

CITY OF WEST LAFAYETTE
COMMON COUNCIL
MINUTES
NOVEMBER 7, 2016

The Common Council of the City of West Lafayette, Indiana, met in the Multi-Purpose Room at the Morton Community Center on November 7, 2016, at the hour of 6:30 p.m.

President Bunder called the meeting to order and presided.

The Pledge of Allegiance was repeated.

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

Absent: None

Also present: Mayor John Dennis, Corporation Counsel Eric Burns, Clerk Sana Booker, IT Director Brad Alexander, Director of Development Erik Carlson, Police Lieutenant Choate, Facilities Director Tim Clark, Parks Superintendent Janet Fawley, Human Resources Director Diane Foster, City Engineer Ed Garrison, Fire Chief Tim Heath, WWTU Director David Henderson, and Street Commissioner Doug Payne.

MINUTES

Councilor Keen moved for acceptance of the minutes of the September 29, 2016, Pre-Council Meeting, and the October 3, 2016, Common Council Meeting. Councilor Wang seconded the motion, and the motion passed by voice vote.

REPORTS OF CITY DEPARTMENTS ON FILE IN THE CLERK'S OFFICE

President Bunder stated that the *Journal & Courier* reported that State Street will close at US 231 in November, and he asked if anyone could provide more information. City Engineer Garrison explained that the daytime-only closure will not exceed two days. The closure will allow a crane to be used to put in a new box structure at the entrance of United Methodist Church.

REPORT OF THE APC REPRESENTATIVES

There was no report.

PUBLIC RELATIONS:

Council Appointment: Area IV Board of Directors

President Bunder explained that Area IV is the agency on aging and community action, and it is a private not-for-profit organization that makes use of federal, State, and local resources in the form of programs or services. It is governed by a Board of Directors, and it operates from a central office in Lafayette with five satellite offices in neighboring counties. There are board members from the private sector, residents of those counties, and government representatives. Ann Hunt has been one of those representatives, and she has agreed to stand again for another term.

Councilor DeBoer moved to appoint Ann Hunt to the Area IV Board of Directors. Councilor Dietrich seconded the motion, and the motion passed by voice vote.

Council Appointment: Go Greener Commission

President Bunder stated that the Go Greener Commission is adding a new member, and the application from Samuel Belteton has been provided on the agenda.

Councilor DeBoer moved to appoint Samuel Belteton to the Go Greener Commission. Councilor Dietrich seconded the motion, and the motion passed by voice vote.

Go Greener Garden Award

Samuel Belteton, Go Greener Commission, presented the quarterly Go Greener Garden Award to Dan Lybrook and Lisa Pantea of 849 North Salisbury Street. He stated that the Go Greener Garden Award recipients create visually appealing outdoor spaces that do one or more of the following: improve or preserve water quality; use native species; decrease carbon footprints; exclude or minimize the use of fertilizers; convert turf grass to food production spaces; and provide habitat for native species. Mr. Lybrook and Ms. Pantea try to re-use as much as possible, including having composting areas and rain barrels. Nominations are open for the next award to be selected in March.

Ms. Pantea stated that she is an Environmental Engineer, but Mr. Lybrook is the “green guy”. She spoke about how they keep worms and re-use the leachate, re-use waste from the worms, collect condensation water from the air-conditioner, and use melted snow. She expressed appreciation for the award.

2017 Council Schedule

Councilor Thomas stated that the January 2, 2018, date may be a problem. Councilor Dietrich moved to change the January 2018 date to “to be determined.” The motion was seconded by President Bunder, and the motion passed by voice vote.

In response to discussion from the Council, Corporation Counsel Burns explained that the corresponding Agenda Day and Pre-Council dates will need to be determined after that date is decided, as given in the City Code.

Councilor Dietrich moved to accept the 2017 Council Schedule, as amended. Councilor DeBoer seconded the motion, and the motion passed by voice vote.

FINANCIAL REPORT

This report is on file.

LEGAL REPORT

This report is on file.

SPECIAL REPORTS:

Joint Board Report

Councilor DeBoer reported that the Joint Board meeting that was cancelled last month has been rescheduled to November 15, 2016.

UNFINISHED BUSINESS: None

NEW BUSINESS:

Ordinance No. 32-16 An Ordinance Amending Ordinance No. 32-97 Being The Unified Zoning Ordinance Of Tippecanoe County. (UZO Amendment #87) (Form Based Code) (Submitted by Area Plan Commission)

Councilor Keen read Ordinance No. 32-16 by title only, and he moved for its passage on first and only reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

Ryan O’Gara, Assistant Director, Area Plan Commission, stated that form-based code is an innovative form of by-right zoning. Development occurs either as a matter of right, by special exception, with a variance, or through the planned development process. What the APC is promoting is an alternative way to allow more intense development with a certain type of character to occur in special places in our community. This ordinance lays out a general applicability section that would apply to all form-based overlays, which are geographically defined areas. This ordinance also includes the Centennial Neighborhood overlay in Lafayette. The New Chauncey Neighborhood overlay is currently in development. Ultimately what the APC will do is use the Land Use Plan that was adopted by this Council [Resolution No. 07-13] to translate that policy into actual ordinance. The underlying zones will remain to control uses, but the form-based overlay will control the development standards. The development standards that would be found normally in the zone will be thrown out for projects that would qualify for the overlay. Mr. O’Gara explained that this will allow for more predictability, as well as some variety. It is designed to be the first big implementation strategy from the New Chauncey plan, to fulfil the Land Use Plan. Projects can be developed without necessarily going through the planned development process. To some extent it is almost like a preplanned development with a lot of standards and architectural rules for a specific neighborhood. If a developer can live within the bounds of the code, they should be able to get permits and build without a rezoning process. If someone wants to change use on a property that requires a rezone, then it would come before the Council. Rezones are not necessarily affected by this, just development standards.

President Bunder stated that to be clear, the Council is just empowering the APC to do this sort of work. The Centennial Neighborhood is first, and New Chauncey comes later.

Mr. O’Gara stated that is correct. This ordinance creates a new Chapter 7, which outlines all of the general rules that form-based overlay should follow. This includes the Centennial-specific sector, which is a later part of Chapter 7. New Chauncey will come later, in a few months. As with all zoning ordinances, amendments can occur any time, and the Council can ask the APC for that. Mr. O’Gara confirmed for Councilor Sanders that each of the bodies listed in the ordinance, including the County Commissioners and various Councils, have to approve this before it goes into effect. He explained that the Unified Zoning Ordinance means that all of the localities within APC’s orbit all follow the same book, even though the codes may not apply to all of them. The first part of this ordinance, Chapter 7, will apply to West Lafayette.

Councilor Sanders asked what happens if, for example, the Town of Clarks Hill did not approve this. Mr. O’Gara responded that typically the outlying towns may not take action, but it is automatically approved if they take no action. In this case, part of Chapter 7 would apply to any locality that would like to use this sort of zoning.

Corporation Counsel Burns added that a locality can opt out, and confirmed that it would apply to everyone that voted in favor of it, and he noted that Shadeland has opted out of using the UZO. It is set up to create unanimity among all of the units because it goes on automatically, unless they do something affirmative. Over the years there has been very little differentiation.

Jan Myers (1909 Indian Trail Drive) stated that she is concerned that the height of entranceways mentioned in the ordinance is not allowed under ADA. Mr. O’Gara responded that Section 7-1-2 (b) on Page 3 says, “In all cases, redevelopment efforts shall accommodate the requirements of the Americans with Disabilities Act (ADA).” This means that if development standards that are found within Chapter 7 need to be adjusted to be accommodate ADA, then they are adjusted as

developers go through the building permit process. If there is an ADA requirement for a structure, the developer would have to comply, and ADA trumps all.

There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Aye
Wang	Aye

Clerk Booker stated that the vote was 9 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 32-16 passed on first and only reading.

Ordinance No. 33-16 An Ordinance Of The City Of West Lafayette, Indiana, Amending The West Lafayette City Code To Include Sexual Orientation, Gender Identity, Gender Expression, And Veteran Status As Protected Classes Under The West Lafayette Human Relations Commission (Sponsored by Mayor John Dennis)

Councilor Keen read Ordinance No. 33-16 by title only, and he moved for its passage on first reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

Counsel Burns stated that this ordinance adds to the traditionally protected classifications, which have been the law of the U.S. and Indiana for decades. The traditional classes are race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, and status with regard to public assistance. Those are more expansive than the U.S. standards, but they have been the standards of Indiana and this City for over 30 years. This ordinance would add four categories to that list: sexual orientation, gender identity, gender expression, and veteran status. Counsel Burns stated that he has provided the Council with a memo that explains the process of why he believes that the time is now to make this modification. There was recent legislative action that did not pass [Senate Bill 344], but it seemed to him and others that this may be a harbinger of what may come in the future, and there may be some changes that could impact West Lafayette. He explained that the proposed Senate Bill 344 indicates that protections passed locally by a certain date could continue to be enforceable, but a local unit of government would not have the power to pass such legislation after that certain date. If the City wants to have enforceable protected classes beyond the traditional, then now would be the time to pass that. There have been some lawsuits in the State that generally revolve around the Religious Freedom Restoration Act (RFRA), but the lawsuits do not have anything to do with Counsel Burns' original concern, which was the preemption doctrine. The preemption doctrine means that the State would say to a unit of government that they cannot do anything in this area because the State has already acted in this area. For example, we cannot pass a tax or make a crime—that is all the State. Counsel Burns stated that in the past it was clear to him, as well as other Corporation Counsels and the previous West Lafayette City Attorney, that the preemption prevented us from legislating

in this area, beyond those traditional classifications. What has changed regarding the preemption is that it was inherent in the proposal made in the Senate Bill 344 that it indicated that the local units can legislate in this, but it better be done by a certain date. He stated that this ordinance takes the protected classifications found in two resolutions that were passed by this Council in 1993 [Resolution No. 27-93] and one in 2010 [Resolution No. 11-10] and puts it into our Code as actual ordinances, as opposed to just resolutions. Our Code does specify that a Resolution is passed once and tends to be things that are transitory for the City, but it takes an ordinance for it to become effective as a local law. There are a lot of exemptions to the applicability of any of the protected classifications—traditional, or these four newer ones—throughout the Human Relations Commission (HRC) ordinance. These include religious exemptions and exemptions for private institutions of various kinds.

Councilor DeBoer asked if the HRC would continue to have the authority to generate exceptions after the ordinance was passed, and if they are creating law at that point. Counsel Burns responded that the exemptions are already hard-wired into the code that the Council has already passed. He confirmed for Councilor DeBoer that the HRC does not have any legislative power. Councilor DeBoer thanked Counsel Burns and Mayor John Dennis for the work in getting this together, and stated that he is glad that the republicans in the legislature have forced our hand into getting this done, as it is the right move in the right direction for this City.

Councilor Keen stated that he has a concern that we are passing an ordinance that references a Senate Bill that is non-existent. Another concern that has been brought up is regarding exemptions. He asked if the City will enforce active participation in same-sex marriages that have a religious tone to that. He asked for a specific comment on that. Counsel Burns responded that you start with the fact that there are four areas that are legislated—four areas that people are protected in. That is: employment, public accommodations such as restaurants and hotels, housing, and education. It does not overtly get into religious procedures at all.

Councilor Keen asked if this ordinance would in any way force participation in a same-sex marriage if your religious belief is against that, such as for a minister. Counsel Burns responded no, for two reasons. First, it is not within the legislated areas of employment, public accommodations, housing, or education. Second, there is an exemption that comes into play for religious corporations, associations, or society when it comes to employment and education, and a couple of other areas. Counsel Burns stated that in his opinion it would not at all enter into any areas that would promote or require anyone to do anything in the marriage arena. To the extent that it is covered at all, it is already covered by State law.

Councilor Keen stated that he notices that the ordinance does not have any references to a penalty phase. He asked what the penalty is if someone is found in non-compliance with this ordinance. Counsel Burns responded that if there is discrimination found within those four areas, and if the person discriminated against has a valid claim, there is a range of things that could be done. The HRC has the power to require people to answer the complaint if the HRC subpoenas them to the meeting. Subject to judicial review, the HRC has the power to levee a fine, and has the power to have someone reemployed if someone was unlawfully fired based on a protected classification. The HRC has the power to “order” the offending party to rehire someone, though the order is not enforceable until and unless the HRC would have it enforced by a court. By the same token, someone facing an order from the HRC has the opportunity to appeal.

Councilor Dietrich stated that going back to the whereas paragraph that references the defeated Senate bill 344 in the ordinance, and also references a December 31, 2015, date, he guesses that is in there to show expedience. He asked what the best guess is on a timetable going forward. Counsel Burns responded that he is just reading tea leaves. The reason that the whereas

paragraph is there is to show the progression of thinking overtime as whereases often do. He stated that, looking at that date, it is not uncommon for the legislature to choose the end of a year. His reading of the tea leaves estimate is that this should be done by the end of the year, and that would be the ordinance readings in November and December. Councilor Dietrich asked if there is any reason to have two readings tonight. Counsel Burns responded that his opinion is that the higher level of impact there is, the more likely the Council should take it slowly, and he was not planning to ask for two readings tonight. By his estimation, the State Legislature is not looking for a controversy; they are looking to avoid a controversy.

Councilor Sanders motioned to amend by striking the paragraph that includes language regarding Senate Bill 344 from Ordinance No. 33-16. Councilor Keen seconded the motion.

Councilor Sanders stated that he is not sure why the paragraph needs to be included, and he believes that the ordinance stands on its own in terms of what it will achieve for comity and the community of West Lafayette. He does not think the ordinance needs to reference the actions or non-actions of the State Legislature.

Councilor DeBoer stated that he agrees it seems superfluous to have it in the ordinance, but if action were to be taken in a court of law, then having the background on the reasoning behind it could not hurt. He does not see it as hurting us in the long run to have it there. Councilor Leverenz stated that he agrees with that, as it talks about the language of the bill as a reason the Council is taking action at the time they are taking the action. It supports the reasoning behind an action at this time.

Councilor Dietrich asked if it would help if language was inserted to indicate that the bill was proposed but defeated. He agrees that it should be in the ordinance for historical purposes. Councilor Wang stated it is not necessarily historical purposes; it is setting a record on what the Council intends or wants to do.

Jim Lehnert (409 Ripley Court) stated that he agrees with Councilor Sanders, as it seems inappropriate to reference a defeated bill. He requested the whereas clause be eliminated because the bill did not receive approval from various groups. It clutters up clean code and sets a precedent for including a law that nobody even wanted. He stated that he does not think we get good legislation by trying to read tea leaves.

There was no further discussion on the amendment.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Nay
DeBoer	Nay
Dietrich	Nay
Jha	Nay
Keen	Aye
Leverenz	Nay
Sanders	Aye
Thomas	Nay
Wang	Nay

Clerk Booker stated that the vote was 2 AYES and 7 NAYS.

President Bunder announced that the amendment was defeated.

Councilor Keen motioned to amend Ordinance No. 33-16 by inserting language that indicates that Senate Bill 344 was proposed and defeated. Councilor Dietrich seconded the motion.

Councilor DeBoer asked if it was defeated or if it was not heard. Counsel Burns stated that it did not get a hearing, so it may be more accurate to say that the bill did not pass. Councilor Keen stated he would accept that language.

There was no further discussion on the amendment.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Aye
Wang	Aye

Clerk Booker stated that the vote was 9 AYES and 0 NAYS.

President Bunder announced that the amendment passed.

Councilor Sanders stated that he wants to acknowledge that a republican Mayor of West Lafayette proposed this ordinance, and he thinks it is reflective of the sort of the community we have here, which may separate us from many other parts of the country now. He noted that the democratic councilmen were discussing a similar ordinance at this time, so it is apropos that we are coming together to approve this.

Mr. Lehnert stated that he has one request that he thinks would end up respecting people and not placing employers in a bad situation. He requested that as part of Chapter 24, Article 1, Section 09(b) that the HRC make it clear that employers need not question employees about whether they are in a same-sex relationship, etc., in order to establish the affirmative compliance that is mentioned in Section 09(c). He explained how this could impact compliance reporting to the federal government. He stated that regarding respect for ministers, as part of Chapter 24, Article 1, Article 08(i), he asks for disclosure regarding whether the City will enforce active participation in same-sex ceremonies and/or celebrations by all in the West Lafayette community, including ministers, etc. This request recognizes that for some, marriage involves a religious faith. He stated that if the City is to enforce compliance on this, he asks for clear disclosure of the penalties of those deemed not compliant.

Donna Marshall (2232 Huron Road) stated that she did not hear mention of bakers, photographers, and others who may not want to use their artistic abilities to do this. She asked if it will be something that can come against them if they do not want to participate in a same-sex wedding, such as making a cake.

Counsel Burns stated that the only changes being made tonight is to add four protected classifications, but the rest of the code is the same as it has been for years. There is a provision that disallows discrimination in public accommodations. Public accommodations could conceivably include any kind of restaurant or bakery, and it does prohibit discrimination with respect to the availability of such services and facilities, under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation, and repair. So, it is covered. He stated that he cannot say whether or not this would apply in a specific instance, such as with the bakery example. If it is enforceable, it would be within public accommodations.

Councilor Dietrich stated that he knows that public accommodations would mean that if he owns a hotel, he would have to open the doors to one and all. He asked what it would mean for an independent baker. Councilor DeBoer stated that he is not sure what the result was of the RFRA reform, but it would probably be a guide in understanding what parts of a religious faith would exempt an individual from certain circumstances within our guidelines, as that was the intent of that legislation.

Counsel Burns stated that our code, having been around for so many years, does not have any provision for the RFRA regulations. As far as this code goes, it only extends as far as the State law allows it—back to the preemption doctrine. Public accommodations is defined as “all services or facilities located within the City, which are generally open or offered to the public.” A private artist, unless they were allowing something to all members of the public, would not be a public accommodation.

Ms. Marshall, speaking of the policy allowing people to be appointed to the HRC for three years, stated that there are at least four people who have been on the HRC longer than four years. She asked how many terms someone serve on the HRC. Counsel Burns stated that there is not a limit on number of terms; they are re-appointed every time the term runs out. Ms. Marshall stated that it does not say that here, and Counsel Burns responded that if it says nothing than the member is free to be reappointed. If there is no term limit, then it is open for as many terms as the Mayor and the Council choose to give.

Susan Thomas (1009 Ravinia Road), representing the HRC, stated that she has been on the HRC since 1993, and they had wanted to make this an ordinance at that time. She noted that she is also a minister. She thanked the Council for what they are doing this evening, and stated that the HRC is in full support of this ordinance.

Councilor Wang stated that employers cannot ask prospective employees certain questions, such as marital status. He does not think they are allowed under the privacy act to ask what their gender identity is, or anything like that. It is protected by federal law, as he understands it. Counsel Burns stated that all of those types of questions, whether protected or not, which are not directly related to the job description and duties are not fair game at all.

There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye

Councilperson	Vote
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Aye
Wang	Aye

Clerk Booker stated that the vote was 9 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 33-16 (Amended) passed on first reading.

Resolution No. 19-16 A Resolution Requesting The Transfer Of Funds (Clerk, Police) (Prepared by the Controller)

Councilor Keen read Resolution No. 19-16 by title only, and he moved for its passage on first and only reading, and that the vote be by roll call. The motion was seconded by Councilor Dietrich.

Clerk Booker stated that part of this transfer is for the Clerk's Office. It is due to the fact that the budget for the Clerk's Office was pre-set before there was a division from Clerk-Treasurer to Clerk and Controller. All of the money that was put in was decided before we actually had an office. The money being transferred is already in the budget, in another line item. She explained that we need to purchase special paper and books for permanent records, along with general operating costs for administrative work. She requested approval of the transfer.

There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Aye
Wang	Aye

Clerk Booker stated that the vote was 9 AYES and 0 NAYS.

President Bunder announced that Resolution No. 19-16 passed on first and only reading.

REPORT BY THE MAYOR

Mayor Dennis expressed appreciation for the support of phase one of Ordinance No. 33-16. He noted that tomorrow is an important day, and spoke of the importance of using the right to vote.

COMMUNICATIONS

► Councilor Dietrich asked if there is a reason for concern about the lack of production on the Payless gas area. He asked if there is a problem, or if it is just a business decision. Building Commissioner Spitznagle responded that the final detailed plan just got approved by the APC

Executive Committee this past week. In order for the gas station to be completed, there needs to either be an approved planned development (PD), or a revision to the original PD. They waited until the new PD's final detailed plan was approved to proceed with the gas station.

► Councilor Dietrich stated that several of his neighbors and friends have spoken to the City about problems with semi-trucks coming down Happy Hollow Road, with the new configuration. He asked for an update on that situation.

City Engineer Garrison provided and described a draft of a new truck route map to the Council. He explained that we are working to revise the City Code to read that any trucks with a delivery within the City will take certain routes as close to their destination as possible, and then take a local route. We have identified arterials and larger local roads that can handle heavier loads as those main routes. He and Councilor Dietrich discussed concerns with these routes and enforcement.

► Councilor DeBoer reported that the developers of The Hub building are looking to get tenants moved out of the current buildings at that location by January 1, 2017. They have proposed paying each tenant \$500 and refunding each entire security deposit.

► Councilor Sanders stated that he has gotten a lot of questions from constituents about how to access information about all of the road projects, and also about finding various things on the City's website. It would be advisable for the City and Council to work together to have one Council meeting where we spend 15 minutes showing people how to access this information. Mayor Dennis stated that we can do that. He noted that the website has changed significantly, and we have done a lot of in-house training. We could at least make sure the Councilors know, and we can provide that guidance. Councilor Keen suggested that website tips be incorporated into each newsletter.

► President Bunder expressed thanks to the Purdue Graduate Student Government for his Legislative Service Award for the 2016-2017 academic year. He also spoke of how one fun thing about the annexation is the ability to have more young people in the City's commissions and government. He noted that one young PhD chairs the Go Greener Commission, and another, Chris Kulesza, chairs the Historic Preservation Commission. He thanked millennials who are interested in the practical matters of government. On behalf of the Go Greener Commission, President Bunder announced information about the West Lafayette City Development, with Bikes in Mind event. A question and answer session will take place on Thursday, November 10, 2016, from 6:00 – 7:30 p.m. at 308 on State.

CITIZEN COMMENTS

► Ms. Myers provided candy to the Councilors to celebrate her birth month, noting that the wooden candy bowl was turned by her husband. She spoke of how she is still open to take the Councilors for a walk on roundfeet. She spoke of pedestrian safety, especially in the dark, stating that the streetlights do not provide illumination on the sidewalks or bike paths. President Bunder stated that we are working on streetlights for New Chauncey.

► Thomas Kesler (479 Maple Street) thanked the Street Department for taking concrete he has collected, and he has started the next pile. After 8.5 years of collecting concrete in New Chauncey, it has gotten a little harder to find. He expressed agreement about sidewalk safety. He spoke of writing a letter to the newspaper about the current election, saying that he received an anonymous letter from someone who perceives him as someone who wants to see our country on a road to disaster, and the writer believes that Donald Trump knows how to fix the country.

ADJOURNMENT

There being no further business at this time, Councilor DeBoer moved for adjournment, and President Bunder adjourned the meeting the time being 7:50 p.m.