



## Committee on Legislative Matters and the Northampton City Council

### Members

*Councilor William H. Dwight, Chair*

*Councilor Gina-Louise Sciarra, Vice Chair*

*Councilor Rachel Maiore*

*Councilor John Thorpe*

### MEETING MINUTES

**Date: December 14, 2020, Time: 5:00 pm**  
**Virtual Meeting**

1. **Meeting Called to Order and Roll Call:** At 5 p.m., Councilor Dwight called the meeting to order. On a roll call, the following councilors were present: Councilor William H. Dwight, Councilor Rachel Maiore, Councilor Gina-Louise Sciarra and Councilor John Thorpe. Also present were Councilor Marianne LaBarge, Councilor Jim Nash, Office of Planning and Sustainability Director Wayne Feiden, Youth Commission Chair and Vice Chair Noah Kassis and Eli Marlin and Administrative Assistant Laura Krutzler.

Councilor Dwight notified those presented that the meeting was being audio/video recorded.

Councilor Dwight asked people's indulgence to take the agenda items out of order since the vast majority of people present were there for the plastic reduction and sustainability ordinance but the other ordinances would take considerably less time. He reviewed guidelines for public comment and opened the floor to general public comment.

2. **Public Comment**

**Rich Cooper of Florence, owner of State Street Fruit Store Deli Wine and Spirits and Coopers Corner**, asked committee members not to recommend the ordinance to the full council. He agrees that plastic waste should be curtailed, however, "this is the wrong ordinance at the wrong time," he asserted.

The proposed ordinance places the Northampton business community in an untenable position. There are some containers they use now for which no alternatives exist. He held up a clear plastic 'clamshell,' explaining that, particularly during COVID, individual items such as muffins or sandwiches cannot be grabbed by a customer. The only way to have some products available is to have them in plastic clamshells so they are visible. There are other plastics for which alternatives don't exist, or, if they exist, they are extremely expensive, such as compostable forks, knives and spoons. Even if they were able to identify affordable alternatives, businesses are at the mercy of a highly unreliable supply chain. Referring to the shortage of toilet paper, etc. at the beginning of the pandemic, he noted there is also a shortage of plastic gloves and a shortage of glass and other items used in the deli.

"We don't know when there's going to be an end to this," he pointed out. The six-month discretionary exemptions aren't sufficient relief and the six-month time period has no relationship to whether an affordable, suitable alternative is actually available. Passing this at this time ignores the existential threats faced by restaurants and food establishments at this time and disregards the reality of running a business in this pandemic. From the beginning of the pandemic, restaurants and food retailers have shut down, reopened, recalibrated, calibrated and pivoted so many times they are permanently dizzy from unending efforts to provide services to their customers while complying with the necessary and important regulations and protocols that keep them all safe and healthy. They've balanced employee needs and customer needs, devoted longer hours and experienced greater stress over an extended period of time than ever before. They worry about their employees and their families; they don't want them to get sick. They worry about their customers. Many in the business community have closed their doors for good. Others have closed for now with no certainty about whether they will reopen.

"We're exhausted. We do not need another obstacle to overcome."

They all agree they need to do something about the waste stream, something about the planet, but now is not the time. If they feel they must advance a plastic-limiting ordinance, he asks that they not advance this ordinance but establish a department to assist businesses on a voluntary basis.

**Judy Herrell of Herrell's Ice Cream** said she agrees with everything Rich Cooper said but would add a few more things and give concrete examples. Herrell's has biodegradable cups for ice cream, but the lids are not PLA plastic; they are PET plastic. "There are no alternatives made," she asserted. She talked to seven different manufacturers (including Solo, Dart Cup and Dixie), and all have said there is no need for the lids to be compostable. Evidently, they have no reason to make them compostable because they hear from businesses saying their customers want compostable lids but they don't hear from customers themselves.

They are unique in the sense that they ship ice cream. It requires dry ice which in turn requires Styrofoam by federal law. The only thing Fed Ex or UPS can use to ship dry ice is Styrofoam; typically, a Styrofoam container within a cardboard box. If they can't get them from suppliers, they will get them locally. Stop & Shop actually carries them but won't if this ordinance goes through. It will force to get them to rely on more expensive suppliers and not allow them to take an order at the last minute and ship it. It is not a huge crippling effect but is a somewhat crippling effect in a time of urgency.

The straw problem is 1) an ADA (Americans with Disabilities Act) issue. They carry three types of straws: paper, plastic and boba. Some people like the boba straws because they're wider and can be used for double-thick milkshakes. With paper straws, large milkshakes require three straws and small shakes need two. At eight cents apiece, this is 24 cents for a large cup and 16 cents for a small cup vs. two cents for a plastic straw. It will also make it difficult for those who are disabled who come in and request plexi straws.

She gets that plastics are not good for the landfill and for the sea. Everybody is looking for some kind of economical and usable alternative but there isn't one out there yet. Compostable plastics which they are being asked to get instead are anywhere from three to five times the cost of regular plastic. She and Rich Cooper have been looking into this for 40 years or more. Every time they find an alternative that's cost-effective, they get it. There are lots of examples of things they *do* do to help the environment.

Compostable plastic is not a good option. Compostable spoons in hard ice cream break and splinter. Splinters go into the ice cream and can't always be seen to be picked out. They have been working with manufacturers to make them stiffer and less flexible so they don't splinter and break. They're working on it but they're not there yet. Also, generally, compostable plastics are still plastics. What's really needed is education of the public, not to cause more problems for restaurant owners. Northampton does not have a compostable plastics program. Those plastics cannot go into home composting systems.

For 5,000 square feet of compostable plastics that cannot be buried and require moisture and sunlight to decompose, 50,000 square feet of compostable organic material is required. Until Northampton comes up with a method of composting, having businesses only sell compostables to the general public who then put them in plastic recycling where they'll just go into the landfill doesn't seem to make sense; they're putting the cart before the horse.

Working with RecycleWorks, working with the state, working with downtown businesses and putting a committee together with subject matter experts to make a more informed and reasonable ordinance would be the way to go, she suggested. As Rich Cooper said, now is definitely not the time. She thinks they would have a lot more business owners at this meeting if 1) they knew about it and 2) it wasn't at 5 o'clock when most of Main Street is closing. Like her and Rich, they have less customers but more employees right now and they are also acting as employees. She has people working and she's also on the floor taking orders and filling orders. She doesn't have enough time in her day right now and this is just one more worry. She actually had to pay an employee to work for her from 4 to 7 p.m. so she could come to this meeting because normally she is on the floor. She has talked to other owners who are in the same boat. She thinks it is important to basically canvass the downtown, canvass the businesses - not just restaurants - and have a meeting with the city council and business owners; just those groups to discuss these things. She thinks they need to hear both sides and all sides, and now is a terrible time for business owners to find the time to talk with everybody.

When she made appointments with Jim Nash, Noah Kassis and Naomi, Noah forgot their first appointment, she reported. She just feels like businesses right now don't have the time or the resources to actively give feedback about this ordinance and to be able to think clearly about all the problems it portends.

Lastly, as an example, she orders cups 60 cases of a thousand at a time because they are biodegradable and special order. She has to go through those. That's more than a year of cups. She does the same with other products that are not biodegradable. Every plastic item she sells has already been recycled, and they ask their customers to please recycle them again. What is she supposed to tell them to do with compostables since they cannot be put in the trash or in recycling? There's no option, she concluded.

**Amy Cahillane, Florence resident and Executive Director of Downtown Northampton Association (DNA)**, gave a little background of what business looks like downtown and the landscape on which they are asking businesses to make these changes. In Northampton, they have lost 15 businesses that have closed permanently since the start of COVID, five of which are restaurants. Seven additional restaurants have closed for the winter. Her fingers are crossed that they'll reopen, but there's no guarantee. Those are the ones she knows about. Some are quiet and she suspects also struggling with tough decisions about how and whether to hang on until the spring.

They are now heading into an uncertain winter where they don't know if any aid is coming from the government, how willing people will be to continue to get take-out and what the weather will be like. In the face of

all that, businesses are facing dramatically decreased revenue - many of them upwards of 70% - and increased costs. They are pivoting to curbside take-out and buying products they have never had to buy before with reduced hours, reduced staff, reduced menus and non-existent or reduced indoor dining. In the midst of all that, she is trying to get them to pay attention and engage with an ordinance that will require them to yet again potentially pivot and change the products they are purchasing. Everyone agrees with the end goal of a more environmentally-protective practice; the challenge is doing it right now in the midst of all of this with so much uncertainty going into 2021. Even though August of 2021 seems far away, there's so much uncertainty about what will happen between now and then that asking a business to plan now for an implementation in August is incredibly challenging and difficult. She is here to ask them to table, extend or delay implementation of this to give businesses a chance to just survive and make it to the spring, then get back on their feet. RecyclingWorks has been great and has reached out to some businesses. She thinks giving them time to reach out to businesses would create an ordinance with data behind it to make it an informed ordinance with restaurants and a community engaged behind it and ready to jump on board.

**Noah Kassis, Ward 1 resident and chair of the Northampton Youth Commission**, one of the sponsors and crafters of the ordinance, said he wanted to talk a little about the process it went through. The youth commission started working on this ordinance about 15 months ago. They spent eight to nine months doing extensive research, including looking at what other communities have done and talking to environmental experts and people involved in enacting ordinances in other communities, then pivoted pretty hard this fall to doing business outreach. They set up seven distinct meeting times and invited the entire downtown and Florence business community to meet with them and also set up meetings to talk to people individually.

They have really appreciated the chance to engage with the community, and later tonight they will be talking about some of the amendments they are proposing to make implementation a little more accommodating, including delaying implementation by six months and making accommodations for people with disabilities. He would like to mention that this is an issue that is very urgent to the youth commission and to young people in the city. While it is about waste stream and classic environmental issues, it is really about the climate crisis. It is about a city which has made a promise to its people and, specifically, its young people that it will deal with the climate crisis and tackle this issue head on. This is a step towards that. The youth commission and sponsors have been incredibly forthcoming and will continue to be so to work with the business community and folks that are saying this is a really difficult moment, but there is also urgency on the other end and there's not much time to keep kicking climate issues down the road. He hopes they can come together to find an ordinance that meets the urgency of the moment and is reasonable.

Easthampton just passed an ordinance that is actually less accommodating than theirs, he noted. This is something communities are making decisions to go forward with even in these tough times. Regarding Director Cahillane's suggestion that they canvas businesses; that was actually done pretty extensively thanks to work by Jim Nash, Renna Pye, Marty Nathan, himself and other members of the youth commission. They went and spoke to and dropped off information at all the restaurants downtown. Also working with Director Cahillane they were able to send a copy of the ordinance and invitations to talk with them and share concerns to every business downtown. They also have been able to work very closely with experts. He doesn't think it is an issue of finding a more informed ordinance; he thinks they have done a lot of work to make sure it is very informed and consistent with ordinances in place in other parts of the country, but it is an issue of making sure they are all communicating.

He hopes they can keep in mind both the urgency of the economic crisis and the climate crisis.

**Eli Marlin, Northampton resident and vice chair of the Northampton Youth Commission**, commented that, as Noah said, Easthampton recently during COVID passed a stricter version of their ordinance, and other towns around the country have passed similar ordinances. This is not something unique to Northampton. "We're trying to jump onto this train."

It is a really important issue for everyone that has to be solved on a very specific timeline. "We don't have forever to solve this," he pointed out.

They definitely understand this is not a normal time so they have tried very hard to reach out to as many businesses as possible. They sent 150 copies of the ordinance and invitations to come talk to them to every business they thought would be affected by this. They are proposing an implementation date of January of 2022 - hopefully the COVID crisis will be over by then – and also making amendments for ADA compliance. Ideally, as time goes on, a lot of product costs will be reduced as consumers move to a pattern of using less single-use items and more reusable containers.

**Kathy Murri**, who identified herself as a prospective member of the Disability Commission who works with family caregivers, said she understands there are a lot of pros and cons to the ordinance. If councilors do consider passing it, she asked that they consider excluding plastic bendable straws upon request. She works with people with disabilities with hand and arm limitations, and sometimes a plastic straw is the only thing that allows them to get proper hydration. She knows there are alternatives and a lot of people say it is possible to have reusable straws, but reusable straws need to be cleaned. Similarly, metal can pose safety hazards, paper gets soggy and can present a choking hazard and compostable straws can even pose an allergy hazard. Plastic straws are the gold standard. She is glad to hear plastic straws are being considered and hopes this will be an exclusion when and if the ordinance is put in place.

**Jeremy Werther, one of the owners of Homestead**, said he has been paying attention to this for quite a while and is in favor of the ordinance. He believes environmental impact is definitely something to focus on and pay attention to. Homestead uses all compostable material at least in terms of its take-out program. He wants to focus on and bring to the forefront some of the questions and issues raised by others, primarily, Judy Herrell's mention that if there is no city-wide system that allows for an obvious method of disposal for compostable material, they are putting the cart before the horse. If there is no way to properly handle compostable material, it is one more thing that will fall onto individual business owners. He is one of the restaurants currently closed. He does appreciate that the timeline has been extended. He asked if Easthampton has the city-wide method of disposal they don't seem to have.

**Jeremiah Micka, Easthampton resident and owner of Union Station**, said he understands the ordinance and definitely agrees with trying to be pro-environmental but thinks there are other ways to do it than passing an ordinance that forces them to spend more money. He wondered whether it is possible to have some kind of city-wide tax credit on all the compostable items they are purchasing. His revenue is down 70% and he has lost over \$2 million this year and the first and only time in nine years somebody has walked through his door to talk to him is Jim Nash about compostable and plastic use in Northampton. After losing over \$2 million, laying off over 50 employees, and being on the brink of closing for good, he's talking about plastics with a committee that hasn't talked to him about how much he or the people who work for him have lost. This is incredibly frustrating and makes him not want to be part of the Northampton community for much longer.

Councilor LaBarge touched on several things mentioned in public comment. Kathy Murri brought up the need for people with certain disabilities to have bendable straws without being asked to disclose the nature of their disability. As someone who has worked with people with disabilities for 35 years, she thinks it is critical that this be included as a reasonable accommodation. She has not heard from Rich Cooper before, but she has heard from a lot of other businesses that this is a bad time. "I think we need to look at what we're hearing from the business people," she insisted.

She referred to an email from Judy Herrell disclosing that Herrell's is charged a COVID fee for ordering equipment. "This is unbelievable here," she commented.

She wondered if they should put a hold on the ordinance, wait and see what happens with COVID, and then get together with businesses in the city to come up with a reasonable ordinance. "They are hurting here. . . It looks terrible down there." She's never seen anything like it in all her time living in Northampton. This is not the time to impose this on local businesses, she said.

Councilor Dwight cautioned Councilor LaBarge that, as a city councilor, she is a deliberator on this issue. He said he is concerned that her public comment may qualify as debate. He cautioned all city councilors present to consider that they are deliberators and will have the opportunity to speak to this in full.

**Renna Pye of Northampton** said she has had the great pleasure of working with the youth commission on the ordinance. It is great to hear from business owners they didn't manage to intersect with although she agrees with Noah that they spent many hours talking with business owners. It is so unfortunate that this is happening during the pandemic; they started working on this way before the pandemic, she noted.

She remembers talking to someone who was around at the time the smoking ban was implemented. They remembered that restaurant owners were all pretty upset about it at the time and yet, it all worked out. She doesn't think they would ever want to go back to the days of smoking inside of restaurants.

It is a huge problem. The U.S. is the largest contributor of plastic waste of any place in the world. When you look at items strewn on the beach, eight out of ten are single-use, disposable food-related products. The ephemeral use of plastic is also driving the need for fracked gas. She understands how difficult a time it is for everybody in the restaurant business and in the world right now. Still, she thinks they need to realize that with the postponement of the ordinance implementation to 2022 they are taking that into account. The Easthampton ordinance just passed does not allow plastic #5 or aluminum and they are allowing those things in addition to compostable materials and reusables, so, in that sense, it should be easier.

**Levi Armstrong, Ward 6 resident and member of the Northampton Youth Commission Sustainability Working Group** said he has been here since the beginning of public comment. He has heard from all the business owners and he feels for them; however, as Eli and Renna pointed out, the ordinance would not be in place until a year from now so he is hoping that by then they will be out of this muck and everyone will have the resources needed. In some public comments, local business owners said things like they understand that the environment is important but, 'blah, blah blah.' He thinks it's ironic that they would say this and then say that they are against this measure. As a kid, he knows the climate is the most important Issue of their time. "We need to do every single thing that we can to stop this crisis," he entreated.

**Youth commission member Theo Starr** said he agrees with Levi and Renna. He knows this is horrible timing. Reconsidering it when COVID is officially over would be convenient and it may seem ridiculous that

they are asking this but it's not really new news and it's not out of nowhere. This should have been in place years ago. He thinks there could be edits made to it to make businesses more comfortable and adjust to people with disabilities. The pandemic is temporary and climate change is not going to disappear; it's not going anywhere. This is not going to put an end to it but is a step that needs to be made and they can't just keep putting it off. The economic part is giant but this is a very serious issue.

There being no further public comment, Councilor Dwight moved to the next agenda item.

3. **Approve Minutes of November 9, 2020 Legislative Matters Committee Meeting**

Councilor Sciarra moved to approve the minutes of November 9, 2020. Councilor Thorpe seconded. The motion passed unanimously 4:0 by roll call vote.

4. **Items Referred to Committee**

A. **20.154 An Ordinance Relative to a Stop Sign on Edwards Square - referred by City Council 12/3/2020**

Councilor Dwight read the ordinance.

Councilor Sciarra moved to forward the ordinance with a positive recommendation. Councilor Maiore seconded.

Office of Planning and Sustainability Director Wayne Feiden commented that, generally, they don't put a stop sign where a little street hits a big street because it is pretty obvious that drivers have to stop. They now have the city's first so-called 'contraflow' bike path so bikers can get from North Street onto the bike path to Edwards Square. They have a road that's one-way northbound but a bike path next to it that's two-way northbound and southbound. They think it's safe because there is a low volume of both cars and bicycles, but out of an abundance of caution they think it is prudent to put a stop sign where North Street hits Edwards Square.

Councilor Sciarra asked if there had been a stop sign in another location, and Councilor Nash confirmed there was a stop sign at some point on King Street. It's not there now, but when the DPW was looking at putting a stop sign in, they noticed a stop sign was previously located on King Street. Rather than creating a whole new ordinance they just decided to switch the stop sign from one end of the street to the other.

The stop signs are already in place, Director Feiden confirmed. They were installed as part of the bike path construction. The question is whether a ticket issued would be enforceable.

Councilor Maiore commented that a bicyclist was just hit on King Street so she is glad to see stop signs being officially ordained there.

The motion passed unanimously 4:0 by roll call vote.

B. **20.155 An Ordinance Relative to Parking on Middle Street - referred by City Council 12/3/2020**

Councilor Sciarra moved to forward the ordinance with a positive recommendation. Councilor Maiore seconded.

Councilor Dwight asked if this was not already discussed.

Councilor Nash said no, this is the other end of the street. Up where Middle Street meets Maple, the turning radius for trucks and vehicles is not enough. Eliminating some parking spaces makes for safer turning.

The motion passed unanimously 4:0 by roll call vote.

C. 20.114 Plastic Reduction & Sustainability Ordinance, referred by City Council - 9/3/2020

Councilor Dwight read the ordinance.

Councilor Sciarra moved to put the ordinance on the floor for discussion. Councilor Thorpe seconded.

She knows there was extensive discussion in the Community Resources Committee, so she would love to hear what amendments they're proposing, Councilor Sciarra said.

**Community Development Planner Keith Benoit, staff person to the Disability Commission**, presented the Disability Commission's recommendations for exemptions as follows: 1) Anyone who requests a plastic straw should be granted a plastic bendable straw without any discussion, and 2) the same exemption should be allowed for plastic bags.

There are a lot of concerns with nonplastic straws, he explained. If people with mobility challenges have tremors, glass or pyrex straws can injure them because they can't bend. Glass can break. With reusable straws, people with disabilities have to bring their own and they have to be washed, so it is asking someone who is disabled to use fine motor control to wash something. It is a quality of life issue, he added. If someone is going out, they have to remember to bring the straw; it's another consideration making it a little more difficult to be spontaneous as well as an additional thing for a caregiver to consider.

Another consideration is travel time. If someone is getting a coffee or milkshake and bringing it back to their house or work, a straw is going to have more time to degrade if it is compostable. Similarly, plastic bags offer handles and are sturdier over time. Paper can degrade if it gets wet. People with disabilities may have longer commute times as travel may involve getting in a van or using special transportation. Plastic bags have loops that can be tied down on a wheelchair or walker so things don't fall out.

The bottom line for people with disabilities is concern about quality of life and being equal with everyone else in the community. There shouldn't be any shame or need to ask for an exemption. Anyone who asks for a plastic straw or bag should be granted one. It doesn't matter if the disability is visible or not; it's not for anyone to make a judgment on the disability.

Councilor Sciarra asked what the current ADA requirement is around providing straws. Do restaurants currently have to provide them?

Mr. Benoit said he didn't research that. He could get back to her on that, he said.

Regarding bags, Marty Nathan noted that Northampton already has a plastic bag ban and there are not exemptions for people with disabilities. She asked if people have been reporting problems. Unlike with straws, it seems like there are alternatives; folks can bring reusable bags. They have had the bag ban for quite a long time. "I have not heard that there are complaints about that," she observed.

In point of fact, they consulted the Disability Commission before the bag ban and this came up, Councilor Dwight related. To Keith's point about universality; with bags, the challenges are the same for everyone across the board whereas challenges presented by straws are more unique to people with disabilities.

Noah said sponsors found the Disability Commission letter very helpful and used it to craft an amendment, which he shared via his screen.

Councilor Maiore read the proposed amendment.

After receiving the Disability Commission letter clearly requesting the ability to access bendable plastic straws without the need to prove a disability, they looked into bendable plastic straws and found they are generally made out of polypropylene, Noah reported. Therefore, they wrote an amendment to stipulate that businesses upon request be able to sell and distribute polypropylene straws. It closely mimics the language of the Easthampton ordinance.

Councilor Maiore moved to approve the amendment as presented. Councilor Thorpe seconded.

Councilor Sciarra asked if Mr. Benoit feels it covers the Disability Commission's request, and he said yes.

According to a law review article he is reading, outright bans of plastic straws would run afoul of ADA laws, Councilor Dwight advised. By contrast, making accommodations and exemptions would comply. The severability clause provides that if a provision runs counter to state or federal law, that section would have no validity.

Councilor Foster specifically spoke to this during Community Resources Committee meetings, Councilor Nash volunteered. He thinks the wording here matches what they were looking for, that people not need to identify themselves as being disabled in order to get a plastic straw.

Councilor Foster confirmed the language addresses her point of not requiring people to identify themselves as having a disability.

One of the cornerstones of ADA law is providing dignity and not exclusivity, Councilor Dwight confirmed.

Noah wondered if the language goes far enough in protecting the rights of people with disabilities since it leaves open the possibility a business could still ask somebody to demonstrate the need for a straw.

ADA law applies to all businesses so it is incumbent on them to understand the law, Councilor Dwight assured. He said he thinks the point of it being an integral part of discussion with businesses is important.

Boba straws will be available upon request per this amendment because they are made of polypropylene, Noah clarified.

Councilor Dwight recognized Judy Herrell, who said a lot of businesses in Easthampton are filing for waivers because they can't comply with the plastic ban since no alternatives are available. Mt. Tom's has exactly the same problem as Herrell's does. As far as reusable containers being brought from home, in a lot of situations, it is against FDA regulations, she contended. (She cited food code 3-304, sections 13 – 30) Under certain circumstances it is okay but under most circumstances it is not okay because of E. coli and

other bacteria and porous vs. nonporous materials. It is also a problem with a restaurant's insurance company since, if a restaurant refills a customer's container and a customer becomes sick, it is not covered by insurance.

Also, in her case she is kosher so she can't take a customer's item and sanitize it in her kitchen if it is not kosher. Refilling a customer's container is also not allowed by ServSafe, she contended.

Councilor LaBarge asked that ADA language about reasonable accommodation be added to the ordinance.

Councilor Dwight said they certainly could add it but it would be redundant because it is already established under ADA law.

Noah asked if she had a recommendation for a certain place to put it. Councilor LaBarge said she and Mr. Benoit could look at the ordinance and make a recommendation.

Councilor Dwight recommended proceeding with the amendment as presented. If Councilor LaBarge has a modification she'd like to propose, she could introduce it on the council floor, he suggested. It is an implicit and understood dimension of ADA law that all reasonable accommodations must be made, he stressed.

Councilor LaBarge asked why the ordinance couldn't be put up on the screen now to determine an appropriate place for insertion.

Since there were several more amendments remaining to be presented, Noah offered instead to meet with her and Keith Benoit to figure out a location for the addition. Councilor Dwight asked if a member of the committee was prepared to make an amendment to the amendment. Since no one offered a motion, he called the motion on the floor to a vote, and it passed unanimously 4:0 by roll call vote.

### **IMPLEMENTATION DATE**

At Councilor Dwight's suggestion, the committee moved on to discussion of the implementation date.

Councilor Maiore moved that the plastic reduction and sustainability ordinance be amended by striking out the date '8/1/2021' in Section F and replacing it with the date '1/1/2022.' Councilor Sciarra seconded.

Councilor Thorpe expressed appreciation for the work everyone has put into this. His only concern with the extension is that, for businesses that close for the winter and reopen in April or May, it may not allow enough time to go through the supplies they will have on hand upon reopening.

Councilor Dwight noted that there is a clause that specifically allows for exhaustion of existing inventory.

Rich Cooper reiterated that putting this off for a year is not enough time for the market to regain its posture pre-COVID. He personally doesn't think they're going to find alternatives to the packaging they're using. He doesn't think there are compostable materials translucent enough to package baked goods and sandwiches and doesn't understand how it will be possible to package up broccoli and lettuce. He doesn't know what alternative there is for that or for deli bags. Now, customers buy half a pound of turkey and they put it in a ziplock bag. [Under the proposed ordinance], they can't sell solo cups or disposable knives, forks and spoons for somebody to have a picnic at Look Park. He feels like the supply marketplace hasn't caught up with what they're trying to do here. As Judy said, it is putting the cart before the horse.

Councilor Sciarra asked if there was a reason why he wouldn't feel he could apply for one of the exemptions.

Philosophically, he hates to be exemption; as a citizen, he wants to comply. Also, the exemption has an expiration date, Mr. Cooper responded.

Kassis confirmed that, as currently written, the ordinance allows two six-month exemptions to be granted.

Marty Nathan noted there are options for produce bags. They may be more expensive, but they are clear. They use them at River Valley Co-op.

The possibility of suppliers not having yet transitioned to acceptable alternatives is exactly the kind of thing they had in mind when moving back the implementation date and adding the two six-month exemptions, Dr. Nathan confirmed. "It's just fine if you're an exemption; it's not a blot on your reputation," she assured. One thing she's afraid is being lost here is how much 'we love and want to work with you.' They also hate climate change. Everybody here is caught between a rock and a hard place, she acknowledged.

By passing this ordinance they are going to make businesses who can make these changes, "and that will make a difference." And this will be happening all over the country.

As a downtown business owner who is all for this change, he shares the concern of fellow business owners about the feasibility of the timeline, Mr. Werther said. He wondered if they could tie the implementation date to the lifting of the state of emergency; i.e. specify that it take effect eight to 12 months later.

Councilor Dwight acknowledged this is possible. Noah said it was something they talked about over the summer, although, as he recalled, the city solicitor wasn't wild about it. Instead, sponsors settled on a time-frame that was reasonably long with the thought that the city council could extend it even further if they decided they were not ready to implement the ordinance.

Attorney Seewald said he believed they talked about it being best to have a date certain. Someone reading the law will know if it is January 1, 2022 but will not necessarily know if the governor has lifted the emergency order. There is no legal prohibition to tying it to the end of the state of emergency, but it's clearer and more definitive to have a date certain, he clarified.

Noah brings up a good point that councilors have the power to amend and adapt or delay implementation as conditions and circumstances present themselves, Councilor Dwight noted.

Essentially, all political issues are a conflict of competing interests, Councilor Dwight continued. Everyone is singing the same tune about the critical aspect of the climate crisis threatening all of their existence. When they have these debates or discussions, it is not whimsy or a feel-good proposal designed to show how hip Northampton is, it is motivated by a genuine sense of urgency and crisis. That said, it is not obviating or ignoring or shrugging off the horrible pressures being realized by many local businesses. As Cahillane pointed out, the census of businesses is diminishing every day and this proposal admittedly adds to the aggravating circumstances. It is not the thing that destroys the businesses but, the businesses can't argue with COVID or require customers to come into their store, the only thing they can do is argue with municipal government about proposing a law that will have an impact.

As to the timeline, Councilor Dwight acknowledged the myriad pressures that exist on businesses, including uncertainty about the supply chain and possible legislative changes pending on the state and federal level. Sponsors have worked very hard to try to identify a number of alternatives, but it is understood that the alternatives usually are more expensive. All of this is understood and this conversation has been had, including the issue of the not-very robust recycling/composting facilities in Northampton, he assured.

If they accept the amendment as presented, it provides a two-year bumper for adjustments and accommodations. If those are not forthcoming, they must commit themselves as a council to review this and find a workable alternative. "We want this to work. We want to realize the benefits of reducing these plastics," he assured.

Councilor Sciarra asked why medical care facilities are granted double the amount of time for exemptions.

Kassis explained the sponsors' thinking that, because they are in the middle of a pandemic, while it is pressing to protect everybody's livelihoods and everybody's businesses, medical facilities are very literally saving people's lives. There was thus an additional impetus to not impose a burden on them. If councilors wanted to bring them in line with other food establishments and not have a differentiation, it would be more reasonable to think about it now that a vaccine is at hand, he conceded.

Regarding the effective date, Catherine Kay of Florence, who informed committee members she is married to Rich Cooper, added to her husband's remarks about not moving forward with the proposal by encouraging the council to instead approve a different ordinance that would designate whatever city department or commission is appropriate to work directly with businesses to identify, plan and implement voluntary reductions in the use of products identified in the ordinance. After that, with that knowledge, they may be able to craft a more tailored ordinance in terms of necessary bans, she suggested. Any extension is a good thing and at the same time, she doesn't think it is sufficient. Trying to craft an ordinance now to take effect a year from now is not using the best information available. They don't know what products will be available at that time. Why not work very deliberately with the businesses most affected to craft a plan to reduce waste voluntarily? She asked. Then, when things have settled down, they can take a look at whether a ban is needed and, if so, what it should look like.

As Councilor Dwight pointed out, state and federal action is possible. That's the kind of action that is going to cause manufacturers and suppliers to make changes that will allow businesses to comply with these restrictions, she noted. She encouraged them to not move forward with this ordinance as is, but to move the effective date as far out as they can if they do move forward.

Also, exemptions are discretionary. There's no guarantee that a business would qualify or be granted either an initial exemption or an extension. And it could come with a fee and would have requirements; it's not automatic.

Similarly, the councilors here now may not be the councilors here two years from now.

That is, unfortunately, the nature of legislative bodies, Councilor Dwight responded. One of the things that initially prompted the discussion about reducing the city's waste stream was closure of the landfill. The measure originally contemplated included a Styrofoam ban but, with input from Mr. Cooper, the sponsors - Councilor Adams and Councilor Spector - decided to change it to a plastic bag ban. Again, the youth

commission was instrumental. The fact is, circumstances on the ground will always change, but, at the same time, it does not beg inaction. To do nothing, to not start the process would, in his opinion, *not* be the way to go.

Amy Cahillane piggybacked onto Jeremy Werther's suggestion of tying enactment to the end of the state of emergency. She wondered if the city council could also tie consideration and deliberation of the ordinance to the end of the emergency order.

That's not really possible, Attorney Seewald interjected. The current council cannot bind a future council to do anything, he pointed out.

She did not mean to suggest binding a future council but rather to offer the friendly suggestion that the appropriate time to debate this ordinance and consider its implementation is after the state of emergency, Cahillane clarified. It doesn't mean doing nothing, she stressed. Things have been happening with RecyclingWorks. Those conversations can continue and changes can continue to be made, but actual implementation expected to have tangible costs on the downtown business community can be delayed until after the state of emergency.

She said she feels there is a bit of a disconnect between the conversation they're having tonight and the crisis downtown. Having this conversation feels crazy to her when the situation is so incredibly dire. "We're debating this ordinance that impacts restaurants directly in the middle of a pandemic in the middle of dinner service. And if you're wondering why a lot of restaurants aren't here; that's why," she asserted.

Discussion continued, with Councilor Maiore reminding those present that RecyclingWorks is prepared to help businesses with this transition. Having lead time to prepare is necessary, and a definitive date allows time for advance preparation. Also, sponsors didn't make the exemptions permanent because the hope is that the supply chain will eventually adapt to providing more compostable alternatives. If businesses are allowed to permanently opt out and there is a change in the supply chain, there is a disconnect there.

Regarding timing, Councilor Maiore asked that committee members delay bringing the ordinance to the full council until after the holidays so businesses will be a little less burdened and able to participate more fully. Kassis said he thought that made sense.

Proponents presented additional arguments in favor of the January 2022 implementation date, including the extreme urgency of the climate crisis, the uncertainty about when the pandemic will end and the possibility that the political and economic climate could become even more unstable in the future. The fact that the council's term ends in a year also offers a built-in opportunity for citizens and business owners to express their opinion by deciding whether or not to re-elect councilors who support the proposal, Councilor Dwight pointed out.

Councilor Dwight and Councilor Sciarra both openly stated their support for the amendment. Councilor Thorpe said he is supportive too with his only concern being that businesses be given time to achieve compliance. He expressed appreciation for Councilor Sciarra's suggestion to make the exemption period for restaurants as long as the one for medical facilities.

Regarding Ms. Cahillane's point about a disconnect, she knows better than most the amount of outreach and thought that's gone into discussions with businesses, Councilor Dwight related. As a retail worker in

Northampton, he himself is no longer employed and is COVID-retired from a restaurant business. He is pretty cognizant of the pressures being experienced by business owners and knows the distinct and real and genuine pain being inflicted. He wants them to separate those because there are so many huge pressures that they cannot control. This adds an additional pressure but it is not in his mind the pressure that ends all pressures - it's not the equivalent of COVID, high rents, etc. In this case, this is actually motivated by something that is not disconnected, the climate crisis. In fact, COVID exists because of the climate crisis. COVID was allowed to propagate and develop because of climate change. They are not insensitive to the pressures of restaurant owners, he assured.

He has discussed with cosponsors that this is a really unfortunate case of timing. These conversations have been going on for over six years. To stop it now would give some people a sigh of relief, but, the fact is, the challenge before them has not changed. There is a tipping point that they are moving headlong toward. Whatever they do is not going to count for much, but it's cumulative and that cumulative effect hopefully has benefits. He knows everyone who has spoken on behalf of the business community agrees and the competing urgency is their existence as business owners. He wants her to know that he understands the frustration but he does not do this with malice in any way.

Director Cahillane said she appreciates the comments. She would just say there are a wealth of steps that can be taken in between doing nothing and passing an ordinance mandating certain behaviors that will cause businesses to incur costs. "I'm not suggesting we do nothing," she stressed. She thinks they could do plenty of things and just put off the final ordinance step. Otherwise she thinks they will be enacting an ordinance and there will be no restaurants to abide by it.

Jeremy Werther asked if it was possible to create some kind of tax refund or rebate to businesses that abide by certain guidelines, but Councilor Dwight said the city doesn't that authority. The state determines what tax breaks are available.

Mr. Werther asked if another mechanism might be available, such as waiver of a fee for a food or entertainment license.

For local fees set by the city, he supposed they could figure out a staggered way of setting fees, Attorney Seewald conjectured. Essentially, though, what is being asked is that the taxpayers of Northampton fund the difference in cost of the supplies restaurants currently use with those required under the ordinance. He hasn't looked at that. He has never seen a fee schedule like that.

The city is fairly limited in what it is able to offer through incentives, Councilor Dwight concluded.

After various additional comments, Councilor Dwight called the motion to approve the amendment to change the implementation date from August 1, 2021 to January 1, 2022 a vote. It passed unanimously 4:0 by roll call vote.

**AMENDMENT TO INCREASE TERM OF INITIAL EXEMPTION FROM SIX MONTHS TO A YEAR**

Next, an amendment to C. Exemptions (1) was debated and approved.

Councilor Maiore moved to recommend four six-month exemptions across the board for all applicable establishments. Councilor Dwight noted this would involve striking the sentence pertaining to medical care facilities since it currently provides for one-year exemptions for them.

Noah explained that medical care facilities are only separately defined to allow them to be granted this special accommodation. Upon hearing this, Attorney Seewald asked if sponsors also wanted to remove this definition, and they agreed. Councilor Maiore so moved. Councilor Sciarra seconded.

As part of the discussion, Ms. Cahillane asked whether the health department could be given the ability to grant exemptions as warranted rather than having a limit on the number of exemptions. Noah responded by explaining the sponsors' thinking in imposing a cap. As an ordinance, sponsors do want people eventually to be required to comply. In the case of specific products for which there are no acceptable alternatives, the thinking was to allow a couple of years to see if the market could adapt. If not, that may be the point at which business owners have to change their menu or find a different container since they are trying to change habits in the long-term.

That said, "we should not be forcing members to change their menu in middle of this economic crisis; absolutely not," he assured. The thinking was that it should be enough time to see if the market will adapt.

Mr. Werther commented that being forced to stop selling an item because he cannot find a suitable container could be highly detrimental to his business.

Councilor Sciarra offered the friendly amendment that the initial exemption period be a full year, bringing it in line with the longer timeline originally allowed for medical care facilities. Specifically, she proposed that the first sentence be changed to allow the mayor's designee to grant an initial exemption for up to one (1) year and to approve two (2) additional six-month exemption periods. **She so moved. Councilor Thorpe seconded.**

**Councilor Maiore accepted this as a friendly amendment to her motion. The motion as amended passed unanimously 4:0 by roll call vote.**

The following amendment to C. Exemptions (1) was approved:

#### C. Exemptions.

(1) The Mayor's designee may exempt a food or retail establishment from the requirements of this ordinance for a period of up to ~~six (6) months~~ one (1) year, upon a finding by the Mayor's designee that the requirements of this ordinance would cause undue hardship to the establishment. The Mayor's designee may approve ~~one (1)~~ two (2) additional 6-month periods upon the showing of a continued undue hardship. ~~For medical care facilities seeking a temporary exemption due to undue hardship, the Mayor's designee shall grant an exemption for one (1) year, with an opportunity to extend the exemption for an additional one (1) year period.~~ An "undue hardship" shall only be found in:

[Note: as part of this amendment, the definition of Medical Care Facility was struck from A. General Definitions]

Kassis mentioned several scrivener's errors, which he said he would pass along to Mrs. Krutzler for correction.

He presented the following amendment to the definition of Food Service Ware:

#### DISPOSABLE FOOD SERVICE WARE

All containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, and other items designed for one-time or non-durable uses

~~(1) designed for one-time or non-durable uses; or~~

(2) in which any food vendor directly places or packages prepared foods; or

(3) which are used to consume foods.

Councilor Maiore moved to approve the amendment. Councilor Sciarra seconded. The motion passed unanimously 4:0 by roll call vote.

#### OPT-INS

Councilor Maiore read a proposed amendment to add two new definitions: Online Food Ordering Platform and Disposable Food Service Ware Accessory, and to add an 8<sup>th</sup> clause to Section B. Councilor Sciarra seconded.

Attorney Seewald said he would like a chance to review this language.

Councilor Dwight presented the committee's options as follows: 1) continuing the discussion in Legislative Matters until its January meeting, or 2) rescinding the motion to amend and forwarding the ordinance to the full council for further discussion and amendment.

Attorney Seewald recommended putting the definitions in alphabetical order.

Upon discussion, members decided to move the ordinance forward to the full council.

Councilor Maiore asked if it is possible to postpone discussion until the first meeting in January as previously suggested.

It is the council president's prerogative to set the agenda so she could choose not to include it on the next agenda for stated reasons, Councilor Dwight clarified. Councilor Sciarra said she would certainly be willing to respect a request to hold it until the January meeting.

Councilor Dwight noted that the consensus is to proceed with a recommendation, holding fire on the last amendment to be discussed on council floor. The motion to amend was tacitly rescinded by mutual consent.

Councilor Dwight called the motion to send the ordinance forward with a positive recommendation as amended to a vote. It passed unanimously 4:0 by roll call vote.

#### 6. New Business

None.

#### 7. Adjourn

Councilor Thorpe moved to adjourn. Councilor Sciarra seconded. The motion passed unanimously 4:0 by roll call vote. The meeting was adjourned at 8:35 p.m.

*Prepared By:*

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