

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
Town Hall Council Chambers
March 8, 2018, Thursday**

Present: Kenneth DiFazio, Chairman
Michael Smart, Vice Chairman
Rebecca Haugh, Councilor
Christopher Heffernan, Councilor

Absent: Arthur Mathews, Councilor

Also Present: Brian Connolly, Chief Financial Officer
Richard Swanson, Town Auditor
Joseph Callanan, Town Solicitor
Robert Luongo, Planning Director
Eric Schneider, Principal Planner
John MacLeod, Director, Asset Management
Dan McCormack, Director, Health Department
Owen McDonald, Traffic Engineer
Paul Williams, Substance Abuse and Prevention
Coordinator

Recording Secretary: Mary Barker

Chairman DiFazio called the meeting to order at 6:30 PM.

**17 106-Traffic Regulation Associated with Reconstruction of Middle St./Libbey
Industrial Intersection.**

This matter was referred to the Budget/Management Committee on November 13, 2018. The Ordinance Committee met and deliberated on January 29, 2018. A public hearing was held on February 5, 2018. Owen McDonald was invited to the table and he noted that there were no changes since the last meeting. Vice Chairman Smart stated that they've had two presentations and a public hearing and he is comfortable moving forward with the measure.

A Motion was made by Vice Chairman Smart to forward measure 17 106 to the full Town Council with a recommendation for favorable action and was seconded by Councilor Haugh. UNANIMOUSLY VOTED.

18 002-Measure Prohibiting Commercial Marijuana

This matter was referred to the Budget/Management Committee on January 16, 2018. Health Director Dan McCormack and Solicitor Callanan were invited to the table. Chairman DiFazio reported that since the last meeting, they have received the Planning Board's recommendation with their vote on February 28, 2018, 4/0 for favorable action.

They've also received a second letter from the Health Director, dated March 6, 2018, responding to some of the issues brought up by constituents at the public hearing. Director McCormack reported that the public hearing was not the time to start a debate, but that some of the inaccuracies needed to be addressed, so they put together a memo addressing the inaccuracies. Several spoke on potential revenue; 3% tax is an unknown. They don't know what revenue it will generate and there are costs associated with the enforcement, licensing, and regulating as well as the unknown health care costs associated with the use or abuse of the substance. The unknowns don't offset the 3% tax. There are also issues with accepting tax revenue from a business and depositing in a federally insured institute if the substance is prohibited by the federal government. Minimum age of purchasers is 21 years; alcohol is 21 and tobacco is 18-- but there are still going to be attempts at underage sales regardless of the minimum age requirement and the town's enforcement ability.

The scientific claim from a speaker that no one has died as a result of marijuana sales was debunked in a research study in Colorado. The number of impaired driving incidents and fatal accidents where drivers had THC, the active ingredient in marijuana, in their system also increased. Hospital reports indicated the number of emergency room visits and related health issues has increased. Another claim that alcohol use actually increased when the prohibition was put in place doesn't apply here. This is not a ban on the use; the ordinance specifically targets the sale of marijuana products. A ban acts the same as a moratorium; if we adopt and later see a potential benefit, we can change it.

Solicitor Callanan reported that estimates of revenue provided from sales are relying on revenue from medical versus recreational statistics; the estimated future revenue from a future business. They used facts from the past to predict the future. State DOR estimated revenue in MA-- but Weymouth's share is an unknown. There are options to regulating.

Chairman DiFazio noted if a ban is enacted, it could be reversed at some future point. Solicitor Callanan noted if they enact the moratorium it could only be through December 2018 per the Attorney General. By then, there should be state regulations in place. If they choose to reverse, a measure could be presented by the mayor; they would need to look at zoning to restrict it to an industrial area, sited away from establishments, and it can be regulated. The difficulty is in choosing regulations. Growing, testing, cultivation would all have to be regulated. The third way would be a citizen petition.

Vice Chairman Smart noted the process for medical marijuana and cultivators can only grow and supply for medical purposes. The state will begin licensing in the next several weeks, but July 1 is the first time that a grower could start building. The state won't see any revenue until facilities are built, licenses are issued, and products grown to distribute-- 18-24 months at best.

Director McCormack noted the additional component; an existing medical location potentially can be issued a license to provide both medical and recreational marijuana. There isn't a medical facility in Weymouth.

Vice Chairman Smart noted the public hearing went as he expected-fairly evenly divided. The biggest concern is the revenue, and won't be known for 18-24 months on what it will be for any town in the Commonwealth. A medical facility has to maintain a supply for its patients. 35% of a medical grower's product could go to commercial. It's extremely difficult to gauge the results based on other state's experiences. Director McCormack noted the CDC may have to exceed the guidelines, to extend the comment period, which is taking longer. It could be two years before the financial impact is known. Vice Chairman Smart said that a moratorium won't help if they don't have data to retrieve.

Solicitor Callanan reported there will be a lag and there is a small number of existing medical facilities that will be further along than any others. Director McCormack noted that the license process also is an unknown. July 1st doesn't look feasible. Vice Chairman Smart asked if there are limitations put on the growers by the state if they don't sell enough; and questions if it would affect the square footage they're allowed. It wouldn't happen right away. Solicitor Callanan would have to research.

Councilor Haugh stated the debate is whether it should be allowed. Anyone can go out and buy anywhere. Would the 3% revenue be treated like a meals tax, with a measure to adopt? Solicitor Callanan responded that there are two components; a host community agreement and a local excise surtax. He hasn't heard what other communities are going to do. For Weymouth to be competitive, it would have to be the only location. An HCA is also capped at 5 years, but a tax could be longer. If other communities are doing HCA and Weymouth is doing a surtax, they would be at a competitive disadvantage. Councilor Haugh asked what other towns are doing that don't have the option to ban (other than Rockland and Quincy). Braintree, and Hingham are considering a ban. Vice Chairman Smart reported which communities have voted. Solicitor Callanan responded that the Patriot Ledger had a recent article on it. If a community voted no, it could be decided by the executive branch; if there was a yes vote, it could be put to a ballot initiative.

Councilor Heffernan noted that the federal government prohibits the sale and the 3% revenue may be considered null and void. Director McCormack suggested there is an issue regarding depositing of funds earned in a prohibited activity, in an established federally insured institution.

Councilor Haugh asked if applicants could apply for licensing without specifying a location. Solicitor Callanan responded that if this weren't acted on before June 30, 2018 when the regulations are in place. The state regulations state it must comply with local regulations. Without a ban in place, there needs to be local regulations before the state licensing is open. Vice Chairman Smart asked what other towns are doing. Solicitor Callanan responded that the provision in the 2016 citizen petition initiative, would be allowed in the least desirable site in town.

Paul Williams, Substance Abuse Prevention Coordinator, noted that the town did vote "no". Families are struggling with substance abuse. While in the midst of a crisis, the overall rates are steadily declining. When Colorado legalized, there was a sharp increase.

He would hate to see the hard work they are doing undone at the promise of what is very nebulous money.

Chairman DiFazio summarized the measure; it was referred January 16, 2018. It was published on February 7th and 14th , and a joint public hearing with the Planning Board was held on February 20, 2018. The committee deliberated the measure on January 29, 2018 and again on March 8, 2018. The Planning Board has provided their recommendation. Vice Chairman Smart reminded the committee that the measure seeks to ban; a “yes” vote is in favor of a prohibition; a “no” vote is not in favor.

A Motion was made by Vice President Smart to measure 18 002 to the full Town Council with a recommendation for favorable action and was seconded by Councilor Haugh. Councilor Haugh expressed her appreciation with all of the comments. She is not comfortable allowing it unless there is something in writing that protects the neighborhoods. She would like to see further study. UNANIMOUSLY VOTED.

A Motion was made by Vice President Smart to take measure 17 127 out of order and was seconded by Councilor Haugh. UNANIMOUSLY VOTED.

17 127-Zoning Amendment to Create a Commercial Corridor Overlay District

This matter was referred to the Budget/Management Committee on December 4, 2017. Planning Director Robert Luongo and Principal Planner Schneider were invited to the table. Mr. Schneider reported that the redline version is the same as what was presented at the last Town Council meeting. He reviewed the changes, which includes very few substantive ones from the original filed measure. He reviewed by page:

- Page1 - no changes (lays out the purpose / intent of the overlay)
- Page2 - minor language (added description of the Route 3A corridor)
- Page3 - strike section C (residential only proposals); They met with Councilor Mathew’s constituent on Washington St. and added language to protect them: 120.25 16b- compatibility - when commercial sited next to existing residential, look at what type of commercial use. Beefed up the suitability of the specific considerations. They will need to look at a mix of residential and commercial.

Chairman DiFazio had a question on additional criteria. In the Landing- commercial and residential- they don’t know what commercial use is going in there. Without knowing, it’s hard to put criteria in that might stop a project from moving forward. Mr. Schneider responded that they will have to work with their counterparts in licensing. It’s possible for BZA to use this criteria.

Chairman DiFazio asked how to stop a proposal if the abutting and area residents are in opposition. How will they stop a proposal of 170 units above 5 stores if all came before the BZA and is it possible to stop? Mr. Schneider responded that they don’t think 170 is realistic in terms of size, parking, FAR, etc. but it would be like any other project; the proponent would have to submit plans. Controls are in place. Mr. Luongo reminded the committee that any of these proposals would require a special permit. It

was noted that the District Councilor is notified. BZA typically listens to them and the traffic engineer. A pre-meeting is held with a developer before submitting an application to vet issues before an application is filed. It was successful at Columbian Street and Park Avenue West. There are no guarantees, but it isn't as of right; with 30 residents and a Councilor backing the board would listen. A developer will automatically come in with the highest number they can to maximize profits, but they don't have to accept it. There are setback and other requirements. Chairman DiFazio suggested they could address this by putting in local density in section E; this gives the Councilor another tool to address impact on an area. Mr. Luongo responded that additional criteria to give some comfort would be wanted; that the town will address impacts. They can embed alternate language that makes the BZA take notice. He offered to add to the language. Mr. Schneider noted that section A under this section can be interpreted however the board chooses to use it. It's vague, but in a good way in that it provides guidance for the BZA:

- Page 4- reference back to dimensional requirements in definitions. Setbacks are the same since the first discussion. Additional requirements added for abutting residential use (change wording from "zone" to "use"). Concern by neighbors – so that a buffer becomes an actual buffer for protection and not a token with no protection. Require a landscape plan to be submitted, and expressly stating the intent of the screen is to provide screening.
- Page 6- in a discussion with constituents, they were concerned that any buffer that might impede fire department access is not needed. Required they put it where it won't impede emergency access, but keep as a requirement. Add "commuter rail station" in definitions.
- Page 7- no changes.
- Page 8- Planning Department thought reducing some requirements by 10% didn't make sense and Chairman DiFazio had suggested that it would encourage proponents add 10% to every proposal, so it was stricken.
- Page 9- in response to a concern by Councilor Mathews regarding inhibiting use of living space above a garage; limit on garage heights only applies to single-story detached garages.
- Page 11- section 15- in response to a conversation with this committee. Councilor Mathews was concerned with lot coverage restrictions. They do need to do more to control impervious surfaces in town. It's a great idea, but cumbersome to the Building Department and homeowner. They don't want a simple asphalt project to be subjected to an expensive survey. They will look at another way to deal with regulating the impervious surfaces on a property.

Chairman DiFazio asked for confirmation that the Planning Board hasn't voted the measure yet. Mr. Schneider responded that they plan to deliberate at their next meeting. Chairman DiFazio will convene the Ordinance Committee after the Planning Board has voted.

Councilor Haugh asked if a mixed-use development will be assessed and taxed at the commercial rate? Mr. Schneider responded yes.

Director Luongo asked that they add that all landscaped areas should be irrigated (for the owners to maintain). Vice Chairman Smart noted that they need to have more controls/enforcements to require commercial owners maintain their landscaped areas.

18 011-Reorganization Plan Establishing the Department of Asset Management

This matter was referred to the Budget/Management Committee on February 20, 2018. Chief of Staff Langill and Solicitor Callanan were invited to the table. Mr. Langill provided a brief overview—noting that the Town Council passed the FY18 operating budget which included a budget for the Department of Asset Management. When the Council approved it, it was with the promise that administration would come back with a measure to create that department through the ordinances. Since then, the school department's Director of Maintenance left. Conversations were held with the school department about consolidating the schools and town under Central Maintenance as allowed under the charter. It is a work in process. After feedback from the Council, a second measure was filed. It reflects the intent from the Mayor. They are very proud of the increased cooperation and collaboration with the schools. Budget processes have improved, and there is more collaboration on human resource and IT areas and Central Maintenance. The department will fall under the Mayor and the Superintendent of Schools. The town and school departments currently have maintenance departments without directors. This proposes to take maintenance and put it in Asset Management. This new department would have a director with a deputy focused on schools and two categories- Buildings and Grounds, and Custodial Services. They've seen the benefits of this over the last two years. There are areas that will have considerable benefit, particularly oversight. There have been failures as a result of a lack of oversight that have cost the town. The school department currently allows Mr. MacLeod to assist and as a result there were quicker results on or under budget. On the town side, new work order software is in place to track the flow of maintenance items. An inventory has begun. They hope to add the schools to this.

Vice Chairman Smart asked if this included everything, including preventive maintenance or is it to track items that come up. Mr. Langill responded that it's both. It will not be a small effort to add the schools. It will help the town in the long run and provide a cost savings. Mr. Langill responded that they hope to utilize it for many things. When it comes to budgeting and prioritizing, it helps to eliminate the town vs. schools concept and will provide a better atmosphere. A benefit of the consolidation will reduce costs by economy of scale in procuring goods and services. He provided some examples of how the cooperation is working. It can be tweaked as needed, but it was shown in the Parks and Recreation improvement program which included the school fields; Council Chambers upgrades were completed with combined town and school labor; emergency issues also- asbestos tiles abatement in the school administration building and the expansion joint failures/floods at the high school. The hope is to prevent things like this in the future. Adding the oversight will help. It won't show a significant salary savings, but with better oversight it will save. They can't always get to a good collaboration but it is working with maintenance. The school department is on board, and the superintendent has provided a memo supporting the move.

Chairman DiFazio suggested that it's easy to see what the advantages could be, but he noted the negatives. The way it was proposed was unacceptable to Councilor Hackett. Under section 5-1 of the charter, all departments can only be changed by charter reform. Her second point was the tie between this and the municipal finance department. Mr. Langill responded that the original proposal included the finance part but when it was revised it was done so that it doesn't deal with the procurement piece, which will remain in Municipal Finance.

Solicitor Callanan responded that procurement is under Municipal Finance and Asset Management, a "dotted line" solution. It satisfies the state requirements, the Town Auditor's concerns and the charter. Councilor Hackett expressed her concerns with that solution and that the revised measure keeps procurement in the finance department. Her other concern was that it was presented as an ordinance change rather than a reorganization plan. He noted that what was originally proposed was not in violation of the charter and was done in deference to the Council. A reorganizational plan is subject to time constraints, an ordinance change is not. A reorganization plan cannot be amended while an ordinance change may. Any allegation of illegalities or violation of the charter is wrong. The charter was written in 1999 and it doesn't say a centralized maintenance plan will be created by reorganization, but by ordinance.

Councilor Heffernan asked if this will be left out of a future charter reform plan. Solicitor Callanan responded that it would be included, but a charter reform is a difficult process. They are trying to balance what is in the charter with good financial practice and what the state is expecting.

Chairman DiFazio asked about the job descriptions. The School Committee approved the two descriptions. The chairman noted the Council has until April 13 to vote this.

Councilor Haugh asked about the staffing. This appears to be a reorganization of staff, filled by existing staff. Mr. Langill responded that the two supervisor positions are new and there is no direct reports. Councilor Haugh asked if these positions are filled.

Vice Chairman Smart asked if all positions are budgeted on the school side? Mr. Langill responded that the Asset Management director and deputy director are paid from the town budget; supervisors on the school budget. Vice Chairman Smart noted that most of the long-time Councilors have been waiting for this and he is pleased it is finally before them. He expected there would be more cost savings by saving on duplications.

Mr. Langill responded that it won't show a significant savings right away. The move eliminates a part-time position but there is minimal savings on personnel costs. The benefit is the savings in consolidation of purchasing, oversight and preventing waste. Vice Chairman Smart responded that he was expecting more savings but hopefully it will show in efficiencies.

Chairman DiFazio asked why it was not done in the past; was collective bargaining a hurdle? Solicitor Callanan responded that they needed to get the unions on board. There is no need to make any union changes-it is a different mindset, one of cooperation and an increased level of trust. Solicitor Callanan responded that there is no change in current working conditions; just supervisory.

Vice Chairman Smart asked where the specific difference is outlined in the new measure from 17 128? Solicitor Callanan responded that it was the two components. The original measure had procurement in it. He will provide a red-line measure. The public hearing is scheduled for March 19, 2018, and it must be voted before April 13, 2018.

18 012-Acceptance of G.L. Ch.71 §37M-Consolidation of Administrative Functions

Solicitor Callanan explained that this measure is part of the process. It is to adopt the state statute that allows the authority to make the change. They sought school committee approval; they are now seeking approval from the Town Council. They made similar progress with IT, legal outside counsel and now maintenance departments.

Chairman DiFazio asked if they would vote both measures together-noting that the reorganizational measure requires a public hearing. Vice Chairman Smart asked if this will happen automatically if they didn't accept this? Does local preside over state regulation? Solicitor Callanan cited state statute; upon acceptance by the town, it allows them to consolidate school and town functions. They need to do both. He suggested they do this first when they vote at Town Council. This one allows state law authority. The charter prevails when state law is inconsistent with the charter. Vice Chairman Smart asked if they should add sections such as this when the next charter review takes place? It's a housekeeping matter. Solicitor Callanan recommended when the need arises, they adopt the state statute.

Chairman DiFazio requested the job descriptions for the two new positions. Councilor Haugh asked if the School Committee approved the original measure, do they need to approve the revised one? Solicitor Callanan responded that what school committee voted on was different.

Issue-Charter Section 8-13 (Enforcement of Charter Provisions)/Charter Compliance Concerns

Chairman DiFazio reported that the measure was referred to the Ordinance Committee on February 5, 2018 and was initiated at the request of a Town Councilor. Chairman DiFazio outlined the list of concerns:

- Allotment schedule of the appropriations of all personnel categories included in the budget, indicating the amounts to be expended by the department are to be submitted to the Chief Financial Officer, with a copy to the Town Clerk on or before August 1st of each year.

Chairman DiFazio noted that the Councilor is alleging that did not take place.

Mr. Langill responded that he is correct but that there is more to it. This has not been done since at least the year before this administration was installed, and for a couple of reasons. What the provision requests is that the administration take salaries, divide by four, and monitor against the actuals every quarter and report if something appears over budget. Mr. Langill reported that the current staff does this monthly. Each department receives a year-to-date monthly. He and the CFO receive and review all departments monthly and it includes not only salaries, but all expenses. The reporting is different. The Town Auditor has access to these and usually generates his own monthly reports. The Auditor and CFO have been meeting the last several months looking at changes to the fiscal policy and are in agreement that this should be eliminated, but it's a charter change which is a huge effort. They will recommend eliminating this in charter review. Administration is more than meeting the general requirement by reviewing monthly. If they need to add to the process, such as a submittal to the Town Clerk, they can, as a way of amending the process.

Chairman DiFazio asked if they provide a copy to the Town Clerk on a monthly basis. Mr. Langill responded no; but the written report is available to anyone upon request. Chairman DiFazio responded that the Councilor is partially correct then; the review is being done but not submitted to the Town Clerk. Vice Chairman Smart stated that the charter is the minimum; another administration may not adopt the current practice. Honestly, if a particular department is struggling, three months is too long to wait. Mr. Langill responded that is why they perform a monthly check. Vice Chairman Smart also noted that if anyone wanted to make a charter change, they don't need to wait for the charter review, but they are required to meet the charter provisions, at a minimum.

Mr. Langill noted that when they did the Community Compact with the state, one of the items they chose to focus on was a fiscal policy review and they were given six or seven suggestions that they are also investigating. They will bundle all together and present after the review is complete.

Councilor Haugh noted that a resident went to the Town Clerk's office and was told the last quarterly report was filed December 15th of Mayor's Kay's last year in office and the concern was the accessibility of the reports. Mr. Langill responded that no quarterly reports were filed in FY16 either. Councilor Haugh responded that it was reported to her that the Town Clerk has them. Mr. Langill responded when they asked for them they weren't given.

Chairman DiFazio resumed with the Councilor's second concern:

- Pursuant to section 8-14 of the Charter, Annual Report of the Town- basically indicates that the FY17 annual report was due to be published by September 28, 2017 and an email and letter to the Mayor by November 14, 2017 informed him of this issue; to date, no annual report has been generated.

Mr. Langill responded that this is correct. It has been late the last two years. Each department composes a draft and he must review each one and he has been late. There was a PDF version uploaded to the website and available sooner than the printed version.

Solicitor Callanan responded that he owns part of the responsibility as his was the last department to submit its report, due to heavy workload. Vice Chairman Smart suggested that everyone make a more concerted effort going forward to get the report published on time and avoid further issues.

Chairman DiFazio continued, with the third issue:

- Pursuant to 2-10 of the charter-Appointment of Department heads. The Mayor shall submit to the Town Council for approval the name of appointed department heads.

The position of Director of Asset Management was established and operative as of July 1, 2017 without the Town Council's authorization. Mr. Langill responded that the FY18 budget unanimously approved by the Town Council included a separate department, Asset Management. The understanding was that a subsequent measure would be filed later. It was made clear and they gave notice in the budget that this was their plan. Chairman DiFazio noted that the Councilor's assertion was correct; the position went into effect before it was voted. It still hasn't been voted, but notice was given in the budget. Mr. Langill agreed and stated it was a timing issue and then didn't happen as quickly because originally they were trying to automate and when the Director of Maintenance on the school side left, efforts reached there as well. They filed a measure that wasn't agreeable to all and was exchanged. It was a constant process that everyone was aware of.

Chairman DiFazio reported that he will provide the responses given here to the Councilor who brought the concerns forward and if there are more questions, they will be addressed in the Ordinance Committee.

Solicitor Callanan noted that it was a multi-step process. If the measures currently before the Council are passed, then a subsequent one will be filed asking for the appointment of John MacLeod as director. He noted that he was not appointed to his position until several weeks after he started working. He wouldn't consider it a charter violation, but a step in the process. Chairman DiFazio noted that he will ask the Councilor to come before them at their next meeting to review the information and wrap up to report out to the Town Council.

ADJOURNMENT

At 8:39 PM, there being no further business, a MOTION was made by Councilor Smart to adjourn and was seconded by Councilor Haugh. UNANIMOUSLY VOTED.

Respectfully submitted by Mary Barker as Recording Secretary

Approved by Councilor Kenneth DiFazio as Ordinance Chairperson
Voted unanimously on 17 April 2018