

**MINUTES OF WEST HARTFORD 7:15 PUBLIC HEARING
JULY 19, 2011 LEGISLATIVE CHAMBER
ORDINANCE CONCERNING THE CONSUMPTION AND CARRYING OF
ALCOHOLIC LIQUOR IN PUBLIC PLACES**

President Scott Slifka called the Public Hearing to order at 7:22 p.m.

President Slifka: Okay. We will reconvene the Public Hearing. This is an ordinance...regarding an ordinance concerning the consumption and carrying of alcoholic liquor in public places. I know that we received information from Corporation Counsel's office since the last Hearing in response to the questions raised by members of the Council at the last Hearing and we were provided with that and Ms. Boneham is here to elaborate further so... Oh, a roll call would be helpful, wouldn't it?

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

Harry Captain was absent.

President Slifka: Thank you, Ms. Labrot. Back to you, Ms. Boneham.

Ms. Boneham: Thank you. The last time we were here we were discussing an ordinance that basically modeled what some of the other towns in Connecticut have – Fairfield, New Haven, New London, for example...numerous others – and there were some concerns that were raised about situations where, for example, perhaps a person might want to go visit with their neighbor while carrying an open container or I think Mr. Brennan had cited an example of having an impromptu gathering at his house and so we tried to take those concerns into consideration while at the same time not negating the whole ordinance altogether. So what you have is two exceptions, two additional exceptions. This is the only change to the ordinance under Section 45-4. We've added an exception for "on or within a highway by a person within 100 yards of their residence" which would take care of visiting your neighbor and we also have added an exception for "being on the public sidewalk within the property lines of the resident that's hosting a social event" and that way you can have people that are more than 100 yards away from their house but they're at this particular residence that's having this social event and as long as they're within the property lines and on the sidewalk then...then they're fine so that's it in a nutshell. Anybody have any questions?

President Slifka: Okay. Are there any questions from the Council right now? Mr. Adler?

Councilor Adler: Thank you, Mr. Mayor. Through you and to Corporate Counsel, just a few questions but the first question is are you seeing across Connecticut or maybe nationally with other municipal corporate counsels this type of a legislation and some of the challenges with, you know enforcement and so forth? I'm going to have probably a couple more I'm sure but if you can go ahead.

Ms. Boneham: Well actually, on a national scale Connecticut is one of only six states that doesn't have an open container statute and so consequently it's really up to the towns and cities to decide what they want to do. I haven't looked at every town and city but there were, like I said, several of them that have done it. A lot of them have had it on the books actually for quite some time. I didn't see any that were relatively recent.

President Slifka: Okay. Thank you, Mr. Adler. Mr. Brennan?

Vice President Brennan: So thank you for addressing the concern and lest it be, you know, labeled the Brennan Drinking Carve Out or Exemption I will also give credit to the Mayor who brought the question up in the first instance.

President Slifka: Thank you.

Vice President Brennan: I wanted to illustrate by example but I think the main point, jokes aside, is that, you know, when we regulate we want to tailor it as narrowly as possible to what we're trying to solve for and, you know, the point that I know the police have highlighted to us in Public Safety time and time again is that there is a growing problem in the Center related to the establishments and people, you know, drinking in advance of going there in their cars and such so there was no need in my view, and I think others as well, to go beyond just that purpose of what we were trying to solve for and so we can call it what we want. I appreciate your calling it out but I think, you know, great job in addressing that and making it properly narrow.

President Slifka: Thank you, Mr. Brennan. Anyone else? Ms. Hall?

Councilor Hall: Thank you, and I'm not sure whether you're the right person to ask. Maybe Corporation Counsel. Some of the behaviors we're trying to address are the public drunkenness and litter and whatever. Can you kind of walk through what existing regulations are out there now, our laws out there now that would also address those particular behaviors? I'm just... You know, you hate to enact laws for the sake of enacting laws. I'm wondering whether there's anything else that's out there that could also be used to enforce, you know, better behavior.

Mr. O'Brien: Among the things that are out there are state statutes that prohibit disorderly conduct and breach of the peace. Those two specifically come to mind and quite often if the police issue a ticket... I mean they could actually arrest the person and bring them down to the station and process them but sometimes with those offenses they simply give them a ticket and summons to appear in court but those are potentially criminal violations so anyone... There's also a disturbing the peace infraction that's a ticket and a fine and that would be covered as well so those are three potential... Public drunkenness would come under the disturbing the peace because obviously if you're publicly drunk you could be making a lot of noise, bothering people, whatever... There's got to be... It's not just a matter of having a high blood alcohol content but there's a behavior that's disturbing the peace and that...there's definitely at least those three statutes on the books and enforceable by our police.

Councilor Hall: So then how would we envision this working with those other statutes that are out there? If you came upon this behavior would...

Mr. O'Brien: Well, this would... This would be just having the open container. You don't have to be disturbing the peace at all. It's just having the open container you'd be subject to a violation of this ordinance. You could get a ticket for that so the other statutes and infractions concern behavior that can result from over-consumption of alcohol and that sort of thing or other reasons even but this would be implicated just simply having possession of the open container except within the exceptions enumerated.

Councilor Hall: Thank you.

President Slifka: Thank you, Mrs. Hall. Anybody else at this moment? Excuse me. I guess for...maybe to amplify Mr. Brennan's point a little bit for the public record purpose. If somebody comes and looks at this at a later time I think all of our intent would want to be clear in this because, Ms. Boneham, I think you guys have done a great job in attempting to codify what is not an easy thing to codify. To the question Mrs. Hall just raised I think first we've had some testimony at the previous Hearing that what we're trying to do is catch a loophole that exists in our present law and is one that, you know, I wouldn't say it's being exploited but we found that we have a problem that's popping up more often than it used to and we don't have exactly the right tool and Mr. O'Brien, if I can maybe put your example into different words it's that the disorderly conduct type of offense, which may or may not include alcohol, is sort of a judgment call whereas this is intended frankly for our, you know, for our commercial districts to eliminate the mere act of walking around with a drink whether... You could be behaving in an entirely appropriate manner but we don't want you walking from bar to bar, so to speak, with a drink in hand.

Mr. O'Brien: That's correct and what may happen is a police officer may say you know, there's an ordinance against that. You have to get rid of that right now and that may be the only consequence that happens to a person but they have to throw away the container and cease walking around with it.

President Slifka: I also know having talked off-line with Ms. Boneham but I'd like it to be in the record that we've... The original ordinance was modeled on what's been done in many other communities in Connecticut. What we have before us is I think we've actually tried to go above and beyond that and make sure that there are fewer unintended consequences than, you know, than in the other one obviously and that what we're clearly not trying to address is a problem of this going on at homes. You know, again, I don't want to use Tim as the example but he cited an example and it wasn't actually him but it was...it was a good example of a family member, right? But that is not what we're trying to police here so to speak. This is really geared towards our commercial areas and, as we discussed the first time, with the term of art now is "pre-gaming" or carrying a "traveler" around within the Center. We suddenly found gee! Surprise, surprise! You would have thought I think in the way that Ms. Hall posed the question this is something that's covered and it wasn't and so we want to make sure we close that door but for those that want to enjoy a drink at home and talk to their neighbors and all, we are going to great

lengths to attempt to make sure that that is not addressed and that we have carved out exceptions for that behavior. Everybody's nodding. Is that...

Ms. Hall: That's correct.

President Slifka: Very good. Okay. Alright. That's all I had for now. Anybody have anything else? No? Okay. Well, if... Mr. O'Brien, for the... Is there a signup sheet for this? I know we had... We went through this the first time but... Okay. This is for the Hearing? Okay, Tad Bistor is signed up. Mr. Bistor, if you could just state your name and address for the record?

Mr. Bistor: Sure. Tad Bistor, 676 Trout Brook Drive. I'm here to speak in opposition to this ordinance, first of all on principle. I think it unduly and arbitrarily restricts my right to consume an otherwise legal beverage. I can legally purchase, possess and consume alcohol and I think for the purposes of this ordinance there's really no difference between an alcoholic beverage and say a can of Coke or a cup of coffee. I think, you know, you claim in the proposed ordinance that it's because of an increase in litter and an increase in the number of DUI arrests. I think that this ordinance also kind of assumes that if I'm drinking or carrying an alcoholic beverage in public that I'm automatically irresponsible - that I'll apparently throw my container on the ground, that I will be driving impaired or that I will be drink and disorderly. I think it also...this ordinance also opens the door for abusive, harassing and perhaps inconsistent enforcement. You claim that it's designed to keep alcoholic beverages out of the center of town here. I think with the new amendment to the ordinance if you're on one of the adjacent streets you're still going to be within 100 yards of your home and so those residents can walk around with a can of beer or a glass of wine but those of us that don't live right here in the center of town, we're not able to do that so I think it's somewhat discriminatory. Also I would point out that if a police officer happens to see you walking around town and even suspects that you're violating the ordinance he now has probable cause to stop you, inquire about the beverage and perhaps search your vehicle or search your person so I think that, you know, that might start to infringe upon the residents' rights. I would also point out that it's completely unnecessary. As has already been brought up there's state statutes that deal with driving under the influence, being drunk and disorderly, public intoxication. I would also point out that even within the town code, chapter 115 of the town code addresses the issue of littering. I think if we simply enforce the existing laws that that is sufficient. I don't think that this is necessary. I would also... With regard to that I would also point out that a recent article in the Hartford Courant from Thursday, June 16, Assistant Police Chief Robert McCue actually attributes the increase in the number of DUI arrests to the increase in the number of restaurants and bars in town so he doesn't attribute it to people walking around town drinking alcoholic beverages, you know, on their own. I would also point out that in at least one instance this would conflict with existing state law. This ordinance would prohibit passengers in a motor vehicle from having an open container, which is currently legal in the State of Connecticut so how are we now going to advise people that you can drive around everywhere else in the state with an open container as a passenger in a motor vehicle but you can't drive...you can't be a passenger with an open container in West Hartford? And finally, I think you may have some enforcement issues because who's to say what is going to be an alcoholic beverage? I mean is that an

alcoholic beverage? Is that an alcoholic beverage? Is this? Is that an alcoholic beverage? How about that? Anybody know what's inside that? That? That water bottle? My coffee cup? Bottle of Coke? Who's to say what an alcoholic beverage is? I'd invite the officers in the back, any of the members of the Council want to sample any of these? Tell me whether or not it's an alcoholic beverage?

President Slifka: We'll take you up on the sample after the meeting, Mr. Bistor.

Mr. Bistor: That's all I have. Thank you.

President Slifka: Thank you, Mr. Bistor. That concluded the signup sheet. Was there anybody who did not sign up who wished to speak to this ordinance? Mr. Milne, please come up.

Mr. Milne: Robert Milne, 3 Osage Road. I'd like to applaud this gentleman for the fine example of just the sort of issues you're going to be dealing with and you're sort of opening the proverbial Pandora's Box. The most troubling thing about this whole thing is that this whole project of Blue Back Square is sort of the cornerstone of progress and supposed to be exemplary of West Hartford at its finest and, in fact, it's causing some great problems. When the concentration of some of the focal points of your commercial efforts are a concentration of restaurant, alcohol consumption and things like that what do you expect? I'm sure many of you who practice law understand it. You understand what an attractive nuisance is. It's like the pool in the backyard. You can't get upset because kids want to come in and swim because it's just the innocence of it. If you're going to be building restaurants and places to eat, wine bars and all kinds of stuff and if this is going to become the cornerstone of your development plan the DWI records and the police department have proven it. In fact, you missed the mark. The last thing I want to say about it is clearly if we have a member of the Council and the Mayor trying to carve out a provision for a man walking down the sidewalk drinking a glass of wine walking a dog... That's like a guy or a woman riding a bicycle smoking a cigarette. It should be apparent on the surface of it that that's kind of not the example that you'd want to have but if we have a Mayor who's so focused on something that ridiculous it's a sad state of affairs. You ought to listen to this, gentleman. You're just spending a lot of time on nothing as usual. Thank you.

President Slifka: Okay. For the record I had nothing to do with the example Mr. Milne cited. Is there anyone else who wished to speak to this ordinance? Okay. Ms. Boneham or Mr. Alair, there were some questions raised just...and this is our second Hearing and some of these were addressed maybe at the first one. We're now on television and people may be watching. We wouldn't want questions to be unaddressed for the public. Could you just maybe summarize very briefly again a couple things – one, the genesis of this? You know, what came from the police department and address some of the items related to the interplay between this and state law that were raised and Mr. Van Winkle, please come...

Mr. Van Winkle: I can talk about the genesis. What we were aiming at here is what you called earlier "pre-gaming" where you might come, park your car and sit and drink for

awhile in your car before going out and having an evening of enjoyment. West Hartford Center has become an attractive place late at night for people to enjoy the evening and what we have seen is some of this pre-gaming, drinking what is a significant amount of alcohol before getting out of your car and going into a bar and that's sort of... what we're trying to control here is how much you consume so if I'm going to drink three bottles of beer and then go into the bar I'm already feeling pretty good and I'm going into a bar to drink so it sort of sets me up for a problem later in the evening. If I... if we can keep them from drinking in their car, perhaps they'll drink a little less while they're in the restaurants and so the effort here is to try to really control that pre-gaming piece where people are sitting in their car and drinking. The provisions we've done to make sure we don't... aren't addressing some other issues are what we've amended it with but it is directed at that and it's directed at trying to find a way to reduce the amount of alcohol you'll take in in an evening and, as Assistant Corporation Counsel has mentioned, 44 states prohibit this. In this nation there's only 6 states that allow this and in the State of Connecticut communities that have a nightlife, if you will, have adopted an ordinance to prohibit this so it's not a... it's not a new ordinance. It's not dramatically different than what's going on all across the nation right now.

Ms. Boneham: Yes, I think that Mr. Van Winkle summarized very well exactly what the genesis was for this ordinance and again the definitions comply with what the statutes say so alcoholic liquor is the same as what the statutes define it as beer, wine, spirits and alcohol and again we've carved out the exceptions to address the issues that were raised at the last Public Hearing.

President Slifka: Could you just address quickly the point about state law? There was a comment made about this being in conflict with state law and if you could just clarify that for us.

Ms. Boneham: Yes.

President Slifka: I know... I know you addressed it briefly earlier tonight but...

Ms. Boneham: No, that's alright. Yeah, the state statute, again it doesn't address this issue and it hasn't... the municipalities and the towns aren't preempted from addressing this issue. Again, the state law says that you just can't drink while operating a motor vehicle. That's all that it covers and so it's up to the towns and the cities to decide if they want to be more comprehensive in that and, again, there are numerous towns and cities within this state that have done exactly that. Again, our ordinance is modeled mostly on those with the few exceptions to try to narrow it down as you had mentioned earlier in the Hearing.

President Slifka: Thank you, Ms. Boneham. Mr. Brennan, you had a question?

Vice President Brennan: I have a comment actually in response to Mr. Bistor's remarks. I actually think that they were... they were very thoughtful. You obviously came prepared and you kept it civil and that's... I think we all appreciate that. I will vote for the ordinance but, you know, I think you highlight the fact that what we're trying to do is to

balance. You know, again, drinking is legal but at the same time clearly it's beyond dispute that drinking can cause problems from drinking and driving to behavioral issues, etc., so we try to balance the problems that can happen and there have been more problems without a doubt. In the committee that I chair, Public Safety, we've heard numerous times over the past year in particular from the police and town management about incident after incident that we've seen in the Center so you've seen this Council take a number of measures in response to that and I think it's fair to say that all nine of us have done our best to try to, you know, find the right balance there so we've in committee been propose.... We've had pretty vigorous discussions. We've had the police bring up a certain point. We may then say well, what about that? And so we've had a good back and forth and I think a pretty thoughtful deliberation on all these issues related to alcohol and, you know, I think the reason that this Public Hearing remained open from the last time was that we wanted to do our best to get it right so that we didn't leave a loophole in there and we didn't leave, you know, we hope too many possibilities for the police to have to use discretion. We don't want to do that for their sake but also for the sake of the citizens. We wouldn't want to put them in the position where there could be that possibility of enforcing in one case and not in another. That's the kind of balancing that we've been striving for and so we took a...we took a different approach than what other towns have done in this state and what others across the country have done so I appreciate your comments and I'm happy that they're...they come...they reached a different conclusion than I do but that's fine and that's what we're supposed to do here and thanks for keeping it civil.

President Slifka: Thank you, Mr. Brennan. Mr. Doar?

Councilor Doar: Thank you, Mr. Mayor. Tad, I also appreciate you coming here to the Public Hearing and making your opinion known but I also want to remind you and the other people here in the Public Hearing that the open space in the Center and the public spaces are for all of our citizens, not just the citizens who want to drink alcohol and, you know, this town has a diversity of people that use our public spaces including children and elderly people and it seems to me that a person who wants to elect to have an alcoholic beverage has many places to go. Not only can they be indoors but we have a number of outdoor ordinances now that provide for our restaurants to have people out in the open. It's a fact that although drinking is legal we're entitled to regulate behavior in this country for the sake of all citizens and I just have to...want to remind you that it's not a Center that if... I got thinking about situations where small children were walking down the Center and coming right at them was a group of people that had open container Budweiser bottles. Now you might try to tell me well, maybe it has water. No matter what the circumstance the perception is that people are drinking and I don't know whether or not it's unreasonable to ask that those people enjoy themselves but enjoy themselves within the confines of all the areas in the Center we have that allow drinking so I'm... I just share that with you and I appreciate you coming forward tonight.

President Slifka: Thank you, Mr. Doar. Mr. Davidoff and Mr. Adler?

Councilor Davidoff: Thank you. To Corporation Counsel, I just want to be clear. Connecticut state law does not prohibit passengers in motor vehicles from consuming open container beverages?

Ms. Boneham: That's correct.

Councilor Davidoff: Is there any history as to why they don't?

Ms. Boneham: I don't know. In speaking with Chief Strillacci he had indicated that there has been discussion on the state level and perhaps even hearings in the past trying to make it a bit more comprehensive but it just hasn't gone through.

Councilor Davidoff: How would a resident know whether a community was an open container community or a no, you know, no containers allowed? So say you're in Farmington and you're crossing the border and Farmington allows you to be a passenger in a car and drink and then you get to West Hartford and you're not able. How is the average person in our society supposed to discern what that regulation would be?

Ms. Boneham: Well, I mean I believe that they discern it the way that they would any of our other ordinances. I mean we publicize it. You know, we put it in the legal notices. It's in the ordinances themselves. I mean there's a lot of...there's a lot of rules that one town might have that another doesn't. I know that's not really probably an answer that you want to hear but we publicize it in the ways that we're legally required to and that we can.

Councilor Davidoff: I'm just concerned that if you're, you know, maybe from Farmington and in Farmington, you know, you designate somebody as a designated driver and you all get together and you're going to go watch the game down in West Hartford Center but you met at somebody's house, for example, and you were pre-gaming and you said well, I'm going to be the driver and they're all drinking in the car and they come down to West Hartford Center but the driver's not, while they were in the Town of Farmington they were totally... Let's just say they didn't have the statute or ordinance. They were fine but once they cross over that town line they're in violation of this ordinance. How would...how would the average reasonable person know that? Just because in July of 2011 we're going to pass this and make it part of our code of ordinances okay, it's fine. We'll get it, the nine of us and anybody watching on television will understand that but how would anybody in the general public have knowledge of that and I'm just concerned that should you get a citation or arrested for violation of this thing and then you say well, it was legal where I started but all of a sudden it's not and then this knowledge and notice requirement...

Mr.O'Brien: I don't think this really applies to a moving vehicle where passengers have an open container because in 45.3 it specifically references that it does apply to parked vehicles, okay? So it does apply to a parked vehicle where you're consuming in a parked vehicle so I don't think it implicates being in a moving vehicle as a passenger, which is allowed by state law at the present time.

Councilor Davidoff: But the state laws prohibit in other communities not being able to consume alcohol in a parked vehicle.

Mr. O'Brien The state law does not but other communities in the state do. I'm not sure I can identify which ones there are but there are some. Again, that's up to each individual community.

Ms. Boneham: And again, just to clarify, this wouldn't be something that a person can be arrested for. You had mentioned a citation or an arrest. This would just... It's a citation, not an arrest.

Councilor Davidoff: I understand, you know, the legal defense that no notice of the ordinance is not a legitimate defense. I get that but I think it was a good valid point that was brought up during the public testimony and I don't know how you alert people to what the rule is here in West Hartford. I know that I have to put money in the meter. It tells me what the hours are but how are we going to let people know that open containers are not allowed? Are we going to have signage that says that this is a special ordinance that's particular to West Hartford? I'd be concerned with the implementation of it so that it wouldn't just be arbitrary and I think people would need to know what the rules are.

President Slifka: Mr. Davidoff. Mr. Adler, you were waiting I think?

Councilor Adler: Thank you, Mr. Mayor. You know, there's some irony here with this ordinance in that, you know, we had a general assembly that just decriminalized marijuana and now we're kind of ratcheting it up to add another layer of complexity or another ordinance to alcohol so I don't know about the rest of you but I think there's some kind of strange irony about this. I think, you know, I understand the intent of this legislation and I do appreciate it and I certainly do support the work local law enforcement's doing with the challenges but I also think that we have existing laws on the books regarding poor behavior and I really think it's about enforcing the existing laws and frankly I don't think there's a lot of people that live in this community that probably are walking around with open containers and frankly I had some discussions with people about this, the fact that we didn't have an ordinance, and a lot of people didn't even know that we didn't have an ordinance so, you know, we have unfortunately a few selected people with bad behavior that, you know, we have to isolate through an ordinance, another layer of enforcement so, you know I just...it just kind of rubs me a little bit the wrong way, you know? So I just wanted to kind of put that out there. I think you folks did a good job in terms of narrowing the scope but it just, you know, it just doesn't work for me at this point so...

President Slifka: Anybody else?

Mr. Bistor: I'd like to make a point of order ...

President Slifka: Well, we've allowed you to speak, Mr. Bistor, so we've concluded that part of the Hearing. It is a Hearing... Members of the Council can make points of order but they're not allowed from the public. I do have to apply certain rules to it so...

Mr. Bistor: That's fine. I think (inaudible)...

President Slifka: From yourself or is this a debatable point?

Mr. Bistor: No. From our Corporation Counsel.

President Slifka: Mr. Bistor, I will allow you to come up and attempt to clarify. This is a one time exception so...

Mr. Bistor: I just wanted to make a point of order. There was a comment made that this wouldn't specifically prohibit open containers in motor vehicles...in moving...in moving vehicles. It specifically applies to highways and highway is defined in here and prohibited acts. It prohibits it on a highway so I would say that it does absolutely apply to moving vehicles.

President Slifka: Okay. Thank you, Mr. Bistor. Is there anything else from the Council at this time? Okay, with that we'll close the Public Hearing.

Hearing closed at 7:57 p.m.



Essie S. Labrot
Town Clerk/Council Clerk

/sab

APPROVED AT AUGUST 9, 2011 TOWN COUNCIL MEETING