

Wilmington City Council met on Thursday, September 15, 2011, with President Fred Ertel presiding.

Roll Call: Jaehnig, present; Wells, present; Stuckert, present; Wallace, present; Mead, present; Mongold, present; McKay, present.

Assistant Chief Duane Weyand was also present.

Council gave the Pledge of Allegiance to the flag.

A motion was made by Wells and seconded by Mead to approve the minutes of the last regular meeting, September 1, as received.

Motion passed.

Minutes approved as received

A motion was made by Wells and seconded by McKay to approve the minutes of the special meeting, August 31, as received.

Motion passed.

Minutes approved as received.

President of Council – Fred Ertel: I talked to you a month or so ago about meetings with your committees in regards to doing cost reductions and whatnot. Laura should be following up with an email. Maybe at the next meeting you will be able to give a 2-3 minute report saying what you found out so we can get ready for the budget process. Beware of that. That finishes my section. Mr. Mayor?

Mayor – Mayor Raizk: Thank you, Mr. President. There are just a couple of items. It was a great week last week in Wilmington and very busy with the Corn Festival going on. They had a great parade, which I almost made it all the way through. Scott asked me tonight, “Did you really break down?” I said, “Yes, we did, on Swindler’s hill.” We were gloriously towed in by a 1960 Mack semi-tractor that was beautiful. We had a good-looking car and a good-looking tractor attached by a tow strap. Anyway, it was a great parade. The attendance was wonderful, I think, and everybody had a good time. Also, I appreciate many of you who came out on Friday to our City annual 9/11 service and memorial. We had a good turnout for that. We had a good turnout at the county observing the tone-outs and the bells and the sirens at 1:00 on Sunday. Also, there was a tremendous turnout at the Murphy Theatre for the “In Honor of Their Service.” It was a great deal. I think Wilmington was done proud. I know there was also a great turnout at Bible Baptist for their celebration in the evening. I think Wilmington was done proud by its observance of the 9/11 memorial. Also, in the conjunction with that, I will just show this to you. The Wilmington City Schools presented to our Fire Department and our Police Department a plaque. I think you might have seen the picture in the paper, in their appreciation of the first responders of Clinton County, so we were very proud to get that. In speaking about 9/11, this kind of ties right in: September 17 through the 23rd is Constitution Week nationally. I had presented a proclamation to the DAR in honor of Constitution Week, as we do every year. I just want to make note of the fact that it is Constitution Week and it’s the 224th anniversary of the constitution. I have one other item. I think everybody got in their utility bills the flyer that went out on our bed bug situation and dos and don’ts. I think it was very informative and, as I said, I really want to thank Donnie Maher and also Laura and especially Andrea Tacoronte, who really did a fabulous job on the flyer. There was some discussion about the Health Department and so forth and what their role was. I have had several discussions with Pam Walker-Bauer, the new Health Commissioner. She gave us a letter outlining what their course of action is. She is supporting the action she took. One of the things, after being told of what we are doing, she wanted to applaud our integrated pest management efforts as being very proactive. She said a lot of communities don’t do what we did in terms of sending out this information and so forth. I was glad to find out that she was appreciative of our efforts. She sent out a nice letter to the city council. I’ll read it to you real quick. It doesn’t take too long.

Mr. Ertel and Members of Council.

It is my understanding that during the last regular council meeting on Thursday, September 1, that an issue/concern was brought forth regarding the Clinton County Health Department and our handling of bed bug complaints and inquiries. As a result, I want to reach out to you to provide some clarifying information.

In a joint statement issued by the Centers for Disease Control and Prevention and the United States Environmental Protection Agency in July 2010, bed bugs are not known to transmit disease. Therefore, the Clinton County Health Department focuses our bed bug efforts on education about prevention and integrated pest management. Integrated pest management is an approach of control by using multiple tactics, including preventative measures, sanitation and chemicals applied to target sites. We strongly encourage that severe infestations be treated by a licensed pest control professional.

Although I have not seen the official policy of the City of Wilmington's new pickup procedures, I applaud your integrated pest management efforts that were listed in last week's Wilmington News Journal. As a public health professional, I am appreciative of your proactive efforts to help prevent the spread of bed bugs.

Please do not hesitate to contact me if you have further questions.

Mayor Raizk: Also, if we have further concerns about this or any other, she has offered to come before council and answer those questions. That is all I have Mr. President.

President Ertel: Thank you so much. Looking at committee reports, Asset, Acquisition and Use?

Asset, Acquisition and Use –Chairperson Sandy Mongold: No report.

President Ertel: Thank you. No Auditor's report tonight.

Auditor –In the absence of Auditor David Hollingsworth, there was no report.

President Ertel: Finance Committee?

Finance Committee – Chairperson Sandy Mongold: We do have several items tonight. The first item is an ordinance making supplemental appropriations.

A motion was made by Mongold and seconded by McKay to give the first reading only on the ordinance Making Supplemental Appropriations.

Motion passed

Director of Law read ordinance by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the ordinance by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the ordinance by title only.

A motion was made by Mongold and seconded by McKay to pass the ordinance as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Ord. No. 4987 passed as read.

Councilwoman Mongold: The next item is an ordinance making miscellaneous transfers.

A motion was made by Mongold and seconded by McKay to give the first reading only on the ordinance Making Miscellaneous Transfers.

Motion passed

Director of Law read ordinance by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the ordinance by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the ordinance by title only.

A motion was made by Mongold and seconded by McKay to pass the ordinance as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Ord. No. 4988 passed as read.

Councilwoman Mongold: The last item tonight is a resolution accepting the amounts and rates determined by the budget commission. This is our annual resolution we do to certify the amounts of money we get from the county.

A motion was made by Mongold and seconded by McKay to give the first reading only on a resolution Accepting the Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying them to the County Auditor.

Motion passed

Director of Law read resolution by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the resolution by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the resolution by title only.

A motion was made by Mongold and seconded by McKay to pass the resolution as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Res. No. 2256 passed as read.

Councilwoman Mongold: That is all.

President Ertel: Thank you. Water Committee?

Water Committee – Chairperson Mike Wallace: No report, Mr. President.

President Ertel: Thank you. Streets Committee?

Streets Committee – Chairperson Wells: Mr. President, I have nothing on the agenda tonight; however, I do want to tell Larry, I meant to talk to him earlier. I had a citizen talk to me about Nunn Avenue. I guess there is an increase in traffic on Nunn Avenue and he was concerned about the condition of the pavement. I haven't had a chance to go out and look at it yet. If you are out that way, would you just look at it and see what is going on in that area?

Service Director Reinsmith: There are a couple of streets that are in need that there is no money for.

Streets Committee: That's all I have, Mr. President.

Mayor Raizk: Don, just to clarify that further. When we looked at all of the streets, obviously, we did look at Nunn Avenue and others. We take the top priority, the ones that are in the worst conditions, first. I travel it on a reasonably regular basis. We might be able to do a little patching or so forth just to hold it through.

Councilman Wells: That is what I explained to the gentleman.

Mayor Raizk: I know we can't do any repaving this year, but I think there might be a couple of places that we can fix up. I've noticed them; I have seen them.

Councilman Wells: Okay. Good. Thank you very much.

President Ertel: Thanks, Don. On the resolution coming around, there are three copies, so you can sign here and date. If you look back through there, there are two more. Solid Waste/Recycling?

Solid Waste/Recycling Committee: Chairperson Don Wells: No report, Mr. President.

President Ertel: Okay. Wastewater/Sewer?

Wastewater/Sewer Committee: Chairperson Mark McKay: No report, Mr. President.

President Ertel: Thank you. Judiciary Committee?

Judiciary Committee: Chairperson Rob Jaehnig: We have three items tonight, Mr. President. The first item is the second reading on an ordinance to amend our enterprise zone agreement between the City of Wilmington and the Board of Commissioners of Clinton County. This would expand the enterprise zone to cover the areas that have been annexed into the city in recent years that currently are part of the enterprise zone.

A motion was made by Jaehnig and seconded by McKay to give the second reading only on the ordinance Authorizing an Amendment to the Enterprise Zone Agreement By an Between the City of Wilmington, Ohio, and the Board of Commissioners of the Clinton County, Ohio.

Motion passed

Director of Law read ordinance by title only.

Jaehnig requested that the third reading be on the Agenda for the next meeting.

Councilman Jaehnig: Laura, is item B just a single. I know we got that email from Phil.

Clerk Laura Curliss: Yes, B is single. C is second and third.

Councilman Jaehnig: The second item is the second reading on a resolution. This is in regards to funding for our taxi service, our transit service, with the state. Are there any questions regarding that?

A motion was made by Jaehnig and seconded by Stuckert to give the second reading only on the resolution Authorizing the Submittal of a Proposal with the Ohio Department of Transportation for a Grant Through the U.S. DOT Federal Transit Administration (FTA), as Authorized Under Federal Transit Law, As Codified, 49 USC Section 5311, Financial Assistance for Other than Urbanized Areas and Funds Available From the Ohio Public Transportation Grant Program and Executing a Contract with the Ohio Department of Transportation Upon Grant Proposal Acceptance.

Motion passed.

Director of Law read resolution by title only.

Jaehnig requested that the third reading be on the Agenda for the next meeting.

Councilman Jaehnig: Our last item is the second and third item. You were notified during the past week of a filing deadline change by DOT. This is to allow the mayor to enter into a contract with the Department of Transportation for transportation for the elderly and disabled. This is the second part of our funding for the transit system. Are there any questions in regard to that?

A motion was made by Jaehnig and seconded by Mongold to suspend the rules and give the second and third reading on the resolution Authorizing the Mayor to Enter into a Contract with the Ohio Department of Transportation for the 2012 Elderly and Disabled Transit Fare Assistance Program.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the resolution by title only.

A motion was made by Jaehnig and seconded by Mongold to pass the resolution as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Res. No. 2257 passed as read.

Councilman Jaehnig: That is all, Mr. President. Thank you.

President Ertel: Thank you. Safety Committee?

Safety Committee- Chairperson Rob Jaehnig: We have no report other than we would like to thank our Police and Fire Department for their continuing professionalism in doing their duties. It has turned out to be a very difficult year, so thank you. That is all, Mr. President.

President Ertel: Thank you. Downtown Revitalization Committee?

Downtown Revitalization Committee - Convener Mark McKay – I talked in great length about some of the things that have been happening in our downtown the last week or so. We do have a Wine Walk tomorrow night in the downtown area. That's another great event. I know that some of you here plan to attend the event. Then, Saturday night is Cardboard City. It's a great fundraiser supported by the Morning Rotary. That is all I have.

President Ertel: Thank you. Parks & Recreation?

Parks and Recreation Committee - Convener Bob Mead: No report.

President Ertel: Excellent. Thank you. Mr. Service Director?

Service Director- Service Director Larry Reinsmith: No report.

President Ertel: Very good. Safety Director?

Safety Director – Mayor Raizk: No report, Mr. President.

Reports:

A motion was made by Wells and seconded by Stuckert to approve the Auditor-Treasurer's Report – August 2011, as received.

Motion passed.

Reports accepted as received.

President Ertel: At this point, I would like to open the meeting up to the general public and/or members of council to address council while in session.

Paul Hunter: 200 Randolph St. Mr. Hunter presented city ordinances for yard sale ordinances, sign ordinances and junk car ordinances. He said the yard sale ordinances are not enforceable and should be rewritten as they just cause controversy between people. He said that he has been seeing fewer signs in the right-of-way. Mr. Hunter declared that Mr. McKay worked hard to make a good ordinance regarding junk cars in 2008. He went on that there seems to be some holes in the either the ordinances or the system of enforcement because many complaints are not resolved. He complained that the laws are made but they do not seem to be enforced. He said that citizens either do not make complaints or do not follow up on their complaints because they do not believe issues will be resolved. He brought up the issue of code enforcement not being able to go into a back yard without a warrant. Mr. Hunter suggested that in some cases, thorough attempts have not been made to see the violation from the street or that permissions from tenants or landowners have not been attempted. He suggested that the additional duties of engineering to the code enforcement officer's position has made it difficult for him to

uphold his code enforcement duties. He also said that too often when people ask for help in resolving code enforcement problems, the response from the code enforcement department is that the Law Director will not take legal action. He said that this suggests that the ordinances or unenforceable or need to be improved. He said that council members also are responsible because they are elected to represent the citizens. He said that some things have been resolved and used the Lytle Creek cleanup as an example. He said that Councilman Wells keeps asking for a meeting and then that seems to be the end of the discussions. He said that even when a meeting is held, no new procedures arise from the discussion.

Mr. Hunter was stopped as he had reached the 5-minute time limit for comments.

Mr. Hunter expressed his disappointment in the enforcement of the time-limit rule. He then went on to say that his main point was that the Police are using dispatcher's log to ridicule a reporter of crime, with some encouragement by various people within the city management.

Brian Stanforth: 620 Bernice. Mr. Stanforth handed out pictures of locations in his neighborhood that he believes are code enforcement violations. He stated that in order to draw businesses into this town, we need to clean up the neighborhoods so they are more attractive. He said that he called on August 19 and he is still waiting for the code enforcement officer to do something about the problem. He said that he called on four junk vehicles on Bernice Street, two on Norman, and one on Randolph. Mr. Stanforth said he also told the code enforcement department about some other problems in the area. He says there is a house on Norman Street that is empty and things are growing over the sidewalk. He says he is surrounded by bad houses, including a crack house behind him. He says that 632 Bernice Street has knee-high grass, appliances, and cat litter dumped on the property. He said that the pictures should speak for themselves on 608 Bernice.

Polly Stanforth: We live by a junkyard.

President Ertel again asked if anybody else from the public or the council wished to address council while in session.

Councilman Jaehnig: In our conversation at the last council meeting, I believed that there was an invitation to come out to the property and look...that we legally couldn't look without violating the privacy of the individual but we could from their property. I believe there was an invitation at that particular time to do that...to see about violations. I was kind of curious if we followed up on that.

Polly Stanforth: No one came.

Law Director Hapner: Don't look at me. I'm not the Code Enforcement official.

Councilman Jaehnig: Am I misspeaking about what you talked about?

Law Director Hapner: No. That is what you talked about. You have to be careful. The state, in this case, when I say "state," I mean the government, can't do anything that violates somebody else's rights and their rights to be free from search and seizure. If the adjoining landowner invites the state onto their premises, you just have to be careful. There is a very fine line between being an invited guest and being an agent of the state. You just have to make sure you don't cross that line.

Councilman Jaehnig: I'm not sure I understand what you're saying...what the difference is between being an invited guest and being an agent of the state.

Law Director Hapner: I'm not sure I know what it is. Apparently the Supreme Court knows what it is, or maybe they don't, because they have cases going both ways.

Councilman Jaehnig: What do you believe it to be?

Law Director Hapner: I believe if the homeowner invites the state in solely for the purpose of examining the next-door neighbor's yard, I think that makes them an agent of the state. Let's say there is a domestic disturbance in the house next door and the police responds to a domestic disturbance and while there they notice a violation next door. They are not an agent of the state in that case because the state is there for legitimate reasons. If the sole purpose for being there is to see something that you could not otherwise see from the public view, then you run the risk of that property owner being deemed an agent of the state.

Councilman Jaehnig: Okay. I'm just getting my head around this. If a neighbor was growing marijuana in their back yard and it was a fenced yard but you could see it from the second story of your house as you are looking down to their yard and you called the police. Under your explanation, you would then be acting as an agent for the state.

Law Director Hapner: You may be.

Councilman Jaehnig: And what is wrong with that?

Law Director Hapner: I don't know what is wrong with that. You have to ask the nine guys that wear the black robes what is wrong with that.

Councilman Jaehnig: Well, I'm asking you because as our Law Advisor, you advise us on what we can and cannot do in an attempt to try to resolve some of these situations. I'm trying to get a better understanding. If this is going to come back before Judiciary again to review these ordinances and these resolutions, we need to have a clear understanding of what we can and cannot do so that we can put it in clear layman's terms so that we can move forward. Mr. Hunter, leaving early, stated there are some confusions in contradictory ordinances.

Law Director Hapner: Sure.

Brian Stanforth: We were told two years ago that this was going to be fixed as far as these ordinances were done.

Law Director Hapner: What you have to understand is that no one has the right to have perfect neighbors. That is not a right that any of us have.

Councilman Jaehnig: I understand that. But their neighbors should not be a risk to them either.

Law Director Hapner: But there is a difference between something being a public nuisance and something being a private nuisance.

Polly Stanforth: It's more than that. I've been sick for months, going to the doctor with allergies. That place is a mess and it is making me sick with the mold and the standing water in those cans.

Law Director Hapner: Like I said, there is a difference between something being a public nuisance and being a private nuisance. People may very well have a cause of action against their neighbor as a private nuisance, but that does not mean that the state has the right to go in and fix whatever the problem is. My advice, and I have said this repeatedly, is to consult your private attorney to see what your rights are.

Polly Stanforth: To sue who? You?

Law Director Hapner: Not me... whoever you're complaining about.

Polly Stanforth: You are the one getting ridiculous with this. It's a mess. Something needs done. We're not going to back down until you guys help us. We're right here now. You're going to help us.

Brian Stanforth: We can't afford lawyers. We're laid off. We're trying to keep our place up.

Polly Stanforth: You want us to sue you guys for this?

Brian Stanforth: We don't want to let the city go downhill.

Polly Stanforth: You don't want to do nothing to help. Everybody wants to...

Brian Stanforth: You want to find excuses why you don't do your job.

President Ertel: Okay.

Law Director Hapner: I think that's enough.

President Ertel: I think we've said enough. I understand your situation.

President Ertel again asked if anybody else from the public or the council wished to address council while in session.

Michael Mandelstein: 1006 W. Locust. I have a question based on the explanation that our Law Director just offered concerning agent of the state. If I am to understand what you have just said, if someone reports some sort activity that they perceive to be in violation of a city ordinance, they could be construed as being an agent of the state. Is that correct?

Law Director Hapner: No. That is not correct.

Michael Mandelstein: Could I have more clarification then? Maybe I didn't hear well because I was sitting over there.

Law Director Hapner: If somebody sees a violation...I mean, you have to look at the circumstances involved.

Michael Mandelstein: Could you define what you consider to be a violation?

Law Director Hapner: Okay. If you are at home and you see someone breaking into your neighbor's house and you call the police, that is fine.

Michael Mandelstein: Would you not, in that instance, also be considered to be an agent of the state because you are reporting an activity that could be in violation of an ordinance...considering breaking and entering is a violation of an ordinance.

Law Director Hapner: No. Breaking and entering is a violation of state law.

Michael Mandelstein: Isn't there a local ordinance for that too.

Law Director Hapner: It's a state law.

Michael Mandelstein: Does the city not usually follow state law as far as adopting state law for purposes of enforcement?

Law Director Hapner: State law is applicable anywhere in the state. Wherever you are that is a state law. You see, ordinances only are going to apply to that particular city.

Michael Mandelstein: Are there examples of ordinances other than the one that has been discussed here this evening. Is there, perhaps, an ordinance on violating a stop sign or running a red light or is that also covered under state law and reporting of that would also be considered, if you are not a law enforcement office that observes it, would you also be considered an agent of the state for reporting that?

Law Director Hapner: No. Because that is public. If you're driving down the street, anyone can see that. I'm sorry, but I think you're being ridiculous.

Michael Mandelstein: I'm just trying to get to where the definition of agent of the state is...if a citizen is reporting something that troubles them.

Law Director Hapner: There is public view and there is private view.

Michael Mandelstein: So, if it can be seen from somewhere other than an adjacent private property. Then it is not necessarily a situation where someone reports and they could be considered an agent of the state, if in fact it can be observed.

Law Director Hapner: If it is open to public view, you are not an agent of the state.

Michael Mandelstein: So, if you drive by a piece of property (and to use the hypothetical that the good councilman just used), you observe the tops of marijuana plants over a fence line as you drive by the property. Then you're not necessarily an agent of the state if, as a citizen, you see that, observe it, and contact law enforcement.

Law Director Hapner: That is open to public view. Yes.

Michael Mandelstein: So, at the heart of all of this, if a violation or if a perceived violation of an ordinance is open to public view, then the reporting of that is not necessarily a situation where if a private citizen reports it, he is considered an agent of the state.

Law Director Hapner: That's right.

Michael Mandelstein: Thank you.

Law Director Hapner: You're welcome.

Michael Mandelstein: That is all I have to ask.

President Ertel: Thank you.

Councilman Wells: Mr. President, I would like to just say something. I used to live in the area right there where Mr. Stanforth lives many, many years ago. I told him earlier tonight that we didn't seem to have any problem at that time in our neighborhood. People took care of their property. You know, we did the best job we could and kept it clean. We're losing control. They have a problem. Maybe we can't see it, but if we have vermin and stuff coming from over there that is hurting them, we need to do a better job of enforcing this. We have to do something to help them. We've got to get pride back in our neighborhoods again. If we don't enforce it, it just gets worse and worse. I know we have several empty houses and trees down and overgrowth, but we've got to do something. I talked to Rob earlier. Maybe if we could have a meeting and review these laws and maybe make them stricter or maybe inquire how other cities are getting this done. We need to do something and not just let it go. That's just my two-cents.

President Ertel: Very good.

President Ertel again asked if anybody else from the public or the council wished to address council while in session.

Seeing no one else who wished to speak, President Ertel asked for a motion to adjourn.

A motion was made by Mongold and seconded by Wells to adjourn.

Motion passed.

Council adjourned.

ATTEST:

President of Council

Clerk