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Town of Maggie Valley
Special Called Board of Aldermen Meeting
July 30, 2020
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Members Present: Mayor Mike Eveland, Aldermen: Tammy Wight, Phillip Wight, Clayton Davis, and Twinkle Patel

Staff Present: Manager Nathan Clark, Attorney Brian Gulden, Chief Russ Gilliland, and Town Clerk Vickie Best

Others Present: Reporters Cory Vaillancourt and Kyle Perrotti, and 25 people

Meeting Called to Order

Mayor Eveland called the meeting to order at 9:30 a.m. on Thursday July 30, 2020 in the Pavilion (adjacent to Town Hall).

Pledge of Allegiance

The pledge of Allegiance was said by all.

Opening Statement: Mayor Mike Eveland

Today the Town of Maggie Valley Board of Aldermen will be discussing and amending the Town's Code of Ordinances to include a new section dedicated to "Pickets and Picketing." This is an amendment most of us never thought would be necessary in Maggie Valley. We are a small community; isolated in both geography and state of mind from issues associated with larger towns and cities. Most people choose to live in or visit Maggie Valley because of its peaceful and tranquil lifestyle that is generated by the natural beauty that surrounds our town.

The events of July 18 showed many of us that Maggie Valley is not isolated- in fact, these events illustrated how connected the Town is to an evolving landscape of ideas and ideals that are being debated throughout our country.

Another glaring reality that was made clear by the events of July 18 is that the Town needs to take a proactive role in ensuring that those wanting to picket have the opportunity to so peacefully and safely, so they have the ability to convey their message-whatever that happens to be.

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I have heard from some that think the proposed ordinance goes too far in limiting free speech while others I have talked to believe the proposed ordinance does not go far enough in addressing safety concerns.

This issue is very complex- it is driven entirely by the 1st Amendment. Due to the complexity of the issue, the Town enlisted the assistance of our Town Attorney Craig Justus and his team of attorneys who collaborated with a vast network of policy and legal experts in an attempt to provide the Town of Maggie Valley with the best possible outcome.

Their assigned task was to provide the Town with a document that protects everyone's 1st Amendment rights to free speech and assembly regardless of content; to provide a framework of rules that will enhance safety at these types of events. This framework also provides the police department with the necessary tools at their disposal to prevent the chaotic and grossly confrontational encounters that occurred on July 18.

The safety of our residents, business owners, visitors, as well as those exercising their 1st Amendment rights, is our goal here today.

Legal Review of Proposed Ordinance # 926 by Town Attorney: Brian Gulden

Attorney Gulden provided and explained the legal language of the First Amendment. Since the adoption of the First Amendment in 1791, picketing is the highest wrung of people's rights. Picketing has always been held to the utmost scrutiny by the courts. Governments cannot mandate content under the Freedom of Speech Act. The limited areas of speech that can be prohibited are obscenity, defamation, fraud, incitement, fighting words, and speech integral to criminal conduct. It must be determined that any regulation must be content neutral and not

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regulate what is being said, or where it is being said. The few restrictions that are allowed are there for the preservation of peace. There must be ample channels for the protestors voice to be heard.

Alderman T. Wight questioned if there is another high traffic event in Town i.e. the Festival Grounds, could the Town limit where in Town the protest can be held based on safety reasons.

Attorney Gulden responded that the safety of all people must be considered. No group may pose a hinderance to vehicular or pedestrian flow. The proposed ordinance limits marching on the sidewalks to single file as not to impede pedestrian traffic. The police can provide assistance to allow for access in and out of the Festival Grounds where the Jeep Fest will be held. Section 95.03 of Ordinance 926 stipulates the picketing regulations.

Laws have allowed picketers that are attending another event ... i.e. a fair/festival/etc. to be limited to one area to distribute their material. For the purpose of safety, the Police may ask the picketers to disperse.

Alderman P. Wight stated that the promoter has leased the Festival Grounds up to the sidewalk.

Mayor Eveland added that they must keep moving as not to impede the flow of traffic or pedestrian traffic.

Proposed ORDINANCE #926

AMENDMENT TO THE MAGGIE VALLEY, NORTH CAROLINA,

CODE OF ORDINANCES

ADDITION OF CHAPTER 95: PICKETS AND PICKETING.

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BE IT ENACTED AND ORDAINED by the Town Council of the Town of Maggie Valley that the Maggie Valley Code of Ordinances be and is hereby amended as follows:

CHAPTER 95: PICKETS AND PICKETING

Section:

95.01 Definitions

95.02 Notice of Intent to Picket

95.03 Picketing Regulations

95.04 Interference with Picketing

95.99 Penalty

95.01: Definitions.

For the purpose of this Article, the following words and terms shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

Picket or Picketing means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

Sidewalk means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights of ways.

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Street means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter or right, for the purposes of vehicular traffic, including that portion that is known as the shoulder of the roadway and the curb. The terms "highway" and "street" and their cognates are synonymous as used herein.

95.02: Notice of Intent to Picket.

(a) Prohibition. No picketing shall be conducted in this Town and no person shall participate in the same unless notice of intent to picket has been given to the chief of police or his designated representative, and unless a receipt of such notice has been issued.

(b) Notification required. Any Picket that the organizer knows, or should reasonably know, will be attended by a group of 10 or more individuals shall give notice of intent to picket to the chief of police or designee at least 72 hours before the beginning of the Picket. The notice of intent to picket shall include the following information:

- (1) The name, if any, of the organization or group sponsoring or proposing the Picket.
- (2) The name of the person giving notice of intent to Picket, if different from the organizer.
- (3) The name of the person or persons to be in charge of the Picket and who will accompany the activity and carry the receipt of notice at all times.
- (4) The location where the Picketing is to take place.
- (5) The date or dates on which the Picketing will occur and time the Picket will begin and end.
- (6) The anticipated number of participants, and the basis on which this estimate is made; and

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- (7) Whether or not persons below the age of eighteen (18) years are expected to participate.
- (c) Receipt of notification. Upon notice of intent to picket given in accordance with subsection (b), the chief of police or designee shall immediately issue a receipt of notice. The receipt shall contain all information stated in the notice. The organizer of a Picket shall be responsible for maintaining the receipt and shall present it when so requested by a law enforcement officer or other Town officials.
- (d) Pursuant to N.C.G.S. §14-4, it shall be unlawful for any person to violate any provision of this section.

95.03: Picketing Regulations.

- (a) Picketing may be conducted on public Sidewalks, at Town Hall Lawn, Town Hall Park, Parham Park, Mary Rathbone Rich Park, McCracken Corner Park, or any other Town-controlled park or other Town-owned areas normally used or reserved for pedestrian movement, including easements and rights-of-way, but shall not be conducted in that portion of the Street used primarily for vehicular parking or moving vehicular traffic.
- (b) Notwithstanding subsection (a), Picketing may not be conducted:
- (1) On a median strip; or
 - (2) At a location directed, focused, or targeted at a particular private residence.
- (c) Picketing shall not disrupt, block, obstruct or interfere with: Pedestrian or vehicular traffic; persons crossing Streets or otherwise using the public way; the free passage of pedestrian or

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vehicular traffic into any driveway; or the pedestrian entrance or other access to buildings, which abut the public Sidewalks.

(d) Written or printed placards or signs, flags, or banners carried by individuals engaged in Picketing shall be of such a size and/or carried on the Sidewalks or other Town-owned areas, as to allow safe and unobstructed passage of pedestrian or vehicular traffic. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood, and shall not exceed 36 inches in length and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.

(e) If more than one group of picketers desire to Picket at the same time or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to picket, at a minimum of 25 feet apart from one another, in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of picketers first received its receipt of notice of intent to picket.

(f) Spectators of Pickets shall not physically interfere with individuals engaged in Picketing. Picketers and spectators of Pickets shall not speak fighting words or threats that would tend to provoke a reasonable person to a breach of the peace.

(g) Picketers must, if marching, march in single file, not abreast, except when passing one another.

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- (h) Picketers and Picketing shall be subject to all applicable local, state, and federal laws including, but not limited to:
- (1) The Town's noise ordinance (Title IX, Chapter 90).
 - (3) G.S. § 14-225.1 (obstructing justice).
 - (4) G.S. § 14-277.2 (weapons).
 - (5) G.S. § 14-277.4 (health care facilities); and
 - (6) G.S. § 14-288.4 (disorderly conduct).
- (i) No person observing, engaging in, or assisting in Picketing shall bring to or allow to remain in the immediate area of Picketing any vicious animal or dangerous weapon.
- (j) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with North Carolina General Statute § 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.
- (k) Pursuant to N.C.G.S. §14-4, it shall be unlawful for any person to violate any provision of this section.

95.04: Interference with Picketing.

- (a) It shall be unlawful for any person to physically interfere with Picketing or to address profane, indecent, abusive, or threatening language to or at such Pickets which would tend to provoke such Pickets or others to a breach of the peace.

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(b) The police officers of the Town, in the event of the assemblage of persons in such numbers as to tend to intimidate Pickets pursuing their lawful objective through numbers alone or through use of inflammatory words or possession of dangerous weapons, may direct the dispersal of persons so assembled and may arrest any person who fails to absent himself from the place of such assemblage when so directed by the police.

(c) Whenever the free passage of any Street or Sidewalk in the Town shall be obstructed by a crowd in connection with Picketing, the persons composing such crowd shall disperse or move on when directed to do so by a police officer. It shall be unlawful for any person to refuse to so disperse or move on when so directed by a police officer as herein provided.

95.99: Penalty.

(a) In accordance with G.S. § 14-4 (and unless the Town ordinances provide otherwise), any person violating any provisions of this chapter may be subject to a fine not exceeding two hundred dollars (\$200.00) or by imprisonment not exceeding 20 days.

(b) In addition to or in lieu of the remedies authorized above, violations of this chapter may also be prosecuted in accordance with G.S. § 160A-175, including that the violation may subject the offender to a civil penalty to be recovered by the Town in a civil action.

Public Comment

Several statements were made from the people in attendance regarding the matter at hand. The common thread throughout the discussions were how deeply people care about Maggie Valley and how these types of activities should not be happening in “our town”.

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Some of the statements/questions were:

Why was this allowed to start? There have been no problems with race in Maggie Valley.

People come here for peace and relaxation. BLM insights violence. Why did BLM need another march? They are going to keep coming back until they get what they want, a fight. Who decides when Maggie Valley is “cleansed” of racism?

Due to First Amendment Rights, the Town has no way of stopping their right to picket. The Town cannot limit the number of times the BLM picket.

It was the belief of some, that Council allowed the picketing to happen.

Some suggested that the protesters be charged for police protection, a clean up fee, etc.

Other suggestions: prohibit protesting if less than five (5) protesters are not from Maggie Valley; keep protesters out of Town on the weekends.

Kitty Currin stated that she came to the BLM protest with water, a medical kit, and food to support her community. The way the counter-protesters were screaming and yelling in her ears was way out of line. “This ordinance needs to be adopted to maintain space between opposing groups.”

There were discussions about tourism and the negative impact that these demonstrations are having on the economy that was already in severe decline due to the pandemic.

The economy (Commercial Districts) is not a consideration for picketing in the First Amendment Act.

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Some of the audience felt this could turn into a very complex situation using words such as antifa, terrorist, etc.

Public Comment closed at 10:04.

Mayor Eveland stated that we must be mindful of who we are and what we are here for. The First Amendment carries a certain amount of weight that cannot be challenged.

Attorney Gulden explained that the courts have been consistent in their rulings when it comes to First Amendment issues. The First Amendment does not mandate a moral code, but rather it protects the liberty of everyone. Prohibiting a protest or putting protesters in a confined area is not allowed. A municipality cannot restrict the use of sidewalks and roads. Those are public areas.

The payment/fee idea is subjective, and a \$25 fee has been found in the courts to have subjective intent and was overturned.

Alderman P. Wight found it hard to understand how the cost of having to have extra law enforcement be a burden on the taxpayers. Also, there are three hundred (300) feet of road frontage along Soco Road between Town and the pavilion; “Why can’t they stay in that area?”

Again, Attorney Gulden explained that officers are sworn to protect. The proposed ordinance has the most strength possible in trying to keep down violence and provide a separation between protesters. Requiring protesters to go single file down the sidewalk is an effort to address the spectators along the road engaging the protesters.

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Mayor Eveland again addressed the audience stating that “we all have a personal interest and have talked a lot about the protesters, but Council has to do what is legal and what is enforceable”. “We had to take out our personal feelings and involve the Attorneys”. This gives the Police Department the tools they need to do their job.

Attorney Gulden concurred, adding that the proposed ordinance provides reasonable time and place without reference of content of speech and best serves the governments interest while leaving open private, ample channels for communication of free speech.

There was a brief discussion about protesters and private homes. Protesters are not allowed to picket private homes although they can walk around the block. It is a different situation if an abortion doctor was rendering services from his home.

Again, the picketers are required to notify the Chief so that he may properly prepare. Maggie Valley has received assistance from the Sheriff’s Office and the Town of Waynesville.

Since Maggie Valley’s economy is based on peace and happiness, Manager Clark asked Attorney Gulden to clarify if protest can be limited to Monday through Friday.

Attorney Gulden said no, it is not legal to limit the days they can protest, because it has a chilling affect on the First Amendment Rights.

Alderman P. Wight questioned why it could not be handled as a nuisance, going on to agree that there is some merit to the document and has time moves forward it can be amended.

Alderman T. Wight asked if the protesters and counter-protesters could be separated by twenty

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-five (25) yards, not twenty-five (25) feet, and yes there was an incredible amount of profanity during the protest.

There is not going to always be counter-protesters and the twenty-five (25) feet is a minimum.

Chief Gilliland has the authority to extend that separation.

ALDERMAN P. WIGHT MADE THE MOTION TO ADOPT ORDINANCE 926.

MOTION CARRIED UNANIMOUSLY.

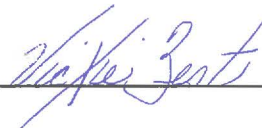
In closing, Mayor Evaland made the following statement. "This has been an incredibly challenging year. Everyone knows that. The Covid-19 Crisis has forced countless Maggie Valley businesses to adapt their business models in creative forward-thinking ways just to keep the lights on. Saturdays are the single biggest revenue generating day for many Maggie Valley businesses. Protests of any kind have a chilling effect on tourist spending; in fact, many businesses lost so much business on July 18 that they will be fully closed on August 1. Our point being, is for those who choose to engage in picketing regardless of content or message remember the impact that your actions will have on a business community whose foundation is built on service and tourism."

ON MOTION OF ALDERMAN T. WIGHT WITH ALL IN FAVOR THE MEETING

WAS ADJOURNED AT 10:50 A.M.



Mayor Mike Evaland



Vickie Best, Town Clerk, CMC, NCCMC

