

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
FEBRUARY 28, 2008

The Common Council of the City of West Lafayette, Indiana, met in the Lower Level Conference Room at City Hall on February 28, 2008, at the hour of 4:30 p.m.

In Mayor Dennis' absence, Council President Hunt called the meeting to order and presided.

Present: Bunder, Hunt, Keen, Roales, Thomas, and Truitt.

Absent: Burch

Also present were City Attorney Burns, Clerk-Treasurer Rhodes, Assistant Director of Development Grady, City Engineer Buck, Public Works Director Downey, Fire Chief Drew, Police Chief Dombkowski, Parks Superintendent Payne, and Attorney Brooks. [Mr. Downey arrived at 4:51 p.m.]

PRESENTATIONS:

► Sagamore of the Wabash Award to Dan Marvin

Councilor Keen said we have a special award for our former [Police] Chief Dan Marvin, who was awarded the Sagamore of the Wabash Award by the Indiana Association of Chiefs of Police. I don't have an award to give you, but I wanted to make that announcement and just let everybody know that you were honored with that. We certainly congratulate you on that.

► America in Bloom

Council President Hunt said next we have a report on America in Bloom. Tena Woenker, Tracy Walder, and Lynn Layden are going to explain the City's involvement in the West Lafayette endeavor.

Ms. Tracy Walder said I actually am one of the co-chairs, along with Tena Woenker, with America in Bloom. And West Lafayette is one of the cities that we have registered to compete in the America in Bloom competition. Lafayette is also one of the cities we'll be competing with. What it is is a national competition of cities throughout the country that are based on the city size. And West Lafayette won't compete against Lafayette. We'll actually, hopefully, be pulling our resources together to compete against other cities of similar size. We actually have a group from West Lafayette, and Lynn will kind of discuss a little bit about that. Ann [Council President Hunt] has agreed to be our Council representative to the committee that we're going to be working with. What we've done is that we have, with the Mayor's blessing, registered the City in this competition. Tena will explain a little bit about the timeline that we're talking about.

Ms. Tena Woenker said I've given you a simple outline here of what we thought that the timeline would look like for the actual contest. It explains when the judges will come. We will hear from the judges sometime next week about their actual dates, and we'll know exactly who those judges are, and we'll be able to start anticipating that. But for now, it looks like the last week in June is when Lafayette and West Lafayette will both be evaluated. At the end of this whole endeavor, we get a compilation from these evaluators, so we'll know where we can grow and improve in years future, and what we're doing really well and what we can be proud of that's already existing. So that's the timeline and that's what this one is. This other one is just the beginning of what we hope is a very lengthy participation calendar of people in the community.

This can be residents in their own neighborhoods, it can be businesses sprucing up their outdoor areas around their businesses, and it's also going to be including green initiatives that we do through the City itself and through our projects and trail development. Those kinds of things will also be part of the criteria that's evaluated. So those things will all get added into the timeline as scout troops come forward and school groups tell us what their plans are. We can chronicle all these things and create this really large community list of activities. Here's a sample of what those groups can tell us their activity and a sample volunteer sign-up form, so that, as new projects are developed—maybe planting projects or something—we can rally volunteers together and put them in certain zones that might need some cleanup or debris removal—some things like that. Finally, we kind of gave you here an overview of how this contest is structured within the City groups. At the top we have eight categories that we're judged on, and what's recommended is that you have a contact person for someone who wants to know about improving a floral display, who would they call. We have a contact for that person and maybe a host organization that would help evaluate those things in the community, and then we'd have a compiled report and our lists would make those things happen. The community-based task force through the Chamber of Commerce Council will be doing these roles to help each city in the competition. So we kind of see the structure as the task force is raising funds, pulling together the volunteers, creating the publicity and the marketing materials and as many resources as we can provide to each city for the competition. So we don't use staff time and we don't take up excess city staff and volunteer time at that level. We'd rather see the volunteers come down to this level and be doing the work on the streets, in their neighborhoods, in their parks, along the trails, and in the business district. So we really want the task force to be doing the hard legwork—raising the sponsor funds, those kinds of things, keeping the timelines, doing the hard documenting of the work, and really rallying the citizens around the community. So that's the ultimate goal. This contest is a cross between community development projects and beautification projects. And community development is really one of the highest things they judge on. That's what we'll be shooting for. We know we have a lot in this community to be proud of, beautification-wise, and the efforts that have already been made. So that's what we're trying to highlight and springboard from that. Questions at this point? Lynn [Ms. Layden], do you have some comments you want to throw in?

Ms. Lynn Layden said we've begun meeting already, and we've made some lists under each of these categories of West Lafayette achievements and where we can get better and which groups are involved with each achievement. Sometime during the spring, we'll have some kind of a summit meeting. We'll be meeting with each one of those groups ahead of time, trying to get their input, so that we won't have to have giant meetings where people talk. I'd rather have people doing things.

Council President Hunt do you have any questions about costs or anything? Do you want to talk about costs?

Ms. Walder said there will be no costs.

Ms. Woenker said and actually the things like entry fees and judges visits, we have to provide for their hotel and their transportation here. We have already raised \$4,600 through the Community Foundation to pay for our entry fees, and some clean-up costs have already been allocated from the City of West Lafayette. We've gotten about \$1,000 between publicity, clean-up materials, plus we're still raising sponsorship money. We've raised \$1,000 so far, and we're still out there. Those monies will be used to pay for the judges costs. In fact, I think the Hilton Garden Inn has donated that, housing for the West Lafayette judges. So that's why the task force is trying to help as this central group, because you all have to work, so we can take that pressure off.

Council President Hunt said thank you very much. Any other questions?

► Safety in City Hall: Police Chief Dombkowski

Council President Hunt said in a more serious vein, I think [Police] Chief Dombkowski, are you going to talk a little?

Police Chief Dombkowski said yes. I wanted to address a couple security issues real quickly. In light of recent events in Missouri at a council meeting, I guess, this past month, we have done a bit of an assessment of our security measures at our Council meetings. I don't want to go into a lot of specifics, but I want the Council to know that it is an issue that is being looked at, that the Mayor and I have been in consultation on it, and to reassure you that we have some measures in place to make sure that we have safe City Council meetings. And also to reassure you that our Mayor is a former law enforcement officer, so he is well-versed in this arena as well. Some things right off the bat that I would point out, when I'm at a Council meeting and am not in uniform, that's usually for a given reason as well. And just to be aware, I'll repeat that we are working on those issues. I don't want to go into a lot of specifics, I just want to point out that we have done an assessment in that area.

Council President Hunt said thank you.

Councilor Truitt said I applaud you for looking at those issues, because they are kind of horrific events when they occur, and so I appreciate you taking steps to evaluate them.

Police Chief Dombkowski said sure. Thank you.

UNFINISHED BUSINESS:

Ordinance No. 6-08 An Ordinance Requesting An Additional Appropriation, Perimeter Parkway Fund **PUBLIC HEARING** (Prepared by the Clerk-Treasurer)

Council President Hunt read Ordinance No. 6-08 and called on City Engineer Buck.

City Engineer Buck said it's on second reading.

Council President Hunt said do you have questions? No questions?

There was no further discussion.

Ordinance No. 7-08 An Ordinance To Amend West Lafayette City Code Chapter 44 Concerning Parking And Towing From Private Property (Submitted by Councilmember Roales)

Council President Hunt said Councilman Roales, do you have something for Unfinished Business?

Councilor Roales said I'd like to move to take from the table Ordinance No. 7-08.

Council President Hunt said was there a version at our desks?

Councilor Roales said procedurally, yes. Procedurally, you have to take it from the table, then we can amend by substitution.

Council President Hunt said okay, so he's made the motion. We need a second.

Councilor Bunder said second.

Council President Hunt said discussion?

Councilor Roales said there's no discussion on a motion to take from the table.

Council President Hunt said okay. Then we'll vote on taking it from the table.

The motion to remove ordinance No. 7-08 from the table was by voice vote with the vote being 5-1.

Council President Hunt said okay, so we have a 5-1, so that removes it from the table. It's on the table. Do we want to discuss it?

Councilor Roales said I would move to amend by substitution Ordinance No. 7-08.

Councilor Keen said are these both the same?

Councilor Roales said look at the bottom right-hand corner.

Councilor Keen said they both have the same date.

Councilor Roales said so then they're the same document.

Councilor Keen said okay. I don't know why I got two copies of the proposed one.

City Attorney Burns said I think there were a couple stacks outside of the same document.

Clerk-Treasurer Rhodes said I stamped the date on it. The version that we received by email this afternoon.

Councilor Keen said okay.

Council President Hunt said do you want to discuss this?

City Attorney Burns said he'll need a second.

Council President Hunt said oh.

Councilor Bunder said second.

City Attorney Burns said and it is debatable, the amendment by substitution.

Council President Hunt said okay.

Council President Hunt said we have a motion and a second. Now we have discussion. Is that debatable?

City Attorney Burns said yes, it is.

Council President Hunt said okay, and we can certainly have discussion.

City Attorney Burns said and that's just on the amendment by substitution, not on the substance of the ordinance.

Councilor Roales said there have been numerous changes generated by the feedback we've received at the Council earlier this month, and so I would like those changes and updates—many of them requested by towing companies operating in West Lafayette, as well as those who own property in West Lafayette and concerned citizens. And so I believe this ordinance as amended is a better ordinance and incorporates a lot of those changes, and so I'd like the Council to adopt that by substitution.

Council President Hunt said so you removed what has the strikeouts?

Councilor Roales said no. So the strikeouts and the underlines—the total is the ordinance. There's no dif between the amended version and this version. I mean, I can walk through some of those changes, if the Council would like.

Council President Hunt said is that your wish? To walk through the changes?

Councilor Keen said yes.

Council President Hunt said all right.

Councilor Roales said first I'd bring your attention to the second page under "(g)." So there have been numerous requests to include a fee for dropping a vehicle if the owner returns to that vehicle while it's being towed. That has been included in the ordinance. You'll see that that fee is set at \$20, and that's in line with what we're seeing in other municipalities. For instance, Lafayette has a \$25 drop fee. We have a zero dollar drop fee. So, I mean, that is in line with what we're seeing in other municipalities. And the second change would be on the second page under "(i)." You know, those requests for there to be a graduated set of fines for violating this section, so that's been included. And that's been included anywhere there's a \$500 fine, it's now graduated—the first offense is now \$100. Page three under section "(c)," you'll see that a day has been defined—previously it was not defined—so I defined it as a 24-hour period. That's just to clarify some issues that have been occurring there.

Councilor Thomas said Councilor Roales, just a question. For clarification, the clock starts ticking—?

Councilor Roales said I mean, the moment that the car would be starting to be towed, I would assume. I tried to clarify that as much as possible.

Councilor Thomas said okay.

Councilor Roales said so section "(e)" on the third page, "The maximum charges detailed..." This is a cost-of-living increase. This was requested in our previous hearing. So, I mean, we realize that these are businesses and the costs can only go up, and so we tried to accommodate that. And the remaining changes, section "(j)" and on the fourth page, section "(b)" again, just trying to graduate that fine schedule to \$100 and \$500. It was just \$500 on the first version. Those are all numerous changes in response to comments received from the public. We appreciate their comments, and I believe it's a better ordinance with those changes.

Councilor Truitt said Paul [Councilor Roales], we have not changed anything in regard to—like,

for example, if there is an unauthorized parking event taking place in my driveway, where a car is parked. According to this ordinance, I still have to go through a process of filing a complaint with the Police Department. Is that correct?

Councilor Roales said yes, you still have to follow the section 44.08 (d).

Councilor Keen said so if somebody comes and parks in my driveway overnight and I get up in the morning and need to go to work, I have to go and file some complaint before I can have the car removed from my property?

Councilor Roales said no, you need to sign a form, issued and prescribed by the Police Chief, and it's up to the Chief to describe how that process works.

Councilor Truitt said well, okay. And then another item here is someone like a John Basham, a Mr. Cochran. If they have a program in place, like a sticker—

Councilor Roales said yes.

Councilor Truitt said system in order to police their lots to determine within their own system if someone belongs or not, they still have to get up at 3 o'clock in the morning to go out to see if that person indeed—?

Councilor Roales said yes. And I'll explain why. One of the major issues and one of the reasons we have this ordinance is because tow trucks were patrolling many of those multi-tenant apartment parking lots, looking for cars to tow. The sticker program as been instituted by a large number of apartment complexes right now does not solve the problem. It, in fact, creates parking problems. Having the towing companies deciding when a car is illegally parked and making profit from that decision. That's the crux of the problem we have today. And that sticker program as they've instituted does not solve the problem of predatory towing in our City. And so, moving to a third independent party will separate the towing company making the decision to tow a car and receiving profit from it.

Councilor Truitt said but—

Councilor Roales said which is a fair system for our City.

Councilor Truitt said but if the towing company is out there patrolling, whether it was the towing company or another third-party company hired, they're either looking for a sticker or not looking for a sticker, right? So I'm trying to figure out, if Company XYZ was hired to drive through Gerry's [Councilor Keen's] apartment building looking for a sticker and there's no sticker, the car—today—would be towed.

Councilor Roales said correct.

Councilor Truitt said and what's wrong with that?

Councilor Roales said well, there's no—who's to say that that car's causing a problem?

Councilor Truitt said but if there's not a sticker, they don't belong there, so therefore, according to the owner of that piece of property, that is causing a problem.

Councilor Roales said well, I mean, I guess I would disagree. Like, for instance, over Christmas

break—

Councilor Truitt said right.

Councilor Roales said very few cars on campus.

Councilor Truitt said right.

Councilor Roales said we've had a number of complaints of cars being towed when there's one, two vehicles in a parking lot. I mean, that's not a situation that's healthy for our—

Councilor Truitt said but when I go to Florida, if someone's parked in my driveway that doesn't belong to be parked in my driveway, they don't belong on my property. So whether there's no cars going in and out is not the point. I mean, I think going through some of these items in here, I can see some logic. But when it comes to a piece of private property—

Councilor Roales said I mean, I really do share the sentiment, and I believe numerous other Councilors share the sentiment, but we need to break the linkage between the towing trucks driving around and themselves making the determination that they should tow cars. Is that correct? Do you share that sentiment?

Councilor Truitt said well, I think that towing cars—if they've been hired or requested to perform a service for an individual, then that is their job.

Councilor Keen said if it's pre-authorized.

Councilor Truitt said but if they're towing— Yes, if they've been pre-authorized to police an area, then—

Councilor Roales said I see that as a problem right there. They're not Police Officers. They should not be empowered as such.

Councilor Truitt said but they're protecting a piece of private property.

Councilor Roales said and that's what we have Police force for.

Councilor Truitt said okay, let me go back. I'm in the property management business. We do this type of activity day in and day out. And we do not go to a police department. I mean, I understand, but if you have a sticker—

Councilor Roales said do you have conflict of interest in this?

Councilor Truitt said no, because I don't manage any properties around here. But I'm still trying to connect the dots here, Paul [Councilor Roales]. I want to try to understand—

Councilor Roales said the intent of this ordinance is to break the linkage between the individual or entity making profit from towing and them making a decision that a car should be towed. We're trying to interject in any way someone besides the individual profiting from the activity from making that determination. Right now, what we have is a system where tow truck drivers are acting as kind of the police officer, the jury, and the—

Councilor Truitt said but if they don't belong, Paul [Councilor Roales], they need to be towed.

Councilor Roales said we need someone making that determination that they don't belong—

Councilor Keen said but had a tow truck actually towed a vehicle that was authorized to be there?

Councilor Roales said we've heard numerous complaints that there have been.

Council President Hunt said may I talk a little bit about who can file the complaint?

Councilor Roales said sure. I wrote that as broad as possible and I used current language from 44.08, "The owner, holder, occupant, lessee, agent or trustee..." I mean, that's nearly anyone affiliated with the property. So, I mean, if you're a tenant in a building, you can have a car towed to remedy the situation. I mean, how much difference is there between tow trucks with humans just prowling around and a tenant who's calling and having the tow truck come? I mean, the delay is going to be minimal, and it creates a better situation for our City. I mean, if you have to waste five minutes, is that an undue burden, to make sure that cars are towed fairly in our City?

Council President Hunt said I've gotten a few responses to a brochure that one of the landlords gave out. I think I got 50 of them, as a matter of fact. I've been sending out this proposed ordinance—at least I did today—and I explained to one of the tenants that that tenant could be the person that called it in. And that particular one person responded back to me and said that he thought that was all right. So if you come in and you've got your sticker and you go through the parking lot, I don't think many people are assigned this particular spot and they're all full, and you know that the one that is here doesn't have a sticker, that person can call—and maybe we can even put it on their own sticker, so they have a phone number to call—and make the complaint.

Councilor Truitt said okay, but to go back—so the intended purpose of this, beside this, is also—I hear you focusing on profit of the towing companies. Is that fair to say that's one of the intended purposes?

Councilor Roales said the intended purpose is to un-link the determination that a car is illegally parked and the receiving of profits. If a car is illegally parked, our Police force should make that determination. Towing is not a punishment.

Councilor Keen said but in my mind, the determination of whether that car is illegally parked if they have a sticker that authorizes them to be there, then they're legally parked *per se*.

Councilor Roales said I would challenge—

Councilor Keen said and if they don't have that sticker, then they're not legally parked to be there. And that's the determination process. I mean, that's the whole point of the sticker process—it's to—

Councilor Roales said if someone is committing an illegal act, our Police force is involved. In no other area of this City do we have the power of private individuals to redress a law that's been broken.

Councilor Keen said are you saying our Policemen are—?

Councilor Roales said in no other area in this City that I'm aware of do we allow private individuals to redress a situation where a law is being broken. And so—

Councilor Keen said but they're not really redressing it, because the sticker on the vehicle is already the avenue that has been used to address this issue. So they're not taking matters into their own hands, I don't see that. Because the vehicle either has a sticker or it doesn't have a sticker. And if it has a sticker and it's an authorized sticker for that lot, then they're authorized to park there. If they don't have a sticker or it's a wrong sticker, then they're not authorized to park there and they should be towed. That to me is the bottom line.

Councilor Roales said well, I think if it's as clear-cut as that and I think if that system worked appropriately, you wouldn't have the large number of student complaints that we have about the current situation and this ordinance wouldn't be necessary. But that system clearly does not work in practice.

Councilor Keen said and how does it not work, though? I mean, I haven't seen any complaints, so I don't know what the complaints are and, you know, because, I mean, you know, people make a complaint, but is the complaint about the sticker, or is it a complaint because they're just upset and they got towed? There is a huge difference there. Just because you get a complaint from somebody doesn't mean they were right.

Councilor Roales said no, I agree. I mean, what we're trying to move to is a fair system that— you know, I mean, that problem with the person making the determination, the person making profit is a key problem. And we have to solve that problem. Stickers does not solve that problem, because the person making the profit still makes the determination. Just because that determination is easier to make because there's a sticker there does not solve the problem.

Councilor Keen said I guess I'm failing to see where that doesn't solve the problem. And there's a big huge gap where we're coming from here, and the basis of the complaints, and, you know, what evidence is there that says that the sticker is not solving the problem? Or is there some other issue here that we haven't looked at yet?

Councilor Roales said I mean, you know, I would urge you to come to the hearing tonight and hear the students—

Councilor Keen said unfortunately, I can't make the hearing tonight.

Council President Hunt said could you talk a little bit about—you mentioned this, but maybe you could talk a little bit more about in most situations, private individuals don't make this decision, it's some sort of—the Police give tickets, but in this case, it's not there and so you believe there should be a third party to make the complaint, so it doesn't go directly to the tow truck people?

Councilor Roales said okay—

Council President Hunt said am I not making myself clear?

Councilor Roales said I was going to ask you to rephrase that.

Council President Hunt said okay. You talk about that this is a unique situation where a business can make the decision to punish—or reprimand or whatever words you want to use—an illegal act, and this is—

Councilor Roales said there's a number of reasons why this ordinance is necessary, and why it is necessary that we regulate this form of business and not regulate others. One is that there is no market mechanism for setting this price to determine the activity. You don't choose when your car is going to be towed or who's going to tow it. So therefore you don't have—

Councilor Keen said but you do choose whether you park your car illegally or not.

Councilor Roales said that's not what we're discussing.

Councilor Keen said well, that's the basis of what we're discussing.

Councilor Roales said if we want to redress illegal parking, then we can have our Police find these vehicles. Towing is not a redress for an illegal activity.

Councilor Keen said but the towing is the result of an illegal activity.

Councilor Roales said but it's inappropriate for that to be a punishment. Towing and the towing fee is not a punishment. It is simply making the parking situation be cleared up. It is not a punishment and should not be viewed as such.

Councilor Keen said what avenue do you have for the business owners to address the issue of illegal parking in their lots?

Councilor Roales said there is City Code that deals with illegal parking on private property. It allows the Police to ticket for \$25. That is the area of Code which the City enforces illegal parking on private property. Towing is not a route for management to enforce illegal parking on private property and it should not be used as such. If we believe we need to increase the fine for illegal parking on private property, then we need to do that. But towing and the towing fees and the towing situation is not a way to punish people for illegally parking on private property.

Councilor Bunder said thank you, Paul [Councilor Roales] or Ann [Council President Hunt]. Here's what I always thought the law was, and I am probably the only one at this table that tows people. And I do. I have a church parking lot, and you're supposed to have an Episcopal shield on your bumper, but that doesn't always work out. You're driving your sister's car, you're supposed to tell somebody, but sometimes you don't. And mostly our violators are student athletes who are trying to get across Northwestern fast, and high school students. On game days it's a little more complicated, and we have lots of out-of-town people. And so here's what I was told when I bought the First Church of Christ Scientist, and here's what I was doing for three years: So you're illegally parked in my parking lot. You get a very wordy brightly colored flyer from the Episcopal Church at Purdue University. And you could get one of these less colorful from Global Village Apartments. It says, "Don't do that." Ours says, "This is a private parking lot, it's not for regular use for campus personnel, students, or visitors. It's not a park-and-ride site for CityBus. We understand that parking near campus is difficult to find. Considering this, we try to be reasonable about the use of our parking lot without our permission. However, the number of Purdue-related vehicles now using our parking lot has become a nuisance, a menace, and could affect our insurance rates, so we are asking you not to park in our lot. In an emergency it is acceptable. However, we will be tracking license plates, and we will ask the Police to tow cars who abuse the privilege of parking here." That's the first thing. Suppose you do that, or suppose it's game day and you've really annoyed the person who's running our parking lot. There are two pieces of paper in a folder inside the front door, and here are the two pieces of paper from the West Lafayette Police Department. One, An Authorization of Agent for Complaint of Unauthorized Parking on Private Property. Piece of

paper number one. "Authorization of Agent for Complaint of Unauthorized on Private Property. Please complete one form for each agent." It has the owner, it has the address, the property address, the legal description, the agent, the agent's address and phone number, and a little box for authorization. I don't know why all the things are on there, but since they gave it to me at the Police Department, I fill in all those spaces. And it says, "I am the owner of record for the real estate above, and I authorize the above agent to make complaint to the West Lafayette Police Department for unauthorized parking on this property, and I agree to hold harmless and indemnify the City of West Lafayette and any of its Officers for any claims on account of action taken under authority of the ordinance based upon any complaints filed by my agent." Okay, so my senior warden or the kid in charge of parking or my secretary rips out a form that says An Authorization of Agent for Complaint of Unauthorized Parking on Private Property. Form two is Unauthorized Parking on Private Property Complaint Form. This describes the offense, the date, the time, the location of the vehicle, the color of the vehicle, the make of the vehicle, the body, the model, the license, the condition of the vehicle, and who owns the property. And then an affidavit is attached. "I [please print] affirm under penalties for perjury that the information above is true and correct, and that the vehicle is parked on private property without my express or implied permission, and is in violation of West Lafayette ordinance. I am [circle one] owner, holder, occupant, lessee, agent, or trustee of the property. (If other than the owner, you must attach a copy of the written authority you possess the property or act as agent.) I make this complaint under the ordinance, and I agree to appear and testify concerning any ticket issued. I agree to appear and testify. I also agree to hold harmless and indemnify the City of West Lafayette and any of its Officers for any claims on account of action taken under authority of the ordinance based on my complaint. [Day, time site]" Then there's a little box down below for disposition. It says, "Vehicle ticketed. Ticket number. Case number. Vehicle towed because it impeded egress or flow of traffic." And it then says who the towing company is. You know, who took the car. "Vehicle towed immediately from retail establishment, professional office, house of worship, or public building. Officer. Number." And it's signed. So that's what I do. Sometimes I just ticket cars, but if it's an old guy, an old Cadillac with a John Purdue Club sticker, then he gets a ticket. If it's a big mother pick-up truck, that says, "Boonville Stallions" or something, he goes. I don't like it, but that's what I have to do. Whoever gets towed will know where the car is, they'll know who did it, and they'll know why they got the tow.

Councilor Keen said a legal opinion from the City Attorney, it was just a thought. Is the towing from private property— or could it be considered— a civil matter versus a criminal matter?

City Attorney Burns said well, it's certainly civil. All these ordinance violations are civil matters. None of these City ordinance violations are criminal matters, to start with. That's a little bit of technicality, but it's—

Councilor Keen said well, I mean, my point in asking the question is that Police generally don't get involved in civil matters.

City Attorney Burns said that is true. But as I think I pointed out in the memo I put together that, Councilor Bunder just pointed out, the forms that are necessary if you as a citizen want to—and I'll use this advisedly—swear out a complaint for a violation of a City ordinance, what you are doing under the procedure he just outlined is that you are swearing that there has been a violation of a City ordinance and you would like that person pursued through the Ordinance Violation, taken in front of the City Court, and fined, using the power of the City. That's everything he just talked about. And he's entirely appropriate in doing it that way. At the bottom, it also says that there might be a towing involved, but that's sort of incidental. What I think is important to talk about is where does the law start? And the law starts with this proposition: If you own real estate, you can protect it by using self-help. That's a fundamental

tenet of American Indiana law. It starts there. If this Council wants to change that, they can do that, but they have to do so very specifically. And that has not been done in the current ordinance. There was a lack of clarity. And I agreed 100%, as soon as I read that, even back last year when you and I had a conversation about it. There's a lack of clarity. It's not clear to me by reading that, as a citizen, whether or not I, as a citizen, can exercise self-help, pick up the phone, and get a tow truck company. But when you start with what the law is, nationally and in the State of Indiana, which is proposition one, private property owners may exercise self-help to get that personal property—whatever it is—a pad of paper, bicycle, car—all personal property. You have that right as a citizen to get it off your property, whether you're a residential owner or a business owner. If this Council wants to change that, they can do so. And I believe that the ordinance that Councilor Roales has put forward does affirmatively change that and say, "You, as a property owner in the City of West Lafayette, no longer have the right to exercise self-help." That's what this does. And so I think it's important to start with that analysis. You can also, as I said in my memo, you've got three options: You can just swear out this complaint against the person and have them pursued through the legal processes; you can—and this is under current ordinance—you can swear out that complaint under City Code and have them towed; or you can take the third alternative, pick up the phone and have them towed without Police involvement. That's the current law. And I think what's before this Council is the decision of whether you want to change that and no longer give a person the right of self-help. Councilor Bunder, Rev. Bunder, you've done the prudent and conservative thing by using the Police officer. I do not believe under current law you have to, but you're getting the Police involved and I'm sure they're happy to help and all those sorts of things. But I don't believe under current law you're required to.

Councilor Truitt said now one other item to also keep in mind. You know the City of Lafayette has third party, to call it that, have outsourced all of their parking downtown. It's all done by a private company called Denison Parking. They police the streets. They write the tickets. They do everything. I think that's also important to keep in mind. I just think, you know, to use the right word, the self-help side of things. I mean, from an individual property owner—me personally, as a citizen—I mean, if someone's parked in my driveway, their car needs to be removed so I can use my driveway.

Councilor Roales said and I don't disagree with that. I mean, I agree with Counsel Burns that self-help is something we need to include, but I think this ordinance outlines a process for self-help and a manner in which to do it. Instead of having it be completely an unregulated activity, this outlines a process so that it can be adequately recorded, so that it can be adequately managed in our City, but that the process of self-help is more efficient and more clear. I think you would agree that our fines—

Councilor Truitt said well, I think—I don't, you know, I'm all in favor of clarifying things, but the word "self-help" means I don't need a description and a definition of—I mean, it's—

Councilor Roales said I mean, the reality is we live in an incredibly dense area of Indiana. It's probably one of the leading top five census areas in the State, and so that—I mean, we're not living in the middle of the country, and so sometimes there's individuals who act imprudently, and so that the law has to have a channel for directing self-help. I think that's appropriate in this instance. I think it's appropriate for a city of our size and with the issues we have.

Councilor Truitt said but is this thing—is it fair to say, though, that you're really—and I don't mean anything more than just what this really means when it comes out here—but are we really focusing on the multi-family market here? I mean, is that really the—?

Councilor Roales said I think—one of my intents of this ordinance was to—you know, we have three different kinds of situations here in West Lafayette. The current ordinance, if we were to restate it as written, would apply to all three. And I think that they're in different situations and different needs. You know, we try to make it as easy as possible for single-family residential homes, you know, on game days. You know, they have a different need than commercial areas of our City and the very dense multi-tenant areas, and so by splitting that into three, you know, we tried to address the needs of each. And I think, you know, that was an attempt to move to a better position than simply restating current ordinance, which is—44.08 as written—and enforcing that. You know, I would restate that self-help is not a punishment. We're not—you know, acting through self-help—Counsel Burns maybe you can clarify—is not a way to punish an individual for—

City Attorney Burns said I agree. Absolutely.

Councilor Roales said it is simply a way to relieve the problem that's been caused. And so, when we think about this, I want everyone to remember that, that we're not trying to punish illegal parking through towing.

City Attorney Burns said correct.

Councilor Roales said we're simply trying to make it—

City Attorney Burns said protect, we're trying to protect.

Councilor Roales said we're trying to protect the rights of property owners by providing the channel for them to legally remedy the situation by making it clear how you can legally remedy the situation.

Councilor Truitt said but from a property—you've got to also keep in mind here, from a property owner's perspective, though, the self-help is if it's a parking lot or if it's a driveway, get the car off the property. So what you're saying is, okay, if we're okay with getting it off the property, are you then saying what happens once it's off the property? Is that what you're—you know, don't charge it out of sight storage charges or towing charges and so on? Is that the main—?

Councilor Roales said yes, and so, for instance, one of the instances where my ordinance comes before a car is towed—

Councilor Truitt said right.

Councilor Roales said is, you know, recording that appropriately with the City. Well, I think that's a public safety issue. If individuals don't know where their car's been taken, they don't know if it's been stolen or if they don't know—

Councilor Truitt said I can see that, I can see the logic—

Councilor Roales said it makes it difficult for a Police force to immediately go looking for a stolen car, because 99% of the calls they're going to get aren't stolen cars. So—

Councilor Truitt said but didn't the towing—correct me, but didn't the towing company operators say that they filed that with the Police Department?

Councilor Roales said I think—

City Attorney Burns said I'm not sure they're required to—

Councilor Truitt said I know they're not required to, but didn't most of them—

Police Chief Dombkowski said they usually fax us [unintelligible].

Council President Hunt said is it the end of the shift or is it right away?

Police Chief Dombkowski said they generally will do that—

Council President Hunt said I thought we heard it was the end of the shift.

Police Chief Dombkowski said if they go down and tow a large amount from a complex, they will—

Councilor Truitt said send a batch—

Police Chief Dombkowski said send a list that is usually fairly immediately.

Council President Hunt said fairly immediately.

Police Chief Dombkowski said yes. I mean, that shift. That shift, Councilor.

Councilor Roales said if that's a good practice, obviously, I do and I think you do, you know, I think maybe not every towing company abides by that. I think making sure they do abide by that is an important measure. So that simple reporting by a form that's already issued by our Police Department I don't think is a burdensome process.

Councilor Truitt said well, and I think what is a burdensome—you know, if you have a property owner that lives out of town, okay, and they have an agent that they hired to do it, whether it's a towing company or, again, PDQ, their job—they way they know that someone belongs—and we'll go back to the multi-tenant type situation—is that they look for a sticker.

Councilor Roales said under this ordinance, the agent is just as empowered as the owner, so—

Councilor Truitt said okay. So the agent goes out and there's not a sticker there and they say, "Get this car out of here."

Councilor Roales said and the scenario you just described would be entirely legal under this ordinance.

Councilor Truitt said okay, so they just tow it, the towing company comes, they go, and then within—we could add something here—within a period of time they have to fax in a report.

Councilor Roales said yes, I believe the scenario you just described with an agent and a sticker is absolutely in line with this ordinance.

Councilor Truitt said okay. So the agent could be a towing company, the agent could be Denison—

Councilor Roales said no, the agent—as long as they're not receiving a profit. It would have to

be a true—

Councilor Truitt said but that—a third party is receiving—I mean, you hired somebody... The landlord lives in Tokyo and they hire somebody—that is—they're making a profit, because—I can tell you, in this business you don't make a profit, but you're getting revenue.

City Attorney Burns said but not off the towing.

Councilor Roales said they need to be profit neutral on whether the car's towed or not. To have an independent kind of conflict-free opinion on that.

Councilor Truitt said all right. I can see some—

City Attorney Burns said if I may, I the only disagreement that I'm hearing between the scenario you laid out and your saying, "Yes, that would comply," is that they still need to fill out a complaint and it must be received by the Police Department, which—

Councilor Truitt said I said within some time period after—I think if we stay away from having to do it in order to tow the vehicle, then I can start to see—so somebody doesn't have to get out of bed at 3 o'clock in the morning or 4 o'clock in the morning in order to determine if their agent determines that a car is illegally parked. I think we still have to allow that vehicle to be removed from a piece of private property. Now, the payment and profit side of things, we can talk a little bit more about the logic there. I see—

City Attorney Burns said but it would certainly need some reworking of the language. Because it says you don't do anything until they're received it. So the Police Department receiving it is the trigger—receiving, not sending.

Councilor Truitt said I mean, we're going to have manpower-related issues. How do you—I mean, you fax it in—not everybody has a fax machine, right. Not everybody has a scanner. Not at 3 o'clock in the morning.

Council President Hunt said you can text it in.

Councilor Truitt said text it in. Whatever. Then you've got to wait for—

Councilor Roales said I tried to leave implementation up to the Police Chief, so that he can determine a system that works for individuals in our community. You know, things are going to change over time. If we had written this five years ago, we wouldn't have thought of texting. But now, technology's changed, and so we try to leave that broad, so that we can have a system that works, not only for his staffing levels in his department, but also the towing companies and the citizens. So, I mean, I think by leaving that open, you know, I think he can design a system that works for everyone.

Council President Hunt said any other questions? Anything else?

Councilor Keen said the only other comment I would have is that, if you look, Councilor Roales—and you and I have not talked specifically about this, and I apologize for not bringing it up when we talked; it just occurred to me—page 2, paragraph (f), "Towing From Commercial Property." The last one, talks about when it must be during a time when "the property is open and operating or is reasonably expected to open or operate within one hour." I think that might be subject to an attack as a public taking. Essentially what it does is it says you, in essence, as

a property owner, need to allow the public to use it, or at least you have no way to tow it.

Councilor Roales said I believe—I mean, you know, it doesn't say you have to have your parking open to everyone—

Councilor Keen said I understand.

Councilor Roales said you can put a chain across it, you can otherwise impede the parking—

Councilor Keen said okay.

Councilor Roales said this is saying if you've allowed the public to park on your property—I mean—

Councilor Keen said so you could chain it.

Councilor Roales said I mean, there are properties in West Lafayette that do that. I think if that's their decision, I think we should allow that.

Councilor Truitt said so this calls for signs to be put up throughout the entire City in front of them?

Councilor Roales said right, and that language was taken from the current ordinance.

Councilor Truitt said right. So right now, under this, we would have—

Councilor Roales said they would.

Councilor Truitt said right.

Councilor Roales said the property owners would. And that's not a change from the current—

Councilor Truitt said no, I'm just saying you can go around right now and look through a lot of those areas, so I'm just trying to think—

Councilor Roales said I think that's one of the comments we see time and again from the public is that they want to see more signs that say where they can and can't park, more signs where parking is available, and things like that.

Council President Hunt said Chief Dombkowski, do you want to make a comment?

Police Chief Dombkowski said I wanted to ask a question of Mr. [City Attorney] Burns, his interpretation of that same scenario we're talking about. If somebody calls the Police Department and wants us to assist with towing a vehicle off of a commercial lot or a house of worship when they're closed for, say, purposes of overnight clearing the lot of snow—

City Attorney Burns said I think—

Police Chief Dombkowski said how would that work?

City Attorney Burns said I think it lacks clarity. I think as it's redrafted, it probably does lack clarity. Because if I were a Police officer and asked to interpret that, I'd have to say, "Hey,

you're not open. You know, it's three in the morning, you don't open until 6. You've got three hours to go. I'm sorry." That's why I pointed out that we may need to do a little adjustment on that, because that's a great example in the middle of—

Police Chief Dombkowski said that's a real-life scenario with Our Saviour and University Lutheran. They've solicited our help in those areas before.

City Attorney Burns said so I do think that needs some attention.

Councilor Keen said I guess I don't see the logic in limiting, in that paragraph (f) again, "a retail establishment, professional office, house of worship or public building located on the property is open and operating or is reasonably expected to open or operate within one hour." Why did we choose the one hour thing, and I guess I have a hard time with—that's like saying that if I own a business some place, I know you kind of touched on this a little bit, but this would allow anybody to park there during the off-hours unless I'm getting ready to open in the morning. I mean, what is the logic behind that? I just don't get the logic on that one.

Councilor Roales said it's to strike a balance between towing that's necessary for the commerce of our City, to encourage commerce, you know, as parking is available, commerce thrives, and so we want to strike a balance between making parking available, but not having undue towing that's not necessary.

Councilor Keen said so we're going to have Robin Hood parking available then? If it's my parking, then, you know, I have to let anybody park there, if I'm not opening within one hour.

Councilor Roales said as I clarified earlier for our legal counsel, I mean, you know, you'd still be allowed to inhibit parking by, you know, physically impeding the parking lot or other means similar to that.

Councilor Keen said but why should I have to incur a cost of putting a chain up, putting a gate up, or anything like that, when it's my property to begin with?

Councilor Roales said it's in the best interest of our City and the commerce of our City and the citizens of our City for more parking to be available.

Councilor Keen said and we can take that parking from anybody out there is what you're saying.

Councilor Roales said no, in practice, instead of building more parking that—we encourage the sharing of parking as much as possible.

Councilor Keen said well, and if the business owner wants to allow that, they're certainly free to do that. But I don't think government needs to step in and tell somebody that they can't use their—that they have to let somebody park in their parking lot, just because they're not open. I don't think that's right.

Councilor Roales said that's not what we're saying with this.

Councilor Keen said that's what is says the way I'm reading it.

City Attorney Burns said I appreciate there's a philosophical difference here, but, to me, the legal issue that is important is that we—it is the regulation of towing as opposed to the regulation of property use that his language does touch. It says you can't tow, and to that

extent, you know, Councilor Roales' point is we're preventing tow truck companies from doing certain things in certain hours. We're not preventing a property owner from doing whatever—

Councilor Truitt said yes, but he can't pick up a car—

City Attorney Burns said I understand. I'm saying it comes down to a philosophical question pretty quickly and we're hearing it right now. I just wanted to make that legal clarification. It's not impeding the property's owner to do anything except to pick up the phone and get the tow truck company there. But they can't do that, because the tow truck company will say, "We can't touch the car. Sorry." So it does impede the property owner to that extent. They can no longer pick up the phone and get a tow truck company to respond.

Councilor Keen said are there any other communities that have this type of an ordinance in place that prohibits people from towing within one hour of opening? And, if so, how does that work for them?

Councilor Roales said I'm not aware of any. Precedent does not always need to be set by other municipalities. Sometimes West Lafayette can be a leader.

Councilor Keen said well, I don't think this is a good precedent is my opinion.

Councilor Roales said well I don't agree.

Councilor Keen said I do have a philosophical disagreement with what you're trying to propose here.

Councilor Bunder said I love the setup for the controversy, you know. We have Robin Hood parking and vigilante towing. You come down on the side of Robin Hood parking or vigilante towing.

Council President Hunt said and we have an amendment on the floor.

City Attorney Burns said that is true. We are debating an amendment to substitute, to amend by substitution.

Council President Hunt said and we have a motion and a second, don't we?

City Attorney Burns said yes, we do, and we've had some discussion.

Councilor Keen said now the question is if we okay the amended version, are we approving it?

City Attorney Burns said you have not passed it on the first reading, no. You have merely substituted, stuck it on the table, have a substituted version. You still have two readings after this to consider it.

[overtalking]

Council President Hunt said we'll have two readings.

City Attorney Burns said you would still have two readings after this vote, because all you're doing now is putting a fresh copy up.

Councilor Roales said by graduating the fine schedule, by including the cost of living increase are the changes, so, I mean, you may not be happy with the final version, but I think you'll agree there have been improvements. We should now consider this, the version we've got here.

Councilor Truitt said how many single-family residential property owners have you spoken with in regard to this? I know you've talked to the students, of course, but single-family resident property owners and commercial property owners—how many, just a guess. Because those are the majority of individuals that I have spoken with, so I was just curious.

Councilor Roales said it's a large number. I mean, I've had numerous discussions with the commercial property owners in my district—

Councilor Truitt said okay.

Councilor Roales said in the last three weeks about this. You know, there's not a lot of single-family residential property owners in my district.

Councilor Truitt said right.

Councilor Roales said and so they haven't reached out to me as much as other Councilors, like Councilor Hunt. And so, you know, I would appreciate your input in that area, but, you know, I tried to consider them as well.

Councilor Keen said can we—I was going to ask if there were any property owners who would be directly affected by this, other than the common public, or any tow truck personnel people that would like to weigh in on this?

Council President Hunt said I understand the public hearing will be on Monday. I guess we'll have public hearing on Monday?

Councilor Keen said are we having a public hearing Monday?

Council President Hunt said usually we do it—

City Attorney Burns said we do take comments.

Council President Hunt said take comments.

City Attorney Burns said it's not a formal hearing, but public comments are heard.

Councilor Keen said I mean, I'd like to know how they propose or perceive themselves to be impacted by this.

City Attorney Burns said well, it just got filed, and so they haven't had a chance to look at it yet.

Councilor Keen said all right.

Council President Hunt said Mayor Dennis is out of town, as you know. Did he leave you any comments on this?

City Attorney Burns said I have. I talked to him and kind of walked through the changes, and he wanted to make three points, which I'll make from my notes. Number one, he believes it's

progress, and positive progress for the changes that have been made. Number two, he believes that some sort of a standardized sticker system for multi-tenants ought to be seriously looked at and considered, to try to come up with a good system that would work and would protect the people who have cars getting towed as well as property owners. And finally, just try to keep in mind we're trying to encourage legal parking and legal towing. So those are his comments.

Council President Hunt said are you ready for the vote on this amended version? Are you?

Councilor Keen said this is just the substitution—

[overtalking]

Council President Hunt said right.

Councilor Bunder said we're in the wrong room for those votes.

Council President Hunt said right, for the vote we do in this room.

Councilor Keen said this isn't the vote on the ordinance—

Council President Hunt said right. I'll call for the vote. Do you want to do—

Councilor Truitt said I think we're—

Councilor Keen said I think we'll just do a voice vote.

Council President Hunt said all in favor of the amendment by substitution, say AYE.

The vote on the motion to amend Ordinance No. 7-08 by substitution was approved by voice vote.

There was no further discussion.

NEW BUSINESS:

Ordinance No. 8-08 An Ordinance Providing For Temporary Loans From A Fund Having Sufficient Balance To A Depleted Fund (WWTU to Fire Pension Fund and General Fund) (Prepared by the Clerk-Treasurer)

Council President Hunt read Ordinance No. 8-08 by title and called on Clerk-Treasurer Rhodes to address the ordinance.

Clerk-Treasurer Rhodes said last month, you took the first action in a series of temporary loan authorizations that we're going to require, in order to pay the City's bills and meet payroll, in the absence of any property tax collection until the latter part of the year. At this point, we don't have a cash flow schedule from the Wastewater Treatment Utility. However, there is still a need, and this is well within the amount that we have borrowed in the past from the Utility, to have a loan of \$1 million for the purposes of funding the General Fund expenses for the coming months. We will need the first of the loans to fund the Fire Pension expenses for this month. As you remember, we do have pension funds that are invested in equity accounts with the State PERF, and it has been the preference of past Councils and certainly myself that they remain there as long as possible, because the earnings are so much greater. However, there may be

legislation changes that would prompt us to draw those down to protect the City, based on what they're up to at the Statehouse—today, it turns out. Nevertheless, we're going to need these funds in order to run the City. The only alternative is borrowing commercially, in which you would incur expense, which we're fortunate not to have to do in this City. So I would request that you approve it, and we will work with the Utility as they roll out their plans for local cash, major projects this year. We'll be able to complete the planning of whether we can continue to borrow from the Utility or will need to seek, at some point during this year, loan authority to go to the commercial sector and borrow to run the City.

Councilor Keen said are you going to need two readings on this?

Clerk-Treasurer Rhodes said yes, please.

Council President Hunt said any other questions or comments about this for the Clerk-Treasurer?

There was no further discussion.

Ordinance No. 9-08 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect (UZO #57) (Submitted by Area Plan Commission)

Council President Hunt read Ordinance No. 9-08 by title and called on Councilor Keen to address this ordinance.

Councilor Keen said I can talk about this tonight, or we can talk about it on Monday. It's very simple stuff. It's an omnibus amendment to Section 7 of the UZO. There are three parts to it. Sections 1 through 4 are simply allowing Urban Zones in some of the smaller unincorporated towns that have sewer access. That really does not apply to West Lafayette proper, so that one is really not affecting us. Section 5 affects adult daycare centers and they want the same zones that we have for daycare centers to be allowed the same for adults as for children. And then Sections 6 and 7 are expanding the Courthouse proximate and they're wanting to expand the Courthouse area downtown for NBU and CBW zones. And it talks a little bit about accessible dwelling units and what types of buildings and that sort of thing will be there. It's basically allowing residential on upper floors of any building down there and reserving the main floors in these buildings and the developments down there to commercial-type use, the exceptions being that handicap access would be allowed in the rear part of some of the main floor areas. I don't have a map with me, but they're expanding the Courthouse proximate area to include not only the area around the Courthouse but up to, I think, 9th or 10th Street.

Councilor Truitt said 11th.

Councilor Keen said 11th Street? Okay.

Council President Hunt said the staff approved this?

Councilor Keen said yes, it was all approved, 11-0, I think.

Council President Hunt said any questions, comments?

There was no further discussion.

Resolution No. 5-08 A Resolution Confirming The Designation Of An Economic Revitalization Area For Property Tax Abatement For Purdue Research Foundation (PTC-II) **PUBLIC HEARING** (Prepared by the Office of the City Attorney)

Council President Hunt read Resolution No. 5-08 by title and said this is a confirmatory resolution.

Councilor Keen said we won't be voting on this, is that correct? This is just public hearing.

Council President Hunt said oh, okay. I'm sorry. It is a public hearing, so we won't vote on a public hearing, because that will come later?

[overtalking]

City Attorney Burns said we will vote on it.

[overtalking]

Clerk-Treasurer Rhodes said we will have the public hearing and you will vote on the same night.

City Attorney Burns said I guess the Mayor will be back and we'll have the public hearing first.

Council President Hunt said questions or comments?

Councilor Truitt said no speech, Jody [Hamilton, Lafayette-West Lafayette Economic Development Corporation]?

Ms. Hamilton said no speech. You've heard me talk enough.

Council President Hunt said thank you for being here.

Ms. Hamilton said you're welcome.

Council President Hunt said any other questions or comments? Ready to move on?

There was no further discussion.

Resolution No. 6-08 A Resolution Requesting The Transfer Of Funds (EDIT) (Prepared by the Clerk-Treasurer)

Council President Hunt said Clerk-Treasurer Rhodes.

Clerk-Treasurer Rhodes said this was my request for transfer of funds. Do you want to speak to it, Allen [Assistant Director of Development Grady]?

Assistant Director of Development Grady said it is basically to cover the cost of running ads for the position of Director of Development. It was not in the original budget, so this is just to cover two ads, I believe, that were placed in the *Indianapolis Star* and with some organizations.

Council President Hunt said questions? Comments?

There was no further discussion.

REMINDERS

Council President Hunt said remember that the Council meeting is at 6:30 p.m. Monday. And there is a student organization forum tonight in Pharmacy 172 at 7:00 p.m..

ADJOURNMENT:

There being no further business at this time, Councilor Truitt moved for adjournment. Motion was seconded by Councilor Thomas and passed by voice vote, the time being 5:35 p.m.

Respectfully submitted,

Judith C. Rhodes, Clerk-Treasurer
Secretary of the Common Council