

Ordinances & Administration Committee
Monday, March 19, 2018 – 6:00 p.m.
1st Fl. Council Conference Room – City Hall
-Minutes-

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

Absent: None.

Also Present: Councilor Holmgren; Councilor Memhard (entered the meeting at 6:01 p.m. & left at 6:50 p.m.); Joanne M. Senos; Jim Destino; Chip Payson

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

1. Boards, Committees & Commissions

A. Appointments:

Clean Energy Commission

Debra Darby (Cont’d from 03/05/18)

TTE 02/14/20

Ms. Darby explained that professionally she works for a solid waste company and assists many municipalities nationwide helping them to be cleaner, more efficient and minimize waste. She noted she’s done a lot of work with wind turbines and LED lighting and that there are other ways to be efficient for a community. She also mentioned she has a science and engineering background in sustainable materials. She acknowledged she knew people on the Commission and that they asked her to join.

Councilor O’Hara highlighted Ms. Darby’s “excellent” professional background which he said would be an asset to the Commission. **Councilor Nolan** added his approbation for Ms. Darby’s appointment.

COMMITTEE RECOMMENDATION: On a motion by Councilor O’Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council appoint Debra Darby to the Clean Energy Commission, TTE 02/14/20.

B. Reappointments – Boards, Committees, Commissions:

Board of Health

Richard Sagall (Cont’d from 03/08/18)

TTE 02/14/21

Dr. Sagall said that the Board of Health is busy and doing well. **Councilor LeBlanc** confirmed with **Joanne M. Senos**, City Clerk, that the Board of Health’s minutes are submitted to her office in a timely fashion as well as posted accordingly.

COMMITTEE RECOMMENDATION: On a motion by Councilor O’Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council reappoint Dr. Richard Sagall to the Board of Health, TTE 02/14/21.

Clean Energy Commission

Candace Wheeler (Cont’d from 03/05/18)

TTE 02/14/20

Ms. Wheeler touched upon the fact that the Commission is pleased that the city is so receptive to clean energy efficiency. She cited that the city is considered cutting edge with its wind turbines and solar programs which she said makes the Commission’s work easier. She pointed out that they’re continuing collaboration with Town Green 2025. She noted that the staff planner position will be filled soon which will be helpful to the Commission as that is the person is designated as their city support staff. She expressed her appreciation to be able to participate on the Commission.

Councilor LeBlanc noted that the Commission has been able to solicit two new highly qualified members. **Councilors O’Hara** and **Nolan** thanked Ms. Wheeler for her commitment.

COMMITTEE RECOMMENDATION: On a motion by Councilor O’Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council reappoint Candace Wheeler to the Clean Energy Commission, TTE 02/14/20.

Downtown Development Commission

Joseph Giacalone

TTE 02/14/21

Mr. Giacalone explained that in his two years on the DDC they're transitioning to become more of an advisory Commission. He noted the DDC recently lost several members. He advised they are actively recruiting new members and suggested there should be a member representing downtown restaurants which he admitted was difficult given restaurant hours that can conflict with DDC meeting times. He said that the DDC is addressing issues that some business owners have brought to their attention, he noted. He highlighted that the DPW did a great job putting in new lights downtown, and that there were lighted wreaths on the downtown's lamp posts this year.

Councilor LeBlanc offered that it may be appropriate for the DDC to invite restaurant managers to come to their meetings rather than seeking out one person in particular to join the Commission to encourage an exchange of information and ideas.

COMMITTEE RECOMMENDATION: On a motion by Councilor O'Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council reappoint Joseph Giacalone to the Downtown Development Commission, TTE 02/14/21.

Magnolia Woods Oversight & Advisory Committee Dean Sidell (Cont'd from 03/05/18)

TTE 02/14/21

Mr. Sidell said that it's been a while since the committee had a committee meeting. He said they did a lot of good work early on, helping the DPW to close down an old project and create a maintenance plan. He advised they're working with Councilor Nolan to work further with the DPW but it has been slow. He pointed out that in his role as head of the Fishermen's Youth Soccer Program (FYSP), they use the Magnolia Woods sport fields predominantly for their soccer program and invest a great deal of funds into the fields to maintain them. He said it's not only an important resource for the FYSP but for the entire city. He pointed out that "resources are short" and is essentially what's holding the committee back from doing more.

Councilor LeBlanc, mentioning the appearance of two members up for reappointment to the committee at the last meeting they touched upon some of the Wood's issues, one of which was opening up a lower parking lot. **Mr. Sidell** advised that the initial plan was to move a gate to create four-season parking at Magnolia Woods as part of a reconfiguration plan in maintaining the facilities which is part of what the committee is working on with the DPW and Councilor Nolan.

Councilor Nolan conveyed that Mr. Sidell has been a strong member of the committee, and noting his relationship to the Fishermen's Youth Program, he said he's played an integral part through the Fisherman's Youth Soccer Program in the Magnolia Woods fields support, care and maintenance. He said he very much appreciated Mr. Sidell's work and commitment. **Councilor LeBlanc** said that Councilor Nolan will try to get some meetings underway between the committee and DPW. He expressed his appreciation for Mr. Sidell for all that he does.

COMMITTEE RECOMMENDATION: On a motion by Councilor O'Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council reappoint Dean Sidell to the Magnolia Woods Oversight & Advisory Committee, TTE 02/14/21.

2. CC2017-016 (Memhard/O'Hara) Request that the city adopt the Commonwealth of Mass DEP Noise Regulation (310 CMR 7.10) and after adoption amend GCO Ch. 13 "Noise" (Cont'd from 03/05/18)

Councilor Memhard asked for a vote by the Committee on his Council Order to take this matter to public hearing. He said the state's noise ordinances are more exacting than Gloucester's. He pointed out that the Building Inspector and the Board of Health aren't being instructed to enforce the state law as to noise that is considered "air pollution." He said that this state law has been in effect since 1990 and is asking that the Council adopt the language of that law. He noted that this matter has been under discussion for a year and a half. He advised that in reaching out to East Gloucester residents in the neighborhood (of 159 East Main Street) they reported that the noise last evening and today, and is unchanged. He further advised that the owner of the 159 East Main Street Americold facility has made progress in addressing that facility's noise issues, but they've not reduced the noise level to date despite the Building Inspector's December 2017 order. He said he'd received a complaint from an area resident who is selling her home because of the noise emanating from the East Main Street Americold facility. He said that industrial noise is subject to state standards which should be enforced within the city. He said that this isn't an "unreasonable burden" on city businesses saying that the technology exists to alleviate such situations.

Councilor O'Hara said this issue, especially in the area around 159 East Main Street has led to "many sleepless nights" and suggested that children are being especially impacted. He pointed out they've worked to try to have the owners of 159 East Main Street lower the facility's noise level but that hasn't happened. He said something has to be done.

Councilor LeBlanc asked General Counsel, **Chip Payson**, to enumerate the city's exceptions under its noise ordinance. **Mr. Payson** confirmed there are about 18 exceptions in the city's noise ordinance and highlighted some of them from GCO Ch. 13 "Noise" Sections 13-10 through 13-12 some of which were:

- Sounds created by the installation of the installation or repair of essential utility services;
- Sounds created by bells, chimes, or carillons, not operating for more than five minutes in any one hour;
- Sounds by construction equipment...;
- Noise created from stationary equipment used in conveyance of water by a utility...;
- Sounds created by safety and protective devices, such as relief valves...;
- Sounds originating from aircraft in flight;
- Sounds created by warning devices not operated continuously for more than 30 minutes per incident;
- Sounds created by fire alarms...;
- Sounds created by the discharge of firearms in the course of lawful hunting activities;
- Sounds created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;
- Sounds created by watercraft;
- Sounds created by construction equipment, including special construction vehicles, emanating from temporary construction sites...(in the ordinance in two separate sections).

He said the city has in its ordinances specific exceptions unique to Gloucester. He said that in his opinion what the community has is a residential area that abuts a historic working industrial waterfront. He explained at issue is the primacy of the waterfront. He said that people bought houses in "full understanding" of where they were buying houses, and asked if that primacy reduced because people don't want the noise." He pointed out this could place the city in a difficult situation. He said he didn't want to minimize the issues experienced by this particular area of the city, but that eliminating the city's ordinance and incorporating the Massachusetts regulations which is a policy, not an ordinance or a regulation or statute, could potentially create "problems."

Councilor LeBlanc said this (adoption) could shut down Beacon Marine; Cape Ann Marina; pointing out that all Gloucester marinas abut residential neighborhoods. **Mr. Payson** said he didn't see how these businesses would be able to continue -- marinas; industrial areas; the working waterfront. He pointed out that in the city there are residential areas that abut directly to these marine industrial areas where people decided to purchase homes, knowing what existed. He added that this wasn't a situation where homes were precedent and waterfront businesses then came into being in the past 50 to 150 years but have been the situation for a very long time. As a result there was a balance created in the ordinances as to what was allowable and what isn't, he conveyed.

Jim Destino, CAO, said the Mayor's office doesn't support this adoption. He explained that everyone understands the issues on East Main Street, but this is making a city-wide policy that could hurt businesses throughout the community. He said the Mayor's office has already heard there are businesses that would leave the city because of this. He added that it isn't as if they have done nothing. The Building Inspector sent a letter that the facility was out of compliance. **Councilor Memhard** suggested that businesses threatening to leave were "scare tactics." **Mr. Destino** said perhaps that may be the case, but he pointed out that they have taken some actions. He recounted the actions of the Building Inspector highlighting the letter Mr. Sanborn sent to the Americold facility owners citing them as out of compliance and telling them to fix the issue. He said they heard buffering was being erected, and if that hasn't reduced the noise level, they'll keep up the pressure on the owners of the facility to make it work. He pointed out that this is one neighborhood that is forcing a city-wide adoption of a state regulation. He said that because of the exceptions as noted by General Counsel, it is why this isn't the same as adopting, for example, the dog tethering statute -- there aren't exceptions to tethering. These exceptions (to the city's noise ordinance), he noted, were adopted over time for the city's working waterfront and isn't the same in any way. He conveyed this is substituting and tossing out work that was done by former Councilors on forming these exceptions for certain businesses. He added that it isn't just the waterfront businesses that will be affected, anywhere a local business abuts a residential neighborhood with exhaust systems would be vulnerable to being shut down because they couldn't comply where no previous issues existed. He said while he understands the concern as expressed by Councilors Memhard and O'Hara, he suggested this was a heavy-handed method to resolving a particular situation in a particular neighborhood at the expense of the entire city.

Councilor Memhard advised he was advocating for a public discussion. He recounted that he, as a businessman on the city's industrial waterfront, experienced the state overriding the Mayor and Building Inspector. The state came and monitored the noise from his place of business in the early morning hours and one person in a Marine Industrial District zoned home was considered a "sensitive receptor" whose rights to sleep at night was compromised. The state, he said, insisted they "respect and protect" individual property owners. He further pointed out that the state delegates to the Board of Health, and suggested that the Mayor's office and General Counsel has asked that the Board of Health not weigh in on this matter. He further pointed out that people who live in the aforementioned neighborhood, some for 30 to 40 years or more, many homes there existed before "the turn of the century," that the noise doesn't predate those homes. The lack of attention and addressing of this noise issue by the previous facility owner can be addressed by the new owners of the facility, he said, and suggested there is no reason for the facility to be exempt from meeting state standards. He added that this isn't just a peace issue but a health issue. **Mr. Payson** rejoined that the (state) regulation says that the Board of Health "may enforce," that the state "may ask for the Board of Health to enforce or the state will enforce." He said he didn't know why that the state hasn't "enforced." He said that the Board of Health isn't required to enforce, and the 1990 policy is a policy and isn't a law -- the policy suggests that if the state gets involved they will look at it a particular way. He said the city is, in his opinion, in compliance with the regulation. He explained that the Board of Health hasn't heard many of these complaints because procedurally they are the appeals body. He pointed out that they can't have residents of the affected neighborhood appear before the Board of Health if there's going to be a complaint that is going to be appealed before the same board.

Councilor Nolan said that when the state made Councilor Memhard's business comply with state noise regulation, what was the difference with the state doing the same about the facility at 159 East Main Street and why haven't they rather than initiating a "blanket" city-wide ordinance. **Councilor Memhard** conveyed he had spoken to the Deputy Director for the Northeast Region of the DEP, whom he said told him that she didn't understand why the Board of Health or the Police Department aren't enforcing the ordinance of the state. The Councilor said that is what the state counts on for enforcement as they aren't funded or staffed at the level they were when his business was cited and have delegated certain responsibilities to the communities. He said that Sen. Tarr and the DEP have expressed interest to work with the Mayor's office on this matter. He suggested that this issue hasn't been adequately addressed; and that this neighborhood has had a significant deterioration of their quality of life. He added that he didn't think this effort was anti-business. This is about allowing residents in East Gloucester to sleep at night as residents do in other wards of the city, he said. He reiterated his original request that this matter be moved forward to a public hearing to give these people an opportunity to be heard.

Councilor Nolan confirmed that the state can come in and enforce at 159 East Main Street on its own, rather than changing the ordinance affecting all areas of the city. **Councilor LeBlanc** said that if 159 East Main Street complies and installs baffles as they are supposed to, then this wouldn't become a city-wide issue. **Councilors Nolan** and **LeBlanc** put forward that this is a neighborhood issue not a city-wide issue.

Councilor LeBlanc expressed his concern for businesses such as the Cape Ann Marina who will be affected when people complain that tuna boats are going out in the early morning hours as just one example. He mentioned the areas of St. Peter's Park; the Fort; Fishermen's Wharf and in many other city areas with industrial/waterfront businesses -- all would be affected by this noise ordinance amendment. He said the past Council and this Council has tried to be distinctly business friendly and encourage businesses to come to the city. He said an ordinance amendment such as this will deter that effort. **Councilor Memhard** said that it is clear that this relates to stationary sources of noise; ambulances and tractor trailer trucks, fishing vessel engine noise, are all excluded. He advised that when a noise test was conducted at his place of business the person from the DEP stopped the test during a passage of a moving source of noise which is considered a different standard. **Councilor LeBlanc** brought up issues of noises from gunshots by hunters in certain sections of the city, or music emanating from certain sections of the city during evening hours that travels some distance. He said it is possible this adoption of state law could stop that recreational use and shut those businesses that have music.

Mr. Destino said this initiative is anti-business which **Councilor Memhard** rejoined that it wasn't the case as it is a state standard citing that he, as a businessman was able to comply with it, "with reasonable cooperation" and technology that was available at that time which he touched upon. **Councilor LeBlanc** pointed out that he can hear the music from the Harbor Loop concerts, from Whale Watch boats from his residence in the area of Gloucester Avenue. He said he wouldn't support this effort as it isn't business friendly and will cause more businesses to suffer heavy fines or ultimately having to be shut down which isn't fair because people don't like an owner of a business or don't want a particular business in their mixed-use neighborhood.

Councilor Nolan asked what the benefit is of having the state intercede on this particular location (159 East Main St.). They (the facility) did start work on baffling, he noted, very recently. He cited corporate noise from

Blackburn Industrial Park that can be heard on Harrison Avenue, as an example, which could restrict some of the city's larger employers such as Varian. He said he knew that 159 East Main Street is noisy recounting that he has listened to the noise, even at night. He asked if the city could try to do something with the assistance of the state (DEP). **Mr. Payson** and **Mr. Destino** both noted that the state is already coming into the city with **Mr. Destino** adding that Councilor Memhard had contacted the state and that Sen. Tarr had called him on that fact about this matter and the DEP becoming involved. **Councilor LeBlanc** said if the state has the authority to come in and "single out" a business, why would they institute something city wide. **Mr. Destino** reiterated that the DEP is coming soon. **Councilor Nolan** said he'd like to find out from the DEP what is going on. It is noisy there but didn't want to see a city-wide ordinance. He said that not knowing what the state is going to do and what the new owners are going to do, he would like to see the facility at 159 East Main Street quiet down in the evening but also said he didn't want to see a city-wide ordinance, that he couldn't support a "ban" on everything. He said he wanted to wait to hear what the results are of the state coming into the city and assessing the situation, and would like to know when that would take place.

Councilor O'Hara then motioned the Council Order which was voted on as follows:

COMMITTEE RECOMMENDATION: ON a motion by Councilor O'Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 1 (O'Hara) in favor, 2 (LeBlanc, Nolan) opposed, to recommend that the City Council adopt the Commonwealth of Massachusetts DEP, Division of Air Quality Control Policy, Noise Regulation (310 CMR 7.10) dated February 1, 1990 DAQC Policy 90.0001 and that after adoption of said policy that the Gloucester Code of Ordinances be AMENDED to Chapter 13 "Noise" to include the following:

"A source of sound will be considered to be violating the city's noise regulation if the source:

- 1. Increases the broadband sound level by more than 10 dB (A) above ambient, or**
- 2. Produces a "pure tone" condition - when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.**
These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level at that is exceeded 90% of the time measured during equipment operating hours."

This matter will be advertised for public hearing.

- 3. CC2018-004 (Holmgren): Amend GCO Ch. 4 "Animals", Article II "Dogs" Sec. 4-16d "Off-leash dog areas" be amended re: Crab Beach**

Councilor LeBlanc noted that the O&A Committee requested that the Interim Police Chief weigh in on public safety and enforcement on the matter of opening Crab Beach to dogs off leash. He advised that he spoke with the Chief who said he has no issues (a memo on file dated 3/19/18 from the Chief said the same). **Mr. Destino** said that the Mayor's office fully supports this effort and mentioned after consultation with the DPW Director that there is not a need for a gate at the top of the steps at the Boulevard, pointing out that the stairs are quite steep leading to the beach. He said people will have to control their dogs. **Councilor LeBlanc** said that people will police themselves, and will need to remember that this is a privilege.

Councilor Holmgren said she would request a second Mutt Mitt dispenser on the Boulevard which she touched on with the Committee as well as additional signage.

Councilor O'Hara said this was a long time in coming in order to have a place for dogs to get to the water in the summer to cool off "legally." This is a great step forward, he said, for the protection and health of the city's dogs. He expressed his support as did **Councilors Nolan** and **LeBlanc**.

COMMITTEE RECOMMENDATION: On a motion by Councilor O'Hara, seconded by Councilor Nolan, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council to Amend GCO Ch. 4 "Animals", Art. II "Dogs", Sec. 4-16d "Off-leash dog areas" by ADDING: "(c) Dogs shall be allowed on "Crab Beach" off leash at all times subject to the enumerated conditions contained in Sec. 4-16a."

4. ***CC2018-008 (LeBlanc) Request the Traffic Commission review the traffic patterns on Middle St. & Washington St. around the Joan of Arc statue & the American Legion building & make a recommendation on any amendments to the traffic ordinances (TBC 04/02/18)***

This matter is continued to April 2, 2018.

5. ***CC2018-009 (LeBlanc) Request the Traffic Commission review whether the crosswalk at "Tally's Corner" be removed & make a recommendation to O&A (TBC 04/02/18)***

This matter is continued to April 2, 2018.

A motion was made, seconded and voted unanimously to adjourn the meeting at 6:55 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.