



Committee on Ordinances

November 12, 2014 – 7:20 PM - **Minutes**

City Hall, 133 William Street, City Council Chamber, Room 214

MEETING: COMMITTEE ON ORDINANCES

DATE: NOVEMBER 12, 2014

TIME: 7:08 P.M.

PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING

PRESENT: COUNCILLORS STEVEN MARTINS, CHAIRMAN; JAMES OLIVEIRA, VICE-CHAIRMAN; DAVID ALVES; HENRY BOUSQUET; NAOMI CARNEY; BRIAN GOMES; JOSEPH LOPES; LINDA MORAD (7:11); DANA REBEIRO; KERRY WINTERSON

ABSENT: COUNCILLOR DEBORA COELHO

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Councillor Martins called the Ordinance Committee Meeting to order and took attendance. He informed the Committee that Councillor Coelho called him to tell him she would not be in attendance at tonight's meeting as she is ill.

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Notice, City Clerk of reference of a Written Motion, Councillor Coelho, requesting, that in light of the recent incidents where the theft of copper resulted in dangerous house fires, that the Committee on Ordinances revisit the existing Ordinances, Chapter 15, License and Permits: Business Regulations, Section 33-51, in order to strengthen the guidelines and the enforcement of same; and further, requesting that a representative from the Police Department attend the Committee on Appointments and Briefings meeting to inform the Council as to what is being done in other communities regarding this problem. (Ref'd 05/23/13, 07/15/14 – Refer to Ordinances) (1)

On motion by Councillor Alves and seconded by Councillor Bousquet, the Committee VOTED: To table this matter at this time. 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 AN ORDINANCE, amending Chapter 6, BUILDINGS and OTHER STRUCTURES, this newly amended "PROBLEM PROPERTIES" Ordinance contains changes based on the Councillors input at the Committee on Ordinances meeting on May 21, 2014 (Ref'd 08/21/14) was received and placed on file by Councillor Alves and seconded by Councillor Winteron. (2, 2a)

Assistant City Solicitor John Flor was asked to explain the changes to the Nuisance Ordinance proposed by the Mayor. He informed the Committee that the Ordinance includes the Hearing Committee for violations to include a three (3) Member Committee; One appointed by the Mayor, One

appointed by the City Council, and One appointed by the Mayor and approved by the City Council. The landlord has the right to appeal the violations to the three-member Appeal Committee; there is a catch-all in place to deal with problem tenants and evictions; there is a right to appeal to Superior Court if the local three-member Appeal Committee does not grant appeals and there is a \$275.00 fee to appeal to the Superior Court.

Police Chief Provencher was asked to comment on the Ordinance. The Chief cited some issues as far as the specificity of the Ordinances language and that some points could be clearer; but it is not overly confusing. It is a good start. He is in favor of the proposed Ordinance but realizes it may need to be tweaked as it is enforced.

Councillor Rebeiro asked Attorney Flor if the Boston Ordinance which is similar to this was successful. Attorney Flor said it was and appears to be effective to this point.

Councillor Gomes asked if Attorney Flor had numbers of the success rate; he did not. Councillor Gomes asked the Police Chief how the Ordinance would be enforced. Police Chief Provencher told him it would be enforced by the Neighborhood Task Force and the Neighborhood Police Officers.

Councillor Bousquet asked Attorney Gerwatowski to illustrate some of the Ordinances pitfalls. Attorney Gerwatowski expressed concern with the following:

Human behavior as opposed to property behavior; problem properties or problem people, are we penalizing the landlord for personal behavior? The Police Department has to find a criminal offence and what if the person who is found for criminal offence is not associated with the landlord, but their tenant, should you hold the landlord accountable? The language where you assess the cost to the property owner, are you considering the nature of the incident? What does the Ordinance mean by this it is not clearly defined. Is it a violent crime or disturbing the peace? What is meant by cooperate and talk to the police? How does this affect the right to remain silent? Would the landlord be penalized for someone exercising that right?

Councillor Bousquet expressed his concern that the motion wouldn't hold water and would not hold up in a court of law.

Councillor Carney discussed what defines the number of nuisance calls? Is noise a criminal offence?

Councillor Rebeiro recognized David Gonsalves, 96 Willis Street, New Bedford, of a newly formed Neighborhood Association. Mr. Gonsalves told a story about how they took back their neighborhood and that this was a good Ordinance.

Councillor Gomes reviewed a number of items within the Ordinance with Attorney Flor.

Councillor Morad asked when a landlord is notified of a violation; she said it is when it gets to ten (10) and that is an issue. The landlords would be notified on each violation. Attorney Flor said he assumed if the police investigate that they would notify the landlords. Councillor Morad said she would like to see language added that the landlord is notified on each violation issued.

Kevin Welch, 1128 Acushnet Avenue, New Bedford, spoke on behalf of the Landlord Association. He expressed concern for the Ordinance, that it was faulting the landlords for a number of things they would not have control over. He told the Committee that landlords, good landlords monitor the behavior of tenants, but should be held accountable for the actions of visitors to their tenants.

Attorney Flor reiterated the need for a warning system in advance of the eight (8) strikes and you're out violation mentality. He explained the Ordinance had originally stated ten (10) violations but it was reduced to eight (8).

Celine Saraiva, Fern Street, New Bedford, of the Clark Point Neighborhood Association spoke in favor of the proposed Ordinance.

Jerry Pinto, 184 Davis Street, New Bedford, President of the Neighborhood Association spoke in support of the Ordinance.

Councillor Martins asked Mr. Pinto if any of the members of the Neighborhood Association sat in on the meetings when the Ordinance was being drafted. He replied "no". Councillor Martins said he was concerned about this and expressed this to Attorney Flor.

On motion by Councillor Alves and seconded by Councillor Lopes, the Committee VOTED: To table this matter at this time. This motion FAILED on a Roll call Vote of Yeas 4, Nays 5, with Councillors Alves, Lopes, Martins and Morad in favor and Councillors Carney, Gomes, Oliveira, Rebeiro and Winterson opposed, Councillor Bousquet not present for the vote.

On motion by Councillor Morad and seconded by Councillor Alves, the Committee VOTED: To table this matter for a sixty (60) day period (January 2015) during that period, the City Council President form a Committee consisting of two (2) Ward Councillors, two (2) At Large Councillors, representatives from the Realtors Association, the Landlords Association, the Police Department and the Neighborhood Association to meet with the Legal Counsel to the City Council and the City Solicitor in order to determine the changes that need to be made to the present Ordinance so we can hopefully find a document that works. This motion passed on a Roll Call Volte of Yeas 9, Nays 0, with Councillor Bousquet not present for the vote.

Council President Lopes provided a list of those to be on the Committee:

Councillor Ward One James Oliveira
Councillor Ward Three Henry Bousquet
Councillor at Large Naomi Carney
Councillor at Large Brian Gomes
Jerry Pinto, Neighborhood Association
Celine Saraiva, Neighborhood Association
Kenny Resendes, Neighborhood Association

Councillor Martins called a two-minute recess at 9:09 p.m. The Committee was called back into session at 9:18 p.m.

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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) (3)

On motion by Councillor Alves and seconded by Councillor Winterson, the Committee VOTED: To keep this matter on the table. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Written Motion, Councillor Gomes, requesting, that Legal Counsel Gerwatowski draft an Ordinance requiring confirmation by the City Council of any person employed by the City Council Office or Clerk of Committees Office; and further, that the City Council President, or his or her designee participate in the interviewing process of any candidates. (Ref'd 05/22/14, 06/23/14 – referred to Legal Counsel) (4)

On motion by Councillor Gomes and seconded by Councillor Alves, the Committee VOTED: To take “No Further Action” on this matter at this time. The motion passed on a voice vote.

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Notice, City Clerk of reference of a Written Motion, Councillor Bousquet and Council President Lopes, requesting, that the Committee on Ordinances draft an Ordinance encouraging food services, supermarkets, and other users of expended polystyrene foam to discontinue their use of the product and move to recyclable to recycled paper based materials, expended polystyrene foam is a tremendous threat to our oceans and its ecosystems, and as a community who makes its living from the ocean we should be concerned for its health. (Ref'd 05/22/14) (5)

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

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On motion by Councillor Gomes and seconded by Councillor Alves, the Committee VOTED: To waive the reading on items 6, 6a, 7, 7a and follow the Chairs recommendation and take No Further Action on these matters at this time. This motion passed on a voice vote. They are as follows:

Notice, City Clerk of reference of a COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDINANCE, Amending Chapter 6, Article VII, Prevention and Abatement of Nuisances, by adding Section 6-125, CHRONIC PROBLEM PROPERTIES. (Ref'd 04/24/14, 05/21/14 - rpf) (6. 6a)

Notice, City Clerk of reference of a Communication, Mayor Mitchell to City Council, submitting AN ORDINANCE, Amending Chapter 6, Building and other Structures, Article VII, Prevention and Abatement of Nuisances, by adding Section 6-125, Chronic Problem Properties. (Ref'd 01/24/13, tabled 02/12/13, 05/13/13 – tabled, 12/12/13 – Remain in Committee) (7, 7a)

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

This meeting adjourned @ 9:21 p.m.

ATTEST:

Clerk of Committees