

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
MEETING HELD ON THURSDAY, MARCH 21, 2019 AT 7:00 P.M. IN ROOM 210,
TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Patti Flynn-Harris, Chairperson; Paul Bowman, David Veleber.

Staff: Arnett Talbot, Asst. Town Manager; Al Smith, Town Attorney; Attorney Patti Boye-Williams.

1. ROLL CALL

The clerk called the roll and a quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

**3. CT'S MS-4 ILLICIT DISCHARGE AND CONNECTIONS STORMWATER
ORDINANCE**

Attorney Boye-Williams reported that she has reviewed the State ordinance and looked at draft ordinances from other towns such as Simsbury, Somers and Granby. The Simsbury ordinance has no criminal enforcement, and Somers added many pages to its MS-4 permit, with cease and desist orders and penalties. The main focus is having the legal authority to do this; the easiest way to do this is through ordinance, which captures everyone with illicit discharges. There must be a means for enforcement and collection of penalties, and at minimum the town to go in, eliminate the discharge, and recoup its costs. Ms. Boye-Williams advised that towns are adopting the model ordinance with a few tweaks, as needed, and in some cases word for word. Granby and Simsbury took out most of the criminal provisions from their ordinance.

Ms. Flynn-Harris asked about the firm date of adoption and penalties if the town did not adopt the ordinance.

The firm date was last year and Ms. Boye-Williams said it was last year; there do not appear to be any penalties for not adopting the ordinance. DEEP has authority to enforce the general permit, and without an ordinance the town could get enforcement through DEEP. It would be dollar value per violation per day. Cheshire has some compliance through its zoning regulations. If the town never adopts the ordinance it would be subject to an enforcement order from DEEP.

Attorney Smith asked about DEEP enforcement towards a homeowner in violation of the ordinance.

The penalty is against the permittee...the town...and Ms. Boye-Williams said how DEEP enforces the ordinance against homeowners and businesses would be falling their into another individual permit. Larger businesses have storm water permits for compliance. As far as illicit discharge the only parties subject to the ordinance and penalties would be the town...the permittee.

Mr. Bowman stated he is not in support of government over-reach, especially when it is not clearly defined, and is not a proponent of this ordinance. He prefers a light version which could be modified by the committee, keeping track or required enforcement, penalties imposed by the town. Mr. Bowman does not want the town having an opportunity, without reason, imposing penalties on property owners. He is willing to look at something once there is a document, but is not willing to adopt an ordinance from another town. This is another unfunded State mandate.

It was noted by Ms. Flynn-Harris that most towns are looking at the ordinance, word for word, expanding, some are restrictive, cutting down some of the basic requirements.

In that regard, Ms. Boye-Williams said most towns are keeping the ordinance fairly even keel. The town must have legal authority to enforce, impose penalties, or recoup costs if the town does the work. Nothing in the permit is specific on penalties or scope, just the ability to do enforcement.

DEEP put out the draft ordinance, and Mr. Veleber asked who put out the original draft ordinance.

This came from U-Conn, not DEEP. U-Conn was asked to put together a draft ordinance based on what the permit requires. Ms. Boye-Williams is uncertain whether DEEP must review all the town ordinances.

There was discussion about farming and agriculture, and the ordinance does not include agricultural field runoff. This could be specific in the ordinance, and Ms. Boye-Williams said DEEP understands there is farm runoff and issues.

In that regard, Mr. Bowman pointed out there are various farms, each with a different type of runoff. Some greenhouses could be covered under the ordinance. He has concerns about vague ordinances and State mandates.

According to Ms. Boye-Williams there are no issues with agricultural discharge, and DEEP is looking into discharging into sewers.

Now that the town attorney has looked into the ordinance and what other towns are doing, Ms. Flynn-Harris said the committee must now look at what Cheshire wants to restrict on a local level.

Regarding leniency with this ordinance, Ms. Boye-Williams advised DEEP is not being so broad. Simsbury just had recoup of costs, with no interest in penalties. The most flexibility is in the consequences for violations, specific things which cannot be done, and these sections of the ordinance are fixed.

Mr. Veleber asked about adoption of a generic ordinance being okay with DEEP.

That would be okay if it covers portions under Council purview, and Ms. Boye-Williams said the permit does have requirements for the ordinance. For a violation of both the town zoning regulations and MS-4 ordinance, there could be double violations and penalties.

The committee held a brief discussion about ordinance enforcement with a construction project. An approved permit has storm water discharge for construction. Ms. Boye-Williams read an excerpt from the draft ordinance into the record. The illicit discharge includes direct and indirect discharge of non-storm water discharge, i.e. draining a pool or sump pump or water tank into the sewer system. She noted a fundraising car wash comes under "illicit discharge."

Attorney Smith read Section 7-Discharge Prohibitions (a) into the record. Throughout the ordinance there should be added..."including but not limited to".

The committee agreed to not take any action on the MS-4 ordinance, pending further review by the Town Attorney, with a hard copy of the proposed draft ordinance forwarded to committee members.

Ms. Flynn-Harris moved agenda item #7 to current status.

7. AMENDMENT OF BAZAAR AND RAFFLE PERMIT ORDINANCE.

Under the statute, Sec. 10-10 the State passes the onus onto the towns to provide permits under the ordinance. The statute has not changed since the 1990's. The State of Connecticut does not allow games of chance, and there is a proposed bill to create a State Commission on Gaming.

Ms. Flynn-Harris noted that Cheshire has been using what came from the State. The Cheshire Police Department received the memo from the State and is using the same fee schedule. (copy attached).

Attorney Boye-Williams advised the towns can set their own fees. The ordinance, with changes, was reviewed by the committee.

With the State turning over the permit process to the towns, Ms. Flynn-Harris questioned why the towns must still file a report back to the State (Consumer Protection) on who won the prizes for the raffle. The group with the permit must provide a list of every winner of every raffle prize and the value. She talked about exclusions from the fees for non-profit groups. She also said the town receives many fees, some annually for bingo, and others monthly.

According to Ms. Boye-Williams the State specifies the maximum fee, and the statute must be complied with as State law.

The classifications between the permits was reviewed by the committee, and Ms. Boye-Williams cited the time frames for the permits.

Class 1 – no more than \$15,000, and no more than 3 months.

Class 2 – no more than \$2,000, and no more than 2 months.

Class 3 – bazaar, within 6 months.

Class 4 – no more than \$100, and within 1 month.

Bingo – yearly games register for an annual permit.

This agenda will have further review by the Town Attorney and committee, and be on the agenda of the next meeting.

4. POTENTIAL MERGER OF YOUTH SERVICES AND HUMAN SERVICES COMMITTEES.

The committee was informed by Ms. Talbot that Human Services Director Piccerillo has reviewed the proposal under Section 2-85 and supports the merger of the two committees.

It was pointed out by Ms. Flynn-Harris that there is a major change on page 3, under Powers and Duties (d) is removed from the ordinance.

MOTION by Mr. Bowman; seconded by Mr. Veleber.

MOVED that the Ordinance Review Committee approves the Merger of Youth Services and Human Service Committees into one committee “Youth and Human Services Committee” and recommends approval of the merger to the full Town Council.

Discussion

In connection with the Town Charter revision, Attorney Smith suggested adding a provision about appointment of successor (b – 2)...”in accordance with provisions of the Town Charter”.

Mr. Bowman and Mr. Veleber agreed to inclusion of ...”in accordance with provisions of the Town Charter” into the ordinance.

VOTE The motion passed unanimously by those present.

5. AGE RESTRICTIONS FOR SALE OF VAPING, E-CIGARETTES AND NICOTINE PRODUCTS.

Attorney Smith informed the committee that “licensing” has been removed from the proposed ordinance.

The committee briefly discussed inviting Police Chief Dryfe to attend a meeting to discuss this proposed ordinance. In that regard, Ms. Flynn-Harris noted that the Chief has concerns about the charges being “civil” and not “criminal” and clarity on the infractions. There is concern about the specificity of the fine...no less than \$250; who makes the determination; where does the fine money go, i.e. special account.

Attorney Smith advised that the City of Hartford created a special education fund for the fee revenue.

Ms. Talbot explained there is a new State statute whereby products cannot be touched...patrons must be assisted with the purchase of products.

Mr. Bowman has questions about who manages and enforces the fines.

The committee was told by Ms. Talbot that Director Piccerillo has concerns about this issue and supports anything to help with the problems. And, a civil penalty must have an appeals process. She stated that there could be a State law passed raising the age to 21 years old.

Following the brief discussion and on advice of the Town Attorney, the committee decided to defer this matter until there is passage of a State law.

6. BUILDING PERMIT FEE WAIVER FOR ALL HANDICAPPED PROJECTS.

The committee reviewed the proposed ordinance with the changes.

During discussion the committee recognized the following issues:

- A ramp (i.e. handicapped) is not a structure, and permit is not required.
- The ordinance is for residential properties only.
- Under the existing ordinance, a veteran gets one fee waiver.
- The on-line permit has a box to check off being a “veteran”.
- The cost of the fee waivers is not a significant loss of revenue.
- The value of the work is usually not a large amount of money.
- Staff must still inspect the property; this is a small cost to the town.

MOTION by Mr. Bowman; seconded by Mr. Veleber.

MOVED that the Ordinance Review Committee approves the draft ordinance for Building Permit Fee Waiver for all Handicapped Projects; the committee recommends and forwards the matter to the full Town Council for adoption.

Discussion

Mr. Bowman commented on the work of the Council committees and their recommendations to the Council. He noted that many of the committees do not take a stand on matters before them. The committees should take a position on matters

before them to accept or reject them. The committee motions should state acceptance or rejection...or the issue dies at committee level. Mr. Bowman would prefer that committee recommendations for Council review be passed and adopted without a lot of additional discussion.

Ms. Flynn-Harris cited one matter before ORC that did die in committee...the noise ordinance.

VOTE The motion passed unanimously by those present.

8. CHARTER REVISION COMMISSION ORDINANCE RECOMMENDATIONS.

Attorney Smith went through the Code of Ordinances to make the changes necessary to conform with the recent Town Charter revision.

Article 2 – the most frequent change involves adding the phrase “in accordance with the applicable provisions of the Town Charter”...to the end of several sections setting forth the process for filling vacancies in Article 2 - Boards and Commissions.

2-26 – Public Building Commission – the PBC ordinance is under review and this change can be handled as part of that process.

- 2-36 – Inland Wetlands
- 2-39 – Economic Development
- 2-47 - Environment
- 2-57 - Library Board
- 2-67 – Parks and Recreation
- 2-71 – Energy
- 2-79 – Public Safety
- 2-83 – Historic Commission
- 2-85 – Human Services/2-121 Youth Services
- 2-86 – Beautification
- 2-87 – Prison Advisory
- 2-91 – Safety
- 2-123 – Fine Arts
- 2-131 – Retirement

Article 11-Parks and Recreation changed to “Director of Recreation; there was no change in the duties.

In going through the ordinances, Attorney Smith found some obsolete references, and informed the committee there are some things to be cleared up within the ordinances.

MOTION by Mr. Bowman; seconded by Mr. Veleber.

MOVED that the Ordinance Review Committee approves the Charter Revision Commission Ordinance changes submitted by the Town Attorney; and the committee recommends and forwards the matter to the full Town Council for adoption.

VOTE The motion passed unanimously by those present.

9. ADJOURNMENT

MOTION by Mr. Bowman; seconded by Mr. Veleber.

MOVED to adjourn the meeting at 8:22 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk