



CITY OF NEW BEDFORD, MASSACHUSETTS

MEETING: COMMITTEE ON ORDINANCES
DATE: NOVEMBER 19, 2024
TIME: 7:00 P.M.
PLACE: CITY COUNCIL CHAMBERS, ROOM 214

PRESENT: COUNCILLORS RYAN PEREIRA, CHAIR; IAN ABREU;
SHANE BURGO; NAOMI CARNEY; LEO CHOQUETTE;
MARIA GIESTA; BRIAN GOMES (7:17); JOSEPH LOPES;
LINDA MORAD; SHAWN OLIVER

ABSENT: COUNCILLOR DEREK BAPTISTE

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Councillor Pereira called the Ordinance Committee meeting to order, took attendance and explained that the meeting was being recorded and live-streamed. The Clerk relayed that he had received a text message from Councillor Baptiste explaining that he would be tardy in attending the meeting.

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COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER and AN ACT, relating to Vacancies in the Office of Mayor in the City of New Bedford. (Referred – March 14, 2024.) (Matter ID #0306) (July 17, 2024 – VOTE: Request that Atty. Gerwatowski and Atty. Jaikes clarify the term “Member” and how to proceed should a vacancy occur under particular circumstances; VOTE: Request that Atty. Gerwatowski and Atty. Jaikes create verbiage so that the Council could elect one of its Members as Interim Mayor until an election could be held; tabled.) (October 09, 2024 – remain on the table)

AN ORDER, (Referred – March 14, 2024.) (Matter ID #0307) (July 17, 2024 – tabled) (October 09, 2024 – remain on the table)

AN ACT, (Referred – March 14, 2024.) (Matter ID #0308) (July 17, 2024 – tabled) (October 09, 2024 – remain on the table)

On motion by Councillor Gomes and seconded by Councillor Abreu, the Committee VOTED: To remove the items from the table.

On motion by Councillor Morad and seconded by Councillor Lopes, the Committee VOTED: To receive and place on file copies of the Amendments submitted by Atty. David Gerwatowski, Legal Counsel, and Atty. Eric Jaikes, City Solicitor.

Atty. Gerwatowski was recognized and gave a summary of the proposed changes recommended by the Councillors at the July 17, 2024 Ordinance Committee meeting. He stated that there were a few items of concern addressed by the Committee. It was determined by Atty. Gerwatowski and Solicitor Jaikes that a City Council member serving as Acting Mayor would not have the authority to continue to serve, as acting or interim Mayor, if during this time they withdrew from their elected position on the City Council. A Councillor is only in the position to serve as Mayor by virtue of their being a member of the City Council. As charged by the Committee, he and Solicitor Jaikes created Amendment language that could be inserted into the Act, clarifying that a Councillor could not continue as acting or interim Mayor if they left their Council position.

Atty. Gerwatowski addressed another issue within the Order. The first Amendment gives the Mayor the authority to submit a Home Rule Petition. Inserting the language “as hereto attached” to the Order clarifies that the only item a Mayor may submit to the State is what the Council forwards to him/her.

The proposed drafted Amendments deal with the concern of how to fill a Mayoral vacancy. The first proposed Amendment states that the City Council would meet and elect by majority one of its own members to serve as Mayor until a Mayor is elected and sworn-in as a result of said election. The second proposed Amendment states that the City Council President shall serve as Mayor until a Mayor is elected and sworn-in as a result of said election, but should the City Council President be unavailable, unwilling or unable to serve as Mayor, the City Council would hold a meeting and elect by majority one of its own members to serve as Mayor until a Mayor is elected and sworn-in as a result of said election. Atty. Gerwatowski also pointed out that open wording was left in both proposed Amendments within the language “upon the Mayor’s Office becoming vacant before the last (blank) months.” The number of months would need to be determined by the Council.

Councillor Choquette asked Atty. Gerwatowski what circumstances would require the Council to select the Mayor, as opposed to its citizens. Atty. Gerwatowski explained that what is before them deals with a vacancy in the Office of the Mayor until a special election is held. The Acting Mayor would serve only until the special election is held and a Mayor is elected and sworn-in. The purpose of these proposed Amendments is to clarify the special election provision in a Mayoral vacancy.

Atty. Gerwatowski added that the new language is being proposed because when the Mayor’s term changed from two years to four years, there was not a procedure in place to address a vacancy during a four-year term. The only written contingency was for a two-year term. The language needs to be changed to reflect how a four-year Mayoral term is filled in the event of a vacancy.

Councillor Morad asked if the Council chose to insert “twelve (12) months” into the language, the Interim Mayor could serve a total of 12 months; she was told that that was correct. She asked for confirmation that there would be no election within those twelve months; it was confirmed that there would be no election. Atty. Gerwatowski stated that if you got to that last year of a Mayoral term and, for example, the Mayor left in December or January, the Interim Mayor would serve for a longer period of time. The City Council would not call for a Special Election because the time it would take to hold one would coincide with a regularly scheduled Mayoral election.

The Chair recognized Manuel DeBrito, Election Commissioner. Mr. DeBrito was asked to give an overview of the timeline for a special election. Mr. DeBrito explained that the timeline would depend on a variety of factors. For example, it could be decided that there would be mail-in ballots or early voting, which he would recommend. A preliminary election could take anywhere between 45 to 60 days to execute. The final election normally takes place 30 days after the preliminary election is held.

A motion was made by Councillor Lopes and seconded by Councillor Burgo, to AMEND the ACT, by inserting at the end of the word “thereof” in the first paragraph of Section 1, the following: *Upon the mayor’s office becoming vacant before the last 12 months, the city council shall then, forthwith, hold a meeting and elect by majority vote one of its members as mayor to serve until a mayor is elected and sworn as a result of said election.*

On a point of clarification, Councillor Burgo asked if this proposed Amendment would also replace the first paragraph in Section 1 of the Act. He was told it would not and that the motioned paragraph would be placed right at the end of the first paragraph.

On motion by Councillor Lopes and seconded by Councillor Burgo, the Committee VOTED: To AMEND the ACT, by inserting at the end of the word “thereof” in the first paragraph of Section 1, the following: *Upon the mayor’s office becoming vacant before the last 12 months, the city council shall then, forthwith, hold a meeting and elect by majority vote one of its members as mayor to serve until a mayor is elected and sworn as a result of said election.* This motion FAILED on a roll call vote of Yeas 5, Nays 5, with Councillors Carney, Giesta, Lopes, Morad and Oliver IN FAVOR.

On motion by Councillor Burgo and seconded by Councillor Morad, the Committee VOTED: To AMEND the ACT, by striking the language “6 months” in the first and second paragraph of Section 1 and replacing it with the language “12 months”.

On motion by Councillor Morad and seconded by Councillor Burgo, the Committee VOTED: To AMEND the ORDER, by inserting, after the words “...Vacancies in the Office of the Mayor in the City of New Bedford”, the following words: “as hereto attached”.

On motion by Councillor Morad and seconded by Councillor Burgo, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDER, AS AMENDED and ADOPTION of the ACT, AS AMENDED, relating to Vacancies in the Office of Mayor in the City of New Bedford.

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COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER and AN ACT, providing for the Recall of Elected Officers in the City of New Bedford. (Referred – March 14, 2024.) (Matter ID #0303) (July 17, 2024 – tabled) (October 09, 2024 – remain on the table)

AN ORDER, (Referred – March 14, 2024.) (Matter ID #0304) (July 17, 2024 – tabled) (October 09, 2024 – remain on the table)

AN ACT, (Referred – March 14, 2024.) (Matter ID #0305) (July 17, 2024 – tabled) (October 09, 2024 – remain on the table)

On motion by Councillor Burgo and seconded by Councillor Oliver, the Committee VOTED: To remove the items from the table.

Councillor Oliver asked Atty. Gerwatowski if the Committee could make changes to the Act; he was told that they could, however, it must be signed by the Mayor in order for it to be forwarded to the State Legislature.

Atty. Mikaela McDermott, former City Solicitor, was recognized. She was retained to draft the language for the Home Rule Petition, and described the process she took in doing so. She stated that there are 59 communities classified as cities in the Commonwealth. In her research, she looked at all of these communities to see whether they had recall petitions; she found 26 that did. She appraised their recall language and discovered that it was consistent between communities; and finally, she identified key choices in developing her language. The only difference she found was the number of petitioners required to put forth a recall. She stated that she felt the Committee was setting the bar higher than most other municipalities.

Councillor Oliver asked if the language of the recall petition prevented the person who is being recalled to be able to run for the position they were being recalled from. He was told that was correct.

The Chair asked Atty. McDermott how long it took to do the research and create the language within the Act. He was told six to eight weeks.

Councillor Abreu asked why the language did not include any parameters as to what an elected official may be recalled for. Without such parameters, he feels the recall ability could be used for political retribution by others. Atty. McDermott explained that based on her review of other communities, they too did not include specific reasons for being able to file a recall petition. She noted that a person would be required to state on the petition why they are requesting a recall. She added that the actual language allowing for the petition does not reference individual reasons to initiate a recall. She advised the way to remedy abuse is to make the requirement threshold high.

Echoing Councillor Abreu's comments, Councillor Morad stated that it concerns her that there isn't some form of trigger for a recall. This would mean that anyone who didn't like a particular person could start a recall petition against them. She stated that she does not believe in the recall request, especially if it is applicable to a two-year term. She conceded that perhaps she would look at it differently if all the terms were four-year terms.

Councillor Carney also spoke against the need for a recall provision. She believes this will be costly to the City, specifically as it relates to two-year terms.

The Chair asked if the recall petition could be started by anyone, for example, a non-resident. He was told by Solicitor Jaikes that the petition must be filed by a resident of New Bedford, but there was nothing preventing an outside source from encouraging a resident to begin the recall process.

Councillor Abreu asked Atty. Gerwatowski to address the concerns related to the recall petition not specifically referring to the reasons for filing one, and thus being used as political retribution without a legitimate cause. Atty. Gerwatowski stated that it would be difficult to specifically list petition requirements because there could be countless reasons that one may think is an appropriate reason for a recall. He explained that the real question is how you define that language ahead of time. Repeating Atty. McDermott's advice, he stated that the best course of action is to make the threshold high, so a great number of people would have to agree that a recall should take place.

Councillor Burgo asked Mr. DeBrito when nomination papers are typically pulled. Mr. DeBrito replied that they are normally pulled in April; and if a preliminary election was needed, it would take place late September or early October, with the final election being approximately one month later in November.

A motion was made by Councillor Oliver and seconded by Councillor Lopes, to strike the language "Six hundred (600)" in Section 3A and replace it with "Twelve hundred (1200)"; and to strike the language "100" in Section 3A and replace it with "200"; and to strike the language "100" in Section 3B and replace it with "300".

On the question, Councilor Morad stated that although she appreciates what the maker of the motion was attempting to do, she reiterated that she is not in favor of a recall petition. She asked if the maker of the motion would consider increasing the figure “1200” in Section 3A to “1800” and increasing the figure “200” in Section 3A to “300”. There was no objection, and the motion was amended to reflect the change.

On motion by Councillor Oliver and Councillor Lopes, the Committee VOTED: To AMEND the ACT, by striking the language “Six hundred (600)” in Section 3A and replacing it with “Eighteen hundred (1800)”; and by striking the language “100” in Sections 3A and 3B and replacing it with “300”.

A motion was made by Councillor Lopes and seconded by Councillor Oliver to AMEND the ACT, by striking the language “3 months” in Section 2 and replacing it with “6 months”.

On the question, Councillor Burgo stated his concern is that taxpayers would be financially burdened with any recall because of the special election requirement. He suggested to the makers of the motion, if they are agreeable, striking the language “3 months” in Section 2 and replacing it with “4 months”; and striking the language “6 months” in Section 2 and replacing it with “8 months”.

Councillor Morad suggested to the makers of the motion, if they are agreeable, striking the language “3 months” in Section 2 and replacing it with “12 months”; and keeping the language of the Amendment motion made by Councillor Burgo of striking “6 months” in Section 2 and replacing it with “8 months”.

Atty. Jaikes stated he was concerned that if you receive a 12-month grace period at the beginning of a term of office and an 8-month grace period at the end of a term of office, that equals 20 months in a 24-month term. You would not be able to move forward with a recall for a two-year term, but only a four-year term. He wanted to ensure that the public is aware of what the language, if adopted, would result in. The Chair stated that he agrees with the motion in principle, but feels the number of months is a bit extreme.

Councillor Gomes disclosed that he does not support a recall provision. People vote for an elected official and decide every two years or four years whether or not they want that person to continue in that capacity.

As the debate continued, Councillor Morad made a motion to call the question and end the debate. There was discussion on how to move forward and Atty. Gerwatowski was consulted. He explained that a motion needed to be made to move the previous question, which would end debate and put the motion being discussed to a vote. The motion before the Committee is an Amendment. If you move the previous question, it calls for a vote on the Amendment. Once the Amendment is acted upon in Committee, a motion can then be made to report the matter out to the full City Council. Atty. Gerwatowski reiterated that when someone moves the previous question, it ends debate and a vote can then be taken.

On motion by Councillor Morad and seconded by Councillor Lopes, the Committee VOTED: To move the previous question and end debate.

On motion by Councillor Lopes and Councillor Oliver, the Committee VOTED: To AMEND the ACT, by striking the language “3 months” in Section 2 and replacing it with “12 months”; and by striking the language “6 months” in Section 2 and replacing it with “8 months”. This motion FAILED on a roll call vote of Yeas 4, Nays 6, with Councillors Abreu, Carney, Morad and Oliver IN FAVOR.

A motion was made by Councillor Burgo and seconded by Councillor Giesta to AMEND the ACT, by striking the language “3 months” in Section 2 and replacing it with “4 months”; and by striking the language “6 months” in Section 2 and replacing it with “8 months”.

Councillor Burgo reiterated that he believes increasing the number of months in the later end of a term would increase the costs associated with a special election. If the City is already in the process of initiating election requirements in April, he believes that the last eight months of a term is very important and should be considered. He also expressed his opinion that the proposed elimination of a two-year term, which the City Councillors currently serve, would send a detrimental message to the City and its residents.

Councillor Carney stated that she does agree that a recall position is appropriate but that it should not be applicable to a two-year term.

On motion by Councillor Burgo and seconded by Councillor Giesta, the Committee VOTED: To AMEND the ACT, by striking the language “3 months” in Section 2 and replacing it with “4 months”; and by striking the language “6 months” in Section 2 and replacing it with “8 months”. This motion passed on a roll call vote of Yeas 6, Nays 4, with Councillors Carney, Giesta, Gomes and Morad OPPOSED.

On motion by Councillor Burgo and seconded by Councillor Choquette, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDER, AS AMENDED and ADOPTION of the ACT, AS AMENDED, providing for the Recall of Elected Officers in the City of New Bedford. This motion FAILED on a roll call vote of Yeas 4, Nays 6, with Councillors Burgo, Choquette, Oliver and Pereira IN FAVOR.

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WRITTEN MOTION, Councillors Lopes and Oliver, requesting, that the Committee on Ordinances meet with the City Planner and Inspectional Services Commissioner to review and discuss the current condo legislation for a possible amendment to include the ability for Resident “A” zoned properties that are greater than 3,250 square ft. of living space to have the ability through a Special Permit process to be reconstituted into Residential Condo units. (Referred– June 13, 2024.) (Matter ID #1008) (September 19, 2024 – tabled to allow Atty. Gerwatowski time to review and amend the proposed Ordinance.)

DRAFT ORDINANCE, Relative to Condominiums in Residence A Zoned Districts, (Received – September 20, 2024.)

On motion by Councillor Lopes and seconded by Councillor Oliver, the Committee VOTED: To remove the items from the table.

On motion by Councillor Lopes and seconded by Councillor Gomes, the Committee VOTED: To receive and place on file a copy of the proposed Ordinance drafted by Atty. Gerwatowski relative to Condominiums in Residence A Zoned Districts.

Councillor Lopes stated the reason for this proposed Ordinance is that the City has a great number of 6, 7 and 8 bedroom homes, with 2, 3 and 4 bathrooms, listed as single family homes. As the City is considering different ways to create housing, this proposal would allow developers the ability to take some of the larger homes in the City and turn them into apartments/condos and multi-unit housing.

The Chair recognized Jennifer Carloni, Planning Director. Ms. Carloni stated that she worked with Councillor Lopes to draft the Ordinance before the Committee and that this Ordinance would allow for the conversion of some of the older, larger homes in the City into multi-family residential buildings or condominiums. She proceeded to give an overview and intent of the Ordinance.

Councillor Morad suggested that further discussion should be delayed as the Committee members had just received the language before the meeting. She had not had a chance to review it and would not be able to comment on it. She asked Danny Romanowicz, Commissioner of Inspectional Services, if the proposed Ordinance conflicted with condominium requirements. He answered that he was not sure, as he had just received the proposal and had not yet had a chance to review it.

On motion by Councillor Carney and seconded by Councillor Morad, the Committee VOTED: To table the matter at this time.

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COMMUNICATION, Mayor Mitchell to City Council, submitting AN ORDINANCE, amending Chapter 19, Section 19-7 (c) PERSONNEL, inserting the title “Supervisor of Local Building Inspectors” at pay grade M-6. (Referred – September 12, 2024.) (Matter ID #1425)

AN ORDINANCE, (Referred – September 12, 2024.) (Matter ID #1426)

Mr. Romanowicz was recognized and shared that he has Senior Inspectors preparing to retire and the City has no qualified applicants to replace them, primarily due to the starting salary. He was shocked to discover that from Barnstable to Quincy, all the way out to Springfield, including Fall River and Taunton, New Bedford is the lowest paying municipality. He proposed that the Department has to look at its pay scale and do what they can to retain the employees that they have.

Councillor Abreu asked Mr. Romanowicz how often he receives calls and inquiries from applicants applying for positions, and once they find out what the pay scale is, no longer wish to move forward. He was told that it happens quite often.

Councillor Giesta asked Mr. Romanowicz how many inspectors were in his Department, what their salary ranges were, and how the salaries compare to other cities. He replied that there are three inspectors, an assistant and himself. Their salaries range between \$16.00 to \$32.12 an hour. He shared that Quincy’s salaries range from \$38.00 to \$45.12 an hour, Plymouth’s from \$34.00 to \$42.00, Barnstable’s from \$36.00 to \$43.00, Taunton starts at \$45.00 an hour and Fall River starts at \$34.00 an hour.

Councillor Morad asked if these staff were AFSCME or Unit C positions. Mr. Romanowicz replied that all the positions in other cities were union positions. There are six Inspectional positions in his Department; he is asking to change two positions to Unit C, which would make it three union positions and three non-union positions. Councillor Morad asked if the Union was in agreement; she was told they did not express an opinion either way. She expressed concern that many AFSCME positions are facing similar issues, but she does not believe it's fair to implement a change in one department and not in others.

Jose Gouveia, Director of Personnel, was recognized. Councillor Morad asked if he understood her concern about being fair and equitable and asked how he felt about implementing change in one department at this time. Mr. Gouveia stated that he understood her concern and that there are many positions that are below market value; however, it was better to address it the way it is being proposed rather than all at one time. He explained it is not fiscally prudent to increase pay across the board. The best way is to look at all of the departments and develop criteria on how and when each department would be addressed as priority one, two and three. Councillor Morad asked what the status was on the Committee receiving the AFSCME study. She was told the Personnel Department is in the final stages of completing the report.

On motion by Councillor Abreu and seconded by Councillor Lopes, the Committee VOTED: To recommend to the City Council APPROVAL of the ORDINANCE, Amending Chapter 19, Section 19-7 (c) PERSONNEL, inserting the title "Supervisor of Local Building Inspectors" at pay grade M-6.

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Councillor Abreu made a motion to adjourn, which was seconded by Councillor Giesta.

This meeting adjourned at 9:01 p.m.

ATTEST:

Denis Lawrence Jr.
Clerk of the Committees