

KETTERING CITY COUNCIL
REGULAR MEETING MINUTES
June 26, 2007

The Council of the City of Kettering, Ohio, met in regular session on Tuesday, June 26, 2007, at 7:30 p.m. in the Council Chambers of the Kettering Government Center, 3600 Shroyer Road. The Mayor, Donald E. Patterson, presided and the Clerk of Council, Connie S. Gaw, recorded. This meeting was telecast live on the cable access channel.

Council Members Present: Duke, Klepacz, Lehner, Spolrich, Thompson, and Wanamaker

Council Members Absent:

Total Members Present: Seven (7)

Mayor Patterson led the audience in the Pledge of Allegiance and then gave the invocation. He introduced the cable TV operators, Earl Jones, and Joe McKenzie and thanked these volunteers for their assistance.

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSIONS

PUBLIC HEARINGS

PUBLIC HEARING – Appealing the decision of the Board of Zoning Appeals to disallow the keeping of five chickens as pets in the rear yard of the house at 1420 Barney Avenue.

Mayor Patterson asked if there was anyone planning to give testimony. Ron Hundt, Noel Haro and Staci Shreve were sworn in to give testimony on this case.

Mr. Ron Hundt, City Planner, Planning and Development Department reported that the owner of the property at 1420 Barney appealed the decision of the Board of Zoning Appeals to disallow him to keep five chickens outside of the home at this address. The five chickens are kept in a wire chicken coop in the rear yard of this property. This is a conflict with the Kettering Zoning Code. The Zoning Code allows only animals commonly deemed to be tame and domesticated. Chickens are not commonly considered tame and domesticated and are not kept inside of a residence, so therefore the applicant's animals do not meet the criteria to be considered a household pet. Staff recommends the BZA decision in this matter be sustained and the appeal of the property owner be denied.

Noel Haro, 1420 Barney Avenue – Mr. Haro stated that he is the owner of the chickens and then proceeded to present a PowerPoint presentation to Council. He explained that it is not uncommon for people to have chickens as pets. His chickens are both tame and domesticated and are family pets. Most think that anyone who would raise chickens is a hillbilly and this is simply not true. He was in the Marine Corp and is an Engineering major. His friend Staci is a Microbiology major. Their five chickens are hens, not roosters. He is a member of the Backyardchicken Forum, which has 2,400 members. There is also a website called mypetchicken.com, where you can order pet chickens in lots of three. His chickens are tame and love being held and petted. They come when called. The wire top on the coop is for their protection; to make sure predators don't get them. It is not to keep them from getting away as indicated in the staff report. There have been domesticated chickens as far back as 8,000 years ago. Standard breeds are bred flightless. Chickens are raised

in the City all of the time. Seattle allows chickens and even has a workshop that citizens can attend to get advice on how to raise them properly. The American Poultry Association quotes that 3 square foot per bird is needed. His coup has 52 square feet for the amount of chickens that he owns. Each bird has it's own personality and name. They do not smell. Dogs make much more noise than chickens. There is no crowing because they are hens. The coup is cleaned frequently. He explained that he has signatures from all of the neighbors that adjoin his property, plus several others, that have no objection to him keeping his chickens. Another worry that was expressed by staff was the question of salmonella. He asked his friend Staci to explain this to Council.

Staci Shreve, 1420 Barney Avenue – Ms. Shreve explained that salmonella is always present in the intestinal tract. Washing hands will kill salmonella. It is proven that reptiles are more likely to have salmonella, and they are allowed to be kept as pets. Chickens are actually less of a risk for salmonella than reptiles. No one else handles their chickens but them, so there is no risk of salmonella passage.

Mr. Haro stated that Dayton South Veterinary Clinic is their veterinary clinic for the chickens. It is only a couple of miles away and that is where they would take them if needed. He showed pictures of his chickens interacting with his family and dogs. He also showed a video clip of the chickens. This concluded his presentation.

COMMENTS AND QUESTIONS

Mrs. Lehner asked if the code clearly defined the word “commonly.”

Mr. Hundt replied that the word “commonly” is not clearly defined. It is left up to determination. Some city's do accept chickens and have standards for them. We do not have standards for chickens because they are not commonly kept in Kettering.

Mr. Klepacz thanked Mr. Haro for his nice presentation. He noticed that the dogs coexisted with the chickens and asked if the chickens also went into the house.

Mr. Haro replied that the chickens do not go in the house because they have their own chicken coup.

Mr. Klepacz asked if the chickens go to the vet on a regular basis like the dogs.

Mr. Haro replied that they do not. He has had no reason to take them to the vet yet.

Mr. Duke asked if the coop was heated in the winter.

Mr. Haro replied that this past winter he kept them in his heated garage.

Mr. Duke mentioned that in other city's they require coop to be 25 feet from the property line and asked if there were any way that Mr. Haro could apply this on his lot.

Mr. Haro replied no, because his lot is only 50 feet wide.

Mr. Thompson asked how long had they owned the chickens.

Mr. Haro replied that they got them in December of last year.

Mr. Wanamaker asked what is the life expectancy of a chicken.

Mr. Haro replied that it depends on how well they are taken care of but generally 10 to 15 years.

Mr. Hundt asked Mr. Haro if he had any further information to submit this evening. Mr. Haro stated that his presentation was complete. Mr. Hundt then instructed that the packet submitted to Council by City staff, be entered into the official record.

Mrs. Lehner asked if Council were to decide to let Mr. Haro keep his chickens, how long would it take to modify City Codes.

Mr. Schwieterman replied that it would take approximately three months.

Mr. Thompson stated that he would hoped that since it would take so long, Mr. Haro would be allowed to keep his chickens.

Mr. Eubank stated that Council's job is to determine if the Board of Zoning Appeals properly interpreted the code. If properly interpreted, then Council could give Mr. Haro up to six months to find homes for his chickens.

Mr. Thompson wondered if there was not some way that Council could handle cases on an individual basis. He would like Mr. Eubank to check into this.

Mayor Patterson reminded everyone that Council's decision is to decide if the Board of Zoning Appeals interpreted the code properly.

There being no further discussion, Mayor Patterson closed the public hearing and advised that Council would render a decision at a future Council Meeting.

ORDINANCES IN SECOND READING

RESOLUTIONS

A RESOLUTION

NO: 8278-07

BY: MR. WANAMAKER AND MRS. LEHNER

DIRECTING THE CITY ENGINEER TO PREPARE AND FILE RENEWED, RECALCULATED, AMENDED AND/OR CONSOLIDATED ASSESSMENTS FOR STREET LIGHTING

Mr. Wanamaker read the above resolution and moved for approval. Mrs. Lehner seconded the motion.

Mr. Schwieterman explained this legislation will enable the City to renew and recalculate street light assessments. The list of assessment will be on file in the Clerk of Council's office.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION

NO: 8279-07

BY: MRS. LEHNER AND MR. SPOLRICH

AUTHORIZING THE CITY MANAGER TO ENTER INTO ONE OR MORE CONTRACTS WITH ROZZI'S FAMOUS FIREWORKS, INC. AND THE ROZZI COMPANY, INC. FOR A FIREWORKS DISPLAY AT THE 2007 GO 4TH! CELEBRATION AT DELCO PARK

Mrs. Lehner read the above resolution and moved for approval. Mr. Spolrich seconded the motion.

Mr. Schwieterman explained the total cost for the fireworks display is \$30,000 that includes electric firing and custom choreography with music. There are two separate contracts, one for the materials and one for the labor and insurance.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, No; Mayor Patterson, Yea. There being six (6) Yea votes, and one (1) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION

NO: 8280-07

BY: MR. SPOLRICH AND MR. THOMPSON

AUTHORIZING THE CITY MANAGER TO ACCEPT A \$3,000.00 GRANT FROM THE KETTERING PARKS FOUNDATION TO PROVIDE FINANCIAL ASSISTANCE TO SPECIAL NEEDS CHILDREN OF LOW-INCOME KETTERING RESIDENTS TO ATTEND CAMP DISCOVERY AND OTHER RECREATIONAL PROGRAMS OFFERED BY THE PARKS, RECREATION AND CULTURAL ARTS DEPARTMENT

Mr. Spolrich read the above resolution and moved for approval. Mr. Thompson seconded the motion.

Mr. Schwieterman explained AMBUCS has awarded a \$3,000 grant to the Kettering Parks Foundation to administer a financial assistance program for children with special needs to attend Camp Discovery. This program is available to Kettering residents only and will be administered following the guidelines by the city's pre-existing financial assistance program.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION

NO: 8281-07

BY: MR. THOMPSON AND MR. KLEPACZ

TO DECLARE THE NECESSITY AND INTENTION OF ACQUIRING CERTAIN PROPERTY INTERESTS IN PROJECT PARCELS 54WD AND 54T OF THE WEST DOROTHY LANE AND SOUTH DIXIE HIGHWAY RECONSTRUCTION PROJECT, IN THE CITY OF KETTERING, OHIO

Mr. Thompson read the above resolution and moved for approval. Mr. Klepacz seconded the motion.

Mr. Schwieterman explained that a consultant hired to acquire the right of way for the Dorothy Lane Improvement Project failed to get a mortgage release for the right of way purchased on behalf of the City. Because the consultant failed to get this release the property was purchased subject to the bank's mortgage. The bank holding the mortgage filed a foreclosure action against the property owner. If the property is foreclosed upon and is sold at sheriff's sale, the sale will include the right of way purchased on behalf of the City. This resolution is the first step in the eminent domain process and will declare the City's intent to appropriate the bank's mortgage interest in the right of way.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8282 -07
BY: MR. KLEPACZ AND MR. DUKE

AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT FOR THE PROMOTION OF BARRIER-FREE ACCESS TO RECREATION FACILITIES

Mr. Klepacz read the above resolution and moved for approval. Mr. Duke seconded the motion.

Mr. Schwieterman explained the City would like to apply for an Access Recreation Grant being offered by the Kellogg Foundation. The grant would be administered through the Dayton Foundation with an endowment fund set up to continue access projects in the future. Initial grant funds will be used to install special hard-paved trails and learning stations for those with special needs at Pondview Park.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8283-07
BY: MR. DUKE AND MR. WANAMAKER

AUTHORIZING THE CITY MANAGER TO FILE AN APPLICATION WITH THE U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, FOR THE GRANT FUNDS IN THE AMOUNT OF \$11,750.00

Mr. Duke read the above resolution and moved for approval. Mr. Wanamaker seconded the motion.

Mr. Schwieterman explained the City is eligible to submit a proposal to apply for an \$11,750.00 Federal Grant from the Bureau of Justice Assistance. This grant will provide funding for the Kettering Police Department to replace the measuring tape wheel used to measure accident scenes with a laser drive angle encoder. Funding will also be used to purchase an FBI Webcheck system and software to check fingerprints on a broader scale than currently possible.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8284-07
BY: MR. WANAMAKER AND MRS. LEHNER

AUTHORIZING THE CITY MANAGER TO FILE AN APPLICATION WITH THE U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, FOR AN "EDWARD BYRNE MEMORIAL DISCRETIONARY GRANT" IN THE AMOUNT OF \$84,000.00

Mr. Wanamaker read the above resolution and moved for approval. Mrs. Lehner seconded the motion.

Mr. Schwieterman explained this resolution will authorize the City Manager to apply for the Edward Byrne Memorial Discretionary Grant to purchase body armor, helmets and headphones for the Regional Response Team.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8285-07
BY: MRS. LEHNER AND MR. SPOLRICH

AUTHORIZING THE CITY MANAGER TO USE COMPETITIVE BARGAINING AND NEGOTIATED QUOTES TO PURCHASE TWO BATTALION VEHICLES FOR THE FIRE DEPARTMENT OR, AS AN ALTERNATIVE, TO PURCHASE SAID VEHICLES THROUGH AN APPROVED COOPERATIVE PURCHASING PROGRAM

Mrs. Lehner read the above resolution and moved for approval. Mr. Spolrich seconded the motion.

Mr. Schwieterman explained the two vehicles would replace the current staff cars used in the battalion role and by the Training Captain. Expeditions are the best model for Fire Department use in these functions.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8286-07
BY: MR. SPOLRICH AND MR. THOMPSON

AUTHORIZING THE CITY MANAGER TO FILE AN APPLICATION WITH THE HUMAN SERVICES LEVY COUNCIL OF THE MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS FOR FRAIL ELDERLY SUPPORTED SERVICES GRANT FUNDS IN THE AMOUNT OF \$27,000.00

Mr. Spolrich read the above resolution and moved for approval. Mr. Thompson seconded the motion.

Mr. Schwieterman explained the Human Services Levy Council funds service delivery for Frail Elderly residents of Montgomery County from the Frail Elderly Supported Services Fund. This money would be used to offset operating expenses at the Kettering Connection at Town & Country Shopping Center.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8287-07
BY: MR. THOMPSON AND MR. KLEPACZ

AUTHORIZING A CONTRIBUTION TO THE DAYTON FOUNDATION INC.
TO ASSIST IN ESTABLISHING THE OHIO ACCESS TO RECREATION
FUND

Mr. Thompson read the above resolution and moved for approval. Mr. Klepacz seconded the motion.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 8288-07
BY: MR. KLEPACZ AND MR. DUKE

TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR CURRENT
EXPENSES AND OTHER EXPENDITURES OF THE CITY OF KETTERING,
STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31,
2007

Mr. Klepacz read the above resolution and moved for approval. Mr. Duke seconded the motion.

Mr. Schwieterman explained this resolution will make supplemental appropriations for the Parks Foundation Financial Assistance Program Contribution – Summer Camps and the Access to Recreation Grant.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

ORDINANCES IN FIRST READING

AN ORDINANCE

TO AMEND THE TRAFFIC CONTROL MAP AND THE TRAFFIC
CONTROL FILE OF THE CITY OF KETTERING, OHIO TO SHOW THE
INSTALLATION OF TRAFFIC SIGNS ON VARIOUS STREETS AND
AVENUES IN THE CITY OF KETTERING, OHIO

- A. SWIGERT ROAD AT CIRCULATORY ROADWAY – YIELD, AND
CIRCULATORY ROADWAY AT SWIGERT ROAD – ROW;
- B. JAMES MADISON TRAIL SOUTH AT CIRCULATORY ROADWAY
– YIELD, AND CIRCULATORY ROADWAY AT JAMES MADISON
TRAIL SOUTH – ROW;
- C. JAMES MADISON TRAIL NORTH AT CIRCULATORY ROADWAY
– YIELD AND CIRCULATORY ROADWAY AT JAMES MADISON
TRAIL NORTH ROW.

Mr. Duke read the above ordinance in first reading. The ordinance will appear on the July 10, 2007, Council meeting agenda for second reading.

AN ORDINANCE

TO AMEND THE TRAFFIC CONTROL MAP AND THE TRAFFIC
CONTROL FILE OF THE CITY OF KETTERING, OHIO TO SHOW THE
INSTALLATION OF TRAFFIC SIGNS/SIGNALS ON VARIOUS STREETS
AND AVENUES IN THE CITY OF KETTERING, OHIO

- A. "NO PARKING ANYTIME" ON THE EAST SIDE OF BURCHDALE STREET FROM THE INTERSECTION WITH RIDGEVILLE (SOUTH EXTENDED CURB) SOUTHWESTWARDLY FOR A DISTANCE OF 155 FEET.

Mr. Wanamaker read the above ordinance in first reading. The ordinance will appear on the July 10, 2007, Council meeting agenda for second reading.

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT

Mr. Mark Schwieterman, City Manager reported:

Go 4th! Celebration – This year's celebration is on July 4, 2007 at Delco Park. Festivities begin at 6:00 pm., with fireworks at 9:45 p.m. (dusk). This is a great community celebration and he urged all citizens to attend to enjoy the festivities. Call the Parks, Recreation, and Cultural Arts Department at 296-2454 with questions.

OTHER BUSINESS NOT ON WRITTEN AGENDA

Communications and Reports

Audience Participation (5 Minute Limit Per Speaker)

Phyllis Donovan, 309 Earnshaw Drive - Mrs. Donovan has lived in Kettering for many years and raised her three sons here. She is here this evening because of a neighbor who is running a business from his home. He keeps all his equipment in his yard and parks his work vehicles in the street. She doesn't feel this belongs in the neighborhood. She received a notice of violation from the City informing her that she must clean the awning over her door. She is upset about this and wonders why she is getting a notice to clean up her property when they never will do anything about her neighbor. She doesn't like the way this whole thing is being handled and feels it is unfair.

Mayor Patterson stated the City recently created a Property Maintenance Task Force to review issues like Mrs. Donovan just reported. He is also tired of this type of behavior. The City plans to take a very aggressive approach to address property maintenance issues. If we don't start maintaining our neighborhoods we will begin to have the same problems that the inner city neighborhoods have. The Planning Department has hired additional personnel for the summer to increase our property maintenance patrol. He instructed Mrs. Donovan to give her information to Mr. Robillard, Planning and Development Director so that he can investigate her concerns.

Mrs. Lehner expressed that as part of the increased inspections other citizens will need to clean their awnings, etc. and be aware that some things may get attention that normally would not.

Mr. Duke asked what type of equipment and is it on their property or on the street.

Mrs. Donovan replied that she thinks it is a tree trimming business and the equipment is on the street and on their property. When inspectors come out through the week during the day all of the equipment is gone.

Mayor Patterson stated this is an issue the City plans to address. We need inspectors to work in the evenings and on weekends to identify these types of problems.

COUNCIL COMMITTEE REPORTS

Mr. Spolrich reported that he reviewed the minutes of the regular and workshop meeting of June 12, 2007, and moved the minutes be approved. Mr. Thompson seconded the motion and there being seven (7) yea votes, and no (0) nay votes, the motion was declared carried by a majority vote.

Mr. Wanamaker – The Street Department just began patching over 100 County cuts. Last Thursday he attended the Kiwanis Club Banquet where they honored Councilmember Keith Thompson as their Citizens of the Year. Congratulations to Mr. Thompson.

Mrs. Lehner – Congratulated Mr. Thompson and expressed that Council is very proud of him.

Mr. Spolrich – No Report.

Mr. Thompson – Thanked the Kiwanis Club for the honor of being their Citizen of the Year. He has received several copies of the Dayton Daily News article of himself and his dogs. The reason he voted no on the fireworks resolutions is because he does not like fireworks. He is opposed to them. Fireworks are and unnecessary risk that the City takes every year. Every year you read about someone being killed at a fireworks display. Fireworks of all kinds are dangerous, even the little sparklers that kids play with.

Mr. Klepacz – The Chimneys of Oak Creek are having a community blood drive on Thursday, June 28, 2007. He encouraged all citizens to participate.

Mr. Duke – Last Wednesday evening the Sister City Committee held their annual Spass Nacht fundraising event. Over 2000 citizens attended. It was by far the largest crowd they have ever had. The committee worked very hard and he congratulated them for a great event.

Mayor Patterson – At the last meeting he had the sad job of telling everyone that Bernie Wannemacher had passed away. We lost a great friend when we lost Bernie. Condolences go out to his family. He had a great time at Spass Nacht. The Sister City Committee and City Staff worked very hard on this event and he thanked them. Congratulations to Mr. Thompson for being named as the Citizen of the Year. He is very deserving of this award. He thanked the Kiwanis Club.

There being no further business to come before this meeting of the Kettering City Council, Mayor Patterson adjourned the meeting at 8:59 p.m.

ATTEST:

Connie S. Gaw
Clerk of Council

DONALD E. PATTERSON, MAYOR