



# *Committee on Ordinances*

March 23, 2015 – 7:06 PM - **Minutes**

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

## **NEW BEDFORD, MASSACHUSETTS**

**MEETING: COMMITTEE ON ORDINANCES**

**DATE: MARCH 23, 2015**

**TIME: 7:06 P.M.**

**PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING**

**PRESENT: COUNCILLORS STEVEN MARTINS, CHAIRMAN; JAMES OLIVEIRA, VICE-CHAIRMAN; HENRY BOUSQUET; NAOMI CARNEY; BRIAN GOMES; JOSEPH LOPES; LINDA MORAD; DANA REBEIRO; KERRY WINTERSON**

**ABSENT: COUNCILLORS DAVID ALVES; DEBORA COELHO**

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Councillor Martins called the Ordinance Committee Meeting to Order and took attendance. The Clerk of Committees read Communications into the record from Councillor Alves and Coelho stating their reasons for not attending tonight's Ordinance Committee Meeting. These Communications were received and placed on file by Councillor Gomes and seconded by Councillor Winterson.

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Notice, City Clerk of reference of a Communication, Mayor Mitchell, to City Council, submitting AN ORDINANCE, amending Chapter 17 Offenses and Miscellaneous Provisions, by adding Section 17-28 Chapter 40U of the Massachusetts General Laws (Ref'd 01/22/15); 1a. AN ORDINANCE, amending Chapter 17 Offenses and Miscellaneous Provisions, by adding Section 17-28 Chapter 40U of the Massachusetts General Laws (Ref'd 01/22/15); 1b. AN ORDINANCE, amending Chapter 6, Buildings and Other Structures (Ref'd 01/22/15); 1c. Public Hearing, on AN ORDINANCE, amending Chapter 9, Comprehensive Zoning (Ref'd 01/22/15, duly advertised in the Standard-Times on Tuesday, March 10, 2015 and Tuesday, March 17, 2015); 1c(a). Communication, City Planner Jill Maclean, to Councillor Steven Martins, Chairman, Committee on Ordinances, notifying the Committee that the Planning Board held a Public Hearing on March 11, 2015, to discuss the proposed amendments to the Code of Ordinances, Chapter 9, Section 5120, by adding language under MA General Laws, Chapter 40U, enforcement powers of the Inspector of Buildings. The Planning Board voted to send a **FAVORABLE RECOMMENDATION** to the Ordinance Committee (3/16/15); 1d. AN

ORDINANCE, amending Chapter 12, Health and Sanitation (Ref'd 01/22/15) were received and placed on file by Councillor Oliveira and seconded by Councillor Bousquet. (1, 1a, 1b, 1c, 1c (a), 1d)

Attorney Jane Medeiros-Friedman, First Assistant City Solicitor, was recognized and gave an overview of the 40U procedures.

Councillor Martins read a letter from Mayor Mitchell on how the 40U collection procedures are beneficial to the city and recommended adopting the ordinance. A motion was made to receive and place on file the letter by Councillor Lopes and seconded by Councillor Carney.

Councillor Morad asked Attorney Flor how the position of the Hearing Officer would be funded. He explained that the funding would be placed on the fiscal 2016 budget. The position will conduct hearings two nights a week. The funds raised in fees and fines would hopefully subsidize the position.

Councillor Morad asked Attorney Gerwatowski if he had any concerns with the Ordinance. He said from a legal standpoint there are no issues, it's more of a question of policy verbiage, but if the Council is okay with it, there are no issues.

Councillor Morad asked Commissioner Romanowicz if he was consulted in the drafting of this ordinance. Commissioner Romanowicz answered yes he was. She then asked if the amount of the fines were okay and he responded that the fines reflect the amounts in similar ordinances with the city. They are already in place. He is in favor of this ordinance because it eliminated the time spent at Small Claims courts. He spends an awful lot of time currently at Small Claims courts when having to send people to Small Claims court this position will cut back on time spent going back and forth to court.

Councillor Lopes asked Attorney Flor when the last time was that the city altered the fee structure. He was told that they did not alter the fee structure that the current fees being used are the same as they currently are in other city ordinances. The maximum that would be able to be charged according to the state and adopted by the city is \$300.00.

Councillor Morad asked Attorney Friedman if some fees will be assessed to property owners when the issue may be caused by someone else. She responded that in certain instances it is true that Landlords or property owners may be fined but the issues would be decided at the hearing as to whether or not a fine would stand. If it was necessary it could be appealed to a Housing court. Councillor Morad commented that some of the fees are hefty but she was told that the fees are in existence now, but they had not been enforced and they are taking steps to increase the enforcement now.

Councillor Rebeiro asked is the Ordinance a form of checks and balances and is it punitive. Attorney Flor said the fines associated with the ordinance are not punitive. He explained the tickets were being written out now but there are no teeth to the ordinance that allows them to collect the disturbance and/or trash fines. He also explained the city makes an effort to dismiss fines in housing court if a landlord or homeowner agrees to make the necessary changes for whatever they are being fined. He explained that this ordinance is not to raise funds but is to get people to do what they are supposed to do.

On motion by Councillor Gomes and seconded by Councillor Carney, the Committee VOTED: To recommend to the City Council ADOPTION of the Ordinances, as follows: AN ORDINANCE, amending Chapter 17 Offenses and Miscellaneous Provisions, by adding Section 17-28 Chapter 40U of the Massachusetts General laws; AN ORDINANCE, amending Chapter 6, Buildings and Other Structures; AN ORDINANCE, amending Chapter 9, Comprehensive Zoning; AN ORDINANCE, amending Chapter 12, Health and Sanitation. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Report, Committee on Ordinances, recommending to the City Council Adoption of the Proposed Ordinance AS AMENDED, Amending Chapter 6, BUILDINGS and OTHER STRUCTURES (Ref'd 02/12/15) and a Communication, City Solicitor McDermott, submitting to the City Council for consideration, three additional amendments to the Problem Properties Ordinance enacted by the Committee on January 20, 2015, were received and placed on file by Councillor Carney and seconded by Councillor Rebeiro. (2, 2a, 2b)

Councillor Bousquet asked Attorney Flor if this ordinance will do what it needs to do. Attorney Flor expressed some reservations to some of the amendments previously made by the Council.

Councillor Martins recognized the Chief of Police and he explained his support of the ordinance, that it is a mechanism to help landlords with their property and that he is willing to give any information to landlords about tenants that are in their homes within the full extent of the law.

Councillor Carney asked if there are public records that are more accessible than others readily available for landlords. The Chief explained he's not sure what he believes so Attorney Flor did say that you can request a police report if there is a disturbance at the location in question; but the only exception is requesting police reports if they involve domestic violence.

Councillor Morad was recognized for point of information, asking if the ordinance on February 12, 2015 is the final draft with all of the amended motions. She was told that it was. She was also told that the Solicitor's changes were submitted to the Council on February 10, 2015 to be incorporated into the ordinance.

After discussion amongst the body the following motions were made:

On motion by Councillor Morad and seconded by Councillor Lopes, the Committee VOTED: To accept the City Solicitor's amendment on Section VIII, under Prevention, after the word request, on page 1, insert "To the extent permitted by law" and on page 2, after the word request, insert "and legally could have been provided to the landlord". This motion PASSED on a Roll Call Vote of Yeas 9, Nays 0.

On motion by Councillor Morad and seconded by Councillor Lopes, the Committee VOTED: To accept the City Solicitor's amendment on Section VII. Eviction, by changing the twentieth word in the sentence, "incidents" to "incident" so that it is consistent with the phrase "particular incident" at the end of the sentence. This motion PASSED on a Roll Call Vote of Yeas 9, Nays 0.

On motion by Councillor Gomes and seconded by Councillor Lopes, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE AS AMENDED. This motion PASSED on a Roll Call Vote of Yeas 7, Nays 2, with Councillors Morad and Winterson opposed.

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Notice, City Clerk of reference of a Written Motion, Councillor Gonsalves, on behalf of the Buttonwood Park Zoo, that City Code Chapter 4, Section 4-5, Relative to Beekeeping, be amended to allow the Zoo to develop an exhibit on Beekeeping (Ref'd 04/11/13, 12/12/13, 04/29/14 – tabled, 09/17/14 – tabled, 10/22/14 – tabled for 60 days-December, 2/23/15 – NFA (asked to keep this in Committee because it goes with two other items still pending) and a Written Motion, Councillor Alves, requesting, that the Committee on Ordinances meet with Michael Patenaude to discuss the potential benefits of allowing bee keepers to operate in the City of New Bedford (Ref'd 05/08/14, 9/17/14 – tabled, 10/22/14 – tabled for 60 days-December, 2/24/15 – remain in Committee) and 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, 2/23/15 – remain in Committee) were removed from the table by Councillor Lopes and seconded by Councillor Rebeiro. (3, 3a, 3b)

Attorney Gerwatowski was recognized to speak on the motion before the body. He explained that he is not sure whether a meeting had taken place with Manny Maciel of Animal Control and Mr. Patrick Rogers in relation to the Beekeeping Ordinance. He is going to reach out to both men to see if they can meet and come up with some definitive language as it relates to the Beekeeping Ordinance. He said he would also reach out to someone from the Zoo for input and once he has his information he would report back to the Committee.

On motion by Councillor Carney and seconded by Councillor Rebeiro, 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 Written Motion, Councillors Martins and Morad, requesting, that the Committee on Ordinances amend Chapter 15-72, FOOD TRUCKS, by including the enclosed attachment, relative to ice cream trucks (Ref'd 06/26/14, 2/23/15 – remain in Committee) was received and placed on file by Councillor Oliveira and seconded by Councillor Lopes. (4)

Attorney Gerwatowski was recognized to give an overview of the new wording as it related to the Food Truck Ordinance.

Councillor Bousquet asked how much it is for a Hawkers and Peddlers License now. He was told it was \$45, and the Food Truck License is \$600.

Attorney Gerwatowski explained the issue was that ice cream trucks were being forced to move from site to site unlike food trucks. The ice cream truck owners wanted to have the same flexibility and

mobility as a food truck; by changing the wording it will allow ice cream trucks to have such flexibility but they will now have to pay \$600 for the permit.

Councillor Lopes explained that this does not mean that ice cream trucks will be allowed to park all day at East Beach or West Beach. He was told by the Attorney that they will all get a copy of the Ordinance which explains the amount of time that can be spent at one location.

On motion by Councillor Lopes and seconded by Councillor Winterson, the Committee VOTED: To recommend to the City Council APPROVAL of the ORDINANCE, AS AMENDED, Chapter 15-72, FOOD TRUCKS. This motion PASSED on a voice vote.

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Notice, City Clerk of reference of a Written Motion, Councillors Alves, Gomes, Council President Lopes, Councillors Martins, Rebeiro, Winterson, Carney, Oliveira, Coelho and Bousquet, requesting that Legal Counsel Gerwatowski draft an Ordinance that would recognize and confirm the City Seal that has been used for over the past 50-100 years, recognizing and illustrating in detail the proud legacy and the history of our City, as the acknowledged world leader in/Whale Oil that lit up the world for years, and that also recognized our City as the hub of the textile industry and that the City Council acknowledges and declares that it should be recognized and acknowledged as the “Official Seal of the City of New Bedford” and is to be used on all official stationary and publications of the City (Ref'd 12/18/14, 1/20/15 – tabled, 2/23/15 – remain tabled) was removed from the table by Councillor Lopes and seconded by Councillor Carney. (5)

Attorney Gerwatowski was recognized and reviewed the language for the body. He explained what would be needed to make sure that only a certain number of approved City Seals would be used by the city in the future. He did discuss that the Ordinance before them really didn't have any teeth to enforce that only those approved City Seals were being used by city entities.

Councillor Lopes informed the Committee that the main thrust behind the Ordinance was to keep the City Seal the way it is, and he believes that we need to include some form of verbiage as to what the seal looks like in order to make the Ordinance stick. He does not want to leave the Ordinance open for interpretation on what is the official seal of the City of New Bedford.

Councillor Morad asked Attorney Gerwatowski what are the teeth of the strengths within the Ordinance. She was told that at this point there is no enforcement mechanism.

Councillor Oliveira gave a brief overview of the history of the City Seal that was commissioned in the 1800s and that its spirit has survived almost over 200 years. He agrees that the Ordinance as it is does not have a mechanism to enforce what the seal should look like and that this Ordinance should have stronger wording.

On motion by Councillor Morad and seconded by Councillor Lopes, the Committee VOTED: To table this matter until the next meeting and that the appropriate language and the images to be considered be presented to the Committee for review. This motion passed on a voice vote.

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Notice, City Clerk of reference of a Communication, City Planner Jill Maclean, to City Council, regarding Zoning Request Changes, associated with fees and Abutter Notification (Ref'd 05/8/14,

06/23/14 – table pending notification, 2/23/15 – remain in Committee) was removed from the table by Councillor Morad and seconded by Councillor Lopes. (6)

Councillor Morad asked if there was anyone present to discuss this motion, there was no one.

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

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

This meeting adjourned @ 8:35 p.m.

ATTEST:

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Clerk of Committees