

TOWN OF WALLINGFORD, CONNECTICUT
SPECIAL TOWN COUNCIL MEETING
Robert F. Parisi Chambers
Wallingford Town Hall
45 South Main St.

Ordinance Committee

Thursday, November 3 2016
6:30 P.M.

AGENDA

1. Call to Order and Pledge of Allegiance
2. Roll Call Attendance
3. Discussion and Possible action with regard to Noise Ordinance, Chapter 144.
4. Discussion and Possible action with regard to creating a tax abatement program to encourage development in the Incentive Housing Zone (IHZ).
5. Adjournment

In accordance with Title II of the Americans with Disabilities Act- Individuals in need of auxiliary aids for effective communication in programs and services of the Town of Wallingford are invited to make their needs and preferences known to the ADA Compliance Coordinator at 203-294-2070 five days prior to meeting date.



Town of Wallingford, Connecticut

TOWN ATTORNEY
GERALD E. FARRELL, SR.
ASSISTANT TOWN ATTORNEY
GEOFFREY T. EINHORN
CORPORATION COUNSEL
JANIS M. SMALL
DEPARTMENT OF LAW
WALLINGFORD TOWN HALL
45 SOUTH MAIN STREET
WALLINGFORD, CT 06492
TELEPHONE (203) 294-2140
FAX (203) 294-2112
lawdept@wallingfordct.gov

MEMORANDUM

TO: Craig C. Fishbein, Ordinance Committee
Members of the Ordinance Committee

FROM: Janis M. Small, Corporation Counsel

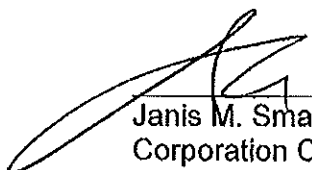
RE: Thurston Proposal

DATE: August 29, 2016

If the Council decides to move forward with the exemption, I have made some modification to the draft.

I am also enclosing information from Mr. Stango on a type of barrier wall he believes to be less expensive. I did have our expert take a look at it and he noted that the estimate does not include the cost of the site preparation and installation. Further, the wall may need to be 20 feet high. There is a lot of detail that goes into a cost estimate.

If you search online, you will find a variety of types of barrier walls. In my conversation with Mr. Tocci, he mentioned that sometimes shipping containers are used as a barrier. Stacking two of them may be possible at a lesser cost. The land would have to be properly graded but it may be a cost effective solution.



Janis M. Small
Corporation Counsel

JMS/bjc

Enclosure

cc Peter Malone, Thurston Foods
Residents of Padens Court

Thurston Proposal:

This Ordinance shall not apply to sound created by any mobile source of noise located within, or emanating from, any Industrial District (as defined in the Wallingford Zoning Regulations) to the extent such mobile source is engaged in an activity permitted within such District. Mobile sources of noise shall include, but are not limited to, automobiles and trucks, irrespective of whether any of the foregoing are stationary or in motion. A mobile source of noise shall also include any ancillary equipment attached, annexed or connected to the mobile source (including, but not limited to, cranes, winches, compressors, refrigeration units, and lift-gates) which ancillary equipment is utilized in connection with any activity permitted within such Industrial District. This exclusion shall cease to apply when a mobile source of noise has maneuvered into position at a loading dock, or similar facility, has turned off its engine and ancillary equipment and has begun the physical process of removing the contents of the vehicle.

This Ordinance shall not apply to sound created by any mobile source of noise located within, or emanating from, any Industrial District **Zone** (as defined in the Wallingford Zoning Regulations) to the extent such mobile source is engaged in an activity **legally** permitted ~~within such District~~ **on site**. Mobile sources of noise shall include, but are not limited to, automobiles and trucks, irrespective of whether any of the foregoing are stationary or in motion. A mobile source of noise shall also include any ancillary equipment attached, ~~annexed~~ or connected to the mobile source (including, but not limited to, cranes, winches, compressors, refrigeration units, and lift-gates) which ancillary equipment is utilized in connection with any activity **legally** permitted ~~within such Industrial District~~ **on site**. This exclusion shall cease to apply when a mobile source of noise has maneuvered into position at a loading dock, or similar facility, has turned off its engine and ancillary equipment and has begun the physical process of **loading/removing** the contents of the vehicle.



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GERALD E. FARRELL, SR.
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CORPORATION COUNSEL
JANIS M. SMALL
DEPARTMENT OF LAW
WALLINGFORD TOWN HALL
45 SOUTH MAIN STREET
WALLINGFORD, CT 08492
TELEPHONE (203) 294-2140
FAX (203) 294-2112
lawdept@wallingfordct.gov

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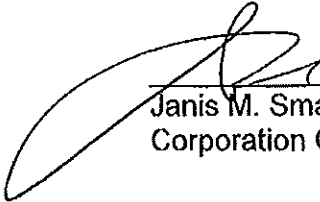
TO: Craig C. Fishbein, Ordinance Committee
Members of the Ordinance Committee

FROM: Janis M. Small, Corporation Counsel

RE: Noise Ordinance

DATE: October 31, 2016

At your last meeting, the issue was raised as to whether more trucks would result in more noise. Attached are our consultant's thoughts on the subject.



Janis M. Small
Corporation Counsel

JMS/bjc

Enclosure

Janis,

The CTDEP noise regulation sets limits on the level of sound at residential receptors produced by activities and equipment on other nearby properties.

Regarding the proposed Thurston expansion, there are two types of sound transmitted to nearby residences. The first is constant sound produced by stationary sources such as operating trailer refrigeration units. Depending on the added number of refrigeration units and the future site layout, this would result in an increase in constant sound transmitted to the nearby neighborhood.

The second type of sound is that produced by transient sources such as trucks operating on site. Individual truck pass-bys in the future would not be any louder than they are now, there would just be more of them. Truck pass-bys normally do not occur simultaneously, so that they would not increase in sound level, only the number of pass-by instances would occur.

With respect to community annoyance, both higher stationary source sound levels and more frequent sound level events would contribute to annoyance. Though at first glance, an expansion may only seem to be a source of more noise, it may open the possibility of orienting site buildings and activities in a way that could reduce sound transmitted to the community.

Let me know if we can provide any further information or review site planning. Thank you.

Gregory C. Tocci
SENIOR PRINCIPAL CONSULTANT
CAVANAUGHTOCCI



Town of Wallingford, Connecticut

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MEMORANDUM

TO: Craig C. Fishbein, Ordinance Committee
Members of the Ordinance Committee

FROM: Janis M. Small, Corporation Counsel

RE: Noise Ordinance

DATE: October 31, 2016

The Committee sought further comment from this office on the issue of a cap on sound levels and the enforcement of the ordinance.

1. Cap on Noise as Part of the Exclusion: There is no prohibition on providing a limit to the level of noise permitted under the proposed exclusion. The issue becomes what should it be and how would it be enforced. The current noise level is unacceptable to the neighborhood. This office has no recommendation as to what a new limit should be.

An exclusion with a cap would make enforcement difficult, to say the least. With the current noise level being burdensome to the neighbors, I suspect that complaints would routinely question whether the levels exceed the cap. I question the viability of testing for compliance on a regular basis.

2. Enforcement of the Noise Ordinance: The question was raised as to whether the costs of the testing could be imposed upon an entity found to have violated the ordinance. Pursuant to Connecticut General Statutes §7-148(c)(10), a municipality may prescribe fines up to \$250.00 for any violation of an ordinance. The statutes do not provide for a recovery of costs spent in the enforcement of the ordinance. Without statutory authority, a violator cannot be charged for ordinance enforcement, including the cost of testing.

For your information, I have reviewed the minutes and records from the creation of the ordinance in 2002. From its inception, the Police Department raised concerns regarding enforcement. Because the ordinance provides for the issuance of an infraction, the burden of proof associated with a particular case is the criminal, beyond a reasonable doubt standard. At the time, it was contemplated that officers would use a hand-held device to measure the noise at a given time. The Department purchased a device. Officers must be trained to use the device and the device must be properly calibrated every six months at a cost to the Department. At this point in time, the Department does not use the device.

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The Department now hires an expert to conduct the testing. The process has been successful in cases such as the use of ATVs in a neighborhood.

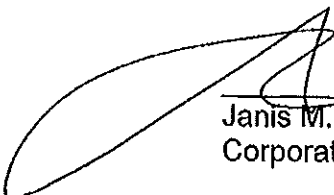
3. Enforcement by the Neighborhood: For your information, I will briefly discuss the nature of claims which can be brought by persons alleging harm from noise emanating from a neighboring property. Generally, such claims would be in the nature of a private nuisance. You should know that compliance with the law is not a defense to a nuisance claim. In fact, the State Regulations, §22a-69-1.5, specifically provides that compliance with the Regulations is not a bar to a nuisance claim. On the other hand, a violation is not automatically a nuisance per se.

A nuisance claim is based upon the general principle that it is the duty of every person to make reasonable use of his property so as not to cause unnecessary damage or annoyance to his neighbor. *O'Neill v. Carolina Freight Carriers Corp.*, 156 Conn. 613, 617 (1968). There have been successful nuisance cases relating to noise brought by abutters. The *O'Neill* case involved a fact pattern similar to ours and it resulted in a damage award and use restrictions.

I offer this information so that the Council is aware of available remedies to the neighbors whether the ordinance is changed or not.

4. Other Revisions: If the ordinance is to be amended, I would like to revise some of the language including the zoning references in order to bring them up to date.

As discussed above, the ordinance provides for the issuance of an infraction. It may be more appropriate to change this to a citation process. I suspect the prosecutor's office may not give such cases any priority. It would seem more appropriate to enforce the ordinance with a notice, citation and appeal process as done with parking and/or snow removal enforcement.



Janis M. Small
Corporation Counsel

JMS/bjc