

A regular meeting of Bloomsburg Town Council was held Monday, March 22, 2010, beginning at 7:00 p.m. in Council Chambers, Town Hall, 301 East Second Street, Bloomsburg, PA. Present were Mayor Dan Knorr; Council Members Diane Levan, Paul Kinney, Kathy Shepperson, Sylvia Costa, W. Carey Howell and William Kreisher; Town Administrator Carol Mas; Chief of Police Leo Sokoloski; Solicitor Jack Mihalik and Office Assistant Amy Seamans.

PUBLIC HEARING – FFY 2010 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION

Prior to the beginning of the regular meeting, a Public Hearing was held at 7:00pm to finalize the Town of Bloomsburg's FFY 2010 Community Development Block Grant application. Mayor Knorr turned the hearing over to Bill Lowthert of SEDA-Council of Governments. Mr. Lowthert stated that the FFY 2010 CDBG Program allocation is still unknown but is estimated to be \$194,200. The following projects have been selected for funding: \$139,250 for Main Street Lighting Improvements from Iron to Third Streets, \$10,000 for Improvements to the Old Restroom Facilities at Town Park, \$10,000 for Recreation Improvements Associated with the Streater Property and \$34,950 for Administration and Planning. Mr. Lowthert also reviewed the resolution authorizing the submission of the FFY 2010 CDBG application.

Modifications to the Town's CDBG-R Program and FFY 2009 CDBG Program were also discussed.

Hearing no further input from Town Council or the public, the Public Hearing concluded at 7:06pm and the regular meeting of Town Council convened.

APPROVAL OF RESOLUTION NO. 03-22-10.01 – FFY 2010 CDBG PROGRAM APPLICATION SUBMISSION AUTHORIZATION

On a motion by P. Kinney, seconded by C. Howell and voted on unanimously, Council approved Resolution No. 03-22-10.01 authorizing the submission of an application to the Pennsylvania Department of Community and Economic Development for Federal Fiscal Year 2010 under the Community Development Block Grant Program.

APPROVAL OF CDBG-R PROGRAM BUDGET MODIFICATION

On a motion by D. Levan, seconded by P. Kinney and voted on unanimously, Council approved a modification of the CDBG-R Program in the amount of \$33,470.00 reallocating the funds from Curbing and Sidewalk Replacement to Main Street Lighting Improvements from Iron to Third Streets.

APPROVAL OF FFY 09 CDBG PROGRAM BUDGET MODIFICATION

On a motion by P. Kinney, seconded by D. Levan and voted on unanimously, Council approved a modification to the FFY 09 CDBG Program in the amount of \$80,000.00 reallocating the funds from the Streater Property Demolition to the Main Street Lighting Improvements from Iron to Third Streets.

CITIZENS TO BE HEARD – OUTDOOR SOCIAL GATHERING ORDINANCE

Solicitor Mihalik explained the changes that were made to the ordinance since it was advertised. The ordinance that was advertised applied to everyone with the Chief of Police having discretion as far as wedding receptions, etc. After the Town received a letter from the American Civil Liberties Union of Pennsylvania (ACLU-PA) two additional changes were made. The discretion of the Chief of Police was eliminated and the following was added to the definition of a regulated social gathering: which is organized,

hosted, or sponsored by a student or students enrolled at Bloomsburg University or a student organization associated with Bloomsburg University or which takes place on premises occupied by students enrolled at Bloomsburg University and which does not take place on the campus of Bloomsburg University.

Mayor Knorr asked that the letter from the ACLU-PA be entered into the minutes of the meeting.

Dear Mayor Knorr and Vice President Levan:

The American Civil Liberties Union of Pennsylvania (ACLU-PA) writes this letter to caution the Town of Bloomsburg against passing the current draft of the "Outdoor Social Gatherings Ordinance." Although Bloomsburg aims to address legitimate concerns regarding the health, safety and welfare of the community when outdoor social gatherings grow unruly, the Ordinance, as drafted, violates several First Amendment principles. Furthermore, we urge Bloomsburg to repeal or amend Ordinance No. 857 ("Permits for Large Outdoor Social Gatherings where Alcoholic Beverages are Served or Consumed" § 13-401, et seq., Bloomsburg Code) because this ordinance similarly infringes upon constitutional rights.

Both ordinances are overbroad. By requiring government permission to host private gatherings on private property, the ordinances burden a wide range of constitutionally protected activities, such as gathering for political, religious and family purposes. In addition to protecting political speech, religious worship, and a wide range of artistic and other expressions, the First Amendment protects a person's right to freely attend gatherings in furtherance of such goal-one's right to freely associate. *See, e.g., Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000) ("implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.")

Both ordinances unconstitutionally hinder these protected associations. For example, before a couple may host a wedding reception in Bloomsburg, they must obtain permission from the government, if they plan to invite more than 150 guests and serve alcohol. This unconstitutionally burdens free association with their families, a fundamental right. *See, e.g., Lyng v. Castillo*, 477 U.S. 635, 638 (1986) (recognizing choice of family living arrangements as a fundamental right). Even a Catholic Mass, held in a Bloomsburg church, would require government permission. By encompassing such activities when they include alcohol, the ordinances actually prohibit far more than wild parties; they burden constitutionally protected activities. "A law or regulation is invalid on its face under the overbreadth doctrine if it 'does not aim specifically at the evils within the allowable area of control [by the government] but ... sweeps within its ambit other [constitutionally protected] activities.'" *Thornhill v. Alabama*, 310 U.S. 88,97 (1940)." *Waterman v. Farmer*, 183 F.3d 208 (3d Cir. 1999).

Secondly, both ordinances impose "prior restraints" on First Amendment activities. When a government requires permits before protected activity may take place, it "carries a heavy burden of showing justification for the imposition of such a restraint." *Capital Cities Media, Inc. v. Toole*, 463 U.S. 1303, 1305 (1983). Permitting schemes that burden First Amendment activities are only constitutional when, among other things, the government has an important reason for requiring advance permits-to ensure proper policing at a large demonstration or to allow only one parade at a time, for example. *See, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969) (parade); *Cox v. Louisiana*, 379 U.S. 536 (1965) (demonstration). It is difficult to imagine that Bloomsburg can provide a sufficiently important justification for *requiring* advance notice of a Catholic Mass or private wedding held on private property.

Rather than continue with its unconstitutional permitting scheme, the Town of Bloomsburg could address unruly gatherings through enforcement of criminal laws, noise ordinances and the like. *See, e.g., 18 Pa.C.S. §§ 3304* (prohibiting property damage), 5503 (prohibiting disorderly conduct), 5505 (prohibiting public drunkenness),

6308 (prohibiting underage drinking). Individuals who attend private events to exercise First Amendment rights are not immune from prosecution under such laws,

In conclusion, the ACLU-PA suggests that the Town of Bloomsburg amend Ordinance No. 857 by enacting a version of its proposed "Outdoor Social Gatherings Ordinance" tailored to exclude from its permitting scheme social gatherings held to further political views, religious practice, familial association and other activities protected by the First Amendment. To limit the reach of the permitting scheme to "an outdoor congregation of persons for social interaction where alcoholic beverages are served or consumed and which is attended at any one time by more than 150 persons, regardless of age"¹ does not go far enough. Large social interactions and alcohol consumption may take place, for example, in the course of practicing one's religion or expressing political viewpoints. It is doubtful that any government may lawfully require anyone to obtain a permit before engaging in these activities on private property in America. If you would like to discuss further the ACLU-PA's constitutional objections to the ordinances, please contact us at 717-236-6827 extension 12.

¹ Both ordinances define "regulated social gathering" in this way.

Sincerely,

Valerie A. Burch
Staff Attorney

Witold J. Walczak
Legal Director

Mayor Knorr asked for public input.

Joe Wright of 335 Lightstreet Road asked Council why they are passing another ordinance when it doesn't seem that there have been any problems the last couple of years. Chief Sokoloski explained that the costs associated with enforcement and cleanup continues to increase and amounts to thousands of dollars each year.

Jim Hollister expressed that he and President Sultz have been meeting with the Mayor to discuss the ordinance amendment but have not had time review the latest version. He's concerned with it targeting students and suggests Council take their time and not pass the ordinance this evening.

Dylan Bradley of Honeysuckle Apartments asked how much it will cost for one area. Chief Sokoloski stated the permit fee is \$25 and the bond is \$500.

Joe Wright stated they've been calling around to get prices for port-a-potties and that it will cost approximately \$3,000 for a party of 1,000 persons for the area behind East Street.

Ranie Lynch of 516 East Third Street thinks one port-a-potty per 50 people is unreasonable.

Jackie Kearns of 311 ½ Lightstreet Road knows that Block Party will happen since everyone is aware of the date.

Dylan Bradley feels burdened by the ordinance. The relationship between students and the town needs to be give and take.

Kelsey Dykstra of 425 East Street stated that it's easy, especially around this time of year, to forget that students do give back to the community and this weekend there will be 400 students cleaning up in yards all around town.

Barry Thorne of East Third Street supports the students and realizes they give back but does it mean that the town needs to allow the party without regulating it to some extent.

Mary Polan lives on-campus but realizes the radius of people attending is larger and larger.

Eric Bower of 350 East Third Street stated that as a resident and business owner he has made money on Block Party and has had to pay money. He was concerned that when the ordinance targeted everyone he thought his rights were going to be infringed upon.

Joe Wright thought beer cans were allowed and does not want the responsibility of providing a keg or a beer ball. They sell wrist bands to count people and typically Block Party is a BYOB event. The ordinance logistically does not work for the students planning Block Party.

Diane Levan stated she would like Council to revisit the port-a-potty issue and would be comfortable changing it from 50 to 100 persons.

Kyle Kelly asked if the whole property is not cleaned up by the deadline would they still be fined. L. Sokoloski stated that when they are making their rounds and they see students are making a concerted effort than no they would probably not be fined.

Steve Coladonato asked for clarification that students are saying they do not supply alcohol to their guests and the audience replied yes. S. Costa further clarified by asking the students if it's true they provide alcohol for their guests but not for others that show up and the audience agreed.

Laura Spatzer asked Council if landlords will still need to give permission and they stated yes.

ADOPTION OF ORDINANCE NO. 928 – REPEALING ORDINANCE NO. 857 OF THE CODE OF ORDINANCES OF THE TOWN OF BLOOMSBURG AND ADOPTING AN ORDINANCE RELATING TO OUTDOOR SOCIAL GATHERINGS

On a motion by D. Levan, seconded by B. Kreisher and voted on Four (4) (D. Levan, B. Kreisher, D. Knorr and S. Costa voting "Yes") to Three (3) (P. Kinney, K. Shepperson and C. Howell voting "No"), Council adopted Ordinance No. 928 repealing Ordinance No. 857 of the Code of Ordinances of the Town of Bloomsburg and adopting an ordinance relating to outdoor social gatherings with the following changes: Section 13-403(3) "or aluminum containers" will be deleted; Section 13-403(4) will be deleted in its entirety; Section 13-403(5) one portable toilet for every 50 persons will be changed to 100 persons and Section 13-403(7) the time when premises shall be cleaned up by will be changed from 8:00am to 10:00am.

ADOPTION OF ORDINANCE NO. 927 – AUTHORIZING A CONDEMNATION OF STREETS AND ALLEYS WITHIN THE BLOOMSBURG TOWN PARK

In a motion by D. Levan, seconded by S. Costa and voted on unanimously, Council adopted Ordinance No. 927 authorizing a condemnation of that portion of Thirteenth Street and Fourteenth, and the parallel alleys between Thirteenth Street and Fifteenth Street, now known as Fort McClure Boulevard, from Railroad Street to Catherine Street; and Colonial Street, from Fifteenth Street, now known as Fort McClure Boulevard, to Twelfth Street, as shown on the revised map of the Waller Addition to the Town of Bloomsburg.

APPROVAL OF MARCH 8, 2010 COUNCIL MEETING MINUTES

On a motion by P. Kinney, seconded by S. Costa and voted on unanimously, Council approved the March 8, 2010 Council meeting minutes with no additions or corrections.

BLOCK PARTY FOOD VENDORS

Council unanimously agreed not to have food vendors in parking spaces along Lightstreet Road or East Street during Block Party weekend.

DOWNTOWN MANAGER

Downtown Manager Megan Hummel reported that the Courthouse Plaza Project is starting this week and the Renaissance Jamboree next year will not be the fourth Saturday in April because of Easter and will be held on the third Saturday instead.

With no further business, the meeting adjourned at 9:04pm.

CAROL L. MAS
Town Administrator & Secretary