## Ordinance Review Committee – Meeting Notes 03/17/2021

Committee Members Present:

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| Name | Present (Y/N) | Name | Present (Y/N) |
| Cllr Barry Connell | Y | Cllr Afroz Khan (Chair) | Y |
| Jim Connolly | Y | Gregg Ogden | N |
| Cllr Jared Eigerman | Y | Atty Mark Reich (Staff)\* | Y |
| Molly Ettenborough | Y | Lt. Siemasko | N |
| Clerk Richard Jones \* | Y | Mike Strauss | Y |
| Chief Chris LeClaire\* | N | Ron Thurlow | Y |

\*Non-Voting Members; Advisory Position

**Introductions**

Chair Khan started the meeting with roll call as noted above. The three chapters for review include Chapter 4, Chapter 8 and Chapter 11. Chair Khan started with Chapter 4 which was reviewed by Ron Thurlow. He also brought this chapter before the Harbor Commission to incorporate comments from that entity as well.

**Chapter 4 – Boats, Docks and Waterways (Ron Thurlow)**

* Definitions: Chair Khan started the discussion to get clarity on how we are going to approach where to put the “definitions” sections collectively and consistently. Atty Reich provided the guidance that it will be important to see if they relate to a Division, Article or Chapter. Depending on where they are “only” to be used, we can then move to the appropriate location. In general, intentions are to apply to an entire Article. **Chair Khan will work with Atty Reich on making sure it is done in the right location.**
* Section 4-46. Power, duties and responsibilities. Ron Thurlow shared that it would be good to add under responsibilities pursuing the designation of a Coast Guard city. This is something substantive and can be added later through the council.
* Section 4-73. – Fees: Cllr Connell brought up the liability insurance amount of $100,000 which seems low. Group agreed that this needs to be reviewed by an insurance provider to the city. M. Strauss asked about the Fee Schedule being able to encapsulate insurance liabilities as well. Atty Reich said that these obligations are not from the city or to the city but an insurance expert can be engaged to see how to cover in general to an appropriate industry standard as opposed to a fixed number. **Chair Khan will work with Chief of Staff Coogan to see who to bring in for that.**
* Section 4-79. - M. Ettenborough shared that her department is going to put a compost container at Cashman Park. Atty Reich said that the discretion for flexibility is on the Harbor Master so it should be good to go as it is currently written.
* Section 4-80. – Windsurfing, waterskiing. Ron Thurlow is sharing that something is coming out by the Commission on kayak safety. There have been some issues over the summer and a need to educate people.
* Section 4-85. – City Liability. Ron shared that he is not aware of anything like this happening. The statement that “any person using any city facility for the conduct of a permitted activity shall file a statement with the harbor commission indemnifying and holding the city harmless form any lawsuit arising out of the conduct of the permitted activity by anyone”.
	+ Atty Reich shared that in the licensing process the city usually has this language through issuing something. Routine usage is not something that is covered. Ron shared that when folks come in to get a season pass they don’t have anything covering this or dock for a few hours. Atty Reich shared that for those who come for short term use; there can be an indemnification pad where they sign off on a form as opposed to a license. Ron shared that people make their reservations through DOCKWA which may be a good place to see if something like this can be added.
	+ Cllr Connell wanted to add that it’s important to keep any processes easy for folks and consistent with locations like ours. Don’t let us have a reputation for making it difficult for boaters. Atty Reich said that this section is stating something that Ron is sharing that is not being done. Is it practical and to what extent with what usage. What if the boat explodes and destroys other boats and the dock; etc. Cllr Connell asked what can be done easily to protect against any of these scenarios.
	+ Atty Reich stated that the language here in the ordinance can be changed to say “any person using a city facility shall be responsible for their own negligent actions and use those facilities at their own risk”. The main issue is that this section is putting burden on the harbor commission to collect these statements; seems like a policy statement and should be reviewed.
	+ Action: Ron Thurlow will look at the DOCKWA reservation system to see if there can be something posted and customize to state this language. Signage on the dock was also something discussed.
* Section 4-98. Ron shared that there is a strict guidance that no material or spare gear shall be stored on or about the pier but it can be a safety issue if there is excessive weight that needs to be removed from a boat. Edited language was discussed for a substantive change later by the council.
* Section 4-99. Central waterfront docks. Items (a) (4) – Harbormaster sets the duration through the reservation system. Substantive change.
* Section 4-203. Definitions defined here but in this case it makes sense that in preamble language always starts first and then the definitions as started in 4-201. The reference for Master Digger to 322 CMR 7.02 was questioned as the right source. Atty Reich looked it up and confirmed that it’s the Division of Marine Fisheries. 310 CMR 10 is on contaminated shellfish. All the references are current.

**Chapter 8 – Fire Prevention & Protection (Molly Ettenborough & Mike Strauss)**

* Maps: M. Ettenborough brought up two maps related to the downtown map versus the Newburyport Business District map. Cllr Eigerman agreed that one definition for downtown would be ideal but we just don’t have that now and there is no reason to change. There have been no complaints so it’s fair to leave it alone. Chair Khan asked for clarification on nomenclature; Business District versus Downtown Overlay.
* Sec. 8-1. No smoking in certain municipal facilities. Cllr Connell brought up whether or not this is still needed. Cllr Eigerman clarified that this is for outdoor areas not indoors. He put this forth when there was smoking on Inn Street by the playground. He suggested that we can make a substantive change but it may be pre-empted by state law. Group agreed to change the name to “outdoor” facilities as a non-substantive change. Atty Reich agreed it can work since facilities are defined in (1) and (2). Heading was changed to insert “Outdoor” as a non-substantive change.
* Sec. 8-2. Non-residential districts – Needs to be updated; substantive change which will include more areas for councillors to bring up.
* Sec. 8-3. Regulation of the use of glysophate. Cllr Connell was interested to know if there should be a reference to the Child Protection Act to ensure that additional compounds and materials may be added in the future. Atty Reich stated that this is implied and referencing the code is good if definitions or provisions are being referenced for use to apply as a reminder. The group discussed whether this ban is being done by the city and it’s contractors. **Cllr Eigerman will double check with DPS and the Parks Department with a copy to the procurement officer, Laurie Pierce.**
* Sec. 8-81. Business District. This is where the area for trash pick-up is described.
* Sec. 8-83 and 8-85. In section (f) the $25.00 was seen as too low to make any difference as well as the $50.00 for litter. These will need to be updated. Atty Reich and Chair Khan can put all of those fees/fines where the fees/fines can be put in one place with a column of when they were last defined.
* Sec. 8-88. Definitions will be moved to 8-87. to keep constant approach to title, preamble and definition format. The definition for Shall is defined as “considered as mandatory and directory” which is not correct and will be removed.
* Sec. 8-90. Collection. Mike Strauss had a question under “allowable materials”. This may be something that changes and should it be changed more generically as stipulated “by the Board of Health”. Molly shared that it’s really the disposal company and what they take. Chair Khan shared that should this even be listed. Atty Reich shared that the Board of Health has a hand in the contract and can define what is allowable under a contract. We should not be referencing a contract in an ordinance. Cllr Eigerman shared that it comes from Molly not the Board of Health and items 1, 2, 3 and 4 are not necessarily important to refer to. **Chair Khan is flagging it and trying to see how we can make this dynamic. She will work with Molly to see if it can reflect current conditions.**
* Sec. 8-89. City to recycle. The group re-worked the syntax to update from outdated language.
* Sec. 8-94. Responsibilities of Collector. Edited the first sentence to not reference the contract. Atty Reich emphasized that ordinances should not try to control contracts. A collector is not always going to be under contract so it is important to note in case the city assumes that responsibility.
* Division 3 – Mercury Thermometer Ban. The group discussed removal of this since it is no longer relevant. The city council can make the decision to remove.
* Division 4 – **Chair Khan will send this section to Marshal Murray to review and see if relevant and/or needs to be updated.**

**Chapter 14 – Utilities (Molly Ettenborough and Mike Strauss)**

* General. Molly brought up that this is titled “Utilities” but it really just references Water and Sewer. There are other utilities though like Electricity, Gas and Cable covered in Chapter 12. Atty Reich recommended that it may be good to rename to Water and Sewer. Cllr Eigerman said that at this time it may be better for simplicity to rename with Water and Sewer in front of Utilities and if we need to change back to Utilities we can do it later.
* Sec. 14-20. Water Use Restrictions. Minor edits were noted by the group for clarification and correction. Language use of “such as” allows providing examples as a “non-substantive” change.
* M. Ettenborough flagged the potential of adding something related to the recent notification system regarding the Merrimack river and sewage disposal. Chair Khan will work with Molly on that.
* FOG regulations were also not noted to be defined here. Molly Ettenborough asked that we look to make sure that we flag that.
* **Chair Khan will send section for stormwater to Nick Federico, Assistant Engineer. He just completed a city-wide report as a requirement. She will ask for that to be sent around.**
* Sec. 14-30. Powers and Authorities of Inspectors. Mike brought up the role of the Pretreatment Coordinator and should that be capitalized. Group agreed that it was covered under the main role of Director of Public Services. **Chair Khan will send this over to Chris Pratt for review who is in charge of the Sewer Department and cc Tony Funari.**
* Chair Khan asked if the Plum Island system is addressed here. It currently is not since this section was written before that system was put in.
* Sec. 14-37. Certain discharges permitted in city sewers. Cllr Connell asked if we need to list it all. Should there be additional items to include. Cllr Eigerman clarified that not only are we the regulator but the proprietor as well and we can list out what we think should be there as long as there is no conflict. Chair Khan stated that disposable wipes are not listed and it would be good to include here.

**Next Meeting**

The group adjourned with a reminder of the next meeting on March 31, 2021 which include Chapter 9, 13 and 15. It is most likely that we will have two meetings in April to finish Chapter 12 and then go through Fees/Fines schedule draft. We will have a final meeting in May to review our memo to the council and process for making our “non-substantive” changes.

Motion to adjourn made by Cllr Eigerman with a second by Cllr Connell. Committee adjourned at 8:45pm by vocal roll call.

| Chapter | Reviewer | Discussion Date\* |
| --- | --- | --- |
| 13 – Traffic and Motor Vehicles | Clerk Jones, Lt. Siemasko, Thurlow | March 31, 2021 |
| 9 – Licenses, Permits & Business Regulations | Connelly, Ogden | March 31, 2021 |
| 15 – Vehicles for Hire | Connelly, Ogden | March 31, 2021 |
| 12 – Streets, Sidewalks & Other Public Spaces | Connell, Khan | April 14, 2021 |