

## KIRTLAND CITY COUNCIL MINUTES

July 5, 2023

The meeting of Kirtland City Council was called to order at 7:02 p.m. by Council President Joseph Smolic. Mr. Schulz led the prayer which followed the Pledge of Allegiance. The members of Council present were: Ronald Fenstermaker, Suzanne Grazia, Scott Haymer, Matthew Schulz, Joseph Smolic and Eric Ziegler. Absent: Richard Lowery.

Administrative personnel present were: Mayor Kevin Potter, Law Director Matthew Lallo, City Engineer Douglas Courtney, Service Director Joseph Fornaro, Police Chief Brian McCallister, Fire Chief Anthony Hutton and Senior Center Coordinator Teresa Szary.

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Council President Smolic advised that he would entertain a motion to suspend Council rules for the administration of the oath for a new police officer. Mr. Schulz so moved, and Mr. Fenstermaker seconded. The motion of Council passed by unanimous vote.

Chief McCallister said the Police Department has been searching for an extra patrol officer and trying to find the person that would be a good fit for the Department. He noted that Jake Scott set himself apart in the application process and brings a level of life experience that is difficult to find. He has an ability to talk to people and his distinct look is good for law enforcement. He speaks four languages fluently and dabbles in multiple other languages, and he served with the Israeli Defense Forces. He is a certified canine trainer and has placed in national and international competitions. He is currently working toward his degree, maintaining a 3.97 grade point average. Chief McCallister believes he will fit in very well and welcomed him to the Department.

Chief McCallister asked Jake Scott to come forward. Mayor Potter said he had an opportunity to meet with the Chief and Mr. Scott several weeks ago, noting that Mr. Scott made an impression on him and he is excited to have him join the Kirtland Police Department. Mayor Potter administered the Oath of Office, and Officer Jake Scott received the applause and congratulations of all those present.

### MINUTES OF THE JUNE 20, 2023 WORK SESSION:

Mr. Fenstermaker moved to waive the reading of the minutes, with the second by Mr. Ziegler. The motion of Council passed by unanimous vote. Mr. Fenstermaker moved to approve the Minutes, as presented, with the second by Mr. Ziegler. **ROLL CALL: MOTION CARRIED 5/0/1 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER AND SMOLIC. VOTING NAY: NONE. ABSTAINING: SCHULZ).**

### MINUTES OF THE JUNE 20, 2023 COUNCIL MEETING:

Ms. Grazia moved to waive the reading of the minutes, with the second by Mr. Fenstermaker. The motion of Council passed by unanimous vote. Ms. Grazia moved to approve the Minutes, as presented, with the second by Mr. Fenstermaker. **ROLL CALL: MOTION CARRIED 5/0/1 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER AND SMOLIC. VOTING NAY: NONE. ABSTAINING: SCHULZ).**

**DEPARTMENT REPORTS:**

**Fire Chief Anthony Hutton** said that July 4th weekend was pretty uneventful for the Fire Department, with no injuries or fires reported. He advised that Wonderstruck will be held this coming weekend at Lakeland College, noting that a lot of traffic is expected. The Kirtland Fire Department will be providing EMS coverage along with University Hospital. The Police Department will have a large contingent present for safety and security.

Answering Councilman Fenstermaker, Chief Hutton advised that the new Mentor Hospital (Cleveland Clinic) will open on July 11. He noted that last week the Department participated in a mock emergency trial with several Fire Departments involved. Chief Hutton noted that it is an extension of Hillcrest Hospital; there is no intensive care unit or cardiac cath lab, but it has a 19-bed full emergency room.

Answering Council President Smolic, Chief Hutton said that as of today 5,000 tickets have been sold for Wonderstruck; they expect between 8,000 to 10,000 attendees.

**Service Director Joseph Fornaro** said the Department is still cutting grass; this week will be the last week for baseball. The Department is addressing flooding issues due to rain.

Answering Council President Smolic regarding patching, Mr. Fornaro said there have been a few complaints in Regency Woods, and that area was patched on Friday. They will patch Hillcrest tomorrow, and crack sealing has also started.

Mr. Fornaro requested that a Service Department Standing Committee meeting be scheduled pertaining to equipment going to auction. It was agreed that a meeting will be scheduled on July 10 at 6:30 p.m. before the regular Council meeting.

**Police Chief Brian McCallister** advised that over the July 4th holiday, the Department responded to complaints and located people setting off fireworks; after a brief conversation, they did not deploy any more fireworks. He noted it was a safe holiday for the Police Department.

**City Engineer Douglas Courtney** advised that signed contracts were received from Specialized Construction, to be executed by the City. Mr. Courtney does not yet have a start date, but he has requested their schedule. He is waiting for signed contracts from Cole Burton Contractors.

With regard to the Old Town sewer improvements, Mr. Courtney said that all main line and lateral connections are complete and the sewers have been tested; there are no issues to his knowledge. He noted that paving should start this week on Elm and Eisenhower and be completed by the end of the week. With regard to the Eisenhower pavement, the contractor will be making some repairs in localized areas, and rather than placing a thicker section of asphalt over the sewer trench, they will put 3 inches of asphalt over the entire pavement; it should hold until the City can address it next year for a full rehab.

With regard to Fox Hill drainage improvements, Mr. Courtney advised that the final adjusting change order for the project is included on tonight's agenda in Resolution 23-R-52 and establishes the final construction cost of \$65,051.84. All work is complete; this is the final reconciliation of all quantities. He requested that the Resolution be adopted tonight.

At the request of Councilman Fenstermaker, Mr. Courtney explained that the Fox Hill drainage improvements original contract amount was \$62,028.45. There was one change order in the amount of \$6,972.59, bringing the adjusted contract amount to just under \$70,000. This change order, with reconciling all quantities, accounts for any overruns and unused quantities and is a negative \$3,949.20, establishing the final contract amount of \$65,051.84.

**DEPARTMENT REPORTS (continued):**

Council President Smolic inquired about the anticipated completion for Phase I of the Old Town sewer project. Mr. Courtney advised that paving is happening this week, and then restoration work will be done, including topsoil, seeding and mulching.

**Law Director Matthew Lallo** reported that he has everything finalized with regard to the records retention policies, separated by department, and he plans on sending it to each of the Department Heads for their review and input in preparation for a Records Commission meeting that will convene in the next few weeks.

Mr. Lallo advised that legislation will be on the next agenda relating to modifying the fiscal year for compensatory time. This applies only to the Service Department employees; it does not apply to any collective bargaining units (Police and Fire). He noted that after consulting with the Mayor and Mr. Fornaro, there was discussion relating to the date the employees can cash in compensatory time vs. carry-overs.

Referring to tonight's agenda, Mr. Lallo advised there is an Ordinance addressing the rezoning of a parcel of property at the north end of the City near Lakeland Community College. The required public hearing is scheduled for the July 10 Council meeting. If Council adopts the Ordinance, it certifies the issue to the Board of Elections.

Mr. Lallo advised that the legislation relating to the adoption of Policy 101 is on the agenda for Third Reading, and he welcomed questions in that regard or any other matter.

Responding to Council President Smolic regarding Ordinance 23-O-53 rezoning a parcel of property, Mr. Lallo said his recommendation is that Council address the Ordinance at the July 10 meeting, following the required public hearing. Otherwise, Council could schedule a special meeting before the August deadline for submission to the Board of Elections. He noted that if the legislation is not adopted before the Board of Elections' deadline, it would not go on the ballot until the Primary Election in the spring. Council President Smolic requested that any questions from Council be emailed to the Law Director before the next meeting.

Answering Councilman Schulz, Mr. Lallo said the submission deadline for the Board of Elections is 90 days before the election.

With regard to Resolution 23-R-43 relating to the adoption of Policy 101, Councilman Schulz inquired if this would be considered a change or addition to the Charter that would need to go to the voters. Mr. Lallo advised that the Policy does not change or add to the Charter; it creates extra oversight. He noted these are policies, procedures and best practices for elected officials.

**Senior Center Coordinator Teresa Szary** thanked the Police, Fire and Service Departments for keeping everyone safe throughout the holiday weekend and through the recent storms.

Ms. Szary noted that the first of the five library gazebo concerts was held last week. Due to the air quality, with the help of Mr. Fornaro and Chief McCallister, the concert was moved indoors to the Community Center. She noted there was standing room only, and the attendees appreciated that it was moved indoors.

She noted that as always, there is a lot of activity at the Senior Center, and it is nice to see people outside on the pickleball courts as well as inside for the various activities.

**MAYOR'S REPORT/ANNOUNCEMENTS:**

Mayor Potter congratulated Jake Scott as he joins the Kirtland Police Department; he noted it was a job well done by Chief McCallister in filling the position.

**MAYOR'S REPORT/ANNOUNCEMENTS:**

Mayor Potter advised that at next week's Planning and Zoning Commission meeting, there will be a conceptual review for potential development of the northwest corner of the Route 6 and 306 intersection. He noted that the concept for a 98-bed nursing facility will be presented, and he welcomed everyone to attend.

Noting that an air quality condition arose last week while he was on vacation, Mayor Potter thanked Ms. Szary, Chief Hutton, Chief McCallister and Mr. Fornaro, with the help of Jane Carle of the Kirtland Library, for making a quick decision to move the concert indoors at the Community Center. He noted his appreciation for having staff that he can rely on to make such decisions.

Mayor Potter advised that he spoke to Commissioner Rich Regovich and reached out to Kirtland Hills Mayor Jack Turben related to the bridge work that is being done. With all the trucks coming through Regency Woods, the City has been receiving calls and emails about the extra abuse on that road. The Mayor asked if there are any funds available to help with the road in the future; the Commissioner was receptive but could not make any promises.

The Mayor noted that upcoming gazebo concerts are scheduled for July 12 and July 19. On July 10 at 1:00 p.m., the Mayor said he will be at the Community Center speaking to the seniors about potential development in the downtown area as introduced by Marous Development in their concept plans. He noted that Councilman Fenstermaker as part of a steering committee, along with a cross-section of the community, has helped address questions, concerns and ideas.

With regard to the concept review for a nursing facility, Councilwoman Grazia inquired if the applicant has developed other nursing facilities in the area. Mayor Potter advised that when they make their presentation, they will refer to a couple of local facilities they have done. Noting that he is familiar with one of their other facilities, the Mayor commented on the high quality of care. Ms. Grazia inquired about a potential timeline. Mayor Potter responded that it would be at least a couple years, noting that expansion of the sewers will be a big factor.

**STANDING COMMITTEE REPORTS:**

Councilman Schulz stated that he would like to schedule a Finance Committee meeting to review the mid-year finances. Upon discussion, it was agreed that the time for the Service Department Standing Committee meeting, previously discussed during this meeting, be changed to 6:00 p.m. on July 10, and that a Finance Committee meeting be scheduled on July 10 at 6:30 p.m.

**CORRESPONDENCE:**

Council President Smolic read correspondence from John Lesnick regarding NOPEC, requesting that the legislation allowing NOPEC the ability to automatically change residents' gas or electric supply be revised to a written opt-in confirmation instead of the current opt-out.

**John Lesnick, 9235 Regency Woods Drive**, said that the gas rates changed last November, and NOPEC doubled the rates. He noted that he went with the Illuminating Company for electric and with Dominion for gas when the rates increased with NOPEC, but he was later returned to NOPEC because he did not opt out. Mr. Lesnick said he was told by the Illuminating Company that there is legislation, and the local government allows this to happen. He said that no one should be able to change his provider without his written confirmation. He said that neither the gas company nor the electric company will allow someone to change at the time they call; it has to be at the end of a billing cycle or the next meter reading.

**CORRESPONDENCE (continued):**

Mr. Lallo advised that the City opted in with NOPEC many years ago. He said that NOPEC does their aggregate bidding, and at the time they put in their bid the rates were very high. The rates came down, but NOPEC cannot renegotiate the rates with those bids. Because of that, NOPEC automatically opted out all of their customers. Notices were sent later advising they would be opting everyone back in (re-enrolling their customers); the deadline was May 2 to opt out. Mr. Lallo explained that once the City opted into NOPEC, residents must opt out and choose another provider if they do not want to be with NOPEC.

Mr. Lallo noted that a NOPEC representative attended a Council meeting at the time the rates were high and they were beginning to opt out their customers. The representative explained at the meeting that NOPEC would be opting everyone out, and then re-enrolling everyone once the rates were lower, with a deadline for residents to opt out of re-enrollment with NOPEC.

Answering Council President Smolic, Mr. Lallo confirmed that the opting out procedure is the same with other cities in Lake County. Mayor Potter said that the ballot language was most likely standardized across all communities.

Councilman Fenstermaker said that although NOPEC put all customers back with First Energy, he still had to pay almost two months of charges at the higher rate.

Mr. Lesnick said when voters were presented with the ballot language, they were led to believe that NOPEC would always look out for the lowest rates because they were able to aggregate; however, they do not always have the lowest rate. He said that NOPEC should not be able to change a customer’s supplier unless they can guarantee the lowest rate.

Councilman Fenstermaker inquired if the legislation can be reviewed to see if there is anything that could be put on the ballot. Mr. Lallo said he would have to look into it, but he does not believe it can be changed. He said it is the resident’s obligation to opt out. He noted the recent situation was unique, in that NOPEC automatically opted everyone out, and then they were re-enrolling those prior enrollees. Mr. Lesnick stated that he opted out himself before NOPEC opted everyone out. He requested that the Law Director send him the legislation that was adopted regarding NOPEC. Further discussion ensued regarding the opt-out requirement and procedures.

Mr. Fornaro said he will reach out to the NOPEC representative and request that he attend an upcoming meeting to address these concerns.

**PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:**

None

**OLD BUSINESS:**

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

None.

**RESOLUTION NO. 23-R-43**  
**(Council as a Whole)**

- **(Third Reading) - A RESOLUTION RATIFYING AND ADOPTING POLICY 101 ADDRESSING STANDARDS OF CONDUCT FOR ELECTED OFFICIALS, AND DECLARING AN EMERGENCY.**

**OLD BUSINESS – RESOLUTION NO. 23-R-43 (continued):**

The legislation was read by title only. Mr. Fenstermaker moved to declare an emergency and adopt, with the second by Ms. Grazia. **ROLL CALL: ADOPTED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).**

**RESOLUTION NO. 23-R-46** - **(Second Reading) - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO SOLICIT BIDS FOR CITYWIDE RESIDENTIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES, AND DECLARING AN EMERGENCY.**  
**(Mayor Potter)**

The legislation was read by title only. Mr. Schulz moved to waive the three readings, with the second by Ms. Grazia. **ROLL CALL: MOTION CARRIED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).** Mr. Schulz moved to declare an emergency and adopt, with the second by Mr. Fenstermaker. **ROLL CALL: ADOPTED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).**

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

None.

**RESOLUTION NO. 23-R-51** - **A RESOLUTION AMENDING RESOLUTION NO. 23-R-16 RELATING TO ESTABLISHING RULES, TIME AND PLACE OF COUNCIL MEETINGS FOR THE PERIOD FROM DECEMBER 1, 2022 THROUGH NOVEMBER 30, 2023, AND DECLARING AN EMERGENCY.**  
**(Council as a Whole)**

The legislation was read by title only. Council President Smolic noted that this legislation relates to tonight's meeting, which was changed from July 3 to July 5. Mr. Ziegler moved to waive the three readings, with the second by Mr. Schulz. **ROLL CALL: MOTION CARRIED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).** Mr. Schulz moved to declare an emergency and adopt, with the second by Mr. Fenstermaker. **ROLL CALL: ADOPTED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).**

**RESOLUTION NO. 23-R-52** - **A RESOLUTION AUTHORIZING A CHANGE ORDER WITH GRADE LINE, INC. FOR THE FOX HILL DRIVE DRAINAGE IMPROVEMENT PROJECT TO DECREASE THE CONTRACT AMOUNT BY \$3,949.20, AND DECLARING AN EMERGENCY.**  
**(Mayor Potter)**

The legislation was read by title only. Mr. Ziegler moved to waive the three readings, with the second by Mr. Fenstermaker. **ROLL CALL: MOTION CARRIED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).** Mr. Ziegler moved to declare an emergency and adopt, with the second by Mr. Fenstermaker. **ROLL CALL: ADOPTED 6/0 (VOTING YEA: ZIEGLER, FENSTERMAKER, GRAZIA, HAYMER, SCHULZ AND SMOLIC. VOTING NAY: NONE).**

**NEW BUSINESS (continued):**

**ORDINANCE NO. 23-O-53**  
**(Council President Smolic)**

- AN ORDINANCE APPROVING THE PROPERTY OWNER'S REQUEST TO REZONE PARCEL NUMBER 20-A-002-0-00-002-0 FROM INSTITUTIONAL AND OFFICE DISTRICT TO R-3D SINGLE FAMILY RESIDENTIAL DISTRICT, SUBMITTING THE ISSUE TO THE ELECTORATE PURSUANT TO ARTICL V, SECTION 5 OF THE CITY'S CHARTER, AND DECLARING AN EMERGENCY.

The legislation was read by title only and placed on First Reading.

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**COUNCIL COMMENTS:**

None.

**CONTINUING CONCERNS:**

This is an opportunity for the public to address Council about any continuing concerns. There were no comments from the public.

**ADJOURNMENT:**

Mr. Ziegler moved to adjourn, with the second by Ms. Grazia. The motion of Council passed by unanimous vote and the meeting adjourned at 8:07 p.m.

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President of Council

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Clerk of Council