



## MINUTES OF AN OFFICIAL MEETING:

Regular Meeting of: Legislative & Licensing Committee

Date and Time: Tuesday, September 15, 2020 at 7:00 pm

Location: City Hall, 2000 N. Calhoun Road – Council Chambers

Members Present: Alderman Gary Mahkorn (Chair), Alderman Brad Blumer, Alderman Bill Carnell, Alderman Mark Nelson, Alderman Rick Owen

Members Excused: None

Others Present: City Attorney Jenna Merten, City Clerk Kelly Michaels, Alderman Jurken

### 1. ROLL CALL

Alderman Mahkorn noted a quorum present and called the Legislative & Licensing Committee to order at 7:05 pm.

### 2. ANNOUNCEMENTS

The Next Regularly Scheduled meeting will be held on Tuesday, October 6, 2020.

### 3. MINUTES

**Motion by Alderman Carnell, seconded by Alderman Owen, to approve the minutes of the September 1, 2020, Legislative & Licensing Committee meeting. Motion carried 5-0.**

### 4. UNFINISHED BUSINESS

a. [Legislative Referral](#): Consideration of Ordinance to prohibit human health hazards. (Alderman Sutton and Alderman Carnell).

Attorney Merten summarized the changes to the ordinance. The ordinance appeared at the Common Council meeting in August when Alderman Wilson questioned residents having compost piles. The item was sent back to the Legislative & Licensing Committee to do some research. In addition, Tom Grisa, Director of Public Works had additional comments.

Attorney Merten clarified the changes as:

- Excluded lawful pesticides and herbicides from the definition of “pollution”
- Included a definition of “rodent”
- Clarified the acts that constitute air pollution

- Removed the animal-proof requirement from garbage cans, but left in the insect and rodent proof requirement
- Specified that open compost piles were not prohibited if sufficiently contained in wire hardware cloth (compost bins were not prohibited in the original ordinance)
- Added exceptions for wastewater or sewage collection, conveyance, or treatment that are conducted by the City of Brookfield

Alderman Carnell disagreed on the compost pile issue. He feels people will not put food scraps and/or uncooked food in compost piles. It will be fruits and vegetables. He is in support of the ordinance as proposed.

Alderman Blumer asked if it is standard to have wire mesh around a compost pile as he has not seen this before. It may be prohibitively hard to keep a compost pile if wire mesh is required. He is not sure if this would be a problem. Alderman Carnell felt it would be a problem, as a compost pile needs to be turned occasionally. With a wire mesh around it, turning the compost would be inconvenient. Alderman Owen was concerned that residents will put items that do not belong in compost piles.

Attorney Merten stated the ordinance states *'compost shall be enclosed in a free-standing compost bin and not closed'*. The city has already prohibited open piles. Alderman Blumer asked if the bin could be completely closed or just enclosed on four sides. Attorney Merten added the ordinance states *'compost bins shall be located and maintained in a manner that does not produce noxious odors or rodent harborage'*. The compost pile must be contained in a way that animals cannot get into it.

Alderman Blumer suggested removal of the verbiage to identify a compost pile/bin and have it read *'open compost piles shall not be considered waste if in accordance with the section of code'*.

Alderman Blackburn questioned what qualifies as an insect proof container. Many residents have plastic containers with lids. Attorney Merten stated if the lids are sealed tightly, insects should not be able to get in. Alderman Owen noted that garbage should be kept in the garage until collection day; therefore, there should not be a problem with insects.

Alderman Blackburn inquired about the provision stating *"rodent" shall mean any animal classified in order rodentia'*. He assumed this does not mean hamster, gerbils, etc., that could be a family pet.

Alderman Nelson noted the provision on air pollution in the ordinance. The city already has an ordinance on open burning. If someone were not complying with the burning

ordinance, then this ordinance would allow enforcement of air pollution. Would the air pollution be a violation that could be enforced under this ordinance if they were burning outside of permitted days? Attorney Merten replied 'yes, this ordinance would allow prosecution.

**Motion by Alderman Owen, seconded by Alderman Carnell, to approve the ordinance as submitted, subject to the added verbiage of 'open compost piles shall not be considered waste if in accordance with the section of code'. Motion carried 5-0.**

- b. [Legislative Referral](#): Repealing and recreating Chapter 8.36 of the Brookfield Municipal Code regarding open burning and recreational fires. (Alderman Nelson and Alderman Berg)

Alderman Mahkorn summarized the discussion the committee had at the September 1, 2020 meeting and directions were given to staff on updating the ordinance with the understanding that it will also go to the Common Council meeting tonight. The ordinance would take effect on October 1, 2020.

Attorney Merten noted the ordinance was given to other departments for additional staff for comments. The ordinance allows residents to continue burning through November 30, 2020, therefore eliminating any confusion.

It was noted the major change in the ordinance was the months, days and hours allowed for burning. Alderman Mahkorn stated this ordinance puts residents in the city on notice that in the following years there will be even more confining/restrictive rules on burning with the ultimate goal of changing this community into a non-burning community eventually.

Alderman Carnell stated he recently received a call from a resident with concerns if there is a windstorm in an off-month, what are they to do with the debris. Alderman Owen replied that if it were serious enough the Department of Public Works would go out to assess the damage to determine a solution. Alderman Carnell acknowledged it has been done that way in the past.

Alderman Blumer commented he was contacted by Alderman Wilson regarding recreational fires. He understands the need for a screened top and distance from other structures. Was that a requirement based on the recommendation of the fire department? Chief Myers noted those requirements are in the State Code and we adopted the State Code.

Alderman Carnell asked if a masonry fire pit needed the screened top. Attorney Merten stated the city has adopted the NFPA1 (National Fire Protection Association) State Code

and we were 'grandfathered' in when the fire code was changed in 2013. Chief Myers read the requirements for recreational fire pits as noted in the Fire Protection Code. Chief Myers noted when you are cooking on an open fire pit, it is exempt from the city code. Alderman Nelson questioned burning structures that burn natural gas, giving off heat. Chief Myers stated those structures do not require a screen enclosure. Alderman Nelson asked if a screened enclosure would eliminate the fire risk. Chief Myers stated 'he did not think so'.

Alderman Mahkorn stated there are many residents who will circumvent the ordinance by having a large leaf burning pile and roast marshmallows. Now, it becomes a cooking fire. It may be important to go into greater detail on the burning ordinance. At the very least, get some perimeters down on leaf burning. What can we do tonight?

Alderman Carnell feels residents will ignore the ordinance. However, if a resident's fire gets out of control, the police will have the ordinance to back them up. Alderman Nelson said he was fine with the ordinance and there may come a time when there needs to be further clarification on the ordinance but we can let this evolve. There are many people who want a 'no burning' ordinance; and it may come to that in time. In the meantime, let's get this one into place. It is a 'baby' step. Alderman Carnell stated the committee needs to come to a consensus on the months to allow burning. The committee was comfortable with April, May, October and November. Some members would like to see 2 days for burning instead of 3 days. Alderman Owen stated we have already restricted the timeframe by half. Further down the road, more restrictions on the ordinance may be made. Attorney Merten noted the penalties if fires are not put out by 5:00 pm. The committee was fine with the penalty fee schedule.

Chief Myers expressed concern with the blanket exemption for the burning of citronella oil, candles and fireplaces located inside a principal building. The city does not regulate what happens inside someone's home. He stated there is no burning of candles, with the exception of an "assembly occupancy" in the State Fire Code. This exemption would be in conflict with the State Fire Code.

Chief Myers said he was unsure of what is allowed in Waukesha County parks in regards to burning. He added that smoking is authorized in certain locations.

Alderman Mahkorn suggested that the ordinance could have a provision stating that nothing in the city code regarding burning cannot be in conflict with the fire code. Chief Myers recommended revision of verbiage on page 6 of the ordinance.

**Motion by Alderman Owen, seconded by Alderman Nelson to approve the ordinance with the revisions of Chapter 8.36 of the Municipal Code given by Attorney Merten and revisions to the ordinance as noted. Motion carried 5-0.**

c. **Legislative Referral:** First Draft to amend Section 15.04.340 Fences, to permit installation of netting at fenced playfields to preclude balls from leaving the field of play when the fenced playfield is proximate to streets, ponds or storm water basins. (Alderman Meza and Alderman Jurken)

Alderman Mahkorn asked Alderman Meza if the committee could postpone this item to the October 6, 2020 Legislative & Licensing Committee meeting due to time constraints. Alderman Meza noted the referral had been made quite some time ago and she felt it would be better for the party involved to have the discussion.

Alderman Meza stated she visited the property and spoke with the owner. The owner wants to add fencing to the property and certain netting allowed by code. She has no problem with the request but wanted input by the Legislative & Licensing Committee.

Alderman Jurken noted there is another childcare business in the city with this netting already installed while this applicant has been forthcoming and wants to do everything legally.

Alderman Carnell asked if the ordinance would be passed this evening. Alderman Mahkorn replied that the City Attorney's office is asking for guidance from the committee. Attorney Merten stated this item is not going to the Common Council tonight. However, a draft ordinance is in the packet indicating how the code will be written due to the committee's suggestions at the last meeting. This ordinance will go to the next Common Council on October 6, 2020 for consideration.

Alderman Owen commented he would like to see a greater definition on capacity, the type of netting that is permitted, and that it distinguish between residential, school and commercial properties. Alderman Carnell said we could survey other communities to see what they allow. He did not see the hurry on this issue.

Alderman Nelson questioned the definition of netting. Can it be metal netting; something you can see through. He also wanted to have a clearer definition of the netting.

Alderman Owen commented that the season for netting is quickly leaving; therefore, urgency is not a factor anymore. Alderman Blumer wanted clarification the use of netting for institutional uses and not residential uses.

Attorney Merten asked what the netting should look like. Possibly, Kiddie Academy could provide a sample of the netting they have. Alderman Jurken stated a sample was given to Mike Theis in Community Development.

**Motion by Alderman Owen, seconded by Alderman Carnell moved to postpone to the October 6, 2020 Legislative & Licensing Committee meeting with additional clarification on netting criteria. Motion carried 5-0.**

5. ADJOURNMENT

**Motion by Alderman Owen, second by Alderman Blumer to adjourn the meeting. Motion carried 5-0. Meeting adjourned at 8:05 pm.**

RESPECTFULLY SUBMITTED: KELLY MICHAELS, MMC, WCPC  
CITY CLERK'S OFFICE, CITY CLERK