

Wilmington City Council met in special session on Monday, December 31, 2012, with President Scott Kirchner presiding.

Call to Order

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

Officer Bob Wilson was also present.

President Kirchner announced that the only item on the agenda was the third reading on the appropriations budget as presented by the Mayor and the Auditor.

A motion was made by Wallace and seconded by McKay to give the third reading only on the ordinance Making Appropriations for Current Expenses and Other Expenses and Other Expenditures of the City of Wilmington, Ohio, During the Fiscal Year Ending December 31, 2013.

President asked for discussion.

Councilman Mead said that as Chairman of the Finance Committee he understands the gravity of the situation and knows the city needs a budget and it needs to be passed today. He went on to say that per the Ohio Revised Code, he had prepared a budget that addresses the concerns by the mayor and the council and the safety of the citizens. He said he took the estimates that the mayor provided, the concerns of council and other administration members, and as the Ohio Revised Code specifies, prepared a budget. He said it is a good conservative budget. It provides most of the services that they now enjoy but maintains the safety of the citizens. He said if the present budget does not pass, alternative budget can be presented for a vote. Councilman Mead indicated that each person had a copy of the alternate budget at their place and asked that each councilperson take it into consideration if it comes to a point where the current budget does not pass.

Councilman Stuckert said that he had concerns about the budget that the mayor proposed. He said he campaigned on a pledge to preserve safety services he cannot support a budget that does that. He said the mayor's budget makes cuts in safety. He added that the budget also makes transfers into the Enterprise Funds and that puts pressure on those funds (especially water) that would almost certainly lead to increasing water rates to the citizens. He said the State Auditor's office is in process of doing an audit to find efficiencies. He thinks the prudent thing to do is to leave the numbers the same, take the pressure out of the Enterprise Funds, restore safety services, and then be prepared to act to make the adjustments as needed after receiving the State Auditor's report. He went on to say that the revised budget doesn't change anything, it leaves the numbers the same, it preserves the carryover and enables them to stay with their campaign promise to the people. He said he never thought that the city would cut safety services or put pressure on the Enterprise Funds as a solution to the budget problems. He said he has felt all along that they could find efficiencies in the administrative section of the city offices. He says the city is doing the same thing as many other governmental places – the first guy that is taken out is the one that is hired to deliver services. The last guy to go is the one who administrates. He said that is wrong. He said that no one on council should be opposed to leaving the safety services and the Enterprise Funds as-is. He said they need to move forward and have the courage and will to make adjustments in efficiencies based on the Auditor's Office report.

Councilman Jaehnig asked if Councilman Stuckert had seen the budget that Councilman Mead proposed. Councilman Stuckert answered that he had a lot to do with the budget because he asked for most of the stuff, but it was the first time he had seen the copy. Councilman Jaehnig then asked if Councilman Stuckert had been involved in the new budget as he was not aware of a Finance Committee meeting that occurred. He said that if Councilman Stuckert had been involved in creating the budget, it may have been a violation of the Sunshine Laws. Councilman Stuckert said all discussions occurred in

council. He said there had not been any meeting of any Finance Committee and he was he was fed up with those types of insinuations.

Auditor David Hollingsworth said that he thought the council people also ran on the platform of being transparent and he didn't think they were being very transparent. He said that the council members had the budget worksheets and documents for over two months and up to this point, Councilman Mead had not even really been involved in the budget. He said he thought everything was being done by the President of Council, which was not really his job. He said he was very pointed in Finance Committee when he asked if any of the three members of the committee had called his office and asked a question about the budget or made an appointment to come into the office to discuss the budget. It only requires a yes or no answer.

Councilman Stuckert said that was the game the Auditor was playing. Auditor David Hollingsworth said that he was not playing a game.

Councilman Stuckert said David Hollingsworth does not come to most of the meetings. He added that they did not receive the balanced budget months ago. Auditor David Hollingsworth retorted that there were approximately 10 changes made to the budget and said he went over each one of the changes. He said it was straightforward and the math was not difficult.

Councilman Stuckert said council has an obligation under the O.R.C. and the Auditor has an obligation under the O.R.C. He said that council was fulfilling their duties. He said the Auditor can diminish and demean them all he wants, but they are doing their job. He said he perceived a lot of put-down phrases from the Auditor. Auditor David Hollingsworth said the only put-down was the fact that obviously there have been things done outside of Finance Committee, outside of the Auditor's office, no one had consulted with his office as far as going over any of the information. He said the conference room is available at any time to go over things. He added that he is not able to attend all committee meetings as he volunteers his time to coach basketball and he is very committed to that.

[Continued arguing about the budget]

Councilman Stuckert said that he still had the same concerns about the budget, with the safety services and the Enterprise Fund. He said that he expressed those concerns in council. He said he told the President of Council that his wishes were to see those burdens taken out of the budget and the same was expressed to the head of the Finance Committee. He said that they put this budget together.

Multiple people asked *who* had put the budget together.

Councilman McKay asked Mr. Mead if he had prepared the budget and Councilman Mead answered that he had been involved in the preparation of the budget.

Multiple people asked who he prepared it with and where.

Councilman McKay asked Councilman Wells and Councilman Stuckert if they had seen the budget prior to this council meeting. Both Councilman Wells and Councilman Stuckert answered that they had not. Councilman Stuckert added that he was seeing it for the first time, but he felt as if he had been involved with it.

Councilman McKay asked if Councilman Jaehnig and Councilman Wallace if they had had seen the budget previously. Both Councilman Jaehnig and Councilman Wallace said this council meeting was the first time they had even heard about it.

Councilman McKay then asked Councilman Siebenaller if he had seen the budget previously. Councilman Siebenaller answered that this was the first he had seen it.

Councilman McKay said it appears that the alternative budget had been prepared by more than one member of council without public notice. Councilman Mead said that he

apologized for the lateness of the presentation of the document. He said this meeting serves as a committee meeting as well as a special council meeting and they can discuss anything they want.

[Discussion of what legally can be discussed in the special council meeting]

Law Director Shidaker said they could discuss the budget because it was on the agenda.

Clerk Brenda Woods said that she must have missed a previous meeting in which council people had provided changes that they wanted made to the budget. She asked if she was the only one who missed that.

Councilman Stuckert started to ask President Kirchner a question.

Clerk Brenda Woods indicated that she was talking directly to Councilman Stuckert and wanted an answer from him without him consulting President Kirchner.

Councilman Stuckert said that he had indicated in a previous meeting that he did not want them to cut safety services and he did not want the expenses transferred to the safety services. He said that quote was in the newspaper.

Clerk Brenda Woods asked if Councilman Stuckert had discussed the budget other than in a council meeting before he got there today. Councilman Stuckert said he had not discussed the budget with any other member of Finance or with any other council member.

Clerk Brenda Woods asked again if he had discussed it with anyone. Councilman Stuckert said not with anyone on Council. Clerk Brenda Woods asked Councilman Mead if he had discussed the budget with anyone on council and Councilman Mead said that he had not discussed it with any other members of council. Councilman Stuckert said that it sounded like they were on trial.

Clerk Brenda Woods said she found it very hard to believe that the alternate budget was not discussed previously, as they had walked in and knew what was going on with the budget before the rest of the people sitting in the room. She said it was very frustrating for her. In her 30 years of doing budgets and serving the different government agencies, she has never dealt with anything like what was going on with this council. She stated that she believed the issue stems back to legislation that was attempted earlier in the year that proposed eliminating the positions of Danny (Human Resources Director), Larry (Service Director), Denny (Streets Superintendent) and her (Executive Assistant to the Mayor/Clerk of Council). She suggested if the mayor had presented a budget with all four of the administration positions cut out of it, it would not have mattered to the council members what the carryover was and what the deficit was. She said it had nothing to do with cost allocation – it all had to do with some council members wishing to cut those four positions.

Councilman Stuckert said he did not recall her position as being one that was proposed to be eliminated. Clerk Brenda Woods said that they had discussed it in committee. Councilman Stuckert maintained that was just committee discussion. They needed to have those discussions to create a budget.

Clerk Brenda Woods said that Councilman Stuckert did not have enough experience in his lifetime to do this type of a budget without the help of the Auditor. She said if they thought that they could put together the budget without the help of the City Auditor, they were crazy. She said that Mary Kay and David were the ones in the city that had both the experience and the knowledge. She went on to say that she was probably the only person in the room that had experience with a three-month budget, and when she did one, it was a total disaster. She said they, the council members, did not know enough about the timing of the city contracts to decide how the lines should be allocated for three months and said that no one had taken the amount of time needed to find out the history of the budget.

Councilman Stuckert said that the problem seemed to be that in the City of Wilmington, council was considered to be below par in knowing what to do. He said that the experts were the Auditor and the council members were to take their word. He said the council members were supposed to trust them. He said that is not what his constituency tells him to do. He said the O.R.C. states that the council is to write the budget, so maybe it needs to be updated to say that the council approves what the auditor and the mayor bring forward.

Paul Fear asked what section of the O.R.C. President Kirchner gaveled the meeting to order.

Councilman Stuckert said that there was an attitude in the city that the experts work in administration and that council was supposed to pay attention to what they say. He said that they are the first council that has had enough votes to stand up and say it is not right. He said they brought forth the restructuring legislation earlier in the year to start a discussion about the important need to restructure. He said that nothing is going to change because the experts don't think that any changes should be made. He said there were examples of three-month budgets that did work. He said if the one that the clerk had been involved with did not work, then it was probably done wrong. He said the three-month budget idea was put forth by four members of council in order to start a conversation. He said that it was obvious that a conversation was not going to start with them because he had to start with the intelligentsia. He said that the lower ranking people did not count. He also said that the Clerk had no idea what his lifetime experience in budgeting was. He said that he helped prepare budgets for the largest insurance company in the world in New York City in his lifetime. He said he had 24 years of experience in the business world. He said he would not have run for office if he didn't have a feel for budgets. He said it has taken a year to understand the information as it has been presented to council. He said it is very different than a lot of the budgets he has seen, but he thinks it time for the culture to understand that the O.R.C. says the council is the entity to drives the budget. He said that it is not feasible for them to call up and ask questions because they all work day and night. He said if the will to work together is not present on both sides, then it is not going to happen. He said the will to work with a council that wants to do something different is not present.

Clerk Woods said that that might because of the approach that the council members take. Councilman Stuckert said maybe it was time to hold up a mirror. He said he thinks a lot of Clerk Woods and didn't want the conversation to go that way. He said the business about eliminating her job was put away a long time ago. Clerk Woods said it was only put away because they found out that they need a Clerk of Council by statute. Councilman Stuckert said that was not true and said that they could have a Clerk of Council for half of her salary.

Councilman Stuckert repeated that he would not support the budget as is. He said that if the council cannot approve the alternative budget, it would only be because the mayor, the employees in the building, and the three members of council have decided that the other four people are not going to get their way. He said the money in the budget is the same; they are just maintaining the safety services at this point and are not putting the pressure on the Enterprise Funds. He said they needed to do the right thing, which is vote down the first budget and vote for the second budget.

President Kirchner said he wished to give clarify what had happened. He said that Councilman Mead contacted him directly with list of things that he had heard as concerns. He said Mr. Mead asked him if he had the ability to prepare a budget that addressed those concerns, and this is the support he gave him as the Finance Chair. He said he was only in contact with Bob. He said the other council members had not seen it and had not discussed it. He said he was working directly with only the Finance Chair to avoid any concern.

Treasurer Paul Fear said that it was not the job of the President of Council to prepare the budget. President Kirchner said he was supporting the Chair of Finance in his request. He said that the job of the Treasurer according to the O.R.C. was not to monitor other elected officials for whether they are doing their job or not.

Treasurer Paul Fear said that 733.01 gives him executive power in the Ohio Revised Code as it does to the mayor and everything else. He said that the duty of the President of Council was not to sit on anything or prepare anything. He said that he was supposed to preside over the meetings. He went on to say that he would like to ask the Law Director to investigate a violation of Sunshine Law. He said that he knew when Scott was making calls at 6:30 on Saturday night to talk to the Police Chief to work on the budget and Loren Stuckert said he worked on the budget, you have three members that worked on an alternative budget outside of notification. He said by the executive powers that he has from Section 733.01, he is asking the Law Director to investigate violation of the Sunshine Law before the alternative budget is voted on.

Law Director Shidaker said that the President of Council had stated that the only person that he talked to was Bob Mead about the budget. Treasurer Paul Fear said that Councilman Stuckert said he also talked to Bob Mead about the budget. Law Director Shidaker stated that those discussion happened within council. Councilman Wells agreed that discussions happened within the council meeting.

President of Council said that the changes that were made in the budget were to remove the cost allocations, put the property casualty insurance back into the General Fund and remove it from the Enterprise Funds. He said it removed the administrative cross charges from the Enterprise Fund line items and reduced the budget income by that amount. He said the budget did not change any numbers other than the benefit line item was reduced to 25% of the request. He explained that it leaves the money in the General Fund as the administration and council work forward to address benefit costs – the single largest expenditure for the city. He went on to say that all of the other numbers associated with the administration's proposed budget exist as they did in the budget presented on December 20. He said no changes were made in personnel except to add back in the safety services salary line items and pension line items. He said this was at the request of the Finance Chair and that he specifically avoided conversations with other members of council.

Treasurer Paul Fear asked Law Director if it was his opinion that the Sunshine Laws had been violated. Law Director Shidaker said that it was just like in court – he may have perceptions and may think something, but from what he heard today, he did not hear anything that suggests that the Sunshine Laws have been violated. He said President Kirchner indicated that he had talked to Bob Mead about this, and that was perfectly appropriate. He said everyone up there knows that a budget has to be passed through council. He said he does not care where the budget comes from as long as there are not Sunshine Laws violated. He said it was perfectly appropriate for Bob to call Scott. He said that typically the Clerk of Council would also have been involved to input the numbers into the computer and why that was avoided, he did not know. He added that if Mr. Stuckert and Mr. Mead had been discussing it, then it was a violation of the Finance Committee, but he had not heard this.

Treasurer Paul Fear said that it was not within the duties of council for the president to prepare the budget. Law Director Shidaker said it was okay if the president prepared the budget. Anyone can do it. He said he does not have a right or a duty to, but he was not prohibited from preparing it.

Councilman McKay asked for clarification. He asked if it was possible to consider the new budget if the first budget was voted down at this meeting. Law Director Shidaker said that it was fine to consider it, but they would have to have a three-fourths majority in order to suspend the rules and regulations to give it three readings in one meeting. That would mean six out of the seven would have to agree in order to do it in one day. Otherwise it would need to take place on three separate days.

President Kirchner said he would like to return to the question asked by the Auditor. The answer is yes. He said that Councilman Mead and he had sent a request to the Auditor to meet with him on the budget in August of this year and have never received the acceptance of that meeting. Auditor David Hollingsworth said that they had had the documents for two months. He said that when that meeting was requested, the

information for the meeting was not available because the departments don't submit their information until the first of October. President Kirchner maintained that he asked to sit down and discuss the budget, and the meeting was not accepted.

Mayor Riley said at the time of the request, there was no budget put together to discuss. Mayor Riley said that he would like to know what part of the revised code Councilman Mead was reciting because his understanding is that the administration prepares the budget but it has to be approved by council. He said that he did not think that it was council's responsibility to prepare a budget and then approve the document that they have prepared. He gave the example of the federal government. He said the senate and the house do not prepare the budget and then pass it – the budget is prepared by the administration and then is presented to congress for their consideration and approval. He said it was the same way in the state. The governor prepares the budget and then sends it to the legislature for their approval. He said this was the same process that the city has had forever. He said that he did not know if council had ever prepared a budget and did not think it was appropriate that council prepare a budget that they are then going to approve. He said it has to do with separation of power. The mayor said that it was clear that everyone has their job to do and they should work together on getting those jobs done. He said that is why you don't have one branch of government preparing a document that they then have to approve and then administer. He said that is a direct violation of the separation of powers. He said he did not think it made sense that they should prepare their own budget for their approval without any input from the Auditor, Treasurer or Administration or the clerk, all of whom have decades of experience.

Law Director Shidaker said he believed the section they were referring to was 705.18 in the ORC. He said the intent of that section is that the council prepares the budget based on estimations from the mayor. He said anyone can prepare it. He said that what was necessary was that council pass it. He said historically speaking, it has always been done by the Auditor who submits to the mayor who reviews it and then presents it to council because the numbers are submitted from the Executive Branch. He said whatever budget council decides to vote on can come from anyone.

President Kirchner said that the budget that Bob asked him to prepare was done completely with the Auditor's and Mayor's information. He said it was done with their submitted estimates and their submitted formats. He said that it was completely based on their information.

Mayor Riley said that was a misrepresentation, because the document that it is a reflection of their estimates and information is the budget version that has already been voted on twice. He said that in the other document, the numbers had been twisted around and skewed. He said otherwise, they would be exactly the same. He said the original request from council was a 25% carryover. He explained that he had presented an original budget with a 26.3% carryover. After that, council decided that was not good enough and they wanted a budget that was balanced to revenue. He said they did what council asked and re-crafted the budget so it was balanced to revenue. He said that council has voted on this version twice affirmatively and has about a 35% carryover. He said that there were still members of council that were not satisfied with it.

President Kirchner said that the new budget puts the safety services back at current levels and maintains a 26.6% carryover using the numbers for income and revenue projected by the Auditor and Treasurer. He added that it removes cost allocation from the Enterprise Fund. He said he was in contact with Chief Mason and Chief Weyand over the weekend to understand the impact on personnel. He said that it was not done with twisted and contorted numbers – it was done with information that the administration had provided. He added that it was a deficit budget – it does not balance to revenue because the current structure of the city costs more to run than the income provides for. He said that is why the State Auditor's report the next year would be critical to enact changes to the structure of the city.

Treasurer Paul Fear said that he called all of the council members and offered to answer questions because he wanted to reach out. He said none of them had any questions for them.

Councilman Wells said that when he talked to Paul, his primary concern was the safety services. He said he did not believe it was right to take those things out of the budget and he expressed that in the phone call. Treasurer Paul Fear said that the first comment Councilman Wells made during that phone call was that the mayor hates Scott Kirchner. Councilman Wells said he could not believe that Treasurer Paul Fear would talk about that in public as it was a private conversation, but he would talk about it if he wanted. Yes, he believes that the mayor hates Scott Kirchner. It has been very obvious from the very beginning. He said that it was wrong for Paul Fear to bring that out in public when they were talking privately as friends.

Councilman McKay said that the meeting was starting to go downhill and asked for them to call the question. Councilman Stuckert said that he wasn't finished talking. He said that the questions do not have to do with the numbers. He said his only question was the found revenue that occurred a couple of weeks ago. He said that the thing that really bothered him was the structure of the city. He said it needed to start in the administrative offices in the city. He said his real concern was the day when they would not have any more carryover and would face a fiscal cliff. He also said that the accusations regarding the Sunshine Law were part of an attack pattern that had been in place since day one. He said that he thought that the way the budget was balanced through the cuts in safety services and cost allocation was irresponsible.

Councilman Jaehnig said he was confused by a few statements being made. He said it was clearly discussed in the last meeting that they could put the safety service cuts back in after the first of the year. He said he didn't think the administration wanted to cut safety services either. He said that he thought by supplementing the Enterprise Funds with General Fund money does not give a clear picture of how those funds are operating. He said it hides any issues in efficiency that might exist. He said that they are all Republicans sitting up there and they talk about Republican values, which are smaller government. He said propping up the Enterprise Funds with general revenue tax dollars is a hidden cost for the citizens. Councilman Jaehnig said he was very confused because the administration presented them with a budget that they could work on all year to cut on. He said it was then told to them that they wanted a closer, more balanced budget. Then the administration came back with a budget that was balanced that they could add to as the year goes on if they think certain things are important and should not be cut. He said he thought that being presented a budget that is balanced in which the administration has to ask for anything they want to add is a gift. He said it is much harder to cut than it is to make the decision to spend extra money. He said the budget had no effect on whether or not they go with an 18-month benefit cycle. He said he tries very hard to not speak for other council people up there. He said he heard Councilman Stuckert refer to the four several times and what the four wants. He said that he did not think it was entirely fair to the other three of the four for him to continuously talk about that. He said he was also concerned about the way the whole thing was laid out – "If this is voted down, I have an alternative." He asked why they would not have waited to see how the vote turned out before presenting an alternative. He said the perception was they had already made the phone calls and they already had the votes. He said there had been no explanation of the changes in the budget by Councilman Mead, but immediately Councilman Stuckert was able to talk about all of the changes.

Councilman Stuckert said he knew what changes would be made because he had asked for them during council. Councilman Jaehnig then asked how Councilman Stuckert knew those changes were in the budget that was presented.

Councilman McKay asked for the vote.

President Kirchner asked if discussion was complete.

Councilman Wells said he didn't understand the concept of taking out the safety people to make it balance and then putting them back in at the beginning of the year. Councilman Jaehnig replied the budget is going to change every month. Councilman Wells said it doesn't make sense and it doesn't seem right to him.

Mayor Riley said that if council so chooses, they can put the cruiser and the police officers back in the budget. They have that option. He said also they don't have to put them back in. The police department will continue to operate short as they have for some time. He said it would be up to council to do so. He said the budget was tighter than he liked, but he tried to give council what they wanted.

President Kirchner asked if the mayor had contacted Councilman Wells as the chair of the Safety Committee to discuss removing the safety personnel from the budget. Councilman Wells said he did not. President Kirchner suggested the removal of the safety services was done by the administration without council input or review.

President Kirchner said that he thought they had had enough discussion.

President called for vote.

Motion passed

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

Director of Law read ordinance by title only.

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

Roll call: Wells, no; Stuckert, no; Wallace, yes; Mead, no; Siebenaller, yes; McKay, yes; Jaehnig, yes.

Motion passed.

President of Council declared Ord. No. 5074 passed as read.

Finance Committee – Chairperson Mead introduced the legislation making reverse appropriations.

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

President asked for discussion.

Seeing none, President called for vote.

Motion passed

Director of Law read ordinance by title only.

A motion was made by Mead 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; Siebenaller, yes; McKay, yes.

Director of Law read the ordinance by title only.

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

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

Motion passed.

President of Council declared Ord. No. 5073 passed as read.

President Kirchner asked if the reverse appropriations establishes the number on the budget worksheets as the carryover balance.

Mary Kay Vance says that it did not have anything to do with that. She said it brings them in line for the actual revenues with the budget commission. Auditor David Hollingsworth said they were numbers that were not spent that were in the original budget. Mary Kay Vance explained that if the revenues were any more than the appropriations in any fund, reverse appropriations are not done. They are only in the funds where the revenues are less than the appropriations are. So if in the water department the estimated revenues were higher than the appropriations, if there were line items that Jerry does not use, we do not do reverse appropriations at this time. It just goes away.

President Kirchner said in the General Fund it would represent all of the expenditures that had been projected in the budget but had not been expended for various reasons.

Mary Kay Vance said those items are in the revenue stream, but the reverse appropriation has nothing to do with that.

President Kirchner said that he thought they were zeroing out the line items. Mary Kay Vance explained that is not how it works. Any excesses just go away. Those appropriations just go away.

President Kirchner asked what the carryover number is. Mary Kay Vance said she was not sure, but it was very close to \$2.7.

Councilman Mead said that it did not look like any further discussion was needed about the 2013 budget. He ended his report.

As there was no further business on the agenda, President of Council declared the meeting adjourned.  
Council adjourned.

ATTEST:

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President of Council

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Clerk