

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
MAY 31, 2018

The Common Council of the City of West Lafayette, Indiana, met in the Multi-Purpose Room at the Morton Community Center on May 31, 2018, at the hour of 4:30 p.m.

President Bunder called the meeting to order and presided.

Present: Peter Bunder, Nick DeBoer, Steve Dietrich, Gerry Keen, Larry Leverenz, David Sanders, Gerald Thomas, and Norris Wang.

Absent: Jonathan Jones

Also present: Assistant City Attorney Elliot McKinnis, Clerk Sana Booker, Interim Parks Superintendent Pennie Ainsworth, Street Commissioner Ben Anderson, Facilities Director Tim Clark, Director of Rental Housing Inspection Dale Dixon, Police Chief Jason Dombkowski, Human Resources Director Diane Foster, City Engineer Ed Garrison, Fire Chief Tim Heath, WWTU Director David Henderson, and Building Commissioner Chad Spitznagle.

UNFINISHED BUSINESS:

Ordinance No. 11-18 An Ordinance Vacating Public Rights-Of-Way And Alley(s) In The City Of West Lafayette, Indiana (Hayes Street, Raymond Street) (West Lafayette Junior-Senior High School Building Corporation) (Submitted by Reiling Teder & Schrier, LLC) PUBLIC HEARING

President Bunder read Ordinance No. 11-18 by title only.

Kevin Riley (Reiling Teder & Schrier, LLC), representing the petitioner, stated that under the statute they sent a notice to neighbors. He explained that the notice was not required because they did not adjoin the street or alley. However, the petitioner opted to send the information out to residents out of caution and courtesy.

There was no further discussion.

NEW BUSINESS:

Ordinance No. 12-18 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect. (Browning Investments) (Discovery Park District PD) (A to PDNR) (Submitted by Area Plan Commission)

President Bunder read Ordinance No. 12-18 by title only.

Sarah Wyatt (Ball Eggleston), representing the petitioner, stated that they are seeking approval of a rezone from zone A to zone PDNR. Ms. Wyatt noted that the project received a favorable staff report from Area Plan Commission (APC).

There was no further discussion.

Ordinance No. 13-18 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect. (UZO Amendment #93 – Bufferyards) (Submitted by Area Plan Commission)

President Bunder read Ordinance No. 13-18 by title only.

Building Commissioner Spitznagle stated that Bryce Patz, Neighborhood Vitality (Department of Development), will explain more in depth at the Council meeting about this ordinance. Mr. Spitznagle stated that the APC's ordinance committee updated bufferyard amendments to the zoning ordinance. One of the key changes is that any business with a loading dock will be required to have a sound barrier between the bufferyard and residential areas. This will improve Evergreen trees and other tree requirements within the bufferyard areas, which will also allow landscape administrators to approve what is placed in each bufferyard.

President Bunder asked if Tippecanoe County will match the City, to which Mr. Spitznagle responded yes.

There was no further discussion.

Ordinance No. 14-18 An Ordinance Restricting The Use Of Tobacco Products In Certain Public Places (Sponsored by Councilor Thomas)

President Bunder read Ordinance No. 14-18 by title only.

Interim Parks Superintendent Ainsworth stated that the Parks Department would like to align with what the City has in place, which can be enforced by the Police Department. A resolution [BRP 01-16] was passed through the Parks Board two years ago, which stated that smoking was not permitted within any of the City's parks or facilities. Due to the City currently being in the process of updating their codes, they felt it was an appropriate time to update the smoking policy. Ms. Ainsworth noted that the Parks Department would like to include vaping in this policy because the Parks Department staff has continued to find the cartridges throughout the City's parks.

President Bunder asked if vaping was considered to be smoking, to which Assistant City Attorney McKinnis responded that in the Chapter 64 of the City Code vaping is not considered smoking.

Interim Parks Superintendent Ainsworth stated that they would like to consider vaping as smoking, due to the presence of children in the parks.

Councilor Leverenz asked how this will affect the neighborhood pocket parks, to which Ms. Ainsworth responded that these changes will include those parks, as well as the ice rink and the municipal pool.

Councilor Leverenz asked in order to be included in the no smoking ordinance, how much involvement from the Parks Department would be necessary for the neighborhood pocket parks. For example, although not owned by the City, the park in Northwestern Heights is mowed by the Parks Department.

Councilor Sanders stated that the ordinance title refers to the use of tobacco products, which would include vaping, but the language within the ordinance is only about smoking. He asked if it would be more effective and clear if the language was either smoking or tobacco products.

Interim Parks Superintendent Ainsworth referred to Assistant City Attorney McKinnis to answer Council Sanders question, due to his office writing the ordinance.

Councilor Sanders mentioned that the ordinance states that the Board of Parks and Recreation adopted prohibiting the use of tobacco products, yet we are not actually prohibiting tobacco products and are only restricting smoking at this time.

Assistant City Attorney McKinnis explained that the meaning of the ordinance is contained in the language and not necessarily the title. He asked if the concern is that the title would cause confusion.

Councilor Sanders stated that the title seems to suggest all tobacco products and not just smoking.

Councilor DeBoer stressed that the title can always be amended.

Councilor Sanders stated that the title could cause the public to think all tobacco products instead of smoking only.

Councilor Bunder asked what other tobacco products there are besides smoking, to which various council members informed him of chewing, spitting, and snorting it.

Councilor Wang stated that the actual statute language says smoking, even though the title says all tobacco products.

Assistant City Attorney McKinnis stated that if there is a question on clarity between the title and language, then it may be better to amend the title, to which Councilor Wang agreed.

Discussion of Ordinance No. 14-18 continues in the Communications section below.

Ordinance No. 15-18 An Ordinance Amending Building Code (City Code Chapter 110) (Sponsored by Mayor Dennis)

President Bunder read Ordinance No. 15-18 by title only.

Building Commissioner Spitznagle stated that we have been working on an updated fee schedule in the Municode revision meetings recently. The City has not updated the building fees since 1992. Before the Municode revisions are complete, we have decided to move forward to amend Chapter 110 for the building fees. Mr. Spitznagle noted that after this item was submitted for Council, additional Fire fees were added, which he requested approval to include as well.

President Bunder confirmed that the Council members were provided with these changes earlier in the day from the Clerk's Office. Assistant City Attorney McKinnis informed the Council that in order to consider these changes, a formal vote was necessary today.

Councilor Keen moved to amend by substitution Ordinance No. 15-18. The motion was seconded by Councilor DeBoer.

Fire Chief Heath stated that these fees play a vital role in growth of the City.

The motion to amend by substitution passed by voice vote.

There was no further discussion.

Ordinance No. 16-18 An Ordinance Amending City Code Chapter 117 – Inspection And Certification Of Rental Housing (Sponsored by Mayor Dennis)

President Bunder read Ordinance No. 16-18 by title only.

Rental Housing Inspection Director Dixon stated that related to the updates by Municode, we wanted to take the opportunity to update the language that pertains to the certification of the Rental Housing Program. There may be some minor changes throughout the year when Municode revisions go in effect, but for now they wanted to get the bulk of the changes submitted. The current changes will include a few things that are in regards to the process of the program itself, as well as the fee structure.

President Bunder asked if the fees go down, to which Director Dale responded that the fees go up. The fees that may have come down have been eliminated. He explained that in the past we gave a \$50.00 credit if there were no violations on an inspection, but this credit has since been eliminated. Instead, we will take the average of violations or the fact that there were not any violations. For example, a single family house gets charged either \$200.00 or \$250.00. If you are charged \$250.00 it is because there were violations, which the extra \$50.00 helps to cover the costs to do the inspection after the items are fixed. Director Dixon stated that due to at least two out of the three inspectors from the office are in the field making inspections every day, the \$50.00 credit was eliminated because the trip charge did not make sense. Then the house charge was raised across the board by \$25.00.

President Bunder asked if the occupancy affidavit was removed, to which Director Dixon responded no. The exterior maintenance agreement was removed. The affidavit was in the ordinance word-for-word, which was removed, but the requirement for the affidavit stays the same. The picture of the affidavit form was unnecessary in the ordinance, so the picture was removed. The affidavit will stay for all single family homes. The exterior maintenance agreement has been removed because of summer and winter breaks for students. A City form states that it is a tenant's responsibility to maintain the public sidewalks and mow the yard at their residence. Unfortunately, it is difficult to keep students compliant during these extended breaks. We are wanting to have a single point of contact for us and the Neighborhood Resource Team (NRT) to be able to go straight to the owner to get the issue resolved. If the owners internally have an agreement within their lease with their tenant, then they are then able to resolve those issues with the City out of that loop.

President Bunder asked who would be responsible to shovel the sidewalks on December 31, to which Director Dixon responded ultimately it would go to the property owner or manager of the property.

Police Chief Dombkowski stated that the NRT would rather contact the landlord and hold them accountable for their property. It is a lot easier for them to track down landlords than students, who no longer live here. The elimination of the exterior maintenance agreement will make enforcement easier for NRT and enhance the appearance of the City.

President Bunder noted that Chapter 117 is one of his favorite chapters in the City Code, which makes him particularly attentive to any changes regarding Rental Housing. Particularly when Purdue is over occupied, there will be more students looking for housing in West Lafayette that could potentially lead to over occupancy in New Chauncey. A concern is that the City would continue to be robust in its enforcement.

Director Dixon responded that the occupancy affidavit is still in place, but the picture of the form is not in the ordinance any longer.

Councilor Dietrich asked if the form also covers single family homes that are being used as an Airbnb, to which Director Dixon responded yes.

Councilor DeBoer asked where the City was currently at with the Municode updates. Then he asked if passing these amendments now would delay the Municode updates later on down the road by needing to be amended again. Assistant City Attorney McKinnis responded that there should be no delays in the updates. The next step in the project is to compile notes, which has been included in a couple work sessions over the last few months. Municode has projected they will have the final versions within the next couple of months. These amended versions will be blended into the final product.

Councilor Dietrich asked if the certified properties are publicly available online, to which Director Dixon responded they are not online. However, the Rental Housing Department receives those requests frequently and are able to provide that information.

There was no further discussion.

Resolution No. 10-18 A Resolution Appropriating Insurance Recovery Received For Damage To City Property (Police) (Submitted by City Controller)

President Bunder read Resolution No. 10-18 by title only.

Police Chief Dombkowski stated that usually once a month the Department has some type of damage to a squad car, which is his assumption for this resolution.

Councilor DeBoer asked if \$10,527.00 sounded familiar.

Chief Dombkowski stated that he would research before Monday to find out what was damaged before Council on Monday.

There was no further discussion.

REPORT BY THE MAYOR

Clerk Booker stated that the Mayor will be in attendance on Monday to read a proclamation.

COMMUNICATIONS

Ordinance No. 14-18 [Continued]:

Councilor Sanders revisited his concerns regarding the language in the ordinance about smoking versus tobacco. He wondered how it would be enforced and which substances would be included.

Assistant City Attorney McKinnis responded that it uses the definition for smoking in Chapter 64, which was created over fifteen years ago.

Councilor Sanders referred to the fact that even though some substances may not currently be legal to smoke in our State, they are in other parts of the Country. With the unknown factors of not knowing if and when these substances could be legal in our State, a better clarity about smoking in the ordinance may need to be revisited.

Assistant City Attorney McKinnis explained that the City cannot restrict conduct that is already restricted by State statute or Federal statute.

Councilor Sanders asked if it was strictly true because he thought there could be additional penalties for things such as drug use in school zones.

Assistant City Attorney McKinnis stated that State statute has elevated levels of crimes or elevated felonies based on proximities for school for certain activities.

Councilor Sanders asked if this could not apply in this circumstance.

President Bunder stated that home rule restricts local legislation.

Councilor Thomas asked for confirmation that Assistant City Attorney McKinnis would review and make any necessary changes to the ordinance.

Councilor DeBoer stated that the title refers to restrict tobacco use, not ban tobacco use. In his opinion he is unsure if there is an issue with the title.

Councilor Sanders explained that the title could be clearer by stating restriction for some tobacco products. He expressed that the language was misleading, and wanted to ensure the public was able to understand what was restricted.

Councilor DeBoer agreed that it would be wise to cleanup some of the whereas language terms throughout the ordinance.

Councilor Dietrich stated that we needed to have further discussion with the Parks Department, which will result in the determination of their full intentions with this matter. If their intentions are to restrict the use of tobacco, such as chewing, snuff, and all others, then the language needs to be worded that way to be completed. If the only intention is to prevent smoking tobacco, then the language needs to be cleaned up.

President Bunder asked if the Corporation Counsel would be allowed to meet with the Parks Department.

Counselor Dietrich responded that he would encourage that a meeting took place.

Assistant City Attorney McKinnis stated that the way the ordinance is currently written it prohibits smoking as already defined in City Code 64.01, which reads, "'Smoking' means the act of puffing, having in one's possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe, or smoking equipment of any kind, or lighting a cigar, cigarette, pipe, or smoking equipment of any kind."

Councilor Wang explained that due the City Code being written over twenty years ago, the smoking definition does not include anything about the issues of vaping, tobacco chewing, and snuff. Therefore, the title for the ordinance is misleading and requires clarification, among other possible review and cleanup details through the language.

Councilor Sanders asked if we were capable of banning all tobacco product use.

Councilor Dietrich brought up the fact that when schools post a tobacco free zone their intent is for all tobacco. He declared that this situation should be the same for our parks as it is for the

schools. Right now it is just a matter of clarification for what the Parks Department is exactly wanting and what we need to accomplish. Councilor Dietrich commended Councilor Sanders on the point he has brought to the table.

Assistant City Attorney McKinnis confirmed with Councilor Dietrich that he was referring to the question of if the City has the right to restrict use of all tobacco products in their parks. If so, then we need to say it.

Interim Parks Superintendent Ainsworth reported that vaping was not addressed in the definition of smoking, to which Councilor Sanders responded that he was unsure where it should be added to the definition. He noted instead of the language reading "smoking in parks" we could replace it with "the use of tobacco products in parks."

Councilor Keen asked if tabling the item for a month in order to come back with a cleaner form would be feasible. Councilor DeBoer suggested that we wait to see if the language is able to be cleaned up before the Monday Council meeting.

Councilor Keen asked if the content is changed in a substantial form, does the public need to be notified prior to the meeting. President Bunder assured Councilor Keen that if there is an amendment to the ordinance the Board will debate the correct way to handle the amendment. If there is a substitution, which may include different language, that will also be taken care of on Monday. He brought up the fact that smoking is already not allowed in parks, the question is whether or not the Parks Board and the City language is in sync.

Councilor Dietrich explained that the Parks Board is trying to set up something that is enforceable by law, not just by Park Board Resolution. He expressed that the language should be exactly precise for the City. If we are going to risk someone getting a ticket or having negative criminal action taken on by the Police Department, it should be defensible on what needs to happen. For example we would not want someone to get a ticket for chewing tobacco in one of the picnic shelters based on how the language of the ordinance is currently.

Councilor Wang asked if the penalty for smoking is a violation with a fine, to which Assistant City Attorney McKinnis responded yes. There is no State statute that makes it a crime.

President Bunder asked if the Council was prepared in agreeance to let Assistant City Attorney McKinnis clean up the Ordinance until Monday, to which various Council members responded yes.

ADJOURNMENT

There being no further business at this time, Councilor DeBoer moved for adjournment. President Bunder adjourned the meeting, the time being 5:02 p.m.