

Town of Middlebury
Public Health and Safety Committee
Meeting Minutes, October 24, 2022
Recorded Zoom --DRAFT

Present: Tom Hanley, Chair;- David Shaw, Chief MFD, Vice-Chair; Andy Hooper – Selectboard Rep; Tom Scanlon - Town Health Officer (arrived late); - Bill Kernan – DPW Director; - Gary Baker - At-Large (arrived late); Dan Brown - Selectboard Alternate; Laura Asermily – At-Large (zoom); Andrew L’Roe – At-Large (zoom)

Absent: Mike Leyden - Porter Hospital

Members of the public: Attendance: John McPartland - resident Washington St. Ext., John and Madeline Tenny - resident, Keith Ellery - Middlebury College

Chair called the meeting to order. 4:00pm

Approve the agenda – deletions/additions.

Motion to approve agenda: David S.

Second: Bill K.

All in favor, motion carries.

Review and act on the minutes from of May 23 meeting (attached)

Motion to approve the May 23, 2022 Minutes: Laura A. Moved to accept minutes.

Second: Dan B. All in favor, motion carries.

4:02pm Update on prior items:

Bird Scooters are not coming, Tom H. has not heard from them, and now it will be too late to get going; Cannabis retail has opened a few weeks ago and there has been no complaints with that.

4:03 Deliberate on the issue of the noise ordinance- suggestions for amendments:

John. M. would like Chief Hanley to lead this discussion. John M desired to have quiet times on Saturday and Sunday being changed from 1:00AM to 10:00PM so those quiet hours would be “across the board” the same for all days. He also asked how the PD can enforce the noise ordinance. Tom H. confirmed that since the ordinance was changed last year from criminal to civil, it has been easier to enforce as formerly the States Attorney was reluctant to prosecute, recommending this be a civil ordinance. The ordinance remained a criminal ordinance as under former rules persons didn’t have to identify themselves resulting in “John Doe” tickets, as the experience in Burlington.. It was therefore left criminal. The legislature subsequently amended the statute requiring persons subject to civil enforcement to identify themselves.

Chief Hanley mentioned that Addison County Restorative Justice has offered to work with the PD to be able to divert civil ,prosecution while holding any ticket in abeyance pending ACRJP completion of sanctions. The PD would write ticket for an offence and submit the original to ACRJP and hold off filing

with the Municipal Ordinance Bureau pending successful completion of any restorative process/sanctions.

Nuisance letters were sent out to two landlords following noise complaints this fall. Landlords responded almost immediately, and met with the Chief. There have been no new noise complaints reported from the two properties where the landlords have been contacted..

There is continued contact with Mr. Tinsley landlord at 53 N Pleasant St. Aside from noise complaints at 53 North Pleasant St, there are potential zoning issues as well as fire safety issues with respect to the garage on the property.

David S. reports that he met with Mr. Tinsley, landlord of 53 N Pleasant and Fire Marshall GJ Garrow and Asst Fire Marshal Josh Maxim at 53 N Pleasant St. By the fire marshals definition, the garage is public facility and must meet all fire codes. Mr. Tinsley does not agree that this is a public facility. John T. referenced fire codes in . Tom H. noted that per the Fire Marshal's order, once people are brought over for social events then one must comply with business regulations. The building behind 53 N Pleasant is classified as a garage to be used for storage only limited use by the tenants. This does not include social gatherings from people who do not live there.

John Tenny noted the only properties exempt from permits are single family, owner occupied, and agricultural use.

Tom H. mentioned that the current issues are noise and unpermitted use of the garage, though no noise complaints have been received since September. Officers have been instructed when responding to a noise complaint emanating from 53 N Pleasant to get head count and to notify the Fire Marshal about unpermitted use of the garage.

John T. wants to know why he should call MPD if they do not have jurisdiction on this matter. He asked if he should be calling the State Police as there are issues several nights a week. He has contacted the College and feels he is not getting a response from them. He feels there has not been enforcement of the ordinance and that is where the frustration lies. Tom H. confirmed there have not been calls regarding this issue for several weeks. John T. states that Fire Marshal has been called and there has not been a response from them. David S. states there are 30 days to respond to citation once given. Dan B. asked if there had been two warnings made by the Fire Marshall.

David S. feels that Mr. Tinsley is moving towards reaching the requirement of "business" use with property improvements.

John T. claims property is being used as a "private night club" and there are clear zoning violations. Tom H. needs reports for officers to go there to get proper documentation of these complaints. The police can't intrude on private property without a 3rd party complaint.

John T. believes the College isn't doing anything even though they are responsible for the students.

Madeline T. claims that her neighbors told her they have called with complaints to the police. Tom H. confirmed that calls that have been received have been responded to, and photos were provided by Kevin McGrath.

John M. asked if there could be calls made if there are more occupants then residents.

Tom H. reiterates that if no information is provided to them (MPD), this means he has no info to provide to the Fire Marshall.

John M. noticed there is beer pong table was covered in graffiti and wanted to know if it was reported. Tom H. confirmed it was not reported.

John T. stated he will be more vigilant in calling but wants to see enforcement. Tom H. did note that the Ordinance requires third party complaint, the PD cannot be the ones to make the complaint.

Dan B. asked if Tom H. if police can stop at the location when he drives by if they see there are multiple cars there. Tom H. states that once again, Police cannot be the ones to make the complaint and can't intrude on private property with a 3rd party complaint. These issues are civil matters subject to the Fire Marshal's jurisdiction and not crimes.

David S. indicated there is no town enforcement because there is no license to pull based on the current status.

John T. asked if Fire Marshall can lock the building down...he has authority. Tom H. noted that issues/complaints still needs it to be reported.

John T. has issue with another element of noise – altered vehicles, there is a noise ordinance, and it is not being enforced and wants to know why. Wants enforcement if the vehicle is intentionally altered to make noise.

Andy H. noted there are, for example, Motorcycle brands are made to be loud out of factory.

John T. asked If there is complaint made, will it be followed up on and Tom H. indicates yes, they will be address on a complaint basis.

Tom H. asked Mr. Tenny, Mr McPartland what changes to the noise ordinance are they seeking. John T. does feels 1pm is too late and needs to be changed. Tom H. explained the time prohibitions on noise are a prima facie standard, that is, any of the noise described in the ordinance are deemed to be unreasonable within the prohibited time periods.

John M. feels it should be 10pm, Laura A. agrees.

John T. feels there should be language revision for vehicles that have been altered to be louder. Andy H. noted within the ordinance there is reference of "devices to attract attention..." and this could fall under such reference.

Madeleine T. asked for specifics where/when "exemptions" are allowed within the ordinance. Examples were as such: Cross St. Bridge opening celebration, events with fireworks, Ciderstock, etc.

Mrs. Tenny also asked for clarification on what a Valcour record was. Tom H. noted it was the records system for the PD.

John M. asked if there were any other changes that Tom H. would like to see. Tom H. feels that it is better since the ordinance was made civil and left to States Attorney

Madeline T. continues to express frustration based on her feeling the police response was not fast enough. Tom H. points out police response may still validates the complaint, even if there is no one is left at the party.

Madeline T. wants to know why college has not addressed concerns. Tom H. has met with Derrick Doucet who has been helpful to the PD. Madeline feels they have not been helpful to them.

Tom H. stated that all should keep in mind that when an ordinance gets passed, it effects the whole town, amending the ordinance to 10:00 pm 7 days a week may interrupt legitimate activities on weekends.

Keith Ellery would like to reply to accusations on inaction, they have no legal enforcement as to what happens to off-campus activities and they only have ability to act administratively. This may not be satisfactory. Students have been spoken too, there is a good neighbor policy, and there is no ability for the college to take substantial enforcement action. Agrees it is best that agencies are notified immediately, not several days or weeks later. Resents being referred to as a "deaf ear", they do listen, and try to hold students accountable.

Dan B. asked if students who live off campus is a privilege, can they be brought back on campus? Do they have a code of conduct to adhere to? Students need to be held to same standard as those on campus. If they do not follow these standards, they can be brought back on campus. Keith E. will defer to Derrick Doucet as he is not sure about exact process.

Laura A. heard in earlier meetings that it was unclear as to how or who to contact at the college. She recommends something be added to public safety page on the website to have first contact information.

Tom H. confirms that he sends summary of complaints every Monday to Keith Ellery.

Laura A. wants to know who residents can call directly at the college.

Keith E. feels those with complaints, the most proper way to report would be directly to MPD as they are in position to take immediate action and obtain necessary information. Public Safety can only help and assist MPD but do not have the capacity to go to off campus. If Derrick Doucet were made the contact, there would be delay if there was an attempt to contact Doucet since he is there Monday through Friday and is not available on the weekends.

Laura A. wants to be sure the information is getting to Derrick Doucet. Keith Ellery confirmed that he disseminates the information he receives from Tom H. to Brian Lind, VP of Student affairs and in charge of community standards, but he is not at liberty to discuss action taken against students.

Laura A. still wants to have information made available on the website about the process of contacting the College, Andy H. stated that there was a letter sent out containing this information.

Tom H. asked to bring the meeting back to the topic of whether to make changes to the ordinance. At this time, if there is a problem...call the police.

David S. feels that the proposed 10:00PM is unreasonable for things like festivals, etc. 11:00PM would be more appropriate. Tom S. noted that in his experience, noise complaints are the hardest ordinances to accurately enforce, and those who make complaints need to be available for contact.

Andy H. asked how to address accountability to property owners and not the temporary tenants. Tom H. as long as the property owner shows they are making attempts to correct and take affirmative actions, they have done what is necessary.

Tom H. has reviewed many different ordinances and is not interested in dealing with arbitrary standards like “decibel levels” within the ordinance. Tom H reminds the board that the majority of noise complaints do not involve students, and those that do are isolated to a few locations. Many off-campus student residences are never subject to noise complaints.

Laura A. feels ordinance should be kept as is and shouldn't be changed.

Tom H. feels that they would need to work with zoning. Make ordinance as operational as possible...Police policy has been provided for board review. Would like a motion.

Andy H. made a motion to make change the time within the ordinance to 11:00pm on the weekends, David S. seconded. All in favor, motion carries.

Tom H. will be writing up the requested change and send it to the Selectboard, and this process might not be complete for 60-90 days.

Keith Ellery asked if this change would take effect now, and Tom H. said it would need to pass through the Selectboard as this is simply a recommendation. The ordinance amendment process requires selectboard review, then a public hearing and then a final board vote on approving or voting down the amendments.

Keith Ellery will discuss amongst colleagues at the College what can and should be put on website in regard to how contact should be made and to whom.

Tom H. cautioned that these types of “noise ordinance” changes tend to lead to vindictive conflicts.

Andy H. noted he has received feedback that this year's students are paying for last years transgressions. Tom H. has met with students at 53 N Pleasant and found them to be respectful. He notified them that tolerance and acceptance levels are low, but there have not been recent complaints, he feels that efforts are being made to mitigate noise complaints.

David S. noted the Fire Marshall and Fire Department processes can take more than 90.

Tom H. reiterated he will get recommendations to the Selectboard.

PH&S Committee issues will be on future agenda, maybe after First of the year.

Tom H. asked for motion to adjourn.

Tom S. moved to adjourn. 5:00pm. A. Hooper seconded. Motion carries. Meeting adjourned.