

**SPECIAL GLOUCESTER CITY COUNCIL MEETING**

Tuesday, December 20, 2011 – 7:00 p.m.

Kyrouz Auditorium – City Hall

**-MINUTES-**

**Present:** Chair, Councilor Jacqueline Hardy; Vice Chair, Councilor Sefatia Theken; Councilor Paul McGeary; Councilor Joseph Ciolino; Councilor Anne Mulcahey; Councilor Steven Curcuru; Councilor Greg Verga; Councilor Robert Whynott; Councilor Bruce Tobey

**Absent:** None.

**Also Present:** Mayor Carolyn Kirk; Councilor Elect Melissa Cox; Councilor Elect Steven LeBlanc; Linda T. Lowe; Kenny Costa; Jim Duggan; Jeff Towne; Suzanne Egan; David Bain; Melissa Teixeira

The meeting was called to order at 7:08 p.m.

**Flag Salute and Moment of Silence.**

**Committee Report: Budget & Finance (Cont'd from the City Council Meeting of December 13, 2011)**

**1. Addendum to Mayor's Report re: Memorandum regarding Health Insurance Reform – Adoption of Legislation**

**Council President Hardy** explained that the Council would take up a single item related to the addendum from the Mayor regarding the memorandum re: Health insurance reform and the possible adoption of legislation. It is before the Council for consideration. This is the City's health insurance. During an inquiry today to the State Ethics Commission legal staff by one of the City Councilors, advice was sought on the fact that City Councilors participate in the City's insurance [plan]; and asked would it be a violation of State ethics statute for the Council to vote on health insurance if they participate in the City of Gloucester's health insurance program. The verbal opinion was that the Council was indeed prohibited from voting on the health insurance; but the Rule of Necessity might allow them to vote and should speak to its City Solicitor, in order that she could explain it to the Council. Before she introduced Ms. Egan to do that, she further explained that eight of the nine members of the City Council have City health insurance; and therefore, have conflicts in the vote before them this evening. Five members are the quorum necessary for a decision vote. The one member without the conflict does not make the necessary quorum. Thus, the Council cannot act without invoking the Rule of Necessity that will permit all of the members to participate on the matter. They have also received a decision from Deidre Roney, General Counsel of the State Ethics Commission, dated September 2, 2011 from the State Ethics Commission which was addressed to David E. Sullivan, General Counsel, Executive Office for Administration and Finance in Boston and concerned local elected officials covered by insurance.

**Suzanne Egan**, City Solicitor noted Council President Hardy had correctly described the Rule of Necessity and the conflict that is before the Council. The law that they are reviewing requires the City Council to act. The preamble to the Act states that the City Council should act as quickly as possible, not exact words, take immediate action on this. The Rule of Necessity can be invoked when there is a conflict of interest when a board or City Council cannot complete a quorum without invoking the Rule of Necessity. There are five requirements as shown on the opinion of the General Counsel of the State Ethics Commission. [**Note:** At the meeting the Councilors received a copy of this opinion by the City Solicitor. They also had the State Ethics Commission 05-05 Advisory on "Rule of Necessity" from the City Clerk.] One of the five requirements is this Council is the only entity that can act on this matter. The law states that only the City Council may accept the statute; it can't be delegated to any other authority. And so they met that requirement. The second requirement is the board or Council must act within a certain length of time. That is discussed in the General Counsel's opinion that the preamble states they should act as immediately as possible. They met that requirement. The rule must be invoked by one or more members of the Council; and there are eight Councilors who have the opportunity to invoke it in order to "sit" on this matter which **Ms. Egan** suggested they would have to do, each of them. The fifth requirement is that the minutes must reflect the fact that the board or the Council will lack a quorum because of the conflict of interest and that the conflict must be specifically stated in the minutes and that the Rule of Necessity is being used to allow the board or Council to take a valid vote. This legal opinion from the General Counsel of the State Ethics Commission specifically addresses this matter that is before them now; and specifically states in this type of an instance, once the Rule of Necessity is invoked, it is applicable and proper for the Council to act on this matter. **Council President Hardy** asked what Massachusetts General Law

(MGL), chapter and section(s) the Council would invoke. **Ms. Egan** informed the Council they would invoke MGL 268A, §19. However, the Rule of Necessity is not in the MGL. The Rule of Necessity is a rule developed by the Courts to deal with situations just like this. **Council President Hardy** asked at what point the Council would invoke the Rule of Necessity; after they've heard the presentations and place the motion on the table perhaps. **Ms. Egan** responded they would want to do it right away because they're allowing the Council to have a quorum to entertain this matter. **Councilor Ciolino** noted they can invoke §19. Once invoked did that mean only five Councilors could vote or they could all vote. **Ms. Egan** stated each Councilor who has the conflict can invoke the Rule so that each Councilor can sit on the matter. They each do it individually.

**Council President Hardy** entertained a motion to invoke the Rule of Necessity as stipulated by the Legal Counsel under MGL c. 268A which was put forward by **Councilor McGeary** and seconded by **Councilor Theken**.

**Councilor McGeary** noted the opinion from the State Ethics Commission (SEC). As he viewed the preamble to the law, which he read aloud: "Whereas the deferred operation of this act would tend to defeat its purpose which is to immediately to authorize municipalities to implement local health insurance changes; therefore it is hereby declared to be an emergency law necessary for the immediate preservation of the public convenience." He felt it appeared the emergency is to allow, not to compel and asked if he was reading that correctly. **Ms. Egan** stated it was important to keep in mind that the SEC General Counsel has addressed that in her opinion. The SEC is a State body that interprets and enforces the State Ethics Law. The State's General Counsel's opinion on this issue is the opinion that would be accepted by the SEC and the courts as to whether or not the requirements of the Rules of Necessity had been met. Her opinion on Page 3 she specifically states, "I interpret this as a requirement that City Councils ... are required to act as soon as possible, satisfying the third requirement listed above for invoking the Rule of Necessity." **Ms. Egan** reiterated the General Counsel specifically addresses that issue; and in response to a statement by Councilor McGeary that they were then on "solid" legal ground, **Ms. Egan** responded, "Absolutely" if they chose to invoke the Rule of Necessity. **Council President Hardy** noted during the O&A Committee Meeting of December 12<sup>th</sup> when they last spoke on this matter, a Massachusetts Municipal Association (MMA) flyer (on file) was given to the Council of a synopsis of the entire process. On page 1 of that process, #2 entitled, Getting Started, specifically says, "... vote to accept §21-§23. No time limit." Yet, the SEC states, "...required to act by a certain time". **The Council President** thought there seemed to be a bit of a conflict between those two statements and asked the City Solicitor to address it, making her more comfortable making her vote. **Ms. Egan** responded the preamble of MGL c. 69 does say the purpose is to "immediately authorize." Whether or not there is a specific time period, that is not necessarily the issue; rather, the issue is whether the statute asks them to immediately authorize and that's what they look to. The only way the statute can be accepted is by a vote of the City Council. The Council has to eventually act on it. So the timing issue becomes almost irrelevant because if there was never any deadline and a deadline was required, they could never act on this. The Rule of Necessity is specifically for an instance like this. There is no other entity within the City that can accept the statute. **Council President Hardy** reiterated the MMA synopsis of the process there is no time limit for the approving body to approve §21-§23. Yet in the SEC letter to David Sullivan, #3 states, "The board must be legally required to act by a certain time, and be unable to do so because of the lack of a quorum;" and was questioning being able to act "by a certain time" yet they're being told there is no time limit. **Ms. Egan** expressed her understanding of the Council President's issue and stated in looking at the Rule of Necessity, and that time requirements, you would look at the law. Although there isn't specific time period within which they can act, the MMA is dealing with a different issue than the SEC is looking at. For the purposes of the State Ethics Law, you look at the statute as to the timing and look at that particular language about the immediacy. For the MMA, which is a member organization that is helpful providing education, they're looking at a different issue and are not addressing that particular issue. **Council President Hardy** then asked Ms. Egan as the Council's legal representative did she have a any problem with the Council going forward and voting this evening. **Ms. Egan** responded, "Absolutely not." **Councilor Tobey** stated he had his own insurance, which meant six of the returning Councilors are on City insurance. This problem is going to continue for another two years. At some point this matter being before the Council, they'll have to engage this, which **Ms. Egan** confirmed. **Councilor McGeary** stated they are not obligated to engage it tonight. They are covered if they choose. There is nothing in the law that says that they must act by, say, December 31, 2011. It just says if they choose to act no deadline to act, they can be interpreted as acting under necessity, and then the Rule of Necessity would apply. **Ms. Egan** agreed that when ever they do act, they'll meet the requirements of the Rule. **Councilor Whynott** stated before they can discuss this issue, they must invoke the Rule of Necessity, which both **Council President Hardy** and **Ms. Egan** confirmed. **Councilor Whynott** added the Council doesn't have to if they don't want to. **Ms. Egan** stated when there is a conflict of interest, they have to recuse themselves; and therefore, a quorum can't be established. They would invoke the Rule of Necessity to establish the quorum to be able to put the matter before them.

**MOTION: On motion by Councilor McGeary, seconded by Councilor Theken, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to invoke the Rule of Necessity in reference to the Health Insurance State Law adoption.**

On inquiry by **Councilor Whynott's** on the meeting process this evening, **Council President Hardy** explained that this meeting on the singular matter was not a public hearing; but that the Administration would be making a presentation on MGL c.32B, §21-§23. She asked the Council to allow a representative of the Public Employees Committee (PEC) to speak with equal time even though this was not a public hearing. **Councilor Whynott** asked if the Council President would be allowing members of the unions to speak, to which **Council President Hardy** responded this was not a negotiation. There being no objection, the Council agreed to proceed with this format.

**Mayor Carolyn Kirk** stated the statute has been submitted to the Council and reviewed with the O&A. She was in touch earlier in the evening with Mayor Driscoll of Salem. That Mayor explained when that Council voted to adopt this legislation, they also invoked the Rule of Necessity, as they had the same issue on the quorum that this Council has. This vote tonight on the legislation is separate and apart from any negotiations they are having the PEC. This legislation gives them a tool. Because they adopt it, it didn't mean they'll use it if adopted. The Administration would like approval to be by this Council and this B&F Committee that experienced what it was like when negotiations fell apart and what resulted. The tool they are given is to have a "rational approach" to put negotiations back on track which she felt was the most important parts of the legislation; built in mediation is able to occur. Just the fact they have this legislation it is driving [health insurance] rates to be more competitive. They have a very competitive rate "today in hand" locked in from Harvard for the upcoming fiscal year because the non-GIC carriers are nervous about losing good customers like Gloucester, and she believed this is why they are being very aggressive. She felt the City really needs to let the competitive insurance market know the City is serious about controlling health insurance costs, and are already seeing the results of that. She asked the Council to adopt this legislation.

**Phil Bouchie**, Public Employee Committee (PEC) Co-Chair and Gloucester firefighter's union member stated the acceptance of this motion could inadvertently cause an increase of rates. He explained the PEC is a committee that negotiates with the Administration, annually, for health insurance benefits for employees, retirees and school department personnel of the City. He offered the PEC had taken the initiative on the matter this time and has already submitted a proposal to the Administration. While they are still waiting for a decision on that proposal, if accepted, he felt it would keep health care costs flat so there would be a zero percent increase in FY13 health insurance costs. Currently he felt there was a situation where employees and management can cooperate willingly without risks of obstacles for common objectives which are mitigating any increase in cost, benefitting both covered employees and the City. PEC, and he believed also the Administration, did not wish to rush and unintentionally causing a situation where they find themselves in the GIC (Group Insurance Commission) which is a three year commitment. He also believed it would result in no savings to the City. They anticipate, rather that it may cause costs to increase at the rate of six percent a year, or 19.10 percent over a three year period. Further, he put forward that the practical thing to do, since there is "no imminent sunset on adoption of the new law," is to lock into a one-year deal with no increase, and then take the matter up again in the fall. He explained since 2008 they have worked closely with the Mayor to decrease health insurance costs, and modified both their carrier and plan design. They became one of the first communities to take on a high deductible HMO plan. Based on an analysis by the City's health insurance consultant, he reiterated the PEC had submitted a proposal last week and are awaiting a decision from the Administration. He asked the Council to allow the collective bargaining process to continue and on behalf of the public employees of Gloucester, they asked that the Council vote no to the adoption of the state statute on health insurance reform. He also referred the Council to the PEC's supporting documentation on current insurance rates (submitted and on file).

**Council President Hardy** stated in fairness to the members of the PEC who also wanted to speak that evening, she asked for a show of hands from the PEC members in the audience, of which six PEC members raised their hands. **Councilor Theken** expressed concern that a few years ago regarding the retired teachers being grandfathered to a 90:10 (90%; 10% employee share) deal with the City. She asked what they City would do if they vote to adopt the statute, and then go to the GIC, they're not grandfathered by law with the State. In that case, would the City pick up that difference? **Mayor Kirk** stated if the Council passes this it does not mean they go into the GIC. It gives them that chance should they decide in the future they needed to do that. She didn't wish for the Council to think that by taking this vote tonight that it automatically puts the City into the GIC. **Councilor Theken** stated the retired teachers would need some time to check out some programs; even though the Mayor said they don't have to go to the GIC; if this law is passed, the Administration has that choice. The flat rate could change, and the Administration

could choose to go to the GIC. The Councilor [in her professional capacity] has no time to give those retired teachers the chance to find what they can do financially as they'd be jumping from 90:10 to 75:25. When they took their "non-raise" at that time to help the City that Council promised they would take care of them with healthcare. Even if the Council adopts this statute this evening, was the Mayor willing to hold off for 18 months making no plans or changes and staying with what they have and work with that. **Mayor Kirk** felt they would have to make a proposal to the PEC along those lines in order to make that kind of promise. Both sides would have to agree. **Councilor Theken** interjected would she as the Administration agree. **The Mayor** responded with an example that last year when they signed the PEC agreement they knew the legislation was pending and the Governor could possibly sign it into law, which he did. They put into the PEC agreement that the Administration would not exercise their authority of the health insurance changes for this year, and have stood by that. She reiterated that was an agreement they were willing to make in the PEC negotiations; and have done so in the past; both sides agreed. They'd be open to those types of terms and conditions in the future. Both sides have to agree. She expressed she couldn't make a promise today and have it be so, nor did she wish to negotiate in this forum. The Administration, she believed, had shown in the past through the existing PEC agreement they have that they have been willing to hold off on implementation when they're in a negotiating climate where there is agreement, cooperation, it make sense for the employees. **Councilor Theken** stated during the O&A discussion at 25% of the savings would go back to the employees. The Councilor asked if any of it would go back to the retired teachers because, she contended, it would be eaten up immediately with the rate increases they would face for health insurance for people who've already been retired for 15, 20 years. She pointed out that everyone on Social Security just got a 3.5% increase. Medicare has gone up. And now those who didn't take Medicare are being penalized because no one informed them of the law that changed. Now a normal Medicare premium would be \$98 to \$115. Some are already paying \$255. What is saving the retirees is the 90:10. If they go to 75:25, she believed they wouldn't be able to afford their health care. The Councilor reiterated they [a previous City Council] promised them by grandfathering the retirees in which Council minutes from 2007 have confirmed. If they stay with Harvard, fine. If they go to the GIC, that's gone. **Mayor Kirk** stated all this leading up to the implementation of the legislation is all subject to negotiation. She pointed to the track record of the Administration of working with the PEC; where they agreed to the subsidizing half the deductibles for employees. To the PEC's co-chairman's point, when they're working cooperatively they can work all those things out. **Councilor Theken** asked hypothetically they and the PEC agrees, did it not have to go before the new City Council's Budget & Finance Committee to put that money there or not. **Mayor Kirk** responded that under the kind of subsidy they're speaking of that is a budget line item and would have to be voted by the City Council. **Councilor Theken** confirmed with Mayor Kirk that then they didn't know what would happen with the retired teachers. **Councilor Verga** noted there is no sunset on this adoption of c. 32B, §21-§23 was mentioned previously. They're all set for the next fiscal year for health insurance because they had a good deal. **Mayor Kirk** noted for FY12, they're all set. If adopted tonight they'd not be able to move to make any change for this fiscal year and is their current agreement within the PEC. For the next fiscal year, FY13, they're getting numbers that are looking very good. **Councilor Verga** restated the current plan is through July of next year; and they're in good shape. This wouldn't kick in until the next fiscal year and then wondered what the rush to adopt the legislation is. If they vote no or table this and take it up in the next term, what is the harm. **Mayor Kirk** expressed her desire for this Council to vote on the adoption. She felt this Council has been through one of the most difficult budget seasons they've seen and has the appreciation as to how difficult some of this can be. There is no good time. They think it better to adopt this when things are calm. They didn't want, she thought, to get into a battle between the Administration and the PEC. It is adopting legislation they may or may not have to invoke and keep pressure on the competitive environment to keep rates competitive. They never have a rate by December, yet they do now. They have a very competitive rate, a zero percent increase, from their existing carrier and believe this is because of the legislation adopted by the State. **Councilor Verga** asked if this is because there is a new Council coming. If everyone is coming back would there be the same sense of emergency. **Mayor Kirk** believed there was. It is a vote at some point that needs to be taken. **Councilor Ciolino** expressed there is a problem; that the PEC has rejected this, and suggested they take it up in September. **Mayor Kirk** imagined at that time they [the unions] would ask them to vote no as well. It does change the rules of negotiation of health insurance. **Councilor Ciolino** asked if she agreed if they didn't pass this tonight and could take it up again in the fall to see what they could do with it then. They could negotiate with the carriers. **Mayor Kirk** felt they need to send a strong message that the City is serious about controlling health insurance costs. To adopt this locally puts them in the position of saying they're serious. This is not to put the burden on the employees but to mix it up in the competitive environment. She believed it was important that Harvard or any other carrier know they could switch to the GIC. **Councilor Ciolino** asked what if the PEC works with them to develop an action plan so everyone can be on board with this. **Mayor Kirk** responded this is a yes or no vote. There is no action or other game plan. **Councilor Mulcahey** understood

that the sooner they have this in hand the sooner they can negotiate knowing that the Administration means business with the insurance companies. It gives them a lot longer to negotiate now rather than doing it next fall. By the time they start negotiating with the PEC and the carriers, they'll have the best possible insurance rates for everyone. The only problem they have to worry about is the retired teachers. **Mayor Kirk** stated that is only if it comes to going into the GIC. If they adopt this legislation doesn't mean they go automatically into the GIC. **Councilor Mulcahey** thought the adoption of this legislation gives the Administration better options rather than going into the GIC.

**Mayor Kirk** responded it gave them leverage to negotiate the best deal with the non-GIC carriers. **Councilor McGeary** clarified the zero percent is the rate for FY13. The City would be set until July 1, 2013 assuming they came to an agreement on that proposal from Harvard Pilgrim which **the Mayor** confirmed. He continued by asking if the "mere threat of the adoption" of this legislation has the same threat as adopting it. It seemed to the Councilor that Harvard Pilgrim was very cooperative but they haven't yet adopted that legislation. **Mayor Kirk** thought it may be true for this current year; but they want to have the adoption behind them. Then it is a known factor that they have that kind of leverage over future negotiations with the non-GIC carriers. **Councilor McGeary** asked if the Mayor had responded or was formulating a response to the PEC proposal. **Mayor Kirk** explained when they negotiate with the PEC, there are many terms and conditions; it's not just acceptance of the rate. They are formulating their response to the proposal they received, addressing all those terms and conditions that the agreement governs. **Councilor McGeary** asked if in the proposal from Harvard, were there any "got ya's", deductibles, to maintain the zero percent increase, will they maintain the same level of coverage under the proposal put forward by Harvard Pilgrim. **Mayor Kirk** stated the Harvard proposal for FY13 is identical to what they have this year. **Councilor Whynott** thought this is a major step, with far reaching ramifications. He thought this is something a public hearing should be held on. This will take away some of the bargaining power of the unions. The Councilor felt the short presentation of the Administration and the six minute response by the PEC co-chair was inadequate. He wished to see a full vetting; and a complete presentation by the Administration to find out what all the factors are that would change. He understood about the collective bargaining and then if a time limit runs out, the Administration, he believed, had the authority to make some changes without the consent of the union. He wanted to know the extent of those changes would be with the health insurance, be they co-pays or deductibles. With that, **Councilor Whynott** motioned to have a public hearing on the adoption of MGL c. 32B §21, §22, §23 (c. 69 of Acts of 2011) which was seconded by **Councilor Verga**.

**Councilor Whynott** felt there were too many unanswered questions and wasn't prepared to vote on the adoption tonight and why he wished to see the matter go to a public hearing. **Councilor Verga** agreed with Councilor Whynott. This being the last meeting of the year it felt a bit rushed to him. He, too, also agreed that a six minute presentation was not enough to fill in some gaps. He asked the public hearing be set for January or February, March at the latest but to get it done for an up or down vote. **Councilor McGeary** agreed with his colleagues that there was no rush feeling that the "specter of this adoption" of the legislation could hasten coming to an agreement for the FY13 health insurance and would support the motion to hold the public hearing. **Councilor Tobey** knew by a simple count this would go to public hearing there being no will to move forward with it tonight. He stated that during his years as Mayor the Health Insurance Advisory Committee was a critical "contributor" to a rather good period for health insurance coverage for the City. The first year saw them taking three plans and taking it to one. He understood the dynamics that led the State to enact this legislation. As President of the MMA, he advocated for stronger terms. He knew they have a system that has worked well in Gloucester and understood wanting a failsafe. **Council President Hardy** stated for the record she had full confidence that the new City Councilors would be able to make an informed decision on this matter. She knew them to be absorbing a great deal of information already and knew a lot of what is going on before this Council already. She had full confidence they'll make the right and fair decision based on what they believe is right for their constituencies. She didn't believe there was one City Councilor who was not in favor of adopting any legislation that would help the City to save money.

**[Mayor Kirk left the meeting during Council President Hardy's statement at 7:52 p.m.]**

**Council President Hardy** expressed her disagreement with the Mayor's premise that the soon to be sworn in City Councilors aren't up to speed and don't know what this Council has been through. Further, that the Administration wanted to rush it through, in the end, didn't make much sense to her. She was willing to embrace the opinions of the new Councilors and looked forward to doing that. However, she didn't feel a public hearing was necessary as City Councilors are elected to make tough decisions. They would have a lot of people that would come out in opposition to adopting to the health reform legislation. She believed they would occupy most of Kyrouz Auditorium that night. But it is the Council's fiduciary responsibility to save money for the City of Gloucester. Based on the information she had in front of her now, whether or not they go to public hearing, she would be voting for the adoption of the legislation. But the timing should not be now. She would like to see the City "lock down" whoever can commit to the zero percent increase for the FY13 budget. Then they can vote on this. To rush this now, she felt, was not fair.

There were comments made and opinions expressed at the Special O&A Committee Meeting as to what the actual process was once the City adopts this. It was unclear then. The 30 day notice as expressed at that O&A meeting would run from the date everyone realized they were at an impasse when the law states that the 30 days runs from the date of the notice that they are going to negotiate. While she believed they needed more clarity on the issue, she remained firm in her belief that a public hearing was not the venue to obtain that clarity on it.

**MOTION: On motion by Councilor Whynott, seconded by Councilor Verga to conduct a public hearing to adopt MGL c. 32B §21, §22, §23 BY ROLL CALL the City Council voted 6 in favor, 3 (Hardy, Curcuru, Mulcahey) opposed.**

**Committee Report: Budget & Finance (Cont'd from the City Council Meeting of December 13, 2011)**

**Note: The following matter, by unanimous consent, was continued at the point of the Council discussion on the motion to accept grant funds. After a brief discussion, the matter of a grant for the Get Fit! Gloucester program was continued to January 10, 2012 and will be heard under Committee Reports.**

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:56 p.m.

Respectfully submitted,

Dana C. Jorgensson  
Clerk of Committees

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- Letter dated September 2, 2011 Legal Advice from State Ethics Commission to Executive Office of Administration & Finance
- Ethics Commission Advisory 05-05 "The Rule of Necessity"
- Breakdown of current City health insurance benefits and GIC look-alike benefits submitted by Phil Bouchie, PEC Co-Chair
- Written statement read to the Council by Phil Bouchie, received in full the day following the Council Special Meeting