

APPROVED MINUTES
Approved on November 10, 2008

KITTERY TOWN COUNCIL

October 27, 2008

Council Chamber

1. **CALL TO ORDER**
Chairman Jeffrey Thomson called the meeting to order at 7:00 p.m.
2. **INTRODUCTORY**
Chairman Thomson read the Introductory.
3. **PLEDGE OF ALLEGIANCE**
The Chair led those present in the Pledge of Allegiance.
4. **ROLL CALL**
Answering the roll were Councilors Jeffery Brake, Frank Dennett, George Dow, Ann Grinnell, Glenn Shwaery, Vice Chair Spiller and Chairman Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Town Attorney Duncan McEachern, Recorder Chris Kudym, members of the press and others.
5. **ACCEPTANCE OF MINUTES**
The Minutes of October 15, 2008 were accepted, as read.
6. **INTERVIEWS FOR THE ZONING BOARD OF APPEALS, PLANNING BOARD OR CABLE TELEVISION RATE REGULATION BOARD: None**
7. **PUBLIC HEARINGS**

a. (100208-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO REPEAL APPENDICES A, B AND C OF THE GENERAL ASSISTANCE ORDINANCE, WHICH BECAME EFFECTIVE OCTOBER 1, 2007, AND ADOPT THE REVISED MMA MODEL ORDINANCE GA APPENDICES A, B AND C FOR THE PERIOD OF OCTOBER 1, 2008 – OCTOBER 1, 2009. THE GA ADMINISTRATOR IS AUTHORIZED TO BEGIN USING THE NEW REVISED APPENDICES AS OF OCTOBER 1, 2008.*

Chairman Thomson opened the Public Hearing and not receiving a response, closed the Public Hearing.

COUNCILOR SHWAERY MOVED TO REPEAL APPENDICES A, B AND C OF THE GENERAL ASSISTANCE ORDINANCE, WHICH BECAME EFFECTIVE OCTOBER 1, 2007, AND ADOPT THE REVISED MMA MODEL ORDINANCE GA APPENDICES A, B AND C FOR THE PERIOD OF OCTOBER 1, 2008 – OCTOBER 1, 2009, SECONDED BY VICE CHAIR SPILLER.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

b. (100208-2) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO RECEIVE COMMENTS ON AN AMENDMENT TO TITLE 13 OF THE KITTERY MUNICIPAL*

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CODE TO ADD CHAPTER 13.16, EMERGENCY BENEFIT VOLUNTEER PROGRAM ORDINANCE.

Chairman Thomson explained that the proposed ordinance would be a tool for the Town of Kittery to provide assistance for seniors over 60, creating a safety net for those who might not be eligible for assistance from other programs and were threatened with an eviction, foreclosure or utility shutoff. This assistance would be provided by having an applicant work in a municipal position and earning the maximum benefit of \$750 based on a \$7.25 an hour minimum wage for 103 hours of work. Prior to opening the Public Hearing, the Chair asked if either the Town Manager or the Town Attorney would like to provide further clarification.

Town Manager Carter said that, as the Chair had indicated, this was a device that provided another tool for Kittery to help seniors over 60 who, in this economy, might find themselves evicted or foreclosed upon; it would apply only to those people in dire need that met the qualifications.

Town Attorney McEachern came to the podium and said he thought the proposed ordinance was pretty straightforward. It would provide up to \$750 to those who qualified and the qualifications were quite stringent; that amount would be applied to either back taxes or rent payments.

Chairman Thomson opened the Public Hearing and not receiving a response, closed the Public Hearing.

COUNCILOR GRINNELL MOVED TO APPROVE, AND THE TOWN OF KITTEERY HEREBY ORDAIN TO ENACT, DRAFT ORDINANCE #2 TO BE KNOWN AS CHAPTER 13.16, EMERGENCY BENEFIT VOLUNTEER PROGRAM, SECONDED BY COUNCILOR BRAKE.

Addressing the Town Manager, Councilor Dennett asked if such payments would be subject to Federal Income Tax? The Manager replied that in the research he and the Town Attorney had been doing, this apparently would be treated very similarly to the work program under General Assistance where there was no Federal reporting of wages. He noted they were awaiting calls from different auditors and the Wage and Hour DOL in order to confirm that but, presently, it was an open-ended issue.

Councilor Dennett wondered how that affected the \$750 - would that amount be net or gross? The Manager explained that the individuals wouldn't be seeing a payment, the transaction would just be a transfer from one account to their account and, according to MMA, these individuals were not considered employees for Workers Compensation or State tax issues.

Councilor Dennett then asked about Social Security Withholding and Medicare and the Manager replied that, again, these people were not employees so those benefits would not be deducted nor would a 1099 issue. Councilor Dennett asked about unemployment and the Manager said that because they were not employees and it was a volunteer program, under State Statute, they were not technically eligible for unemployment.

Regarding liability insurance, Councilor Dennett asked if the risk pool would pick up any claims made against these individuals and the Manager indicated that if there was proof of negligence on the part of the Town, MMA would pick it up.

Town Attorney McEachern noted that the Town would comply with Federal Law as to the characterization and treatment of the participants and while Mr. Carter may not have a definite answer

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at this point, they would get one and if a 1099 needed to issue, the applicant would be advised and the 1099's would be issued.

Town Manager Carter noted that one of the problems was that if Council went this way, then Kittery would be the first community to adopt this. The Manager said that he completely understood Councilor Dennett's concerns and issues and this program would not be implemented until they had answers to these questions.

Concerning a Homestead, which was defined as a dwelling or home held in trust for the qualifying applicant, Councilor Dennett said he presumed that "held in trust" meant that this would apply to a qualified applicant who resided in a dwelling owned by a Revocable Trust (or possibly an Irrevocable Trust) set up for the benefit of that applicant.

Town Attorney McEachern stated that the reason the wording was "in trust" was because there were different kinds of trusts but the beneficiary would be the applicant under the trust and eligible for the program. That language was designed in order to not exclude someone who happened to have put their house into a Revocable Trust.

Town Manager Carter clarified some prior information by reading from a memo received from their MMA Insurance Agent. That memo indicated that the volunteers would not be covered by Workers Compensation. If the volunteer was injured and could prove the injury was caused by the Town's negligence, they could file a general liability claim against the Town. The Town's insurance provided general liability coverage for the work performed by the volunteers on the Town's behalf and within the scope of the volunteers' assigned duty.

Councilor Dow asked how the \$750 to be paid for work provided was being handled - would it be a real estate tax abatement or would it be a line item in the Budget? The Manager replied no, it would not be treated as an abatement and that the proposed ordinance indicated that the funds would come from the Overlay Account.

Noting that there tended to be a lot of questions around taxation, etc., Councilor Dow asked the Manager if he was comfortable with the responsibility inherent with the program? Town Manager Carter said that he was comfortable with it. The Manager noted that he was, in title, part of the General Assistance Program and he would be relying upon Kathy Pridham to take the application, have a detailed interview concerning the applicant's situation and research any other programs that could help. The idea was to assist where possible, using as many resources as possible to help; that was why having received the Homestead benefit was one of the requirements. This program was intended for when some one was in desperate need and this little amount of money would be the difference in their being able to keep their house or apartment.

Vice Chair Spiller stated that this seemed like a worthy endeavor to her and considering where they started with this last spring, she thought the Manager had done a great job of doing something to help a small group of people. The Vice Chair said she did respect Councilor Dennett's concerns but assuming the Council approved this, she was confident those concerns would be addressed so she was supportive.

Since this money could be applied either toward rent or toward property taxes, Councilor Shwaery wondered why it couldn't also be applied to a mortgage payment equivalent to the rent. The Manager said that the maximum of \$750 would only be applied against the property taxes or against

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the rent. An applicant, he said, would have had to have qualified for a Homestead. Councilor Shwaery noted that maybe not locally but obviously nationally foreclosures were the biggest thing going and he didn't understand why they were somewhat discriminating against people who were owners versus renters. The Manager indicated that, unfortunately, because the way the law was stated, they couldn't really maneuver.

Councilor Shwaery stated that, generally speaking, he thought this ordinance discriminated against people who were 57 years old in the same situation. Also, if no one came forward in this program, it was obvious that the Town didn't need that work done so if someone did come forward, they would basically be creating things for them to do. Councilor Shwaery said that if they were able-bodied and able to do things for the Town, he just didn't understand why someone wouldn't go to work for ten hours a week anywhere else in the hundreds and hundreds of retail places they had that were advertising for part-time workers and make \$7,000 a year so he was not fully supportive of this.

Councilor Dennett noted his objection to the following language in Section 13.16.040.B: *“The applicant must maintain a homestead in the Town of Kittery and have done so for at least one year immediately prior to the time of the application.”* Councilor Dennett said he thought that was awfully short and would like to see it increased maybe up to five years; if this was going to happen, it should perhaps happen to people who had been a little bit longer in residence than one year.

COUNCILOR DENNETT MOVED TO AMEND LANGUAGE IN SECTION 13.16.040.B., AS FOLLOWS: “THE APPLICANT MUST MAINTAIN A HOMESTEAD IN THE TOWN OF KITTELY AND HAVE DONE SO FOR AT LEAST FIVE YEARS IMMEDIATELY PRIOR TO THE TIME OF THE APPLICATION.”, SECONDED BY COUNCILOR GRINNELL.

A ROLL CALL VOTE WAS TAKEN ON COUNCILOR DENNETT’S PROPOSED AMENDMENT TO LANGUAGE IN SECTION 13.16.040.B, WITH ALL IN FAVOR. MOTION PASSES 7/0.

Chairman Thomson referred Council back to the main motion and asked for any further discussion.

Councilor Dennett stated that he certainly saw the reason for this but he opposed it. Financial difficulties, he said, were not limited by age and, unfortunately, they could only work within the constraints of the State Statute as passed, which mandated the age of 60 years or older. Councilor Dennett said that he firmly believed if they were going to have a “needs” based ordinance such as this, there should be no age limitation. Also, in his opinion, the majority of people reaching age 60 should have their financial house in order and if anyone was needs based, it was perhaps the younger people and not those over 60. Based upon these statements, Councilor Dennett said he would have to oppose the measure.

Councilor Shwaery said he didn't want to come off as some hard guy so he wanted to clarify that he saw a need for a program, as well, and as Councilor Dennett had said, if somebody came to them, regardless of their age, in a dire financial situation but didn't meet the GA requirements, then if they wanted to have some kind of program that abated real estate taxes or provided some kind of financial support for them to live in their house in Kittery, then they should just do that, they should just have some kind of component that helped people out. This seemed way to mechanistic for him

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and seemed just to be creating some things to make people feel good about themselves to get some money so he would support something in general but he just didn't like this document.

Chairman Thomson said that first of all, he was in support of the proposed ordinance, as amended, but certainly understood the concern that Councilor Dennett raised, along with Councilor Shwaery, regarding the fact that 60 was not a magical age for folks to have financial difficulty. However, he said, perhaps the best way to address that concern would be to enact this ordinance, as presented and then amended by Council, and then if they found that indeed they had folks under the age of 60 falling through this safety net, that would certainly give them ample cause and provide the appropriate evidence and experience to ask the Legislature when it met in 2009 - and ask their particular Legislators in person - to look at that issue and adjust the age. The Chair said that his feeling was the only way they were going to be able to do that was to enact the ordinance as the Legislature presented it to them and draw on their experience, moving forward and that was why he was going to support it.

A ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION, AS AMENDED, AS FOLLOWS: FOUR IN FAVOR; THREE OPPOSED. MOTION PASSES 4/3, WITH COUNCILORS BRAKE, DENNETT AND SHWAERY OPPOSED.

8. DISCUSSION

a. *DISCUSSION BY MEMBERS OF THE PUBLIC (Three minutes per person)*

b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

9. UNFINISHED BUSINESS

Councilor Shwaery commented that after sitting on it for two weeks, he still thought that the Gorges Road Fire Station alternative energy plan was kind of pushed on them a little quickly and he wondered, since he was the sole negative vote, if anyone who voted in the affirmative had any inkling for reconsideration? If not, he would make the comment that when they considered the pay-back period on this, they needed to consider the fact that they bought two burners for that building, not just the \$12,600, because the burner they were taking out was not going to be used, it was just going to sit there; if they'd spent \$20,000 on burners, that was what they needed to use as a pay-back price. Councilor Shwaery stated that his opinion was that if they bought two burners, that's what they needed to use in their calculations.

Councilor Dennett asked Town Manager Carter if an agreement or contract on the burner had been signed yet, and the Manager replied, yes. Councilor Dennett then noted that, unfortunately, a motion to reconsider could not be made if the action involved a third party that had already been notified and, in this case, contracted.

In that regard, Councilor Dow noted that he had inquired if the Energy Advisory Committee had given their stamp of approval and it was his understanding that they had, therefore, he had been okay with it.

Chairman Thomson asked Town Manager Carter about the status of the new sewer contact with the Town of Eliot. The Manager said they met twice; Eliot was very interested and they had negotiated through almost the entire agreement. Eliot was back talking with their folks dealing with the issues of their expansion requirements and the economy; they needed to act quickly on the TIF ("Tax and Incremental Financing") because of the gas metering plant they had coming on line and

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they needed to capture that value to pay for the sewer extensions. This was a Town Meeting issue for Eliot and there were a lot of issues for them to deal with before they moved forward with Kittery.

10. NEW BUSINESS

a. (100208-3) *THE KITTERY TOWN COUNCIL MOVES TO HEAR A RECOMMENDATION FROM THE SAFFORD SCHOOL RFP ADVISORY COMMITTEE.*

Chairman Thomson indicated that representatives from one of these groups could not be present and had asked that this item be deferred so Council took no action.

b. (100208-4) *THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE FROM THE SHARED SERVICES COMMITTEE.*

Vice Chair Spiller stated that the Committee met on Thursday, October 16th. Membership included Councilor Dow, Councilor Brake and herself and they were joined by School Committee Members Batchelder, Furbush and Ayer. The first part of the meeting they spent discussing the shared Finance Manager position that would be located in the School Department, about which the Town Manager could give an update.

Town Manager Carter said they were moving forward to attempt consolidating the finance offices of the School Department and the Town, heading that up with a school manager/town fiscal agent. They had not had the best of luck with their recruitment phase where, after going through one process that netted two finalists, they had offered the job to one of the applicants but after considering the amount of compensation, that person declined their offer. They had re-advertised with a deadline of November 3rd and details, as well as the application, were located on the School Department's website. The Manager said they were also interviewing a municipal temp service located in New Hampshire that would be coming in tomorrow to speak with the Superintendent and himself about what they could offer for this position on a temporary or long-term basis.

Councilor Dow noted that he often came into contact with other school districts and they had all been asking about what Kittery was doing and wondering how this was going to work out because a lot of them felt this was a direction that many communities would have to move in.

Vice Chair Spiller said that the other big issue they were looking at was the Three School Feasibility Study and how to move forward with that. Both the School Committee and Town Council wanted to see some progress on that. They were trying to find a meeting time with the consultants who had done the Feasibility Report and she thought that within the next two weeks they would be meeting with them and would have more to report back.

The final topic they discussed very briefly, the Vice Chair said, was the condition of the Frisbee School roof, about which the School Department would be reporting back.

Councilor Shwaery said he had spoken to a parent who was very concerned about her child's safety at Frisbee School. He said he thought all of them agreed they would like to keep the Frisbee School within municipal control so whether it needed a roof as a school or some other community center, to him, seemed moot. It was all coming out of the same pool of money, out of a bond issue one way or the other, so he thought it probably was not very good preventative action if they waited until the school consolidation of physical buildings was done before they thought about replacing that roof. The Frisbee School, he said, was a critical and valuable piece of Town infrastructure.

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Vice Chair Spiller said, speaking as a Councilor and not on behalf of the Shared Services Committee, that seemed like a good candidate for their Capital Improvement Plan.

c. (100208-5) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairman Thomson listed the following warrant articles:

Warrant No. 34	Town Accounts Payable	\$ 922,626.51
Warrant No. 8	School Accounts Payable	\$ 217.80 –
Warrant No. 8A	School Accounts Payable	\$ 586,287.79

COUNCILOR SHWAERY MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY VICE CHAIR SPILLER.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

d. (100208-6) *THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE AND HOLD A DISCUSSION ON THE SALT SHED STRUCTURAL FAILURE.*

Town Manager Carter referred to a report Council received from Ken Wood of Attar Engineering describing the condition of the salt shed. A claim had been filed with MMA and an adjuster had been sent out. The Manager said that he, the adjuster and Commissioner Rossiter had been working together to determine the outcome of the MMA claim and that was still up in the air. The Manager didn't think they would have a resolution for at least another week. He and Commissioner Rossiter had been talking about putting the salt shed back together again in a manner that would be structurally acceptable to the engineers and leaving it in its present location so they were now getting estimates and discussing options. One of the things they would like Council to consider, if they brought an option forward was using the newly created Municipal Infrastructure Reserve Account to assist in funding. The Manager said he hoped to have a further update for their next meeting of November 10th.

e. (100208-7) *THE KITTERY TOWN COUNCIL MOVES TO GIVE AUTHORIZATION TO PLACE FUNDS RECEIVED FROM THE SALES OF THE TWO POLICE VEHICLES INTO THE POLICE VEHICLE RESERVE ACCOUNT.*

Chairman Thomson indicated that a high bid came from East Coast Classics in the amount of \$3,972.

COUNCILOR SHWAERY MOVED TO GIVE AUTHORIZATION TO PLACE THE SUM OF \$3,972 RECEIVED FROM THE SALES OF THE TWO POLICE VEHICLES INTO THE POLICE VEHICLE RESERVE ACCOUNT, SECONDED BY VICE CHAIR SPILLER.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

f. (010208-8) *THE KITTERY TOWN COUNCIL MOVES TO AUTHORIZE PAYMENT OF UP TO THE INSURANCE CLAIM DEDUCTIBLE (\$1,000) FROM THE INSURANCE DEDUCTIBLE WARRANT ARTICLE FOR THE WATER DAMAGE CLAIM IN THE POLICE DEPARTMENT.*

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Chairman Thomson noted that an HVAC unit condensation drain located on the second floor became clogged resulting in water damage and the shorting out of the fire alarm panel. The cost of repair came to \$1,901.

Town Manager Carter stated that payment had been received from MMA in the amount of \$901, leaving the deductible to be paid.

VICE CHAIR SPILLER MOVED TO AUTHORIZE PAYMENT OF UP TO THE INSURANCE CLAIM DEDUCTIBLE (\$1,000) FROM THE INSURANCE DEDUCTIBLE WARRANT ARTICLE FOR THE WATER DAMAGE CLAIM IN THE POLICE DEPARTMENT, SECONDED BY COUNCILOR SHWAERY.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

g. *OTHER*

Councilor Dennett said that at the Eliot/Kittery Town Line several weeks ago there was an excavation that was partially filled in and partially hot-topped, leaving a two to three inch drop and he wondered if that was going to be filled in before winter. Town Manager Carter said he would certainly look into that.

Chairman Thomson noted there was also one on Dennett Road when turning onto the 95S ramp and asked if that was going to be paved. The Manager said that Dennett Road would be paved where the shoulder project was going on.

Councilor Brake had a check for \$139 for the Recycling Fund.

11. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

Chairman Thomson said they met with the School Committee in a workshop back in late September to start the wheels in motion for the FY '10 Budget process and, rather than waiting until December, he thought they should get together again and formally give whatever guidance they might choose to give for FY '10 to the Manager and the School Department. The Chair proposed Monday, November 17th.

The Chair said this was the last meeting of the Council before national and local elections next Tuesday, which promised to be an interesting and historic day in the Country, and he encouraged all registered voters in Kittery to exercise their privilege.

Town Clerk Place noted that Town Hall would have special hours on Wednesday evening, October 29th at 6:00 to 8:00 and Saturday, November 1st at 8:00 a.m. to 12:00 Noon for people who were unable to make it to the polls on Tuesday, November 4th.

b. *TOWN MANAGER'S REPORT*

Town Manager Carter referred Council to handouts containing information on some bids that they had conducted.

The Town Manager said they also had communication from Glen MacWilliams of the Keys Regional Organization inviting Council and the general public to a workshop on October 29th at

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7:00 P.M. at the First Congregational Church of Kittery Point. This was part of the Community Wellness Coalition, Keys Regional and Everyday Democracy and was an introductory program about citizen participation. They had asked if Council or the Manager might be able to attend. The Chair indicated that he planned on attending.

The Manager said that the Sarah Long Bridge had closed today and would be closed for three weeks; signage was up to make people aware that merchants were open and, as comments were received, would be adjusted.

The Manager said they had been monitoring the Memorial Bridge. The NHDOT had been working toward a two-year completion but, unfortunately, the bids came in \$15 Million higher than expected. A public meeting discussing different strategies would be held at the Portsmouth City Hall Council Chamber on Thursday, November 6th at 7:00 P.M. The Manager urged everyone who could make it, including the general public and merchants in that area, to go and listen to what would be proposed. This was a very difficult situation and the Manager said he hoped they came up with an approach to get the Bridge repaired.

Chairman Thomson interjected that he walked across the Memorial Bridge quite often and found that even on the calmest of days he had to take his hat off because of the wind, which made him think how great it would be to put a wind turbine on the Bridge because it was always windy there.

Town Manager Carter stated that they received preliminary word that their Regional Grant Application had been accepted and the Southern Maine Regional Planning Commission, which was assisting them in doing that, was finalizing the necessary data for the full acceptance by the State. That was certainly good news; it meant more work for everyone but may, in the end, be beneficial.

The Manager said they also had gotten word of another grant award for the Spruce Creek 319 Project from the NH Estuaries Service for a piece of equipment used to detect certain pollution.

Regarding the Fuel and More Program, Kathy Pridham indicated that they now had a balance of \$44,268.51. To the community, the Manager said: Thank you; Thank you; Thank you! That certainly moved them toward their goal of \$50,000.

The Manager said that a gas main would be installed tomorrow at the Municipal Building so parking would be affected. The gates to the Public Works area would be open for employees and people attending meetings so that the front of the building could be free for customer parking. The Manager said they found that was very important since the Town Clerk, with some help, did 138 absentee ballots that day.

Halloween in Kittery will be celebrated on Thursday, October 30th. More information was available on the Town's website.

The Town Manager said his last item was to wish the sailors of the USS New Hampshire good will and thank them for their hospitality and thank the commissioning group that spent six months putting it together because he understood it came off very well.

c. COMMITTEE REPORTS

Town Manager Carter stated that at the October 20th workshop Council reviewed Revision 3 of the Capital Improvement Process that he and his staff had put together to move towards a multiple

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year CIP. They had proposed a five-year program, each year being amended yearly and priorities set. The Plan was written, in large part, by the summer intern, the Fire Chief and himself and was reviewed by Department Heads and the Council. At the October 20th workshop, Council came up with a number of issues so amendments to the document were made, such as adding two citizen representatives on the Board, one for two years and one for three years. The document was deemed to be more of an in-house guide that Council would not officially adopt but take as guidance.

Chairman Thomson noted that to get the ball rolling on the citizen reps, there should be some notice on the website and the Manager could speak to members of the press, asking them to highlight that particular aspect.

12. ADJOURNMENT

VICE CHAIR SPILLER MOVED TO ADJOURN, SECONDED BY COUNCILOR SHWAERY, WITH ALL IN FAVOR.

MEETING ADJOURNED: 8:25 P.M.