

Wilmington City Council met in special session on Tuesday, August 13, 2013, at 6:00 p.m. with President Scott Kirchner presiding.

Call to Order

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

Chief Weyand was also present.

President Kirchner announced that they would move directly into the Auditor of State Office, LEAP Performance Audit portion of the agenda. Because this is an active performance audit, it qualifies as a purpose for executive session.

Law Director Shidaker explained that the Auditor of State would not present the information within any special council meeting and instead requests that council members only hear the LEAP Performance Audit presentation at a separate meeting immediately following the special council meeting. Law Director Shidaker expressed his objection to the process, stating that he thought the perception to the public was poor for all of the council members to be involved in a meeting out of session. He stated he was worried about compliance with Sunshine Laws, but if he had any complaints he would explain that it was orchestrated by the State Auditor's office.

[Discussion of the forum for State Auditor's report]

Clerk Brenda Woods explained that when the Auditor's office contacted them with a time to present the information, she had, at the Law Director's direction, scheduled it as a special session of council in order to comply with the Sunshine Laws.

Councilmembers asked Law Director Shidaker what his legal advice was. Law Director Shidaker stated that he disagreed holding the meeting outside of council, but the Auditor of State would not do it any other way. He said it was very important for the councilmembers to refrain from discussing any city business among themselves during the presentation.

[Further discussion of State Auditor's presentation]

President Kirchner stated that he understood that the presentation was not to be open to the public, which is why they were going into executive session. He did not know that the request was to go out of session in order to hear the report.

[Further discussion of executive session]

President Kirchner stated that they would change the order of the agenda at this point. He said after the close of agenda business, they would hold a brief recess while they consult with the State Auditor's office.

Law Director Shidaker stated that there would be no problem with the council members sitting and listening to a presentation. Councilman Jaehnig asked if they could ask questions. Law Director Shidaker explained that they could ask questions of the State Auditor's office but they cannot deliberate amongst themselves.

President Kirchner stated that any conversation amongst the councilmembers during the meeting with the State Auditor would be a violation of the Sunshine Laws and he would himself report it. He stated that they would now continue on into the Finance Committee section of the agenda.

Finance Committee – Chairperson Mead asked if Law Director Shidaker still required an executive session to discuss pending litigation. Shidaker replied that he did.

A motion was moved by Mead and seconded by McKay to go into executive session to discuss pending litigation. Law Director Shidaker clarified this was under 121.22 (G)(3) and (4) of the Ohio Revised Code.

Motion passed. All yeas.  
Council entered into executive session at 6:14 p.m.

Council exited executive session at 6:45 p.m.

Councilman Mead introduced legislation making supplemental appropriations: the Waste Fund to Landfill Vehicle Gas Expense, \$25,000; the General Fund to Director of Law Consultant Services, \$100,000; the General Fund to Civil Service Incidentals, \$5000.

Clerk Brenda Woods read a statement describing the purpose of the civil service incidentals supplemental appropriation for drug testing for compliance with random testing and workers compensation claims.

Councilman Mead asked if anyone wanted separate the supplemental appropriations.

Councilman Stuckert asked if the landfill gas expense was in addition to what was budgeted. Donnie Maher explained that it had to do with using more gas to run equipment due to the heavy rainfall and moving a lot of dirt.

Councilman Jaehnig stated that he had no trouble with the supplemental appropriation but felt that legal fees associated with the enterprise funds should come out of their respective funds.

Councilman Siebenaller said that he agreed and asked how they could split it out.

Mayor Riley said that Law Director Shidaker indicated that he would probably need more before the year was out.

President Kirchner suggested that they direct the Law Director to not cover bills associated with Enterprise Funds.

Law Director Shidaker said that he paid the EPA bill. The current amount of \$12,983.69 has been paid.

Councilman Jaehnig – We could still fix it after the fact because it is not part of this request.

Law Director Shidaker – The \$94,000 that is currently owed does not include the EPA bill.

Auditor David Hollingsworth – What we might be able to do is supplement the cost allocation that was done at the beginning of the year.

President Kirchner said the question was whether we were covering costs associated with the Enterprise Fund.

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

President asked for discussion.

Seeing none, President called for vote.

Motion passed. All yeas.

Director of Law read ordinance by title only.

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

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

Motion passed.

President of Council declared Ord. No. 5103 passed as read.

Councilman Mead introduced legislation making miscellaneous transfers from impound costs to uniforms.

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

President asked for discussion.

Seeing none, President called for vote.

Motion passed. All yeas.

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

Motion passed.

President of Council declared Ord. No. 5104 passed as read.

Councilman Mead introduced legislation accepting the amounts and rates of tax levies as determined by the budget commission.

A motion was made by Mead and seconded by Stuckert 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.

President asked for discussion.

Councilman Jaehnig asked for clarification of why the Park Fund showed no amount but a Recreation Fund has money in it.

Treasurer Fear explained that when the Park Fund expired, it was continued by the Recreation Fund.

Seeing no more discussion, President called for vote.

Motion passed. All yeas.

Director of Law read resolution by title only.

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

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

Director of Law read the resolution by title only.

A motion was made by Mead and seconded by Stuckert to pass the resolution as read.

Roll call: Siebenaller, yes; McKay, yes; Jaehnig, yes; Wells, yes; Stuckert, yes;

Wallace, yes; Mead, yes.

Motion passed.

President of Council declared Res. No. 2330 passed as read.

Councilman Mead introduced legislation accepting the Local Government Assistance Formula.

A motion was made by Mead and seconded by Stuckert to give the first reading only on a resolution Accepting Local Government Assistance Formula As Provided by the Clinton County Auditor.

President asked for discussion.

Seeing none, President called for vote.

Motion passed. All yeas.

Director of Law read resolution by title only.

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

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

Director of Law read the resolution by title only.

A motion was made by Mead and seconded by Stuckert to pass the resolution as read.  
Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Siebenaller, yes; McKay, yes.

Motion passed.

President of Council declared Res. No. 2331 passed as read.

Councilman Mead introduced legislation providing for street lighting special assessments.

A motion was made by Mead and seconded by McKay to give the first reading only on a resolution Declaring it Necessary to Light the Streets, Lanes, Alleys, Lands, Squares, and Public Places in the City of Wilmington, Ohio, with Electric Lights, and for Special Assessments to be Levied to Pay the Cost Thereof for the Year 2014.

President asked for discussion.

Auditor David Hollingsworth explained that the city was requesting approximately \$55,000 less than the year before. Because of aggregation, the monthly fee to light the streets is running just a little shy of \$12,000. The fund is used for lighting the streets and also to pay for the costs of new lighting that is needed.

Councilman Siebenaller asked why this was done in August.

Auditor David Hollingsworth said he thought it was in order to give the Auditor's office time to get the assessment onto the first half real estate in 2014.

President Kirchner asked if there was a reason it needed to be on a special council meeting agenda.

Clerk Woods said that she and Chairman Mead had discussed it and thought it was more efficient to put it on the special council meeting where it could be reviewed by full council rather than schedule yet another Finance Committee meeting. September 15 is the deadline for both items on the agenda.

President Kirchner asked if it was an urgent matter and that is why it needed attention at a special council meeting.

Clerk Woods explained again that she had spoken to Chairman Mead and he thought it was fine that it be brought forward onto the Special Council agenda in order to keep the process moving.

Chairman Mead agreed that he said it should be brought forward for a first reading.

Seeing no more discussion, President called for vote.

Motion passed. All yeas.

Councilman Mead requested that the second reading be on the Agenda for the next council meeting.

Councilman Mead introduced legislation approving liens for utility delinquencies, mowing and lot cleanup.

A motion was made by Mead and seconded by Siebenaller to give the first reading only on a resolution Approving Liens Pursuant to §§729.49, 743.04 of the Ohio Revised Code and §§923.09, 929.03 and 1729.03 of the Codified Ordinances of the City of Wilmington.

President asked for discussion.

Councilman Jaehnig questioned the amount of \$600 in sewer fees and \$0 for water for Meadow Park Plaza.

President Kirchner explained that even when water is shut-off, there is a sewer access charge.

Seeing no other discussion, President called for vote.

Motion passed.

Director of Law read resolution by title only.

Mead requested that the second reading be on the Agenda for the next council meeting.

Woods asked to clarify that item 3(f) (Street Lighting Assessments) was going to have the second reading at the August 15 council meeting. Mead agreed.

President Kirchner asked the Auditor of State to come in and explain the problem with presenting their information during the council meeting.

Councilmembers requested a small recess.

A motion was made by Jaehnig and seconded by McKay to have a five-minute recess.

Motion passed. All yeas.

Council recessed at 7:07 p.m.

Council reconvened after five-minute recess.

President Kirchner said that he had a discussion with the Auditor of State's office. The exemption associated with the discussion of an in-process audit is an exemption that applies if it is their meeting for it not to be a public meeting. If they would do it in an executive session in our meeting, their exemption does not apply. It is not a reason we can go into executive session. So, the indication again is, we can have them do the update and there is no exclusion of members of the administration. There is only exclusion of department heads at this point. It would not be during a meeting of council. I will make it as clear as I can to council again. You can directly ask questions of any member of the State Auditor's office, but councilmembers can in no way converse with each other about any of these matters.

Councilman McKay – So this is not a public meeting because it is their meeting and that is where the exception comes from.

Law Director Shidaker – I guess the question I have is, does anyone in this room currently need to leave?

President Kirchner said the Law Director is asked to be present if he wishes, as well as all elected members of the administration. My only question is whether the Clerk of Council is allowed to be here.

Mayor Riley said that since Brenda Woods has been the official contact with the Auditor's office, then she should be invited to stay.

President Kirchner said that the concern is as in her role of Clerk of Council she be allowed to be remain.

A motion was made by Wallace and seconded by Jaehnig to adjourn.

President Kirchner declared the meeting adjourned.

Council adjourned.

ATTEST:

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President of Council

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Clerk