

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
MEETING HELD ON THURSDAY, JUNE 13, 2019 AT 6:30 P.M. IN ROOM 207-209
TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

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

Staff: Arnett Talbot, Asst. Town Manager; George Noewatne, PW Director; Don Nolte and Dan Bombero, Town Engineering Dept.; Suzanne Simone, Environmental Coordinator; 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. SOLID WASTE ORDINANCE REVIEW AND UPDATE

Attorney Smith stated the Solid Waste Ordinance is updated with statutory references, contract references, regulatory references, definitions, changing CRRRA to MIRA, and referencing closure of the transfer station. These changes are required throughout the ordinance.

Ms. Flynn-Harris asked about the following items in the ordinance.

Page 1 (c) – “chapter”...Attorney Smith said this is existing language, i.e. ordinance “chapter”.

Section 7-4 (b) – (consider impact of Unsafe Premises Ordinance) – Attorney Smith said there is some overlap, but no reason to make a change; question is whether to keep this or just rely on Unsafe Premises Ordinance; this ordinance impacts the Solid Waste Ordinance.

Committee agreed this should have further review.

Section 7-4 (a) – Mr. Veleber referenced this section, which states garbage cannot be stored on a property for more than seven (7) days...and its relationship with the Unsafe Premises Ordinance.

Ms. Flynn-Harris stated the committee should further review the Unsafe Premises Ordinance.

Section 7-4 “no person” – Mr. Bowman asked if this covers all the entities. Attorney Smith advised this is a legal definition of a “person”...without repeating all the entities.

Section 7-5 (f) – garbage collection relative to hours. Ms. Flynn-Harris thought there was something in town ordinances about hours of collection.

Ms. Talbot advised this is established by contract with the hauler; it is for residential collection; it does not apply to commercial collection; the hours could be established by Council resolution.

If the Council wanted to, it could adopt a resolution stating residential collection is covered by the contract, and commercial hours could be stated.

Mr. Bowman thought there was no collection prior to 5 a.m. because of the prior Everybody shopping center issues.

Ms. Talbot will research the resolutions and zoning regulations on the hours of collection issue.

The hours in the contract could be a carryover from prior contracts, and Mr. Talbot asked if this is where the collection hours came from...possibly in the resolution.

The Solid Waste Committee has authorized the Town Manager and staff to manage and administer the distribution and swap of containers. Mr. Bowman noted the committee agreed to this authorization. He asked about this being memorialized somewhere with inclusion in the ordinance.

Ms. Talbot said this authorization is not included in the ordinance.

Section 7-3 (f) Containers – Mr. Veleber commented on the definition of “standard containers”...64 and 96 gallon containers/water tight containers. The current containers are not water tight. The committee talked about people using only the town issued containers, weight requirements (from prior manual pickup), and the use of the term “standard” container in the ordinance.

Mr. Bowman supported this recommendation, as a future Council may decided to dial back the size of containers.

Section 7-3 Definitions – Mr. Noewatne had some questions related to the proposed ordinance.

“Bundle” – this can be eliminated as it no longer relates to bundling waste, i.e. wood or sticks.

“Facility” – located in Wallingford, Connecticut...there could be inclusion of “or other disposal facility utilized per the contract”; throughout the ordinance it says “Wallingford”;

the committee discussed eliminating “Wallingford, Connecticut”; and inclusion of “as dictated by the contract” or “recovery facility specified in the contract”.

Attorney Smith will re-word this section.

“Service Contract” – delete “CRRRA” from this definition.

Section 7-5 – Mr. Noewatne asked about inclusion of bulky waste collection in the ordinance. He noted a permit is required for bulky waste pickers. The committee discussed this issue and decided to wait for Attorney Smith’s language for this issue.

Section 7-11 (b) – line #2, delete “CRRRA”.

Section 7-12 Penalties – the committee discussed the violations and monetary fines; reviewed the fines, and decided on percentage surcharges (no dollars) of 10%, 15%, 20% of the tipping fee; deleted sections “e and f”...the fourth and fifth violation sections.

Mr. Bowman asked about a penalty for violation of the contract, such as commercial trash collected under the town’s umbrella, and how this all works. He asked how the town knows that all tonnage generated to the transfer station is from Cheshire.

Attorney Smith advised the contract has a penalty section included.

Ms. Talbot asked about the violation provision being related to the town’s transfer station. She talked about someone, other than A.J.Waste, going to the Wallingford or other transfer station...and questioned why the town would charge them a penalty. Cheshire no longer has a transfer station.

The town is out of that loop, and Attorney Smith said the town is not being charged if A.J. takes Meriden waste to Wallingford. The facility does spot checking of the hauler’s trucks.

Mr. Noewatne reported our hauler has received prior violations for non-Cheshire waste. Covanta fined the hauler directly, without town involvement. This issue is addressed in the contract with the hauler.

There was a committee and staff discussion on Section 12 and how it affects the town. It was determined it does not affect the town, and could be deleted. Permits are issued out of the PW Department for private haulers to go to Covanta for a specific project or hauling job. There could be a penalty involved if the load was uncovered, blew debris all over town, and PW Dept. would go after the hauler for the cleanup. This could be written into the permit regulation; the permits would be revised; and litter or mess could be addressed with the Cheshire Police Department.

Mr. Bowman brought up the concept of a “Recycling Center” in Cheshire, and the fact that recycling is in a flux right now. He said this “center” would be an educational program in the schools and for people to teach them about recycling, and it would be beneficial to the community.

Section 7-12 (B) – the committee decided to amend this section with the fine of “not more than two hundred (\$200) dollars for each separate violation.”

Mr. Noewatne had a few other items to bring to the committee for possible inclusion in the ordinance:

- Electronics/Mattress/Hazardous Waste disposal opportunities
- Residential defined as four (4) housing units as the criteria for town waste collection (this is in the A.J. contract)
- Residential unit owned by a tax exempt organization are not covered by residential collection

Following a brief discussion the committee decided these items would not be included in the ordinance.

4. CT’s MS-4 ILLICIT DISCHARGE AND CONNECTIONS STORMWATER ORDINANCE

Attorney Boye-Williams said the model ordinance is broader than what is required by the MS-4 ordinance, and there are concerns about being overly aggressive.

Ms. Talbot said the biggest question is who would be the enforcement person out of the PW Department.

Section 12 – Watercourse Protection – the committee discussed “excessive vegetation” and how and who would address this issue; how someone can go into the wetlands without a local permit. Ms. Simone said there is a directive, and all the activities require a permit.

This portion of the model ordinance is not exactly required by the permit, and Ms. Boye-Williams said the permit requires elimination of illicit discharges. She read the definition of “illicit discharges” into the record. Watercourse protection is not required in the ordinance, but is a way for the town to do what it wants to do for this protection.

Mr. Bowman questioned how someone can have a directive from the State and wetland agencies not aware of this...how does this work. Cheshire’s IWW is active and aware of what is going on in town.

Section 12 is not required in the ordinance under the permit, and Ms. Boye-Williams read a section of the permit into the record.

The committee decided to delete Section 12 from the ordinance.

Mr. Nolte clarified that the ordinance is not to take the place of the enforcement done by other agencies. The only construction related discharges to be involved is checking on whether State permits are obtained.

There are two stages of the permits in the ordinance, and Ms. Boye-Williams said the second component is effective in 2020 for construction and post-construction. Many requirements are already incorporated into the zoning regulations. There has to be authority, which is not necessarily the ordinance. It could be the permit that is issued. As long as those activities are being permitted, the town meets the requirement of the MS-4 permit because the legal authority is demonstrated. This does not have to be referenced. A PZC permit makes more sense.

The event of a car wash was described by Mr. Nolte, who said this is illicit discharge which cannot be exempted because it is on the State's list.

Some towns have fire departments with catch basins or oil/water separator, and Ms. Boye-Williams said they allow car washes at locations where the runoff is not going into the MS-4.

Mr. Bombero noted people can find a designated facility with runoff to grass fields, and this is part of the public outreach and education through the permitting process.

Some regulations make sense, and Mr. Bowman said some make no sense, with some ideas unfunded to municipalities. They are difficult to enforce.

The State adopted MS-4 programs for themselves, and Mr. Bombero said we are taking matters seriously. On the State level they are expected to do the same.

Section 9 – Mr. Nolte asked about this being deferred to the next ordinance, or if the town must be the enforcer on whether people take State permits now, i.e. at pre-construction meetings.

Ms. Boye-Williams said the town does not have to take on control of the permit. If someone is not in compliance there is enforcement capability waiting for the State to get involved. There can be enforcement discretion used.

For pre-construction meetings, Mr. Bowman said they could happen prior to actually receiving DEEP approval.

Ms. Simone stated pre-construction meetings stipulated in IWW and PZC permits is on discretion, depending on how sensitive the site is. She asked if this must be stipulated in every single permit.

Mr. Bowman said his point was not to circumvent the requirement, but timing of the pre-construction meeting to the actual start of construction, maybe a month away. During the pre-construction meeting, if the contractor is asked if they have the permit, and it is no...you do not want to get shut down or not have that meeting...things are not always in sequence. You want to have the meeting while waiting for DEEP.

If the disturbance is greater than five acres, Ms. Boye-Williams said there must be approval...less than five acres the wait time is about 60 days.

Section 13 Notification of Spills – Mr. Nolte asked about this section. He recently saw sand spills along RT 68. There should be clarification that spills are leaks, and referred to DEEP without local authority being involved.

Ms. Simone said when she receives notification from the State she will add Mr. Nolte to the list for receiving these reports.

If there is a spill on RT 10 or RT 70 going into the system, this can be reported to the town authorities. Mr. Bombero said it is reported to the State and local fire department.

Section 13 will remain in the ordinance.

Mr. Nolte informed the committee that the Town of Simsbury removed Section 21 from their ordinance. He recommended Cheshire also remove Section 21.

The issue of illicit discharge going into the treatment plant was raised by Mr. Bowman.

Mr. Bombero said this has nothing to do with the sewer system.

Some municipalities have stickers on their storm drains and Mr. Veleber said this informs people about discharging into the drains.

Section 15 Appeals Process – Mr. Nolte asked who the appeals board would be for a violation.

Ms. Talbot stated the town has a “hearing officer” (designated by the Town Manager) who handles appeals on many matters. The MS-4 violations could be added to the appeals process for the hearing officer.

Mr. Bowman suggested this could go to IWW.

According to Mr. Nolte, the biggest impairment is bacteria...and he questioned turning over this enforcement.

It was pointed out by Mr. Bombero that there are mechanisms with Chesprocott to enforce septic system failures. He explained that a failing septic system falls under

illicit discharge. It would be so identified. It would be counter-productive for the town to be involved past the point of determination for enforcement.

The director of the municipal agency would be the PW Director.

Mr. Noewatne said the PW Department is not a regulatory organization, and the existing enforcement officer would be the better mechanism.

According to Mr. Nolte the town has the manpower, and could find, track, test, lift grates and take the matter to a point, but not handle enforcement. As MS-4 requirements ramp up there will be more complex requirements.

For the ordinance, Ms. Boye-Williams said the town could cite an authorized agency or designee of the agency.

Some municipalities are using a third-party to manage MS-4, and Mr. Bombero said this could be done in Cheshire. Once the town is aware of an illicit discharge, it must be mitigated, and there is an obligation under the permit to take care of it.

Ms. Boye-Williams reported that in Somers CT the Town Manager designates a town employee.

Ms. Flynn-Harris said this is a Chesprocott issue.

The issue of "costs" to be recovered was raised by Mr. Nolte. He asked if staff time logs would be compiled for administrative work, use of equipment costs, etc.

The situation(s) must be monitored, and Mr. Bowman said the impacts must be seen, and having more available data to recapture costs.

Mr. Veleber said these are, potentially, willful or knowledgeable discharges, causing time and energy to stop the discharge and remedy the situation. The question is how far the town will go with expenses and passing along the costs. He commented on a high school car wash with discharge into the drains and enforcement.

Attorney Smith stated that enforcement is discretionary.

It was suggested by Mr. Bombero that there be public education and notification to non-profit groups about approved locations for car washes.

Ms. Flynn-Harris summarized the meeting, stating there will be copies of the draft ordinance to staff and committee for further review and input.

The next meeting of the ORC will be July 11th at 6:30 p.m.

5. ADJOURNMENT

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

MOVED to adjourn the meeting at 7:55 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk