

CITY OF WEST LAFAYETTE  
COMMON COUNCIL  
PRE-COUNCIL MINUTES  
SEPTEMBER 30, 2010

The Common Council of the City of West Lafayette, Indiana, met in the Lower Level Conference Room at City Hall on September 30, 2010, at the hour of 4:30 p.m.

Mayor Dennis called the meeting to order and presided.

Present: Bunder [arrived at 4:34 p.m.], Burch, Dietrich, Hoggatt, and Hunt.

Absent: Keen and Thomas.

Also present were City Attorney Burns, Clerk-Treasurer Rhodes, City Engineer Buck, Police Chief Dombkowski, Street Commissioner Downey, Fire Chief Drew, Parks Superintendent Payne, and Director of Development Poole.

Councilor Hoggatt reported that there were two items in September 7, 2010, Council minutes which needed to be corrected: On page 3, the last paragraph, instead of "radical," he used the term "rabbit hole," and on page 11, the last paragraph, the two references to "methanol" should be "menthol." City Attorney Burns suggested that the minutes be amended as requested, so that the amended minutes are presented for approval on Monday.

Mayor Dennis requested that, since the Council meeting may be long, the Council stipulate that the Council standing reports would be on file, rather than reading each report individually. Councilor Hoggatt said that he was going to ask someone from Purdue to discuss the alcohol moratorium, but that program was ended before he could do that. Consensus was that the standing reports would not be read at the October Council meeting.

Councilor Hunt reported that Councilor Burch would present the Beautification Award to Dr. Brenda Jurich of 729 Lagrange.

### UNFINISHED BUSINESS

Ordinance No. 14-10 An Ordinance Providing For Payment Of Fire Hydrant Rental Costs By Indiana American Water Company Ratepayers (Sponsored by Mayor Dennis)

Mayor Dennis stated that Councilor Hunt provided him information from a citizen who raised the issue about having the hydrant fees, as well as having water-sprinkling systems in yards. This would result in ratepayers being billed twice, which would not be fair. The Mayor stated that it is a State-mandated statute; the Council cannot remedy that. He stated that he wanted to withdraw the ordinance. Councilors Burch and Dietrich agreed. Mayor Dennis requested a vote to pull the ordinance from the agenda.

Councilor Dietrich said that the same charge is true for the City, that the City is paying twice. Councilor Hoggatt said that the City always paid by fire hydrant, not by meter. Mayor Dennis said when it gets to the individual payer, if there are sprinkler systems and meters, the individual is charged or pays twice. This would not be fair and equitable, which is what was planned.

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Councilor Hunt asked when the ordinance would be brought back. Mayor Dennis answered that it would depend on how the issue can be addressed. City Attorney Burns reported that State law is rigid on that point. Mr. Burns had discussed this matter with an Indiana-American Water representative in St. Louis who deals with these issues around the country. That person's interpretation was that State statute does not allow the Council any latitude, even if the Council chooses to do that, to pull those meters for those people who are just sprinkling their lawns. Unless State statute changes, there is nothing that the Council can do about it. Councilor Hunt said that it is of note that, when a sprinkler system is used, it is usually turned off in November and opened in April, so it is a seasonal bill.

There was no further discussion.

Councilor Burch moved to withdraw Ordinance No. 14-10 from the agenda. Councilor Hoggatt seconded the motion.

Clerk-Treasurer Rhodes called the roll call vote:

	<b><u>AYE</u></b>	<b><u>NAY</u></b>	<b><u>ABSENT</u></b>	<b><u>ABSTAIN</u></b>
Bunder	✓			
Burch	✓			
Dietrich	✓			
Hoggatt	✓			
Hunt	✓			
Keen			✓	
Thomas			✓	

Mayor Dennis announced that the motion to pull Ordinance No. 14-10 from the October 4, 2010, Council meeting passed by unanimous vote of those present.

City Attorney Burns stated that the ordinance should show as withdrawn, for the record.

Mayor Dennis remarked that this issue would continue to be discussed.

Councilor Dietrich asked whether the City had made an effort to contest Indiana-American Water's rate increase. City Attorney Burns answered that the actual rate has been issued, and the rates that have been discussed are the approved rates. The rate increase was contested, and IAW received significantly less increase than had been requested, in part thanks the efforts of West Lafayette and the other municipalities which questioned some of the company's assumptions. The IURC approved the lower rates, which are the ones that have been discussed.

Ordinance No. 15-10 An Ordinance Setting The 2011 City Budget And Setting The 2011 Tax Levy On Property And Tax Rate (Prepared by the Clerk-Treasurer)

Mayor Dennis read Ordinance No. 15-10 by title and asked for comments or questions.

Clerk-Treasurer Rhodes advised that there has been another review of revenue, and revenues have been adjusted on four funds, General, Parks, EDIT, and Parks Nonreverting Capital – Pool. This also occurs in other jurisdictions, where the finance officer delays revenue adjustments until just before the vote. The total amount of the budget and the advertised levy—

PRE-COUNCIL MINUTES, SEPTEMBER 30, 2010, CONTINUED

tax rate and anything that pertains to those funds does not change. The only number that will change will be the revenue numbers and the operating balances. One of the reasons jurisdictions advertise extra balances in the operating budget is to allow for items such as changes in revenue. The largest change in revenue is due to the certification of the local income tax. She distributed a document that illustrates West Lafayette's share of the EDIT (Economic Development Income Tax) and the COIT (County Option Income Tax) since 2003, and called attention to the line that shows 2010-2011 changes. The comparison among large jurisdictions—the County, Lafayette, and West Lafayette—reveals that West Lafayette is going to receive about 16% less EDIT and about 17% less COIT than in 2010. The other jurisdictions also will receive fewer dollars, but not as great a decrease by percentage.

There was no further discussion.

Ordinance No. 25-10 An Ordinance Prohibiting Certain Intoxicating Substances Within The City Of West Lafayette (AMENDED IUPAC Names) (Co-sponsored by Councilor Dietrich and Councilor Hoggatt)

Mayor Dennis read Ordinance No. 25-10 by title and asked for comments or questions.

Councilor Hunt said that she has asked someone to talk less than five minutes on the pharmacological approach. Either Professor Eric Barker or Professor Cynthia Koh-Knox will speak. There is a workshop on Wednesday at the public library at 6:30 p.m. that will include discussion about spice and other drugs, as well as handouts on the topic. She asked if this ordinance could be considered before the budget. There was consensus that this would be done.

City Attorney Burns noted that there is another amendment to Ordinance No. 25-10 in the Council packets, which added the City Code citations.

Councilor Hoggatt moved to substitute the amended version of Ordinance No. 25-10 (AMENDED IUPAC Names) with the version titled, "Ordinance No. 25-10 (AMENDED IUPAC Names) 2<sup>nd</sup>." The motion was seconded by Councilor Hunt.

There was no further discussion.

Clerk-Treasurer Rhodes called the roll call vote:

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Bunder	✓			
Burch	✓			
Dietrich	✓			
Hoggatt	✓			
Hunt	✓			
Keen			✓	
Thomas			✓	

Mayor Dennis announced that Ordinance No. 25-10 (AMENDED IUPAC Names) has been replaced with the version titled, "Ordinance No. 25-10 (AMENDED IUPAC Names) 2<sup>nd</sup>", by unanimous vote of those present.

NEW BUSINESS

Ordinance No. 26-10 An Ordinance Amending The Procedures Of The City Of West Lafayette Human Relations Commission (Submitted by West Lafayette Human Relations Commission; Sponsored by Mayor Dennis and Councilor Hunt)

Mayor Dennis read Ordinance No. 26-10 by title.

and

Resolution No. 11-10 A Resolution To Reaffirm Action Taken By The West Lafayette Human Relations Commission (Submitted by West Lafayette Human Relations Commission; Sponsored by Mayor Dennis and Councilor Hunt)

Mayor Dennis read Resolution No. 11-10 by title.

Mayor Dennis called on Human Relations Commission President Charlie Shook.

Mr. Charlie Shook [Human Relations Commission President] said that the ordinance does three things, one significant, and the other housekeeping. One is it allows the HRC (Human Relations Commission) to include mediation in the toolkit. This would be on a voluntary basis and could be inserted into the review process early. It would not be used or accepted in all situations, but it may to temper some emotions and expedite resolution. The other two items allow the HRC to meet in locations other than City Hall and to meet in times other than between 9:00 a.m. and 8:00 p.m.

Councilor Hunt asked if Ordinance No. 26-10 and Resolution No. 11-10 could be put together on the agenda. Mayor Dennis indicated that he planned to do that.

Mr. Shook provided background on creation of the City's Human Relations Commission, noting that State statute asks municipalities to make efforts to ensure that fair and equal treatment is accorded to all residents of the City. The goal is to minimize and eliminate discrimination in specific protected classes based on color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance. The HRC has the authority to receive and investigate complaints, as well as to adjudicate them. Decisions of the HRC are final and enforceable by the Circuit and Superior Courts. This authority is unique to the Commission and is given by State statute. In the early 1990s, there was desire in the community to expand the reach of the Commission, to include sexual orientation in protected classes. The State law does not extend that, and the Commission cannot have powers that the State has not granted. The situation locally was solved by including a resolution. Resolution No. 11-10 extends the reach of the original resolution by including gender identity, gender expression, and active military and veteran status.

Councilor Bunder asked for clarification, since the resolution has one vote and the ordinance has two votes, whether the rules should be suspended to allow two votes on the ordinance at Monday's meeting. Mayor Dennis said the ordinance would have two separate readings, but that the resolution and ordinance would be discussed together at Monday's meeting.

Councilor Burch asked why there were both an ordinance and a resolution. City Attorney Burns responded that the ordinance asks for an actual change in the "black letter law" within the City Code, which pertains to those things that Mr. Shook discussed, primarily to allow mediation to

be put in early in the process. Now, many steps in the process are completed before mediation can be offered. The ordinance allows mediation to be offered at any point in the process. This will actually change the City Code. The resolution does not change City Code, but allows the HRC to receive complaints about gender identity, gender expression, and veteran status. The reason for the resolution is that the Council does not have the power to change the Code to include those three additional items. This is a procedural step. Mr. Shook added that the best work is done when there is no requirement for administration of a mandatory decision, but one reached through mutual consent. Mr. Burns commented that the mediation is always voluntary.

Councilor Dietrich asked if the ordinance required first person complaints. City Attorney Burns cited phrasing in the ordinance that would permit someone to make complaint on another's behalf.

Councilor Dietrich said that he met with Mr. Shook the day before. Part of this ordinance mirrors the Bloomington (IN) ordinance. There is discussion about transgendered individuals being able to use the restroom facilities of the gender they represent. Councilor Dietrich said he believed that was problematic for the City to have that in the ordinance. He said it may happen, that it is an individual choice, but for the City to permit a legal male to lawfully go into a women's restroom or vice versa is problematic. Mayor Dennis asked if it were illegal. City Attorney Burns reported that it is not illegal; the fact of using the other gender's bathroom is not illegal, in and of itself.

Councilor Dietrich asked Police Chief Dombkowski, if a drunken man walks into a women's restroom, what would be the Police Department reaction. Chief Dombkowski said this matter has come up before, and it becomes a matter of public decency, possible disturbance, trespass, and possible voyeurism. It is more of a comfort level, but the Police do insert themselves into this type of situation, to try to keep the peace, to mediate.

Councilor Dietrich said that he supports the ordinance, but he feels that it is not good practice for the City to say, "It's okay." It may happen, and it probably happens every day, but Councilor Dietrich said it seems to open doors that the City should not be on record as saying it is okay. However, he has no intention of standing in the way of the passage of the ordinance. Mayor Dennis asked whether there should be an amendment. Mr. Shook responded that the resolution does not do anything. Any inappropriate behavior—voyeurism, solicitation, physical contact—is a crime, and there is nothing in the resolution that would protect a criminal. As it is currently, a person who enters a public restroom whose gender identity or gender expression is different than their anatomy, and enters that facility discreetly, probably has as much discomfort as the other parties involved to take care of private business and discreetly leaves. Anything beyond that would be in the category of inappropriate, and the HRC would not be supported in the resolution. The opposite side of the story, Mr. Shook continued, is that the same person makes the opposite decision and visits the public facility that would resemble their physical anatomy, would probably make people in that facility just as uncomfortable. It is not a matter of discomfort; it is a matter of allowing people to do what is appropriate and necessary, if they handle themselves appropriately. Since there is no current law addressing this matter, the City's risk is not inconsistent with existing ordinances.

City Attorney Burns said he did not see a legal issue with the ordinance or resolution, but there may be law enforcement issues. Law enforcement will take care of an issue to keep the peace. Legally, there is no problem for the City from any liability standpoint. It might be different if it were illegal for a male to go into a female restroom, but that is not the case.

Mayor Dennis said the legislation is attempting to ensure that the right thing is done. Councilor Dietrich agreed, but said he wanted to make certain there was no inadvertent problem. That is part of the good governance. City Attorney Burns added that while it does become a question of how the Police handle it.

Councilor Hoggatt asked Councilor Dietrich what specific language he was concerned about. Mr. Shook answered that Councilor Dietrich had raised concern about some of the language in the supplemental document the HRC had supplied. Councilor Hoggatt stated that he did not see that there was a specific language issue, but how the City puts the matter into practice has been clarified.

Mr. Shook clarified that the ordinance does not speak to gender expression and gender identity, but the resolution does. The resolution is brief, and the policy is to provide education and promote understanding. The talking points document provided by HRC attempts to ensure that all the issues that come up in this type of discussion are addressed. It is a fact sheet.

Councilor Hoggatt asked whether other communities that have passed this type of legislation have numbers dealing with this type of incident or other ones. Mr. Shook responded that there is no data that would indicate that the occurrences that are associated with people expressing their gender differences in their selection of restrooms increases.

Councilor Hunt thanked the Human Relations Commission for their hard work and for the professional discussion.

There was no further discussion.

Ordinance No. 27-10 To Amend Certain Procedures Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect (UZO Amendment #68, change required auto and bicycle parking standards in WL Village, and change height requirements in the CBW, R3W, and R4W zones) (Submitted by Area Plan Commission)

Mayor Dennis read Ordinance No. 27-10 by title and asked for comments or questions.

Councilor Hunt stated that she has been advised that this ordinance has been “public hearing-ed” to death, and since the Council only has one reading of this ordinance, she requested if this item were postponed, so that there could be a publicized public hearing. Councilor Hunt reported that over 200 emails were sent to people in New Chauncey, advising them of the many hearings on this, but this also affects District 3. She did not receive those emails. Councilor Hoggatt asked if the public hearing could be at the November Council meeting. Councilor Hunt answered that it would be a publicized public hearing. Clerk-Treasurer Rhodes asked for clarification whether there is a request for a legal advertisement or we need to publicize it on the agenda. City Attorney Burns suggested that it be noted on the website. Councilor Hunt asked that it be put on the agenda.

Councilor Hoggatt moved to table Ordinance No. 27-10 until the November Council meeting, at which time there will be public discussion of this ordinance. Councilor Burch seconded the motion.

Councilor Bunder stated that he appreciated Councilor Hunt’s suggestion, since this is more significant than many of the APC ordinances.

There was no further discussion.

Clerk-Treasurer Rhodes called the roll call vote:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>	<u>ABSTAIN</u>
Bunder	✓			
Burch	✓			
Dietrich	✓			
Hoggatt	✓			
Hunt	✓			
Keen			✓	
Thomas			✓	

Mayor Dennis announced that the motion to table Ordinance No. 27-10 until the November Council meeting passed by unanimous vote of those present.

Resolution No. 12-10 A Resolution Requesting The Transfer Of Funds (MVH) (Prepared by the Clerk-Treasurer)

Mayor Dennis read Resolution No. 12-10 by title and asked for comments or questions.

Street Superintendent Downey explained that the transfer of funds within his department would permit him to purchase a used paint striper machine. He provided photos of the new machine, a 1998 model, which the Street Department will acquire from the City of Portage for \$9,000. A brand-new model would cost \$140,000. This will replace a 1991 model currently in use. Such equipment is specialized and only used in the summer to stripe streets and paint curbs, which is why these machines last so long.

There was no further discussion.

COMMUNICATIONS

Councilor Hunt announced that voter registration ends Monday at 4:30 p.m.

CITIZEN COMMENTS

None.

ADJOURNMENT

There being no further business at this time, Councilor Burch moved for adjournment, and Mayor Dennis adjourned the meeting, the time being 5:17 p.m.