

**CITY OF MONTPELIER
CAPITAL CITY OF VERMONT**

City Manager's Weekly Report – 2/12/10

UPCOMING MEETINGS ...

- ❖ **Presidents' Day:** Monday, February 15th; City Hall Offices will be closed.
- ❖ **Development Review Board Meeting:** Tuesday, February 16th, at 7:00 P.M. in the City Council Chambers.
- ❖ **Cemetery Commissioners' Meeting:** Wednesday, February 17th, at 3:30 P.M. in the City Manager's Conference Room.
- ❖ **"Montpelier Alive" Promotions Committee Meeting:** Wednesday, February 17th, at 8:00 A.M. in the City Council Chambers.
- ❖ **Board of Civil Authority Meeting:** Wednesday, February 17th, at 6:30 P.M. in the City Council Chambers.
- ❖ **City Council Meeting:** Wednesday, February 17th, at 7:00 P.M. in the City Council Chambers.
- ❖ **"Montpelier Alive" Design Committee Meeting:** Thursday, February 18th, at 5:00 P.M. in the City Manager's Conference Room.

ENCLOSURES ...

- ✓ Copy of Parade Permits: Updated 2/12/10

STATUS REPORTS ...

Health Insurance Update:

We received notice on Tuesday that the Police Union has filed for arbitration about the health insurance transition although it's not totally clear what issues they want arbitrated. As you know, we are scheduled to begin bargaining with them very soon for a successor contract.

Vermont Compost:

I spoke with Attorney Stitzel about this issue as you requested. He is reviewing the agreement between the health officer and Vermont Compost and will offer any comments or suggestions that he may have about the specific contents.

With regard to the procedural issues that were raised, Attorney Stitzel said that the statutes require the health officer to seek voluntary compliance before pursuing a health order. When seeking voluntary compliance, a health officer is within their rights and jurisdiction to make formal or informal agreements. As an example, a very simple agreement might be when the health officer tells someone that a problem exists at their property. The person says they'll clean it up within the week. The officer agrees to this time frame. If the person follows the agreement the officer takes no more steps, if they don't then the officer still has the full range of enforcement options available. This same agreement could take the form of an exchange of letters or e-mail instead of verbal communication. Or it could be in form of a more formal written agreement such as the one in this case. The key is that the agreement does not restrict future actions by the city nor does it commit any resources on behalf of the city. It spells out compliance actions that need to occur, what happens if they don't occur and presents the health officer the future opportunity to seek an order (without having to go through the same amount of investigation) if necessary. Therefore the agreement is valid and in place, the council wouldn't be able to amend or alter it since they are not really a party – in essence the Health Officer is agreeing to conditions under which he may or may not take additional action.

With regard to the Health Officer manual, Mr. Stitzel says that it is absolutely appropriate for the Health Officer and Council to work together on policies, ordinances and standards for the community. He advises, however, that both the manual and statute are clear that enforcement and initiation of health orders are the responsibility of the Officer. The

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Board acts in a hearing role when such actions are brought or appealed. Again the analogy is the Zoning Administrator – the council adopts the zoning ordinance and may get input from the Administrator about wording or what is or isn't working well. But the enforcement of the code fall strictly on the Administrator. The same thing exists, really, with the Police. The council adopts ordinances which are enforced by the police officers. Building codes work the same way. It does, however, make sense for the Council and Health Officer to have a general discussion about these issues that is not connected to the Vermont Compost case.

Finally, Mr. Stitzel noted that there are a couple of key differences between a voluntary compliance agreement and a formal health order. The first is that once the Council issues a health order (if not appealed) it becomes the final order. A violation of terms of that order can result in a court order. The second is that, unlike zoning or other ordinances, the health code allows an effected party, not just the city, to file in court to seek enforcement of a health order. In this case, for instance, if a potential violation occurred and the city did not see reason to bring an action, the neighbors could bring an action themselves. Mr. Stitzel also notes that an order can provide protection for the person against whom the order is issued. That is because the order specifies certain actions, standards and behaviors that need to be met. If complied with continually, they protect themselves against additional complaints.

Audit:

Fred Duplessis from Sullivan, Powers Inc. will be at the meeting to present the annual audit for the fiscaly year ending June 30, 2009.

Schools:

The School Board is already meeting on February 17th and has a very full agenda. As such, they will not be able to send a rep to meet with us although they indicated that they would like to. Perhaps after the March elections they could meet with us and introduce their new Superintendent. I did follow up on the issues raised by Council Member Weiss. The amount of money on the ballot for the Rec Department represents the tax appropriation only, not the full budget (the same thing we do for the city budget). The reporting requirement in Title VI, Section 7 refers to the written material for the Annual Report. The school department provided us with all of their material in a timely fashion to meet this requirement.

Wastewater Plant:

We remain in conversations with ANR about resolving this matter. We have provided documentation of work done to date to correct the UV light issue and additional work to be done. We are optimistic that this will demonstrate the city's good faith attempts to fix the system and not result in any fines.

City Manager's Review:

We agreed to continue the review at the end of the February 17th meeting.

Upcoming Meetings:

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| February 17 | Audit Presentation
River Report
58 Barre Street |
| March 2 | Annual City Meeting Elections |
| March 10 | Election of Officers
Rules of Procedure
Ethics Policy
Operations Overview (open meetings, public records, etc.) |

William Fraser
City Manager



