



City of Taunton
Municipal Council Meeting Minutes

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Temporary City Hall, 141 Oak Street, Taunton, MA
Minutes, July 9, 2013 at 6:05 o'clock P.M.

Special Meeting

Councilor President McCaul presiding

Present at roll call were:

*Councilor's Barbour, Carr, McCaul, Pottier, Costa-Hanlon,
Medeiros, Colton, Marshall*
Councilor Cleary was absent.

Hearings:

Pursuant to section 18-4 of the Revised Ordinances of the City of Taunton, and any and all other applicable legal authority, a hearing will be held on the possible removal from office of Constable William Garcia before the Taunton Municipal Council, Tuesday, July 9, 2013 in the Chester R. Martin Municipal Council Chambers, Temporary City Hall, 14 Oak Street, Taunton, MA at 6:00pm. The hearing may be held in open or closed session. **Motion was made to open the hearing. So Voted.** City Solicitor stated that there are three matters that need to be addressed. Communication was received from Attorney Thomas Hensley regarding a continuance for two (2) weeks. Solicitor Buffington stated that he would recommend to Council for a short continuance to be granted. **Motion was made and seconded to continue. Motion was made to withdraw motion. So Voted.** Solicitor Buffington informed that his office summoned witnesses to be present for this Hearing; therefore, he asks that Council allow them to identify themselves and let it be known that they are present under the subpoena. **Motion was made to move approval. So Voted. Motion was made to invite in the witnesses. So Voted.** Patrick Penha and Kelsey Wellford were present. At this time the witnesses were sworn in by the City Clerk. Attorney Buffington asked the witnesses if their presence were due to the receipt of the summons received by his office and informed them that the Council may be continuing the Hearing until July 23, 2013. Both witnesses informed that they were present due to the summons and that they would be able to return on the continued date. Present was Chief Walsh. Because of the seriousness of this matter, the Chief recommended temporarily suspending Mr. Garcia's Constableness until such time that the pendency of the matter is over. Solicitor Buffington notified Attorney Hensley's office earlier today of the Chief's recommendation. Attorney Hensley stated that he had spoken to Mr. Garcia regarding the recommendation and Mr. Garcia informed that he would voluntarily agree not to perform any duties as a Constable from now until the time of the Hearing. Councilor Marshall asked if the Council could suspend his Constableness until the continued date. Solicitor Buffington stated that with the authority to appoint is the authority to suspend for a short period of time; although the Council would not have

the authority to remove from office without a Hearing. **Councilor Carr motioned to suspend Mr. Garcia's privileges until Hearing date in two (2) weeks. Voting in favor was Councilor Marshall, Colton, Medeiros, Pottier, Carr and Barbour. Voting in opposition was Councilor Costa-Hanlon and McCaul. So Voted. Motion was made to continue the Hearing until July 23, 2013 at 6:00pm. Councilor Costa-Hanlon would agree with a continuance as long as the Municipal Council receives pertinent information one week before the Hearing that would be used by both the City and Council for Constable Garcia; court documents, copy of witness list and any other documents that either party would be relying on.** Solicitor Buffington stated that he knows of no legal authority under which the Council could compel either the Law Department or Respondent to tell exactly what evidence would be introduced. Because things are fluent, he cannot commit to Council that he will have every piece of paper going to be used at the Hearing one week before. Councilor Costa-Hanlon stated that Council would absolutely have the authority to request those documents to be provided beforehand if any party is expecting to enter evidence at this Hearing, as part of the record. Councilor Carr stated that she would not have an issue with requesting information, she just has an issue saying that we would not consider evidence if it is not given to Council one week before. With two week preparation, both sides could come up with new documents. All documents should be considered no matter if it is a week before or a day before. Councilor Costa-Hanlon stated that no one would know if they had a conflict if a witness list is not received ahead of time. She stated that it is incumbent on both parties to present Council with some reasonable information before the Council moves forward. She does not want to put herself in any potential conflict; nor should any Council Member put themselves in a conflict. Previously on this case, the Committee on Police and Licensing was handed an awful lot of documents before this Body was expected to make a final decision; and there was no issue there. Since this is not going to be heard in Committees first then Council should have the level of respect and procedure for this hearing. Councilor Costa-Hanlon pressed the motioned. Solicitor Buffington stated that the Municipal Council will not be sitting as a Judicial Body; this is an Administrative Hearing where the rules of evidence do not strictly apply. The Council sits as an Executive Authority where as they have the power to appoint or remove someone from office. The Ordinance states the principle of due process of law states that a hearing must take place prior to someone being removed from office. Solicitor Buffington stated that any Committee of the Council would not have authority to sit and decide this issue. The time for presenting evidence is at the trial/hearing and courts do not require anyone to produce all the evidences that they will be entering into evidence before the trial. If someone wanted to assist the City in presenting its case ahead of time, they could force Mr. Garcia to present all his evidence or vice versa. Solicitor Buffington stated that requiring Mr. Garcia to present all his evidence before hand, particularly implements some of his due process rights. Solicitor Buffington strongly recommended to Council that this motion not be adopted. Councilor Costa-Hanlon pressed the motion. **Voting in favor was Councilor Costa-Hanlon. Voting in opposition was Councilor Marshall, Colton, Medeiros, Pottier, Carr, Barbour and McCaul. Motion does not carry. Motion was made for all nine (9) Councilor's to provide within one week, to**

the City Solicitor's Office, information regarding their use of Constable Garcia's services either personally or professionally during the past five (5) years. Councilor Costa-Hanlon would like to amend Motion by adding any Witnesses. So Voted. Motion was made to continue the Hearing until July 23, 2013 at 6:00pm. So Voted.

Motion was made to adjourn at 6:30pm. So Voted.

A true copy:

Attest:

A handwritten signature in cursive script that reads "Rm Blackwell".

City Clerk

RMB/dmc