



**Town of Mansfield  
Agenda Item Summary**

**To:** Town Council  
**From:** Matt Hart, Town Manager *MWH*  
**CC:** Maria Capriola, Assistant Town Manager; Sergeant Richard Cournoyer, Resident Trooper Supervisor; Michael Ninteau, Director of Building and Housing Inspection; Dennis O'Brien, Town Attorney  
**Date:** July 23, 2012  
**Re:** Amendment to Nuisance Ordinance

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**Subject Matter/Background**

You will recall that on July 11, 2011, the Town Council enacted the "**Ordinance to Prevent Neighborhood Nuisances**," The ordinance was developed by staff in consultation with the legal department of the State Police to address nuisance behavior in the community. As you know, we have had a history of nuisance activity in certain parts of town, including neighborhoods with student housing. This behavior has had a negative effect on occupants of nearby homes and other structures, impacting the quality of life of the neighborhoods. This condition is largely due to demographic circumstances present in few if any other towns statewide. The requirements set forth in this ordinance are designed to promote neighborhood peace and compatibility, and the general health, safety and welfare of the people of Mansfield.

Under the leadership of our resident trooper supervisor, in less than a year the "**Ordinance to Prevent Neighborhood Nuisances**" has been effectively and extensively enforced in successful pursuit of its quality of life goals in the best interests of the people of Mansfield. Very recently, however, a judge of the Superior Court in **Flahive v. Town of Mansfield** concluded that a tenant on whose premises a nuisance party has occurred may not be held responsible under our ordinance for failing to prevent others on the premises in which the tenant resides from engaging in nuisance behavior, even if the tenant is present at the scene. A copy of the Memorandum of Decision is attached hereto.

This omission from the ordinance noted by the court in the *Flahive* case is a loophole which must be closed if the Town of Mansfield is to continue to fairly and effectively enforce the subject ordinance in some situations. Though the ordinance clearly provides for sanctions that may be applied to any active perpetrator of nuisance behavior, no fine may be assessed against a tenant who passively allows their premises to be used for nuisance activity. Staff believes that often the fairest and most efficient and effective way to deter the kind of

nuisance behavior the ordinance is intended to prevent is to assess a fine against anyone who knowingly, if passively, enables any such disturbance.

Classes at the university will begin again soon. Our resident trooper supervisor and other staff, including the town attorney, have quickly developed a slight change to the definition of "Nuisance" in the "**Ordinance to Prevent Neighborhood Nuisances**" that they believe will legally, fairly and effectively address this omission in the ordinance revealed by the recent court decision. A copy of the proposed "**Amendment to the Definition of 'Nuisance' in Section 135-4 of the Ordinance to Prevent Neighborhood Nuisances,**" is also attached hereto. As this proposal is relatively brief and time is of the essence, the staff asks that the proposal be discussed and modified if need be at the July 23, 2012, meeting of the Town Council, and scheduled for a public hearing on August 27, 2012.

#### Financial Impact

This ordinance generates some funds based on the issuance of citations and collection of the assessed fines. If anything, this proposed amendment would increase the potential for receiving fine income, though the main purpose of the ordinance is of course to deter nuisance behavior.

#### Legal Review

At my request, the town attorney has fully participated in the development of the proposed "**Amendment to the Definition of 'Nuisance' in Section 135-4 of the Ordinance to Prevent Neighborhood Nuisances,**" and has determined that it is legally sound and may be implemented by Town staff.

#### Recommendation

As stated above, the staff asks that the Town Council schedule a public hearing to solicit public comment regarding the proposed "**Amendment to the Definition of 'Nuisance' in Section 135-4 of the Ordinance to Prevent Neighborhood Nuisances.**"

If the Town Council supports this recommendation, the following motion is in order:

*Move, to schedule a public hearing for 7:30 PM at the Town Council's regular meeting on August 27, 2012, to solicit public comment regarding the proposed Amendment to the Definition of Nuisance in Section 135-4 of the Ordinance to Prevent Neighborhood Nuisances.*

#### Attachments

- 1) Proposed "Amendment to the Definition of 'Nuisance' in Section 135-4 of the 'Ordinance to Prevent Neighborhood Nuisances'"
- 2) Memorandum of Decision in Flahive v. Town of Mansfield, Superior Court, July 10, 2012

**Proposed Amendment to the Definition of *Nuisance* in Section 135-4 of the  
*Ordinance to Prevent Neighborhood Nuisances***

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**Article I. Prevention of Neighborhood Nuisances**

[Adopted 7-11-2011, effective 8-8-2011]

**§ 135-1. Title.**

This article shall be known and may be cited as the "Ordinance to Prevent Neighborhood Nuisances."

**§ 135-2. Legislative authority**

This article is enacted pursuant to the provisions of C.G.S. § 7-148 et seq., as amended.

**§ 135-3. Findings and purposes.**

- A. It is found by the Town Council of the Town of Mansfield that a significant number of persons in the Town occasionally engage in behavior which constitutes a nuisance. Nuisance behavior includes, but is not limited to, disturbances of the peace, disorderly conduct, underage drinking, obstruction of public streets by crowds or vehicles, crimes against property and excessive noise, separately or sometimes in combination.
- B. Nuisance conduct has a negative effect upon residents and occupants of adjacent homes and structures, impacts the quality of life of neighborhoods, and tends to depress the value of nearby property. This problem is in part due to local circumstances present in few, if any, other towns statewide. To the extent that tenants are involved in such nuisance behavior, landlords can help to remedy the problem because they control tenant selection, and may determine whether to dispossess a tenant.
- C. The Town of Mansfield has engaged in a sustained, concerted effort to address these and similar issues. The Town Council expects that by discouraging nuisance activity and encouraging local landlords to prevent nuisance behavior by their tenants, this article will combine with other recently enacted ordinances to promote neighborhood peace and compatibility, and protect the general health, safety and welfare of the people of Mansfield.

**§ 135-4. Definitions**

For the purposes of this article, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

**ADJACENT PREMISES**

Premises contiguous to premises on which there is activity that is a nuisance per this article, to which said activity has moved or spread.

**DWELLING UNIT**

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**LANDLORD**

The owner, lessor or sublessor of a dwelling unit, the building of which it is a part, or the premises.

## NUISANCE

Any behavior which substantially interferes with the comfort or safety of other residents or occupants of the same or nearby buildings or structures. Conduct of a person or persons on any premises in a manner which is a violation of law, or which creates a disturbance of the quiet enjoyment of private or public property, may constitute a nuisance. Such behavior includes disorderly, indecent, tumultuous or riotous conduct. Unlawful conduct includes, but is not limited to, individually or in combination with other misbehavior, excessive pedestrian and vehicular traffic, obstruction of public streets by crowds or vehicles, illegal parking, the service of alcohol to underage persons, underage drinking, fights, creating a public disturbance, breach of the peace, trespassing, disorderly conduct, littering, simple assault, threatening, harassment, illegal burning or use of fireworks, urinating or defecating in public, lewdness, criminal mischief, crimes against property, or excessive noise. The knowing failure of any tenant to act responsibly to require any resident of the same premises or guest on their rented premises or adjacent premises with the consent of the tenant or their co-resident, to refrain from behavior constituting a nuisance under this Article, shall itself be a nuisance. *discourage*

## PREMISES

A tract of land, including buildings thereon, appurtenances, grounds, and any public right-of-way immediately adjacent to any such tract of land.

## TENANT

The lessee, sublessee or person entitled under a rental agreement, written or not, to occupy a dwelling unit or premises to the exclusion of others or as is otherwise defined by law.

### § 135-5. Applicability.

This article shall apply to any premises situated within the Town of Mansfield.

### § 135-6. Enforcement; penalties for offenses.

A. In addition to the police, the Town Manager shall designate, in writing, one or more Town officials empowered to take enforcement or other action authorized by this article.

B. Warning; fine; notice of violation.

- (1) Each commission of a nuisance activity as defined herein on any premises or adjacent premises shall be a violation of this article, thereby authorizing any designated Town official or police officer to issue a written warning to an offender or to assess a fine of \$250 per violation. In his or her exercise of discretion under this section, any such official or police officer shall be guided by the stated purposes of this article, among other things.
- (2) Written notice of any such violation shall be hand delivered or sent via certified mail to the offender. Any fine shall be payable within 30 calendar days of the date of issuance of the notice. If any such offense was committed on the residential rental premises of a landlord by his or her tenant or by the guest of any such tenant of the landlord, a copy of such notice of

violation and a warning of the provisions of § 135-6C of this article shall be hand delivered or sent by certified mail to the landlord of any offending tenant or his or her guest.

- C. If any police officer or other duly authorized Town official issues any notice of violation of this article by and pertaining to any tenants or any of their guests to any landlord of the same residential rental premises on more than two occasions in any six-month period, or more than three times within nine months, or more than four times within one year, as measured from the date of the first instance of nuisance, the Town Manager, or his designee, per Subsection A of this section, in his or her discretion, guided by the stated purposes of this article and the laws of this state and the Town of Mansfield, may hold the landlord of any tenant(s) or guest(s) who perpetrated such additional acts of nuisance legally responsible for a fine of \$250 for each such additional instance of nuisance committed by any tenant of the landlord or guest of such tenant. Prompt notice of any such violation by a landlord shall be hand delivered or sent via certified mail to the landlord. The fine shall be payable within 30 days of the date of issuance of said notice.
- D. In addition to any other remedy authorized by this article, if any such fine issued pursuant to this article is unpaid beyond the due date, the Town may initiate proceedings under the authority of C.G.S. § 7-152c and Chapter 129, Hearing Procedure for Citations, of the Code of the Town of Mansfield, to collect the fine.
- E. Nothing in this article shall limit the ability of the authorities to initiate and prosecute any criminal offense or provisions of any other applicable Town ordinance arising from the same circumstances resulting in the application of this article. The police, in their discretion, guided by the stated purposes of this article and the law enforcement provisions and purposes of the laws of the State of Connecticut and the Town of Mansfield, may disperse any participants in any activity constituting a nuisance per this article.

#### **§ 135-7. Appeals.**

Any person fined pursuant to this article is entitled to a hearing procedure and judicial review, if necessary, pursuant to the provisions of the Town of Mansfield hearing procedure for citations set forth in Chapter 129 of the Code of the Town of Mansfield, as required by C.G.S. § 7-152c.

#### **§ 135-8. Word usage.**

Whenever used, the singular number shall include the plural, the plural the singular, and the use of either gender shall include both genders.

DOCKET NO. TTD CV 12 5005633 S : SUPERIOR COURT  
 NEIL A. FLAHIVE : JUDICIAL DISTRICT OF TOLLAND  
 VS. : AT ROCKVILLE  
 TOWN OF MANSFIELD : JULY 10, 2012

MEMORANDUM OF DECISION

The petitioner, Neil Flahive, appeals to this court, under General Statutes § 7-152c(g), from the adverse decision of a municipal hearing official who assessed a \$250 fine upon the petitioner for violating a provision set forth in Art. I. § 135-6 of the Mansfield ordinances which seeks to curb nuisance activity. Subsection 7-152c(g) affords judicial review of the assessment in the form of “a hearing in accordance with the rules of the judges of the Superior Court.” Practice Book § 23-51 allows aggrieved persons to attack such an assessment at a hearing de novo. On July 6, 2012, the court held the de novo hearing.

The statutes, rules of practice, and caselaw supply no guidance as to the proper conduct of the de novo hearing. No burden of going forward or proof is specified. The one appellate decision involving § 7-152c(g), Fillion v. Harmon, 106 Conn. App. 745 (2008), deals only with the legal interpretation of a particular ordinance rather than procedure.

The statute, § 7-152c(g), and rule of practice, § 23-51, do refer to the process as an “appeal.” Usually, the burden is upon the appellant to establish error. However, a de novo hearing implies

*The decision was mailed 7-10-12 to:*

*Neil Flahive*

*Atty Dennis O'Brien*

*Reporter of Judicial Decisions*

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SUPERIOR COURT  
 TOLLAND JUDICIAL  
 DISTRICT

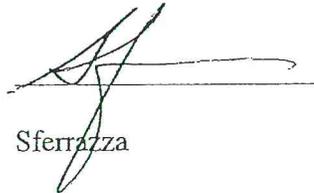
that the superior court conducts a proceeding which parallels that of the earlier, nonjudicial hearing. The court, therefore, assigns the burden of proof of a violation of the ordinance by the petitioner to the municipality, i.e. the party seeking to assess the civil penalty and enforce its ordinances. The standard is by a preponderance of the evidence because it is a civil penalty which is being sought.

As a threshold matter, the court determines that the petitioner is aggrieved because he is the person to whom the citation was issued and upon whom the fine was assessed.

The court also determines that the municipality has failed to prove that the petitioner engaged in nuisance activity. Under Art I., § 135-4, "nuisance" is defined to include "[c]onduct of a person or persons on any premises in a manner which is a violation of law, or which creates a disturbance of the quiet enjoyment of private or public property ... ." The allegation is that the petitioner was one of four tenants at a premises at which a large party occurred. The hosts charged a fee to enter the party and beer was available indiscriminately for guests. No permit to distribute beer was obtained nor did the hosts attempt to prevent underage drinking.

Such an operation was undoubtedly "nuisance activity" within the proscription of § 135-6.B.(1). However, no evidence was adduced that the petitioner hosted the party or participated in the activity in any manner. The ordinance only permits the municipal enforcement official to assess a fine against an "offender." There is no provision for strict liability or vicarious guilt. Merely being a cotenant at premises at which such nuisance activity occurs is insufficient to create an

inference of cooperation or participation in the untoward behavior. Consequently, the court rules in favor of the petitioner and against the municipality.

 , S.J.  
Sferrazza