is a good idea to continue these meetings without informing the other councilors and you can’t continue this because it is an illegal meeting that is being conducted. Thank you.

VI. CONSENT AGENDA

VII. AGENDA

VIII. ADMINISTRATIVE UPDATE

City Administrator Kevin Sutherland provided the following Administrative update:

**Multi-family Dwelling Units**

As of end of day October 8th, we had:

- 1339 Individual units expected to register
- 796 Currently registered
- 69 In progress

Reminder letters have gone out to the owners that have not registered yet, and staff have waived any penalty fees for late registration through the month of October as the registration process is new and we don’t want people to feel this program is starting out on a punitive note, as that’s not the intent of this program.

Several factors that set our program apart from others are the inspections happening on a 5 year cycle; only being charged the inspection fee during the inspection year; our willingness to allow the property owner to pick a date or time of day that is convenient for them; and the way we are structuring our repair requirements in regards to timeline and complete transparency in our notifications.

The positive comments have ranged everywhere from “it’s about time” to “well at least it should help lower

my insurance rate”. We had one couple volunteer to be first because they genuinely believe in this program, the need, and the effectiveness of inspection programs such as this one.

As far as current findings; we are finding a lot of electrical hazards, ranging from hot wires left uncapped and unenclosed, loose outlets, to issues with the casings of risers from meter banks being broken, exposing the feeder lines. Early notification detectors for smoke/fire as well as carbon monoxide are often missing or in locations that, due to the way smoke travels, ineffective. We’ve found multiple plumbing issues that leave the tenants at risk of back gassing from the septic lines; issues with holes in floors creating chase ways from the basement to the attic, and venting issues for dryers. In addition to those building fails, we have found some exits blocked by tenants, inappropriate use of extension cords in a way that pose a fire risk. The response to these findings by these owners have generally been the expected combination of concern for cost of repair, concern about the amount of time they will have to make the repairs due to the scheduling issues facing those needing licensed help (which we alleviate on site), but the largest response has been relief that these issues were found before they could pose a fire or safety risk to the property or the tenants.

### **Route 1 corridor odor complaints**

The City of Saco Water Resource Recovery Department (WRRD) is aware of sewer odor concerns along the Route 1 corridor, from just north of the auto mile to the Ocean Park Road. Unfortunately, the creation of odor when transporting wastewater is, at times, problematic. The WRRD is working diligently alongside area businesses, as part of the Route 1 sewer extension, to take corrective measures to reduce odor emissions in this area.

Last week, as an initial step, staff installed an odor control scrubber at the Millbrook pump station located on Portland Road. The scrubber reduces odorous air emitting from that location. We ask for your patience as we work to solve this issue as timely as possible.

### **Chapter 175 – Senior Tax Relief**

Attached to this update is a memo from Mary Starr outlining a few amendments (also attached) that will be necessary for the final reading of Chapter 175. We will be preparing the packet to include an alternative motion to accept the revised version instead of the original.

## **IX. COUNCIL DISCUSSION AND COMMENT**

- Councilor Gay – I’m wondering if the Traffic Committee has done anything for this lady at 345 Flag Pond Road who has an autistic child and she would like to have a sign put up. City Administrator Kevin Sutherland asked that the information be submitted to Dep. Police Chief Corey Huntress who is the chair of the Traffic Safety Committee. The Traffic Safety meeting is in November.
- Councilor Copeland – I have a question about tonight’s Executive Session in terms of our city charter that says councilors are to see and review applicants, and we haven’t. We have only seen the four that have been boiled down for us and I think that is in violation of our charter. Mayor Lovell noted that the City Solicitor was present, and he is the expert on charter, and he will be talking about that at the beginning of the Executive Session as I understand. Councilor Copeland inquired why we couldn’t talk about it to our constituents can hear? Mayor Lovell called Attorney Murphy forward. Attorney Tim Murphy stated that of course I work for all of you. I take direction from the council and what it feels best, and my recommendation given these are employment matters is that you discuss it in executive session. But I defer to the judgement of the council on that. Councilor Copeland stated it was a charter issue and we are trying to understand why the black and white charter would not apply. Attorney Murphy stated that he looked at the charter this morning and he was guessing mind you that he hadn’t had a chance to hear all of you and what your views are. I’ve gotten some memos on the topic and I’m guessing Councilor Copeland that what you are referring to is the first sentence of the charter section concerning the appointment of a City Administrator which states that all, the word is “all” applicants is the driving word would be brought to the council. So, essentially your argument is that all means all. Councilor Copeland stated that was exactly right, yes. Attorney Murphy stated until you just told

me that I can only presume those things. I took it that was kind of what the concern was. My opinion would be I don't read all to mean all in all circumstances. So, I can elaborate on that in executive session or I can do it here publicly. Councilor Copeland stated so all doesn't mean all. City Administrator Kevin Sutherland recommended this be discussed in executive session. Councilor Copeland stated she would take a pause. Councilor Minthorn – I would like to make a comment if I might. Tim I'm concerned that the previous cycle of hiring when Kevin was hired, the council was in executive session and set before them were 3 piles of resumes. Those that had been weeded out for Chef Tell wants to be the new City Administrator. There was middle pile that were thinly qualified and there was a competent pile which Kevin was sitting in. The council as a body with the mayor was allowed to see the entirety of the pool. It is understanding from today's e-mail there were 30 some odd applicants and we have seen four. One of which we understand has pulled out. So, now we have privy to three, 10%. I believe all means all. It has been interpreted by past councils and mayors that all meant all. The fact that we used a consultant to rate those applicants and score those applicants I don't think takes all and makes it some. I think all means all and we should be able to see all 31 and how they were scored and those that were withdrawn as part of the process. Doing it in executive session. There are penalties for releasing executive session information and the system has to work with those assumptions. Attorney Murphy asked, so I guess we are going to keep rolling here in open session until someone tells me to stop. So, councilor up until tonight in my 25 years I haven't participated in any of the selection process in any of our prior administrators. Not Larry Mitchell's replacement. Not Rick Michaud or Rick Michaud's replacement or Kevin up until now. Those have always been managed by the council, per the wisdom of the council without my involvement. I have participated in some contract negotiations as to the terms of one of the documents and then of course there was the participation in the decision whether to reappoint Rick Michaud. But, in terms of the selection of any of the administrators, that has always been managed by you as a body. There is no set process that you are required to follow, maybe precedent that you followed, but the charter doesn't tell us what that process is. There isn't much that is said about it. So, that you recall a prior approach, I didn't participate in it, by more importantly doesn't bind this group. This group may feel there are other ways to do it that are equal or better. The problem that you are going to run into councilors, you had opportunity, you selected this company to do a job. The company came to you and spoke to you at one of the meetings I think in August and they were pretty clear as I read the minutes today, what they intended to do. They outlined they're for lack of a better word "winnowing" process, so it is hard sitting here now in October to say that the council was informed that the selected consulting firm was going to use a windowing process and you all consented to that. But now that the winnowing has happened, we are turning back to the charter and saying well wait a minute. I think that makes it harder to support that argument that all means all because you yourselves affirmatively opted not to have all mean all. Councilor Minthorn stated no, in fact I made comments to the fact that I was open to the offering the subordinate resumes if you will with as redacted items and numbering them based on their score or something like that. But we would still like to see all. However, if they wanted to do a redaction, and numbering process to ensure greater privacy we were fine with that. Mayor Lovell stated excuse me councilor, but I believe that you are in the minority in that matter and that the majority of the council sought to use MRI as the selection agency. Councilor Minthorn noted that we are not disagreeing with the selection. But I think the feedback was there to Mr. Gould at the time that we still had the expectation to see all even if it was in a modified form and that point was never fully actualized. Mayor Lovell stated he believed the majority of the council agreed to follow along using a professional executive search agency and that that process was clearly explained at the time and subsequent to that time that search agency in fact contacted every single councilor individually and asked them how they felt and what they were looking for as a person to. Councilor Minthorn stated these were 2 different subjects. All of us agreed to leave them to do the leg work collecting the resumes, scoring the resumes, and that. I don't feel my comments let them off the hook to not present all the resumes even if in a redacted and indexed form so that we could see the entirety of the process of those resumes and meet the letter of the all. Mayor Lovell stated he understood that was his point of view and I think that was not the majority point of view. I believe the majority point of view was to get the process to go and seeing what we received from the search agency and not to go into a micromanagement of the search agency. I believe in fact at the time we talked about how the search agency should line up auditors for Human Resource and Finance and so forth. Council did not follow along in that line. What the council followed along with was to allow a professional organization to complete its work. Thank you Councilor Minthorn. Councilor Copeland asked to continue on. You said that there was an affirmative motion to go with that firm and that

is entirely true. But there was never a vote to not go by the letter of the charter. So, we are having an all is all thing and I don't quite understand that. But I don't think we voted not to follow the letter of the charter. Mayor Lovell stated so if I believe attorney Murphy can point out that indeed the interpretation of the charter is that we are following the letter of the charter by using an agency to do the major work of reducing the pool to applicants that are actually meet what the charter has to say for experience. That was followed wasn't that true attorney Murphy. Councilor Smart arrived. Attorney Murphy, that was allot that you said Mayor I will have to parse that through again. Councilor Minthorn – Tim if I could interrupt one second. Last time according to former mayor Pilon they had all the resumes in the three piles, and they had been sorted and sifted by the contractor they chose at that time to do exactly the same function that we asked this group to do. That didn't exclude him from submitting all of the resumes to the council, last time. This time when Mr. Gould presented that we offered him a alternative it was his concern the privacy of those that were not selected. That didn't make that top cut. That is when I offered up this suggestion to redact them and put a number on them based on their index score so that he could still see them and see the totality of the pool and the experience that was applying. Now I don't know where we vote yea or nay on that, I don't think we ever did as Councilor Copeland just pointed out. We agreed to allow him to collect scores and screen resumes. That doesn't negate his obligation to provide them to us It only agreed to allow him to do those functions. Mayor Lovell noted that Councilor Johnston was present for that process and he can explain to you what that process was like and he was present when the council came to terms with wanting to make this as efficient as possible rather than micromanage a professional executive search agency. Councilor Minthorn stated it was not micromanaging. Mayor Lovell replied that is was micromanaging and called upon Councilor Johnston to speak to the process that was used to select Mr. Sutherland. Councilor Johnston stated again, I'm not looking for a back and forth or an argument here. What I remembered from back in 2015 was that we had contracted with an individual and he didn't screen anything Councilor Minthorn. He provided 3 different piles in which he said these were totally unqualified, once of which was okay, and the other pile had the most. That is borderline screening. This particular individual, Mr. Gould's firm I was well aware of what he presented to us was he was going to leave out individuals that had no business being here essentially is how I understood it. Obviously, yourself, and Councilor Copeland had something else in mind. I can't speak to what you thought. I though what MRI was going to do was what they have done. I didn't want to go through the long drawn out and honestly unprofessional process we used last time where we pit 8 individuals basically trying to come up with a compromise for City Administrator. I wanted a hiring firm that were professionals to weed out that so that you don't have the instances where you have one person that says well, I like that person because they went to the same college for example. Something like that. That was my understanding with this process here that we were hiring this firm to again weed out. I can't speak for Councilor Smart or other councilors. What we got was what I expected. Councilor Copeland stated she would like to speak. Mayor Lovell stated there are some other councilors have arrived and we will see if anyone else wishes to speak. You have spoken several times and the general procedure in council order of business is that we allow individual councilors to speak in turn. Do you have anything to say Councilor Smart? Councilor Smart stated that obviously he had no understanding of what happened in prior years but he looked at the relevant section and I don't think we have necessarily violated the charter in my opinion. I'm not speaking as a legal opinion, but I think it sounds to me like there is a difference of opinion on how it should and could go. Personally, I agree with what Councilor Johnston said. I don't care to spend the time and effort going through candidates that have already been vetted and weeded out and excluded for one reason or another. I think it makes sense, why else hire to have them do that for us so that we can focus on the candidates that are truly appropriate. Thank you. Mayor Lovell asked Councilor Archer if he would like to speak. Councilor Archer stated he could speak upon himself how he understood this process to happen. We were presented a firm and they told us the tools and methods of how they would screen individuals and submit to us. When we got the 4 resumes, I considered that as receiving all resumes of applicants who were deemed qualified by the process presented to us and then confirmed by the council by vote to happen. So I believe this process has happened the way that we were presented back in August. I think allot of the arguments presented by Councilor Johnston and Councilor Smart I agree with too. It was a way to make this more efficient process to identify quality candidates and those applicants submitted to us in which we did receive all qualified candidates. We hired a search firm to do that initial level that, next step and we were presented in the end the qualified candidates. Mayor Lovell asked if there were any more comments to his left and Councilor Doyle asked to speak. Councilor Doyle – Thank you Mr. Mayor. So, I've heard now a

number of councilors weigh in on this. I will weigh in my opinion. It is simply this. The City Administrator position for the city is a very important position that oversees approximately 150 employees and budget without the school of about \$50 million. This is an important position that shouldn't be taken lightly or be rushed through the process. This process feels rushed. You have an election coming up and who is rightly going to apply to a position when they know that the ball could change in a month. With that said it is important that this council looks at all the resumes. That is why section 3.01 says the mayor and city council shall meet jointly to review all applicants. It doesn't say it shall meet and jointly review all applicants that were weeded out by a committee chosen by. But all applicants. So, all applicants should be out there. Now that doesn't mean that we can't rely on the expertise of MRI to say hey these are the ones that we feel are worth your consideration. That is essentially why you hire a firm to recommend hey, these are the folks that we think have the stuff to be your next city administrator. It doesn't mean you should discount everyone else because you might have someone in that pile that in your opinion meets the criteria but in MRI's opinion didn't meet the criteria and that is why the charter is clear that you see all applicants for a position of this magnitude. You shouldn't be taking this lightly. This process has been rushed through and we need to slow down. There is no reason to move this quickly when you are picking a position of this magnitude that is going to run the city. Run the city day to day operations for a 3-year term. Mayor Lovell called upon Councilor Gay. Councilor Gay stated he though the process was done right and who is to say tonight that we don't even select a person. Thank you. Mayor Lovell thanked Councilor Gay and called upon Councilor Copeland. Councilor Copeland – Thank you Mr. Mayor. So, my comments have been about the process and I agree with Councilor Smart that it is efficient and that we don't want to waste our time. We are basically volunteers here, and spend allot of time doing what we do. So that brings me to the fact that with the application withdrawn on Friday, yet I didn't learn about it until today. So why spend all my time searching and vetting this applicant. I think that the fact that the mayor let others know but didn't let the council know is very disturbing to me. I'm concerned about the transparency. I have asked you via e-mail several times and there is even a FOAA request by somebody else on this. Who is on the citizen group? I sent you the email you sent back saying what group? The council is making the decision. You knew what I was talking about and you were not forth coming, and you were not transparent, and I have know idea why this process is rushed so much. Find that disturbing. Mayor Lovell – Thank you. Any other comments to my left. Councilor Smart noted that he didn't necessarily disagree with anybody who wants to see all of the applicants. I wouldn't frankly have any problems if anybody wanted to do that. But as far as the process goes I don't see any reason to be concerned with it because I haven't seen anybody raise any concerns that a qualified candidate would be left out or somehow elongating this process there would be somebody else out there who would be better than anybody that we have found so far in this process. I understand there are concerns with how it went, and I don't see any problem with getting all of the applications. I don't see why it is an issue if they have the time to look through those. But at the same time there is nothing out there that tells me we missed somebody. Mayor Lovell called upon Councilor Archer. Councilor Archer stated he keeps hearing rushed but we literally started this process back in July. Maybe even earlier, late June. We are talking about a 4-month process here and I don't consider that to be rushed by any means. Attorney Murphy stated that since we are going full tilt here outside executive session, I would remind all the councilors. Mayor Lovell interrupted and asked if we have crossed over any material would offend anyone? Attorney Murphy stated he would have done all of this in executive session but again, you are the council. As I say I take my lead from you. But, I would remind all the councilors to the extent you are concerned that there are applicants that may remain of interest you all have essentially the power to withhold confirmation. You can say to the mayor that. The mayor appoints and you confirm. So, you have the power to withhold that confirmation and say I'm not going to confirm a particular person until I see another pile. That is within your prerogative. It is a two-part process here to appoint someone. I think Councilor Smart has essentially in a more elegant way explained the point that I was making to Councilor Copeland that the word all has been modified by your own actions. You hired a firm and guided that firm and gave them instructions. They even came to you and explained how they were going to winnow people out. You must have nodded in assent or at least sent them off with instructions on what to do even if not a majority. So, therefore all becomes modified by your own actions. All doesn't always mean all. You essentially willingly exceeded some of your authority, but it isn't the problem you think it is because ultimately you as the council are still the backstop. You have the ability to say Whoa, I'm not confirming until I'm comfortable we have seen the pool of qualified applicants. What I also suggest is that any issues related to employment or concerns on potential applicants at both pending or

existing jobs and anything we discussed publicly puts them at risk. Secondly, you are putting yourselves at risk because to the extent they were applicants who have been winnowed they may now be upset and want to know why was I winnowed. Why am I in such a such a stack? Why these are best resolved and discussed in executive session where we can candidly and openly discuss people. Because these are important matters. Mayor Lovell stated that on the advice of the city solicitor I would like to ask for a motion to enter executive session.

## **X. EXECUTIVE SESSION**

Councilor Mintorn moved, Councilor Gay seconded “Be it Ordered that the City Council enter into executive session, pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405 (6)]: (A) Update from MRI on City Administrator Search. The motion passed with seven (7) yeas. Time: 7:08 p.m.

## **XI. REPORT FROM EXECUTIVE SESSION**

Mayor Lovell, Councilors: Archer, Gay, Doyle, Copeland, Minthorn, Smart, and Johnston and the City Administrator were all present.

Councilor Minthorn moved, Councilor Smart seconded to come out of Executive Session pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405 (6)]: (A) Update from MRI on City Administrator Search. The motion passed with seven (7) yeas.

Councilor Minthorn stated that there was no report.

## **XII. ADJOURNMENT**

Councilor Minthorn moved, Councilor Gay seconded to adjourn the meeting at 11:59 p.m. The motion passed with six (6) yeas and one (1) nay – Councilor Archer.

Attest: \_\_\_\_\_  
Michele L. Hughes, City Clerk