

Amherst City Council met in a Regular Session under full compliance of State Law with President Dietrich opening the meeting at 7:30 P. M. Roll call: Mr. Janik, Mrs. Wasilk, Mr. Van Treuren, Mr. Gambish, Mr. Bukovac, Mr. Traster, Mr. Loughrie. Also present were Mayor Taylor, Safety/Service Director Clotz, Law Director Pecora, Auditor Kukucka, Treasurer Hullman, members of the Public and the Press.

The Prayer was invoked by Chaplain Wasilk, followed by the Pledge to the Flag led by Sgt. At Arms Traster.

Consent Agenda: The Clerk read the Consent Agenda. Mr. Gambish motioned to accept the Consent Agenda as read. Seconded by Mr. Traster. Roll call vote 7-0 to accept the Consent Agenda.

Acknowledgement of the Public pertaining to items on the Agenda: Mr. Dietrich recognized Mr. Todd Stuart from the Amherst Schools District Administration. Mr. Stuart said as part of their strategic plans, and through community engagement and communication he would be the liaison for the schools for the remainder of the school year. Currently he is holding the position at the Board Office as Operations Coordinator. He urged everyone to e mail him or call him at the board office with any concerns or questions. He wants to be in communication and partnership with the schools and Council. He distributed the Amherst Schools 2012 Measures of Success handout and spoke to it. He invited everyone to a meeting at Steele High School on February 11 at 7:00 P. M. The meeting is to seek input from the community. There were some questions from member of Council.

ORDINANCES AND RESOLUTIONS FIRST READING:

- (a) An Ordinance authorizing the City to grant to Robert and Nelida Lopez a revocable license to install a patio on City owned land. (A-10-07)

Mr. Gambish said he followed up on a couple of things that were discussed in committee. He then will see what Council's pleasure is, but he would like Council to send this back to Committee. He shared concerns regarding this item. He is very much for Mr. Torres being able to do this project, representing the third ward and having a business downtown, he has pride in the downtown area. This would be an asset to the downtown area, but what he does not like is the fact that the City is going to give a revocable license and not charge rent, have a lease or go through the CIC. He does not like City land given away. That is no different than handing out City money on the streets. He asked Mr. Clotz for information about the salon that is located in the basement of the San Springs Building. He discussed that agreement and the rent and would like to see this patio patterned after that. If any precedent has been set, it has been set with rent being charged for City property. He discussed the area and potential value of the patio area. He would like to see the contract even tho Council does not vote for it, he thinks it's important to see the agreement and contract hand in hand. He believes this establishes a precedent. He has had phone calls advising him that the City does the right thing. This is his opinion about good government and he does not want to see this green space given away. Someone else may request some kind of kiosk there. As far as tax dollars goes, this actually could hurt the City because if there is a pool of money in the entertainment district down there and on a nice, sunny 70 degree day, that pool of money goes over to this proposed patio. That gentleman will have write-offs, depreciation and all these other things that could have a negative effect on the City through a lower amount of taxes to the City. It would be better for

the City to have an income based on land, rather than sales or anything else. We had not talked of it; he would like to make sure that the land be returned to its original state when it is not longer being used for a patio. This will ensure it will not become a burden to the City. Since he was the dissenting vote, he will not make the motion but would like to see this go back to the committee and he would do the leg work with an engineer and finding out if there is a value to the property. He again urged that they go through the CIC and remove the City from any kind of liability. Mrs. Wasilk asked the Law Director about the actual agreement. Mr. Pecora reminded her it's like the revocable license they did for the Life Care Building to allow them to install sidewalks across some gas lines. Council passed the ordinance then they drafted the actual agreement and negotiated with the owner of the building. Mrs. Wasilk asked if Life Care paid anything to the City? Mr. Pecora said they did not. The revocable license has certain elements that protect the City. Mrs. Wasilk said Main Street is in a building that is owned by the City - how much do they pay? Mayor Taylor said they pay nothing. He explained about the grants and how it's budgeted for them. It's a wash, the City pays nothing to them. They end up picking up costs which are part of the grant. Mrs. Wasilk pointed out that the Amherst Historical Society has events on City property. Do we charge the historical society rent? Mayor Taylor said we do not. Same with Main Street when they have their dancing on Main Street, we close down the streets and we do not charge them. We just make sure they have insurance policies for any injuries or liabilities. Mrs. Wasilk said that being said, she motioned to pass this on to its second reading. Seconded by Mr. Janik. Mr. Janik asked if there was a way between the first and second reading see the potential contract that the city will enter into? Mr. Pecora said they can provide the basic agreement that they work from. They will be negotiating with the actual owners to terms they are agreeing to. He spoke as to what that would entail. It will take more than one reading to complete the full negotiations and agreement. Mrs. Wasilk asked if we ever declared Life Care Ambulance, the Historical Society, Main Street or Perk Avenue to demonstrate that they have liability insurance for any of the events that we have granted them on City property without charging them a fee? Mr. Pecora believes they are required to have a million dollars insurance policy in place pursuant to the license agreement. Mrs. Wasilk said it sounds like he has already thought of a lot of these things and they are in place. Mr. Bukovac asked if Main Street and the Historical Society are non-profit organizations. Mr. Pecora said they are. Mr. Bukovac said so we are not talking about building any permanent structures for those events for those groups. Mr. Pecora said Life Care has a sidewalks and that is considered permanent and you can certainly easily destroy a sidewalk and you can certainly remove a patio. Mr. Gambish said one thing about the sidewalk at Life Care that land did not cost the City or the City parking lot or any other business owners downtown parking spaces. That was more of a safety concern as they did not want the gas line under the building so that limited the options that they had to do those very extensive upgrades and repairs to the building. He feels that the patio vs. the sidewalk you are looking at two different things. You are looking at property that is randomly given to a business that could conceivably cost the city tax money over a short period of time, vs. another piece of land that enters into two locations. So we are not talking about two pieces of property that are comparable. The comparable property would be the Salon and the vacant piece of land that will be business for private income. The sidewalk serves the same purpose as any other business downtown; to get people to and from businesses to spend money. He does not think Mrs. Wasilk's are equal comparisons. Main Street and Historical

Society are non-profit. So cannot be compared. Mr. Traster asked about the CIC and why they are not involved in this project? Mayor Taylor the City is not promoting this project; he said Mr. Torres went to Main Street to ask if it's possible to use that property. He, Mr. Clotz, Mr. Dietrich and himself met and discussed this. Mr. Torres was told that Council would have to approve this after it went to Design Review Board. Mr. Torres had some plans drawn up, and had it approved by the Design Review Board and then submitted it to Council. So we do not have a dog in this fight. It is up to Council and what their pleasure is. Mr. Pecora said the CIC would be beneficial if we were trying to get around, so to speak, the bidding requirements for leasing. Under CIC you don't have to bid for project and follow rules that you normally follow if you are selling or disposing city property. You could have a building designed such as Life Care and be selective and not necessarily pick the highest bidder. You could focus on the development of the community and keep in mind what we are trying to achieve downtown. So the CIC would not be of any particular use to this project as we are not trying to lease this property or dispose of it. When leasing, we are subject to certain terms, including some liabilities and a fixed period of time. The revocable license, on the other hand, we give them 180 days notice that we are going to revoke it, and that's it. Then they would be liable for removing their patio project from City property. Mr. Kukucka explained that the city offices housed in the San Springs building needed a home and the City was able to acquire this building and refurbished it. The Styling Den requested to stay there. So they worked it out with the City at that time to rent it. The amount of space is probably ½ of the space that Quesadillas is looking at. Mr. Janik said it sounds like Mr. Pecora's opinion that if we were to approach the owner and talk about a lease agreement, this would complicate the issue with the City being the lessor and the restaurant being the lessee. Mr. Pecora said if this were just a lease situation then we would have to open this up to bidding to anyone who would want to lease that particular space. We could get around that if we used the CIC but at that point you are subjecting yourself to terms of a lease which are not as favorable as a license. If you want them off your property, you give them 180 days and you take your stuff with you. Under a lease, we might have some complications; eviction would be one, certain liabilities, possibly insurance allegations so it's not as desirable as a revocable license. Mr. Gambish thinks it would behoove the City to do a term to guarantee this. He talked to Mr. Yorks last night and Mr. Torres is looking at investing of upwards to \$15,000 and if Council changes or Administration changes, and with him making a significant investment, it would be better for him to have some kind of a term. A lease would also protect Mr. Torres also in case he is told to uproot and take off. Roll call vote 4-3 with Mr. Gambish, Mr. Bukovac and Mr. Loughrie voting no to pass to second reading.

- (b) An Ordinance enacting Section 545.22 of Amherst's Codified Ordinances to designate tampering with or unauthorized reconnection of utility equipment as a misdemeanor of the first degree; and declaring an emergency. (A-10-08)

Mr. Traster motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Janik. Roll call vote 7-0 to suspend rules. Mr. Traster motioned to adopt. Seconded by Mr. Gambish. Roll call vote 7-0 to adopt. Becomes 0-10-07.

- (c) An Ordinance to approve the form and authorize the execution of power sales contracts with American Municipal Power, Inc. and taking other actions in connection therewith regarding Meldahl and Greenup Hydroelectric Project participation; and declaring an emergency. (A-10-10)

Mr. Gambish motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Bukovac. Roll call vote 7-0 to suspend rules. Mr. Gambish motioned to adopt. Seconded by Mr. Loughrie. Roll call vote 7-0 to adopt. Becomes 0-10-08.

ORDINANCES AND RESOLUTIONS SECOND READING: NONE

ORDINANCES AND RESOLUTIONS THIRD READING: NONE

Miscellaneous and Acknowledgement of the Public: There was no one speaking.

Agenda Requests and Committee Meeting schedules

A-10-11 Ordinance Approve current replacement pages to ACO
A-10-12 Streets Removal of Dodge Drive Barrier

Ordinance February 1, 2010 At 7:00 P. M. A-10-11
Streets February 1 at 7:05 P. M. A-10-12

The remaining Council Committee Meetings from January 26, 2010 to February 2, 2010 are cancelled.

Mr. Traster noted that the item regarding that gate, this is very short notice for some of the residents and he would urge Council to consider tabling this. One groups submitted this and the other group is just finding out and this group is not prepared.

Reports of the Administration:

Treasurer Hullman: No report.

Auditor Kukucka: No report.

Law Director Pecora: Announced that as he indicated at the last Council Meeting, he will hold public office hours at City Hall commencing 2/10. He indicated the hours. If there is a response by the residents, they can expand on that.

Safety/Service Director Clotz: Thanked Council for adopting the Ordinance regarding meters. It's been something he has been after for some time. At the Planning Commission Meeting, there will be discussion on R-3 and R-3 zoning codes.

Mayor Taylor: On February 8 he will give the State of the City address. He will have the budget ready by the end of this week so that it can be considered at the February 15 committee meeting. He asked for anyone that had questions to contact him, or the Auditor, or Mr. Clotz.

Mr. Janik motioned to accept the Reports of the Administration, seconded by Mr. Traster. Voice vote 7-0 to accept the Reports.

Mr. Gambish motioned to adjourn, seconded by Mr. Janik. Voice vote 7-0 to adjourn. The meeting adjourned at 8:10 P. M.