

**THE CITY OF KENT, OHIO
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 21, 2007**

This regular meeting of Kent City Council was called to order at 7:30 p.m. on Wed., March 21, 2007 by Mayor & President of Council, John Fender. Mayor Fender welcomed those present at this time.

PRESENT: MR. BARGERSTOCK, MR. DELEONE, MR. FERRARA, MS. GAVRILOFF, MR. HAWKSLEY, MR. KUHAR, MS. OSWITCH, MR. SCHULTZ & MR. WILSON

ALSO PRESENT: D. RULLER, CITY MANAGER; J. FENDER, MAYOR & PRESIDENT OF COUNCIL; L. COPLEY, CLERK OF COUNCIL; J. SILVER, LAW DIRECTOR; AND G. LOCKE, ACTING DIR. OF COMMUNITY DEVELOPMENT

Mayor Fender called upon Mr. Kuhar for his opening remarks at this time.

Mr. Kuhar said that some Council members had a long day, and he had no opening remarks. Mr. Kuhar led all present in the Pledge of Allegiance.

MOTION TO APPROVE THE MINUTES OF THE REGULAR COUNCIL MEETING OF MARCH 7, 2007 AND THE PUBLIC HEARING OF MARCH 7, 2007.

Motion made by Ms. Gavriloff, seconded by Mr. Hawksley, and carried by a voice vote of 9-0.

COMMUNICATIONS

Mayor Fender called for audience comment at this time, reminding those wishing to address Council to sign up with the Clerk of Council who will call them forward. Hearing no (further) audience comment, Mayor Fender called upon the Clerk for the written correspondence at this time.

The Clerk reported that a copy of a letter sent to Gary Locke, Acting Director of Community Development, was received on Mar. 14, 2007, from Chris Myers of Vine Street. She said that author of the letter thanked all involved individuals who assisted with the cleanup of a property on S. Willow Street.

The Clerk reported that a copy of an email sent to the Beacon Journal from Council member Bargerstock was received on March 12, 2007, clarifying his proposal for an Admissions Tax, and disputing the Law Director's reference to it as a Head Tax. She said this email was forwarded to all members of Council previously.

The Clerk reported that another email was received from Council member Bargerstock on the same day, expressing his concern about a letter sent to State Rep. Chandler by the Law Director. She said that Mr. Bargerstock felt it was not authorized by Council and should be rescinded. The Clerk reported that this email was forwarded to all members of Council previously.

The Clerk reported that a copy of an email was received from Council member Ferrara supporting the University/City relationship, and disputing facts in the Beacon Journal article of March 12, 2007. She said this email was forwarded to all members of Council previously.

The Clerk reported that an email was received on March 14, 2007, speaking against the idea of an Admissions Tax, from Denise Drotleff. The Clerk reported that Ms. Drotleff said that people really wanted a reduction of taxes rather than any new taxes.

The Clerk reported that minutes of the Feb. 8, 2007 Standing Rock Cemetery Board meeting were placed on file by Council's representative, Mr. DeLeone, on March 14, 2007.

The Clerk reported that an email was received on March 15, 2007 from Council member Bargerstock,

disagreeing with Council member Ferrara, and explaining more about an admission tax.

The Clerk reported that another email was received on March 15, 2007 from Council member Bargerstock, with a forwarded email from Jesse Grimm, who agreed with Council member Bargerstock's suggestion on an admission tax.

Hearing no further written correspondence, the Mayor called upon the City Manager for his report. Mr. Ruller said there was no written report, and asked for authorization on Draft No. 07-28.

MOTION TO AUTHORIZE DRAFT NO. 07-28.

Motion made by Mr. Wilson, seconded by Ms. Oswitch, and carried by a voice vote of 9-0.

Mr. Ruller thanked those members who joined him at Kent State University during the afternoon meeting with the Undergraduate Student Senate.

STANDING COMMITTEE REPORTS

COMMUNITY DEVELOPMENT COMMITTEE

The Mayor asked the Clerk to read Draft No. 07-28 by title only at this time.

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH THE STATE OF OHIO DEPARTMENT OF DEVELOPMENT FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2009 FOR THE ADMINISTRATION OF A HOUSING REVOLVING LOAN FUND, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Ms. Oswitch, seconded by Mr. Wilson.

Roll call was taken on the vote. Voting aye: Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch Mr. Schultz, Mr. Wilson. The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Ms. Oswitch, seconded by Mr. Ferrara.

Roll call was taken on the vote. Voting aye: Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch Mr. Schultz, Mr. Wilson. The motion carried by a roll call vote of 9-0.

2007-24: AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH THE STATE OF OHIO DEPARTMENT OF DEVELOPMENT FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2009 FOR THE ADMINISTRATION OF A HOUSING REVOLVING LOAN FUND, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

FINANCE COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF MARCH 14, 2007 AND THE RECOMMENDED ACTIONS.

Motion made by Mr. Ferrara, seconded by Mr. Hawksley.

MOTION TO AMEND ACTION #2, TO INCLUDE THE GAS FIRED ELECTRIC GENERATOR FOR

OPERATION OF ONE ELECTRIC PUMP, APPROVING THE BID FOR \$52,792 FROM GENERATOR SYSTEMS, INC., AS AN EMERGENCY.

Motion made by Mr. Wilson, seconded by Mr. Bargerstock, and carried by a voice vote of 9-0.

The original motion, as amended, carried by a voice vote of 9-0.

The following actions were approved by the aforementioned motion:

- 1) TO AUTHORIZE THE GRANT APPLICATION FOR THE CHRISTENSON FOUNDATION
- 2) TO AUTHORIZE THE REPROGRAMMING OF 2007 CAPITAL FUNDS FOR THE WATER PLANT, TO INCLUDE THE GAS FIRED ELECTRIC GENERATOR FOR OPERATION OF ONE ELECTRIC PUMP, APPROVING THE BID FOR \$52,792 FROM GENERATOR SYSTEMS, INC. AS AN EMERGENCY.
- 3) TO AUTHORIZE THE GLASS VESTIBULE FOR THE COUNCIL OFFICE

The Mayor asked the Clerk to read Draft No. 07-26 by title only at this time.

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO APPLY FOR A GRANT IN THE AMOUNT OF \$ 1,000.00 FROM THE HENRY V. AND FRANCES W. CHRISTENSON FOUNDATION FOR THE CITY OF KENT'S ADOPT-A-SPOT PROGRAM, AND UPON AWARDING OF THE GRANT, AUTHORIZING APPROPRIATION OF FUNDS THEREFOR, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Mr. Wilson, seconded by Mr. Bargerstock.

Roll call was taken on the vote. Voting aye: Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch Mr. Schultz, Mr. Wilson. Bargerstock, The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Ms. Oswitch.

Roll call was taken on the vote. Voting aye: Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch Mr. Schultz, Mr. Wilson. Bargerstock, The motion carried by a roll call vote of 9-0.

2007-25: AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO APPLY FOR A GRANT IN THE AMOUNT OF \$ 1,000.00 FROM THE HENRY V. AND FRANCES W. CHRISTENSON FOUNDATION FOR THE CITY OF KENT'S ADOPT-A-SPOT PROGRAM, AND UPON AWARDING OF THE GRANT, AUTHORIZING APPROPRIATION OF FUNDS THEREFOR, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

HEALTH & SAFETY COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF MARCH 14, 2007 AND THE RECOMMENDED ACTIONS.

Motion made by Ms. Gavriloff, seconded by Ms. Oswitch, and carried by a voice vote of 9-0.

The following actions were approved by the aforementioned motion:

- 1) TO AUTHORIZE THE LEGISLATION FOR GAMING MACHINES, WITH THE INCLUSION OF THE EMERGENCY CLAUSE.
- 2) TO AUTHORIZE COORDINATION BETWEEN THE SERVICE DEPARTMENT AND THE POLICE DEPARTMENT, WITH REGARD TO BLOCKING OFF MUNICIPAL PARKING LOTS IN

THE AREA OF CITY HALL ON ACTIVE WEEKEND NIGHTS.

The Mayor asked the Clerk to read Draft No. 07-29 by title only at this time.

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF KENT, OHIO, SO AS TO ADD CHAPTER 770, STYLED "AMUSEMENT ARCADES," AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Ms. Oswitch, seconded by Ms. Gavriloff.

Roll call was taken on the vote. Voting aye: Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Ms. Oswitch, seconded by Ms. Gavriloff.

Roll call was taken on the vote. Voting aye: Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, The motion carried by a roll call vote of 9-0.

2007-26: AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF KENT, OHIO, SO AS TO ADD CHAPTER 770, STYLED "AMUSEMENT ARCADES," AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

LAND USE COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF MARCH 14, 2007, WHERE INFORMATION WAS RECEIVED ON THE TEXT AMENDMENT TO THE ZONING CODE AND NO ACTION TAKEN.

Motion made by Mr. Ferrara, seconded by Mr. Wilson, and carried by a voice vote of 9-0.

MOTION TO APPROVE THE PLANNING COMMISSION'S RECOMMENDATION REGARDING A TEXT AMENDMENT CHANGING THE GAP IN FENCING AROUND SWIMMING POOLS.

Motion made by Mr. Wilson, seconded by Mr. DeLeone.

Ms. Oswitch said she had several concerns. She said it was unfair to the rest of the community to change the policy based on one development. She expressed concern with the safety aspect, with respect to water.

Mr. Hawksley said for informational purposes, they did change the commercial code about eight to ten years earlier to three inches because of the safety factor.

Ms. Gavriloff said she would vote against the motion. She said that children can put their head through the rails, and if their head fits, so will their body. She said they were setting themselves up for a tragedy.

Mr. Kuhar said he has mixed feelings, adding that most people go to Home Depot or Lowes to buy their fences, and are stuck with the four-inch opening. He said the other concern is that they are not designed for swimming pools, and he has an issue with small children being harmed. Mr. Kuhar said he would vote against the motion.

The motion failed by a hand vote of 3-6, with Mr. DeLeone, Mr. Bargerstock, and Mr. Wilson supporting the motion, with all others dissenting.

STREETS, SIDEWALKS & UTILITIES COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF MARCH 14, 2007 AND THE RECOMMENDED ACTIONS.

Motion made by Ms. Oswitch, seconded by Mr. Ferrara, and carried by a voice vote of 9-0.

The following actions were approved by the aforementioned motion:

- 1) TO AUTHORIZE THE APPROPRIATE LEGISLATION FOR DRAINAGE AREA Q, PHASE IV.
- 2) TO AUTHORIZE THE APPLICATION FOR THE WATER REVOLVING LOAN FUND FOR THE FRANKLIN HILLS PROJECT.

The Mayor asked the Clerk to read Draft No. 07-27 by title only at this time.

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ACCEPT AND ENTER INTO A WATER SUPPLY REVOLVING LOAN ACCOUNT ON BEHALF OF THE CITY OF KENT FOR PLANNING, DESIGN AND/OR CONSTRUCTION OF DRINKING WATER FACILITIES; DESIGNATING A DEDICATED REPAYMENT SOURCE FOR THE LOAN, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Ms. Oswitch, seconded by Mr. Ferrara.

Roll call was taken on the vote. Voting aye: Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, and Ms. Gavrilloff. The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Ms. Oswitch, seconded by Ms. Gavrilloff.

Roll call was taken on the vote. Voting aye: Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, and Ms. Gavrilloff. The motion carried by a roll call vote of 9-0.

2007-27: A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ACCEPT AND ENTER INTO A WATER SUPPLY REVOLVING LOAN ACCOUNT ON BEHALF OF THE CITY OF KENT FOR PLANNING, DESIGN AND/OR CONSTRUCTION OF DRINKING WATER FACILITIES; DESIGNATING A DEDICATED REPAYMENT SOURCE FOR THE LOAN, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

SPECIAL COMMITTEE REPORTS None

UNFINISHED BUSINESS None

NEW BUSINESS

MOTION TO AUTHORIZE \$500 TO THE KENT POLICE DEPARTMENT, FROM CONTINGENCY FUNDS, FOR UPCOMING SPRING EVENTS WHERE THERE WILL BE ASSISTANCE FROM OTHER DEPARTMENTS.

Motion made by Mr. Wilson, seconded by Mr. Bargerstock, and carried by a voice vote of 9-0.

Mr. Bargerstock said he still has a concern that the letter sent by the Law Director did not match the motion made in Committee, and approved by Council. He said he would hope that there will be a follow up letter correcting that letter. Mr. Silver said after rereading the motion, he will rewrite the letter.

Ms. Oswitch said at a Streets, Sidewalks & Utilities Committee meeting in September, 2006, they authorized the Budget & Finance Department to come up with a policy for direct billing with the landlords.

She said that policy has not returned to Council.

MOTION TO REQUEST THE POLICY FOR DIRECT BILLING WITH LANDLORDS RETURN TO COUNCIL AS SOON AS POSSIBLE.

Motion made by Ms. Oswitch, seconded by Ms. Gavrilloff.

Ms. Oswitch said she came by this by accident. She said she was looking for the policy, and questioned if they are losing money by not having the policy in effect. She said it is imperative they return with it quickly.

Mr. Kuhar said he also requested that the legalities be referred at that same meeting.

Mr. Bargerstock asked how they have discussion on it when they have not received the policy, and Ms. Oswitch said the Budget & Finance Department was authorized to do this, but never came back with a policy.

Mr. Kuhar said he is remembering what Ms. Oswitch is talking about. He said he asked the Law Director to check the legalities, and suggested that request did not make the minutes. He said water is a public utility, and they cannot deny water service to anyone.

Ms. Oswitch said they are not denying anyone, just making the owner of the home responsible. Mr. Kuhar said if he were the tenant, they would be denying him a utility by not letting him sign up for water.

The motion carried by a voice vote of 9-0.

MOTION TO ASK THE LAW DIRECTOR TO CHECK INTO THE LEGALITIES OF THIS ISSUE.

Motion made by Mr. Kuhar, seconded by Mr. Bargerstock.

Mr. Wilson said he realized that Mr. Silver could not speak, as there was a motion on the floor, but asked if the Law Director automatically checks each policy to be sure it is legal. He suggested Mr. Silver could shake his head, and Mr. Silver nodded his head in assent.

Mr. Wilson said he would vote against the motion. He said it was a moot issue, because if the Law Director thought it was not legal, he would not bring it back to Council.

Mr. Bargerstock said he remembered the discussion, adding it was not whether or not it was legal, but how it was applied. He said the focus may be on boarding houses and student housing, but this may impact the commercial, industrial, and nonresidential properties that have long term leases. He said that most have triple net leases, adding the tenant assumes all responsibilities. Mr. Wilson said the property owner would want the account in the tenant's name. Mr. Bargerstock said they may be negligently impacting the industrial base, and need it to be a little more broad based than to be for rental properties only.

MOTION TO AMEND TO INCLUDE THE WORD "RESIDENTIAL"

Motion made by Mr. Schultz, seconded by Ms. Gavrilloff.

Mr. Bargerstock said that some residential uses may involve a nursing home or the Kentway Retirement Center. He said the focus may be on student housing, but would impact other areas negatively. He said it is a poor amendment, as the issue is more broad based.

Ms. Oswitch said it is a moot point, adding they discussed all of those issues at the meeting on Sept. 6, 2006, adding she has a copy of those minutes. She said Mr. Bargerstock asked all of the same questions at that meeting, prior to passage of the motion.

The amendment failed by a voice vote of 6-3, with Mr. Bargerstock, Mr. DeLeone, and Mr. Kuhar dissenting.

The original motion carried by a voice vote of 7-2, with Ms. Oswitch and Mr. Kuhar dissenting.

Mayor Fender called for Council member comments at this time. Mr. Kuhar said he recently ate at the Captain J's Seafood Restaurant. He said this restaurant is in their JEDD, and was one of the best fish dinners for a valuable price. He said that type of business has a tough survival rate unless they get a head start.

Ms. Oswitch thanked the Undergraduate Student Senate for inviting Council to their meeting. She said it was a little heated, at times, but was a great event. She said a lot of the issues need more discussion, adding the City may not be as aware as they ought to be. Ms. Oswitch said she hoped they got better connected.

Mr. Bargerstock said they had a nasty fire on College Street, adding there was a great potential for the loss of life and pets. He said he arrived after it happened, and was surprised by the level of response. He said this could have been a disastrous fire with the wrong weather conditions. He said there was a quick, appropriate response, adding they have superb safety services.

Mr. Bargerstock said he attended the same meeting, and is always pleased to be at Kent State University. He said there are often a lot of misunderstanding and misperceptions because of communication issues, and he was disheartened to hear some say they do not have representation. He said he hoped they realize they do have representation. Mr. Bargerstock applauded Justin Jeffrey and his work, adding the meetings were always balanced. He wished Mr. Jeffrey luck in the future.

Mr. Wilson thanked Mr. Jeffrey for setting up the meeting, adding it was very informative. He said he hoped they can do more. Mr. Wilson said he is not a big "emailer", adding that is why they did not hear from him the previous week. He said the comment was made that they only receive approximately \$33,000 from the state as impact fees. He said they also receive 2% income tax on every student who has a job, and all of the other employees at the University. He said this comprises 37% of their budget.

Mr. Wilson said he spoke to Marc Crail, Superintendent of Kent City Schools. He said the schools receive \$1.6 million annually from the state. He said that Dr. Crail told him it became permanent law in Ohio about five or six years earlier, and occurs annually. He said the negative impact is not that large, adding that while they benefit the schools, the schools benefits them. He said it is still more of an asset than a draw.

MAYOR'S REPORT

Mayor Fender agreed with the praise given to the Fire Department, adding he, too, was at the scene of the fire. He also thanked Mr. Jeffrey for setting up the meeting earlier in the day.

MOTION TO ADJOURN THIS MEETING

Motion made by Mr. Ferrara, seconded by Mr. Wilson, and carried by a voice vote of 9-0.

Hearing no further business before this Council, Mayor Fender adjourned this meeting at 7:55 p.m.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council