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MINUTES
SELECTMEN'S MEETING
TOWN HALL
GRIFFIN ROOM
WEDNESDAY, JANUARY 26, 2022
10:00AM REGULAR MEETING
REMOTE PARTICIPATION OPTIONAL

APPROVED

RELEASED

SELECTMEN PARTICIPATING: Michael MacAskill, Larry Ballantine, Donald Howell and Mary Anderson. Julie Kavanagh participated remotely.

ALSO PARTICIPATING: Town Administrator Joseph F. Powers

CALL TO ORDER

Chairman MacAskill opened the Board of Selectmen's meeting for January 26, 2022 at 10:00AM and noted that it is a workshop of the Board of Selectmen joined with the Harwich Police Chief, all 5 members of the Board, Attorney Jeff Blake from KP Law, one resident in the room and several people on line, the Town Administrator, and the town's license specialist. This workshop is on the liquor license and entertainment regulations. This is not a public meeting, the public will not be speaking today. Any suggestions on changes in the regulations will be brought to a public meeting.

NEW BUSINESS

A. Board Workshop - Overview of the Town of Harwich Liquor License Regulations provided by Attorney Jeffrey Blake, KP Law. Review and possible amendment to the Town's Liquor License Regulations.

Town Administrator Powers referred to the liquor license violation hearings that occurred in 2021. It was determined that it would be beneficial to meet and discuss generally the Town's Liquor License Regulations as it relates to the Board of Selectmen as the Local Licensing Authority.

Mr. MacAskill commented on Chief Guillemette's statistics on the number of incidences in 2021, the Liquor Regulations are lengthy and there are also questions about the Entertainment Licenses. They need clarification for Chief Guillemette so his officers don't do so a lot of work and then no violations are found at the hearings.

Attorney Blake gave an overview of the liquor regulations. He commented that they are very comprehensive regulations and listed the components. He brought their attention to page 11 regarding entertainment at the premises and noted those components and specifics. He commented on page 13 inspections and investigations. There is not someone who does an annual or monthly or seasonal actual inspection of the premises for purposes of liquor license compliance. That responsibility usually falls on the Police Chief on a reaction basis. He suggested possibly delegating that duty to someone in town who would go through and check for

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things such as relations posted etc. When the Town issues a type of discipline, the ABCC will be looking to see if the Town has guidelines and if the guidelines are followed. He briefly reviewed the rest of the regulations noting that they are very detailed, if it is interpreted reasonably, from a legal point of view, he doesn't feel there is a lot that needs to be amended. However, he will answer questions and hopefully clarify any gray areas.

Mr. MacAskill noted the proactive meeting they have at the beginning of the year with the Police Chief, the ABCC, Town Administrator, all liquor and entertainment licenses are invited. They require licenses to initial each page of the regulations to show they have them, they understand them, they've read them and they're going to adhere to them. He asked if that is required.

Chief Guillemette replied that they have a sign in process which is not mandatory. However, it is the licensees' obligation to read and understand the regulations,

Mr. MacAskill's wants to be sure that if they go to hearings or an ABCC hearing, they have one more thing to say they have done. He states for the record that we have a lot of great businesses in this town and they have had some problems with some businesses but for the most part it is a very responsible group of business owners. He wants to reduce the unnecessary cost to the Town and remove any gray area. He would like, with the Board's support, to have licensees sign the regulations to prove their end them. He would like to make that meeting mandatory, not voluntary.

Mr. Anderson commented regarding the signing, she would like to make the meeting mandatory and require that the licensees review the regulations with all their bartenders.

Atty. Blake responded that yes, they could require the owner and the manager and require that they provide copies or summaries or have them speak with their head bartenders about the regulations. He suggested the meeting be mandatory for the owners and managers. The regulation could be amended to require it and in order for them to get and keep their license they have to comply with the regulations. If licenses are renewed prior to the meeting and they don't attend, that would be a violation.

Mr. MacAskill commented that it should be mandatory and they'll have to figure out the timing on when that meeting would take place.

Mr. Howell agrees that the meeting should be mandatory.

Mr. Ballantine also agrees that the meeting should be mandatory and that the discussion is the timing. He asked if they are tied into the certain time the state gives them to renew the licenses.

Atty. Blake replied, yes. They go from January 1st to December 31st and they are renewed in December.

Ms. Kavanagh agrees that the meeting should be mandatory before licenses are issued and that they should have to sign the regulations. She also suggested that the license expert attend that meeting and ensure that everyone signs in and that they have an acknowledgement form that

they've received the regulations. The Board should also be telling them that they will be checked to see how often they are conducting trainings that people have signed off that they've had that training and it's in their files.

Town Administrator Powers commented that the effort that Chief Guillemette and the Police Department have been the lead on bringing everybody together before the season that brings the most activity. He commented that because it is seasonal a reminder should be sent to everyone before Memorial Day of what is expected of them. He continued that there are 2 types of managers, the owner in regards to licenses is the owner of record. That is the person identified when the establishment applies for the license in the first place and the person who becomes central to all of this.

Atty. Blake noted that that is also the person submitted to the ABCC. When they change the manager, they have to submit the paperwork. He agrees that it should be the owner of record and the manager.

Ms. Anderson suggested they add to the regulations that the owner commits to providing a copy and training all bartenders and managers.

Atty. Blake replied that it is doable and made suggestions on the wording. He also suggested it be other employees as well, not just bartenders that get training.

Mr. Ballantine commented that the problems they've had in the past have been lack of management being accountable, the managers need to be responsible for the facility. He clarified that Seasonal Licenses are April 1st and they can still require training before they give the licenses.

Atty. Blake noted that he can put in the regulations for the non-seasonal licenses that failure to attend the hearing will result in a non-renewal of the license. He asked if they would have another meeting for the seasonal licenses.

Town Administrator Powers commented that if the Board as the LLA is looking for acknowledgement and adherence to the regulations as part of the renewal process, the annual licenses, applications and materials, must be submitted in the month of November. The Board takes action in the month of December. If they want to make that part of the adherence it should be added to the check list in November. If they don't adhere to that, it could be considered a violation. He also specified the same for Seasonal licenses with different dates. It is more work but also more accurate.

Atty. Blake wouldn't consider it a violation but simply a condition to issuance of a renewal.

Mr. Ballantine suggested that to accommodate people out of state, the meetings could also be done virtually.

Ms. Anderson suggested to leave the meeting as optional but in the packet that goes out with their license, a copy of the regs and a sheet in the back that the manager of record has to sign and put the burden on them rather than the Chief having multiple meetings.

Chief Guillemette referred to page 20 of the regulations regarding service training. It requires an employee training program and a written policy that is supposed to be provided to the authority as part of the original renewal applications. He asked if that is with the renewal application.

Town Administrator Powers replied that we do not. That goes to the fact that we don't have an individual or agent looking for that specifically. Whether we get it or not they have the obligation of having it on their premises.

Ms. Kavanagh commented that they (licensees) are supposed to provide training however as we do seasonal checks she feels it should be simplified and not add more work for the Chief or anyone else. She feels they should look at making the meeting mandatory and non-back to the training, it is well written and the responsibility is on the owner. It should be done as a seasonal check. She read specifics of training within 30 days of hire and suggested they look into that one.

Mr. Howell commented that ignorance of the law isn't a defense, it's the obligation of the license holder to know this. The fact that something exists that hasn't been enforced doesn't mean that it's not enforceable. He is interested in licensees knowing that they are going to follow the law.

Atty. Blake suggested that the Chief hold the meeting to remind everybody during the busy season, what's going on. He can let them know that we are taking this seriously.

Mr. MacAskill commented that for him, it's most important to have a full packet when they go to an ABCC appeal. He doesn't want the Police Department to do the work and for the Board to have a whole bunch of hearings with a whole lot of non-finding of facts. He feels if the owners sign off on the regulations, it gives the Board more teeth when they go to the hearing process or an appeal process. He leaves it to the Police Chief, the Attorney and the Administration for suggestions on how we can make it more ironclad.

Mr. Howell is in favor of making it a mandatory meeting with some sort of sign off

Ms. Anderson asked for clarification on section 122 a & b, that deals with underage drinking.

Atty. Blake replied that it is for verifying that patrons are 21 years of age and older. It isn't that they understand and acknowledge they're bound by the regulations etc.

Ms. Kavanagh agrees that the mandatory meeting is important. She feels it's important that they understand that at any given time, we may go in and check that they have the correct documents and that they're doing what they're supposed to be doing. She also agrees that licensees should have to acknowledge receipt regarding the regulations and training of their employees. There is a lot of responsibility that comes with a liquor license and the Board has to ensure that they are adhering to those regulations. She would like to see a discussion on the 150 feet noise in regards to the entertainment licenses. There is a bylaw and it's attached to the liquor license. It puts the

onus on the Chief and the Officers and she wondered if it should be separated from the actual license.

Mr. MacAskill asked who does the inspections for the LLA and if nobody does it, who should do it.

Town Administrator Powers replied that he doesn't have a ready answer for that. The Chief has said that he has sworn Officers that are prepared to uphold the laws. A liquor regulation inspector is different, he feels it borders on an administrative function. It's a critical component that hasn't been captured directly. They all agree that these licenses are a privilege and the Town has the ability to revoke. If the Board has administration do that job, it changes the way they do hearings.

Mr. MacAskill commented that he feels the Police Chief or a designee should do it and explained his reasons including that it would have more of an impact than if anyone else did it. He asked Chief Guillemette if this something he and his Department could do if the Board requested that.

Chief Guillemette replied yes, all the officers are sworn in as agents of the local licensing authority. It may be beneficial to have an assigned group who were more highly trained. It should be a group of people but he would be willing to be part of that process.

Ms. Anderson recalled discussing that it would be someone from the Police Department, Fire Department and Board of Health to get at the whole picture.

Chief Guillemette replied that Yarmouth includes the Building Department.

Mr. Howell went back to the entertainment licenses and noise is mentioned in regards to the entertainment. Problems have come from the crowds making more noise than the entertainment.

Mr. MacAskill summarized that it would be the Board's choice, if not a group, that the Police Chief or designee do a compliance inspection any time he wants but certainly at the beginning of their opening.

Town Administrator Powers noted that when he started, he assured the Chief that they would have representatives from Health, Building and Fire as it relates to that process. Going forward, the expectation would be that there would be a representative from each of these regulatory departments, Building, Health, Police and Fire that are going to impact upon licensed establishments.

Mr. MacAskill commented that the Chief would be their designee from the Local Licensing Authority for their part of the inspection. The Town Administrator will come back to the Board with a proposal on that.

Atty. Blake referred to Mr. Howell's comment that the liquor license regulations adequately capture some of the violations that they had. He explained that under the statute for entertainment license there is mention of rowdy crowds. But we were enforcing under 138 and

the liquor license regulations. He referred to the wording of 1.10 b and d in the regulations and he feels that a lot of what went on is captured in those particular regulations.

Mr. Howell commented that they weren't looking at a violation of the entertainment license as much as a flat out violation of the liquor license itself. It doesn't have anything to do with entertainment, it's making sure they won't walk off the premises with liquor, they don't over pour, and there aren't rowdy crowds.

Atty. Blake commented that they overlap a lot. The hearings were held under Chapter 138, it could have been done under both.

Chief Guillemette commented that that's where the big stick of the LLA comes in, it's tied to their liquor license and it clearly is in the regulations.

Town Administrator Powers commented that he feels that 109 and 110 of the regulations negates any need for the noise bylaw Chapter 189 section G3. With any conflict between licenses and the bylaw, the licenses prevail. He feels the wording is redundant and dangerous. He continued explaining the wording in the bylaw. He believes the regulations are solid and suggested they omit any reference in the noise bylaw regarding the licenses under the regulations because the regulations are more powerful. He thinks they should consider as a town, to amend the noise bylaw to take that reference out.

Atty. Blake added that they could just change the letter of that to h and the next one g because that could be a standalone clause or provision.

Town Administrator Powers' suggestion is to alert everyone that they are relying on the licenses when it comes to licensed establishments.

Mr. Howell supports that change.

Ms. Anderson supports that change.

Mr. Ballantine supports that change.

Mr. MacAskill supports that change. They will draft that and bring it back part of the global package to a public meeting. He would like to present it to the town this year.

Chief Guillemette clarified that the Board is agreeing to exempt 138 licenses from the noise bylaw because any and all noise violations are covered within the regulations.

Mr. MacAskill replied, yes.

Ms. Anderson mentioned requesting some random reviews by the ABCC and she thinks they should do that. She asked what is needed in the packet to have more success at hearings.

Atty. Blake responded that on some, they were relying on witnesses that wouldn't testify and he explained other situations that would make it difficult to prosecute at the ABCC.

Town Administrator Powers commented that the other element that is looming over that is that the process that he, as the Hearing Officer undertakes and then the hearing the Board undertakes as LLA is different than what would take place at the ABCC under appeal.

Mr. Howell asked about witnesses testifying, that they weren't aware of hearings, and asked if they are considering the prospect that they could be a material witness.

Atty. Blake replied that if they get that information, yes they will. Often folk's don't want to come in.

Mr. Howell clarified that someone who was a witness may not know of the existence of the hearing. He wants to avoid that sort of situation.

Town Administrator Powers commented that a remedy to that would be that after he conducts the hearing he could rely on the use of council to notify individuals that they will be asked to participate in the Board hearing.

Mr. Howell commented that if they establish a baseline, there will be a clear understanding of the consequences if certain things happen.

Chief Guillemette noted that historically, they have not been inviting civilian witnesses to these events. He feels often a judge or jury is going to believe civilians over Police Officers but if a civilian witness will bolster your case, we should use them.

Mr. MacAskill commented that this meeting is to go to the next level, so everyone is clear on what they're doing. For hearings that come before the Board, they will invite anyone who wants to speak, to speak.

Town Administrator Powers clarified that at the hearing level, Atty. Blake is prosecuting the allegations provided by the police.

Mr. Ballantine commented that they should go back and look at their baseline criterion for what goes to a hearing. That process should be minimized and used responsibly.

Mr. MacAskill replied that they addressed that when they gave Chief Guillemette the discretion as to what goes forward to a hearing before the Board.

Chief Guillemette noted that it does say within the regulation in the hearing process that the Board is the one that is to decide. He will word a memo so the Board is aware of what it was that happened and it's his recommendation that it not move forward to a hearing and then the Board decides. If there is a close call, he will be in communication with Atty. Blake.

The Board was in agreement with that process.

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Town Administrator Powers noted that he would not be part of that transaction because as the Hearing Officer, that would be prejudicial.

Mr. MacAskill noted that 2 weeks ago they had an applicant that applied for an entertainment license for 6:00AM when they open to 1:00AM when they close so they can turn on a TV or a radio. The question is, do we need to issue entertainment licenses for radios and televisions?

Atty. Blake replied that technically speaking it would fall within the entertainment license. He sees no issue with the Board conditioning a license that says from 6:00AM to 1:00AM you can have your radio and TV on and from 1:00PM to 12:00PM you can have amplified music inside. That would give the establishment the comfort they are looking for.

Town Administrator Powers agrees with what Atty. Blake said but he wants to emphasize that when the license has conditions, when we go back to inspections that is something that has to be inspected.

Mr. MacAskill noted that the Board is in agreement and its incumbent upon the Board when they make their motions to be specific on times and conditions.

Mr. Ballantine commented that they should look to the Town Administrator for the language in the motions so they can be consistent.

Ms. Anderson commented that's incumbent on the applicant to ask for the TV and radio, the Board isn't automatically doing it for everybody.

Mr. MacAskill noted that it has been added to the application.

Chief Guillemette noted, on page 12 in the regulations on outside entertainment, there is a section regarding the 150 feet that needs clarification.

Atty. Blake noted that it can be interpreted as "from the outside in or from the inside out". He feels it could be plainly tweaked and gave suggestions.

Town Administrator Powers pointed out that sections of Harwich are very different. Harwich Port isn't far greater than 150 feet. He asked if references should be made to certain districts or villages.

Mr. Howell commented on the 150 in Harwich Port doubling the size of the establishment. There are many abutting residences there.

Ms. Anderson agrees with the boundaries of 150 from the property line.

Chief Guillemette noted, that going by boundary line puts larger businesses with a lot of property at an advantage. He feels it should be 150 feet from the source of the sound amplification system.

Mr. Ballantine is not comfortable with the point source because it can be moved around, he prefers the boundary and specify for each district.

Ms. Kavanagh also feels the boundary is more definitive.

Mr. MacAskill's preference would be boundary and leave the 150 feet alone. Also he doesn't want to restrict businesses any more than they already have. They can use the "nuisance" bylaw.

Chief Guillemette clarified that it would be the boundary line of the licensed premises. The 150' is measured from that property line back.

Atty. Blake noted that it would be the property line.

Town Administrator Powers noted that if they rely upon "nuisance", they also include it in the outdoor entertainment.

Ms. Anderson commented that if it needs to be clarified inside and outside, they should clarify that.

Ms. Kavanagh commented that the information about the boundaries should be readily available to the Police Officers.

Mr. Howell noted that they are getting a lot of one day license requests and he noted some issues with weddings at large houses.

Atty. Blake noted that it's a fairly common use for a one day license. Liquor license regulations apply to the licenses and it could be added to the one day license as well. They would then have the same obligations as any else.

Town Administrator Powers asked why they couldn't consider a non 138 establishment or a non-138 applicant or petitioner to seeking a special permit under Chapter 189as was originally conceived, he gave examples. He would refer to it as a permit for entertainment under Chapter 189.

Mr. Howell noted that he is referring to people who are advertising their homes for wedding receptions so they would not be requesting one but a series of one day license. He asked what the limit should be.

Mr. MacAskill will agenda that conversation for the future. He asked if some is issued a special permit, does that exempt them from the noise bylaw.

Chief Guillemette noted that it is in the bylaw, there is reference to that under exemptions.

Mr. MacAskill commented that they should be looking into taking the exemption out of the noise bylaw. They can add wording that they will give a special permit but they have to abide by the noise bylaw.

Town Administrator Powers suggested they have a specific form no longer relying on the one day license, they can establish a special permit under bylaw relief from noise.

Mr. Howell commented on the dormant license problem and he asked how long they are obligated to forebear that.

Atty. Blake noted that the ABCC's guidelines are that the license holder had to be aware that there is an issue with it and they have to be given at least 6 months to exercise it.

Mr. MacAskill commented Atty. Blake that it's been suggested that they have to do for one what they do for the other. He noted the criteria and difference.

Atty. Blake replied that they have to treat similarly situated establishments the same. Specific situations can be taken into account.

Ms. Anderson asked if there would be a problem if, when they do random checks, they focus on establishments that they have had problems with.

Atty. Blake replied that by definition, random should be random. But there are problems with specific establishments, there's nothing to prevent them from not doing a random check but simply a check.

Mr. MacAskill asked, indoor entertainment has to stay indoors but there are circumstances where a window can be opened and the entertainment can be heard outside. He asked for a suggestion on how that should be licensed.

Atty. Blake referred to the wording for nuisance and that it can be used if needed.

Mr. MacAskill asked Atty. Blake a question regarding a change in behavior after a permit issued and how the Board should handle the situation.

Atty. Blake responded that a revocation/suspension/modification hearing should be conducted.

Mr. Howell expressed concern that changes made to help during COVID are being expected to continue.

Atty. Blake replied that they should look back to the original license and what it was issued for before they renew. If licensed establishments want to continue with special rules or permissions, they have to go to the ABCC for that.

Ms. Andersen stated that they want to be fair to all the businesses and fair to the residents that live near the businesses. She hopes that whatever adjustments they make, help them to do that.

Town Administrator Powers noted that this was a non-primetime meeting of the Board of Selectmen and he hopes people watching take note of that and how seriously the Board members take these matters. He felt this was a helpful workshop and thanked them for taking time out of their daily lives because this is important to the town.

Chief Guillemette also thanks the Board for allowing him to be part of this discussion. It was a helpful discussion and he will pass the clarifications on to the Police Officers.

Atty. Blake noted that the regulations are strong but it was helpful to hear the Board's comments and concerns.

Mr. Howell moved to adjourn, 2nd by Ms. Anderson. Vote 5:0 in favor.

Respectfully submitted,

Judith R. Moldstad
Recording Secretary

