

GLOUCESTER CITY COUNCIL MEETING

Tuesday, October 27, 2015 – 7:00 p.m.

Kyrouz Auditorium – City Hall

-MINUTES-

Present: Chair, Councilor Paul McGeary; Vice Chair, Councilor Whynott; Councilor Joseph Ciolino; Councilor Melissa Cox; Councilor Steve LeBlanc, Jr. (entered the meeting at 7:04 p.m.); Councilor Greg Verga; Councilor Paul Lundberg; Councilor William Fonvielle; Councilor Robert Stewart

Absent: None.

Also Present: Mayor Sefatia Theken; Linda T. Lowe; Jim Destino; Kenny Costa; Chip Payson; John Dunn; Mike Hale

The meeting was called to order at 7:00 p.m. The Council President announced that this meeting is recorded by video and audio in accordance with state Open Meeting Law.

Flag Salute & Moment of Silence.**Oral Communications:**

Deborah Pitts, 50 Taylor Street, said that she approached the Health Department over two months ago, noting she didn't write down the actual date, to make a report on issues of rats in her building. She said her landlord is aware of the issue as well, and suggested a reason for a possible cause. She has not yet had a response from the department, she said. She also expressed concern for very loud noises from a large family residing above citing that the building is old and may not structurally be able to support a large group of people living there. **Council President McGeary** said that her inquiry will be forwarded to the Mayor's Office and that a response will be forthcoming. **Councilor Cox** introduced herself as Ms. Pitts' Ward Councilor and offered her assistance also.

Presentations/Commendations:**1 of 2: Commendation of Virginia Bergmann for her years of service on the Zoning Board of Appeals**

Council President McGeary announced that on behalf of the Council he was honored to present a commendation to Ms. Virginia Bergmann as a token of respect for the work that she has done for 31 years as a member of the Zoning Board of Appeals (ZBA) and her many other contributions to the community. He then read the Council's citation honoring Ms. Bergmann.

Mayor Sefatia Theken acknowledged as well Ms. Bergmann's contribution to the Zoning Board of Appeals and the community at large. Joining the Mayor at the podium were James Movalli, ZBA Chairman, and Councilor Bob Stewart who was a member of the ZBA for many years before becoming a City Councilor. She read a mayoral citation honoring Ms. Bergmann for her many years of volunteer service to the city.

Ms. Bergmann thanked both the Council and the Mayor for the honor and said that she loves the city so much that she would do whatever she could do to make things right. She expressed her gratitude for the honors bestowed on her by the Council and the Mayor.

The Council recessed at 7:09 p.m. and reconvened at 7:13 p.m.

2 of 2: Board of Health and Healthy Gloucester Collaborative on new public service announcement by the Collaborative's Youth Council and update on efforts to curb substance abuse

Noreen Burke, Health Department Director introduced **Joan Whitney**, Healthy Gloucester Collaborative Director, and **Cristina Hildebrand**, Healthy Gloucester Coordinator, as members of the Collaborative's Youth Council screened that group's new public service announcement for the Council.

Ms. Whitney explained that this is the sixth in a series of Public Service Announcements (PSAs) since 2009. The core value of the Healthy Gloucester Collaborative is youth and adults working together for positive change, putting forward the message of healthy choices. She said the newest PSA lends itself to discussion groups, and the youth are working on a discussion guide to accompany the PSA. Guidance was provided by Heidi Dahlin and Lisa Smith of Cape Ann Television (CATV). **Ms. Hildebrand** said the youth voice in Gloucester is very important and introduced five youth leaders representing the Collaborative's Youth Council: Soo Ae Ono, Caroline Enos, Erica Nolan, Rose Favazza and Ben St. Cyr. The teen leaders then briefly presented how they came to design and film the

newest Healthy Gloucester Collaborative Youth Council PSA. Speaking in turn, they said that the goal is to encourage making good choices and healthy decisions by young people. The group then showed the PSA video to the Council.

Council President McGeary commended the Youth Council for their leadership among their peers. He noted in his work with the Collaborative that their work is important and the PSAs are very helpful. He highlighted that foremost in importance is the example the teen leaders set for their peers.

Councilor Fonvielle also offered his commendation to the teens for their hard work. He noted that the majority of the students were juniors and seniors and asked what plans they had to encourage more young people to join and take their places as they graduate high school. **Ms. Enos** said they have a few more initiatives and ideas they wish to contribute to the community and will recruit students to take their place.

Consent Agenda:

- **REAPPOINTMENTS**
- 1. Gloucester Cultural Council Mary Rhinelander McCarl TTE 02/14/18
- **MAYOR'S REPORT**
- 1. Memo, Grant Application & Checklist form Police Chief re: City Council approval to apply for a FY16 911 Support and Incentive Grant in the amount of \$61,795 (Refer B&F)
- 2. Memo, Grant Application & Checklist from Police Chief re: acceptance of U.S. DEA Overtime Funding for FY16 in the amount of \$17,548 (Refer B&F)
- 3. Correspondence from Mass. Cultural Council re: transfer of FY16 Local Cultural Council funds in the amount of \$7,600 & acceptance of said funds (Refer B&F)
- 4. Memo, Grant Application & Checklist DPW Director re: acceptance of a grant in the amount of \$504,869 from the Executive Office of Energy and Environmental Affairs for the repair of the Haskell Pond Dam (Refer B&F)
- 5. Memo, Grant Application & Checklist DPW Director re: acceptance of a grant in the amount of \$19,000 from the Mass. Department of Environmental Protection to enhance the performance of Gloucester's successful waste reduction programs (Refer B&F)
- 6. Memo from Chief Financial Officer and a Supplemental Appropriation-Budgetary Request (2016-SA-6) (Refer B&F)
- 7. Memo from Chief Financial Officer and a Supplemental Appropriation-Budgetary Request (2016-SA-7) (Refer B&F)
- 8. City of Gloucester FY2015 Annual Report (Refer B&F)
 - **COMMUNICATIONS/INVITATIONS**
 - **INFORMATION ONLY**
 - **APPLICATIONS/PETITIONS**
 - 1. Application for License of Flammables & Combustible Liquids, Flammable Gases & Solids re: 21 Great Republic Drive (Refer P&D)
 - 2. PP2015-006: Petition of National Grid for installation of underground conduits re: Middle Street & Western Avenue (Refer P&D)
 - **COUNCILORS ORDERS**
 - 2. CC2015-041 (Stewart) Amend GCO c. 22, Sec. 22- 270 "Parking prohibited at all times" re: Intersection of Washington & Tucker Streets (Refer O&A & TC)
 - **APPROVAL OF MINUTES FROM PREVIOUS COUNCIL AND STANDING COMMITTEE MEETINGS**
 - 1. City Council Meeting: October 13, 2015 (Approve/File)
 - 2. Standing Committee Meetings: B&F 10/22/15 (under separate cover), O&A 10/20/15, P&D 10/21/15 (Approve/File)

Items to be added/deleted from and adoption of the Consent Agenda:

By unanimous consent the Consent Agenda was accepted as presented.

Committee Reports:

Budget & Finance: October 22, 2015

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to approve the Budget & Finance Unanimous Consent Agenda of October 27, 2015 as follows:

Police Department:

1. **Memo, Grant Application & Checklist from Police Chief: City Council acceptance of a FY16 State 911 EMD & Training Grant in the amount of \$154,032.55**

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to accept under MGL c. 44, §53A from the Massachusetts Executive Office of Public Safety and Security, a FY16 State 911 Department Training Grant and Emergency Medical Dispatch/Regulatory Compliance Grant for \$154,032.55. The grant period of this grant is from August 31, 2015 through June 30, 2016.

DPW:

2. Supplemental Appropriation-Budgetary Request (2016-SA-4) from the DPW

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to approve Supplemental Appropriation 2016-SA-4 in the amount of \$45,000 from Account #294015.10.991.59600.0000.00.000.00.059, Highway Force, Transfer out to the General Fund, to Account #101000.10.470.58415.0000.00.000.00.058, DPW Public Services Paving, for the purpose of funding various city paving projects.

Fire Department:

3. Memo from Chief Financial Officer re: City Council approval of repurposing funds for the purpose of obtaining a new Fire Department command vehicle

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to approve under M.G.L. c. 44, §20 the repurposing of \$28,045.01 in three accounts with balances remaining and transfer the funds to Fund 300099, CIP - Fire Department Command Vehicle, for the purpose of funding the purchase of a new Fire Department Command Vehicle from the following Funds:

<u>Fund #</u>	<u>Fund Name</u>	<u>Balance</u>
300008	CIP 2004 – Replace Fire Forestry Vehicle	\$15,471.00
300062	CIP 2007 (5) – Fire SUV	\$ 1,095.25
300072	Construction Vehicles	<u>\$11,478.76</u>
	TOTAL:	\$28,045.01

4. Memo from Fire Chief & a Special Budgetary Transfer (2015-SBT-3) from the Fire Department

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to approve Special Budgetary Transfer 2016-SBT-3 in the amount of \$19,000 from Account #101000.10.220.58720.0000.00.000.00.058, Fire Department, Replace Automobiles, to Account #101000.10.220.51300.0000.00.000.00.051, Fire Department, Salary/Wage, Overtime, for the purpose of funding the Fire Department Overtime account to cover fire station openings.

Harbormaster’s Department:

5. Memo, Grant Application & Checklist from Harbormaster re: City Council acceptance of a Boating Infrastructure Grant (BIG) in the amount of \$263,930 from the U.S. Fish & Wildlife Service through the Mass. Division of Marine Fisheries

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to accept under MGL c.44, §53A a federal grant through the Boating Infrastructure Grant (BIG) Program through the Mass. Division of Marine Fisheries for a new float system at Solomon Jacobs Park to be installed upon the completion of the National Grid Remediation project for a total of \$263,930.

Community Development Department:

6. Memo, Grant Application & Checklist from Community Development Director re: City Council acceptance of MassDEP grant through the Mass. Electric Vehicle Incentive Program (MassEVIP) in the amount of \$51,000

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to accept under MGL c.44, §53A a state grant from the Massachusetts Department of Environmental Protection for its Massachusetts Electric Vehicles Incentive Program Grant for a total of \$51,000 for the purpose of acquiring up to five electric vehicles and a Level 2 dual head charging station.

7. Memo from Community Development Director re: City Council Acceptance of a 2014 Essex Heritage Visitor Center Grant in the amount of \$2,500 and a 2015 Essex Heritage Visitor Center Grant in the amount of \$2,350

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to accept under MGL c. 44, §53A a federal grant through the Essex National Heritage 2014 Visitor Center Grant through the National Park Service for a total of \$2,500 for the purpose of supporting the activities of the City's Visitor Welcome Center at Stage Fort Park. The grant period is from May 2014 through October 2014.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 9 in favor, 0 opposed, to accept under MGL c. 44, §53A a federal grant through the Essex National Heritage 2015 Visitor Center Grant through the National Park Service for a total of \$2,350 for the purpose of supporting the activities of the City's Visitor Welcome Center at Stage Fort Park. The grant period is from May 2015 through October 2015.

***** END B&F UNANIMOUS CONSENT AGENDA *****

Councilor Cox, noting that the following motion now includes Supplemental Appropriation-Budgetary Transfer 2016-SA-5, which was not referred to the B&F Committee through the Mayor's Report, she asked that the City Council suspend its Rules of Procedure in order to be able to vote on a matter related to the Beeman Elementary School Boiler Project and the Supplemental Appropriation.

The City Council without objection allowed the matter of 2016-SA-5 to be taken up.

COMMITTEE RECOMMENDATION: On a motion by Councilor McGeary, seconded by Councilor Fonvielle, the Budget & Finance Committee voted 3 in favor, 0 opposed, to appropriate 2016-SA-5 \$22,121 (Twenty-two thousand one hundred twenty one dollars) as a supplemental appropriation to the Fiscal Year 2016 Budget to the DPW Facilities, Building Maintenance, Account # 101000.10.472.52410.0000.00.000.00.052 for the purpose of City Building Maintenance. The approval of available funds of \$22,121 (Twenty-two thousand one hundred twenty one dollars) to the FY2016 General Fund Revenues as one-time revenue from National Grid for the efficiency incentive boiler conversion at the O'Maley Innovation Middle School.

DISCUSSION:

Councilor Cox explained that the city received an incentive check from National Grid from the boiler conversion project at the O'Maley Innovation Middle School. When the boiler project for the Beeman Elementary School was started in order to fully fund the project, money had to be taken from the DPW's Facilities Department account and this acceptance of the check and its transfer is to back fill that account.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted by ROLL CALL 9 in favor, 0 opposed, to appropriate 2016-SA-5 \$22,121 (Twenty-two thousand one hundred twenty one dollars) as a supplemental appropriation to the Fiscal Year 2016 Budget to the DPW Facilities, Building Maintenance, Account # 101000.10.472.52410.0000.00.000.00.052, for the purpose of City Building Maintenance. The approval of available funds of \$22,121 (Twenty-two thousand one hundred twenty one dollars) to the FY2016 General Fund Revenues as one-time revenue from National Grid for the efficiency incentive boiler conversion at the O'Maley Innovation Middle School.

Ordinances & Administration: October 20, 2015

Councilor Whynott reported there were no matters for Council action under this heading from this meeting.

Planning & Development: October 21, 2015

Councilor Verga announced there were no matters for Council action under this heading from this meeting.

Scheduled Public Hearings:

1. **PH2015-047: Petition for road repairs in accordance with Art. IV "Repair of Private Ways" Sec. 21-80 et seq re: Starknaught Heights**

2. **PH2015-048: Petition for road repairs in accordance with Art. IV "Repair of Private Ways" Sec. 21-80 et seq re: Starknaught Road**
3. **PH2015-049: Petition for road repairs in accordance with Art. IV "Repair of Private Ways" Sec. 21-80 et seq re: Oxford Road**
4. **PH2015-050: Petition for road repairs in accordance with Art. IV "Repair of Private Ways" Sec. 21-80 et seq re: Joseph's Way**

These public hearings are opened at 7:26 p.m.

Council President McGeary informed the Committee two roads voted to proceed and two other roads' abutters have requested a continuance until Nov. 9 so that they can ensure all abutters were properly noticed of the meeting. He advised that the abutters of Starknaught Heights and Joseph's Way voted in the affirmative and those two petitions will move forward regardless.

These public hearings are continued to December 15, 2015.

5. **PH2015-056: Tax Classification in accordance with MGL c. 40, §56 and GCO Sec. 2-26 to determine the percentage of the local tax levy for the Fiscal Year 2016 to be borne by each class of real and personal property**

This public hearing is opened at 7:28 p.m.

Council President McGeary announced that this matter would be continued to the Nov. 17 City Council meeting.

This public hearing is continued to November 17, 2015.

6. **PH2015-057: Amend Chapter 9, "Trash, Recycling and Litter" by DELETING in Sec. 9-1 the definition of "litter" in its entirety and ADDING a new definition; amend Sec. 9-8 "Littering prohibited" by ADDING a new subsection (e); amend Sec. 9-10 "Penalty for violation of Sec. 9-10" by DELETING Sec. 9-10 in its entirety and ADDING a new Sec. 9-10**

This public hearing is opened at 7:28 p.m.

Those speaking in favor: None.

Those speaking in opposition: None.

Communications: None.

Councilor Questions: None.

This public hearing is closed at 7:28 p.m.

COMMITTEE RECOMMENDATIONS (3 in total):

COMMITTEE RECOMMENDATION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council AMEND GCO Chapter 9 by DELETING in Sec. 9-1 the definition of "litter" in its entirety and ADDING a new definition as follows:

"Litter means any waste material, including but not limited to tobacco products or parts thereof (other than the ashes), and waste material deposited on or near a waste receptacle which cannot accommodate more waste, and which waste material, if thrown or deposited in a manner prohibited by this Article 9, tends to create a danger to the public health, safety or welfare, or tends to create a danger to the quality of life including an unsightly appearance that would reasonably discourage others from using the property for its intended purpose."

DISCUSSION:

Councilor Stewart said that there is no definition of what constitutes litter that makes sense currently in the Code of Ordinances, so that this amendment proposes a comprehensive definition. It also adds tobacco products, he noted.

MOTION: On a motion by Councilor Whynott, seconded by Councilor Stewart, the City Council voted by **ROLL CALL 9** in favor, 0 opposed, to AMEND GCO Chapter 9 by DELETING in Sec. 9-1 the definition of "litter" in its entirety and ADDING a new definition as follows:

“Litter means any waste material, including but not limited to tobacco products or parts thereof (other than the ashes), and waste material deposited on or near a waste receptacle which cannot accommodate more waste, and which waste material, if thrown or deposited in a manner prohibited by this Article 9, tends to create a danger to the public health, safety or welfare, or tends to create a danger to the quality of life including an unsightly appearance that would reasonably discourage others from using the property for its intended purpose.”

COMMITTEE RECOMMENDATION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council AMEND GCO Chapter 9, Sec. 9-8 “Littering prohibited” by ADDING a new subsection (e) as follows:

“(e) No person shall deposit litter in or near any waste receptacle that cannot accommodate additional waste.”

DISCUSSION:

Councilor Stewart explained that one of the major complaints in park areas is that people toss bags of trash next to full trash receptacles causing the trash to be strewn about attracting rodents and seagulls.

MOTION: On a motion by Councilor Whynott, seconded by Councilor Stewart, the City Council voted by ROLL CALL 9 in favor, 0 opposed, to AMEND GCO Chapter 9, Sec. 9-8 “Littering prohibited” by ADDING a new subsection (e) as follows:

“(e) No person shall deposit litter in or near any waste receptacle that cannot accommodate additional waste.”

COMMITTEE RECOMMENDATION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council AMEND GCO Chapter 9, Sec. 9-10 “Penalty for violation of Sec. 9-10” by DELETING Sec. 9-10 in its entirety and ADDING new Section 9-10 as follows:

“The Police or the Building Inspector shall recommend to the District Court that the Court fine the violator according to the severity of the violation and/or the number of prior violations of this article, up to \$50 per day continuing for each day that the violation remains.”

DISCUSSION:

Councilor Whynott said that he agrees with the intent of this ordinance amendment but that he didn’t see that it would be possible to track the number of days in order to fine a litterer accurately.

Councilor Stewart said he believed scofflaws will violate any ordinance regardless what is involved and law abiding people will abide by the law almost without exception. He added that there is a significant ability to deter these kinds of activities if the consequences are severe enough. He thanked the Councilors of the O&A Committee for raising the fine to \$50. His original proposal was \$300 per day he noted while the per day violation accumulation may be difficult to assess, but to lose \$300 most people will think twice about littering, he said. He moved to amend the \$50 fine to \$200, seconded by **Councilor Cox**.

Councilor Whynott reiterated he didn’t have the problem with the fine, he reiterated but that he was concerned as to how the per day accumulation for a fine would be tracked and assessed. **Councilor Stewart** said such a penalty regardless of how it is calculated is intended to act as an increased deterrence to litterers. He suggested pursuant to not enforcing ordinances such as this, that police believe they first have to observe the action in order to enforce the ordinance. He said that there is nothing in state law or ordinance but ordinary rules of evidence apply that say that if there is good reason to believe that a particular individual violated the ordinance they have the right to serve a fine and the alleged offender has the right to appeal that decision. If the Council makes the fine significant enough the city will be better off, he said.

Councilor Cox suggested that if the maximum fine is \$300 and the minimum is no fine, that she would be willing to have language that states a fine of no greater than \$300 and no less than \$100 per offense. She added that she also didn’t see a way the ordinance amendment could be enforced as written “per day.” **Councilor Stewart** said he would strike the words, each day that the violation remains.”

Councilor Fonvielle said he had no issue with \$300 but liked Councilor Cox’s suggestion of a sliding scale.

Councilor Verga asked who would have the discretion to deem whether a fine is \$100 or \$300. He suggested it would be more appropriate to have a flat rate for the fine.

Councilor Ciolino expressed support for a fine of \$200 as did **Councilor LeBlanc** with both expressing concern with the “per day” issue and its enforcement.

Councilor Whynott said he has not voted since 1976 to raise a fine and would not do so now.

Councilor Cox expressed her agreement with Councilor Whynott. She said she didn’t see the correlation between more enforcement and more fines. This is, she reiterated, a matter of enforcement.

Councilor Stewart said that enforcement will be what the Police Department can do. They did increase patrols around the pits and are well aware of this issue. He noted that in response to his inquiry by email that Chief Campanello had said he believes that it will help.

On the amendment to raise the fine from \$50 to \$200 each day the City Council voted by Roll Call 6 in favor, 3 (Cox, Whynott, Lundberg) opposed.

Discussion on the main motion:

Councilor Stewart allowed for a friendly amendment of, “\$200 fine per offense.” and to strike the language, “...according to the severity of the violation and/or the number of prior violations of this article, up to \$50 per day continuing for each day that the violation remains.”

Councilor Cox asked who would be enforcing this ordinance noting that she saw language indicating the addition of the Building Inspector to the list of enforcing officials. She further asked if this was strictly a police matter or would the Building Inspector be able to issue tickets. **Jim Destino, CAO**, said, “No,” not as written unless the Council was to designate the Building Inspector to be able to write tickets which would require a separate vote. He said he had recommended that the only person writing a ticket for \$200 or \$300 for litter should be a police officer. There had been discussion of designating a member of the Clean City Commission or the Building Inspector, and that it was felt it was completely wrong, he said. Such a high fine ticket should only be written by a police officer, he reiterated.

Councilor Cox added that language in the motion that said, “...and further adding after enforcing persons the words, “Building Inspector.” **Councilor Stewart** said the Building Inspector is named within the littering ordinance, but the GCO in Section 1 of the General Ordinances related to fines omits mention of the Building Inspector. The addition of the Building Inspector is to make the two sections consistent, he pointed out. He added that it is the Building Inspector who has to crack down on builders and construction companies and that he suggested that the Building Inspector is named in the ordinance in order to be able to use this ordinance to get contractors to clean their work sites. If the Mayor’s Office and the Police Department think that naming the Building Inspector as an enforcing agent would be inappropriate, he would agree to that to remove that from the amendment, he said.

Councilor Whynott said that he agreed a \$200 ticket should only be written by a police officer. He asked who would go through a bag of trash to find who deposited it. **Mr. Destino** said he said that he didn’t know citing that there have been no tickets written for littering in two years. He said the city’s Building Inspector doesn’t have the ability to write tickets. Building violations are taken to court as opposed to writing ticket, he advised.

By friendly amendment the Council struck the words, “or the Building Inspector” from the ordinance amendment.

Councilor Lundberg expressed concern that this Council action was less than clear and recommended this matter be sent back to the O&A Committee for further clarification and redrafting. He said he would have to vote against all else that will come before the Council on this and any related matter because he was unable to understand what the Council is trying to accomplish. **Council President McGeary** offered that the Council had voted to amend the trash/litter ordinance related to the definition of litter and disposal of same, and that this third action is related to the fine for violation of the trash/litter ordinance of \$200 per offense. **Councilor Lundberg** said that wasn’t the only point at issue that they are talking about adding the Building Inspector related to enforcement; the Administration is talking about not having a mechanism for enforcement. They aren’t ready to make a change in the ordinance, he said. **Council President McGeary** said he didn’t disagree with Councilor Lundberg and would support sending the matter back to the O&A Committee but highlighted that there are only two more regularly scheduled Council meetings in 2015 and expressed concern that this Council may not be able to finish action on this matter prior to the end of Councilor Stewart’s term. **Councilor Lundberg** said if this rolls over to the new Council it is a matter of course and can be handled then if need be. **Councilor Stewart** said the motion on the table is in the civil court enforcement provision that it be a flat \$200 fine. The next question, if it is raised, is to take the Building

Inspector out of the enforcement process; and the third question will be to deal with the second fine provision which is the ticket authorization to the police which has always been an alternative to the court method of enforcement and has been in the ordinance since first enacted. There is no lack of clarity, he pointed out, and that they are changing the fine to a flat \$200 and to take the Building Inspector out of the enforcement aspect.

Councilor Verga said he agreed with Councilor Lundberg and understood where the Council has reached consensus adding that what the Council is doing now is legislating on the fly on a non-urgent matter. He suggested it was prudent to vote to reconsider the previous two related motions related to the trash/litter ordinance -- and that it all goes back to O&A and comes back to the Council as one revised cohesive package.

Councilor Whynott expressed his preference to spend the time to vote this matter up or down now reiterating that Councilor Stewart will not be a member of the Council on January 1.

Councilor Cox asked for the actual ordinance on the books as it is presented now. **Councilor Stewart** explained that the littering ordinance and the parallel fine for littering in GCO Article 1 differ. One section has the Building Inspector in it as an enforcing officer and one section does not. He explained that the original purpose was to add the Building Inspector to the section which didn't include him, and nothing to the section that included the Building Inspector already. He said he was willing to strike the Building Inspector all together. He highlighted that it is not eliminating language in the ordinance of any significance. **Council President McGeary** read the current ordinance section to the Council.

Councilor LeBlanc asked that the discussion be tabled and taken up after other matters before the Council are disposed of.

This matter was tabled at 8:08 p.m. and returned to for Council discussion at 8:40 p.m.

Upon returning to the matter of the third motion of the public hearing, **Councilor Stewart** advised that the first two motions will stand alone and improve the ordinance. He asked that the third motion be returned to the O&A Committee for further clarification and revised language.

This matter is continued to December 15, 2015.

7. **PH2015-058: Amend Chapter 1, Sec. 1-15 "Penalty for violation of certain specified sections of the Code" Chapter 9, Sec. 9-8 "Littering prohibited" by DELETING \$300 FOR EACH OFFENSE" and by ADDING \$50 PER DAY (or the amount allowed by MGL c. 40, §21 as amended) including the day the action of depositing the litter occurred and each day thereafter in which the litter remains for any part of the day" and ADDING after "Enforcing persons the words, "Building Inspector"**

This public hearing is opened at 8:41 p.m.

Those speaking in favor: None.

Those speaking in opposition: None.

Communications: None.

Councilor Questions: None.

This public hearing is closed at 8:41 p.m.

Councilor Stewart asked that this matter return to the O&A Committee. With the assent of the Council, **Council President McGeary** announced that this matter is returned to the O&A Committee for its reconsideration and that the public hearing is continued to December 15, 2015.

This matter is continued to December 15, 2015.

8. **PH2015-059: Amend Chapter 22, Sec. 22-270 "Parking prohibited at all times" by DELETING Middle Street, westerly side, from the easterly corner of Riggs Street, in an easterly direction to the property line of #20 Middle Street**
9. **PH2015-060: Amend GCO Chapter 22, Sec. 270.1 "Resident Sticker Parking Only" by ADDING Middle Street, westerly side (even numbers) from the intersection of Riggs Street, in a northeasterly direction to the westerly property line of #28 Middle Street**

This public hearing is opened at 8:09 p.m.

Those speaking in favor:

Todd Tierney, 26 Middle St., said there is an issue of parking in front of his family's house which is public property which he said they understood. He pointed out that in the snow season it is not shoveled or plowed in the

last five years as has his neighbors for many years. They used what they clear as parking spaces, he said, and upon clearing the area for he and his neighbors, people who worked downtown take those cleared spaces in front of their homes taking away their ability to park adjacent to their homes. He said they are asking that there be a limit on parking in their area to resident sticker parking so that they have reasonable access to their homes. He added that he and his neighbors understand that residents across the city have or have access to these stickers but that it would help to alleviate some of the neighborhood's parking issues they have to deal with now.

Jill Webber, 22 Middle St., expressed agreement with Mr. Tierney. She spoke of her parking challenges near her home even to unload groceries. She said she is frequently seeing cars with out-of-town stickers parked outside where she lives on Middle Street from 8 a.m. to 6 p.m. each day. She acknowledged there are people who come to the area for various events but they leave when those events are over. She said that she supports the use of resident sticker parking for her neighborhood.

Those speaking in opposition: None.

Communications: None.

Councilor Questions:

Councilor Ciolino cautioned the residents that once this area is made "resident sticker parking only," visitors to their homes who don't have a resident sticker can be ticketed, and moreover that a resident who has a sticker who resides in Lanesville or any other area of the city who may work downtown or shop downtown can park in that immediate area all day if they choose once it is change to resident sticker parking.

This public hearing is closed at 8:14 p.m.

COMMITTEE RECOMMENDATION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend that GCO Sec. 22-270 (Parking prohibited at all Times), be Amended by DELETING: "Middle Street, westerly side, from the easterly corner of Riggs Street, in an easterly direction to the property line of #20 Middle Street."

DISCUSSION:

Councilor LeBlanc said that what is before the Council is to amend the ordinance to make a particular area of Middle Street resident sticker parking only. The residents in the affected area understand the ramifications, he pointed out. He explained that there is no parking now on these residents' side of the street from Riggs Street. He said that this Council action is cleaning up the ordinance and adding resident sticker parking to make legal the area in which residents have been parking. The ordinance change would also alleviate issues of non-residents parking for extended periods of time in this part of Middle Street in order to allow people who live in the neighborhood with no off-street parking to park near their homes legally.

Councilor Verga said he supported the amendment to the ordinance. He said this action has been done in every ward in the city now that there is an affordable multi-year resident sticker as a parking sticker alternative to a beach sticker for on-street parking. He added this is looking out for the taxpayers rather than the visitors to the city who consume so much of the city's parking spaces. He said this is a fair solution for the time being.

MOTION: On a motion by Councilor Whynott, seconded by Councilor LeBlanc, the City Council voted by ROLL CALL 9 in favor, 0 opposed, that GCO Sec. 22-270 (Parking prohibited at all Times), be Amended by DELETING: "Middle Street, westerly side, from the easterly corner of Riggs Street, in an easterly direction to the property line of #20 Middle Street."

COMMITTEE RECOMMENDATION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend that GCO Sec. 22-270.1 (Resident Sticker Parking Only), be Amended by ADDING: "Middle Street westerly side (even numbers) from the intersection of Riggs Street in a northeasterly direction to the westerly property line of #28 Middle Street."

DISCUSSION:

Councilor LeBlanc said this motion now is to allow parking in front of homes that is prohibited at this time.

Councilor Cox offered her support but suggested that there is cherry picking of areas around the city in instituting resident sticker parking only. She further suggested that there should be better planning for residential parking zones in the city such as is done in Salem or Beverly, and expressed concern that there needs to be a broader discussion and better city planning regarding residential parking areas.

Councilor Lundberg and **Councilor LeBlanc** briefly discussed the physical street parameters of the ordinance amendment.

MOTION: On a motion by Councilor Whynott, seconded by Councilor LeBlanc, the City Council voted by ROLL CALL 9 in favor, 0 opposed, that GCO Sec. 22-270.1 (Resident Sticker Parking Only), be Amended by ADDING: “Middle Street westerly side (even numbers) from the intersection of Riggs Street in a northeasterly direction to the westerly property line of #28 Middle Street.”

10. PH2015-061: Acceptance of roadways as public ways in accordance with MGL Chapter 85, and GCO Sec. 21-1, 21-35 and Sec. 21-43

This public hearing is opened at 8:22 p.m.

Councilor Verga said before the Council meeting he spoke with the DPW Director who suggested that this matter be returned to the P&D Committee to clarify procedures and then asked this matter be referred back to P&D. By unanimous consent of the Council this matter was referred back to the P&D Committee. **Council President McGeary** then continued the public hearing to Dec. 15.

This public hearing is continued to December 15, 2015.

For Council Vote:

1. Decision to Adopt: SCP2015-003: 15 Western Avenue, Unit No. 2 (“Condominium”), Assessors Map #2, Lot #69; Modification of Special Council Permit granted on June 6, 2000 under GZO Sec. 2.3.1(4)(a) (GZO 2008 2.3.1.6)

Councilor Stewart recused himself under MGL c. 268A as he had done when this matter was before the Council for the approval of a Special Council Permit modification.

Councilor Verga expressed he was still in support of the Council’s vote to deny the modification of the original Council Permit granted in June 2000.

Councilor Ciolino said that he didn’t support the denial of the Special Council Permit modification and would not support the adoption of the decision. He said by supporting the decision the Council sets a poor precedent for the city that they are unwilling to work out a situation that a tear down is a solution.

Councilor Whynott said while he hadn’t supported a tear down to correct a particular situation, that wasn’t what the Council had before them. He reminded the Council they are voting on whether or not the decision to be adopted represented the decision the Council and so he would support the adoption of the decision.

Councilor LeBlanc said he didn’t support the Council vote to reject the application for a modification of the Special Council Permit when it was last before the Council, and that he would not support the adoption of the Special Council Permit decision now. He expressed concern that this matter be put to rest after many years, and said that this is an abutter/ condominium association issue and should be handled in that manner. He said the city has spent great sums of money and many years of litigation which could continue should the Council adopt the decision.

MOTION: On a motion by Councilor Verga, seconded by Councilor Cox, the City Council voted by ROLL CALL 5 in favor, 3 (Ciolino, LeBlanc, Fonvielle) opposed, 1 (Stewart) recused, to adopt SCP2015-003 decision for 15 Western Avenue, Unit No. 2 (“Condominium”), pursuant to Modification of Special Council Permit granted on June 6, 2000 under GZO Sec. 2.3.1(4)(a) (GZO 2008 2.3.1(6)).

Councilor Whynott and **City Clerk, Linda T. Lowe** suggested that such a vote would require six votes to pass. **Mr. Destino** said that any zoning amendment requires six votes and suggested the decision to adopt is not adopted with a vote of 5 in favor, 3 opposed, 1 recused.

Responding to a question by **Council President McGeary** if the vote to adopt a decision of the City Council requires six votes to be adopted, **Mr. Destino** said that he believed that six votes were required to adopt a decision. He noted this is a modification of a Special Council Permit which would be the same as any other Special Council Permit. **Councilor Lundberg** expressed his disagreement saying that this is not about the modification of a Special Council Permit but a vote to adopt the decision which is to sustain the original City Council vote on the modification of the City Council Special Permit. **Mr. Destino** cited that the City Council turned down the modification which was a new application. He suggested that the Council was missing the point that the decision to adopt is only on the

decision itself which says it is a record of what the Council voted. He said any zoning amendment or decision requires six votes, although saying he would defer to the City Clerk.

Councilor Verga suggested whether the Council adopts the decision, it isn't relevant -- the Council voted to deny the modification of the Special Council permit which still stands. Both **Council President McGeary** and **Ms. Lowe** expressed their agreement with Councilor Verga's assertion. **Mr. Destino** said the final action is the decision to adopt and if that action is not taken, in this case tearing down what was done to cause the issue in the first place can't take place because the final decision wasn't adopted. **Councilor Verga** expressed his disagreement, saying that the action the Council was asked to take was to allow the modification of the originally issued Special Council Permit. What was in place was an order to tear the structure down, and the owner was questioning if he had to tear it down. The Council's 4 in favor, 4 opposed vote essentially said, "No;" what they said stands. He said in the end it doesn't matter if all the Councilors voted in opposition to the adoption of the decision and that it didn't mean the vote of the Council reverts automatically to a "yes" vote.

Council President McGeary said that the matter, having failed, that the vote to adopt a decision is pro forma. Pointing out that the original motion that was before the Council was to modify a previously issued Special Council Permit, which failed, he said then what is in place is the original City Council Special Permit of which the applicant was in violation of. **Chip Payson**, General Counsel, confirmed that was the case. **Council President McGeary** asked what impact would there be if that adoption failed. **Mr. Payson** said that if the Council failed to adopt the decision, he would have to redraft it and bring the decision back to the Council.

Councilor LeBlanc asked how if the Council denied the Special Council Permit modification on a vote of 4 in favor, 4 opposed, did such a vote stand as a denial. **Council President McGeary** clarified that the application of the Special Council Permit didn't pass, rather it failed because it required a vote of six Councilors in favor of the modification.

Councilor Verga suggested had the Council voted to support the modification in September, the question of the votes needed for adoption might be an issue. Since there was no change to the originally issued Special Council Permit, he said he didn't see how a failure to adopt the decision changes that vote or decision at that time of the Council. **Mr. Destino** said this is unprecedented for a Council not adopt a decision which is a record of what had happened which is all a decision to adopt is.

Council President McGeary announced a "ruling of the Chair" stating the vote of the Council for the decision to adopt is by a simple majority, and that if any Councilor wished to appeal the ruling of the Chair they may do so.

Councilor Verga, calling a point of order on a statement by Councilor Ciolino who indicated this entire matter would end in litigation said that the Council is not re-deliberating whether or not the Council should allow for the modification. They are simply looking to reconfirm that this is what the decision of the Council was at that time and how the Council voted. This is a matter of what was voted by the Council and what the Council's decision on the matter was. This is not about reversing the vote of the Council but recognizing what happened based on what is before the Council in the written decision, **Councilor Verga** pointed out. **Council President McGeary** expressed his agreement with Councilor Verga's assessment.

Councilor Whynott briefly explained why motions are always stated in the positive voice and reiterated the assertion that when the Council votes to adopt a decision they are simply voting to reconfirm what previously transpired to be factual and not whether they like that or not. He said even though he didn't like the result of the decision of the Council on the modification of the Special Council Permit, he voted in favor of the adoption of the decision because that is all they are voting on.

Councilor Verga made a Motion to Reconsider, seconded by Councilor Lundberg, the City Council voted by ROLL CALL 7 in favor, 1 (Ciolino) opposed, 1 (Stewart) recused.

MOTION PASSES.

MAIN MOTION VOTED AS A RECONSIDERATION BY THE COUNCIL BY ROLL CALL: 7 in favor, 1 (Ciolino) opposed, 1 (Stewart) recused, to adopt SCP2015-003 decision for 15 Western Avenue, Unit No. 2 ("Condominium), pursuant to Modification of Special Council Permit granted on June 6, 2000 under GZO Sec. 2.3.1(4)(a) (GZO 2008 2.3.1(6)).

DECISION FOR SCP2015-003 IS ADOPTED.

- 2. Decision to Adopt: SCP2015-005: 65 Friend Street, Assessors Map #51, Lot 21, GZO Sec. 2.3.1(4)a (GZO 2008 2.3.1(7)) to allow petitioner to maintain an existing five-unit dwelling**

MOTION: On a motion by Councilor Verga, seconded by Councilor LeBlanc, the City Council voted by ROLL CALL 9 in favor, 0 opposed, to adopt SCP2015-005 decision for 65 Friend Street pursuant to GZO Sec. 2.3.1.(4) a (GZO 2008 2.3.1(7)).

Unfinished Business: None.

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

Councilors' Requests to the Mayor:

Councilor Ciolino reminded city residents to look out Saturday evening for young trick-or-treaters to ensure everyone has a safe Halloween. He encouraged parents to bring their children to Main Street on Halloween to trick-or-treat, sponsored by the Gloucester Downtown Association. It will run from 4 to 6 p.m. and he asked parents look for a jack-o-lantern in the store window of participating merchants.

Councilor Fonvielle reminded the public that the Magnolia Library has always been a haven for trick-or-treaters every Halloween and said he assumed this year would be no different.

Councilor Stewart said that tomorrow evening's debate at the Lanesville Community Center 7 p.m. to 9 p.m. is the last before the election. Included in this debate will be all candidates for Councilor At Large along with the two Ward 4 candidates.

Councilor LeBlanc lauded the candidates for municipal office, especially those candidates running for Mayor who endured many mayoral debates throughout the campaign season. He wished them all good luck.

Councilor Cox announced that on Halloween, Saturday, Oct. 31 the Unitarian Universalist Church will screen the silent film, Phantom of the Opera, accompanied by a live organist and starts at 7:30 p.m. and is a fundraiser for the church. She noted there is an event celebrating Cape Ann World War II veterans, in honor of a photographic exhibition, "Our Greatest Generation" from 1 to 4 p.m. in Kyrouz Auditorium, Saturday, Nov. 7 sponsored by Jason Grow. She wished all the candidates for municipal office good luck.

Councilor Lundberg thanked the new candidates running for office for their participation in this process saying that it is an unusually good crop who have brought a lot to the campaign season. He commended to the Council and would-be candidates for office that in the Council agenda packet this week was the annual report of the city which included all the departments. He said it is a great description by department of what has been done in the last year and helps people to understand what their government does for them.

Councilor Whynott said he wished everyone a Happy Halloween

Council President McGeary announced Tuesday, Nov. 3 is Election Day, and **Ms. Lowe** listed the city's polling places as: Ward 1-1, East Gloucester Elementary School; Ward 1-2 Veterans Memorial Elementary School; Ward 2-1 and 2-2 Our Lady of Good Voyage Church Youth Center; Ward 3-1 and 3-2 Gloucester High School Field House; Ward 4-1 Beeman Elementary School, 4-2 Lanesville Community Center; and Ward 5-1 and 5-2 through this year is the Magnolia Library. Polls open at 7 a.m. and close at 8 p.m.

A motion was made, seconded and voted unanimously to adjourn the meeting at 8:52 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- **Information regarding Healthy Gloucester Collaborative Gloucester Youth Council's Public Service Announcement and a flyer on the harm to youth that marijuana poses**
- **Littering Fines; Cities/Towns Near Gloucester Or Having Population Range Approximately 28,000-39,000 Where Ordinances Could Be Found submitted by Councilor Stewart**