



Council Meeting - Agenda

CITY COUNCIL CALENDAR

Thursday, February 26, 2009 - 7:00 p.m.

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OPENING OF SESSION BY: CITY COUNCIL PRESIDENT JOHN T. SAUNDERS

**PRAYER LED BY: REVEREND HUGO CARDENAS, PASTOR,
OUR LADY OF GUADALUPE/ST. KILLIAN PARISH**

PLEDGE OF ALLEGIANCE

RESOLUTIONS

1. RESOLUTION, Councillor Alves, Congratulating BRADLEY N. "BRAD" CASTELLO, JR. on the Occasion of his Retirement, and Honoring him on his Long and Distinguished Career.

HEARINGS

2. HEARING, on Petition of NSTAR Electric Company for location of One (1) Pole in ASHLEY BOULEVARD, Corner of Sawyer Street.

2a. AN ORDER,

3. HEARING, on Petition of NSTAR Electric Company for location of One (1) 4" Conduit, Seven (7) 4" Conduits, Four (4) 5" Conduits and One (1) 45" x 45" x 36" Handhole in ROCKDALE AVENUE, North of Allen Street.

3a. AN ORDER,

MAYOR'S PAPERS

M1. COMMUNICATION, Mayor Lang, to City Council, submitting AN ORDER for the TRANSFER of \$1,000,000.00 from STABILIZATION FUND, to GENERAL GOVERNMENT UNCLASSIFIED, SALARIES & WAGES.

M1a. AN ORDER,

M1b. COMMUNICATION, Mayor Lang, to City Council, providing further information regarding the need for the \$1,000,000.00 Transfer from Stabilization Fund (one-time unfunded liability obligations for laid off or retiring employees.)

M2. COMMUNICATION, Mayor Lang, to City Council, submitting AN ORDER for the TRANSFER of \$62,500.00 from STABILIZATION FUND, to INSPECTIONAL SERVICES, CHARGES & SERVICES.

M2a. AN ORDER,

M3. COMMUNICATION, Mayor Lang, to City Council, submitting AN ORDER for the TRANSFER of \$50,000.00 from STABILIZATION FUND, to DEPARTMENT OF PUBLIC FACILITIES, CHARGES & SERVICES.

M3a. AN ORDER

RECONSIDERATIONS

4. WRITTEN MOTION/RECONSIDERATION, Councillor Morad, having voted with the prevailing side on the question of L3. COMMUNICATION, Anthony A. Kamara, Council I, submitting AN ORDINANCE, Amending Chapter 22, Article V, Excavation and Trench Safety, Section 22-107, lowering Certificate of Insurance/Liability Fees indemnifying the City, from one million dollars to \$100,000 to \$300,000, and stipulating mailing procedures for the City to be notified of such Insurance Policies, or changes thereto, for excavations on public ways/property as well as privately-owned land, as stipulated in M.G.L., Chapter 82A, Section 2 (Excavation and Trench Safety;) also submitting back-up information regarding same, AND L3a. AN ORDINANCE, Amending Chapter 22, Article V, Excavation and Trench Safety, Section 22-107, lowering Certificate of Insurance/Liability Fees indemnifying the City, from one million dollars to \$100,000 to \$300,000, and stipulating mailing procedures per M.G.L. Chapter 82A, Section 2, at the regular City Council meeting held on February 12, 2009, hereby files a Motion to RECONSIDER said vote. (Filed February 13, 2009, at 8:30 a.m. via telecom to Assistant City Council Clerk.)

4a. COMMUNICATION, Anthony A. Kamara, Council I, submitting AN ORDINANCE, Amending Chapter 22, Article V, Excavation and Trench Safety, Section 22-107, lowering Certificate of Insurance/Liability Fees indemnifying the City, from one million dollars to \$100,000 to \$300,000, and stipulating mailing procedures for the City to be notified of such Insurance Policies, or changes thereto, for excavations on public ways/property as well as privately-owned land, as stipulated in M.G.L., Chapter 82A, Section 2 (Excavation and Trench Safety;) also submitting back-up information regarding same. (Copy all Councillors 02/12/09.)

4b. AN ORDINANCE,

5. WRITTEN MOTION/RECONSIDERATION, Councillor Morad, voted with the prevailing side on the question of L15. REPORT, Committee on Finance, recommending that the City Council ADOPT the ORDER, for the TRANSFER of \$2,000.00 from CEMETERY DEPARTMENT, SALARIES & WAGES to CEMETERY DEPARTMENT, OTHER FINANCING USES, AND L15a. AN ORDER, TRANSFERRING \$2,000.00 from CEMETERY DEPARTMENT, SALARIES & WAGES to CEMETERY DEPARTMENT, OTHER FINANCING USES, at the regular City Council meeting held on February 12, 2009, hereby files a Motion to RECONSIDER said vote. (Filed February 13, 2009, at 8:30 a.m. via telecom to Assistant City Council Clerk.)

5a. REPORT, Committee on Finance, recommending that the City Council ADOPT the ORDER, for the TRANSFER of \$2,000.00 from CEMETERY DEPARTMENT, SALARIES & WAGES to CEMETERY DEPARTMENT, OTHER FINANCING USES.

5b. AN ORDER,

6. WRITTEN MOTION/RECONSIDERATION, Councillor Morad, voted with the prevailing side on the question of L16. REPORT, Committee on Finance, recommending that the City Council ADOPT the ORDER, for the TRANSFER of \$4,000.00 from PLANNING DEPARTMENT, SALARIES & WAGES to PLANNING DEPARTMENT, OTHER FINANCING USES, AND L16a. AN ORDER, TRANSFERRING \$4,000.00 from PLANNING DEPARTMENT, SALARIES AND WAGES, to PLANNING DEPARTMENT, OTHER FINANCING USES, at the regular City Council meeting held on February 12, 2009, hereby files a Motion to RECONSIDER said vote. (Filed February 13, 2009, at 8:30 a.m. via telecom to Assistant City Council Clerk.)

6a. REPORT, Committee on Finance, recommending that the City Council ADOPT the ORDER, for the TRANSFER of \$4,000.00 from PLANNING DEPARTMENT, SALARIES & WAGES to PLANNING DEPARTMENT, OTHER FINANCING USES.

6b. AN ORDER,

END OF RECONSIDERATIONS

NEW BUSINESS

7. REPORT, Committee on Ordinances, recommending that the City Council DENY the request for the ZONING DESIGNATION of Parcels known as Plot 58, lot 149 (591 County Street;) Plot 58, Lot 152 (583 County Street;) and Plot

58, Lot 157 (109 Hillman Street – Location of the former Civil Defense Building;) from RESIDENCE A to MIXED-USE BUSINESS.

8. WRITTEN MOTION, Councillor Pimental, requesting, on behalf of the South End Business Association, Inc., that the following street(s) be CLOSED: WEST RODNEY FRENCH BOULEVARD, from Valentine Street to Lucas Street, on SATURDAY, JUNE 06, 2009, FROM 4:00 P.M. TO 10:00 P.M., for the purpose of their ANNUAL FAIR AND FIREWORKS DISPLAY.

9. WRITTEN MOTION, Councillors Gonsalves, Alves, Martins, Gomes, Morad, Pimental, Coelho, Duarte, Dehner, Saunders and Lawrence, asking that the Committee on Public Safety and Neighborhoods meet with Emergency Medical Services Director James Trout to inquire how the EMS is operating without street supervision, given that same is a requirement of our State License.

10. WRITTEN MOTION, Councillors Gomes and Morad, asking that the Committee on Appointments and Briefings meet in Executive Session with a representative of the Mayor's Office, Personnel Director Angela Natho and Auditor Peter Schmidt, to discuss the personnel layoffs that occurred on February 12 and 13, 2009, in the City of New Bedford, eliminating Unit C, Police, Fire and AFSCME personnel, to advise the Council as to the criteria used to determine these layoffs, what consideration was given to seniority/years of service of the employees that were laid off, and the overall effect, from a personnel and budgetary perspective, to each City department.

11. WRITTEN MOTION, Councillor Gomes, asking that the Committee on Finance request that the Police and Fire Departments provide the City Council with a detailed breakdown of all overtime accumulated, beginning at the start of the Fiscal Year July 01, 2008, to the present; and further, that the amount of money left over in the overtime budget also be provided to the Committee on Finance.

12. WRITTEN MOTION, Councillor Gomes, requesting that the Union leadership from Police, Fire and AFSCME go back to the table to see if any type of deal can be worked out that is in the affirmative to keep Police, Fire and City services intact through June 30, 2009, the end of the current Fiscal Year, while we await the Federal stimulus package money to make its way down to Cities and Towns to see how it addresses our public safety issues, and, more importantly, how we can keep people employed during these hard times that are affecting everyone, not only in this City, but across the Commonwealth and the entire Country.

13. WRITTEN MOTION, Councillor Gomes, requesting that, in the future when an issue that affects the entire City, such as the rolling blackouts in the Fire Department or any Public Safety Department such as Police or EMS, that the Chiefs of all Departments, along with the Mayor, notify either the President of the City Council or the Chairman of the Committee on Public Safety and Neighborhoods as to what is being implemented, so that we are fully informed when our constituency calls us, and we are able to relay to them exactly what is going on throughout the City and affecting the safety of its Citizens; and further, when there is an emergency within the City, whether it be Police or Fire related, that the Chairman of the Committee on Public Safety and Neighborhoods be notified, and that the contact numbers be provided to said Chairman so that he may be able to contact the Ward Councillor of the area that is being affected and/or the entire City Council for informational purposes.

14. WRITTEN MOTION, Councillor Gomes, requesting, once more, that the City Council on behalf of their constituents, go on record in opposition to any proposed tax increase, including the nineteen cent increase proposed by the Patrick Administration, in order to close the gap in the Transit Authority and the MBTA, which has not been run properly for some time; further, that the State Government not imply that this nineteen cent increase in tax will further increase our chances of seeing commuter rail brought to the Southcoast area as an incentive for acceptance; further, that letters be sent to our State Delegation, House Speaker and Senate President stating the New Bedford City Council's opposition to the tax; and further, that Congressman Barney Frank be contacted and requested to see if monies can be implemented into and/or used from the stimulus package that will address bringing the commuter rail to New Bedford and the Southcoast, seeing that our Federal, State and City Administrations have been strongly talking about going green.

15. WRITTEN MOTION, Councillor Gomes, requesting that the City Council's Committee on Finance look into Traffic and any other fines implemented by the City for violations, to see if they should be increased, which may result in a way of raising more funds in order to support the City budget.

16. WRITTEN MOTION, Councillor Coelho, on behalf of constituents, that the Committee on Environmental Affairs look into how the issuance of a Building Permit is obtained, and what is the involvement of the Conservation Commission and Fire Department with the Department of Inspectional Services in order for a Citizen to obtain a Building Permit.
17. WRITTEN MOTION, Councillor Gonsalves, Martins, Pimental, Lawrence, Alves, Morad and Gomes, requesting that the City Council write to the State Legislative Delegation in support of the Legislation to eliminate the cap on “historic tax credits.”
18. COMMUNICATION, Legislative Counsel Gerwatowski, to City Clerk/Clerk of the City Council Arruda, submitting AN ORDINANCE, Amending Chapter 17, Section 17-18, Subsection (j), RELATIVE TO NON-CRIMINAL DISPOSITIONS and Amending Chapter 23, Section 23-27, Subsection C, RELATIVE TO TRAFFIC.
- 18a. AN ORDINANCE,
19. COMMUNICATION, Derek Santos, Director of Business Development, New Bedford Economic Development Council, to Council President Saunders and Members of the City Council, submitting TIF Application and Resolution approved by the Tax Increment Financing Board for a five (5) year Special Tax Assessment (STA) Agreement for Darn It!, Inc. and Darn It! Reality LLC., 630-686 Belleville Avenue, New Bedford, MA (Copies provided and distributed to all Councillors on 02/19/09.)
- 19a. RESOLUTION, Approving Certified Project Application and Special Tax Assessment Agreement with Darn In!, Inc. and Darn It! Reality, LLC.
20. COMMUNICATION, Councillor Morad, to sixteen (16) concerned residents, regarding the new date of the rescheduled Committee on Appointments and Briefings meeting to review the City’s upgrade of the water meter reading system. (To be Received and Placed on File.)
21. COMMUNICATION, City Solicitor Schall, to City Council, responding to Written Motion, Councillor Gonsalves, Council President Saunders, Councillors Gomes, Lawrence, Morad, Alves, Pimental, Martins and Duarte, on Agenda of February 12, 2009, submitting copy of the contract between the City of New Bedford and Local 841, International Association of Firefighters, effective July 01, 2007 – June 30, 2010. (Copies for all Councillors 02/23/09.)
22. COMMUNICATIONS (4), Massachusetts Highway Department, to City Council President John Saunders, Mayor Scott Lang, Executive Administrator for Town of Dartmouth Michael Gagne (sic), Chairman Dartmouth Select Board Joseph Michaud, Re: Dartmouth-New Bedford – Improvements on Dartmouth Street, from Rockdale Avenue to Roger Street, Project Number – 60312, project programmed for 2009, with Federal Funds, stating Property Owners rights must be protected under M.G.L. Chapter 79 and The Real Property Acts of 1970, as amended, and stating that project cannot be advertised on anticipated date of April 4, 2009, for construction until the new proposed RIGHT OF WAY is secured and the Right of Way Bureau issues a “Right of Way Certificate;” also stating THE CITY/TOWN IS RESPONSIBLE FOR THE ACQUISITION OF ALL NECESSARY RIGHTS IN PRIVATE/PUBLIC LAND FOR THE PROJECT’S IMPLEMENTATION. (Copy All Councillors 02/13/09.)
23. COMMUNICATION, Massachusetts Department of Housing & Community Development, to Local Officials, issuing a reminder that M.G.L., Chapter 40A, Section 5, requires that the Department of Housing and Community Development be notified of ANY PUBLIC HEARING scheduled by a Planning Board/City Council concerning any proposed amendment to the local ZONING BYLAW or ORDINANCE and must be received by the Department at 100 Cambridge Street, Suite 300, Boston, MA 02114, Attn: Don Schmidt, PRIOR TO the scheduled hearing; and further stating provisions for a waiver of notice. (Copied All Councillors, Attorney Gerwatowski, City Clerk/Clerk of the City Council, Clerk of Committees 02/13/09.)
24. COMMUNICATION, WLWC/CW28 TV, Four Points Media Group, LLC, Washington, D.C., to various MA TV Stations and City and Town Officials, re: Section 76.54 (c) of the Federal Communication Commission’s rules, advising that Providence TV Licensee Corp, licensee of WLWC (TV), New Bedford, MA, intends to commission studies from The Nielsen Company in an effort to obtain a ruling from the FCC that WLVI-TV, Cambridge, MA is not “significantly viewed” in the communities served by Comcast, Charter and Verizon cable television systems in Bristol County, MA and

stating that they must be advised within twenty (20) days of any objections to the proposed studies. (Copy of letter w/o Attachments to all Councillors 02/18/09.)

25. COMMUNICATION, Zoning Board of Appeals, submitting NOTICE OF CONTINUED PUBLIC HEARING UNDER ZONING ORDINANCE, Chapter 9, Comprehensive Zoning, Section 2460 (Catastrophe,) on THURSDAY, FEBRUARY 26, 2009, at 4:30 P.M., ROOM 314, CITY HALL, for: #3942 Joanna S. Rebeiro and Attorney Donna M. Sowa, relative to 395 North Street, Plot 56, Lot 44, Mixed Use Business Zoned District; petitioners proposing to build a 26' x 58' single family dwelling, which will require a Special Permit. (Copies provided for all Councillors 02/19/09.)

26. COMMUNICATION, New Bedford Historical Commission, to Dickinson Development, 1266 Furnace Brook Parkway, Quincy, MA 02169, informing of NOTICE OF PUBLIC HEARING FOR DEMOLITION REQUEST, 85 Coggeshall Street, former Fairhaven Mills #4, #7, Storehouse, & Electric House 4 Structures, Circa 1892, Brick Mill Building, on WEDNESDAY, MARCH 4, 2009, AT 4:30 P.M., at 33 William Street.

27. COMMUNICATION, MA Division of Fisheries & Wildlife, to Ian A. Bowles, Secretary, Executive Office of Environmental Affairs, Attn: MEPA Office, Nicolas Zavalas, EEA No 10316, 100 Cambridge Street, Boston, MA 02114, re: New Bedford Regional Airport Improvements, Airport Commission, 1569 Airport Road, New Bedford, Notice of Change/Final Environmental Impact Report as applied to Airport improvements, including construction of Runway Safety Areas (NHESP Tracking No. 96-0737), stating project site is located with and will require "take" of Priority and Estimated Habitat (Special Concern MA Endangered Special Act: Eastern Box Turtle and Coastal Swamp Amphipod) and that NHESP will not render final decision until the MEPA review process and associated public and agency comment period is completed and until all required MESA filing and permit application materials are submitted. (Copy all Councillors 02/23/09.)

28. COMMUNICATION, MA Executive Office of Transportation, to Secretary Ian Bowles, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Boston, MA 02110, Re: Environmental Notification form, South Coast Rail Project, EEA No. 14346, submitting Supplemental Ridership Memorandum for the South Coast Rail Project, and requesting that notice be published in the Environmental Monitor to allow full public review and comment, with estimated completion and Certificate issued by March 27, 2009.

TABLED BUSINESS

01/08/09 COMMUNICATION, Mayor Lang, to City Council, submitting **VETO** of THE ORDER ADOPTED IN CITY COUNCIL, NOVEMBER 13, 2008, ACCEPTING THE DEED, in substantially the same form as enclosed, from Cove Road LLC, for property located on the easterly side of Orchard Street, shown as Lot 2 on a plan titled "Approval Not Required Plan of Land in New Bedford, Massachusetts Prepared for Cove Road LLC, prepared by Sitec, Inc., dated August 2, 2004, recorded with the Bristol Southern District as Plan No. 154-94 and containing 76,594 square feet of land, according to said plan; stating that on November 21, 2008, the City was informed that the DEP completed an audit of the response actions undertaken at the Camara Field site and the subsequent Class A-3 Response Action Outcome Statement (RAO) and Activity and Use Limitation (AUL) filed on behalf of Cove Road LLC and concluded that the response actions performed by or on behalf of Cove Road LLC were NOT PERFORMED IN COMPLIANCE WITH THE REQUIREMENTS OF THE MCP and DEP is requiring the owner to provide additional data in support of the LSP's conclusion that No Significant Risk has been achieved; AND since not in best interests of the City to accept said deed, Mayor Lang, also submitting A SUBSTITUTE ORDER ACCEPTING THE DEED from Cove Road LLC, for property known as Camara Field, upon the owner addressing, to the DEP's satisfaction, the response actions undertaken at the site, the subsequent Class A-3 RAO and the AUL filed on behalf of the Cove Road LLC. (Veto by Mayor Lang, received November 26, 2008, at 3:53 p.m.) (VETO Received and Spread on the Records IN CITY COUNCIL, December 18, 2008.) **(Please Note: AN ORDER, Accepting Deed submitted by Mayor Lang, as a SUBSTITUTE ORDER, Referred to the Committee on Appointments and Briefings, IN CITY COUNCIL, December 18, 2008.)**

01/08/09 AN ORDER, (Accepting Deed for the Property known as Camara Field) (Vetoed by Mayor Lang – see 2.)