

**MINUTES OF THE WEYMOUTH ORDINANCE COMMITTEE
THE MEETING OF MARCH 10, 2008
HELD AT THE WEYMOUTH TOWN HALL CHAMBERS**

Attendance:

Voting Members: Kevin Whitaker, Chairman; Arthur Mathews, Vice-Chairman; Ed Harrington, Brian McDonald, Michael Smart

Guests: Police Chief Thomas, Town Clerk Frank Fryer, Town Council Member Patrick O'Connor, George Lane-Town Solicitor

07 130 - Proposed Ordinance Revision to Chapter 6/Section 1300-Sex Offender Registry

Councilor Whitaker called the meeting to order at 8:20 p.m. The Chairman stated the first item on the agenda was 07 130 - Proposed Ordinance Revision to Chapter 6/Section 1300 - Sex Offender Residency Restrictions. The Ordinance wishes to amend through the addition of Section 1300 as follows:

Section 6 - 1300. SEX OFFENDER RESIDENCY RESTRICTIONS

Sec. 6-1301. Definitions. For the purpose of this article, the following terms shall have the respective meanings ascribed to them:

Adult Criminal Level 3 Sex Offender. A person convicted of a criminal sex offense and designated as a Level 3 sex offender by the Massachusetts Sex Offender Registry Board. The Board has determined that these individuals have a high risk to reoffend and that the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active community notification.

School. A licensed or accredited public or private school or church school that offers instruction in pre-school, including a licensed daycare or other business permitted as a school by the Town of Weymouth, or any of grades K through 12. This definition shall not include private residences in which students are taught by parents or tutors.

Sec.6-1302. Residency Restrictions. It shall be unlawful for any Adult Criminal Level 3 Sex Offender to establish a residence or any other living accommodations within one thousand five hundred feet of the property on which any school, day care center, park, or recreational facility open to the public is located. The one thousand five hundred feet restriction shall be measured from the nearest property line upon which the house, apartment complex, condominium complex, motel, hotel or other residence is located to the property line of the nearest school or recreation facility.

Sec.6-1301. Established Residents. Changes to property within one thousand five hundred feet of an Adult Criminal Level 3 Sex Offender's registered address which occur

after an Adult Criminal Level 3 Sex Offender establishes residency shall not form the basis for finding that a criminal sex offender is in violation of Chapter 6-1300.

Sec.6-1304. Notice to Move. Adult Criminal Level 3 Sex Offenders who resides on a permanent or temporary basis within one thousand five hundred feet of any school, daycare center, park, or recreational facility following passage of this ordinance, shall be in violation of this section and shall, within thirty days of receipt of written notice of the Registered Sex Offender's noncompliance with this chapter, move from said location to a new location, but said new location may not be within one thousand five hundred feet of any school, daycare center, park or recreational facility. The first day following the thirty day written notice shall be considered the first violation. Following the first violation, every day that the Registered Sex Offender continues to reside within one thousand five hundred feet of any school, daycare center, park or recreational facility shall be considered a violation each day.

Sec.6-1305. Penalties. The Town Council recommends the following penalties to the Mayor of the Town of Weymouth:

1. First Offense by Registered Sex Offender: Non-criminal fine of \$150.00.
2. Subsequent Offense by Registered Sex Offender: Non-criminal fine of \$300.00 and notification to offender's parole officer and/or probation officer, and the Commonwealth's Sex Offender Registry Board and the Sex Offender has violated a municipal ordinance. Except for persons who are not yet seventeen years of age when they commit any such subsequent offense, such a subsequent offense further constitutes a violation of MGL c.272, Subsection 59, for which the violator is also subject to immediate arrest without warrant.

This Ordinance expressly does not repeal or otherwise affect any other provisions of the Code of Ordinances of the Town of Weymouth, MA.

This ordinance was submitted by Patrick M. O'Connor, Councilor at Large and Thomas J. Lacey, District 2 Councilor.

The Chairman introduced Police Chief Thomas. Chief Thomas questioned enforcement of this ordinance. This item is a civil process and therefore, not mandated to be a police matter. He suggested the item could be handled through the Planning or Building Departments. He stated the police have done their job to bring the person to the point where they are registered. He is not advocating sexual predators, but people do have certain rights. There is nothing in the ordinance that allows them to appeal the opinion as to how things are measured. They must be more specific on that item. Also, on the fine process, what would occur should they refuse to pay? Councilor Mathews asked what the current process is after prison release for registering. Chief Thomas stated that they maintain a log book at the Police Station in the Town they reside along with a photograph. The public has a right to view the book. Councilor Mathews questioned the ability of the Planning Department to enforce this matter. The Police Chief offered the suggestion that notice could be sent via certified mail.

Councilor O'Connor offers this venue as a way to gather the Committee's comments and recommended that the Mayor is the party who would decide on who would enforce the ordinance. An appeal process could be built into the ordinance. Solicitor Lane stated the City of Marlboro utilizes the Police Department as the enforcement entity and they also have the duty of notifying. Councilor McDonald suggested utilizing the constables of the County Sheriff's office. Councilor Harrington agreed. Councilor Whitaker stated a notice could be given via certified mail. Councilor Mathews stated that it was important to get the public input before the Council votes on the matter. They expect to have a public hearing on March 17, 2008 and would probably have a recommendation for the full Council in April 2008. Chief Thomas stated even though the notification and fines would be a civil process, any violation of the ordinance could become a criminal matter. He feels it would send a strong message to the community. Solicitor Lane stated the Police Department is the catalog agency of the non-criminal identification of the sex offenders. Councilor Whitaker stated the information is available both on-line and at the Police Station. Chief Thomas stated that they want to give people hope to live their lives, and not to discourage them, but also want to protect the children in the community. Councilor Smart stated it was a great proposal. Councilor Whitaker stated they must proceed carefully and evaluate the legal issues.

08 018 - Acceptance of M.G.L. Chapter 53: Section 9A - Nomination of Candidates

Chairman Kevin Whitaker introduced Town Clerk, Frank Fryer, to speak on Item 08 018 - Acceptance of M.G.L. Chapter 53, Section 9A - Nomination papers for cities or towns; applicable provisions. Section 9A. In any city or town which accepts this section, in a city by vote of the city council subject to the provisions of its charter, and in a town by vote of the town meeting, the following provisions shall apply with respect to nomination papers: The final date for obtaining blank nomination papers for nomination to city or town office shall be forty-eight week day hours prior to the hour on which nomination papers are required to be submitted to the registrars of voters for certification. Each candidate shall file with the city or town clerk, prior to obtaining blank nomination papers, a statement containing his name and address, and the city or town office for which he intends to be a candidate. No candidate for city or town office shall receive more blank nomination papers than will contain the number of signatures required to place his name in nomination, multiplied by five.

Currently, candidates who seek to run for an elected position would obtain nomination papers from the Town Clerk's office without stating their name or address or what position they were running for. Acceptance of the M.G.L. would require individuals who are seeking office to state their name, address and the board or committee they wish to serve when they request nomination papers. Mr. Fryer stated it would be a good thing for the Town to have. He stated there are people who come into his office who have not made up their minds about what office they are running for, and take out several sets of nomination papers. Candidates would have 48 weekday hours to return their documents prior to the hour on which the Board of Registrars must receive the forms to verify the names of the voters listed. He stated the requirement would allow the clerks' time to verify the signatures on the nomination papers. Councilor Harrington asked if they can

adopt portions of the M.G.L. or must it be in its entirety. Solicitor Lane stated they must accept the law in its entirety. Councilor Harrington stated that the proposal would give an incumbent an unfair advantage in a pending election and put a challenger at a disadvantage by having to state their intention to run for office immediately. Councilor Whitaker stated that it might bring the public interest into the election sooner. He did not believe it would put a challenger at a disadvantage. Councilor Mathews asked what other towns have adopted this practice. Mr. Fryer confirmed that the Town of Braintree has adopted this policy. Councilor Mathews stated that this must be an issue and if this will provide relief for the Town Clerk's office, he would have no problem with the proposal.

08 022 - Proposed Ordinance Revision to Chapter 8/Section 8-701 - Stormwater
08 023 - Proposed Ordinance Revision to Chapter 8/Section 8-702 - Illicit
Connection/Discharge

The Chairman introduced Chip Fontaine, Town of Weymouth Engineering Department, to speak to 08 022 - Proposed Ordinance Revision to Chapter 8/Section 8-701 - Stormwater and 08 023 - Proposed Ordinance Revision to Chapter 8/Section 8-702 - Illicit Connection/Discharge. Chip Fontaine stated the proposed ordinance 08 022 is related to the Federal governments push for stormwater quality protection. They have focused on mid-sized communities requirement to clean the stormwater quality by May 1, 2008. There are two ordinances the Town of Weymouth has been working on via a Review Committee with the following members: Maryellen Schloss, Conservation Officer; Dan McCormick, HAZMAT; Rod Fuqua, Planning; Jeffrey Richards, Inspector of Buildings; Jeff Bina, Engineering; Solicitor George Lane, Paralegal Marsha Conley Lee Hultin, Mayor's Office and Robert O'Connor, DPW Director. They have reviewed other communities ordinances and used them as guidelines to develop the proposed ordinances to meet the new Federal regulations. They have also customized them for the Town of Weymouth. Mr. Fontaine stated when there is a Town project, the applicant is asked to submit an application to the DPW to ensure their compliance. It was asked how the public could make comment on such applications. Mr. Fontaine stated they are simply reviewed in house by the DPW and Engineering Departments. They ordinarily do not involve a public review, unless they are required to go before the Conservation Commission, Planning Board, or the Zoning Board of Appeals. It was suggested the applicant conform to this ordinance before going before the Conservation Commission with an approval process which shows via plan or states 'Met Requirement of Stormwater Ordinance'. Mr. Fontaine acknowledged the comment and stated it would be coordinated between the departments and boards in sequential order. Councilor Whitaker asked what the implications would be if the ordinance was not in place by May 1, 2008. Chip Fontaine stated there are positives and negatives to the proposal. It is similar to what Conservation attempts in protection of the water sources. A town- wide ordinance would catch all projects. It is worded to mirror the Federal law and is beneficial to the environment. Councilor Mathews stated this would work to get the stormwater out of the sewerage lines. Councilor Smart asked if the fines were set by the State. Mr. Fontaine stated it creates a state level permit to comply with Federal regulations and that is where the civil penalties arrive. There are criminal and non-criminal penalties. The guidelines

used were similar to the samples from Milton, Salem and Foxboro. This is the first ordinance geared to construction and looks at illicit connection and discharge of anything other than stormwater to the drain system.

A MOTION was made by Councilor Mathews and seconded by Councilor Smart to recommend favorable action on 08 022 - Proposed Ordinance Revision to Chapter 8/Section 8-701 - Stormwater to the full Town Council and was UNANIMOUSLY VOTED.

A MOTION was made by Councilor Mathews and seconded by Councilor Smart to recommend favorable action on 08 023 - Proposed Ordinance Revision to Chapter 8/Section 8-702 - Illicit Connection/Discharge to the full Town Council and was UNANIMOUSLY VOTED.

Councilor O'Connor spoke to measure number 07 130 - Proposed Ordinance Revision to Chapter 6/Section 1300-Sex Offender Registry. He stated the proposed ordinance was submitted in October of 2007. In early 2008 Chairman Whitaker made the recommendation this be reviewed by Solicitor Lane. That has been done. He met with the committee last week and they recommended getting opinions from Solicitor Lane, the Police Chief and the Mayor's Office. The committee has two of the three opinions and feel they will receive a favorable opinion from the Mayor's Office. He leaves it up to the committee as to where they go from here, and to Solicitor Lane as far as the language. Councilor O'Connor expects things to go positively at the Public Hearing on March 17, 2008. Before the public hearing, he expects to put forward another revision as mentioned regarding enforcement and the appeal process. He is pleased the Police has no real objection and hopes it goes along smoothly to help protect the children. He appreciates Chairman Whitaker giving it its just due. He asked if there were any questions.

Solicitor Lane gave comment on the appeal process and the enforcer of the ordinance. He referred to Chapter 40, 21D as the non-criminal appeal process. One thing that is open, however, is who would be the enforcer, if not the Police Department. Solicitor Lane stated the City of Marlboro uses the Police Department to send notices to the offenders. He continually envisions the Police Department as being involved. This item merits further discussion. The Eighth Circuit Federal Court indicates the safety zones have passed the Federal Court tests.

Councilor Mathews is hopeful Councilor O'Connor could submit the proposed ordinance with any additional changes to the Committee prior to the public hearing on March 17, 2008.

Councilor Whitaker stated the timeline would be the public hearing on March 17 followed by the Town Council meeting in April-at which time they could make the recommendation to the Full Town Council. This would allow for time to work out the fine details after hearing from the public, to make a recommendation.

Councilor McDonald stated that as it is a civil process matter they could utilize the

Norfolk County Sheriff's Office and if they became aware of a violation, a call could be made to the process server. Councilor Harrington agreed he liked the idea of the Deputy Sheriff being involved. He asked where the fine monies would go, to which Solicitor Lane stated it would go to the General Fund. Councilor Whitaker stated they could suggest the Mayor consider utilizing the Sheriff's Office, but it cannot be written into the ordinance itself, as it is administrative. Councilor O'Connor stated he would eliminate the second sentence of item #2 under the Sec. 6-1305 penalties section.

Councilor Smart stated he would like them to move forward with this item since it protects the rights of the people in the area and gives them greater peace of mind.

Councilor Whitaker stated they will determine how the 1500 buffer zone classification was made and must state the appeal process. They will have a public hearing, followed by comments from State Legislature, and schedule a meeting in a week's time after the public hearing to have a final pass over the ordinance.

Councilor Mathews stated they cannot amend measure 08 018. It would have to be adopted as proposed or leave it as is. Councilor Mathews suggested they make a motion to recommend favorable action to full Town Council.

A MOTION was made by Councilor Mathews and seconded by Councilor McDonald to recommend favorable action on measure 08 018 - Acceptance of M.G.L. Chapter 53: Section 9A - Nomination of Candidates with THE MOTION PASSED with a vote of 4-1 with Councilor Harrington opposed.

A MOTION was made by Councilor Mathews and seconded by Councilor Smart to adjourn at 10:00 p.m. and was UNANIMOUSLY VOTED.

Respectfully Submitted,
Doreen Teodorson/Recording Secretary

Councilor Whitaker, Chairman