



City Council Special Meeting
Minutes
September 26, 2011
Non-public meeting with legal counsel in accordance with RSA 91-A
to be held at 6:30 p.m.
City Council Chambers
7:00 p.m.

1. The Mayor called the meeting to order at 7:00 p.m.
2. Roll Call. Councilors Bennett, Blanchard, Mayor Bouley, Councilors Coen, DelloIacono, Grady, Keach, McClure, Nyhan, Shurtleff and Stetson were present. Councilors Bouchard, Patten, St. Hilaire and Werner were excused.
3. Agenda overview by the Mayor.
4. **September 26, 2011 Public Hearing**
 - A. Proposed City Charter Amendment and Ballot Question regarding redistricting ward lines.

Action: Mayor Bouley provided an explanation of the redistricting procedures that occurs every ten years. He added that after the committee came up with the proposed lines, the Council held two public hearings. He noted that the situation which presents itself today is the same one that occurs every ten years but this year there is a situation in which there is a potential where somebody could be elected and then not be able to serve because they would not be domiciled within the new ward lines. He stated that through the hard work of the city's attorney working with the Secretary of State's Office and the Attorney General's Office, he would like to propose language that would amend the proposed charter amendment question that will be on the ballot this November with the amendment of two sentences. The Mayor indicated that the hope is to solve a short term problem, being in compliance with the state redistricting efforts so that as they draw their boundaries for state representative races, etc. they will have their lines; the other immediate situation would be to clarify exactly, in a municipal election, who would be able to serve. This proposal that they are going to review would allow whoever the top vote getter is to be the person who would be able to serve. He stated that there is, within this language, language that would solve the long term solution.

City Solicitor Jim Kennedy stated that they have an issue with the charter amendment process regarding ward lines for the upcoming election. He noted that Council has set forth a ward line configuration that is in line with the federal census numbers and that the Council is required to create election districts that are in equal population as

possible. He stated that the Council did achieve that this summer and has for its voters to consider ten ward lines that are in equal population as is possible and the problem that they are presented with for this upcoming election is that there are two candidates that have filed for office and these two candidates live in certain wards. If the voters approve the ward lines, as configured and proposed by the Council, these two individuals will not live in the wards that they have filed for candidacy in. He explained that the greater problem exists if these two individuals who live in certain wards are elected by the voters and in January, because they have been moved by way of the charter amendment ward line/redistricting process to another ward, they will not be permitted to serve in the ward that they were elected to. Mr. Kennedy stated that a fundamental premise of the city's charter, which is the city's constitution, is that in order to be a ward councilor you must live in that ward, you must be domiciled in that ward and there is no exception to that, it's in the charter, in state law and in the state's constitution. He explained that what would happen going forward if these two individuals were elected, they could not serve and therefore there would be a vacancy which is defined under state law under three conditions: if the person passes away; if the person resigns; or if the person loses their domicile. The problem here is that these two individuals would not be able to serve in the district that they were elected to serve in. He noted that the remedy that the Mayor has brought forth and in which he himself has worked with the state and Attorney General's Office with is to make these ward lines applicable to the city two years down the road and it's important for the Council and the citizens to understand that they are going to have this upcoming November election based upon the existing, current ward lines and the ward lines that Council is proposing wouldn't effect the city for two years anyways so the practical effect of these ward lines being configured now would not really occur until the election that would set forth the City Council for the 2014 term. Mr. Kennedy explained that what they are suggesting for the Council to consider is an amendment to the ballot that will go before the voters in November is that the ward line configuration proposed by the Council shall apply to the state, the school district, and county elections. This will allow the state to go through with its redistricting procedure which will have application for state elections in 2012; it would also require, if approved, that the Council make these ward lines applicable to the City of Concord on or before 2014 in preparation for that upcoming election. He stressed that it's important that it is understood that the election in 2011 is based on the current ward lines and not on the proposed ward lines because those have to be passed by the citizens of Concord. He stated that the recommendation is to allow these ward lines to apply as they would in practical terms in 2014 and to make them apply sooner, in 2012, for state elections.

Mayor Bouley asked Mr. Kennedy to describe the portion of the constitution that references the fair right to be elected. Mr. Kennedy explained that, in Part 1, Article 11 of the NH Constitution, candidates have the fair right to be elected to office. He noted that arguably, an individual who applies and is a candidate for a certain ward and then wins the election and, by virtue of the ward redistricting procedure, is not in that ward and therefore wouldn't be able to serve that ward they are arguably a person who does not have a fair right to be elected and there is no office that the person could have applied for or be qualified for in order to hold office. He stated that just as it's a fundamental requirement that you have a domicile to hold office, you must be domiciled in order to be a candidate for office.

Councilor Blanchard asked if a certain person won an election to be a councilor in Ward 2 and under this proposal they would serve as a councilor in Ward 2 but what checklist would this person be on for the 2012 elections, Ward 3 or Ward 2. Mr. Kennedy responded that there would be a state election and a city election for a checklist at this juncture. He explained that for 2012, should the state go through redistricting, there will be a checklist for the state election and the voters of this city would follow the checklist for the state election. Councilor Blanchard questioned whether this would be under the new ward lines. Mr. Kennedy responded yes explaining that should the state go through with proposing its redistricting based upon the city's new ward lines, the state would go through that process and that is where someone would vote. Councilor Blanchard inquired whether it was a contradiction with regard to a particular person who is serving on the Council as a Ward 2 Councilor but then that person would vote in the state elections in Ward 3. Mr. Kennedy replied that it is just for state elections only which is why they are specific within this charter amendment. He clarified that if the citizens of this city say that the new ward lines shall apply to state elections only, they are going to maintain their ward domicile under the ward lines within the city and for the state, the ward line configuration would be applicable to state elections only. He stated that this creates some confusion and is a difficult process that the voters in the city may have to reconcile with and they will need to be on their toes as to which polling place they are going to attend. He noted that this is an option at least here for the Council to consider relative to solving the instant problem before them which is whether or not the certain candidates, in this election, have a fair and equal right to be elected.

Councilor Grady asked if, arguably, somebody that currently lives in Ward 4 who understood that under this proposal would be moved to Ward 5 and who did not register to run because they thought they were going to be in Ward 5 even though they wanted to run for Ward 4 have an action here under the fair right to be elected to office. Mr. Kennedy responded that this is certainly something that somebody could consider at the time pointing out that nobody has come forward with that scenario. He stated that what they do know right now is that there are two candidates who may not have the fair right to be elected should the ward lines be adopted by the voters.

Mayor Bouley asked Mr. Kennedy to speak of what the City of Nashua and the City of Rochester do in terms of their redistricting efforts and how moving towards taking ward lines out of the charter and moving them to an ordinance might avoid this sort of problem. Mr. Kennedy indicated that this is an option and is used by the cities of Nashua and Rochester in which their ward lines are set by ordinance so the rules for redistricting are in the charter but the ward line configuration is set by ordinance. He said, for instance, that if they received the census numbers this summer and this Council had the power to set its ward lines by ordinance, it could have staggered the effect of the new ward line configuration.

Councilor Coen stated that he has been in Concord for four decades and this is the first time that he remembers an issue coming up in regards to redistricting and inquired what was done differently this year than in previous years. Mr. Kennedy replied that there was nothing that was done differently and that the only thing that the city has now is a scenario in which two people are candidates and who will not maintain their ward configuration if the new ward lines are approved by the voters. The domicile problem

that they are faced with now as far as he can tell has not existed in those prior years during redistricting.

Councilor Blanchard asked for clarification as to if ward line configuration could be by ordinance then this would not be a referendum on the ballot. Mr. Kennedy responded that to be correct. He explained that in order to go through that process they would have to go through the referendum process to amend the city's charter and moving forward, the Council would set the stage to do it by ordinance.

Mayor Bouley opened the public hearing.

Public Testimony

Carol Hargrove suggested that the two candidates who are affected by the ward line change run in the new ward that they will be living in. Referencing the new ethics ordinance, she indicated that part of the ethical is living by the rules noting that she feels that rules should not be twisted around to fit the circumstances that are present.

Mayor Bouley asked Ms. Hargrove to elaborate as to how she feels that Council is twisting things around. Ms. Hargrove noted that she feels that if these people know that they are going to be in another ward; why don't they run in that ward and secondly, why would they want to try to make Council change the rules if the constitution says you must live in that ward to run for that ward and to represent that ward, if that's what the law says that is what the Council should follow and shouldn't be twisted to accommodate others. Mayor Bouley asked if she had a chance to listen to Mr. Kennedy when he referenced the fair right to be elected portion. Ms. Hargrove indicated yes.

Kris MacNeil noted that, in regards to the domicile question, most people at the state seem to understand that if you don't die or physically move then that the domicile that you are in is legal until the end of the elected term stating that it's only at this level that there seems to be a problem when that's not being adhered to. She pointed out that Keene had this come up ten years ago and suggested that when the charter amendment takes effect, the incumbents of all elected officers continue to hold the same until the expiration of their respective terms. She thought this issue could be something simple than what it is. She hopes that, in two years, Council won't have this take effect in January 2014 and is hoping that it will be before sign ups. She stated that people need to look at the wording and the intent before making decisions and that it shouldn't have gotten this far.

Councilor Shurtleff, referencing Ms. Hargrove's testimony in regards to ward lines changing, questioned as to why Ms. MacNeil and Ms. Kretovic filed to run. He stated that the dilemma that they are facing is that nobody knows if the ward lines are changing until the voters decide and that they may or may not accept what's being proposed. He indicated that they are trying to correct that problem/dilemma this evening.

Councilor Bennett indicated that this is not the same with county, state and federal elections and that Council is trying to get this remedied so that candidates can run for office. He stated that this process, come next November, will be history for the state and

federal elections because all this will have been done. Ms. MacNeil noted that if the effective date for redistricting was January 1, 2012, then the question was would a candidate at a state level suddenly be in a different district and still be allowed to serve and the answer she received from the state was of course they would because they assume that they can continue to serve out their term because they are still in the domicile in which they filed for office. She stated that that is all she is asking for from the City of Concord.

Mayor Bouley inquired as to who had informed Ms. MacNeil of the information provided to her in regards to the state level. Ms. MacNeil replied that Dave Scanlon had informed her of this information. She stated that if the ward lines were moved in January there are State Representatives who might fall in a different district because, by definition, they are no longer in the wards that comprised that original district but the state never intended that to happen because that representative did not move so they will be able to continue out their term. Mayor Bouley clarified that Mr. Scanlon worked for the Secretary of State's Office and not the Attorney General's Office. Ms. MacNeil indicated that to be correct. Councilor Shurtleff added that he believes Mr. Scanlon was referring to someone elected as a state representative as opposed to a city councilor. Ms. MacNeil indicated that a district is comprised of wards.

Councilor Nyhan stated that if a candidate is elected in November, their term does not become effective until January 1, 2012. He clarified that it is not a matter of finishing out a term because the term wouldn't have ever started.

Ms. MacNeil stated that what she is trying to say is that she has the right to file for office in a ward and if the ward line is changed, she didn't move.

Jennifer Kretovic noted that she currently lives in Ward Two and could possibly be moved to Ward Three. She indicated that she wanted Council to know how utterly respectful she is of City Solicitor Jim Kennedy explaining that she had a friend call him on her behalf and asked this question and he took it to heart indicating that something is not right here and promised to work on it. She stated that she didn't expect a speedy answer which is what she received. She noted that she knew from the beginning that this was a clerical oversight and it hadn't showed up for over forty years because nobody ever came before the Council and said that they wanted to file for office but their ward is changing. She thanked the Council and Mr. Kennedy for their hard work.

There being no further public testimony, the Mayor closed the hearing.

Public Hearing Action

5. Proposed City Charter Amendment and Ballot Question regarding redistricting ward lines.

Action: Mr. Kennedy pointed out that Ms. Hargrove raised the question about why these two individuals who are candidates would not run in the new ward. He indicated that in order to run in a ward, you must be domiciled in that ward at the time that you file for office to be a candidate. He explained that the two individual candidates who may be

moved to another ward, should the voters approve the ward line configuration, are only eligible to be candidates in the ward for which they are currently domiciled, a fundamental requirement under election law. With respect to the question posed by Ms. MacNeil relative to why a state representative wouldn't be removed from office from a city ward line redistricting, Mr. Kennedy stated that it is important that the voters understand that the state law is what creates a redistricting for the state and state redistricting and ward lines aren't automatically going to change when a municipality changes its wards. He noted that the state must take action and create a redistricting plan as it does by statute; ward lines at the state level will not change until the state takes action.

City Manager Tom Aspell questioned, hypothetically, if Councilor Keach who currently is a Ward Ten Councilor moves to Ward Three tomorrow could he still be a City Councilor in Ward Ten. Mr. Kennedy replied no stating that he would not maintain his domicile. Mr. Aspell asked whether he would then have to resign from the City Council. Mr. Kennedy responded that under state law and RSA 652:16, there would be a vacancy on the City Council.

Mayor Bouley explained that the primary change is saying that the ten wards in Section 1-b shall only be applicable to State of New Hampshire elections, county elections and school district elections. If the ward lines in Section 1-b are approved as a charter amendment, the city shall by charter amendment or otherwise propose that said ward lines be applicable to city elections on or before January 1, 2014. He noted that these will be the last two lines of the question proposed to the ballot on November 2011.

Councilor Shurtleff moved to adopt this language for the ballot for the upcoming election to be held in November 2011. The motion was duly seconded.

Councilor Blanchard noted that Ms. MacNeil is not the only person in Ward Three that will be in Ward Four after redistricting and there will be a lot of voters that will be in another ward. She inquired whether this was looked at as a reason of not having to go through this and just leave things as they are. She stated that it seems to her that this would make some sort of difference.

Mayor Bouley asked what would happen if the Council ignored the census data that was presented to them; what would be the effect of this. Mr. Kennedy responded that if it was just "left alone" then the city wouldn't meet what the NH Supreme Court and US Supreme Court has said relative to a democratic institution that our municipalities, our state governments and federal governments duty to create voting districts that are in equal population. He stated that the city has ten wards and the NH Supreme Court has said that when you had ward configurations you must make those wards in equal population as possible to have a fair representation throughout the city. He added that you don't want one ward to have more representation and a louder voice than another ward, you want them to be equally configured with equal population which is what democracy is in the City of Concord and in the State of NH and that is what the redistricting process tries to create.

Following additional Council discussion, Councilor Keach indicated that there has got to be a point in which you have to redistrict and that it's never perfect and it's always a little imbalanced. Responding to a comment that it should never had gotten this far, he stated that the fact that the Council, particularly the Mayor, took on this issue early protecting the individuals that wish to run for Council. He stated that he feels that this is a great short term solution to a problem that exists but ultimately changing the charter to reflect an ordinance based situation is the better way to go.

Councilor Nyhan stated that it is unfortunate that they find themselves here tonight and that this is a very difficult and complicated process of making sure that everyone has an equal opportunity to run for office and hold office. He noted that what is before Council this evening is going to achieve that. He added that they are not trying to disenfranchise anyone but just trying to make it equal for people. He noted his support of the amendment stating that he feels that this is the right thing to do and it's fair for everyone.

Councilor Grady noted her agreement with Councilor Nyhan. She stated that the primary reason she is going to support this amendment is because as she starts the campaign process she finds herself uncomfortable with the fact that some people would be voting for her that aren't going to be represented by her.

In closing, Mayor Bouley thanked Council for meeting this evening and thanked Mr. Kennedy for the time that he has put into this. He added that they have it in writing from the Attorney General's Office that this is possible. He further added that this is not a perfect solution but is a transition solution and the long term solution is to change the charter to make the city ward lines in the city's ordinance allowing them to avoid this in the future.

Councilor Shurtleff's motion passed with no dissenting votes.

Comments, Requests by Mayor, City Councilors

Councilor Coen strongly urged that Council set up a committee to address this issue going forward and not have this happen again in ten years. Mayor Bouley commented that something may happen in the near future to remedy this from happening.

Councilor Keach noted that he saw the boats on the river and feels that it will continue to grow in the future. He stated that when Council voted to allow the Concord Crew to build a boathouse, it was a wise move.

Adjournment

The time being 8:13 p.m. Councilor Stetson moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

*Michelle Mulholland
Deputy City Clerk*