



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 29, 2021, Time: 5:30 p.m.

Virtual Meeting

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:31 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, Member Jeff Napolitano and Member Megan Paik. 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 MARCH 15, 2021 AND MARCH 23, 2021**
The minutes could not be approved because they had not yet been transcribed.

Members scheduled a final meeting for Tuesday, April 27, 2021 @ 5:30 p.m. to approve remaining minutes. [Note: the meeting was subsequently reschedule to Monday, May 10, 2021 @ 5:30 p.m.]

5. **FINAL FORM OF TRACKING SPREADSHEETS**
 - ❖ **Bucket No. 1 – Housekeeping Changes**
 - ❖ **Ordinances Reviewed for Impact on Marginalized Communities**

Ms. Krutzler screen-shared 'Bucket No. 1 – Housekeeping Changes,' renamed 'Exhibit B – Housekeeping Changes.' The last change she made to the spreadsheet was to insert a note that the technical change recommended by Fred Zimnoch (changing the amount of clearance in §312-99 from 15 feet to 12 feet to match §312-27F) was referred to **Exhibit C Subjects Recommended for Study**, she reported.

Attorney Seewald noted that the heading needed to be changed to be consistent on all five pages. He said he made a change today to add a note to Item #20 (**§**312-43 Parking for Physically Handicapped) as follows: The Northampton Disability Commission has reviewed and approved these proposed amendments.

He also moved Fred Zimnoch's proposed technical change to Exhibit C as directed.

Councilor Nash moved to adopt the document as Exhibit B subject to changing the heading on pages 2 – 5. Councilor LaBarge seconded. The motion passed unanimously 5:0 by roll call vote.

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

Ms. Krutzler screen-shared the spreadsheet entitled, "Ordinances Reviewed for Impact on Marginalized Communities," renamed Exhibit A.

Attorney Seewald reviewed the changes he made to Exhibit A as shown in red-faced bold on the attached document. (See attachment to master version of minutes.)

Members accepted the changes as presented with the exception that they decided to attribute the work of compiling the list of resources for the Housing Stability Notification ordinance to both the Northampton Housing Partnership *and* the Office of Planning and Sustainability (OPS). They also changed the pronoun 'she' to the name 'Tay' under item #6 (Ordinance Incentivizing Against Long-Term Vacancies in Private Properties) at Councilor Thorpe's suggestion to be respectful of a possible non-binary gender preference. And, they accepted the suggestion of Member Napolitano to prioritize recommendations in order of importance (instead of chronological order) by moving the Housing Stability Notification ordinance to item #1 because of its pressing nature.

The Center for Disease Control (CDC) extended the moratorium on evictions today, Attorney Seewald announced. The eviction moratorium is now slated to end June 30, 2021.

Member Paik asked if it is also possible to prioritize Exhibit C (Subjects Recommended for Study) if they are going to prioritize subjects in order of importance.

Attorney Seewald said this is possible as long as somebody has time to do it between now and Wednesday. He's not sure he will have time to do a lot of reorganizing. If somebody else has time to do it, it's fine.

It's just cutting and pasting, Member Paik pointed out. Attorney Seewald said he understood that.

Member Napolitano suggested simply moving it to first place with a footnote stating that because of the anticipated eviction crisis, they urge that this ordinance be considered promptly.

Attorney Seewald noted that the footnote is not so much about expediting approval of the ordinance itself but to urge administrative action to make information about legal and financial resources available to tenants. That could be done almost immediately, he said. In other words, the city could make the list of resources available to tenants by putting the material on the website and publicizing it.

The list of resources is already on a page on the city website, Member Paik stated. It is just a matter of directing people's attention to it and having enough community education that it exists, she said. She has spoken to and forwarded the list to a Daily Hampshire Gazette reporter who is interested in writing an article, she said.

Member Paik offered to edit the document to move item #4 to item #1 while they were talking. Attorney Seewald asked if she would do it on the version he sent out earlier since other changes were made to that document, and she agreed.

Councilor Nash said he thinks they are in agreement with the draft as presented with the agreement on language in the footnote [citing the housing partnership *and* OPS], the proposal to move item #4 to item #1 and the change of 'she' to 'Tay.'

Councilor Nash so moved. Councilor LaBarge seconded.

Councilor Nash noted that committee members will have the opportunity to let councilors know the housing stability notification ordinance is their #1 priority when they make their presentation to city council. The motion passed unanimously 5:0 by roll call vote.

6. FINALIZATION OF FINAL REPORT

- ❖ Exhibit A
- ❖ Exhibit B
- ❖ Exhibit C - Subjects Recommended for Study

❖ Exhibit A

The only thing he added to Exhibit A since the last meeting is a proposed narrative for the Ballance proposals to be added to the not recommended section, Attorney Seewald advised. [He emailed the following paragraph at 4:07 p.m. on March 29, 2021.]

FIT Test and Capping of Size of New Single-Family Residences

In a February 7, 2021, email, Jackie Ballance proposed attached a document entitled "Equity in Housing" in which you urged the Committee to recommend use of a "FIT" review for Equity, Environmental Sustainability, Appearance and Economy for every new residential building permit application." That proposal would require a board to review applications for fitness, including consideration of an applicant's track record in creating fit housing. In a February 21, 2021, email, Ms. Ballance withdrew the fitness proposal and advanced a proposal to cap the size of new single-family residences at 1,100 square feet, with any larger proposed single-family residences required to "ask for an exception and expect a fair hearing." The Committee thanks and commends Ms. Ballance for her thoughtful proposals and her commitment to the important issue of fairness and equity in housing in our City. However, Solicitor Seewald informed the Committee that state law prohibits zoning that regulates the interior size of a single-family residence. For that reason, on March __, 2021, the Committee voted not to recommend Ms. Ballance's proposals.

❖ Ordinance Review Committee Final Report

Ms. Krutzler pulled up the final report with Member Paik's changes as emailed at 10 o'clock on Sunday, March 28th.

Member Paik said she highlighted the sentence, "Those recommendations are attached as Exhibit C," because the recommendations don't really relate to fair housing. [The previous sentence reads in part, "...the Committee voted to urge the City to continue to study and develop other amendments to zoning and other ordinances that would address barriers to fair housing¹ in the city. "] She said she wanted find a way to rephrase it. She suggested going through the other changes and coming back to it.

Members agreed to the following minor changes:

- ❖ the addition of the word "and" between time and scope in the last paragraph on pg. 2
- ❖ simply stating "to alleviate" instead of "continue to alleviate"
- ❖ changing the header on pages 2 and 3 to match the title on the first page

Member Napolitano said it otherwise looks good. Councilor Nash said he seconded that motion. However, Attorney Seewald reminded them that they still needed to deal with the previous paragraph.

Member Paik asked if they could proceed to reviewing Exhibit C and come back to this amendment. Since the document was not yet finalized, members did not proceed to a roll call vote on Member Napolitano's motion.

❖ **Exhibit C - Subjects Recommended for Study**

Ms. Krutzler screen-shared Ex. C. Councilor Nash and Member Napolitano said they were satisfied with the document in its present form.

Member Paik asked if they wanted to change the order of the seven items to place them in order of importance. Member Napolitano said that if he were going to prioritize any of them, it would be the recommendation to increase the frequency of the charter review.

Councilor Thorpe said that was going to be discussed, and they proceeded to the discussion.

RECOMMENDATION TO INCREASE THE FREQUENCY OF CHARTER REVIEW

This topic was raised at the last meeting and it didn't occur to him until this morning that charter review was never on an agenda and came up sort of out of the blue, Attorney Seewald said. With all of the other subjects, they put them on the agenda to discuss.

No, they didn't, Member Paik interjected. The ordinance about the half-scale units wasn't explicitly on the agenda, she reminded.

Because it was not on an agenda, no one had notice that it was going to be discussed, Attorney Seewald continued. That's the requirement of the Open Meeting Law (OML).

Member Paik said she was sure they could find exceptions to that.

Member Napolitano asked if they hadn't discussed items brought up by speakers in public comment and by guests [without their being specific agenda items].

Attorney Seewald himself suggested the possibility during a meeting of members making changes to the ordinance creating the special committee for review of ordinances, Member Paik reminded.

He mentioned that it was something that could be discussed, but it would still have to be on an agenda, Attorney Seewald said.

At Councilor LaBarge's request, Ms. Krutzler brought up the March 23, 2021 agenda. [Note: the charter review committee ordinance does not appear as an agenda item.]

Since they are a committee that reviews ordinances, if they talk about something contained in the ordinances, isn't that fine? Member Napolitano asked.

No, because people have to know generally what is on the agenda, Attorney Seewald advised.

His question is how granular they have to be, Member Napolitano said.

They never put on an agenda that they were going to talk about amending the charter review ordinance, Attorney Seewald reiterated.

Member Paik said she finds it curious that this is coming up at their last meeting. Also, if this is his opinion, it really should be applied to every board and commission. She can assure him that the agendas of other boards are not nearly as detailed as theirs and they don't seem to have been in violation of the OML.

Agendas need to give notice to anybody who is interested about the subject matters that will be the topic of the meeting, Attorney Seewald stressed. The city council doesn't just decide to modify the charter review committee without putting the subject of charter review on the agenda.

We're an advisory committee, Member Paik countered.

It doesn't matter, the same rules apply to every governmental body, Attorney Seewald responded.

They completed a discussion and took a vote at the last meeting without his bringing this up, Member Paik pointed out. That was his bad, Attorney Seewald acknowledged.

She would like to move on, but she proposed that members vote as a committee whether to keep the recommendation on Exhibit C.

They could also make this recommendation to councilors outside of this report, Attorney Seewald suggested. He doesn't want to prolong this either. But if it is his ruling that this is an OML violation and it shouldn't be in the report, then it is an OML violation and shouldn't be in the report.

She would like to hear from the other members, Member Paik said. It is currently in the report, so they would have a vote to take it out, she asserted. It is now in Exhibit C.

Councilor Nash said his question is, yes, it wasn't on the agenda last time; he thinks they are in agreement about that. But they did fold it into the report and that report was on the agenda for tonight. It is on the agenda right here and that was posted and shared. His question is, is that enough for them to have a discussion about it right now?

In response to a question from Attorney Seewald, members confirmed that the report is indeed posted on tonight's agenda.

If it was posted and notice was given that it will be discussed in the final report, then he will relent, Attorney Seewald said.

❖ **Exhibit C - Subjects Recommended for Study**

Members returned to the discussion of Exhibit C. They re-ordered the items recommended for study to list them in order of importance as follows:

1. Charter Review
2. Rental Agency Fees
3. Towing of Vehicles
4. General Sign Regulations
5. Proposal to Expand Notification Under §350-3.5
6. Commercial Buffer Zone
7. Unobstructed Lane of Travel

Councilor Nash moved to accept Exhibit C with the track changes as presented along with the change in order as reviewed. Councilor LaBarge seconded. The motion passed unanimously 5:0 by roll call vote.

Attorney Seewald reminded them not to forget the Ballance paragraph. Councilor Nash moved to approve the Ballance paragraph and to add it to the 'Not Recommended' section of Exhibit C. Councilor LaBarge seconded.

Members made minor editorial changes to the paragraph to delete the word 'proposed,' change the word 'you' to 'she,' and insert the date March 23rd. The motion to accept Exhibit C passed unanimously 5:0 by roll call vote.

FINAL REPORT

Members returned to a discussion of the final report. Members discussed how to amend the paragraph that inaccurately describes Exhibit C as containing items that address zoning and barriers to fair housing.

Exhibit C contains fairly disparate topics, Member Paik noted. She listed them as follows: Charter Review, Rental Agency Fees, Towing of Vehicles, General Sign Regulations, Proposal to Expand Notification Under §350-3.5, Commercial Buffer Zone and Unobstructed Lane of Travel.

After somewhat extended discussion and collaboration, members agreed to the following wording: "In addition to the proposed ordinance revisions and additions submitted with this report, the Committee voted to urge the City to study and develop amendments to zoning and other ordinances as set forth in Exhibit C. The Committee also encourages the City to address barriers to fair housing in the City and to explore ways to incentivize the creation of both affordable market-rate and subsidized affordable housing."

Councilor Nash moved to accept the document (the final report) with the changes as presented. Councilor LaBarge seconded. The motion passed unanimously 5:0 by roll call vote.

Members decided not to take a vote on half-scale units since it was not one of the ordinances formally presented to them by Wayne Feiden. The ordinance was tabled at the last City Council meeting but has had fairly extensive vetting at Community Resources and a joint hearing of the Planning Board and Legislative Matters, Councilor Nash reported.

Ms. Krutzler said she would put the final report on Ordinance Review Committee letterhead before filing it with the City Clerk's office. It needs to be signed by Councilor Thorpe as chair, Attorney Seewald reminded. Ms. Krutzler said she would copy the final report to Councilor Thorpe, Attorney Seewald and Member Paik before filing it.

Councilor Thorpe said he would discuss with the council president when the committee should present its report to the city council. He is hoping it will be at the April 15th city council meeting.

7. **ADJOURN**

Member Napolitano moved to adjourn. Member Paik seconded. The motion passed unanimously 5:0 by roll call vote. The meeting was adjourned at 7:17 p.m.

Respectfully submitted,

Laura Krutzler, Administrative Assistant

~~2020~~ Report of the 2020 Special Committee for Review of Ordinances

Exhibit A

**Ordinances Impacting Traditionally Marginalized Communities
Recommended for Adoption**

1. An Ordinance Relative to Affordable Housing.

On November 2, 2020, Wayne Feiden, Director of Department of Planning and Sustainability appeared before the Committee. He testified regarding a proposed amendment to the Zoning Ordinance to create a local Affordable Housing Ordinance that would simplify the state comprehensive permit process, known as “40B.” At that time, the proposed ordinance was in its conceptual stage. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt such an ordinance to promote housing affordability in the City.

2. Two-Family By Right in all Residential Districts.

On November 2, 2020, Director Feiden testified regarding a proposed amendment to the Zoning Ordinance to allow two-family residences by right in all residential zoning districts, including two detached single-family structures. At that time, the proposed ordinance had been introduced to the City Council and it was being reviewed by Council committees. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt that zoning ordinance amendment ordinance to promote housing affordability in the City.

3. First Floor Residential Use in Downtown and Florence Center

On November 2, 2020, Director Feiden, testified regarding a proposed amendment to the Zoning Ordinance to allow residences on first floors in in Downtown Northampton (outside of the Central Business District) and in Florence Center (outside the Chestnut/Main/Maple business district). At that time, the proposed ordinance was in the drafting stage. Allowing residential uses on the first floor of commercial buildings outside core downtown areas would allow more people to live within walking distance of commercial centers, allow property owners more options, and create housing opportunities at all levels of the market. At that time, the proposed ordinance was in its conceptual stage. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt such an ordinance to promote housing affordability in the City.

4. Housing Stability Notification Ordinance.

On November 17, 2020, Keith Benoit, CDGB Planner in the Office of Planning and Sustainability and Carmen Junno, a Member of the Northampton Housing Partnership, appeared before the Committee. They presented testimony regarding a proposed new ordinance that would require landlords of rental units or lenders foreclosing on a house to give tenants a list of financial and legal resources when serving a Notice to Quit

terminating a tenancy or when serving foreclosure documents.¹ Such notification may include documents such as Residential Assistance for Families in Transition (RAFT) and Emergency Rental and Mortgage Assistance (ERMA). Similar ordinances have been enacted in Cambridge and Somerville. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt such a Housing Stability Notification Ordinance.

Ordinances Impacting Traditionally Marginalized Communities Not Recommended for Adoption

1. Rental Agency Fees.

On [fill in date], Carmen Junno, a Member of the Northampton Housing Partnership The Committee considered a, proposed an ordinance that would prohibit charging tenants a rental agency fee and requiring that any such fee be paid by the landlord. While the Committee believed that such an ordinance would alleviate the cost burden to renters, would positively impact traditionally marginalized communities, City Solicitor Alan Seewald advised the Committee that such legislation would violate the provision of the Home Rule Amendment to the Massachusetts Constitution that prohibits local legislation that alters civil relationships. According to Solicitor Seewald, the contract between the landlord and the rental agency, which requires that fees be paid by the prospective tenant, is such a civil relationship. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.

2. Enforcement of “Ban the Box” Law.

On November 17, 2020, Tay Porco addressed the Committee during public comment urging the City to enforce the so-called Ban the Box law, which prohibits employers from inquiring into certain aspects of an employment applicant’s criminal history. The Ban the Box law is included in a statute that prohibits discrimination in employment, and it is enforceable by the Massachusetts Commission Against Discrimination, not by the City. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.

3. Ordinance Legalizing Temporary Structures and to Repeal Ordinances Prohibiting Camping on Public Property.

On November 17, 2020, Tay Porco addressed the Committee during public comment and presented a demand that the City pass an ordinance legalizing temporary structures and repealing ordinances prohibiting camping on public property. On December 15, 2020,

¹ The Committee is cognizant of the both the time it takes to move new ordinances through committees and the prospect of the federal and state eviction and foreclosure moratoria ending in the near future. The Committee recognizes the important work that the Office of Planning and Sustainability has performed in compiling the resources for the proposed notification ordinance, and it urges that those resources be kept current, and that the City implement administratively the notifications that were proposed to be required of landlords and mortgagees by the recommended ordinance.

Councilor Nash reported that his review of the ordinances did not reveal any ordinances that prohibited camping on public land other than conservation land. On March 1, 2021, the Committee unanimously voted not to recommend any such ordinances. At the same time, the Committee voted to inform the City that it would oppose any ordinance that would impede those who choose to live outdoors.

4. Fair Chance Ordinances.

In a November 18, 2020, email, Tay Porco urged the Committee to recommend an ordinance that would prohibit landlords from accessing and using the criminal history when screening a proposed tenant. While the Committee believed that such an ordinance would mitigate discriminatory practices in the housing market, positively impact traditionally marginalized communities, City Solicitor Seewald advised the Committee that the Criminal Offender Record Information (CORI) statute, M.G. L. c. 6, § 167, et. seq., is a comprehensive state law that creates uniform access to criminal history information statewide. The CORI statute was amended a short time ago to specifically allow landlords to access such information and, therefore, the City cannot legislate in this area. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.

5. Ordinance Banning Sale of Property Gifted to City.

In the November 18, 2020, email Tay Porco also proposed to the Committee an ordinance to ban the sale to private parties of property gifted to the City and, instead, to use such property for affordable housing. Solicitor Seewald informed the Committee that the properties they cited in the email were not gifted to the city, and that of the city properties sold during his years as City Solicitor were sold for some form of public benefit or to meet a community need. City buildings for sale were municipal buildings not used for housing and not set up to comply with sanitary code and other requirements for use as housing. On March 1, 2021, the Committee voted unanimously not to recommend such an ordinance.

6. Ordinance Incentivizing Against Long-Term Vacancies in Private Properties.

In the November 18, 2020, email, Tay Porco also proposed to penalize and incentivize against vacancies in private properties citing the fact that properties remain vacant for long periods of time while individuals live on the street. Without more specific proposals for limiting the rights of private property owners or involuntary acquisition of such properties, Solicitor Seewald could not provide an opinion on the legality of such an ordinance. On March 1, 2021, the Committee voted unanimously not to recommend such an ordinance.

7. Repeal of Anti-Panhandling Ordinances.

On November 30, 2020, Razi Beresin-Scher addressed the Committee during public comment and urged action to stop criminalizing and harassing unhoused people asking for money or panhandling on the street without a permit, citing c. 245 of the Code of Ordinances. On December 15, 2020, Solicitor Seewald informed the Committee that c. 245 dealt with commercial solicitation, not panhandling, that the Supreme Judicial Court had that day struck down the state anti-panhandling statute as a violation of the First Amendment, and that the City has no anti-panhandling ordinances. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.