

**MINUTES  
OF THE  
REGULAR MEETING OF  
LAKEWOOD CITY COUNCIL  
HELD IN COUNCIL CHAMBERS  
12650 DETROIT AVENUE  
MAY 17, 2010  
7:30 P.M.**

Regular Meeting of the Lakewood City Council called to order at 7:46 by Council President Butler

....

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

....

Also Present: Mayor FitzGerald, Law Director Hurley, Finance Director Pae, Police Chief Malley, Fire Chief Mroz, Public Works Director Beno, Human Services Director Buckon, Planning & Development Director Kelly.

Motion by Mr. Butler, seconded by Ms. Madigan, to approve the Minutes of the Regular Meetings of Council held May 3, 2010.

Motion adopted. All members voting yea.

**\*\*\*\*OLD BUSINESS\*\*\*\***

**\*A – Add-on – Lakewood Heritage Advisory Board Presentation of the 2010 Historic Preservation Awards – presented by Richard Sicha. (On file in the Council Office)**

1. Committee of the Whole Report regarding Lakewood Hospital Discussions to date (To Be Provided)

#1 Committee of the Whole Report regarding Lakewood Hospital Discussions to Date – Butler  
The Committee of the Whole which is the city council committee that comprises all seven members of council, met in response to a letter we received from the Cleveland Clinic administration regarding a proposed change to the required services offered under that lease that the city has with the Lakewood Hospital Association. That may sound very confusing. The City of Lakewood owns the land and the structure in which Lakewood Hospital exists. Under a lease agreement entered into back in I believe 1986 we negotiated with what is known as the Lakewood Hospital Association, essentially now the Cleveland Clinic Foundation, for the provision of services in that hospital by the Clinic. As part of that lease the term “required services” is defined. Require services is what the Clinic Foundation has to offer in the services the Cleveland Clinic Foundation has to offer in the hospital. On or after April 6<sup>th</sup>, Councilmembers received a letter proposing to change the definition of required services or better yet, proposing to technically eliminate two services from those required services. Those were in-patient pediatrics and trauma services. That is all part of the Clinic’s Vision for Tomorrow plan and that also includes certain augmented services at Lakewood Hospital. In order to make this change official, the Clinic has to notify City Council members and

councilmembers have sixty days in which to either reject the change or approve it or simply let it go into effect by taking no action. When we received the letter shortly after April 6<sup>th</sup>, we scheduled a meeting for April 19<sup>th</sup>, discussed the framework for going forward under this process. We then met again on May 6<sup>th</sup> and again we will be meeting tonight to hear from members of the community about this proposed change. That's going to be after our Council meeting tonight right here in these chambers beginning at 8:30. That's our discussions to date.

Motion by Mr. Butler, seconded by Ms. Madigan, to receive and file the oral report.

Motion adopted. All members voting yea.

\*\*\*\*

2. Committee of the Whole Report regarding Human Resources Department Review. (To Be Provided)

Also on May 3, the Committee of the Whole met with the Director of Human Resources here with the city, Jean Yousefi, and conducted an annual review of her department which we found to be favorable.

Motion by Mr. Butler, seconded by Ms. Madigan, to receive and file the oral report.

Motion adopted. All members voting yea.

\*\*\*\*

3. Public Safety Committee Report regarding Ordinance No. 23-10. (To Be Provided)

#3 Public Safety Committee Report regarding Ordinance 23-10 - Powers

The entire Public Safety Committee met this evening and recommended passage of the substitute ordinance which we had attached to our docket along with some amendments which we will make from the floor. We want to thank Chief Malley and Jen Mladek from the Law Department who were present at our meeting but also did a lot of work and a lot of thought behind an ordinance that is a very good move for us as a city. That's the conclusion of the report.

Motion by Mr. Powers, seconded by Ms. Madigan, to receive and file the oral report.

Motion adopted. All members voting yea.

\*\*\*\*

4. **ORDINANCE NO. 23-10** - AN ORDINANCE to enact a new Chapter 309, Parking Violations Bureau, within the Codified Ordinances of the City of Lakewood for the purpose of decriminalizing parking citations pursuant to the authority granted to municipalities in Ohio Revised Code Chapter 4521. (**PLEASE SUBSTITUTE** for ORDINANCE NO. 23-10 PLACED ON 1<sup>ST</sup> READING & REFERRED TO THE PUBLIC SAFETY COMMITTEE 3/1/10, 2<sup>ND</sup> READING 3/15/10, DEFERRED 4/19/10) (Pg. 4)

Motion by Mr. Powers, seconded by Ms. Madigan, to substitute Ordinance No. 23-10.

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

Nays: None

Motion adopted. Ordinance No. 23-10 substituted.

Motion by Mr. Powers, seconded by Ms. Madigan, to amend Ordinance 23-10 as follows:

309.02 (b) added “ shall have the authority to appoint the Hearing Examiner” .. the Public Safety Director will have the authority to appoint a Hearing Examiner.

Move to make several amendments. The first is on page 4, 309.04 (A) we are including ways to pay after “Parking Violations Bureau, by mail or” insert “**by internet through an internet site provided on the ticket.**”

The second change is 309.99 – the entire section, including the title, need to change the “fines” to “fees” and throughout this section change the word “fine” to “fee” change the word “fined” to “charged”

There is a new section 3.

**Section 3. This ordinance shall take effect August 1, 2010.**

The old section 3 is now **Section 4**

**On the motion to amend:**

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

Nays: None

Motion adopted. Ordinance No. 23-10 amended.

Motion by Mr. Butler, seconded by Ms. Madigan, to adopt Ordinance No. 23-10 as substituted and amended.

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

Nays: None

Motion adopted. Ordinance No. 23-10 adopted as substituted amended.

\*\*\*\*

5. Public Works Committee Report regarding Ordinance 32-10. (To Be Provided)

#5 Public Works Committee Report Regarding Ordinance 32-10 - Bullock

The Public Works Committee met again tonight, prior to the council meeting, to discuss proposed ordinance 32-10 which would give authority to Public Works and Refuse personnel to enforce the new refuse collection system rules for cleanliness and efficiency and neatness in the neighborhoods. Things that matter such as placement of the refuse containers in the proper place, facing the proper way so the mechanical arms can do their job and then rolling them back to the back of the house or the side of the house again so we don't have cluttered neighborhoods. This worked significantly well but not glitch free over the course of the past year. Up until now the Refuse Department has been sending reminder letters to residents to say “these are the new rules, we want to keep an efficient system and clean neighborhoods, please comply.” But we haven't had fees or fines to enforce up to now. So this new ordinance would provide that and I think it makes sense. It was the recommendation of our Public Works Committee tonight to favorably report out this proposed ordinance with some changes that I'm going to briefly address here. And there are that in section 1777.02 paragraph (b) to put into the blank listed there the rate of \$50.00, spelling out the number fifty. Fifty dollars is based upon the actual cost the city incurs for an hour of time of a Refuse employee and that's probably actually a low estimate when we factor in equipment cost and perhaps even some administrative costs. The other changes, and after we file this report I'll make a motion actually to make these changes on the

floor here, would be to strike “The minimum charge therefore shall be as follows: “ and the scheduled 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> violation. The discussion that we had guided by our Council President was that that language really fits a criminal fine rather than a fee, which we’re doing here. So, with those changes and after some further discussion to make sure that our final result is going to be effective and balance enforcement with fairness for the residents we favorably recommended the proposed ordinance.

Antonio: I just have one question, so, in clarifying this, someone is still violating a rule or regulation but now we’re charging fees rather than being deemed...how does that translate?

Bullock: A fine is a criminal term in other words and follows a different logic and a different authority under the ordinances and instead of going through all that which would really require prosecution through our court system, and by the way, is still a remedy available to us if we had a case that merited that, rather than go that route, a simpler and more direct version which follows upon the precedent we set with High Grass and Weeds, for example, where the city will go out and actually do the work to cut grass at a vacant home that may not be properly maintained by the absentee owner, bank or what have you that owns it. The city just goes out and does the work and keeps track of the actual expenses incurred and then bills the owner. So, following on that, that’s essentially the same rationale being proposed here.

Antonio: So, just to clarify, so, if someone is found in violation, we’re still using the word “violation”, correct? So, they violated the rule by not having their garbage can facing the correct way, we’re going to charge them a fee of \$50.00? I just want to understand.

Butler: Councilwoman, I think the idea is that the city, under an administrative enforcement provision, where you’re decriminalizing the penalty, is permitted to recoup its cost in enforcing the ordinance. Where it doesn’t make sense for example for Refuse to haul someone to court over keeping their trash bin out for too long, it makes more sense for Refuse to notify the owner that that is the case and they should stick to the rules from now on. If at that point the Refuse division determines that that rule still is not being followed, they can then recoup the cost of either abating the nuisance problem themselves or making sure that it’s taken care of. The idea was, we took a benchmark figure of \$50/hour which was provided by our Public Works Director as the actual cost of enforcing most Refuse violations, and started with that as your fee. But truly the ordinance says the Refuse Division is allowed to charge the cost of enforcing to the homeowner.

Antonio: So, I just have one more question for clarification. So, I understand the difference between changing something from criminal to just having it be a fee where you’re violating the rule. I understand that. When we took out the minimums I guess, so that’s where I’m going. So, before there were warnings. There were minimums that were addressed. So, now that this is decriminalized, is there a comparable part of this in terms of warnings. I know our Refuse Department, up to this point, I mean, there’s the tags on the cans. I’ve had various conversations with neighbors who have let me know they get those warnings. Will that continue with this? My concern is in doing this, are we taking away the warning system as well. And so, if I could have a clarification that would be great.

Beno: No. There are still the tags. Even if a letter is sent, typically, at least the first letter, maybe even the second letter is a warning before an actual fine is invoked. Similar to the trash out on the wrong day situation, the first time, people get a letter. The second time they get the bill. Even then that usually gets their attention and gets a call on the phone and sometimes that fee is

revoked. It's just to make sure it got their attention. We're not planning on charging everybody in the city \$50.00 the first time they leave their can out.

Antonio: Thank you. That's exactly what clarification I wanted.

Bullock: Mr. Chair I'll simply just add, it's a fair point, Councilwoman and it was discussed in committee. The other, Councilman Powers pointed out that even the new language proposed says "may result in the property owner being charged.." so there's discretion afforded the administration. It doesn't require a "shall fine" in each and every case but it is a balance between reminding people and yet having some teeth to enforce the law because there are chronic offenders and to be frank I get complaints on both sides of the issue.

Motion by Mr. Bullock, seconded by Ms. Madigan, to receive and file the oral report.

Motion adopted. All members voting yea.

\*\*\*\*\*

6. **ORDINANCE NO. 32-10** - AN ORDINANCE to amend section 1777.02 within the Sanitary Code of the Codified Ordinances of the City of Lakewood for the purpose of creating civil penalties for noncompliance with rules and regulation promulgated pursuant to that section. (PLACED ON 1<sup>ST</sup> READING & REFERRED TO THE PUBLIC WORKS COMMITTEE 4/5/10, 2<sup>ND</sup> READING 4/19/10, DEFERRED 5/3/10) (Pg. 17)

Motion by Mr. Bullock, seconded by Ms. Madigan, to amend Ordinance No. 32-10 as follows:

- Put in 1<sup>st</sup> blank the word "fifty"
- In the 2<sup>nd</sup> blank the number "50"

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

Nays: None

Motion adopted. Ordinance No. 32-10 adopted as amended.

\*\*\*\*\*

*{Ordinances Nos. 37-10 & 38-10 were printed in their entirety on the May 3, 2010 docket and are printed by first page only here. The complete ordinances can be email upon request or can be reviewed in the Council Office during regular business hour}*

7. **ORDINANCE NO. 37-10** – AN ORDINANCE to amend Title Seven, Parking of the Traffic Code, within the Codified Ordinances of the City of Lakewood for the purpose of updating and expanding the Code and to be consistent with the Ohio Revised Code. (PLACED ON 1<sup>ST</sup> READING & REFERRED TO THE RULES & ORDINANCES COMMITTEE 5/3/10) (Pg. 19)

Motion by Mr. Butler, seconded by Ms. Madigan, to place Ordinance No. 37-10 on 2<sup>nd</sup> Reading.

Motion adopted. All members voting yea.

\*\*\*\*\*

8. **ORDINANCE NO. 38-10** – AN ORDINANCE to amend Title Nine, Pedestrians, Bicycles and Motorcycles, of the Traffic Code, within the Codified Ordinances of the City of Lakewood for the purpose of updating and expanding the Code and to be consistent with the Ohio Revised Code. (PLACED ON 1<sup>ST</sup> READING & REFERRED TO THE RULES & ORDINANCES COMMITTEE 5/3/10) (Pg. 20)

Motion by Mr. Butler, seconded by Ms. Madigan, to place Ordinance No. 38-10.

Motion adopted. All members voting yea.

\*\*\*\*

9. **ORDINANCE NO. 39-10** - 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 and directing the Director of Planning and Development to enter into an agreement with a licensed real estate broker to market for sale the real property located at 1667 Waterbury (PP#315-06-148), 2070 Dowd (PP#315-23-199), 2107 Robin (PP#315-22-074), 13736 Madison Avenue (PP#315-03-031), 1482-84 W. 117<sup>th</sup> (PP#315-14-002), 1301 Cranford (PP#311-32-172), 1297 Cranford (PP#311-32-173), 1269 Westlake (PP#311-29-041), 1598 Wyandotte (PP#315-03-095) and about 1383 Sloane Avenue (311-15-011), for a period not to exceed 12 months, pursuant to Section 155.07 of the Codified Ordinances. (PLACED ON 1<sup>ST</sup> READING & REERRED TO THE HOUSING COMMITTEE 5/3/10) (Pg.21)

Motion by Mr. Butler, seconded by Ms. Madigan, to place Ordinance No. 39-10 on 2<sup>nd</sup> Reading.  
Motion adopted. All members voting yea.

\*\*\*\*

10. Liquor Permit Application for a C1 transfer to China Garden, 14867 Detroit Avenue from FLA Forever, same address. (Deferred 5/3/10) (Pg. 23)

Motion by Mr. Bullock, seconded by Mr. Powers, to objection to this liquor permit application.

Six members voting yea.

Ms. Antonio absent for vote.

**\*\*\*\*NEW BUSINESS\*\*\*\***

11. Communication from Council President Butler regarding Council CAC Appointments 2010. (Pg.24)

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

Motion adopted. All members voting yea.

\*\*\*\*

12. Communication from Finance Chair Summers regarding Finance Committee Docket. (Pg. 26)

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

Motion adopted. All members voting yea.

\*\*\*\*

13. Communication from Finance Director Pae regarding 2010 Ohio Police & Fire Pension Fund pick-up plan documentation requirement. (Pg. 27)

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

Motion adopted. All members voting yea.

\*\*\*\*

14. **RESOLUTION NO. 8421-10** – 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, authorizing an offer to pick-up all or part of the voluntary contributions through a payroll deduction for the purchase of service credit by employees of the Division of Police who are members of the Ohio Police and Fire Pension Fund. (Pg. 28)

Motion by Mr. Butler, seconded by Ms. Madigan, to adopt Resolution No. 8421-10.  
Motion adopted. All members voting yea.

\*\*\*\*

15. **RESOLUTION NO. 8422-10** - 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, authorizing an offer to pick-up all or part of the voluntary contributions through a payroll deduction for the purchase of service credit by employees of the Division of Fire who are members of the Ohio Police and Fire Pension Fund. (Pg. 30)

Motion by Mr. Butler, seconded by Ms. Madigan, to adopt Resolution No. 8422-10.  
Motion adopted. All members voting yea.

\*\*\*\*

16. Liquor Permit Application for a New D5I – To PIBO LLC d/b/a Cozumel, 16512 Detroit Avenue. (Pg. 32)

Motion by Mr. Bullock, seconded by Mr. Butler, to file no objection to this liquor permit.  
Motion adopted. All members voting yea.

\*\*\*\*

Motion by Ms. Madigan, seconded by Ms. . Antonio, to adjourn.  
Motion adopted. All members voting yea.  
Meeting adjourned 8:53 PM.

Approved: \_\_\_\_\_

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
PRESIDENT