

**CITY OF WOBURN
MAY 8, 2012 – 6:00 P.M.
COUNCIL CHAMBERS, WOBURN CITY HALL
SPECIAL MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
DiTucci	Haggerty
Drapeau	Mercer-Bruen
Gaffney	Raymond
Denaro	

Pursuant to Title III, Section 12 of the Charter of the City of Woburn, His Honor the Mayor called a special meeting of the City Council to be held in the City Council Chambers, Woburn City Hall, 10 Common Street, Woburn on Tuesday, May 8, 2012 at 6:00 p.m. for the purpose of discussing the Bond authorization for water meters.

President Denaro stated that if the City Council wants to hear from the Mayor and his designees on the issue a motion to suspend the rules to do so would be in order and further that if the City Council wants to deliberate on the underlying Order a motion to suspend the rules for the purposes of taking the matter from Committee on Finance and Committee on Infrastructure and Public Lands would be required. Motion made and 2nd to suspend the rules for the purposes of hearing from the Mayor and his designees as requested in the call of the meeting, all in favor, 9-0. Appearing was Mayor Galvin and he stated that the bond authorization was submitted for the purposes of purchasing water meters for residential use, that he is not requesting a vote on the matter at this meeting, that in 2006 the city's fate was sealed with respect to this matter, that the time is now upon the city to take action, that he is present to discuss why the bond authorization is required for the meters, that that price of the meters will be approximately \$4 million to \$5.5 million dollars, that the actual figures will be determined when the bid request goes out, that some Aldermen have talked to him about using free cash for the costs if necessary, that the Water and Sewer Enterprise Fund (WSEF) budget is \$18.4 million, that a surplus has been built up in the WSEF to provide reserves, that the WSEF is a good financial operation, that it is recommended that the city have three months of operating expenses in the account, that he urges that the bond authorization be approved when the City Council is ready to act, and that he can bring in an outside consultant to explain how the reserves helps the city's financial position with respect to borrowing, its credit rating, and similar issues. Alderman Gately stated that there is no plan in place. Mayor Galvin stated that he transmitted the plan to all Aldermen by email last week. Alderman Gately stated that he wanted to know how the \$4 million figure was determined. Mayor Galvin stated that the \$4 million to \$6 million estimate is based on the number of meters needed in the city and the cost per meter, and that a meter must be installed in every house. Alderman Gately stated that it has been 2½ years since the Administration Consent Order (ACO) was signed, that the first of May the Mayor comes to the City Council and allows just three

weeks to appropriate the funds, and that the City Council has not heard from the Mayor during this time about the water meters. Alderman Drapeau stated that he wants to know how the program will be rolled out once the meters are purchased, that he wants to know who will be responsible for the plumbing and related activities to install the meters, and that he wants to know what type of meter will be installed and how the meters will be read. Mayor Galvin stated that the type of meter will not be known until the bid goes out. Alderman Drapeau stated that the city has approved borrowing in the past and that when the work is not completed as originally set out the Mayor does not provide further information once the appropriation is approved. Mayor Galvin stated approving the appropriation is the role of the City Council with respect to these matters. Alderman Drapeau stated that this has not been the experience with other Mayors, that he will accept the Mayor's position concerning the City Council's role under the Charter, and that therefore he requests information on the Mayor's proposal before approval. Mayor Galvin stated that he is not requesting that the City Council approve the authorization, that the city is being ordered to install the meters under the terms of the ACO, and that he did not sign the ACO. Alderman Drapeau stated that he needs to perform due diligence to determine what the city will be doing before the appropriation is approved as once the appropriation is approved he will have no further role. Mayor Galvin stated that the City Council will have no role in implementing the installation of the meters. Alderman Drapeau stated that he wants to know what will be installed and the proposed rate structure. Mayor Galvin stated that the City Council has ultimate decision making in approving the rate structure. Alderman Drapeau stated that the City Council will not be establishing a rate plan without input from the Mayor, that he wants to know the Mayor's thoughts on the rate structure, that this is a monumental event, that this Mayor is responsible for the installation of water meters, that this will not be an easy task, that it will be helpful for the resident to understand what to expect, and that he needs to know the expected plan so that he can answer his constituents if the bond is approved. City Engineer John Corey stated that that there will be preparation of contract documents, that the city will look at one of a dozen meters that are available, that the city uses a fixed network for commercial water users and will use that for residences as well, that there will be a period of six months to determine the specifications, that the city can prepare a Request for Quotations and select certain meters that meet the specifications, that the installer could select one of the meters, that then a rate study will be prepared for the City Council and Mayor to determine the rates, and that by March 2015 a decision will have to be made as to what the rates will be. City Engineer Corey offered a document entitled "Projected Project Schedule Water Meter Program" dated 5/4/12 for the City Council to review. Motion made and 2nd that the document be received and made part of the record, all in favor, 9-0. Margaret McCarthy, Weston & Sampson Engineers, Inc. stated that aside from policies and procedures to be set requiring the installation contractor to put out community notifications about the project the city would also notify the community, that the project is dependent upon the residents allowing access to their homes, and that some accounts will be returned back to the community by the installer if access is not allowed. City Engineer Corey stated that the rate structure is not part of the ACO. Alderman Haggerty stated that the public should know that the rate structure will not change at this time. City Engineer Corey stated that \$25,000.00 has been budgeted for the rate study, that the scope of the work is not yet finalized, and that the city can look at many scenarios for the rate including a flat rate, a step rate, a usage rate with increasing blocks, a step rate with increasing blocks, or a variety of combinations. Alderman DiTucci stated that she does not see where the DEP has the authority to order this work, that she is concerned that a project this large will affect every home in the city

and as an Alderman she feels a disconnect from the process, that there are a number of questions such as whether the program will require additional staff, the type of meter, how many meters are needed and whether separate meters can be installed for home usage and ancillary usage such as watering a lawn, and that as Alderman the Mayor would have difficulty with this decision at this stage. Mayor Galvin stated that whether separate meters will be allowed is a legislative decision and not the Mayor's decision, and that the task of getting the meters installed in the residences will be big enough. Alderman DiTucci stated that she feels like a stenographer in this process. Mayor Galvin stated that the Alderman should not feel that way as the City Council has a very important role. Alderman DiTucci stated that she wants a cooperative process, and that she understands that the project must be completed but she does not want to support the installation of water meters. Mayor Galvin stated that he was glad that the dialogue on this issue has started. Alderman DiTucci stated that it is late in the process. Mayor Galvin stated that it is not late, and that the water study had been submitted to the City Council previously. Alderman Mercer-Bruen stated that if \$4 million to \$5 million is not sufficient to complete the project what happens. Mayor Galvin stated that a booster station was built at the high school without the appropriate permits, that the DEP brought the city in and an ACO resulted in 2006, and that a new ACO was signed in 2008 which required the water meters. Alderman Mercer-Bruen asked what is the State's role if there is not sufficient money with the bond authorization. City Solicitor Ellen Callahan Doucette stated that if there is not sufficient money the Mayor will have to ask for additional bonding authority once the program is started. Alderman Mercer-Bruen stated that the State has no role except to force the city to install meters regardless of the cost. City Solicitor Callahan Doucette the DEP is charged with enforcing certain statutes and regulations, and that there is no monetary contribution from the State but the ACO sets out the penalties for non-compliance. Alderman Mercer-Bruen stated that if the water continues to be dirty how can the city expect people to pay for water they cannot use. City Engineer Corey stated that the pilot water meter study provided some information that assisted in determining the cost of the meters at approximately \$5.8 million. Ms. McCarthy stated that the ordinances govern whether and how much residents will pay for installation of the meters, that plumbing from the meter to the street is paid by the city, and that plumbing from the street to the house is generally charged to the homeowner. City Engineer Corey stated that the ordinances will cover what the city pays and what the homeowner pays, and that some costs are more reasonable for the homeowners to pay although that is a legislative matter. Alderman Raymond stated that he has the 2008 report which was received in 2010, that he supported the \$140,000.00 pilot program and had a water meter installed in his house as part of the program, that he asks for an explanation of how the \$4 million figure was determined, that relevant information is in the report, that the report answers most questions but does not specify the model, and that he is not looking for specific details but an approximate breakdown of the costs. Alderman Gaffney stated that the work has to be done, that it will be poor government if the funding mechanism is not in place by May 21st and the city incurs fines, and that there will be plenty of time after May 21st to work out the details legislatively. Ms. McCarthy stated that the meters cost approximately \$100.00 per unit, that there are three major components to the meters, that the brass meter costs between \$100.00 to \$150.00 per unit, that the relay equipment is a box that sits on the meter to send an signal and costs between \$100.00 to \$120.00 per unit, that the installation costs between \$100.00 to \$125.00 per unit under prevailing wage, that 10% has been added for contingencies such as installing ball valves or issues with installation, and that the approximate cost is \$300.00 per unit to install. City Engineer Corey stated that approximately 10,500 units will be needed in the city, that there is

decoder technology that is part of the overall system that will signal issues such as leak detection or if the battery is running low. Mayor Galvin stated that the benefit of the bond authorization is that the money will not be spent until the costs are incurred, that if the money is taken from free cash then that ties up the money as it becomes encumbered, and that this is too big of an expenditure to spend \$4 million to \$5 million out of free cash and to deplete the reserves. City Solicitor Callahan Doucette stated that the 2008 ACO supersedes the 2006 ACO. Alderman Anderson stated that neither the 2006 ACO or the 2008 ACO were submitted to the City Council for approval, that the City Council has approved actions consistent with the requirements of the ACO, that the ACOs were never given in totality to the City Council for approval, and that he wants a legal opinion as to the enforceability of the ACO. City Solicitor Callahan Doucette stated that the Mayor is authorized to sign contracts, that this is a settlement agreement, that the Charter does not allow an agreement requiring an appropriation with the City Council approval, and that the Mayor can sign the ACO but cannot bind the City Council to appropriate the money. Alderman Anderson stated that the ACO state that the City Council shall appropriate the money. City Solicitor Callahan Doucette stated that the ACO indicates that the City Council can be bound but that is not accurate, that the DEP should have determine the required authorization of the city when drafting the ACO, that the City Council has ratified the action in a sense by taking certain steps along the way, that even if the ACO is not valid there are still enforcement actions that the DEP can take. City Engineer Corey stated that if the deadline set out in the ACO are missed there are fines and interest charges that will accrue each day. City Solicitor Callahan Doucette stated that the fine reaches \$1,000.00 per day after 30 days. Alderman DiTucci stated that the DEP has the right to enforce their actions but no authority to force a community to install meters, and that the regulations indicate that the city must measure the water use but if no water meters are installed then a calculation can be used by the city to determine water usage. City Solicitor Callahan Doucette stated that in the regulations set out in the CMR there are no provisions requiring meters but there are policies that require meters. Alderman DiTucci stated that this is another unfunded mandate being forced on the city. City Solicitor Callahan Doucette stated that sometime when settlement agreements are drafted ancillary issues find their way in. City Engineer Corey stated that the batteries run the life of the meter. Ms. McCarthy stated that the batteries are located in the transmission unit and will last approximately fifteen to twenty years which is the life of the residential meter, that the meters will have to be replaced in fifteen to twenty years, that generally there is a 90% to 98% rate of successful installation, and that outreach can be effective in encouraging compliance. Alderman Drapeau stated that this is different than other activities with the city in that every house must have a meter installed. Ms. McCarthy stated that noncompliance can be dealt with by fines or shutting off water service to the home according to the ordinances, and typically fines are used for enforcement. City Engineer Corey stated that with noncompliance the city could provide an estimated water bill until the homeowner allows the installation of the meter; Alderman Drapeau stated that he understands does not dictate what the city charges for water, that the program will determine how much water the city uses, and that there must be a 10% differential between what is coming into the system and what goes out. City Engineer Corey stated that the city files an annual statistical report, that the report indicates water taken from the Horn Pond aquifer and how much is taken from MWRA, that there should be no more than 10% of unaccounted for water, that this figure cannot be determined if the water is not metered, that the city has been providing estimates for these reports over the years, and that Woburn uses approximately 108 to 110 gallons of water per person per day but neighboring communities use approximately 85 gallons

of water per person per day. Alderman Drapeau asked why the water meter to be used was not selected during the pilot program. City Engineer Corey stated that the city installed approximately 1,000 commercial water meters for the fixed network, that there are approximately four to five meters that will fit the meter data collection architecture, and that if a competing meter has the same capabilities for a better price then the city could select that unit and run two different meters for the commercial and residential users. Alderman Drapeau stated that he does not believe that a Mayor can commit the city to incurring millions of dollars in expenditures without City Council approval. City Solicitor Callahan Doucette stated that the Charter does not allow the Mayor to commit the City Council to an appropriation, and that the Mayor can only sign contracts when the City Auditor certifies that funds are available. Alderman Drapeau stated that a vendor has to know the authority of the city when selling to the city, that the DEP cannot plead ignorance that the Charter restricts the Mayor from committing funds without the approval of the City Council, that the City Council did authorize some actions that are referenced in the ACO however the City Council has never taken the position of installing water meters including the Mayor when he was serving as an Alderman, and that he is not afraid of water meters as the city can control the charges by way of the ordinance but that he is concerned about the precedent of the city being bound by this ACO. City Solicitor Callahan Doucette stated that the initial action took place six years ago, that the city would have been in a better position to argue that position at that time, and that the city is not in a good position having waited this long. Alderman Drapeau stated that the City Council is on record as having been opposed to the ACO. Alderman Gately asked whether the ACO can be challenged, that the water filtration plant has to be completed, and that the pilot study was completed. City Solicitor Callahan Doucette stated that the question as to whether the ACO can be challenged cannot be answered without research, and that the only way to challenge the ACO would be not to appropriate the money for the water meters, the DEP would begin an enforcement action and then the city would defend against the enforcement action. Mayor Galvin stated that there was an extension of the ACO dates relative to installation of the meters to allow for the treatment plant to come on line and for flushing to be completed, that the city was given an extension of approximately eight months, that he is not a big fan of water meters, that six years ago an ACO was signed and four years ago an ACO was signed again, and that actions by the City Council ratified the ACO as steps were taken in compliance with the ACO including the pilot program. Alderman Gately stated that the pilot program was done in anticipation that water meters would have to be installed, that two reasons for water meters are accountability and conservation, and that all the municipal buildings should also be metered including the schools if the commercial and residential users are metered. City Engineer Corey stated that the MWRA still runs the water leak detection program every two years. Alderman Gately stated that flushing hydrants and all water uses have to be metered in the city, that watering fields and parks in the city have to be included, that the reports that the city has filed were "rubber stamped", that he will not support the installation of water meters at this time, and that he will not oppose the installation of the water meters at some time when it is right to do so. Alderman DiTucci stated that she would like the city to seek an additional extension, and that there are many questions that must be answered. Mayor Galvin stated that the city obtained an extension when the water treatment plant was substantially completed, that the original date was August 11, 2011, and that this allowed the completion of the water treatment plant and a cycle of flushing. Alderman DiTucci stated that there should be more time to discuss this matter in committee and that she asks that the city seek an extension. Mayor Galvin stated that he cannot promise an extension but will request an

extension. Alderman Anderson stated that additional time would be helpful, that the city can seek a declaratory judgment although the city may face the wrath of the DEP, and that the City Solicitor can be requested to research the issue as to whether the city can be bound by the ACO. Alderman Haggerty stated that he wants a breakdown of the \$4 million figure, that he wants a formal legal opinion from the City Solicitor as to whether the matter can be challenged, that the city is sitting on a healthy reserve in the WSEF, that his opinion is that the reserve is high, that there is \$5.2 million in reserve, that at times the city has had to take in the range of \$700,000.00 from the reserve, that the city does not have to take all of the reserve to fund the purchase of the water meters but some of the reserve should be used, and that the city will have to pay interest on the bond. Alderman DiTucci stated that if the interest rates can be avoided that is preferable, and that she is not suggesting that the city not proceed but that there are many options that the city has to review. Alderman Drapeau stated that the City Council must be careful when sending a matter to two different committees as it causes confusion, that the next Committee on Finance meeting is scheduled for May 21st which is also the deadline, that the fine is \$100.00 per day for the first fifteen days, that there are a lot of questions that need to be answered, that there should be an attempt made to ask for more time given what the city has done to improve the water system, and that asking for an extension of one month is not asking a lot. Alderman Raymond stated that the City Engineer should bring the spreadsheet with the estimate of expenses for the project, that percentages can be used and actual costs are not necessary, and that some data is needed to provide explanations to his constituents. Alderman DiTucci stated that the City Auditor should be part of the review process. Charles Doherty, Deputy Auditor stated that current charges are fair and reasonable, that there have been saving in the WSEF and aggressive collections, that if there is a deficit in the WSEF then the city must make up the difference in the cityside of the budget, that the goal has been to make the WSEF self-sufficient, that this allows the city to plan long-term improvements to the system, that reserves are beneficial to the city's financial condition, that the city has a stable budget, good management and reserves, that this is a unique period for bonding, that using reserves for a lump sum payment does not allow liquidity to address catastrophic issues, that the interest rates are historically low, that the city does not rely on overrides, that the city creates wealth with the commercial structure and manages the money well, that the bond authorization can be targeted to what the City Council wants the money spent on, that the city has rescinded bonds when the amount authorized for a project was more than the targeted project cost, that the preferred reserve level is discretionary, and that reserves have to grow proportionally with the growth of the budget to maintain good bond ratings. Alderman DiTucci stated that the less water residents use to flush water may beneficially impact rates, and that the reserve funds are for WSEF use. Motion made and 2nd to return to the regular order of business, all in favor, 9-0. Alderman Haggerty stated that the matter should come out of committee to be in place for the meeting of May 15th. President Denaro stated that the City Council can take the matter from committee and act on it or pay it on the table, or leave it in committee. Motion made and 2nd to suspend Rule 36 for the purpose of taking from Committee the Order to appropriate the sum of \$4 million to pay costs of replacing water meters throughout the city, ROLL CALL: Anderson – Yes, DiTucci – No, Drapeau – No, Gaffney – Yes, Gately – No, Haggerty – Yes, Mercer-Bruen – Yes, Raymond – No, Denaro – Yes, Motion Fails.

Motion made and 2nd to ADJOURN, all in favor, 9-0. Meeting adjourned at 7:50 p.m.

A TRUE RECORD ATTEST:

William C. Campbell
City Clerk and Clerk of the City Council