



BOARD OF ALDERMEN
SHELTON, CONNECTICUT
Public Hearing on Ordinances
February 24, 2009

CALL TO ORDER/PLEDGE OF ALLEGIANCE

Aldermanic President John Anglace opened the Public Hearing at approximately 7:20 p.m., immediately following the Public Hearing on Water Main Assessments. All those present pledged allegiance to the flag.

ROLL CALL

Aldermanic President John F. Anglace, Jr. - present
Alderman Lynne Farrell - absent
Alderman John "Jack" Finn - present
Alderman Stanley Kudej - present
Alderman Kenneth Olin - present
Alderman John P. Papa - present
Alderman Jason Perillo - present
Alderman Anthony Simonetti - present

Legal Notice - City of Shelton

NOTICE IS HEREBY GIVEN THAT THE BOARD OF ALDERMEN WILL CONDUCT A PUBLIC HEARING ON THE FOLLOWING:

- PROPOSED ANTI-GRAFFITI ORDINANCE
- AMENDMENT TO ORD. 713 - OPEN BURNING ORDINANCE

SAID PUBLIC HEARING SHALL BE CONDUCTED ON TUESDAY, FEBRUARY 24, 2009 IMMEDIATELY FOLLOWING THE PUBLIC HEARINGS ON WATER MAIN ASSESSMENTS SET FOR 7:00 PM IN THE AUDITORIUM AT SHELTON CITY HALL, 54 HILL STREET, SHELTON.

ALL PERSONS WHO HAVE AN INTEREST THEREIN MAY APPEAR AND BE HEARD IN RELATION HERETO.

FEBRUARY 12, 2009

1. PROPOSED ANTI-GRAFFITI ORDINANCE

WHEREAS, the Board of Aldermen of the City of Shelton is enacting this Ordinance to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Board of Aldermen is authorized to enact this Ordinance pursuant to the Charter of the City of Shelton and Connecticut General Statutes §7-148; and

WHEREAS, the Board of Aldermen finds the graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the City of Shelton acts to remove graffiti from public and private property, the graffiti remains and continues to be injurious to the public health, welfare and safety of the City. Other properties will then become the target of graffiti and entire neighborhoods will be affected and become less desirable places in which to be, all to the detriment of the City of Shelton; and

WHEREAS, the Board of Aldermen tends to the adoption of this Ordinance to provide additional enforcement tools to protect public and private property from acts of graffiti, vandalism and defacement. The Board of Aldermen does not intend for this Ordinance to conflict with any existing anti-graffiti laws promulgated by the State of Connecticut.

A. Definitions.

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance.

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

B. Prohibited Acts.

(1) **Defacement.** It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any city-

owned property or, without the permission of the owner or occupant, on any non-city owned property.

Possession of Graffiti Implements.

(a) **By Minors at or Near School Facilities.** It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers.

(b) **In Designated Public Places.** It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, , recreational facility, or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain or similar types of infrastructure unless otherwise authorized by the City.

C. **Enforcement.**

(i) Any person applying graffiti on public or private property shall have the duty to remove the graffiti within 24 hours notice by the City or by the owner of the property involved. The City of Shelton Police Department shall be notified and such removal shall be accomplished in the manner directed by the City of Shelton Police Department. Failure to comply with any such demand shall constitute an additional violation of this Ordinance.

(ii) **Property Owner Responsibility.** If graffiti is not removed by the perpetrator according to the Section above, graffiti shall be removed pursuant to the following provisions:

It is unlawful for any person who is the owner or who has primary responsibility for control of property or for the repair or maintenance of property in the City to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following:

- (1) The street address and legal description of the property sufficient for identification of the property;
- (2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
- (3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance and the City shall have the right to remove the public nuisance at the cost and expense of the property owner.

(iii) **Right of City to Remove.**

(a) **Use of Public Funds.** Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located.

(b) **Right of Entry on Private Property.** Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal the City shall attempt to secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Ordinance, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the

terms of this Section, the City shall commence abatement and cost recovery proceedings for the graffiti removal.

- D. **Prohibition of Spray Paint to Minors.** It shall be unlawful for any person other than a parent or legal guardian, within the city limits of Shelton, to sell, exchange, give, loan or otherwise furnish any aerosol point container, broad tipped marker or paint stick, spray paint cans to any individual under the age of 18 years of age without the written consent of the parent or guardian the person. Merchants shall be required to view photo identification from the purchaser of proof of age. The illegal sale of spray paint cans to minors, as well as the above-mentioned crimes, shall be investigated, catalogued and enforced by the Chief of Police and/or his designee and shall be a violation of this Section.

- E. **Penalties.** Any person violating this Ordinance shall be punished by a fine of two hundred and fifty (\$250.00) dollars.

In addition to any punishment specified in this Section the violator shall make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.

NOTE:

The City has specific powers to abate nuisance under §7-148 of the Connecticut General Statutes:

- (7) (A) Establish building set back lines, including signs (v)
Over sidewalks (vi)
- (E) Definition of nuisance, very broad
- (H) Public Health & Safety

Regulate and prohibit unreasonable annoyance (ii)

Regulate public grounds for public and private purposes (xii)

Make and enforce regulations to protect and promote safety (xiii)

A copy of above referenced section is attached.

James Oram, 181 Division Avenue
Chairman, Citizens Advisory Board

Our board was very involved in the beginning with the need for this graffiti ordinance. We recognize that graffiti in the downtown area especially could drive away potential businesses, investors, residents and so forth. The graffiti ordinance is key to all of the work we're been doing, I think 23 years for our citizens board, 25 years for the Shelton Economic Development Corporation, all in trying to revitalize our downtown and revitalize our riverfront. This ordinance is a key element in attracting new residents, new businesses and new investment. We thank you for your work on that ordinance. We'll be very pleased when it's passed and we can go on and use it to help us prevent the kind of things we've been seeing around town.

Alderman Anglace stated, I know your organization had a great deal to do with the assistance in getting this ordinance to where it is. Would you comment with respect to the period of time a person has to clean up a graffiti thing?

Mr. Oram replied, it's 10 days.

Alderman Anglace stated, I received a comment that goes like this, "I'm innocent, somebody did this to my property. Now you sent me a letter and you're forcing me to clean this up in 10 days. Can you give me a little more time?"

Mr. Oram stated, it's a concern and I know that the research, things you can look at on the Internet, things that happened many years ago in New York City as an example show that sooner is better. Eradication of graffiti done very quickly allows the artist to come back the next day or two and find that his work is done and gone, and it prevents them from showing off their work. It worked in the subway cars in New York City where they were taking the graffiti off the cars within 24 hours and pretty soon graffiti artists found another place to go. So sooner is better. Quicker is better.

Alderman Anglace stated, the ordinance doesn't provide but would it be okay in your view if we allow them to ask for an extension of time for whatever reason and grant it?

Mr. Oram replied, well, if there's a good reason. Again, we're asking people to lay out their money, their labor and their time. If it's the right thing, the Board of Aldermen feels it's the right thing to grant that difference, I think it's okay.

Alderman Papa stated, Jim helped us a lot with Public Health & Safety, and Public Health & Safety took this ordinance to task, and the Chief gave us a lot of information. Jim and his group did, Corporation Counsel Welch came in and gave us a good idea of what we're trying to do. They have 10 days, and if it's on public property the Police Department, as you said before, gives that property owner 10 days to clean up. I'm sure if there is a problem with something there could be an extension. If it's on City property, as soon as we get the information from the Chief, the Chief tells either Parks and Recreation or Highways and Bridges to go out and clean up that particular area.

As you know there are a couple of things we added in here. There is also a \$250 penalty for violation of anybody who is caught. Also, we notified some of the stores in the neighborhood like WalMart and the paint stores, department stores. Any minor under 18 will not be allowed to buy an aerosol can of paint. Merchants will ask a question as to what particular reason, and get a photo ID, just to try and control it to a certain degree. I thought that was very helpful. We're also trying to work with Jim. Jim said you talked to one group about giving out rewards.

Mr. Oram stated, we looked at my group first, but we are also attached to the City so we couldn't do it ourselves. We talked to some of the merchants. We haven't really put together anything yet with all of them. We will continue to work on that. Also from the education standpoint where one of our members is working on doing a poster contest so they could get into the schools and try to convince some of the kids that graffiti isn't such a good idea.

Alderman Finn stated, just on the timeframe for removal, we were told that the longer you wait the more difficult it is to remove the graffiti. Whoever is doing the graffiti has gotten a bit wiser. They are using glue and they spray over the glue. If you wait more than 10 days it will be impossible to remove.

Alderman Papa stated, I don't think it's a problem with the public buildings, because the City is going to react in less than 10 days. It's the private homeowners who have businesses or homes that people are using graffiti on that might be a problem.

Administrative Assistant Sandra Nesteriak , 21 Maple Lane

Upon reading this, I'm not sure who does the notification to the private property, the Police Department? It's not clear. Under c) enforcement it's clear if they catch somebody doing it, but for the property owner responsibility section, it's not clear to me and if you are going to add a waiver provision please include the method for the waiver in the ordinance. Who sends the letter, because it doesn't say.

Alderman Papa stated, the Shelton Police Department shall be notified as such...directed by the City of Shelton Police Department.

Mrs. Nesteriak stated, right, and it said that a certified letter is sent to the property owner. It is not clear to me from reading this who sends the letter.

Alderman Papa replied, the Police Department.

Mrs. Nesteriak asked, could you clarify in the ordinance? I think it should be clear because if it's not clear to me, we need to make it clearer. I think that you may want to consider some sort of waiver or provision. But that should also be included in the ordinance and not left up in the air.

Alderman Anglace stated, the overall sense to me is that this is good ordinance and you did a good job with Public Health & Safety working it up and you have some good support.

Alderman Papa stated, that was a good comment by Sandy, and Corporation Counsel Welch is making notes right now so he can make that adjustment for us.

Alderman Anglace asked if any other member of the public wished to be heard. Being none, Alderman Kudej MOVED to close the public hearing on the anti-graffiti ordinance; SECONDED by Alderman Simonetti. A voice vote was taken and the MOTION PASSED 7-0.

2. PROPOSED AMENDMENT TO ORDINANCE #713 – OPEN BURNING

ORDINANCE 713

AN ORDINANCE REGARDING OPEN BURNING

SECTION 1 – PURPOSE AND DEFINITIONS

- a) Purpose of Ordinance: It is the purpose of this Ordinance to prescribe regulations consistent with State and nationally recognized standards for the safeguarding of life, health and property from the hazards of fire and explosion arising from the kindling of outdoor fires, wood stoves and outdoor wood burning boilers and furnaces.
- b) Definitions: The following definitions shall apply to all parts of this Ordinance:
 - i) Combustible Material: Any substance which is inflammable, readily ignitable or free burning, such as but not limited to paper, rubbish, wood, grass and leaves.
 - ii) Grill or Outdoor Fireplace: Any metal or masonry structure used for the sole purpose of cooking outdoors.
 - iii) Outdoor Fire: Any fire in the open air, or outside the confines of a building for the purpose of disposing of any combustible material.
 - iv) Nuisance: An interference with public health and safety to an individual or individuals who come within the influence of the regulated activity or that constitutes an unreasonable annoyance to those living or owning property in the vicinity.

SECTION 2 – POWERS AND DUTIES OF THE FIRE MARSHAL

- a) Inspection: The Fire Marshal shall be certified as an open burning official as same is defined by Connecticut Administrative Regulation Section 19-508-17, as may be amended from time to time and shall be authorized to enforce the provisions of this Ordinance. To assist such enforcement, the Fire Marshal is authorized to enter any yards for the purpose of detecting and extinguishing fires created without compliance with this Ordinance.

SECTION 3 – PERMITS

- a) Application for Permit: All applications for permits required by this Ordinance shall be made to the Fire Marshal in such form and in such detail as he shall prescribe. The Fire Marshal may require, where he deems it necessary, proof of compliance with the City zoning or building ordinances and may revoke a permit in case there has been a false statement or misrepresentation as to a material fact in such application.
- b) Issuance or Permits: The Fire Marshal shall issue all permits required by this Ordinance when satisfied that the activity or condition for which the permit is sought poses no threat to life, health or property and is in conformance with the State of Connecticut Administrative Regulations Section 19-508-17 relative to the control of open burning, as same may be amended from time to time.
- c) Fire pits, wood fired barbecues, chimineas and campfires are exempt from the open burning permit guidelines provided they do not create a nuisance and are operated in accordance with any restriction or restrictions imposed on such burning.

SECTION 4 – OUTDOOR WOOD BURNING STOVES, BOILER AND FURNACES

- a) Outdoor wood burning furnaces, stoves and boilers as defined by Connecticut General Statute 22a-174(k) must comply with all relevant Connecticut Department of Environmental Protection regulations and requirements. Such furnaces, stoves and boilers also require building permits from the building official and fire marshal before installation.

SECTION 5 – NUISANCE AND HAZARDS

- a) Any fire shall be considered a non-permitted fire if it is determined to be a hazard or nuisance by the Fire Marshal, even if proper permits have been appropriately issued.
- b) The Fire Marshal, after having been made aware of a particular open fire and having satisfied himself as to the circumstances and applicable requirements, shall cause any fire not specifically permitted or any fire deemed a hazard or nuisance to be immediately extinguished as a non-permitted fire and may summon the fire service to accomplish this extinguishment.
- c) Upon receipt of a complaint concerning any open fire, the Fire Marshall shall cause an investigation to be made to determine the validity of the complaint and shall take enforcement action when deemed appropriate.

SECTION 6 – APPEAL

- a) Any person issued a citation pursuant to this Section may appeal said citation in accordance with Section 1-11.1 of this Ordinance.

Alderman Anglace stated, as you all know, Alderman Perillo had done some work on this and got back to us through Counsel. The thing he pointed to was the nuisance part; that's what is being adjusted so they can properly enforce it; it's section 1.b.iv.

Alderman Kudej stated, I know there have been discussions on wood burning stoves.

Alderman Papa stated, it's outdoor – outdoor wood-burning boilers.

Alderman Anglace stated, what brought this about was the fact that there was an indoor wood burning furnace on a one-story house, and the houses were very close to one another. The person next door on the second floor was getting the smoke coming into their kitchen and couldn't enjoy the peaceful use of their property. That is what we are attempting to address. We have to go back and take another look at it because after reviewing it with the State Statutes and reviewing it with Counsel, Alderman Perillo came back and said the only way to address such an issue would be to say that it's causing a "nuisance" and if we can't abate that nuisance we have to have an ordinance in place to handle it.

Alderman Finn stated, during the discussion at Public Health & Safety not once was the issue of indoor burning brought to our attention, just outdoor.

Alderman Kudej stated, I know Jason received calls, and I have had calls about people using wood burning stoves indoors and the smoke is traveling to the neighbors.

Alderman Anglace stated, this was a 2nd Ward constituent. I notified Stan and Jason, and situation as I described it was...

Alderman Kudej stated, this is strictly outdoors, nothing indoors.

Alderman Anglace stated, you may have to take this back to Public Health & Safety and look at it with that in mind.

Alderman Simonetti stated, wouldn't the building codes have regulations as to how to vent a chimney for indoor fire burning – to bring it to a certain height?

Alderman Anglace stated, that's what you would think, but that is not the case.

Alderman Simonetti stated, that would be the way to adjust this problem.

Alderman Anglace stated, the one family house with one story has a very high flue, but the house next door is so close to it, that flue comes right up to their kitchen window. We'll do the Public Hearing tonight and take it back to Public Health & Safety.

Alderman Anglace asked if any member of the public wished to speak. Being none, Alderman Finn MOVED to close the public hearing on this matter; SECONDED by Alderman Olin. A voice vote was taken and the MOTION PASSED 7-0.

ADJOURNMENT

At 7:36 p.m., Alderman Kudej MOVED to close the Public Hearing; SECONDED by Alderman Simonetti. A voice vote was taken and the MOTION PASSED 7-0.

This public hearing was immediately followed by a Special Meeting of the full Board of Aldermen.

Respectfully submitted,

Patricia M. Bruder
Clerk, Board of Aldermen

Date Submitted: _____

DATE APPROVED: _____

BY: _____

Mark A. Lauretti
Mayor, City of Shelton