



ORDINANCE REVIEW COMMITTEE

Members

*Councilor John Thorpe, Chair
Megan Paik, Citizen, Vice-Chair
Councilor Marianne LaBarge
Councilor Jim Nash
Jeff Napolitano, Citizen*

MEETING MINUTES

Date: March 23, 2021, Time: 5 p.m.

Virtual Meeting

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:01 p.m., Councilor Thorpe called the meeting to order. On a roll call, the following members were present: Councilor John Thorpe, Councilor James Nash, Councilor Marianne LaBarge and Member Megan Paik. Member Jeff Napolitano was absent. Also present were City Solicitor Alan Seewald and Administrative Assistant Laura Krutzler.
2. **ANNOUNCEMENT OF AUDIO/VIDEO RECORDING**
Councilor Thorpe announced that the meeting was being audio/video recorded.
3. **PUBLIC COMMENT**
There being no members of the public present, there was no public comment.
4. **APPROVAL OF MINUTES OF FEBRUARY 22, 2021**
Councilor LaBarge moved to approve the minutes of February 22, 2021. Councilor Nash seconded.

Member Paik corrected the spelling of Jackie Ballance's last name. Councilor Nash clarified that when he cited the percentage of residents who are renters, he was referring specifically to Northampton.

The motion passed unanimously 4:0 by roll call vote with Member Napolitano absent.
5. **FINAL DISPOSITION OF TOPICS ALREADY REVIEWED**
 - ❖ Jackie Ballance Proposals for 'Fit' Test for Equity, Environment and Economy and to Cap the Size of New Single-Family Homes
 - ❖ Councilor Nash Report/Recommendation on Matters Referred to Planning Board
 - ❖ Bucket No. 1 – Housekeeping Changes
 - ❖ Ordinances Reviewed for Impact on Marginalized Communities

Mrs. Krutzler screen-shared a document entitled "How Can the Existing 'Fit' Ordinance Help to Address New Housing Construction Justice Issues?" forwarded as an attachment to an email from Jackie Ballance dated February 7, 2021. (See attachment)

This proposal was related to the two-family by-right package of ordinances which has already gone through City Council, Councilor Nash reminded. The idea of a cap was brought up during deliberations by him at around 12:30 p.m. Councilors did amend the ordinance to require that second structures over 1,800 s.f. be allowed by special permit only. Rather than a cap, the idea of creating more oversight was added, he advised.

At five after 1 a.m., Councilor Maire came forward with an amendment to trigger the requirement for a special permit for second single-family homes on a lot over 1,800 s.f., Councilor LaBarge elaborated. It made a significant difference for that second house.

Office of Planning and Sustainability Director Wayne Feiden and Attorney Seewald also spoke to this proposal at an earlier Ordinance Review Committee meeting, Councilor Thorpe added.

Attorney Seewald expressed his understanding that the proposal for a 'Fit' test was later withdrawn by Jackie herself. He suggested noting that it was withdrawn and replaced with a proposal to cap the size of single-family homes and that he subsequently advised the committee that capping the size of single-family homes is not permissible under state law.

Members agreed not to recommend the changes. Councilor Nash moved to include the proposals in the list of items not recommended. Councilor LaBarge seconded. The motion passed 4:0 by roll call vote with Member Napolitano absent.

Member Paik said she wanted to acknowledge Ms. Ballance's concern that the scale of housing does have an environmental impact, since it is a very legitimate concern. She also would like to recognize Ms. Ballance's contribution to their work as part of the narrative. Attorney Seewald said he thought it was appropriate to also mention her attempt to address the high acquisition cost of property. Members indicated their approval.

❖ Councilor Nash Report/Recommendation on Matters Referred to Planning Board

Councilor Nash screen-shared a report on his discussion with the Planning Board. He reiterated his recommendation that both items (§350-3.5 - expanded notification for zoning map changes and §312-51- towing of vehicles impeding snow removal operations) be referred for further study. He and Councilor Sciarra will take the lead on the first topic and he and Councilor Foster will take the lead on the second, he indicated.

He would like to pursue calling upon the executive branch to provide some sort of courtesy notification to occupants in addition to owners of properties affected by rezoning, Councilor Nash added. He heard from both Attorney Seewald and from the attorney on the Planning Board, Marissa Elkins, that legally requiring notification of tenants through an ordinance is inadvisable.

He is recommending the same disposition for the commercial buffer zone proposal; i.e. - putting it on Exhibit C, the list of topics recommended for further study. He and Councilor Jarrett will be following up on

this with Assistant OPS Director Carolyn Misch. It may require a change to the general ordinance since that is where this provision is found.

Councilor Nash moved to move all three as a group to further study. Councilor LaBarge seconded. The motion passed 4:0 by roll call vote with Member Napolitano absent.

❖ **Bucket No. 1 – Housekeeping Changes**

Ms. Krutzler screen-shared the spreadsheet.

Attorney Seewald said it seemed to him that he could attach the spreadsheet to the final report in its present form without converting it to another format. He asked if the committee would be in agreement with this, and members said yes.

Attorney Seewald said he would like to add a note to the recommendation to correct the inconsistency between §312-99B(2) and §312-27F (to make both 12 feet). The DPW Director says that applying this strictly would prohibit parking in many places, particularly in Councilor Nash's district and in older parts of the city, because the roads there are narrow. It might be problematic. He asked if he could add something to that effect as a note or add this to items for further study. He doesn't have a solution to the problem.

His recommendation would be to make it consistent but also to recommend it for further study so the council would be aware it is problematic for certain parts of the city, Attorney Seewald said. The fact is, police don't really enforce this, particularly in Ward 3 and Ward 4.

Councilor Nash said he agreed with the idea of putting it on Exhibit C.

DPW Director LaScaleia will tell you she has the prerogative to determine this on a case-by-case basis, Councilor Nash added. The amount of traffic flow determines whether enforcement is necessary. Twelve feet of clearance is necessary for getting a firetruck through, but if there are only 20 cars per day on a particular road, it's more than enough as long as there is room for cars to jockey and get out of the way to let a firetruck through. Fred Zimnoch points to Phillips Place where they have cars parked on both sides of the street and there's no way for a firetruck to get through. The DPW wants to be able to make a judgment call on this.

A cynical person could say the easy answer is to reduce the parking spaces and make some of the street 'No Parking,' Attorney Seewald observed. However, this impacts a lot of the people they're trying to protect. That's the reason he would want to send it for further study.

Councilor Nash agreed he's not into eliminating parking.

Councilor Nash moved to move the change to §312-99B to Exhibit C. Councilor LaBarge seconded. The motion passed 4:0 by roll call vote with Member Napolitano absent.

❖ **Ordinances Reviewed for Impact on Marginalized Communities**

Ms. Krutzler said she updated the spreadsheet to include Jackie Balance's two ordinance proposals and to add a chapter reference (§312-25) for the commercial buffer zone provision.

She questioned whether she should remove the following note: **“Building Inspector opinion obtained that §312-25 can be enforced in any zoning district where there are residences, so new ordinance is not needed.”**

Attorney Seewald said his conversation with Building Commissioner Jonathan Flagg was that, since this is not a zoning ordinance, the building inspector doesn't enforce it, the police do. The note should be removed, Councilor Nash confirmed.

The spreadsheet should be updated to remove §312-25 and move it to Exhibit C, since it was referred for further study, members directed.

Ms. Krutzler said there had been no other changes to the spreadsheet since the last meeting.

6. FURTHER DISCUSSION OF FINAL REPORT

- ❖ **First Draft – Ordinance Review Committee Report**
- ❖ **Exhibit A**
- ❖ **Subjects Recommended for Study**

Members reviewed the summary report (2020 Report of the Special Committee for Review of Ordinances, Summary of Recommendations) with changes proposed by Attorney Seewald and Member Paik. The document was distributed to members by Member Paik prior to the meeting.

Councilor Nash said he thought Member Paik's changes and Attorney Seewald's draft were both fine.

Members discussed some of the terms used. Councilor Nash said he considered substituting the term 'attainable' housing for the term "market-rate affordable housing" since this is a term increasingly used by planners. However, after looking into it, he learned that 'attainable' housing refers to housing affordable to people earning 80% to 120% of the area median income (AMI). Since the definition of attainable is not well-understood, he is comfortable sticking with the language proposed by Member Paik, i.e. - market-rate affordable.

Attorney Seewald wondered if the word 'affordable' should be inserted after the word 'subsidized' so that the text reads "the creation of both market-rate affordable and subsidized **affordable** housing." Members approved that change. Member Paik proposed inserting the word 'affordable' before market-rate too.

Members discussed whether it was necessary to define the term 'fair housing'

Councilor Nash read the definition to fair housing on Wikipedia as follows: the right to choose housing free from unlawful discrimination.

Member Paik suggested adding a footnote with a reference to the Fair Housing Act. Members agreed the addition of a footnote would be appropriate.

Councilor Nash read the following from the HUD page: "The Fair Housing Act protects people from discrimination when they are renting, buying a home, getting a mortgage, seeking housing assistance or

engaging in other housing-related activities. Additional protections apply to federally-assisted housing." He said he would send the link to Attorney Seewald.

Another reason to use the broader term 'fair housing' is that they hit upon this concept in many different ways during the course of their discussions, Councilor Nash said. For example, they talked about creating a folder so folks who rent have access to information about their rights as tenants.

Attorney Seewald said he would craft something to make clear that the term 'fair housing' refers not only to the interests protected under the Fair Housing Act but to the interests of fairness in a broader sense.

In other changes, members accepted Member Paik's addition of the phrase, "in full partnership with their advisory boards and committees," and her suggestion of deleting the words 'longstanding history' from the sentence beginning "reversing the longstanding history of ongoing marginalization."

❖ Exhibit A

Members reviewed the highlighted changes to Exhibit A.

Member Paik wondered if they could add the requirement that a list of financial and legal resources be provided upon service of a foreclosure notice or Notice to Quit to topics for further study. There is real time sensitivity to this topic with the eviction moratorium ending this month. According to the minutes, when Northampton Housing Partnership (NHP) members visited in November, Keith Benoit mentioned that two NHP members were already working on a list of resources. It might very well be available now to distribute.

What she is suggesting be put into further study is not an ordinance but would be part of the process of building an ordinance, Attorney Seewald pointed out. What they might do is express some urgency that the city council take this up, he suggested. He put the topics in chronological order, but they could move it up and state that this is something that may become urgent very quickly and encourage the city council to take it up as soon as possible.

Member Paik said she thinks making the information available and obligating landlords to provide the information could be two separate issues. If the information exists, it just requires some entity to pull it together and disseminate it broadly. If the ordinance comes to pass, landlords will have to provide this with a notice to quit. She doesn't want to hold up compiling the information and making it available since the legislative process to pass an ordinance could take six months to a year, she explained.

Attorney Seewald suggested a footnote indicating that this information is being compiled by the NHP and that, even in advance of an ordinance, it ought to be made available by the city. This is an executive action, not an ordinance recommendation, he clarified.

Member Paik expressed the opinion that it is appropriate for subjects for further study.

However, if the city council is going to study it, it's going to be referred to a committee, Attorney Seewald noted. That's not built for speed. If they're looking for something built for speed, they are looking for the executive branch to take immediate action, and he wouldn't put it on the study list. "That's the slow boat," he advised. He is not disagreeing, he is just trying to strategize the best way to get this on somebody's agenda now.

If the Human Rights Commission had this information today, it would be on the website and they would write an op ed about it, Member Paik said. It is a matter of great urgency. She is in favor of however the city can assist with this.

Attorney Seewald asked the committee's wishes.

Members agreed to leave the text as shown in the draft.

Member Paik raised the question of whether it was actually Carmen Junno who proposed the idea of charging rental agency fees to landlords instead of tenants. This is not reflected in the minutes of the meeting, she noted. Attorney Seewald expressed his recollection that somebody brought it up. Ms. Krutzler said she thought it might have been suggested by Carmen Junno but omitted from the minutes. She offered to check the tape to see who proposed it.

Member Paik suggested also referring this for further study. An article in the Gazette said that Mayor Narkewicz was supportive of it and was in favor of exploring a home rule petition to allow it. She asked if other members supported referring it to further study, and Councilor Thorpe said he did.

Member decided to omit the second part of a sentence under paragraph 4, "Northampton lacks a housing department to handle the administrative complaint process and enforcement," because Attorney Seewald said it is not an accurate statement.

Members accepted Member Paik's other changes to Exhibit A.

RECOMMENDATION TO CONDUCT CHARTER REVIEW AT MORE FREQUENT INTERVALS

Member Paik said she had one more recommendation, possible changes to the ordinance creating the periodic review of ordinances committee. (Code of the City of Northampton §1-15.1 Special Committee for Review of Ordinances)

Nothing's been written, but she is considering possible changes to the composition of the committee and clarification of the focus of its review. The policing review commission went through this as well. They were given this broad mandate and struggled with getting a consensus on why they were there and how they were going to do their work. Given that these commissions exist for only six months, it would be helpful to know from the start what they are expected to study. They could have started out their work knowing they were going to focus on certain categories of ordinances.

She thinks they should review how the committees are created, the ratio of elected to non-elected participants, whether there should be a gender balance or not and whether they should have more specific clarity of purpose, whether given to them by the council president or the mayor.

Member Paik said she didn't see a lot of enthusiasm for that one.

The charter requires a review of ordinances every 10 years and they have increased it to every five years by ordinance, Attorney Seewald advised. He thinks it was the specific intention to let the committee itself determine what was important to review at the time the review was being conducted. For instance, when the charter was first adopted, reviewers needed to reconcile the ordinance to the new charter. He doesn't

think anybody could have anticipated in 2012 that, in 2020, this would be their topic. He thinks there is a lot of value in allowing the committee itself to determine what its focus will be knowing that there has to be a focus since they can't look at all the ordinances. If he were to say they should review a document or set of documents more frequently, it might be the charter because the charter affects more than the ordinances in some ways. The ability of the council to pass ordinances is somewhat limited and he detects some frustration on the part of councilors about how limited the council is in effecting change through ordinances. He is happy to work with the committee every year to review ordinances if that is their pleasure, he confirmed.

He is being compensated for it, Member Paik pointed out.

It is his job, Attorney Seewald acknowledged.

It is not the job of community members at all, Member Paik commented. As one such community member, she wonders how they can make this a more meaningful, valuable experience for them. How do we allow them to more meaningfully contribute? She asked. If it is through something like charter review, then she'd like to recommend that.

Charter review is now done in years ending in 9 and ordinances in years ending in zero under the charter, Attorney Seewald noted.

They may not have mayoral administrations that last 10 years every time, Member Paik observed. She would like to propose that recommendation. If he wouldn't mind drafting something like that, maybe they could look at it next week.

Attorney Seewald said he wasn't sure what he is drafting.

She is proposing a recommendation to make charter review more frequent, Member Paik clarified. She knows they are at the penultimate meeting, but they did decide in the beginning that they were going to entertain proposals from everyone, including members themselves, Member Paik reminded.

He doesn't have a problem with that, Attorney Seewald confirmed.

They've discovered that so much of what ordinances can't do is possible through other sorts of government action, be it executive action or otherwise, Member Paik explained. She feels like it is logical that they consider how they can help solve the problems.

Chapter 9 of the code contains the ordinance creating the Charter Review Committee, Attorney Seewald said. He read the text as follows:

The special committee shall be comprised of nine members who shall be appointed for a term commencing no earlier than January 1 and no later than July 1 in a year ending in a nine. One member shall be a member of the City Council appointed by the Council President. One member shall be an employee of the executive branch of the City appointed by the Mayor. Seven members shall be citizens of the City, one from each ward, appointed by the Mayor in consultation with the ward councilor with the confirmation of the City Council in accordance with Section 2-10 of the City Charter. All members of the special committee shall be registered voters in the City. The special committee shall be overseen by the City Solicitor.

The committee shall convene no later than 30 days after its appointment and hold meetings as necessary, he added.

Member Paik said she would like to recommend that they visit charter review more frequently than every 10 years.

Councilor Thorpe asked if this was something Member Paik wanted to propose in writing and give to Attorney Seewald for discussion at the next meeting.

The only problem is, he doesn't know how to incorporate this into the report if they haven't decided whether or not to do this, Attorney Seewald said.

Member Paik moved to approve a recommendation to consider establishing a charter review committee more frequently than every 10 years.

The current ordinance for the ordinance review committee calls for review in years ending in 5 and zero and the ordinance for the charter review committee calls for review in years ending in 9, Attorney Seewald reiterated. He asked if Member Paik's proposal would be to increase the interval for charter review to years ending in 4 and years ending in 9.

Member Paik suggested instead tying it to the four-year mayoral term.

Attorney Seewald noted that charter changes proposed in 2019 are still wending their way through the legislature, which is another lengthy process. Also, it is possible for the interval of the mayor's term to change if a mayor leaves in the middle of a term, so it is difficult to tie it to the mayor's term.

Member Paik suggested not being specific as to intervals.

Attorney Seewald asked if she is recommending it for further study. . .

Member Paik said she thought it could be put on Exhibit A because it is an existing ordinance but agreed it was appropriate for topics for further study. Councilor LaBarge and Councilor Thorpe said they believe that is where it belongs.

Member Paik moved to send the idea to review increasing the frequency of charter review under Chapter 9 of the ordinances to topics for further study. Councilor Nash seconded.

Councilor Nash said he thinks this is an interesting idea. He asked Member Paik what she felt they would be able to address in their deliberations if charter review happened more frequently. A lot of things are out of the city council's control because they lie in the authority of the executive branch, he observed. As she was speaking, he was thinking how important it is to pick a good mayor since the mayor has such broad powers to create departments, set policy, hire staff, etc. The council's job is basically to keep an eye on what the executive is up to, he suggested. They have a system where the mayor has incredible power. He is not sure charter review would change that unless they went to a weak mayor system. He asked the city solicitor if they could do that.

They could do whatever the city council and mayor agree to submit to the legislature, Attorney Seewald confirmed. There are other processes for changing the charter other than a special act, he noted. Special acts are very, very cumbersome. They could change their form of government, he acknowledged.

However, outside of ordinances, there is a lot of authority for the city council because every one of those departments has to be approved by the city council, he pointed out. Also, all department heads the mayor proposes have to be approved by the council, and the council can say no. Finally, the budget is a huge, huge hammer that the council holds and they saw that last year with the cuts to the police department. The greatest power of the city council is the budget; that's where the authority lies, he asserted. They could change the form of government, but the idea in this day and age to go back to the old form of charters that have not worked in so many communities with essentially ten chief executives – the mayor and the city council - is just untenable. Modern charters being passed are strong mayoral forms of government, he stressed. He doesn't want them to take this narrow slice – ordinances - and think this is all the authority the city council has. It is far from the only authority the city council has; it has all the money authority.

Councilor LaBarge referred to the former charter review committee where a big issue was the term limits of city councilors.

A charter change could be proposed any time, Attorney Seewald pointed out. He is not opposed to charter review, but they do not need a charter review committee to propose charter amendments, he emphasized. They just need a city council with five votes and the mayor to sign onto it.

Member Paik said she thinks it is more powerful to have this recommended by a citizen commission. The charter review committee is basically non-elected residents proposing things to the city council. She thinks it's great for increasing participation.

It sounds like there is support for this being one of their topics for further study, she commented. The motion was called to a vote, and it passed 4:0 with Member Napolitano absent.

❖ **Subjects recommended for study**

The only thing on this list now is the general sign ordinance and the items referred to the list tonight, Councilor Thorpe noted.

Attorney Seewald asked if Ms. Krutzler would just be adding these to the spreadsheet or if members also wanted it to be in narrative form?

Member Paik said she would prefer it to be in narrative form. The consensus was to make it a narrative.

Councilor Thorpe recognized Councilor Maiore, who was present in the Zoom meeting.

Councilor Maiore said she just wanted to sit in. She thanked members for their work, saying she is really excited this is happening in their council term since they are talking about equity issues.

7. ADJOURN

Member Paik moved to adjourn. Councilor LaBarge seconded. The motion passed unanimously 4:0 by roll call vote with Member Napolitano absent. The meeting was adjourned at 6:49 p.m.

Respectfully submitted,

Laura Krutzler, Administrative Assistant
Northampton City Council