

**MINUTES OF WEST HARTFORD PUBLIC HEARING
ORDINANCE REGARDING DISPLAYS AND SALES AT FOOD STORES
JUNE 28, 2011, 6:30 P.M., LEGISLATIVE CHAMBER**

President Scott Slifka called the Public Hearing to order at 6:45 p.m.

President Slifka: Okay, we're going to open the 6:30 Public Hearing, ordinance regarding displays and sales at food stores. A roll call when you have a second, Ms. Labrot.

Ms. Labrot: I'm taking orders here.

Present were Councilors Steven Adler, Tim Brennan, Shari Cantor, Harry Captain, Judy Casperson, Leon Davidoff, Burke Doar, Denise Hall and Scott Slifka.

No one was absent.

President Slifka: Okay. We'll begin with Mr. Van Winkle.

Mr. Van Winkle: Yes, this is an ordinance which permits food stores to sell cold, fresh or hot or cold, fresh or prepared foods. Several years ago amazingly you weren't able to sell a tomato out in front of a food store. We prohibited it. This is not that far back and we had a request from a number of stores that they would like to be able to do that and so now as you walk into a food store you'll see a lot of display of...particularly in the summer months here you'll see corn and beans and tomatoes and whatnot. This is to expand upon that. It is restricted to food stores and in our ordinances the way we do this it's number 18 on that list of allowed uses and we have the word hot or cold or prepared foods and it would allow a food store which has a full health license and certainly is well-steeped in the health regulations to add to that tomato that might be out front some prepared food that someone might be able to buy in front of the food store versus going in so that's really all the regulation does and it's just an expansion of some progress we've been making on allowing a little more freedom as to how a food store can use their site. They can't put this service in a parking space. You can't take away a parking space. You can't put it on a public street, on a public sidewalk. It has to be on their site. It has to be in that... What we were sort of talking about before – that patio area in front of the store that is private property so that's what this regulation attempts to achieve. If you have any questions I'd be glad to answer them.

President Slifka: Mr. Van Winkle, if you or Mr. Alair could expand a little bit on this, this is an unusual zoning change suggestion in that it came from...the catalyst was really a resident who had spoken to myself and Mrs. Cantor and I think he's here today and it kind of hit us. It's one of those common sense things. Here's the owner of Crown Market and we had been there at different times but around the same time and he had erected a hot dog stand, small hot dog stand but the traditional kind you might see in a New York street serving hot dogs from his store and when we walked into the vestibule it was inside the vestibule and the tent...the awning is up and everything and we looked and went, why is this inside? Well, the answer was... I wish I hadn't asked because it

was, your laws said we had to put this inside and there was a sidewalk out front and we were informed that there had been some difficulty where he had actually had it outside originally, everybody thought it was a great addition to the location and then we, you know, had to enforce the law so we don't... You know, zoning is...I was taught a long time ago...is for the use, not the user and we want to be careful when we address this but I think a real-life example as to what this is intended to do is very helpful but I'm wondering if you or Mr. Alair could talk about what this would not be in case we get those questions that say well, it's...yeah, it's great. You know, we like that store, we like that guy, we trust them. We think it works in that situation but does your definition open this up to something that we don't want and I know we've been...this took a long time. For a couple words it took us a long time to put this together because we wanted to be very, very careful and choose the right words so with that...

Mr. Van Winkle: Well, let me first say and put on the record that Crown Market is one of the great purveyors of hot and cold prepared foods, one of my favorite places to pick up something for dinner. It is restricted purely to food stores – to our larger food stores, the Halls Market, Crown Market, Big Y and that area could do this so it's limited to those stores and those areas. It is not allowed by our restaurants to open a prepared food station in front of their restaurant. It would not allow someone to begin to sell out of a cart on our streets or use of our public parks or any other place to do this. This is restricted to that place where they have the food license for this kind of use and they are steeped in the regulations of our health code to make sure that whatever they do they follow those health codes carefully so it does restrict it to those handful of stores that we have, our grocery stores at one time, our food stores, larger ones and smaller ones that would sell around the town.

President Slifka: Thank you. Are there any other questions? Mr. Adler?

Councilor Adler: Through you, Mr. Mayor and also to confirm, half my paycheck goes to the Crown as well and it goes up to 80 percent around the high holidays so I want to thank you. This has a look and feel of the food cart resolution that we were talking about so maybe from a Corporate Counsel or from you, Mr. Van Winkle, how is this different than the food cart and I've got a couple more follow-ups to that but that's kind of my initial impression.

Mr. Van Winkle: Well, several months ago we were looking at whether we should allow food carts to roam our streets. This is a cart that I might own and I would roam in the commercial areas and sell off of that cart to people who might be interested in buying whatever prepared food I would have. It is not an established restaurant. It would have to be connected to some restaurant in the center but the intent was to allow it to use the public sidewalk for the purpose of selling that food. We withdrew that and pulled back on that because of some concerns about congestion, the size of these carts that might be moving around the center. Again, the whole discussion that we've been doing over the past 15 or 20 years is to bring some life to our commercial areas that doesn't overwhelm them but tries to bring some new opportunities where they might be so we moved away from the cart and this is to again bring some outside prepared foods but to allow it only

on site, on private property, on those patio areas or areas just outside the front door of the food stores.

Councilor Adler: Great. Thanks, Ron. And just a couple of other follow-ups. I've seen the cart too and I'm a regular... I was just kibitzing a little bit before with the regular customer of the Crown so I clearly have seen the cart before. There are still some kind of the same basic elements of this ordinance as well as compared to the food cart in that, you know, I want to know about the Bloomfield Health District. You know, is there an additional, you know, review by them in terms of cleanliness? Because I do have concern about...so, you know, people have the hot dog, the Hebrew National or whatever it might be and then they walk out and then it turns into litter in the area so that is an obvious concern. The other concern I have also is how far out... I don't necessarily see within this ordinance but from a pedestrian, we certainly are pedestrian-friendly here and I'm going to get to that a little bit later on on pedestrians... How far out from the storefront is this cart allowed to be in terms of service?

Mr. Van Winkle: Well, from a...from a...distance from the storefront it cannot be in the parking lot, cannot be in parking spaces, can't block drive lanes and those sorts of things and certainly the operator of the store is going to place it in the most advantageous position to sell that great kosher dog perhaps but also to make sure his pedestrians are able to flow in and out of his store so we're leaving it up to the entrepreneur to make the best decision but it still has to be located close to that building in that patio area if you will in front of the store.

Councilor Adler: Yeah, I mean I think we should probably have some discussion around having maybe a definitive square, you know, footage from the front of the business. I think to leave it up to the owner as to how far they can go out... I think there should be just like every other ordinance that we have within zoning some distance requirement so I'd like to hear some discussion from the rest of the Council on that as well.

Mr. Van Winkle: I just may point out we...I'm sorry...point out, we do not regulate now the square footage for produce you might put out in front of the store so we don't do the green grocer piece in front of the store so whether it is necessary to regulate that distance, again the operator of the store is going to locate it in a good spot. This is not his sole profit center, this hot dog stand or prepared foods or whatever. He's going to put it where his customers can get in and out of the store easily and will provide an additional aspect to the shopping that day. What he's most interested in is getting them in to sell them a pound of corned beef or great pastrami but I don't think you really need to think about too much regulation in that sense. The market should really dictate that.

Councilor Adler: I would, you know, respectfully disagree on that and I'd like to hear what the other Council folks have to say. We just went through about a hour-and-a-half about a 700 foot radius with liquor stores so I think we need to understand how, you know, how much authority does a business owner have to be able to move these carts in and out. I'm not necessarily making an opinion on this. I just think that that's an element of this ordinance that we have to take into consideration.

Councilor Doar: Just a followup.

President Slifka: Hold on. I apologize. I thought Mr. Davidoff had his hand up?

Councilor Doar: Yeah. I apologize.

Councilor Davidoff: Sorry, Mr. Doar. Thank you, Mr. Mayor. The part that is quite telling in this regulation is they have to an accessory use to an existing I think it says food store or food market and the question in have with respect to that is would BJ's Wholesale Club under our current scenario qualify as a food market or food store?

Mr. Alair: I would want to talk definitively to the Town Planner but my instinct is it's essentially a very large grocery store.

Councilor Davidoff: Okay.

Mr. Alair: It does... To some extent it's a department store. It's been awhile since I've been in BJ's but...

Councilor Davidoff: Right.

Mr. Alair: ...but, you know, that's sort of the outer edges, let's put it that way. There was some discussion of this idea at the TP&Z of what constitutes a food store or a food market and it's... I mean, we certainly approve retail grocery stores on a regular basis. We know what a garden variety retail grocery store is but things like bakeries – that's a food store. The 7-11 not so much because they are more a convenience store. They are more a traditional retail store. A gas station that has a quickie-mart inside is approved as a service station and the sale of food is accessory to that use so there are some things on the edge of what constitutes a food store, BJ's being at the supremely high end and some of those smaller things being at the low end.

Councilor Davidoff: And then the next question is would 7-11 or convenience marts fit that and I think...I don't know if it would fit that accessory use and then we went...and then I started to think about the bakeries or the other...or a gourmet food store. Would that fit this?

Mr. Alair: Certainly it's been awhile since it was in the center but I remember the days of Nanshe's in West Hartford center. Certainly that would constitute a food store. The Ann Howard Cookery, which did not have seats so it didn't qualify as a restaurant would probably I think qualify as a food store. I hope that helps.

Councilor Davidoff: No, it does and for full disclosure for the record I do regularly patronize the Crown Supermarket on a weekly Sunday basis and I think that's important to put on here since we'll be voting on this. With respect to Mr. Adler's concern with respect to regulating distance outside I would be of the opinion that I think the retailer knows when they're obstructing their customer's ability to get in and out. People often say when they have people in the vestibule doing charity work collecting solicitations

they're in my way. I can't get by. I need to get my cart in. Can they move? And sometimes even when politicians are outside of grocery stores they're not too happy about them being there soliciting for votes so I think if we let the free market dictate the right solution I don't think we can go wrong here and, you know, they'll know that what they're doing is causing more harm than good because the customer won't buy the product that's out there and they'll make it known that it's more of a nuisance than a convenience and I think on a case by case basis I think that's how I would come down on it and I don't really think that we need to have more government regulation on this. I think sometimes less government regulation is better. I think this ordinance is granting opportunities for business development and growth, because I can't say that other word, and I think I'd like to commend Mr. Bokoff this evening for bringing this to our attention, to basically do something that I thought we could do here in West Hartford and I really don't think causes any harm to anybody and probably would be better for our community and enrich people with respect to having a great shopping experience so hat's off to Marc and I hope the rest of the Council supports this ordinance.

President Slifka: Thank you, Mr. Davidoff. Mr. Captain, you're... Okay. Then Mr. Doar and then Ms. Hall.

Councilor Doar: Thank you, Mr. Mayor. Just to followup on Mr. Adler's suggestion. If you look at the ordinance in the third whereas clause, you know, it does raise the issue of hot foods included with cold foods. I could see a point that Mr. Adler may be making. You have to put power to hot foods. You're going to have to have some kind of, you know, extension cord or some kind of device that will be out on the street that's going to have to be connected to the building and again I always...all of us have to...we come to this Council from our own prior experience. I've set up displays as part of my business in manufacturing. I know about the problem of a trip hazard, getting too far away from your power source, and it might be better to include in this language the outdoor sales areas to be no greater than 15 feet from the structure which we now know what that means to include prepared hot and cold foods. It might improve the ordinance without a lot of unreasonable government... You know, Mr. Davidoff, I certainly support that kind of thinking but it might just improve the ordinance. I throw it out as a discussion to my other colleagues, especially because it includes hot foods and you have to...you're going to have to keep the hot foods hot some way. Even if you had cold foods and you had refrigeration out there you're going to have to put that to power so something to think about for the rest of you. I don't... I throw it as a discussion point.

Mr. Van Winkle: If I could just clarify, the existing ordinance, number 18 that we're talking about here, says the location of any product display stand shall not obstruct pedestrian right-of-way, shall not obstruct the building or slight egress, emergency access or create sight obstructions to vehicular traffic – sort of an intent to kind of capture some of what you both have suggested here.

President Slifka: Mrs. Hall was first.

Councilor Hall: I guess sort of as a followup to that we do have what I think would be categorized as a food store on LaSalle Road right now, the specialty Italian food shop that

sells prepared... And that is a very narrow sidewalk right out in front of that so to Mr. Adler's point I know, you know, you've pointed out you can't obstruct pedestrians but then it's also kind of an ambiguous, you know, how...when do you start obstructing? So maybe there is some way to tighten this up so that we don't create a problem on a busy sidewalk on LaSalle Road.

Mr. Van Winkle: Just to clarify that, that site in particular, half of that public sidewalk is a public right-of-way. Within the public right-of-way this facility would not be allowed to be within the street right-of-way and so we allow restrictions in the center in the sense of outdoor dining that is allowed to be on their portion of the sidewalk as you walk around the center. This would apply the same here.

President Slifka: Mrs. Cantor?

Councilor Cantor: Thank you. When we... We did discuss this in Community Planning and when the issues were raised we thought this was really a nice time to offer many of our food establishments...food stores a creative, kind of a creative outlet. Hall's Market is one that comes to mind where they have a really, you know, Park Road Parade, they make hamburgers. Obviously the Crown was the one who raised it but I also, I do think even in the Italian Market when you have that restriction of a public right-of-way you have that cannot obstruct the building right-of-way, the vehicular right-of-way. When we reviewed it in detail it seemed as though it was not allowing...this ordinance was not allowing anything but almost that green grocer kind of activity but allowing hot food in addition to it which we already see and really has been such an attractive addition to all of our shopping experiences. It's a really nice thing so I think the creativity, even if you did a little al fresco window in the Italian Market, I mean would that even...? I don't know but when you... But when you walk around in areas that offer these kinds of things and we were just, you know, when you walk around Boston or whatever it really adds a lot of character and flexibility but, again, our residents' safety or of anybody walking in town, the safety of people are of utmost importance but I think the verbiage in the ordinance as it stands now is the same as it is for the green grocer. You could have that, you know, but we don't see it and it's been there for awhile now so I would... The only thing that I could say is that this is a new addition to an ordinance. I think it's enhancing a current, you know, it's enhancing a current ordinance but it is a little bit of a change. We could say let's again take a look at it in a year and see if this is something that is creating a problem in any way so that would be really the only kind of, you know, restriction that I really would be willing to put on it. Thank you.

President Slifka: Thank you, Mrs. Cantor. Mr. Adler?

Councilor Adler: Through you, Mr. Mayor. Councilman Cantor, I agree with you. I mean, you know, my original intent or question around the distance isn't really to impede commerce. I think if anything we shouldn't be shy about improving business anywhere in this community. You know, the concern that I had is, you know, if we have a food, you know, purveyor, if we have a grocery business that ultimately, you know, has this cart that kind of inches its way out to the point of where it's a significant distance from the building then I've got a problem with that and then it turns into kind of the food cart

ordinance that we were talking about previously so... And I think it... You know, getting back to Councilman Cantor's point I think what we need to do is monitor it and certainly if it enhances the business that's fine so, you know, the totality of what we're looking here at the ordinance is, you know, it feels good, it looks good and I've seen the cart and I've see the attraction but it's not just your business. It's also going to be other businesses as well so... Okay, fair enough.

President Slifka: Okay. Anyone else? Okay, I don't think we had the signup sheet yet, Mr. Alair. Okay. For those who may have walked in in the middle of this we're in a Public Hearing on an ordinance regarding outdoor displays and sales of food stores. Mr. Alair has notified me that the signup sheet is blank. Is there anybody who wished to speak to this subject matter at this point in time? Oh, Mr. Bokoff?

Mr. Bokoff: Yes.

President Slifka: You can just come on up at this point. You don't have to sign it. Just make sure you introduce yourself for the record.

Mr. Bokoff: Sure. Yeah, Okay. Marc Bokoff and I'm the owner of the Crown Market and somebody mentioned that I was a resident. I'm not a resident so if that matters you should know that. A couple of items that you have all raised, all of which I think dealing with prudent business practices are certainly reasonable. The thing about this that got me thinking in the beginning about it, and I think the big delineation here to some of Mr. Adler's concerns, is the issue of public versus private sidewalk space and I think the ordinance fairly well limits the placement of these things to the sidewalk so therefore if it's a private sidewalk it would pretty much take it out of the issue of getting into vehicular right-of-ways and things like that so I wanted to say from that perspective I don't see that as a big concern as long as you maintain within the letter of the ordinance which says you have to stay on the sidewalk. That's the first thing. The second thing is I can assure you from firsthand experience that your local health department is fully and actively taking care of their business so I wouldn't... I'm not going to say that you needn't worry about it but I believe that if they do their job your concern there is not of great concern for the Council if the health department's doing its job and I can assure you, again from firsthand experience, that they are. We have had them visit us on a number of occasions relative to this cart and trying to get it right and part of getting it right is getting it outside, both from the health department perspective and from, you know, all of the other niceties that go along with it. We clearly... When we went in the vestibule power was something we considered. When we purchased this, and just so you're kind of aware of what's available to people who might actually try to do something like this, is the cart is an NSF – National Safe Food-approved cart so everything about it goes through the national food/health/safety kind of protocol. You can buy a cart that's about \$1000 less and not have the NSF regulations which means running hot water, which means heated product to get it to temperatures that need to be maintained, all of the health department issues that they concerns themselves with so by getting it outside our particular unit is a propane-powered unit so there's no issue about power cords and things like that. And I understand our particular situation is not what you need to only be concerned with so I get the fact that, you know, from another

perspective somebody could decide to run a power cord and, you know, run it across the sidewalk and somebody trips and falls and hurts themselves but as a store owner that quickly becomes my headache. Before it becomes the city's headache it becomes mine. It's private property. It's just a slip and fall thing that we don't even want to deal with so from a business point of view I think we would take care of that. I think that's probably pretty much it. We are, you know, as the weather continues to get nice, we finally got the nice weather, we actually eagerly await getting outside and getting away from the inside which is, you know, from our perspective which was a compromise, in other words that vestibule there is part of the building so this is allowed to be there under the current ordinance, you know, but it's not the greatest for our business traffic-wise so we are trying to get away from that vestibule for that very reason, although I have to say that our customers are putting up with it because they really like it so I guess that kind of dictates a little bit of our action but we are, you know, fully engaged in the health issues, the safety issues, and making sure that, you know, as good corporate citizens we're doing what we're supposed to do to make sure that, you know, people have a good experience not only in the store but in town as well. Okay? Thanks.

President Slifka: Thank you, Mr. Bokoff. Is there anybody else? Okay. If there's nothing further then I will close the public hearing.

Public Hearing closed at 7:13 p.m.



Essie S. Labrot
Town Clerk/Council Clerk

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APPROVED AT JULY 19, 2011 TOWN COUNCIL MEETING