

**TOWN COUNCIL MINUTES  
ORDINANCE COMMITTEE  
Town Hall Council Chambers  
September 14, 2006**

Present: Susan Kay, Chairperson  
Arthur E. Mathews  
Gregory Shanahan  
Kevin Whitaker  
Michael Smart

Also Present: Diane Hachey  
George Lane, Town Solicitor  
Paul J. Leary, Councilor

Recording Secretary: Janet Murray

Chairman Kay called the Ordinance Committee Meeting to order at 7:40pm.

**06 125-Utility Applications/Petitions Proposed Changes**

Councilor Kay stated that this measure was referred on 6/19/06. The Committee met on 7/25/06 and continued. The Committee now has a draft procedure for utility petitions. Councilor Kay stated that she and Diane Hachey met to discuss how this process could work more smoothly. Verizon, National Grid, and Keyspan received copies, Comcast did not.

Ms. Hachey stated that the proposed policy indicates that the utility company be responsible for submitting the original petition in addition to a detailed abutters map to the town. Additionally the utility company would be responsible for notifying all abutters of the proposed changes and public hearing detail. Placing a legal advertisement in our local newspaper would be at the utility company's expense. The advertisement and the abutters notification should list a contact individual at the utility company so constituents are able to call with questions. The public hearing would be scheduled at Town Council level.

Penny Kane from Verizon stated that she submitted this proposed procedure to the Legal Department for review and comment. They came back with a response that in their interpretation of MGL 166, section 2, they are not required to do anymore than they are already doing and that it is the responsibility of the Town to notify the abutters. She stated that Verizon is willing to have a Verizon contact number available.

Councilor Kay asked if Verizon does this for other communities. Ms. Kane stated that the Legal Department is opposed to this in any community.

Solicitor Lane stated that there are permissive vs. mandatory requirements. He noted that the law states clearly that the notification must take place, it does not dictate who does the notification. Solicitor Lane asked that the utilities take a permissive interpretation toward notification, especially for Verizon who already does this type of notification in other towns.

Ms. Kane stated that at this time Verizon is willing only to provide what they are currently providing. She noted that she is willing to provide a contact name and number for Solicitor

Lane.

Councilor Mathews asked if Verizon pays for legal ad reimbursement. Ms. Kane stated that there are several towns that are reimbursed for the cost of the newspaper advertisement.

Councilor Leary asked that the map be more specific to include driveways, sidewalks, etc.

Councilor Smart stated that the abutters need to be informed about what is proposed to be done in their neighborhood.

Councilor Mathews stated that the phrase “certified abutter” refers to the resident, not the means of mailing. The mailing could be sent first class mail.

Joe Cardinal from National Grid appeared before the Committee. He stated that he had shown the proposed procedure to the engineers and operations department. His interpretation is that National Grid is already doing what the town has been requesting. In submitting this draft to the Legal Department, they had the same opinion as Verizon.

Joe Carroll from Keyspan asked if a packet is required even for small work. He noted that Keyspan does not work much during the winter months; however once the warmer weather comes, they can have many jobs scheduled. To follow the procedure proposed with many jobs would be cumbersome. Peter Nagle from Keyspan was also present.

Councilor Kay stated that the Council is interested in seeing the information proposed utilized for those petitions which are forward to the Council Office for approval.

Councilor Shanahan asked if Keyspan is already doing what the Council is requesting. Mr. Carroll stated that Keyspan does not send out a set packet.

Councilor Mathews stated that he would like to see the meeting continued and DPW contacted for their input as it is not the intention of the Council to hold up the process. He stated that this draft is generally intended for new work. There could possibly be a waiver procedure through the Department of Public Works.

Mr. Carroll stated that they currently send out notice of the date that a project will start. He stated that they do not send out detailed information about the project.

Councilor Mathews suggested that the Director of DPW, Robert O’Connor be invited to the next committee meeting. He noted that the committee is open to suggestions.

Ms. Hachey stated that she thought this procedure was just for those issues coming through the Council for approval.

Councilor Smart spoke to the cost of the notification. He stated that it is 22 pages and 119 abutters. This would be 2640 pages/120 packets in addition to the time that it takes to copy and mail out the notices.

Mr. Cardinal asked if there was a willingness to negotiate. He noted that the legal issue will need to work itself out.

Councilor Mathews stated that a postcard is sent out to notify abutters of the date and time of the public hearing. It also indicates that documents are available in the Council Office for review.

Councilor Smart asked who owns the poles. Mr. Cardinal stated that most of the poles are jointly owned. He also stated that the petition begins with Massachusetts Electric and is then sent to Verizon, and finally it is forwarded to the Council.

Councilor Whitaker made a MOTION to CONTINUE item number 06 125 and was seconded by Councilor Mathews and UNANIMOUSLY VOTED.

### **06 126-Utility Pole Removal Proposed Ordinance**

Councilor Kay stated that this measure was filed on 7/19/06, referred on 7/25/06, and the committee met on 7/25/06 at which time the meeting was continued.

Councilor Kay stated that the Fire Chief was not available tonight. She noted that there is a detailed report provided by Ms. Hachey on double pole status.

Councilor Leary distributed a letter from James P. Cicchese. He noted that there is a statement in the letter that the Town of Brookline has an ordinance regarding the removal of poles within a specific time frame and fines if the poles are not removed. Councilor Leary noted that Mr. Cicchese has since informed him that there is no such ordinance in Brookline. This letter suggesting the existence of an ordinance in Brookline is what initiated this discussion.

Councilor Leary stated that there is legislation within the Department of Telecommunications and Energy in place-- but there is no enforcement.

Councilor Mathews suggested that this measure be discussed at the next committee meeting. He stated that having this discussed with Mr. O'Connor and a representative from the Fire Department present would be a good idea.

Councilor Mathews made a MOTION to CONTINUE item number 06 126 and was seconded by Councilor Shanahan.

Councilor Whitaker suggested to report back to the Council with an unfavorable report. He stated that the Town is not allowed to develop an ordinance with regards to pole removal.

Councilor Whitaker made a SUBSTITUTE MOTION to report back to the Council with an unfavorable report on item number 06 126. The motion was not seconded.

Councilor Kay stated that even without the legal ability to create an ordinance, it is her opinion that this measure is worthy of further discussion.

Councilor Smart stated that he would like to wait to hear from the Fire Department as to what the situation is. He noted that the double pole report provided lists a “remediation party” which requires clarification.

The original MOTION was UNANIMOUSLY VOTED.

### **Yard Sale Ordinance Review**

Councilor Leary stated that he wrote a brief memo to Council President Smart regarding the Yard Sale Ordinance, original item number 00 073, which was approved on 6/6/01. He noted that he believes that this ordinance, as written, may be flawed.

Councilor Kay stated that in Braintree, there exists an application process with a \$5 fee, which is free for seniors. Residents are limited to three (3) yard sales a year. She noted that the police department receives a copy of the application for informational purposes.

Councilor Shanahan stated that the form presented by Councilor Kay seems to address some of the issues raised. However, there is a concern regarding enforcement.

Councilor Smart stated that April - October is roughly the yard sale season. He stated that the issue is not to raise money, but to provide for accountability. He noted that provisions need to be made for non-profit charitable organizations.

Councilor Shanahan stated that he thinks that any changes to the ordinance should be a blanket application to cover all yard sales regardless of non-profit status.

Councilor Mathews stated that there needs to be more discussions regarding enforcement.

Councilor Whitaker suggested doing away with the ordinance all together. He does not want to see resources put towards an issue that has not been enforceable in the past. He also stated that a homeowner should be left alone to use their property as they see fit.

Councilor Shanahan stated that this can be a neighborhood issue and in his opinion it needs to be addressed.

Councilor Kay stated that the yard sale issue was brought up under the Board of Selectman as a nuisance issue and originated as a by-law.

Councilor Leary stated that the yard sale ordinance needs to be reviewed section by section. He noted that he is concerned specifically that the ordinance states that only items belonging to the homeowner are to be sold and this is not enforced. He also stated he believes instituting an application is a good idea.

Councilor Smart stated that the Police Chief and Administration should be asked to be present at the next meeting.

Councilor Whitaker requested that a new measure number be assigned.

Councilor Smart made a MOTION to CONTINUE discussion on the Yard Sale Ordinance Review and was seconded by Councilor Mathews and UNANIMOUSLY VOTED.

**Adjournment**

At 9:10 pm, there being no further business, A MOTION was made by Councilor Smart to ADJOURN and was seconded by Councilor Shanahan and UNANIMOUSLY VOTED.

Approved by: \_\_\_\_\_  
Sue Kay, Chairperson