

## **KIRTLAND CITY COUNCIL MINUTES**

### **SPECIAL MEETING**

**August 2, 2021**

The special meeting of Kirtland City Council was called to order at 6:00 p.m. by Council President Richard Lowery. 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, Service Director Joseph Fornaro, Fire Chief Anthony Hutton and Police Sergeant Jamey Fisher.

Others present: Attorney Mark Zicarelli, Attorney Frank Consolo, and Lance Nosse.

#### **CORRESPONDENCE:**

Ohio Division of Liquor Control – Notice of Application for Permit Transfer

Council President Lowery acknowledged receipt of a notice from the Ohio Division of Liquor Control relating to transfer of a permit from Trois Amis Inc., dba Kirtland City Tavern, to KCT Partners LLC, dba Kirtland City Tavern. No objections were stated by Council and no hearing was requested on the issuance of the permit.

#### **CONTINUED HEARING:**

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

Council President Lowery introduced Attorney Mark Zicarelli, noting that he has been retained to referee the hearing. Mr. Zicarelli advised that he has been appointed as special counsel to provide legal assistance for City Council. Mr. Zicarelli stated that he does not represent the Chief, nor does he represent Mayor Potter; his purpose is to provide legal assistance and guidance to City Council for these proceedings, to ensure that the proceedings are held in a fair, impartial and quasi-judicial manner, to allow and permit both parties to create, supplement and provide any information under record to ensure that all parties have a fair and impartial hearing. Mr. Zicarelli stated that his job will be similar to a judge in a civil proceeding; he will make legal rulings, and if the attorneys have an objection to a question asked of a witness, he will make a ruling as to whether that question will be allowable and whether the witness has to answer that question.

Mr. Zicarelli stated this is a quasi-judicial hearing and the rules of civil procedure will be followed. He advised that a court reporter is present to make a complete record of the proceedings. He stated that none of his actions should be considered by the legislative body, who will sit as a jury, nor by the Chief, as his opinion concerning the facts of this case. Mr. Zicarelli stated the hearing is in the matter of the discipline, and to request a determination, of Police Chief Nosse, pursuant to the Ohio Revised Code and the Ordinances of the City of Kirtland. He read from Ohio Revised Code Section 733.35 and Section 733.36. Mr. Zicarelli stated that the action of City Council shall be final, but it requires the affirmative vote of 2/3 of all members of Council. He also read from Kirtland City Ordinance Section 244.01(d), which states that the Mayor may remove the Chief from office for just cause, provided however that such removal shall not take effect without the concurrence of 2/3 of the members of Council. He stated that the Mayor has set forth various charges and requested termination of the Chief through a letter dated July 7, 2021, and the law requires that a hearing be held.

Noting that the 2/3 vote is necessary, Mr. Zicarelli stated that if the City Council does not elect to affirm the Mayor's recommendations of removal, and if five Council members do not vote affirmatively, Chief Nosse shall resume his duties as Police Chief. He explained that Council shall have full opportunity to review all of the evidence, testimony and arguments in favor of removal; likewise Council will have the opportunity to consider all evidence, testimony and arguments brought forth by Chief Nosse or his legal counsel.

Mr. Zicarelli explained the order of the proceedings, noting there will be opening statements provided by Matthew Lallo on behalf of the Mayor and by Attorney Frank Consolo on behalf of Chief Nosse. The Council President will swear-in all witnesses and all testimony will be under oath. Mr. Zicarelli explained the process of calling and examination of the witnesses and introduction of exhibits. He stated that after hearing all of the evidence, it is up to this Council to decide and vote on the termination of Chief Nosse for cause. There will be a standard roll call of Council; an affirmative vote will be a vote to concur in his termination. Noting that Council is the sole judge of the facts and the weight of the evidence, Mr. Zicarelli provided instructions to Council regarding weighing the evidence.

Mr. Consolo presented pre-hearing objections. Mr. Lallo responded to all of the objections, and upon completion of his response, he respectfully requested that Mr. Zicarelli overrule the objections and allow the proceeding to begin. Mr. Zicarelli reviewed each of the objections, and all objections were overruled.

Mr. Lallo and Mr. Consolo each presented an opening statement. Upon completion of the opening statements, a short break was taken before beginning witness testimony.

Mr. Lallo called the following witnesses, who were questioned and provided testimony after being sworn-in by the Council President: Teresa Szary, Amy Buchanan, Cindy Gabor, Sergeant Eric LaTurner, Sergeant Jamey Fisher, Fire Chief Anthony Hutton, and Mayor Kevin Potter. Breaks were taken as needed throughout the testimonies.

Given the late hour, it was determined that the hearing will be continued on August 3, 2021 at 6:00 p.m., with emergency notice provided to the press. The Mayor and each Council member waived notice of the meeting.

**ADJOURNMENT:**

Mr. Lesnick moved to adjourn, with the second by Mr. Schulz. The motion of Council passed by unanimous vote and the meeting adjourned at 1:50 a.m. on August 3, 2021.

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President of Council

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Clerk of Council