

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
December 1, 2020
Zoom # 885 5074 2364**

Present: Kenneth DiFazio, Chairman
Brian Dwyer, Vice Chair
Rebecca Haugh, Councilor
Christopher Heffernan, Councilor
Arthur Mathews, Councilor

Also Present: Joseph Callanan, Town Solicitor
Robert Luongo, Planning Director
Owen MacDonald, Traffic Engineer
Officer Flanagan, WPD
Fr. Sean Conner, Pastor, Sacred Heart Parish

Recording Secretary: Mary Barker

Chairman DiFazio called the meeting to order at 6:32 PM, with all members present.

A motion was made by Councilor Haugh to take measure 20 114 out of order and was seconded by Councilor Mathews.

A roll call vote was taken:

Councilor Haugh-Yes, Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio- Yes. UNANIMOUSLY VOTED.

20 114-Traffic Regulations Regarding Access to Sacred Heart School

This measure was referred to the Ordinance Committee on November 9, 2020. Traffic Engineer Owen MacDonald presented the background and a powerpoint. Officer Flanagan and Fr. Sean Conner, Pastor at Sacred Heart Parish were also present. Officer Flanagan approached the town because of the traffic congestion at drop off in the morning. With a consolidation of South Shore parochial schools, K-4 students now attend Sacred Heart resulting in an increase of 84 students and drop off's and bussing from other areas of town. To address the issues, a request was made to replace a missing "no parking" sign and that was replaced, and a few new suggestions came up. The first; a proposal that the drop off's be accommodated in the church yard and the buses at the location in front of the school, which places the students at the sidewalk. There, the students are met by an aide, who walks them the rest of the way to school. "No parking" during certain hours would help accommodate drop off and pick up and he requested they block and stripe "do not block driveway." Traffic can back up from the signal and queue up Washington Street and block the Commercial Street intersection during high traffic times at drop off. The pandemic has lessened traffic this year, but they anticipate it to increase later in spring or next year.

Chair DiFazio asked how an operator would know; will there be signage, or will it be painted on the ground? Mr. MacDonald responded that there would be a sign and it would also be painted. The chair agreed with the objective, but there are 2 lanes of traffic coming down the hill trying to beat the traffic signal. Second, is there something else to be done? Mr. MacDonald responded that there will be time-limited no parking (Slide 2) on Commercial Street (between 7-9 and 4-6 on weekdays). The restriction already exists on a section of Washington Street.

Councilor Mathews asked for a clarification on the parking restrictions. The language indicates 2-4 PM. Sacred Heart Pastor Fr. Conner responded that 2-4 is correct.

Councilor Haugh asked if the restricted hours will apply through the summer as well, or is it seasonal for the school year? Mr. MacDonald responded that it could be written that way. Chair DiFazio asked if it would be indicated on the sign? Is it okay to park there in summer? Mr. MacDonald responded that it is just not enforced in summer, but it could be tagged onto the sign. Chair MacDonald responded that it is a good point, since parking is at a premium at this location.

Fr. Sean Conner was present to clarify any questions. He noted that there are currently 285 students at this campus including 3-5 year-olds in kindergartens. A traffic evaluation was conducted with police assistance. 3 busses drop off, and there is no way to bring them into the lot with other vehicles, safely. The parents have a parking plan. With the additional students, and the missing signage and construction in the Landing, it was problematic. There is an issue with the intersection because of its makeup. The land next to the church is church owned. The cars parking on the right illegally are those causing the congestion. They will not let the bus stops be used by the car parkers. After drop off it isn't an issue. He appreciated the time and support from the town. Councilor Mathews asked if Fr. Conner can make himself available for the public hearing on December 21, 2020. Fr. Conner will check his schedule and let the committee know.

Officer Flanagan reported that they have a system where the busses can park on Washington Street, but cars park at the corner, and trucks attempt to make the turn, and even at the best of times the area is impassible for larger trucks. It's a very difficult area to navigate. Monitors are out to keep the area clear. Between Washington and Commercial Streets, to the opening at the churchyard it is very congested. Fr. Conner noted that having the area marked and open will be a good safety measure.

20 100-Citizen Petition-Request to Change Zoning Ordinances-Section 120-64.7.1

This measure was referred to the Ordinance Committee on September 8, 2020. The committee has met on September 22, October 6, 27 and November 10, 16 and 24, 2020. A joint public hearing, with the Planning Board was conducted on November 9, 2020. The Planning Board voted to approve the request at its meeting on November 10, 2020.

The chair noted to the committee the latest version with added sections and Councilor Haugh has updated the additional details from the last meeting.

Suggested Details to be added to measure number 20 100- 11/24/2020

Items in red to be inserted to the noted sections of measure 20-100

1-All electronic billboards must have light blocking/Siteline technology installed as approved by the Board of Zoning Appeals.

(add #9)

2-The **total** maximum height of electronic billboard must not exceed 35 feet from existing ground elevation, with the board maximum dimensions not to exceed 10.5' tall x 36' wide.

(delete # 4 section "the structure, height and size of the sign," and insert above language)

3-Hours of operation cannot occur outside of the hours of 7:00 AM to 10:00 PM.

(add #7A)

4-Content displayed on billboards cannot be sexually graphic, tobacco, alcohol or marijuana related, including paraphernalia.

(same content as # 6-decide which language the committee prefers)

5-Proponent must provide property owners located within 2,000 feet of proposed billboard structures regarding a public hearing for any new installation and/or modifications to existing billboards. This notification will be sent via certified mail and will specify the address of the proposed/modified billboard with a GIS map of the location.

(add #10)

Citizen Petition:

Eliminate Section C

No more than three electronic billboards are the only permitted use within the Billboard Relocation Overlay District and are subject to the approval of a billboard reduction and relocation agreement or development agreement for the reduction and relocation of billboards in compliance with this section.

Insert a new Section C as follows:

No more than two electronic billboards (either one or two faces) are the only permitted use within the Billboard Relocation Overlay District and are subject to the approval of a billboard reduction and relocation agreement or development agreement for the reduction and relocation of billboards in compliance with this section.

Insert New Section E.

Section E.

Construction of billboards and related facilities and structures within the billboard relocation overlay district shall be subject to a special permitting process by the Board of Zoning Appeals.

A decision shall not be rendered on an application for a special permit until the Board of Zoning Appeals has made its findings. Said finding shall include but not limited to the following:

1. Demonstrate compliance with the regulations of the Office of Outdoor Advertising.

2. Demonstrate that no residentially zoned property or pre-existing nonconforming property or other property used for residential purposes, excluding hotels or motels, is within a one-thousand foot radius of the proposed location.
3. Demonstrate that the proposed location does not adversely interfere with the use of adjacent properties, including, but not limited to, increasing noise or vibration, casting a shadow on, or causing a flicker on adjacent properties.
4. Demonstrate that the proposed billboard is in harmony with or suitable for the surrounding area and would not do significant damage to the visual environment. In making the determination, the special permit granting authority may consider, among other factors, health, safety, general welfare of the public, the scenic beauty of the area, the physical, environmental, cultural, historical or architectural characteristics of the location and area, proximity of the proposed billboard to schools, or places of worship or open space, architectural characteristics of the location and area, the total maximum height of electronic billboard must not exceed 35 feet from existing ground elevation, with the board maximum dimensions not to exceed 10.5' tall x 36' wide, and the number of signs on the premises and in the area where the billboard is to be located.
5. No flashing lighting shall be allowed. Flashing shall be defined as changing natural or artificial light or color effects by any means except as may occur when panels or messages change on electronic/digital billboards.
6. Content displayed on billboards cannot be sexually graphic, tobacco, alcohol or marijuana related, including paraphernalia.
7. The Board of Zoning Appeals shall determine the number of annual hours the billboard shall devote to public service announcements during a calendar year.
8. Hours of operation cannot occur outside of the hours of 7:00 AM to 10:00 PM.
9. Financial or other compensation to the Town, including but not limited to removal of existing non-conforming billboards, to mitigate the impact of the proposed billboard(s) on the Town, in a form and/or amount identified in an agreement approved by the Mayor and the Town Solicitor.
10. All electronic billboards must have light blocking/Siteline technology installed as approved by the Board of Zoning Appeals.
11. Proponent must provide property owners located within 2,000 feet of proposed billboard structures regarding a public hearing for any new installation and/or modifications to existing billboards. This notification will be sent via certified mail and will specify the address of the proposed/modified billboard with a GIS map of the location.

§ 120-64.7 Billboards.

[Amended 4-2-2018 by Ord. No. 17-127]

Billboards of any kind are prohibited outside the limits of the Billboard Relocation Overlay District.

§ 120-64.7.1 Billboard Relocation Overlay District.

[Added 4-2-2018 by Ord. No. 17-127]

A.

The Billboard Relocation Overlay District is established to provide for the removal and relocation of pre-existing, legally established billboards to new locations while achieving an overall reduction in the number of billboards throughout the Town.

B.

The regulations set forth below are generally applied to portions of properties located along Route 3 that are currently zoned Limited Industrial (I-1). The overlay shall be limited to an area extending 300 feet from the center line of Route 3 within the designated areas and as specifically identified on the Town of Weymouth Zoning Map.^[1]

[1]

Editor's Note: The Zoning Map is on file in the office of the Town Clerk.

C.

No more than three electronic billboards are the only permitted use within the Billboard Relocation Overlay District and are subject to the approval of a billboard reduction and relocation agreement or development agreement for the reduction and relocation of billboards in compliance with this section.

D.

All billboards and related facilities and structures approved or permitted pursuant to a billboard reduction and relocation agreement or development agreement must be within the Billboard Relocation Overlay District and must comply with the requirements of Code of Massachusetts Regulations as defined in 700 CMR 3.17 and with the guidelines developed by the Director of Planning and Community Development.

Vice Chair Dwyer wondered if there is subject matter expertise in light blocking technology; he tried to look it up. Cove had shown something to the residents. What is it and what does this represent?

Councilor Mathews responded that only two companies make it, so there are no specifics. The current billboard does not have it and those panels need to be replaced. Terminology was provided by the administration and Cove. If there is more elaborate language, he would be willing to add it and is open to any amendments to avoid any ambiguities.

#1:

Vice Chair Dwyer responded that they don't have the expertise. He would be reticent to name a vendor in the language but if it's overkill that's fine.

Chair DiFazio responded that, in the last year and a half, he has never heard it referred to as anything other than that (LBT). No specifications were included. Councilor Haugh noted it was mentioned in the agreement dated 2019. "Approved by the Planning Board or input" so the town has some control over what is used. The chair asked Mr. Luongo if there are any specs? Mr. Luongo responded that they could provide a definition. It's also known as site line technology and enables drivers to see it without light pollution to shield the residential areas.

Councilor Mathews noted that the language should read "as approved by the Board of Zoning Appeals," since this will have to go through the special permit process. Councilor Haugh agreed, but pointed out that she's hesitant that the BZA may not be experts. Councilor Heffernan noted that installation was supposed to be weeks away. LBT doesn't exist in MA or New England; PA is the closest state using it. If they are going to require it, it isn't within the regional area where they could see an example.

#2:

Height must not exceed 35' maximum (without building up the groundwork elevation); and billboard size is not to exceed 10.5x36'. Councilor Mathews noted this size billboard is the industry standard for the 2nd largest size.

#3:

Hours of operation
(Added as 7A)

After a brief discussion of clarity, Chair DiFazio suggested a language change to "outside of the hours of 7 AM to 10 PM."

#4:

content (same content as #6)

Councilor Mathews suggested he is amenable to either language. The chair asked what is the difference? Councilor Haugh asked, legally can they control adult-related content? Councilor Mathews is looking up the Article.

#5:

Abutters were notified re: new installation and modifications. Councilor Mathews noted that when 611 was installed almost the entire neighborhood did not receive notification from the state or the town. 500' is the definition of abutter, per the state. He wants to expand this 4 times. The state also requires certified notice. Do they want to clarify further as to how notify?

The chair asked do they think it needs to be mailed certified? Councilor Mathews suggested it should be. The Licensing Board has to notify and with a return receipt. Might also be required in others. He asked Mr. Luongo if the Conservation Commission

does via certified mail. Mr. Luongo responded yes. BZA notifies abutters, but not by certified mail and the state doesn't require it. The chair suggested that based on the potential number of notifications, regular mail should be fine. Councilor Haugh asked if the term abutter includes land owner only, or would it include every renter in an apartment complex? Mr. Luongo advised them that the owner of record is notified. If it is a condominium complex, the individual owners are notified. Councilor Mathews suggested if they are concerned with the cost of notification via certified mail, they could specify within 1000 ft. and could require certified, and outside of the limit could be by regular mail. Councilor Haugh suggested a 1/3-mile radius, although she is unsure of the population density. Chair DiFazio suggested they come to a consensus; how many more times will they come across this? Vice Chair Dwyer responded that as long as they are notified, they don't need to be particular about the means. Councilor Mathews responded it should be at least by regular mail, and right now it is certified within the 500'; he is just suggesting they extend the area. Mr. Luongo noted that because the process requires a special permit it's a hearing before BZA. There are advertising and notification timelines. They might want to consider changing "abutters" to "property owners within 2000 feet" since abutter means next to. Councilor Mathews also suggested they revise the language to include the location- abutters who were notified on Century Road were not provided with a map. It should specify the address of the proposed location along with a GIS map.

#4-

Solicitor Callanan noted that he was unaware they were changing this. The 1st amendment restricts this; the government can't put any related regulated content that can be challenged. All regulatory restrictions with Cove are negotiated. This has nothing to do with the already permitted billboards. Solicitor Callanan noted that the 1st amendment law has changed. They can't regulate tobacco, alcohol and marijuana (which is regulated through the Cannabis Control Commission). Chair DiFazio suggested if they enforce it at BZA- the proponent could make the case, and the town can deal with it at this point. Solicitor Callanan responded that it could be taken up in court and it would be difficult to enforce. Chair DiFazio suggested any content regulation would be case by case. Councilor Haugh noted that adult content on billboards is not uncommon through the South, but not seen here in Massachusetts. Is there a current local law, or is it the standard? The chair added further, if #4 were not here, is there anything in MA law that prohibits displaying sexually graphic or provocative advertising. Regulating it is very difficult. He doesn't see how it can be regulated.

Councilor Heffernan reported he did some research on billboard case law and asked the solicitor to elaborate *Euclid v Ambler* (1926) to regulate what is on a billboard. Solicitor Callanan responded with a more current case. Solicitor Callanan noted that the town's zoning ordinance is unconstitutional. Councilor Haugh noted they have a regulation on the books. The solicitor responded that it isn't enforceable. It's like putting a murderer to death in Massachusetts.

Chair DiFazio suggested if someone filed and wanted to insert their 1st amendment right, it would be before BZA and if no; then they could appeal through superior court. BZA would know at the time of the hearing if there were going to be an issue. He suggested they either take it out or leave it in and selectively enforce at the time of permit approval.

Councilor Mathews responded that it's frustrating. This is the 21st hearing on the topic. Even before, when they were discussing the ordinance change, this Council was led to believe two things; 3A billboards would come down, and the town would have control of the content. If the case cited by the solicitor was in 2015 then it's another false narrative that was presented to get the ordinance passed. Personally, he would vote to leave it in and let the proponent fight it. They won't know what they are going to advertise until after they obtain the permit. He wants people to know they do not support it. Members of the administration have said that in a public venue. It was inferred. This subject matter hasn't come up before now. He will vote to leave the language in. Chair DiFazio noted he is also inclined to leave it. Councilor Haugh noted that in the minutes from the 1/29/20 Ordinance Committee meeting, it was stated that they would be able to approve the content. She concurred they leave it in. Councilor Heffernan also agreed. He suggested it deserves to be debated by the full Town Council. The cases cited were not super precedents, this could be overturned. If a suit were filed, their ordinance would hold up. Do what is right by these neighborhoods and retain as much control as possible. Vice Chair Dwyer also agreed, whether or not it was challenged.

Councilor Mathews suggested if the Town Council passes this, he would like to consider sending a letter notifying Mr. Romano (Office of Outdoor Advertising at the state) of the changes which will be made. The objective is to give him notice as to what action the Town Council has taken. He would also send a copy of the proposed measure and the language, as well as the moratorium that is being considered. He is unsure Mr. Romano is aware of the issues that have come up while trying to mitigate this. He thanked the committee for their input. Hindsight is 20/20 –they thought this would be included in the original guidelines. These protections will help mitigate what they've seen with the first board.

Chair DiFazio noted they have the previous memo from the solicitor, dated September 22; in which he stated the town shouldn't be considering changing the ordinance because they previously changed it. They also have the recommendation from the Planning Board. Some final edits were made:

Councilor Haugh made another suggestion to change the addition of 7A- change to 8 to keep the same flow. That is assuming they change nothing from the citizen petition, and Vice Chair suggested using the term "amended."

Mr. Luongo added that in item #7, use "Board of Zoning Appeals" and not "Planning Board."

Councilor Haugh noted the language still says no more than 2 billboards. Councilor Mathews noted in the past they used the term "faces.-

A motion was made by Councilor Mathews to forward measure 20 100, as amended, to the full Town Council with a recommendation for favorable action and was seconded by Councilor Heffernan.

A roll call vote was taken:

Councilor Haugh-Yes, Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio- Yes. UNANIMOUSLY VOTED.

**20 117-Town Council Zoning Ordinance Amendment to Section 120-64.7.1
Billboard Relocation Overlay District (One Year Moratorium on New Permit
Issuance)**

This measure was referred to the Ordinance Committee on November 16, 2020. A public hearing has been scheduled. It is pending Planning Board review/recommendation. Chair DiFazio asked if there are any specific questions at this time? The committee will further deliberate after the planning board makes its recommendations.

Councilor Mathews noted as a point of information that the joint public hearing with the Planning Board is scheduled for December 7, 2020.

The chair reported that the administration provided answers today to Ms. Swain, Ms. Kabilian and Mr. Delaney. It is not on this agenda, but will be on the next, to review the responses and they can discuss at the next meeting. He will make sure the 3 citizens receive copies of the responses.

ADJOURNMENT

At 8:12 PM, there being no further business, a MOTION was made by Councilor Mathews to adjourn and was seconded by Councilor Heffernan.

A roll call vote was taken:

Councilor Haugh-Yes, Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio- Yes. UNANIMOUSLY VOTED.

Attachment: PowerPoint from Traffic Engineer Owen MacDonald

Respectfully Submitted by Mary Barker as Recording Secretary

Approved by Kenneth DiFazio as Ordinance Committee Chairman
Voted unanimously on 21 Dec 2020