

CITY OF BRIDGEPORT
ORDINANCE COMMITTEE

MONDAY, JULY 9, 2012

6:00 PM

ATTENDANCE: Council members: Paoletto; Co-chair, M. McCarthy, Curwen, Martinez

NON-COMMITTEE: Council members: Brannelly

OTHER(s): Associate City Attorney Schmidt

Co-chair Paoletto called the meeting to order at 6:10 pm.

(68-11) Proposed Amendments to the Municipal Code of Ordinances, amend Chapter 5.12 Massage Establishments and Massage Therapists

Attorney Schmidt reviewed the changes to the ordinance and he stated that he only tweaked what was already on the books. The definition of “massage therapy” was expanded to include varied types of massages in accordance with the state definitions – *he read a section of the ordinance that referenced the state statute.*

Overall, he stated that all the changes to the ordinance were minor in nature.

Co-chair Paoletto recalled that the ordinance previously went through committee and passed; there was then a request to table it for the purpose of including the reference to the state language. He clarified that no changes were made from the new document to the original document passed in committee.

**** COUNCIL MEMBER McCARTHY MOVED TO APPROVE THE MOST RECENT DOCUMENT DATED JULY 9, 2012 AS AMENDED**

**** COUNCIL MEMBER CURWEN SECONDED**

**** MOTION PASSED UNANIMOUSLY**

***Consent calendar**

****amended copy submitted to the city clerk***

- ** COUNCIL MEMBER CURWEN MOVED TO SCHEDULE A PUBLIC HEARING PRIOR TO THE NEXT CITY COUNCIL MEETING**
- ** COUNCIL MEMBER MARTINEZ SECONDED**
- ** MOTION PASSED UNANIMOUSLY**

(67-11) Proposed Amendment to the Municipal Code of Ordinances, amend to add new Chapter 8.81 Sexually Oriented Business Ordinance

Attorney Schmidt reviewed the changes to the ordinance. He clarified that this ordinance pertains to a licensing of public health. He noted that the new language was underlined throughout the document and it remains otherwise unchanged from the original. He further noted that it's not required to cross reference the Planning & Zoning regulations in the ordinance and it was specifically worded to be enforced.

The licensee section was reviewed and it was noted that this section pertains to identifying who the operator is and outlines the departments that are allowed to conduct inspections and find any applicable violations.

He further reviewed specific sections of the ordinance that referenced:

- Background check for the licensee
- Renewal of the license
- Revocation of the license by the health director
- Right of appeal
- Operating requirements – it was pointed out that the operator of the establishment will be held responsible; however, this will be difficult to enforce if the action isn't actually observed
- Liquor license is subject to state regulation
- Hours of business

The Penalty section was reviewed and it was noted that a fine of \$250.00 is the maximum amount imposed by state law. If the fine imposed is over \$250.00; the matter will require further proceedings at an incremental cost.

It was clarified that it is not the city's intent for the ordinance to be in conflict or usurp any federal or state law. It was stated that the final draft will be upheld in any court of law.

Council member Martinez asked how current businesses will be made aware of the changes to the ordinance. Attorney Schmidt replied that this is a new licensing

requirement. He clarified that currently, establishments don't have a license. He recommended that a copy of the ordinance be sent to all existing establishments by certified mail to ensure receipt and to make them aware that they will have 60-days to comply. He noted that a list exists of all existing businesses.

He further clarified that the ordinance doesn't regulate dancing; i.e., what's licensed is not the dancing, but the sexually oriented component.

Council member Silva questioned why existing businesses aren't grandfathered in. Attorney Schmidt explained that if existing businesses were grandfathered, it would give unfavorable treatment to those businesses. However, he said time will be allowed for those businesses to submit an application to obtain a license and once it's obtained, they must comply.

Council member Brannelly added that in regard to the health of the workers and the patrons, a business will **never** be grandfathered, because the issue is directly related to a health issue.

Attorney Anastasi and Attorney Schmidt both concurred that the new zoning rewrite dramatically restricts opportunities for new and/or additional activity. The ordinance was rewritten to comply with the Supreme Court decision. It was reiterated that businesses are **not** grandfathered when the matter relates to being non-compliant of health issues. It was once again clarified that the issue relates to a public health matter. The ordinance is not meant to put anyone out of business; it was created to enforce the protection of the workers and the patrons.

Council member Silva further explained his concern about existing businesses not being grandfathered in, noting that this may result in possible lawsuits.

Council member McCarthy addressed the issue of the owner having to post their name and address in the establishment. He said he had a concern of putting the establishment owner in jeopardy – *he referenced Section 8.81.042-I outlined on page 10*. Attorney Schmidt replied that that required was taken from the Town of Berlin's ordinance. He said an amendment could be made to that section and as long as the Health Department and the Police Department have the owner's information, then it's not required to post it at the establishment. He suggested removing the owner's name and leaving the address.

Council member McCarthy had a question about Section 8.81.060-H. He said he didn't feel it was the city's right to mandate that a business owner of an establishment can't have an alcohol beverage. Attorney Schmidt clarified that language never changed from the original draft.

Section 8.81.060-M pertaining to signs was reviewed. Council member McCarthy stated that he didn't feel a sign should be posted on the exterior of the building. Attorney Schmidt assured that signs would be located inside the establishment that "sexual activity on the premises is prohibited ". Council member McCarthy stated that he would like to delete that portion from the ordinance. Council member Brannelly commented that she didn't feel there would be any harm posting the sign on the interior of the building.

Council member Curwen commented that disclosure of personal information was an issue. He relayed that there was a bigger problem in his district that affects the ordinance; noting that currently there is one (1) establishment and two (2) more new applications pending. He stated the he hoped the two (2) new applications wouldn't be considered. Attorney Anastasi said there were certain applications filed under the old regulations and there is some zoning litigation that is still pending that he stated would be best discussed during an executive session.

Council member Martinez stated that she has observed that some of the committee members had specific concerns and questions. And she felt that since they had the city attorneys available, the concerns should have been addressed as requested. Attorney Anastasi responded that the best way to deal with legislature is not by having numerous different conversations with committee members. He relayed that he got caught up in meetings today and he apologized for not returning Council member McCarthy's call. He further clarified that there was no artificial deadline to vote on the item tonight.

Council member McCarthy stated that Council member Brannelly has worked hard on the ordinance. He recalled that the previous makers of the ordinance didn't follow through and the item was allowed to die. However, he felt the ordinance still required some tweaking.

Council member Curwen stated that sometimes they put in legislation that that can't or hasn't been enforced. He said that although the understood the intent and logic of the ordinance with the restrictions outlined, he didn't feel it was enforceable. And if it's meant to be a licensing ordinance, then he suggested that's the way to go.

**** COUNCIL MEMBER CURWEN MOVED TO ENTER INTO EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING PENDING LITIGATION AS IT PERTAINED TO SEXUALLY ORIENTED BUSINESSES**
**** COUNCIL MEMBER McCARTHY SECONDED**
**** MOTION PASSED UNANIMOUSLY**

The committee entered into executive session at 7:10 pm.

The committee came out of executive session at 7:56 pm.

**** COUNCIL MEMBER CURWEN MOVED TO COME OUT OF EXECUTIVE SESSION**
**** COUNCIL MEMBER McCARTHY SECONDED**
**** MOTION PASSED UNANIMOUSLY**

Co-chair Paoletto reconvened the meeting at 8:00 pm.

Council member Curwen continued where he left off before they entered into executive session. He stated that the concerns he had were addressed and explained during the executive session.

A proposed amendment submitted by Council member Silva was read into the record as follows:

PROPOSED AMENDMENTS TO THE CITY'S SEXUALLY ORIENTED BUSINESS ORDINANCE

The first sentence of Section 8.81.060 shall be amended to read as follows:

The following requirements shall apply to all Sexually Oriented Businesses established after the effective date of this Ordinance

The first sentence of Section 8.81.061 shall be amended to read:

In addition to the requirements contained in 8.81.060 the following requirement shall apply to all sexually oriented businesses within the City after the date of this Ordinance.

**** COUNCIL MEMBER SILVA MOVED TO ENTER DOC.-A-7-9-12 AS AN EXHIBIT INTO THE RECORD**
**** COUNCIL MEMBER CURWEN SECONDED**
**** MOTION PASSED UNANIMOUSLY**

Attorney Anastasi reiterated that Attorney Schmidt recommended **not grandfathering** for existing establishments for licensing.

Council member Brannelly commented that she had a potential reaction in response to business owners that may file a lawsuit. She expressed that Attorney Schmidt and other parties have worked hard to get this document in order and to put the interest of legitimate business owners and non-compliant owners (which are the ones they are focused on); the discussion of grandfathering puts them at ground zero. She

emphasized that the city is looking to send the message that if they don't comply, they aren't welcomed. However, if they comply with becoming a legitimate business, then they will be most welcomed.

Council member Silva said he understood the concern. He stated that if these businesses were grandfathered, it would stop other businesses from opening up and prevent the risk of opening new businesses. Attorney Anastasi responded that factoring is behind a health and safety ordinance and the activity they are looking to regulate. He stressed that if it warrants regulation, you have to apply it to existing businesses.

Attorney Schmidt stated that litigation had nothing to do with the matter. The key component is that the regulation should be applied equally and not exempt existing businesses from non-compliance. The matter pertains to a licensing issue and how many establishments may be opened is not governed by the ordinance.

Co-chair Paoletto clarified that the ordinance applies to all sexually oriented business.

Council member Brannelly clarified that the massage therapist ordinance is not supposed to be deemed a sexually oriented business. She stated that they needed to specifically hear from business owners what some of the problems will be for them and their legitimate business; such as conducting the background check etc. She stated that is the information that should be found out.

**** COUNCIL MEMBER CURWEN MOVED TO TABLE**
**** COUNCIL MEMBER MARTINEZ SECONDED**
**** MOTION PASSED UNANIMOUSLY**

ADJOURNMENT

**** COUNCIL MEMBER CURWEN MOVED TO ADJOURN
** COUNCIL MEMBER McCARTHY SECONDED
** MOTION PASSED UNANIMOUSLY**

The meeting adjourned at 8:16 pm.

Respectfully submitted,

Diane Graham
Telesco Secretarial Services