

Journal of Proceedings

OF THE COMMON COUNCIL OF THE CITY OF OLEAN, N.Y.

November 10, 2020

via ZOOM

**COUNTY OF CATTARAUGUS
STATE OF NEW YORK**

A Regular Meeting of the Olean Common Council of the City of Olean was held on Tuesday, November 10, 2020 at 6:30 p.m.

PRESENT: *Aldermen Gonzalez, Witte, Panus, Dougherty, Crawford, Robinson and Anastasia*

ABSENT: *None*

OFFICIALS: *Mayor William Aiello; Lens Martial, City Clerk; Nicholas DiCerbo, Jr., City Attorney; Bob Ring, Director of Public Work; Jeff Rowley, Police Chief,, and Tiffany Taylor, Managerial Confidential Administrative Secretary*

At this time an invocation given by Mr. Martial, followed by a salute to the flag.

READING, CORRECTING, AND APPROVAL OF THE MINUTES OF THE PREVIOUS REGULAR MEETING

A motion to approve the minutes of the October 27, 2020 Regular Meeting was made by Alderman Gonzalez, seconded by Alderman Anastasia. Voice vote, ayes all. Motion carried.

COMMITTEE REPORTS & UNFINISHED COUNCIL BUSINESS

Report from Public Safety Committee on PL #61-20, to amend the City of Olean Code of Ordinances Chapter 12, Housing Code, to include Article VI, Short-Term Rental Registration and Licensing. Committee recommends approval. Referred to City Attorney for Resolution.

Report from Public Safety Committee on PL #68-20, to amend the City of Olean Code of Ordinances Section 24-81 to include a 20 mph speed limit on portions of Main Street and Hamilton Avenue when school is in session. Committee recommends approval. Referred to City Attorney for Resolution.

Report from Public Safety Committee on PL #69-20, to authorize the installation of school zone, speed reduction and pedestrian crossing signs on Main Street and Hamilton Avenue in the vicinity of the Boardmanville School building. Committee recommends approval. Referred to City Attorney for Resolution.

COMMUNICATIONS FROM THE MAYOR

Mayor Aiello explained that tomorrow is Veteran's Day and he would like to extend his best wishes and a deep thank you to all veterans who have served this nation.

MISCELLANEOUS COMMUNICATIONS

Renewal of a Liquor License – Steven J. Marra AAZA Inc. (Tito's Restaurant) – 310 West State Street, Olean

CITY OFFICIAL REPORTS

Monthly Report of the City Auditor – month ended October 2020

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PROPOSED LEGISLATION AND REFERRALS

PL #71-20: (Crawford) To amend the City of Olean Charter Article III, Division 4, to include Section 3.090 containing specifications for the City Auditor. Referred to Strategic Planning Committee by Council President.

PL #72-20: (Aiello) To authorize the transfer of funds from General Fund Contingency to line item 1680.443 for costs associated with Zoom Meetings. Referred to Regular Meeting Tuesday, November 10, 2020 for Resolution by Council President.

PUBLIC COMMENT/INPUT

Alderman Crawford explained that he has had a couple of people reach out regarding public comment, and he wonders what the procedure is going to be to allow for public comment. He asked if the public will be able to access meetings. Alderman Gonzalez explained that it is his understanding that we can allow people to join the meeting, and the moderator has the ability to regulate who speaks, who is seen, and who is allowed in. Mayor Aiello explained that the IT Department has been working on this so that we can allow public comment. He explained that right now, anyone with public comment can email it in, or send it to the City or Aldermen and we will get back to them.

Alderman Gonzalez explained that he thinks that anyone who chooses to attend the meeting should be able to speak during public comment. He explained that the moderator has the ability to mute and unmute the microphone. Mayor Aiello explained that one of the concerns was allowing everyone to have passcodes to get into the meeting and Zoom bombing. He explained that our IT department is working on this and he thinks that it will be ready by the next meeting.

FINANCE / BILLS

None

RESOLUTIONS

Alderman Gonzalez explained that this was discussed at length in committees. Alderman Dougherty explained that he wants to congratulate Alderman Robinson for bringing forth his first piece of legislation. He explained that he will be voting against this. He explained that he was on the fence for a while, but it comes down to his roots, that all laws should be created to strengthen the rights of everyone, not to take away the rights of some. He explained that if no one has the right to be loud, then no one should have the right to enjoy silence.

Alderman Crawford explained that he is in favor of this legislation, but although he has received a lot of positive feedback, he has one resident who was concerned about this legislation. He explained that her fear is that the monetary consequences, if left unpaid, could leave to incarceration, job loss or other personal issues. She feels that we should back away from additional fees and costs on homeowners. He explained that she is also concerned about ensuring that there is equal enforcement regardless of the neighborhood composition or status of the alleged violator. He explained that all laws need to be observed, and explained that anything done tonight can be changed or modified.

Alderman Panus explained that he would like to comment that this legislation is not to make Olean quiet, but to deal with troublemakers who take it upon themselves to disturb others.

Alderman Gonzalez explained that he will be voting no as well. He explained that at the

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end of the day, he feels that this legislation will cause more problems than it will solve and he feels that it needs more work and more time.

Mayor Aiello explained that he has had several people reach out to him about this, some for and some against. He explained that one of their concerns is that they fear that they will get ticketed if they are out running their power washer on their house for more than fifteen minutes. He explained that he hopes that things like this would not happen, but they could. He explained that there are concerns about this legislation. He thinks that it is positive but he feels that it needs more thoughts before moving it forward.

Alderman Crawford explained that before we vote, he would like to clarify that an issue would arise if you are power washing your house between 11 p.m. and 7 a.m. He explained that he is okay with his neighbor not running his pressure washer at midnight. He feels that legislation is written to be fixed, and this essentially creates a quiet time. He doesn't want tickets for mowing lawns at 3 p.m. on a Saturday, as that is not what we are trying to accomplish.

Alderman Witte explained that we can pass this legislation and if it doesn't work, change it. She feels that people always look at the worst side of things.

Alderman Robinson explained that he has heard concerns that this will punish one social group, namely, black people, more than others. As the Alderman bringing this forward, he doesn't think that there is anyone on the Council more concerned with his whole race than himself so he feels that we could eliminate that concern. This is to bring forth legislation to help those with unruly neighbors, and to help the Police Department because they currently won't enforce a noise ordinance because they say there is not one on the books. Here is one for them to enforce. He explained that this is to address the 1% who don't want to bother with following the rules. He explained that if we want to do what is best for our citizens, we will pass this law tonight.

Alderman Robinson explained that this would have helped with Alderman Gonzalez's issue last week. Alderman Gonzalez explained that the situation resolved itself just fine. Alderman Robinson explained that laws are in place for us to follow, and people still break them. If we don't want to pass a law because it could do harm then why do we pass any laws. Alderman Gonzalez responded that he does not see how there is anything in this law that would not allow neighborhood feuds to get worse. He explained that instead of neighbors working things out, they will call the Police to handle things. He explained that Alderman Robinson has done a lot of work on this, but he doesn't think that the notion that we are going to throw this at the wall with the understanding that we will need to make changes at some point is the best idea. He feels that this needs more work, and more community input.

Alderman Robinson explained that he thought that the Police Chief and City Attorney gave the okay to this legislation. He explained that if they are going to be the ones enforcing this, and they gave it their stamp of approval, then we should give it a chance and pass the legislation tonight and see what happens. Everything needs to be tweaked every once in a while.

Alderman Crawford explained that at the end of the day, the Mayor's Office is responsible for the administration and managing laws that are on the books. He explained that the Police Department doesn't write a ticket for every single vehicle driving more than 30 miles per hour, and he doesn't think that they will write tickets for every single noise complaint. Mayor Aiello explained that he would agree. Alderman Panus added that the first offense is a warning.

RESOLUTION #76-20

PL #49-20

By Alderman Witte, Seconded by Alderman Robinson

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TO AMEND THE CITY OF OLEAN CODE OF ORDINANCES CHAPTER 15, NOISE

RESOLVED, that the City of Olean Code of Ordinances is hereby amended as follows:

Chapter 15. Noise

Article I. Noise Declaration

Sec 15-1. Declaration of policy.

It is hereby declared to be the policy of the City to reduce the ambient noise level in the City, so as to preserve, protect and promote the public health, safety and welfare and the peace and quiet of the inhabitants of the City, prevent injury to human, plant and animal life and property, foster the convenience and comfort of its inhabitants and facilitate the enjoyment of the natural attractions of the City. It is the public policy of the City that every person is entitled to ambient noise levels that are not detrimental to life, health, and enjoyment of his or her property. It is hereby declared that the making, creation or maintenance of excessive or unreasonable noises with the City affects and is a menace to the public health, comfort, convenience, safety, welfare and the prosperity of the people of the City. The provisions and prohibitions hereinafter contained and enacted are for the above-mentioned purpose.

Article II. Time Frame

Sec 15-2. Defined Time Frame.

The hours between 7:00 a.m. and 10:00 p.m., except Friday and Saturdays, when the evening hours shall be 11:00 p.m.

Article III. Ambient Noise Definition & Interpretation of Unnecessary Noises

Sec 15-3. Ambient Noise Definition.

Any noise associated with the natural sounds surrounding that environment and can be from near and far.

Sec. 15-4. Interpretation of Loud & Unnecessary Noises

- 1. Any loud, unnecessary, unreasonable, and unusual noises that disturb the peace or quiet within the geographical boundaries of the City of Olean, or which cause discomfort or annoyance to any reasonable person of normal sensitivity.***
- 2. Motor Vehicles - (Automobiles, Motorcycles, Bus or other vehicles)***
 - a) Engine Revving & Tire Squealing - The operating of a motor vehicle or motorcycle in such a manner as to cause unreasonable noise by excessive spinning or squealing noise of the tires or by causing the engine/motor of such vehicle or motorcycle to rev producing excessive motor roar.***
 - b) Radio - The playing of any radio, music player, or audio system in a motor vehicle at such volume as to disturb the quiet, comfort or repose of other persons. The operation of any of the above in such a manner as to be plainly audible from the vehicle at which it is located shall be prima facie evidence of a violation of the chapter.***
- 3. Lawn Care Machinery***
 - a) Any lawn care equipment run by gas/fluids and otherwise muffled.***
 - (1) Operation of lawn care machinery to include: lawn mowers, lawn tractors, trimmers, edgers, power-driven hedge shears, leaf blowers and other lawn***

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care power machines shall NOT be used between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Saturday.

(a) Golf courses are exempt from these provisions.

(b) Operations of city, county, state or other governmental equipment otherwise in compliance are exempt from these provisions.

4. Animals

a) No animal or bird owner shall permit any animal to cause annoyance, alarm or noise disturbance for more than fifteen (15) minutes at any time of the day or night by repeated barking, whining, bellowing, crying, screeching, howling, braying or other like sounds which can be heard beyond the boundary of the owners property.

5. Public Disturbances

a) Shouting and crying of peddlers, hawkers and vendors, which disturb the peace and quiet of the neighborhood.

b) Yelling, shouting, hooting, whistling or singing on public streets shall NOT be allowed between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Saturday, or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

6. Musical Instruments & Devices

a) No person shall operate or play any radio, phonograph or any musical instrument in such manner or with such volume at any time, shall NOT be allowed between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Saturday, or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

b) No person shall use or operate any musical instrument or device such as steam whistles, horns, gongs, and bells (church bells are exempt) which disturbs the quiet or repose in the vicinity thereof.

c) No person shall use, operate or be permitted to be played, used or operated any radio receiving set, musical instrument, broadcasters, loud speakers, amplifiers, sound producing instruments, or other machine or device in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.

7. Construction/Demolition

a) Any person erecting (including excavating) demolition, grading, alteration or repair of any building, shall NOT be allowed between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Saturday unless specially permitted by the Department of Public Works.

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- b) *Any person operating any pile driver, pneumatic hammer, dredging, derrick, steam or electric hoist or other such appliance, the use of which is attended by loud or unusual noise, shall NOT be allowed between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Saturday unless specially permitted by the Department of Public Works as emergency work.*
- c) *Any person desiring to engage in the aforesaid activity beyond the stated hours of limitations, based upon cases of urgent necessity or upon the interests of public health, safety, and convenience, may apply to the Department of Public Works for a special permit allowing such activity. The Department of Public Works shall weigh all facts and circumstances and shall determine whether the reasons given for the urgent necessity are valid and reasonable, whether the public health, safety and ultimate convenience will be protected or better served by granting the permit requested and whether the manner and amount of loss or inconvenience the the party in interest imposes a significant hardship.*
 - (1) *The permits, if granted, shall be limited to a period of up to three (3) days duration.*
 - (2) *The permits may be renewed for additional periods of up to three (3) days each if the emergency or need continues.*

8. Fireworks

- a) *Existing Law - NYS Article 405 Penal Law - Licensing and other Provisions Relating to Fireworks.*
http://ypdcrime.com/penal.law/article405.htm?zoom_highlight=fireworks

9. Local Taverns, Bars, Pubs, Restaurants with outdoor spaces

- a) *All businesses that fall under this provision are allowed operation with a 2 a.m. curfew.*

Article IV. Distance Limitation

Sec 15-5. Distance Limitation - Prima facie

Any loud, unnecessary, unreasonable, and unusual noises which is plainly audible off the premises from which the sound originates and from a distance of at least fifty (50) feet from the source of such sound or building or structure from which such sound originated during the hours of 10:00 p.m. and 7:00 a.m., shall be prima facie evidence that such sound is unreasonable noise.

Article V. Exemptions

Sec 15-6. Exemptions from Chapter

1. *The provisions of this chapter shall NOT apply to noise generated by police department, law enforcement agency, code enforcement, and health department.*
2. *The provisions of this chapter shall NOT abridge or be construed to abridge the powers and responsibilities of any police department, law enforcement agency, code enforcement, and health department.*
3. *The provisions of this chapter shall NOT apply to noise generated by municipality-sponsored concerts or permitted special events, as well as noise generated by events*

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held at or within the confines of stadiums, arenas, parks, or fields designed specifically and primarily for sporting events and which are open to the public.

4. *The provisions of this chapter shall NOT apply to or construed to prevent the production of music in connection with any military, civic, or authorized parade, funeral procession, or religious ceremony, nor to prevent any musical performance or fireworks displays conducted under the consent of municipal authorities, or noncommercial events conducted by the national, states, county, or municipal government.*
5. *The provisions of this chapter shall NOT abridge or be construed to abridge the responsibilities of any trash or debris collection agency including the handling of trash, garbage cans, either loading or unloading and whether full or empty within the City of Olean.*
6. *The provisions of this chapter shall NOT abridge or be construed to abridge the responsibilities of local business deliveries & operations within the City of Olean.*

Article VI. Peace Order

Sec 15-7. Peace Order – Schools, Hospitals, Courts, Places of Religion

1. *The operation of any sound-producing device or noise within two-hundred fifty (250) feet of any school, institute of learning, hospital, healthcare facility, clinic, courthouse, church, religious service, funeral, burial or memorial service, while the same is in session or conducting business therein to the safety and welfare of the public is prohibited and considered a violation of this chapter.*
2. *The provision of this chapter shall NOT abridge or be construed to abridge nor infringe upon the right to assemble.*

Article VII. Penalties

Sec 15-8. Penalties for Offenses

1. *First offense - Verbal Warning with acknowledgement of understanding the ordinance.*
2. *Second & subsequent offense - A \$100 fine. Fine shall not be suspended, waived, or otherwise reduced below this amount.*

RESOLVED, that this Resolution is hereby effective immediately.

ROLL CALL, AYES ALL EXCEPT ALDERMEN GONZALEZ AND DOUGHERTY, WHO VOTED NAY. MOTION CARRIED.

Mayor Aiello explained that we have gone to Zoom for Common Council meetings, and it will cost \$2,000 a year for the service plus \$500 for the ability to do Zoom Conferencing. He explained that he believes that this will be the way that we can allow for public comment. He explained that this is unbudgeted money and we need to request funding from Contingency to make it work.

Alderman Dougherty explained that we currently do not use the Boxcaster software that we paid for since we are doing Zoom meetings. Since it seems we will be doing Zoom meetings for a long time, he questions if we still need to pay the monthly fee for Boxcaster. Mayor Aiello explained that he will look into this, and he does not know if we need to or are able to cancel the subscription. He explained that Zoom was suggested by the Council, and that is why we are here.

Alderman Witte asked if other City committees will be using Zoom, and Mayor Aiello

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responded that they would be.

RESOLUTION #88-20
PL #72-20

By Alderman Witte, Seconded by Alderman Dougherty

**RESOLUTION AUTHORIZING THE TRANSFER OF FUNDS FROM GENERAL FUND
CONTINGENCY TO LINE ITEM 1680.443, INFORMATION TECHNOLOGY – COMPUTER
MAINTENANCE CONTRACTS, FOR COSTS ASSOCIATED WITH ZOOM MEETINGS**

RESOLVED, that the following transfer be authorized for costs associated with the replacement of Dispatch computers:

<i>Account #</i>	<i>Description – General</i>	<i>Transferred From</i>	<i>Transferred to</i>
A-01-5-1990.590	General Fund Contingency	\$2,500.00	
A-01-5-3120.235	Information Technology – Computer Maintenance Contracts		\$2,500.00

BE IT FURTHER RESOLVED, that this Resolution is effective immediately.
ROLL CALL, AYES ALL. MOTION CARRIED.

Mayor Aiello explained that he has started to reach out to interested parties for the Police Reform Committee to ensure that they are still interested, and he hopes that we get back timely responses to have a committee ready to go soon. He explained that he is looking to have put together the committee and letters going out by the first part of next week. He explained that he has already received several affirmative responses, and he feels that we will have a pretty good committee. We need to get busy on the task at hand to get a report to the Governor’s Office by the deadline.

Mayor Aiello explained that we also need to have a Pandemic Plan, and Brad Camp and Tim Richardson are working on this, He explained that it will be a discussion topic this Friday at the Department Head meeting. That also needs to be to the Governor’s Office by April 1, 2021.

Alderman Gonzalez explained that since the presidential election a week ago, we have a new president elect. He explained that the next day, we had nine new positive COVID cases. The next day we had 6, the next 11, the next 5, and the next 9. He explained that this definitely did not go away after the election.

Alderman Crawford asked if we have received any new information from the Governor’s Office. Mayor Aiello explained that he believes that he sent out the information to everyone regarding new travel rules from a NYCOM meeting that he sat on. He explained that he will be on his weekly call with the hospital on Monday. The Health Department and the hospital get together to look at things. He explained that we are getting a lot of new cases, and he is concerned that we will end up in a sort of lockdown as numbers increase. He explained that this is going to be an ongoing thing that we need to monitor. He explained that there is no direct communication from the Governor’s Office at this time besides what he puts out in the news, but he will keep the Council updated.

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ADJOURNMENT

Motion to adjourn was made by Alderman Gonzalez, seconded by Alderman Panus. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 7:05 p.m.

Lens Martial, City Clerk

Mayor William J. Aiello

Paul Gonzalez, Council President

I hereby approve the foregoing minutes

Dated: ____/____/____

***STATE OF NEW YORK
COUNTY OF CATTARAUGUS
CITY OF OLEAN***

I, Lens Martial, City Clerk of the City of Olean, do hereby certify that the foregoing minutes of the Common Council of the City of Olean is the true and correct copy of the whole thereof.

Lens Martial, City Clerk