

AGENDA

**Public Safety Committee Meeting
Tuesday, February 3, 2015, 8:45 A.M.
Boardroom, 2nd Floor, City Hall**

Committee Members: Chairwoman Pat Shelton, Joe Leonard, Raleigh York Jr.

Call to Order

Chairwoman Pat Shelton

Approval of Minutes

October 7, 2014

- 1. Consideration of Noise Ordinance**
- 2. Fire Department Update – Chief Dailey**
- 3. Police Department Update – Chief Insley**
- 4. Additions/Updates**
- 5. Adjournment**

A quorum of the council may be in attendance and may participate in the discussion, but not vote.

MINUTES

Public Safety Committee Meeting Tuesday, October 7, 2014, 9:15 A.M. Boardroom, 2nd Floor, City Hall

PRESENT: Mayor Joe G. Bennett; and Council Members: Chairwoman Pat Shelton; Ron Bratton; Neal Grimes; Joe Leonard; Joel Pierce; Scott Styers; Raleigh York Jr.; and City Manager Kelly Craver; City Attorney Paul Mitchell; Police Chief Jeff Insley; Fire Chief Marty Dailey; Fire Inspector Rocky Watts; and Barney W. Hill.

The meeting was called to order by Chairwoman Pat Shelton. Joe Leonard made a motion to approve the minutes of August 5, 2014; Raleigh York seconded the motion to approve the minutes.

1. Discussion on Sweepstakes

Chairwoman Pat Shelton said now that Council has a 60 day moratorium in place it is time to discuss ways of monitoring the sweepstakes/internet cafes and what we may have to do.

Committee was provided with maps of the current locations of sweepstakes/internet cafes; the Historic Districts; the downtown incentive district; the current voting precinct districts as well as a large map of the office/industrial areas posted on the wall. The zoning part of this has been a typical strategy that other jurisdictions have had; they have limited location by zoning in addition to law enforcement. This information gives ideas of areas of consideration if Council were to look at this from a zoning perspective.

Neal asked if we did something by zoning perspective and one of the prospective places fell outside of the approved area would they be grandfathered. Kelly Craver answered yes. They are where they are now because the existing zoning was compliant. Currently the zoning for these businesses is C1 or C2.

Chairwoman Shelton said she asked for the Historic District map because she doesn't feel this business is appropriate for that area. The incentive district is another area that may possibly be considered. Lexington used the voting wards as their means to allow only one business per ward. Paul Mitchell has said that Council could use the old wards as a purpose of zoning if they choose to. Chairwoman Shelton said she believed that even though there are existing businesses, Council could create the ordinance to not allow any more to come in if it exceeds the number Council chooses. Scott Styers said he looks at this as an economic development issue and the City may be running off legitimate businesses that do not wish to be located beside the sweepstakes/internet cafes.

There was a group discussion regarding business licenses and other aspects of the businesses. Ron Bratton said early on when others put restrictions and costs on them to operate in their cities; we did not, and opened it up for them to come and easily operate their business in Thomasville. He said he

believes the reason we are saturated is because we only require a business license at a minimal cost – no other fees. All business privilege licenses will be halted June 30, 2015 per the state, so we will be on the same playing field as everybody else.

Chief Insley reported that his department does perform random inspections. There have been two robberies reported, one of which was fabricated. There have been other concerns but none have been verified.

Chairwoman Shelton asked her committee how they would like to proceed as far as zoning is concerned.

Scott Styers said unfortunately zoning them out of one area and into another may work against us from an economic development standpoint. Joel Pierce said they are already restricted by C1 or C2. Chairwoman Shelton said in researching she found one city that had sweepstakes zoned in office/industrial and that was the reason she requested that particular map. Scott Styers said their reasoning was probably so it would not affect any commercial business. Joe Leonard suggested moving in the direction of the old wards or voting precincts as districts. We had five wards, we have seven precincts. Neal Grimes asked what could be done after the sixty days to further restrict the applications. Scott Styers replied that the first thing would be to request a six month moratorium if we choose to; we could not do that in the beginning because the state mandates that you cannot go more than sixty days on an initial moratorium on this kind of thing.

Upon City Attorney Paul Mitchell's arrival Chairwoman Shelton explained that committee was discussing sweepstakes and what can be done legally to limit them in Thomasville. Attorney Mitchell, with the help of others, conducted an "unscientific survey" to see what other jurisdictions are doing. He said he planned to meet with Kelly Craver to put together a strategy. Attorney Mitchell said Davidson County requires a records check done by the Police Department; the City of Lexington has had an ordinance for more than two years which limits them to certain zones. In Henderson County, they monitor any sweepstakes operation in question which may be causing a nuisance situation with crimes on the premises or such. They contact the property owners and tell them that under North Carolina law if there is criminal activity occurring on the premises, the property can be forfeited. That seems to dampen the enthusiasm of the property owners to rent to sweepstakes. He explained that although sweepstakes are not illegal in North Carolina, Council has wide latitude in which to limit them in Thomasville.

A discussion was held on "internet time" versus "gaming."

Attorney Mitchell suggested that at the end of this process, when we come up with something we believe is legal; that we have it reviewed by the two attorneys who spoke in favor of sweepstakes at the Public Hearing on September 29, 2014.

Chairwoman Shelton said once the business license is not required the only enforcement she sees is through fire inspections. If they get a Certificate of Occupancy when they open the business, the Fire Department will know they are there.

It was deemed necessary to determine that all sweepstakes operations are using the same software. This may be a law enforcement issue rather than a zoning issue.

Joel Pierce said he thought from the beginning this was a law enforcement issue; not necessarily zoning; the market restricts them. The City has already restricted them by zoning, but they must follow the law.

Chairwoman Shelton asked Attorney Mitchell about using the “ward system” as discussed earlier in the meeting. He replied that it is a means in which to spread them throughout town; right now they are limited to C1 or C2. Chairwoman Shelton said she would like to research some more to determine where the wards are and their boundaries in addition to how many sweepstakes operations are in each ward.

Scott Styers asked Attorney Mitchell to clarify the time frame if Council chose the need to have more time in order to solve the problem; at what point could we call for a Public Hearing to ask for a six month moratorium? Attorney Mitchell answered we have to advertise it twice although we do not have to wait until the sixty days is over. Scott Styers asked Attorney Mitchell, we can call for a Public Hearing in November and extend it for six months if we choose to, and that would be legal? Attorney Mitchell said he thought so and he would know for sure before then.

A plan of action was determined to include both law enforcement and zoning.

2. Additions/Updates

- **Speeding on Forest Drive** – A complaint was received concerning speeding on Forest Drive to Westwood Avenue within Fairgrove Forest. Chief Insley was directed to handle the complaint.
- **Fire Department** – Chief Dailey provided his monthly report.
- **Police Department** – Chief Insley’s report was available in the drop box. Chief was glad to say there has been a 14% drop in violent crime however property crime has increased and the department is working on the best way to address it. He touched on the Sargent’s promotional process; a breakdown of the evaluation chart was shown and how the applicants met the requirements.

3. Adjournment

With no further business to come before the committee; Raleigh York made a motion, Joe Leonard seconded the motion to adjourn the meeting.

Sec. 34-31. Generally, prohibited.

(a) Subject to the provisions of this section, it shall be unlawful for any person or persons to make, permit, continue or cause to be made or to create any unreasonably loud, disturbing and unnecessary noise in the city, with the exception of construction work done pursuant to a federal, state, county or city contract which requires work to be performed during certain hours. Construction work under these conditions shall be exempt from the provisions of this section. For purposes of this section, the following definitions shall apply:

(1) *Unreasonably loud.* Noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace or good order.

(2) *Disturbing.* Noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of the area.

(3) *Unnecessary.* Any excessive or unusually loud sound or any sound which is of such character, intensity and duration as to disturb the peace and quiet of any neighborhood or which disturbs, injures or endangers the comfort, repose, health, peace or safety of any person, and being a type of sound which could be lessened or otherwise controlled by the maker without unduly restricting his conduct.

(b) In determining whether a noise is unreasonably loud, disturbing and unnecessary, the following factors incident to such noise are to be considered: Time of day; proximity to residential structures; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; the character and zoning of the area; whether the noise is related to the normal operation of a business or other labor activity; whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof. A continuing or non-resetting audible burglar or fire alarm shall not be considered a violation of this article. Operation of power producing generators under emergency conditions or power outages shall be exempt from the provisions of this section.

Sec. 34-32. Specific prohibitions.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this section but this enumeration shall not be deemed to be exclusive:

- (1) *Blowing horns.* The sounding of any horn, whistle or signal device on any automobile, motorcycle, bus or other vehicle or railroad train, except as a danger signal required by law, so as to create any unreasonable, loud or harsh sound or the sounding of such device for an unnecessary and unreasonable period of time;
- (2) *Bells, gongs and sirens.* The sounding of any bell, gong or siren upon any vehicle which disturbs the quiet or repose of persons in the vicinity thereof, other than police, fire or other emergency vehicles;
- (3) *Radios, stereos, etc.* The playing of any radio, television set, record player, stereo, phonograph or other sound reproduction system, musical instrument or sound-producing or sound amplifying device on the premises of any dwelling, hotel or motel room, in such manner or with such volume, if the sound generated is audible at a distance of thirty (30) feet or more from the dwelling's property line, or, in the case of a hotel or motel room, the unit's most outer boundary wall;
- (4) *Sound-producing equipment in vehicles.* The playing of any radio, cassette player, compact disc, video tape or disc, or other similar device for reproducing sound located on or in any motor vehicle on a public street, highway, within any public vehicular area, or on the premises of a private residence, if the sound generated or noise vibration therefrom is audible or can be felt at a distance of thirty (30) feet or more from the radio, cassette player, compact disc, video tape or disc, or other similar device that is sound producing the sound;
- (5) *Pets.* The keeping of any animal or bird, which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity;
- (6) *Use of Vehicles.* The use of any automobile, motorcycle, dirt bike, go-cart, recreational vehicle or any other vehicle so out of repair or so loaded or operated in such manner as to create loud or unnecessary grating, grinding, rattling, screeching of tires or other noise;
- (7) *Blowing whistles.* The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger;
- (8) *Exhaust discharge.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motor boat

engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

- (9) *Compressed air devices.* The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced;
- (10) *Building operations.* The erection (including excavation), demolition, alteration or repair of any building in a residential district other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays of any day or in any district other than a residential district between the hours of 10:00 p.m. and 7:00 a.m. of any day, except in the case of urgent necessity in the interest of public safety, and then only with a permit from the building inspector, which permit may be renewed for a period of three (3) days or less while the emergency continues;
- (11) *Noises near schools, etc.* The creation of any excessive noise on any street adjacent to any school, institution of learning, library, or court while the same is in session, adjacent to any hospital, or any church during services, which unreasonably interferes with the working of such institution;
- (12) *Loading and unloading operations.* The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening or destruction of bales, boxes, crates and containers;
- (13) *Peddlers and vendors.* The shouting and crying of peddlers, barkers, hawkers and vendors which disturb the quiet and peace of the neighborhood;
- (14) *Noises to attract attention.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention, by creation of noise to any performance, show, sale, display or advertisement of merchandise;
- (15) *Loudspeakers or amplifiers.*
 - (a) It is prohibited within or from any commercial establishment or private entertainment or recreational venue to allow any loudspeaker or other mechanically-amplified device to be played so that the sound therefrom may be heard at a distance of thirty (30) feet or more from the facility's property line, between the hours of 2:00 a.m. and 7:00 a.m.

- (b) The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising or other purposes;
- (c) In the exercise of noncommercial free speech, loudspeakers or amplifiers may be used, subject to the following condition:
 - It shall be unlawful for any person to speak into a loudspeaker or amplifier within the corporate limits of the city, when such loudspeaker or amplifier is so adjusted that the voice of the speaker is amplified to the extent that it is audible at a distance in excess of one hundred fifty (150) feet from the person speaking; city sponsored events and recreational games shall be exempt;
- (16) *Business noises.* The conducting, operating or maintaining of any place of business in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 8:00 p.m. and 7:00 a.m.;
- (17) *Guns, fireworks, and combustibles.* The firing of guns, fireworks, gunpowder or other combustible substance in the streets or elsewhere, for the purpose of making a noise or disturbance, except by permit from the police department.

Sec. 34-33. Enforcement and repeated violations.

Whenever in this Code or in any other ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this Code or other ordinance the doing of any act is required or failure to do such act is declared to be unlawful and no other penalty is specified, a violation of such provision of this Code or other ordinance shall be punishable as a misdemeanor, subject to a fine not to exceed twenty-five dollars (\$25.00) or imprisonment not to exceed thirty (30) days, as provided in N.C.G.S. § 14-4(a).

Comment [SB1]: Lexington's Enforcement

(c) Enforcement and repeated violations. Where there is a violation of any provision of this article, the city, at its discretion, may take one (1) or more of the following enforcement actions:

- (1) A police officer may issue a citation as provided herein, subjecting the violator to a civil penalty of \$200.00. A second violation by the same person or business within one (1) year of the first violation shall subject such person or business to a penalty of \$400.00. All subsequent violations by the same

person or business within one (1) year of the first violation shall subject such person or business to a civil penalty of \$500.00.

(2) Failure to pay a civil penalty imposed under this section within 10 days may subject the offender to an additional \$50.00 delinquency charge. Any unpaid penalty or delinquency charge may be recovered by the city in a civil action.

(3) The civil penalties imposed by this section and the proceeds therefrom as collected by payment, civil action or otherwise, shall belong to the city and shall be paid into the general fund of the city under such conditions as prescribed by the annual budget.

(4) In the alternative, pursuant to North Carolina General Statutes, section 14-4, a violation of this section may be considered a misdemeanor. Such a misdemeanor is punishable by a fine of not more than \$500.00 or imprisonment designated for a Class 3 misdemeanor.

(d) Each separate day of a continued violation shall be a separate and distinct offense and shall give rise to a separate and distinct penalty.

Comment [SB2]: High Point's Enforcement

(e) A property owner shall be liable for the cost of abating the nuisance or remedying the health or safety hazard created by a tenant for a third or subsequent violation of this ordinance, as specified in section 34-37. A property owner shall be liable for the actual cost of the abatement or remedy, taking into account the cost of law enforcement personnel salaries, law enforcement equipment, administrative overhead, law enforcement recordkeeping, mailing and notification costs, and any other costs directly or indirectly attributable to the cost of abating the nuisance or remedying the health or safety hazard. In no case shall the cost assessed under this subsection be less than \$100.00 for the third violation by the tenant (initial assessment of property owner), or less the \$75.00 for any subsequent assessment for a violation by the same tenant. If costs assessed pursuant to this subsection are not paid by the property owner within 30 days of receipt of a statement of costs from the city, the costs may be placed as a lien on the property where the hazard existed.

Comment [SB3]: Added from Thomasville to compliment 34-37 below. May need to visit fine amounts.

Sec. 34-34. Responsibility of property owner for violations by tenants.

No property owner shall allow a noise-related nuisance or health or safety hazard to be created or maintained by or on account of tenants of the property owner. For purposes of this subsection, a noise-related nuisance or health or safety hazard shall be deemed to exist when a tenant or group of tenants at a specific location receives

a third citation for a noise ordinance violation pursuant to this article. The property owner shall be liable for the cost of remedying the nuisance or health or safety hazard in accordance with the provisions of section 34-33(e). A property owner may be held liable for the costs of abating the nuisance or remedying the health or safety hazard only if the property owner has been notified in writing, via actual delivery or certified mail, of the first two ordinance violations. A property owner shall be liable for the cost of abating the nuisance or remedying the health or safety hazard upon the third and any subsequent action by the same tenant at a specific location, provided the third violation occurs at least 15 days from the date of actual receipt of notice of the second violation. It shall be a complete defense to a citation under this subsection if the owner of the real property involved can prove that he is actively pursuing an eviction process according to law, and that the eviction process was begun prior to the date of the third or any subsequent violation by the same tenant at specific location.