

**MINUTES
OF THE
REGULAR MEETING
OF
LAKEWOOD CITY COUNCIL
HELD IN COUNCIL CHAMBERS
12650 DETROIT AVENUE
NOVEMBER 7, 2011
7:30 P.M.**

Regular Meeting of the Lakewood City Council called to order at 7:30 PM by President Madigan.

Present: Councilmembers David Anderson, Thomas Bullock, Shawn Juris, Mary Louise Madigan, Brian Powers, Ryan Nowlin, Monique Smith,.

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Also Present: Mayor Summers, Law Director Butler, Finance Director Pae, Public Works Director Beno, Police Chief Malley, Fire Chief Gilman, Human Services Director Buckon, Director of Planning and Development and Assistant Director of Public Safety for Housing and Building. Siley, Human Resources Director Yousefi,.

Reading & disposal of the Minutes of the Regular Meeting of Council held October 17, 2011.

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

Without objection from Council Items 12 & 13 were read first in the agenda order.

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

1. Finance Committee Report regarding Resolution No. 8526-11 & Ordinance 85-10A. (To Be Provided)

#1 Finance Committee Report regarding Resolution 8526-11 and Ordinance 85-10A - Powers

The Finance Committee met this evening. We had three items before us. The first was proposed resolution 8526-11, the One-Year Consolidated Action Plan for CDBG, ESG and HOME programs. We had much discussion regarding this including our colleague Mr. Bullock had submitted in writing a list of suggestions or questions which we covered and we may want to cover some of that again on the floor this evening with respect to senior needs, with respect to bicycle plans for the City and with respect for water for community gardens and Keep Lakewood Beautiful and again we may get into that

discussion a little bit more. On each of those items the administration had responses and had been prepared by Mr. Bullock and their own work in advance and those questions were answered to the satisfaction of the committee. We did, in discussion with the members of the administration and the Chairs of the CAC who have put in the hundreds of hours of work necessary to make this resolution a reality. There was two changes to the plan or to the Resolution that were suggested. One was to add the words “and Council” after each instance of CAC and I will make that motion tonight on the floor. Also, to increase funding by \$7,000 on the Department of Human Services Division the Child Scholarships Assistance Program, to increase that award, a recommendation by the CAC by \$7,000 and to decrease by the same amount, the Domestic Violence and Child Advocacy Center program that was recommended for funding, to decrease it by \$7,000. That was a new program and give them a year to establish themselves and come back before the CAC. Again, the Chairs did agree with those two recommendations. We will be making such a recommendation on the floor. Having said that full committee of Finance recommended passage of that resolution this evening by the full Council.

The second item before us was proposed ordinance 85-10A. This is the computer capital ordinance. These are for machines necessary for our FCC compliance and these are budgeted funds and the committee is recommending passage this evening on third reading by the full Council. The last matter before us is not on our docket before us this evening but just to report, we had a discussion including an executive session determining the settlement of Workers’ Compensation litigation. The full committee asked that a report be prepared for us that we have approved that particular settlement. That being all the business before the committee, we adjourned.

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

2. **RESOLUTION NO. 8526-11** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five (5) members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing and directing the Mayor to submit the Fiscal Year (FY) 2012 One-Year Action Plan of the Consolidated Plan, which includes dollar allocations and activities for federal Community Development Block Grant (CDBG) funds and Emergency Solutions Grant (ESG) funds, and incorporates the City’s application for CDBG funds, ESG funds, HOME investment Partnership funds, and all amendments thereto and all understandings and assurances contained therein, to the U.S. Department of Housing and Urban Development (HUD). (REFERRED TO THE FINANCE COMMITTEE 10/3/11) (Pg. 5)

Motion by Mr. Powers, seconded by Ms. Madigan, to amend Resolution No. 8526-11 by adding the words, “and Council” after each instances of “CAC” in Sections 1 & 2 and also to amend the item with respect to the Childcare Scholarship Assistance; increasing that amount by \$7,000 to a total of \$67,000 and a corresponding decrease in the advocacy

for Lakewood victims of domestic violence by \$7,000 taking that down to \$6,827 recommendation

Yeas: Anderson, Bullock, Juris, Madigan, Nowlin, Powers, Smith

Nays: None

Motion adopted. Resolution No. 8526-11 adopted as amended.

Motion by Mr. Powers, seconded by Ms. Madigan, to adopt Resolution No. 8526-11 as amended.

Yeas: Anderson, Bullock, Juris, Madigan, Nowlin, Powers, Smith

Nays: None

Motion adopted. Resolution No. 8526-11 adopted as amended.

3. **ORDINANCE NO. 85-10A** - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members of Council otherwise, it shall take effect and be in force after the earliest period allowed by law amending Ordinance 85-10, adopted December 22, 2010 to purchase additional equipment, authorizing and directing the Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager to advertise for bid and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood for the purchase of **Computers & Systems**, with contracts not to exceed the specified amounts shown without separate resolution of Council. (PLACED ON 1ST READING & REFERRED TO THE FINANCE COMMITTEE 10/3/11, 2ND READING 10/17/11) (Pg. 8)

Motion by Ms. Madigan, seconded by Mr. Powers, to adopt Ordinance No. 85-10A.

Motion adopted. All members voting yea.

4. Public Safety Committee Report regarding Ordinance 37-11. (Pg.10)

Motion by Ms. Smith, seconded by Ms. Madigan, to receive and file the report.

Council President Madigan asks the Law Director to speak to the Ordinance.

Law Director Butler: Before you is a version of the ordinance that you have only recently seen in an email or attached, some of you have seen attached to an email. Those are the folks who have participated thus far in the Public Safety Committee discussions. This version before you is a version that I prepared and I prepared it after the last, this, I'm sure is very frustrating to the members of the Public Safety Committee who have sat through all of these meetings, but I prepared this version that's in front of you tonight; the one that's highlighted at the top that says "substitute for original" in response to some additional research that I was doing after the Public Safety Committee last met. One of the concerns that I have with the ordinance that would otherwise be before you tonight is

that it automatically sets a requirement that the stack be raised an additional 5 feet above the highest peak of any residence located less than a 150 feet from the site of the smoke stack.

I did some research with the United States EPA, I spoke with our own Fire Chief and the concern is that by actually raising the stack height automatically you could lessen the temperature of the smoke coming out of the stack and therefore create denser smoke that has more difficulty rising. So, it could actually either contribute more to or remain or keep the level smoke of at the level that it's at currently.

Now, that's not a given. That's a possibility but by automatically raising the stack height to a level that's five feet higher than any other roof within 150 feet it doesn't automatically mean you're going to be abating a nuisance condition.

The version before you strikes that automatic requirement. Now, what does it also do? It adds provisions and you're going to see these in underlined red text on the second to last page of the ordinance. It adds options for our inspectors. If a nuisance condition is found. If a nuisance condition is found, the City, regardless of whether or not these options that I've added in red text as a suggestion are adopted, the City has at its disposal a number of options. All the way through an attempt to abate the nuisance condition by forcing the owner to shut down the woodburning boiler altogether. That option remains available to us whether you approve of the substitute version in front of you tonight or the version I put in front of you. But, this makes more explicit, this version that I put in front of you that the City may take certain enforcement steps to try to arrive at the best way to control a nuisance condition without shutting down the appliance altogether which represents for those who have installed them a substantial investment. Those include, extending the stack height if it's warranted, forcing the owner to install a catalytic converter, which is what I believe Vermont has done, and was a suggestion made by Councilman Juris early in these discussions, requiring that the addition of fuel to the woodburning boiler be limited to a certain number of hours or times per day so as to eliminate the frequent emission of dense smoke which is my understanding, after doing this research occurs when you add fuel; the worst of the smoke occurs when you add fuel to the boiler. Requiring, with the appropriate technology, that the smoke emitted from a woodfired boiler be of a reasonable opacity over a period of time, or as a sort of a last option, requiring that it be shut down altogether if nuisance conditions aren't abated. I didn't just dream of these, I used model regulations advanced by an entity NESCOM; which is an organization that is technical advisors to both the United States EPA and six northeast United States states on pollutants in general also the use of hydronic heaters or woodburning boilers.

Those model regulations include provisions; each one of these provisions that is before you tonight, as options for those states to adopt. I think what this the sum and substance with this version that's before you is as follows:

You put the owners of woodburning boilers on notice that these are some of the things that the City can ask of you if nuisance conditions are found and not abated by the owner.

But it doesn't make them mandatory because there may be better provisions out there as we advance in technology and there may be less intrusive ways to abate the nuisance without the owner having to take more expensive, more drastic steps to do so. One of the concerns in addition to the density of the smoke with extending the height of the stack is that it could be extraordinarily expensive to do so in order to keep the stack safe. So, we want to take that into consideration. I think all of these things require the careful, thoughtful consideration of the inspectors, that's why they're added as options and not requirements.

One message I also want to make clear though is that while these are options, they will not be overlooked because they are options. If nuisance conditions are found, this ordinance continues to support the City in its efforts to make sure that the nuisance conditions are abated and we will continue to do that but we think this is a more flexible, reasonable ordinance. So I would encourage Council's consideration of adopting this most recent substituted version. Thank you.

Mr. Bullock indicates that he has reviewed the proposed amendments the Law Director has proposed and stated he was comfortable with them. He indicated that the Law Director was providing both enforceability and flexibility and said he would defer to the Public Safety Committee Chair.

Ms. Smith indicated support of the amendments and referenced the options that an inspector would have; specifically limiting the addition of fuel to a certain number of hours or times per day. I just have a question as to whether that has to be more defined or

Residents spoke to the ordinance; indicating the ordinance unfairly targets those with woodburning boilers and does not target fireplaces/chimneys. The ordinance places the burden to add more costs when originally was permitted; City should then pay for new requirements; argument making fireplace use and woodburning appliances similar not fair in that fireplaces do not run 24 hours. Concerns about carcinogens through woodburning, and issue with not taking winter months into account as winter months sometimes have more stagnant air.

Motion adopted. All members voting yea.

5. **ORDINANCE NO. 37-11** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members of council, or otherwise to take effect at the earliest period allowed by law, to enact new Section 521.18, Wood-Fired Boilers, for the prevention and control of air pollution from the use of wood-fired boilers, also known as wood-fired furnaces and wood-burning appliances. (**PLEASE SUBSTITUTE** for Ordinance No 37-11 Placed on 1st Reading & Referred to the Public Safety Committee 7/18/11, 2nd Reading 9/6/11) (Pg. 11)

Motion by Ms. Smith, seconded by Mr. Powers, to substitute Ordinance No. 37-11.

Yeas: Anderson, Bullock, Juris, Madigan, Nowlin, Powers, Smith
Nays: None
Motion adopted. Ordinance No. 37-11 adopted as substituted.

Motion by Ms. Madigan, seconded by Mr. Powers, to adopt Ordinance No. 37-11 as substituted
Yeas: Anderson, Bullock, Juris, Madigan, Nowlin, Powers, Smith
Nays: None
Motion adopted. Ordinance No. 37-11 adopted as substituted.

6. Public Works Committee Report regarding Ordinance No. 33-11. (To Be Provided)

#6 Public Works Committee Report regarding Ordinance 37-11– Bullock

The Public Works Committee met on this ordinance along with several other members of Council to consider and ultimately recommend to Council for adoption proposed ordinance 37-11 which would change the standard in our written ordinance regarding the declaration of snow emergencies and the consequent street parking ban from two to four inches. This, in practice, is a more workable standard for our Police and snow removal crews. The ordinance occasioned a broader discussion of updating our map of secondary snow emergency streets and other snow practices. I want to compliment the continuing attention given by Director Beno, Chief Malley and all our Directors toward optimizing efficiency in City operations. It's fair to say that throughout my service on Council this has been a consistent priority of Mayors FitzGerald and Summers and a consistent effort by the Directors and has helped us achieve the increasing efficiency and cost reductions and therefore downward pressure on taxes of recent years. These operational nuts and bolts may not be immediately apparent to the public but they make all the difference. So, I wanted to bring that to light tonight and give full credit to these efficiency movements.

Motion by Mr. Bullock, seconded by Mr. Powers, to receive and file the oral report.
Motion adopted. All members voting yea.

7. **ORDINANCE NO. 33-11** – AN ORDINANCE to amend Section 351.26 of the Codified Ordinances, Emergency During Heavy Snow Storms, for the purpose of increasing the snowfall amount in a 24-hour period that is required to trigger a prohibition against parking on City streets from two inches to four inches. (PLACED ON 1ST READING & REFERRED TO THE PUBLIC WORKS COMMITTEE 6/20/11, 2ND READING 7/5/11, DEFERRED 7/18/11, REFERRED BACK to PUBLIC WORKS COMMITTEE 9/19/11) (Pg.17)

Motion by Mr. Bullock, seconded by Ms. Madigan, to adopt Ordinance No. 33-11.
Motion adopted. All members voting yea.

8. Economic Development Committee Report regarding Resolution 8527-11. (To Be Provided)

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

#8 Economic Development Committee Report regarding Resolution 8527-11 - Juris

The Economic Development Ad Hoc Committee met on November 2nd. Present were Councilmembers Bullock, Madigan and Anderson as well as Mayor Summers and Planning and Development Director Siley. The Mayor had asked our opinion as the Economic Ad Hoc Committee on his suggested signature for the anti-poaching proposal from the County and we appreciated the opportunity to be able to discuss this. The purpose of this meeting was again to discuss the impact of the County's anti-poaching pledge on the City of Lakewood. Following a healthy discussion of the points related to the options of either signing or not signing this agreement, the Committee moved unanimously to support the Mayor in signing this pledge.

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

9. **RESOLUTION NO. 8527-11** – A RESOLUTION authorizing the Mayor to enter into an agreement with the Cuyahoga County Executive committing the City of Lakewood to attract businesses in a manner comporting with that agreement, and urging the remaining communities in Cuyahoga County to do the same. (**PLEASE SUBSTITUTE** for Resolution No. 8527-11 referred to the Economic Development Committee 10/17/11. (Pg. 19)

Motion by Ms. Madigan, seconded by Mr. Powers, to substitute Resolution No. 8527-11.
Yeas: Anderson, Bullock, Juris, Madigan, Nowlin, Powers, Smith
Nays: None
Motion adopted. Resolution No. 8527-11 substituted.

Motion by Ms. Madigan, seconded by Mr. Powers, to adopt Resolution No. 8527-11 as substituted.
Yeas: Anderson, Bullock, Juris, Madigan, Nowlin, Powers, Smith
Nays: None
Motion adopted. Resolution No. 8527-11 adopted as substituted.

10. Liquor Permit Application for C1 & C2 transfers to Evans Investment Group, 14235 Madison Avenue, from D Madison Avenue Lakewood Gas same address. (DEFERRED 9/19/11, 10/3/11, 10/17/11) (Pg. 25)

Motion by Ms. Smith, seconded by Ms. Madigan, to file no objection to this liquor permit application
Motion adopted. All members voting yea.

11. **ORDINANCE NO. 47-11** – AN ORDINANCE amending Section 902.09 of the Lakewood Codified Ordinances to modernize the code by updating an outmoded title. (PLACED ON 1ST READING & REFERRED TO THE RULES & ORDINANCES COMMITTEE 10/17/11) (Pg.26)

Motion by Ms. Madigan, seconded by Mr. Powers, to place Ordinance No. 47-11 on 2nd Reading and refer it back to the Rules & Ordinances Committee.

Motion adopted. All members voting yea.

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

12. Communication from Councilmembers Smith and Powers regarding Lakewood City Schools Commendation. (Pg.28)

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

Motion adopted. All members voting yea.

13. **RESOLUTION NO. 8529-11** – A RESOLUTION commending Lakewood City Schools for achieving an “Excellent” rating for the 2010-2011 school year by the Ohio Department of Education. (Pg.29)

Motion by Ms. Madigan, seconded by Mr. Powers, to adopt Resolution No. 8529-11.

Motion adopted. All members voting yea.

14. Communication from Councilmember Bullock regarding Proposed ordinance to provide clearer regulation for composting in Lakewood to allow successful adoption and management of composting on a broader scale. (Pg.30)

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

Motion adopted. All members voting yea.

15. **ORDINANCE NO. 49-11** – AN ORDINANCE amending Section 1783.12, Composting, for the purpose of providing clearer regulation related to composting activity in Lakewood. (Pg.31)

Motion by Ms. Madigan, seconded by Mr. Powers, to place Ordinance No. 49-11 on 1st Reading and refer it to the Public Works Committee.

Motion adopted. All members voting yea.

16. Communication from Police Chief Malley regarding Resolution for University Hospitals Health System OVI Prevention Task Force Grant. (Pg.35)

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

Motion adopted. All members voting yea.

17. **RESOLUTION NO. 8530-11** - AN RESOLUTION to take effect immediately provided it received the affirmative vote of at least five (5) members of Council or otherwise, it shall take effect and be in force after the earliest period allowed by law, authorizing the Mayor, as Safety Director, to enter into agreements on behalf of the City to accept an expend grant funds, in an amount not to exceed \$10,377.47, from University Hospitals Health Systems for the purpose of providing saturation patrols to enforce OVI laws within the City of Lakewood. (Pg.36)

Motion by Ms. Madigan, seconded by Mr. Powers, to adopt Resolution No. 8430-11.

Motion adopted. All members voting yea.

18. Communication from Human Resources Director Yousefi regarding Salary Ordinance Revisions; Adding Title of Part-time Dispatcher with Grade; Establishing Chief Prosecutor as a full-time Position & fixing Grade. (Pg.38)

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

Motion adopted. All members voting yea.

19. **ORDINANCE NO. 50-11** - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, to provide for creating positions and rates of pay for full-time and certain part-time annual salaried employees and hourly rate employees not covered by a collective bargaining agreement in the several departments, divisions and offices of the City of Lakewood, including the Chief of Fire, Chief of Police and Civil Service Commissioners. (Pg. 39)

Motion by Ms. Madigan, seconded by Mr. Powers, to place Ordinance 50-11 on 1st Reading and refer it to the Rules & Ordinances Committee.

Motion adopted. All members voting yea.

20. Communication from Human Services Director Buckon regarding Family to Family Neighborhood System of Care Program. (Pg.45)

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

Motion adopted. All members voting yea.

21. **RESOLUTION NO. 8531-11** - A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five (5) members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor or his designee to enter into an amendment to an agreement with the Cuyahoga County Department of Children Family Services for the Family to Family Neighborhood System of Care program which will increase funding to the City of Lakewood estimated to be \$80,116.00. (Pg.46)

Motion by Ms. Madigan, seconded by Mr. Powers, to adopt Resolution No. 8531-11.

Motion adopted. All members voting yea.

Motion by Ms. Madigan, seconded by Mr. Powers, to adjourn the meeting.

Motion adopted. All members present voting yea.

Meeting adjourned 8:42 PM.

Approved: _____

CLERK

PRESIDENT