



Committee on Ordinances

November 19, 2015 – 7:45 PM - **Minutes**

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

MEETING: COMMITTEE ON ORDINANCES

DATE: NOVEMBER 19, 2015

TIME: 7:45 P.M.

PLACE: CITY COUNCIL CHAMBER, ROOM 214, MUNICIPAL BUILDING

PRESENT: COUNCILLORS STEVEN MARTINS, CHAIRMAN; JAMES OLIVEIRA, VICE-CHAIRMAN; HENRY BOUSQUET; NAOMI CARNEY; DEBORA COELHO; BRIAN GOMES (8:29); JOSEPH LOPES; LINDA MORAD; DANA REBEIRO(8:21); KERRY WINTERSON

ABSENT: COUNCILLOR DAVID ALVES

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Councillor Martins called the Ordinance Meeting to order and took attendance. The Clerk read a Communication from Councillor Alves stating the reason for his absence from the meeting and a Communication from Councillor Gomes explaining his reason for arriving late to the meeting. These Communications were received and placed on file by Councillor Lopes and seconded by Councillor Carney.

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Items one (1) and five (5) were not read.

On motion by Councillor Oliveira and seconded by Councillor Carney, the Committee VOTED: To table items one (1) and five (5). This motion passed on a voice vote. They were as follows:

Notice, City Clerk of reference of a Written Motion, Councillor Lopes, Rebeiro, Martins, Winteron, Bousquet and Alves, requesting, that the Committee on Ordinances draft and approve an Ordinance that would exempt all City Council support staff from the City's policy requiring the Mayor's approval/signature on any requisition form or any other type of paperwork; and further, that the City Council President sign off on such positions; support staff is to include employees in the City Council Office, Clerk of Committees Office, and the position of City Clerk/Clerk of the City Council.(Ref'd 8/20/15) (1)

Notice, City Clerk of reference of a Written Motion, Councillor Martins, requesting that the Committee on Ordinances, establish an Ordinance restricting door-to-door solicitation, aimed at protecting the public from obtrusive and perhaps unscrupulous door-to-door solicitors; and further, that the Ordinance should include a stipulation that solicitors should be licensed on an annual basis by the Chief of Police or his designee; and further that the aim of this Ordinance is to address the real problem in the City with solicitors asking residents for personal information that they have no right to have an companies pretending to be from other companies;

and further, that with a license, this will give our public safety officers a broader authority to deal with an increasing problem that other major Cities have already dealt with. (Ref'd 2/12/15, 5/11/15 tabled) (5)

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On motion by Councillor Oliveira and seconded by Councillor Coelho, the Committee VOTED: To table item two (2). This motion passed on a voice vote. It is as follows:

Notice, City Clerk of reference of a Written Motion, Councillors Bousquet, Lopes, Winterson, Alves, Martins, Coelho, Carney, Morad and Council President Gomes and Councillor Rebeiro, requesting on behalf of dog owners in New Bedford, that the City encourage leash law adherence, and severely penalize dog owners who fail to properly restrain their pets in the event of an aggressive attack on another person or pet in the City. (Ref'd 8/20/15) (2)

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Notice, City Clerk of reference of a Written Motion, Councillors Lopes, Martins, Winterson, Morad, Council President Gomes, Alves, Bousquet and Carney, requesting, that the Committee on Ordinances revise and update Chapter 9, Section 4200 of the City Code, relative to Body Art (Ref'd 10/22/15) was received and placed on file by Councillor Oliveira and seconded by Councillor Winterson. (3)

Dan Romanowicz, DIS Commissioner was present to answer questions from the Committee.

Councillor Oliveira asked the Commissioner what the current Ordinance requires as far as window coverings as it relates to tattoo establishments. He was told that 60% of the windows were required to have some form of screening, that body art establishments are required by law to have proper screening. What was at issue was that the establishment in question is currently operating its business without the proper screening. Although the owner of the shop informed the Board of Health of this issue they did not inform the Building Department who is required to enforce the Ordinance. When they discovered that the business was operating in violation of the Ordinance they reached out to the owner and informed them that they would be fined if they did not install the proper screening. This is what led to the motion that the Council sponsored. The Commissioner explained that his department was in error and should not have granted the certificate of occupancy without the proper screening.

Dr. Weiss, Director of the Board of Health, explained that the Zoning Board of Appeals granted the permit to the business back in June and that to date there have been no complaints on the business with the lack of screening and they continue to operate under the permit that was originally issued.

Councillor Coelho explained her concern that the establishment did not have proper screening. She happens to have passed by the establishment thought it was odd but thought nothing further of it.

Dr. Weiss explained that the Health Board has talked about the openness of tattooing that it is considered and viewed as body art and compared it to open kitchens in restaurants where patrons can keep an eye on the cooking and preparing of their food.

Councillor Coelho explained that she sees the lack of screens as a health issue the windows are not the problem but the proper screening of the windows appears to be. She was told by Dr. Weiss, the Board of Health does not have a regulation on shielding so they voted unanimously to allow it but they were unaware of the Ordinance on the books that falls to the Building Department.

Councillor Morad asked the Building Commissioner what the actual zoning law entailed and he explained that all buildings need to have access and windows screened to prevent visual access to the interior. A discussion took place as to what the screening entails, was it something that had to be permanent or could it

be movable. She was told that he believed the screening would need to be approved by the Historical Commission because the building falls within the Historic Park, that you should be able to see out but not in.

Councillor Lopes explained to the City Council Attorney that some form of appeal process for violators needs to be established and that the Ordinance needs to include better language to clarify what screening is and that it be subject to certain body parts. The Attorney said that from what he has heard and read that the Board of Health and the Building Department are both correct. The Board of Health has no jurisdiction over zoning laws but the Building Department does. The law says you have to be screened it does doesn't matter what it is you have to prevent from public view. Even when the establishment is closed you should not be able to see into the building. Councillor Lopes explained that he found the current ordinance to be too restrictive. He would like to see language adopted that keeps the public from seeing works that may be considered personal area of the body screened but a simple arm tattoo should not. He asked the Attorney how long it would take to come up with language. He was told he would need to get the language in order to word the ordinance but he needs to know what the Council's intent is.

Councillor Coelho asked Dr. Weiss if she knew how Fall River deals with screening of tattoo establishments; she was told that she does not know what Fall River does.

Councillor Oliveira asked the Building Commissioner how many tattoo establishments there were in the city and he was told the number was four (4) and that the other three had the proper screening this was the only issue. Councillor Oliveira said that he does agree some type of screening needs to occur and that it needs to be a consideration of a clear definition of what part of the body should at the very least be screened even if a portable screen is being used.

Councillor Bousquet asked the Attorney if we can legally define what art is and he was told yes you can to a certain extent. Councillor Bousquet said he would support some change as it relates to screening especially since it is seen as a form of art and would attract onlookers.

Councillor Carney said she does not find body art offensive and would be in favor of easing screening restrictions.

On motion by Councillor Lopes and seconded by Councillor Morad, the Committee VOTED: that Attorney Gerwatowski update the Body Art Language associated with screening, to limit screening to a petition non-visible to the naked eye that would be used when areas of the body deemed of indecent exposure are being worked on. This motion passed on a Roll Call Vote of Yeas 9, Nays 1, with Councillor Coelho opposed.

On motion by Councillor Coelho and seconded by Councillor Morad, the Committee VOTED: That Attorney Gerwatowski update the body Art language that the Body Art Establishments use screening un-visible to the outside viewing while working on any part of the body. This motion FAILED on a Roll Call vote of Yeas 1, Nays 9, with Councillor Coelho in favor.

On motion by Councillor Morad and seconded by Councillor Bousquet 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 AN ORDINANCE amending Chapter 2 of the City Code by inserting Section 2-241 COMMUNITY PRESERVATION COMMITTEE (Ref'd 1/22/15) was received and placed on file by Councillor Carney and seconded by Councillor Lopes. (4, 4a)

Kreg Espinola, Assistant City Solicitor was present to answer questions from the Committee.

Councillor Carney said she had read the language and was concerned about the quorum majority that they need to look to increasing the number of members on the Committee, because as it stands now, out of the seven, five of them are city employees and could quite possibly meet at any time and there would be a quorum, this would result in their being the lack of citizen/community input.

Councillor Lopes expressed his concern that the designated members from the public are not defined and he believes that this needs to be done so that all wards are properly represented on the Committee.

The Attorney stated that the appointments made by Mayor Mitchell have to be approved by the City Council.

Councillor Oliveira stated that he knew this but that the membership to include the general public needs to be clearer prior to them passing the Ordinance.

Councillor Morad said there needs to be an appropriate amount of diversity within the Committee. She asked that the Attorney bring these concerns that were discussed this evening back to the Mayor and that the language be changed and then returned to the Committee for further review.

On motion by Councillor Morad and seconded by Councillor Carney, 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 Bousquet, Lopes and Martins, requesting that the Committee on Ordinances and the Board of Health explore the possibilities of placing tobacco, herbal vapor Hookah Bar establishments under The Smoke-Free Workplace Law, M.G.L., Ch.270, §22 (Ref'd 04/09/15) was received and placed on file by Councillor Morad and seconded by Councillor Lopes. (6)

Dr. Brenda Weiss was present to answer questions from the Committee.

Councillor Lopes wanted to enter into a discussion that would allow tobacco bars/hookah bars in the City of New Bedford but that they are regulated by the Board of Health. He understood that a smoking bar needs to have at least 51% of tobacco sales in its establishment to operate as a smoking bar. He went on to state that people's positions on hookah and cigar smoking have changed in recent times.

Dr. Weiss said that as the Health Director she has to endorse and is required to enforce the smoking laws as they pertain to the City of New Bedford. Personally she realizes that bars as such are very popular today, especially cigar bars. However as the Health Director she feels she needs more information to make a comfortable decision if at all as it relates to her opinion on smoking bars. She suggested that the Council and/or Councillor Lopes provide her with information that she can bring back to her Board to see if they would be in favor of allowing such an establishment in the city.

Councillor Lopes stated that he would speak with her and provide her with this information.

On motion by Councillor Lopes and seconded by Councillor Winterson, the Committee VOTED: To table this matter for thirty (30) days. 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 a Zoning Request Changes, associated with fees and Abutter Notification. . (Ref'd 05/8/14, 06/23/14 – table pending notification, 2/24/15 – remain in Committee, 03/23/15 - tabled)

On motion by Councillor Morad and seconded by Councillor Winterson, the Committee VOTED: To waive the reading and follow the Chair's recommendation and take "No Further Action" on this matter at this time. This motion passed on a voice vote.

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

This meeting adjourned @ 9:25 p.m.

ATTEST:

Clerk of Committees