

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
HELD ON WEDNESDAY, JANUARY 10, 2018, IN ROOM 207, TOWN HALL, 84
SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Patti Flynn-Harris, Chairperson; Paul Bowman and David Veleber
Staff: Michael A. Milone, Town Manager; Louis Zullo, Personnel Director; Police Chief
Neil Dryfe; Deputy Chief Dennis Pichnarcik; Fire Marshal John Andrews; Town Attorney
Joseph Schwartz;

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.

Ms. Flynn-Harris moved agenda item #4 to current status.

4. DISCUSSION RE: TRAFFIC CONTROL ORDINANCE

Town Manager Milone explained that the language for the charge for CPD vehicles was merged, and it was approved by Town Council resolution. With this merging there were some inconsistencies in the entirety of the ordinance. The ordinance is re-drafted; more streets were added; and the charge for vehicles is covered appropriately. In the changes, there is more accommodation for Public Works. A meeting was held by Mr. Milone, Mr. Noewatne and Chief Dryfe, and there was concern from Mr. Noewatne about significant costs on the repaving program, primarily in construction and repair of catch basins. There was modification to provisions for installation of catch basins, which is included as an item where a certified flagman could be on site rather than an extra duty police officer. With the number of catch basins installed every year, the additional cost of a police officer could be \$80,000 to \$100,000 for the PW Department.

There is much equipment in the streets for repairs and replacements, and Mr. Bowman asked about the difference between a certified flagman and police officer with a vehicle, from a safety perspective. He asked if there is a net gain or loss of safety. Mr. Bowman also asked about catch basin cleaning.

Chief Dryfe stated it is assumed everyone assigned to the site is doing the job they are supposed to do. Under section "C" of the ordinance there is an attempt by CPD to alleviate some of the concerns of the Public Works department with their costs. It was never the intent that a police officer on duty follow a snow plow around. The sewer and catch basin inspection repairs were concerns of Mr. Noewatne, as these are done 270+ days a year with two crews at the work sites. Whether there is a certified flagman or police officer depends on the job being done, and the road itself. When a residential driveway on Route 10 is repaved, and work at completion is into the street, a police officer does not need to be hired. A patrol car officer might see the situation and direct

traffic for a few minutes. Chief Dryfe receives calls from companies about shutting down a road for a few minutes, and this is done without disruption.

In the ordinance there is a provision added for \$25 per hour for a CPD vehicle at the site. This is mandatory for all night jobs, and voluntary at all other times. Chief Dryfe said this has been in place for decades.

Ms. Flynn-Harris pointed out that the \$25 fee is not repeated throughout all the paragraphs; it is mandatory for night work; out-of-town is reciprocal; and out-of-town vehicle use is brought into the ordinance.

There was a brief discussion about "H", and Mr. Milone noted the fee can be increased by resolution of the Town Council.

Attorney Schwartz said that in paragraph "H" there could be deletion of "upon recommendation of the Chief of Police".

Mr. Bowman talked about the revenue, and it not going into the General Fund. He said it should be in a lock box, and used for replacement or repairs of CPD vehicles.

This direction of funds would have to be included in the ordinance, and Mr. Milone said it must be codified by ordinance or resolution. Otherwise, everything is deposited into the General Fund. He noted that funds from auction of PW equipment is redirected into a PW fund, done by resolution, and this is the right way to do this. The same process could be done for the CPD vehicle revenue. Mr. Milone will do a projection of revenue generated through the vehicle program, see the savings generated, and decide if the money goes into the capital budget or operating budget.

With revenue generated for the CPD using department vehicles, Mr. Bowman said he prefers this revenue going into a CPD fund.

Ms. Flynn-Harris asked about purchasing of vehicles, and it being smarter to have money set aside for vehicle costs rather than bonding.

Mr. Milone stated that patrol cars are not being bonded; it is a cash purchase; and only larger equipment is bonded.

Mr. Veleber asked about the cost of a new patrol car.

The committee was informed by Chief Dryfe that a new car is about \$28,000 without decommissioning another car, and switching equipment. New equipment costs and a new car could total \$50,000.

For a CPD lock box, Mr. Bowman stated the Town Manager and Town Council would have to allow the lock box to purchase a vehicle.

Mr. Milone will research how much cash is generated over one year from the use of CPD vehicles...and how this money would be used towards purchase of a new vehicle.

In the first year of the vehicle rental program, Chief Dryfe said the revenue was about \$48,000.

With the lock box fund, Mr. Bowman said it could get to a certain amount, i.e. \$100,000, and then the balance goes to the General Fund.

Paragraph H – Regarding the uniformed officer on site, Attorney Schwartz talked about the verbiage changes in this section. He asked about enforcement plans...will it be when the contractor submits the permit to do the work...or when the project is stopped with payment of an estimated amount.

Chief Dryfe explained how it works. The list of permits issued would have to go to CPD so there is awareness of contractors, roads they will be working on, and requirement for a police officer. Without an officer at a location, the contractor would be advised about the ordinance with requirement for a police officer at the site.

When there is a call to Public Works for work to be done, Mr. Bowman said there should be a mechanism in place for the PW Department and Town Engineer to notify CPD about any activity.

Chief Pichnarcik stated that most contractors hire a police officer, except for the few times they get in and get out...possibly creating a traffic hazard.

It was noted by Chief Dryfe that the majority of contractors working in town usually hire a police officer, and there are no issues with hiring the police vehicle.

In a case where a job is almost done without a police officer on site, Mr. Veleber asked if the contractor is informed about having a police officer at the location...and is there any retroactive punitive penalty.

If the job is almost done, Chief Dryfe said the contractor would be informed of the ordinance requirements that must be followed.

Regarding a flagman or police officer, Mr. Veleber asked about discretion in this hiring.

On a State road, in a school zone during school hours, town roads, hours of darkness, Chief Dryfe said a police officer is hired opposed to a flagman.

Chief Pichnarcik cited an example on Riverside Drive with work on the gas line and the road closed. In that case a police officer is needed on each end of the road and the contractor usually agrees. He said contractors work well with the CPD on the issue of hiring a flagman or police officer.

Chief Dryfe stated that a flagman should be certified and trained, and a flagman must be dedicated to doing traffic at the work location.

Paragraph I – line #2...there was discussion on changing “may” to “shall”. Attorney Schwartz will review this sentence structure.

Ms. Flynn-Harris stated the revised ordinance will come back to the committee at the next meeting on January 25th.

3. DISCUSSION RE: ANTI-BLIGHT ORDINANCE

Fire Marshal Andrews was present for discussion on this agenda item.

At the June 2017 committee meeting, sections c) and d) under “Blighted Property” were discussed for removal, as they are already codified under the zoning regulations. Ms. Flynn-Harris said they are issues that could go to the Zoning Enforcement Officer (ZEO).

Attorney Schwartz is inclined to keep these two sections in the ordinance because the blight ordinance is a superior method to address concerns of certain zoning issues...health code, fire code, building code issues. This enables the power to use both ZEO action and the blight ordinance action. He noted there is no definition in the CGS on “blight”, and every town can define it broadly.

Fire Marshal Andrews referred to the flow chart he prepared on “Anti-Blight Enforcement”, and reviewed the process he undertakes when a complaint is received in his office. In response to complaints, Mr. Andrews visits the site, checks to determine if something is there, does further research, contacts other town departments, investigates, allocates time frame (i.e. 30 days) for the remedy to be done, and works with the property owner on a remedy of the issues. When there is non-compliance, the property owner receives an administrative letter on the matter, and then it is referred to the town attorney’s office.

This is a good flow chart and Attorney Schwartz said the only change he would recommend is, in certain instances, getting the Town Attorney involved earlier in the process. During the investigation/research time the property owner should know they are in violation of the blight ordinance; receive a date for remediation of the situation; and specifically state what goes into the violation. Under a formal citation there could be a fine imposed, i.e. \$100 per day; there is 10 days to appeal the citation; without an appeal it is admitted liability; within 30 days a certified letter (with copy of the citation) is sent informing the property owner of violation of the citation; the information is sent to the court, and a judgment will be immediately entered against the property owner. The judgment could be the \$100 per day from the date of notice of violation. The court will issue this judgment until there is a remedy. Without a remedy there is a judgment lien on the property with the property owner informed of this lien.

Attorney Schwartz explained that under the blight ordinance the Town does not have the power to go onto the property to remedy the violation, and lien the property for these costs. This happens only with a court injunction action. With building or fire enforcement action there cannot be collection of attorney fees, and there is a limited amount to get for punitive violations, up to total of \$1,000. The Town could spend up to \$20,000+ going back and forth to court getting a judgment, and the violator gets a \$1,000 fine. Under the ordinance, while going for an injunction, the Town is getting a \$100 per day fine accrued as a right, and this can help make the Town whole.

Fire Marshal Andrews noted that the \$100 per day violation is \$100 for each violation found on the property...i.e. 6 violations equates to \$600 per day.

Ms. Flynn-Harris asked about the flexible part, the fair judgment, and how the process is going in the first 60 days.

The committee was informed by Attorney Schwartz that this is the Town's judgment, and it is not a tax lien. If someone finds there is a blight lien being accrued on their property, unknown to them, and they cannot address it for many reasons, they can go to the Town Council and ask forgiveness of this lien, or pay 10 cents on the dollar. The Town Council has the power to forgive this lien.

Mr. Bowman commented on struggling with this from a perspective of people's property rights. He wants the ordinance to have a sunset provision for future evaluation. He wants to insure there is a public safety issue (hoarders, lives in danger etc.), a special consideration clause for disabled people, elderly residents, lower income residents, with the Fire Marshal granting relief for hardships.

Under Section 9A-3, Attorney Schwartz said #4 could be added. He said the Blight Enforcement Officer, when considering the amount of the fine, may give due consideration to any hardship of the violator. Mr. Schwartz read an excerpt from the Westport CT ordinance into the record for consideration by the committee. The enforcement officer would be able to give consideration under the ordinance.

With regard to a "Blight Enforcement Officer (BEO)", Town Manager Milone said Fire Marshal Andrews has taken the lead throughout this process, and he wants to identify him as the BEO.

Fire Marshal Andrews informed the committee that he has dealt with these issues for many years...every situation and person is different...and the blight ordinance will be a tool to help the community. It is not his intent to irrationally address issues and fine property owners. Over the years he has spent time with property owners, talking to them about their issues and acceptable remedies...without matters going to the Town or Town Attorney. This is his intention...to help the community...not impose fines on residents. The ordinance would be a last resort to accomplish the safety of people

living in these properties and people living around these properties, and protection of property values. Mr. Andrews said he always has the ability to abate fire hazards, unsafe structures, go to court spending hundreds of hours to remedy a situation. This is costly, and never turns out to be a positive experience.

Mr. Milone said the goal is to create less work and streamline the process. The sunset provision is a good idea to determine what is being accomplished.

Ms. Flynn-Harris said the understanding is that Mr. Milone has tagged Mr. Andrews to be the BEO due to what he does today as Fire Marshal. In the future there would be another BEO who may not have the genial personality of Mr. Andrews, and the Town wants to make sure everything is covered.

For the Council to enact an ordinance, which is a powerful tool and measure for the benefit of the Town and its citizens, Mr. Bowman said it is a serious action. He wants the public to be able to have every reasonable chance they need to handle a situation. In some ordinances it is incumbent upon the person receiving the violation to reach out to Town officials to receive support.

Fire Marshal Andrews said that “blight” is a nasty word. His intentions are to work with people on an individual basis, and the ordinance is a tool making life easier than the current path to remedy situations. Mr. Andrews commented on the \$100 per day fine being there for a person who could take care of the situation but does not want to do it. He would not impose a fine on someone needing help, but would assist with remedying their situation, getting them assistance from Town officials. Currently, the process is complex, and with the ordinance the capable property owner could be informed of the fine, along with an offer to help with the clean-up.

The title of the ordinance is an issue and Ms. Flynn-Harris said that “blight” is negative. There should be discussion on the title of this ordinance.

Mr. Milone said some ideas came from the Avon CT ordinance. When you hear “anti-blight” there is a public expectation as to what the ordinance is for...and the ordinance primarily is for health and safety. The issue of blight is a by-product, not the intent of the ordinance. The Avon CT ordinance title is “Blighted or Unsafe Premises Ordinance”. This underscores not so much the maintenance of the property, but the structure of the dwelling as the issue.

Mr. Veleber stated the ordinance language has nothing to do with “blight” as perceived by the public. The blight issue came up during his campaign for Town Council...with property owners willfully not taking care of a dwelling. He is comfortable with the definition of “blight” in the ordinance...but does not believe it gets to what people perceive blighted property to be.

Fire Marshal Andrews commented on the fact that with the ordinance he will get 50+ blight calls a day as opposed to 15 calls per day now...without current ability to act on anything. A situation could be non-maintenance of the property, it could be a health hazard, and should be addressed.

In that situation, Mr. Veleber said the blight ordinance will not address unmaintained properties.

Attorney Schwartz talked about taking out "c and d" from Blighted Property. The ordinance then only addresses buildings and abandoned properties. Keeping in "c and d" does provide broader powers and situations that can be addressed.

The recommendation of Attorney Schwartz on the title of the ordinance is "Abandoned and Unsafe Structure Ordinance". This is what it is...an ordinance that only addresses abandoned properties and buildings that are unsafe, i.e. dilapidated or decaying.

Mr. Andrews asked about not calling it a "blight" ordinance, and his concern is knowing properties where the house is good and its surroundings are scary and messy. This is affecting property values and the neighborhood. The question is whether the Town wants to address these types of situations. He has seen properties in poor condition but cannot do anything without a cease and desist under the ordinance.

In that regard, Ms. Flynn-Harris asked if the yard conditions are zoning (ZEO) violations or health issues needing the health department to be called. She questions if it is the Council's job to do this.

According to Mr. Milone some of these situations have been handled through Human Services and Chesprocott, with them making contact with property owners and assisting with remedying the situation.

With the "debris" definition in the ordinance, Ms. Flynn-Harris believes this covers some unmaintained property issues.

If the Town is going to have a blight ordinance, Mr. Andrews said maybe we should just do it...do it right...cover what needs to be covered. In the spring, he will receive phone complaints from residents about neighboring property poor lawn maintenance, overgrown shrubs, etc. He must respond to these complaints, doing the work whether there is an ordinance or not.

Mr. Bowman prefers to walk before we run...and determine how to manage the situations that come up.

Town Manager Milone is comfortable with the wording of the ordinance, and said we can find ways to address certain egregious problems. The Council can come back and

modify the ordinance. Mr. Milone stated the need for good public relations on this ordinance so people are clear as to the definition of “blight” and the Town’s role.

For clarification, Mr. Flynn-Harris reviewed things to be addressed in the ordinance...additional language/phrasing to fit in, and the inclusion of the sunset clause. This ordinance is in effect until the sunset date, and Mr. Milone said the Council can decide on the period of time, i.e. 12 or 18 months from the date of adoption. The Town Manager would bring the ordinance back to the Council near the sunset date for its reconsideration, or send it back to the committee.

As it relates to complaints about properties to the Fire Marshal’ office, Mr. Bowman asked if the property owner has the right to know “who called” and cited the complaint. From a legal perspective, he believes the property owner has the right to know “who” issued the complaint.

Mr. Andrews said he does not inform the property owner of the name of the complainant. Many times he receives anonymous phone calls and letters as complaints, and he would be remiss to ignore them.

Attorney Schwartz said from a legal perspective the answer is “no” with informing who made the complaint. It is separate when someone calls with a complaint about a property...and the Fire Marshal visits the site, and makes the blight determination. There is no legal reason for release of the name of the complainant. For something to be subject to FOIA it must be in written form or e-mail or text.

Section 7 Enforcement – Mr. Milone read the first section (a) into the record.

Attorney Schwartz said if someone wants to make a formal complaint, the BEO has the right to say it must be in writing to the Fire Marshal’s office. If a blight complaint is made by a phone call, the BEO can visit the property, and if blight is seen he can start the process. The intent of the ordinance is to put everything in writing, but a phone call with a voice mail cannot be ignored. All written complaints are under FOIA.

On that issue, Mr. Veleber asked about a phone complaint, the BEO citing the procedure of a written complaint to be addressed...and the caller not wanting to do this and get involved. If there are three properties receiving complaints, and the BEO visits only one, he asked if this is selective enforcement.

In response, Attorney Schwartz said the Town is not required to enforce every zoning violation as they do not have the resources. There is discretion on the part of the Town Planner or ZEO in determining which are the most egregious, most non-sensitive, priority order...and which to go after. This is the case unless there is a disingenuous reason why some properties were ignored and the Town went after one particular property owner. There are situations where the violators give the Town reason to know

their names, and the courts will not be sympathetic to the argument the "Town is going after them"...especially if violations continue to occur.

A scenario was stated by Mr. Veleber about enforcement of a building or safety code violation against a property, but nothing in the proposed ordinance allowing pursuit of this property under the blight ordinance.

Attorney Schwartz commented on a particular property in Town currently on trial, and said if a citation was issued for the \$100 per day fine up to the trial dates, there would have been a huge lien on the property filed on the land records. The lien stays with the property.

Mr. Bowman asked about a particular property owner getting a building permit to change a window or door or siding, or three separate permits...how much time is there after receipt of the permits for the enforcement of the blight ordinance.

The building permits are usually for 12 months and Attorney Schwartz said this would be the time frame for the property owner to do the work or remedy the situation. While the permit time frame is open the Town would be hard pressed to file a citation. If there is proof the property is abandoned...no one is there for 60 days...the Town can state it is abandoned. This is on a case by case basis.

Mr. Bowman commented on his doing work on buildings in Town that took more than 12 months to complete.

5. ADJOURNMENT

MOTION by Mr. Bowman; seconded by Mr. Veleber

MOVED to adjourn the meeting at 8:42 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk