

CITY COUNCIL STANDING COMMITTEE
Ordinances & Administration Committee
Monday, September 19, 2011 – 7:00 p.m.
1st Fl. Council Committee Rm. – City Hall
-MINUTES-

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

Also Present: Councilor Hardy; Linda T. Lowe; Jim Duggan; Suzanne Egan; Fire Chief Phil Dench; Deputy Chief Miles Schlichte; Carol McMahan; Tony Gross

The meeting was called to order at 7:00 p.m. Councilor Tobey entered the meeting at 7:02 p.m. Items were taken out of order.

1. Continued Business:

- A) Communication from Christopher M. Sallah re: Cordials & Liqueur Permit Option under MGL c.138, §1, Paragraph 15 (Cont'd from 7/18/11)

Attorney Michelle Harrison, Chair of the Licensing Board stated that at a previous O&A meeting, Mr. Sallah had requested of the City Council an expansion of MGL c. 138, §12 that will allow holders of a beer and wine license (malt and wine) to be able to also sell cordials & liqueurs and reviewed what had transpired in the meeting of July 18th. She had been asked to determine the level of interest of their licensees; what other cities are doing with their adoption of c. 138, §12; and if so, is there an additional fee for this. Pauline Doody, Clerk of the Licensing Board did a survey of Beverly, Salem, Danvers and Peabody which she reviewed (documentation received at meeting and on file). Of note, Peabody had not adopted cordials and liqueurs onto their wine and malt. If O&A recommends this to the City Council, and the City Council adopts this then the Licensing Board will be allowed if someone has a beer and wine license they can ask to have a beer, wine, cordial and liqueur license. That would have to go through the public hearing procedure at the Licensing Board and the ABCC would have to approve it. The Licensing Board's position is that if this new expansion of c. 138, §12 will help the economic development of the City; and will help the sustainability of the local licensees, that they would be in favor of it. They would ask for a reasonable but substantial enough fee so that all-alcohol license holders are not jeopardized; that their licenses are not worth as much because of this expansion. The third reason this was important to the Licensing Board is there an interest in having this expansion of c. 138, §12. Mr. Sallah made this petition; and Attorney Harrison noted her communication with him many times in person and by email on the matter having asked for a list of the interested license holders from him, but to date she has nothing to report back to the Committee. She felt this was significant in terms of interest in the expansion. She also noted there are seven year round and three seasonal licensees for wine and malt. **Councilor Tobey** was not as concerned if 'they' would want the expansion, but would they oppose it. He asked did Attorney Harrison feel it would be helpful to have the City Clerk send a letter to these ten wine and malt license holders as well as to the all-alcohol licensees to ascertain interest and any possible opposition to the expansion as well. **Attorney Harrison** stated the Licensing Board is ambivalent. Mr. Sallah tells her everyone is in favor of it, but she can't represent it to the Committee. **Councilor Tobey** thought it sounded benign. **Attorney Harrison** agreed but also thought it there is an advantage to the expansion as it could help sustainability of some of the beer and wine license holders; but she hasn't heard from anyone who holds an all liquors license that they are opposed to it; that it might cut into their business. She thought if there was a fee that is reasonable that would be fine, but reiterated they have some ambivalence. **Councilor Tobey** asked should they go forward to public hearing and make the inquiry what she thought. **Attorney Harrison** didn't think they'd get much of a response from a letter being sent. She thought that if it was available some might apply for it. **Attorney Harrison** noted the increase of a wine and malt license would be around \$500 on average according to their survey. **Councilor Theken** thought for some restaurants there might be some interest. **Councilor Hardy** asked if there was anyone pouring without authorization. **Attorney Harrison** stated they know of no one who does. **Councilor Hardy** noted the section stated "upon written approval". **Attorney Harrison** expanded that the written approval is from the Licensing Board and the ABCC which is in the body of the entire chapter. She also submitted a list of the all-alcohol licensees (on file in the City Clerk's office). She further felt this ordinance could induce some further economic development for the City and enhance the licensees' ability to do business.

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to adopt MGL c. 138 §12, in part as follows:

“In any city or town which votes to accept the provisions of this paragraph, a common Victualler, who holds a license under this section to sell wines and malt beverages may, upon written approval, also sell liqueurs and cordials pursuant to said license, subject, however, to all other licensing provisions of this chapter;” AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

Councilor Tobey requested that all holders of seasonal or annual wine and malt licenses to invite them to the public hearing on the matter through the City Clerk. **Attorney Harrison** also suggested this same letter be sent to all-alcohol license holders as they may have an objection to such a change in licensure.

- B) Vehicle Traffic Speed Rates on Woodward Avenue (ref'd from 7/26/11 City Council Mtg. (Cont'd from 8/1/11))

This matter is continued to October 3, 2011.

- C) Memorandum from CAO re: establishment of the Emergency Management Department (Cont'd from 8/15/11)

Councilor Theken stated she would continue this matter and had also received a letter from the Red Cross endorsing the establishment of an Emergency Management Department. Noting the poor experience she and family members recently experienced in being evacuated from a community out of state, it only reiterated her belief in and endorsement of the creation of an the Emergency Management Department. She pointed out at the most recent fire on Washington Street, all elements were in place, and it went very smoothly with the evacuation and care of the fire victims. She didn't wish to see this department 'lost'. They are getting a new Fire Chief felt the matter should be continued until that time. **Councilor Tobey** appreciated the September 6th memo from the Administration, raising good points on the matter. He appreciated the Mayor's recognition for the need to control overtime and her institution of written authorization procedure for the activation of the Emergency Management Director was very good in his opinion. The Councilor especially appreciated that the Administration is having Mr. Duggan work on the best practices by learning what other communities are doing with their Emergency Management Departments, noting that there is no single way. He discussed with Mr. Duggan the lessons learned from the City of Danvers' experience and response during the explosion and fire several years ago. He felt there was a different point of view that needed to be acknowledged. Further, it is important that there will be an in-depth interview process to seek out a new Fire Chief; to get candidates' point of view and what they see their role would be with this proposed new Emergency Management Department. He felt they were on a sound course and thanked the Administration for putting them on that course. **Councilor Theken** felt that Emergency Management doesn't necessarily have to be a whole separate department; however, they do need a person or team(s) in place when there is a crisis to be able to go forward postulating it could be the Police or Fire Chief, or a civilian as the 'go-to' person and a need for an established chain of command. Coastal towns all need this in place. On inquiry by **Councilor Theken, Mr. Duggan** informed the Committee that Deputy Chief Schlichte is still the Emergency Management Director. Chief Dench is the back up. **Councilor Theken** thanked Chief Dench for initiating the rapid response by the Red Cross for the most recent fire.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to continue the matter of the establishment of the Emergency Management Department until the selection and installation of a new Fire Chief.

- D) CC2011-033 (Mulcahey) Speed Study re: Taylor Street & Friend Street (Cont'd from 8/15/11)

Councilor Mulcahey noted these speed studies have been done, and that she will submit a Council Order for a new speed limit. She is looking for signage for Children Slow/Playground which she would explore also.

This matter is complete.

- E) CC2011-034 (Hardy) Amend GCO §22-270 (Parking Prohibited at all Times) & GCO §22-291 (Tow-Away Zones) Re: Leonard Street (Cont'd from 8/15/11)

Councilor Hardy explained that the neighborhood behind the Annisquam Village Church at the beginning of Leonard Street was looking for additional parking. The Traffic Commission visited the affected area along with Jud Gale and several members from the church, and thought they could allow three additional spaces amounting to the measurements as noted in the Commission minutes (on file). The Councilor requested that the O&A approve what the Traffic Commission has already pre-approved, and ask that it be sent to public hearing for vote by the City Council.

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to AMEND the GCO §22-270 (Parking Prohibited at All Times) AND GCO §22-291 (Tow Away Zone) by DELETING Leonard Street westerly side from its intersection of Bridgewater Street north to its intersection of Nashua Avenue opposite the Village Church on Washington Street AND ADDING Leonard Street westerly side from its intersection with Nashua Avenue opposite the Village Church north to its intersection with Dennis Court and from a distance of 100 feet from Dennis Court to its intersection with Bridgewater Street AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

- F) CC2011-036 (Curcuru) Amend GCO §22-287 (Disabled veteran, handicapped parking) re: Clifford Ct. #8 (Cont'd from 8/15/11)

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to AMEND the GCO §22-287 (Handicapped Parking) by ADDING one (1) handicapped parking space in front of Clifford Court #8 AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

2. Reappointments & New Appointments

Fisheries Commission

William "BG" Brown

TTE 02/14/14 (Cont'd from 8/15/11)

Councilor Theken related that William BG Brown could not attend this O&A meeting. **Councilors Tobey** and she, both members of the Fisheries Commission spoke to Mr. Brown at length at a Fisheries Commission meeting, asking the questions of him that the Committee normally does relating to appointments. He had already taken the State Ethics Exam as well and had been sworn in on a temporary basis. As he is a fisherman and can be at sea from time to time, as is the case this evening, if any Councilors have any questions or concerns regarding Mr. Brown's appointment, **Councilor Theken** will pass those questions along to be sure to obtain answers from him. **Councilor Tobey** concurred with Councilor Theken; and that **Mr. Brown** is an excellent appointment to the Fisheries Commission, already proving his mettle as a member of the Commission.

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to appoint William "BG" Brown to the Fisheries Commission, TTE 02/14/14.

The Committee questioned **Marion Goodwin**, who was present, as to her experience, background, professional affiliations as well as asking about her familiarity with the Open Meeting Laws and to have filed proof of having taken the State Ethics Commission test with the City Clerk's office which Ms. Goodwin confirmed. She was also asked if she had any possible conflicts with another City Board, Committee or Commission in the City, which she did not. She expressed her desire to serve the City and was proud to do so. The Committee in turn expressed their appreciation for Ms. Goodwin's willingness to step forward and volunteer thanking her for their commitment.

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to appoint Marion Goodwin to the Archives Committee, TTE 02/14/14.

The Committee requested that the Archives Committee send a representative to the October 17, 2011 for an update of their activities and any assistance the Council may be able to provide to them.

3. Letter from Citizens for Gloucester Harbor

Patti Page, 3 Tidal Cove Way on behalf of the Citizens for Gloucester Harbor noted that the correspondence dated August 5, 2011 from them to the Mayor (copied to the City Solicitor and Council President Hardy) which states they understand the City can exercise its prescriptive rights to Pavillion Beach but are requesting the City move forward to file at the Registry of Deeds the City's belief that it has prescriptive rights to the beach as a move to protect public access and rights. The best they can tell through the Registry of Deeds is that the City doesn't have title to the beach; that it is privately owned. By doing this, they believe it would strengthen the City's position when they have to exercise their prescriptive rights in court. **Councilor Mulcahey** described a conversation with the Mayor on September 6th just prior to the start of a meeting of the Charter Review Task Force, in which the Mayor stated she was under the impression they didn't have to do anything because it was prescriptive rights. The Councilor at that time asked the Mayor to apply in the matter of prescriptive rights. **Ms. Lowe** commented she was also a participant in this off-the-record conversation of September 6th. While the letter is correct about the City and its "prescriptive rights". It means that over the many long years of usage of that beach as though it was a public beach as well as numerous other activities such as signage and maintenance, it starts to qualify the City as having rights; however, there is nothing in the Registry of Deeds or anywhere else that has any legal significance whatsoever. Prescriptive rights are not established unless it is done through a court action. A filing at the Registry of Deeds will not establish anything; but taking a legal action, most likely by a declaratory judgment which will require the City demonstrating what the prescriptive rights are and that history, in order to back up the City's claims. Even then that will not give the deed to the City; it would establish the prescriptive rights once and for all. **Councilor Mulcahey** expressed she had asked the Mayor to have the City Solicitor to start proceedings as soon as possible to get this declared. **Councilor Tobey** agreed that filing at the Registry of Deeds would not be effective; but that the effective process would be for the City to proceed with legal action for recognition of the City's rights by extinguishing anyone else's claim. **Ms. Lowe** added they would not extinguish the deed. The prescriptive rights would be legally established and acknowledged which is to use that beach as though it were a public beach. The City also has to establish all that evidence that proves that over many, many years. **Ms. Page** asked if anyone will do a thorough deed search before such action takes place. She qualified by noting what she uncovered through an on-line search of the Registry of Deeds was only 165 feet of frontage in front of the Birdseye building was legally deeded to that property. To the left and right of that parcel she didn't know who owns the property. **Councilor Tobey** pointed out regardless of what the deed(s) show, there has been contrary assertion of dominion of ownership, and that they want to seek recognition through factual records, twenty years uninterrupted must be established under "adverse possession". There is evidentiary information that has to be brought forward. **Councilor Mulcahey** felt this would be a friendly situation as she had spoken with Sherri DeLorenzo who acknowledged to the Councilor verbally the prescriptive rights of the City with regard to Pavillion Beach, that they (the new owners of the Birdseye property) don't have any right to it. Councilor Theken clarified that right now they have a request before them for the establishment of prescriptive rights by the City for Pavillion Beach. **Ms. Page** noted some time back she believed anecdotally that the City did own Pavilion Beach; she did not have proof to that, however; and wondered if a deed search first would be appropriate. Councilor Theken thought perhaps that may be also necessary and could be part of the actions by the City's Legal Department. **Sunny Robinson**, a member of the Citizens for Gloucester Harbor suggested it was very useful to move this along as rapidly as possible so that it gets resolved before there are any permitting requests (referring to the 'Birdseye' property). **Councilors Theken, Mulcahey and Hardy** assured they wished to see this matter stay current and move forward while this Council remains seated. **Ms. Robinson** noted that they probably want to talk to the Health Department as that is a beach that the Health Department tests the water on to make sure it stays fit, which is a good part of the public record. As one of the signers of the letter she appreciated that the Councilors are taking this request seriously. **Ms. Lowe** noted the City never owned Niles Beach either. There is a lease in place for a nominal payment so it can be continued to be used as a public beach. **Councilor Tobey** believed that it was a 10 year lease.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council that it request the Administration, through Legal Counsel, initiate appropriate legal actions to establish the City's prescriptive easement rights in Pavillion (Pavilion) Beach.

4. *CC2011-038 (Mulcahey) Amend GCO Sec. 22-287 (Disabled veteran, handicapped parking) re: across from Prospect Street #122*

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to AMEND the GCO §22-287 (Handicapped Parking) by ADDING one (1) handicapped parking space to be placed in front of Prospect Street #115 AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

5. *Charter Task Force Report Re: §10-1(b) – Periodic Review & Recommendations of City Charter*

Councilor Tobey left the meeting at 9:06 p.m.

The Charter Review Task Force submitted their draft document to O&A and after further review by the Committee the following motion was made:

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Theken, the Ordinances & Administration Committee voted 2 in favor, 0 opposed to recommend to the City Council to accept the amendments to the Gloucester City Charter as presented by the Charter Task Force in accordance with the City Charter Article 10, §10-1(b).

6. *Memo from Mayor re: Updates regarding City's Emergency Management Dept. & Special Budgetary Transfer (#2012-SBT-3) in the amount of \$4,800 (referred from CCM 09/13/11)*

Jim Duggan, CAO explained they wanted to continue the services of Carol McMahon, Assistant to the Emergency Management Director, Miles Schlichte through December 31, 2011. **Councilor Tobey** explained the reason he pulled this matter from the Council Consent Agenda of 9/13/11 to refer this matter not just to B&F but to this Committee as well is that he wished to be sure that they reconciled keeping this function going and funding it with the existing organizational structure. He asked where they would be appropriating the money from as recommended to the Council and where did the Administration feel those transferred funds should go. **Mr. Duggan** stated the funds would come out of the Special Reserve Account #900, and funded into contractual services in the Fire Department. **Councilor Tobey** stated he supported this funding request and wanted to see the funds placed where they could 'keep tabs' on it, he recommended by motioning that the O&A Committee recommend to the B&F Committee the approval of the request for funding subject to a recommendation that it go into an existing department. He would like this to be subject to the recommendation that it go into the Civil Defense department in a comparable line item. **Mr. Duggan** stated there is a purchase order in place for Ms. McMahon's services which expires at the end of September. With Hurricane Irene and its subsequent storm damage they would like to continue Ms. McMahon's services, she will be submitting the City's FEMA documentation for reimbursements, doing the applications, doing the research. They would look to start a new purchase order. On inquiry by Councilor Theken, **Mr. Duggan** commented the City is looking to get reimbursement for storm damage caused by Hurricane Irene from FEMA. **Councilor Tobey** stated this would be a contract service to keep the coordination of such matters moving forward. **Councilor Theken** commented Ms. McMahon's position has not been established yet. **Councilor Tobey** agreed but also noted this is a contractual position. However, this can't be done too long otherwise the City Auditor has an obligation to stop it because at that point it is circumventing the Code of Ordinances and State law by creating a permanent position by contract. This would now be about the limit of any extension of Ms. McMahon's services, and they can look to build upon that.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the Budget & Finance Committee to approve Special Budgetary Transfer #2012-SBT-3 subject to the funding be placed in contract services line item in the Civil Defense Department's (#291) budget.

The following four matters are continued to October 3, 2011

7. *CC2011-039 (Mulcahey) Amend GCO §22-270 (Parking Prohibited at All Times) re: Green & Perkins Sts.*
8. *CC2011-040 (Mulcahey) Amend GCO §22-291 (Tow Away Zones) Green & Perkins Sts.*
9. *CC2011-041 (Verga) Speed Limit for Woodward Avenue area*

10. CC2011-042 (Verga) Revisit of 4-way stop signs at intersection of Magnolia Avenue, Shore Road and Raymond Street

OLD BUSINESS:

There was a discussion between the Committee, Shawn Kelly of 1 Lendall Street and the City Solicitor, Suzanne Egan related to the winter of 2011 complaint of Mr. Kelly of towing of cars during a snow emergency concerning vehicles parked on Lendall Street, a private way.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to request the DPW Director's opinion to exercise discretion in the plowing of Lendall Street such that parking on the side of the road would remain undisturbed; and if the DPW Director agrees he can do so, to inform the Committee of a policy on small (narrow/dead end) roads plowing procedures.

A motion was made, seconded and voted unanimously to adjourn the meeting at 9:34 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- Survey re: Wine, Malt and Cordials and Liqueurs License submitted by Attorney Michele Harrison, Chair – Licensing Board