

**MINUTES OF THE COMMITTEE OF THE WHOLE MEETING OF THE  
PORTAGE CITY COUNCIL OF MAY 14, 2020**

Mayor Randall called the meeting to order at 1:04 p.m. The meeting was held virtually in accordance with the Governor's Executive Directive 2020-02 in light of COVID-19. The following members were present via the WebEx meeting platform: Councilmembers Chris Burns, Richard Ford, Lori Knapp, Claudette Reid, Terry Urban, Mayor Pro Tem Jim Pearson, and Mayor Patricia Randall. Also in attendance on the WebEx meeting platform was Deputy City Manager Adam Herringa. In attendance in Council Chambers were City Manager Joe La Margo, Deputy City Manager Mike Carroll, Communications Manager Mary Beth Block, and City Clerk Erica Eklov.

Mayor Randall reviewed the purpose of the meeting relating to the City Attorney contract expiration and deferred to City Manager La Margo. The City Manager reviewed the current City Administration's efforts to find cost savings and increased efficiencies. He noted that, with the arrival of Deputy City Manager Carroll and his background as an attorney, he had asked Mr. Carroll to review the current City attorney contract as the contract deadline approaches. Mr. La Margo stated that he believes it is time for the City to perform another RFQ for City attorney services. He stated that he likes the current way the City attorney services are structured and desires to keep the current structure instead of hiring internally. Mr. La Margo relayed that he and Mr. Carroll had reviewed the City Charter for potential efficiencies regarding City attorney services, noting that every City contract must currently go before the City attorney for approval to form, whereas they believe some contract could be completed internally. The City Manager also stated that staff is hoping to streamline acquiring outside attorney services, highlighting several recent instances when specialized counsel relating to marijuana, eminent domain, intellectual property issues, and others were needed. Mr. La Margo stated he is seeking City Council's feedback with regard to City Attorney services to better prepare language for an upcoming RFQ. The City Manager then deferred to Deputy City Manager Carroll for additional discussion.

Deputy Manager Carroll relayed that he has noticed things have been done not necessarily in accordance with the Charter. He highlighted section 6.6(B) of the Charter while noting that other sections, such as 6.6 (H) also give additional flexibility. Mr. Carroll stated that staff would like City Council's direction specifically with Section 6.6(B). Mr. Carroll highlighted issues in the past four months relating to code enforcement and relayed that this could become problematic as the City plans to increase enforcement efforts to elevate the quality of the city. Mr. Carroll also noted he had compiled a cost comparison with the assistance of the Michigan Municipal League highlighting that many cities currently use outside City attorney services similar to Portage. Mr. Carroll relayed that municipal attorneys can be challenging as they are usually not regularly performing litigation in courtroom environments. Deputy City Manager Carroll proposed separating litigation or enforcement as a standalone item in the upcoming RFQ. Mr. Carroll then stated that the current Charter requires the City Attorney's approval as to form all contracts which have created inefficiencies. He relayed there is currently a two- to three-day turnaround on contract reviews. He stated that repeat contracts should be able to be executed more easily. Mr. Carroll stated that the city is potentially spending more money on matters that are not needed. Mr. Carroll also noted that, under the Charter, City Council has the authority to hire specialized attorneys when needed, whereas historically staff had been hiring outside legal counsel. Mr. Carroll stated the City Administration would like to know whether the Council would like that practice to continue. He then turned the discussion over to City Council.

Councilmember Reid highlighted section 6.6(B) in the Charter and asked how many times ordinances require prosecution and, if the city is going to increase this effort, how much more of this effort do staff expect will be needed. Deputy City Manager Carroll responded that each case is unique. He stated some cases can be taken care of with one court appearance, whereas others can become prolonged. Mr. Carroll highlighted a current code enforcement case that he is currently monitoring where the person appears to be "gaming the system" and has already been there in court six times. Mr.

Carroll further responded to Councilmember Reid noting that there are pros and cons to increasing enforcement, stating that would likely be a 50 percent increase in cases with the new ordinance. He stated that he believed that this increase would be temporary in the beginning but is expected to taper off once citizens understood the city was getting more serious about code enforcement.

Councilmember Reid then relayed that she was not aware of how often or how many specialized attorneys have been hired in the past year. Deputy Manager Carroll responded that most contracts had come before Council, such as Bond Counsel, Environmental Counsel, and Labor Counsel, whereas the medical marijuana attorney contract did not require Council approval but the City Manager had made Council aware at a Committee of the Whole meeting. Mr. Carroll noted that the marijuana attorney was a single instance, whereas the other attorneys are routine except for an occasional eminent domain case.

Mayor Randall inquired regarding Michigan Tax Tribunal appeals and the specialized attorney for those cases. Deputy City Manager Carroll responded that he was unsure of the history in this instance.

Councilmember Knapp asked about the process for the hiring of outside legal counsel and whether that has been historically done through the City Manager's Office with the City Manager signing the contracts. She further inquired as to how the city decides which attorney to contract with. Deputy Manager Carroll responded that the City has identified leaders or very competent attorneys in those specific areas of interest. He then provided a history of each attorney the city currently utilizes and their tenure. Mr. Carroll stated that his opinion was if the City already had counsel providing good advice then continue to retain their services, noting the attorneys to date have been great. Mr. Carroll further offered that historically the City Manager's Office would retain the attorneys when necessary and would like the City Council to allow that to continue.

Councilmember Knapp requested additional clarification regarding protocol, noting Section 6.6(H) in the Charter, whether the desire is for City Council to provide some authority to the City Manager's Office to retain outside counsel. Deputy City Manager Carroll confirmed, stating that if a particular subject is outside the City Attorney's knowledge base then the City can hire a specialized attorney. Councilmember Knapp then highlighted the City's organizational chart noting that the City Attorney presently reports only to City Council and asked when the City Manager's Office is retaining counsel how City Council can account for reporting purposes. Deputy City Manager Carroll responded that many municipalities have a dual report structure that includes the City Manager's Office, noting City Council is separate from staff but the City Attorney reports to both Council and the City Manager's Office.

Councilmember Urban inquired about the particular municipalities noted on the comparison spreadsheet, stating that some municipalities did not match Portage in size for comparison purposes. Mr. Carroll responded that he used the Michigan Municipal League responses from a listserv request. City Manager La Margo noted that the listserv goes out to all Michigan municipalities but only those listed on the comparison example were the jurisdictions who responded in the short timeframe given.

Mayor Pro Tem Pearson agreed with Councilmember Urban and highlighted the annual City Manager salary survey. Mr. Pearson requested staff to inquire with the seven comparable cities in that survey to also be asked about City Attorney services. Councilmember Urban also noted the annually published list for comparable tax rates and requested those municipalities also be asked. He also requested the City of Kalamazoo to be included as it is the neighbor city to Portage. Mayor Pro Tem Pearson agreed. The City Manager and Deputy City Manager confirmed that they would include those municipalities in the secondary survey.

Councilmember Urban further noted that pulling away prosecutions from the City Attorney's office is a Charter provision and requires a vote of the people to change, not City Council. Debate regarding the Charter and Section 6.6(B) versus 6.6(H) followed.

City Manager La Margo noted that the City Administration desired to adhere to a procedure that all of the Council was comfortable with and that proved to be efficient. He stated that if Council was comfortable with the current procedures and structure of the City Attorney services, then he would not

make changes, but highlighted that with the current contract up for renewal that now was the time to review the topic. He suggested some matters could be reviewed by the Mayor and Mayor Pro Tem to increase efficiency.

Deputy City Manager Carroll then expressed concerns regarding structuring the City Attorney to an hourly format in an effort to economize and expressed a preference to continue the current contract structure using a flat fee contract. He stated that staff also want the opinion of the City Council regarding the desired contract structure for the upcoming RFQ.

Councilmember Urban agreed that having the City Attorney review all contracts is cumbersome but stated the Charter requires it under Section 6.6(C). Deputy Manager Carroll disagreed noting that the City Attorney is also under the direction of City Council. He further stated that the City Attorney is not preparing all contracts and documents as outlined in the Charter, in some instances outside vendors are preparing the contracts with the City Attorney simply approving them to form.

City Manager La Margo clarified that he was not looking to revise the Charter, that he wanted clarification from Council on a direction to ensure a cohesive procedure is followed going forward.

Councilmember Urban replied that the specialized marijuana counsel needed City Council approval. He further stated that sending certain matters to only the Mayor and the Mayor Pro Tem was unacceptable and all of the Council needed to review and approve items. He stated that he did not believe the Mayor and Mayor Pro Tem had any special authority beyond the other Councilmembers. He expressed concern that any proposed changes could violate the Charter and understanding these provisions were outlined by the Charter and not by ordinance has changed his prior opinions.

Mayor Pro Tem Pearson stated that certain contracts like the annual face painting contract should be considered routine. He also stated that he believes Section H of the Charter supersedes Section B and noted that other provisions in the Charter are not currently followed either.

Mayor Randall replied to Councilmember Urban regarding the current outsourcing of the bond counsel and labor attorney being long-term contracts that are not outlined in the Charter. She further stated that it is best to have a subject matter expert and get the best advice for the price. The Mayor also highlighted that she is receiving repeat complaints from citizens on code issues and feels this needs to be handled better in the future.

Councilmember Reid spoke regarding repetitive contracts and stated her desire that Council does not relinquish that oversight. She noted the current City Attorney contract is for five years and proposed a slightly shorter term. Ms. Reid further inquired about Council passing a resolution for approving certain routine outside legal counsel contracts, such as bond and labor counsel, that would be explicit regarding City Council intentions.

Councilmember Knapp stated that she liked Councilmember Reid's suggestions as a way to ease into a modified contract structure. She noted that, under the Charter, if the City Attorney was supposed to do everything there would not be a Section H. Ms. Knapp further agreed with Councilmember Reid that the next City Attorney contract is for a period slightly less than five years.

Councilmember Urban agreed and supported a more efficient procedure if there was a way in which to comply with Section C of the Charter. Mr. Urban also expressed agreement with the Mayor regarding problematic code enforcements, noting that it may be the ordinance guidelines that slows the process and not the attorneys prosecuting the matters. He expressed hope that the internal processes of the City Administration can be streamlined while still following due process.

City Manager La Margo responded to Councilmember Urban stating he believed the city needed a stronger prosecutor and deferred to Deputy City Manager Carroll. Mr. Carroll relayed that he had reviewed the city processes in the last four months and agreed with the manner in which items were being handled but also noted that he had gotten involved with the City Attorney's Office with regard to prosecuting. He stated that municipal attorneys differ from prosecuting attorneys in that litigation is a specific portion of law where municipal attorneys traditionally do not perform as well. Deputy City Manager Carroll relayed that the City Attorney contract could be less expensive but a contract with a

prosecuting attorney would be more dependent upon how future contracts were structured.

Councilmember Burns stated he wanted to echo Councilmember Knapp regarding her suggestion that a contract term be less than five years, especially in light of the proposed Fiscal Year 2020-21 Budget.

City Manager La Margo responded that the contract length is at the discretion of City Council but he desired further direction as to how to proceed with the service structure.

Mayor Randall stated that a Committee of the Whole meeting does not hold votes but she believed Council could provide direction now to allow for the City Attorney Services RFQ to be placed a later Council agenda. Mayor Randall stated that she has always favored voting to put this contract out to bid as the City Attorney contract is one of the biggest dollar amounts. She noted that the last time this contract was bid that there were two lower bids but City Attorney Brown had ultimately provided a supplementary addendum.

Councilmember Urban stated he was concerned with a shorter contract noting the steep learning curve, highlighting the current City Attorney's institutional knowledge and stressed that a shorter contract would need to allow for a new City Attorney to learn the city. He suggested advertising multiple RFQs with one format for the current structure and another format using the current structure but separating a prosecuting attorney and comparing the costs. He then inquired about Mr. Carroll's idea from a prior meeting to bring a magistrate into Portage and asked for more information on that proposal.

Councilmember Reid agreed that a one-year term for a new contract for a new firm would be too difficult and suggested at least a two-year term would be needed with explicit Council approval for certain categories of attorney types to adhere to the Charter.

Councilmember Ford agreed with the previous Councilmember suggestions but highlighted the numerous instances of City Council and City Attorney interaction, as well as interactions with the various City Boards and Commissions entailing evening meetings. He stated that at \$300 an hour and hourly structure could create a very expensive contract and requested an estimate regarding the amount of time the current City Attorney devotes to the City.

Mayor Pro Tem Pearson expressed a preference for a shorter contract such as a three or four-year term. Councilmembers Knapp and Burns agreed. Mayor Randall then asked whether the City Manager had any additional questions.

Deputy City Manager Carroll then reviewed the City Council's requirements from the meeting discussion. He noted the Council's request that he review the seven other entities or municipalities for service provision and costs comparison; that the upcoming RFQ structure needed to be tiered with one proposal mirroring the current City Attorney Services structure, then a second proposal with a split structure, and a third proposal with a prosecuting attorney only, and finally that the contract term be three to four years.

Mayor Randall questioned the potential for an a la carte bid structure to prevent from burdening responses and ensuring proposals were competitive. Deputy City Manager Carroll responded that advertising two bids would be best using the first and second service structures. Mr. Carroll also responded to Councilmember Ford, relaying the lack of response from his prior inquiries to the current City Attorney regarding current time commitments or time spent on cases.

Councilmember Urban inquired about the review of contracts and asked how the City could adhere to the Charter by eliminating contract reviews for contracts that only change dates or similar small details. He wondered if the City could create a policy with a noted dollar amount and provisions regarding change limitations to streamline this process. He then requested that the proposed RFQ receive City Council review and approval before the City's publication. Discussion then followed regarding the history of whether RFQ proposals were provided to the Council before publication. Mayor Randall asked the City Manager to review prior action and repeat what had been done previously. Councilmember Urban stated that if the contract is at the behest of the City Council then Council should

approve the RFQ.

Councilmember Reid noted the City Council only deals with two offices, the City Manager and City Attorney. Mayor Randall responded, asking City Manager La Margo to have the RFQ proposal on the next City Council agenda.

Mayor Randall opened the meeting for any citizen comments. There being none, the Mayor then asked if there were any additional Councilmember comments.

Councilmember Urban inquired about the magistrate option proposed by Deputy Manager Carroll. City Manager La Margo responded that it was just an informal idea at this time and not ready for a formal proposal. Mayor Pro Tem Pearson expressed hesitation regarding the public perspective in utilizing a magistrate to gain revenue. Councilmember Urban agreed, noting he was simply curious about the matter.

ADJOURNMENT: Mayor Randall adjourned the meeting at 2:55 p.m.

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Erica L. Eklov, City Clerk