



**SPECIAL MEETING OF THE COMMON COUNCIL  
MIDDLETOWN CONNECTICUT**

**WORKSHOP:  
FREEDOM OF INFORMATION ACT AND USE OF SOCIAL MEDIA**

**MONDAY, FEBRUARY 3, 2020  
6:30 PM  
MINUTES**

The Special Meeting of the Common Council of the City of Middletown was held in the Council Chamber of the Municipal Building on Monday, February 3, 2020, at 6:30 PM.

**Present:**

Councilwoman Jeanette White Blackwell	Councilman Vincent Loffredo
Councilwoman Meghan Carta	Councilman Anthony Mangiafico
Councilman Grady Faulkner, Jr.	Councilman Edward McKeon
Councilman Darnell Ford	Councilman Eugene Nocera
Councilman Edward Ford, Jr.	Councilwoman Linda Salafia
Councilman Anthony Gennaro, Sr.	

Mayor Benjamin D. Florsheim, Chair  
Linda Reed, Council Clerk  
Daniel Ryan, Esq., Corporation Counsel  
Officer Kurt Scrivo, Middletown Police, Sergeant-at-Arms,

Also Present: Kori Wisneski, Deputy General Counsel  
Brig Smith, General Counsel  
David Bauer, Republican Registrar of Voters  
Barbara Knoll Peterson, Mayor's Administrative Assistant (arrived 6:50 PM)  
Faith Jackson, Director Office of Equal Opportunity & Diversity Mngt. (arrived 6:52 PM)

Absent: Councilman Philip Pessina

Members of the Public: 6

**1. Call to Order**

Mayor Benjamin Florsheim calls the meeting to order at 6:35PM PM. No Pledge of Allegiance.

The Clerk reads the Call of the Meeting and the Chair declares the call a legal call and the meeting a legal meeting.

**2. Public Hearing Opens**

The Chair announces that the public hearing for the social media workshop is waived.

**3. Public Hearing Closes**

Public hearing is waived.

**4. Presentation by Office of General Counsel: Freedom of Information Act and Use of Social Media**

The Chair invites Deputy General Counsel Kori Wisneski to the podium for the workshop.

Attorney Wisneski states that she will discuss the Freedom of Information Act (FOIA) and some of the pitfalls of social media. She refers to two (2) handouts: City procedures for responding to Freedom of Information (FOI) requests, noting it is important for City employees and good for the Councilmembers to see; and the FOI Act. She explains that FOIA consists of two (2) parts, addressing documents and meetings, respectively. The City must comply with all parts of FOIA, and notes that the more relevant section of FOIA for Councilmembers deals with meetings. If Councilmembers receive an FOI request, they are obligated to respond. She advises that, if a Councilmember receives an FOI request, they should contact the Legal Department and the Town Clerk. The Town Clerk is the keeper of City records and is the City's FOIA liaison,

Attorney Wisneski reviews FOI definitions for “documents,” including public record. It pertains to the City server and could pertain to private server. She cautions that Councilmember’s should not use private email for public business. She adds that the Mayor has issued a directive to staff to use City issued emails for elected officials. She advises that, if a councilmember receives an FOI request, they notify the Town Clerk and Legal Department. While they do not create documents, they produce copies of existing documents, which are not exempt. She describes the time frame for the FOI acknowledgment and document production and fee structure. She summarized documents that are statutorily exceptions or exemptions.

Attorney Wisneski states that the second aspect of FOI deals with meetings. By law, public agency meetings must be open to the public., She reviews the broad definition of “meeting” as “convening of a quorum of a multimember agency whether in person or by means of electronic equipment to discuss or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.” It includes email with a quorum of individuals. For social media purposes, it includes comments between a quorum of people. She states that, if someone has a conversation on social media, including other members of the Council and it constitutes a quorum and it involves business that should be on an agenda, it may constitute a meeting. It could be a violation of the FOIA open meeting law. A non-meeting includes personnel search committees for executive level employees, chance meetings not intended for the purpose of discussing matters relating to official business, collective bargaining, and caucuses of single political parties. Exemptions are rare, but if there is quorum be careful because that meeting should be noticed and it could generate an FOI violation complaint.

Relative to agendas, Attorney Wisneski explains that FOI requires filing 24 hours in advance of the meeting with the Town Clerk. Regular meetings are held at the same time and place each month. The agenda can be amended at the meeting by a 2/3 vote of those members present and voting. In contrast, a special meeting is announced for a particular purpose. This agenda cannot be amended. It is posted with the Town Clerk and on the City website.

Attorney Wisneski states that, in Middletown, minutes are filed with the Town Clerk, eliminating accessibility issues, especially when there is staff turnover. She indicates that the minutes should also be posted online. She highlighted the FOIA statutory elements for minutes.

Relative to an executive session, it is a meeting of a public agency, excluding the public, noting that FOIA defines specific reasons for convening an executive session. An agenda may be amended to add an executive session by a 2/3 vote of those present and voting. A 2/3 vote is required to move into executive session, a motion to come out of executive session, and any necessary motions in open session. An executive session must appear on a special meeting agenda as that agenda cannot be amended.

Relative to social media, Attorney Wisneski states that as elected official they need to be cautious not to violate FOIA. The legal department is working with the Mayor’s Office on a social media policy, which will apply to official social media forums and not apply to elected officials. She summarizes some of the pitfalls of social media. She states that posts on social media may be considered records under FOIA because they are elected officials if they are talking about a subject of these meetings. Councilmembers’ social media or blog may be subject to FOIA. Records created under their role as public officials may be subject to State records retention laws and has been discussed by the office of the State Attorney General. Under open meeting laws, social media, blogs, and comments may be posted on social media, and, while rare, other Councilmembers may comment. If there is a quorum of comments from Councilmembers on a subject that is on the agenda, for example, it could be a meeting, which needs to be noticed and published. If it is on social media, it was clearly not intended to be a meeting, so it could be an FOIA violation of the open meeting law. Someone could file a complaint with FOI and the legal department will need to defend the conduct. She doesn’t know how often this happens, but they must need to think about this when using social media.

Attorney Wisneski states that Zoning Board of Appeals and Planning & Zoning Commission members must be careful about communicating with the public on open matters before a decision is rendered especially because these bodies are judicial authorities. It could lead to claims of predetermination and bias, which could impact litigation. She suggests that they limit communication with the public on pending matters.

Attorney Wisneski reminds councilmembers to use City issued email. They need to be careful of records, social media posts, and emails.

The Chair calls on Councilwoman Linda Salafia for questions.

Councilwoman Salafia states that her email comes through the City tablet. She asks if she may – if it is possible -- access that email via another device.

Attorney Wisneski replies that it is possible and that Councilwoman Salafia should contact Technology Department Director Bryan Skowera. She adds that she needs to review the policy.

Councilwoman Salafia states that, the only way that she can get to that email is via the tablet, which she cannot do during the day. If that is the absolute and only way to get information, then Councilmembers need more lead time. That means that you cannot send something today and expect and answer today.

The Chair calls on Councilwoman Jeanette Blackwell.

Councilwoman Blackwell asks Attorney Wisneski, having spoken to regular and special meetings, to speak to emergency meetings.

Attorney Wisneski replies that emergency meetings are rare. She notes that trainings by FOI Public Information Officer Tom Hennick . . . never in her tenure has she ever used it, An emergency meeting does not need to be noticed so they could just have a meeting. She recalls that Mr. Hennick referred to Sandy Hook as an example of something that is a true example of something that merited an emergency meeting. It is not something that she would use. Use it sparingly, reiterating that she has never used it. Ordinarily, an agenda can be issued within 24 hours, making it a special meeting.

Councilwoman Blackwell asks, for members who might violate the social media policy, what are the consequences.

Attorney Wisneski asks Councilwoman Blackwell if she means employees.

Councilwoman Blackwell replies, Councilmembers and employees.

Attorney Wisneski states that the social media policy is in draft format and does not apply to elected officials. The policy looks to coordinate policies across the City, noting that different departments have blogs and they want to coordinate everyone.

The Chair calls on Councilman Edward McKeon.

Councilman McKeon asks for clarification. If he emails his caucus, he asks if it is not considered a meeting.

Attorney Wisneski replies, "Technically, no."

The Chair calls on Councilman Edward Ford, Jr.

Councilman Edward Ford states that he uses social media often to update, to share public information. For example, in terms of content and sharing that content, he asks if they are permitted to share information about items that the Council is working on as long as they don't start a conversation.

Attorney Wisneski replies that they can do that, but she wants Councilmembers to be sure, as Councilman Nocera asked her to address, that the members be aware of certain pitfalls. She does not represent the individual Councilmembers, but, rather, the City, Councilmembers are adults and should be able to engage with the public, who elected them. She adds that they need to be smart about how they do so and make sure that they are mindful that a conversation with other officials can constitute a meeting.

As a follow-up, Councilman Edward Ford asks when the new social media policy will be released.

Attorney Wisneski replies that this policy will be issued by the Mayor's Office, adding that it does not have to go to the Common Council. She notes that it will be on the City website. She does not have a timeline, but estimates that it will be in the next couple of months.

The Chair calls on Councilman Vincent Loffredo.

Councilman Loffredo asks if past administrations have had a social media policy.

Attorney Wisneski replies that she does not know whether or not there has been a written social media policy.

Councilman Loffredo asks why.

Attorney Wisneski replies that the use of social media in the City is relatively new, that it didn't exist 10 years ago.

Councilman Loffredo asks if, during the process of elections, and individuals running for office deal with campaign issues, this policy applies.

Attorney Wisneski replies that this is different because it is a political campaign with First Amendment rights. When it crosses over into things that fall under the jurisdiction of the City and an individual's role as a Councilmember, that's when you think about whether or not you have

created a public record, if you need to keep it, are you having a conversation over email or social media, which could be construed as a meeting.

Councilman Loffredo states that, as people campaign, they are potentially dealing with issues that are going to be on the agenda or have been on the agenda. He asks where the line is.

Attorney Wisneski replies that it depends on the actual post. She states that she is not telling anyone not to post, adding that they all have that opportunity. What she is saying is that they need to think about things when they do post to be sure that they are not running afoul of FOI.

Councilman Loffredo asks how long it is required to retain records by City and staff and elected officials. How long should records be retained?

Attorney Wisneski replies that is a difficult question because there is a different schedule for different records.

Councilman Loffredo asks that she provide that information.

Attorney Wisneski replies that the information is on the Connecticut State Library website

Councilman Loffredo asks if there is a requirement as to the number of years.

Attorney Wisneski replies, "Absolutely," noting that one cannot simply destroy records. She explains that they need to apply to the State to shred documents when the time is up.

Councilman Loffredo states that they are using, as Attorney Wisneski is urging, the City website. The City has an IT department, which has responsibility for retention.

Attorney Wisneski replies, "Absolutely," noting that they are aware of the retentions schedules.

Councilman Loffredo asks, "Including emails?"

Attorney Wisneski replies, "Absolutely."

**5. Meeting adjourned**

There being no further business, Councilman Grady Faulkner, Jr. moves to adjourn. Councilwoman Jeanette Blackwell seconds the motion.

There being no discussion, the Chair calls for a vote. The motion is unanimously approved with 11 aye votes (Councilmembers Blackwell, Carta, Faulkner, D. Ford, E. Ford, Gennaro, Loffredo, Mangiafico, McKeon, Nocera, and Salafia). Councilman Philip Pessina is absent. The motion to adjourn is approved.

The Chair declares that the meeting is adjourned at 7:05 PM.

ATTEST:

LINDA S.K. REED,  
COMMON COUNCIL CLERK

*K: review/ minutes/ 20 February 03 – special meeting – social media workshop – 3 February 2020*