



Committee on Ordinances

March 21, 2017 – 7:02 PM – **Minutes**

City Hall, 133 William Street

City Council Chamber, Room 214

MEETING: COMMITTEE ON ORDINANCES
DATE: MARCH 21, 2017
TIME: 7:02 P.M.
PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING

PRESENT: COUNCILLORS STEVEN MARTINS, CHAIRMAN; LINDA MORAD, VICE CHAIRPERSON; IAN ABREU; NAOMI CARNEY; DEBORA COELHO (7:03); JOSEPH LOPES; JAMES OLIVEIRA; DANA REBEIRO; KERRY WINTERSON

ABSENT: COUNCILLOR BRIAN GOMES

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Councillor Martins called the Ordinance Committee Meeting to order and took attendance. The Clerk read a Communication from Councillor Gomes explaining his absence from tonight's meeting. This Communication was received and placed on file by Councillor Lopes and seconded by Councillor Carney.

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Notice, City Clerk of reference of a Written Motion, Councillor Lopes, requesting that the Committee on Ordinances draft a Home Rule Petition that would expand on the existing State Nuisance Law, to provide local landlords with the authority to evict tenants involved in crimes related to the use or illegal possession of guns (Ref'd 6/9/16) was received and placed on file by Councillor Lopes and seconded by Councillor Winterston. (1)

City Solicitor Mikaela McDermott, Associate Solicitor John Flor and Police Chief Cordeiro were present to answer questions from the Committee.

The Committee was told that based on the current law landlords do have the ability to evict tenants for the unlawful possession of firearms. If the tenant is caught with an illegal fire arm or used one in an illegal manner, they can be automatically evicted, without having to go through the Courts summary process. The Courts want a live witness to testify rather than relying on a Police Report. They have been in discussion with the Chief of Police on ways to enforce this.

Police Chief Cordeiro was present and explained that if a landlord moves to evict a tenant the Courts would require a Police Officer to be present during the Court proceedings. This could be a financial burden on the Police Department; however, the Chief has been able to circumvent this by using Officers that are already participating in other Court proceedings that particular day. The Chief agreed to send a letter to the Landlord Association informing them of their rights as it relates to the eviction of those found with illegal fire arms.

On motion by Councillor Lopes and seconded by Councillor Abreu, the Committee VOTED: To take "No Further Action" on this matter at this time. This motion passed on a voice vote.

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Notice, City Clerk of reference of a RELATED MOTION, Councillor Morad, requesting, that the Committee on Ordinances review the City's Code of Ordinances as it relates to the appointment, reappointment and removal of individuals serving active terms on the various Boards and Commissions of the City of New Bedford; and further, that language be crafted and adopted that would prohibit said Board members from serving in excess of ninety days after the term has expired (Ref'd 1/12/17) was received and placed on file by Councillor Morad and seconded by Councillor Carney. (2)

Councillor Morad told the Committee that she was concerned when the appointing Committee moves to not reappoint a member of a City Board or Commission that the Mayor will keep that person in place and not submit another name. The current Ordinance language states that the member will continue to serve until such time that the position is reappointed. She believes that this defeats the purpose of the Council not voting to reappoint an applicant.

Attorney Gerwatowski, Legal Counsel to the City Council, told the Committee that there are some Commissions that have been set up under State guidelines that create the enabling statute, meaning that a member can continue to serve at the discretion of the Mayor until the position is filled. There are non-enabling statute Commissions that have been created that would not fall to such guidelines, but he feels that the ones the Committee is interested in addressing fall to the State statutes. The Committee can create such language to address the issue for the non State ones; but for the State ones this would more than likely have to be addressed by submitting a Home Rule Petition to the State Legislature. It is believed the Harbor Development Commission, Zoning Board and Housing Authority all fall under the States Enabling Statute.

Councillor Morad would like to see this addressed by Home Rule Petition.

Attorney Gerwatowski was asked if they could include, in writing. If a person makes a certain dollar amount contribution to the Mayor that he cannot appoint them to a Commission. He explained this would more than likely be in conflict with the first amendments rights and that campaign donation limitations are set forth by the State.

Councillor Morad would like to work with Attorney Gerwatowski on drafting the Home Rule Petition language to present to the Committee for review.

On motion by Councillor Morad and seconded by Councillor Coelho, the Committee VOTED: To table this matter for thirty (30) days. This motion passed on a voice vote.

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Item number four (4) was taken out of order without objection.

Notice, City Clerk of reference of a WRITTEN MOTION, Council President Lopes, requesting that the Committee on Ordinances amend Chapter 2, Section 2-56 of the City Code, relative to Committees, that the Special Committee on Budget Review be a Standing Committee of the City Council.(To be Referred to the Committee on Ordinances.) (Ref'd 1/26/17) was received and placed on file by Councillor Lopes and seconded by Councillor Winterson. (4)

Attorney Gerwatowski told the Committee this would be pretty easy to draft but he would need to know what the duties of the Committee would be and if they conflict with the standing Finance and Audit Committees.

Councillor Lopes told the Committee he would meet with Attorney Gerwatowski to review and report back to the Committee.

On motion by Councillor Lopes and seconded by Councillor Abreu, the Committee VOTED: To table this matter for thirty (30) days at this time. This motion passed on a voice vote.

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Notice, City Clerk of reference of a WRITTEN MOTION, Council President Lopes, requesting that the Committee on Ordinances review the governing structure of the Board of Park Commissioners, as it relates to the Members of the said board (To be Referred to the Committee on Ordinances.) (Ref'd 2/23/17) was received and placed on file by Councillor Lopes and seconded by Councillor Winterson. (3)

Councillor Lopes stated he was concerned that the Board had the authority to grant the building of structures on Park property, especially where the Committee is comprised of lay people without any engineering or planning experience, He would like to change the structure of the Committee description to consist of one member of the City's Engineering Department and Planning Department.

Attorney Gerwatowski said he would need to check on the structure of the Board. It may be that the Board member structure is dictated by State guidelines. He would review and revert back to the Committee.

On motion by Councillor Lopes and seconded by Councillor Winterson, the Committee VOTED: To table this motion at this time. This motion passed on a voice vote.

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Notice, City Clerk of reference of a RELATED MOTION, Councillor Morad, requesting the Committee on Ordinances revise the Code of Ordinances, Chapter 19, Section (c) to amend said Section to accommodate the structure of the recently ordained Unit C Classification and Salary Plan (Ref'd 2/23/17) was received and placed on file by Councillor Morad and seconded by Councillor Rebeiro. (5, 5a)

Sandra Vezina, Personnel Director and Attorney David Gerwatowski were present to discuss this issue.

The Ordinance, as it is written now, allows hiring a new employee at a higher step than step one. The Committee expressed concern that the recently passed structure allowed for Step one positions to start a fair and market value salary; and that although the process was started two years ago and approved this year, the salaries accepted are fair and reasonable at this time.

Some Councillors believed that if they did not change the language as it currently is, made the last few years an effort in futility. Councillor Morad proposed changing the Ordinance language to not allow the permitting of Step increases for new hires indefinitely. Other Councillors while they agreed with Councillor Morad's rational felt that language should be included that allows the Committee to come back in three years and review the salary structure. Attorney Gerwatowski suggested language that would achieve some of the members concerns. Councillor Morad did not have an objection to adding the language to her motion.

On motion by Councillor Lopes and seconded by Councillor Morad, the Committee VOTED: To amend the amended Ordinance, Chapter 19 Section 19-7.1 by adding Section 2, as follows: The provisions of this Ordinance shall be submitted to the City Council 3 years after its enactment for review by the City Council. This motion passed on a voice vote.

On motion by Councillor Morad and seconded by Councillor Lopes, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE, AS AMENDED, Relative to Personnel. This motion passed on a voice vote.

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Councillor Martins entertained a motion to follow the Chair's recommendation for clarification on items 6 – 27a. The clarifications are as follows:

The Committee severed the following numbers to remain in Committee, they are as follows:

Notice, City Clerk of reference of a Written Motion, Councillors Lopes and Martins, requesting that the Committee on Ordinances draft an Ordinance as it relates to House Bill 3074, An Act permitting the use of traffic control signal violation monitoring system devices as a means of prompting traffic safety in the City of New Bedford. (Ref'd 05/09/13, 12/12/13 – Refer to Legal Counsel for drafting, 03/19/14 – tabled, 06/23/14 – rft, letter to State Rep, 11/12/14 – tabled, 2/23/15 – remain in Committee, 12/14/15- remain in Committee) (6)

Notice, City Clerk of reference of a Communication, Councillor Martins, submitting an Ordinance from the City of South Bend, Indiana, regarding Honey Bee Keeping Regulations. (Ref'd 08/21/14, 09/17/14 – tabled, 10/22/14 – tabled for 60 days-December, 2/24/15 – remain in Committee, 03/23/15 – tabled, 12/14/15- remain in Committee) (7)

Notice, City Clerk of reference of a Related Motion, Councillor Gomes, requesting that Legal Counsel Gerwatowski draft an Ordinance that would place regulations on replica guns in public spaces and would allow the New Bedford Police Department to confiscate these replica guns if someone under the age of 18 was found with device and notify their parents; and further, that the Ordinance also ban anyone from carrying a replica gun within City limits, and that they be subject to arrest and fine. (Ref'd 1/14/16) (8)

Notice, City Clerk of reference of a Written Motion, Councillor Gomes, requesting, that the City Council send a letter to our State Delegation asking for legislation making it mandatory that production of toy guns do not replicate real handguns, this legislation will serve to save lives and not put Police and law-enforcement agencies in situations where they are dealing with criminals using toy guns in criminal activity and to protect our Citizens against crime. (Ref'd 1/14/16) (10)

Notice, City Clerk of reference of a Written Motion, Councillors Rebeiro, Lopes, Council President Gomes, Morad and Oliveira, requesting that the Committee on Ordinances, draft an Ordinance that would place an immediate ban on the use of medians for panhandling in the interest of public safety, medians are ADA compliant as dividers only, most are only 4 feet, whereas sidewalks are ADA compliant to travel and rest on and are 6 feet or more, any individual or organization should utilize sidewalks only. (Ref'd 12/17/15, 2/23/16- table for 30 days, 4/19/16- table for 90 days to allow Atty. Gerwatowski to explore the difference between closing Parks from dusk to dawn and applying the same to City medians) (16)

Notice, City Clerk of reference of a Written Motion, Councillors Carney, Abreu, Lopes, Martins, Winterson and Rebeiro, requesting, that the Committee on Ordinances, implement a policy that all licenses issued by the City of New Bedford which require a criminal background check known as a CORI, also require that fingerprinting also be added to the process, which will give the City notification of a felony committed in other States; and further, that any additional expenses incurred by the fingerprinting process be reflected in the cost of the license. (Ref'd 4/28/16) (18)

Notice, City Clerk of reference of a Written Motion, Councillor Gomes, requesting, that the City enforce the laws pertaining to repairing vehicles on City streets and that any vehicle being repaired or left unattended on car jacks on City streets be towed immediately at the owners expense and further, that the City Council create a fine for those in violation of the City Ordinance, and that all departments including public safety departments be required to report any vehicles in violation immediately for actions, this issue is becoming a safety, damage and environmental concern. (To be Referred to the Committee on Ordinances, Police Chief Cordeiro, Fire Chief Gomes, EMS Director McGraw, Department of Inspectional Services Director Romanowicz, and Health Department Director Weis.) (Ref'd 6/23/16) (7/15/16-returned unsigned by the Mayor) (19)

Notice, City Clerk of reference of a AN ORDINANCE, RELATIVE TO VEHICLES FOR HIRE (Ref'd 10/27/16) (23)

Notice, City Clerk of reference of a WRITTEN MOTION, Councillor Bousquet, requesting, that the Committee on Ordinances look into updating the 1963 law in the City Code, Chapter 1, Section 1-5, regarding advertising Ordinances to reflect modern mass communication methods in an age where smart phones, tablets and laptops reign and print media has a small and ever shriveling audience. (To be referred to the Committee on Ordinances.) (Ref'd 1/12/17) (24)

Notice, City Clerk of reference of a WRITTEN MOTION, Councillor Abreu, Council President Lopes, Councillors Winterson, Martins and Bousquet, requesting that both the City Solicitor and Mayor's Office work with and come before the Committee on Ordinances to re-evaluate the proposed "municipal marketing" strategy as a means to generate a potential substantial amount of positive revenue for the City of New Bedford; Chapter 9, Section 3228 of the City Code currently prohibits the construction of new off-premise signs, if this code were to be amended to allow such "municipal marketing" opportunities for private sector industries, the City would need to establish a competitive procurement process to insure its legality. (To be referred to the City Solicitor's Office, Mayor's Office and Committee on Ordinances.) (Ref'd 1/12/17) (2/16/17-returned unsigned by the Mayor) (25)

Notice, City Clerk of reference of a WRITTEN MOTION, Councillor Morad, requesting, on behalf of the property owners, **that 671 Summer Street, Plot 91/Lot 152 be REZONED, from RESIDENTIAL "B" to MIXED-USE BUSINESS**, and that 674 Summer Street, Plot 91/Lot 249 be REZONED, from RESIDENTIAL "C" to MIXED-USE BUSINESS. (To be referred to the Committee on Ordinances and the Planning Board.) (Ref'd 2/23/17) (26)

Notice, City Clerk of reference of a COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDINANCE, amending Chapter 9, ZONING, by adding Section 5720 Temporary Moratorium on Recreational Marijuana Establishments. (Ref'd 2/23/17) (27)

Notice, City Clerk of reference of a AN ORDINANCE, amending Chapter 9 ZONING by adding Section 5720 Temporary Moratorium on Recreational Marijuana Establishments. (27a)

The following items numbers 11, 21, 22 and 22a were referred to another Committee. They are as follows:

Notice, City Clerk of reference of a Written Motion, Councillors Lopes, Rebeiro, Martins, Winterson, Bouquet and Alves, requesting that the Committee on Ordinances draft and approve an Ordinance that would exempt all City Council support staff from the City's policy requiring the Mayor's approval/signature on any requisition form or any other type of paperwork; and further, that the City Council President sign off on such positions; support staff is to include employees in the City Council Office, Clerk of Committees Office, and the position of City Clerk/ Clerk of the City Council (To be Referred to the Committee on Ordinances) (Ref'd 8/20/15) (11/19/15-tabled; 1/26/16- tabled) was referred to the Committee on Internal Affairs. (11)

Notice, City Clerk of reference of a Written Motion, Councillor Lopes, requesting, that the Committee on Ordinances draft an Ordinance that would limit the number of marijuana retailers to no more than 20 percent of the number of licenses issued by the City of New Bedford for the retail sale of alcoholic beverages not to be drunk on the premises sold under Chapter 138 of the Massachusetts General Laws (To be Referred to the Committee on Ordinances.) (Ref'd 9/22/16) was referred to the Committee on Licensing and Zoning for Cannabis. (21)

Notice, City Clerk of reference of a Report, Committee on Ordinances, recommending to the City Council ADOPTION of the ORDINANCE as AMENDED, Relative to the Use of Marijuana in Public (Ref'd 9/22/16) was referred to the Committee on Licensing and Zoning for Cannabis. (22, 22a)

The following items numbers 9, 12, 13, 14, 15, 17, 17a and 20 were recommend for "No Further Action", they are as follows:

Notice, City Clerk of reference of a Written Motion, Councillor Coelho, requesting, that the Police Department provide the City Council with the number of repeat overdoses in a twenty-four hour period in New Bedford, and that we look into possibly drafting an Ordinance addressing the matter; and further; that we ask our State Legislative Delegation to assist us in drafting a policy that would make mandatory that anyone who overdoses, especially those who overdose repeatedly, not be treated and released, but held in the hospital for twenty-four hour surveillance, they are a harm to themselves and to society and are using up our resources.(To be Referred to the Committee on Ordinances and Public Safety and Neighborhoods.) (Ref'd 1/28/16) (9)

Notice, City Clerk of reference of a Written Motion, Councillors Bousquet, Lopes, Winterson, Alves, Martins, Coelho, Carney, Morad and Council President Gomes and Councillor Rebeiro, requesting on behalf of dog owners in New Bedford, that the City encourage leash law adherence, and severely penalize dog owners who fail to properly restrain their pets in the event of an aggressive attack on another person or pet in the City. (Ref'd 8/20/15, 11/19/15-table, 1/26/16-table) (12)

Notice, City Clerk of reference of a Written Motion, Councillor Gomes, requesting, once more that the Committees on Ordinances and Public Safety and Neighborhoods meet with Acting Police Chief David Lizotte, a Representative from Massachusetts State Police Dartmouth, City Solicitor McDermott, and Legal Counsel Gerwatowski, to discuss the best legal action that can be taken immediately and collectively against panhandling on the City streets, businesses and highways, which has become a real problem for the Police Officers, residents and tourists.(To be Referred to the Committees on Ordinances and Public Safety and Neighborhoods.) (Ref'd 2/11/16) (13)

Notice, City Clerk of reference of a Written Motion, Councillors Bousquet, Lopes, Martins, Morad, Winterson, Coelho and Carney, requesting that the Committee on Ordinances explore creating an Ordinance Enforcement Officer that would make enforcing the City Ordinances a priority and leave the New Bedford Police Department to focus on public safety matters. (To be referred to the Committee on Ordinances.) (Ref'd 3/10/16) (10/25/16-tabled) (14)

Notice, City Clerk of reference of a Written Motion, Councillors Coelho and Martins, requesting , that the Committee on Ordinances review its current Ordinances on Hawkers and Peddlers, due to small business owners complaining about people using public sidewalks to set up tables and sell flowers without a valid license; and further, that the Police Department enforce the Ordinances currently on the books; and further requesting, that Ms. Connie Pereira,

owner of Abracadabra Flower and Gift Service, Inc., be invited to attend the Committee on Ordinances meeting. (Ref'd 6/25/15) (9/15/15-tabled to March 2016 so NBPD has time to enforce the licenses and that enforcement is being properly addressed; 12/14/15-Remain in Committee; 4/19/16 – table for 60 days for Atty. Gerwatowski can review the supports received but that NBPD continue to enforce current Ordinances especially since Mother's Day is coming up, Committee send communication to Police Chief Lizotte asking that he provide the Committee with a written briefing as to any flower vendor violations that had to be addressed over the holiday weekend.) (15)

Notice, City Clerk of reference of a Communication, Mayor Mitchell, to City Council, submitting AN ORDINANCE, amending Chapter 19 Personnel, Section 19-7 – Unit C Classification and Salary Plan. (Ref'd 4/28/16) (17, 17a)

Notice, City Clerk of reference of a AN ORDINANCE, amending Chapter 19, PERSONNEL - reclassification of the City Planner from M-12 to M-15. (Passed to a Second Reading 8/18/16) (Ref'd 9/8/16) (20)

Councillor Coelho made a motion to adjourn, which was seconded by Councillor Carney.

This meeting adjourned @ 7:53 p.m.

ATTEST:

Denis Lawrence, Jr.,
Clerk of Committees