

Wilmington City Council met on Thursday, April 3, 2014, at 7:30 p.m. with President Cindy Peterson presiding.

Call to Order

Roll Call: Jaehnig, present; Spicer, present; Stuckert, present; Mead, present; Miller, present; Milburn, present; McKay, present.

Chief Weyand was also present.

Pledge of Allegiance

Council gave the Pledge of Allegiance to the flag.

President of Council

Approval of minutes: Councilman Stuckert said he thought it was important the record reflect that in the discussion of the landfill and financing, there were assurances by Councilman Jaehnig, Service Director Reinsmith, and the Mayor that funds were in place in the Enterprise Fund and there would be no borrowing for the landfill expansion project. He asked that the minutes be amended to reflect the details of the discussion.

A motion was made by Stuckert and seconded by Mead to approve the minutes of the last regular meeting, March 20, as amended.

Motion passed.

Minutes approved as amended.

President Peterson presented new committee assignments and thanked the council members for their work. An additional committee has been formed – the Cemetery Committee.

A motion was made by Jaehnig and seconded by McKay to accept new Committee Assignments.

Motion passed.

Committee assignments approved.

President Peterson announced the Public Hearing on landfill operations will be held at the next council meeting, April 17, at 7:30 p.m. in council chambers. This will be in the first committee report on the agenda.

Mayor- Mayor Riley announced that letters from Volunteer Energy Services referencing the natural gas aggregation program had gone out to residents. The pricing is based on the NYMEX (New York Mercantile Exchange) plus .0935. Based on what the NYMEX price has been lately, the aggregation price will be about .59/ccf. If you have questions, call the office, we have the latest NYMEX figures. It is an opt-out program, so if you do nothing, you will get the pricing.

Councilman Jaehnig – If you are under a contract already, you will not have received this letter because it does not supersede contracts that are already in place.

Councilman Stuckert asked how often they go to the NYMEX. Mayor Riley said they do not say, but it appears to be a moving target. It appears to be a better price than what Vectren is currently offering.

[Discussion of aggregation program]

Paul Hunter said that according to Mr. Bellish (Buckeye Energy) they are going to try to fix the price at 50 cents or less next September.

[Discussion of aggregation letter]

Mayor Riley offered to go over the information with Lora Abernathy (News Journal) so she could put an article together to better explain the program and the letter citizens have recently received.

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

Asset, Acquisition and Use.- Chairperson Mead presented legislation to vacate an easement adjacent to Compton Lane for the CVS building project.

A motion was made by Mead and seconded by Stuckert to give the first reading only on the ordinance Authorizing Extinguishment and Vacation of Certain Easement on Compton Lane.

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 Milburn to suspend the rules and give the second and third reading on the ordinance by title only.

Roll call: Jaehnig, yes; Spicer, yes; Stuckert, yes; Mead, yes; Miller, yes; Milburn, yes; McKay, yes.

Director of Law read the ordinance by title only.

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

Roll call: Spicer, yes; Stuckert, yes; Mead, yes; Miller, yes; Milburn, yes; McKay, yes; Jaehnig, yes.

Motion passed.

President of Council declared Ord. No. 5145 passed as read.

Finance Committee-Chairperson Mead presented legislation establishing a new fund for a NatureWorks grant at the Parks Department.

A motion was made by Mead and seconded by McKay to give the first reading only on the ordinance Establishing a New Fund.

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: Stuckert, yes; Mead, yes; Miller, yes; Milburn, yes; McKay, yes; Jaehnig, yes; Spicer, 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: Mead, yes; Miller, yes; Milburn, yes; McKay, yes; Jaehnig, yes; Spicer, yes; Stuckert, yes.

Motion passed.

President of Council declared Ord. No. 5146 passed as read.

Councilman Mead presented legislation making supplemental appropriations.

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

Roll call: Miller, yes; Milburn, yes; McKay, yes; Jaehnig, yes; Spicer, yes; Stuckert, yes; Mead, 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: Milburn, yes; McKay, yes; Jaehnig, yes; Spicer, yes; Stuckert, yes; Mead, yes; Miller, yes.

Motion passed.

President of Council declared Ord. No. 5147 passed as read.

Councilman Mead presented legislation making miscellaneous transfers.

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

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: McKay, yes; Jaehnig, yes; Spicer, yes; Stuckert, yes; Mead, yes; Miller, yes; Milburn, 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: Jaehnig, yes; Spicer, yes; Stuckert, yes; Mead, yes; Miller, yes; Milburn, yes; McKay, yes.

Motion passed.

President of Council declared Ord. No. 5148 passed as read.

Water Committee - Chairperson McKay had no report.

Streets Committee - Chairperson McKay had no report.

Solid Waste/Recycling – Chairperson Jaehnig said that there would be a public hearing on the landfill operations at the next council meeting on April 17 at 7:30 p.m.

Wastewater/Sewer Committee - Chairperson Stuckert had no report.

Judiciary Committee - Chairperson Jaehnig had no report.

Tree Commission gave a presentation on their history, past and current projects, plus plans for the future.

Councilman Jaehnig explained that part of the work of the Tree Commission has been to review current legislation and offer changes that are needed in order for them to continue their work. These changes focus on how trees are planted in the right-of-way and putting a permit process in place to help regulate the planting of trees and educate citizens on proper procedures.

Councilwoman Miller asked for verification of the following points: the term right-of-way includes private property as well as city-owned property; there is no cost for the permit; the permit applications are submitted to the Code Enforcement Official; and the legislation expands the jurisdiction to include the entire city of Wilmington. Councilman Jaehnig verified each of these points, clarifying that the permits will be turned into the Building and Zoning Clerk. Councilwoman Miller summarized the legislation by stating that if she wanted to plant a tree in on her private property, but in the public right-of-way, she would be required to obtain a tree permit. Councilman Jaehnig verified that was accurate.

Councilman Jaehnig further said that the point is not for the permission to plant the tree but to make sure that everything is being taken into consideration before that tree is planted. Councilwoman Miller replied that it is permission, because if the property owner does not obtain a permit, they will be fined \$150.

Councilman Jaehnig – The main reason is because we quite often have the wrong tree planted in the wrong place.

Kim Law – It's not that much different than having a permit to have a yard sale. You get information when you take that permit out which gives you useful planting information.

Councilwoman Miller expressed that she had no problem with providing more knowledge but has a problem with the fact that residents have to get permission or they will be fined. She asked why sections were removed that allowed the property owner to move forward if their permit is not processed within 60 days. She also asked why the standards of evaluation for the permit application were removed.

Councilman Jaehnig - The second phase of this will be the guidelines in which the Tree Commission works under. It's not a legislative process; it's an administrative process. The two are separated. The reason for the removal of the automatic approval after 60 days if there is no action, we never as a city want something to happen by default if there is no action taken.

Don Smith – Why would someone want to plant a tree between the sidewalk and the street? Trees and cars don't mix. The sewer lines, the storm drains are all in those sections. I cringed when I saw them digging all of those holes for the trees, because they are right there by the storm drains.

Kim Laws – We have OUPS come out and tell us where they all are, so we don't dig where we not supposed to.

Councilman Jaehnig - We have two options – either stick our heads in the sand and let people plant wherever they want or we can just not plant trees at all.

Don Smith – Trees can be planted in different places than right next to the street.

Councilman Stuckert verified that the legislation does not say that you can't plant trees in your back yard. Councilman Jaehnig said that was correct.

Councilman Jaehnig - Currently it is illegal to plant a tree in the right of way at all. This is to fix that so the Tree Commission can legally move forward with their plans.

[Discussion of trees in right-of-way]

Councilman Jaehnig – This is the first work on this. If there are problems with it, we can fix it.

A motion was made by Jaehnig and seconded by Stuckert to give the first reading only on the ordinance Amending Certain Sections of Chapter 909, Rescinding §909.10, and Adopting New Section in Chapter 909 of the Codified Ordinances, Regarding Downtown Historic District Trees.

President called for vote.

Motion passed. All yeas.

Director of Law read ordinance by title only.

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

A motion was made by Jaehnig and seconded by Stuckert to give the first reading only on the ordinance Rescinding Chapter 547, Trees, Shrubs and Weeds, of the Codified Ordinances and Adopting a New Chapter 547, Trees and Shrubs, of the Codified Ordinances.

Seeing no discussion, President called for vote.

Motion passed. All yeas.

Director of Law read ordinance by title only.

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

Councilman Jaehnig presented legislation authorizing the mayor to enter into an agreement with Spyglass. Spyglass will do an audit of the city's communications.

Ryan McCoy, Regional Director of Sales, Spyglass, gave a brief overview of their services. They are a cost advisory firm focusing on communications. They communications billing and then look for recommendations in three categories: 1) Cost

recovery; 2) Identify services we pay for but are not using; 3) Cost reduction recommendations. We collect invoices for two months of services mentioned. We ask for copies of contracts. We have a letter of authorization to contact the various providers.

President Peterson – How long does the analysis take?

Ryan McCoy – About four weeks.

Councilman Stuckert – Your fee is taken out of savings?

Ryan McCoy – Fee is 100% success-based or contingent based. We do analysis without any fiscal commitment.

President Peterson – What if there is a separation of opinion - you've identified a cost savings and we find it unrealistic? How do you assess that?

Ryan McCoy – We do the analysis and we present our suggestions. We understand that we can't know the city's business better than the city can. Our recommendations are going to be from a fiscally driven point of view. We understand that they might not make the best business sense for the city. If you don't move forward with the recommendations, that is fine.

Councilman Spicer - Even if it would be a cost savings for the city and we don't move forward on it, you don't consider that we would owe you because you found the savings?

Ryan McCoy - The only thing you pay are verified savings that we implement and actual savings are achieved.

[Discussion of potential savings]

Councilman McKay – Is this an annualized fee?

Ryan McCoy – No, it is a snapshot audit. We just do it once. We will check with the city in the future to see if they have additional needs.

Councilman McKay – Say we were going to save \$25 a month, is your fee a portion of that \$25 or is it like twelve \$25.

Ryan McCoy – The first fee structure is for cost recovery – anything we get back for you that you shouldn't have paid in the first place, we get a 50/50 split on. The concept behind billing you for savings you are going to receive from elimination and cost reduction is from the point we implement it and move forward. There is no recovery element. The way we calculate our fee for this is based on whatever your verified monthly savings is, we attach a multiplier of 12 to that number.

Councilwoman Miller – When we make payment to Spyglass, does it come out of the department where the money saved was found or does it come out of the General Fund? If you audited the water department and they had 17 ghost lines, does the General Fund pay that?

Mayor Riley – I'm sure it would be divided up amongst the departments that had those savings. That is a technical issue we would have to get into.

Councilman Jaehnig – The Enterprise Fund operate separately and would have to be captured separately.

President Peterson – Can we get a follow-up with the Auditor to verify that?

A motion was made by Jaehnig and seconded by Stuckert to give the first reading only on a resolution Authorizing the Mayor to Enter Into an Agreement with Spyglass to Analyze the City of Wilmington's Primary Telecommunication Service Accounts.

Seeing no more discussion, President called for vote.
Motion passed. All yeas.
Director of Law read the ordinance in title only.

Jaehnig requested that the second and third readings be on the Agenda for the next meeting.

Councilman Jaehnig presented legislation on renewing the agreement between the City and the DWCIC (Downtown Wilmington Community Improvement Corporation) and explained that it was a housekeeping item that the city does every five years. He presented an overview of the structure and purpose of the DWCIC.

A motion was made by Jaehnig and seconded by Miller to give the first reading only on the ordinance Approving the Continued Agency Agreement Between the City of Wilmington and the Downtown Wilmington Community Improvement Corporation Within the Central Business District.

Seeing no further discussion, President called for vote.
Motion passed. All yeas.
Director of Law read ordinance by title only.

Jaehnig requested that the second and third readings be on the Agenda for the next meeting.

Councilman Jaehnig presented legislation regarding establishing a permit process for games of skill. This legislation has been in the works for two year and it is controversial. We have no legislation in place dealing with the skilled gaming issues. Because of the way the state laws are written, removing existing skilled gaming facilities from our community is not currently an option. The proposed legislation calls for the city to issue permits for each and every machine in the city. The permit gives us the legal right to make sure they are doing exactly what they should be doing based on Ohio state law. Currently we have no legal right to inspect the machines. We would call in a third party to do the inspection. The cost of the inspection would be on the owner of the establishment. They would not be inspected every year but can be looked at if needed. Inspectors can determine if the machines have been tampered with and if they are operating as promised. We have also put together legislation that would restrict gaming to the B-3 zone as a conditional use only. If council wants to put a ban on future skilled gaming facilities, they can do that with this legislation in place. It is currently written as an emergency, but I will be asking for that to be amended.

Councilman Stuckert – I am very upset about the presence of these facilities in our city. It's complicated. I'm upset that government is involved in gambling at all. I'm upset with the state of Ohio. Certain types of gambling are supported by the State of Ohio (resort gambling) while others are subject to great restrictions (games of chance for charity or local card games). The reason I want to extend our ban is I am not interested in getting their money. I think it would be misleading the constituents if I say we've really done you a big favor here – we're protecting you from getting ahold of a bad machine. I will support the legislation to restrict it. I will be pushing for legislation to ban them.

Councilwoman Miller – Has there been any discussion to ban it? I know it's expired, but has there been discussion.

Councilman Jaehnig – We have not had a discussion in committee. We have talked about how we may be coming back immediately to talk about a gaming ban. Our focus was getting something on the books that protected us. Currently, we don't have anything on the books dealing with this at all. We have the facilities here now whether we want them or not. We can talk about a ban immediately if council wishes to do that.

Councilman Mead – My concern from a businessman standpoint, we have said that these businesses are legitimate business according to law, how can we then treat them differently than other perfectly legitimate businesses according to state law? If we are going to license and charge money to one business, why not next month at the grocery

store because of the number of cash registers or the craft shop because the number of clerks or a restaurant because of the number of meals they service? Why not just let them operate as a small business and if they break the law, they break the law.

Councilman Jaehnig – We already do that to restaurants. They have fees and health inspections that no one has. The transportation industry pays fees and taxes that no other industry pays. We already do that all over the place. The standard throughout the state with the skilled game industry is to do something of this nature. There is no other way to protect our citizens.

Councilman Spicer – I agree with you Bob, but if you have good honest people running these establishments, you don't have a problem. In the old days, with gambling machines, if they payoff got too good, then the owner would crank it down. He would rake in the money until people started complaining.

Councilman Mead – Any business can cheat you.

Councilwoman Miller – It is my individual responsibility to do business elsewhere if I believe I am not getting good service.

Service Director Reinsmith – Do you know how many times police have been brought out to these businesses in the past two years?

Councilman Jaehnig – We have no indication that either location is doing anything fraudulently. We have had no calls at either location.

Service Director Reinsmith – How many times have police been called to the bars? How many hours of public time have we spent with our police in these bars?

[Discussion of licensing bars]

Service Director Reinsmith – The bottom line, everyone in the state was against gambling until the state realized that they could make money on this. Now they are the biggest takers of all. It's not a moral issue with the state.

Councilman Stuckert – I wouldn't have a problem with the ones that are here if they took the laws off of everybody. They selectively stop some people and then let other slip through the rules.

President Peterson – This is a first reading. We are not trying to pass an emergency. I think there is going to be more debate. I believe we will be hearing from citizens. I suggest we make a motion one way or the other. We look forward to hearing from our constituents. We could make decision at the next meeting about the second reading.

Councilman Jaehnig – The first piece of legislation is about the rules for the games of skill. The second piece of legislation is just for the zoning of where they are allowed to be in the future.

A motion was made by Jaehnig and seconded by Stuckert to amend the licensing requirement of games of skill legislation to remove the emergency provision.

Motion passed.

Legislation amended.

Councilman McKay suggested a roll call vote on the legislation.

A motion was made by Jaehnig and seconded by Milburn to give the first reading only on the ordinance Establishing a License Requirement for the Ownership, Installation, Maintenance, and Operation of Certain Gaming Machines/"Games of Skill."

President called for a roll call vote.

Roll call: Spicer, no; Stuckert, no; Mead, no; Miller, yes; Milburn, yes; McKay, yes; Jaehnig, yes.

Motion passed.

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

A motion was made by Jaehnig and seconded by Stuckert to give the first reading only on the ordinance Amending Section 1155.043 of the Codified Ordinances of the City of Wilmington B-3 Roadside Business.

President called for roll call vote.

Roll call: Stuckert, yes; Mead, yes; Miller, yes; Milburn, yes; McKay, yes; Jaehnig, yes; Spicer, yes.

Motion passed. All yeas.

Director of Law read ordinance by title only.

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

Councilman McKay suggested using the term moratorium.

Councilman Jaehnig said that the Judiciary Committee is happy to put together legislation reinstating the moratorium if council wishes them to.

Councilwoman Miller said that she thought the zoning ordinance was the most important because it protects the downtown. She said she would be comfortable doing the second and third readings at the next meeting.

Councilman Jaehnig said that it seemed the sense of the meeting to put together moratorium legislation.

President Peterson asked for clarification on whether it was second and third reading for the zoning legislation at the next meeting.

Councilman Jaehnig said that he only wished to do one reading. He does not want to rush it because it is a sensitive subject.

Service Director Reinsmith – We permitted these business to come in and we didn't stop them. Now years have passed by and we decide we want to pass a law and charge them money and charge the licenses and if they decide they don't want to pay the license fee we can throw them in jail. Because of this criminal provision in there, I want the Law Director to review the areas concerning ex post facto laws because the constitution prohibits this type of action. We're taking innocent people and changing the rules on them and threatening to throw them in jail if they don't obey by those rules. They started their businesses without those rules in place. Councilman Jaehnig said rules change for businesses on a regular basis. We will be happy to look at that.

Councilman Jaehnig - For clarification, one of the establishments that we are talking about is renting space in Mr. Reinsmith's building. That is not why he is bringing this up. We are aware of that issue.

[Further discussion of games of skill]

Safety Committee - Chairperson Jaehnig said he was happy to turn the committee over to Councilman Spicer.

Downtown Revitalization Committee—Convener McKay had no report.

Parks and Recreation Committee – Convener Stuckert – The parks have been doing a lot of work, including a voluntarily funded dog park. I will be providing a full report on the project.

Service Director - Service Director Reinsmith had no report.

Safety Director – Safety Director Russ Burton had no report.

Reports

A motion was made by McKay and seconded by Stuckert that the Income Tax Report, - March 2014, be accepted as presented.

Motion passed.

Reports accepted as presented.

President Peterson opened the meeting up to the general public and/or members of council to address council while in session.

Law Director Brian Shidaker – Service Director Reinsmith is asking if the ordinance is constitutional. Basically, the 5th and the 14th amendments would apply, which is due process and equal protection. If the establishments challenge the ordinance, the court would apply what is called a rational basis test. Basically, what that says is the governmental action, which is the ordinance, rationally related to a legitimate governmental interest. The government’s position will be that the governmental interest is to make sure that gambling is not going on in these establishments. Another issue that no one has discussed is the interest that government has in collecting city income tax. That is another interest that can be raised if this is challenged in court that they are analyzing and looking at these books to see if they are paying city income tax. A court would do the rational basis test to decide whether or not the ordinance is constitutional. I will put that in writing. That is basically the test they apply.

Councilman Stuckert asked if they were asking to put the fees back to where they began. Law Director Shidaker said you cannot do that.

President Peterson asked if anyone else wished to address council while in session.

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

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

Motion passed.

Council adjourned.

ATTEST:

President of Council

Clerk