

KIRTLAND CITY COUNCIL MINUTES

December 17, 2018

The meeting of Kirtland City Council was called to order at 7:00 p.m. by Council President Kevin Potter. Mr. Schulz led the prayer which followed the Pledge of Allegiance. The members of Council present were: David Kirek, John Lesnick, Richard Lowery, Kevin Potter, Matthew Schulz, Robert Skrbis and Joseph Smolic.

Administrative personnel present were: Mayor Douglas E. Davidson, Law Director Daniel Richards, City Engineer Philip Kiefer, Service Administrator Carm Catania and Fire Chief Anthony Hutton.

MINUTES OF THE DECEMBER 3, 2018 WORK SESSION:

Mr. Schulz moved to waive the reading of the minutes, with the second by Mr. Smolic. The motion of Council passed by unanimous vote. Mr. Lesnick stated that on page 1, in the third sentence of the sixth paragraph, the reference to "sewers that had been found in failure" should be corrected to read "septic systems that had been found in failure". Mr. Schulz moved to approve the Minutes, as corrected, with the second by Mr. Smolic. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

MINUTES OF THE DECEMBER 3, 2018 COUNCIL MEETING:

Mr. Smolic moved to waive the reading of the minutes, with the second by Mr. Lesnick. The motion of Council passed by unanimous vote. Mr. Smolic moved to approve the Minutes, as presented, with the second by Mr. Lesnick. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

DEPARTMENT REPORTS:

Fire Chief Anthony Hutton reported the Fire Department and the EMS have been very busy since the last Council meeting, noting his thanks to other departments that assisted.

Chief Hutton stated the PSAP for dispatch was installed last week and the transition has been going great. One of the first calls was the fire in Kirtland Hills. Chief Hutton stated the dispatchers went through training, but there is a learning curve for everyone.

Chief Hutton wished everyone a Merry Christmas and Happy Holidays.

Council President Potter mentioned a picture he was shown of a fire the department responded to recently and how it brought to light the reality of the job the Fire Department does on a daily basis. Mr. Potter asked the Chief to thank his department for all they do for the City, and he wished the Chief and his family a Merry Christmas.

Service Administrator Carm Catania gave no formal report but stated he was pleased it was not snowing. The department is saving money on salt, fuel, and overtime. The department has been doing some patching and ditch work.

In response to Mr. Lesnick's questions concerning the striping on Booth Road, Mr. Catania replied that the contractor was unable to accomplish the job. Mayor Davidson stated there was a discussion after the attempt had been made; the contractor was not paid.

DEPARTMENT REPORTS (continued):

In response to Council President Potter's questions concerning the wall support in Council Chambers, Mr. Catania stated the support is a temporary safety precaution. Mr. Catania noted that it is a structural issue, and a Purchase Order to have it fixed has been requested. Discussion ensued regarding the project.

There were no questions for Mr. Catania, and he wished everyone a Happy Holiday season.

Mr. Catania thanked Marilyn Spease and the Garden Club for all the help with the holiday decorations this year and for working with the Road Department staff in this regard. Mr. Potter agreed with Councilman Schulz that the decorations are the best around the area.

City Engineer Philip Kiefer did not present a formal report. Mr. Kiefer wished all a Happy Holiday.

Mr. Kiefer mentioned an e-mail he'd seen from Councilman Smolic regarding the amount of carryover in the road fund; he noted that he believes it is approximately \$30,000.

Mr. Kiefer stated the stream bed stabilization is out for rebid with Chagrin River Watershed Partners, with bids due in early January. An additional contractor came to view the site last week, and he is hopeful there will be more interest this time. The scope has been reduced and the Service Department will take down the guardrail, which will save construction costs.

Mr. Kiefer stated in the original bid there were five or six contractors that came out to the pre-bid, but no bids submitted. Reasons given were not enough money in the budget, not wanting to comply with the two-year guarantee, the guardrail was an issue, and access was an issue. Mr. Kiefer is hopeful there will be a better response this time.

In response to Mr. Lesnick's question regarding pipe replacement and culverts on Fox Hill, Mr. Kiefer stated he has someone in his office that is helping with the proposal, and it will be ready in January.

Law Director Daniel Richards did not present a formal report. With regard to Mr. Skrbis' question from the last meeting, Mr. Richards responded that the EPA is unlikely to forgo its right of enforcement against the local governments, relative to discharges into the stream.

He noted that the EPA does, in fact, have the right to take action against the City for allowing any type of illicit discharges into the stream. Therefore, Mr. Richards does not see how the City can avoid the connection requirements if the EPA insists upon it. The City does have enforcement powers to prevent illicit discharges. The City doesn't design the systems, but does have authority with regard to package plants, in the maintenance and operation of the plants. Concerning home site systems, the City has a requirement to prevent the discharge of illicit items into the stream. If the City fails to do so, the EPA has the authority to hold the City liable for failing to exercise its obligation to prevent the flow of illicit discharges into the clean water.

Mr. Richards stated he believes it would be very unwise to plan on a concept by agreeing today to put in a home site system that is compliant that would not, in the future, require additional funds be spent for the purposes of connecting to a sanitary sewer system.

Mr. Richards went on to say he believes there are provisions in the state code, as well as in local government, that hardship considerations be taken into account. Mr. Richards suspects the City's situation may qualify some residents for hardship considerations. As an example, if a resident spends \$20,000 for a system and later is told there will be an additional charge of \$20,000 - \$30,000 for a connection, they may qualify for a hardship, and it is worth exploring.

DEPARTMENT REPORTS (continued):

In response to Mr. Skrbis' question in terms of liability, Mr. Richards stated as a municipality the City would never agree to indemnify or hold harmless anyone, but the City could appropriately administer funds that may be available to make up for those types of situations. The City would not create a legal obligation that does not currently exist. Discussion ensued on types of situations that may occur.

Mr. Richards stated that the situation is a legitimate threat to public health and something must be done. The focus should be on where the illegal discharges are coming from, and there are residents who are resisting on-site inspections. He noted that this creates a difficult situation with enforcement, and that the City may be in a situation where probable cause warrants are needed to inspect systems. Mr. Richards stated he would never recommend any kind of on-site inspection of private property without having the auspices of the court system behind the City to protect against any claims that the City was acting outside of the law.

Mr. Lesnick stated that a letter was sent to the residents requesting the County be allowed to come and sample. The Council also very clearly heard from the EPA that it is the City's responsibility to encourage the residents to comply. Mr. Lesnick inquired if the City should send a more strongly worded letter, requesting again that the County be allowed to sample, before legal action is taken.

Mr. Richards responded that the City must prevent illicit discharges; enforcement requirements are in the ordinance. Mr. Richards agreed anytime something can be accomplished by reasonable persuasion, it is good. Discussion ensued on the idea of a strongly worded letter, penned by the Mayor or the President of Council.

There was discussion regarding the need for proactive steps to be taken and whether the County would be involved with future testing.

Mayor Davidson agreed with sending out a second letter to the residents, including information from the meeting with the EPA representative and reasons the testing is needed; he noted that he would ask the City Engineer's assistance in drafting a letter. The Mayor asked whether Council, in its best judgement, believes a sewer is in the long-term best interest of the City. The Mayor stated this is a topic he would like Council to discuss in more depth at a later date, noting the positive impact on the Temple View neighborhood as a result of the sewer. Mayor Davidson stated he believes there will be more failures at a later date, along with more cost.

Following further discussion, Council President Potter suggested that the conversation continue in a meeting of the Utilities Standing Committee, noting that the committee can help draft a letter to the residents.

Mr. Richards wished everyone a Happy Holiday.

MAYOR'S REPORT/ANNOUNCEMENTS:

Mayor Davidson noted that the Kirtland Creamery groundbreaking was held on December 8, and he thanked Tom and Paula Christopher for the invitation. Mayor Davidson also thanked Karen Tercek from Willoughby Western Lake County Chamber of Commerce for attending.

Mayor Davidson thanked Officer Mike Valenti, who organized the "Shop With a Cop" event on December 9. Kids, families, and guests from Kirtland Rehabilitative Care were there, and it was a great event. A number of officers participated, on and off duty, along with their families, spouses and kids; and students from KHS came over to help.

MAYOR'S REPORT/ANNOUNCEMENTS (continued):

The Mayor advised that the NOPEC grant, which has been used for music on the gazebo green, is back on for 2019. He noted that Ms. Petersburg has been in contact with the Friends of the Library (Jane Carle, Phil Johnson) on the use of those funds.

Mayor Davidson stated the rental deposit and hourly rate have been raised for use of the community center; it is a small adjustment and the rental information will be posted on the City's website.

Mayor Davidson stated the Economic Development Manager, following up on the Council President's request to contact Dione DeMiro, has organized an economic development strategic planning meeting on February 6, at no cost to the City. He noted that more information will follow.

Mayor Davidson thanked Jenna Hull and the Senior Board for the invitation to attend the annual Christmas lunch at Pine Ridge Country Club on December 13. He noted that Debbie Gifford did a nice job, as usual.

Mayor Davidson reported he invited Jenna Hull to attend a Work Session, either January 7 or 23.

Mayor Davidson stated the PSAP is up and running and did not require shifting to Central at all during the installation. Chief Nosse has invited the Council to a walk-thru in January during the work session to see the technology at work and to take a look at the dispatch area.

Mayor Davidson stated he and Councilman Smolic attended the Northeast Ohio Mayors and Managers meeting held in Independence, on December 5. Mayor Davidson stated there were good insights gained. Mayor Davidson expects he will be inviting Mr. Kirek, Mr. Lesnick and Mr. Skrbis to meet with a prospective candidate (for Finance Director).

Mayor Davidson reported that Mr. Martinet may be available for the first round of the budget discussion, but his attendance is not expected at more than the first or second budget meetings.

Mayor Davidson reported he should have a short list to give Council for the Service Director position, and he appreciated Councilman Schulz's help on the matter.

Mayor Davidson wished everyone and their families a Merry Christmas.

Mr. Lesnick noted he sent an inquiry to Mr. Martinet regarding a budget item. Mayor Davidson responded that software being used is no longer supported by the parent company, and the newer software will have excellent reporting capabilities, but will also have a cost that will be reflected in the budget. The Mayor stated the current software does not have the ability to generate a good deal of reports, but he will take another look at Mr. Lesnick's e-mail and discuss it with Mr. Martinet. There is some optimism that the new software will be more decision support oriented and will be able to show more data. The Mayor noted that the software will not be seen before the current budget is approved, and he is unaware of the implementation schedule.

Council President Potter thanked the Mayor for contacting Jenna Hull. It was agreed that she be asked to attend the 6:30 p.m. work session on January 7.

Responding to Mr. Potter, Mayor Davidson stated he will contact Mr. Slapnicker and invite him to a meeting.

Responding to Council President Potter's question regarding the cell tower, Mayor Davidson stated Helen Petersburg had followed up with an e-mail, noting that the last response received was on October 19, with no more updates. The Mayor stated he would have to get back to Council with more information.

STANDING COMMITTEE REPORTS:

Mr. Lesnick stated that a Utility Standing Committee meeting will be held to draft a letter to residents. Mr. Schulz asked that a copy of the letter be sent to all Council members.

CORRESPONDENCE:

Council President Potter reported on the following:

Correspondence dated November 30, 2018 from Dominion Energy which describes the increase to rates. The letter will be available for viewing.

Mr. Lesnick asked if there is a way to find out the details of the increase, noting that many residents are affiliated with NOPEC. Mr. Schulz noted that Betsy Phillips mentioned that in years past they used to come before each City Council to discuss reasons the rates were being raised; it now goes to the Public Utilities Commission of Ohio. Mr. Schulz stated he found it interesting that in recent history municipalities gave up their right to have a voice in the process.

PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:

None.

OLD BUSINESS:

ORDINANCE NO. 18-O-31
(Council President Potter)

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(Tabled) - AN ORDINANCE ADOPTING CHAPTER 1468 OF THE CODIFIED ORDINANCES OF THE CITY OF KIRTLAND RELATING TO ALTERNATIVE ENERGY.

Read by title only. Mr. Lesnick moved to remove from the table, with the second by Mr. Smolic. Mr. Lesnick noted that he asked some experts to look at the ordinance, and they advised it is non-restrictive; although direction of solar panels may create an issue. Mr. Potter noted that residents have the opportunity to go to the Board of Zoning Appeals. As Chairman of the Utilities Standing Committee, Mr. Lesnick recommended that Council move forward with passage of the Ordinance. Mr. Smolic stated his opinion that the resident should be able to face the panel whichever direction is opportune without having to go before the Board of Zoning Appeals. Voting began on the motion to remove from the table. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER, AND SCHULZ. VOTING NAY: NONE).** In discussion, Mr. Potter stated that he had hoped to have an expert attend a Council meeting to discuss the ordinance, but it does not appear that Council will have that opportunity. Questions arose regarding whether the Ordinance should be amended. Based on the recommendation of the Committee Chairman, Mr. Skrbis suggested that the Ordinance can be adopted as is, and it can be amended later if determined necessary.

Upon further discussion, Mr. Kirek moved to put the Ordinance back on the table, with the second by Mr. Smolic. **ROLL CALL: MOTION CARRIED 4/3 (VOTING YEA: SMOLIC, KIREK, POTTER AND SCHULZ. VOTING NAY: SKRBIS, LESNICK AND LOWERY).**

OLD BUSINESS (continued):

ORDINANCE NO. 18-O-49 - (Third Reading) - AN ORDINANCE PROVIDING
(Mayor Davidson) TEMPORARY APPROPRIATIONS FOR THE THREE-MONTH PERIOD ENDING MARCH 31, 2019.

Read by title only. Mr. Skrbis moved to adopt, with the second by Mr. Kirek. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

ORDINANCE NO. 18-O-50 - (Third Reading) - AN ORDINANCE DESIGNATING
(Mayor Davidson) FINANCIAL INSTITUTIONS AS PUBLIC DEPOSITORIES.

Read by title only. Mr. Kirek moved to adopt, with the second by Mr. Skrbis. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

ORDINANCE NO. 18-O-59 - (Second Reading) - AN ORDINANCE AMENDING
(Mayor Davidson) ORDINANCE NO. 18-O-11 RELATING TO THE APPROPRIATION FOR THE YEAR 2018.

Read by title only. Mr. Skrbis moved to waive the three readings, with the second by Mr. Lowery. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).** Mr. Skrbis moved to adopt, with the second by Mr. Kirek. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

NEW BUSINESS:

ORDINANCE NO. 18-O-60 - AN ORDINANCE AMENDING SECTION 220.11 OF THE
(Council President Potter) CODIFIED ORDINANCES OF THE CITY OF KIRTLAND, RELATING TO STANDING COMMITTEES OF COUNCIL, AND DECLARING AN EMERGENCY.

Read by title only. Mr. Lesnick moved to waive the three readings, with the second by Mr. Lowery. Mr. Schulz asked if there was any discussion about having Council-as-a-Whole for the Economic Standing Committee. Council President Potter responded that there was discussion with Ms. Drake of having a smaller committee to meet and refer back to the Council-as-a-Whole. **ROLL CALL: MOTION CARRIED 6/1 (VOTING YEA: SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: SKRBIS).** Mr. Lowery moved to declare an emergency and adopt, with the second by Mr. Lesnick. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

RESOLUTION NO. 18-R-61 - A RESOLUTION ESTABLISHING STANDING
(Council President Potter) COMMITTEES OF COUNCIL, AND DECLARING AN EMERGENCY.

Read by title only. Mr. Skrbis moved to waive the three readings, with the second by Mr. Smolic. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).** Mr. Skrbis moved to declare an emergency and adopt, with the second by Mr. Lowery. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

NEW BUSINESS (continued):**ORDINANCE NO. 18-O-62
(Mayor Davidson)**

- **AN ORDINANCE LEVYING LIENS FOR DELINQUENT SANITARY SEWER CHARGES, AND DECLARING AN EMERGENCY.**

Read by title only. Mr. Skrbis moved to waive the three readings, with the second by Mr. Kirek. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).** Mr. Skrbis moved to declare an emergency and adopt, with the second by Mr. Smolic. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

**RESOLUTION NO. 18-R-63
(Mayor Davidson)**

- **A RESOLUTION CONFIRMING THE REAPPOINTMENT OF TIMOTHY K. POWELL TO THE PLANNING AND ZONING COMMISSION, AND DECLARING AN EMERGENCY.**

Read by title only. Mr. Kirek moved to waive the three readings, with the second by Mr. Skrbis. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).** Mr. Kirek moved to declare an emergency and adopt, with the second by Mr. Schulz. **ROLL CALL: DEFEATED 4/3 (VOTING NAY: SMOLIC, LESNICK, LOWERY AND POTTER. VOTING YEA: SKRBIS, KIREK AND SCHULZ).** Before casting his vote, Mr. Potter read the following statement into the record:

“Before I cast my vote - I need to ask that the following statement be put on record. In the December issue of the Kirtland Chronicle, Tim Powell, candidate for reappointment to the Kirtland Planning and Zoning Board, made assertions that were a mischaracterization of recent events relative to this council. This council, two weeks ago, rejected a resolution that would have given Mr. Powell the Zoning Inspector job in the City of Kirtland. This was a resolution that I personally voted for and lobbied other council members to do the same and to appoint Mr. Powell.

After the vote, Mr. Powell made several comments to the newspaper that reflected poor and concerning judgement. And whether intended to be or not, they were misleading and irresponsible. Unfortunately, I am not able to offer the details of the job interview to which he referred in the Chronicle, as the discussion happened in an executive session of this council. Mr. Powell suggested that the vote of several members of this council were motivated by some sort of retribution. This is categorically false and his commentary was designed to impugn good men. These are principled men that adhere to promises they made to the voters that so elected them.

Tonight, it is *impossible* for me to vote to reappoint Mr. Powell to a position that requires an absolute persistent effort to separate personal emotion from issues. Because Mr. Powell has demonstrated an inability to keep personal resentments separated from the conduct of city business, my vote is No.”

**RESOLUTION NO. 18-R-64
(Mayor Davidson)**

- **A RESOLUTION CONFIRMING THE REAPPOINTMENT OF AMY BUCHANAN TO THE VOLUNTEER FIRE FIGHTERS' DEPENDENTS BOARD, AND DECLARING AN EMERGENCY.**

Read by title only. Mr. Schulz moved to waive the three readings, with the second by Mr. Smolic. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).** Mr. Schulz moved to declare an emergency and adopt, with the second by Mr. Lesnick. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

NEW BUSINESS (continued):

RESOLUTION NO. 18-R-65
(Mayor Davidson)

- **A RESOLUTION CONFIRMING THE REAPPOINTMENT OF CHRISTINE SPEECE TO THE VOLUNTEER FIRE FIGHTERS' DEPENDENTS BOARD, AND DECLARING AN EMERGENCY.**

Read by title only. Mr. Lesnick moved to waive the three readings, with the second by Mr. Lowery. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).** Mr. Schulz moved to declare an emergency and adopt, with the second by Mr. Smolic. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SKRBIS, SMOLIC, KIREK, LESNICK, LOWERY, POTTER AND SCHULZ. VOTING NAY: NONE).**

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CONTINUING CONCERNS:

None.

COUNCIL COMMENTS:

Councilman Schulz wished everyone a Merry Christmas and a Happy New Year.

Councilman Lesnick stated that going forward he would like to see that positions, whether paid or not, be advertised on the website and in the local newspaper to allow all residents to know they are available and have an opportunity to apply. Councilman Smolic stated his concurrence.

PUBLIC COMMENTS:

None.

ADJOURNMENT:

Mr. Lowery moved to adjourn, with the second by Mr. Lesnick. The motion of Council passed by unanimous vote and the meeting adjourned at 8:14 p.m.

President of Council

Clerk of Council