

TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
Town Hall Council Chambers
November 13, 2006

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

Also Present: Paul Leary, Councilor
Patrick O'Connor, Councilor
Town Solicitor George Lane

Recording Secretary: Mary Briggs

Chairperson Susan Kay called the Ordinance Committee Meeting to order at 6:35 PM.

06 125 - Utility Applications/Petitions Proposed Changes

The chair noted this was discussed at the October 19, 2006 meeting and voted to be continued. Since that discussion, a letter was sent to Town Solicitor Lane from National Grid, specifying MGL, Ch.166, which indicates either the clerk of the city or the selectmen of the town be the entity to send out notices.

Councilor Mathews reviewed the letter, and based on the reference to MGL, the committee should consider revising its application process or regulations. This has been an issue for a couple of months; he is willing to work with the utilities to make this an easier process for citizens; however, none of the utility companies has given any suggestions or indication of willingness to work with the town. He needs to look again at the regulation to see what needs to be revised to be sure it doesn't conflict with Mass General Laws.

Councilor Kay pointed out that the letter from National Grid appears as though they would be open to helping the town by increasing the fees paid to the town. She provided the committee a handout-- a rough draft prepared by Diane Hachey, of a cost analysis for preparing petitions. She then asked Solicitor Lane his opinion on increasing fees to cover the costs of mailing.

Solicitor Lane noted his original opinion provided in August cited specific areas of MGL with regard to utility companies and safety regulations. Alterations of placement of poles and wires requires abutters be notified by the town. In the original assessment, he found there were communities in which the utilities that own the poles are in fact completing the notification, including the town of Braintree.

Solicitor Lane also noted administrative downsizing in the utility companies, and the reference made to the case several years ago involving Boston Gas and what can be charged for fees for street opening permits.

Discussion with Attorney Rooney from National Grid was helpful; they have offered to assist and to pay some of the costs. After speaking with Diane Hachey it was determined there were two departments involved in the petition processing-- the Town Clerk and the Town Council Office. Ms. Hachey provided a cost assessment, the fees for which Solicitor Lane would recommend be shared with National Grid.

Solicitor Lane believes the town has interpreted this in such a way that and he does not want to spend legal money defending the position. He states discussion of the issue should continue, mindful of Councilor Mathews' comments and the assessment made by Ms. Hachey.

Councilor Mathews wants to be sure National Grid understands that this is not an ordinance to single them out and make them do more work, but should apply to all utility companies. Even if National Grid agrees to pay for some of the fees, it doesn't take into account other utility companies which come before Town Council for a hearing. It needs to be cleared up. If the MGL requires the town to do the notification, he doesn't see why the utility company can't provide maps, copies of the paperwork and mailing lists, instead of using the Town Council secretary to do all of the work involved. All of the work could be done by the utility outside of the actual mailing.

Chairperson Kay reminded the committee that none of the utility companies were invited to this meeting; it was specifically so the members could speak to the additional information before them. The utility companies were present before the committee on two prior occasions which were not public hearings. They were allowed to speak since regulations were being imposed. If and when all information is processed and determinations made, if the committee so desires, the utility companies will be invited. She agrees and supports Councilor Mathew's position that any information needed for notification should be included in the utility petition agreement.

Councilor Whitaker stated that if the utility is to take a hard line approach and fall back on the legal issue and determine that it's up to the Town Clerk's office to mail out notification, then the committee can define what a petition is. The petition isn't defined in the ordinance itself. The definition can include all information requested in the regulation. The alternative instead of proposing it in the ordinance is to provide a packet with information included to be on the agenda of the hearing, so as not to deprive them of the statute's protection.

Chairperson Kay recommended another continuance is in order with the new materials for members to absorb, and for Ms. Hachey to determine if the cost analysis is appropriate, having been drafted on short notice.

Solicitor Lane reminded the Chair that his discussion with Attorney Rooney suggested a further discussion with the Committee, and offered to bring her back in to a future meeting. The Chair

agreed if it was the decision of the committee once all materials have been reviewed.

A motion to continue the discussion to a later meeting was made by Councilor Shanahan and seconded by Councilor Matthews. Councilor Mathews recommended that the Chair meet with Diane Hachey in the meantime and cross reference Massachusetts General Laws with the town's regulations, and to review the cost analysis to be sure it is not in conflict with any regulations. The chair agreed, and suggested a brief meeting with Diane and Solicitor Lane to go over the information and come up with a package agreeable to all members. UNANIMOUSLY VOTED.

06-143 - Yard Sale Ordinance Review

The Chair reminded the Committee that discussion on this measure was also continued from the October 19, 2006 meeting. Councilor Shanahan provided a proposal, another was provided by Councilor Leary-- based on the City of Lawrence's ordinance, and the Chair provided one based on the Town of Braintree's. The Chair believes Braintree's can be eliminated since both others are tidier. She then asked Councilor Shanahan to speak to the proposal he provided.

Councilor Shanahan requested the last line of section B on his proposal be stricken "All signs, advertisements or flyers distributed in advance of a given sale shall be removed within 48 hours of said sale..."

Councilor Leary noted that he likes Councilor Shanahan's proposal with the exception of "no property except personal property owned by the resident of the location of the sale, and his/her family members residing at the location of the sale..." He noted that most yard sales are neighborhood efforts, and most yard sales, if the ordinance was written this way, would be illegal.

Councilor Whitaker addressed paragraph five of Councilor Shanahan's proposal for clarification. Councilor Shanahan recommended keeping the version, and the only change would be to the last sentence in the fifth paragraph, "all signs.....said sale...", keeping the 48-hours requirement.

He and Councilor Leary have discussed the proposed ordinance, and are in agreement. Councilor Leary read the change to the proposal for the members of the Committee- "No property except personal property owned by the resident of the location of the sale, family members or neighbors shall be sold. The sale of merchandise belonging to a business entity, new merchandise, or merchandise in bulk is prohibited under this section."

Councilor Mathews asked for a point of clarification; striking wording from Councilor Shanahan's proposed ordinance and replacing with wording proposed by Councilor Leary. The committee agreed that was the intent.

The Chair addressed the third paragraph from the bottom on page one of the proposed ordinance. Fees are recommended for \$5 to register with the town to hold a tag or yard sale by a nonprofit organization. The Chair recommended the fee be lowered to \$2. It is not intended to be a money maker, but without a cost, people are not apt to report. She also recommended at the end of the

paragraph including the addition of "A copy of the permit to be sent immediately to the police department. This is to ensure that if there is a complaint, there is a record of the permit, and it is a legitimate sale.

Councilor Smart made a motion to reduce the fee to \$2, and was seconded by Councilor Mathews.

Ms. Hackett addressed the committee and suggested that as a result of a review of the municipal code, the dollar amount for fees for new regulations or ordinances should not be included in the ordinance. Fee schedules can be maintained in a table and adjustments can be made to the table without having to redo the ordinance. Solicitor Lane agreed with the suggestion.

Solicitor Lane also suggested in the enforcement section, to also include "or other applicable civil or criminal enforcement" (section D of Councilor Shanahan's proposal).

The Chair reviewed the proposal by Councilor Shanahan; Councilor Whitaker suggested striking and rewriting. The definitions of "persons" "property" and "licensed non-profit organizations" are unclear. He recommended referring back to the Code of Ordinances to review definitions. He suggested defining the term "property" rather than "person to address." Councilor Whitaker feels that the language needs to be tightened.

Solicitor Lane was asked by the Chair to address these issues. He believes Councilor Whitaker brings up a good point. Under conditions of a sale, mixing and matching "persons" and "property" could result in several yard sales. With Councilor Leary's definition, it will essentially restrict the number of yard sales at particular premises. He recommends with terms and conditions, the shorter the better. Solicitor Lane is recommending definition of a yard sale, then definition of the conditions.

Councilor Whitaker proposed a 3 sentence substitution for sections A-C. The Chair noted there are now several documents before the Committee. She requested that Solicitor Lane take all suggestions into account and make a recommendation from them. He agreed.

The Chair thanked all for their help and she recommended that when the Committee convenes to address the earlier measure, they include finalization of this measure as well.

Councilor Mathews agreed there should be language included regarding licensed non-profit organizations. His definition of this would be under section 501-C-3 with a federal tax ID number. Also, under terms and conditions, he feels that provisions should be included to address the availability of the fee and paperwork filing to be completed on-line.

The Chair reminded the Committee that there is a motion on the table to vote the reduction from \$5 to \$2 for the fee, and the discussion should be limited to that. Councilor Mathews noted in light of what Ms. Hackett brought up, he withdraws his second on the motion.

Councilor Whitaker stated that they should not be voting a reduction of the fee when the ordinance has not been adopted. The Chair agreed; the motion is removed until a discussion with Solicitor Lane has taken place.

Solicitor Lane noted that not all civic organizations are 501-C-3. On the local level, this could be problematic with definitions.

Councilor Shanahan requested that Solicitor Lane provide the language that will prohibit abuse of the ordinance.

Councilor Whitaker defined “persons” from the code and noted if it is used in the ordinance, it will cover a wide range and correctly reflect the intent of the Committee. Focus should be on the property, and not the person.

Solicitor Lane will go through all of the information and come up with something the Committee can use.

The Chair summed up; the intent is to have some accountability. She thanked the members for their input and noted at the next meeting there should be a proposal to vote. A motion was made to continue measure 06-143 to the next meeting and was seconded by Councilor Shanahan. UNANIMOUSLY VOTED.

Councilor Whitaker noted that an earlier measure involved utility poles, and he provided the Committee with information on software available to them at no cost other than training. The Chair thanked him and noted it will be put on the agenda for the next meeting.

Adjournment

At 7:11 PM, there being no further business, a MOTION to adjourn was made by Councilor Mathews, and seconded by Councilor Smart. UNANIMOUSLY VOTED.

Approved by: _____
Susan Kay, Chairperson