

AGENDA

**Public Safety Committee Meeting
Tuesday, March 3, 2015, 8:30 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

February 3, 2015

- 1. Fire Department Update – Chief Dailey**
- 2. Police Department Update – Chief Insley**
- 3. Discussion on Noise Ordinance**
- 4. Additions**
- 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, February 3, 2015, 8:45 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; Lieutenant Brad Saintsing; Fire Chief Marty Dailey; Division Chief of Training and Standards Don Crafford; Administrative Assistant Pam Galloway; and Diane Patterson.

The meeting was called to order by Chairwoman Pat Shelton. Joe Leonard made a motion to approve the minutes of October 7, 2014. Raleigh York seconded the motion.

Chairwoman Shelton changed the order of the agenda in order to hear from Chief Dailey first. The discussion item was moved to Item #2.

1. Fire Department Update – Chief Dailey

New Employee - Chief Dailey reported that the new Fire Inspector, Tim McNeil is on board.

Radios - Don Crafford brought one of the new radios to show Council. Al Linker has the programming underway and has held one class on operation with the fire department employees so far.

Rescue – The department is a medium level rescue and can respond to just about anything requiring rescue care. The city currently has twenty-one medical responders, nineteen EMS technicians, two paramedics and twenty members who are certified as technical rescuers. These employees are spread out among different shifts and locations throughout the city.

Don reported that EMS approached the city and is coming in the next few months to help the city phase in more extensive medical assistance, within the boundaries of our qualifications, to assist in CPR calls.

Councilman Styers said in the next few months he would be asking Council to consider creating a policy (before July 1) which would require buildings with multiple businesses be inspected more frequently. He suggested this, knowing we have added a fire inspector and the Business Privilege License is coming to an end in July 1.

2. Consideration of Noise Ordinance

The current ordinance has been in effect a long time. It used to be that the decibel meter seemed to be the deciding factor in what noise is and what is too loud.

The Police Department was given the task to look at the ordinance from a more practical point of view and come up with amendments to the ordinance to make it more enforceable.

Chief Insley introduced Ms. Patterson and explained that the department has been working with her on a noise complaint.

Chairwoman Shelton invited Ms. Patterson to address committee on some of the issues she was faced with. Ms. Patterson said she made about thirty calls over a two month period. The officers would come out but there was nothing they could do. There is no way to enforce the law. She believes the ordinance needs to be updated and came today to hear the proposed changes. Chief Insley said Ms. Patterson's problem has been taken care of with the assistance of another city department.

Lieutenant Saintsing said he researched noise ordinances from Lexington, High Point, Kernersville, Garner and Holly Springs. None of them needed a sound level measuring instrument to take enforcement action. He looked closely at High Point's ordinance which is completely different from ours; they actually measure noise from thirty feet of the property line. He said he felt that would be something good for Thomasville to look into and proposed that we do so. They do not use any device such as the decibel meter to measure the sound. Lieutenant Saintsing said under our current ordinance we can impose a civil penalty based on the decibel reading. Should we get rid of the sound level device which Chief Insley said was very old and out of calibration, Lieutenant Saintsing referenced High Point again, saying they issue the violator a citation subjecting them to a civil penalty of \$200 for the first offense. Penalties would be determined by Council should the amendment be made to our ordinance.

Group discussion.

Lexington charges a misdemeanor for the violation.

Discussion was held on residential and commercial zones and hours of enforcement.

Lieutenant Saintsing said a cell phone could be used for recording; it's as simple as that.

A temporary event permit was mentioned to cover music.

Chief Insley added that it was the desire of the department to move away from the decibel meter; it would be a little simpler to enforce. He said they could certainly research to see if there are versions of the decibel meter which could be used by individuals or made available for each team.

Attorney Mitchell said he liked the ordinance as proposed and he liked the approach. He would not put the use of a decibel meter in it, but it is a tool that lawyers use to find justice. It can be helpful or hurtful.

Councilman Styers wants to be sure their cases are not made based on subjective information; some type of documentation of proof takes that out of question.

At the request of staff and committee, the conviction rate from High Point and Lexington will be provided before briefing.

Councilman York questioned #16 in the draft, saying he felt it should be adjusted in some way. After discussion, the wording will be changed to the following:

Business noises. The conducting, operating or maintaining of any place of business located in any residential zone 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.;

Lieutenant Saintsing was directed to make the change.

The proposed ordinance was moved to briefing.

Ms. Patterson was invited to attend Council meeting and speak to this issue if she wishes to do so.

3. Police Department Update – Chief Insley

Violent Crime – Showed a 13% reduction at the end of the year.

Property Crime – Showed a 2% reduction at the end of the year.

Special Operations Unit – Will be attending a training session in the near future.

4. Additions/Updates

None

5. Adjournment

With no further business to come before committee, the meeting was adjourned.

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.