

CITY COUNCIL STANDING COMMITTEE

Ordinances & Administration

Monday, October 15, 2012 – 6:00 p.m.

1st Fl. Council Conference Rm. – City Hall

-Minutes-

Present: Chair, Councilor Sefatia Theken; Vice Chair, Councilor Robert Whycott; Councilor Steven LeBlanc, Jr.

Absent: None.

Also Present: Linda T. Lowe; Rose LoPiccolo; Rebecca Bernie; J. Ronald Ross; Barry Pett

The meeting was called to order at 6:00 p.m.

1. Continued Business:

- A) CC2012-052 (LeBlanc) Amend GCO Sec. 22-270 “Parking Prohibited at all Times” re: Lincoln Avenue (*Cont’d to 11/05/12*)

Councilor LeBlanc commented he would be submitting a Council Order to amend GCO Sec. 22-191 “Tow Away Zone to accompany CC2012-052. It would be available for the Committee’s consideration at the next regularly scheduled meeting.

2. Re-Appointments:

EDIC: Rebecca Bernie	TTE 02/14/2015
R. Billings Bramhall	TTE 02/14/2015
Ellen Lufkin	TTE 02/14/2015
J. Ronald Ross	TTE 02/14/2015
Carolyn Stewart	TTE 02/14/2015
Barry Pett	TTE 02/14/2015

Councilor Theken asked about the date for the terms to expire with regards to the EDIC Board members; that the dates that came through with the Mayor’s Report may not be correct. **Linda T. Lowe**, City Clerk stated she was expressing Councilor Hardy’s opinion on several related matters, at the Councilor’s request as she was unable to attend this evening’s meeting. The Councilor’s concern was that the EDIC is based on MGL c. 121C, §3, speaks of terms being staggered, but then once the EDIC is set up, it is supposed to be three year terms for all members, but indicates the terms on July 1st. That would indicate that the terms to expire are not subject to the February 14th date of the City Charter provisions. She noted Councilor Hardy had submitted an email with several of her questions and concerns to the Committee prior to the meeting (on file). Councilor Hardy was also concerned that there should be an umbrella ordinance for the EDIC and General Counsel, Suzanne Egan responded to the question whether the Council could do that. Ms. Egan said the City Council does not have the authority to regulate the Board, which is true. But what Councilor Hardy wanted was similar to some ordinances on other City boards, committees and commissions that are more informational; and not an ordinance that says that the City Council is deciding what the EDIC can or cannot do. Councilor Hardy said it would be helpful to have an ordinance. The Councilor was also concerned that the state law said that when people are appointed they should have expertise in a variety of different areas. She would like to know if the Mayor is able to tell the Council what the expertise is for each of the nominees. She was especially concerned that there should be one member representative of low income people and who might that be. Further, would there be some way to have a person that fulfills those criteria.

Councilor Whycott expressed the Committee could vote on the nominations of the EDIC members in order to move them forward to the Council, but the Council should have that information by the time the nominations come forward for Council vote. **Rebecca Bernie**, EDIC member stated Ellen Lufkin was appointed because she was a member of the board of Action, Inc. **Barry Pett** pointed out that, MGL c. 121C, then GRA 121B, and said there are regulations that there are governor’s appointments that also brought several members to the Board initially. About 20 years ago, Ms. Bernie was a Governor’s nominee, as he was. **Ms. Bernie** stated that when she was initially appointed she was in the real estate business. Mr. Pett’s initial appointment had him filling the slot of business representative. **Councilor Theken** asked to have it confirmed that Ms. Lufkin is still on the board of Action, Inc. **Ms. Lowe** explained that Councilor Hardy asked her to say that her questions were not a reflection on any of the

nominees currently before them. She was strictly speaking to the process. **Ron Ross** added he was appointed as an industrial representative. **Ms. Bernie** stated she would find out which slots each member fulfills and get that information to the Committee. She and Ms. Lowe confirmed there are seven members under state law. She also confirmed that Abdullah Khambaty had resigned from the EDIC just prior to the Mayor's submitting their names for reappointment and was in the process of considering a nomination for Mr. Khambaty's replacement. She indicated she is no longer in the real estate business; however, when each member was appointed they fit specific slots. The Clerk of Committees was instructed to submit a summary of the Committee's and Councilor Hardy's questions to the Mayor for a response for their consideration prior to their next meeting. At the November 5th meeting the Committee would also take up the matter of voting on all of the nominees. Councilor Theken also asked that when the O&A Committee reconvenes on this matter that the Board make a brief summary of their recent activities.

This matter is continued to November 5, 2012.

3. Review of GCO Sec. 9-2 PAYT Containers as referred by the City Council on 10/09/12

Councilor Theken acknowledged an email received from Bill Thoms on the subject of amending GCO Sec. 9-2 PAYT Containers to eliminate the phrase "non-profit," who was present as was Rose LoPiccolo, the City's Recycling Coordinator.

Bill Thoms, 1174 Washington Street stated he had included in his email an example of one non-profit organization is still using a "Barney" bag [official City trash bag] program and is completely unaware of the ordinance change over a year ago. He indicated the organization he belongs to has been also using the Barney bag program and would still be doing so had he not gone into the DPW in early September to buy a bulk item sticker, asked a question about recycling. He was referred to Ms. LoPiccolo, who upon asking the address of the organization, and informed him that they were not supposed to be putting out items in the trash. She pointed out St. Ann's had a dumpster and asked why their organization did not. **Councilor Theken** explained there is a contract with a trash hauler for the City, and to violate terms of the contract would cost the City a great deal of money. She pointed out other folks with bed and breakfast concerns, folks who own four- and five-family structures, small restaurants, retail stores, who have said if they are not going to do this for non-profit organizations that don't pay taxes to the City, what is the difference between their building and the non-profits. **Councilor Whynott** said he had received calls from the Lutheran Church. Mr. Thoms explained with his email to the Councilors he had included an email from Jim Flynn, the Lanesville Community Center who indicated they were unaware of the trash program which excludes non-profits and were still using the Barney bags to dispose of their trash. He said his purpose was not to "rat out" any other organizations, but as far as the Lutheran Church, a neighboring organization, it was not his stated purpose to tell them what he knew they did with their trash. His organization complies with the law, which has more than doubled their costs. They participated in municipal trash collection ever since it was first offered by the City. There are over 100 civic, fraternal, social service and religious organizations serving the City; many are small, or larger groups that meet part time, and generate household-sized volumes of waste. The PAYT program has had a negative impact on those organizations who can no longer participate in City trash pick up. He stated his opinion that the ordinance change was implemented in a defective manner resulting in disparate treatment, and is not equal protection under the law. He asked the Committee to investigate this. He urged the Committee to delete the word "non-profit" from the GCO, Sec. 9-2 PAYT Containers. He suggested the Councilors did not know the impact of this section of the ordinance. **Councilor Whynott** stated they would investigate this. They may make a recommendation, but it would not be until the next contract if any changes are made. He expressed the belief they could not change anything in the contract now. **Mr. Thoms**, indicating he had a copy of the Hiltz contract and disagreed with Councilor Whynott's supposition they could not break the contract, and that it specified that they must exclude non-profit organizations. **Councilor Theken** pointed out when the ordinance was amended, having reviewed the minutes of the meetings in 2011, the tonnage the City had and what the City could afford to without raising the price of the Barney bags for everyone, including seniors, was what drove their decision. She asked Ms. LoPiccolo to attend this meeting to listen to their conversation, and to subsequently research how much it would cost. Councilor Theken expressed she will not make any ordinance changes this during this contract period. It is a budgetary issue. She would not change a contract in place now that saves money for the City. There are 18 months left in the contract which was set in place for a reason as it was negotiated and took into consideration budgetary constraints. She asked Ms. LoPiccolo for information on how many non-profits there were in the City; what the cost would be for hauling non-profit organizations' trash. **Mr. Thoms** stated he had yet to poll the over 100 City non-profit organizations who are unaware of this ordinance. He said if his recent research shows there is disparate treatment because they have not implemented this program and only certain people/organizations have been notified to stop participation and others

they are “turning a blind eye to, it is a matter of law.” Councilor Theken suggested that if Mr. Thoms had knowledge of the “over 100 organizations” wished to come forward and submit the names of these organizations they would have Ms. LoPiccolo investigate his claims. She said Mr. Thoms was stating the City was doing something that was wrong. They work for compliance of the law. If he has any doubts, then he should speak with General Counsel. Mr. Thoms then indicated he could make a request of a complete record of all emails and correspondence in the City’s computer system, which he stated he didn’t want to do. Rather, he asked them to be open-minded and consider the issue. **Councilor Theken** reiterated they could not change the contract nor would she amend the ordinance at this time because it would be costly to the City. They need time to do the work in time for the next contract. **Ms. LoPiccolo** noted Mr. Thoms had a copy of the current contract and received it the previous week, she stated that the definition of solid waste in the contract as “household trash generated within the home”. This refers to the municipal collection program. Waste generated from a church is not considered a home. **Ms. LoPiccolo** stated she had been asked by Mr. Thoms to “turn my head” when she brought that to his attention. **Councilor Whycott** stated he came to the meeting with an open minded about non-profits. A lot of non-profits are businesses, even though they are tax exempt. They don’t pick up trash for businesses. Even though non-profits may be tax exempt they do much good in the City. He was willing to look at the ordinance and contract but that it wouldn’t happen until the next contract. **Councilor Theken** reminded Mr. Thoms there were public hearings on the PAYT matter and the subsequent amending of the ordinance as to definitions. She said she had read Mr. Thoms email and understood some of his points. But she needs Ms. LoPiccolo to do some research at the Committee’s request. **Ms. LoPiccolo** also pointed out that there is a fee for recycling that is paid to the contractor. There are approximately 250 non-profit organizations in the City. Churches cannot be separated from the non-profits who use them for meetings, etc. **Councilor Theken** also asked that Ms. LoPiccolo find out how many five-family and above there are. **Mr. Thoms** stated there is only one person benefiting from this situation that is Hiltz, implying that all non-profits must go to Hiltz for their trash pick up. **Ms. LoPiccolo** said this is not the case as they can go to anyone. He would like to see how much this is saving the City. There is no impact on the tonnage and is a serious disadvantage. **Councilor Theken** pointed out that 2011 there was an impact study and what was saved. **Ms. LoPiccolo** stated there were a 26 percent decrease in trash tonnage, and a 14 percent increase in recycling tonnage. The City’s recycling rate is 31 percent. **Mr. Thoms** reiterated his stance that the most serious problem is the defective implementation, saying they can’t turn a blind eye to some and not others. He further suggested he would bring litigation over what he alleged to be disparate treatment. **Councilor Theken** explained that Ms. LoPiccolo stays right on top of things and is diligent in her work as the City’s Recycling Coordinator. She advised Ms. LoPiccolo to send a kindly reminder to all non-profits that they will not have their trash and recycling picked up by the City’s trash contractor.

This matter is continued to January 14, 2013.

The Committee recessed at 6:34 p.m. and reconvened at 6:37 p.m.

Councilor Theken and Ms. Lowe each commented that in Mr. Thoms’ opinion that they are not following the law under the Code of Ordinances and each reiterated that was not the case. However, to assure evenhandedness and equal treatment, the Committee had asked Ms. LoPiccolo to send out reminder letter to all City non-profits about the PAYT program, as **Mr. Thoms** claims that some non-profits are using Barney bags and leaving them on the sidewalk for pick up where others are not.

4. *CC2012-057(Cox/Ciolino) Amend GCO Sec. 22-270 “Parking Prohibited at all Times” and Sec. 22-291 “Two Away Zone” re: Rowe Square (Cont’d to 11/05/12)*
5. *CC2012-058(Cox) Amend GCO Sec. 22-287 “Disabled veteran, handicapped parking” re: Pearl Street #13 (Cont’d to 11/05/12)*

A motion was made, seconded and voted unanimously to adjourn the meeting at 6:44 p.m.

**Respectfully submitted,
Dana C. Jorgenson
Clerk of Committees**

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None