



## **TOWN OF HAVERHILL**

### **OFFICIAL MINUTES**

**MEETING:** Code & Ordinance Committee

**DATE:** October 15, 2020

**ATTENDEES:**

Mayor Jay Foy; Vice Mayor Lawrence Gordon; Council Member Mark Uptegraph; Council Member Dennis Withington; Deputy Town Clerk Jean Wible; Town Attorney John Foster; Town Planner Josh Nichols and Eulayyses Perry, owner of 787 Briarwood Drive.

Via Teleconference: Town Administrator Janice Rutan, Council Member Ray Caranci and Code Inspector Devon Kirms

**CALL TO ORDER:** Mayor Foy called the meeting to order at 11:30 a.m.  
Introduction of all attendees.

**ORDINANCES:**

NOISE - Sec. 18-26:

Town Attorney John Foster stated he wanted to give a little background on noise that he thought would help in today's meeting. He stated there are two (2) main ways a resident or neighbor could address noise. One was a common law, which is basically a private nuisance action. He explained this is where a neighbor who was creating loud and unnecessary noise and usually a junctive action is brought on through court. The other way

that noise could be addressed, was through local noise ordinances. Unfortunately, neither the State nor the Federal government have provided much help in this respect. He reported the EPA got involved he thought in the 70's – 80's and there was some legislation that basically talked about helping local communities out but there was never any funding or direction. He reported that as far as the State was concerned, they do not have any legislation except in the specific context of an automobile making noise, having a loud stereo. Town attorney Foster stated what's fascinating is our Florida Constitution Article 2, Section 7 contained the following provision: "Adequate provision shall be made by law, for the abatement of excessive and unnecessary noise". He continued, neither the state nor federal government had made such a provision. Local governments have developed their own sound ordinances which generally fall into two categories:

1. Those that have subjective standards, basically cannot be annoying, unnecessary, excessive, or offensive and
2. Those that are based on sound measuring equipment or decibel base standards. The latter one was the type of ordinance that are generally upheld as constitutional as long as they have specific standards. The courts have said that a noise-controlled ordinance must be content neutral. In other words, you cannot say that the church can have amplified music, but a politician cannot. Secondly, it had to be clearly and narrowly drawn.

Town Attorney Foster stated the Town of Haverhill currently does not have a decibel related ordinance and for the Town to do so, the Town would have to buy a very expensive machine that would have to be routinely calibrated, have a trained person to use it and more importantly, the Town would have to have a person who is available in the evenings to come and measure sound. Discussion ensued.

Town Attorney provided in today's packet, **ARTICLE II – NOISE** highlighting key parts as follows:

Sec. 18-27. - Definitions.

Unnecessary, excessive, or offensive noise means any sound or noise conflicting with the criteria, standards or levels set forth in this article for permissible noise. Discussion ensued.

Sec. 18-28. - Limitations.

- (a) It shall be unlawful for any person to cause or create any

unnecessary, excessive, or offensive noise that might in any way constitute a nuisance to adjacent property owners, residents, or the community. Discussion ensued.

- (b) A violation of this article may occur without the occasion of measurements being made, if circumstances are such that a violation would be obvious to an ordinary, reasonable, prudent person. Discussion ensued.

#### Sec. 18-29. - Prohibited acts.

The following activities are expressly prohibited:

- (1) Commercial industrial and manufacturing noise. It shall be unlawful for any commercial, industrial or manufacturing activities, including construction, home improvement or remodeling activities, to be conducted within the town in such a manner that the noise resulting from such activity may be heard beyond the premises where such activity is conducted between the hours of 8:00 p.m. and 8:00 a.m. Without limiting the provisions of this subsection, this prohibition shall apply to any noises caused, directly or indirectly, by internal combustion engines, electric motors, power tools, fans or blowers, noise due to explosion of operating gases or fluids or noises attributable to piledrivers, steam shovels, pneumatic hammers and other tools, derricks, steam or electric hoists or other appliances, when such noise is related directly to commercial, industrial or manufacturing activities.
- (2) Noise from buildings, premises, or property. No person owning , or in possession or control of any building or premises, shall use the same or rent the same to be used for any business or employment or residential use, or for any purpose of pleasure or recreation, if such use shall, by its nature, be unnecessary, excessive, offensive or unusually loud and thereby disturb or disturb the peace of the neighborhood in which such building or premises is situated.
- (3) Radios, electronic audio equipment and musical instruments. No person shall use, operate or play any radio, phonograph, stereo set, tape player, television set, sound amplifier or other electronic audio device or any musical instrument which produces or reproduces sound at an excessive or unusually high volume level so as to disturb the peace quiet and comfort or the neighborhood in the vicinity.

- (4) Noisy and boisterous conduct. It shall be unlawful to knowingly and willfully cause or create offensive, excessive or unnecessary noise by engaging in boisterous, noisy and loud conduct while upon a public street, sidewalk, or parkway, so as to annoy or disturb the quiet, comfort or repose of person in any office, store, dwelling, or residence within the range of hearing.
- (5) Bells, whistles, horns, and other devices for advertising. No person shall blow any horns or whistles, ring any bell, or use any other device whereby a noise is produced or amplified, for the purpose of advertising any business, occupation or article or for the purpose of attracting attention to such advertisement, and no person shall cause or procure the same to be done.
- (6) Nuisance by noise emitted by animals. It shall be unlawful for any person owning or having custody of any animal, domestic or otherwise, to permit such animal to create a nuisance by making loud and disturbing noises so as to disturb the peace and quiet of the neighborhood.
- (7) Prohibited hours. With respect to subsections (2), (3) and (6) of this section, no person shall create or cause, directly or indirectly, any such noise which may be heard beyond the boundary lines of the property emitting the noise, where such noise producing activity is conducted between the hours of 11:00 p.m. and 7:00 a.m.

**Sec. 18-31. - Enforcement procedure.**

- (a) The procedure for enforcing the provisions of this article shall be as follows:
  - (1) If the noise level is found to be in violation of this article, the code enforcement officer shall give a warning to the person responsible for the unnecessary, excessive, or offensive noise.
  - (2) If the unnecessary, excessive, or offensive noise is not abated within a reasonable time after warning, a notice of violation by the code enforcement officer shall be issued.
- (b) Penalties for violation of this article shall be enforced by the procedures as set forth in this Code, provided the code enforcement special master shall not be the exclusive remedy and shall not affect the right of the town to proceed by other lawful means to correct any condition existing in violation of this article.

Mayor Foy thanked Town Attorney Foster for his in-depth coverage.

Mayor Foy asked what could be done for repeat offenders. Town Attorney Foster stated we do have that within our code as part of code enforcement proceedings. If someone is deemed a repeat offender, the ability to fine them goes up more and you have a lot more latitude as a municipal organization in prosecuting those cases. Lengthy discussion ensued.

Eulayses Perry, owner of 787 Briarwood Drive stated he had left a very noisy city to retire to the Town of Haverhill because it was nice and quiet. He stated he has had 9 years of peace until the new house was built behind his property. This past Christmas he stated there was very loud music and lights blasting late into the hour of 1:00 am. Mr. Perry stated he had stayed quiet about this particular incident because he realized it was the holidays and perhaps the owner and his family were celebrating their new home as well. Mr. Perry and the new homeowner, Jose Lamazares had met and exchanged telephone numbers. Mr. Perry texted Mr. Lamazares on several occasions with noise complaints. Mr. Perry stated Mr. Lamazares was no longer returning text messages or lowering the music. Mr. Perry wanted it clear that the type of music was not the issue. It is the bass that is chasing him from his own backyard when trying to read a book or just enjoying his backyard! Mr. Perry reported he had recently installed \$17,000.00 in impact windows on the first floor of his home and installed a full barrier sort of a sound barrier near the fence line. Mr. Perry explained he was trying to do everything he possibly could, but it is still is an issue. Regarding ambient noise, he realized when he bought his home so close to the airport that that could pose a problem, but it has not been that horrible. This is very stressful for him. Mr. Perry stated his home is unlivable. He also reported that his neighbors at 777 Briarwood have a home in Georgia and have the option of returning to that home unlike Mr. Perry who does not have the luxury of having another home to go to.

Town Administrator Janice Rutan reported that she had been at one of the Briarwood residences who had been complaining and she felt the bass from the resident's driveway and reported it was "pounding".

Lengthy discussion ensued.

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

## **TOWN OF HAVERHILL**

Exhibit "A" to Ordinance No. 482

Sec. 30-1. - Definitions

Curbside means the edge of the roadway, whether paved or not, and the swale in front of the house. Properties that have frontage along two

streets, must use the front of the house for collection, except that properties on a corner lot may choose to place garden and yard trash on the secondary street side rather than the front of the house for collection, except for corner properties along Haverhill Road and Belvedere Road which shall use the other street for collection.

Sec. 30-28. - Containment

Trash small enough to be scattered by wind or rain, may be placed in a garbage receptacle can for containment. The use of nonreturnable containers such as plastic bags shall be prohibited from being placed in trash for collection. 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 or root ball, shall exceed fifty (50) pounds in weight.

Sec. 30-29. - Unsafe conditions.

Trash, waste and debris, of any kind under this Chapter, that is permitted hereunder to be placed for curbside collection, shall not extend more than two feet into the street from the curb or pavement edge, and shall not obstruct the street or sidewalk or create an unsafe condition as determined by the town public works or code enforcement employee. In addition, trash, waste or debris, of any kind, placed for collection at curbside, shall be placed no closer than six (6) feet from any fire hydrant, utility pole, sign or street marker, not under any overhanging tree branches, overhead cables or guy wires.

Sec. 30-30.

Contractors or persons engaged in the business of tree or landscaping service, including lawn mowing and vegetation trimming, shall remove the bulk yard trash, garden and yard trash, and vegetative waste from the town and not deposit in on the town property for which such service is being provided.

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

Sec. 30-31 - Non-conformity.

It shall be the sole responsibility of the property owner to dispose of trash, waste or debris of any kind which does not conform to the requirements of this Chapter.

Sec. 30-32. - Enforcement.

The owner of a property immediately adjacent to the right-of-way in which trash, waste, or debris of any kind, is placed for collection in violation of this chapter shall be deemed to be prima facie in violation of this chapter. The Town may utilize the enforcement procedures as set forth in Article V, Code Enforcement, of Chapter 2, Administration, of the town code, or any other remedies available to it in law or equity, including injunctive relief.

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.

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 Friday before the scheduled pick up.~~

After lengthy discussion, Thursday before 4:00pm will be the new cutoff for putting out garbage and see how that works.

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

Town Attorney Foster stated we do need to address commercial vehicles as we had some inconsistencies in our language.

(a) *Commercial vehicles.*

(1) *General prohibition:*

- i. On-street: No person shall park, store, or keep any commercial vehicle on any public street, thoroughfare, or any right-of-way.
- ii. Off-street: No owner or resident of property in any residential district shall park, cause to be parked, or allow to be parked anywhere on such property a commercial vehicle as follows:

- a. For more than one hour between 6:00 a.m. and 8:00 p.m. Monday through Saturday, such period commencing at the time of first stopping or parking;
- b. For any period of time between 8:00 p.m. and 6:00 a.m. Monday through Saturday;
- c. For any period of time on Sunday.

(2) *Exceptions:*

- i. Commercial vehicle. One commercial vehicle, not more than one (1) ton, 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 other commercial vehicle parked on a residential lot must be done in a manner so that and provided no portion of the vehicle is visible from adjoining properties or the street. ~~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.
- ii. Construction vehicles. The general prohibition set out above shall not apply to the temporary parking of construction vehicles on private property where construction is underway, for which a current and valid building permit has been issued by the building official, and the building permit is displayed on the premises.
- iii. Delivery and service vehicles. The general prohibition set out above does not apply to routine deliveries by tradesmen or the use of trucks in making service calls, provided that such time in excess of one hour is actually in the course of business deliveries or servicing and the vehicle does not impede the orderly flow of traffic.
- iv. Emergency repairs. The general prohibition set out above shall not apply to a situation where a motor vehicle becomes disabled and, as a result of such emergency, is required to be parked for more than one hour. Any motor vehicle shall be removed withing 24

hours, regardless of the nature of the emergency.

Attorney Foster stated he wanted to make it clear that a commercial vehicle up to one (1) ton can be parked in their front yard, but any others cannot be visible from the street.



**PROPERTY MAINTENANCE STANDARDS** (Adopted from PBG): Attorney Foster will circulate (at a later time) the Ordinance of Bonita Springs.

**Purpose and scope:**

The purpose of this chapter is to establish uniform minimum standards for the occupancy and maintenance of dwellings, as well as commercial, and institutional structures located in the Town of Haverhill. The objective of the standards of this chapter is to improve, preserve, and maintain the buildings and structures of the Town and to eliminate blighting influences, wherever possible. Every building or structure in the Town that is subject to the provisions of this chapter shall conform to the requirements of this chapter regardless of when the building or structure may have been constructed, altered, or repaired. This chapter does not replace or modify standards of other codes or ordinances regulating the construction, replacement, or repair of buildings or unsafe structures, but shall operate in conjunction with the standard Florida Building Codes and all other technical codes as adopted by ordinance. Discussion ensued.

Town Administrator Rutan stated she had an issue she wanted to bring up. She reported that we have several instances in Town where we have pre-existing non-conforming that have been known, have been accepted and when we now try to enforce to ordinances that are written, we are really causing an upheaval to peoples lives. For example, we have a shed that was placed in the side yard not meeting any setbacks. It is literally against the house and against the fence. This particular shed had been there approximately 5 years. When the Town cited the homeowner for the shed, they certainly can plead hardship but at the cost of \$1,000 to file for a variance. T/A Rutan stated they are willing to come in and permit the shed, but it does not and never had met the Town's standard. Town Administrator Rutan stated this is not the only instance. Town Attorney Foster stated we could prepare an ordinance that reasserts the variation procedure and allows the Town Council to impose conditions on a case by case basis. Discussion ensued

Council Member Mark Uptegraph asked what the Town's standards were regarding port-o-lets being on a residential property in Town. Code Inspector Devon Kirms stated she looked in our code but could not find anything. Discussion ensued.

Council Member Mark Uptegraph stated the home that had been used as a church, 5304 Belvedere Road has been vacant for several months. Discussion ensued.

**ADJOURNED:** 1:32 p.m.

**SUBMITTED BY:** Jean Wible, Deputy Town Clerk