



The Commonwealth of Massachusetts
Office of the Inspector General

GLENN A. CUNHA
INSPECTOR GENERAL

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

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James Jajuga, Mayor
City of Methuen
Searles Building, Room 306
41 Pleasant Street
Methuen, MA 01844

Methuen City Council
Searles Building, Room 308
41 Pleasant Street
Methuen, MA 01844

Dear Mayor and Councilors:

Pursuant to its statutory authority under Chapter 12A of the General Laws to prevent and detect fraud, waste and abuse in the expenditure of public funds, the Massachusetts Office of the Inspector General (“OIG”) issues this letter regarding the Methuen Police Superior Officers’ N.E.P.B.A. Local 17 contract (“Superiors’ Contract”), which the Methuen City Council (“Council”) purportedly approved on September 18, 2017.

Beginning in June 2018, and continuing to this day, dozens of individuals, including residents of Methuen and state and local officials, have called, emailed and written letters to the OIG requesting an investigation of the Superiors’ Contract.

Summary of Findings

The OIG found that the former Mayor and Methuen City Council likely violated state laws, failed to comply with their own municipal rules and breached their fiduciary duties to the residents of Methuen. By following such a deeply flawed process in negotiating and approving the Superiors’ Contract, the former Mayor and the Council demonstrated a reckless disregard for their duty to the residents of Methuen to safeguard taxpayer funds. Based on the totality of the circumstances, moreover, the OIG does not believe that the councilors’ votes to “approve” the Superiors’ Contract on September 18, 2017 are valid. Specifically, the OIG found that:

1. The Council appears to have improperly invoked the Rule of Necessity by, among other things, failing to publicly identify the conflicted councilors and the nature of their conflicts;

2. The former Mayor and the Council violated City Resolution #4720, which requires a financial impact statement and a memorandum explaining the differences between the current and proposed contracts prior to approval;
3. The Council violated the City Charter and a City Ordinance by voting to approve the Superiors' Contract twice on the same day;
4. The current Mayor is violating Section 4 of Chapter 40 of the General Laws and the City Charter by paying the superior officers under a memorandum of understanding ("MOU") that the Council never approved; and
5. The former Mayor and former and current city councilors violated the duties of care and due diligence that they owe as elected officials to the residents of Methuen by negotiating and approving the Superiors' Contract either without understanding the financial impact of the contract, or by understanding the financial impact and approving it anyway.¹

Moreover, if the City were to pay under the Superiors' Contract, it would constitute a waste of public funds. According to documentation provided by the City, one estimate of the financial impact of the Superiors' Contract demonstrates that police captains would receive a one-time raise of up to 183.49%. This would result in an estimated average salary for captains of \$432,295 per year, not including overtime and paid details.² At that salary, Methuen's police captains would earn significantly more than the Police Commissioners for Boston, Los Angeles and New York, the Superintendent of Police for Chicago and the Massachusetts State Police Colonel.

Based on the above findings, it is unlikely that the Superiors' Contract and MOU are legally enforceable agreements. The OIG recommends that the Council consult with the State Ethics Commission regarding the former Council's use of the Rule of Necessity. The OIG further recommends that the City consult with legal counsel to determine the validity of the Superiors' Contract and the MOU. Specifically, counsel should examine (1) whether the City's violations of its City Charter,³ a City Ordinance⁴ and a City Resolution⁵ impact the enforceability

¹ Additionally, the OIG has no reason to question, but did not fully analyze, the conclusions of attorneys hired by the Council finding that because the Council never appropriated funds for the "cost items" in the Superiors' Contract, those cost items are unenforceable. *See, e.g., Boston Teachers Union, Local 66 v. School Committee of Boston*, 386 Mass. 197, 203-04 (1982).

² Approximately nine months after the vote to "approve" the Superiors' Contract, the City created various estimates of the potential financial impact. Some estimates demonstrate a lower average pay; however, it was unclear to the OIG how those estimates were reached.

³ Section 2-9(a) of the Methuen City Charter states that "no measure shall be passed finally on the date on which it is introduced, except in cases of special emergency involving the health or safety of the people or their property." By "approving" the Superiors' Contract at the same meeting it was introduced, the former-Council likely violated the City Charter. Note that under the City Charter, "[t]he word 'measure' shall mean an ordinance passed or which could be passed by the City Council or an order, resolution, vote or other proceeding passed or which could be passed by the City Council or School Committee." Methuen City Charter, §§ 2-9(a), 9-12(g), *available at* <https://www.cityofmethuen.net/sites/methuenma/files/uploads/mmc12819.pdf>.

of the Superiors' Contract; and (2) whether the City's failure to comply with Section 4 of Chapter 40 of the General Laws⁶ and the City Charter render the MOU invalid.

Superiors' Contract

As detailed below, the City Council voted in September 2018 to approve the Superiors' Contract, which is the collective bargaining agreement for all sergeants, lieutenants and captains in the Methuen Police Department. The contract runs from July 1, 2017 to June 30, 2020.

The Superiors' Contract calls for captains to make \$432,295 on average per year, not including overtime or paid details.⁷ Sergeants and lieutenants also receive large pay raises in the new contract. The substantial salary increases over the prior year are the result of two significant changes to the Superiors' Contract. First, the Superiors' Contract manipulated the definition of "base pay" to include additional payments that were not included in the past contract. Second, the contract manipulated the order in which this inflated "base pay" is calculated to maximize the benefit for superior officers.

Changing the definition of base pay. As in prior contracts, the Superiors' Contract provides for superior officers to be paid a percentage increase over the base pay of the officers below them in rank. For example, the Superiors' Contract calls for a sergeant's base salary to be 132% of the highest-paid patrolman's base pay. In the prior contract, the "base pay" of a subordinate officer was just that: his basic salary, not including any stipends, allowances, incentives, overtime or detail pay.

This Superiors' Contract, however, defines base pay to also include *all* of the subordinate officer's stipends, allowances and incentives, such as: cleaning allowances, holiday compensation, protective vest/hazardous duty, night differentials, uniforms, career incentives and technology compensation. For instance, using this manipulated "inflated base pay," a sergeant's

⁴ Methuen City Ordinance § 2-17(C)(2) states that, like ordinances, collective bargaining agreements require two readings and "shall not be put for final passage on the same it was introduced." By conducting two "readings" and "approving" the Superiors' Contract, a collective bargaining agreement, on the same day, the former-Council likely violated City Ordinance § 2-17(C)(2). Methuen City Ordinance § 2-17(C)(2), *available at* <https://www.cityofmethuen.net/sites/methuenma/files/uploads/mmc12819.pdf>.

⁵ Methuen City Resolution #4720 requires that any collective bargaining agreement must be submitted to the Council no less than 10 days prior to any meeting to vote on such agreement and that any such contract must be accompanied by both a "separate financial impact statement and a memorandum delineating the differences between the proposed contract and any previous agreement between the City and the respective collective bargaining unit." Then-Mayor Zanni and the former-Council likely failed to comply with Resolution #4720 by failing to obtain or require a financial impact statement and a memorandum delineating the differences between the Superiors' Contract and the prior contract.

⁶ Section 4 of Chapter 40 of the General Laws requires city council authorization of a city's contracts. M.G.L. c. 40, § 4.

⁷ A "paid detail" means a police service performed by a Methuen officer during off-duty time contracted for by a third-party related to the provision of police services, including, but not limited to security and traffic control.

base salary becomes 132% of the combined total of the highest-paid patrolman’s base pay, plus all of that patrolman’s stipends, allowances and incentives.⁸ In particular:

- Sergeants’ base salary = 132% of the highest-paid patrolman’s “inflated base pay”
- Lieutenants’ base salary = 118% of the highest-paid sergeant’s “inflated base pay”
- Captains’ base salary = 117% of the highest-paid lieutenant’s “inflated base pay”

Utilizing this “inflated base pay” dramatically increases each superior officer’s salary. Based on documents provided by the City of Methuen, for instance, the captains’ base pay went from \$107,505 under the prior contract to \$287,719.

2014 Contract	2017 Contract
	Quinn Bill/Education Incentive
	Cleaning Allowance
	Holiday Compensation
	Protective Vest/Hazardous Duty
	Technology Compensation
Base Pay	Base Pay
= Base Pay	= “Inflated Base Pay”

Dictating the order in which the inflated base pay is calculated. In addition to changing to inflated base pay, the Superiors’ Contract also added a formula to determine the order in which inflated base pay must be calculated. As a result, inflated base pay would likely be significantly higher than it would be without the formula. The language of the contract stated:

The cost of living increases are as follows:

- July 1, 2017 – zero percent increase**
- July 1, 2018 – two percent increase**
- July 1, 2019 – two percent increase**

The preceding increases shall be implemented as follows:

Base pay and added base pay calculations are to be calculated in the following order and manner to arrive at base pay for all purposes; Base pay, then add cleaning allowance, subtotal, then calculate and add Holiday compensation under Article XII, then add calculated Protective Vest/Hazardous Duty and Technology Compensation percentage, calculate Quinn Bill/Educational Incentive [sic].⁹

⁸ Stated differently, the Superiors’ Contract uses the phrase “base pay” to mean something that it does not (*i.e.*, it includes the stipends, allowances and incentives).

⁹ Agreement between the City of Methuen and the Methuen Police Superior Officer’s Association N.E.P.B.A. Local 17, July 1, 2017, p. 22.

As stated above, for example, eligible officers receive payment for a “Quinn Bill/Educational Incentive.” Any superior who was a Methuen police officer before July 1, 2013 receives a percentage increase of his salary for having an academic degree. Under previous contracts, that was a lump sum payment. Under the Superiors’ Contract, that lump sum is added into base pay. By doing this, the superiors inflated every further calculation to maximize the benefit. The effect compounds up the chain of command. For example, a captain will get paid for patrolman’s education, the sergeant’s education and the lieutenant’s education. Finally, a captain will be compensated for his own educational incentive.

Additionally, the Superiors’ Contract changed the way the City was to pay officers for working on holidays. Under previous contracts the holidays were paid in a lump sum twice a year. The Superiors’ Contract directed the City to instead add holiday pay to their base pay, further inflating the base pay. Additionally, superiors also receive extra pay for having an academic degree on those holidays. By adding it to base pay, a captain now gets paid for a sergeant’s academic degrees and his holidays and a lieutenant’s academic degrees and his holidays.

To further illustrate the compounding effect of additional payments into base pay, based on one of the City’s estimates, by rolling educational incentives into base pay, some captains would earn as much as \$77,457 annually in education incentive alone for degrees they earned *and* for degrees earned by subordinate officers. This is approximately \$50,000 more than under the prior contract.

Negotiation and Approval of the Superiors’ Contract

Methuen’s City Council is a nine-member body, with some councilors elected “at-large” and others elected from districts. Under the City’s Charter, “[t]he administration of the fiscal, prudential, and municipal affairs of the City . . . shall be vested in an executive branch, to consist of the Mayor, and a legislative branch, to consist of the City Council.”¹⁰ The councilors and the mayor serve two-year terms and neither may serve more than three consecutive terms.¹¹

Under the Methuen City Charter, a majority of the Council constitutes a quorum. The approval of a financial appropriation requires a majority of the full Council; for all other motions and measures, only a majority of the councilors present at the meeting is required.¹² Collective bargaining agreements require a “second read” and may not be approved on the same day they are presented.¹³

¹⁰ See Methuen City Charter, § 1-3, *supra* note 3.

¹¹ See *id.* §§ 2-1, 3-1.

¹² See *id.* § 2-7(b).

¹² See *id.*

¹³ See *id.* § 2-9; see also Methuen City Ordinance § 2-17, *supra* note 4.

The Methuen Police Department consists of approximately 98 officers of varying ranks as well as approximately 16 civilians.¹⁴ On July 10, 2017, then-Mayor Stephen Zanni (“then-Mayor Zanni”) promoted 4 superior officers at the recommendation of the police chief, Joseph Solomon (“Chief Solomon”). As a result, the number of superior officers (any officer with the rank of sergeant, lieutenant or captain) increased from 23 (3 captains, 8 lieutenants, 12 sergeants) to 26 (5 captains, 8 lieutenants and 13 sergeants).¹⁵ Two unions represent Methuen police officers, one for the superior officers and one for the patrol officers. They have separate contracts, which are typically for a term of three years.

The superior officers’ union and the patrol officers’ union contracts were set to expire on July 1, 2017; however, both contracts contained clauses stating that they would remain in force until the parties reached a successor agreement. Then-Mayor Zanni reportedly made it a top priority to gain Council approval for police contracts prior to leaving office in January 2018, even though a number of individuals suggested that he should leave the negotiations to the next mayor and council.

Then-Mayor Zanni reportedly began negotiating the new contracts with the unions in May 2017. The evidence demonstrates that then-Mayor Zanni scheduled a series of meetings with Chief Solomon and union representatives during the summer of 2017. Then-Mayor Zanni ultimately signed the Superiors’ Contract on August 31, 2017.

At its September 18, 2017 public meeting, the Council, at the recommendation of then-Mayor Zanni, voted to approve the Superiors’ Contract. Then-Mayor Zanni made no presentation or explanation of the terms or the financial impact of the Superiors’ Contract to the Council or public in attendance.¹⁶

The Council voted to approve the Superiors’ Contract at the September 18, 2017 meeting, the same day it was introduced, with no apparent public discussion regarding the terms or the financial impact of the agreement at either the first or the second reading (which were conducted within minutes of each other).¹⁷

In addition, after the terms of the Superiors’ Contract became public, various officials stated that then-Mayor Zanni had told them that the Superiors’ Contract called for raises of 0% in

¹⁴ Methuen Police Department website, *available at* <https://www.cityofmethuen.net/police-department/pages/about-us>.

¹⁵ Stephen Zanni served as Mayor of Methuen for six years. His final term as mayor ended on December 31, 2017.

¹⁶ Webcast of Methuen City Council meeting, September 18, 2017, *available at* <https://methuen-ma.viebit.com/player.php?hash=19YHyX67o735>. *See also*, webcast of Methuen City Council special meeting, September 18, 2017, *available at* <https://methuen-ma.viebit.com/player.php?hash=b53jj7I8Ax8w>.

¹⁷ Methuen City Charter § 2-7(b), *supra* note 3.

the first year and 2% in each of the next two years.¹⁸ But at the time of the meeting, no councilor asked any questions about the Superiors' Contract. Nor did any councilor ask the City's Auditor, Thomas Kelly, for his opinion of the financial impact or budgetary constraints the contract would create. The only questions asked by any member of the Council were about the "Rule of Necessity."¹⁹ It is not clear whether any official responsible for the negotiation or approval of the Superiors' Contract actually read the agreement or understood the financial impact on the City.

A number of the councilors had either actual or apparent conflicts of interest in voting on the Superiors' Contract. By the time of the vote on September 18, 2017, two pieces of special legislation had been filed on behalf of two outgoing councilors to permit them to accept appointments to the Methuen Police Department and disregard the City Charter's prohibition on former councilors holding any compensated appointed position with the City within one year of the expiration of their term on the Council.²⁰ The legislation proposed that then-Councilor (and Council Chairman) James Atkinson be appointed as a junior accountant with the Methuen Police Department. The legislation also proposed that former-Councilor Sean Fountain be appointed as a full-time intermittent patrol officer.

Moreover, Chief Solomon had recommended, and then-Mayor Zanni had approved, promotions for two immediate family members of city councilors in the months leading up to the vote. Chief Solomon and then-Mayor Zanni promoted the son of then-Councilor and current-Mayor Jajuga to captain. They also promoted Councilor Lynn Vidler's husband to sergeant.

Public Disclosure of the Cost of the Contract

From the time of the vote on September 18, 2017 until April 17, 2018, city officials spoke among themselves about concerns about the potential financial impact of the Superiors' Contract, but those concerns were not made public until current Mayor James Jajuga ("Mayor Jajuga") publicly disclosed at a Council meeting that there were provisions in the contract that would exponentially increase the salaries of superior officers. But even by the time of the April 2018 meeting, approximately seven months after the vote to approve the Superiors' Contract, the City still did not have an accurate assessment of the financial impact of the Superiors' Contract as was required by Municipal Resolution #4720.²¹

¹⁸ Given the vast disparity in estimates of the financial impact of the Superiors' Contract, it is unclear whether the parties had a shared understanding of what the contract meant. This calls into question whether the parties had a "meeting of the minds" and therefore whether they actually entered into an enforceable contract.

¹⁹ As explained more fully below, the "Rule of Necessity" may be invoked by an elected city council when the council "is *legally required to act* on a matter, and it lacks enough members to take valid official action solely due to [council] members being disqualified by conflicts of interest" State Ethics Comm'n Advisory 05-05 (2005), *available at* <https://www.mass.gov/advisory/advisory-05-05-the-rule-of-necessity> (emphasis added).

²⁰ See Chapters 60 and 149 of the Acts of 2017. See also Methuen City Charter § 2-5, *supra* note 3.

²¹ This is largely because of the contract provisions concerning inflated base pay. By creating the inflated base pay, for example, the salary calculations for every superior became incredibly complicated, depending on their longevity, amount of education and whether they received the night differential.

Due to issues with the Methuen schools' budget, and public outcry regarding the Superiors' Contract, Mayor Jajuga (through his Chief of Staff Paul Fahey because of Mayor Jajuga's conflict of interest with the police department) and the Superiors' union negotiated a memorandum of understanding ("MOU"). The MOU called for raises of approximately 12% to 25% for superior officers, rather than instituting the approximately 37% to 183% raises called for under the Superiors' Contract. This still far exceeds the 2% increase that then-Mayor Zanni and councilors publicly represented as the salary increases under the Superiors' Contract. The City Council never approved this MOU or appropriated any funds to pay for it, but the Mayor's Office authorized payments to the superior officers under the MOU anyway.

Because of the salaries it is paying to superior officers, the Methuen Police Department is currently projected to exceed its budget appropriation sometime in March 2019, and has informed 50 patrol officers of impending layoffs. As a result, both the patrol officers and the residents of Methuen will suffer the consequences of unaffordable raises for the superior officers.

Findings

1. The Council improperly invoked the "Rule of Necessity" at its September 18, 2017 meeting.

The Rule of Necessity is a judicially created rule that permits governmental bodies to act on a matter when a quorum cannot be obtained because of a voting member's conflict of interest.²² Section 19(a) of Chapter 268A of the General Laws makes it a crime for a municipal official to participate in a particular matter in which his immediate family member or an organization with whom he is negotiating, or has any arrangement concerning prospective employment, has a financial interest.²³ "Participation" in a particular matter includes both discussions and votes concerning the matter.²⁴ Stated differently, the member must "recuse" himself from discussion and votes on the matter.

If enough members have to recuse themselves, the public body will not have a quorum to vote on the matter. However, the Rule of Necessity, in certain instances, will permit members of a public body to participate or vote in a particular matter notwithstanding their conflicts of interest (*i.e.*, their financial interest in the matter). Proper use of the Rule of Necessity requires that members of a public body (1) publicly disclose the nature of their conflicts;²⁵ (2) be legally

²² See *Graham v. McGrail*, 370 Mass. 133, 138 (1976).

²³ M.G.L. c. 268A, § 19(a). Reliance on a city solicitor's advice is a defense to a conflict-of-interest charge only if the advice is in writing and it has been submitted to and approved by the State Ethics Commission. State Ethics Comm'n, Public Enforcement Letter 97-1 (1997), available at <https://www.mass.gov/letter-ruling/public-enforcement-letter-97-1-richard-penn>.

²⁴ State Ethics Comm'n, Op. EC-COI-92-24 (1992), available at <https://www.mass.gov/opinion/ec-coi-92-24>.

²⁵ See *Wall v. Guinasso*, 3 Mass.L.Rptr. 403 (Super. Ct. 1995).

required to act;²⁶ and (3) use the Rule only where there are no other viable alternatives.²⁷ The Council's use of the Rule likely did not meet any of these requirements.

a. Failure to publicly disclose conflicts

At the time of the vote on the Superiors' Contract, five of the nine city councilors had either actual or apparent conflicts of interest with the Superiors' Contract. This meant four councilors remained eligible to vote; thus the Council could not achieve a quorum to vote on the contract (at least five out of nine councilors are required for a quorum). As a result, the City Solicitor recommended that the Council invoke the "Rule of Necessity."²⁸ To properly invoke the Rule of Necessity, each councilor "must first disclose publicly the facts that created the conflict."²⁹

At the September 18, 2017 meeting, not one councilor publicly disclosed the nature of his or her conflict. In fact, the conflicted councilors were never even publicly identified. Therefore, no member of the public attending the public council meeting would know which councilors had conflicts or the nature of those conflicts.³⁰

b. Legally required to act

The Rule of Necessity is considered a rule of last resort.³¹ The Rule of Necessity may be invoked by an elected city council when the council "is *legally required to act* on a matter, and it lacks enough members to take valid official action solely due to [council] members being disqualified by conflicts of interest"³² The OIG questions whether the Council was "legally required to act" for three reasons.

First, three of the allegedly conflicted councilors were leaving in January 2018; their terms were expiring and, because of term limits, they could not run again. If the Council had waited a few months before voting on the Superiors' Contract, it would not have needed to rely on the votes of conflicted councilors.

²⁶ State Ethics Comm'n Advisory 05-05 (2005), *supra*, note 19.

²⁷ *See Wall, supra* note 25 (Rule of Necessity is a rule of last resort).

²⁸ The city solicitor drafted a memorandum to the Council discussing the Rule of Necessity, but the memo did not analyze which councilors were actually conflicted or the nature of their conflicts under Section 19 of Chapter 268A.

²⁹ *See Wall, supra* note 25 (disqualified councilors had a duty to publicly disclose their perceived conflicts). *See also* State Ethics Comm'n, Op. EC-COI-93-3 (1993), *available at* <https://www.mass.gov/opinion/ec-coi-93-3> (in order to invoke the rule, councilors must publicly disclose the nature of the conflict).

³⁰ *See Wall, supra* note 25 (city council's failure to disclose the nature of the councilor's conflicts prior to the vote left the aggrieved residents with no opportunity to challenge the purported conflicts at the meeting). *See also* webcast of Methuen City Council meeting, September 18, 2017, *supra* note 16.

³¹ State Ethics Comm'n, Op. EC-COI-92-24 (1992), *supra* note 24.

³² State Ethics Comm'n Advisory 05-05 (2005), *supra* note 19.

Second, the 2014 superior officers' contract contained an "evergreen clause" that states that "the provisions of this Contract shall remain in effect until the approval of a successor contract."³³ In other words, had the Council not voted on the Superiors' Contract, the City would have continued to pay the superior officers based on the 2014 contract.

Third, the City had precedence for using the evergreen clause; the 2014 superiors' contract was not signed until July 2015, a full year after the expiration of the prior contract. In fact, at the time of both the signature and vote on the Superiors' Contract, the prior superiors' contract was expired but remained in force. As under the 2014 superiors' contract, the City could have relied on the evergreen clause.

c. No viable alternative

The State Ethics Commission has explained that "resort to the Rule of Necessity [is] unnecessary [if] an adequate number of city councilors had no conflicts or could have cured their conflicts."³⁴ While elected officials cannot cure an actual conflict under Section 19 of Chapter 268A, elected officials can "cure" the appearance of a conflict of interest by publicly disclosing the conflict under Section 23(b)(3) of Chapter 268A.³⁵

As a result, before invoking the Rule, councilors must determine whether they have an actual or apparent conflict. As noted below, because of various perceived conflicts, the City Council believed only four members could vote on the Superiors' Contract. The Council needed five members for a quorum. If a single councilor with an apparent conflict could have cured his conflict through a public disclosure, then the City Council improperly invoked the Rule of Necessity.

(i) Councilor Kannan

Councilor Jennifer Kannan's son is a patrol officer with the Methuen police. As a patrol officer, not a superior officer, Councilor Kannan's son arguably did not have a direct financial interest in the Superiors' Contract. Therefore, there was likely no Section 19 prohibition on Councilor Kannan voting on the Superiors' Contract.³⁶ Instead, Councilor Kannan likely only

³³ Agreement between the City of Methuen and the Methuen Police Superior Officer's Association N.E.P.B.A. Local 17, 204, p. 28.

³⁴ State Ethics Comm'n, Public Enforcement Letter 97-1 (1997), *supra* note 23.

³⁵ *See id.*

³⁶ *See* State Ethics Comm'n Op. EC-COI-87-21 (1987), available at <https://www.mass.gov/opinion/ec-coi-87-21>. In a similar situation, the State Ethics Commission determined that approval of a collective bargaining agreement that provides for a salary increase for an elected official's son would implicate Section 19 and accordingly require the abstention of the elected official. However, the Commission's guidance expressly noted that the "[Section] 19 abstention requirement does not extend to all police department matters but only to those matters in which your son has a reasonably foreseeable financial interest." Specifically, an elected official "may participate in decisions concerning the salary for the police chief and matrons, inasmuch as the salary of police officers [there, the elected official's son] is negotiated independently of these [the Supervisor's] salary levels." The elected official's

had an apparent conflict of interest under Section 23(b)(3) – which she could have cured through a written public disclosure. Because Councilor Kannan likely could have cured her conflict through a public disclosure, the Council could have obtained a quorum without invoking the Rule of Necessity. Accordingly, the Council likely improperly invoked the Rule of Necessity.

(ii) Councilors Atkinson and Fountain

On April 21, 2017 and August 15, 2017, prior to the vote on the Superiors' Contract, Linda Dean Campbell and Frank Moran filed special legislation to permit two term-limited city councilors – Chairman Atkinson and Councilor Fountain – to accept jobs with the Methuen Police Department.³⁷ As prospective members of the police department, Councilors Atkinson and Fountain likely had a Section 19 conflict, as the police department, their future employer, had a financial interest in the Superiors' Contract.³⁸ As a result, Chairman Atkinson and Councilor Fountain could only vote on the Superiors' Contract if the Council properly invoked the Rule of Necessity.

(iii) Councilors Jajuga and Vidler

Chief Solomon recommended the promotion of two other councilors' family members immediately prior to the vote: Councilor Jajuga and Councilor Vidler. On July 10, 2017 (while contract negotiations were ongoing) Chief Solomon, with then-Mayor Zanni's approval, increased the number of captains on the force from three to five and promoted then-Councilor Jajuga's son to captain. Chief Solomon promoted Councilor Vidler's husband to sergeant. Because Councilors Jajuga and Vidler had immediate family members who stood to gain from approval of the Superiors' Contract, they likely were prohibited from voting on the Superiors' Contract. Accordingly, Councilors Jajuga and Vidler could only vote on the contract if the Council properly invoked the Rule of Necessity.

The fact that the Council likely improperly invoked the Rule of Necessity does not automatically void the Council's vote to approve the Superiors' Contract. In order for the vote to be rescinded, the Council must first request its rescission to the State Ethics Commission. Second, the State Ethics Commission must find that a violation of the Conflict of Interest Law "substantially influenced" the action taken by the municipal body.³⁹

"participation in police matters" would also implicate Section 23(b)(3), however, "[b]y making a public disclosure of the fact that your son is a member of the police department, you will dispel any impression of undue favoritism under s. 23(b)(3)."

³⁷ Both obtained special legislation in order to bypass the City's one-year cooling off period. As such, Councilors Atkinson and Fountain could only vote on the contract following proper invocation of the Rule of Necessity. In addition, they both likely had a perceived conflict of interest under Section 23(b)(3).

³⁸ A Section 19 conflict occurs when "a municipal employee who participates as such an employee in a particular matter in which to his knowledge . . . any . . . organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest." M.G.L. c. 268A, § 19.

³⁹ M.G.L. c. 268A, § 21(a). *See also Wall, supra* note 25 (annulling the decision of a city council for improper use and execution of the Rule of Necessity). If the commission determines that ethical breaches "substantially

In addition, because the Council invoked the Rule of Necessity, four Council members with Section 19 conflicts ended up voting on the Superiors' Contract. If a municipal employee with a Section 19 conflict participates in a particular matter despite the conflict – under an *improper* invocation of the Rule of Necessity – the municipal employee would violate Section 19.⁴⁰

2. The former Mayor and the Council violated Resolution #4720, which requires a financial impact statement and a memorandum explaining the differences between the current and proposed contracts prior to approval.

In 2007, the Methuen City Council passed Resolution #4720, which requires that any collective bargaining agreement be submitted to the Council no less than 10 days prior to any meeting to vote on such agreement and that any such contract be accompanied by both a “separate financial impact statement and a memorandum delineating the differences between the proposed contract and any previous agreement between the City and the respective collective bargaining unit.”⁴¹ Then-City Council Chairman Zanni signed the Resolution on behalf of the Council and then-Mayor Manzi signed it on behalf of the City.

The OIG has found no evidence that then-Mayor Zanni or the Council complied with Resolution #4720 prior to the Council's vote on the Superiors' Contract on September 18, 2017. Then-Mayor Zanni now publicly claims that he thought the Superiors' Contract called only for a raise for the superior officers of 0% in year one, 2% in year two, and 2% in year three.⁴² Current and former councilors have also publicly claimed that they were told that the Superiors' Contract only called for 2% raises in 2018 and 2019.⁴³

Regardless of what the then-Mayor and Council knew regarding the contract, they still had to follow Resolution #4720. Also, it is clear that, had the Mayor and the Council followed Resolution #4720, it is more likely that the full financial impact of the Superiors' Contract would have been publicly known prior to the vote. Undoubtedly, the purpose of Resolution #4720 – to

influenced the action taken by any municipality in any particular matter,” the commission may order that the municipal action be “avoid[ed], rescind[ed] or cancel[ed] ... upon request by said municipal agency.” *See, e.g., Leder v. Superintendent of Schs. of Concord & Concord-Carlisle Regional Sch. Dist.*, 465 Mass. 305, 311 (2013).

⁴⁰ *See* State Ethics Comm'n Op. EC-COI-92-24 (1992), *supra* note 24 (“It is always advisable, although not required, that the Rule of Necessity be invoked by the Chairperson of the Board upon the written advice of town counsel, because a Board member would violate §19 if the Rule is improperly invoked”).

⁴¹ Methuen City Council Resolution #4720, TR-07-66 (Sept. 4, 2007).

⁴² Tim Wood, Zanni: Police Contracts Negotiated in Good Faith, Loop Weekly (June 14, 2018), *available at* <http://www.loopweekly.com/articles/zanni-police-contracts-negotiated-in-good-faith/>.

⁴³ Michael Levenon, Raises for Methuen Police Threaten to Put Town in Financial Jeopardy, Boston Globe (June 25, 2018), *available at* <https://www.bostonglobe.com/metro/2018/06/25/raises-for-methuen-police-threaten-put-town-financial-jeopardy/Ru7JyZwCQGIXchM28u8seO/story.html>.

ensure that the Council is afforded all necessary financial information prior to exercising its authority to approve collective bargaining agreements – was frustrated.⁴⁴

3. The Council violated the City Charter and a City Ordinance by voting to approve the Superiors' Contract twice on the same day.

The Methuen City Charter provides that “no measure shall be passed finally on the date on which it is introduced, except in cases of special emergency involving the health or safety of the people or their property.”⁴⁵ The Charter defines the term “measure” broadly to include a “vote or other proceeding which could be passed by the City Council”⁴⁶

Moreover, the Methuen City Ordinances specifically state that collective bargaining agreements require two readings. The full text of Section 2-17(C)(2) states:

No ordinance shall be put on its final passage on the same day it was introduced, unless such is declared an emergency by vote of the Council; provided, however, that contracts, proclamations and public service grants shall require only one reading, with the exception of collective bargaining agreements and amendments thereto which shall require two (2) readings.

These provisions were made effective by ordinance on March 21, 2011.⁴⁷ Read in context, this section requires that the Council follow the same procedure for the approval of ordinances and collective bargaining agreements. In other words, like an ordinance, a collective bargaining agreement cannot be “finally passed” on the same day it is introduced, except in the case of an emergency. The requirement that the Council conduct a “second read” of ordinances and collective bargaining agreements demonstrates the importance that the drafters of the Charter placed on certain City Council actions.

The City Council voted on the Superiors' Contract twice on September 18, 2017. While it is not clear what effect the Council's decision to conduct a “second read” on the same day has on the enforceability of the contract, it is clear that the Council failed to follow the process outlined in the City Charter and had it followed the proper process, councilors may have been more informed about the contents of the Superiors' Contract.⁴⁸

⁴⁴ See Methuen City Council Resolution #4720, TR-07-66 (Sept. 4, 2007).

⁴⁵ Methuen City Charter § 2-9, *supra* note 3.

⁴⁶ *Id.* § 9-12(g).

⁴⁷ See Methuen City Ordinances § 2-17, *supra* note 4.

⁴⁸ See, e.g., *Park Drive Towing, Inc. v. City of Revere*, 442 Mass. 80, 84 (2004) (quoting *United States Leasing Corp. v. Chicopee*, 402 Mass. 228, 232 (1988) (It is a well-established principle of municipal contracting that courts require “precise []” compliance with [statutory] requirements”). See also *Crall v. City of Leominster*, 362 Mass. 95, 101-02 (1972) (in judicial review of municipal by-laws and ordinances, courts consistently follow rule that “every presumption is to be made in favor of their validity, and that their enforcement will not be refused unless it is

Additionally, had the councilors complied with their own ordinance, it would have provided an opportunity for each councilor with an actual or apparent conflict to seek guidance from the State Ethics Commission. Again, the purpose of the City Charter was frustrated by the Council's actions.

4. The Council rejected the MOU, but the Mayor's Office is still paying the superior officers under it, in violation of the Massachusetts General Laws and the City Charter.

Under Section 4 of Chapter 40 of the General Laws, "[a] city [] may make contracts for the exercise of its corporate powers, on such terms and conditions as are authorized by . . . the city council in a city with the approval of the mayor . . . or as otherwise authorized in accordance with a duly adopted charter." The City's Charter states that the Mayor "shall negotiate and may execute contracts involving any subject within his jurisdiction. All contracts shall be awarded by the Mayor, however, all contracts, prior to said award, shall meet with approval, by vote, of the majority of the City Council."⁴⁹ It is a well-established principle of municipal contracting that courts require "precise compliance with [statutory] requirements."⁵⁰

After the impending raises outlined in the Superiors' Contract came to light, the City and the union agreed upon the MOU, which, while not as generous as the Superiors' Contract, called for raises for superior officers of up to 25%. The MOU is a contract. Contracts in the City of Methuen require the approval of the City Council.⁵¹ The City Council did not approve the MOU. As a result, the City is paying the superior officers based on the MOU in violation of both M.G.L. c. 40, § 4, and its Charter. Plainly speaking, the MOU is likely unenforceable. By continuing to pay superior officers based on the MOU, the Mayor is frustrating the purpose of M.G.L. c. 40, § 4, which is to provide checks and balances between the legislative and executive functions of the City.

5. Paying on the Superiors' Contract would constitute a waste of public funds.

As noted above, the former Mayor recommended and the City Council approved a contract that, according to the highest estimate from the City, gives captains an average salary of \$432,295 per year, *not including overtime and paid details*. Under the proposed agreement, no superior officer would see a raise of less than 35% over the prior year. These raises were contained within a contract that the former mayor and a number of city councilors claimed only called for raises of 2% in the final two years of the contract.

shown beyond reasonable doubt that they conflict with the applicable enabling act or the Constitution"); *Broderick v. Boston*, 375 Mass. 98 (1978) (municipalities are bound by their ordinances).

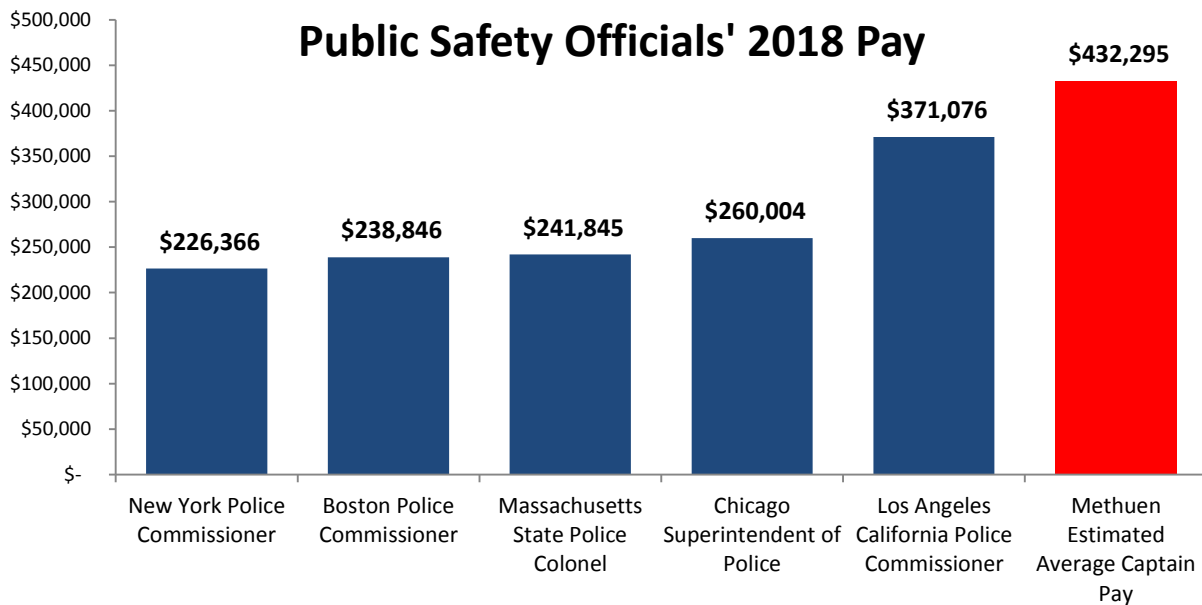
⁴⁹ Methuen City Charter, § 3-2(i), *supra* note 3.

⁵⁰ See, e.g., *Park Drive Towing, Inc.* *supra* note 48 (finding that no valid contract existed where city did not comply with statute requiring a written contract); see also *Crall*, *supra* note 48; *Broderick*, *supra* note 48.

⁵¹ The MOU itself acknowledges that it "is contingent upon the approval and funding by the City Council"

As previously stated, for many months after the Superiors' Contract was signed, the City apparently did not know precisely how much it would cost. Between January and July 2018, City officials and police officials produced a number of different estimates based on their various interpretations. Strictly following the language of the Superiors' Contract, City officials estimated that the salary for a captain would range from \$401,860 to \$459,906. The salary for a lieutenant would range from \$226,274 to \$289,834. For sergeants, the City estimated their salary between \$133,678 and \$181,298.⁵²

If the City used the highest average estimates under the Superiors' Contract, as depicted in the chart below, that would result in Methuen's police captains earning more than the Police Commissioners for Boston, Los Angeles and New York, the Superintendent of Police for City of Chicago and the Massachusetts State Police Colonel.



6. The current and former mayor and certain current and former councilors violated their oaths of office and breached their fiduciary duties of care and due diligence to the residents of Methuen.

No reasonable public official would negotiate and vote for the salary increases detailed above. The public officials responsible for it either did not read or understand the contract, or they did read it and ignored the potential financial impact.

⁵² These ranges only include those superior officers in their positions for the entire time period between January 2018 and July 2018.

Upon taking office, each city councilor swore an oath to “perform faithfully the duties of their . . . offices.”⁵³ Moreover, as elected representatives, the mayor and councilors are “‘substitutes and agents’ of the people who [should] act only in their interest.”⁵⁴ Under Article V of the Massachusetts Declaration of Rights, all governmental officials in the Commonwealth, as agents of the people, should “work with an eye single to the interest” of the public.⁵⁵ At the very least, the mayor and councilors owe fiduciary duties of care and due diligence. The elected representatives responsible for the negotiation, execution and approval of the Superiors’ Contract breached their duty to the public by failing to exercise due diligence in understanding the contract they approved and voted upon.

Then-Mayor Zanni negotiated the terms of the Superiors’ Contract with the superiors’ union representatives multiple times during the summer of 2017. Then-Mayor Zanni ultimately executed the contract on behalf of the City on August 31, 2017. He had at his disposal an experienced city auditor to provide an assessment of the impacts on the budget.

The City Council is required to receive the contract 10 days prior to its vote. There is no evidence to suggest that any of them asked any questions or sought any financial analysis. Additionally, the Council voted on the contract without any presentation from then-Mayor Zanni, the city auditor or anyone else. Then-Mayor Zanni and the former councilors (some of whom are current councilors) breached their duties to the public by not understanding the terms of the contract, or by understanding the terms of the contract and recommending and voting for it anyway.

Conclusion

The OIG recommends that the City Council seek to rescind the Superiors’ Contract and the MOU. The City Council should request a determination from the State Ethics Commission concerning the Council’s use of the Rule of Necessity. The Mayor and the City Council should also consult with legal counsel to determine (1) whether the City’s violations of its City Charter, a City Ordinance and City Resolution #4720 impact the enforceability of the Superiors’ Contract; and (2) whether the City’s failure to comply with Section 4 of Chapter 40 of the General Laws and the City Charter render the MOU invalid.

⁵³ M.G.L. c. 43, § 69.

⁵⁴ *1A Auto, Inc. v. Dir. of Office of Campaign & Political Fin.*, 480 Mass. 423, 444 (2018) (Budd, J. concurring). See also Art. V of the Massachusetts Declaration of Rights (“all power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them”).

⁵⁵ See *1A Auto, Inc.*, *supra* note 54 at 444-45 (quoting *McKinley v. Williams*, 74 F. 94, 95 (8th Cir. 1896)). See also *Prof'l Servs. Grp. v. Town of Rockland*, 515 F. Supp.2d 179, 192 (D. Mass. 2007) (“A public official of a municipality acts as a trustee for the citizens and the town . . .”).

James Jajuga, Mayor
City Council
February 1, 2019
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This Office appreciates the cooperation of the City of Methuen, its employees and residents.

Sincerely,



Glenn A. Cunha
Inspector General

cc: David A. Wilson, Executive Director, Massachusetts State Ethics Commission
Sean Cronin, Senior Deputy Commissioner of Local Services
Richard D'Agostino, Methuen City Solicitor