

Jay G. Foy, Mayor
Lawrence Gordon, Vice Mayor
Mark C. Uptegraph, Council Member
Dennis Withington, Council Member
Ray Caranci, Council Member
John Fenn Foster, Town Attorney
Janice C. Rutan, Town Administrator



Town Council
Code and Ordinance Committee followed by Regular Workshop
Town Hall Council Chambers
4585 Charlotte Street
Haverhill
Tuesday, November 17, 2020
NOON

AGENDA

CODE AND ORDINANCE COMMITTEE:

- I. Call to order**
- II. Discuss proposed amendments to Town Ordinances**
- III. Adjournment**

- I. Call to Order**
- II. Presentations/Proclamations**
 - a. Discuss recent drainage issues arising from Tropical Storm Eta**
 - b. Discuss Briarwood Wall Project**
 - c. Discuss ballfield sod replacement project**
- IV. Old Business**
- V. Council, Attorney and Staff Reports**
- VI. Adjournment**

Notice: If any person decides to appeal any decision of the Town Council at this meeting, he/she will need a record of the proceedings and for this purpose; he/she needs to ensure that a verbatim record of the proceedings is made. The record must include the testimony and evidence upon which the appeal is to be based, pursuant to F.S. 286.0105. The Town of Haverhill does not prepare nor provide such verbatim record.

In accordance with the provisions of the American with disabilities Act (ADA), this document can be made available in an alternate format (large print) upon request. Special accommodations can be provided upon request with three (3) days advance notice of any meeting, by contacting Janice C. Rutan, Town Administrator at the Haverhill Town Hall, 4585 Charlotte Street, Haverhill, Florida. Phone Number (561) 689-0370 Facsimile Number (561) 689-4317

**TOWN OF HAVERHILL
Town Council Workshop and Code & Ordinance Meeting
November 17, 2020
Town Hall – 4585 Charlotte Street**

OFFICIAL MINUTES

Pursuant to the foregoing notice, a Haverhill Town Council Workshop and Code & Ordinance meeting was held on Tuesday, November 17, 2020 at Town Hall, 4585 Charlotte Street, Haverhill. Those present were Mayor Jay Foy; Vice Mayor Lawrence Gordon; Council Member Mark Uptegraph; Council Member Ray Caranci; Town Attorney John Foster, Town Planner Josh Nichols; Town Engineer Todd McLeod; Town Administrator Janice Rutan; Deputy Town Clerk Jean Wible; Code Inspector Devon Kirms and Public Works employee Rodrick Jones

CODE AND ORDINANCE MEETING:

I. Call to Order: Mayor Foy called to order at 11:10 a.m. He asked that anyone calling in on the teleconference system to please introduce themselves, there were none.

II. Discuss proposed amendments to Town Ordinances: Mayor Foy asked Town Attorney Foster to begin. Attorney Foster stated he prepared the packet in front of each attendee with page numbers to help everyone follow along. Attorney Foster stated the first item to be discussed would be the noise ordinance. He stated he will not be going over the entire ordinance but specifically a few items. He explained that on page 2 there was a *Findings and Purpose* clause that we will “beef” up even more. He explained the Town is trying to achieve that balance of “the right of free expression and the unwilling listeners right to peace and tranquility”. He wanted to be sure it is spelled out as it becomes very important in an ordinance like this that can be so easily trampled on constitutionally. Particularly when we are using more of a subjective standard, it is even more vulnerable to first and fourteenth amendment claims.

SECTION THREE: FINDINGS AND PURPOSE: DEFINITIONS

A. TOWN finds that excessive loud and raucous noise, and the vibration associated with sound emitted at lower sound pressure levels, degrades the environment of the Town to a degree that:

1. is harmful to the health, welfare, and safety of its inhabitants and visitors.
2. interferes with the comfortable and reasonable enjoyment of life and property.

3. interferes with the well-being, tranquility, and privacy of the home; and
4. can cause and aggravate physiological, psychological, and other health problems.

B. Both effective control and the elimination of excessive, loud, and raucous noise are essential to the health, safety and welfare of the Town's residents and visitors, and to the conduct of normal pursuits of life, including, but not limited to, recreation, work, communication, and rest.

C. This Ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of Town through the reduction, control, and prevention of excessive, loud, and raucous noises that unreasonably disturb, alarm, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons with normal sensitivities.

D. Nothing contained in this Ordinance is intended to infringe upon the constitutionally protected rights guaranteed by Article I of the Florida Constitution and the First Amendment of the United States Constitution. This Ordinance enacts narrowly drawn; content-neutral regulations that are to be interpreted so as to not unduly restrict constitutionally protected rights.

E. Definitions. The words and phrases used in this Ordinance are defined as follows:

Ambient noise: The all-encompassing noise associated with a given environment, being usually a composite of sound from many sources near and far, such as traffic or roadway noise and noise emitted from aircraft, also referred to as background noise.

Commercial use: Land used primarily for the sale of merchandise or goods, the performance of a service, or for office or clerical work.

Continuous noise: A noise which remains essentially constant in level during the period of observation.

Council: Town Council

Emergency: An occurrence or set of circumstances involving actual, threatened, or imminent physical trauma or property damage which necessitates immediate action.

Emergency work: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including restoration work to return property to a safe condition following an emergency.

Impulsive sound: A sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and drop forge impacts.

Noise: Any sound which annoys or disturbs humans or causes or tends to cause an adverse physiological, psychological, or other effect on humans, such as insomnia, annoyance, stress, learning impairment, speech or sleep interference, lack of

concentration, and/or compromising enjoyment of leisure activities. "Noise" includes low frequency sounds caused by amplified bass music that can result in vibration of structures or persons.

Noise disturbance: Noise or vibrations that unreasonably disturb, alarm, injure, harm, or endanger the health or welfare of a reasonable person with normal sensitivities.

Person: Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

Public space: Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.

Real property line: An imaginary line including its vertical extension which separates the real property owned, rented, or leased by one person from that owned, rented, or leased by another person, excluding intra-building real property divisions except as otherwise provided herein.

Receiving land: Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal ear and/or felt in the form of vibration.

Residential use: Land use that is primarily for living and sleeping, parks, schools, institutional, assisted living facilities, nursing homes or the individual plots within a mobile home park or any land use that is not commercial or industrial.

Palm Beach County Sheriff's Office ("PBSO"): The designated authority charged with administration and enforcement of the Palm Beach County Noise Control Ordinance.

Sound source: The location from which the impermissible sound level or noise disturbance is emanating.

SECTION SIX: STANDARDS

Attorney Foster wanted to take a little time going over this section. He explained that if you look at the definition of noise disturbance, it invokes the reasonable persons standard, what a reasonable prudent person would determine to be a nuisance under the circumstances. That has been judicially upheld. He stated that we have added another layer here:

(1) *Standards.* The standards to be considered in determining whether a noise disturbance exists under this subsection include the following:

a. The volume of the noise, whether it is loud or quiet.

- b. The intensity of the noise.
- c. Whether there is vibration associated with the noise.
- d. The nature of the noise, i.e., raucous, unruly, harsh, etc.
- e. The volume and intensity of the ambient noise, if any.
- f. The proximity of the noise to residential uses.
- g. The nature and use of the area from which the sound source is located.
- h. The nature and use of the receiving land.
- i. The time of day or night the noise occurs.
- j. The duration of the noise.
- k. Whether the noise is produced by a commercial or noncommercial activity.

- (2) *Consideration.* Enforcement under this Article of this section requires consideration of all applicable standards listed above by the Code Inspector or PBSO Deputy.

Attorney Foster would like to add (to the list above) whether there was a witness. In other words, was there a resident, a PBSO Deputy or someone who happens to be with Code Enforcement or in close proximity at the time observing the noise and can corroborate what has been heard.

Discussed at length.

SECTION SEVEN: EXCEPTIONS

The following will not be considered a violation of this ordinance:

- A. The operation of warning or emergency signal devices such as sirens, horns and bells when utilized for their intended purpose in cases of emergency.
- B. Noises resulting from equipment or operations incidental to the installation, maintenance or repair of facilities or restoration of services, such as public utilities or other emergency work in the public interest.
- C. Ordinary noise created by the operation of airports, railways, and roadways.
- D. Operation of equipment or conduct of activities normal to residential or agricultural communities, such as lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming, and limb clipping and other normal community operations, is allowed

between the hours of 7:00 a.m. to 7:00 p.m., provided that the equipment is in accord with the manufacturer's specifications and with all manufacturer's sound reducing equipment in use and in proper operating condition.

E. Noise resulting from safety features required by law for equipment or operations, including, but not limited to, backup alarms or vehicle motion alarms.

F. Noises associated with farm operations protected by the Florida Right to Farm Act, Section 823.14, F.S.

G. Any noise regulated and preempted by applicable state or federal laws and regulations.

SECTION EIGHT: WAIVERS

Applications for a waiver for relief from the requirements designated in this

Ordinance shall be made in writing. Such applications for waivers will be made to the Town Administrator or designee when the activity creating such noise is located within the Town boundaries. The Applicant shall mail the application for waiver to all property owners withing 300 feet of its real property and provided proof of such mailing to the Town Administrator prior to the application being considered by the Town. Any waiver granted by the Town Administrator or designee must be provided to the applicant in writing within thirty (30) days of application to the Town and contain all conditions required for compliance with the waiver approval. The Town Administrator or designee may grant the waiver under the following conditions:

A. The Town Administrator or designee in granting a waiver may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

B. Waivers from maximum allowable noise level limits may be granted for noises created within a commercial use area by operations which were in existence on or before February 9, 1990.

C. Waivers may be issued for no longer than one hundred eighty (180) days, renewable by further application to the Town Administrator or designee.

D. Any applicant aggrieved by the Town Administrator's or designee's decision under this Section, may app date of written decision on the waiver.

SECTION NINE: ENFORCEMENT

A. PBSO: The Palm Beach County Sheriff's Office is empowered to investigate

any situation where a person is alleged to be violating this Ordinance. If an Officer encounters a circumstance which reasonably indicates that a person is violating this Ordinance, the Officer will conduct a noise disturbance determination in accordance with _____ of this Ordinance to determine whether or not a violation of this chapter exists. Nothing in this chapter shall prohibit the Palm Beach County Sheriff's Office from charging persons responsible for acts which affect the peace and quiet of persons who may witness them for breach of the peace or disorderly conduct under Florida Statutes Section 877.03, as may be amended from time to time.

B. Code Enforcement: Alternatively, if a code enforcement officer receives a complaint from a complainant regarding a violation of this article, or otherwise observes a suspected violation, he or she shall investigate the complaint or suspected violation to determine whether a violation exists. If the code enforcement officer observes a violation of this article, and it is the first violation of the person, sound device or establishment in a 24-hour period, the inspector shall give written warning of the violation and allow 15 minutes for the person or, if a sound device or establishment, the owner, operator, or other person in control of the sound device or establishment, to voluntarily comply with this chapter. A written warning of violation prior to issuing a notice of violation is only required for the first violation in a 24-hour period. If a person, or in the case of a sound device or establishment, an owner, operator or other person in control of the sound device or establishment fails to bring the sound device or establishment into compliance within 15 minutes after being issued a written warning, the code enforcement officer will issue a notice of violation as provided in Article V, Chapter 5 of this Code and inform the violator that he or she must immediately cease the violation and will be subject to additional penalties if the violation continues. The notice of violation shall contain the:

- (1) Name of the violator.
- (2) Date and time of violation.
- (3) Nature of the violation.
- (4) Amount of fine for which the violator may be liable pursuant to this Code or as otherwise provided by law.
- (5) Instructions and due date for paying the fine.

(6) Notice that the violation may be appealed by requesting an administrative hearing within ten (10) days after service of the notice of violation, that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and that unpaid fines will result in the imposition of liens which may be foreclosed by the city.

(7) The notice shall also inform the violator that repeat violations of this article will result in the imposition of larger fines and may also result in revocation of occupational license and/or certificate of use and/or injunctive proceedings as provided by law.

ATTORNEY FOSTER ADDED:

C. Nuisance. Any violation of this article shall constitute a nuisance. The town attorney may bring suit on behalf of the town, or any affected citizen may bring suit in his name, against the person or persons causing or maintaining the violation, and against the owner/agent of the building or property on which the violation exists. Relief may be granted according to the terms and conditions of F.S. Ch. 60.

D. Nothing in this Article shall affect the right of the Town to proceed by any and other lawful means to remedy any violation of this Article. **Discussion ensued.**

SECTION TEN: PENALTIES – In the event that the PBSO enforces the provisions of this Article, any person or persons, firm or corporation or any agent thereof who violates any of the provision of this ordinance will, upon conviction, be guilty of a second-degree misdemeanor and subject to a fine not exceeding the sum of Five Hundred Dollars (\$500.00) or imprisonment in the County jail for a period not exceeding sixty (60) days, or by both fine and imprisonment. Each separate occurrence of a violation of this ordinance will constitute a separate offence and will be punishable as such hereunder.

Town Attorney Foster stated he does not recommend this and was totally against it but wanted to bring to Town Council's attention as it is something that other Municipalities follow. **Discussion ensued.**

Attorney Foster stated it is anticipated that some of these ordinances are going to be brought before Town Council at the two Town Council meetings in January 2021 so it was Attorney Fosters hope that Council and Staff could have at least one more Code & Ordinance meeting to review the changes.

Council member Ray Caranci reported there was a specific situation (off of Club Road) where a guy drives his little car that is very noisy and had explosion like noises that came from it. Council member Caranci stated it really is unbelievable, the noise it made and that the guy specifically does it when people are around. Council member Mark Uptegraph agreed and stated there are a couple of race cars on that road. Council member Ray Caranci was wondering if there was something that could be done about

this particular situation. Attorney Foster stated there is actually state law that governs the noise that comes from motor vehicles and he would look into it.

Council member Ray Caranci reported there was a specific situation (off of Club Road) where a guy drives his little car that is very noisy and had explosion like noises that came from it. Council member Caranci stated it really is unbelievable, the noise it made and that the guy specifically does it when people are around. Council member Mark Uptegraph agreed and stated there are a couple of race cars on that road. Council member Ray Caranci was wondering if there was something that could be done about this particular situation. Attorney Foster stated there is actually state law that governs the noise that comes from motor vehicles and he would look into it.

DRAFT- Still subject to review and modification by Town Council:

TRASH:

Attorney Foster stated that he tried to highlight changes made from the last meeting. He stated if all remembered correctly, at the last meeting, there was a discussion about plastic bags and putting them out.

Sec. 30-28. – Containment:

Trash small enough to be scattered by wind or rain, may **must** be placed in a garbage receptacle can for containment. The use of non-returnable containers such as plastic bags shall be prohibited from being placed in trash for collection, **unless the container is full**. Notwithstanding anything contained herein to the contrary, trash, waste and debris of any kind shall not exceed four (4) feet in length, six (6) inches in diameter, and no garbage receptacle. or single item of trash, waste, or debris of any kind. such as a portion of a tree trunk, shall exceed fifty (50) pounds in weight.

Attorney Foster is suggesting to Town Council, the compromise would be that residents must use a container, unless the container is full, which could result from the holiday's

Town Administrator Rutan read from the Waste Pro contract "Garbage receptacles shall mean any commonly available light gauge steel, plastic or galvanized receptacle of a non-absorbent material, closed at one end and opened at the other furnished with a closely fitted top or lid. A garbage receptacle also includes a heavy duty securely tied plastic bag designed for use as a garbage receptacle".

Attorney Foster stated the question before Town Council was whether they want to allow containers and bags or does Town Council want to allow a required container except when the container is full. **Discussion ensued.**

Sec. 30-49. - Garden and yard trash.

Tree branches shall not exceed four feet in length, or six inches in diameter. Garden and yard trash shall be bundled and organized neatly or placed in containers which are susceptible to normal loading and collection as other residential solid waste. No bundle or filled container shall exceed 50 pounds in weight. ~~No more than one (1) pile of garden and yard trash, including bulk yard trash, shall be placed curbside each week.~~ After discussion, Attorney Foster will delete the last clause. **Discussion ensued.**

Sec. 30-119. - Point of pickup:

Collection of garden and yard trash and bulk yard trash shall be at curbside or other such locations as will provide ready accessibility to the collector's collection crew and vehicle, provided, however, that garden and yard trash and bulk yard trash, including vegetative waste, shall not be placed in the right-of-way or otherwise impede traffic. If an appropriate location cannot be agreed upon, the town administrator or his designee shall designate the location. Garden, yard and bulk trash, and vegetative waste, shall not be place[d] placed at the curbside curb earlier than 72 hours prior to **4 p.m. each Thursday** the scheduled pick up.

DRAFT - Still subject to review and modification by the Town Council:

COMMERCIAL:

Commercial vehicles – Exceptions:

- i. Commercial vehicle. One commercial vehicle, not more than one (1) ton GVWR (Gross Vehicle Weight Rating), per dwelling unit may be parked on a residential lot, providing all of the following conditions are met: The vehicle is operative, registered and displays a current license tag. Any additional commercial vehicle parked on a residential lot. that is not more than one (1) ton GVWR, must be done in a manner so that ~~and provided~~ no portion of the vehicle is visible from adjoining properties or the street; provided, however that no more than two (2) commercial vehicles that are not in excess of one (1) ton may be on any one residential lot. ~~One vehicle which is deemed a commercial vehicle due to the display of outside lettering only may be parked provided the lettering is completely covered, unless it is an automobile or up to a one-ton truck or van, in which case the lettering does not need to be covered.~~ A truck and adjoining trailer shall be considered one commercial vehicle, provided the truck does not exceed one (1) ton GVWR. **Discussion ensued.**

PROPERTY MAINTENANCE STANDARDS:

Attorney Foster asked all to turn to page 18 for some provisions he had taken from other Municipalities:

(a) The owner and/or operator and/or occupant of real property within the Town shall maintain all structures and landscaping in such a manner to conform with all Town codes and ordinances in order to avoid blighting influences on neighboring properties and to avoid the creation of hazards to public health, safety, and welfare. All real property, including all structures and landscaping, shall be maintained in accordance with the following standards:

(1) The exterior of all structures, including, but not limited to, all roofs, fences, walls, screens, mailboxes, and similar enclosures, shall be maintained in good condition and free of evidence of deterioration, weathering, discoloration, ripping, tearing, or other holes or breaks. **All roofs shall be maintained in a secure and watertight condition. All awnings or canopies facing or visible from the public right-of-way shall be maintained in good condition. Torn and loose awnings shall be promptly repaired or replaced. All screened enclosures shall be properly fitted and maintained in a good state of repair. Accessory structures, including sheds, shall be structurally sound and maintained in good repair. All sheds shall be secured pursuant to the manufacturer's requirements.** All other surfaces shall be maintained free of broken glass, crumbling stone, brick or stucco or other conditions reflective of deterioration or inadequate maintenance. All fences supplied or erected on any property shall consist of metal, wood, masonry, or other decay resistant material. Fences shall be maintained in good condition, secure, and in the manner in which they were properly constructed. Materials, other than decay resistant varieties, shall be protected against decay and/or mildew by use of paint, stain, or other wood or surface preservatives.

(3) All off-street parking shall be on asphalt, concrete, block, pavers, or other material approved by the Town engineer or designee, **taking into consideration on the nature of the surrounding properties and size of the lot,** and shall be maintained in good repair and shall be free from ruts, potholes, loose aggregate, and/or deterioration in compliance with the Town codes.

Discussion ensued.

III. Adjournment: 12:15 pm

TOWN COUNCIL WORKSHOP:

I. CALL TO ORDER: Mayor Foy called the workshop to order at 12:15 pm

II. PRESENTATIONS / PROCLAMATIONS

- a. Discuss recent drainage issues arising from Tropical Storm Eta;** Todd McLeod, Town Engineer provided a map of about six (6) areas that had some flooding issues that may be projects in the future.

He provided the following report:

Tropical Storm Eta brought approximately 6"- 7" of rain to the Town over the 11/7 - 11/9 period, based on SFWMD data. On Monday, 11/9 Town staff and I visited some reported flooding sites in the Town to assemble a list of known problem areas in the Town for potential future drainage retrofit projects. Those areas are shown on the enclosed map and photos and are generally described as:

- 1: West Club Road (Flooding along north/south sides of roadway and in ditch north of Club Road)
- 2: East Club Road (Reports from homeowner of flooding at the east end of Club Road, but no evidence to-date)
- 3: Luwal/Club (Homeowners have filled portions of their lots pushing rain runoff to adjacent properties)
- 4: Park Lane (Standing water along eastern property due to driveway blocking yard drain flow)
- 5: Park Lane (Standing water inside yards on western side of Park Lane)
- 6: Durham (Standing water along unpaved portion of Durham; also standing water in driveways east of Concord)

Discussion ensued.

- b. Discuss Briarwood wall project;** Todd McLeod, Town Engineer reported he had contacted a surveyor to sketch a legal description.
- c. Discuss ballfield sod replacement project;** Town Administrator Rutan stated that in the past it had been discussed, at a minimum, removing the sod from the ballfield and grassing the ballfield. T/A Rutan reported that she was way off in her estimates. She reported that Devon Kirms had done some legwork regarding this. Devon Kirms reported she received three (3) quotes. First quote

of \$22,750.00, second quote of \$19,890.00 and thirdly of \$16,925.00.
Discussion ensued.

III. NEW BUSINESS

Vice Mayor Gordon stated that for a while now, Town Council had been discussing making changes to its Charter. As an example, the length of time a person must be a Haverhill resident before running for office. Vice Mayor Gordon would like to see a Charter Review Committee established to include Town Council members and Haverhill residents to work together and make recommendations. Attorney Foster stated since the Town is small, it would be a good idea to have a combination of Council members and residents.

Town Administrator Rutan reported that it came to light that Palm Beach County is working on a project which is known as the Digital Inclusion Project. The reason, schools are educating students from their homes and a lot of them do not have broadband/WIFI services. T/A Rutan was hearing that the Town may be having poles installed within its municipality boundaries. T/A reached out to Chris Garrison today and was told she did not think the Town was a part of it. T/A Rutan heard from Michael Butler who is the Director of Services and he stated there are twelve (12) poles that will be affected by the Digital Inclusion Project in the Town. Permitting had not yet started and the build out will probably begin in December 2020. T/A Rutan was provided a map of potential locations of the poles and will forward on to Town Council.

IV. OLD BUSINESS

N/A

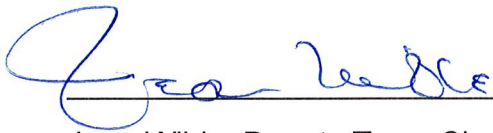
V. COUNCIL, ATTORNEY AND STAFF REPORTS

N/A

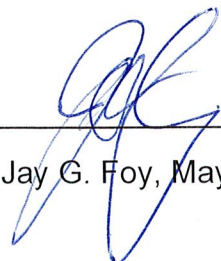
VI. ADJOURNMENT

There being no further business to be discussed, the workshop ended at 1:20 p.m.

Approved: January 14, 2021



Jean Wible, Deputy Town Clerk



Jay G. Foy, Mayor

SIGN IN SHEET

**TOWN OF HAVERHILL
TOWN COUNCIL WORKSHOP AND CODE & ORDINANCE
Tuesday, November 17, 2020
11:00am**

[illegible]