



TOWN OF HAVERHILL
OFFICIAL MINUTES

MEETING:

Code & Ordinance Committee

DATE: December 10, 2020

ATTENDEES:

Introduction of Mayor Jay Foy; Vice Mayor Lawrence Gordon; Council Member Mark Uptegraph; Council Member Dennis Withington, Council Member Ray Caranci (via tele-conference); Town Administrator Janice Rutan; Deputy Town Clerk Jean Wible; Code Enforcement / Public Service Devon Kirms; Town Attorney John Foster and Town Planner Josh Nichols.

Also in attendance were Gabrielle D'Agostino, PA and Adriana Vasallo, Paralegal both on behalf of homeowner Jose Lamazares 4885 Luwal Drive.

CALL TO ORDER: Mayor Foy called the Workshop to order at 11:35a.m. He reminded all attendees that no voting can be done at a Town Council Workshop, it is for discussion purposes only.

Ordinance No. 495 – NOISE

Town Attorney John Foster provided everyone with a handout. Changes regarding noise were made and are highlighted in red since last meeting:

DRAFT - Subject to Town Council's review

SECTION THREE: FINDINGS AND PURPOSE: DEFINITIONS:

A. Purpose: This Ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, tranquility, and quiet of the citizens of the Town of Haverhill through the reduction, control, and prevention of loud and raucous noise, or any noise (as defined below) that unreasonably disturbs, injures, or endangers the comfort, repose, health, tranquility, peace, or safety, or causes public inconvenience, annoyance, or alarm to reasonable persons of ordinary sensitivity.

B. Findings: Article II, Section 7, of the Florida Constitution, provides in pertinent part that "Adequate provisions shall be made by law for the abatement of...excessive and unnecessary noise." The U. S. Supreme Court has recognized that the police power of the state extends beyond regulation of health, morals, and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of the community. Kovacs v. Cooper, 336 U. S. 77 (1949).

The TOWN finds that excessive, loud, and raucous noise, and the vibration associated with sound emitted at lower sound pressure levels, irrespective of the content, 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, especially with so much of that living being done outdoors given the climate in Florida.
 3. interferes with the well-being, tranquility, peace, and privacy of the home; and
 4. can cause and aggravate physiological, psychological, and other health problems including, but not limited to, hypertension, sleep disturbance, communication interference, stress, annoyance, diminished productivity, and concentration, etc.
- C. Both effective control and the elimination of excessive, loud, and raucous noise, and any vibrations caused by such 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.

- D. ~~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~~ The use of sound amplification equipment, including the generation of any vibration associated with such noise, can create loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, tranquility and freedom of residents and visitors to the Town, and unreasonably disturb, alarm, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons with normal sensitivities.
- E. Certain short-term easing of noise restrictions is essential to all the construction and maintenance of residential property and infrastructure, and other elements necessary for the physical and commercial vitality of the Town.
- F. 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, especially as it relates to free speech. This Ordinance enacts narrowly drawn content-neutral regulations that are to be interpreted as such so as to not unduly restrict constitutionally protected rights. It is not the intent of this Ordinance to unduly interfere with freedom of speech or religion. Moreover, and the direct amplification of the human voice is not regulated hereby.
- G. It is determined by the Town Council that the regulations and restrictions contained in this Ordinance serve to protect and preserve the public's right to an environment free from excessive noise and vibration, without restricting free speech any more than necessary.
- H. 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 effects 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 and ordinary sensibilities.

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.

Discussion ensued.

SECTION FOUR: NOISE DISTURBANCE PROHIBITED: SCOPE

This Ordinance applies to the control of all sound originating within the jurisdictional limits of the Town regardless of whether it is specifically addressed below or not. No person shall make, continue, or cause to be made or continued any noise disturbance in accordance with the terms set forth in this article, including, the following:

(1) Any unreasonably loud or raucous noise.

(2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, tranquility, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limit of the Town; or

(3) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons with the neighborhood from the sound source, or as to unreasonably interfere with the peace and comfort of residents or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

Discussion ensued.

SECTION FIVE: PROHIBITED ACTS

The occurrence of the conditions, acts, or omissions as described below

will constitute a **noise disturbance and** a violation of this Ordinance.

- (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~~ sound source, where such noise producing activity is conducted between the hours of 11 :00 p.m. and 7:00 a.m.

(8) *Vibration. Any sound that is causing a vibration that can be felt on adjacent property.*

Discussion ensued.

SECTION SIX: STANDARDS

- (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 land use of the area from which the sound source is located.
 - h. The nature and land 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 recurrent, intermittent, or constant.*
 - l. Whether the noise is produced by a non-commercial 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.

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.

Discussion ensued.

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 within 300 feet of its real property and provide 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 appeal to Town Council within thirty (30) days from the date of written decision on the waiver.

Discussion ensued.

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 [Section Six](#) 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 52 of 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.

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.it may seek to impose any remedy and/or penalty as provided by law.~~ Each separate occurrence of a violation of this ordinance will constitute a separate offence and will be punishable as such hereunder.

Discussion ensued.

SECTION ELEVEN: CIVIL REMEDIES

In addition to the criminal penalties provided in Section Nine of this Ordinance, the Council is hereby authorized to institute any appropriate action or proceeding including, without limitation, code enforcement under Article V of Chapter 2, or a suit for injunctive relief in order to prevent or abate violations of this ordinance.

Discussion ensued.

DRAFT - Subject to Town Council's review

Town Attorney Foster wanted to speak particularly about Section 30-28. - Containment as there had been a lot of discussion in the past regarding it.

Exhibit "A" to Ordinance No. 482

Sec. 30-28. – Containment:

Trash small enough to be scattered by wind or rain. must be placed in a garbage receptacle container. The use of nonreturnable 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. 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.

Sec. 30-30. - Contractors

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, that is in excess of 3 cubic yards, and not deposit on any property within the town for which such service is being provided.

Discussion ensued.

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

Exhibit "A" to Ordinance No. 496

Attorney Foster stated the Town had changed the Town's definition of commercial vehicle to payload capacity by using the word payload capacity instead of gross vehicle weight rating.

(2) *Exceptions:*

i. Commercial vehicle. One commercial vehicle that is either a van or pickup truck, with a payload capacity of 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 additional commercial vehicle, that is either a van or pickup truck, 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; provided, however that no more than two (2) commercial vehicles 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 have a payload capacity of more than one (1) ton.

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.

Attorney Foster stated there was a waiver option.

d4). Waiver.

- (i) Waiver permitted. Recognizing that the strict application of the requirements of this subdivision may work an undue hardship on certain persons, a waiver from the strict application of this subdivision may be granted by the town council.

- (ii) Petition for waiver. A written petition for a waiver shall be filed by the owner of the lot upon which the commercial vehicle, recreational vehicle, sports vehicle, watercraft, or trailer will be parked or stored with the town administrator. The town council shall conduct a public hearing within 30 days to review the petition. As a basis for approval, the town council must find that the requested parking or storage of the commercial vehicle, recreational vehicle, sports vehicle, watercraft, or trailer will:

a. Be consistent with the general character of the neighborhood considering population density, intensity and character of activity, size and dimensions of the lot and traffic and parking conditions; and

b. Not be a detriment to the use, enjoyment economic value or development of surrounding properties or the general neighborhood.

Discussion ensued.

DRAFT- Still subject to review and modification by Town Council

Exhibit "A" to Ordinance No. 497

PROPERTY MAINTENANCE STANDARDS

Sec. 58-580 - Purpose and scope.

Attorney Foster stated that Council Member Ray Caranci had raised a question of the notion of regulating, what is defined on Page 18 on today's handout as Rooming House or Rooming Unit.

Rooming house. Any building or portion thereof containing guest rooms where rent is paid, and guests are not transient. For the purpose of this chapter, boarding houses are included in this category.

Rooming unit. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping but including a kitchen.

Attorney Foster stated the reason he left these in here was because under our definition of family, it can be up to three (3) unrelated people. Town Administrator Rutan confirmed with Attorney Foster that *Rooming House* will be removed.

Discussion ensued.

Sec. 58-584 - Maintenance and appearance standards for all real property.

Attorney Foster wanted to raise the issue of paragraph one (1) (below) because there had been discussions about this. He stated that fences present an interesting situation with respect to wind load and can become a hazard in a storm if improperly maintained. Mayor Foy stated his conversation with Attorney Foster regarding this revolved around health and safety. Aesthetics is not the issue here. **Discussion ensued.**

(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's 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.

Discussion ensued.

Town Attorney Foster stated that paragraph four (4) (below) had raised a question. He stated there had been a question as to whether or not the Town wanted to get involved in that kind of detail.

(4). Only one (1) principal color may be used on each structure, excluding those used to accent architectural features and/or trim, except where more than one (1) principal color is expressly approved by a separate development order.

Discussion ensued.

Attorney Foster stated that after the discussion above, he will delete paragraph 4 (above) and under paragraph two (2), he will add a provision that to the extent you start to paint your house, you must finish painting your house.

(2). All surfaces requiring paint, or which are otherwise protected from the elements shall be kept painted or protected and shall be free of peeling paint and/or mildew. All surfaces shall be maintained free of graffiti and void of any evidence of deterioration. In addition, all exterior surfaces should be cleaned on a regular basis so as to prevent and remove mildew formation.

Discussion ensued.

ADJOURNED: 1:30 p.m.

SUBMITTED BY: Jean Wible, Deputy Town Clerk