

## Public Hearing – April 1, 2013

Mayor Grenier opened the duly advertised public hearing portion of the meeting at approximately 7:27 p.m. to hear public comments on the following subject matters:

- Ordinance 2013-04 Restaurant Licensing. No Comments
- Resolution 2013-05 Sale of 180 Glen Avenue to Jim Lavertue. No comments

There being no one wishing to speak for or against the subject matters, Mayor Grenier closed the public hearing portion of the meeting at approximately 7:28 p.m.

## CITY COUNCIL MEETING – Monday, April 1, 2013

Mayor Grenier called the Regular City Council Meeting to order at approximately 7:28 p.m. in the City Hall Council Chambers. The pledge of allegiance to the flag preceded roll call. Present: Councilors Otis, Morgan Allain, Benski and Rozek. Councilors Remillard, Higbee, Nelson and Theberge were absent. Also present: Pat MacQueen and the press.

### Minutes, Previous Meeting

Councilor Rozek moved with a second by Councilor Morgan Allain to accept the minutes of the March 18 Regular Meeting/Work Session; March 25 Work Session and the March 13 and 20 Budget Minutes. So moved, the motion carried.

**Disbursements:** Disbursement Summary Draft #1687 start date 3/21/2013; end date 4/3/2013 has a total cash disbursement of \$1,296,373.53. Councilor Benski moved with a second by Councilor Morgan Allain to accept the disbursement summary and pay all bills as recommended by the Committee on Accounts/Claims. So moved, the motion carried.

### PUBLIC COMMENTS – No Comments

## UNFINISHED BUSINESS

1. Council Committee Reports. No reports
2. Ordinance 2013-04 Amending the City of Berlin Code of Ordinances, Chapter 9 License and Regulation of Occupations and Businesses by deleting Article VI Restaurants in its entirety, and replacing it with a new Article VI Restaurants as described. (tabled 3/18/13)

Be it ordained by the City Council of the City of Berlin as follows:

### ARTICLE VI. RESTAURANTS\*

**\*Case Law References:** *State v. Grant*, 107 N.H. 1, 216 A2d 790 (1966). Regulations for determining prohibiting the keeping open of such places on the Lord's Day is constitutional, and regulation requiring all houses and restaurants to be closed from midnight to six a.m. is valid exercise of powers conferred by the statute. **Cross References:** Health department, § 2-311 et seq.; health, Ch. 7. **State Law References:** Power to make by-laws, RSA 31:39; power to regulate, RSA 47:17; food sanitation, RSA 143:1 et seq.; health officers may regulate and license restaurants, RSA 147:1.

### DIVISION 1. GENERALLY

#### Sec. 9-176. Definitions.

Definitions shall be as provided below and as provided in [RSA 143 A:3, III through VIII](#).

*Health Administrator* shall mean the health officer of the city or his/her authorized representative.

**Cross References:** Definitions and rules of construction generally, § 1-2.

#### Sec. 9-177. Enforcement.

This article shall be enforced by the health officer in cooperation with the state pursuant to and in accordance with [RSA 47:17](#) and [RSA 143-A Food Service Licensure](#) except as modified by this Ordinance in accordance with RSA 143-A:5, I, II, III & VII, as required for the continued provision of public health and in accordance with the interpretations thereof contained in the [New Hampshire Rules for the Sanitary Production and Distribution of Food, He-P 2300](#), which are hereby adopted by reference, except for any and all license and fee schedules required by the state. A copy of such rules shall be on file at the city clerk's office and the health department. (Code 1977, § 11:213; Ord. of 5-6-96(1))

**Sec. 9-178. Licenses required, applications, terms, fees.**

- (a) It shall be unlawful for any person to operate a food service establishment in the city who does not possess an unrevoked or unsuspended license granted by the health officer. Only persons who comply with the requirements of this article shall be entitled to receive and retain such a license.
- (b) All food service establishment licenses shall be for no more than one year except in the case of an initial license which may be granted for up to a year and a half.
- (c) The annual fees for a food service establishment license shall be \$50.00 Failure to pay license fee is grounds for food license revocation.
- (d) The licenses issued hereunder must be displayed at all times in a conspicuous place on the premises licensed. (Code 1977, § 11:202; Ord. of 5-6-96(1))

**Sec. 9-179. Suspension, revocation of license; rules and regulations.**

- (a) No food service establishment shall be operated within the city unless it conforms with the requirements of this article; provided, that when any food service establishment fails to qualify the health officer is authorized to temporarily suspend the license.
- (b) The health administrator shall have the power to refuse to issue a license or to suspend or revoke the license of any food service establishment which does not meet the requirements of this article.
- (c) The health officer shall have power to adopt reasonable rules and regulations governing its procedure. These regulations shall include provision for a hearing by any party who wishes to contest a license suspension and requests such a hearing in writing. Any such hearing request shall be scheduled within three (3) working days of such written request. (Code 1977, § 11:207; Ord. of 5-6-96(1))

**Sec. 9-179.1. Appeals.**

There is hereby established an Appeals Hearing Committee. This Committee shall be made up of the City Manager who shall chair the committee, the Administrative Assistant and the Community Development Director. Any party aggrieved by the enforcement of these provisions shall have the right to appeal to the Appeals Hearing Committee by filing, within 10 working days of becoming aware of an enforcement action they wish to appeal, a written appeal to the Health Officer. The Health Officer will notify the person requesting the appeal of the time and place of appeal. This notice will be mailed at least 72 hours in advance of the appeal hearing. One postponement of a scheduled appeal hearing will be granted if the claimant has a valid reason for not being able to attend. Otherwise, if the claimant does not appear at the second scheduled appeal hearing, the claimant will lose his or her right to an appeal hearing.

Appeal hearings are not subject to formal requirements or rules of courts of law. However, they shall be conducted in such a manner as to ensure that the claimant has the opportunity to be fully heard and to maximize the fairness of all proceedings and all decisions arising out of such proceedings. The appellant may designate counsel or another person to represent him or her. The appellant or his or her representative has the right to examine all materials relevant to the Department's decision prior to the appeal hearing. The Health Officer or his/her authorized representative has the right to examine all materials and documents on which the appellant plans to rely prior to the appeal hearing. The Health Officer will attend the hearing and testify as to his or her actions and the reasons for them. Both parties may present witnesses on their behalf. Both parties have the right to cross-examine all witnesses. The appeal hearing committee will reach their decision solely on the basis of the evidence presented to it at the hearing. Appeal hearing decisions are rendered in writing within seven working days of the hearing. The appeal hearing committee will set forth the reasons for their decision and the facts relied on. A copy will be mailed or delivered to the appellant and to the City Health Department. Appeal hearing decisions are rendered on the basis of the appeal hearing committee's findings of fact, state and federal law. Appeal Committee decisions do not limit any right of an appellant to seek subsequent court action to review or challenge a Health Department decision.

**Sec. 9-180. Reinstatement of license.**

- (a) Any food service establishment, the license of which has been suspended, may at any time make application to the health officer for reinstatement of the license.
- (b) Within one (1) week after the receipt of a written statement signed by the applicant to the effect that the violated provisions of this article have been conformed with, the health officer shall make a re-inspection, and if satisfied that the applicant is endeavoring to comply with the requirements theretofore violated, he/she shall make as many additional re-inspections as he/she may deem necessary to assure that the applicant is again complying with the requirements of this article. If the findings indicate compliance, the health officer shall reinstate the license. (Code 1977, § 11:208; Ord. of 5-6-96(1))

**Sec. 9-181. Inspection of food service establishments.**

- (a) The health officer, before issuing or renewing a license, shall cause an inspection to be made of the food service establishment as often as he/she deems such inspections necessary. Such inspections may be scheduled or unscheduled as determined by the Health Officer. In case the health officer discovers the violation of any item of sanitation required by the terms of this article or section thereof, he/she shall make a second inspection after the lapse of such reasonable time as he/she deems necessary for the defect to be remedied, and the second inspection shall be used in determining compliance with the requirements of this article. Any violation of the same item of this article on such second inspection shall be cause for immediate suspension of license.
- (b) One (1) copy of the inspection report shall be sent by the health officer to the manager or operator of the food service establishment and the latest inspection report shall be kept on file in the office of the Health Officer.
- (c) The person operating the food service establishment shall, upon request of the health officer, permit access to all parts of the establishment for the purpose of inspection and shall furnish upon demand and/or permit copying any or all records of sources of supply of food or drink purchased or used in or on the premises. (Code 1977, § 11:204; Ord. of 5-6-96(1))

**Sec. 9-182. Examination, condemnation of unwholesome, adulterated food or drink.**

Samples of food, drink, and other related substances found in any food service establishment may be taken and examined by the health officer as often as may be necessary for the detection of unwholesomeness or adulteration. The health officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is unwholesome or illegally adulterated. (Code 1977, § 11:203; Ord. of 5-6-96(1))

**Sec. 9-183. Disease control.**

No person who is affected with any disease in a communicable form or is a carrier of such disease or who has suppurating lesions on arms, hands or other exposed parts of the body shall work in any food service establishment and no food service establishment shall employ any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. Employees who have left work at a food establishment because of communicable illness must provide written physician's clearance before returning to work. (Code 1977, § 11:209; Ord. of 5-6-96(1))

**Sec. 9-184. Procedure when infection suspected.**

When suspicion arises as to the possibility of transmission of infection from any food service establishment employee, the health officer is authorized to require any or all of the following measures:

- (1) The immediate exclusion of the employee from any food service establishment;
- (2) The immediate closing of the food service establishment concerned until no further danger of disease outbreak exists, in the opinion of the health officer;
- (3) Adequate medical examination of the employee and of his/her associates, with such laboratory examinations as may be indicated. (Code 1977, § 11:210; Ord. of 5-6-96(1))

**Secs. 9-185--9-240. Reserved.** This Ordinance shall be in full force and effect from and after passage.

Councilor Otis moved with a second by Councilor Morgan Allain to remove the ordinance from the table at this time. So moved, the motion carried.

Councilor Otis moved with a second by Councilor Morgan Allain to have the ordinance read a second time by title only. So moved, the motion carried.

Councilor Otis moved with a second by Councilor Benski to have the ordinance read a third time by title only. So moved, the motion carried.

Councilor Otis moved with a second by Councilor Morgan Allain to pass the ordinance. So moved, the motion carried and Mayor Grenier declared the ordinance now passed.

3. Resolution 2013-05 Authorizing the Sale of 180 Glen Avenue, Map 117; Lot 55 to James Lavertue for the sum of Ten Thousand Dollars (\$10,000.00) (tabled 3/18/13)

Resolved by the City Council of the City of Berlin as Follows:

Whereas, the City of Berlin currently owns the property at 180 Glen Avenue, Map 117; Lot 55, tax deeded on May 3, 2012; and

Whereas, there is currently no tax base derived from the unused buildings on the property; and

Whereas, the buyers' investment property abuts 180 Glen Avenue and the other abutters have declined interest in the property; and

Whereas, the buyer has effectively maintained his present property to meet all City Codes and ordinances; and

Whereas, the buyer has agreed to substantially improve the property at 180 Glen Avenue by renovating the main residence and shed to meet all City Codes and ordinances; and

Whereas, the Mayor and Council have determined that the City of Berlin has no need for the property; and

Whereas, the proposal tendered by Mr. Lavertue was found to meet the City's goals to improve neighborhoods and put properties back on the tax rolls. Now therefore be it resolved by the City Council of the City of Berlin as follows: That the City Manager is authorized to do all things necessary to effectuate a contract to sell the property at 180 Glen Avenue, Map 117; Lot 55, for Ten Thousand Dollars (\$10,000.00) to James Lavertue under an agreement which makes it clear that the proposed improvements to the property will be substantially completed within 12 months of the closing date or the property will revert to the City. Further, that the proceeds of the sale will be deposited with the City Treasurer. This Resolution shall be in full force and effect from and after passage.

Councilor Otis moved with a second by Councilor Morgan Allain to remove the resolution from the table at this time. So moved, the motion carried.

Councilor Otis moved with a second by Councilor Morgan Allain to have the resolution read a second time by title only. So moved, the motion carried.

Councilor Otis moved with a second by Councilor Morgan Allain to have the resolution read a third time by title only. So moved, the motion carried.

Councilor Otis moved with a second by Councilor Morgan Allain to pass the resolution. So moved, the motion carried and Mayor Grenier declared the resolution now passed.

## **NEW BUSINESS**

4. Fleury-Patry Funeral Home Request to Remove 2 Handicap Parking Spaces by 240 School Street. Councilor Rozek moved with a second by Councilor Otis to accept/file the communication and remove the handicap parking spaces as requested. So moved, the motion carried. It was later determined that this item will have to be handled through the regular ordinance process. An ordinance to remove the signs will be drafted for the next Council Meeting.

5. City Manager's Report  
**WWTF Improvements Update**

The WWTF Improvement project has been moving ahead apace. The new disinfection building is at a point where they are actually beginning to test some of the interior tankage. The new clarifier, which had to be blasted out of ledge, was poured last fall before the weather closed in and was holding water. A great deal of electrical work was carried out over the winter inside the main control building. There had been a delivery delay on electrical components that has now been freed up and the electrical work is actually ahead of schedule. Some of the new instrumentation panels are in and are ready to be installed.

The Council will recall that we have undertaken an engineering evaluation to determine whether the centrifuges we have been using for dewatering sludge should be continued into the future for accomplishing that requirement. That report by Wright Pierce is nearing completion and we hope to be in to the Council with a recommendation on that in the near future. Overall, this project has thus far gone as well as we could have expected. We have had a total of 10 payment requests from APEX, the General Contractor approaching \$5M against a total contract amount of \$13,216,437. Hopefully, the second half of this project which will be complete in the summer of 2014 will go as smoothly as the first half has.

### **PWD Clean Up**

Hopefully this years' winter snow storms are over. In any event Spring Cleanup has begun and the street sweeper has been out nights and already picked up tons and tons of sand.

### **Housing Matters**

- 3 Glen Avenue – Abatement of Asbestos completed – Demolition bids to go out this week. We are working with HEB Engineers who will be giving us re-use design to present to planning board this Tuesday, then will present to City Council.
- 325 & 432 Burgess & 124 ½ Norway – abatement to be completed this week.
- The following houses not sold in previous Property Sales will go back out to the general public for bid this week: 6 Rouleau Road, 538 Burgess, and 290 Grafton St.
  - Have put 590 Goebel out to abutters again at reduced minimum bid of \$3000.

- Will be recommending to Council that two properties formerly put out to sale: 615 Fourth Ave and 466 Burgess be put out to bid for demolition.
- 717 Fifth Avenue – was demolished this week by Barry Kelley (White Mountain Lumber)
- The Housing Coordinator has also been approached by Fleury Funeral Home who would like to demolish two properties that they own: 257 School St. and 240 School St. She is providing assistance and information regarding the process.
- 79 Hamlin –purchased under the last Property Sale is also going to be demolished by the abutter (John Champion) who owns 75 Hamlin St.
- Community Development Director Laflamme was approached about possible sites for a “dog park” – The Housing Coordinator is working with her on suggestions of potential locations.

### **Berlin Article**

Attached is an article published in the University of New Hampshire Magazine about a Berlin couple who graduated from UNH in the early 70's but continue to show their commitment to their home town and the North Country by endowing scholarships to UNH for Berlin High School students – a testament to the loyalty and caring Berlin engenders in its citizens.

### **NHES Job Information Session**

New Hampshire Employment Security is holding a Job Information Session tomorrow April 2<sup>nd</sup>, 2013 at 6pm at the Berlin Junior High School Auditorium. This session is being held in conjunction with Burgess Biopower and Delta Power Services which will be running the new biomass plant. The flier is attached.

### **Legislative Matters**

Crossover: The date by which the House must act on all House bills and the Senate must act on all Senate bills is this Thursday April 4<sup>th</sup>. The Senate has dealt with all of its bills, but the House still has three bills left to deal with: These are the operating budget, the budget trailer bill and the capital budget. One bill which has been retained by the House for further study and which has long been of interest to Berlin is HB 672 relative to the property tax credit for pollution control facilities.

House Operating Budget: The operating budget bill HB1 and it trailer bill HB 2 which statutorily implement the changes to implement the budget have been adopted by the House Finance Committee. This budget begins to restore many of the cuts that were enacted over the past four years, including funding the statutory catch-up formula in the rooms and meals tax distribution and funding for the deferred state aid pollution control grants (SAG).

HB 617 Gas Tax: The three year roll-in (4 cents per year for 3 years) of a gas tax increase was for the second time passed by the full House. The language of HB 617 is also included in the Budget Trailer bill HB2. It will likely face a much tougher battle in the Senate.

Councilor Rozek asked if we recycle the sand picked up by the street sweeper? It makes sense to utilize and mix it in with the sand for next year provided there are no metal objects or it could be used as a cover for landfill. The City Manager will check and let Council know how it is handled.

Councilor Rozek moved with a second by Councilor Otis to accept the City Manager's Report and place it on file. So moved, the motion carried.

### 6. Mayor's Report -

Appointment: Planning Board – Martha Creegan, as a regular member for another three year term set to expire April 2016. Councilor Rozek moved with a second by Councilor Benski to accept the Mayor's nomination of Martha Creegan on the Planning Board. So moved, the motion carried.

### 7. Public Comments: No comments

### 8. Council Comments: No comments

### 9. Adjournment:

There being no further business before the Mayor and Council at this time, Councilor Rozek moved with a second by Councilor Benski to adjourn the regular meeting. So moved, the motion carried and Mayor Grenier declared the regular meeting closed at approximately 7:46: p.m.

A True Record, Attest:  
Debra A. Patrick, CMC