



Committee on Ordinances

March 19, 2013 – 7:00 PM – **Minutes**
City Council Chamber, Room 214, Municipal Building

****View Agenda ****

MEETING: COMMITTEE ON ORDINANCES

DATE: MARCH 19, 2013

TIME: 7:07 P.M.

PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING

PRESENT: COUNCILLORS STEVEN MARTINS, CHAIRMAN; DAVID ALVES, VICE-CHAIRMAN; HENRY BOUSQUET; BRUCE DUARTE, JR.; BRIAN GOMES; JANE GONSALVES; JOSEPH LOPES; JAMES OLIVEIRA; JOHN SAUNDERS (7:15)

ABSENT: COUNCILLORS DEBORA COELHO; DENIS LAWRENCE, JR.

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Councillor Martins called the Ordinance Committee Meeting to order and took attendance. The Clerk read a Memo from Councillor Coelho stating she is unable to attend tonight's meeting due to her not feeling well, this Memo was received and placed on file by Councillor Lopes and seconded by Councillor Alves.

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Notice, City Clerk of reference of a Written Motion, Councillor Lopes, requesting, that the Committee on Ordinances, review the existing language as it relates to permitting the establishment of Pawn Shops in the City of New Bedford (Ref'd 1/26/12, 4/10/12, 5/14/12, 9/12/12 10/23/12 – Refer to Legal Counsel to draft amendment; and AN ORDINANCE, Relative to Pawnbrokers, Establishments was received and placed on file by Councillor Alves and seconded by Councillor Lopes. (1, 1a)

Councillor Lopes stated that the proposed language by Attorney Gerwatowski contained all the key points he was looking for and thanked him for his work.

Attorney Gerwatowski stated that this Ordinance is patterned after the Ordinances pertaining to adult entertainment, and it requires that new pawn shops be at least 500 feet away from churches, schools, etc. and at least 1 square mile away from another existing pawn shop.

On motion by Councillor Lopes and seconded by Councillor Bousquet, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE, Relative to Pawnbrokers - Establishments. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Written Motion, Councillors Gonsalves and Martins, requesting that the Committee on Ordinances review the current Ordinance in the City of Boston regarding the placement of satellites, antennas and receivers on residential properties throughout the City (Ref'd 6/14/12, 9/12/12 – Letter, Gerwatowski to draft Ordinance, 10/23/12 – tabled, 12/11/12 – table, letters to Mayor) was removed from the table by Councillor Alves and seconded by Councillor Gomes. (2)

Attorney Gerwatowski stated that at a previous Ordinance meeting he had submitted a draft Ordinance, which stirred debate, but no direction or instruction as to how to change or modify the language was ever

provided by the Council. A letter was sent to the Mayor in December of 2012 asking what his intent would be as far as enforcing any such ordinance created by the Council, but there has been no response.

Councillor Lopes asked whether or not the Committee Members thought it would be effective to ask the Housing Task Force to be the enforcing body for such an Ordinance.

On motion by Councillor Gonsalves and seconded by Councillor Duarte, the Committee VOTED: That the Committee on Ordinances send a letter to the Mayor asking him to review the drafted language that Attorney Gerwatowski has previously submitted, as well as to what his thoughts are on how to best enforce such an Ordinance, whether it be hiring additional Inspectional Service staff and/or asking the Housing Task Force to enforce it, or by some other method; and further, that he be requested to respond in less than 30 days. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Written Motion, Councillor Gomes, requesting, that the Committee on Ordinances discuss drafting an Ordinance that would make it mandatory that all employees hired by the City of New Bedford be given a CORI check, including all Departments and Department Heads, an all inclusive CORI Check will be conducted for the safety of all employees working for the City and for the safety of our City and services provided by the City of New Bedford to our Citizens (Ref'd 9/13/12, 10/23/12) and AN ORDINANCE, (Drafted by Attorney Gerwatowski) and the City of New Bedford CORI Policy (Submitted by Angela Natho, Personnel Director) was received and placed on file by Councillor Gomes and seconded by Councillor Duarte. (3, 3a, 3b)

Attorney Gerwatowski explained that the language he drew up is very basic in that no new city employee would be able to be hired without his/her CORI being run and reviewed by Personnel and eventually the Department Head.

Councillor Oliveira expressed a concern that CORI's should not be run on every single applicant, but rather job offers be made pending a CORI check.

Attorney Gerwatowski stated that the language could simply be amended to say that specifically, but he believes the language he presented does just that.

Councillor Duarte brought up the idea of possibly running CORI checks on existing employees.

Councillor Gonsalves expressed concern that the language does not prohibit the hiring of felons, etc. She is concerned about opening the city up for liability if it knowingly hires someone with a criminal past. Attorney Gerwatowski stated that the city is just as liable now for not knowing and not checking.

Attorney Jane Medeiros-Friedman stated that if you make the Ordinance specific as to what crimes or types of crimes would prevent someone from being hired by the city; it would have to be job-specific, as some positions are more sensitive than others for many different reasons.

On motion by Councillor Duarte and seconded by Councillor Alves, the Committee VOTED: To table this matter temporarily, in order to provide Attorney Gerwatowski an opportunity to quickly amend the language as Councillor Oliveira requested. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Communication, Mayor Mitchell to City Council, submitting the draft of the Housing Development Incentive Program (HDIP) Zone Plan for the City; and also, submitting AN ORDER, requesting that the City Council authorize and forward the plan for certification to the Massachusetts

Department of Housing and Community Development (DHCD) for its approval and endorsement (Ref'd 1/10/13) was received and placed on file by Councillor Alves and seconded by Councillor Lopes. (4, 4a)

Pat Sullivan, Director Community Development/Housing, explained this program to the members. He stated that it essentially works as a TIF, as the tax breaks would be on improvements to existing properties only and not the entire building/structure. It is designed to provide developers with the financial incentive, small as it may be in this program, to create market rate housing in the downtown area of the city. It does not provide any money for low-income housing – it is strictly for market rate housing units.

Councillor Lopes asked why and how Downtown was chosen as the site for this program. Mr. Sullivan stated that they believe Downtown can support such development of market rate housing and, frankly, the city wants that type of development there.

Councillor Gonsalves asked about commercial development, to which Mr. Sullivan responded that this program is specific to housing.

Mr. Sullivan explained that this program is available to the Gateway communities, and a few have begun to take advantage of it. The financial investment from the state is, admittedly, small relatively speaking, as it allows each community only \$5,000,000 per year for five years.

On motion by Councillor Alves and seconded by Councillor Lopes, the Committee VOTED: To recommend to the City Council ADOPTION, of the ORDER, requesting that the City Council authorize and forward the plan for certification to the Massachusetts Department of Housing and Community Development (DHCD) for its approval and endorsement. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Communication, Mayor Mitchell to City Council, submitting two (2) Ordinances, one amending Chapter 16 of the Code of Ordinances to include a Stormwater Management Ordinance which is necessary for the City to comply with the National Pollution Discharge Elimination Systems (NPDES) Storm Water Phase II Permit Program and two, amending Chapter 17, Section 17-18 (j) of the Code of Ordinances to enable the City the option of utilizing non-criminal citations for the enforcement of the Stormwater Management Ordinance and regulations (Ref'd 2/28/13) was received and placed on file by Councillor Alves and seconded by Councillor Lopes. (5, 5a, 5b)

Councillor Lopes asked Attorney Gerwatowski who would be in charge of setting the fees in the future should something like this pass. He expressed concern that homeowners would eventually be charged fees for having driveways.

Attorney Gerwatowski responded by saying that all ordinances are amendable by the Council at any time.

Councillor Gonsalves expressed concern that the regulations are not included in the language. She understands that there will be public hearings and from those hearings, the regulations would be added to the language, but she is uncomfortable with that. She would prefer that the City Council vote on it all together so that they do not approve something that they do not agree with, specifically speaking about the regulations.

On motion by Councillor Alves and seconded by Councillor Saunders, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE, Amending Chapter 16 of the Code of Ordinances to include a Stormwater Management Ordinance which is necessary for the City to comply with the National Pollution Discharge Elimination Systems (NPDES) Storm Water Phase II Permit Program and ADOPTION of the ORDINANCE, Amending Chapter 17, Section 17-18 (j) of the Code of Ordinances to

enable the City the option of utilizing non-criminal citations for the enforcement of the Stormwater Management Ordinance and regulations. This motion FAILED on a Roll Call Vote of Yeas 0, Nays 8, with Councillor Gomes not present for the vote.

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Notice, City Clerk of reference of a Written Motion, Councillors Gonsalves, Saunders, Lopes, Alves, Council President Martins, Councillors Lawrence, Coelho, Gomes, Bousquet and Duarte, requesting, that the Committee on Ordinances explore the possibility of creating an Ordinance to address preservation issues with respect to historic houses of worship in the City of New Bedford, in order to prevent the wholesale demolition of houses of worship vacated by various religious organizations (Ref'd 3/22/12, 5/14/12 – ***Referred to Legal Counsel, 02/12/13***) was received and placed on file by Councillor Alves and seconded by Councillor Gonsalves. (6)

Attorney Gerwatowski stated that the City currently has the mechanism to do this now without having to create a new ordinance. He explained that the Historical Commission is the body that designates what is and is not a historic site/location. Therefore, they can designate these churches/places of worship that are in question as historical districts in and of themselves. All the City Council has to do is ask them to do so.

On motion by Councillor Gonsalves and seconded by Councillor Bousquet, the Committee VOTED: That the Committee on Ordinances ask the Historical Commission to designate all houses of worship located in the city that are over seventy-five (75) years old as 40C Historical Districts. This motion passed on a voice vote.

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Notice, City Clerk of reference of a WRITTEN MOTION, Councillors Oliveira, Gomes, Lopes, Council President Martins, Councillors Gonsalves, Coelho, Bousquet, Alves and Duarte, requesting, that the City Council revisit the Ordinance that describes the activities of hawkers and peddlers for the purpose of modifying its current language to allow food trucks and so called food trailers to conduct business within the City, much like the recent Ordinance fashioned by the City of Boston, the City of New Bedford could benefit by receiving revenue for space dedicated to food trucks and also introduce a new dimension of food vendors that would provide variety and convenience to its residence that otherwise would not occur (Ref'd 5/10/12, 10/23/12 – refer to legal counsel for drafting) was received and placed on file by Councillor Bousquet and seconded by Councillor Alves. (7)

Attorney Gerwatowski explained that it will be the City Clerk's office that receives the application for the license and permits, but the Department of Inspectional Services will enforce as needed, along with the Health Department in response to a question from Councillor Gonsalves. Attorney Gerwatowski also suggested that the designated areas be defined with specific borders such as "Such Street and Such Street."

Councillor Gonsalves admitted that the difficult part would be designating which areas to allow this activity and at what times.

Councillor Bousquet felt it would not be that difficult. He feels, first of all, that the permit fee should be stiff, but reasonable. While he understands that traditional restaurants pay property taxes, he still feels that \$500 at the most is appropriate. He also feels that 1,000 feet away from an existing restaurant is crazy, and that 250 feet is more reasonable. He feels the Industrial Park is a great place to have one of the "districts", but feels there is no need to permit the time for this district, because the market will dictate when it is worth while for the

vendor(s) to be there. He feels the same would go for the Historical Downtown area; and as for the Parks and Beaches, he feels it should simply be restricted by dawn to dusk, and that they not be allowed to block public ways. In all cases, the vendor would need documentation of permission to be on private property.

Extensive discussion resulted.

Councillor Oliveira stated that this Ordinance needs to be well thought out and not rushed. He feels it is being rushed through simply because the warm months are approaching.

On motion by Councillor Oliveira and seconded by Councillor Duarte, the Committee VOTED: To table this matter at this time, this motion FAILED on a Roll Call Vote of Yeas 5, Nays 4, with Councillors Alves, Duarte, Martins, Oliveira and Saunders in favor and Councillors Bousquet, Gomes, Gonsalves and Lopes opposed.

On motion by Councillor Bousquet and seconded by Councillor Gonsalves, the Committee VOTED: To Table this matter for thirty (30) days and that Roy Nascimento from the New Bedford Area Chamber of Commerce; Tom Davis, a representative from the North and South End Business Associations; Downtown New Bedford, Inc.; and who ever the person is who is in charge of the permitting process for this in the City of Boston, all be invited to provide the Committee with their perspectives on this issue; and further, that each Councillor, particularly the Ward Councillors, also bring specific proposals for times, districts, etc. to said meeting. This motion passed on a voice vote.

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Councillor Saunders made a motion to remove item number three (3) from the table which was seconded by Councillor Gomes.

Notice, City Clerk of reference of a Written Motion, Councillor Gomes, requesting, that the Committee on Ordinances discuss drafting an Ordinance that would make it mandatory that all employees hired by the City of New Bedford be given a CORI check, including all Departments and Department Heads, an all inclusive CORI Check will be conducted for the safety of all employees working for the City and for the safety of our City and services provided by the City of New Bedford to our Citizens (Ref'd 9/13/12, 10/23/12) and AN ORDINANCE, (Drafted by Attorney Gerwatowski) and the City of New Bedford CORI Policy (Submitted by Angela Natho, Personnel Director).

On motion by Councillor Gomes and seconded by Councillor Oliveira, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE amended to read as follows: That every offer of employment to a prospective employee shall be contingent upon a favorable review by a CORI certified individual of the Department of Personnel and that the prospective employee's CORI information be forwarded to the Department that the applicant will be assigned to. This motion passed on a voice vote.

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

This meeting adjourned @ 9:17 p.m.

ATTEST:

Clerk of Committees