

**WEYMOUTH TOWN COUNCIL  
Public Works Committee  
Town Hall Council Chambers  
January 23, 2018, Tuesday**

Present: Arthur Mathews, Chairman  
Ed Harrington, Vice Chairman  
Christopher Heffernan, Councilor  
Thomas J. Lacey, Councilor  
Michael Smart, Councilor

Also Present: Joseph Callanan, Town Solicitor  
Robert Feldman, Department of Public Works

Recording Secretary: Mary Barker

Chairman Mathews called the meeting to order at 7:00 PM.

**17 129- Measure to provide an exemption under the State Ethics Law to allow Municipal Employees to Plow Snow**

Chairman Mathews opened the measure for discussion. It was referred to the Public Works Committee on December 18, 2017. He provided some background information- the measure was reviewed and passed by the Town Council at its meeting on January 16, 2018. Subsequent to the vote, there was a motion to refer the matter of snowplowing to the Public Works committee for discussion.

Solicitor Callanan reported that the Director of Public Works was unavailable and Robert Feldman was present on his behalf. Chairman Mathews asked for an outline of the procedure to contract with private snowplow vendors regarding insurance, inspections, etc. Mr. Feldman responded that a proposed vendor is provided with a contractor package that includes the contract and proof of insurance, vehicle quantity and registrations. The administration (DPW) reviews the packet and if it is acceptable, it's forwarded to the Solicitor for approval. Once approved it comes back to the DPW with a list of the equipment they have. The vendor brings his equipment to the DPW for inspection before the first snowfall to make sure it is what was claimed in the application. The vendor is then assigned a route-of which there are fifty.

Councilor Smart asked what they do if the contractor can't meet the need. Mr. Feldman responded that they are allowed two violations (they don't have the equipment that was claimed or they can't meet the need required for the route) before they are let go. They are given an hour in a storm to get back up and running before they are cut.

Vice Chairman Harrington asked if they hire single-truck contractors or must it be a larger operation. Mr. Feldman responded that there are fifty routes; each is assigned a DPW crew member and a private contractor so that there are two trucks to a route. There

are eight DPW employees that route check. The contractor is given a timesheet and the checker will fill in for the route and return it at the end of the storm. They do use the single trucks, especially for narrower, smaller streets.

Councilor Heffernan noted that when the measure was brought before the Council, it was noted that the insurance requirements were more stringent than those in surrounding towns. Solicitor Callanan asked Mr. Feldman to update the contractor numbers provided at the last Town Council meeting. Mr. Feldman responded that in 2015/16 season there were 51 contractors and 102 pieces of equipment. Equipment includes anything from a front-end loader to a pickup. Last year, 2016/2017 there were 36 contractors with 82 pieces of equipment. This year they have 32 contractors and 77 pieces of equipment. During the first storm, on December 9, 2017, there were 32 contractors and 52 pieces of equipment. Not all contractors had turned in paperwork by then or were ready to go, and not all showed up.

Chairman Mathews asked how many municipal employees have signed on since the measure was passed. Solicitor Callanan responded that one has completed everything and been signed off and they have had inquiries from two other categories of town employees; town employees who have equipment that someone else would be driving, and those that plow for school and recreation department who could then be paid to go outside of their assigned areas and with town vehicles paid for by the town department. Chairman Mathews asked if these town employees would be eligible under the measure that was just passed? Solicitor Callanan responded they could if they meet the requirements and were signed off by a member of Council—and are outside of their regular workday (i.e. a police officer plowing after his regular shift). Conditions have to be met.

Solicitor Callanan reverted back to the question on insurance posed by Councilor Heffernan. He spent a great deal of time reviewing procurement and insurance. The contracts he approved during his first winter were barely enforceable. It was difficult to change the system. Contracts were adjusted from a two to a six-page form with better protections for the town. MIAA provided guidance for the insurance requirements for town contracts and snowplow contracts. The insurance the town required in 2015 would not have covered a contractor in an accident – they required insurance but they didn't require insurance that would cover the operations of the driver. It was more typical of a policy one would require for an automobile (which would exclude commercial use such as plowing, and would not cover if a resident were injured.).

They changed the requirement in 2016/2017 to insurance with a rider that actually covered snowplowing, which costs more. They didn't require the full amounts recommended by MIAA (\$1M /\$3M aggregate and \$500,000 general liability). During the last storm a snowplow hit a house in another town. Prior to 2015 the required coverage was \$100,000/\$300,000 and that year a private contractor hit and killed a Weymouth resident. If the policy had actually covered snowplow operations, the deceased's family would have only been eligible for a \$100,000 payout from the insurer. If it had been a town employee, not a town contractor, the coverage for the contractor

would have been zero. It would have been hard to defend that depending upon who caused the damage, and it would determine whether there was money or not for the coverage. The values they settled on were \$1M auto/\$500,000 general liability; not the \$1M MIIA recommended. It was a balancing act between protecting the residents and providing the service. Contractors who repaired the town hall were required to have insurance.

Councilor Harrington responded that it is prudent to protect the residents but it's also prudent to have a rate that can be absorbed by the contractors. Mr. Feldman noted that two years ago when the regulations were added to the insurance, they did increase their rates. They did a comparison of surrounding towns and the state's rates and we are within \$5 of any other city or town. Chairman Mathews responded that their rates may be comparable, but their insurance requirements may not be. The last few years, with less snow, the contractors can't afford the rates along with the insurance and they are leaving because of it. It puts Weymouth in a difficult position if it doesn't have sufficient equipment to handle the town's snow plowing needs.

Councilor Lacey noted that at the Town Council meeting, at which this was deliberated under same night action, the Council requested for the comparison of rates between surrounding towns. It looks like the numbers have significantly changed and the balance of risk to insurance might have Weymouth out-priced as a result of the insurance. Has the comparison been done? Solicitor Callanan responded that they dropped their requirements to what Braintree required. They are tied as the second highest with Braintree for the insurance requirement. The DPW director was satisfied in January that they had sufficient equipment and the Mayor had called contractors. In January after the big storm, they were satisfied they had enough. The Director has not asked for additional support. Councilor Lacey noted that he was disappointed there isn't a comparison as was asked for at the meeting- this was a common courtesy request. They supported a 2-9 (b) request expecting they would have this information. Mr. Feldman had the information referred to and Solicitor Callanan read it:

City/Town	Bodily Injury Insurance	Property Liability	Workers Comp
Braintree	\$500,000		Y
Hanover	\$100000/\$300,000	\$100,000	
Hingham	required/no amounts		Y
Quincy	\$100,000/\$300,000	\$100,000	minimum required

Councilor Lacey asked for the written report. Mr. Feldman will request the value from Hingham. He noted that out of district special education transportation contracts were required to carry less coverage than a personal automobile holder would be required to carry.

Chairman Mathews asked if they plan to revisit this next year or are the contracts firm in perpetuity? Solicitor Callanan responded that he has ongoing discussions with the DPW Director. There are other aspects he would like to address. If the rates become a problem they will readress. Chairman Mathews thanked the DPW for its efforts to attract

contractors. He had heard from constituents regarding some of the cleanup after recent storms. The larger storms, by and large, were better managed. With fewer contractors, a storm may take longer to clear with less equipment.

Councilor Harrington noted he had not received any complaints about snowplowing issues and has monitored social media which had more positive comments. He asked if there had been a lot of financial loss regarding damage? Solicitor Callanan responded that the DPW replaces many fences and mailboxes from storm damage. These small repairs are handled by the department. He clarified that they are willing to pay but the DPW Director is comfortable with the number of pieces and the rates they are paying. They are willing to find a way to make this work.

Councilor Heffernan noted when this issue was first proposed it was with a sense of urgency. Is there a number that the DPW wants to get to? Mr. Feldman responded that they are comfortable with the current quota. Solicitor Callanan responded that there was a sense of urgency with the number they were working with at the time. They noted that the Mayor has been proactive. They have monitored and viewed the process. Mr. Feldman reviewed the process: the first order of business is to clear the main roads before hitting side streets. When the snow begins, the first contractors called in are responsible to sand. The smaller equipment does the town buildings and hills. When the 2" mark is reached, the plows go out- town buildings and hills. Once 2" mark reached, contractors are called in. First consideration is to clear for emergency vehicles, then when the snow stops, they push back snow. Once contractors are released, the town is salted, then sidewalks and a mile radius around schools are cleared.

Chairman Mathews asked for the amount currently expended on snow. Mr. Feldman responded to date the bills total \$512,579.97. Councilor Smart asked if prevailing wages apply to snowplow contractors. Solicitor Callanan responded that the rates are higher than most employees double-time and he can provide it. Councilor Smart asked if the scarcity was a result of the increase in insurance rates. If they didn't have enough insurance and had a catastrophic loss it would look poorly to the residents. Are they pushing too high and as a result are losing contractors? 32/88 for this year, administration feels is adequate. What is Braintree's numbers and are they struggling with the higher requirements?

Solicitor Callanan has heard there are some contractors who are not coming back because of insurance and some also because of the contract. Allocating risk includes insurance and how the contract is drafted. There was no indemnification clause and the new one represents Weymouth residents, not the contract. Contracts are built that way. They lost 4 contractors in the last few years. A good economy has also contributed. Braintree package went out with higher rates after Weymouth's contract went out. If Braintree had done it in August, they could then have competed. DPW Director decides what he can work with. They are not saying no; just trying to do the best they can.

Councilor Smart asked what is the money amount from point A- the contract last year to point B- this year's. Solicitor Callanan noted that it's average \$800-\$1000 per plow and

they have talked about what to do next year; perhaps pre-funding insurance with contractors. They are willing to work with them. Councilor Smart responded that no one thought they were underpaying. Chairman Mathews noted snowplowing was losing money the last few years; there wasn't snow and the rates increased. Most were single-truck contractors. Landscape companies were more able to absorb the change. Solicitor Callanan noted that making reforms in the middle of a season was unfair to the contractors already on board. He noted that the town does not have a contract for debris removal. Emergency procurement would be needed. It would have been nice to include this in the contract. It was noted that Houston had to do an emergency procurement following the flooding and were lost to Miami which raised its rates higher. Incremental change will be done as the system can handle it. This should be addressed before next season so there is more incentive to retain and attract contractors. Councilor Harrington noted there are less available contractors and competition. Solicitor Callanan suggested that regionalizing may be a consideration. Salt and sand supplies are purchased regionally but weather would affect the plowing. Snowfall varies geographically.

Councilor Smart asked if single-truck contractors are subject to the same contract terms as multiple equipment contractors. Solicitor Callanan noted the state allows a 3-year contract. Chairman Mathews asked why the measure was only for one year. Solicitor Callanan responded that it was originally presented that way, but a Councilor requested the language be amended to cover only the current year. Councilor Smart suggested that if it expires this year, it gives them a chance to look at other options and are they willing to commit to suggesting to the administration to extend? They would like to relay this to the constituents. Councilor Smart hopes to hear the Mayor is committed to that.

Chairman Mathews suggested that this issue should not be a Town Council matter; it should be through the administration or Human Resources. Solicitor Callanan noted the only involvement by Council is a signature signing off on an employee's disclosure. Currently it will be the President of the Town Council as signer. There is a box to check on the disclosure with a signature by a Councilor. Solicitor Callanan said only one employee has gone through the process. The form requires signature by the employee, the DPW Director and a Councilor. Vice Chairman Harrington asked if the Councilor receives it to sign, is there assurance it has been thoroughly vetted before that point. Solicitor Callanan responded that the Council signature is the final one. The Solicitor would sign prior to that.

Chairman Mathews noted that he will report out at the next meeting of the Town Council that a discussion was held, and this issue is not closed. The administration is still looking at it. There is positive news, in that the numbers have increased since this was first brought to the Council's attention.

Councilor Smart asked he reiterate when he reports out that the matter has been disposed of and the referral was strictly for discussion of the subject matter. No further action can be taken on the measure. Solicitor Callanan will provide the insurance breakdown. He will commit to discussion with the Administration regarding the pre-funding concept. Councilor Haugh had asked for specific rate comparison information with Braintree and

the other surrounding towns, including Quincy (pays by the inch). Mr. Feldman noted rates are set by type of equipment.

### **ADJOURNMENT**

At 8:11 PM, there being no further business, a motion was made by Vice Chairman Smart to adjourn and was seconded by Councilor Lacey. UNANIMOUSLY VOTED.

Respectfully Submitted by Mary Barker as Recording Secretary.

Approved by Chairman Arthur Mathews

Voted unanimously on 5 February 2018