

KIRTLAND CITY COUNCIL MINUTES

July 12, 2021

The meeting of Kirtland City Council was called to order at 7:00 p.m. by Council President Richard Lowery. Mr. Schulz led the prayer which followed the Pledge of Allegiance. The members of Council present were: Scott Haymer, John Lesnick, Richard Lowery, Jeffrey Ruple, Matthew Schulz, Joseph Smolic and Kelly Wolfe.

Administrative personnel present were: Mayor Kevin Potter, Law Director Matthew Lallo, Assistant Finance Director Louis Slapnick, Service Director Joseph Fornaro and Police Sergeant Jamey Fisher.

DEPARTMENT REPORTS:

Sergeant Jamey Fisher did not present a formal report and no questions were asked of him.

Assistant Finance Director Louis Slapnick advised that the Finance Department has one ordinance on tonight's agenda, Ordinance No. 21-O-41 amending the 2021 appropriation; he requested this be passed tonight.

Service Director Joseph Fornaro advised that the pre-construction meeting for the 2021 road program is scheduled for tomorrow morning. Councilman Schulz requested that once the schedule is set, Mr. Fornaro share that information with Council while on recess.

Law Director Matthew Lallo did not present a formal report and no questions were asked of him.

MAYOR'S REPORT/ANNOUNCEMENTS:

Mayor Potter noted that former Mayor Ed Podojil passed away last week; calling hours are tomorrow (Tuesday) at Divine Word from 3:00 to 7:00 p.m., and the funeral mass will be held at Divine Word at 10:30 a.m. Wednesday. Flowers were sent to the Church today on behalf of the City of Kirtland.

STANDING COMMITTEE REPORTS:

None.

CORRESPONDENCE:

None.

PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:

None.

OLD BUSINESS:

None.

NEW BUSINESS:**PUBLIC COMMENTS ON AGENDA ITEMS OF NEW BUSINESS:**

None.

**ORDINANCE NO. 21-O-41
(Mayor Potter)**

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**AN ORDINANCE AMENDING ORDINANCE NO. 21-O-9
RELATING TO THE APPROPRIATION FOR THE YEAR
2021.**

Council President Lowery noted that Assistant Finance Director Slapnicker shared the details of the amendment during the work session and requested that Council pass this legislation tonight. Mr. Lesnick moved to waive the three readings, with the second by Mr. Smolic. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SMOLIC, WOLFE, HAYMER, LESNICK, LOWERY, RUPLE AND SCHULZ. VOTING NAY: NONE).** Mr. Lesnick moved to adopt, with the second by Mr. Smolic. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SMOLIC, WOLFE, HAYMER, LESNICK, LOWERY, RUPLE AND SCHULZ. VOTING NAY: NONE).**

COUNCIL COMMENTS:

Referring to public comments from last week's meeting, Councilman Lesnick stated he made some inquiries regarding the development of the property next to City Hall. He noted that he will soon have some information to share with Council.

Councilman Schulz suggested that since the meetings are being broadcast on Zoom, it should be noted on the agenda. Mr. Lallo noted that since Council is now meeting in person, the Zoom meeting has been an extra benefit for residents to observe and listen to the meeting if they cannot come in person. Mr. Lallo noted it is Council's decision whether they want the meetings to continue streaming on Zoom; he noted it is not a legal requirement. In discussion, it was noted that people are being reached, and they have the opportunity to listen to the meeting if they are not comfortable attending in person. Mayor Potter stated that he is expecting a cost estimate to cast the meeting by some other medium, noting that it could be accessed from the City website. Council President Lowery noted that the information for any streaming should be included on the agenda.

CONTINUING CONCERNS:

Council President Lowery noted that this is an opportunity for the public to address Council about any continuing concerns. There were no comments from the public.

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HEARING:

To Consider the Mayor's Request for the Termination of Lance Nosse Pursuant to Ordinance 244.01(d)

Council President Lowery requested that any preliminary statements be made before proceeding with the hearing.

Frank Consolo, Attorney for Lance Nosse addressed Council, stating their disagreement with the Revised Code Statute that is being used for this proceeding, stating that it relates to villages and not cities. He stated that he did not receive notice of this hearing until Thursday, July 8, around noon, while he was concluding a two-week jury trial on another matter; therefore he had no time to meet with his client.

HEARING (continued):

Mr. Consolo requested a continuance of the hearing, stating concern that Chief Nosse's due process rights to a fair hearing and a fair defense have been compromised. He noted that the charges contain allegations of various individuals, and he would like the opportunity to have those individuals identified to him, whether they were interviewed and whether notes were taken; and he would like an opportunity to interview them. Mr. Consolo stated that during a civil proceeding, he would have the ability of discovery beforehand, and he would be able to address any statements or allegations made by witnesses or victims.

Mr. Consolo stated they believe this is a pattern that has happened in the City of Kirtland over the last several years, with regard to the OPBA (Police Union) inserting themselves into the Police Department and dictating who will run the Department; he provided examples of past issues. He stated he would like to see personnel files and the record of proceedings over the last decade when complaints have been made by the Police Union against the Police Chief. Mr. Consolo stated he would request a 30-day continuance.

Addressing Mr. Consolo's concerns regarding the Revised Code Statute, Mr. Lallo stated that in Chapter 733, there are several sub-sections relating to cities, noting that it is stated that the Mayor of a municipal corporation shall bring charges. He stated it is the City's position that 733.35 and the subsequent provisions do apply, and it requires that a charging document be served and a hearing be held at the next regularly scheduled meeting. He noted that the previous regularly scheduled Council meeting was on Wednesday, July 7, with tonight's meeting being the next regularly scheduled meeting. Mr. Lallo stated that the statute gives Council the discretion to consider a continuance if brought by the accused.

Mr. Lallo noted that a substantial amount of documents were provided to Mr. Consolo on May 19, which encompassed all the evidence the City is set to present today. With regard to the reasons the continuance is being requested, Mr. Lallo stated that Mr. Consolo is familiar with the facts surrounding this case and the allegations, and he knows a great deal regarding the history of the past issues he mentioned. Mr. Lallo stated the City will not call certain witnesses today, if that will alleviate Mr. Consolo's concerns. Mr. Lallo stated he believes Mr. Consolo's concerns have been addressed, and he asked that Council proceed today.

Responding to Council President Lowery, Mr. Lallo advised that this is an administrative proceeding; he noted the rules of evidence are relaxed and it is a more lax procedure. Answering Councilman Lesnick, Mr. Lallo discussed the records that were provided to Mr. Consolo.

Mr. Consolo stated that whether it is an administrative proceeding or a civil hearing in court, it is their position that Chief Nosse is still afforded due process. He acknowledged that Mr. Lallo has provided all of the noted documents, but his concern is being able to respond to allegations.

Responding to a question about the rescinded resignation, Mr. Consolo stated that the pay-out amount was significantly less. He stated that an agreement was desired, but the City did not want to include a non-disparagement clause.

Answering Councilman Lesnick, Mr. Lallo stated there was an estimated pay-out in May, but the updated amount had less accrued sick time; he noted there may have been a calculation error in the earlier estimate. With regard to the non-disparagement clause, Mr. Lallo stated that he indicated to Mr. Consolo that he does not have authority to require that all of Council and all of the City stay silent on certain issues. Discussion ensued in this regard.

Councilman Ruple inquired whether there was possibility of an agreement if the pay-out amount and the disparagement clause can be worked out. Mr. Consolo stated they would like to reach an agreement, but the difference in the two estimates was \$10,000. Answering Councilman Smolic, Mr. Lallo stated it is his understanding that the most recent document is accurate.

HEARING (continued):

Councilman Ruple stated that if Mr. Consolo is indicating in good faith that there is a chance to work this out without proceeding with the hearing, he would recommend a continuance. Mr. Lallo advised that the hearing can be re-scheduled for a special meeting.

Council President Lowery stated that if a continuance is considered by Council, it will need to be put to a vote. If the vote passes, it will be continued to a date that will be scheduled tonight. If the vote does not pass, the hearing will proceed this evening. Mr. Lallo advised that a simple majority would be needed to pass the motion.

Answering questions from Council, Mr. Lallo stated that for any case, the goal is to resolve it before trial, but it does not always happen; he noted that he will not provide a recommendation to Council regarding whether or not Council should allow a continuance.

Responding to Councilman Haymer, Mr. Lallo stated that if an agreement is reached, there would be legislation authorizing the Mayor to sign the agreement.

Council members inquired if the pay-out amount and disparagement clause are the only items of concern, and if this can be resolved by Friday. Mr. Consolo stated they would need to go back to the initial discussions with the Law Director and the City when this first began in May; there may be one or two more items. He stated they can try to get this resolved by Friday.

Upon discussion, Mr. Schulz moved to continue this hearing on Monday, August 2, 2021 at 6:00 p.m. Mr. Lesnick provided the second. Mr. Smolic noted that the financial amount and the disparagement clause are the items in question. Mr. Consolo stated that in light of the other evidence they believe will come out, they will go back to the initial discussions with the City, which might have included items other than those two; he stated he does not want to be misleading. Mr. Lesnick stated his concern is whether this can be done by Friday (July 16); Mr. Consolo indicated he will work to get it done by Friday. Mr. Lallo stated that should this motion pass, he will notify Council whether or not there is a tentative agreement; if there is no tentative agreement, then this will go forward on August 2 with the removal proceedings. He stated if there is an agreement, a special meeting can alternatively be scheduled to address legislation authorizing the Mayor to sign the Agreement. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SMOLIC, WOLFE, HAYMER, LESNICK, LOWERY, RUPLE AND SCHULZ. VOTING NAY: NONE).**

Mayor Potter referred to Section 733.37 of the Ohio Revised Code, Suspension of Accused Pending Hearing, which reads as follows: Pending any proceedings under Sections 733.35 and 733.36 of the Revised Code, an accused person may be suspended by a majority vote of all members elected to the legislative authority of the municipal corporation, but such suspension shall not be for a longer period than fifteen days, unless the hearing of such charges is extended upon the application of the accused, in which event the suspension shall not exceed thirty days. Mayor Potter stated that he is asking for a motion to suspend Lance Nosse for 30 days without pay.

Answering Council, Mr. Lallo advised that it is his position that the City is proceeding under those relevant portions of the Statute, therefore this provision would apply should Council so choose. Mayor Potter stated if Council does not pass such a motion, Lance Nosse continues to be paid and he is the acting Police Chief, which is a concern in his opinion because of the charges and the rescinding of his resignation at the eleventh hour.

Mayor Potter stated it is his position that the charges were filed for a reason, and that to protect this Department, the morale of this Department, and the finances of the City, he is requesting Council to suspend Chief Nosse without pay for 30 days.

HEARING (continued):

Mr. Smolic moved to suspend Chief Nosse for 30 days, pursuant to Ohio Revised Code Section 733.37. Mr. Consolo stated his objection would be that they do not believe that provision applies; secondly, the Mayor's request is for 30 days, but the hearing will be 21 days from today. He noted that if Chief Nosse is cleared of any charges and it is decided not to remove him, then it would be unfair for him to be suspended another nine days. Mr. Lallo advised that if Chief Nosse is not terminated on August 2, Council can make a determination to reinstate him at that time. Mr. Lesnick provided a second to the motion. Council President Lowery noted this puts the suspension to August 11, 2021.

Mr. Smolic moved to amend the original motion, to suspend Chief Nosse for 30 days without pay, taking effect today and in effect until August 11, 2021. Mr. Schulz provided the second. **ROLL CALL: MOTION CARRIED 6/1 (VOTING YEA: SMOLIC, HAYMER, LESNICK, LOWERY, RUPLE AND SCHULZ. VOTING NAY: WOLFE).**

Voting began on the amended motion. **ROLL CALL: MOTION CARRIED 6/1 (VOTING YEA: SMOLIC, HAYMER, LESNICK, LOWERY, RUPLE AND SCHULZ. VOTING NAY: WOLFE).**

ADJOURNMENT:

Mr. Lesnick moved to adjourn, with the second by Mr. Smolic. The motion of Council passed by unanimous vote and the meeting adjourned at 8:10 p.m.

President of Council

Clerk of Council