

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
POLICE, JUDICIAL & LEGAL COMMITTEE
Monday, March 5, 2018**

Municipal Complex, Committee Meeting Room, 3rd Floor

Minutes

Members Present: Mayor Will Haynie, Chair, GM Whitley, Joe Bustos

Absent: Gary Santos

Staff Present: Eric DeMoura, Levica Kirvin, Chief Ritchie

Also Present: David Pagliarini, Corporation Counsel

Mayor Haynie called the meeting to order at 08:00am.

1. Approval of Minutes from the February 5, 2018 meeting

Mayor Haynie asked that the minutes from February 5, 2018 meeting be approved. Mr. Bustos made the motion for approval; seconded by Ms. Whitley. Motion carried unanimously.

2. Public Comments

Ms. Susan Thompson, 323 Bayview Drive, Mount Pleasant stated that she has been a resident of the East Copper area for over 40 years and was a small business owner for over 30 years in Mount Pleasant.

Ms. Thompson stated that she was here this morning because she believes this is an important issue and she wants to ask the committee to vote for the ban against single use plastic bags available at check-out.

Ms. Thompson stated that she also attended last month to hear the discussion about this and at the end it was said that the committee needed to check with businesses to see how they feel. She added that as she left she thought that the Town does not need to reinvent the wheel here and

that this has been discussed by communities across the State and Country and it has been implemented specifically on Folly Beach and the Isle of Palms.

Ms. Thompson stated that it turns out that the Town Administrator of Folly Beach, Spencer Whitmore, said there were no problems implementing their plastic bag ban and they also included a ban of Styrofoam dispensing from restaurants. She added that last week she called the City Administrator from the Isle of Palms and spoke with Linda Tucker who was happy to report there had been no problems with their plastic bag ban and that is all they did was the plastic bags at check-out.

Ms. Thompson stated that Ms. Tucker said she thought the residence and visitors and business alike were proud that they were part of this initiative and she specifically asked her about the Harris Teeter and Ms. Tucker advised that they were on board with it right away.

Ms. Thompson stated that there was a grace period where businesses had a chance to use up their plastic bag inventory before the law was enforced.

Ms. Thompson stated that Ms. Tucker advised that the only objection she got from this was from plastic bag manufacturers who wrote letters against it and they sent a representative down to speak at one of the City meetings.

Ms. Thompson stated that she was asking the Committee to vote for the plastic bag ban and make it narrow so that it can happen quickly and so the State Legislature does not have chance to take away the right to make this decision for ourselves. She added to please do the right thing and vote for the ban and make everyone proud that they live in Mount Pleasant.

Ms. Kelly Thorvalson, SC Aquarium, stated that research Wilcox et al identifies plastic bags as the second most harmful item to marine fauna after ghost fishing gear. She added that along with fishing gear and

balloons, plastic bags pose the greatest threat of entanglement to sea birds, marine mammals and sea turtles.

Ms. Thorvalson stated that plastic bags are also identified as one of the top 2 items posing the greatest threat to ingestion by wildlife. She added that they are seeing this first hand in the sea turtle hospital with a market increase of turtles coming in to the hospital with plastics ingested.

Ms. Thorvalson stated that it is the same thing they are antidotally seeing along the roadways and beaches and it is important to note that the research does identify that 80% of marine and coastal plastic litter is coming from terrestrial sources.

Ms. Thorvalson stated that the Charleston harbor has been identified to contain approximately 8 tons of plastic debris that is coming from our local streets and it is also important to look at the global perspective of plastic pollution as there is an estimated 8 million metric tons in the ocean everyday which is equivalent to dumping the contents of one garbage truck into the ocean every minute and the growth of plastic production has increased exponentially and is expected to double again in 20 years and quadruple by 2050.

Ms. Thorvalson stated that we absolutely need to manage this issue. She added that researchers who have thoroughly examined the issued published the following statement in Marine Policy Journal, "Compared to most other plastic items, plastic bags post one of the greatest threats to impacts of ocean wildlife and warrant the specific attention they received from Governments and Advocates to address their use."

Ms. Thorvalson stated that a note on polystyrene, it is the second most common plastic documented in our citizen science app along the coast in South Carolina and it is one of the most pervasive forms litter in the world and it can contains harmful chemicals. She added that styrene is a

suspected carcinogen and carries a host of other adverse health effects such as pulmonary function disruption and hormone disruption.

Ms. Thorvalson stated that personally she will not take food or drink in polystyrene because of the threat it poses to her and her family.

Ms. Thorvalson stated she was thankful to be able to comment on this issue.

Mayor Haynie thanked Ms. Thorvalson for the good work that is done at the Aquarium.

Mr. Andrew Wunderly, Charleston's Water Keeper, stated he would like to thank the Mayor for his leadership on this issue and for the opportunity to speak.

Mr. Wunderly stated that he would like to share a little bit more on Folly Beach's experience as he was able to catch up with Spencer Wetmore and wanted to share a little of that conversation.

Mr. Wunderly stated that Folly's styrofoam and plastic bag ban has been a non-issue for Public Safety Department and Harris Teeter and the other local businesses were able to comply quickly and easily but he did say they had a bit of a grace period which allowed them to work out some issues with the local Subway franchise but they were able to work together to get that done and reach compliance.

Mr. Wunderly stated that Folly Beach has an interesting component to their ordinance in that they have a possession ban on the beach which is arguably a little bit harder to enforce as you have to work with individuals rather than businesses.

Mr. Wunderly stated that Folly's beach patrol reports that they have had no issue with that and that people are generally aware, and they have very little with Styrofoam or plastic bags on the beach. He added that they do not

data on this issue but anecdotally the beach patrol reports that they have seen a reduction in the amount of that debris on the beach during busy weekends.

Mr. Wunderly stated that Spencer feels that the City of Folly Beach is a success story and believes it is because of the strong educational component that happened during the grace period before the ordinance took full effect. He added that this interesting as our environment is our economy which is true both in the Town of Mount Pleasant and the City of Folly Beach. He added that they have been able to market themselves using that component.

Mr. Wunderly stated that ordinances like these really work and he would encourage the Town to keep considering it and he hopes to see it come up for a vote soon.

Mayor Haynie thanked Mr. Wunderly for the good work that he does as well.

Mr. Jack Smith, Environmental Attorney with Nelson Mullins, 747 Old Central Way, stated that he is here today on behalf of the Charleston Metro Chamber of Commerce and is a member of the Business Advocacy Council and a past chairman and still on the Environmental Committee for the Chamber. He added that he was the Chambers representative on the City's group that studied this issue.

Mr. Smith stated that the Chamber does not have a particular position and the businesses in the area have not focused on this as a priority type issues but are concerned that it may increase costs but Mr. Smith feels this can be passed on and the reality of what is being looked at is mostly single use plastic bags from the national brands from the chain stores, grocery stores, etc.

Mr. Smith stated that is up to those folks to comply with whatever laws that are passed, and they probably will. He added that it is also important and it was brought out in the city's committee that he served on that plastic bags are a small component at less than 1% of the plastic that is seen as debris, however, it does as the Aquarium is aware can have a drastic effect individually for any creature that may come in contact with it.

Mr. Smith stated that it is a difficult choice and he encouraged the Committee to be balanced in their approach and to include a very strong education component. He added that the problem is not really the plastic it is the people who drop it and put it in our environment and there is no real solution to that and it is either going to be paper or plastic bags that get put in the environment so unless behavior is changed and some way to keep people from not caring about where they live by taking care of it that is the key to changing that behavior then there would not be that problem.

Mr. Smith stated that the Chamber is not here taking a position necessarily and the understand it is difficult and emotional subject, but they believe there are some facts and information that could be brought, and he had a hand out that he wanted submitted for the record.

Mr. Smith stated the Chamber would be happy to do any follow-up and feels attacking a very small part of the problem from its source from the people giving out the bags as opposed to the people who are dropping them he wanted to encourage the consideration of the potential impact of businesses going forward.

3. Police matters

Employee years of service recognition

Chief Ritchie stated that he had the honor of recognizing one of the Department's finest for her five years of service. He added that Officer

Hannah Howard like all officers started out in patrol and while on patrol was very committed to our community.

Chief Ritchie stated that she along with her team were instrumental in doing fund raising throughout the year to be able to take some deserving kids Christmas shopping. He added that she is also very much involved with Special Olympics/Law Enforcement Torch Run and also out in the cold water doing the Polar Plunges which helps raise money and awareness for those great athletes.

Chief Ritchie stated that Officer Howard is currently assigned to our Traffic Bureau and is one of the DUI grant officers and is very committed to getting DUI's off our roads. He added that when she leaves the meeting she will be headed to Wando High School along with another officer to teach Wando students about DUI and DUI awareness and why not to drink and get behind the wheel.

Chief Ritchie stated that the officers go far beyond just writing tickets and locking people up and that they are very much involved in the community and being part of the solution by making everyone aware of what is going on.

Chief Ritchie stated that Officer Howard is a solid performer and someone he can count on. He added that she exemplifies what he feels a good police officer should be.

Chief Ritchie stated that he had two other officers to be recognized but that they were in training and he would recognize them in-house at a later date.

4. Judicial matters

No agenda items

5. Legal matters

a. Review of the structure of the Town's legal representation

Mayor Haynie stated that he would turn this over to staff and it would be discussed at Council but the question here is the Town using the right form of legal representation for a Town of this size and complexity.

Mayor Haynie stated that there is currently a contract with one law firm that he believes, and he believes the Municipal Association policy covers the Town for certain types of law suits so there is a different type of attorney who handles those cases.

Mayor Haynie asked Mr. Pagliarini to explain basically what his firm does and to give the Committee the name of the firm and a little bit about it and the difference between what they handle and what is covered by the Municipal Association.

Mr. Pagliarini stated that in 2011 the Town moved away from the in-house model of legal counsel and issued an RFQ, he stated he was not sure how many law firms submitted but ultimately it was down to 10 that were interviewed by council. Hinchey Murray & Pagliarini was fortunate enough to be retained by the Town at that time and their understanding of that circumstance was that in-house the old in-house model was one person handling all in-house matters and typically all litigation matters sought and retained outside counsel. So, the financial structure on the inside was salaries, benefits for in-house legal, and then hourly-pay for outside lawyers to handle all litigation, real estate, bond, outside matters.

Mr. Pagliarini stated that their firm, when hired, was charged with handling most, if not all, matters usually sent to outside counsel, under their contract. He added that they have been with the Town since that time and their contract at this point calls for 2 full-time attorney positions so those are dedicated to the Town typically as it has been over the last few years. This structure has been split among 3 lawyers and the reason for that is that they all have different areas of expertise and focus and concentration.

Mr. Pagliarini stated that Mr. Hinchey focuses on finance and all related matters, HR and all related matters, drafting ordinances contracts and policies. He added that he handles much of the real estate, eminent domain litigation as well as a substantial portion of what the Town does and that is their planning. He added that Ms. Copeland also addresses planning issues, as well as any FOIA related issues.

Mr. Pagliarini stated that is the way they handle it and to this point they have had very little need to retain outside counsel, except for specialized areas, such as bond counsel. Beyond that, the firm works as the Mayor indicated in that they have obtained limited insurance coverage for certain matters related to land use matters in addition to the typical insurance coverage for all of the other matters, car accidents, injuries, things like that as it always has.

Mr. Pagliarini stated that this is the general overview and he would be glad to answer any questions in addition. He pointed out that one of the items the Committee may have some interest in is the cost as it relates to other municipalities, so he put together some information there, however, understanding that this is their department and if the Committee wanted a full vetting of the cost it may be better to put that to the CFO and her department for a more details. He added that he has put together some costs comparisons with other municipalities.

Mayor Haynie asked if he would like to share those with the Committee.

Mr. Pagliarini stated that at this point for fiscal year 2018 the Town's contract with HMP is \$403,267.00 which covers 2 full time attorneys. In addition, the firm maintains a full-time litigation paralegal and a full-time real estate paralegal as well as 2 other attorneys that do not appear at the Town but have the ability to help when necessary.

Mr. Pagliarini stated that the 2018 budget calls for \$178,000.00 for outside legal fees and costs and this is a particularly high period of litigation with the

Park West matter and other matters the litigation costs are fairly significant so that is what is budgeted this year and there are some salaries and benefits as there is and has been a legal secretary dedicated for the Town for some years and when you factor in her salary and her benefits that number is \$82,000.00.

Mayor Haynie asked if that is a Town employee.

Mr. Pagliarini stated that it was a Town employee.

Mr. Pagliarini stated that at this point for 2018 the portion of the legal budget dedicated to corporation counsel is \$664,000.00. He added that the City of Charleston which is a little larger than the Town their in-house salaries are \$718,000.00 and the benefits are \$235,000.00 and they also contract out for many of their services which is \$422,000.00 with a total of \$1.47 million so roughly \$800,000 more than the Town.

Mr. Pagliarini stated that the City of North Charleston is a fairly similar model and they do contract their corporation counsel and that is for one position and not 2 with a total of \$280,000.00, however, in addition, they also retain several in-house lawyers and their salaries and benefits total approximately \$450,000.00 in addition they have to contract outside for over \$300,000 so the City of North Charleston's budget for 2018 is about \$1,094,000.00 some \$400,000 more than the Town of Mount Pleasant.

Mr. Pagliarini stated there were several municipalities who do not put out budgets that are particularly detailed for example, Greenville, it was very difficult to get those numbers. He added that their budget is just over a million dollars, but he cannot determine at this point what exactly that goes to.

Mr. Pagliarini stated that the City of Columbia is \$2.1 million and again he does not know where those numbers come from either and how it is broken down, but it is significantly more than the Town.

Mr. Pagliarini stated that many municipalities, City of North Charleston, Charleston County and Greenville have switched from in-house corporation to contracted services and those are typically hybrid which means they have contracted services plus in-house. He added that the Town has bypassed the in-house option and utilizes only the contracted services.

Mayor Haynie asked which ones do that.

Mr. Pagliarini stated that Greenville, City of North Charleston and Charleston County to his knowledge.

Mayor Haynie asked if Greenville, City of North Charleston and Charleston County had a hybrid.

Mr. Pagliarini stated that their general counsel is contracted but they maintain staff lawyers for support purposes.

Mayor Haynie stated that he believes for the budget this year that the former Council voted for a new contract for HMP and asked to be corrected if he was wrong, the base retainer went from \$390,000 to \$450,000.

Mr. Pagliarini stated that it is a gradual increase and that this year the budget number is \$403,000 and will go up annually.

Mayor Haynie asked if it would go up to \$450,000.

Mr. Pagliarini stated that he believes that is the end number.

Mayor Haynie asked if the Town was under contract with HMP.

Mr. Pagliarini stated that the Town is under contract which was voted on last Spring and took effect July 1, 2017 and it is for four years.

Mayor Haynie asked if it was normal for lawyers to have their clients under contract.

Mr. Pagliarini stated that in a typical arrangement attorney/client that he would say “no” but in a client arrangement such as this he believes that all of the municipalities that he has looked at have contracts and that this is fairly common; however, he would have to do a canvas study as to what the other contracts look like but he can tell that when the process was originally started the Town’s offer to the firm, in his understanding, was based on contracts similar to other municipalities and governments in the State but that would be a question for Mr. DeMoura and staff.

Mayor Haynie asked that in private practice do lawyers normally have their clients under contract as he is considering this a government issue or does the ABA anything to say about having your clients under contract.

Mr. Pagliarini stated that he would have to investigate that matter but that he does know that in several corporate matters are typically contracts that the Mayor is talking about but typically it is a letter of representation which calls for specific matters for example a specific case or a specific purpose, that is more typical.

Mayor Haynie stated that just being under contract he is having trouble understanding the concept of why the lawyers have the Town under contract to where the Town cannot do anything.

Mr. Pagliarini stated that he takes exception to the Town cannot do anything but the why is that when HMP, and he assumes the other various Charleston County General Councils, himself, Mr. Hinchey and Ms. Copeland dedicate virtually all of their time to the Town of Mount Pleasant leaving every other area of practice and as a fundamental matter doing that there is some protection required for their firm. He added that if this Council or any other Council decides not to renew or to terminate the contract there is a period in which they would expect to be able to go back to their regular

practice and recover. He added they are dedicating their full-time and staff and all of those expenses and on the other side of it they are simply being protected from any sudden changes.

Mayor Haynie asked Mr. DeMoura when the Town has contracts with other services such as Public Service and the landscape contract that does work for the Town, is that an annual or a multi-year contract usually.

Mr. DeMoura stated that usually the larger contracts are multi-year. He added 3 to 5 years.

Mayor Haynie asked that when the contracts come up to be re-done or they are renewed is there normally an evaluation or recommendation from staff or some measure that is put to that.

Mr. DeMoura stated that yes there is and typically when the contracts come up for renewal that particular task is shopped competitively in the market and if the firm who originally had the work re-applied or competed for the work again then their performance would be brought into their evaluation as to whether they were the best fit for that project.

Mayor Haynie asked when this contract was renewed last year and increased the fee and extended it by 2 years was it opened to competitive bid or evaluate any other possible options.

Mr. DeMoura stated not that he recalled.

Ms. Whitley stated that it was mentioned there was a time period for the firm's protection for the time that has been dedicated to the Town and she asked it that was for one year.

Mr. Pagliarini stated that it is a 6 months' notice period and then there are some provisions after that but when added together it does come to a year.

Mr. Bustos stated that he had several questions in reference to this. He stated that when he was on Council before they had staff turning and now he questions who is in charge. He asked if they all took turns depending on the subject.

Mr. Pagliarini stated that Mr. DeMoura oversees the legal department and that he serves as corporation counsel and he is the designated member of the firm to serve as Corporation Counsel so while he does not like to consider himself in charge of Mr. Hinchey however, he does serve in that capacity as Corporation Counsel.

Mr. Bustos stated that he has struggled with this relationship and asked if Mr. Pagliarini reports to the Town Administrator.

Mr. Pagliarini stated that by ordinance their responsibility is directly to Council, however, as a practical matter on a daily basis, like all department heads, they report to Mr. DeMoura for administrative matters.

Mr. Bustos stated for administrative matters and asked Mr. Pagliarini if he saw the disconnect in that sometimes he is responsible to Council and sometimes to the Town Administrator. He added that at times trying to get an answer from the legal department is like trying to hit a moving target depending on who is in charge and asked if Mr. Pagliarini could see his difficulty with that.

Mr. Pagliarini stated that he was not sure as he thinks that the only administrative matters his firm deals with are matters that arise in the course and scope of the administrative day. He added that for example their day consists of about 5% of direct dealings with Council and the other 95% is spent reviewing contracts, pleadings, ordinances, and generally dealing with matters that arise day-to-day in the building with the Department Heads.

Mr. Pagliarini stated that what he does agree with and will say is that many municipalities and organizations struggle with who gets to tell, who gets to ask and who has the authority to ask the legal department as to what to do. He added that in this case it is clearly Council, and they report to Council and they do what Council requests. He added that some municipalities have it set up to where Council members are shielded from the legal department because, as is understood, there are nine councilmembers and they could get one request or several different competing requests.

Mr. Bustos asked if when a single councilmember comes in and asks for something to be done do they have to wait until full council can weigh in on it.

Mr. Pagliarini stated that yes for the most part because when they provide legal advice that is supposed to be for all nine councilmembers.

Mr. Bustos stated that Mr. Pagliarini said for the most part.

Mr. Pagliarini stated for legal advice, however, there are other questions about perhaps how to draft a motion, technical matters such as what does this ordinance mean, I'd like to bring this to council what is the best way to do it, can you help with some research to help me with this position, all of which are not necessarily legal advice but the way the system is now we help councilmembers as much as they possibly can, however, when it approaches the line of legal advice then that is to be shared with all councilmembers. He added, for example, they do not make legal advice available to only one council member but they do talk to all of the council members and that is a decision for the Committee to make if another way is preferred then a system can be implemented where no one has access to the legal department but he thinks that is counterproductive and not the way it has been done.

Mr. Bustos stated that he was not trying to be argumentative but when a person walks into the front door of the legal department and says I have a

question about something who would answers that, or do you say wait a minute Ms. Copeland handles that or no wait I can do that and who makes that decision.

Mr. Pagliarini stated that it typically depends on what the question is and over time he thinks Council members and staff have become aware of what lawyers are best at handling what department for example if it is a finance matter typically the CFO is going to Mr. Hinchey because he handles that and if it is a planning matter typically they will come to him. He added that they are all available but if he gets a question that he is not qualified to answer he will send it onto someone else in the firm to answer the question.

Mr. Bustos stated that it occurs to him that there are times when attorneys in the legal department nurture relationships with members of Council and he feels that is wrong and he thinks that has gone on and right now there is a bit of a “tadoo” going on about requesting opinions of the Attorney General based on legal advice that Council was given. He added he thinks part of that comes from the absolute confusion that they have about who is on first and the firm will talk to the Town Administrator about administrative matters but legal matters you do not just come to Town Council.

Mr. Bustos stated that may be whoever comes thru the door and he thinks there is a problem with that and having seen how the staff attorney worked, that system, where if there was someone with a condemnation question then the town came to Mr. Pagliarini to handle that question and might go to Uricchio & Howe or whoever depending on what the law suit was and he feels having a staff attorney is a better option for the Town of Mount Pleasant.

Mr. Bustos stated that he feels the Council needs to look at questions, like the whole AG thing, which stems from questions that came up from legal advice that was never sufficiently answered.

Mr. Pagliarini stated that the method and however if you wish at some point to go back to the in-house he feels that is fine and it is a Council matter and Council decision.

Mr. Pagliarini stated that the last year 2011 that the Town had that model the outside legal fees were almost \$400,000.00. so, there is a cost attached to that and he believes that they can and have handled all of those.

Mr. Pagliarini stated that he was not certain as to what Mr. Bustos was asking about the AG as legal was never consulted about letters to the AG and were specifically excluded from that. He added that there is a cure and that is to have either the Mayor or someone designated to meet weekly with counsel and that has been done in the past if requested by the Mayor and he and his firm are happy to do that.

Mr. Pagliarini stated that if there is any thought that there is some miscommunication about legal advice, that he really has no reference as to what is being asked. Generally, legal is called upon at meetings to answer questions. As it relates to the AG letters, legal was asked at that specific (July) meeting to make several legal decisions and that was done appropriately. He added that he is confident that it was done correctly, and he further stated under public record when these matters were voted on, that it is not appropriate to go to the Attorney General if there is a question about legal advice. In fact, the way to do that is to have Council get an opinion from another lawyer. He added they certainly would be fine to do that if there is a question about that.

Mayor Haynie asked how that would work.

Mr. Pagliarini stated that Council would make a decision to get an opinion from a qualified third-party lawyer. He added that the Attorney General is not equipped to provide back-up legal advice and they are simply taking a situation or facts as they are presented and rendering an opinion on what may or may not happen. He added that without question there are complex

legal decisions made every day and you may get attorneys with different opinions and in those situations like the one they are talking about again after they were made, the firm has gone back and checked with everyone they possible could who was familiar municipal law and found that in their opinions the right decisions were made and this does not mean that someone else could not disagree with that, however, when legal opinions are made public such as those, it exposes the Town to liability, sometimes significant liability.

Mr. Pagliarini stated that for instance on a question that whether there was a question of a proper or improper vote, if the Attorney General or member of that office has an opinion based on a certain set of facts it could seriously impact the Town legally. He added that would provide the knowledge that Council might wish to have, but it should be protected by the Attorney/Client privilege and that is his position, that a third party outside lawyer could be contacted with the facts and ask them for an opinion, it could harm the Town and the firm and they are also looking to improve and be correct, but the opinion then would stay protected by the Attorney/Client privilege. He added when it goes to the Attorney General that privilege is broken, it is made public and that is the danger that he spoke about on the record when this was voted on in the Fall.

Mayor Haynie asked if he knew what that vote was by Council when they voted.

Mr. Pagliarini asked which vote.

Mayor Haynie stated the vote to go to the Attorney General with two questions.

Mr. Pagliarini stated there were two that he recollected, one was September and the other November.

Mayor Haynie stated that he believes they were November and December after the election.

Mr. Pagliarini stated that could be, but he did know that there were two questions that were voted on, one was passed and that was the one Councilmembers were named in a law suit and that passed the first and second time. He added the other question was about FOIA and executive session that failed the first time but passed 8-0 the second time.

Ms. Whitley stated if any of Mount Pleasant's peer towns have a similar structure to the one the Town has which is a peer/contract model or is it all hybrid or in-house staff.

Mr. Pagliarini stated that North Charleston was fairly similar, and they contract their General Counsel but that is only for one position and they also have staff attorneys supporting. He added that County of Charleston is the same way in that they contract their General Council but they also staff lawyers supporting that person.

Mr. Pagliarini stated that as Ms. Whitley eluded to different in that respect in that as you contract a Corporation Council, but we do not have lawyers on staff to support and that is all done under the contract exclusively.

Mayor Haynie stated that based on Mr. Pagliarini's advice he is going to ask Ms. Cotov who is in the room for the next meeting he would like a breakdown from the Town's standpoint on what all of the legal costs are. He added he would like the report to include the Town's personnel and what is paid for outside counsel whether it is corporate counsel or third party. He added he would like a breakdown total for all legal representation from 2016, 2017 and then what it looks like for 2018.

Mayor Haynie asked if that was a reasonable request.

Mr. DeMoura stated that was reasonable.

Mayor Haynie stated he feels this will give the Committee an idea of what the whole picture is because some of the cost is the Town's own staff.

Ms. Whitley stated she would also like a report on why the change was made away from the General Counsel for instance was it a pure cost measure as she is personally a retired attorney and to her the General Council structure seems to be the standard structure at least in the corporate world for companies of any particular size and given the size of the Town having a dedicated General Counsel to manage all of the outside attorneys or to be able to go to a specific attorney or strategically select attorneys for particular matters gives the Town freedom that perhaps the contractual arrangement does not.

Mr. DeMoura stated that he has that information in his head as he was there, and he thinks the feeling, not speaking for the elected body, was that was too much work. He added that there was one body and that one individual could not possibly take on all the legal responsibilities of a fast-growing community and because of that much of the work was being passed out throughout the community to be accomplished.

Mr. DeMoura stated that Council felt there was a cost issue associated with that they no longer wanted to bear and started looking at other ways of going about doing it which lead to the current situation the Town is in now.

Mr. Pagliarini stated he wanted to add that they do maintain that flexibility and if they need to go outside for specific reasons they still have the flexibility to do so. He added they attempt to avoid retaining outside counsel as a cost control measure, but occasionally for example, for bond work there are only a few lawyers who are qualified to do that and they specifically go outside for that purpose and if matters arise, you can say fortunately or unfortunately, given their experience level he imagines that is why they were hired. He added that within their firm they have the areas

that the Town requires which is land use, development, HR and finance and they are able to do that with the personnel that they have.

Mr. Pagliarini stated that as a credit they have not been forced to do that but can retain outside legal if need be.

Mayor Haynie asked that when they were transitioned in to being the Town's Corporate Council obviously there were some ongoing legal issues, cases pending, and that type thing so were they able to transition into being the Town's attorneys and taking over those cases or how did that work. He added that there is probably never a time with a Town this size where there is not some ongoing legal matter.

Mr. Pagliarini stated that what happened at that point was that there was a period of six or eight months that some of the outside counsel remained working on cases which needed to be completed by those outside counsel.

Mr. Pagliarini stated that for example there was what he calls the golf course litigation which is an example that was being handled by Frances Cantwell and his firm simply joined in with Ms. Cantwell and brought that to a conclusion. He added there were some other miscellaneous matters, real estate matter and things like that that those lawyers brought to a close, but they transitioned in really over the first six months to a year in order to bring those to a close.

Mayor Haynie asked that when this was done there was a transition period that they were able to work with.

Mr. Pagliarini stated that yes, they were and like any other department managers there is historical knowledge that needs to be gained and so he thinks any lawyer taking over a case mid-stream that there is a period of adjustment and re-adjustment.

Mr. Pagliarini stated that the way their contract is situated is that they are able to do even litigation work and the majority of it under their 80 hour a week contract. He added that when he says there is a contract that covers 2 full-time lawyers, but they are also able to do a lot of the hourly work and litigation under that time chunk.

Mr. Pagliarini stated he feels they are able to manage that and mainly because he was one of them, would like to believe that the Town hired very good outside counsel to include Ms. Cantwell and others. He added he believes it was a nice transition.

Mayor Haynie asked Ms. Cotov if she knew what the Committee was asking and asked if there were any other comments or motions from the Committee.

Mayor Haynie stated that the conversation would be continued at next month's meeting.

b. Consideration of ordinance language relative to Board and Commission meeting attendance

Mayor Haynie stated that this came up when it was brought to the Committee's attention that there were some appointed board members with excessive absences and the Town wanted a consistent yet firm way of dealing with that.

Mr. Pagliarini stated that in his mind there are three areas to consider. He stated that the way the ordinance has been set up is there is a 75% meeting requirement for all meetings.

Mr. Pagliarini stated that the first question would be does Committee want to keep the threshold at 75%. He added that based on comments at last month's committee meeting he believes 75% was the preferred number but that is for consideration.

Mr. Pagliarini stated that the second question would be what the time period for is measuring the 75%. He added that he believed Mr. Bustos had inquired about a rolling percentage and as the ordinance is currently written it is from January 1st to December 31st and at the end of the year the attendance can be analyzed.

Mr. Pagliarini stated that Mr. Bustos had asked for perhaps the suggestion was for an avenue that you can miss meetings and then come in at the end. He added if you do it as a rolling the way this proposal is written is that it would be measured as of the first of each month. He stated that he thought it may be difficult to have it on a daily basis and calculating that out. He added that in discussing the matter with staff that one appropriate measure would be at the first of every month you can go back twelve months and review it from that stand point.

Mr. Pagliarini stated the third and most important question is the request was made to bring this away from Council as a discretionary matter and to put it in the hands of whatever the numbers are and the way it is written is a member that falls under the threshold then it falls on the Town Administrator to remove.

Mr. Pagliarini stated that this is the way it is written and of course if the Committee wanted it to go to Council he believes that is the discretionary part of it. He added that if and when it would come to you as it currently does he thinks it would be a discretionary issue.

Mr. Pagliarini stated that he does not believe it needs to be made a situation where why have a Council vote if it is absolutely required.

Mr. Pagliarini stated that is the way it is written and to please note that there are excused absences and unexcused absences and the way this is written is that there is an allocation for one excused absences and those are defined and to be determined by the chairperson and that must be stated

on the record so there is no issue going back in time as to whether it was excused or unexcused absence.

Ms. Whitley asked if this language was going to be global for all the different Commissions.

Mr. Pagliarini stated that was a decision the Committee should make, and his understanding is that it will be and there are many boards, some with their own structure, he would incorporate this through all of the boards and commissions.

Ms. Whitley stated that she feels it should be uniform for all of the commissions.

Mr. Bustos stated that he agreed.

Mayor Haynie asked if as this is worded is it applicable to every board and commission. He added that he understands that task forces are excluded from this because they are a different animal.

Mr. Pagliarini stated that was correct and he believes the recommendation would be for the standing type organizations and it is able to be utilized for all of them.

Mayor Haynie asked if this needed a vote.

Mr. Pagliarini stated that if there are any specifics that need changed or if the committee is ready to move forward he thinks that if the committee wants it to go to all the various boards and commissions he would want to know that and if the committee wants to approve it as written that would be sufficient.

Ms. Whatley asked if they need to make a motion to have it go before full Council.

Mr. Pagliarini stated yes, a motion is required.

Mr. Bustos stated that he feels this is written well and this is what the committee was looking for to have a firm standard so at this point he wanted to make a motion.

Mr. Bustos moved to have the legal staff put this in the necessary form and recommend to full council that this be adopted. Ms. Whitley seconded the motion. All present were in favor.

c. Consideration of an Ordinance for Environmentally Acceptable Packaging and Products

Mayor Haynie stated that he just wanted to say one thing to his fellow committee members and the public as well and that is that he does not think the discussion in this committee is on substance so much or whether plastic bags or Styrofoam is good or bad and his thought is that when this came to the committee is enforcement. He added that if it passes or gets amended in some other way as he knows this originated in Public Services that would be more for what types of containers and this type thing and the purpose of this is simply is this enforceable and if so, how do we go about it and would it require any augmentation as the police department would enforce this. He added that he has questions for example he does not think he has ever seen a non-smoking ban enforced as he does not know if he has ever seen one have to be enforced.

Mayor Haynie stated that his question would be if someone has plastic bags when they are not supposed to does the person carrying the bag get a ticket or does the vendor of the bag get a ticket and if so does the Town have the resources to do it and does it come from Planning or law enforcement.

Mayor Haynie stated that he is approaching this under the presumption that if it passes that the Committee has looked at the enforcement aspects of this and given Council some consideration if there is any or a total okay.

Mr. Pagliarini stated that to start out as to the resources that is a Mr. DeMoura question, but he would say in looking into this and the research and drafting from a legal standpoint that Council can define whether plastic bags and all the various items that you want to ban or restrict that is a matter of policy.

Mr. Pagliarini stated that the enforcement is the difficult part of it because like any matter with the Town whether it be a code violation, a building code violation or something that there is a team dedicated to do that but he would say in writing this that is at least what Legal is asking you today is where would you like to see it go and he realizes the Committee will probably look back at staff and say what is the best way to do that.

Mr. Pagliarini stated that it is probably primarily a Planning Department, but he also thought about the smoking ordinance is a Police Department function, so it really falls under either and he would like to think it is a law enforcement function because there are penalties associated that are affiliated with what our police officers do.

Mr. Pagliarini stated he believes it can be done either way but would put it to Mr. DeMoura as to what is believed to be more effective as far as the enforcement.

Mr. DeMoura stated that in his opinion it should be under the privy of the police department. He added that if contacted the Town will have police officers around Town and they are more than up to speed on the laws of the Town that you pass.

Mr. DeMoura stated that it is his recommendation that the Police Department be charged with the enforcement as in many times in a situation like this a phone call would probably be the first thing received from someone reporting the violation and at that point an officer would be

dispatched to investigate and if found to be that way they would take the appropriate action as outlined in the ordinance.

Ms. Whitley stated that she has skimmed the ordinance but not read it deeply and asked when someone is found to be in violation is there a warning and a time to cure or once the grace period is over is it an automatic fine.

Mr. Pagliarini stated that he thinks he heard it mentioned there be a period of transition but beyond that a ticket would be issued and it would follow the course and procedure as we do in the municipal court system. He added that he would think it would be discretionary that the police issue a warning but that is a police matter but the ordinance itself calls for a ticket and then a fine structure.

Mayor Haynie asked Mr. DeMoura or Chief Ritchie if this would require any increase in budget or manpower or would the department be so busy enforcing this that other areas have a strain put on them because of this.

Chief Ritchie stated that he did not believe that it would and that it would come under the normal duties. He added as in the smoking ordinance, just recently one was dealt with that came through the legal office and sent to the department who sent an officer to speak with the people that were in a business building being shared and the officer was able to assist, and no tickets were issued.

Chief Ritchie stated that this would be the same case here and he does not believe there would be a lot of calls and does not anticipate making a lot of traffic stops for plastic bags but of course if there were stores in violation or something that is called on then the department would respond and as Mr. Pagliarini said officers do have discretion to either write a ticket or not write a ticket.

Chief Ritchie stated the Department could handle this without any extra stress on the department.

Ms. Whitley stated that she thinks this is a great step forward for the Town by limiting and doing this environmental regulation and feels the Town is following in the footsteps of peer Towns that have gone before us and thinks the move will inspire other Towns in the area to go along with it.

Ms. Whitley stated she was not sure if a motion needed to be made for this to go to Full Council for first reading.

Mr. Bustos stated the one question he had was what the fine was for littering.

Mr. DeMoura stated that he thought he knew but was not positive, so he would not say it.

Mr. Bustos stated that his point was perhaps the Town's fines for littering are too low and that an increase may act as a deterrent for people throwing plastic bags out. He stated he doesn't know if plastic bag littering can be separated from regular littering but perhaps if the fine was known at first reading that would help and may need to be included with the ordinance instead of saying a grocery store is passing out plastic bags it is still the litterer that causes the problem and feels the fine should be increased.

Mr. DeMoura stated that he would be happy to pull up the fine structure and email it to the Mr. Bustos and the rest of Council to look over and proceed as they like.

Mayor Haynie stated that was probably a separate topic than this one as we have an ordinance on littering.

Mayor Haynie stated he believes if he read the ordinance correctly by the time this passes it would be a year before it would take effect and there will

be time to warn the public and tell people it is coming and to start moving away from single use plastic bags or whatever is in the ordinance.

Mr. Pagliarini stated that was the way it is written and if you look at other jurisdictions it could be a lower period and in some it is much longer so that would be an issue for Council to decide if the lead in period is sufficient or not.

Mayor Haynie stated that he had no further questions but asked if there was a motion to recommend this to full council that we have looked at this from the legal and police side and see no issues from this Committee view that would be a yellow flag on this ordinance.

Ms. Whitley moved to have this ordinance go to full council for first reading. Mr. Bustos seconded the motion. All present were in favor.

Mayor Haynie stated he would also like to tell full council that the Committee have looked at this and that enforcement will not be an issue.

Mr. Pagliarini stated he would add to that, based on this conversation, that there will be a little re-writing based on police department enforcement and of course first reading will be first reading and then any amendments will be at final reading which assuming it goes on track would be for April and any changes would be made for that time.

Mayor Haynie stated to keep in mind that this is also on another Committee's agenda today and asked Mr. Pagliarini if first reading was anticipated for next week's Council meeting.

Mr. Pagliarini stated that he would be prepared for that if that is this Committee's wish and the additional Committee's wish.

6. Adjourn

There being no further business, the meeting was adjourned at 9:02am.

Minutes submitted by:

Lori Gaskin

01/02/2018