

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
Town Hall Council Chambers
January 31, 2006**

Present: Susan Kay, Chairperson
Michael Smart, Vice-Chairperson
Arthur Mathews
Gregory Shanahan
Kevin Whitaker

Also Present: Jane Hackett, Chief of Staff
Daniel McCormack, Health Department
Thomas J. Lacey
Paul J. Leary

Recording Secretary: Janet Murray

Councilor Kay called the Ordinance Committee Meeting to order at 6:30pm.

05 164 – Fats, Oils, and Grease Proposed Ordinance

Councilor Kay stated that this item was referred to the Ordinance Committee on 12/5/05. A favorable report was voted by the Committee on 12/05/05. The notice was published on 1/7/06. A joint hearing with the Board of Health was held on 1/17/06. It was continued to this evening, 1/31/06.

Daniel McCormack appeared before the Ordinance Committee to address several concerns which were brought up at the previous hearing. These issues were recordkeeping, 1st offense, and financial assistance.

Recordkeeping language regarding food stuff purchases was eliminated. The storage and removal of grease- related waste will need to be recorded.

Councilor Kay suggested that a menu be requested from the establishment. In looking at the menu, you can determine what types of fried foods are served.

Mr. McCormack stated that the 1st offense for a violation will be a warning. The 2nd offense is \$100. The 3rd offense is \$250. The 4th offense is \$1000.

Ms. Hackett stated that the Town Council had appropriated \$50,000 for a consultant to educate establishment owners and to assist the Town in administering the program fairly. This ordinance is not meant to generate revenue. It is designed to minimize fats, oils, and grease in the municipal sewer system.

Councilor Lacey asked for clarification on the method by which violations would be enforced. Mr. McCormack stated that the reason for the ordinance is for compliance. He stated that an establishment is given a time frame to repair the violation. If after that date non-compliance still exists, fines will be established. If there is a good reason for the repair not being made, an

additional grace period is allowable at the discretion of the inspector and the Director of the Health Department. Mr. McCormack stated that it is not their intention to find an establishment in violation and then rack up fines. He noted that the specific language regarding fines is standard in the Town's ordinances.

Ms. Hackett stated that under enforcement and inspection the most aggressive action is to suspend and in another section to revoke the license of an establishment. This is reserved for the serious offender.

Mr. McCormack stated that financial assistance is not available. The establishment would not be making a new connection and is therefore not eligible for a betterment loan.

Councilor Whitaker stated that it would appear that the regulation supersedes the ordinance. Councilor Kay stated that in other communities, DPW manages this procedure and is not a health regulation. This regulation/ordinance places the responsibility clearly on the Board of Health.

Ms. Hackett stated that historically, there have been concerns regarding the Board of Health enacting regulations when it is not an elected body; especially when the regulation has a considerable impact on businesses. This course of action is endorsed by the Mayor. The Council is the legislative body of the town government. She also noted that the Department of Environmental Affairs wants to see an ordinance.

The Board of Health can not have a regulation with fines attached, an ordinance is required. Mr. McCormack stated that in the last section of the regulation, it states that the ordinance takes precedence over the regulation.

Ms. Hackett stated that the regulation and the ordinance are identical.

Mr. McCormack noted that there was a change in the language which read "the Board of Health may immediately force an establishment to connect" to whatever system the Town requires. He acknowledged that this language seemed harsh. He stated that the wording was changed to read "the Board of Health may order the installation of an indoor automatic or outdoor underground system.

Councilor Whitaker stated that he has a concern regarding the lack of a timeframe. Mr. McCormack stated that the intent is for the systems to be installed as soon as possible.

Councilor Smart asked for clarification on the process. Mr. McCormack stated that the process is set up to give establishments a one (1) year time frame in which to install an indoor automatic or outdoor underground system. This time frame can be waived through a variance process.

Councilor Whitaker stated that a variance is not allowed for economic hardship. He noted that there is no mechanism to allow more time to connect for economic reasons. Mr. McCormack stated that if an establishment is properly maintaining their current system, a variance would be allowed. This regulation is meant to target those establishments who have not been properly maintaining their systems.

Councilor Mathews made a MOTION for a FAVORABLE REPORT and was seconded by Councilor Shanahan

Councilor Smart stated that he supports the ordinance but would like more time for discussion.

Councilor Whitaker stated that the word “person” should be better defined.

Councilor Whitaker questioned if the Licensing Board should be involved in this process. Mr. McCormack stated that the Health Department issues the license. Councilor Kay clarified that the Director of the Health Department is a member of the Licensing Board. Mr. McCormack stated that the Licensing Board issues a license and the Board of Health issues a permit. Mr. McCormack stated that the permit is what is being revoked.

Councilor Whitaker stated that when changes are made to the CMR there should be language in the regulation to reflect these changes, such as the addition of “or as amended” after the CMR reference. However, consideration needs to be made for changes that may loosen the regulations.

Councilor Mathews stated that in the past amendments have been made to ordinances/regulations.

Councilor Kay stated that the committee is required to bring a report back to the full Council. This report does not always need to have a motion assigned with it.

Councilor Mathews WITHDREW his motion.

Councilor Smart stated that this measure was voted favorably out of committee in 2005. He suggested that the Chair report back to the Council with the changes.

Councilor Kay asked if the measure needs to go back to the Board of Health. Ms. Hackett stated that this is not necessary.

Councilor Kay stated that she will report to the Council that Administration, through Mr. McCormack, had resolved three of four concerns.

05 139 – Review of Section 3-102 Appointments

Councilor Kay stated that Mr. Gary Peters was present this evening to discuss this matter. She noted that this item was referred on 10/3/06. The Committee met on 10/17/05, 11/19/05, and 12/13/05. On 12/13/05, there appeared to be a conflict between the Ordinance and the Charter. She stated that the Town Solicitor, Mr. Lane, became involved.

Solicitor Lane submitted a letter which Councilor Kay read into the record.

Councilor Whitaker noted that Solicitor Lane's letter states that the Council is not able to originate this type of measure-- that is organizational in nature. However, it does not address the Charter issue which is still out there-- that all appointments are for an indefinite term.

Councilor Kay read from the minutes of the 12/13/05 meeting to remind the committee of previous conversations.

Mr. Peters stated that he has been involved in this discussion from the beginning. He stated that it is not his intent to necessarily change anything, rather to re-examine and ask Solicitor Lane to provide an advisory opinion in regards to Section 3-102. He stated that he believes that there is confusion surrounding these issues, in particular with how it pertains to Boards of Health.

He stated that he would like to ask Solicitor Lane to render an advisory opinion regarding as to how the Mayor handled himself with regards to issues raised in his submitted letter. Councilor Kay stated that she has a copy of Mr. Peters' letter.

Councilor Kay stated that first she would like to discuss measure 05 139 and then the committee will entertain Mr. Peters' request.

Councilor Whitaker stated that based on Solicitor Lane's opinion; there is nothing the Council can do to make the recommended changes.

Councilor Whitaker asked if the Committee believes that this measure is an organizational change under the Charter or if it is a legislative act.

Councilor Kay asked Ms. Hackett for clarification on what is considered organizational vs. non-organizational.

Ms. Hackett stated that this could be considered a matter of interpretation. However, she directed the committee to Article 5.1 of the Charter, which is also repeated in the Municipal Code. Councilor Kay read from the Charter as follows: the organization of the Town into operating agencies for the provision of services and the administration of the government may be accomplished only through an organization plan or re-organization plan filed by the Mayor. No organization changes may originate with the Town Council. She asked if appointments were part of the organization plan. Ms. Hackett stated that they were.

Ms. Hackett stated that the Board of Health is an administrative agency. The composition of this Board and how it operates is an administrative function. She noted that a Board of Health is not required. She also noted that during the discussion when the new form of government was being established there was consideration of not forming a Board of Health but instead having a Health Commissioner.

Ms. Hackett noted that prior to the submittal of an organizational plan; the Mayor had the ability to appoint members to multi-member boards for indefinite terms. However, when the Mayor submitted the organizational plan, it included terms of office and staggered terms. She noted that

a Mayor could submit a re-organization plan to the Council to change any or all of these conditions.

Ms. Hackett stated that the Mayor does have a mechanism to remove a board member for cause.

Councilor Whitaker stated that he has concerns regarding the use of organizational plans. He questioned if the Council, and/or citizens have the authority to do what Councilor DiFazio has proposed, and which Solicitor Lane has stated can not be done. He offered a different view that even if something is administrative, it does not mean that we can't add comments or change.

Mr. Peters stated that what is on the books right now is all that is needed to be remedied in regards to what happened.

Mr. Peters noted that the “may” is construed to mean permissive and the word “shall” is construed to mean mandatory.

Mr. Peters noted that Councilor DiFazio had previously asked Solicitor Lane regarding yearly evaluations of members of boards. He also noted that it is stated that the appointing authority shall yearly evaluate persons subject to appointment. In his opinion the question about these evaluations taking place was never clearly answered.

Mr. Peters questioned if the Mayor had been following the dictates of Sections 3 and 4 in regards to appointments and re-appointments based on merit and fitness. He stated that what he seeks to do is to firm up the legal matters surrounding his non-reappointment. He also stated that he is asking the Council to be the Mayor's checks and balances.

Councilor Smart stated that the Council does not request records and recommendations as part of the appointment process. This only occurs in atypical situations.

Councilor Kay noted that this is employees vs. multiple member boards. Mr. Peters stated that multiple member board members are town employees. Councilor Kay stated that there is a term, “special employees”, for those who are voted to a position. These special employees' names must be sent into Boston to determine if there is a conflict of interest. Multiple member bodies are not employees; they are representatives. It also depends on what member committee you are referencing.

Mr. Peters stated that he believes that in this case the term employee applies to his particular situation. Mr. Peters also stated that there should have been some paperwork available during the process.

Councilor Smart questioned if this would mean that the committee would have to request the personal records and recommendations from the Department of Human Resources as part of the approval of appointments. Mr. Peters stated that he did not think that this would be necessary in every case. In the case of a non-reappointment, this should be available.

Councilor Shanahan stated that he saw no problem with asking Solicitor Lane for an advisory opinion on this matter.

Councilor Smart stated that the Council is not part of the selection process. The appointment is presented to the Council for a yes or no vote. The Council can not consider others. He agreed that in the situation with Mr. Peters, the lines of communication were not clear and the situation could have been handled better.

Mr. Peters stated that the bigger issue is of checks and balances between the Mayor and the Council. He questioned why the Council wouldn't want to see the credentials and documentations of those who apply for membership of a board.

A MOTION was made by Councilor Smart to FORWARD to Solicitor Lane for an advisory opinion the letter submitted by Mr. Peters and was seconded by Councilor Shanahan and UNANIMOUSLY VOTED.

Councilor Kay stated that the Committee has an opinion from Solicitor Lane regarding this matter. She stated that the Committee could either report back to the Council or a motion could be made in regards to the measure.

Councilor Mathews stated that if the Committee does not vote on the measure, it would then go back to the Council for a vote without a committee recommendation.

A MOTION was made by Councilor Mathews to recommend NO ACTION and was seconded by Councilor Shanahan and was UNANIMOUSLY VOTED.

At 8:45 pm, there being no further business, A MOTION was made by Councilor Mathews to ADJOURN and was seconded by Councilor Smart and UNANIMOUSLY VOTED.

Approved by: _____
Susan Kay, Chairperson