

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: Mrs. Wasilk, Mr. Van Treuren, Mr. Gambish, Mr. Bukovac, Mr. Traster, Mr. Loughrie, Mr. Janik. Also present were Mayor Taylor, Safety/Service Director Clotz, Auditor Kukucka, Law Director Pecora, Treasurer Hullman, members of the Public and the press. Mr. Gambish motioned to excuse Mr. Traster as he had called the Clerk earlier and was feeling unwell. Seconded by Mr. Janik. Voice vote 6-0 to excuse.

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

Consent Agenda: The Clerk read the Consent Agenda. Mr. Janik motioned to accept the Consent Agenda as read. Seconded by Mr. Gambish. Roll call vote 6-0 to accept the Consent Agenda.

Acknowledgement of the Public pertaining to items on the Agenda: There was no one speaking.

ORDINANCES AND RESOLUTIONS FIRST READING:

- (a) An Ordinance to approve current replacement pages to the Amherst Codified Ordinances and declaring an emergency. (A-10-11)

Mr. Gambish motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Loughrie. Roll call vote 6-0 to suspend rules. Mr. Loughrie motioned to adopt. Seconded by Mr. Gambish. Roll call vote 6-0 to adopt. Becomes 0-10-09.

ORDINANCES AND RESOLUTIONS SECOND 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 has talked to several members of Council and Administration as well as Mr. Torres (who was present at the meeting) about this patio. He let Mr. Torres know that everyone here, and he can also speak for Mr. Traster after the conversations he has had with him the last four days, are definitely in favor of this process of installing this patio. But with that he motioned to send this back to Committee to iron out a few details, make sure we have everything involved in the revocable license and allow Mr. Torres a chance to review this as he has not had a chance to review the document. Seconded by Mr. Loughrie. Mr. Van Treuren said he is very much in support of the project and wants it go forward and he understands Mr. Gambish's view that maybe some value or token fee needs to be put on the land but he will not support any kind of lease as he does not think this is the way to go. Mrs. Wasilk said she generally agrees with what Mr. Van Treuren said. We need to do all we can to make it easier on businesses. We have expanded parking lots downtown, the municipal parking lot is used by businesses downtown and we don't charge them for those parking lots and we need to continue to do everything we can to help. Mr. Janik said he has discussed this with the Mayor of Elyria who has assured him that this is not uncommon and gave him a sample of a revocable license that they have used. Their license is fairly similar to the one presented by our Law Director on this project with a couple of exceptions. He asked about two exhibits that were not attached to the agreement that Council received. He thought maybe six months might be too long if we want to use that land and maybe we should consider 90 days notice.

With this agreement since it's something that is in it's second reading, the owners might want to review it and maybe it does not need to go back to committee. There has been concern about running the City like a business. He believes that as well. He also believes we are in tough economic times and we have a downtown business owner who is wanting to invest between 10-15 thousand dollars into this business to attract more business and people downtown which in turn is more tax dollars for the City. As a businessman, when we are dealing with legal matters, you follow the advice of your attorney. Our Law Director has said that we are in better position with a revocable license than to be in a landlord/tenant situation with a lease agreement that will involve complicated evictions notices and things of that nature. So he is more comfortable with the revocable license agreement. He does not think this opens up a Pandora's Box or a slippery slope which is what people have been saying. If there are business owners who have an established successful business who are willing to invest 10-15 thousand dollars onto a unused portion of property adjacent to their business, and are willing to accept a revocable license for property that the city owns completely and can have back at any time and it has to be returned in the same condition, then that is a slippery slope that he would love to travel. If someone wants to come to Council and invest money in downtown Amherst, he says to bring them here and Council will work with them. To answer Mrs. Wasilk's question about changes in the revocable license, Mr. Pecora said the Ordinance we are passing basically authorizes the Law Department and the City to enter into negotiations for a revocable license. The terms themselves are not necessarily being presented to Council for approval. This is the same scenario as the recent license with Herb de Laporte's building. Council can provide suggestions, such as the 90 days which would be appropriate. Mrs. Wasilk said so he is saying this is just an example, a draft and the only force is the one page of legislation. Mr. Pecora said that was correct, the legislation only authorizes negotiations with the land owner and he can incorporate these changes. Mr. Gambish said if Council was to approve the revocable license, the Safety/Service Director is then pretty much ordered by Council to enter into that agreement. He asked Mr. Clotz what his thought is on this. Mr. Clotz said he checked with Mr. Lieberman and if Council directs him to sign this document, he is obligated to sign the document. He does not necessarily agree with the fact that the land is free, but that is his opinion. He totally agrees with having a patio there, it is a nice thing for the downtown area, but to him, what would stop someone else from coming in and wanting another 50 foot? You would be dealing with the same thing over and over again. Mr. Gambish said he takes a more capitalistic approach on this and you have to do what's good for your business and not look for handouts. Mrs. Wasilk and Mr. Janik bring up some good points and a discussion on Committee floor would be appropriate. Mr. Loughrie agreed with the Safety/Service Director and Mr. Gambish and feels a nominal fee is not out of the question. He feels it takes away the illusion of impropriety. He wants to see them do a successful business down there But does not want to create a flood gate at City Hall either with others asking "where's mine." He does not mind taking this back to committee to dot all the i's and cross the t's.

Mr. Janik said he referenced a situation similar in Elyria and it is actually Scoops Ice Cream on W. River Road. They had some property adjacent to a parking lot and the City entered into something similar, for \$1.00 per year, a revocable license. It's the same thing, the business owner was going to pave it and was completely liable for everything and if the City wanted it back it is restored to its original condition. He does not think we are talking about

much here. Mrs. Wasilk asked if there anything in the revocable license or the legislation preclude the Safety Service director from charging a nominal amount. Mr. Pecora said they could include a subsection regarding a fee for the license. Mrs. Wasilk said since Mr. Clotz expressed a feeling that we should do something like that, he can do that and no legislation is required. Mr. Pecora said if Mr. Clotz wants to add any provision that's part and parcel to a revocable license, we can certainly do that. At that point we are entering into negotiation with the landowner and that is certainly a point of negotiation to discuss. If Mr. Clotz demand that be in there, it's between the City and the landowner. If the landowner does not want to pay a fee for the license then it's his prerogative and it's no longer an issue. The license doesn't happen and we don't enter into the agreement.

Mrs. Wasilk said she had some concerns about the precedent that this might set if we start talking about charging fees for any kind of activities that we allow people to use city land. We don't charge the Jamboree or Main Street, we don't charge profit making groups that use the free property we allow them to use for a certain number of days. They make money and the profit making endeavors makes money off that. We don't apportion any kind of fee to any business for the free use by the customers of that business for the parking lots in the city; unlike K-Mart or Giant Eagle, they have to maintain their parking lots, we maintain these parking lots without cost to the business owners. Her concern is that we might have to examine all of this.

Mr. Bukovac is not at this point sure where this belongs; does it belong in committee or on Council floor? He is behind this property taking effect and the revocable license agreement is a good idea as well. He thinks it's a good idea but he is with his cohorts as well that there should be some rules and procedures set aside so that if someone requests property it's just not whatever comes to the floor. The next time someone is told the steps and the procedures. He is not suggesting a lease or any particular fee but thinks it should be a standardized thing and not something that's bounced around back and forth. He does not want to stop Mr. Torres from using his property and discouraging him. He has other questions about the lease - regarding use of premises. We talk about the revocable license going with the building owner and not the actual business owner. Mr. Pecora agreed. Mr. Pecora said the license goes with the property owner. But the license also makes reference to the use by its tenant for the purposes of the restaurant. Mr. Bukovac asked if there was anything in the agreement if Quesadilla's does not survive, does that change the agreement and if the building closes, does that change the agreement? Mr. Pecora noted that it is a revocable license and if we see something that's not good for the City if Quesadilla's goes out of business and the building goes into foreclosure, then we revoke the license and the matter is dead. The agreement is not longer in existence. That's why a lease is not a good idea, the City would have to go through proper legal procedures to evict the tenant. Mr. Bukovac asked what if there was inability by the business or property owner to pay for charges to remove that property? If there any stipulation that protects the city if we need to remove that? Mr. Pecora said if either party revokes the license the tenant is obligated at their cost to remove their patio. Should they fail to do that, it becomes a contractual situation and we will issue for a breach of contract and it becomes a civil matter. That means having the court tell them to remove it by force of the court. Mr. Gambish said listening to everybody talk

there is no question in his mind that they want to see this project go forward and a happy medium can be found. He wants Council to consider as the vote comes down to consider Mr. Traster's thoughts on this, he would like have Mr. Traster here for his input. There have been extensive conversations on this between Mr. Traster, him and Mr. Loughrie.

Mr. Janik spoke to the revocation of the license or the failure of the business, but the license is with the property owner and obviously there would be some equity in the property so there would be recourse. He feels we would be in a good position if that were the case. Mayor Taylor wanted to assure Council that at no time was there an instance where we were going to give anything away. This is not a freebie. This is a situation where Quesadilla's came to us and said there is some property here, could we put a patio on it? And that precipitated this whole thing. We told them the route to go through and we were not in favor of a lease. We felt the best way to go to protect the City based on the investment of the business and based on the city situation was to get a revocable license. We felt this is a safe way to do it. As Mr. Clots and he talked about this, he has complete confidence that he will negotiate with Mr. Torres and Mr. Lopez in a fashion that will protect the City. As Mr. Pecora said, the legislation Council is considering only gives them the authority to negotiate this. Not the details, not the gory details, that is their job as the administration - to negotiate with the Safety/Service Director, the Law Director and himself. So all he is asking them to do is pass legislation to authorize them to negotiate with Mr. Lopez and Mr. Torres plus the fact that if Mr. Lopez and Mr. Torres don't like what the City offers, either party can walk away. There really is no risk involved here because Mr. Torres and Mr. Lopez may not like what we show them. So this is far from a done deal. While he understands going back to committee, he doesn't understand what's to go back to committee because he and Mr. Clotz and the Law Director are going to be negotiating. They will not do anything that will be a detriment to the City. So after hearing all the discussion, why send it back to committee when Council is only giving them the authority to negotiate a contract? Mr. Dietrich said he would have to agree with the Mayor completely. The only thought that was here was to help businesses succeed in our downtown. Mr. Gambish said with all due respect, it is a freebie. It is land and asset to the City; land has value. You cannot compare this to a parking lot, or non-profit, you are comparing this to an individual who will make money off City land for no fee. Parking lots and streets are maintained by tax dollars. The grass is cut by tax dollars. He wants to see this project go forward but not for free. There is other land in the City. He represents the third ward and has lived in that ward his whole life and he wants to see every single one of those businesses survive. But not for free. If individuals of Council don't want to charge rent, some Council members want to charge rent or lease or whatever, which action does Mr. Clotz have to go with? Council will authorize them to negotiate, what if the Mayor does not want to charge them rent and Mr. Clotz does want to charge rent? Where will this all come together on that end without direction of Council? Mr. Janik said the Ordinance we are considering is to authorize a revocable license. A lease would not be authorized. Mr. Bukovac said with the question of whether this should go back to committee or not, he feels even the people against taking this back to committee have some questions. Can there be any negotiations prior to this going to the third reading to appease Council and prevent it from going back to committee? Mr. Pecora said the legislation tells them to enter into negotiations but can't enter into final agreement and terms until after Council

authorizes them to do so. He imagines they can enter into some preliminary negotiations prior the third reading, depending on the other side and what we have discussed tonight. Mr. Van Treuren feels on one hand that a nominal fee should be attached to this as some value should be put on the land. On the other hand he does not think this should be a lease. As the Mayor told us, sending it back to committee may not serve everyone's best interest if the amount of the nominal fee can be decided right now. His question is like Mr. Bukovac's - can we get some kind of guarantee now if we don't send this back to committee, if there is going to be a nominal fee attached? Mr. Pecora said he cannot agree to whether someone else is going to agree to even the basic terms of this license agreement. Mr. Van Treuren said but placing this back to committee would allow us to place a nominal fee, even if it's \$1, before it goes forward? Mr. Pecora said they can do that or allow them to go into negotiations in the interim and if they don't come to an agreement, go back to second reading. Mr. Van Treuren asked if we can find out about this before the next reading? Mr. Pecora said he can advise Council on the progress of negotiations.

Mr. Mark Costilow, owner of the Amherst Cinema and a resident of Amherst would like to see this business and project succeed. But he can't believe that this is on Council floor and there are so many questions and they are thinking about passing it on to its third reading. Council should send this back to Committee and speak to this more. On one hand, it would be great to get something for free, but on the other hand, this property is owned by the government, which means that people all over town own a piece of it. He hopes that Council thinks about it since there are so many questions and get it right, because it's quite involved, it's just not one little piece of property. If it goes to third reading and gets postponed, it will be that much longer before it gets done.

Mr. Loughrie thinks there should be no problem sending this back to committee. We have fees to discuss plus we also have to modify the license agreement. Mr. Pecora said this is just a sample of what a license agreement looks like, what we start off with. There might be some changes in terms; such as fees per the discussions tonight, it can be added to this.

Mr. Dietrich said regardless of what Council would decide in Committee and want to change, this is a moot point. It does not get negotiated until their group meet with the landowner and come up with something between them. Mr. Pecora agreed that there might not be any terms that are in here now or to add the fee agreement.

Mr. Kukucka said he is sitting here amazed that there is so much discussion on a parcel of property that he went by and looked at the other day. Yes, we do cut it but if we put in the patio, we won't be cutting it, so we would get a discount. This is an ordinance only to give these gentlemen the authorization to negotiate this. You have them negotiate a lot bigger things like the police, the fire, AFSCME contracts and Council does not trust them to negotiate a piece of land? You want to get money for it? Come on. Mr. Gambish said to answer that, once this deal is negotiated, it does not come back to Council. The others all come back to Council. Mr. Dietrich said this could go on all evening, but if it does go back to Committee, he would suggest they come up with their own ideas and give them to the Law Director. Roll call vote 3-3 with Mrs. Wasilk, Mr. Van Treuren, Mr. Janik voting no. The vote is a tie and the President of Council votes No. The vote is 3-4 and this does not go back to Committee. Mrs. Wasilk motioned to pass this on to its third reading. Seconded by Mr. Janik. Roll call vote 3-3 with Mr. Gambish, Mr. Bukovac and

Mr. Loughrie voting no. The vote is a tie and the President of Council votes yes making it a 4-3 vote. The legislation goes on to the third reading.

ORDINANCES AND RESOLUTIONS THIRD READING: NONE

Miscellaneous and Acknowledgement of the Public: Mr. Dietrich recognized students from Mr. Malone's government class who were present to observe the meeting. He thanked them for coming.

Mr. Dietrich read the names of the new re-appointees to the Design Review Board: Mr. Dave Fox, Mr. Jim Yorks, Mrs. Judy Rechnagel, Mr. Ron Sauer. Mrs. Wasilk motioned to confirm these re-appointments. Seconded by Mr. Janik. Mrs. Wasilk asked if these are all the members on the board? Mayor Taylor said only four are re-appointed, the terms are staggered. Voice vote 6-0 to confirm the appointment.

Agenda Requests and Committee Meeting schedules

A-10-13 Streets City consent for SR 2 sign replacement by ODOT

A-10-14 Finance Authorization to bid and award tree trimming maintenance agreement

A-10-15 Finance Authorization to bid and award purchase of gasoline, diesel fuel, oil and other petroleum products

Finance February 15, 2010 at 7:00 P. M. A-10-09 Permanent Budget
A-10-14, A-10-15

Streets Feb. 15 at 7:05 P. M. A-10-13

The remaining Council Committee Meetings from February 9 to February 16, 2010 are cancelled.

Reports of the Administration:

Treasurer Hullman: Noted that after a month in office, he is impressed with the finance side of the office as he sees them. His office is functioning very nicely and he is also impressed with what Mr. Kukucka is doing in the Auditor's Office. He does have information about Income Tax collections for the month of January. In January our collections are a little lower than at this time last year, but his staff advises that they see no reason for concern at this point. He will be watching the numbers and keeping everyone apprised.

Auditor Kukucka: The January Cash Position report has been distributed.

Law Director Pecora: Noted that weather permitting, this Wednesday the 10th he will have his first office hours at City Hall.

Safety/Service Director Clotz: Council received copies of the January Police Report. He reported on the calls and citations as per the report.

Mayor Taylor: Commended the City crews for the fine snow removal over the weekend. They really step up and do a good job. Gave the State of the City address. On file.

Mr. Loughrie asked about the cost of the off ramps. Mayor Taylor said that is picked up by ODOT. No cost to the City including the signalization.

Mr. Janik motioned to accept the Reports of the Administration. Seconded by Mr. Loughrie. Voice vote 6-0 to accept.

Mr. Loughrie motioned to adjourn, seconded by Mr. Janik. Voice vote 6-0 to adjourn. The meeting adjourned at 8:26 P. M.