

Energy & Environment Committee

Regular Meeting Minutes

DATE & TIME: April 16, 2015, 6:30 PM
LOCATION: Legislative Chambers, 6th Floor, COB, Kingston, NY
PRESIDING OFFICER: Chair Peter Loughran
LEGISLATIVE STAFF: Krista J. Barringer, Deputy Clerk
PRESENT: Legislators John Parete, Kenneth Ronk, and Mary Wawro
EXCUSED: Legislators Richard Parete and Hector Rodriguez
QUORUM PRESENT: Yes
OTHER ATTENDEES: Legislators Tracey Bartels and Manna Jo Greene, Minority Counsel Erica Guerin, County Attorney Bea Havranek, Fleet Manager Kim Millian, City of Kingston Alderman Brad Will and Catskill Mountainkeeper Representative Kathy Nolan

Chair Loughran called the meeting to order at 6:05 PM.

Motion No. 1 **Resolutions Nos. 109** **April 21, 2015**

Motion Made By: Legislator Ronk

Motion Seconded By: Legislator Loughran

Text of Motion: Resolved to approve Resolution No. 109 - Setting A Public Hearing On Proposed Local Law No. 3 of 2015 (A Local Law Establishing A Sustainable Green Fleet Policy) To Be Held On Tuesday, May 13, 2015 At 6: 00 PM

Resolution No. 109 Summary: This Resolution noted the submission of Proposed Local Law No. 3 of 2015 to the Ulster County Legislature and tabled said Proposed Local Law pending the holding of a public hearing thereon. The Resolution directs the Clerk of the Ulster County Legislature to cause a legal notice of said public hearing to be published according to law and that said public hearing will be held on Tuesday, May 13, 2015 at 6:00 PM in the Legislative Chambers, Ulster County Office Building, 6th Floor, 244 Fair Street, Kingston, New York.

Discussion:

County Attorney Havranek noted her concern with paragraph 1, section 6, that the Legislature is unable to direct the County Executive. She stated the County Executive's responsibility, as stated in the Charter, to supervise and direct and control. She stated it is his authority to supervise and direct the internal structure and organization of every unit of government in the Executive branch.

Minority Counsel Guerin stated she respectfully disagreed. She noted the group being established is in no way being supervised, directed, or controlled by the Legislature. She noted the Executive has the ability to appoint every member of the Committee and there is no direction on when they meet, how often they meet, how they will conduct their business as that will be up to the Committee themselves and how the Executive will direct them. She stated the Legislature does have the ability under the Charter to direct each of the Commissioners of each of the Departments, with the

exception of the Department of Health, to give them specific duties. She noted the Legislature could include in their specific responsibilities to partake in and undertake this particular vehicular review. She stated the Resolution sponsor, Legislator Ronk, did not feel that the Commissioners themselves had to be the appointed members of the Review Committee but if the County Executive so wanted it to be Commissioners, he could appoint them. She stated the Legislature can create a Committee and establish the principals to undertake Green Fleet policy. She noted the County Executive role is to execute the policy. She noted it gives opportunity for the Committee to be creative and innovating in executing the policy and considers it to be a fluid document. She noted the advancement of technology and the need for the policy to move with innovating in green fleet technology. She spoke of the incentive to be creative. She stated there was no supervision, direction or control over the Executive but strictly is policy decisions being made by the Legislature. She noted under the Code, it is the County Executive's job to execute and enforce all local laws and resolutions the County Legislature enacts.

County Attorney Havranek respectfully disagreed. She stated a task of the County Executive to execute something already created has nothing to do with the County Executive's authority and duty to supervise, direct and control the departments. She indicated the Legislature directing the County Executive to appoint was not allowed.

Minority Counsel Guerin noted in State statutes where the Legislature has created advisory committees, especially in the Department of Environmental Conservation (DEC), where the Commissioner of DEC does appoint to the Committees.

County Attorney Havranek replied the State Legislature is a totally different animal than County Legislature. She stated the Charter was created by the County for the purpose of creating two separate branches of Government. She stated the Executive can not be directed to do something nor can a leap be made to his authority to supervise, direct, or control rests with the Legislature. She indicated offers were made by the Executive office to assist with the proposed policy and requested planning documents would not be denied the Legislature. She noted the employees serve at the pleasure of the County Executive. She felt there should be a way to negotiate to enable the review committee.

Legislator Bartels concurred that she also desired to negotiate to find a way to establish a review committee that met Legislator Ronk's satisfaction without stepping on the separation of powers. Legislator Ronk discussed his reasons for identifying the specific department representation listed as members of the review committee. He noted the ability for each of the departments to offer different expertise and knowledge to the review committee's discussions.

Legislator Bartels noted similar language in other local laws that authorize the enforcement role on county employees, such as the polystyrene local law. She offered an edit to the monitoring section to remove the words "County Executive appointment" and just specify the members of the review committee. Legislator Ronk indicated he would be fine with the Legislation identifying the specific department heads.

County Attorney Havranek indicated she would need time to study the section and determine what the specific department heads would be bringing to the table. Legislator Ronk queried if the review would be specific to the legal sufficiency of the section and not what the department heads could bring to the table. He felt that role of determining what they brought to the table was legislative decisions made by the Legislature. County Attorney Havranek stated she would be reviewing it for everything and noted she would be picking it up and looking at it multiple times as part of her review process.

Legislator Bartels and County Attorney Havranek discussed the Commissioner of Public Health's authority in regards to the polystyrene law. Legislator Bartels noted the continuous effort to find the line between operations and establishing policy. She noted there was an existing policy, the Charlie Busick Take Home Vehicle Policy, which was superseded by the SOP.

Chairman Loughran asked about the difference between the local law and policy. County Attorney Havranek replied the Legislature can mandate the County Executive to do something but that he doesn't have to follow it. She noted with those cases that have gone to court, the cases typically do not get anywhere. Legislator Ronk provided court examples from Dutchess and Orange Counties. County Attorney Havranek replied the hope was not to see similar actions in Ulster County and noted the desire to compromise.

County Attorney Havranek discussed her role to defend the power of the Legislature. Committee members discussed the differences of the roles of the County Attorney and the Legislature's attorney.

County Attorney Havranek requested time to look at the monitoring section and speak with the County Executive.

Legislator Bartels asked Legislator Ronk to articulate his aim for having a Green Fleet Review Committee. Legislator Ronk stated he desired a second set of internal eyes to review the plans for a green fleet. He noted the separate focuses from each of the departments and that not every department has the same needs. Minority Counsel Guerin stated every department has different areas of expertise with regards to the vehicle use of better routes, less travel, and more efficient purchasing. County Attorney Havranek noted the departments are constantly communicating to one another. Legislator Bartels noted the development of this policy was not about what this County Executive is doing. She noted the Legislature has to consider the worse case scenario and establish what works in policy. Chairman Loughran noted there is always that possibility and noted that is where a new County Executive or Legislature would come in make the changes. Legislator Bartels noted the desire to develop a document that lives across multiple and changing administrations.

Legislator Ronk reiterated the review committee's purpose was to offer a second set of eyes to look at the Green Fleet Report as developed by the Fleet Manager, in conjunction with the Department of the Environment. He noted the review committee's role would be to offer changes or amendments to the report. Legislator Greene concurred with the benefit to

members of the review committee sitting down annually with a report to look at successes. She did desire to know if there were any legal issues with establishing a review committee.

Legislator Bartels noted while the policy document did not have a review committee, a review committee was recommended in the Dobbs Ferry and Mid Hudson Climate Smart Committee documents. Legislator Ronk noted the review committee language used was from an Illinois example document. He noted the Illinois Green Fleet model had received recognition from the Environmental Protection Agency (EPA) as being a very successful green fleet program.

Director LaValle noted the County's Department of the Environment was established by local law with the charge of coordinating the County's operations. She noted they had already formed a group to look at these types of issues.

Chairman Loughran asked if the policy was passed as a local law, can changes be made without much difficulty as opposed to a policy. County Attorney Havranek replied changes to a local law would require more research and effort. She stated a mechanism can be added to the local law to allow changes to be made if needed. She noted a local law would exist longer than a policy. She and Legislator Ronk reviewed the local law process and the differences at other Counties.

Legislator Bartels requested Deputy Clerk Barringer to send to County Attorney Havranek and her Administrative Aide, Lesa Foster, the Illinois and Dobbs Ferry documents as well as any documents regarding the review committee.

Legislator Parete noted the review committee would help the Legislature monitor the policy. Legislator Ronk clarified this would help the Executive's office monitor the policy and that there would be a reporting mechanism to the Legislature. Legislator Parete asked how could the Legislature monitor a policy if there is no requirement to give a report to the Legislature. He noted the difficulty with time delays in having to go to individual departments to request reports. He felt if the policy indicated a report would be done, it would be done. He noted his experience on the ORDA board. County Attorney Havranek noted a future dysfunctional Executive could not be forced to do something even with a law. Legislator Ronk quoted former Legislative Counsel Chapman, "The only way to get an Executive that will not follow a local law to do is with a person with a black robe on. And having a local law in place would allow the ability to go before one." Legislator Bartels noted the Committee was not discussing litigation and not discussing the difference between a law and a policy. She felt the discussion should focus on creating the best document that moves the most people toward voting for it and will live over time through multiple administrations.

Legislator Ronk noted with the Department of the Environment not being included in the Charter, it could be eliminated in any given budget. County Attorney Havranek disagreed stating the Department was created by local law. Legislator Ronk noted a proposal to eliminate the Department would not have to go to referendum. Legislator Ronk and County Attorney Havranek discussed the Charter creation and process.

Alderman Will noted in the A-I list there were two Department of the Environments listed. Committee members discussed a proposal to return to this discussion at the next Energy and Environment Committee meeting on May 7, 2015. County Attorney Havranek stated she could not commit to this date but would try.

Legislator Greene reviewed the proposed edits on page 5, section 3. She proposed percentages of 20% at a rate of 4% per year. She queried if this could exclude equipment that is not passenger vehicles. She felt trucks could be encouraging flex fuel vehicles such as ethanol and bio-diesel. Fleet Manager Millian stated some trucks being purchased are flex fuel and they are looking to purchase bio-diesel. Legislator Greene stated she was looking for realistic numbers for this goal. Chairman Loughran noted there was a cost factor impacting these numbers. Fleet Manager Millian provided the current examples. County Attorney Havranek discussed the percentage goal having an impact on the annual budget and expressed concern with the tax cap. Ms. Nolan recommended if the goal was not met having language to provide justification of why it was not met.

Legislator Ronk noted the tax cap issue was addressed in the section on monitoring the Green Fleet policy. He stated it was section 6 which read, "each fiscal year, a Green Fleet plan shall be implemented provided it does not put the County in jeopardy of exceeding the 2% New York State property tax cap. In the event, such plan could cause the County to exceed the 2% property tax cap, the review committee shall decide how best to proceed to balance the goals and strategies of a Green Fleet policy with the requisite to keep the County budget within the confines of the 2% tax cap". County Attorney Havranek felt this provision of the policy was transferring powers that belong to the Legislature. Legislator Ronk stated the policy was not telling the review committee how to appropriate but rather how to operate the plan. Legislator Bartels expressed concern, in addition to the transfer of power, that the language puts this policy as the first initiative to not fund if the tax cap is being exceeded. Legislators Bartels and Ronk discussed possible budgetary discussion impacts.

Legislators Ronk and Greene clarified the desire to encourage flex fuel and bio-diesel but that they would not be defined as a Green vehicle. Legislator Ronk noted if there was a promotion of fossil fuels than he would want to revisit the alternative fuel discussion.

Fleet Manager Millian felt 15 green vehicles by 2020 was aggressive. She noted the plan was to purchase 4 cars in 2015 and 2 in 2016. She noted the Sheriff's vehicle purchases may bring the County closer to its goal but noted the purchases were dependent on the Department's needs.

Committee members discussed the typical purchase of vehicles annually. Fleet Manager Millian noted there is a 5-year plan for vehicle replacement. Legislator Ronk requested from Fleet Manager Millian and Deputy County Executive Crannell the request for replacement plan. County Attorney Havranek requested Fleet Manager Millian remind Deputy County Executive Crannell of this request.

Committee Members discussed the actual and minimum numbers that would be required to meet a 20% within 5 years.

Chairman Loughran noted the 2020 date language would end the goal at that time. Legislator Greene noted the need to establish a real goal. Legislator Ronk noted establishing a deliverable as part of the policy. Legislator Bartels suggested adding language such as “to ensure a minimum of 5% of the fleet by 2020 are Green vehicles. Thereafter, annually, a minimum of 20% of passenger vehicles purchased leased or otherwise obtained will be Green.”

Legislator Ronk recommended from Rockland County’s example document, “During any fiscal year, beginning on or before January 1, 2006, the Executive, having determined that the request or recommendation of any County agencies or on his own initiative that could cause exists to do so, may issue a waiver from the purchase schedule requirements of this article provided that no such waiver shall become effective and no purchases pursuant to such waivers shall be permitted unless and until such waiver and for the reasons constituting good cause to issue such waiver shall be submitted in writing to and by Resolution approved by the Legislature of Rockland County.” County Attorney Havranek noted her continued disagreement with this language.

Legislator Bartels restated the proposed goal language and noted both Fleet Manager Millian and Director LaValle indicated the goal as stated is reasonable. In response to questioning from Chairman Loughran, Legislators Bartels and Ronk replied that should the County not meet the stated goals, there was no punishment for not hitting the goals. Legislator Bartels felt the policy should target the most aggressive, realistic goal that the County can set with the hopes of exceeding it. Legislator Bartels noted the pride the Committee Members could have with establishing this policy.

Committee members discussed the Charlie Busick Take Home Vehicle policy. County Attorney Havranek stated she would be doing a more in-depth review of the policy and the SOP. She noted a court case which found the municipality which took the vehicles away had to compensate the employees for the removed vehicles. County Attorney Havranek stated the case was out of the Town of Islip in June 2014. She stated it was labor law and it was the Court of Appeals determined it was the Town’s duty to bargain before they took away the vehicles. Legislators Bartels and Ronk and County Attorney Havranek discussed the difference between having a job description that requires a take home vehicle and bargaining unit role in bargaining as part of agreements.

Chairman Loughran queried the maintaining of take home vehicles if their duties have changed. Legislator Ronk replied the only way to change duties is through a change in position, which involves a desk audit. Legislator Bartels and County Attorney Havranek discussed the intersect of the policy dated 2007 and the SOP amended post-Charter. County Attorney Havranek discussed the Internal Revenue Service (IRS) benefit designations for

take-home vehicles. Legislator Bartels requested County Attorney Havranek to review further this intersect.

Chairman Loughran reiterated his request to Deputy County Executive Crannell that a list of take home vehicles be made available at the next Energy and Environment Committee meeting. Legislator Bartels noted her request to have within that list indicate how many vehicles were in violation of the policy. Legislator Ronk noted in 2008 that none of the take home vehicles in the Highway Department met the policy. County Attorney Havranek concurred that the removed vehicles were returned due to an improper practice filing with Public Employee Review Board (PERB).

Legislator Ronk and Chairman Loughran withdrew their motions pending additional discussion at the next Energy and Environment Committee meeting.

Resolution No. 32 - Adopting The Ulster County Green Fleet Policy – was held for the next Energy and Environment Committee meeting. No action taken by the Energy and Environment Committee.

New Business – Committee Meeting Time

Legislator Bartels requested the Committee consider moving the meeting time to a date and time that does not start at 7:00 PM. Legislator Greene concurred the members of the Public Works and Capital Projects Committee have also expressed concern with having to shorten their meeting to accommodate the Energy and Environment Committee. Legislator Ronk suggested Committee Members review their schedules for discussion at the next Energy and Environment Committee meeting.

Adjournment

Motion Made By: Legislator Ronk

Motion Seconded By: Legislator Wawro

No. of Votes in Favor: 3

No. of Votes Against: 0

TIME: 7:50 PM

Dated the 5th day of May, 2015

Krista J. Barringer, Deputy Clerk

Minutes Approved on: May 7, 2015