

NEW BEDFORD, MASSACHUSETTS

MEETING: COMMITTEE ON ORDINANCES
DATE: FEBRUARY 21, 2018
TIME: 7:01 P.M.
PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING

PRESENT: COUNCILLORS HUGH DUNN, CHAIRMAN; IAN ABREU; DEBORA COELHO; MARIA GIESTA; BRIAN GOMES (7:05); SCOTT LIMA; WILLIAM BRAD MARKEY; LINDA MORAD (7:08)

ABSENT: COUNCILLORS DANA REBEIRO, VICE-CHAIRPERSON; NAOMI CARNEY; JOSEPH LOPES

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Councillor Dunn called the Ordinance Committee Meeting to order and took attendance; four Communications were read into the record; three letters explaining the absences of Councillors Carney, Lopes and Rebeiro and one explaining the tardiness of Councillor Morad. These Communications were received and placed on file by Councillor Abreu and seconded by Councillor Coelho.

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The Chair asked that items 3 and 4 be taken out of order and taken up together for the purpose of tabling both items.

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) (3/21/17-tabled) (3)

Notice, City Clerk of reference of a COMMUNICATION, Mayor Mitchell, submitting AN ORDINANCE, Amending Chapter 10, Section 47, FINANCE; TAXATION; PROPERTY, Departmental Revolving Funds added to the new Dog Park Revolving Fund. (Ref'd 11/9/17) (4, 4a)

On motion by Councillor Coelho and seconded by Councillor Abreu, the Committee VOTED: To table items three (3) and four (4). This motion passed on a voice vote.

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Notice, City Clerk of reference of a WRITTEN MOTION, Council President Lopes, Councillors Abreu, Winterson, Dunn and Oliveira, requesting that the City Council look into adopting a Wage Theft Prevention Ordinance modeled after the Town of Quincy. (To be Referred to the Committee on Ordinances.) (Ref'd 9/28/17) and a COMMUNICATION, Council President Lopes, submitting a Wage Theft Prevention Ordinance from the City of Quincy, MA. (To be Referred to the Committee on Ordinances) (Ref'd 9/28/17) was received and placed on file by Councillor Abreu and seconded by Councillor Giesta. (1, 1a)

Councillor Dun stated that he purposely chose this item to be the first item heard by the Committee on Ordinances for 2018 due to the importance of the topic, noting that it focuses on protecting workers from various types of abuses and illegal activities which are too often still perpetrated by disreputable contractors. Abuses that a Wage Theft Ordinance would protect against include forcing employees to work ‘off the clock’, unlawfully holding back vacation and/or sick time, paying lower than minimum wage, and more.

Councillor Dunn also explained that these and other illegal practices are often perpetrated against members of the immigrant population, and went on to say that these practices not only hurt hard working individuals and families, but also the economy by decreasing tax revenue that should rightfully be collected. It is his desire, he added, that the Council put forth an Ordinance that would hold employers accountable to the law and support workers.

Mr. James Pimental, Vice-President and Organizer for Bricklayers & Allied Craftsmen Local 3, addressed the Committee members and expressed his complete support for the passage of a Wage Theft Ordinance in New Bedford. He stated that most employers are very good about correctly and legally paying their workers. However, there are still – on average – 5,000 cases of wage theft reported to the Attorney General’s Office each year in Massachusetts.

These cases include non-payment of overtime, prevailing wage infractions, worker’s compensation issues, vacation and/or personal time not being properly allocated, etc. Mr. Pimental echoed Councillor Dunn’s statement that it not only hurts the individual workers and their families, but also the economies of the communities in which they live and robs taxpayers of revenue. He added that Boston, Quincy, Chelsea and other communities have all passed Wage Theft Ordinances, and Lawrence is in the process of doing so.

Councillor Abreu asked Mr. Pimental if the Quincy Ordinance would be a good model for New Bedford to follow. Mr. Pimental responded that Quincy is the one he happens to like best. However, he does recommend adding language that would allow the City to revoke or not renew the licenses of businesses found to have perpetrated wage theft (for businesses that have licenses issued and monitored by the City).

Councillor Abreu asked Ms. Susan Bruce, Purchasing Agent for the City of New Bedford, what the City is or is not doing to ensure that wage theft is not an issue for New Bedford.

Ms. Bruce responded that all construction oversight is done thru the Attorney General’s Office and she explained the regulations and requirements that all contractors must adhere to, including the fact that they must disclose any and all infractions that they have been sighted for when bidding on City contracts. However, complaints of wage theft are reported to the Attorney General, not the New Bedford Purchasing Department. The Attorney General then posts all vendors/contractors who have been found guilty of infractions, and when reviewing bids for City projects, her office checks the received bids against the Attorney General’s website of violators.

Mr. Dan Rego, Organizer for the New England Regional Council of Carpenters, also addressed the Committee. He stated that Ms. Bruce is correct about the Attorney

General having oversight of wage theft complaints. He also explained the detriment of wage theft and endorsed passage of a preventative ordinance by the City Council in New Bedford.

Mr. Rego also explained that when a company is found guilty of this infraction, they can be barred from bidding on, or receiving a prevailing wage job for several years. He noted that one such company was caught and found guilty and as a result was barred from bidding on any prevailing wage job in the entire state until 2023. This punitive action ultimately forced the company to close down.

Ms. Bruce also added that the Attorney General does not have nearly enough enforcement officers to check on all the contractors and job sites. There are many, many issues of wage theft violations across the state of various types, stating that ‘this is a constant problem in construction’.

Councillor Lima asked Ms. Bruce if she feels that the City adopting a wage theft ordinance would be ‘overkill’, considering the fact that the Attorney General’s office does the enforcement and there appears to be appropriate state laws in place.

Ms. Bruce responded, “Yes, I do feel it would be overkill – to a point’. She stated that the State does in fact have all oversight authority. She does, however, recommend adopting language similar to what Chelsea has done to focus on the local business owners who are licensees of the City; and she endorses the idea of not renewing or even revoking licenses of local companies that are found guilty of wage theft in any form. However, she stressed, that at the RFP level, it is definitely ‘overkill’.

Ms. Lisa Lemieux, President of the Greater Southeastern Massachusetts Labor Council, endorsed Wage Theft language being adopted as it helps ‘all’ workers.

Councillor Abreu asked Attorney Gerwatowski what his legal opinion is of adopting a wage theft ordinance or language similar to what has been presented.

Attorney Gerwatowski stated that the City Code currently has the ‘Responsible Employer Ordinance’, which was last updated in 2003. As that currently exists, there are strict requirements for contractors who are bidding on City projects. One such requirement is that a contractor must comply with Chapter 149b, which addresses paying a lawful wage to employees; and those employers must provide supporting evidence of their compliance to the Purchasing Department on a weekly basis if requested. However, Attorney Gerwatowski added, that some language could be cleaned up so that a clearer focus could be made upon certain areas, including local companies found guilty of wage theft losing any city-issues licenses they may hold. He also suggested adding that to the duties of the Licensing Board under Ord. 10-77.

Councillor Dunn stated that he would like to see language that provides the City with the ability to hold all vendors, licensees, and any companies receiving TIFs and CPA dollars accountable.

A motion to Table this item for 30 days in order to allow for Attorney Gerwatowski to review the items discussed (including the categories suggested by the chair) was made by Councillor Abreu and seconded by Councillor Coelho.

Councillor Morad offered an amendment that the Co-sponsors of the original motion also meet with Attorney Gerwatowski directly in order to work with him on specifics vs. providing him with a ‘broad brush’; and further, that the matter be tabled for 30-40 days; and then have language submitted by Attorney Gerwatowski back before the Ordinance Committee for review.

This amendment was seconded by Councillor Gomes and passed by a voice vote.

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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) (3/21/17-remain in Committee) was removed from the table by Councillor Gomes and seconded by Councillor Abreu. (2)

Councillor Gomes asked Deputy Chief Oliveira if he believed additional language was needed in order for the Police Department to eliminate this problem. The Deputy Chief stated that his officers do in fact tow vehicles who are in violation of the existing ordinances, and that, in his opinion, no further language is necessary.

Fire Chief Michael Gomes and EMS Director Mark McGraw both concurred and stated that their people constantly have to work around vehicles parked on the street; and that cars ‘up on jacks’ illegally on the side of streets would definitely pose a safety risk to their people.

Councillor Gomes stated that he is satisfied that this issue is being addressed by the Police Department.

On motion by Councillor Gomes and seconded by Councillor Coelho, the Committee VOTED: To recommend to the City Council to take “No Further Action” on this matter at this time. This motion passed on a voice vote.

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On motion by Councillor Morad and seconded by Councillor Coelho, the Committee VOTED: To recommend to the City Council to take “No Further Action” on items 5 through 11. This motion passed on a voice vote. 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 5/9/13) (12/12/13-Refer to Legal Counsel for drafting; 3/19/14-tabled;

6/23/14-letter to State Rep; 11/12/14-tabled; 2/23/15-remain in Committee; 12/14/15-remain in Committee; 3/21/17-remain in Committee) (5)

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) (3/21/17-remain in Committee) (6)

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) (3/21/17-remain in Committee) (7)

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; 3/21/17-remain in Committee) (8)

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) (3/21/17-remain in Committee) (9)

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) (3/21/17-tabled 30 days) (4/19/17-Motion to Adopt FAILED in Committee: Yeas 5, Nays 2, Councillors Carney and Martins opposed, Councillor Rebeiro not present for the vote.) (10)

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) (3/21/17-remain in Committee) (11)

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

This meeting adjourned @ 8:07 p.m.

ATTEST:

Dennis W. Farias,
City Clerk / Clerk of the City Council