

PUBLIC SAFETY

Tuesday, September 15, 2020 – 5:30 p.m.
Council Chambers – Olean Municipal Building

Present: Members: Chairman Witte, Vice Chairman Dougherty, Alderman Panus, Alderman Gonzalez, Alderman Crawford, Alderman Robinson, and Alderman Anastasia. Others: Mayor William Aiello; Fred Saradin, City Auditor; Bob Ring, Director of Public Works; Tim Richardson, Fire Chief; Jeff Rowley, Police Chief, and Michiko McElfresh, Mayor's Secretary.

1. Roll Call

Alderman Witte called the meeting to order at 6:24 p.m. and asked that the record show that all committee members were present.

2. Approval of Minutes of the Previous Committee Meetings (Tuesday, August 18, 2020)

A motion to approve the minutes of the September 1, 2020 meeting was made by Alderman Witte, seconded by John Crawford. Voice vote, ayes all. Motion carried.

3. Unfinished Business

None

4. New Referrals for Consideration

- a. PL #49-20: (Robinson) To amend the City of Olean Code of Ordinances Chapter 15, Noise.

Alderman Witte turned the meeting over to Alderman Robinson to update the council on the noise ordinance.

Alderman Robinson said that they have a copy of the changes. Alderman Robinson said that they are not trying to quiet down the City. What they are trying to do is address the loud, unnecessary, unusual, and unreasonable (LUUU) noises. This is the same terminology that is used in other Cities in which he has researched. And that the only things that is addressed. He said he finds it weird that we call ourselves a City but we fear a noise ordinance. When he did research he saw it was brought before the Council in 2002 by Alderman Teachman in Ward 6 as there were problems on South 26th Street. Alderman Robinson said that in 2002 it came back to the Council with quite a few things removed from it; the City Attorney got involved and then it dropped and there was no more information about it. In 2004 in Ward 2 there were complaints from residents about bars who hosted bands. The last discussion he found, Alderman Padlo said they would discuss the noise issue at another time and then nothing was brought up again. Alderman

Robinson said that the Town of Olean just renewed their noise ordinance in June 2020. Dunkirk, Jamestown and Buffalo have all recently renewed the noise ordinances in their prospective cities. Alderman Robinson could not find anything suggesting when City of Olean rewrote the ordinance.

Alderman Robinson said that Mayor Aiello got information from NYCOM that suggested using a decibel system instead of a reasonable noise standard as it is objectionable and easier to fit; moreover the decibel meters are affordable and easy to use.

Alderman Robinson said that he would not shy away from that because Olean had a meter when he first moved here about 27 years ago. He thinks the meter is probably gone or doesn't work anymore. He stated to go with an ordinance base on the decibel we would have to rewrite everything that has been started. He thinks that we just want to target the loud, unusual, unnecessary and unreasonable noise. He said that the four cities that he researched only one used a meter. The other ones do not; and all have legislation written recently. Buffalo does use meters. Alderman Robinson said that he discussed the issue with the President of the Buffalo City Council, Darius Pridgen, who said that it is not going well because they do not have enough meters. Alderman Robinson thinks that since we are smaller than Buffalo, we do not need to use the decibel system.

Alderman Robinson referred to section 2.B-1, which says "to any reasonable person of normal sensitivity." He said that he did not make up this clause—he took it from another City, he said that it is obviously hard to come up with the words that we are looking for. He said reasonable is a word that is being used in current state laws. In NYS 125 (Homicide Law) reasonable is used 10 times. He said he thinks reasonable is a good word to use when we write this ordinance.

Alderman Robinson said that New York State Penal Code Article 240.20 Disorderly Conduct will be used to cite individuals who make LUUU noise.

Alderman Robinson said that ordinance uses "he" consistently. Alderman Robinson said that he has been getting numerous calls, e-mails and videos with noise complaints. He has sent one to Codes, as the complaint has to do with day time hours. He said that through this ordinance, the Council wants to target the LUUU noises.

Alderman Robinson referred to the changes that he made. He stated that what he tried to do was to come with a declaration—he pulled that from one City. And then he identified ambient noise for those who do not know what it is. He established a definition for LUUU noise, also taken from other cities. He established a time frame, which the Council can discuss and nail it down as best as they can. He started with an initial 7am to 10pm except Friday and Saturday nights. He also established a distance limitation. He said that Chief Rowley told him that some of language

was too restrictive. Alderman Robinson said he did some comparison and does recall making changes to the distances that other Cities had.

Alderman Gonzalez asked if in section 3, he meant 10:00pm and 7:00 am.

Alderman Robinson agreed that that was the quiet time. On Friday and Saturday, quiet time is extended until 11:00 pm.

Alderman Robinson said that he changed the distance to 50 feet and mentioned that the Prima Facie evidence can be changed if necessary. In addition, he added the provision in 5F to allow businesses to carry-on without hindrance. (I.e.: if deliveries are received in the night)

Alderman Gonzalez asked if that meant business operations and Alderman Robinson confirmed. Aldermen Gonzalez, Crawford, Panus, and Robinson and Mayor Aiello discussed the agreement between Codes and the 4th Street Bus Garage.

Alderman Panus suggested “deliveries to business”.

Alderman Robinson said he added it because businesses on South 26 would have been hindered by the noise ordinance 2002. Alderman Panus asked Mayor Witte and Mayor Aiello why it has been historically hard to get noise ordinance passed through. He said that he asked this question because sometimes residents find their neighboring business a nuisance, but live with it. He said that if a new ordinance is in place, they may be able to act on that nuisance. He said that he hate to see someone have to shut down a business.

Alderman Robinson said that 5F was placed in there to alleviate Alderman Panus’ concern, but understands that it would happen. He said that may be addressed in a public hearing.

Alderman Witte said that in her neighborhood, she gets complaints because of the ambulance and the helicopter. So wherever you live there are problems.

Alderman Crawford suggested that the clause “the provisions of this chapter shall not be abridged or construed to abridge responsibilities of local business deliveries and operations in the City of Olean.” So business that protects business that have been operating under the requirements of the zoning board.

Alderman Panus said that he understands that, but gave an example in his neighborhood where a business expanded and encroached on a residential neighborhood. He said he would hate to see the Council tossed in to picking one over the other due to noise.

Alderman Gonzalez said that is why there are separate bodies—the Zoning and Planning Boards—to hear concerns and make decisions.

Alderman Panus said that he understands that in the future the Boards will make decisions with the new ordinance in mind, however there are problems that exist now and he wants to know in advance what problems the restrictions will cause in the areas that he described.

Alderman Witte said that in 200_ [inaudible] there was a bar on State Street and that just trying to put something in writing caused a great deal pushback and nothing got written. She said that while she was mayor the Jake Brakes were an issue and people complained about Bradner Stadium, but those problems seem to be dealt with in the draft ordinance.

Mayor Aiello said that the reason it hasn't worked over the years – the City Can enforce—but it has to get through the court system. He said that if the judge doesn't think our ordinance is fair, he will dismiss. And say for example someone was cited on a loud bass. And he said once the ticket dismissed, the person will just play it louder.

Alderman Gonzalez asked about VII-D –Out of Repair Motor Vehicles. He said that you have to assume all vehicles have passed the NYS Inspection and in his view, we would be writing a clause that would be targeting poor people—people with old cars that make noises and rattle. Mayor Aiello said that mufflers are part of the vehicle and traffic law

Mayor Aiello asked if Alderman Robinson's intent was to cover the sound of a loud bass, which could be heard in the Chambers. Alderman Robinson said yes, pretty much. But that is basically covered in B. He said the officer doesn't necessary have to write a ticket. Just let the individual know. If the person is a repeat offender then a ticket would be issued.

Alderman Robinson drew Attention to Quiet Time. He said that the Peace Order (VI) covers the churches, schools, courts and places of worship.

Alderman Gonzalez agree that the ordinance should only be during quiet time.

Alderman Robinson said that the ordinance is written for quiet time, unless it is otherwise specified.

Alderman Crawford has a house a street over from him which has music with a deep bass playing all day. It is loud, it is a block away, and he is not next door. But he wonders why he should have to listen to it all day long because it is not the quiet time.

Alderman Robinson said that that would fall under musical instruments and devices XI A.

Alderman Panus said that the animal clause says that animals cannot make an annoyance for more than 15 minutes at any time of the day (IXA). And he agrees with Alderman Crawford as the annoying noise has a place in this ordinance. Deliberate and may be annoying for people around you regardless of –Alderman Crawford said that some people leave the radio on all day

and he gets the point. So whether is it intentional and not. He does not like going down the road where everything is up to interpretation.

Chief Rowley asked why the stipulated penalty was replaced with disorderly conduct.

Alderman Robinson said the stipulation was removed because Chief Rowley thought that the first offense was too high and there was language in there that judge can and can't do... So he eliminated it all together and the first offense would be a verbal warning, subsequent would be disorderly conduct 240.0.

Chief Rowley said that he should go back to the original. He charged with disorderly conduct, not charging him with being in violation with the ordinance.

Alderman Robinson referred to a case that he and Chief Rowley were aware and said that if the complainant was willing to sign a statement the individual would have be charged with disorderly conduct. The Chief said correct. But warned that it is very hard to get a disorderly conduct conviction in court. He said that Judge Mountain would require two signed complaints when dealing with the noise ordinance, to get rid of the possibility of one neighbor getting back at another neighbor. Which was a good plan. He said that they can arrest hundreds of people for disorderly conduct, but you take the court's time, the officer's time etc..., and it will probably get thrown out of court. He said that the goal has to be to write an ordinance that is enforceable but not overly restrictive. He said that he is all in favor with the ordinance. But Alderman Robinson should talk the City Attorney because the ordinance should stand on its own two feet with its own punishment, instead of sending it back to the penal law.

Alderman Gonzalez asked if you can arrest anyone at any time for disorderly conduct and Chief Rowley reasoned that all the law says is "makes an unreasonable noise." There are seven sections of the disorderly conduct law—but with noise, it says, he makes unreasonable noise.

Chief Rowley said that throughout his career they issues a warning the first time, and sometimes they go to a place 6 or 7 times a night. He said that the reason this ordinance has never gone through is because it is very complicated issue, a hot button topic.

Alderman Crawford followed up with a question of a disorderly conduct ticket at the scene and a court day in the future and the judge determines the penalty based on the law. Would having set penalties be able to circumvent the court—like paying a ticket?

Chief Rowley said that the biggest problem to neighbor or victim is that you want him locked up for 30 days. But the Court, after the Covid closure is currently out 45 days out. And he said that, as they had talked about the 1 percent--they will tear up the ticket, move on and never go to court.

Alderman Robinson said that we are talking about the 1 percent—the ones who don't care—they won't get charged with anything. Chief Rowley explained how the new bail reform worked with the fines and ultimately they receive a civil judgement instead of a warrant if the fine is not paid...

Alderman Robinson said that ordinance should be written for the other 99 percent.

Mayor Aiello told Alderman Robinson that he is on the right track and don't get discouraged. The 1 percent are always there.

Mayor Aiello said that if we have a warning process. He said that most people who get a warning will apologize the next day and move on.

Alderman Gonzalez asked if they get warning tickets. Chief Rowley said that they do not give warning tickets. Chief Rowley said that warning tickets can be created. The Mayor said that we need a process where they do that one warning and how to track it. Chief Rowley say that they do a police report which is essence is a tracking method.

Alderman Dougherty likes the warning ticket and at a future meeting the Council can discuss amount of the fine. But wanted to know the goal on the second offence. Alderman Robinson said other City's had the same amount for the first, second and third offence. But he changed it based on Chief Rowley's suggestion and added a warning.

Alderman agreed that a warning was a good idea and then possibly a \$250 fine. As they had been warned.

Mayor Aiello suggested warning, then \$100 fine and go from there.

Alderman Dougherty asked about the Cigarette Ordinance. He believes that there is no warning, it starts with a \$50 fine and goes to \$250. Alderman Dougherty said he was against the cigarette ordinance and does not see the difference between having to smell smoke or hear noise. Chief Rowley said the difference, it that if you are smoking, the police officer can actually see you smoking, with the noise ordinance, it is subject to interpretation—what one person thinks is loud another might not.

Alderman Gonzalez agreed. He said that the ordinance is great, but it is built on the presumption that someone being reasonable—100 percent of the time. He mentioned the homicide law uses the word reasonable 10 times. He said that that is working with evidence to establish guilt. A person cannot be afforded to have the same degree of reasonable assumptions. Alderman Robinson said that his point in talking about the homicide law was to indicate that the council cannot be scared of using the term reasonable when we are talking about unreasonable unnecessary noise.

Alderman Gonzalez said that his point is that if a person is motivated enough by something they do not like, they will not act reasonable. They will say, imply and directly implicate anyone, regardless of how reasonable it is.

Alderman Crawford asked who we are asking to be reasonable. He suggested that the police who show up on a call are the reasonable ones.

Annoyance to any reasonable person, Alderman Gonzalez said, in the normal sense.

Alderman Crawford gave a scenario where the police show up because of the music next door and the caller says can't you hear the music next door and the police say no, I can't.

Alderman Gonzalez said that that was where we are now.

Alderman Witte said some people have hearing problems—they do not realize how loud they are. In a perfect world, everyone would be reasonable, everyone would have the same level of hearing and same level of sensitivity, but.....

Alderman Crawford asked if Chief Rowley had any record of the number of calls the OPD went on because of noise. He asked if it could be estimated. Chief Rowley said that in the summer it is higher than winter. He wouldn't say that it is a weekly thing. Usually when we have somebody, it is a constant problem and until we are able to fix it.

Alderman Gonzalez asked about Construction XII and listed the items in A: erecting, demolition, grading, alteration or repair of a building. He interprets it as these things cannot be done on Sunday. And asked why. Alderman Robinson said that he is correct and that he copied these from other cities.

Alderman Gonzalez proposed that we do away with the days and allow it on Sunday.

Alderman Crawford asked why the ordinance is not consistent with the times. He suggested have the same time across the board.

Alderman Dougherty why would we stop people from working on their house. He gave a scenario where he loads a trailer to get to work by 7:00. Alderman Robinson said that he would fall under the business clause.

Alderman Gonzalez said that he would not want to stop people from doing work on their house on Sunday. Alderman Crawford agreed. Alderman Gonzalez agreed that it should be uniform quiet time.

Alderman Dougherty asked how this affects a person inside their home or building. For example someone is inside their home painting and running saws and listening to a loud radio.

Alderman Panus said that the sound of saws will disrupt a neighbor at night.

Alderman Dougherty said that there are a lot of people like him who are landlords that work after hours getting their apartments ready. Or a hobbyist fabricating a hot rod.

Alderman Crawford said it doesn't matter the police will show up will give a warning.

Alderman Panus asked if there is a distance. If you were keeping your sound within a distance. Alderman Robinson said yes – 50 feet.

Alderman Panus said that then it is fair. If you can close your windows and keep your noise within your property. He said that the document is great. But he thinks that the terminology can be much simpler. He thinks the document should be turned over to the City Attorney to simplify and edit. He thinks that the Council is spinning its wheels a bit and gave an example regarding the Fire Chief.

There was a discussion about snow removal and Alderman Robinson said in 2002 they eliminated the snow blowing, because there were issues with businesses especially with large parking lots, that is why it is removed.

Alderman Panus said that he is confused on what we can do and what we cannot in the ordinance.

Alderman Robinson agreed that the document should be all positive—what you can do, or all negative—what you cannot do.

Alderman Dougherty spoke about his neighbor who told him about his new eco mower, with the lights which allows him to mow at 11:00 pm, but since the new mower makes no noises he is not violating any code.

Alderman Panus said that is going in good direction.

Alderman Anastasia said that it is a good start and the City Attorney should look at it. He wondered about bars that are opened to 1:30-2:00. Alderman Panus said he wondered about them too.

There was a discussion about the time bars closed. Alderman Anastasia and Mayor agreed that the County sets the time.

The council agreed that 2:00 am is good, but Alderman Dougherty said that after many bars close, people hang out in the parking lots or in the vicinity and make noise.

Alderman Panus asked if this ordinance will allow bars to remain open until 2:00. Alderman Robinson confirmed that it will allow them to proceed without any changes to their operation.

Alderman Anastasia asked the mayor if this would be approved by the City Attorney and they a public hearing with be schedule. The Mayor believes that would be the course of action

Alderman Panus said that there would be a lot of input from both sides.

Alderman Dougherty asked about Hawkers, etc.

Alderman Panus wished he had looked it over more before the meeting as it is a lot to digest.

Alderman Crawford asked about the Peace Order. Section 7: Is the 24/7 quiet time around those places listed. Alderman Robinson Confirmed that it was Alderman Crawford asked about Church Festivals and it was pointed out that that was covered in permitted events.

Alderman Gonzalez asked about hooting and hollering. If a bunch of kids are running up the street 11 hoot and hollering with they get a warning based on my complaint.

Chief Rowley explained that the OPD would handle that situation based on what the council decides. But the caller would have to identify the kids. He added that they do not charge the parents of minors.

Alderman Robinson said a number of kids were loud by his house the other day, he did not call the police, because the kids would move on.

They discussed moving noises that cannot be identified. Alderman Crawford discussed his neighbor who would rev-up hos motor.

Alderman Witte said that we can write anything we want, but if people don't come to court. Nothing will happen.

Chief Rowley confirmed that the complainant would have to come to court if the police officer did not witness. Alderman Dougherty said that he sees that there are checks and balances to make sure that people are not frivolously filing complaints. However we still have people who are disrupting the neighborhoods.

Chief Rowley said that if people sign a complaint, they have to take a day off of work and sit in court all day. And that doesn't happen often.

Alderman Gonzalez said that the person who is properly motivated and unreasonable has the time to do that and asked if we are giving them the where with all do that.

Officer Rowley said that ideally the police are able to get there in time and be the witness.

Alderman Gonzalez said that he doesn't want to give the appearance that his is constantly dumping on this ordinance, he thinks that there is a great structure there,

Alderman Robinson said that where they will notice the improvement is in that people who have been getting away with something for a long time, will now notice that there is something out there that they can be charged with. If nothing gets passed he said that he can go back to his old ways, get on his motorcycle, go to the Mayor's house and do burnouts down his street. And then who is to say what law he is breaking.

Mayor Aiello said to please keep in mind that you are trying to give relief to people in the community who have been suffering from this kind of display. That's where this ordinance becomes a good thing.

John Crawford said that at the end of the day the Council passed the tenant law and so far so good, he thinks. It has made a difference in the neighborhoods. If this ordinance has problems, they can make changes later.

Alderman Anastasia said that it has been a long time coming

Alderman Witte said that the inspections law was not initially liked by the landlords

Alderman Robinson that he will make the suggested changes and pass it on to the City Attorney

Alderman Panus said that he would like to see the ordinance take the wording of what is not allowed or what is allowed.

Alderman Robinson agreed and said that he will change it.

Alderman Witte said that there are two additional items on the agenda. 109 North Second Street.

Mayor Aiello said that estimates have come in for tearing the building down and HH Rauh came in at \$12,750 and that there was enough money in the general account to take it down. But that will make the account short in the event of an emergency. He asked how the Council wanted to proceed or does it want to take money out of contingency.

Alderman Gonzalez said that he thinks it should be taken from the account and if there is an emergency later, they will take it out of contingency. The other committee members agreed.

Mayor Aiello said that the second item on the agenda is a foam trailer and he is going to have Chief Richardson explain.

Chief Richardson says the foam trailer since 2016 and that they have not had an inter-municipal agreement between the City and the State of New York Homeland Security. This is one of only 19 foam trailers in NY. He said that this is housekeeping. It authorizes the City to sign a contract.

Alderman Witte asked if we have ever had to use it and Chief Richardson said yes. It is one of the more active one in the state.

Mayor Aiello said that foam trailer was delivered in 2016 and there was no agreement needed but now there is. We will put the agreement together for next Tuesday

Mayor Aiello said that he has one more thing—good news. On the claim on the malware. The insurance company has been authorized to give us a check for \$79,592.92. There was a \$1000 deductible.

He said that we talked about increasing our insurance. Additional coverage for an additional \$12K in premium.

Alderman Crawford suggested opening a Capital Account from the insurance proceeds to fund the premium for the next few years. Other Council Members agreed and the Mayor will talk to the City Attorney on how best to proceed.

Alderman Gonzalez asked for a motion to postpone #49-20 until the next update. Motion made by Linda Witte seconded by Alderman Gonzalez. All Ayes.

A motion to adjourn was made by Alderman Witte, seconded by Alderman Gonzalez. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 7:50 p.m.