

**Ordinances & Administration Committee**

Remote Meeting

Monday, August 2, 2021 – 6:00 p.m.

-Minutes-

**Present: Chair, Councilor Sean Nolan; Vice Chair, Councilor Steven LeBlanc; Councilor Jamie O’Hara**

**Also Present: Police Chief, Ed Conley; General Counsel, Chip Payson; Licensing Board Chair, Melissa Teixeira Prince; Clerk of Committees, Sherry Karvelas**

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

*This meeting was conducted remotely through ZOOM*

*All votes conducted by ROLL CALL*

**Chairman Nolan** announced consistent with the Governor's orders suspending certain provisions of the Open Meeting Law and banning certain gatherings such that an in person meeting of the Ordinances & Administration Standing Committees is not possible, this meeting will be conducted by remote participation. The public may not physically attend this meeting but every effort will be made to allow the public to view and listen to the meeting in real-time and participate when necessary. Additionally, all votes taken by the Committee during this and future remote meetings will be by roll call vote. If you are calling in on a phone, you can press Star 9 (\*9) to request to speak. If you are watching on a computer or device there is a “raise hand” button that you can tap or press to request to speak. Please use either of these options to be recognized to speak.

## **1. Boards, Committees & Commissions Reappointments**

Economic Development & Industrial Corp.      TTE 6/30/24      Jerrold Oppenheim

**Summary of Discussion:** **Mr. Jerrold Oppenheim** stated his past term on the Economic Development & Industrial Corp. (EDIC) had been equally divided into two parts, “pre-COVID” and “post-COVID”. Pre-COVID, he stated, was a period of reengineering and resetting the policies on how the EDIC wanted to proceed moving forward. He stated during that period the members of the EDIC came to a consensus of what the EDIC’s mission should be. He stated the seat he occupied on EDIC was the seat that represented the low-income population in the City and stated job creation, job retention, job training, workforce development, workforce housing and transportation would be important and part of EDIC’s mission. He stated post-COVID he has focused on energy efficiency but, he stated, a lot of the buildings were empty during the pandemic so much of his focus was getting operations back up and running in some of the buildings.

**Members of the Committee** thanked Mr. Oppenheim for his efforts on the EDIC.

**COMMITTEE RECOMMENDATION: On a motion by Councilor LeBlanc, seconded by Councilor O’Hara, the Ordinances & Administration Committee voted by ROLL CALL 3 in favor, 0 opposed, to recommend that the City Council appoint Jerrold Oppenheim to the Economic Development & Industrial Corp., TTE 6/30/24**

## **2. Memorandum from the Mayor re: Licensing Board BYOB regulations in local businesses**

**Summary of Discussion:** **General Counsel, Chip Payson** gave a brief background. He stated over the past several months he had discussions with the **Chair of the Licensing Board, Melissa Teixeira Prince,**

and **Councilor LeBlanc** about BYOB issues (Bring Your Own Bottle) and possibly drafting an ordinance. He stated as the law currently stood if there was not a BYOB ordinance then the presumption was that BYOB was legal without any rules or regulations. He stated it was determined that BYOB should be legal, but only under certain circumstances with certain approvals. He stated he did research regarding BYOB regulations in communities throughout Massachusetts (Boston, Springfield, Amherst, Weston and Greenfield) and relayed that information to the Licensing Board. He stated in April of 2021 the Licensing Board had a long conversation and debate regarding the ordinances in the other communities and discussion regarding what would be appropriate for the City. Based on those conversations, he stated, he drafted a comprehensive ordinance and provided that to the Licensing Board who reviewed the draft and made slight changes. There was discussion regarding the definition of “alcoholic beverages” as stated in the draft ordinance. **General Counsel** stated the ordinance was drafted to make it all-encompassing without any wiggle room for interpretation. **Councilors LeBlanc** and **O’Hara** agreed the draft ordinance was extensive, but made sense and was a necessity. **Police Chief Conley** thanked **General Counsel** and the members of the Licensing Board for their work on this matter. He agreed the draft ordinance was comprehensive and stated when regulations were well-defined and comprehensive it made the ordinance easier to enforce.

**Ms. Prince** stated discussions on this issue began in August of 2019 due to concerns in the community about not having any BYOB regulations. **Councilor LeBlanc** asked how information on the BYOB ordinance would be distributed to the public. **Ms. Prince** stated the Licensing Board had not yet decided, but would probably construct a list of all the restaurants in the City that did not currently have a liquor license and send a letter of notification of the new regulation. She added the Licensing Board would also work with the Gloucester Daily Times, add the information to the Licensing Board’s webpage and possibly the City’s website. She further stated the Licensing Board would work to develop best practices to disseminate the information to the community as a whole. **Ms. Prince** added the BYOB ordinance would require the establishment have a Common Victualler license, which meant the establishment had seating and served food. There was also discussion regarding one-day licenses for special events. **Ms. Prince** thanked the O&A Committee for taking up this matter. She also thanked **General Counsel** for his extensive work, and **Assistant Police Chief Joe Fitzgerald** and **Sergeant Sean Connors** for their work and input on this matter.

**MOTION: On a motion by Councilor LeBlanc, seconded by Councilor Nolan, the Ordinances and Administration Committee voted by ROLL CALL 3 in favor, 0 opposed to waive the reading of the proposed new BYOB ordinance**

**COMMITTEE RECOMMENDATION: On a motion by Councilor LeBlanc, seconded by Councilor Nolan, the Ordinances and Administration Committee voted by ROLL CALL 3 in favor, 0 opposed, to recommend that the City Council amend GCO Ch. 14, “Offenses and Miscellaneous Provisions,” Sec. 14-11, “Reserved” by ADDING a new Sec. 14-11, “Bring Your Own Bottle” as follows:**

### **Section 1: Purpose**

**The purpose of these regulations is to allow patrons to bring alcoholic beverages into an establishment holding a Common Victualler license for their personal consumption in a manner that is compliant with Chapter 138 of the General Laws of the Commonwealth, promotes the responsible use of alcohol by adults, and protects the health and safety of the inhabitants of the City of Gloucester.**

### **Section 2: Authority**

**These regulations are adopted under the authority of Massachusetts General Laws c. 138 and the Gloucester Home Rule Charter section 1-4.**

### **Section 3: Definitions**

As used throughout these regulations, the terms contained within MGL c. 138 and MGL c. 140 will have the meaning as defined by statute. In addition, and to the extent not inconsistent with MGL c. 138 and MGL c. 140, the following terms will have the following meanings:

“Alcohol” – per MGL c. 138 s. 1 shall mean all alcohol other than denatured alcohol or alcohol described in s. 303A of c. 94 of MGL.

“Alcoholic Beverages” – all liquids intended for human consumption as a beverage which contain one half of one percent or more of alcohol by volume at sixty degrees Fahrenheit, including malt beverages.

“Beer” – shall be synonymous with “malt beverage.”

“Board” – the Gloucester Licensing Board.

“BYOB”, “Bring Your Own Bottle” – the act or practice of bringing alcoholic beverages into an establishment by a patron for consumption on the premises of that establishment by a patron or patrons.

“BYOB Permit” – a permit on the Common Victualler License issued by the Gloucester Licensing Board that allows establishments to allow patrons to bring wine and malt beverages onto the premises for BYOB.

“Common Victualler” – any establishment that has on its premises the ability to assemble, prepare, or cook food and has seating for the purpose of consuming food on the premises.

“Establishment” – an entity within the City of Gloucester holding a Common Victualler License, or the premises thereof.

“Permitee” – an establishment that has received a BYOB permit under this section.

“Licensing Authority” – Gloucester Licensing Board.

“Liquor or Cordial” – all alcoholic beverages manufactured or produced by mixing or redistilling or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials and containing no less than two and one-half percent sugar by weight.

“Malt Beverages” – all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains of fermentable sugars, or of hops, and containing not more than twelve percent alcohol by weight, including beer.

“Wine” – all fermented alcoholic beverages made from fruits, flowers, herbs or vegetables and containing not more than twenty-four per cent of alcohol by volume at sixty degrees Fahrenheit, except cider containing not more than three per cent, or containing more than six percent, of alcohol by weight at sixty degrees Fahrenheit.

### **Section 4: Eligibility**

**A BYOB Permit:**

- a. Is only available for establishments that provide meals and that have been issued a Common Victualler's license.
- b. Shall only be issued in the name of the manager and shall not be transferred without prior approval of the Board.
- c. Only applies to malt beverages and wine, patrons are not permitted to carry in hard liquor.
- d. Alcoholic beverages may only be consumed between the hours of 11:00 am and 9:30 pm Monday - Sunday by patrons seated at a table with a meal being served by the permittee. Buffet arrangements are acceptable provided that the food and beverages are consumed only at a dining table.

Establishments that hold an alcohol license under MGL c. 138 s. 12 or s. 15 may not apply for or be granted a BYOB Permit and may not allow patrons to bring alcohol into the establishment to consume on the premises.

Establishments holding a Common Victualler License that do not hold a BYOB Permit or an alcohol license under MGL c. 138 s. 12 may not allow patrons to consume alcohol on the premises.

Violations of this section will be enforced in accordance with Section 12, as well as any additional penalties that may apply to s. 12 or s. 15 license holders.

**Sec. 5: Applications and Fees**

All BYOB Permits are annual permits only.

All BYOB Permits shall expire on December 31<sup>st</sup> annually and must be renewed subject to the discretion of the Board.

Applicants for a BYOB Permit shall pay a \$200 fee to the City of Gloucester. This fee is non-refundable once the application has been put on the agenda for a meeting of the Board.

**Sec. 6: General Regulations**

BYOB Permits may be granted to establishments by the Board and are an addendum to the Common Victualler License.

BYOB Permits allow establishments to allow patrons to bring in and consume malt beverages and/or wine only on the premises.

An establishment that wishes to allow BYOB must first obtain a BYOB Permit from the Board.

All alcoholic beverages brought to the premises must be in previously unopened containers.

No alcoholic beverages may be purchased or provided from the establishment or within the premises.

No person shall consume alcoholic beverages on any premises or in any vehicle open to the public for business unless a BYOB Permit has been issued by the Board.

**Permitees shall not allow consumption of alcoholic beverages by a person who is intoxicated.**

**Permitees shall not allow consumption of alcoholic beverages by a person who is under 21 years of age. Any permittee who reasonably relies on the following forms of identification for proof of age shall not thereby subject its license to modification, suspension, revocation, or cancellation:**

- i. a valid Massachusetts motor vehicle driver's license with photograph;**
- ii. a valid Massachusetts Liquor Purchase Identification Card;**
- iii. a valid Massachusetts identification card issued by the Registry of Motor Vehicles pursuant to M.G.L. c. 90 s. 8E;**
- iv. a valid passport or passport card issued by the United States government, or a valid passport issued by a government of a foreign country recognized by the United States government; or**
- v. a valid United States-issued military identification card.**

**Additionally, a permittee who allows consumption of alcohol to an under-aged person may be subject to sanction against the Permit in the event the permittee relied on proof of age other than one of the forms of identification enumerated in this Section.**

**The Manager, any Alternate Manager(s), and all servers must participate in a safe service of alcohol training program designed for restaurants to train persons in methods of observation and detection of intoxicated persons and the prevention of consumption of alcoholic beverages by intoxicated persons and/or minors. Only insurance industry approved and qualified training programs will satisfy this training requirement. All Managers and Alternate Managers must receive in-person training in order to be employed as a Manager or Alternate Manager. Non-Managerial employees must be trained within fourteen (14) days of employment by the permittee, and may satisfy this training requirement through online training. All persons subject to this training requirement must be retrained every three (3) years in the manner specified by these Regulations for that position. The permittee shall maintain on the licensed premises and make available for inspection at all times a copy of the certification card and other proof showing that each person subject to this training requirement has been trained in the manner specified by this Section within the prior three (3) years.**

**Permitees shall not allow their managers or employees to consume alcoholic beverages while on duty.**

**Permitees shall not allow their managers or employees to handle or serve alcoholic beverages a customer brings onto the premises (this includes storing, refrigerating or pouring alcoholic beverages); this does not preclude the permittee from disposing or discarding in the trash or recycling an empty or abandoned alcoholic beverages container or its contents.**

**Permitees shall not allow consumption of alcoholic beverages from a pitcher or carafe or in any container or glass the capacity of which is in excess of sixteen fluid ounces.**

**Permitees shall not permit drinking games.**

**Permitees shall post conspicuously a copy of the penalties set forth in MGL c. 90 s 24(1) for operating a motor vehicle under the influence of alcohol in the form that such posting is distributed by the Massachusetts Alcoholic Beverages Control Commission (ABCC).**

**Permitees shall post conspicuously a copy of the penalties set forth in MGL c. 90 s. 241, for operating a motor vehicle while drinking from an open container in the form that such posting is distributed by the ABCC.**

The permittee cannot charge the patron either directly or indirectly to consume alcoholic beverages on the premises.

Permittees shall notify the Board of their plan to allow BYOB no later than thirty (30) days before implementing the plan, except that permittees allowing BYOB as of the date of the adoption of these regulations shall notify the Board within thirty (30) days of the adoption of these regulations.

It is the assumption of the Board that the establishment has permission from its landlord to allow BYOB.

The Permittee shall carry liability insurance that covers alcohol consumption and shall provide evidence of such coverage to the Board.

Permittees must allow inspections by members of the Gloucester Police Department or an agent of the Board as a condition of maintaining their BYOB Permit.

#### **Sec. 7: Limit on Quantity of Alcohol**

For the purposes of this section, a group of 21 years of age or older who are seated together at a table, or who are attendees of a private event, are considered a party.

Minors under the age of 21 may be seated with older patrons who are consuming alcoholic beverages but they are not members of the party for the purposes of this section.

Patrons may carry in no more than one standard bottle of wine (750 ml) for every two members of the party (or, if packaged in containers other than a standard bottle, no more than 375 ml of wine per party member).

Alternatively, patrons may carry in no more than 36 fl. oz. of malt beverages per party member.

Parties may bring both wine and malt beverages, but the allowed quantity of alcohol granted to an individual patron cannot apply to both wine and malt beverages. (For example, a party of three could bring in a 750 ml bottle of wine and 36 fl. oz. of malt beverages, but not a 750 ml bottle of wine and 72 fl. oz. of malt beverages).

Permittees shall allow only beer and wine products onto their premises; no hard alcohol shall be permitted. If a patron brings any hard alcohol product, the manager must refuse service until the hard alcohol is removed from the premises.

#### **Sec. 8: Discretion**

BYOB Permits are a privilege, not a right, and are granted at the sole discretion of the Board.

#### **Sec. 9: Age Verification**

It shall be the responsibility of the establishment to ensure each patron consuming alcoholic beverages on premises is 21 years of age or older. The age of each patron consuming alcoholic beverages shall be verified by employees of the establishment promptly after those patrons enter the premises.

#### **Sec. 10: Establishment Rules**

Establishments may set their own rules regarding BYOB practices not in conflict with these regulations, including but not limited to more limited hours of BYOB availability or designated seating for BYOB patrons.

These rules may not include any direct or indirect fees for BYOB patrons, such as minimum charges or minimum orders for patrons to participate in BYOB.

#### **Sec. 11: Temporary Suspension of BYOB for Public Safety**

The Gloucester Police Chief may, for reasons of public safety, temporarily suspend BYOB privileges for individual Permit holders or all Permit holders citywide for a limited period of hours or days with notice of the same being provided to the Board. Permit holders shall be informed of this suspension period at least seven (7) days in advance unless there are exigent circumstances.

#### **Sec. 12: Enforcement**

The provisions of this regulation may be enforced by any available means in law or equity, including but not limited to MGL c. 138, 204 CMR and non-criminal disposition pursuant to MGL c. 40 s. 21D. When enforced through non-criminal disposition, the penalties shall be not less than \$100 per each violation with each calendar day constituting a separate violation.

Any designee violating any provision of these regulations or any of the conditions of their Permit shall be subject to a civil penalty of \$100 for the first offense, \$200 for the second offense and \$300 for the third offense within a 12-month period.

The Board, in their discretion, may suspend and/or revoke the BYOB Permit of an establishment after one or several of these violations have occurred.

The Gloucester Police Chief, for reasons of public safety, may immediately suspend BYOB privileges at an establishment pending review at the next meeting of the Board.

#### **Sec. 13: Severability**

If any section, paragraph, subdivision, clause, or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision so adjudged and the remainder of these regulations shall be deemed valid and in effect.

This matter will be advertised for Public Hearing.

3. CC#2021-015 (Pett): Amend GCO Ch. 22, Sec. 22-270 "Parking prohibited at all times" and Sec. 22-291 "Tow-away zones" re: Prospect Square

**Summary of Discussion:** There was no discussion on this matter.

**COMMITTEE RECOMMENDATION:** On a motion by Councilor LeBlanc, seconded by Councilor O'Hara, the Ordinances & Administration Committee voted by ROLL CALL 3 in favor, 0 opposed to recommend that the City Council amend GCO Ch. 22, Sec. 22-270 "Parking prohibited at all times" and Sec. 22-291 "Tow-away zones" re: Prospect Square as follows:

**Amend Sec. 22-270 "Parking prohibited at all times" by DELETING:**

**Prospect Square, the left side, for its entire length.**

**Prospect Square, westerly side (right side) beginning at a point 198 feet from its intersection with Prospect Street in a southerly direction for a distance of 20 feet.**

**Prospect Square, westerly side (right side) beginning at a point 228 feet from its intersection with Prospect Street in a southerly direction for a distance of 20 feet; and by**

**ADDING:**

**Prospect Square, the left side in the direction of travel, for its' entire length.**

**Prospect Square, westerly side (right side) beginning at a point of 198 feet from its intersection with Prospect Street in a southerly direction for a distance of 68 feet.**

**Prospect Square, southerly side (right side) beginning at a point 266 feet from its intersection with Prospect Street for a distance of 54 feet.**

**Prospect Square, southerly side (right side) beginning at a point 368 feet from its intersection with Prospect Street for a distance of 70 feet in an easterly direction.**

**Prospect Square, easterly side (right side) beginning at a point 462 feet from its intersection with Prospect Street for a distance of 40 feet.**

**Amend Sec. 22-291 "Tow away zones" by DELETING:**

**Prospect Square, westerly side (right side) beginning at a point 228 feet from its intersection with Prospect Street in a southerly direction for a distance of 20 feet.**

**Prospect Square, westerly side (right side) beginning at a point 378 feet from its intersection with Prospect Street for a distance of 60 feet in an easterly direction.**

**Prospect Square, westerly side (right side) beginning at a point of 198 feet from its intersection with Prospect Street in a southerly direction for a distance of 20 feet; and by**

**ADDING:**

**Prospect Square, the left side in the direction of travel, for its' entire length.**

**Prospect Square, southerly side (right side) beginning at a point 368 feet from its intersection with Prospect Street for a distance of 70 feet in an easterly direction.**

**Prospect Square, westerly side (right side) beginning at a point 198 feet from its intersection with Prospect Street in a southerly direction for a distance of 68 feet.**

This matter will be advertised for Public Hearing.

**4. CC#2020-003 (LeBlanc): Request review of City Charter pursuant to Sec. 10-1(b) (Cont. from 7/19/21)**

**Summary of Discussion: Councilor LeBlanc suggested the members of the O&A Committee split the City Charter into three sections and each member would review the verbiage in a section. He explained**



that once each member of O&A finished, then the section would be sent to **General Counsel** for review before bringing the matter before City Council.

The matter was continued until September 20, 2021.

**5. CC#2021-011 (LeBlanc): Ordered that the O&A Committee review and discuss the temporary relief granted to businesses and outdoor seating during the State of Emergency regarding the extension of seasonal liquor licenses, and possible action (Cont. from 7/19/21)**

**Summary of Discussion:** Councilor LeBlanc stated he put this Council Order forward to be proactive as a City to support the City's businesses. There was a discussion as to the State's current guidelines.

This matter was continued until September 20, 2021.

**MOTION:** On a motion by Councilor LeBlanc, seconded by Councilor O'Hara, the Ordinances & Administration Committee voted by ROLL CALL 3 in favor, 0 opposed, to adjourn the meeting at 6:42 p.m.

**Submitted by Sherry Karvelas, Clerk of Committees**

**Documents submitted at the meeting:** None.

**Meeting Recording:** <http://gloucester-ma.gov/1097/Past-Remote-Public-Meetings>