

Ordinances & Administration Committee
Monday, May 18, 2015 – 6:00 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Chair, Councilor Robert Whynott; Vice Chair, Councilor Bob Stewart; Councilor Joseph Ciolino
Absent: None.

Also Present: Councilor Cox; Chip Payson; Bill Sanborn

The meeting was called to order at 6:00 p.m. Councilor Cox sat in for Councilor Stewart until his arrival at 6:03 p.m. She left the meeting at 6:24 p.m.

1. Appointments:

Clean City Commission TTE 02/14/18 Patty Amaral, Charlotte Ohannessian, Amy Kerr,
Donna Ardizzoni (Cont'd to 06/01)

Ms. Amaral said that in addition to her tenure on the Open Space & Recreation Committee, she is looking forward to seeing a revival of the Clean City Commission, noting that she was its former Chair. She gave the Committee “carry in/carry out” bags for their use which she noted she paid for their production personally. She said she would be giving them out at city beaches this weekend. She said she’d like to see recycling barrels installed downtown and to have budgeted funding for the Clean City Commission efforts. **Councilor Ciolino** suggested Ms. Amaral attend a Tourism Commission to see if funds would be able to be set aside through the Commission for the recycling effort which Ms. Amaral said would cost about \$5,000, the cost of the recycling barrels.

Councilor Whynott said he was pleased to see Ms. Amaral step forward yet again on behalf of the city.

MOTION: On a motion by Councilor Ciolino, seconded by Councilor Stewart, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council appoint Patty Amaral to the Clean City Commission, TTE 02/14/18.

Ms. Ohannessian reviewed her professional background as a member of the Board of the North Shore Health Project and another Board and said she has an enthusiasm for the city and wanted to help keep the city clean and welcoming to its residents and visitors alike.

Councilor Ciolino said he has worked alongside of Ms. Ohannessian for the North Shore Health Project and recommended her wholeheartedly.

MOTION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council appoint Charlotte Ohannessian to the Clean City Commission, TTE 02/14/18.

Ms. Kerr said that as a member of the staff of Ocean Alliance, a non-profit organization, having a clean city was important to her as a clean ocean is to its denizens and looked forward to being a member of the Commission. She said she has worked with Ms. Amaral and Ms. Ohannessian in helping with clean-up efforts in the city for the past year.

Councilor Stewart said he was pleased to see Ms. Kerr and Ms. Ohannessian step forward as new volunteers on behalf of the community.

MOTION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council appoint Amy Kerr to the Clean City Commission, TTE 02/14/18.

Historic District Commission TTE 02/14/18

Jessica Mulcahy

Ms. Mulcahy had communicated by email with the Committee that due to a family issue she was unable to attend this evening’s meeting. She asked that her appearance before the Committee be continued to June 1.

The appointment of Jessica Mulcahy to the Historic District Commission is continued to June 1, 2015.**2. Memorandum from General Counsel re: a new Ordinance for Block Parties**

Chip Payson, General Counsel recounted that Michelle Harrison, Chair of the Licensing Board who was unable to attend this evening had met with him and the Chief Administrative Officer creating a Block Party ordinance but was unable to attend. Ms. Harrison asked that the suggested ordinance include city sidewalks, he said. **Mr. Payson** gave the Committee an enhanced version of the draft ordinance proposal which now included Ms. Harrison's request for inclusion of city sidewalks. He noted that not many cities and towns have a Block Party ordinance and that he found only one town in Massachusetts and had to look to New Jersey and California for comparable ordinances on which to base his recommendation to the Committee.

Councilor Whynott asked why there was now involvement with the city's Licensing Board. **Councilor Cox** explained that Michelle Harrison received notification from the ABCC that the way in which the Licensing Board was permitting extension of premises during Block Parties was in conflict with ABCC regulations and were notified of it. The Licensing Board is unable to offer an extension of premise because the premise is the inside of the building whether the permittee owns the premises or rents it. In order to extend a licensee's premise to out of doors for a Block Party, it is necessary to create the ordinance, and that the ABCC has available a one-time license for \$200 which covers the business as long as it remains in business that is filtered through the local Licensing Board. If there are violations, the matter would be handled through the Licensing Board for disciplinary action. In order to allow businesses to go out into the street or sidewalk, the liquor permit holder has to go in front of the Licensing Board to make the application for the one-time license with a fee for \$200; and in turn the Licensing Board then forwards the application to the ABCC who is the permitting body. The Licensing Board is meeting with the first two applicants for this ABCC license tomorrow, she noted.

Councilor Ciolino said he was concerned about the sidewalk use. He said sidewalks are always kept clear and noted an incident where a sidewalk was blocked due to a restaurant placing tables on the sidewalk impeding access to a retail business. **Mr. Payson** said there is an ordinance that says that sidewalks must be kept clear and that nothing can be placed on them at all. This situation is unique in that the city streets are blocked off for the sole purpose of use of the downtown streets for the Block Parties. The ordinance as drafted says that. Block Parties deals with the streets and the sidewalks. **Councilor Cox** said based on her experience many Main Street restaurants utilize the sidewalk areas during Block Parties because they have to rope off an area in front of their business for alcohol consumption and have always utilized sidewalks. **Mr. Payson** added that during non-Block Party times the obstruction ordinance controls the matter of there being nothing placed on city sidewalks.

Councilor Whynott said it was his recollection that on Main Street from Flanagan Square to Washington Street a business can put out something in front of their store as long as there is four foot clearance on the sidewalk for pedestrians during regular business hours (GCO Sec. 21-9 subsections (a) and (b)). **Councilor Cox** said she and Mr. Payson are currently working to redraft those sections of the ordinance related to sidewalks and are not related to this proposed amendment at all. She reiterated that due to serving alcoholic beverages on an extension of premise during Block Parties, it is required that a restaurant or bar block off an area for the purpose of serving alcohol immediately adjacent to the premise. She said that she didn't see where the sidewalks could be free and clear if alcohol was being served, which **Councilor Whynott** expressed his agreement with the Councilor on this point. She pointed out that during Block Parties the streets are blocked and fully accessible for pedestrian travel including for handicap accessibility. **Councilor Ciolino** expressed he remained concerned that the sidewalks needed to be kept accessible and clear during the Block Parties.

Councilor Cox noted that the Building Inspector had a rule, not based in ordinance, that a place of business may place a table with chairs, or discrete seating if there is no service to these chairs, benches and/or tables. Mr. Payson pointed out that GCO 21-13 (a) and (b) in particular states that, "No person shall place or cause to be placed upon any sidewalk, any lumber, iron, coal, trunk, bale, box, crate, cask, package, article or thing whatsoever whether of the same description or not, so as to obstruct the free passage for travelers for more than 15 minutes."

Councilor Stewart expressed that he had never had an issue gaining access to a retail establishment on Main Street during Block Parties which was no different than the circumstances during Fiesta, he pointed out.

Councilor Stewart asked why there is a need to have an ordinance to have a Block Party. **Mr. Payson** said that it is consistent with the receipt by the Licensing Board of guidance on extension of premise during Block Parties through the ABCC. This is to ensure that there is no conflict with state regulations where extension of premise is involved during Block Parties. This is only affecting restaurants and/or bars, **Councilor Cox** pointed out.

Councilor Ciolino said that access to businesses during Block Parties that are not restaurants or bars must be kept open and that those businesses that have extended their premises can't impede access. **Councilor Cox** said the

Block Party permitting still has to come before the Special Events Advisory Committee and such issues are resolved there.

The Committee unanimously accepted the amended draft of a motion for amendment to the Code of Ordinances as offered by General Counsel and by inserting the phrase “,including but not limited to,” between the words “regulations” and “those” in subsection (e) as follows:

MOTION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council Amend GCO Chapter 21, by ADDING a new subsection 21-7 “City Block Parties-Permits and Regulations” as follows:

- (a) Description and Purpose.** A city block party shall mean a city-sponsored event intended to take place and actually taking place in whole or in part on a city street and which thereby obstructs vehicular traffic and on a city sidewalk with obstructs pedestrian traffic.
- (b) Permit Required.** The city council shall issue a permit for the temporary blocking of a city street and city sidewalk for the purpose of holding a city block party.
- (c) Usage.** Upon issuance of a permit by the city council, participants are granted the temporary right to use the designated portion of the city street and city sidewalk for a city block party.
- (d) Obstacles Blocking Streets to be Movable.** Notwithstanding Sec. 21-9 concerning “Sale or Display of Goods,” a street or portion thereof blocked off for a city block party shall not be obstructed by obstacles which cannot be readily moved for all emergency and hazard vehicles to enter it in response to an emergency.
- (e) Rules and regulations.** The city council may approve reasonable rules and regulations, including but not limited to those put forward by the licensing board, to implement the provisions of this section as relates to licensed restaurants and food establishments.

This matter will be advertised for public hearing.

3. Memorandum from General Counsel re: Amendment to GCO Sec. 5-19. “ Inspection of buildings erected on pilings”

Mr. Payson reviewed that the impetus for bringing this matter to the Committee’s attention is that the Building Inspector brought to his attention that an issue has arisen with the Code of Ordinances under Section 5-19 Inspection of buildings erected on pilings that was pointed out that effective September 2005 and within three years thereafter the Building Inspector shall notify in writing the owners of structures, etc., which seemed to read that from 2005 to 2008 the Building Inspector was empowered to notice those owners of structures supported by pilings that they need to inspect their pilings, but that after 2008 there was no authority that the Building Inspector had to notify owners that they need to inspect their pilings. He said he conversed with Attorney J. Michael Faherty, and he suggested leaving “within” and add “every”. He also acknowledged members of the audience who were interested parties representing property and waterfront business owners.

J. Michael Faherty, 32 Highland Street said he was speaking before the Committee on his own behalf as a resident and waterfront property owner, pointed out that when this ordinance was originally drafted it was done in response to a collapse of a Rocky Neck building, drafted in haste and that the discussion centered on some kind of periodic piling review so that it would be an on-going process. The way the ordinance was written, he said, it doesn’t reflect clear language and is contradictory to what may have been the original intent. He further suggested that new buildings with pilings needn’t be inspected as often as every three years and that a one-size-fits-all ordinance is not appropriate given the variety of the types piling-supported structures on the city’s waterfront. He cited the example of a small new building only five years old with new piles that he owns, certified by an engineer prior to permitting, and indicated there was no reason a new building on piles such as this one needs to be inspected every three years. He indicated there are other buildings where there are maintenance programs in place now being carried out. He said it isn’t appreciated how much it takes to maintain pile-supported buildings, and that for pile-supported structures to be segregated and made different from those properties that have fixed foundations is unfair.

Mr. Faherty also pointed out that it is costly to employ the services of a structural engineer who does more than just a visual inspection and described the kinds of tests carried out for piling-supported structures. He added that

there should be some sort of an on-going schedule for inspections that is reasonable. He reminded the Committee that the city has pile-supported structures that will also be affected by this ordinance amendment. He further asked that the Committee defer any action this evening and draft an ordinance that differentiates between types of pile-supported structures and sets procedures to be followed which would be more workable. He advised that only a few people aren't taking care of their pile-supported structures in the city.

Councilor Stewart asked if they are talking of thousands of dollars not hundreds of dollars for the hiring of a structural engineer's services. **Mr. Faherty** said it is thousands of dollars. A structural engineering certificate is required, and the cost is dependent upon how much testing is done which he described. He said additionally there are various permitting and inspections an owner goes through with the state and locally with the Conservation Commission at the least. He noted that some relief is offered to waterfront owners whose structures are within the Designated Port Area (DPA) which allows for driving up to 10 piles a year. A private citizen who owns a restaurant or a hotel doesn't have that allowance, he said.

Councilor Ciolino said he was a part of the drafting of the original ordinance and agreed it was rushed through to get something on the books. Noting that several waterfront owners contacted him on this matter he said this shouldn't be an amendment to the ordinance but a redrafting of the entire ordinance section. He suggested that there are better ways to craft it to reflect the changes in technology. He suggested an ad hoc committee be seated composed of city staff and concerned citizens to review the ordinance, draft recommendations that O&A can consider in order to craft an ordinance that everyone can live with.

Councilor Whynott said he agreed that this matter needs more time. **Councilor Ciolino** said the review also needs to be broader and reflective of the different types of piers and conditions. **Councilors Stewart, Whynott and Ciolino** then discussed with Mr. Payson and Bill Sanborn, Building Inspector, on how they would structure such an Ad Hoc Committee to review the ordinance and make their recommendation to the O&A Committee and when that may occur, in order to ensure that the review is complete and a recommendation is whole when it reaches the O&A Committee. There was also a discussion as to the composition of an Ad Hoc Committee with a suggestion there be representatives from the city's waterfront commercial owners but also residential owners of buildings and piers on pilings, and as suggested by Mr. Faherty that there be someone on the Ad Hoc Committee who may not necessarily be a property owner with a structure on pilings, but that had engineering or legal experience with such issues.

Mr. Sanborn reminded the Committee it wasn't just one building that fell into the water that caused this ordinance to be put into place in 2003/2004 but five structures, and he recounted the circumstances, which he said in most part was due to maintenance issues. As a result, in 2004 this current ordinance was passed by the Council. He noted at that time he was given a second inspector to do the piling inspections, and said that most of the harbor properties were contacted but that the process was left unfinished when that inspector left the city's employ. He said it has sat since that time, with barely any monitoring since then.

He suggested that there is a great deal of work being undertaken on and around the city's waterfront for which no permit was issued by his department, and that his department has to track property owners down to get people into the office to apply for them and yet still work goes on unpermitted. He said it is appreciated that the work is being done, but expressed concern is that his office doesn't know what is being done and how. He agreed three years is too early between inspections and didn't support it in the past either. Most periodic inspections are five years for buildings without pilings, which he said he had no problem with. Recently a part-time building inspector was brought on because of the institution of the Stretch Energy Code. A second part of that inspector's job is to get the pilings inspections back on track because he said it hasn't been done in some time and is what generated this effort now before the Committee.

Mr. Sanborn said his first response to the complaints coming in if everyone who owned the waterfront piers were doing what was necessary; it should simply be a matter of filing the letters received from their engineer and filing it with the Building Department. He said he didn't have an issue to rewrite the ordinance because he said he knew it had been drafted in haste to solve an immediate problem, and that he looked forward to contributing to that effort. He expressed concern for waterfront buildings which he knew to be in poor shape and while he understood to draft an ordinance by committee takes time, he said this effort should be fast tracked as it can't wait with problems at hand that need addressing now.

Councilor Whynott asked if there was a list of all structures on pilings in the city. **Mr. Sanborn** said not all, but that his department is trying to document them all, and are continuing that effort. He noted it is the properties along the Annisquam River where there are a great many documentation deficits. Councilor Whynott suggested it would be not only important to have that list but a brief description of the types of structures and a rating by the Building Department. **Mr. Sanborn** said the way the building codes are set up it is the responsibility of the engineers to tell the Building Department the way in which the pilings are set up and their condition. He pointed out his department can't compel the owners to hire engineers to tell them to get an engineer to advise the Building

Department. He added that his department is not out to punish anyone or to spend people's money. They have not fined anyone ever for violating this ordinance. This effort is solely to make sure that all the piers and piling supported structures where people are working and living are safe and remain safe.

Tobin Dominic, representing the Cape Ann Marina and Resort, said that there are some serious costs involved with piling inspections and expressed her appreciation that the Committee is considering rewriting the ordinance. She said that not every property with pilings is the same and urged that the Ad Hoc Committee consider the different structures, different environments and materials and uses.

Manuel Quesada, Operations Manager of East Gloucester Marine LLC, 121 East Main Street, and a member of the Unification Church, said that Chapter 91 already compels the licensees to be responsible to maintain their property. He said that they have to get a permit in order to fix the property to maintain it. He expressed concern there is redundancy with the local ordinance with Chapter 91. **Councilor Whynott** said that while the Chapter 91 license may say it is the license-holder's responsibility to maintain their structures, there has to be an ordinance to govern an inspection processes at a local level regardless of what a Chapter 91 license requires.

Councilor Whynott, after further consultation with the Committee, Mr. Sanborn and Mr. Payson said the Committee will ask that the City Clerk, working with Mr. Payson, develop an advertisement to be placed in the Cape Ann Beacon and the Gloucester Times Goings On Section targeting interested members of the public for an Ad Hoc Committee that indicates preference for three slots to be filled by residents who are commercial and residential waterfront property owners who have structures on pilings and/or those who have engineering/legal knowledge of waterfront issues related to such in order to study and draft a recommendation with an eye to revise the city's ordinance on pilings and their inspection schedules, to then be considered by the O&A Committee. The Ad Hoc Committee will also consist of Mr. Payson, Mr. Sanborn or his designee, and a City Councilor as an ex-officio member, ideally a member of the O&A Committee. The deadline to receive in applications to the Ad Hoc Committee from the public through the City Clerk will be the close of business on Monday, June 15. The Committee would then choose three members of the public and announce that at their July 6 regularly scheduled meeting. Mr. Payson and Mr. Sanborn would then be responsible for coordinating the Ad Hoc Committee meetings and will report to the O&A Committee in September as to any progress that has been made to that date.

MOTION: On a motion by Councilor Ciolino, seconded by Councilor Stewart, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to establish an Piling Inspection Ordinance Ad Hoc Committee composed of General Council, Building Inspector or designee, a City Councilor as ex-officio member, and three representatives of the public who are residents of the city, preferably waterfront property owners either in the commercial or private residential sectors and/or having knowledge regarding the substance of the inspection of pilings under GCO Sec. 5-19 in order to draft recommendations to amend this ordinance section.

This matter is continued to July 6, 2015.

4. Memorandum from General Counsel & pertinent material re: proposed Ordinance for the creation of the Stage Fort Dog Park Commission

At the request of General Counsel, this matter is continued to July 6.

This matter is continued to July 6, 2015.

5. CC2015-006 (Fonvielle) Request O&A & Traffic Commission review existing parking restrictions in GCO Sections 22-270 & 22-291 for Kondelin Road from its intersection with Magnolia Avenue for its entire length and to review existing signage for consistency with GCO c. 22 (Cont'd from 05/04/15)

At the request of Councilor Fonvielle, this matter is continued to June 1.

This matter is continued to June 1, 2015.

6. CC2015-015 (Cox) Amend GCO c. 2, Division 10 "Committee for the Arts" Sec. 2-508 "Created," subsection (b) (Cont'd from 05/04/15)

At the request of Councilor Cox, this matter is continued to July 20.

This matter is continued to July 20, 2015.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:10 p.m.

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

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.