

CITY COUNCIL STANDING COMMITTEE
Ordinances & Administration
Monday, March 14, 2011 – 6:30 p.m.
KYROUZ AUDITORIUM – City Hall
-Minutes-

Present: Chair, Councilor Sefatia Theken; Vice Chair, Councilor Anne Mulcahey; Councilor Bruce Tobey
Absent: None.

Also Present: Councilor Verga; Councilor Hardy; Linda T. Lowe; Jim Duggan; Fire Chief Phil Dench;
Deputy Chief Stephen Aiello; Steven Dexter; Attorney Suzanne Egan

The meeting was called to order at 6:32 p.m. Items were taken out of order. Councilor Verga sat in as an alternate until the arrival of Councilor Tobey at 7:25 p.m. At that time there then was a quorum of the City Council.

1. Old Business:

- A) Legal Questions related to the Approval of Stormwater Utility Regulations under City Charter Sec. 7-16(a) (b) and GCO Sec. 23(1) through (23)(6) “The Stormwater Utility Ordinance” in general and Sec. 23-4(c) “Stormwater Utility Service Fees” (*referred from 03/08/11 City Council Meeting*)

Councilor Tobey thought the Stormwater fee ordinance should be amended to broadly state the authority they’re acting under so that instead of being specific to c. 83, Sec. 16, it would be “pursuant to the provisions of MGL c. 83, Sections 1 et. seq.” He felt this evening they should vote to recommend for a public hearing on that amendment change, and that Councilor Verga had asked could the Council act in a contingent way in the meantime, adopted subject to the amendment being enacted.

Suzanne Egan, City Solicitor agreed the Councilor’s suggestion was sensible and stated the ordinance as enacted now is proper. She submitted to the Committee that c. 83, Sec. 16 was the proper section. When they first looked at this, they looked to the City of Fall River who has the Stormwater utility in effect. They relied on that. They can change to amend to put in c. 83, Section 1 et. seq. It does give the broad, general authority. While that amendment is pending, the stormwater ordinance is still in effect; and the Council can approve the proposed regulations while the Council is going through the process of amending the ordinance to cite c. 83, Sec. 1 et. seq. It could be done conditionally if it was the will of the Council also. Questioned by **Councilor Theken** about law suits, **Attorney Egan** stated there is always the ‘fear’ of lawsuits but this it doesn’t have any teeth. **Councilor Theken** also asked about Sec. 14 of c. 83 which Steven Malboeuf brought out at the City Council meeting. **Attorney Egan** This stormwater utility has never been challenged. Many municipalities have enacted it and had it for a number of years. They’ve used the same language as other cities and towns in the State. Further, she stated c. 83, Sec. 14 was not relevant; that section is for repair and construction. What the City is doing with their Stormwater utility is they’re putting in operation and maintenance, putting in programs, the cost of running the program into that; that is under Sec. 16, not Sec. 14 of c. 83.

Councilor Tobey felt if they wanted to be “super cautious” and rely on that provision for whatever reason and they approved the regulation on the ordinance as it is now and subsequently amended the ordinance, would they need to do anything further to the regulations to which **Attorney Egan** replied “no”. She also affirmed the amendment process would not impede the regulation acceptance.

[**Note:** Chapter 83 section 1 is the first section of the M.G.L. chapter and that et. seq. means ‘and all others in that chapter; therefore it means the entire c. 83.]

Councilor Hardy stated Sec. 16 “by every person who enters his particular sewer therein”, expressed concern regarding the statement in Sec. 16, “who enter...therein”, and how to explain to those not connected to City sewer and water that they’re receiving a benefit from the Stormwater fee, and also quoted Section 16 noting the word “shall”.

Attorney Egan responded did that phrase limit their ability to charge people who don't use the sewer for a stormwater fee; which she believed it did not limit the authority of the City. She noted the statutory framework of c. 83 sets out the authority of the City to have a sewer utility and a stormwater utility. Noting in 2004 c. 83 was amended and explained in Sec. 16 they added the phrase the stormwater facilities in that first sentence. However, from everything that she read and looked at, she contended they put it in the wrong place. They could have put it at the end after 'who enter their sewers therein'. If you look at the next two sentences in Sec. 16, that lays out the basis for charging for stormwater facility. There was nothing else within the entire chapter that limits a stormwater facility to people who use the sewer system.

Councilor Hardy read, "...may from time to time establish just and equitable charges for the use of common sewers and main drains and related stormwater facilities which *shall* be paid by every person who enters their particular sewer therein." She reiterated it is "shall" not "may".

Attorney Egan stated while that is true, the part that was added in 2004, after sewers, "...and main drains and related stormwater facilities. That phrase was added to the first sentence in 2004. Also added then are the next two sentences which all pertain to stormwater facilities and what the fee can be used for. She asserted the section had to be looked at as a whole. Further, that if you look at it and say it is only for people who use the sewers, "the whole thing doesn't make any sense..." There are two separate, distinct entities, a sewer and a stormwater. There is a whole statutory framework that lays it out. It is the interpretation of the law. She expressed her confidence in her legal opinion.

Councilor Hardy added she also had a problem with the word "fee". She understood that a fee could be opted into or out of. She cited trash fees or beach sticker fees as an example and asked for the legal definition.

Attorney Egan stated this is a fee. The DOR is not the entity that decides it; it is the courts who decide. It is a three part test. A recent appeals court looked at this three part test. The court stated that wasn't the most significant part. Is this for a service provided? Is the fee to pay for the service provided? That, she contended, is the critical part. Are you just charging people to supplement the general fund to avoid Prop. 2-1/2 or are you charging them for a service. Because of the way the regulations are enacted and the way the formula is constructed, it specifically relates to the impervious surface on a property.

Councilor Hardy understood how it could be supported. But she still had a problem with the word "fee". This fee will be assessed whether someone lives on a private or public street pointing out the City is not servicing drains on a truly private street.

Attorney Egan stated currently they provide maintenance on private streets. On those completely private systems on private streets, there is still run off from the properties and the drains are connected to the City system. When the stormwater drains down the street get cleaned out it is also a result of the run off from these private properties.

Councilor Verga stated Councilor Tobey brought up sewer is more a generic word in the last meeting.

Councilor Tobey replied sewer is often defined as what transports stormwater run off and wasn't sure that was involved in the interpretation of Section 16.

Attorney Egan stated there were definitions in Sec. 1 of c. 83. She felt the statute is working on two levels, with regard with waste water and what is stormwater runoff. She added this isn't a new service or fee. They are providing this service now. This is just a different way to pay for this service.

The Committee and the Councilors present discussed the process by which they could advertise for public hearing for the possible amendment of the Stormwater ordinance.

Jim Duggan, CAO, on inquiry by **Councilor Tobey**, stated as long as the rules and regulations are adopted at the next City Council meeting they'll be able to make sure they'll be able to have the proper billing procedures in place and six to eight weeks to get the Unifund system tested.

Councilor Hardy asked Attorney Egan for her opinion in writing addressing Section 16 related to "by every person who enters his particular sewer therein", as well as on the definition of voluntary fee (vs. tax) and service fee so that the Council can comfortably vote knowing the subsequent changes would have protective value.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to ADVERTISE FOR PUBLIC HEARING to Amend Gloucester Code of Ordinances Sec. 23(1) through 23(6) for the purpose of changing the basis of the Stormwater Ordinance from M.G.L. c. 83, Sec. 16 alone to M.G.L. c. 83, Sec. 1 through Sec. 29 (et. seq.).

2. Continued Business:

- A) CC2011-007 (Hardy) That O&A review the following City Ordinances: ARTICLE II. Chapter 8-16(b) FIRE DEPARTMENT and ARTICLE II. Chapter 17-16(b) POLICE DEPARTMENT (Cont'd from 02/28/11)

Councilor Hardy asked the Administration to put in writing the policy of when the Fire and Police Chief vacancies will be declared.

This matter is continued to April 4, 2011.

- B) CC2011-008 (Hardy) Creation of language for ballot question re: recently enacted Water Ordinance and pending Home Rule Petition related to same (Cont'd from 02/28/11)

Suzanne Egan, City Solicitor gave the Committee possible language for a ballot question on the matter (submitted and on file). She looked at what was pending for the State Senate which seemed to her to take care of the issues because it will limit the charter as to what it can do. She pointed out that the language before the Committee was consistent with what is at the State now as a proposed Special Act.

Councilor Tobey stated they don't need to do this as the legislature would amend the charter.

Councilor Hardy believed they made a representation to the grassroots organization, WHO DECIDES that they would do a referendum to put it to a ballot question so that the only way it would be removed is by another vote by the electorate. They promised them they would do this in a three-pronged approach.

Councilor Verga recalled it that way also as did **Councilors Mulcahey** and **Theken**. **Councilor Verga** continued that they couldn't know how long the home rule petition could take in the legislature; and felt they should do the ballot question as it could take three years and in that time someone could want to buy the water system; it's new Mayor, and they could sell the water system.

Councilor Tobey asked if the affirmative statement is adopted but with no home rule petition and no Charter Commission what would the effect of the passage of this vote be to which **Attorney Egan** responded it would be nothing. The Councilor stated further that this charter provision would be added, and that ultimately would be better.

Councilor Hardy reiterated they promised a three-pronged approach.

Attorney Egan stated they could put language for the question as to whether or not the City shall enact an ordinance that provides the same language which says the City Council shall not transfer the water rights unless it is referred to referendum of the voters. That would give WHO DECIDES and the voters of the City the chance to make that decision; it would give the added comfort level.

Councilor Hardy also wished to review the minutes of the O&A meetings where the matter was discussed to be sure of what was said regarding the three-pronged approach and to find out the legality.

Councilor Tobey stated to amend the charter to mandate this vote they'd be changing the nature of government. They'd restrict the authority of the Mayor, the Council. It is a change in the powers of government and that requires a Charter Commission with Attorney Egan agreeing.

This matter is continued to April 4, 2011.

Councilor Tobey entered the meeting at 7:25 p.m. There was now a quorum of the City Council.

Councilor Verga left the dais as an alternate.

- C) Letter and documentation from Deputy Fire Chief Aiello re: enactment of ordinance to bill for Certain Fire Dept. responses (Cont'd from 02/14/11)

Steven Dexter of Carroll Steele Insurance Agency, an invited guest of the Committee, reviewed information he gathered (submitted and on file) for them and stated insurance rates are based on losses. Every auto accident or homeowner's fire will raise the rates based on loss ratios.

Councilor Tobey noting many cities have fundamental concerns of costs to homeowners and vehicle owners, he asked the Fire Department to withdraw their request; that if they wished to pursue it then what fundamentally do citizens pay taxes for.

Chief Dench explained that in 1992 an audit was done of the Fire Department and another after the Lorraine Fire which contained essentially the same recommendations. The Administration challenged the Fire Department to find alternate revenue streams. They looked through the Essex County Fire Chief's Association noting there were other municipalities in the area who were doing this form of cost recovery. He pointed out some of the many recommendations, most of which need funding such as keeping the Bay View and Magnolia fire stations open, filling several officer positions, a clerk's position; many clauses citing the need for training, for instance.

Councilor Tobey contended this is an "axe tax" and thought it would be viewed with cynicism by the community who are already greatly burdened by taxes, water, sewer increases and now stormwater.

Chief Dench responded this is money that is paid to the insurance companies by the citizens. They're paying for a service through their insurance companies.

Deputy Fire Chief Stephen Aiello appreciated the Councilor's remarks but that didn't reflect that to be the case of increased premiums or loss of insurance. This form of billing has been going on for twenty years in the U.S. He asserted there was no documented evidence that rates went up because of these billings. The premiums they collect in Gloucester, in Massachusetts, are required to have a minimum coverage for fire department response. He believed if they don't collect that money they're doing a disservice to the tax payers who expect the service and not getting the level of service they desire. Insurance companies are collecting the premiums, expecting to pay those fees and don't get asked by the City. He pointed out that Wenham and Andover do this successfully. In order to raise rates, the insurance companies have to get approval from the State Commission to raise them. He also pointed out that 85% of the accidents within City limits are either due to negligence or caused by non-residents; also that 12% of structure fires are from negligence.

Responding to a question from **Councilor Mulcahey**, the Deputy Chief stated insurance rates go up if there is a fire, not because the Fire Department sends a bill to the insurance company. He felt it important to note that the bill doesn't go to the homeowner or vehicle owner it goes to the insurance company.

On inquiry to **Councilor Theken**, **Mr. Dexter** pointed out that the insurance companies may consider paying up to \$500 but that limit is for mutual aid under homeowner policies. He also stated he was not disputing what the Fire Department was trying to do; but was there to provide information.

Councilor Theken recalled it was anticipated this revenue stream could bring in \$60,000 annually.

Mr. Dexter stated there is coverage in commercial insurance policies but not homeowner's policies. For homeowners there is a \$500 limitation. Noting he spoke to the Fire Chiefs in Wenham and Andover, their main reason to institute such a billing program was because of the transient auto traffic in the community not the local citizens causing motor vehicle accidents, many of a commercial nature also.

The **Deputy Chief** responding to **Councilor Mulcahey** stated it may be that all the insurance company would pay is \$500 for a homeowner who had a fire; and there could be some negotiation between the billing company and the insurance company. He felt the greater majority of the time the billing company would accept the \$500 the insurance company would be willing to pay; however he pointed out there is an exception to every rule.

Councilor Verga asked for a breakdown of the statistics the Fire Department is basing this on.

The **Deputy Chief** stated the 55-60% motor vehicle accidents are caused by non-residents and/or by negligence. Further, the Fire Department would have nothing to do with the billing. The billing company

will send bills to the insurance company who then pays; and the billing company takes an agreed upon portion of the funds recovered. This is the same procedure for ambulance billing. He likened this to a 'user fee'.

With **Councilor Theken** stating she had no problem with the proposed ordinance as pertains to motor vehicles as there are usually two insurance companies involved and asked if motor vehicles could be separated out but remained uncomfortable billing homeowners' insurance companies. **Councilor Verga** agreed with Councilor Theken. **Councilor Mulcahey** also believed that doing this for motor vehicles would be appropriate and possibly commercial businesses but could not condone this being done for homeowners.

Councilor Theken expressed her appreciation for the documentation provided by Mr. Dexter.

Mr. Dexter in response to queries by Councilor Tobey stated the Carroll K. Steel Insurance Company had been in business since 1867, and that he had been with them since 1973. He also noted his extensive involvement in the City and his company's donations to the City, and the other civic organizations that he's been involved in. He noted the main reason homeowners rates go up is that we are a coastal community and are within a certain distance to the ocean. On inquiry by **Councilor Tobey** he noted his response from a couple of insurance companies, that there's no clear avenue of payment on an auto policy. They pay for property damage. If this ordinance is passed, all the Fire Department can do is bill and see if the insurance will pay. However, with regard to commercial property, if the coverage is there, he felt it was worth looking at because many commercial property policies have coverage for Fire Department services in most cases. He did differentiate with homeowner's insurance which has a \$500 cap for mutual aid and felt eventually those rates would go up.

Councilor Tobey feeling that motor vehicles, and homeowners billing should be taken out of the proposed ordinance but to leave in billing for commercial properties he asked how much comes out of commercial properties.

Deputy Chief Aiello stated his information was not broken down between commercial and homeowner property. He was under the impression that there was a maximum of \$500 in or out of district. He understood the State mandated that there was a \$500 maximum. If it was not the case then he felt there was no sense to send a bill and would be opposed to send a bill to a Rockport or Manchester homeowner for mutual aid services. He would have to get back to the Committee to provide them with a breakdown.

Councilor Tobey urged they deal locally and figure out the local coverage.

Deputy Chief Aiello would work with Mr. Dexter on that matter and return with information at the next meeting.

This matter is continued to April 4, 2011.

2. Re-appointments and Appointments:

Re-Appointments Continued from 02/28/11 and forwarded from 02/22/11 and 03/08/11 from City Council:

The Committee questioned the new appointees and reappointees to their respective Committees, Boards and Commissions on their experience, background, professional affiliations as well as asking them to be familiar with the Open Meeting Laws and to file their proof of having taken the State Ethics Commission test with the City Clerk's office. They were asked also if they had any possible conflicts if they were on another Board, Committee or Commission in the City. The Committee expressed their appreciation at each of the appointees' willingness to step forward and volunteer on behalf of their City and thanked them for their commitment.

Re-Appointments:

Affordable Housing Trust

TTE 02/14/13 Ruth Pino, Michael Luster

Councilor Theken noted having working with Ms. Pino on affordable housing in the community and that she was an asset to the community.

Mr. Luster did not appear. His reappointment was continued to April 4, 2011.

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Verga, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend to the City Council to reappoint Ruth Pino to the Affordable Housing Trust, TTE 02/14/13.

Archives Committee TTE 02/14/14 Sarah Dunlap, Jane Walsh, Stephanie Buck, Priscilla Kippen

Councilor Theken noted that the Administration notified the Committee in writing that the reappointment of Priscilla Kippen has been withdrawn as she no longer resides in Gloucester. She also asked that the O&A Committee receive an update on the Archives Committee about every six months from the City Clerk. **Linda T. Lowe**, City Clerk added this group does extraordinary work in service of the City.

On motion by Councilor Mulcahey, seconded by Councilor Theken, the Ordinances & Administration Committee voted 3 in favor 0 opposed, to recommend to the City Council to reappoint Sarah Dunlap to the Archives Committee, TTE 02/14/14.

On motion by Councilor Mulcahey, seconded by Councilor Theken, the Ordinances & Administration Committee voted 3 in favor 0 opposed, to recommend to the City Council to reappoint Jane Walsh to the Archives Committee, TTE 02/14/14.

On motion by Councilor Mulcahey, seconded by Councilor Theken, the Ordinances & Administration Committee voted 3 in favor 0 opposed, to recommend to the City Council to reappoint Stephanie Buck to the Archives Committee, TTE 02/14/14.

Board of Health TTE 02/14/14 Fred Cowan

Councilor Theken expressed her thanks not only to Mr. Cowan for his many years of Board of Health service, but to all the volunteers for the Boards, Committees and Commissions for their dedication to the City.

On motion by Councilor Mulcahey, seconded by Councilor Verga, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend to the City Council to reappoint Fred Cowan to the Board of Health, TTE 02/14/14.

Cable TV Advisory Committee TTE 02/14/14 Briggs Longbotham

Mr. Longbotham explained the Cable TV Advisory Committee oversees the contract administration and oversight to get together and meet to look at the financial oversight of the cable TV for the City. They gather information and list of inquiries and act on them.

On motion by Councilor Mulcahey, seconded by Councilor Verga, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend to the City Council to reappoint Briggs Longbotham to the Cable TV Advisory Committee, TTE 02/14/14.

Clean Energy Commission TTE 02/14/14 Sam Cleaves, John Moskal, Linda Brayton, Tom Balf

Councilor Theken advised the Committee that Tom Balf was unable to attend this meeting and their April meeting, and would come before the Committee May 2nd for reappointment.

Mr. Cleaves looks for better coordination between the Council, Administration and the Commission to move the City forward to cleaner energy, support the environment and improve the City with an income stream.

Councilor Verga agreed and was pleased there was recognition for better coordination of communication with ward residents.

Councilor Theken stated that everyone wants more alternate energy sources but not in their backyard' and thought it fortunate it appeared attitudes were changing albeit slowly.

Councilor Theken noted the appointments would be sent to the Council through the Mayor's Office in her next Mayor's Report for confirmation by the Council.

4. *CC2011-009 (Mulcahey) Amend GCO 22-287 (Disabled Veteran, handicapped parking) re: 6 Oak Street (TBC 04/04/11)*

This matter is continued to April 4, 2011.

5. *CC2011-010 (Hardy) Amend GCO Chapter 22, subsection 22-93 by adding new subsection 22-93(c) "Crosswalks" (TBC 04/04/11)*

This matter is continued to April 4, 2011.

A motion was made, seconded and voted unanimously to adjourn the meeting at 8:46 p.m.

Respectfully submitted,

Dana C. Jorgenson, Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- From Mr. Dexter – Documentation on Billing of Certain Fire Department responses
- From City Solicitor, Suzanne Egan – Referendum Language re: Water Ordinance