



# *Committee on Ordinances*

February 23, 2016 – 7:04 PM - **Minutes**

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

**MEETING: COMMITTEE ON ORDINANCES**

**DATE: FEBRUARY 23, 2016**

**TIME: 7:04 P.M.**

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

**PRESENT: COUNCILLORS STEVEN MARTINS, CHAIRMAN; DANA REBEIRO, VICE-CHAIRPERSON; IAN ABREU; HENRY BOUSQUET; NAOMI CARNEY; DEBORA COELHO; BRIAN GOMES; JOSEPH LOPES; JAMES OLIVEIRA; KERRY WINTERSON**

**ABSENT: COUNCILLOR LINDA MORAD**

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Councillor Martins called the Ordinance Committee Meeting to order and took attendance. The Clerk read a Communication from Councillor Morad explaining she would be late in attending tonight's meeting due to a prior work commitment. This Communication was received and placed on file by Councillor Carney and seconded by Councillor Bousquet.

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Notice, City Clerk of reference of a Written Motion, Councillors Rebeiro, Lopes, Council President Gomes, Morad and Oliveira, requesting that the Committee on Ordinances, draft an Ordinance that would place an immediate ban on the use of medians are ADA compliant as dividers only, most are only 4 feet, whereas sidewalks are ADA compliant to travel and rest on and are 6 feet or more, any individual or organization should utilize sidewalks only (Ref'd 12/17/15) was received and placed on file by Councillor Bousquet and seconded by Councillor Winterson. (1)

Councillor Rebeiro gave an overview of the motion and the need to ban people from the city's medians as it is not safe and those people who are on the medians are getting in the way of ADA access that allow the use.

Attorney David Gerwatowski addressed the Committee and informed them that he drafted a preliminary Ordinance and gave it to Councillor Rebeiro, but has not passed it on to the City Council. He stated there a variety of safety concerns on activities that take place on medians that need to be considered; for example distracting drivers and perhaps losing balance and causing injury. He gave an overview of a similar Ordinance in Portland, Maine which was challenged in the Courts and the Courts shot down the local Ordinance. So there is precedent set. In the New Bedford Ordinance, he did try to limit the size of the median, trying to create an Ordinance that will hold up if challenged in Court.

Councillor Bousquet asked if there was anything on the city books now and he was told no, not as it relates to activity on city medians and sidewalks; but yes to obstructions. Attorney Gerwatowski did state that he believes if challenged the; city Ordinance would not hold up in Court.

Councillor Oliveira said he agreed with the intent of the proposed Ordinance but realizes it would not be a successful one if challenged in a Court of Law.

Attorney Gerwatowski explained that this Ordinance does not deal with pan handling.

Councillor Coelho commented on what State Laws are on the books that keep people off State highways that maybe the city should look to that language. She was told that Portland tried a number of angles but they did not hold up in Court. She asked about prohibiting solicitation and/or issuing permits of solicitation. She was told this could be looked at.

Councillor Oliveira said if the Committee does move forward with an Ordinance he would like to see comment as it relates to the ADA language found in the current motion. He would like to see ADA language incorporated in the Ordinance. He would like to have Attorney Gerwatowski collaborate with Cynthia Wallquist on the ADA language.

Councillor Rebeiro stated she would like to review unilateral language with Attorney Gerwatowski.

On motion by Councillor Rebeiro and seconded by Councillor Abreu, the Committee VOTED: To table this matter for thirty (30) days and to provide the Committee with copies of the preliminary Ordinance drafted and the case language cited on the Portland, ME Ordinance; also, that the Ordinance language and case file be sent to the City Solicitor's Office asking that they review and make comments. 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, 11/19/15-tabled for 30 days) was removed from the table by Councillor Lopes and seconded by Councillor Bousquet. (2)

Councillor Bousquet provided an overview of his desire to create such an Ordinance.

Dr. Brenda Weiss, Director of the Board of Health was present and addressed the Committee. She informed the Committee that such establishments fall outside of the Smoke Free Workplace Law in the State, and that special permits by the Department of Revenue could be granted and allow such establishments to exist in the city. If the State granted a permit to a business which is a sale and stay establishment, the Board of Health would more than likely back off and allow it to exist; though it would be reviewed by the Board. She suggested that if the city does pursue this Ordinance that they limit the number of establishments, as the Director of the Board of Health, she is opposed to smoking, but does understand that these establishments do exist in other communities. She also explained that vaping/hookah bars is a new area of them. She is not sure how this activity falls within the tobacco bar permitting.

Councillor Lopes outlined the framework of the Ordinance and stated that twenty municipalities in the Massachusetts currently allow smoke and hookah bars.

Councillor Martins spoke in favor of such establishments and agreed that they should be limited.

Attorney Gerwatowski told the Committee that even if a permit was granted by the State, the Board of Health could create a more stringent rule that would override the permit. Dr. Weiss indicated that she does not believe the Board would do this, though she could not speak on their behalf.

Councillor Rebeiro voiced her opposition to the Ordinance.

Councillor Coelho explained thought she is against smoking, she does believe that if someone wants to open this type of establishment and can secure the permit, they should be able to open such an establishment.

On a Related Motion by Councillor Lopes and seconded by Councillor Winterson, the Committee VOTED: That the Chairman of the Ordinance Committee establish a Special Committee to work with the Board of Health to establish a permitting process for the creation of a “Smoking Bar” Permit that would allow for the sale and consumption of tobacco products on-site. This motion passed on a Roll Call Vote of Yeas 6, Nays 2, with Councillors Coelho and Rebeiro opposed and Councillors Gomes and Oliveira not present for the vote.

On motion by Councillor Lopes and seconded by Councillor Winterson, the Committee VOTED: To refer this matter to the Special Committee. This motion passed on a voice vote.

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Councillor Lopes asked that items three (3), four (4) and five (5) be taken up together, without objection. There was no objection.

Notice, City Clerk of reference of a Written Motion, Councillors Abreu, Lopes, Martins, Winterson and Bousquet, requesting that the Health Director, Dr. Brenda Weis, attend an upcoming Committee on Ordinances meeting to discuss a potential collaborative strategy regarding the City’s plan to address the on-going epidemic as it relates to the smoking and consumption of synthetic drugs (including, but not limited to K12, Spice, Potpourri) which are still being sold on store shelves; and further, that Mayor Mitchell engage in dialogue with the City Council in a search of a collaborative effort to help confront this matter ( Ref’d 2/11/16) and a Communication, Councillor Martins, submitting AN ORDINANCE, from the Town of Wareham regarding Synthetic drugs ( Ref’d 2/11/16) and a Communication, Councillor Abreu, submitting AN ORDINANCE, from the City of Lowell regarding Synthetic drugs ( Ref’d 2/11/16) were received and placed on file by Councillor Lopes and seconded by Councillor Bousquet. (3, 4, 5)

Dr. Weiss was present and explained that the sale of synthetic drugs is a very real problem country wide and in the city as well. She teaches a class to high school students explaining the dangers of using such items. They are not marijuana that in most cases it is an unknown plant that is treated with unknown chemicals that when smoked can have some very severe side effects. They are currently selling on city shelves. She said the city needs to be proactive in the search of solutions in prohibiting these sales. She stated that the Wareham and Lowell Ordinances that are in place in their respective communities seem to be full proof and would more than likely face a challenge in court if there ever is one. She encouraged the Committee to use the language of both when drafting their Ordinance.

Councillor Winterson asked about the fines involved, how they should be structured. Dr. Weiss believes it would be \$100 first offense, \$200 and a Board of Health hearing second offense, and \$300 and a thirty (30) day shutdown of all tobacco sales. The new Ordinance would run parallel to the selling of tobacco products to minors.

Councillor Bousquet expressed his dismay that tobacco can be regulated, but as it is now; synthetic drugs are not, for they are being sold as potpourri, but being used to get high. These items can kill you and that by creating such an Ordinance you are protecting a fifteen (15) year old kid who does not understand what people are selling them and how it can hurt them.

Councillor Carney expressed her support of the Ordinance.

On motion by Councillor Abreu and seconded by Councillor Lopes, the Committee VOTED: To recommend that the City Council requests the Board of Health to use their regulatory authority and enact a

regulation banning the sale of synthetic drugs in the City of New Bedford, and that they use the current Wareham and Lowell Ordinances for guidelines; and further, that the Board of Health has the leeway to use other Ordinances as they see fit. This motion passed on a voice vote.

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On motion by Councillor Carney and seconded by Councillor Coelho, the Committee VOTED: To waive the reading and follow the Chair's recommendation and take "No Further Action" on items 6 and 6a. This motion passed on a voice vote. They are as follows:

Notice, City Clerk of reference of a Written Motion, Councillor Rebeiro, requesting, that the City Council approve Adoption of a Home Rule Petition – AN ACT authorizing the City of New Bedford to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises, pursuant to Section 15, Chapter 138 of the Massachusetts General Laws, to the establishment located at 801 Purchase Street, in the City of New Bedford currently known as Cuve Wine LLC – d/b/a Crush New Bedford, the licensing authority shall not approve the transfer of the license to any other locations; and further, that this matter also be referred to Representative Cabral for processing. (Ref'd 1/14/16) (6, 6a)

Councillor Coelho made a motion to adjourn, which was seconded by Councillor Abreu.

This meeting adjourned @ 9:01 p.m.

ATTEST:

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Clerk of Committees