

FINANCE

Tuesday, December 4, 2018 – 5:35 p.m.

Police Training Room – Olean Municipal Building

Present: Members: Chairman Witte, Vice Chairman Crawford, Alderman Andreano, Alderman Gonzalez, Alderman Dougherty, and Alderman George. Others: Mayor William Aiello; Nicholas DiCerbo, Jr., City Attorney; Fred Saradin, City Auditor; Bob Ring, Director of Public Works; Jeff Rowley, Police Chief, and Tiffany Taylor, Managerial Confidential Administrative Secretary.

1. Roll Call

Alderman Witte called the meeting to order at 5:358 p.m. and asked that the record show that all committee members were present except Alderman Smith, who was excused.

2. Approval of the Minutes of the Previous Committee Meetings (Tuesday, October 16, 2018)

A motion to approve the minutes of the October 16, 2018 meeting was made by Alderman George, seconded by Alderman Crawford. Voice vote, ayes all. Motion carried.

3. Unfinished Business

None

4. New Referrals for Consideration

- a. #120-18: (Crawford) To amend the City of Olean Code of Ordinances Chapter 2, Article VI, to include Division 3, Audit and Compliance Committee Reporting Policy.

Alderman Crawford introduced Ron DePalito and Ernie Kallenbach, the two citizen members of the City's new Audit and Compliance Committee. He explained that when the committee was formed, he realized that the City could use some members with an accounting background, which is why Mr. DePalito and Mr. Kallenbach were chosen. He continued that the point of this legislation is to address some internal control weaknesses, which were outlined in the City's last audit.

Alderman Crawford explained that the first recommendation from the City's independent auditors was to establish a policy concerning pending or threatened litigation, and notice to the Audit Committee. He explained that Mr. DiCerbo and the Mayor worked on a portion of the legislation to address these issues, which was presented to the committee. He added that in order to get this policy into place by the end of the year, it would need to be approved in

committee tonight in order to allow for publication time prior to the Council's final meeting of 2018. He asked the committee for their opinion on the proposed legislation.

Alderman Witte asked how often notice would occur, and Mr. DiCerbo replied that the legislation requires notification to occur not less than quarterly. Alderman Witte stated that she thinks that it is great that the Audit Committee will be notified of threatened and pending litigation, and asked if the Council will be notified as well. Alderman Crawford agreed, and Mr. DiCerbo replied that the legislation can be amended to include a copy of the notification to the Mayor and Common Council.

Alderman Crawford questioned the three stipulations spelled out in the legislation that determine whether or not notification is required. Mr. DiCerbo replied that the stipulations are taken from the American Bar Association, and that there has long been a back and forth with attorneys as to what should be disclosed, and what doesn't need to be. Alderman Crawford asked if the only time that litigation needs to be disclosed is if it is above the amount insurance covers, and Mr. DiCerbo added that it also must be disclosed if the insurance company declines coverage.

Mr. Kallenback explained that he does not feel that the City should tie anything to insurance coverage, as there is no guarantee that anything will be covered by the insurance company. He also feels that the Audit Committee and Council should be notified of pending litigation. Alderman Crawford agreed.

Alderman Dougherty asked if the insurance company is notified as soon as a situation arises, and Mr. DiCerbo responded that they are. However, it could be a week to a month before coverage is determined as the company considers the claim based on the policy coverage.

Mr. DiCerbo added that all Notices of Claim can be provided to the Audit Committee and Council each quarter; however, he feels that this will create more questions that it will provide answers.

Alderman Dougherty asked if a dollar threshold would be appropriate to determine if claims should be reported, and Mr. Kallenback replied that a dollar amount would be prudent. Mr. DiCerbo explained that the legislation could state "a loss in excess of \$50,000" or the three listed conditions.

Mr. Saradin explained that he feels that this recommendation was made in regards to Capital Projects. Mr. DiCerbo replied that he did not read it that way. Alderman Crawford explained that he feels that the City should apply this to anything in general. The council should be aware of when the City is being sued.

Alderman Witte asked if the smaller claims paid are included in the finance and bills, and Mr. Saradin replied that they are and can be found in "Judgments and Claims" (1930.413) or "Unallocated Insurance" (1910.511).

A motion to accept the changes as presented to require reporting not less than quarterly, to include a copy to the Common Council and Mayor, was made by Alderman Crawford, seconded by Alderman Witte. Voice vote, ayes all. Motion carried.

A motion to change requirements for reporting threatened or pending litigation as described was made by Alderman George, seconded by Alderman Dougherty. Voice vote, ayes all. Motion carried.

Alderman Crawford explained that the next recommendation suggested a policy regarding budget versus actual for Capital Projects. Mr. Saradin explained that he has provided for the committee an analysis of the Debt Service account. He explained that any time the City borrows money, the money is deposited into the Debt Service account with Five Star Bank, and is then moved to the appropriate Capital Account. He illustrated how major projects are either still in progress or under budget with remaining funds to be used to pay down debt for that particular project.

Mr. Saradin continued by presenting a breakdown for the Farmers' Market Project showing project funding, minus three check amounts that have been paid since the inception of the project. He explained that he envisions doing this in the future for the Audit Committee to show what the City has borrowed and what has been spent to date.

Alderman Crawford asked if this represents actual cash flow, and Mr. Saradin replied that it does, and these are actual checks that have been issued.

Mr. Kallenback explained that if Capital Projects are shown to the Audit Committee on a cash basis such as this, the million dollar overflow for the North Union Street Project still would not have been found. He feels that the Audit Committee should also be presented with bills that are still outstanding, and show some sort of accrual basis and invoices received.

Alderman Andreano explained that moving forward, the City wants a different way of reporting. Mr. Ring explained that he feels that this is where engineering comes in, as he can track percentages used and completed versus budget. Alderman Dougherty asked if cash receipts could be listed by Mr. Saradin, and accruals from Mr. Ring.

Mr. Kallenback explained that he assumes that as progress was being made on North Union Street, there must have been certainty that the project was 90% complete and that \$1 million

would still be owed. The \$1 million, however, seemed to come out of the blue and he aims to prevent this from happening again in the future.

Mr. DiCerbo explained that the committee needs to separate the North Union Street Project from all future projects, because of the circumstances. He explained that the Council approved the full value of the project; however, they did not fund the full value of the project. It was the intention of the City at that time to shave costs off of the project, but that never materialized. This is not a question regarding the surprise bill.

Alderman George asked if it was a red flag that the project was underfunded from the beginning.

Mr. Kallenback explained that while he was the Controller at St. Bonaventure University, the Quick Arts Center was built with funding from a donor. However, the donor did not fund operations, and this caused additional financial responsibility on the University that should have been considered before the project was done. If the project cost was \$11 million and only \$10 million was in place, then he would say that it's on the Council for planning like that.

He continued that going forward, Mr. Saradin's example should also include the total cost of the project. That way, if there is a \$1.3 million cost and only \$1.25 million in funding, the Council can be aware to come up with the additional needed funding. Something needs to be done to monitor major construction projects more closely.

Alderman Crawford explained that the budget, change orders, and project financing recommendations from the auditors are all interrelated. He added that reporting needs to include something that says that the City has received an invoice, but that it has not yet been paid.

Mr. Saradin explained that, more recently, the Council has been made aware of change orders on projects. Alderman Crawford explained that he wants to make sure that administrations in the future are held to a standard.

Mr. Ring explained that based on recommendations by the State, project budgets typically include a 15% contingency and 5% field change payment. All else being equal, the bid amount minus the total cost leaves a roughly 15% contingency. The 5% field change payment is built into the bid. He explained that it is important to reevaluate after a bid for contingency.

Alderman Crawford explained that it seems that the City needs an actual written policy in order to put into legislation what the committee is discussing. He explained that that's how the Council can close the gap. He feels that, due to timing constraints, the latter part of the legislation regarding project budget, change orders and project financing will not be put into

place this year, but that they can be addressed after the New Year. The committee can at least consider the notification of pending or threatened litigation.

Mr. Saradin explained that, normally when the City envisions a project, it tries to be up front with the Council. Nothing happens until the Council approves the general idea.

Alderman Crawford asked Mr. Ring, Mr. Saradin and Mayor Aiello to get together to put together more decisive verbiage, to then be forwarded to the committee for its review.

A motion to approve PL #120-18 as discussed was made by Alderman Crawford, seconded by Alderman Witte. Voice vote, ayes all. Motion carried. Referred to City Attorney for Resolution.

5. Approval of Committee Reports

A motion to approve committee reports was made by Alderman Witte, seconded by Alderman Andreano. Voice vote, ayes all. Motion carried.

6. Adjournment

A motion to adjourn was made by Alderman Dougherty, seconded by Alderman Crawford. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 6:30 p.m.