

**GLOUCESTER CITY COUNCIL MEETING**

Tuesday, March 22, 2011

7:00 p.m. – Kyrouz Auditorium – City Hall

Council Meeting – 2011-006

**-Minutes-**

**Present: President, Councilor Jacqueline Hardy; Vice President, Councilor Sefatia Theken; Councilor Joseph Ciolino; Councilor Bruce Tobey; Councilor Robert Whycott; Councilor Anne Mulcahey; Councilor Steven Curcuru; Councilor Greg Verga**

**Absent: Councilor McGeary**

**Also Present: Linda T. Lowe; Jim Duggan; Jeff Towne; Police Chief Michael Lane; Kenny Costa; Mark Cole; Suzanne Egan; Mike Wells; Nancy Papows; Fire Chief Phil Dench**

**The meeting was called to order at 7:00 p.m.**

**Flag Salute and Moment of Silence.**

**Oral Communications:**

**Bruce Maki**, 381 Western Avenue, member of WHO DECIDES, reminded the public of the EPA public hearing Thursday, March 24<sup>th</sup> in Kyrouz Auditorium urged citizens to turn out for the hearing which begins at 6:30 p.m. He noted it concerns everyone, on septic or on City sewer services. It could be a \$60 million expenditure that will hurt everyone.

**Steven Malboeuf**, 25 Overlook Avenue addressed a question to Jeff Towne, CFO through the Council regarding the CSO debt shift. He noted Property Tax Bureau Guideline Release #93-207 and understood and agreed it authorizes the debt shift for residential and commercial property. Quoting Section A, last paragraph: “the cost of the excluded water and debt service or the residential share of such debt service will be recovered from the taxpayers whether they are served by the municipal sewer and water system or not. Only users of water and sewer systems will get an offsetting benefit through the reduction in user charges. The adoption of the exclusion may therefore be inappropriate in municipalities with significant numbers of taxpayers who are not served by water or sewer systems.” He knew that number to be approximately 3,000 people. He asked how is the adoption appropriate. Secondly, the new property tax exemption in MGL c. 59 Sec. 5 quotes clause 52 which then proceeded into clause 53 which refers to residential real estate “that uses a septic system or cesspool and is not connected to the municipal sewer system in a city or town that has accepted the provisions of paragraph N of 21C shall receive an exemption equal to the difference between any increase in property taxes attributable to the provisions of said paragraph N in the amount by which the water bills for the property would have been higher if the amount of said increase in property taxes were recovered in water charges which difference shall be calculated by the board or office responsible for fixing water or sewer charges certified by the Board of Assessors provided that such exemptions shall not exceed \$300.... He then asked how does the clause 53 apply as to what was done on the CSO debt shift.

**John Feener**, 45B Warner Street, recently resigned member of the Conservation Commission thanked the City for his appointment to that Commission and his time on it. He felt it was a great Commission composed of people who understand their field which was in part allowed him to feel confident in tendering his resignation. He noted Helen Farr, a proposed appointee for the Commission endorsing her appointment.

**Councilor Hardy** on behalf of the City thanked Mr. Feener for his service.

**Presentations:**

**1 of 1: Gloucester Daily Times publisher – Mr. Al Getler**

**Mr. Getler**, publisher of the Gloucester Daily Times of Eagle Tribune Publishing newspaper chain informed the Council he understood there were some rumors about the Gloucester Daily Times stating the Times is not leaving the City. They will not merge with the Salem News as also rumored. He felt the Times knows and serves this community well. Their website is highly trafficked; and they now have a mobile website and have an active comment section, adding that a vibrant community has a good exchange of commentary. He acknowledged Times reporter Francis X. Quinn at the meeting who is their

main reporter at the Times. He reiterated the Times is not leaving town. Since they began publishing in 1888, they have changed to meet the changing times. They have moved their printing to North Andover, however, due to some economic advantages. They welcome more feedback and welcome any member of the Council, as well as any citizen; they will assemble their editorial board to have a discussion. He then read a portion for the Council the First Amendment. He also mentioned a Taste of Cape Ann the following evening, a fundraiser the Times was sponsoring.

**Councilor Whynott** commented he thought the Times had lost some of the “homey-ness”, like “Talk of the Times” which he missed the most.

**Councilor Verga** thanked Mr. Getler for coming.

**Councilor Ciolino** noted some of the four or five term Councilors recalled having a Times reporter at most City Council meetings, in fact the majority and many of the budget meetings. He felt that seemed to have ceased. He missed seeing the immediacy of the reporting of the issues raised at the Council meetings.

**Mr. Getler** stated there are times when resources are thin as there can be other issues going on in the City simultaneously. He thought Mr. Quinn would be here at more meetings.

**Councilor Hardy** expressed concern after listening to some of the rumors about the Times in light of the legal noticing of meetings and zoning issues that must be published that they need to know in advance if there was ever any issue where the Times would not be published.

**Mr. Getler** reassured they are committed to continuing to publish the Times and serve the community.

#### **Confirmation of New Appointments:**

**Councilor Theken** stated the O&A Committee questioned the appointees to their respective Committees, Boards and Commissions on their experience, background, professional affiliations as well as asking them to be familiar with the Open Meeting Laws and to file their proof of having taken the State Ethics Commission test with the City Clerk’s office. Further, they were all asked to be sure their Committees, Boards and Commissions were turning in the minutes of their meetings to the City Clerk’s Office to be in compliance with the Open Meeting Law. In addition, candidates were asked regarding whether they were members of another Board, Commission or Committee. She also stated that the Committee expressed their appreciation at each of the reappointees’ willingness to step forward yet again and volunteer on behalf of their City and thanked them for their commitment.

Historic Commission Representative TTE 02/14/14 Thomas O’Keefe, III

The Ordinances & Administration Committee unanimously to recommend to the City Council to appoint Thomas O’Keefe, III to the Community Preservation Committee as the Historic Commission representative, TTE 02/14/14.

**Councilor Whynott stepped away from the dais at 7:21 p.m.**

**Councilor Theken** thought Mr. O’Keefe was a great asset to the community

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted 7 in favor, 0 opposed to appoint Thomas O’Keefe, III to the Community Preservation Committee as the Historic Commission representative, TTE 02/14/14.**

Historic District Commission TTE 02/14/14 Charles Nazarian

The Ordinances & Administration Committee voted unanimously to recommend to the City Council to appoint Charles Nazarian to the Historic District Commission, TTE 02/14/14.

**Councilor Theken** endorsed Mr. Nazarian as an asset to the Historic District. Commission

Mr. Nazarian expressed he was honored to serve the City on the Historic District Commission and noted his professional experience as well as being a petitioner to the Commission.

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted in 7 favor, 0 opposed to appoint Charles Nazarian to the Historic District Commission, TTE 02/14/14.**

**Councilor Whynot returned to the dais at 7:23 p.m.**

**Executive Session: Pending litigation concerning Charter School re: Peter Dolan et al and City of Gloucester Gloucester, Plaintiffs v. Mitchell D. Chester, et al Defendants**

**Councilor Hardy** stated in order for the City Council to go into executive session, the Council must adhere to strict Massachusetts Open Meeting Law in order to do so. “As Council President I declare that the March 22, 2011 meeting of the City Council has been duly posted and has been called to order. We are now in open session, and there is a quorum present. Before the Council can vote to go into Executive Session, the purpose of said Executive Session must be stated:

I declare the purpose of the Executive Session as follows is to discuss litigation strategy in a legal matter; and to discuss this in an open meeting may have a detrimental effect on the litigating position of the City. I further declare that it is the intent of the Council to reconvene back into open session to continue with the balance of our agenda after the Executive Session. Motions to go into Executive Session are by roll call vote and require a majority vote of the Council. Therefore, I will entertain a motion: That the plaintiff City Council, its staff and the plaintiff attorneys go into Executive Session to discuss strategy with respect to Charter School litigation regarding the Dolan et. al. v. Chester et. al. litigation.”

**MOTION: On motion by Councilor Tobey, seconded by Councilor Theken, the City Council BY ROLL CALL voted 8 in favor, 0 opposed to call the City Council (plaintiff), City Council staff, and attorneys for the Plaintiff enter into Executive Session (in accordance with the Open Meeting Law, Chapter 30A §21(3) to discuss litigation strategy with respect to Charter School litigation regarding the Dolan et. al. v. Chester et. al.**

**Councilor Hardy** stated, “I hereby announce that the roll call vote is 8 in favor, 0 opposed. We shall now convene into Executive Session and will reconvene to continue the balance of our agenda.”

*The City Council recessed from open session at 7:26 p.m.*

*The Executive Session was convened at 7:30 p.m. and was ended at 8:15 p.m. by roll call vote.*

*By unanimous consent, the City Council voted to reconvene to open session at 8:22 p.m. in Kyrouz Auditorium.*

**Councilor Hardy** stated that no other motions were entertained during the Executive Session.

**Consent Agenda:**

• <b>CONFIRMATION OF REAPPOINTMENTS</b>		
Affordable Housing Trust	Ruth Pino	TTE 02/14/13
Archives Committee	Sarah Dunlap, Jane Walsh, Stephanie Buck	TTE 02/14/14
Board of Health	Fred Cowan	TTE 02/14/14
Cable TV Advisory Committee	Briggs Longbotham	TTE 02/14/14
Clean Energy Commission	Sam Cleaves, John Moskal, Linda Brayton	TTE 02/14/14
CPC as Planning Board Representative	Karen Gallagher	TTE 02/14/14
CPC as the Gloucester Housing Authority	William Dugan	TTE 02/14/14
CPC as an At-Large Member	Scott Smith	TTE 02/14/14

Conservation Commission	Arthur Socolow, Robert Gulla	TTE 02/14/14
Historic District Commission	Nancy Goodick	TTE 02/14/14
Mariners Medal Committee	Capt. Paul Frontiero	TTE 02/14/14

• **MAYOR'S REPORT**

1. Resignation of City's Health Director Jack Vondras effective March 31, 2011 (Info Only)
2. Environmental Protection Agency public meeting and public hearing on March 24, 2011 (Info Only)
3. Summary of City Position re: Environmental Protection Agency public hearing on secondary treatment (Info Only)
4. Memorandum from Director of Public Works re: Public Works Reorganization for FY2012 (Refer B&F and O&A)
5. Special Budgetary Transfer Request (#2011-SBT-15) from Department of Public Works (Refer B&F)
6. Memorandum from Harbormaster re: permission to waive the "Daily User Fee" at Dun Fudgin on May 21, 2011 (Refer B&F)
7. Memorandum from Co-Chairs of Archives Committee re: acceptance of donation in the amount of \$2,000 (Refer B&F)
8. Request from national Grid re: electric easement for overhead system at 4 School House Road (Refer P&D)
9. New Appointments:
 

Helen C. P. Farr	Conservation Commission	TTE 02/14/13	
Mark W. Ring	Fisheries Commission	TTE 02/14/14	(Refer O&A)

 Appointment to Fisheries Commission by Council President Hardy: Council VP Sefatia Theken, Councilor Bruce Tobey (City Council)

• **COMMUNICATIONS/INVITATIONS**

1. Letter from Kenneth Hanover – President & CEO of Northeast Health System to City Council (File)
2. Communication from Mayor to Ward 5 Councilor Greg Verga re: Magnolia Woods Wind Turbine Study (Refer B&F)

• **COUNCILORS ORDERS**

1. CC2011-011 (Verga) Traffic Commission to review traffic flow of four (4) way traffic areas of Lexington Avenue, Fuller Street and Flume Road and amend GCO Sec. 22-269 and/or Sec. 22-269.1 upon Traffic Commission recommendations (Refer TC & O&A)
2. CC2011-012 (Hardy) Amend GCO Sec. 23-57 "Discontinuance of service for failure to pay water charges" (Refer O&A)
3. CC2011-013 (Tobey) That O&A and Administration develop and implement management system re: City data (Refer O&A)

• **APPROVAL OF MINUTES FROM PREVIOUS COUNCIL AND STANDING COMMITTEE MEETINGS**

1. City Council Meeting 03/08/11 (Approve/File)
2. Special City Council Meeting 03/17/11 (under separate cover) (Approve/File)
3. Standing Committee Meetings: O&A 03/14/11, B&F 03/16/11, B&F 03/17/11 (under separate cover) (Approve/File)

**Items to be Added/Deleted from Consent Agenda:**

**Councilor Hardy** asked to remove Item #8 under the Mayor's Report and the City Council Minutes of 03/08/11.

**Councilor Hardy** stated on the matter of the request from National Grid re: electric easement for overhead system at 4 School House Road be referred out to the Land Disposition Committee as well as Planning & Development since there is a request for the City to grant an easement.

**By unanimous consent the matter of the request from National Grid re: easement for an electric overhead system at 4 School House Road be referred out to the Land Disposition Committee as well as Planning & Development.**

**Councilor Hardy** stated that again there was a Microsoft Word mechanical error in numbering and that in the March 8, 2011 City Council Minutes, the Public Hearing on the matter of 4. PH2011-008: Approval of Stormwater Utility Regulations under City Charter Sec. 7-16(a) (b) et al on page 19, was in fact Public Hearing #2 of the evening and asked that the Council allow for that to be corrected.

**By unanimous consent the matter of the correction in the City Council Minutes Page 19 to show PH2011-008: Approval of Stormwater Utility Regulations under City Charter Sec. 7-16(a) (b) et al be numbered the second Public Hearing.**

**By unanimous consent the Consent Agenda was accepted as amended.**

**Standing Committee Reports:**

**Ordinances & Administration: March 14, 2011**

**Councilor Theken** stated there were no action items.

**Planning & Development: March 14, 2011**

**MOTION:** On motion of Councilor Verga, seconded by Councilor Ciolino, the Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to allow the 2011 annual St. Peter's Fiesta commencing on Wednesday evening, June 22 through Sunday, June 26, use and control of St. Peter's Park on Rogers Street, the streets and sidewalks of Rogers Street, from Mansfield Way to the entrance of Commercial Street; Commercial Street up to Fort Square to include the use of the Birdseye property; and from the intersection of Main and Washington Streets to St. Peter's Park; and on Friday, June 24, Saturday, June 25, and Sunday, June 26 only the water side of Stacey Boulevard from the "Tavern" to the Fishermen's Memorial (to the extent allowable by law) and the Ciaramitaro/Gemellaro Playground at Fort Square; for the purpose of conducting the St. Peter's Fiesta on the days and dates mentioned above. Further that vendors not be allowed on the right-hand side of Commercial Street nor on the streets and sidewalks from Tally's to the Chamber of Commerce and in addition, that all peddlers, canvassers, solicitors and others who encroach upon or occupy in any way these areas without the express consent of the St. Peter's Fiesta Committee are to be considered trespassers and to be in violation of Gloucester City Ordinances, Chapter 14, Section 14-6; Trespass; and with the following conditions:

- 1) That the kiddie rides (children of a height of 42 inches or under) be kept at the St. Peter's Square Park not at the Birdseye property;
- 2) That the enlarged footprint be drawn out on a plan showing locations of, but not limited to, Comfort stations and first aid stations to be placed on file (with the City Clerk's office no later than 14 days in advance of the start of the 2011 St. Peter's Fiesta);
- 3) That the music be shut down at the opening and closing ceremonies on the closest rides to the altar area;
- 4) That a temporary fence be erected at the very back of the area known as the "Birdseye Parking Lot" to prohibit entrance to Pavilion Beach from that parking lot;
- 5) Temporary lighting shall be placed illuminating the area used as a crossing between St. Peter's Park and the Birdseye parking lot;
- 6) That Fiesta Shows, Inc. contribute \$3,000 for the added police coverage due to the expansion of the rides to the Birdseye property payable to the City of Gloucester in care of the City Clerk's office to be paid 14 day in advance of the opening of the St. Peter's Fiesta.

**Discussion:**

**Councilor Ciolino** stated the Committee discussed in depth with the St. Peter's Fiesta Committee, Councilors Hardy and Mulcahey, and the Police and Fire Chiefs the plans for this year's Fiesta to their satisfaction. The Committee was assured that all conditions would be met and that they anticipate a well run 2011 St. Peter's Fiesta.

**MOTION:** On motion of Councilor Ciolino, seconded by Councilor Tobey, the City Council voted **8 in favor, 0 opposed to allow the 2011 Annual St. Peter's Fiesta commencing on Wednesday evening, June 22 through Sunday, June 26, use and control of St. Peter's Park on Rogers Street, the streets and sidewalks of Rogers Street, from Mansfield Way to the entrance of Commercial Street; Commercial Street up to Fort Square to include the use of the Birdseye property; and from the intersection of Main and Washington Streets to St. Peter's Park; and on Friday, June 24, Saturday, June 25, and Sunday, June 26 only the water side of Stacey Boulevard from the "Tavern" to the Fishermen's Memorial (to the extent allowable by law) and the Ciaramitaro/Gemellaro Playground at Fort Square; for the purpose of conducting the St. Peter's Fiesta on the days and dates mentioned above. Further that vendors not be allowed on the right-hand side of Commercial Street nor on the streets and sidewalks from Tally's to the Chamber of Commerce and in addition, that all peddlers, canvassers, solicitors and others who encroach upon or occupy in any way these areas without the express consent of the St. Peter's Fiesta Committee are to be considered trespassers and to be in violation of Gloucester City Ordinances, Chapter 14, Section 14-6; Trespass; and with the following conditions:**

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- 4) **That a temporary fence be erected at the very back of the area known as the "Birdseye Parking Lot" to prohibit entrance to Pavilion Beach from that parking lot;**
- 5) **Temporary lighting shall be placed illuminating the area used as a crossing between St. Peter's Park and the Birdseye parking lot;**
- 6) **That Fiesta Shows, Inc. contribute \$3,000 for the added police coverage due to the expansion of the rides to the Birdseye property payable to the City of Gloucester in care of the City Clerk's office to be paid 14 day in advance of the opening of the St. Peter's Fiesta.**

MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to permit the 2011 Fishtown Horribles Parade on Sunday, July 3, 2011 starting at 6:00 p.m. from the Gloucester High School parking lot to Centennial Avenue onto Stacy Boulevard to Main Street to Washington Street proceeding down Rogers Street to Manuel F. Lewis Street to Main Street to Pleasant Street to Prospect Street to Railroad Avenue to Washington Street to Centennial Avenue to Emerson Avenue to Lincoln Avenue returning to the Gloucester High School parking lot with the following documentation to be on file in the City Clerk's Office 7 (seven) days in advance of the parade date as follows:

1. A Certificate of Insurance naming the City of Gloucester as the certificate holder;
2. A Letter of Understanding between the 2011 Fishtown Horribles Parade Committee and the City of Gloucester School Department indicating permission to use the grounds of Gloucester High School as a staging area for the parade;
3. That Memorandums of Endorsement with the Fire and Police Departments for the parade;
4. A written plan of the parade route with attendant map indicating times of start and estimated Finish.

#### **Discussion:**

**Councilor Ciolino** acknowledged the endorsement of the Committee for this annual Gloucester tradition along with the discussion with both Chiefs.

**Councilor Whynott** noted the route has not changed for the upcoming parade.

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- 3. That Memorandums of Endorsement with the Fire and Police Departments for the parade;**
- 4. A written plan of the parade route with attendant map indicating times of start and estimated Finish.**

**MOTION:** On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to grant a permit to the Downtown Block Party Committee to temporarily close Main Street from the open driveway of Bank Gloucester to Washington Street on the following dates between the hours of 4:00 p.m. and 11:00 p.m.: Saturday, July 16 Saturday, August 20 and Saturday, September 17 to hold three block parties with the following conditions:

1. No vendor/merchant set ups on the sidewalk blocking entrance ways to retail or residential units, hydrants, crosswalks or handicap ramps;
2. All vendor/merchant set ups in the street are to allow for no less than a 10 ft. unobstructed, drivable area along the entire route – slightly wider at the curve of Palazola’s Sporting Goods to maintain adequate access for emergency vehicles. Failure to provide this 10’ unobstructed margin of drivable area may necessitate the removal or relocation of the vendor/merchant at the discretion of the Fire Department, the Police Department or the Block Party Committee;
3. The organizers shall allow the Fire Department drive-through access with the fire engine at the convenience of the Fire Department;
4. Any restaurant/merchant set up of tables and chairs, tents or area enclosures should extend into the street no further than the lines painted on the street for vehicular parking;
5. That all of the side streets – Short, Porter, Center and Hancock Streets be kept open and not blocked by vendors, food establishments, tables, chairs, enclosures, equipment or vehicles, so emergency vehicles may enter and exit Main Street as needed;
6. Vendor/merchants shall be responsible for their own trash removal;
7. Signs indicating the location of comfort stations shall be the responsibility of the Committee;
8. Plumbing Codes and regulations shall be adhered to regarding use of Restaurant bathroom facilities;
9. Special lighting and electrical requirements necessitate approval of the Inspector of Buildings and the Electrical Inspector;
10. The closure of the street at the intersection of Main and Duncan Streets shall be by means of sawhorses or the like, as directed by Lt. Joseph Aiello of the Gloucester Police Department;
11. It is the responsibility of the committee to procure all other Federal, State and local permits and approvals associated with this event;
12. That the committee makes reasonable notification to all residents and merchants along the route that will be affected by the closure;
13. Restaurants or vendors wishing to serve food outside must notify the Board of Health 7 (seven) days in advance for approval;
14. Conditions imposed by the Gloucester Liquor Licensing Board may also apply to the above closure and shall become incorporated herein;
15. All other laws, City ordinances and/or regulations are in full force.

**Discussion:**

**Councilor Ciolino** noted the endorsements of the Police and Fire Chiefs for this event as well as that of the P&D Committee.

**MOTION:** On motion by Councilor Ciolino, seconded by Councilor Tobey, the City Council voted **8 in favor, 0 opposed to grant a permit to the Downtown Block Party Committee to temporarily close Main Street from the open driveway of Bank Gloucester to Washington Street on the following dates between the hours of 4:00 p.m. and 11:00 p.m.: Saturday, July 16; Saturday, August 20 and Saturday, September 17 to hold three block parties with the following conditions:**

1. **No vendor/merchant set ups on the sidewalk blocking entrance ways to retail or residential units, hydrants, crosswalks or handicap ramps;**
2. **All vendor/merchant set ups in the street are to allow for no less than a 10 ft. unobstructed, drivable area along the entire route – slightly wider at the curve of Palazola’s Sporting Goods to maintain adequate access for emergency vehicles. Failure to provide this 10’ unobstructed margin of drivable area may necessitate the removal or relocation of the vendor/merchant at the discretion of the Fire Department, the Police Department or the Block Party Committee;**
3. **The organizers shall allow the Fire Department drive-through access with the fire engine at the convenience of the Fire Department;**
4. **Any restaurant/merchant set up of tables and chairs, tents or area enclosures should extend into the street no further than the lines painted on the street for vehicular parking;**
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6. **Vendor/merchants shall be responsible for their own trash removal;**
7. **Signs indicating the location of comfort stations shall be the responsibility of the Committee;**
8. **Plumbing Codes and regulations shall be adhered to regarding use of Restaurant bathroom facilities;**
9. **Special lighting and electrical requirements necessitate approval of the Inspector of Buildings and the Electrical Inspector;**
10. **The closure of the street at the intersection of Main and Duncan Streets shall be by means of sawhorses or the like, as directed by Lt. Joseph Aiello of the Gloucester Police Department;**
11. **It is the responsibility of the committee to procure all other Federal, State and local permits and approvals associated with this event;**
12. **That the committee makes reasonable notification to all residents and merchants along the route that will be affected by the closure;**
13. **Restaurants or vendors wishing to serve food outside must notify the Board of Health 7 (seven) days in advance for approval;**
14. **Conditions imposed by the Gloucester Liquor Licensing Board may also apply to the above closure and shall become incorporated herein;**
15. **All other laws, City ordinances and/or regulations are in full force.**

MOTION: On motion of Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council granting permission for the Gloucester Downtown Group (GDG) through its agent, Grace Giambanco (name and contact information to be submitted to the Committee no later than July 1, 2011 as well as to the Fire and Police Chiefs) hired by the GDG, to close Main Street from Pleasant Street to Washington Street, including Hancock, Center, Porter and Short Streets to all vehicular traffic from 7:00 a.m. to 6:00 p.m., Thursday, August 4<sup>th</sup>, Friday, August 5<sup>th</sup>, and Saturday, August 6, 2011 for the purpose of conducting the Gloucester Sidewalk Bazaar with the following conditions:

1. No vendor set ups on the sidewalk blocking either hydrants, crosswalks or handicap ramps. Vendor set ups are not to extend beyond the marked parking lines on the streets (The handicap access is at the crosswalk. This is where the curb cuts are.);
2. No vendor set ups in front of the police station other than the area designated by Lt. Aiello of the Gloucester Police Department;
3. All vendor set ups in the street are to be within the marked parking lines to allow for unobstructed drivable area along the entire Sidewalk Days route - slightly wider at the curve of Palazola’s Sporting Goods to maintain adequate access for emergency vehicles. Failure to provide this unobstructed margin of drivable area may necessitate the removal or relocation of the vendor at the discretion of the Fire Department, the Police Department or the event agent hired by the GDG;
4. The organizers shall allow the Fire Department drive-through access with a fire engine once each day of the event, on or about 9:00 a.m., and one random drive through to be decided by the Fire Department;

5. No parking or unloading of goods of any vehicles on any of the above-mentioned streets after 8:50 a.m. until 5:00 p.m. on each of the days of the Gloucester Sidewalk Bazaar;
6. Signage showing the location of the comfort stations to be located throughout the event area.

**Discussion:**

**Councilor Ciolino** explained the Committee was assured that this year's Sidewalk Bazaar, now run by the Gloucester Downtown Group through its agent, Grace Giambanco, would be successful. He noted the Cape Ann Chamber of Commerce is no longer associated with the event other than to assist with its promotion.

**MOTION:** On motion of Councilor Ciolino, seconded by Councilor Theken, the City Council voted 8 in favor, 0 opposed to grant permission for the Gloucester Downtown Group (GDG) through its agent, Grace Giambanco (contact information to be submitted to the Committee no later than July 1, 2011 as well as to the Fire and Police Chiefs) hired by the GDG, to close Main Street from Pleasant Street to Washington Street, including Hancock, Center, Porter and Short Streets to all vehicular traffic from 7:00 a.m. to 6:00 p.m., Thursday, August 4<sup>th</sup>, Friday, August 5<sup>th</sup>, and Saturday, August 6, 2011 for the purpose of conducting the Gloucester Sidewalk Bazaar with the following conditions:

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2. No vendor set ups in front of the police station other than the area designated by Lt. Aiello of the Gloucester Police Department;
3. All vendor set ups in the street are to be within the marked parking lines to allow for unobstructed drivable area along the entire Sidewalk Days route - slightly wider at the curve of Palazola's Sporting Goods to maintain adequate access for emergency vehicles. Failure to provide this unobstructed margin of drivable area may necessitate the removal or relocation of the vendor at the discretion of the Fire Department, the Police Department or the event agent hired by the GDG;
4. The organizers shall allow the Fire Department drive-through access with a fire engine once each day of the event, on or about 9:00 a.m., and one random drive through to be decided by the Fire Department;
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6. Signage showing the location of the comfort stations to be located throughout the event area.

**Budget & Finance: March 17, 2011**

**MOTION:** On motion by Councilor Hardy, seconded by Councilor Ciolino, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the full City Council that under M.G.L. Chapter 44 Sec. 53A to accept a grant amendment of \$83,504.00 from the MA Department of Public Health, Bureau of Substance Abuse Services which renews contract #INTF2354MM3900913012, renewing the contract in place for an amount of \$30,000 for FY12 and FY13.

**Discussion:**

**Councilor Curcuru** explained the Health Department has for the current grant year \$120,000 for the Opiate Overdose Prevention Services Grant from the Bureau of Substance Abuse Services from the MA Dept. of Public Health. It is a four year grant. The City has been awarded an additional \$83,504 to

amend the grant total award to \$203,504 for this year. The amendment also renews this contract in the amount of \$30,000 for fiscal year 2012 and 2013. On inquiry by **Councilor Theken** the Councilor stated if there is a match it is in kind.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor Ciolino, the City Council voted 8 in favor, 0 opposed that under M.G.L. Chapter 44 Sec. 53A to accept a grant amendment of \$83,504.00 from the MA Department of Public Health, Bureau of Substance Abuse Services which renews contract #INTF2354MM3900913012, renewing the contract in place for an amount of \$30,000 for FY12 and FY13.**

MOTION: On motion by Councilor Hardy, seconded by Councilor Ciolino, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the full City Council that under M.G.L. Chapter 44 Sec. 53A to accept a grant of \$22,362.20 from the MA Executive Office of Public Safety & Security for funds to be used towards the purchase of an Automated License Plate Reader (ALPR).

### **Discussion:**

**Police Chief Lane** stated the Police Department is in receipt of a grant award of \$22,362.20 from the MA Executive Office of Public Safety & Security for the purchase of an Automated License Plate Reader (ALPR). The purchase of this technology (a series of cameras mounted on a police vehicle) will allow for greater enforcement of motor vehicles violations related to registration and insurance status, “tow and holds”, warrants, ‘hot sheets’ and other functions that can be programmed into the system. Thirty were awarded statewide in this competitive bidding process. They expect it to be a good tool in reducing the number of unregistered and uninsured vehicles, as well as collateral issues such as warrants, etc. and asked the Council to accept the grant on their behalf.

**Councilor Tobey** asked where the data from the readings go.

**Chief Lane** stated the data goes to a server in the police station. The retention period is optional and expressed he had no intention to purchase a large server to hold all of the data.

**Councilor Tobey** noted if there is a car that is “clean” with insurance, no warrants, no tow-and-hold on it, what data does that capture about that car, its whereabouts; what are the pros and cons of this kind of data from a law enforcement policy point of view?

**Chief Lane** responded he understood the American Civil Liberties Union had concerns which were voiced to Lt. Aiello who was sent to the meeting [in Boston the day after the Budget & Finance Meeting of March 17<sup>th</sup>]. He noted it can go by and capture everyone’s license plate, but the machine would not know whether the vehicle was on Washington Street or Poplar Street or any other way. He noted he had a sample policy designed by the International Association of the Chiefs of Police and will look to fine tune it and have a policy in place and in use. He assured the system would be for official police business only. If they find a car on a certain street at a certain time, and a person was saying they weren’t there, it could be used to disprove an alibi. He has only just received information today and hadn’t completed his review of it, but didn’t see any civil liberty issues.

**Councilor Tobey** thought it possible this data could be used in unrelated law enforcement activities. He gave the example of a car that was parked in front of a house where a murder had occurred. **Chief Lane’s** view was it would be a legitimate use, compliant with the policy they had in effect, stating, “Yes”.

**Councilor Tobey** noted the 20% match with **Chief Lane** explaining it was an in-kind or soft match of the total project cost totaling \$5,590.55 to be made up by cruiser rental, administration, training, etc.

**Councilor Ciolino** reminded they’re under surveillance with the Homeland Security cameras with or without the ALPR.

**Councilor Whynott** asked how the system was triggered which **Chief Lane** explained the program will ping the cruiser laptop when it reads a plate; if there is a problem plate, it will ring an alarm, freeze the image of the plate which is then confirmed manually by the police officer who runs a confirmation. They then receive the information and take action should there be a need.

**Councilor Mulcahey** asked where the information in the computer comes from which **Chief Lane** confirmed comes from the Registry of Motor Vehicles and the Criminal Justice System in Chelsea which is the interface for the registry. If the plate is active, it is stored in the server; if revoked it 'pops up' on the screen of the laptop. It is the same information they would received if they had called it in over their radio system to headquarters.

**Councilor Curcuru** noted Lt. Aiello was at B&F where they discussed parking tickets and the next day had sent an email stating that for an additional cost they can add software for that.

**Chief Lane** stated he didn't know about it but would have to speak to the records management vendor. He reiterated for **Councilor Theken** that the cameras, each about the size of a water bottle, will be mounted to the outside of the cruiser. The system stays on the whole shift in the particular cruiser fitted with the three cameras, one on either side of the cruiser's trunk and one on the hood. She also asked if a person was parked legally on the side of a street doing nothing illegal, but they had outstanding tickets and it came up on the laptop because they ran the plates and was arrested would that arrest hold up in court pointing out it was a plate that was run without their permission and wasn't doing anything illegal. Would there be lawsuits because they would be illegally arresting people?

**Chief Lane** stated no nor would that be an arrest-able offense. He noted unregistered motor vehicles, and an uninsured motor vehicle, those are not arrest-able. If they pulled a person over and someone had something that was illegal other than the tickets, say, then that is a different process.

**Councilor Hardy** stated this does not require hiring another officer to operate this system.

**Chief Lane** confirmed it did not. He also noted there will be a press release to the public to let them know this will now be a tool for use by the Police Department.

**Councilor Whynott** thought this was a good tool for the police.

**Councilor Tobey** respected the zeal of the department to find those who are doing wrong. He was, however, bothered the continuation of a "surveillance society" and would vote no.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor Verga, the City Council voted 7 in favor, 1 (Tobey) opposed that under M.G.L. Chapter 44 Sec. 53A to accept a grant of \$22,362.20 from the MA Executive Office of Public Safety & Security for funds to be used towards the purchase of an Automated License Plate Reader (ALPR).**

#### Public Hearings:

1. **PH2011-008: Approval of Stormwater Utility Regulations under City Charter Sec. 7-16(a) (b) And GCO Sec. 23(1) through 23(6) "The Stormwater Utility Ordinance" in general and Sec. 23-4(c) "Storm Water Utility Service Fees" (Cont'd from 03/08/11)**

**This public hearing is open at the point of "Questions from the Council" from the 3/8/11 meeting.**

#### **Questions:**

**Councilor Tobey** restated that the Council has received today two memos from General Counsel (on file) regarding questions asked at the last (City Council) meeting. There was one memo specifically addressed to the Council President exploring legal definition of a fee and does the fee require an opt out provision. In its discussion on the opt-out provision the opinion states, "Accordingly, there is no requirement for opt out provision, however, the stormwater fee is voluntary to the extent a property owner may choose not to develop any impervious surface on their property." He asked if this said the sole trigger for a property owner to be subject to this fee is the act of developing impervious surface on the property.

**Suzanne Egan**, General Counsel stated his question of whether having impervious surface on a property is the sole trigger to the fee relates back to the regulations as presented to the Council begins looking as to whether a parcel has impervious surface on their land. As relates to commercial property, the equation states they look at each parcel and determine the amount of impervious surface on that parcel. There is some exemption within the regulations and within the ordinance that land without any impervious service

is exempt from the ordinance. “Yes”, if the lot has no development and no impervious surface that is exempt under their ordinance and under these regulations.

Is there an ability to opt out of the ordinance and is that necessary for there to be a fee. In a number of cases the courts have looked at as to whether or not a charge is a fee or a tax, the second factor they look at is, is the person paying the fee voluntarily. The courts questioned what does voluntarily mean in this instance. They’re not saying it is a choice as in, “I’m going to pay it or I’m not going to pay it”; it means the choice as in whether or not you’re going to exercise a right or participate or develop your land or do anything that the fee is related to. If they have a fee that relates to having impervious surface on your land, if you choose to develop the land and pave it or put a house or anything on it to have impervious surface then under this particular legal theory you’re *choosing* to exercise that right and *choosing* that particular service their offering which is stormwater collection and treatment and is how voluntary relates to this fee.

**Councilor Tobey** stated the fee is “for the use and operation and maintenance of the stormwater facilities.”

**Attorney Egan** responded the fee relates to the annual charges which relates to the budget in the City ordinance; their regulations are saying they will come up with a stormwater utility budget each year; and the expenses of the running that utility and the expenses of providing the service to the citizens of Gloucester to treat the stormwater, to collect it and to maintain that stormwater facility; they are then going to come up with the equation and charge a fee on the basis of the equation which relates to the amount of impervious surface on that parcel of land.

**Councilor Tobey** thought of properties in the City that aren’t on sewer on a private road with well water and built so that they’re downhill from the street. The driveway is paved; the house has a roof. None of that water goes anywhere but shedding away into a waterway. What service does that house get that they should be charged a fee?

**Attorney Egan** replied the service that the City is providing for that is any runoff from that property eventually goes into the stormwater treatment collection and treatment system and that is the service they are providing to them.

**Councilor Tobey** reiterated that on the facts he just presented, this water is going into for example, Walker’s Creek.

**Attorney Egan** stated that creek then flows into the system and any other stormwater gets combined with that and becomes a part of the whole. She noted it was important to remember there is a system they’re creating; a stormwater system for the treatment and collection of stormwater which doesn’t run off and stop but runs off and continues. Also important to remember, she pointed out, is that MGL c.83 provides for the authority for the City to create a stormwater facility, stormwater treatment and run off and allows the City to authorize to create this and charge a fee for it. They have tried to come up with the best equation and the best method by which to charge property owners a fee that relates to the service that is provided.

**Councilor Tobey** remained confused because in scenario he laid out where the home would be assessed a fee with water going into Walker Creek, to the Essex River, to Ipswich Bay to the ocean and never goes through any type of a City facility receiving some City service.

**Councilor Hardy** asked if they were going with the previously discussed amendment to the stormwater ordinance of c.83, Sec. 1 et seq or something other than that and questioned what was in front of the Council.

**Attorney Egan** stated it is just the regulations now before them. She noted the Council is going to schedule an additional public hearing to amend the ordinance to take out MGL c.83 sec. 16 to become MGL c. 83 Sec. 1 et seq at another City Council meeting.

**Councilor Hardy** didn’t see the benefit extending to all in the City. Citing there were people not on sewer and that under c. 83, Sec. 16 it only applied to “those that enter thereunto”, she wasn’t there yet. She believed if they had to pick a way to get to the rate that the City has done a “wonderful job” in figuring out what that formula would be because she believed it was fair and equitable; however, she didn’t think it was a benefit equally shared by the community expressing she wouldn’t be supporting this.

**Councilor Theken** stated they're already paying for this on their taxes for those who don't have sewer. While not speaking to the debt shift currently, but that it was all included. Right now the CSO project is on their taxes right now for property owners. If they don't do something it goes on the sewer rate. They made an agreement it should be spread across for all. How can they not combine it all together? She understood those who say they don't have water, sewer, and drainage. She understood there were 3,000 homes not on City sewer; and while she was one of those 3,000, she wanted to pay that portion on her part. She does use the streets, and other City services. They made the Administration to come up with this. She liked that no one was exempt from the fee. Everyone will have to pay something.

**Councilor Curcuru** hoping to give a better understanding of the methodology expressed the way the rates look it would be around \$53 annually for one ERU based on the proposed stormwater utility budget for the next fiscal year. **Mike Hale**, DPW Director confirmed that with the Councilor who continued except for the 3,000 people, additional new rate payers, this is not a new fee. This is a current cost sewer rate payers are paying now, which **Mr. Hale** also confirmed. The Councilor also reminded that the Administration has suggested that during the budget review process they would look at shifting a portion or a percentage from the existing CSO debt shift to this new fee.

**Mr. Duggan** stated, "Correct". He related the Mayor understood and recognized the inequity with that entire amount on the tax rate. They would look "strongly" at a shift over to this fee; but they would not commit to a percentage tonight.

**Councilor Curcuru** understood and thanked the Administration and the Stormwater team for their effort, noting he and Councilor Tobey having attended a few of their meetings. He also expressed his support of the regulations.

**Councilor Verga** expressed he had been going back and forth on the issue, and expressing regret for the vote for the shift the first time last year. The more he tried to convince people in his ward that this is fair because they're all one City, a part of one system all wanting clean harbors he found it harder to convince them as well as himself that based on the scenario Councilor Tobey related earlier, what benefit is it to the ward. When he saw a breakdown of ward by ward, users of water and sewer, seeing just a tiny sliver on the sewer in Ward 5. As the Ward 5 Councilor, he expressed he had to look out for the best interest of the ward. Noting he was on City sewer, and paying his share, but he had to agree there were properties in the middle of the woods and their run off is going into the ground then into the woods and is never in contact with any manmade system. If they could make some kind of amendment when the ordinance comes back before the Council, he might be able to support this; but at this time he could not.

**Councilor Curcuru** noted at the last meeting they spoke about where this monitoring and fees and where this could possibly go from here; and they're not really sure.

**Mr. Hale** responded as the evolution of the stormwater permit grows from the EPA it will become more stringent over time. The initial permit in 2003 was very basic. The proposed permit that goes into effect this summer is much more intrusive into their stormwater system. He brought up the example of some of the run off that runs off a property into a stream, they sample the outfalls, which will be required in the next permit. It was, he felt, not fair to say the run off didn't touch the City stormwater policy, expressing rather they did. They will be sampling all these outfalls that enter the receiving water bodies, streams, rivers, and the ocean. They will have some "touch" to it. He posed was it a catch basin, a set of pipes to maintain, and thought not. But there was a significant portion of the stormwater system in West Gloucester they do maintain today that is not being paid for by those residents. It is being maintained by the sewer rate.

**Councilor Curcuru** expressed that essentially everyone benefits from this in some form. In looking at his ward, he related it was mostly ratepayers and had to speak on their behalf; and that for years ratepayers have been bearing the burden of this. He understood Councilor Verga's ward and the people he represented are not necessarily affected by the water and sewer rates, but he believed this was something everyone benefits from and thought everyone should bear the burden of the cost.

**Councilor Theken** stated right now they're paying on the debt shift. If they do not support this tonight who will pay for this.

**Mr. Duggan** responded it would stay on the sewer rate and be no further examination until next year for a debt shift.

**Councilor Theken** then expressed that the debt shift on taxes is based on the value of a home, even if you had no sewer. It is based on the value of a home; even if the property has septic and their own well, they're paying for this which **Mr. Duggan** confirmed to be the case. **Councilor Theken** added there could be another debt shift added on top of this which Mr. Duggan stated there is a possibility but the Council would have to approve that. The Councilor continued by asking where the budget for stormwater comes from.

When asked how stormwater costs are paid now, **Mr. Hale** stated they carry "the lion's share" in the sewer rate and the rest being carried in the DPW budget.

**Councilor Theken** noted the DPW cleans the Magnolia Avenue storm drains.

**Mr. Hale** confirmed they did and that money to do it comes out of the sewer rate. He noted they were asked to develop the regulations and crafted them the best they could, noting the complexity. It is complex. There are obvious homes and some that are not. And some a very few would be tough to trace. But there are many ways stormwater is affected. He noted the very recent Hookset, NH example (the release of discs to the ocean now coming ashore on area beaches).

**Councilor Theken** asked how many homes do they really have in Gloucester having nothing to do with City water or sewer bill which **Mr. Hale** thought was a small number that don't have either, a handful.

**Councilor Theken** then stated if someone doesn't have any City services and lives on a private road could they sue the City for putting this fee into place.

**Attorney Egan** stated anyone can sue the City. However, they've created an ordinance and regulation that has a sound basis; and the reason is that it relates to the service provided and to the amount of impervious surface on the ground. They can seek an abatement that they don't receive a benefit; but the stormwater that runs off into a stream or river, the City still has to treat and collect that water. But they can provide the rationale for this having worked hard to make this effective.

**Councilor Theken** asked if the City set up for abatements as relates to stormwater.

**Attorney Egan** responded they are not. They would provide abatements for the lack of impervious surface as the regulations are written today and as the ordinance is written today, there is nothing that provides for abatement due to that situation.

**Councilor Theken** added could they can put in a provision for abatement; were they allowed to do that.

**Attorney Egan** stated anyone can apply for abatement. It is not in the regulations.

**Councilor Verga** expressed he'd like to offer an amendment related to the ordinance but since they were looking at the regulations now, he believed he'd have to wait until the public hearing on the ordinance comes before the Council which **Councilor Hardy** confirmed was the case.

**Councilor Whyntott** pointed out this has to do with the cleanliness of the water noting they still are putting pollutants out there and thought that this was a burden that everyone should carry.

**Councilor Tobey** stated at some point either the regulation or ordinance might be amended. General Counsel said at the last O&A meeting if they amend the ordinance, that change would reflect back on the regulations as they accept them tonight. Tonight on the matter of the regulation, they either take a regulation or leave it under the charter. They can't change it unless the Administration agrees. If the Councilors vote to accept it, subject to the Administration accepting an amendment whereby this would only apply to those houses that do have a physical connection to a sewer as a first step, would the Administration accept that.

**Mr. Duggan** responded if that is the will of the Council to divide the amount in order to provide that to a lesser amount of fee payers, "yes".

**Attorney Egan** thought it important to consider that when the regulation was created and the equation was created, it was done on the basis of the facts that were before them. That was how they determined whether or not it would work. There were a lot of different inputs and factors that went into it. She suggested it would not be a very beneficial move this evening to take an amendment to the regulations and enact them; instead what they have put forward to the Council is on the basis of the work that was performed and the studies that were done. She felt they need to be able to take a step back and look at the

effect of any amendment which was also her suggestion. What they have discussed to date is the reasonableness of the regulations which as been carefully considered. If they switch those regulations without having the ability to look at it that it is reasonable, then she believed they are defeating their own purpose.

**This public hearing is closed.**

MOTION: On motion by Councilor McGeary, seconded by Councilor Hardy, the Budget & Finance Committee voted 3 in favor 0 opposed to recommend to the City Council that the matter of the "Stormwater Utility Fee Structure and Regulations" be adopted as presented and pursuant to City Charter Sec. 7-16(b) dated February 15, 2011 and incorporated into these minutes.

#### **Discussion:**

**Councilor Ciolino** expressed they sat here about 1-1/2 years ago with people asking for a billing system that was fair, and at that time they put it on their taxes. He believed it was the most unfair way to put the burden on the taxpayers. Whether it is a Eastern Point, Annisquam or Magnolia, it was not fair, he contended, to put it on the assessed value of a home. They promised those people they would come up with a better system. He pointed out that once again this Council asked the Administration to come up with a system. They worked very hard on this, believing the City was a pioneer in the matter. He gave 'kudos' to all who worked on it, noting its complexities feeling the end result is fair. If you have a house on Eastern Point, it will be \$53; whether a house is on say, Addison Street or School Street, Magnolia or Lanesville, it is the same amount paid yearly on a quarterly basis. He pointed out he is not on City sewer either. From the Boulevard or the Fort one can view the clean harbor as well as from Niles Beach or Walker Creek. That is the effect. This ruling was a mandate from the EPA with no help to pay for it. He reiterated it wasn't fair to just put it on the taxpayers or the sewer users. The meeting Thursday (referring to the EPA public hearing on the City's denial of a secondary treatment permit waiver) could put sewer rates "through the roof" and felt they can't keep putting the burden on that enterprise fund. This is a new system. And because this system is working, they're not having incidents in the harbor that they get the pollution going it and not be fined by the EPA. These storm drains need to be maintained and cleaned on a regular basis or the City will be fined. The only fair way is to do it, is to do it as planned. He felt they could 'tweak' it down the road; but the mandates keep coming, and they have to share the burden to pay for it. He will be supporting it.

**Councilor Verga** thanked the Administration and team for their hard work. He thought it was a good formula but it came down to what are the people who aren't on sewer getting; and was it fair of their bearing the burden because of the large amount put on the tax bill last year which he voted for and regretted since, that a large portion is going to stay on it, at least a large portion of it. As far as being team player, until recently he was on septic; they subsidized the rest of the City while they got sewers and had smaller betterments because of their subsidy. When it came time to look at Walker Creek and other areas of West Gloucester, they were told, "the well ran dry", and felt they already gave. He hoped they come up with something fair and come up with some kind of 'tweak' to the ordinance at the next meeting. As it stood at this time, he could not support it as is.

**Councilor Theken** stated there is no fair measure. She lives in Ward 5. She has friends who have no sewer, and those who have no City services. When they have a problem they have to handle it themselves. There are quite a few people who are paying taxes for the school system but having no children in it. They have people living on private streets that don't get plowed, but their taxes pay for it. They didn't like the tax shift. And every single person who was there two years ago said they were willing to pay a little bit, but make it fair. She understood about fees, litigation. She gave kudos to Councilor Tobey to see it was done right and never gave up on this. He's not given up and wants to see a percentage taken off to put it on to a stormwater fee if they do it. They can't keep putting the burden on the taxpayers. She would vote for this. By doing this, then if necessary, they can possibly amend the ordinance. She didn't view this as a burden. She wanted to know she was paying the same as everyone

else and closed by saying making it equal across the board allows it to be fair.

**Councilor Mulcahey** stated everyone drives on the streets. If their car deposits oil onto the street, it washes off the street into the storm drains and into the system, as does the rain off their cars, and the road salts and sand. She would support this.

**Councilor Hardy** expressed she would be interested to see the offered amendment to the ordinance when it comes before the Council at their next meeting; until then she would vote no.

**Councilor Tobey** felt they're in a dilemma that they have to choose what is least unfair or not unfair as opposed to what is most fair. The debt shift, in his opinion, was and remains wrong. It is contrary to that room full of people who wanted a fee. They can only do a fee that is legally upheld and was still troubled if they include the 3,000 not on sewer; that it won't be legal or be upheld. He was also troubled when the legal argument is that the language of [MGL c. 83] Sec. 16 that says "who enter their sewer therein" and are told by the City Attorney that they don't have to worry about it, being told it is "clearly poorly drafted". He felt this explanation was not correct under the "canons of statutory construction" as he understood. Then if they don't accept this, the Administration has no capacity to look at undoing some of the debt shift. He expressed he was frustrated; that they were in a bad spot because of a combination of factors. He acknowledged the staff has worked hard and had done a great job but wasn't sure this goes all the way because the 3,000 homes from the points of view of fairness and legality he believed are a major problem to their proceeding with this regulation.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 5 in favor, 3 (Hardy, Tobey, Verga) opposed, 1 (McGeary) Absent, that the matter of the "Stormwater Utility Fee Structure and Regulations" be adopted as presented and pursuant to City Charter Sec. 7-16(b) dated February 15, 2011 and incorporated into these minutes.**

## **2. PH2011-010: Dog Park Location and Regulations**

**This public hearing is open.**

**Those speaking in favor:**

**Mary Lou Maraganis**, dog park proponent and Gloucester resident stated she was in favor of the Stage Fort Park location and the regulations as proposed. They last came before them for the creation of the dog park; with unanimous approval they passed an ordinance to provide for off leash dog parks in the ordinances. They then gave a power point presentation (submitted and on file). The presentation covered their mission statement, community benefits such as keep dogs out of shelters and keep pets with their owners. It will serve diverse community groups. Dog parks provide for better behaved dogs. It would increase tourism and is a way of promoting the City and gave examples. Noting forty percent of homeowners have dogs, they believe it will also assist in providing for a cleaner City and a safe environment for dogs and their owners. There will be rules to govern the dog park based on successful dog parks in other areas. The emphasis is on responsible dog ownership with self policing which they believe would be more effective. The rules were reviewed by the DPW and the O&A Committee. It is in three sections: general, written notice of liability waivers, age appropriateness of dog guardians and control of dogs. The third section is for dog handlers.

The site is an area in Stage Fort Park which is centrally located with ample parking, public facilities and lighting. The site was also recommended by the DPW and the Open Space Committee. She pointed out it is an under utilized spot situated behind the basketball courts. She noted the "little white school house" nearby. Right now the area is not used at all; and wishes to see it used all year. Their architect, Doug Cook, has stated it would be appropriate site for the park. Their design was based on successful dog parks. The dog park will follow the natural outline of the topography of the area. They will build buffering areas between the road behind the park and will develop a drainage plan to dispense water into the ground. It would be stone based which is intended to mitigate odors also it will cut down on maintenance. There will be a small dog section and a training area to be used for educational forums, and

for special needs dogs. There will also be a leashed area because of interaction with small children which would be in the middle of the park. She thanked the Council for their support.

**Peter V. Asaro**, 224 Bray Street stated he has three dogs and was in favor of it.

**John Feener**, 45B Warner Street stated he has a dog and liked the idea of the dog park and thought it exciting. He noted the proposed site is actually an old playground. It is not only an opportunity to have a dog park but to expand the City's recreation plan and be inviting for more people to use the park itself. He thought it a great opportunity to unify the City.

**John Dugger**, 25 Beach Road was impressed with the work the proponents have done. He was in favor of it.

**Dr. Ray Cahill**, 100 Eastern Avenue, Veterinarian at Seaport Veterinarian Hospital applauded the professionalism and thoroughness of the evolution of the dog park proposal believing it had been done well and that the park offers an enriching opportunity for dogs and their owners.

**Those speaking in opposition: None.**

**Communications: None.**

**Questions:**

**Councilor Verga** asked about funding going forward, the organization of a board of directors and how this would be maintained in the future asking what would perpetuate the park.

**Ms. Maraganis** explained they're in the midst of getting more volunteers for doing the building project and other sections of the park they'll need help with and would not just be her and Judy Masciarelli, the other original proponent. They couldn't move forward before the approval. Once they have that they will get support to build the park.

**Judy Masciarelli** 23 Way Road and dog park proponent added they're now in the process of forming the Friends of Gloucester Dog Park. They have a website: [gloucesterdogpark.org](http://gloucesterdogpark.org) and are looking for committee members and volunteers.

**Councilor Verga** asked for a dollar amount to open the park and a timetable to get it done.

**Ms. Maraganis** stated the timetable is funding dependent. They're working out the numbers and how they can phase it in and meeting with DPW tomorrow to see how that can start and what they'll need for each phase.

**Councilor Curcuru** stated this is City land and did they expect the City to maintain this land once park is up and running.

**Ms. Maraganis** responded they're asking for trash removal, parking lot maintenance and utilities, that meaning water and lights.

Councilor Curcuru asked about liability and how it affects the City.

**Ms. Maraganis** thought that was addressed by the City's attorney and stated if you use property for a recreational use of the public without charging any fees then they waive liability.

**Councilor Hardy** pointed out with regards to the construction that they realize the DPW must approve the design, the materials, etc. because it becomes, in essence, a part of the City.

Both **Ms. Maraganis** and **Ms. Masciarelli** confirmed they did..

**This public hearing is closed.**

**MOTION: On motion by Councilor Theken, seconded by Councilor Tobey, the City Council voted BY ROLL CALL 8 in favor, 0 opposed to accept the location for the Off-Leash Dog Park within Stage Fort Park near the Stanley Marchant Building as designated by the DPW Director under Code of Ordinances Sec. 4-16(d).**

MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to accept the Revised Dog Park Regulations dated January 31, 2011 (pursuant to Sec. 7-16(b) of the City Charter).

**Discussion:**

**Councilor Ciolino** asked that there be an amendment to the regulations dated December 1, 2010 and would note this is a rearrangement of some of the numberings. The changes are under Sec. C Dogs, (i), (j), (k) be shifted to Sec. B, General with new numbers 8, 9 and 10 (documentation of changes submitted at meeting and on file.

**Without objection the Council made the changes as proposed.**

**Councilor Ciolino** explained that Ms. Maraganis and Ms. Masciarelli were the first go forward with this idea; and the model they used was the Rotary Club's children's park at Stage Fort Park which was to create it and then gave it the City. He believed any city that has a leash law should have a dog park feeling is a hardship not to take dogs on the beaches in the summer although understandable. There is a need to have a place for dogs to run and socialize. They need to address the issue of owners being responsible for their pets noting the dog waste on the Boulevard and that the dog park will clean that whole area up and make it useful and wholeheartedly supported it. He expressed his admiration for Ms. Masciarelli and Ms. Maraganis for their efforts and thanked them.

**Councilor Whynott** thought the dog park was great. He wouldn't want dogs on the beach in the summer as it is not a good mix. The dog park is great for helping to clean up other areas also.

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 8 in favor, 0 opposed to accept the Revised Dog Park Regulations dated January 31, 2011 (pursuant to Sec. 7-16(b) of the City Charter).**

### **3. PH2011-011: Amend GCO Sec. 11-5 re: Additional Fixed Vending Locations**

**This public hearing is open.**

**Those speaking in favor: None.**

**Those speaking in opposition: None.**

**Communications: None.**

**Questions:**

**Councilor Whynott** asked about the third location and where it was in relation to the one the Council recently deleted.

**Councilor Mulcahey** stated it is between the entrance and exit of St. Peter's Park.

**This public hearing is closed.**

**MOTION: On motion by Councilor Mulcahey, seconded by Councilor Curcuru, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to Amend GCO Chapter 11 Sec. 11-5 BY ADDING Hawkers & Peddlers and Transient Vendors Sec. Fixed Vending; Site Specific Locations as follows:**

- The former 'Duck Boat' area on Rogers Street in front of the Fitz H. Lane parking lot and at the southwest corner of the east entrance to Harbor Loop.
- Main Street, southerly side, by the boatyard and in the area across from the area of Scott Street and 360 Main Street.
- Rogers Street, southerly side, at parking meter #2 located between the two entrances to St. Peter's Park.

**Discussion:**

**Councilor Theken** stated this was just on the three spots only. Councilor Ciolino wondered about fees to be charged for these spots and their minimums which they did not have before them at this time.

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 8 in favor, 0 opposed to Amend GCO Chapter 11 Sec. 11-5 BY ADDING**

**Hawkers & Peddlers and Transient Vendors Sec. Fixed Vending; Site Specific Locations as follows:**

- **The former 'Duck Boat' area on Rogers Street in front of the Fitz H. Lane parking lot and at the southwest corner of the east entrance to Harbor Loop;**
- **Main Street, southerly side, by the boatyard and in the area across from the area of Scott Street and 360 Main Street;**
- **Rogers Street, southerly side, at parking meter #2 located between the two entrances to St. Peter's Park.**

**Councilor Mulcahey left the meeting at 10:10 p.m.**

**4. PH2011-012: Amendments to GCO Chapter 10 "Waterways Administration Sections 10-3 to Section 10-53**

**This public hearing is open.**

**Those speaking in favor:**

**Cate Banks**, Waterways Board member stated she has been chairing the regulations review committee for the last two years during that time they've tried to incorporate some of the language from the ordinance. They needed to clarify and change some items. They focused on City owned marinas listed as public marinas. They're for commercial fishermen and so they changed it to "City owned commercial marina" instead. They looked at their own board which had a waterways safety subcommittee. They didn't meet that often and with only two people on their subcommittees, without a third person it created difficulties. They are asking to change from three subcommittees to two. They looked at the regulations on moorings. The wording appeared confusing; and they clarified it to be more coherent.

**Those speaking in opposition: None.**

**Communications: None.**

**Questions:**

**Councilor Hardy** asked about some marginal notes in a "red-line" version indicating that Section E under fees showing it to be deleted and discussed with **Ms. Banks** and **Councilor Theken**, O&A Chair, as to whether this had been in their original proposal vetted at O&A as she did not remember it to be the case. **Ms. Banks** agreed with the Councilors that while the copy she held, a red-lined copy with marginalia showing the deletion of Section E, F, G and I it was not what they had before them this evening, that this was addressing only the proposed changes to Sections 10-3 through 10-53

**This public hearing is closed.**

MOTION: On motion by Councilor Curcuru, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council the adoption of the Amendments to the Gloucester Code of Ordinances, Chapter 10-Waterways Administration, Sections 10-3 to 10-53 as presented and dated February 28, 2011 and as incorporated into these minutes and attached hereto.

**Discussion:**

**Councilor Theken** stated this is just the first step and there will be more forthcoming from the Waterways Board.

**MOTION: On motion by Councilor Theken, seconded by Councilor Tobey, City Council voted BY ROLL CALL 7 in favor, 0 opposed to adopt the Amendments to the Gloucester Code of**

**Ordinances, Chapter 10-Waterways Administration, Sections 10-3 to 10-53 as presented and dated February 28, 2011 and as incorporated into these minutes and attached hereto.**

**5. PH2011-013: Adoption of MGL Chapter 31 §58A concerning maximum age for civil service Appointment of police officers and firefighters and amend GCO by adding Chapter 17, Sec. 17-20 and Chapter 8, Sec. 8-21(b)**

**This public hearing is opened.**

**Those speaking in favor:**

**Fire Chief Phil Dench** related he and Chief Lane both felt it important to keep young people in their respective departments noting it was tough to do when there were no age limits, with people starting their careers as police officers or firefighters at 45 or 50 years of age. They hope the Council would amend the Code of Ordinances by adopting MGL c. 31, Section 58A which sets an age limit of 32 years of age for people being appointed as police officers or firefighters. They have allowed for active service for veterans. If they do 4 years active service and that is why they can be up to 36 years old, giving veterans a couple of extra years to take exams and be appointed to the respective departments; and thought that very important. He pointed out 32 years ago when he first joined the Fire Department there were age limit of 32 years old; but it was subsequently removed. Anyone of any age could take the exam and be appointed. They are in favor of this with their goal to keep their departments "young".

**Those speaking in opposition:**

**Communications: None.**

**Questions:**

**Councilor Theken** asked is anyone who is on the list being hurt by this change of the ordinance.

**Chief Lane** stated no. There are five or six candidates on the police reserve officer list who would not be affected. This would be for people who had yet to take the civil service eligibility exam, which was according to David Bain, Personnel Director; and it would be the same with the Fire Department as confirmed by **Chief Dench** that while they didn't have a reserve list, but people on the list right now would not be affected until the next exam is given.

**Councilor Hardy** asked if someone on a State layoff list would they be eligible to be hired by Gloucester if they were over age of 32 years.

**Chief Lane** confirmed that before they put on any new employees they have to go to the layoff list first.

**Chief Dench** thought the layoff list takes precedent, that they get first choice. When the City has had openings, the people on the layoff list typically wait for the jobs to open up back in their own community and don't apply for openings here.

**Councilor Theken** stated this was addressed by David Bain, Personnel Director at O&A who confirmed the same as the Chiefs regarding the layoff list.

**This public hearing is closed.**

**MOTION:** On motion by Councilor Mulcahey, seconded by Councilor Curcuru, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to adopt M.G.L. Chapter 31, Section 58A pertaining to age limitations in the hiring of Police and Fire personnel as presented in documentation dated February 14, 2011 in order to "Amend the Gloucester Code of Ordinances, Chapter 8 by ADDING new sub-section 8-21(b) "Appointment of Fire Fighter shall be subject to the age restrictions (32 years or Veterans of up to 36 years) of M.G.L. C. 31, Sec. 58A" AND TO AMEND Chapter 17, Art. 2, Sec. 17-20 "Appointment of Officers shall be subject to the age restrictions (32 years or Veterans of up to 36 years) M.G.L. C. 31, Sec. 58A".

**Discussion:**

**Councilor Ciolino** expressed his support.

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted BY ROLL CALL 7 in favor, 0 opposed to Adopt M.G.L. Chapter 31, Section 58A pertaining to age limitations in the hiring of Police and Fire personnel as presented in documentation dated February 14, 2011 in order to “Amend the Gloucester Code of Ordinances, Chapter 8 by ADDING new sub-section 8-21(b) “Appointment of Fire Fighter shall be subject to the age restrictions (32 years or Veterans of up to 36 years) of M.G.L. C. 31, Sec. 58A” AND TO AMEND Chapter 17, Art. 2, Sec. 17-20 “Appointment of Officers shall be subject to the age restrictions (32 years or Veterans of up to 36 years) M.G.L. C. 31, Sec. 58A”.**

**For Council Vote:**

**1 of 1: CC2011-014 (Tobey/Hardy) Adoption of Resolution re: Addison Gilbert Hospital eight minimum services**

**Councilor Tobey** moved adoption of the order he and Councilor Hardy brought forward. He thanked the Councilors for assenting to this moving forward by their referral at the previous week’s Special City Council Meeting and also for joining in on this order at the same time. He believed this is an important statement by the Council and asked the Mayor to join it also. It puts the City in a leadership role to advocate with others in the community who have been advocating aggressively that Addison Gilbert Hospital (AGH) not be lost in the shuffle. With a Request for Proposals under way by Northeast Health Systems (NEHS) they’re reaching out to four prospective “acquirers” to find a new corporate ‘home’ for NEHS. He understood the pressures the health care industry is under, that are possibly going to see ownership of the hospital change. He believed they can’t lose AGH in that process. The key to maintain the emergency room; and the key to maintaining the emergency room is to maintain the eight minimum services stated in the resolution (on file). By adopting this resolution which he felt was of the utmost importance to the City, to the neighboring communities and hoped they could advance that. If they adopt this resolution, he would offer a motion so they can communicate this to outside the community beyond their own.

**Councilor Hardy** suggested an amendment to the motion for this resolution to have all the names of the Councilors on the resolution so that when it is sent beyond to other communities and entities, it will alert them to the efforts of the Gloucester City Council. Noting she and Councilor Tobey are the sponsors of this resolution, the amending it with the rest of the Councilors showing them as co-sponsors would show the unity in their belief in the strengths of the eight criteria.

**Councilor Ciolino** agreed with this process, and to have this resolution in writing with all their signatures it acts as a benchmark they’re setting for the hospital for the requirements for the City and the medical help that it needs. Suitors for NEHS will know that their resolution they pass tonight will be out there and that these are the expectations of the City. It will be on the record; and he fully supported it.

**MOTION: On motion by Councilor Tobey, seconded by Councilor Hardy, the City Council voted 7 in favor, 0 opposed to adopt the resolution regarding the Addison Gilbert Hospital eight minimum services.**

**Councilor Tobey** then brought forward the following motion which **Councilor Hardy** seconded. Councilor Ciolino also wished to add to the letter that would go out with the resolution that the Boards of Selectmen of the surrounding communities be invited to do their own resolution as the City Council has just done with **Councilor Hardy’s** assent..

**MOTION: On motion by Councilor Tobey, seconded by Councilor Hardy, the City Council voted 7 in favor, 0 opposed that the City Clerk mail with an appropriate cover letter the resolution regarding the Addison Gilbert Hospital eight minimum services to the following parties:**

1. **The CEO of Northeast Hospital Corporation, its Board of Trustees, and the members of its recently identified affiliation-merger RFP review committee;**
2. **The CEO's and Trustees of each hospital corporation named by Northeast CEO Kenneth Hanover as a party invited to respond to the recently announced affiliation-merger RFP;**
3. **The Attorney General of the Commonwealth of Massachusetts; and**
4. **The Boards of Selectmen of the Towns of Rockport, Essex and Manchester.**

**Unfinished Business:** None.

**Individual Councilor's Discussion Including Reports by Appointed Councilors to Committees:** None.

**Councilors' Requests to the Mayor:**

**Councilor Whynott** stated that a citizen noted in the newspaper the City was a buyer in a large number of parcels of land. He asked the Administration to comment on that as to why.

**Councilor Verga** relayed that on Thursday March 31<sup>st</sup> GHS lecture hall 6:30 p.m. there would be a meeting about flow design turbines. The presenting company has state funding to do part of the program for a turbine at Bond Hill.

**Councilor Ciolino** reminded the public that at 6:30 p.m. on Thursday this week there was a very important public hearing and asked them to come out and show their support for the City to the EPA; that they are united in asking for a waiver. If it doesn't go through they'll have to build a secondary treatment plant which would raise the sewer rates greatly and affect the City's future economic growth. He urged the public to show up even if they don't wish to speak at the hearing.

**Councilor Theken** thanked Good Morning Gloucester for St. Joseph's celebration. She also thanked Jack Vondras, Health Director who is leaving the City's employ and wished him well in his new endeavor.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 10:36 p.m.**

**Respectfully submitted,**

**Dana C. Jorgensson  
Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- Dog Park Power Point Presentation and Amendment to Dog Park Regulations by Mary Lou Maraganis and Judy Masciarelli

Updated: 02/15/2011

## STORMWATER UTILITY REGULATIONS

### Sec. I - Purpose

Pursuant to the City of Gloucester Code of Ordinances section 23-2, the city has established a stormwater utility. These regulations are promulgated by the Director of Public Works under the authority of section 23-4(c) of the Code of Ordinances and the City Charter. The regulations establish the utility fees and the administration of the utility.

### Sec. II – Definitions

- (1) City: shall mean city government, including staff and elected officials.
- (2) Equivalent residential unit (ERU): The representative impervious area of single family residential property located in the city. The value of one ERU will be established based on the median impervious area size of the City's single family residences, as determined from aerial photography. It will be re-computed periodically as new data becomes available.
- (3) ERU rate: The charge per year for a single ERU. This to be calculated by dividing the budget of the Stormwater Utility by the number of chargeable ERUs.
- (4) Impervious area: Any part of any parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes areas that have been covered with structures. Excluded are all lawns, landscape areas but not excluding any hardscaped area.
- (5) Impervious surface: any material or structure on or above ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks and rooftops.
- (6) Director: The Department of Public Works Director or designee.
- (7) Multifamily property: All residential development not classified as single-family residential or accessory.
- (8) Nonresidential property: All property not zoned or used as residential property as defined in this article.
- (9) Single-family property: All single-family residential dwelling structures. All other residential development shall be classified as multifamily.

- (10) Stormwater: That part of precipitation that travels over natural, altered, or improved surfaces to the nearest stream or channel or impoundment and may appear in surface waters. Including stormwater runoff, snowmelt runoff, and surface water runoff and drainage.
- (11) Stormwater management plan: An approved plan for receiving, handling, and transporting storm and surface waters within the city stormwater management system.
- (12) Stormwater management systems: All natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable outlet location internal or external to the boundaries of the city. The stormwater management system includes all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities, whether public or private.
- (13) Stormwater Management Utility (SMU): the utility created pursuant to the Gloucester Code of Ordinances chapter 23-2.
- (14) SMU director: The Department of Public Works Director or designee is responsible for implementing the SMU function.

### Sec. III – Stormwater management utility program established

A stormwater management utility (SMU) program is established to provide the operational means of implementing and carrying out the functional requirements of the stormwater management system. The SMU program shall be part of the overall utility systems of the city.

### Sec. IV - Customer base

All real property within the jurisdictional boundaries of the city shall be subject to SMU fees unless specifically exempted by the section 23-6 of the code of ordinances. The fees shall also apply to all tax-exempt properties, including properties of federal, state, and county agencies and nonprofit organizations, with the exception of properties owned by the City of Gloucester.

### Sec. V - Utility fee categories

The following utility fee categories are established for the purpose of calculating the stormwater fee.

- (1) Single-family property: Each single-family property shall be considered one ERU for billing purposes.

- (2) Multifamily: The Director of the Department of Public Works (Director) may establish the number of units in a single property above which properties will be charged as a multi-family unit. At or beneath this number a multifamily will be charged as a single-family property (a single ERU). Each multifamily unit shall be charged a fixed portion of the ERU rate.

NUMBER OF UNITS x MULTI-OCCUPANCY FACTOR x ERU RATE

The multi-occupancy factor will be established by the Director.

- (3) Residential lots with structures and or uses which are accessory to residential uses shall be charged as follows:

ERU RATE X MULTIT-OCCUPANCY FACTOR

- (4) Each condominium unit shall be charged as follows:

ERU RATE x MULTI-OCCUPANCY FACTOR

- (5) Nonresidential property: The annual utility fee for all nonresidential properties shall be billed and calculated in accordance with the following formula:

IMPERVIOUS AREA / ERU size = Number of ERUs

- (6) The Director may set a minimum and maximum number of ERUs for nonresidential or residential property.

#### Sec. VI - Fee schedule

- (1) ERU fees shall be billed and collected as a separate line item on utility account bills. Separate accounts for stormwater services may be established if other utilities are not furnished to property.
- (2) ERU fees shall be billed as often as other utility accounts are billed.

#### Sec. VII - Exemptions

Pursuant to section 23-6 of the Code of Ordinances, the following real property located in the city shall be exempt from the imposition of SMU fees:

- (1) Property that is owned by the City of Gloucester.

- (2) Property that is vacant and unimproved and with no impervious area, however, the Director may determine that the land may contain an amount impervious surface which is de minimus and therefore exempt.
- (3) Paved improved public or private right-of-way.

#### Sec. VIII – Remedies of aggrieved property owners

All requests to abate the stormwater utility fee shall be submitted to the Director of the Department of Public Works and shall be reviewed and processed in the same manner as an appeal of a sewer bill. The provisions of MGL c. 83, section 16E, and all available remedies under MGL c. 165, section 10, may apply. The petition for an abatement must be filed within the time allowed for an abatement of real estate tax, or for exempt properties the time within which a real estate tax would be filed if not tax exempt. If the DPW Director finds that the charge was for more than was properly due, an abatement shall be made. If the appeal is denied, the petitioner may appeal to the appellate tax board upon the same terms as a person aggrieved by the refusal of the assessors of a city to abate a tax.

#### Sec. IX - Enforcement and penalties

- (1) Bills shall be payable at the same time and in the same manner and subject to the same penalties as set forth in Massachusetts General Law chapter 83 section 16 for sewer bills. Nonpayment of any portion of the stormwater utility fee shall be considered as nonpayment of all other city utilities appearing on the bill and may result in the city's termination of all services appearing on the bill.
- (2) Pursuant to Massachusetts General Laws, the city shall have a lien for delinquent or unpaid stormwater management services charges, which lien shall be prior to all other liens on such property except for tax liens. Enforcement and foreclosure of said liens shall be as provided by law. Interest on the unpaid balance shall be the highest rate as authorized by state law.

## **Chapter 10 WATERWAYS ADMINISTRATION\***

**\*Editor's note**--Ord. No. 17-1993, adopted Dec. 14, 1993, amended former Ch. 10, Arts. I-III, relative to the harbor and related waters, in its entirety to read as herein set out. The substantive provisions of former Ch. 10 derived from Code 1970. Sections 4-3, 101/2-17--101/2-25, 101/2-27, 101/2-29, 12-8, 12-18--12-21, 16-14, 16-16; and ordinances of Dec. 6, 1977; Jan. 10, 1978; Nov. 4, 1979; Feb. 3, 1983; Oct. 28, 1986; Aug. 4, 1987; Dec. 22, 1987; July 19, 1988; and April 4, 1989.

**Cross reference(s)**--Marshlands, Ch. 12; shellfish, seaworms and eels, Ch. 20.

**State law reference(s)**--Waterways, M.G.L.A. c. 91; provisions relating to Gloucester harbor, M.G.L.A. c. 102, §§ 3, 4; harbors and harbormasters, M.G.L.A. c. 102, § 17 et seq.

### **ARTICLE I. MANAGEMENT**

#### **Sec. 10-3. Authority and responsibilities.**

The Gloucester Waterways Board is hereby empowered, and authorized to:

- (a) Promote implementation of the City of Gloucester Harbor Plan, dated 1992, and, in cooperation with the appropriate city bodies, amend said plan from time-to-time as circumstances warrant;
- (b) Establish policies, rules and regulations for the use of Gloucester's waterways and waterfront facilities, including but not limited to, mooring areas, public launch ramps, public landings, and city owned commercial marinas;
- (c) Recommend to the city council fee schedules for moorings, launch ramps, slips at city owned commercial marinas, and other waterfront public facilities and a schedule of fines for violations of waterways rules and regulations;
- (d) Oversee the operation and maintenance of all public launch ramps and related facilities, the city owned commercial marinas, and public landings, floats or access ramps;
- (e) Review and oversee the work programs, budget, staffing, training, effectiveness, management techniques and policies of the harbormaster's office and related city staff;
- (f) Work cooperatively with the harbormaster's office and related city staff on harbor management issues, enforcement of waterways rules and regulations and waterways development projects;
- (g) Review all waterfront development projects or zoning changes and report its findings and recommendations to the mayor, city council or other relevant board. The waterways board may required drawings, plans or other supporting documentation from project proponents for its review;
- (h) Act as the policy liaison between the City of Gloucester and the Army Corps of Engineers, U.S. Coast Guard, the State Department of Environmental Protection, the Massachusetts Office of Coastal Zone Management and other government agencies concerned with waterways;
- (i) Work with the harbormaster's office and related city staff to plan, design and undertake new projects such as dredging, mooring fields and access facilities;
- (j) Plan and encourage the development of signage and facilities for transient boaters and promote Gloucester as a well-equipped and hospitable port-of-call;
- (k) Work cooperatively with the harbormaster's office, police and fire departments, environmental police and other public safety agencies to ensure that Gloucester's waterways policies, rules and regulations and operating practices will protect the rights and property of waterways users and waterfront land owners, while maximizing public safety;
- (l) Delegate any of its responsibilities to a standing committee, the harbormaster or other staff person assigned by the mayor;
- (m) Investigate new sources of revenue for waterways management and development.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-4. Standing committees.**

(a) *Designation.* There shall be two (2) advisory standing committees of the

waterways board, appointed by the chairman; a public facilities committee; and an operations and finance committee/safety committee. The committees shall review, research, investigate and make recommendations on matters referred to them by majority vote of the full board. The committees shall send their reports and recommendations only to the full board which shall review them and take appropriate action. The harbormaster shall be an ex-officio member of each committee. Every member of the board except the chairman shall be on at least one standing committee, and each committee shall elect its own chairman. The chairman of the board shall be an alternate member of all committees.

(b) *Public facilities committee.* This committee may be referred any matter dealing with moorings; public launch ramps, including Dun Fudgin; public landings; city owned commercial marinas, including St. Peter's Square and Harbor Cove; signage; public access, including but not limited to, walkways to the water, access ramps and floats and dinghy floats, sewage pump-out facilities, waste oil recycling facilities; harbormaster floats and offices; and any other matter deemed appropriate by the board. This committee shall consist of: three (3) members of the board; an advocate of public landings appointed by the mayor; the director of public works, or his designee; and a member of the tourist commission.

(c) *Operations and finance/Safety committee.* This committee may be referred any matter dealing with harbor planning, design, engineering or construction; budgets; intergovernmental relations; the harbormaster's office, including but not limited to, staffing, training, vessels and equipment, work and education programs; fees and fines. In matters of safety, the committee may be referred any matter dealing with enforcement of boating laws and regulations; other enforcement activities including the need and nature of police patrols during various times of the year and during special waterfront events; fire prevention and suppression needs; hazardous materials; emergency medical services; hazards to navigation; rules and regulations regarding use of the City's waterways; city ordinances dealing with the waterways or waterfront; and any other matter deemed appropriate by the board. This committee shall consist of: three (3) members of the board; a member of the fisheries commission and a member of the city council for matters concerning operations and finance. For matters of safety, the three (3) board members shall be advised by the Chief of Police or his designee, the City Fire Chief or his designee, and by a representative of Coast Guard Station Gloucester.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-5. Relationship to the harbormaster and city staff.**

(a) The waterways board shall work cooperatively with the harbormaster and other assigned city staff to implement the City of Gloucester Harbor Plan, as amended, and pursue the policies and goals of the board. In addition, the harbormaster and the board shall work together closely to ensure that the harbormaster's office is efficient, effective, and fair to all waterway users through review of work programs, plans operating procedures and budgets.

(b) The waterways board shall work cooperatively with the harbormaster and other assigned city staff including police officers, such that the following duties are performed by the designated official or employee.

(1) *Harbormaster:*

- a. Operate, maintain, manage equipment and vessels assigned (harbormaster boat).
- b. Assign and oversee moorings.
- c. Coordinate with and report to waterways board--Meetings, staff, grants, etc.
- d. Operate and manage public launch ramps, landings, city owned commercial marinas and other public waterways facilities around the city.
- e. Gather information and make recommendations relative to the harbor--Commissioner's line, Chapter 91, permits, CZM regulations and other waterways issues.
- f. Promote Gloucester as a hospitable port of call--Provide information to visitors, provide water transport as directed by the mayor.
- g. Manage and maintain a harbormaster's office.
- h. Report to the mayor on administrative matters; report to board on policy matters.

(2) *Police department:*

- a. Enforce all Massachusetts Commonwealth laws while patrolling the city waterways.
- b. Operate, maintain and manage equipment and vessels assigned (police boat/fire boat).
- c. Investigate, prosecute criminal activity on waterways and waterfront in cooperation with other members of the Gloucester Police Department and other law enforcement agencies, USCG, etc.
- d. Make arrests on water.
- e. Report to the chief of police.
- f. Assist the fire department, US Coast Guard with fire prevention and suppression, law enforcement, hazardous materials investigations and emergency medical services.
- g. Check on lobster violations under the city ordinance and State Laws. Enforce MGL Chapter 130, Sections 31, 17, 18, 18a, 39, 41, 41a, 43, 44--Marine fisheries laws: Destruction of weir-fish trap; lobster and crab licenses; markings on buoys--exhibition of license; display of license numbers and buoy colors; hours of tending traps; taking of female lobsters with eggs; possession of short lobsters.
- h. Check properties on islands not accessible from land.

(3) *Joint duties:*

- a. Enforce waterways laws, ordinances and rules and regulations (MGL Chapter 40, Section 21D (Fines and Ticketing) and Gloucester Code section 1-15 and MGL Chapter 90B, Sections 1--19 (Motorboats and other vessels) and other enforcement per MGL Chapter 102, Sections 17--28 (Shipping and Seaman, Harbor and Harbormasters).

*Police:* Plus all other applicable city and state laws.

b. Patrol city waterways.

*Police:* Enforce all Massachusetts laws.

c. Respond to emergencies within scope, training and resources.

d. Operate, maintain and manage equipment and vessels assigned (police boat/fire boat--police; harbormaster boat--harbormaster).

e. Coordinate with other agencies and assist within scope, training and resources.

f. Observe water quality, assist appropriate agencies.

g. Assist in keeping navigation channels clear, keep harbor free of debris.

*Harbormaster:* Primary responsibility.

h. Patrol major events to promote and protect public safety--Fiesta, 4th of July, Schooner Races, etc.

*Police:* Other occasions as directed by chief of police.

i. Issue citations on water.

j. Enforce the BWI, make arrests and bring complaints to court.

(Ord. No. 17-1993, 12-14-93; Ord. No. 21-1995, § I, 3-7-95)

**Cross reference(s)**--Police duties and joint duties concerning harbor management, § 17-1.

Secs. 10-6--10-19. Reserved.

## **ARTICLE II. ENFORCEMENT**

### **Sec. 10-20. Harbormaster appointment, qualifications and authority.**

*(a) Appointment.* In accordance with M.G.L.A. c. 102, § 19, the harbormaster shall be appointed annually by the mayor after joint interviews and consultation with the waterways board, and confirmed by the city council. Ord. 02-50 Deleted 11/12/2002)

The mayor shall fix the compensation of the harbormaster after an annual performance review conducted by the board and the mayor or his designee. The harbormaster shall report to the mayor on administrative matters and to the waterways board on policy matters.

*(a) Appointment.* In accordance with M.G.L.A. c. 102, § 19, the harbormaster shall be appointed for a term of three (3) years by the mayor after joint interviews and consultation with the waterways board, and confirmed by the city council.

(Ord. 02-50, 11/12/2002) The mayor shall fix the compensation of the harbormaster after an annual performance review conducted by the board and the mayor or his designee. The harbormaster shall report to the mayor on administrative matters and to the waterways board on policy matters.

*(b) Qualifications.* The harbormaster shall possess the following skills, knowledge or experience: small boat handling in heavy weather; navigation; rules of the road; waterways laws, rules and regulations and their enforcement; budget preparation; and staff management. Desirable skills or knowledge include water safety and life-saving; marine fire prevention and suppression; emergency medical care at the EMT level; waterfront construction techniques; the waterways permitting process; waterfront facilities management; water pollution control

techniques and grant writing.

(c) *Authority.* The harbormaster shall have all authority set forth in: the Massachusetts General Laws, including but not limited to Chapters 102, 90B and 91; the Code of Massachusetts Regulations; applicable federal laws and regulations; and the City of Gloucester Code of Ordinances.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-21. Fines.**

The harbormaster and assistant harbormasters shall have the authority to enforce any section of this chapter by way of the ticketing procedures set forth in Massachusetts General Laws, c. 40, § 21D and Gloucester Code of Ordinances, Section

1-15. Each day of violation shall constitute a separate offense.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-22. Responsibilities.**

The harbormaster shall be responsible for the following tasks unless otherwise assigned by the mayor;

(a) Enforce all laws, ordinances and rules and regulations within the authority set forth above;

(b) Patrol all waterways within the city's jurisdiction during the entire year with more intense patrolling from May first to November first, and provide a continuous radio watch during patrol hours;

(c) Respond to all emergencies on Gloucester's waterways, and provide all reasonable assistance within the scope, training and resources provided;

(d) Operate, maintain and manage vessels and related equipment used for harbor patrols;

(e) Assign and oversee all moorings in the city's waterways;

(f) Cooperate with, and report to, the waterways board and its committees by: attending all board meetings; providing staff, technical support and advice; preparing reports and other documents, including budget proposals and grant applications; representing the commission; and enforcing the board's policies, rules and regulations;

(g) Cooperate with other boards, commissions and other departments, including but not limited to, the Fisheries, Conservation, and Tourist Commissions, and the Community Development and Public Works Departments;

(h) Assist the Gloucester Fire Department, U.S. Coast Guard and other relevant agencies with fire prevention and suppression, law enforcement, hazardous materials, investigations and management, and emergency medical services by providing technical and staff assistance, sharing information, joint training, and the loaning of vessels and equipment for operations or investigations;

(i) Operate and manage the maintenance of all public launch ramps, public landings, city owned commercial marinas and other public waterways facilities owned by the City of Gloucester;

(j) Observe the water quality of all waterways, take immediate steps

to stop or contain pollution on an emergency basis, notify appropriate government agencies, and enforce all relevant city ordinances;

(k) Monitor and clear navigation channels and prevent encroachments beyond the harbor commissioner's line;

(l) Promote Gloucester as a hospitable port-of-call for transient boaters by advertising the city's facilities, welcoming visiting boaters, and providing them with directions, technical assistance and advice as they operate on the city's waterways;

(m) Conduct educational programs that teach all boaters safe boating practices, rules of the road, hazardous areas of local waters, and the value of Gloucester's waterways.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-23. Relocation of vessels.**

(a) *Harbormaster's authority.* The harbormaster may station and regulate all vessels in Gloucester waterways and may remove any vessel to new location, or cause it to be so removed, if in his or her judgment any one of the following circumstances exists:

(1) If the vessel is improperly or illegally moored as described in section 10-51 herein;

(2) If a vessel occupying a berth at a wharf or pier is not removed within a reasonable period after notice from the owner of said wharf or pier to the master or owner of said vessel, and wharf or pier owner makes a complaint to the harbormaster; and

(3) If a vessel not discharging cargo or receiving cargo or services stands in the way of another vessel waiting to carry out any of these activities and the master or owner of the latter vessel complains to the harbormaster.

(b) *Removal at expense of owner.* The harbormaster may, at the expense of the master or owner thereof, cause the removal of any vessel which is not moved when directed by him or her. Upon the neglect or refusal of any such master or owner to pay on demand the expense of such removal, the harbormaster may recover the same from the master or owner in contract for use of the city. If the master or owner of the vessel cannot be found or located within the jurisdiction of the harbormaster, the harbormaster may proceed in rem directly against the vessel.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-24. Harbormaster's office.**

(a) *General.* There shall be a division within the city named the harbormaster's office. It shall be managed by the harbormaster and assist in the carrying out of his or her duties as well as those of the waterways board. The harbormaster's office shall have an annual operating budget and shall prepare an annual report. The harbormaster shall ensure that all staff members are adequately trained for their jobs, especially those that include boat operation.

(b) *Permanent staff.* The harbormaster's office shall have a small, permanent staff to assist in the operation and maintenance of records, boats, equipment, and public facilities.

(c) *Seasonal staff.* The harbormaster's permanent staff may be augmented by seasonal personnel who may be used for such tasks as safety patrols, launch ramp operation, mooring fee collection, and maintenance and repairs.

(d) *Assistant harbormasters.* In accordance with M.G.L.A. c. 102, § 19, the mayor, upon the recommendation of the harbormaster, may appoint permanent or seasonal staff as assistant harbormasters. Such assistants shall be subject to the direction and control of the harbormaster and shall have all authority given to, and be subject to all the duties required of harbormasters, assistant harbormasters shall receive no stipends.

(Ord. No. 17-1993, 12-14-93)

#### **Sec. 10-25. Budgeting.**

The annual budget of the harbormaster's office shall include all operating expenses of the waterways board such as legal advertising. The budget shall be developed by the harbormaster in consultation with the operations and finance committee of the waterways board and shall be approved by the full board before it is transmitted to the mayor. The board shall assist the harbormaster at budget reviews by the mayor and city council. The budget shall not exceed the projected revenues of the Waterways Enterprise Fund.

The harbormaster, in consultation with the public facilities committee of the waterways board, shall prepare and submit project descriptions, justifications and budgets to the capital improvements advisory board for any applicable waterway project to be funded by the Waterways Enterprise Fund. The waterways board shall assist the harbormaster during project reviews.

(Ord. No. 17-1993, 12-14-93)

Secs. 10-26--10-39. Reserved.

### **ARTICLE III. WATERWAYS FUNDING**

#### **Sec. 10-40. Waterways enterprise fund.**

(a) *Creation.* In accordance with M.G.L.A. §§ 5(72) and 39K, there shall be a Waterways Enterprise Fund. Said fund shall be used to support the operations of the waterways board and all waterways management and enforcement activities, including the purchase of equipment, the planning, design and construction of public waterways facilities, such as mooring fields, ramps, piers and pump-out facilities. The fund shall have two (2) distinct accounts each of which shall receive a portion of the receipts listed in section 10-40(d) herein.

(b) *Waterways management account.* Funds from this account shall be used for management and enforcement operating expenses as well as for equipment and repairs which do not have to be included in the city's capital improvements program. The funds from this account shall be managed by the mayor in cooperation with the waterways board and harbormaster.

(c) *Waterway improvements account.* Funds from this account shall be used for purchase of vessels, large equipment and the planning, design, construction or major repair of any public waterway facility. As required, expenditures from this account shall be included in the city's capital improvements program. This account shall be managed by the mayor in cooperation with the waterways board and harbormaster.

(d) *Receipts.* The Waterways Enterprise Fund shall receive the following

receipts: mooring fees, both annual and transient; dockage and slip fees from city owned commercial marinas, launch ramp fees; all boat excise taxes; fines; and any other

income derived from public waterways facilities including dedicated grants or gifts.

(Ord. No. 17-1993, 12-14-93)

Secs. 10-41--10-49. Reserved.

#### **ARTICLE IV. MOORINGS, PUBLIC LANDINGS AND CITY OWNED COMMERCIAL MARINAS**

##### **Sec. 10-50. Definitions.**

In construing the provisions of this article, the following words shall have the meanings given below unless a contrary intention clearly applies:

(a) *Gloucester waterways*: All tidal waters within the boundaries of the city, its harbors, bays and coves, and the whole of the Annisquam River and its outlets, coves and bays;

(b) *Harbormaster*: That city official duly appointed in conformance with section 10-20, herein;

(c) *Public landing*: Any area including uplands, ramps, floats, wharfs, piers, parking areas and water that has been set aside by the city for the landing of vessels to discharge or take on passengers or supplies, or for the launching of vessels, and for public access and recreation as set forth in M.G.L.A. c. 88, § 14;

(d) *Mooring*: A relatively permanent arrangement of an anchor, chain and floating buoy to which a vessel may be tied for extended periods;

(e) *Permittee*: A person to whom a permit has been granted for landing or mooring;

(f) *Public waters*: All waters beyond the mean low water mark;

(g) *Recreational vessel*: A vessel used for personal, non-commercial enjoyment, recreation or sport;

(h) *Recreational boater*: An individual who owns and/or operates a recreational vessel;

(i) *Vessel*: Shall include ships, boats, steamers, barges, or any other type of watercraft powered or under sail or tow, as well as such floating structures as buoys and rafts;

(j) *Vessel length*: for the purposes of determining the amount of the mooring fee, the length overall (LOA) of a vessel exclusive of bowsprits, main boom, and boomkins. For the purposes of mooring assignments, the length shall include bowsprits, main boom and boomkins.

(Ord. No. 17-1993, 12-14-93)

##### **Sec. 10-51. Regulation of moorings.**

(a) *Regulations*. The waterways board shall make regulations regarding the application process, size, type, construction and placement of all moorings within Gloucester waterways. All moorings shall be placed under the direction of the harbormaster and are subject to inspection by the harbormaster prior to their initial placement and at intervals of three (3) years.

(b) *Permits*. No person shall establish a mooring within Gloucester

waterways without first obtaining a permit from the harbormaster to do so. Mooring permits shall be renewable each calendar year.

(c) *Applications.* Applications for new permits shall be submitted on forms provided by the Harbormaster. Applicants shall be placed on waiting lists by location preferred, in order of their receipt. The Harbormaster shall keep the waiting lists updated by requiring applicants who wish to maintain their position on the waiting list to file an annual renewal prior to the last business day of December of each year. The Harbormaster shall publicly post the waiting lists at the Harbormaster's office and shall file a copy of same with the City Clerk's office on April 30<sup>th</sup> of each year.

The fee for such renewals shall be \$10.00. Failure to timely file the annual renewal shall result in the applicant's removal from the waiting list, provided however that an applicant may, prior to the last business day of February of the following year, request reinstatement to his/her previous position on the waiting lists by filing with the Harbormaster a request for reinstatement together with a late fee of \$50.00 for a total of \$60.00.

(d) *Types of moorings.* The harbormaster may issue permits for three (3) types of moorings:

*Personal moorings* for sole use by the single vessel of an individual and his or her immediate family;

*Municipal moorings* which may be approved by the waterways board for public purposes; and

*Transient moorings* which may be used by waterfront businesses or yacht clubs for transient vessels.

(e) *Fees.* The fee for each type of mooring shall be established by the city council. Fees for personal moorings shall be charged by the length of vessel at the rate of four dollars (\$4.00) per foot for Gloucester residents and taxpayers and at the rate of six dollars (\$6.00) per foot for non-residents. The fee for transient moorings shall be two hundred (\$200.00) each. A daily fee of twenty-five dollars (\$25.00) shall be charged every vessel that utilizes a municipal mooring, used for transient boats, operated by the harbormaster. Fee for 10A Float Permits shall be in the amount of \$50.00 per season. (Ord. 02-16 4/16/2002)

(f) *A completed renewal application by each mooring permit holder, including the renewal fee and proof of ownership, shall be returned to the Harbormaster's office on or before the last business day in February of each year. After that time the mooring holder may renew the permit by filing a completed application, including the regular fee per foot, plus a late fee of \$50.00, prior to the last business day of May of that same year. Failure to do so will result in the mooring permit being revoked.*

(g) *New mooring areas.* The waterways board may, after a public hearing, designate new mooring areas. Moorings in those areas may be installed, maintained and operated by the harbormaster's office or by private businesses under license from the waterways board. The selection process for private operators shall include requests for proposals by the waterways board, submission of proposals and bids in conformance with M.G.L.A. c. 30B, and review of proposals and bids consistent with that law.

(h) *Public chart.* The harbormaster shall maintain a chart which clearly indicates the location, permittee, LOA of each moored vessel, and number of

moorings in Gloucester's waterways. A copy of this chart shall be publicly posted in the harbor master's office and in the city clerk's office.

(i) *Suspension and revocation.* A mooring permit may be suspended or revoked by the harbor master whenever, in his or her opinion, the vessel and/or mooring unduly threatens the safety of the mooring area or the reasonable use of that area by other vessels. Placing a mooring at a location other than that specified on the mooring permits will be grounds for revocation. Any person aggrieved by the action of the harbor master in denying, revoking, suspending or imposing restrictions on a mooring permit may appeal the harbor master's decision to the State Division of Waterways, provided the person files application for such appeal within thirty (30) days after receiving notice of the harbor master's decision. Failure to fully pay vessel excise taxes for the previous fiscal year(s) shall be grounds for suspension or revocation;

(j) *Violations.* Whenever the harbor master considers a mooring to be in violation of harbor regulations or to be a hazard to navigation, he or she may, after due notification of the owner, in person or by registered mail to the address of record, order the removal of the mooring, together with any vessel attached to it, to a new location. Such action may be taken without notification to or reply from an owner only, if in the determination of the harbor master, the owner cannot be contacted within seventy-two (72) hours or if emergency conditions required immediate action. Any expenses incurred in the removal or relocation of such mooring or any damages resulting shall be the responsibility of the owner. Floats, rafts and moorings held by anchors or bottom moorings, if installed in the public waters of the city without permission from the harbor master, shall be considered a public nuisance, and may be removed by the harbor master at the expense of the owner in the event he or she fails to remove same after notice in writing.

(Ord. No. 17-1993, 12-14-93)

**Sec. 10-52. Use of public landings.**

(a) *General use.* All public landings, along with the ramps and floats attached thereto, shall be used primarily for the landing of people from vessels, the docking of vessels while people are alighting or boarding, and by persons tying their vessel thereto while making purchases ashore. Public landings shall also provide public access for passive recreational activities. Where public landings have no floats, vessels may be pulled up on shore for the purposes set forth above. Parking areas at public landings shall be for the exclusive use of landing users unless otherwise designated by the waterways board.

(b) *Tie-up period.* No owner nor anyone else in charge of or operating a vessel of any description, shall use the head of any float moored or attached to any public landing for any greater period of time than ordinarily and reasonable required to load or unload the passengers or occupants of any such vessel, together with whatever merchandise might accompany or be in the possession of the persons or passengers alighting therefrom. In no case shall any vessel be tied to the head of a public landing float for more than thirty (30) minutes except by permission of the harbor master. However, dinghies, tenders and other auxiliary vessels less than twelve (12) feet in length, used by mooring holders or transient boaters, may be tied up at the sides of undedicated floats at public

landings for up to four (4) hours while the owners thereof are purchasing goods and services. No such auxiliary vessel shall block the head of a float or interfere with permitted activities.

The harbormaster may permit the seasonal tie-up of dinghies, tenders or other auxiliary vessels less than twelve (12) feet in length at portions of any public landing so designated by the waterways board, provided that the fee set forth below has been paid.

Such permitted vessel shall be marked by an official sticker on their transoms.

(c) *Conducting business or soliciting.* It shall be unlawful for any person to conduct any business, including vending on or from a public landing. The sale of tickets or the solicitation of passengers in any other manner for boat or fishing trips from any public landing is prohibited. However, any person operating a harbor sail, ferry, excursion vessel, vessel livery or party fishing vessel but maintaining a wharf headquarters or principal place of business elsewhere, may use a public landing as a point of call and may discharge or take on passengers. The vessels engaged in such ventures shall not lay at any float at a public landing longer than shall be ordinarily and reasonable necessary for their occupants, passengers or customers to board or alight therefrom, and shall not block or otherwise interfere with other permitted activities.

(d) *Other prohibited activities.* No person shall clean fish, or leave ropes, lobster pots, barrels, rocks, bricks, boards or any other material on any public landing, or launching ramps, floats or piers thereof, for longer than is reasonable necessary in the act of loading or unloading the same onto or from vessels, unless authorized by the harbormaster. No person shall load or unload lobster pots, bait, or other gear on or from any public landing, or floats, wharfs or piers thereof, except those designated by the waterways board. No vessels, vehicles or trailers may be stored on any public landing.

(e) *Encroachment.* No person shall encroach upon a public landing in any way.

(f) *Restrictions on hours.* Stone Pier and Long Wharf shall be closed to prohibit all activities between the hours of 10:00 p.m. and 4:00 a.m. Any use of this area between the prohibited hours shall constitute trespassing, a violation of City of Gloucester, Code of Ordinances, section 14-6. Any person who violates said ordinance shall be subject to arrest under City of Gloucester, Code of Ordinances, section 14-6 and/or fined pursuant to section 1-14, City of Gloucester, Code of Ordinances. The city will use reasonable and practicable means to inform the public of such curfew. Further, this section is not intended to conflict with or supersede the authority of the conservation commission or any rules enacted by them under their Massachusetts General Laws Chapter 40, Section 8C, Powers.

(g) *Fees.* The annual fee for the seasonal tie-up of dinghies, tenders or other auxiliary vessels, less than twelve (12) feet in length, at designated areas of public landings shall be fifty (\$50.00) dollars.

(Ord. No. 17-1993, 12-14-93; Ord. No. 16-1996, § J, 5-28-96; Ord. No. 6-1999, § I, 6-22-99)

**Sec. 10-53. Use of public ramp at Dun Fudgin.**

(a) *Fees.* The fees for launching vessels at the Dun Fudgin public access ramp shall be as follows:

Daily fee for all users except commercial boat haulers, per vessel launched . . . \$ 5.00

Season pass for any vessel up to and including 18' in length, per season . . . 35.00

Season pass for any vessel more than 18' in length, per season . . . 50.00

(Daily fee for commercial boat haulers, per vessel launched . . . 25.00 Ord. 02-17 Delete 4/16/2002)

(Daily fee for commercial boat haulers, per vessel launched . . . 50.00 (Ord. 02-17 4/16/2002) Ord. 03-25, Delete, 6/10/2003)

Daily fee for commercial boat haulers, per vessel launched . . . 35.00 (Ord. 03-25, 6/10/2003)

(Season pass for commercial boat haulers, per season . . . 250.00 Ord. 02-17 Delete 4/16/2002)

(Season pass for commercial boat haulers, per season . . . 500.00 (Ord. 02-17 4/16/2002)

Ord. 03-25, Delete, 6/10/2003)

Season pass for commercial boat haulers, per season . . . 350.00 (Ord. 03-25, 6/10/2003)

(b) Failure to pay fee as posted shall result in the issuance of a violation as specified in Sec. 10-21 and Sec. 1-15. (Ord. 03-25, 6/10/2003)

(Ord. No. 31-1997, § I, 3-4-97)

**Sec. 10-54. Use of city owned commercial marinas--Reserved.**

Secs. 10-55--10-79. Reserved.