



Committee on Ordinances

September 15, 2015 – 7:14 PM - **Minutes**

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

MEETING: COMMITTEE ON ORDINANCES

DATE: SEPTEMBER 15, 2015

TIME: 7:14 P.M.

PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING

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

ABSENT: COUNCILLORS DAVID ALVES; HENRY BOUSQUET; DEBORA COELHO

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Councillor Martins called the Ordinance Committee to order and took attendance. The Clerk read Communications received from Councillors Alves and Coelho explaining their absences from the meeting. These Communications were received and placed on file by Councillor Morad and seconded by Councillor Carney.

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Item number two (2) was taken out of order without objection.

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 a 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) was received and placed on file by Councillor Winterson and seconded by Councillor Lopes. (2)

Ms. Connie Pereira, of Abracadabra Gifts, 1701 Acushnet Avenue, New Bedford was present to address the Committee. She expressed her frustration as a business owner in the floral industry where individuals are selling flowers on street corners during high volume flower days, e.g. Mother's Day, Easter. She explained we have Ordinances on the books to make sure vendors are properly licensed and not on city property, but that this is not taking place. She explained that legally each person peddling products must be licensed separately, but that is not being done; for example, a man in Reading, MA, has pulled a license from the State and hires people all over to sell products for him, using copies of his individual permit and that should not be the case.

Copies of photos discussed by Mr. Pereira were received and placed on file by Councillor Lopes and seconded by Councillor Winterson.

Councillor Rebeiro asked how much revenue Ms. Pereira loses as a florist as a result of these types of sales. She was told that she sells a better quality product than the vendors. She estimated approximately \$1,000. She gave examples of having to close early on Mother's Day and selling a minimal amount of Easter Lilly's. She explained now it is affecting everyone in her profession.

Chief Provencher was recognized by the Chair on this issue. He was asked to comment on how the current Ordinance is enforced. He explained that this has been an issue for a long time and that a vast majority of the vendors are for the most part on private property; if they are not they should be shutting them down.

Councillor Carney asked the Chief if they have been checking licenses and he explained that they have not done as good a job as they should have in enforcing this Ordinance and that the New Bedford Police Department needs to do a better job in checking licenses. He stated that they will move forward in doing a better job.

Councillor Winterson thanked the Chief for looking into it.

Councillor Morad asked the Chief if he knew if the licenses issued by the State allowed multiple vendors under one issuance. The Chief said no, that there should be a separate license for each individual vendor.

Councillor Lopes asked Attorney Gerwatowski if the city requires a local license. He was told no that the license is issued by the State. The vendor is required by Ordinance to present their State license to the City Clerk, filing their permit with the office and notifying the office of where they will be selling their product. It is possible that the police can get a list from the Clerk's Office and that way when they check on a vendor they can tell if they have appropriately notified the city of their selling product. If they have not then the city can fine the vendor \$100.00 per incident.

Councillor Lopes asked if the city can require a local license and Attorney Gerwatowski said he does not think that you can make a vendor pay for an additional license when they have already secured one to sell product from the State. Councillor Lopes explained that Somerville and Attleboro do this. Attorney Gerwatowski explained that while they may do this, he does not feel it is being done legally and that if challenged in Court the city would lose. Councillor Lopes asked if Attorney Gerwatowski could look into the Somerville and Attleboro Ordinances to see if they are enforceable. Attorney Gerwatowski stated that simply imposing another cost on a license that is already issued when a city Ordinance requires that you have to file your State license with the City Clerk defeats the purpose of getting a State license. Councillor Lopes explained he was more concerned in addressing fraudulent licenses and not prohibiting those vendors who are doing it the right way from selling.

Attorney Gerwatowski explained that better enforcement might not warrant a need for an additional license; but if you are looking for a way to document a fraudulent license right now, there is no way to address this.

Councillor Morad asked Attorney Gerwatowski if there is a way to determine where hawkers are going to be selling their product. Do you have to notify the City Clerk annually of where you will be located? Attorney Gerwatowski said you were supposed to notify the City Clerk yearly. He said you can pass a fee on to the vendor for copies and keep a list updated. She also asked if you needed to provide evidence of insurance within the State Law. Attorney Gerwatowski said he would check into this.

Councillor Carney asked if the Clerk's Office can supply a copy of the list or perhaps issue a badge with a photo ID so the police will be able to tell if a vendor is properly licensed; that way the city will know that the vendor exist. Attorney Gerwatowski explained that is adding a lot to process that is already in place and you would need to make sure what department is handling it and what it has the ability to do.

Councillor Morad asked the Chair if he would consider adding item number 1 as a part of the conversation so that she could make a motion. The Chair agreed.

Notice, City Clerk of reference of a Written Motion, Councillors Alves and Martins, in an effort to better support local businesses that have opened "brick and mortar" businesses in the City, pay real estate taxes and hire our residents, and in light of the number of street vendors and peddlers that have infected our streets selling flowers, plants and miscellaneous items without a valid license and are in violation of the current City Peddlers Ordinance, requesting, that the Committee on Ordinances review any and all similar Ordinances currently in effect in such communities as Haverhill and Somerville, and any other community in the Commonwealth that has one, to see what we can do to improve our City Ordinances to address the issue of unlicensed or out of town peddlers on our City streets.(Ref'd 6/25/15) (1)

On motion by Councillor Morad and seconded by Councillor Oliveira, the Committee VOTED: To table items one (1) and two (2) until March 2016, so that the New Bedford Police Department has time to enforce the licenses and that enforcement is being properly addressed. Also, that the Committee reach out to the Chamber of Commerce for local florist addresses and they be invited the next time the issue is addressed. This motion passed on a voice vote.

Councillor Morad spoke on the question. She feels that they need to give the Chief the opportunity to focus on this issue. He has indicated that he will.

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The Chair explained that items three (3), three a (3a) and four (4) regarding prohibiting aggressive begging, soliciting and panhandling in public places is similar to the Worcester Ordinance that has since been challenged by the Courts as unenforceable. Understanding this, the Chair entertained a motion to table these items.

On motion by Councillor Lopes and seconded by Councillor Carney, the Committee VOTED: To table items 3, 3a and 4 at this time. This motion passed on a voice vote. They are as follows:

Notice, City Clerk of reference of a Written Motion, Councillors Martins, Lopes, Coelho, Carney, Rebeiro and Gomes, requesting that the Committee on Ordinances review the Ordinance from Worcester regarding prohibiting aggressive begging, soliciting and panhandling in public places, to enact a similar Ordinance in the City of New Bedford (Ref'd 6/11/15) and AN ORDINANCE, (Submitted by Councillor Martins) from the City of Worcester regarding prohibiting aggressive begging, soliciting and panhandling in public places. (Ref'd 6/11/15) (3, 3a)

Notice, City Clerk of reference of a Written Motion, Council President Gomes, requesting that the Committee on Ordinances meet for the purpose of putting together a permitting process for panhandling in the City of New Bedford with the exception of public safety officials; this will guarantee their organizations will be permitted in safe areas of the City; and further, to address the out-of-control panhandling that is occurring on every major intersection and Highway exit throughout the City. (Ref'd 7/16/15) (4)

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Notice, City Clerk of reference of a Written Motion, Councillors Oliveira and Morad, requesting that the Committee on Ordinances review the proposed language from DPI Commissioner Ronald Labelle, regarding Alternate Sewer Assessment – Special Project Method and that Legal Counsel to the City Council, Attorney David Gerwatowski draft an Ordinance from this language (Ref'd 05/28/15-6/8/15 Ref'd to Atty. Gerwatowski for drafting) and Proposed language for the Ordinance for Alternate Sewer Assessment- Special Project Method (Ref'd 5/28/15-6/8/15 Ref'd to Atty. Gerwatowski for drafting) were received and placed on file by Councillor Morad and seconded by Councillor Lopes. (5, 5a)

Councillor Morad asked if the item before them was something that they could legally do and she was told that they could not legally act on it; that there already is an Ordinance in place that is applicable as it relates to betterments.

On motion by Councillor Morad and seconded by Councillor Oliveira, 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 Communication, Mayor Mitchell to City Council, submitting ORDINANCES, Amending Chapter 16, Article VIII, MUNICIPAL UTILITIES AND SERVICES; amending Chapter 17, Section 17-18, Noncriminal Disposition of Violations of Certain Ordinances, Rules & Regulations - (j) Relative to STORMWATER MANAGEMENT; and Amending Chapter 17, Section 17-28, Chapter 40U of the Massachusetts General Laws (Ref'd 05/28/15) was received and placed on file by Councillor Morad and seconded by Councillor Winterson. (6, 6a, 6b, 6c)

Ron Labelle, DPI Commissioner, gave an overview of the proposed Ordinance. He explained that the city has to create such an Ordinance for there are new EPA regulations in place that need to be strengthened, the Ordinance would do this. It will help to strengthen the city's enforcement of storm drainage guidelines.

Attorney Gerwatowski explained that he felt this Ordinance would provide the Commissioner with an Ordinance that allows specific rules and regulations, but is comfortable that none of the decisions made would take place without review and authority given by the City Council.

Councillor Lopes addressed section 16-132, where it read may create a guidebook, he feels that once DPI moves forward, that they should create a guidebook for residents, not may. He also asked what the fee structure would be. Commissioner Labelle explained the fee structure was already in place and is being used in other areas of DPI permitting. Attorney Gerwatowski explained that if you put the fee structure into the Ordinance that should you need to increase the fees, you would have to come back and reword the Ordinance.

On motion by Councillor Lopes and seconded by Councillor Morad, the Committee VOTED: To Amend the Ordinance Amending Chapter 16 Article VIII, Stormwater Management at Section 16-132. Administration D) First sentence after the word Infrastructure strike the word “may” and insert “shall within one year of adopting Rules and Regulations.” Then 4 lines down after the word Guidebook strike the word “may” and insert the word “will”. Then 7 lines down after the word Guidebook strike the work “may” and insert the word “will”. This motion passed on a voice vote.

On motion by Councillor Lopes and seconded by Councillor Morad, the Committee VOTED: To amend in Section 16-135 Fees, by striking the entire first paragraph and inserting with: At the time of an application, the applicant shall pay a filing fee pursuant to a fee schedule which shall be determined by the Commissioner of the Department of Public Infrastructure and approved by the City Council. Any subsequent changes to the fee schedule shall be submitted to the City Council for approval. This motion passed on a voice vote.

On motion by Councillor Lopes and seconded by Councillor Morad, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE, AS AMENDED, Amending Chapter 16, Article VIII, Municipal Utilities and Services; and the ORDINANCES, amending Chapter 17, Section 17-18, Noncriminal Disposition of Violations of Certain Ordinances, Rules & Regulations - (j) Relative to STORMWATER MANAGEMENT; and Amending Chapter 17, Section 17-28, Chapter 40U of the Massachusetts General Laws. This motion passed on a voice vote.

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

This meeting adjourned @ 8:39 p.m.

ATTEST:

Clerk of Committees