

**MINUTES
OF THE
REGULAR MEETING
OF
LAKEWOOD CITY COUNCIL
HELD IN COUNCIL CHAMBERS
12650 DETROIT AVENUE
MARCH 4, 2019
7:30 P.M.**

Regular Meeting of the Lakewood City Council called to order at 7:33 PM by Council President O’Leary.

Present: David Anderson, Thomas R. Bullock III, Meghan George, John Litten, Samuel T. O’Leary, Tristan Rader

Also Present: Law Director Butler, Planning and Development Director Sylvester, Human Resources Director Yousefi, Police Chief Malley, Fire Chief Gilman & Human Services Director Gelsomino, Public Works Director Beno

Motion by President O’Leary, seconded by Vice President Anderson to excuse the absence of Councilman O’Malley. All members voting yea. Motion passed.

Reading and disposal of the minutes of the Regular Meeting of Council held February 19, 2019.

Motion by Mr. O’Leary, seconded by Mr. Anderson, to approve without the necessity of a reading. All members voted in favor. Motion passed.

******OLD BUSINESS******

1. Committee of the Whole report regarding meetings held February 19th 2019. (pg. 1)

At the invitation of President O’Leary, Mayor Summers added to the report by stating that on March 1st the administration submitted the Integrated Wet Weather Improvement Plan – Phase 2 to the Ohio EPA, the federal EPA, and the attorney generals’ offices. He expressed confidence in the report and noted that it will be available on the City website. He thanked Council for its support of the report and of the water/sewer rate increases.

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the report.

All members voting yea. Motion passed.

2. Committee of the Whole report regarding meetings held March 4, 2019. (to be provided)

Committee of the Whole met immediately prior to this meeting to receive an update from Public Works Director Joe Beno regarding Public Works projects both ongoing and upcoming. In addition, we did hear several other public works related projects to be taking place in the City, primarily through replacement of gas mains through Dominion and other utility work.

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the report.

All members voting yea. Motion passed.

3. **RESOLUTION 9057-19** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appointing _____ to the Youth Council Planning Task Force. (Deferred 2/19/19) (pg. 2)

President O’Leary remarked that these three appointing resolutions were deferred at the previous meeting.

Motion by President O’Leary, seconded by Vice President Anderson to refer to Committee of the Whole.

All members voting yea. Motion passed.

4. **RESOLUTION 9058-19** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appointing _____ to the Youth Council Planning Task Force. (Deferred 2/19/19) (pg. 3)

Motion by President O’Leary, seconded by Vice President Anderson to refer to Committee of the Whole.

All members voting yea. Motion passed.

5. **RESOLUTION 9059-19** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appointing _____ to the Youth Council Planning Task Force. (Deferred 2/19/19) (pg. 4)

Motion by President O’Leary, seconded by Vice President Anderson to refer to Committee of the Whole.

All members voting yea. Motion passed.

6. Public Works Committee report regarding meeting held February 25, 2019. (to be provided)

Mr. Rader provided the following oral report and submitted the attached written report:

The Public Works Committee met on Feb. 25th to discuss two resolutions – one that would adopt the Solid Waste Management Plan from the Cuyahoga County Solid Waste Management District and another that would authorize submission of an application to NOPEC to receive this year’s grant totaling roughly \$206,000. All members of the Committee were present. In addition we had Diane Bickett, Executive Director of the Solid Waste District, Assistant Law Director Swallow, Director Beno and Deputy Clerk Lascu. First, Director Bickett gave a presentation. The Director shared key findings. The Cuyahoga County residents produce 2.6 million tons of trash every year. 43% of it is recycled, 6% is composted and 51% ends up in the landfill. Some other key aspects of this plan were that they are recommending that the rate per ton be increased by .50 cents starting in 2023 to maintain funding and their organization and to hire an additional staff person. They highlighted that this additional fee will bring the total fee up to about \$2, which is still well below the state average. They estimate this will cost most communities about \$5,000. Lakewood may be a little bit more since we are larger. In order for this plan to be ratified, 60% of the represented cities must approve it as well as Cleveland and Cuyahoga County Council by April 4th. If we do not approve it, the EPA will create its own plan. Director Bickett advocates that we do pass this. At the end of the meeting we did decide unanimously to pass the resolution which is on the docket following this communication.

Secondly, we talked about the NOPEC grant. If passed, this will allow the City to apply and receive funds of approximately \$206,000 from NOPEC. It was impressed upon us that we need to pass this resolution formally to accept the monies. Directors Beno and Butler agreed. Deputy Clerk Lascu relayed a message from the Mayor stating that it was important to pass

this tonight in order to receive these funds. All members of the Committee expressed a desire to have a more substantive discussion regarding these funds and how they will be spent. It was moved that we recommend this resolution with the caveat that Public Works Committee strongly recommends another meeting to discuss the use of these funds. Councilmembers Rader and Anderson voted yea. Councilmember Bullock chose to abstain.

Motion by Mr. Rader, seconded by Mr. O'Leary to receive and file the report.

Discussion: Mr. Bullock expressed appreciation for having the time to hear from Director Bickett to learn more about the Solid Waste District. He asked for clarification from the Mayor that there will be additional deliberation with Council about the use of the balance of the 2018 NOPEC grant and the 2019 grant.

Mayor Summers responded that he expects several meetings on this subject.

In response to a question from Mr. Bullock, Director Beno and Mayor Summers explained that there is no third EV charging station in the works but that it is a goal to strive for.

On the motion: All members voting yea. Motion passed.

7. **RESOLUTION 9051-19** - A RESOLUTION to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the City of Lakewood to take all actions necessary to submit an application and accept Northeast Ohio Public Energy Council (NOPEC) Energized Community Grant(s). (Referred to Public Works 2/4/19) (pg. 5)

Motion by President O'Leary, seconded by Mr. Bullock to adopt Resolution 9051-19.

All members voting yea. Motion passed. Resolution 9051-19 adopted.

8. **RESOLUTION 9053-19** - A RESOLUTION to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, adopting the Solid Waste Management Plan for the Cuyahoga County Solid Waste Management District. (Referred to Public Works 2/4/19) (pg. 7)

Motion by President O'Leary, seconded by Mr. Bullock to adopt Resolution 9053-19.

All members voting yea. Motion passed. Resolution 9053-19 adopted.

9. Health & Human Services Committee report regarding meeting held March 4, 2019. (to be provided)

The Health & Human Services Committee met this evening, present were Director Gelsomino, Law Director Butler, Chief Gilman, several representatives of the County Health Department including Commissioner Terry Alan, Wendy Hyde from Tobacco 21, several members of the public as well as a premium purveyor of tobacco products here in Lakewood. First on our agenda was Ordinance 44-18 regarding mobile food service operations. Some adjustments were made from the original version of this legislation including an application fee of \$150 annually that the permitting would begin on a calendar year basis – so the Ordinance would not take effect until January 1, 2020. The Health Department also had several changes regarding ease of use, some clarifications and housekeeping-type things. Ultimately, the Committee moved to recommend adoption as substituted this evening.

Second on our agenda was Ordinance 76-18 regarding cigarette and tobacco vendors and sales to persons under age 21. There were three adjustments to the ordinance as originally proposed that were discussed in Committee. One was to add the Board of Health as the permitting agent. Second was to strike the criminal penalty provision found in proposed Section 1727.99. Third was to repeal the existing Section 521.14 due to its being duplicative. After robust discussion, the Committee did move to recommend adoption as substituted, though I believe there are still remaining questions regarding the federal ramifications of the ordinance.

Motion by Mr. Litten, seconded by President O’Leary to receive and file the oral report.

Discussion: President O’Leary referenced the Committee discussion in which Section 521.14 was mentioned as possibly being duplicative. He reiterated that he does not believe it is duplicative, but rather empowering the City to enforce its own ordinance.

Mr. Litten remarked that the issue was not able to be sorted out in Committee because President O’Leary and Director Butler were not in the meeting at the same time.

Director Butler remarked that 521.14 regarding underage sales has not been enforced locally. State agents have enforced the similar state Code in Lakewood. He recommended that the committee omit 521.14 for clarity in the Code and explained why.

On the motion: all members voting yea. Motion passed.

10. **ORDINANCE 76-18** - AN ORDINANCE to take effect at the earliest period allowed by law, enacting Chapter 1727, Cigarette and Tobacco Vendors; Sales to Persons Under 21, of the Codified Ordinances of the City of Lakewood in order to amend and create

regulations involving licensing for and sales of tobacco products. (Placed on 1st reading and referred to HHS 12/17/18; 2nd reading 1/7/19) (pg. 67)

Motion by President O'Leary, seconded by Vice President Anderson to defer Ordinance 76-18.

Councilman Bullock stated he supports the ordinance, but Council needs more discussion on the details of the ordinance.

Tom Corrigan, attorney for local premium tobacco shop Robusto & Briar, stated his client has a unique store for a unique city. His client purchased and restored the business' building for half a million dollars. A large part of the investment includes a walk in humidior. The business' practices would not change as a result of the ordinance due to clarification in committee. The 18-21 year old portion of the business' market is very small, mostly consisting of fathers and sons. The business does not sell vapes, cheap tobacco, or cellulose acetate based products. They sell premium cigars and premium tobacco. The business will lose some customers due to new signage requirements in the ordinance. When the family owners first invested in business, Lakewood assured them that they would not adopt practices regarding to smoking that are not adopted statewide. Federal regulations require the business to card anyone that appears 27 or younger. Mr. Corrigan listed some of the proposed civil penalties that could affect business and that's why he is advocating that Council for carve out a niche in ordinance for it. He and his client were not successful this time, but look forward to speaking at the next committee meeting on the issue.

Terry Alan, Commissioner of the Cuyahoga County Board of Health, thanked Council for leadership on Tobacco 21 legislation. He stated over 450 communities across country have passed similar legislation and 7 states have passed tobacco 21 as well. Cleveland, Euclid, Cleveland Heights, Brooklyn have all passed Tobacco 21 legislation. He shared, according to department data, only 5% of people start smoking after age 21. Lastly, he said that the county is here to support dialogue as Council sees fit.

Wendy Hyde, of the Preventing Tobacco Addiction Foundation advocated for passage of Ordinance 76-18. In response to other public comment, she remarked that the Ordinance as proposed would not result in any additional fees or expenses to retailers as long as they complied with the law. She pointed to the success of other communities who have passed similar proposals and thanked City Council for considering it.

On the motion: all in favor. Motion passed.

11. ORDINANCE 44-18 - AN ORDINANCE enacting Chapter 743, Mobile Food Service Operations, of the Lakewood Codified Ordinances to establish regulations on food trucks operating within the City. (Placed on 1st reading & referred to HHS 11/5/18, 2nd reading 11/19/18) (pg. 79)

Motion by President O’Leary, seconded by Vice President Anderson to substitute Ordinance 44-18.

Discussion: Councilmember George acknowledged Mayor Summers and the administration for their collaboration on the Ordinance.

Yeas: Anderson, Bullock, George, Litten, O’Leary, Rader

Nays: none

Motion passed, Ordinance 44-18 substituted.

Motion by President O’Leary, seconded by Vice President Anderson to adopt Ordinance 44-18 as substituted.

Yeas: Anderson, Bullock, George, Litten, O’Leary, Rader

Nays: none

Motion passed, Ordinance 44-18 adopted as substituted.

12. ORDINANCE 07-19 - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, providing for the submission to the electors of the City of Lakewood an amendment to the Third Amended Charter of the City of Lakewood in order to create a primary election for the office of municipal court judge. (Placed on 1st reading and referred to COW 2/19/19) (pg. 83)

Motion by President O’Leary, seconded by Vice President Anderson to defer Ordinance 7-19.

All members voting yea. Motion passed. Ordinance 7-19 deferred.

13. ORDINANCE 08-19 - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force at the earliest period allowed by law, authorizing the transfer and advance of certain funds. (Placed on 1st reading and referred to Finance 2/19/19) (pg.87)

Motion by President O’Leary, seconded by Vice President Anderson to defer Ordinance 7-19.

All members voting yea. Motion passed. Ordinance 8-19 deferred.

****NEW BUSINESS****

14. Communication from President O’Leary regarding support of Vision Zero initiative. (pg. 89)

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

15. **RESOLUTION 9063-19** – A RESOLUTION supporting the Vision Zero initiative, a strategy to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all, and committing to work with the Administration and community stakeholders to create a Vision Zero plan for the City, and to incorporate that plan into the City’s Bicycle Master Plan and other planning documents. (pg.90)

Motion by President O’Leary, seconded by Vice President Anderson to refer to Public Safety Committee.

All members voting yea. Motion passed.

16. Communication from Planning Director Sylvester regarding planned development rezoning at 13900 Lake Ave. (pg. 92)

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

17. **ORDINANCE 09-19** - AN ORDINANCE to amend Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map of the City with respect to certain property as set forth and described as 13900 Lake Avenue (PPN 312-05-011) from R1M (Single-Family Residential, Medium Density) to PD (Planned Development). (pg. 93)

Motion by President O’Leary, seconded by Vice President Anderson to refer to Planning Commission and ABR.

Discussion: Ms. George stated that the proposal is outside the norm of the design of the neighborhood. She expressed concern about over saturation of condos and townhomes in the City.

Paul Irwin – 17456 Lake Ave.

Mr. Irwin asked Council to reject the proposed zoning change associated with this planned development. He noted that Lake Ave is largely populated with single family homes and that there is no precedent for cluster homes. He advocated for three detached single family homes or something “more fitting with the character of the neighborhood.”

Gaynel Mellino – 13908 Edgewater Dr.

Ms. Mellino asked about the sale price of the proposed homes.

Director Sylvester responded that that will be discussed at the upcoming Planning Commission meetings.

Mr. Litten remarked that he had heard rumors that a multi-story building may have been in the works for the site and so he is relieved that the current proposal is relatively consistent with the style of the neighborhood. He asked for information about remediation needed at the site related to the underground storage tanks.

President O’Leary noted that it would be very challenging to remove the underground storage tanks if the parcel were to be split up among separate owners. He remarked that proposed project is actually more in line with the residential neighborhood than the existing gas station. He stated that once it is zoned commercial the City cannot discriminate about the type of commercial establishment will go in and that it just as likely could be an ice cream parlor as a vape store. He also pointed to some examples of areas in the neighborhood that are not exclusively single family homes. He expressed enthusiasm for the process ahead.

In response to a question, Director Sylvester explained that the site is currently zoned single-family residential, medium density. The current use as a commercial entity was there before the zoning code was established and so it is legally non-conforming. He further explained that constructing five homes instead of three is likely the number the developer needs to make a profit after remediating the site and constructing the homes. He offered that the developer would be happy to provide additional information from his perspective. No public subsidy for site remediation is being considered.

Council and the administration discussed the criteria that it is allowed to consider when voting on a zoning change. These criteria are located within the Code. President O’Leary pointed out that considering price points of the proposed developments could lead to discrimination.

Mr. Bullock noted that over the past ten years the City has shifted from guarding against decline to managing growth. He remarked on other housing and population trends in the City. He noted that it is the developers who are making multi-million dollar investments and who

have the market expertise and so the City should be cautious about micro-managing. He expressed interest in ensuring the City has enough affordable housing.

On the motion: All members voting yea. Motion passed.

18. Communication from Public Works Director Beno regarding easement for emergency generator at Clifton Lagoon lift station. (pg. 95)

Motion by President O'Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

19. **RESOLUTION 9061-19** - A RESOLUTION to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the Mayor to enter into an easement agreement with Clifton Park Trustees, governing the rights of the parties relative to a parcel located at Beach Road, Lakewood, Ohio 44107 (PPN#311-02-001) which grants the City of Lakewood access to the parcel for the placement of an emergency generator to serve the Waste Water Treatment Plant and ongoing maintenance of the generator for a payment of \$1.00. (pg. 96)

In response to a Councilmember's question, Director Beno stated that the Resolution need not be passed immediately as the situation has been in its current state for over 40 years.

Motion my Mr. Rader, seconded by President O'Leary to refer to Public Works Committee.

All members voting yea. Motion passed.

20. Communication from Public Works Director Beno regarding municipal swimming pool rates. (pg.103)

Motion by President O'Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

21. **ORDINANCE 10-19** - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, establishing rates of admission to the Lakewood municipal swimming pools located at Lakewood Park and Madison Park, and superseding Ordinance 30-09 and all other ordinances inconsistent herewith. (pg. 104)

Motion my Mr. Rader, seconded by President O’Leary to refer to Public Works Committee.

All members voting yea. Motion passed.

22. Communication from Public Works Director Beno regarding Cuyahoga County Solid Waste District grant. (pg. 108)

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

23. Communication from Police Chief Malley regarding Keep Our Parks Safe grant. (pg. 109)

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

24. **RESOLUTION 9062-19** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of council, or otherwise to take effect at the earliest period allowed by law, authorizing the Mayor (Director of Public Safety) to enter into an agreement to accept a grant from the Federal Bureau of Justice Services through the Ohio Criminal Justice Services Office in the amount of \$12,069 and requiring an approximate 10% match by the City of Lakewood. (pg. 110)

President O’Leary expressed comfort supporting the Resolution this evening as it continues an ongoing initiative in our parks that is much appreciated by residents.

Motion by President O’Leary, seconded by Vice President Anderson to adopt Resolution 9062-19.

All members voting yea. Motion passed. Resolution 9062-19 adopted.

25. Communication from Police Chief Malley regarding donation for local tobacco compliance checks. (pg.112)

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the communication.

Discussion: Chief Malley clarified that state law enforcement usually handles the checks and that local law enforcement provides back up and enforcement. He noted that the type of offense would determine whether state or local code is used for issuing a citation.

All members voting yea. Motion passed.

26. Communication from Police Chief Malley regarding donation from Discount Drug Mart. (pg. 113)

Motion by President O’Leary, seconded by Vice President Anderson to receive and file the communication.

All members voting yea. Motion passed.

******PUBLIC COMMENT******

Levi McKenzie – 14811 Hilliard

Mr. McKenzie made remarks regarding the proposed ordinance to establish an Ethics Commission and asked that Council strike requirements contained within the ordinance to appoint individuals on certain ethnic gender and sexual identities.

******ANNOUNCEMENTS******

Mayor Summers announced an event to take place tomorrow at the Women’s Club Pavilion with 100 residents in the health and wellness field regarding the social determinants of health.

Mr. Anderson acknowledged a boy scout in the audience there to earn a badge.

President O'Leary announced that he will have a Town Hall meeting open to the public tomorrow at Lakewood Public Library.

Motion by Mr. O'Leary, seconded by Mr. Anderson, to adjourn the meeting.

Motion adopted. All members voting yea.

Meeting adjourned 8:52 PM.

Approved: 3/18/19

Manner M Bach

CLERK

[Signature]

PRESIDENT

PUBLIC WORKS COMMITTEE REPORT
From February 25, 2019 - 6:00PM
Council Conference Room

Present: Councilmembers Rader, Anderson, Bullock

Also Present: Diane Bickett, Executive Director of the Cuyahoga County Solid Waste District; Assistant Law Director Swallow, Public Works Director Beno, Deputy Clerk Lascu taking minutes

Before us:

RESOLUTION 9053-19 - A RESOLUTION, adopting the Solid Waste Management Plan for the Cuyahoga County Solid Waste Management District.

RESOLUTION 9051-19 - A RESOLUTION to authorize submission of application and accept Northeast Ohio Public Energy Council (NOPEC) Energized Community Grant.

Director Bickett of the Cuyahoga County Solid Waste District gave a presentation regarding the County Solid Waste District Plan for 2019-2033.

The Director shared some key findings from the plan. Cuyahoga County generates about 2.6 million tons a year in trash and we recycle 43% of it, compost 6% of it, and landfill 51% of it. We send about 1.2 million tons of waste to landfills annually, which are all located outside of Cuyahoga County.

Not much is new or different with this plan compared to past plans, all existing programs and services will continue upon approval, although there will be a fee increase in 2023 of \$.50 per ton of waste due to increases in the funding mechanism. It was highlighted that CCSWD's fees would remain well below the state average.

For most communities the plan will cost an addition \$5,000 per year or less. Likely more for us, as Lakewood is a larger community.

The committee asked for clarification on the notion that Council cannot make amendments to the District's plan, which we cannot. The plan needs approval from cities representing 60% of the population in region along with the major city of the region, being Cleveland, by April 4th.

If we don't have a locally ratified plan, the EPA takes over and creates its own plan for the county, which has never happened in Cuyahoga. Dir. Bickett stated that it would not an ideal situation to have the state take over because it is a direct order and the community has no say in the matter.

The committee formally and unanimously agreed that Resolution 9053-19 be recommended for adoption.

Resolution 9051-19, we had a discussion regarding NOPEC grant. If passed would allow the City to apply of and receive this year's allotment of \$206,000 from NOPEC. It was impressed upon us the need to pass this resolution formally accepting the grant money in order to start the process and the resolution did not expressly authorize spending of the funds.

Assistant Law Director Swallow indicated this needed to happen soon. Director Beno confirmed that this was the case and this was the beginning of the process and needed to happen in order to receive these funds. Deputy Clerk Lascu relayed a message from the Mayor, that it was important to pass this at the next council meeting and that there was not yet a plan for these funds.

All members of the committee expressed a desire to have more substantive discussions regarding the how these funds should be spent.

It was moved that we recommend Resolution 9051-19... with the caveat that the Public Works Committee strongly recommends another meeting, in a formal setting such as the Public Works Committee, to discuss the use of these funds.

Rader and Anderson voted aye. Councilman Bullock abstained from the vote.

Move to receive and file.

s/Tristan Rader

Member of Council

Chair, Public Works Committee