

**MAYOR AND COMMISSIONERS MEETING
CITY OF REHOBOTH BEACH**

October 4, 2010

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:11 a.m. by Mayor Samuel R. Cooper on Monday, October 4, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Commissioner Bill Sargent
 Commissioner Pat Coluzzi
 Mayor Samuel R. Cooper
 Commissioner Dennis Barbour
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Absent: Commissioner Kathy McGuiness

Also in attendance was: City Manager Gregory Ferrese
 City Solicitor Glenn Mandalas

CORRESPONDENCE

There was no general correspondence.

OLD BUSINESS

There was none.

NEW BUSINESS

Mayor Cooper called to discuss Section 270-10(A) of the City Code and its enforcement, which Section relates to the regulations of patios associated with restaurants.

Correspondence regarding the patio ordinance and concerns about its enforcement:

1. Email received September 30, 2010 from Steph Dalee & Sheila Savaliski of Seafood Shack, 42½ Baltimore Avenue.
2. Email received October 1, 2010 from April DeBoe of FDA IT Call Center.
3. Email received October 1, 2010 from Thomas McGlone, 318 Laurel Street, Rehoboth Beach.
4. Email received October 1, 2010 from Kevin Bauer, address unknown.
5. Email received October 1, 2010 from Ellen Powell, address unknown.
6. Email received October 1, 2010 from Steven Wildasin, address unknown.
7. Email received October 1, 2010 from Troy Roberts of Purple Parrot Grill, 134 Rehoboth Avenue, Rehoboth Beach.
8. Email received October 1, 2010 from Guy Abernathey, Wilmington Avenue, Rehoboth Beach.
9. Email received October 1, 2010 from Rob Renner, Thurmont, MD.
10. Email received October 1, 2010 from Tam M., address unknown.
11. Email received October 1, 2010 from Renee Stambaugh, Frederick, MD.
12. Email received October 1, 2010 from Janet Both, address unknown.
13. Email received October 1, 2010 from Dan Foskey, address unknown.
14. Email received October 1, 2010 from Carl Schloegel, Rehoboth Beach.
15. Email received October 1, 2010 from Troy Petenbrink, Washington, DC.
16. Email received October 1, 2010 from Jennifer Schultz, Pittsburgh, PA.
17. Email received October 1, 2010 from Christopher Ramos of The Star Group, Philadelphia, PA.
18. Email received October 1, 2010 from Andy Meddick, Rehoboth Beach.
19. Email received October 1, 2010 from Ben Parthree of InstallTech, Inc., address unknown.
20. Email received October 1, 2010 from Greg Oberdick, York, PA.
21. Email received October 1, 2010 from Kyle Barkins of ION-E Group LLC of Newark, DE.
22. Email received October 1, 2010 from Bill McManus, address unknown.
23. Email received October 1, 2010 from Sterling Jones, Rehoboth Beach.
24. Email received October 1, 2010 from Trelynda Kerr, 34827 Mute Swan Lane, Rehoboth Beach.

25. Email received October 1, 2010 from Carmelita Whitfield, address unknown.
26. Email received October 1, 2010 from Bruce Clayton, address unknown.
27. Email received October 1, 2010 from Tom Resh, 2 Gary Avenue, Rehoboth Beach.
28. Email received October 1, 2010 from Troy Reynolds, address unknown.
29. Email received October 1, 2010 from Robert Hicken of South Carolina ReMax, address unknown.
30. Email received October 1, 2010 from Frank Stepnowski, address unknown.
31. Email received October 1, 2010 from Paul Cronkleton, Rehoboth Beach.
32. Email received October 1, 2010 from John Francis Flynn, 37266 Sea Coast Court, Rehoboth Beach.
33. Email received October 1, 2010 from Gerry Duprey, Ann Arbor, MI.
34. Email with attached emails received October 1, 2010 from Jenny Barger, Executive Director of Main Street, Inc., Rehoboth Beach.
 - A. Thomas McGlone, 318 Laurel Street, Rehoboth Beach.
 - B. Steph Dalee & Shilia Savaliski of The Seafood Shack, 42½ Baltimore Avenue, Rehoboth Beach.
 - C. Kevin Bauer, address unknown.
 - D. Ellen Powell, address unknown.
 - E. Steven Wildasin, address unknown.
 - F. Troy Roberts of Purple Parrot Grill, 134 Rehoboth Avenue, Rehoboth Beach.
 - G. Guy Abernathy, Wilmington Avenue, Rehoboth Beach.
 - H. Tam M., address unknown.
 - I. Meyer Persow, Rehoboth Beach.
 - J. Renee Stambaugh, Frederick, MD.
 - K. Rob Renner, Thurmont, MD.
 - L. Janet Both, address unknown.
 - M. Dan Foskey, address unknown.
 - N. Carl Schloegel, Rehoboth Beach.
 - O. Brian Lopez, Philadelphia, PA.
 - P. Troy Petenbrink, Washington, DC.
 - Q. Jennifer Schultz, Pittsburgh, PA.
 - R. Andy Meddick, Rehoboth Beach.
 - S. Ben Parthree, address unknown.
 - T. Greg Oberdick, York, PA.
 - U. Kyle Barkins, Newark, DE.
 - V. Trelynda Kerr, 34827 Mute Swan Lane, Rehoboth Beach.
 - W. Sterling Jones, Rehoboth Beach.
 - X. Jim Affonco of Star of the Sea, 307 South Boardwalk, Rehoboth Beach.
 - Y. Tom Resh, 2 Gary Avenue, Rehoboth Beach.
 - Z. Bruce Clayton, address unknown.
 - AA. Robert Hicken of South Carolina ReMax, address unknown.
35. Email received October 1, 2010 from Celena Stepnowski, address unknown.
36. Email received October 1, 2010 from W. Mason Preddy, Founder/CEO of White Brights Teeth Whitening Boutiques, address unknown.
37. Email received October 4, 2010 from Winfield Standiford, 8 Olive Avenue, Rehoboth Beach.
38. Email received October 4, 2010 from Tara Lausch, Title 1/Student Mentoring Coordinator of H.O. Brittingham Elementary School and Rehoboth Elementary School, address unknown.
39. Email received October 4, 2010 from Brian Lopez, Philadelphia, PA.
40. Email received October 4, 2010 from Holly Lane, address unknown.
41. Email received October 4, 2010 from Joe Murray, Rehoboth Beach.
42. Email received October 4, 2010 from Carol Fezuk, Lewes, DE.
43. Email received October 4, 2010 from Karen Harris, address unknown.
44. Email received October 4, 2010 from Tom McDermott, address unknown.
45. Email received October 4, 2010 from Jay Hoad, Director of Jay Hoad Bank, Australia.
46. Email received October 4, 2010 from Mary, Walter & Michael Melisky, address unknown.
47. Email received October 4, 2010 from Geri Dibiase of Geri Dibiase Photography, address unknown.
48. Email received October 4, 2010 from Carol Chrzanowski, Lewes, DE.
49. Email received October 4, 2010 from Dana Keeney and Paul Young, 151 Columbia Avenue, Rehoboth Beach.
50. Email received October 4, 2010 from Roger Binner, 59 Maryland Avenue, Rehoboth Beach.
51. Email received October 4, 2010 from Pamela Notarange, Rehoboth Beach.

52. Email received October 4, 2010 from Jayne Burke, 308 State Road, Rehoboth Beach.
53. Email received October 4, 2010 from Tony Potter, 4 Sea Chase, Rehoboth Beach.
54. Email received October 4, 2010 from John & Jan Motz, 25 Delaware Avenue, Rehoboth Beach.

Commissioner Dennis Barbour read a statement prepared by Commissioner Kathy McGuinness since she was unable to attend this meeting. In her statement, Commissioner McGuinness said that it seems the City employees have been asked to enforce the current patio ordinance with vigor. She questioned why all of a sudden in September 2010 it was enforced. Research has shown that it was due to a particular complainer who was unhappy with the unenforceable noise ordinance. This matter should be addressed to prevent a similar occurrence. She has offered to work on the current patio ordinance language; and at the October 15, 2010 Regular Meeting present some suggestions in hopes of consensus. Commissioner McGuinness had requested this subject be put on the agenda of the October 15, 2010 Regular Meeting. She asked that the complainers sit in on a Noise Committee meeting along with at least two Commissioners to bring the process. Commissioner McGuinness had hoped in the future that all Commissioners could be notified of sudden enforcement changes and bring another Commissioner to any meetings for balance.

Commissioner Barbour summarized a statement that he had prepared on the matter of City ordinances pertaining to noise, disturbance of the peace and patios, and how those ordinances have been applied to City restaurants. It is important to air the concerns and come up with a civil solution to move forward. His conclusions were based on conversations with numerous people. Commissioner Barbour pointed out his support for the police and City employees who were put in an untenable position as a result of the actions of others. He reviewed the three ordinances: 1. Noise ordinance. 2. Disturbing the peace ordinance. 3. Patio ordinance. A violation of the noise ordinance is a criminal offense. In the past, the police had used the ordinance as an enforcement mechanism for noise. Because the City currently does not have adequate technology to measure noise that would be sustained in court, it was decided that this was not a good use of the City's resources to be defending suits in court that were not going to be sustainable. What has been used is the Disturbing of Peace Ordinance which is a civil matter. Individual businesses have been flagrant violators; and on the whole, the police have worked out a system that was working pretty well with the business owners. There has been for years a small group of individuals who have had problems with noise in the restaurants in the City. On September 8, 2010, there was meeting at which time someone or a group of people presented a list of businesses that have violated the patio ordinance. The patio ordinance calls for stopping to serve alcohol at 10:00 p.m. and people being off of the patio at 11:00 p.m. One of the complicating factors is that a number of restaurants in the City are grandfathered. The police were sent out without a complete spread sheet on which restaurants are grandfathered. A violation of the patio ordinance is a criminal offense. As a result of that, there were arrests. Commissioner Barbour questioned why suddenly on September 11, 2010 the businesses were notified that the patio ordinance will be used in order to tackle the issue of noise. He also wanted to know what happened at that meeting and who brought the complaints forward. It is very important that the Commissioners move forward with this matter. There is some evidence that these ordinances are generally unenforceable in the courts. In order to get at the noise issue, the Commissioners need to address it in a consistent way, work with the businesses and be transparent. The patio ordinance will also need to be addressed. Commissioners Barbour and McGuinness both proposed to appoint a group of people to review this matter.

Commissioner Pat Coluzzi supported Commissioner Barbour's recommendation. Three Commissioners on a committee along with some business owners should be involved and look at coming to a consensus of what to do to make the patio ordinance work better for everyone.

Commissioner Bill Sargent said that if the Commissioners work directly with the business owners, it might be harder for the Commissioners as a group to decide what should be done. The issue with the outside patios hours is an extension of dining. On the other hand, there could be excessive drinking, outside music, etc., and it is really the conversion of restaurants to bars in the evening. The problem is that this cannot be outside bothering the community. The patio legislation was there to address the issues of excessive drinking, outside music, etc. The legislation attacks the problem, but it is not an efficient way of doing it. The problem is noise. The noise ordinance is very limited. The Commissioners do not want loud music outside particularly with a low frequency beat that carries a long way and disturbs people or boisterous talking outside. Commissioner Sargent asked how the Commissioners can come up with something that is defined as sustained noise. He read Ms. Jenny Barger's email. Her suggestion is for Main Street to work with the City and downtown businesses and come up with suggestions regarding the current language, restrictions and enforcement of the patio ordinance. Multiple businesses, residents and visitors have come forward to Main Street with concerns of how this ordinance reads and the way in which it has been enforced over the last month or so. All were encouraged to send correspondence directly to the City for awareness and feedback. The Main Street board would like to

invite downtown businesses, residents, visitors and City representatives to collaborate and discuss this ordinance at a meeting. The suggested date for the meeting is October 15, 2010 at 10:00 a.m. Commissioner Sargent said that involving the Commissioners may not be the best thing; but if those who are a part of the restaurants could give the Commissioners an acceptable definition of sustained noise so that a law enforcement officer could use a tape recorder within a certain amount of feet from an establishment. This could be a different approach to the patio hours. If everyone who would be at the meeting on October 15, 2010, would come up with a draft of how to determine noise, the Commissioners could give serious consideration to it.

Commissioner Lorraine Zellers said that the Commissioners support the businesses and are grateful they are in the community. There are two sides to the community: 1. Business owners. 2. Homeowners. The noise is probably the biggest issue of all of this. Comments have been made that ordinances are not enforced consistently. Recently, this was an attempt to try to enforce the ordinances. More notice should have been given to business owners. There are unintended circumstances with the criminal aspect of the noise ordinance. Now is a good opportunity for everyone to work together. Commissioner Zellers encouraged the Commissioners to move forward and look at these ordinances. She researched other municipalities' ordinances; and each municipality has the same patio ordinance. All of them require for patrons to be off of the patios at 11:00 p.m. All of them require no music, no outside speakers, etc. This is a good opportunity of moving forward to be on the same page.

Commissioner Stan Mills noted that he has been the one blamed for all of this. City Manager Gregory Ferrese set up the meeting in September 2010 and had invited Commissioner Mills. A list was compiled of complaints from all the restaurants which had been discussed at that meeting. Multiple persons complained, and the complaints came in the form of questions. A lot of residents and restaurateurs have come to Commissioner Mills expressing the same questions, and he passed those complaints on to the City Manager. Pointing a finger is a diversionary tactic. The point is the City has ordinances that are meant to be respected and complied with, and the City should be enforcing them fairly. Most all of the businesses in the City respect and comply with the ordinances. However, there is a small sub-committee that thumbs their noses at the ordinances whether they are pertaining to restaurants, patios, noise, signage, etc. Doing so does not provide a level playing field for all the others that play by the rules. Enforcement is needed and warranted. The patio rules are part of the permit of compliance process where typically the Code is read and acknowledged by the applicant. When the motion is made during a permit of compliance hearing and approved, Commissioner Mills has the expectations that the restaurant is going to follow and comply with the Code, and that the City will enforce them. The same expectation has been held by the residents and the other restaurants. It is an obligation of the City to fairly enforce the ordinances across the board. Some of the establishments that most recently received their permits of compliance which included the patio rules and whose applicants indicated they would comply with the rules, had their fingers crossed behind their backs and immediately violated those rules upon opening their new or expanded establishments. Some older establishments may be strayed, and some of the establishments are willful violators; and those violators are the straws that broke the camel's back. The City has been lax in its enforcement, but Commissioner Mills did not see it as any reason to take the position by these establishments that rules can be broken until caught. He supports Mr. Ferrese in enforcing the rules. Mr. Ferrese should review some of the important methodologies such as with interior patios. Commissioner Mills asked that those with permits of compliance and patio licenses honor their part of the contract when they were granted a permit of compliance allowing the sale of alcoholic beverages and use a patio as an extension of the licensed premises. He is amenable to looking at changes to the Codes. The first step to change is not to willfully violate those Codes.

City Manager Gregory Ferrese has not had anyone come in and ask to amend the patio ordinance since its adoption in 1991. The patio ordinance works, and it is a good ordinance. Complaints are addressed on a one-on-one basis. Three Commissioners in a matter of three weeks in late August and early September 2010 had come to Mr. Ferrese about violations of the patio ordinance. It is a disgrace when the new restaurants come before the Commissioners for a certificate of compliance, the Commissioners read the patio ordinance and the restaurant owners agreed to it, and then they have speakers outside, loud noise and patrons on the patios at 12:00 a.m. There are 63 restaurants in the City that serve alcohol. In the list that was presented to Mr. Ferrese, there were 12 restaurants violating the ordinance. A meeting was held in regard to this issue. During the summer, Mr. Ferrese had told the building inspector at public meetings to give the establishments a warning and then to cite them next time. In this situation, some restaurants were cited. Not one restaurant has come to Mr. Ferrese to have the ordinance amended. It is intended that the ordinance will be enforced more next year. City Solicitor Mandalas, Mayor Cooper and Commissioner Mills were involved in the meeting. Mr. Ferrese was unsure as to how many citations have been issued since 1991 for violations of this particular ordinance. Most of the violations for noise have been from noise, speakers, DJ's and bands. Citations have been issued

n a one-on-one basis. This was the first time that twelve complaints were made at one time. Mr. Ferrese suggested that the Commissioners should establish a committee to resolve the issues with the patios, noise and sandwich board signs.

Commissioner Sargent understood that the grandfathered restaurants are able to stay open and serve the patron outside on the patios until 12:00 a.m. He asked if those restaurants have established a pattern which indicates they cannot abide by the rules within the 12:00 a.m. timeframe. Mayor Cooper did not think that a pattern could be drawn. Commissioner Sargent looked for any information that would indicate it to be possible to live with a later closing if it is done responsibly. He did not want to support a change in the hours if there is not a tight way of enforcing noise. If noise could be controlled in a fair and tough way that would stand up in court, then he would be amenable to equalizing the hours. There is an apparent unfairness that some restaurants can stay open and serve on patios until 12:00 a.m., and other restaurants have to close their patios down earlier. Every restaurant should follow the same rules.

Commissioner Coluzzi asked if the noise ordinance can be enforced with the noise meters the Police Department has. Police Chief Banks noted that the Police Department has a meter that will work, however there are different base levels, and the ordinance does not cover some of those levels. It is upsetting to Police Chief Banks and his officers when a complaint is made and they respond to it, that some of the restaurants only comply for 10 minutes and when the officers leave the noise level is back up again. Some of the restaurant managers will acknowledge that the noise level is too loud and will turn it down, but then it goes right back up later. Some of them have their noise meter and its reading that by the ordinance they are not in violation because they are at a particular wave level. If the ordinance would be amended to be able to enforce it better, the businesses would not be happy with that because it would show a lot more of them in violation. He acknowledged that the meter is probably not the best way to try to enforce the ordinance.

Commissioner Sargent said that the noise ordinance is violated when noise is heard, and he encouraged the Commissioners to come up with a standard that everyone will recognize so in court, a judge can clearly determine that the noise came from a particular establishment. A fair standard needs to be written, and it needs to exclude things that are going to happen naturally and catch those things which are found offensive.

Commissioner Barbour said that these ordinances are generally unenforceable. It is the responsibility of the Commissioners as the governing body to come up with a standard in conjunction with the business community. It is also important to keep in mind that this is commerce in a commercial area, and the businesses have a right to conduct commerce. They may be next to residential areas, but over the years there have also been violations by the residents insofar as renters who are noisy. This is not only about the businesses doing wrong and flagrantly violating the ordinance, it is also the residents. They have a right to live peacefully in their homes within certain parameter if it is a residential area. Businesses have an intrinsic right to run their commerce within reasonable standards. The standards in the City have not been reasonable for some time. The other issue is that the Commissioners need to keep in mind that during the day there are visitors in the City who make a lot of noise and make a lot of disturbance. As part of the tradition, the daytime visitors are accommodated by the City. The City is supposed to be an open resort City. Another attitude needs to be adopted than what has been so far. Commissioner Barbour was concerned with why the City needs to overreach and go after a larger group when there are only a few flagrant violators of this ordinance..

Commissioner Mills clarified what grandfathering is and how an establishment with an outdoor patio has become grandfathered. He also clarified the timeframes for closing regarding some of the different establishments. Mayor Cooper noted that in theory a restaurant is grandfathered to what it was doing in 1991. Commissioner Mills noted that the patio ordinance was adopted in 1991. At that point, the rules were established. The rules are: 1. A maximum of 750 square feet whether the patio is uncovered or has a shed roof. 2. Food and beverages may be served only to seated patrons. 3. No patrons may await seating on the patio. 4. No live entertainment on the patio. 5. No external speakers or amplifiers on the patio. 6. No internal speakers from the premises are to be directed to the patio. 7. No bar on the patio. 8. Food service shall be allowed from 7:00 a.m. to 10:00 p.m. 9. Alcoholic liquor service and consumption shall only be allowed from 11:00 a.m. to 10:00 p.m. 10. Patrons must leave the patio by 11:00 p.m. 11. No one shall construct or operate a patio unless it is included in a special permit of compliance per Chapter 215. 12. No overflow of patrons. A patio existing as of June 14, 1991 shall be considered a legal non-conforming use but shall be subject to all the provisions of Chapter 215 if expanded. An establishment which had an outdoor patio prior to June 14, 1991 can keep the patio. An establishment which had a bar on the outdoor patio at that time, can keep the bar. The 11:00 p.m. closing time is pursuant to any restaurant that received a permit of compliance after June 14, 1991, including any grandfathered restaurant that had to come back for a permit of compliance if it expanded in size. Aqua Grill is an exception because it has an outdoor patio license which allows it to close at 12:00 p.m. All the other

grandfathered establishments have no timeframe. When the restaurant closes is when the patio closes.

Public Comment:

1. Mr. Joe Maggio, co-owner of Aqua Grill, said that this part of the Code should be changed from criminal to civil.
2. Ms. Carol Everhart of Rehoboth Beach/Dewey Beach Chamber of Commerce said that the Chamber got involved in the issue when she had received a phone call from a business that was cited which was followed by several businesses coming into the Chamber to discuss. The Chamber has a Downtown Advisory Committee which deals with issues when they arise but are not on a normal basis. A meeting was held on October 1, 2010; and in regard to these issues, the Committee had expressed that the ordinance had laid dormant for a long time, it was sudden enforcement, enforcement was not necessarily widespread but more selective, whether it was complaint spurred or if it came from noise and how many complaints, civil vs. criminal, etc. The Committee's vote is that the ordinance should be repealed. The alternative to that would be some discussion at a meeting.
3. Mr. Jeff Hamer, owner of Claws Seafood House, said that the City has a comprehensive plan that has shifted to a business corridor where streets have been changed back to residential. The businesses have been put on the main avenue for the most part. If there are a few problems, they should be dealt with on an individual basis. The restaurants would be amicable to give a little bit if the City would allow an extension of the time and would run the meters to 1:00 a.m. It seems that everyone has agreed this is a noise issue. A small percentage of people are violators, and understandably there is noise in the business corridor. It is hard for the Police to meter establishments when the waves crashing, a lawnmower, an HVAC unit turning on, etc. all violate the decibel readings of noise. It is important that this gets worked out quickly. There are only a few establishments that are violators, and the rest will also expect to be ticketed and arrested as well if this is enforced across the board. Mr. Hamer suggested that the group should not be punished because of the violations of a few restaurants. He requested that the ordinance should be revisited and re-tooled for today.

Mayor Cooper said that he is open to making changes. In regard to the letters, this is about bars and not about restaurants. Half of the letters cite that people like the bars that are outside, and that is the issue for him.

4. Mr. Paul Young, address unknown, said that it is outrageous that some businesses are being targeted and arrests were made, and other businesses were not. This issue needs to be addressed properly.
5. Ms. Libby Stiff, Scarborough Avenue, said that if the Commissioners plan to revisit the ordinance, she would be happy to volunteer. She is in favor of what is the best thing for the City.
6. Ms. Sydney Arts, former business owner of Sydney's, said that this ordinance is not enforceable because there are so many extenuating circumstances to the issue of what creates a certain level on the noise meter. This is an unenforceable ordinance the way it is written and has not been enforced equally across the board. The Commissioners needs to allow businesses to conduct commerce and have a way to enforce consistent violators. The Commissioners need have something that establishes guidelines for summer time where there is a lot of ambient noise, and something that works in the off-season where sound will carry much further and faster into the residential community.
7. Mr. Bill Shields, co-owner of Aqua Grill, has worked with the Mayor and City Manager on any issue that has come up. He has never not kept a promise to the City. In his letter regarding grandfathering, it states that Mr. Shields need to remove people at 12:00 a.m. He was cited for one dozen people being on the patio. He had no music on and every window was shut, and there were no servers servicing the tables on the patio. Mr. Shields did not feel that he broke the law in any way. He would like to see something work out that is fair and honest.
8. Mr. Pat Adams, owner of Arenas, has never been cited for noise. For him, there are two separate issues: 1. Patio. 2. Live entertainment. He felt that the Commissioners are enforcing the rule that needs to be addressed, and maybe that rule needs to be broken down that has live music in part of the rule and has the patio broken down in the rule. A lot of the patios are used to serve food with liquor as a complement.
9. Mr. Jay Caputo, owner of two restaurants in the City, said that his issue with having an outdoor patio is the way it was enforced and the way the officers came into the establishment. Everyone should be in compliance with the liquor laws or any sort of law. He was also concerned because 12 establishments were targeted. It is not unreasonable for the City to have done some homework in regard to patrons and closing times of the different patios. If the City wants to work with the businesses, it should not rule with an iron fist.

10. Ms. Sheila Savaliski, co-owner of Seafood Shack, had received a letter and posted it in her business. Of the 63 establishments with liquor licenses and 36 patio licenses in the City, only 12 establishments received notices. She asked why notices were not sent out to all 36 establishments that have patio licenses which would have been fair and equal presentation of the law. She suggested that this ordinance should be put on hold from enforcement.

Commissioner Mills agreed that the letters should have been sent to all the establishments that have a patio license. He also thought that Mr. Jay Caputo was owed an apology because the City was deficient in having a full list of what establishments are grandfathered. Commissioner Coluzzi said that the Commissioners will work with the establishments if there is an issue.

11. Mr. Scott Standiford, 8 Olive Avenue, said that the Commissioners are using a patio law in order to control noise. If there is a noise problem, then a noise ordinance should be written, and it should be written in such a manner that it ignores things such as air-conditioners turning on and traffic driving by, etc. The patio ordinance should go by the wayside and a noise ordinance should be written that has meaning to it.
12. Ms. Bitsey Cochran, 102 North First Street, said that the patio ordinance was created because of a noise issue, and there are businesses that are blatantly violating it. An officer should be scanning each business in the City on an equal basis to make sure that everybody is in compliance. She voiced concern with how the base can be controlled because it resonates.
13. Mr. Ben Fosey, address unknown, was appalled by the way the ordinance was enforced. Most of the issue is with the hours of operation in the patio ordinance. There is a noise problem, and the City is trying to enforce it with the patio ordinance. He urged the Commissioners to suspend enforcement of paragraph (K) in the ordinance or strike it immediately from the ordinance; and set up a working group to look at the noise ordinance, rewrite the noise ordinance, have public commentary and then enforce it later this year or before the next summer season.
14. Mr. Will Rogers, employee at a business in the City, said that the Commissioners are trying to contain people in a restaurant or business from going outside on the patio, and the restaurants can contain them. By enforcing the patio ordinance, the restaurants will not be able to do that.
15. Mr. Nathan Keeney, 151 Columbia Avenue, voiced concern that gay establishments have been targeted, and other businesses have been able to do whatever they want.
16. Ms. Jenny Barger of Rehoboth Beach Main Street, said that at the end of this meeting she will put out a list to whomever is interested in providing strong ideas of where to go from here, whether it is an alteration to the patio ordinance or suggestions on how to measure sound appropriately. It would be up to the Commissioners whether they will join the meeting on October 15, 2010 at 10:30 a.m. It would be appropriate to have representatives of the City, Main Street. She will put out a press release as to where the meeting will take place. Ms. Barger would like to help out with this issue along with Ms. Libby Stiff. The list will be provided to anyone who is interested in being on the committee.
17. Mr. Carl Schlegel, address unknown, said that in less than two weeks Jazzfest weekend will be occurring, and there will be a lot of live music in the City. He said that the Commissioners need to let the owners of the establishments know how this ordinance is going to be handled.
18. Ms. Roberta Troy, address unknown, said that selective enforcement is ludicrous, and this ordinance should be suspended in the interim because it is not working.
19. Mr. John Black of Rigby's Bar & Grill, have had complaints about noise because the door was left open accidentally. Live music was provided on the patio on Saturday of Labor Day weekend to provide more revenue. With the timeframe for the patio, people should be able to sit out on the patio to sit, relax and enjoy the company of others. He hoped to get to some kind of a resolution.
20. Mr. Rodney Law, address unknown, requested that the City go on record and apologize for handling this situation badly and what it will do to rectify it.
21. Mr. Gene Lawson, Esq., 12 Hickman Street, said that City has enforced the noise ordinance in private residences. The noise ordinance will not be enforced by the courts of Delaware. In regard to noise, Rehoboth Avenue is different from streets that border residential areas. Noise on the Boardwalk is as loud as noise coming out of certain establishments on Rehoboth Avenue. When the Commissioners are considering what to do, they should do something that is variable with regard to Rehoboth Avenue and streets bordering residential areas.

Commissioner Coluzzi apologized regarding the business owners who were arrested because it seems that things were not handled properly. Commissioner Barbour concurred. He hoped as a citizen that the City will not pursue the criminal matters. Commissioners Sargent agreed and he hoped that there was no targeting. Commissioner Zellers agreed.

Mayor Cooper apologized to Mr. Caputo, but he disagreed with Commissioner Sargent. He has sat in permit of compliance hearings where the restaurant owners were asked if they understood the Code, and within a year they were violating it. That is a real disrespect for the City and the people in the City. He that maybe the Code needs to be changed, but that is not the way to change it.

Commissioner Sargent was not apologizing for the law and the police doing their proper duty, but the feeling is that injustice went to an extreme. The City certainly owes everybody an apology. Commissioner Barbour said that even if the City would drop the charges, the arrest record and fingerprinting stands until it is expunged by the court.

Commissioner Mills noted that he could not attend the meeting to be held by Main Street on October 15, 2010, but he is comfortable with Ms. Barger talking the lead on this matter. He suggested that information is gathered and come up with some proposals, and send it forward to the Commissioners. There may be some dialogue at a future date between the committee, Main Street and the Commissioners. Commissioner Barbour noted that Commissioner McGuinness has requested that this matter be placed on the next agenda.

Commissioners McGuinness, Coluzzi and Barbour will work with Ms. Barger of Main Street in regard to this matter.

Mr. Jay Caputo accepted the apology from the Commissioners. He also requested that a formal public apology be made to the specific establishments that were targeted and monetarily affected.

Mayor Cooper will meet with Mr. Ferrese and Police Chief Banks regarding the ordinance. To suspend the ordinance is wrong, but the City needs to be a little more relaxed with it.

CITY MANAGER'S REPORT

(See attached report.)

City Manager Ferrese reported that a grant application was submitted to the State Parks and Recreation Department to purchase a mobi-mat which would be located on the crossover going to the beach at Laurel Street. The amount submitted is \$17,000.00 and if approved, the City's share would be \$8,500.00. The Museum Project has been finalized, and the last request for reimbursement will be submitted to the State. Sealed bids will be opened on October 7, 2010 at 1:31 p.m. for the Solar Panel Project. Mayor Cooper and Mr. Ferrese held a meeting with DelDOT last week to discuss making improvements to the entrance to the Fire Department. DelDOT must approve this project. It is anticipated that the improvements will begin in November 2010. The State intends to micro-surface Bayard Avenue in mid-October or November. The State is aware of the Jazz Festival and Sea Witch dates, and will work around those events. The new air-conditioning unit for the Convention Center will be installed in November.

CITY SOLICITOR'S REPORT

City Solicitor Glenn Mandalas reported that the Cape Henlopen School District has signed the easement agreement for Silver Lake. One last step to do in the Building Inspector's office is to sign off on the plat, and then it will be final.

COMMITTEE REPORTS

There were no reports.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

There were no announcements/comments.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

No items were discussed to be included on future agendas.

There being no further business, Mayor Cooper adjourned the meeting at 11:03 a.m.

Respectfully submitted,

(Ann M. Womack, Assistant Secretary)