

**MINUTES
OF THE
REGULAR MEETING OF
LAKEWOOD CITY COUNCIL
HELD IN COUNCIL CHAMBERS
12650 DETROIT AVENUE
DECEMBER 15, 2008
7:30 P.M.**

Regular Meeting of the Lakewood City Council called to order at 7:38 PM by President Dever.

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Present: Councilmembers Nickie J. Antonio, Thomas Bullock, Kevin Butler, Michael W. Dever, Mary Louise Madigan, Brian Powers, Michael P. Summers.

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Also Present: Mayor FitzGerald, Finance Director Pae, Police Chief Malley, Fire Chief Mroz, Human Services Director Buckon, Law Director Hurley, Public Works Director Beno, Planning & Development Director Kelly, Building Department Ed Fitzgerald, Assistant Law Director Awadallah, Superintendent of Schools Dr. Estrop;

Motion by Mr. Dever, seconded by Ms. Madigan, to approve the Minutes of the Regular Meeting of Council held November 3, 2008 and December 1, 2008.

Motion adopted. All members voting yea.

Without objection from Council – Items 11, 12 and 21 were read first in the agenda order. Without further objection Item 13 was read after item 6.

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

1. Committee of the Whole Report regarding Planning Commission Appointment. (Pg.5)

Motion by Mr. Dever, seconded by Ms. Antonio, to receive and file the report.

Motion adopted. All members voting yea.

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2. **RESOLUTION NO. 8317-08** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five (5) members elected to Council otherwise, it shall take effect and be in force after the earliest period allowed by law to appoint Mary Cierebiej to the Lakewood Planning Commission for the full six year term ending December 31, 2014. (Pg.6)

Motion by Mr. Dever, seconded by Ms. Madigan, to adopt Resolution No. 8317-08.

Motion adopted. All members voting yea.

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3. Housing Committee Report regarding Lakewood HOME Program and American Dream Down Payment Initiative. (To Be Provided).

Councilmember Madigan submitted the following report:

The Housing Committee met this evening at 6:30. Councilman Summers and I were there, along with Nate Kelly, the Director of Development. We discussed this Ordinance authorizing the City to enter into a new funding agreement with the Cuyahoga County; being the lead entity of the Cuyahoga County Housing Consortium and we recommend that we adopt.

Motion by Ms. Madigan, seconded by Mr. Dever, to receive and file the report.
Motion adopted. All members voting yea.

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4. **ORDINANCE NO. 94-08** - AN ORDINANCE authorizing the Mayor, on behalf of the City, to enter into an agreement with the Cuyahoga Housing Consortium (“Consortium and various lending institutions and individuals participating in the Lakewood HOME Program and the American Dream Down Payment Initiative (ADDI) collectively the “Modified Programs” in and amount not to exceed Five Hundred Thousand Dollars (\$500,000). (PLACED ON 1ST READING & REFERRED TO THE HOUSING COMMITTEE 11/17/08, 2ND READING 12/1/08). (Pg. 7)

Motion by Mr. Dever, seconded by Ms. Madigan, to adopt Ordinance No. 94-08.
Motion adopted. All members voting yea.

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5. Public Safety Committee Report re: Chronic Nuisance Violations (noise, etc...) (To Be Provided).

Councilmember Bullock submitted the following report:

The Public Safety Committee worked steadily on this issue on the third nuisance ordinance over multiple sessions since the summer to refine and improve what we now have on the books and to correct some due process concerns with our current law. The nuisance ordinance is an important tool to address quality of life problems in Lakewood so that we can keep our neighborhoods safe, clean and family-friendly and namely by – in this case, holding accountable through civil fines and penalties the landlords of properties which have chronic nuisance behaviors originating at their properties.

We have developed refinements and improvements to our ordinance in several significant ways thanks to not only the work of the Committee; my colleague Councilman Powers but also Councilman Butler who spent a lot of time on this issue and especially Assistant Law Director Sal Awadallah whom is with us today. Who also conducted a comparative

analysis of nuisance ordinances in several communities - three column side-by-side page.

The Public Safety Committee reported out favorably earlier this evening, a substitute amendment that would accomplish a number of significant changes – those are summarized in this side-by-side two column sheet and I'll go through the major highlights or contours of those now.

The first and perhaps the most important is to change the definition of nuisance incident from at or near the property which is a quite geographically constrained definition to “at or within a thousand feet” of the property which that means that somebody who is chronically causing problems up at the corner or a block or two over this would trigger our nuisance ordinance.

Secondly, the activity will trigger our nuisance ordinance under these proposed changes if it is not just a conviction or an arrest but now also if the law enforcement officer documents the activity. That's an important distinction because it's frequent in law enforcement that warnings are given but not an actual citation so this allows us to do a better job of capturing properties' incidents chronic issues that crop up and to get a more complete picture bloom to the pipeline which we should note just because the police or a law enforcement officer by a nuisance property it does not necessarily mean that the mayor's office or the Law Department has to pursue it, it's a “may” not a “shall”. But what this essentially does is it gives us four chances to have the option to exercise an additional tool to remedy the problems that we've been seeing at times in certain places in our community.

Another major chance is that there is now a newly created criminal nuisance board of appeals. That's important for due process reasons because, and Law Director, please correct me if I'm getting any of this wrong, is we want somebody who is making an appeal needs to have an independent reviewer of the appeal and right now as we are constructing it, the prosecutor is also the judge and that's an inherent, intrinsic conflict of interest so now we've remedied that by creating a five member citizen board of appeals – three members of which would be appointed by the mayor two by Council. In addition, the City must show by preponderance of the evidence that each activity has occurred to there's an evidentiary standard established to make it more clear than we currently have.

So our hope is that this will significantly refine and improve what we have on the books. We've had this currently law for what, 18 months – 2 years? It has had some success and we heard from the Police Chief about 40 or 50 cases were referred by police to our process right now, the Mayor's assistant will take on a case; send a letter to a property that is on the verge of becoming declared a nuisance and try to remediate the situation. We hope and expect that will continue because the goal really is to fix the problem as soon as possible even if it doesn't go all the way to the end of the legal process.

We are recommending tonight, we will be making a motion to amend what is on the docket which is a initial ordinance proposed last year I believe by Councilman Butler and change that to incorporate the changes prepared by Assistant Law Director Awadallah.

Motion by Mr. Dever, seconded by Ms. Madigan, to receive and file the report. Councilmember Madigan asked how many times the nuisance ordinances had been enacted. Chief Malley indicated a dozen or so required actual citations.

Motion adopted. All members voting yea.

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6. **ORDINANCE NO. 23-08 – AN ORDINANCE** to take effect immediately provided it received the affirmative vote of at least five (5) elected members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, amending Section 509.14 of the Codified Ordinances **to include the issuance of noise abatement orders and notices of violation among the events that must occur in order to classify a noise violation as a nuisance activity** for the purposes of the Criminal Activity Nuisance Ordinance. (PLACED ON 1ST READING & REFERED TO THE PUBLIC SAFETY COMMITTEE 2/19/08, 2nd READING 3/3/08) (Pg. 9)

Motion by Mr. Bullock, seconded by Mr. Dever, to substitute Ordinance No. 23-08.

Yeas: Antonio, Bullock, Butler, Dever, Madigan, Powers, Summers

Nays: None

Motion adopted. Ordinance Substituted.

Motion by Mr. Bullock, seconded by Mr. Dever, to adopt Ordinance No. 23-08 as substituted.

Councilmember Summers indicated support of the Ordinance stating that this ordinance along with the Community Police Officer would be welcome quality of life issues for Ward 3.

Councilmember Powers indicated he wanted to make sure Council was made aware that Section 537 was added to the Ordinance in its entirety. He referenced Section 510.01 number 11 indicating that the ordinance that was originally proposed only covered assault. He indicated that all of the offenses against persons in Section 537 were added indicating the inclusion of Domestic Violence. He indicated the Committee had lengthy discussion regarding the consequences of including domestic violence in the ordinance because of concerns that the law could end up inhibiting victims of domestic violence from calling in complaints. He indicated that this was left to the discretion of the Administration to make sure that the issue was considered when enforcing the law in the future and that the issue would need to be monitored as time went on.

Councilmember Madigan asked if the expectation was that citations would increase. Mayor FitzGerald indicated that this could be the expectation but that he wanted to point out that there would be more compliance - because the true measure would be how many positive resolutions would result from increased attention along with strengthening the law.

Yeas: Antonio, Bullock, Butler, Dever, Madigan, Powers, Summers

Nays: None

Motion adopted. Ordinance No. 23-08 adopted as substituted.

{Item 13 was read after this ordinance}

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7. **ORDINANCE NO. 93-08** - AN ORDINANCE to take effect immediately provided it received the affirmative vote of at least five (5) members elected to Council otherwise, it shall take effect and be in force after the earliest period allowed by law, requesting Council's specific approval of and authorizing the Mayor to enter into a lease for property located at 17415 Detroit Avenue, Lakewood, Ohio for use by the Division of Police ("Division") as the Ward I Neighborhood Police Station, in accordance with Lakewood Codified Ordinance §111.04(a)(4). (PLACED ON 1ST READING 11/17/08, 2nd READING 12/1/08) (Pg. 16)

Motion by Mr. Dever, seconded by Ms. Madigan, to adopt Ordinance No. 93-08.

Motion adopted. All members voting yea.

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8. **ORDINANCE NO. 95-08** – AN ORDINANCE to create Chapter 160, a new Environment Committee of Lakewood (ECO Lakewood) to assist with planning and implementing sustainable practices in City of Lakewood operations and in the community at large. (PLACED ON 1ST READING & REFERRED TO THE COMMITTEE OF THE WHOLE 12/1/08) (Pg.21)

Motion by Mr. Dever, seconded by Ms. Madigan, to place Ordinance No. 95-08 on 2nd Reading and refer back to the Committee of the Whole.

Motion adopted. All members voting yea.

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9. **ORDINANCE NO. 96-08** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members elected to Council, otherwise, it shall take effect and be in force after the earliest period allowed by law, authorizing the Mayor on behalf of the City of Lakewood to enter into agreements necessary to grant an Exclusive Easement and a Non-Exclusive Easement to The Ohio Bell Telephone Company, d/b/a AT&T Ohio, for placement of and access to equipment used in the transmission of signals used in the provision of communication, video and /or information services on property

located at 14532 Lake Avenue, Lakewood, Ohio. (PLACED ON 1ST READING & REFERRED TO THE PUBLIC WORKS COMMITTEE 12/1/08) (Pg.23)

Motion by Mr. Dever, seconded by Ms. Antonio, to place Ordinance No. 96-08 on 2nd Reading and refer it back to the Public Works Committee.

Motion adopted. All members voting yea.

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10. **ORDINANCE NO. 97-08** - AN ORDINANCE authorizing the Mayor or his designee to enter into an agreement with Wholesome Development, LLC or its designee for participation in the Lakewood Business Investment Program (BIP) of the Economic Development Fund (EDF) for a five (5) year loan in an amount of One Hundred Thousand Dollars (\$100,000.00). (PLACED ON 1ST READING & REFERRED TO THE COMMITTEE OF THE WHOLE 12/1/08) (Pg. 31)

Motion by Mr. Dever, seconded by Ms. Madigan, to place Ordinance No. 97-08 on 2nd Reading and refer it back to the Committee of the Whole.

Motion adopted. All members voting yea.

*******NEW BUSINESS*******

11. Communication from Mayor FitzGerald regarding Daytime Curfew. (Pg.33)

Motion by Mr. Dever, seconded by Ms. Madigan, to receive, file and refer the communication to the Public Safety Committee.

Mayor FitzGerald supplemented the letter indicating the ordinance was a result of working with the school district; was similar to a truancy ordinance with parts of the legislation addressing parental accountability.

Superintendent David Estrop spoke in support of the ordinance, providing an overview of the school's activities regarding attendance monitoring. He indicated that consistent attendance was a necessity in effective learning and was also an accountability measure the District was judged on in the State of Ohio. He indicated that the City and the Schools cooperative efforts in expectations of young people to be in school sent an important message. He indicated that he is proposing to reallocate existing budget money for an Attendance Officer at the School through the Educational Service Center of Cuyahoga County. Dr. Estrop indicated that the officer could also ensure residency requirements for students in the District.

Councilmember Madigan indicated support of the ordinance citing the parental/guardian responsibility measure in the legislation.

Councilmember Antonio indicated support of the measure and asked for clarification on what is presently on the books regarding truancy.

Mayor FitzGerald indicated that in the past there had been a school employee serving as a truancy officer in the past but with limited authority. Mayor FitzGerald also wanted Council to be made aware that parental efforts in curtailing their child's absenteeism as school would be a legitimate defense to any charge instigated against the parent.

Councilmember Antonio indicated that she looked forward to reviewing the details of the proposal in Committee suggesting that laws similar to this that protect people in the community also end up protecting the children because they need to be where they are supposed to be.

Mayor FitzGerald added that the City was going to be able to have increased capacity to enforce this type of law because of the City was at full staff with new and part-time police officers next year.

Councilmember Bullock supported the ordinance to the degree it could address problems of graffiti, litter and unruly behavior in city parks.

Motion adopted. All members voting yea.

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12. ORDINANCE NO. 98-08 - AN ORDINANCE to take effect immediately provided it received the affirmative vote of at least five (5) members elected to Council otherwise, it shall take effect and be in force after the earliest period allowed by law, to create a new section within Chapter 509 of the General Offenses Code of the Codified Ordinances of the City of Lakewood creating a daytime curfew within the City of Lakewood. (Pg. 34)

Motion by Mr. Dever, seconded by Ms. Antonio, to place Ordinance No. 98-08 on 1st Reading and refer it to the Public Safety Committee.

A resident spoke against the ordinance indicating that the ordinance would place an additional burden on the Lakewood Police Department and citizens. The resident indicated that home-schooled children would be at risk of being unduly singled out should they be on legitimate treks to parks for physical education, or the library for school activities. The resident indicated that other home-school families who would be visiting during school hours would avoid Lakewood and not shop in the area.

Motion adopted. All members voting yea.

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13. **ORDINANCE NO. 99-08** - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members elected to Council otherwise, it shall take effect and be in force after the earliest period allowed by law, repealing Lakewood Codified Ordinance §509.14, Criminal Activity Nuisance. (Pg. 37)

Motion by Mr. Dever, seconded by Mr. Butler, to suspend the rules requiring this ordinance to be read on three separate days and placing Ordinance No. 99-08 on final reading.

Yeas: Antonio, Bullock, Butler, Dever, Madigan, Powers, Summers

Nays: None

Motion adopted. Rules suspended.

Motion by Mr. Dever, seconded by Mr. Bullock, to adopt Ordinance No. 99-08

Yeas: Antonio, Bullock, Butler, Dever, Madigan, Powers, Summers

Nays: None

Ordinance No. 99-08 adopted.

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14. Communication from Planning and Development Director Kelly regarding Tax Incentive Review Council Meeting of August 19, 2008. (Pg. 41)

Motion by Mr. Dever, seconded by Ms. Madigan, to receive and file the communication.

Motion adopted. All members voting yea.

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15. **RESOLUTION NO. 8318-08** – A RESOLUTION to take effect immediately provided it received the affirmative vote of at least five (5) members elected to Council, otherwise, it shall take effect and be in force after the earliest period allowed by law to report the action of the Tax Incentive Review Council (the “TIRC”) meeting of August 19, 2008 pursuant to Ordinance 47-04, adopted June 4, 2004 and Section 5709.85 of the Ohio Revised Code regarding Rockport Square, Vedda Printing and The Cliffs. (Pg.42)

Motion by Mr. Butler, seconded by Mr. Dever, to amend Section 1, by inserting “, Vedda Printing” after the word Square and before the word “and”.

Mr. Butler clarified that it was the intent of the Review Council’s to continue all three indicating it was an oversight to leave off the one party in one of the paragraphs..

Motion adopted. Resolution No. 8318-08 amended.

Motion by Mr. Dever, seconded by Mr. Butler to adopt Resolution No. 8318-08 as amended.

Motion adopted. All members voting yea. Resolution No. 8318-08 adopted as amended.

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16. Certificate of Result of Election regarding Charter Amendment – “... amended to change the date that primary elections would be held in the City to the second Tuesday in September prior to a general municipal election...”. (Pg.43)

Motion by Mr. Dever, seconded by Ms. Madigan, to receive and file the certificate.
Motion adopted. All members voting yea.

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17. Liquor Permit Application for D2, D2X, D3, D3A and D6 stocks to 11926 Madison Inc d/b/a Flying Rib. (Pg.44)

Motion by Mr. Dever, seconded by Ms. Madigan, to defer action on this item.
Motion adopted. All members voting yea.

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18. Communication from Finance Director Pae regarding 2008 Appropriation Ordinance and 2008 Advances & Transfer Ordinance. (Provided)

Motion by Mr. Dever, seconded by Ms. Antonio, to receive, file and refer the communication to the Committee of the Whole.

Motion adopted. All members voting yea.

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19. **ORDINANCE NO 100-08** – (Provided that evening) AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members elected to Council otherwise, it shall take effect and be in force after the earliest period allowed by law to establish appropriations for current expenses and other expenditures of the City of Lakewood, State of Ohio, for the fiscal year ending December 31, 2008.

Motion by Mr. Dever, seconded by Ms. Antonio, to place Ordinance No.100-08 on 1st Reading and refer it to the Committee of the Whole.

Motion adopted. All members voting yea.

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20. **ORDINANCE NO. 101-08** - (Provided that evening) AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members elected to Council otherwise, it shall take effect and be in force after the earliest period allowed by law to authorize the transfer and advance of certain funds.

Motion by Mr. Dever, seconded by Ms. Madigan, to place Ordinance No. 101-08 on 1st Reading and refer it to the Committee of the Whole.

Motion adopted. All members voting yea.

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21. **ADD-ON** – Communication from Mayor FitzGerald regarding Healthy Lakewood Partnership

Motion by Mr. Dever, seconded by Ms. Madigan, to receive, file and refer the communication to the Health & Human Services Committee.

Motion adopted. All members voting yea.

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Motion by Mr. Dever, seconded by Ms. Antonio, to adjourn.

Motion adopted. All members voting yea.

Meeting adjourned 9:06 PM.

Approved: _____

CLERK

PRESIDENT

