**ORDINANCE COMMITTEE MEETING MINUTES**

Thursday, December 8, 2022, 6:00 PM

Town Council Chamber and Zoom Meeting

<https://berlinct-gov.zoom.us/j/83810254680?pwd=Rk5BUEFzNHVNWWJxKzlGNzNrRW4vdz09>

Call-in Option: 1 929 205 6099

Meeting ID: 838 1025 4680   
Passcode: 367729

Members Present:

Mayor Mark Kaczynski – Chairman (arrived at 6:06 p.m.), Councilor Sandra Coppola, Councilor Jack Fazzino, Councilor Charles Paonessa, Councilor Peter Rosso

Members Absent:

None.

Staff Present:

Arosha Jayawickrema – Town Manager

Jennifer Coppola – Corporation Counsel

1. CALL TO ORDER

Councilor Paonessa called the meeting to order at 6:04 p.m.

1. PLEDGE OF ALLEGIANCE
2. AUDIENCE OF CITIZENS

Roman Borysiuk, 121 Devonshire Way

Mr. Borysiuk said that they are here to request to amend the current ordinance because it does not work. I can ride 25 ft. from my neighbor’s property line all day long from 8 a.m. to 8 p.m. every day. I can make noise and produce toxic fumes, all operating under the guidelines of this ordinance. A law enforcement official can say you are not being a good neighbor, but it is all within the guidelines of the ordinance. Ordinances are put in place to protect health, well-being and quality of life. It effects the entire neighborhood, we pay taxes and this effects the quality of our life and has a negative impact on property values. I love going fast on two wheels, or four wheels, but not in my backyard. It impacts our health and my wife has asthma. Our neighbors have other issues as well. Children’s birthday parties are also affected by the activity. It has a negative impact on the neighborhood. I agree that 25 ft. is ridiculous, and I don’t want to be calling the police who are short staffed as it is. Take a good look at the ordinance and ask yourself how would I feel if this was in my backyard? What impact does it have on the Town of Berlin.

Lydia Borysiuk, 121 Devonshire Way

Ms. Borysiuk said thank you for considering the concerns brought up. This ordinance was written 12 years ago and that was pre-COVID. COVID has introduced teleworking into our homes. I’m currently the Director of Pharmacy at the VA Medical Center and was working from home on conference calls. I heard the ATV’s riding for 3 to 4 hours at a time, which is very disturbing and interferes with the ability to concentrate when we are talking about very important things that impact the way that we take care of our veterans. It is a different time in which we are living now, and it requires us to do things differently. I challenge you to think differently as well and apply our current day environment to the decision-making process when considering this. If the definition of a formal complaint means that we have to call the police to have them come to the neighbor and say there is a complaint. I’d like to know what that definition is, but also challenge you to change it. There are some neighbors who are not willing to step up because they are fearful of retaliation. Also consider how many hours of continuous riding is tolerable. Because continuous riding from 8 a.m. to 8 p.m. doesn’t work. Not once this summer were we able to eat outside because of the riding along the property line that kicks up dust and effects my asthma. They are also inviting people that do not live at that residence to ride. We are paying taxes for property that we can’t use. We have to respect our police officers and allow them to address the really important issues. This is a nuisance kind of thing. The decibel level is important especially when we have to work from home.

Rita Bissonette, 135 Devonshire Way

Ms. Bissonette said she loves the discussion she is hearing. I have a special needs daughter who tires easily, and she naps most afternoons and it is continuous riding. It is not for an hour, it is 4 to 6 hours at a time. Even if you move it from 10:00 a.m. to 4:00 p.m., they will be there from 10:00 a.m. to 4:00 p.m. If I’m at my pool having a party, they are 25 ft. from my property line, but my cabana is only 25 ft. into my property. It impacts the ability to enjoy our pool. The distance between the residence and operation of vehicles needs to be greater than 25 ft. My pool is one of the few things we can participate in together with my daughter in the summertime. Also, we should be able to have a party without this constant noise level, dust and fumes. There is video available to see of the dust wave. Often it is more than 1 or 2 vehicles being ridden and the track is closer to our house than it is to their house.

1. APPROVAL OF MINUTES
2. October 26, 2022

Councilor Coppola moved to approve the October 26, 2022, meeting minutes.

Seconded by Councilor Rosso.

Those voting in favor: Mayor Kaczynski, Councilor Coppola, Councilor Fazzino, Councilor Paonessa. Councilor Rosso

Vote being: 5-0. (MOTION CARRIED)

1. OLD BUSINESS
2. Discussion on Off-Road Vehicles

Corporation Counsel Coppola said the Ordinance Committee received a sample of ordinances from other municipalities where this is also an issue. Berlin has a complaint about an individual property that is being used for activity of these types of vehicles which results in noise and dirt being generated. There is a concern of neighbors not being able to enjoy their properties. It is affecting their quality of life. The town’s ordinance from 12 years ago appears to be based on the noise issue. Other ordinances don’t identify a decibel level, but the Town of Berlin ordinance does. Middletown for example has more broad and discretionary language. Communities often have these vehicles on public roadways, sidewalks and commercial properties, but here it is a private property issue. Municipalities are concerned if there is permission by the owner to use on private property. The hours which this activity is allowed should be discussed. The ordinance has specific terms for setback of the activity and decibel restriction. Does the town want to revisit those particulars of the ordinance and consider making amendments or revisions to those sections?

Town Manager Jayawickrema said that he spoke with Lieutenant Solek of the Berlin PD and Section 17-127 of the ordinance as it pertains to privately owned land states that there must be a formal complaint made. Councilor Paonessa added that we already have an ordinance, but unless someone is willing to complain, we can’t change anything. Some ideas are eliminating the hours of operation and requiring written permission from a property owner to have them responsible for giving that person permission to ride. I hope that if someone has a serious problem, they would be willing to make a complaint.

Corporation Counsel Coppola said the body that administers and enforces ordinances is the Police Department because they are a 24/7 operation. The town of Berlin’s ordinance was written for the enforcement process to commence by complaint. Anonymous complaints could be something that is abused. The Town of Berlin chose to state formal complaint, but not all town ordinances do it that way. Councilor Coppola said maybe we can change the wording from formal complaint to just complaint and do something to change the hours. Councilor Fazzino asked to verify what the hours are. Corporation Counsel Coppola said 8 a.m. to 8 p.m. Monday through Saturday and 8 a.m. to 6 p.m. on Sunday. Councilor Fazzino said that is a wide range of time, maybe the hours need to be more confined. Corporation Counsel Coppola said the town is not overly broad in terms of hours. There could be seasonal hours, but 8 p.m. might be too late for the winter months considering inclement weather. Councilor Coppola added that changing to seasonal hours may not resolve the issue, it is still going to be a problem for some of the neighbors.

Councilor Rosso asked if we accept an anonymous complaint, or does it have to be a formal complaint? Councilor Fazzino also asked what the underlying concerns are why towns would not accept anonymous complaints? Corporation Counsel Coppola said anonymous complaints are more freely made and there is concern that process is abused. Neighbors can try to use the process against other neighbors they dislike if they do not have to put their name on a complaint.

Town Manager Jayawickrema said Police Chief McNally said that we would need a formal complaint to investigate, based on the language in the current ordinance Mayor Kaczynski added that you can’t always discount anonymous complaints. Corporation Council Coppola said you need to know what the circumstances are as to why they are seeking anonymity. Mayor Kaczynski said that he is not sure that it is the best idea to not report an anonymous complaint and not pass it along to the Police Department to investigate with their discretion. Councilor Fazzino asked if there is a duty to act on an anonymous complaint? Mayor Kaczynski said that if an officer hears of a complaint, they would add it to their daily patrol and go by there to determine if there is something there. He would like to talk with Police Chief McNally to get his thoughts on enforcing the current ordinance and whatever we change. The hours and the decibel level could be changed. Corporation Counsel Coppola said she wants to look further into the decibel level and will have a conversation with Chief of Police McNally. It is important to get some feedback from the Police Department. We need to get a sense of what are the types of vehicles they are seeing and what is the most common.

Councilor Coppola asked if there could be anything pertaining to the size of the property? Houses closer together are more likely to hear noises. Councilor Paonessa said he would like to see the landowner issue written permission for the operator. Corporation Counsel Coppola said that written permission by the landowner is part of the ordinance. That is supposed to be produced if requested by a Police Officer. There is basis for enforcement action to be taken without that permission. On page 9 under operational restrictions, section 17-124, it discusses proximity to adjoining land provisions, public roads and hours of operation and all have distance requirements. She asked if the Council would want to make the distance to the activity to be at a greater distance from neighboring properties? Also, is there something you want to change for dwelling vs. property line, that should be considered?

Audience of Citizens requested to speak at this point, Mayor Kaczynski said yes. See Audience of Citizens comments above.

Corporation Counsel Coppola said it was expressed that these kids are going out with some frequency, and we are not talking about just an hour. It is a lengthier amount of time. We could restrict that, but it is something that we need to ask Chief of Police McNally because that becomes a proof issue. If people are not going to submit a complaint and that is the basis of fining somebody, but we don’t have direct evidence of how long someone has been making noise. She said that she has heard there are multiple vehicles being used and she is curious if this is a situation where other kids are bringing vehicles to the property, or if all these vehicles are from this one property? Mayor Kaczynski said we do not have answers for that. Corporation Counsel Coppola asked if there are ever more than three vehicles used? Is there ever a dozen at any point in time? Mayor Kaczynski said no, just three to four. Corporation Counsel Coppola said all of that increases the impact. Town Manager Jayawickrema added that the lot size is important. Mayor Kaczynski said we have some homework to do and he will talk to Police Chief McNally. Councilor Fazzino said there is sufficient basis to enact a lot size limit, or setback justification. Corporation Counsel Coppola said yes. This is something that is in your ordinance, and you would be expanding on that. There is testimony received showing that is insufficient. There is justification for increasing that distance. We will have draft recommended language for the next meeting. Mayor Kaczynski said the next meeting will be on Thursday, January 5 at 6:00 p.m.

1. NEW BUSINESS
   1. Ordinance to establish a bid threshold for the purchase of goods and services, criteria for bid waivers, and the use of State of Connecticut or public purchasing consortia.

Town Manager Jayawickrema said during the Charter Revision process we had multiple discussions about the bid threshold. The state is at $25k, but the town is at $10k. We to move that number to $25k and recommend that Town Council set a public hearing for January. Councilor Fazzino asked would the ordinance supersede the charter. Corporation Counsel Coppola said the ability to set the threshold would be allowed under the Municipal Powers Act, 7-148. Councilor Coppola said that the town voted it down, but you can still hold a public hearing and do it that way. Corporation Counsel Coppola added there is a statutory provision in section 7-148v Requirements for Competitive bidding.

Councilor Paonessa motioned to make an ordinance to establish a bid threshold for the purchase of goods and services, criteria for bid waivers, and the use of State of Connecticut or public purchasing consortia and send it to Town Council for a public hearing.

Seconded by Councilor Coppola.

Those voting in favor: Mayor Kaczynski, Councilor Coppola, Councilor Fazzino, Councilor Paonessa, Councilor Rosso

Vote being: 5-0. (MOTION CARRIED)

Councilor Paonessa motioned to consider an ordinance to require elected and appointed public officials to be voters in town and responsible for at least $1k on the grand list.

Mr. Paonessa said he would like to discuss this motion at the next meeting.

1. ADJOURNMENT

Councilor Paonessa moved to adjourn at 7:15 p.m.

Seconded by Councilor Paonessa.

Those voting in favor: Mayor Kaczynski, Councilor Coppola, Councilor Fazzino, Councilor Paonessa, Councilor Rosso

Vote being: 5-0. (MOTION CARRIED)

Submitted by  
Alina Brown

Attachments:

* Minutes of October 26, 2022, meeting
* Items discussed at the 10.26.22 meeting
* Sample ATV Ordinances from other Towns
* Proposed New Language for Section 16-256