

Meeting Minutes

Regular City Council Meeting

January 17, 2005, 7:00P.M.

Council Chambers, County-City Building

Mayor Gary W. Wescott, presiding Roll Call: Present: Ald. Sevenich, Walther, Markham, Wiza, Sowieja, Barr, Rackow, Molski, Stroik, Barber, Moore

Also Present: City Clerk Kranig, City Attorney Molepske, Comptroller/Treasurer Schlice, Directors Gardner, Schrader, Euclide, Halverson; Police Chief Morris, Deputy Fire Chief Kujawa, Transit Manager Lemke, Personnel Specialist Jakusz, Administrative Assistant Ostrowski, Kari Yenter, Kelly McBride (Journal), Gene Kemmeter (Portage County Gazette), Telitha Cronin (WSAU)

Index to these minutes:

2. Salute to the flag and Mayor's opening remarks.
3. Approval of the minutes of the Regular Common Council meeting of December 20, 2004.
4. Persons who wish to address the mayor and council on specific agenda items other than a "Public Hearing" must register their request at this time. Those who wish to address the Common Council during a "Public Hearing" are not required to identify themselves until the "Public Hearing" is declared open by the Mayor.
5. BreatheFree Direct Legislation Petitions.
6. Plan Commission meeting of January 3, 2005.
7. Public hearing - operate a tavern as a conditional use at 200 Division Street.
8. Resolution on the above.

9. Public Protection Committee meeting of January 10, 2005.
10. Special Public Protection Committee meeting of January 17, 2005.
11. Ordinance - Truancy.
12. Board of Public Works meeting of January 10, 2005.
13. Finance Committee meeting of January 10, 2005.
14. Personnel Committee meeting of January 10, 2005.
15. Board of Park Commissioners meeting of January 5, 2005.
16. Board of Water and Sewage Commissioners meeting of January 10, 2005.
17. Reports: Police and Fire Commission meeting of January 11, 2005.
Statutory monthly financial report of the Comptroller-Treasurer.
18. Persons who wish to address the mayor and council for up to three (3) minutes on non-agenda item.
19. Adjournment.

2. Salute to the flag and Mayor's opening remarks.

Mayor Wescott announced it is appropriate on this day that we commemorate the life and accomplishments of Dr. Martin Luther King Jr.

Mayor Wescott reviewed what direct legislation is and what it is not. It is important that the public understand the Council's responsibilities. Direct legislation is completely different from the usual process of government. Direct legislation arises from the people to the legislative body, instead of the reverse.

3. Approval of the minutes of the Regular Common Council meeting of December 20, 2004.

Ald. Barr moved, Ald. Stroik seconded, for approval of the regular Common Council minutes of December 20, 2004.

Roll Call: Ayes all.

Nays none. Motion carried.

4. Persons who wish to address the mayor and council on specific agenda items other than a "Public Hearing" must register their request at this time. Those who wish to address the Common Council during a "Public Hearing" are not required to identify themselves until the "Public Hearing" is declared open by the Mayor.

None.

5. BreatheFree Direct Legislation Petitions.

Clerk Kranig reported that after careful examination, she has determined that there appears to be a sufficiency of signatures petitioning for a Smoke Free Indoor Air Ordinance. 1,254 signatures were required, and approximately 2,550 signatures of city residents were submitted. The document was in proper form, written in ordinance form with the proper ordinance section and numerical assignment. The certification of sufficiency was sent to the responsible committee on December 29, 2004.

Ald. Rackow asked if copies of the proposed ordinance were attached to the petitions.

Clerk Kranig answered each of the petitions filed did have a copy of the ordinance attached when she received them. She could not state if the ordinance was attached when circulated.

City Attorney Molepske said since the City Clerk had certified the petition, the Common Council has 30 days from the date of the certification to adopt the proposed ordinance or refer it to a referendum. The Council cannot repeal or amend the proposed ordinance for a period of two years from the date of its adoption. There are four exceptions when the Council does not have to adopt or refer the proposed ordinance to a referendum. The exceptions are 1) must be legislative as opposed to administrative or executive in nature; 2) cannot amend an existing ordinance; 3) may not exceed the legislative powers conferred upon the governing municipal body; and 4) may not modify statutorily prescribed procedures or standards. The City Attorney suggested the Council either adopt the proposed ordinance or direct it to go to a referendum on the April 5, 2005 ballot.

Ald. Barr asked under direct legislation, can this item be tabled? Attorney Molepske responded it may not because of the 30 day requirement.

Ald. Sowieja asked who will enforce this ordinance if it is adopted. Attorney Molepske said most likely, the Police Department. The City of Stevens Point does not have authority over Portage County to direct their Health Officer to enforce this ordinance.

Ald. Sowieja asked if the ordinance is adopted and the police issue a citation, can the party that received the citation sue the city? Attorney Molepske said only if there was something wrong with the arrest.

Ald. Rackow asked if the Council should decide the flaws are incidental and the Council adopted the proposed ordinance, and some group sued the city to put it on the ballot anyway, would the city use taxpayer money to defend itself? Attorney Molepske said yes, the city would defend it.

Ald. Rackow asked if the Council decides that the flaws are serious and the Council decided to place this item on the ballot anyway, and some group sued the city claiming it did not meet the requirements of direct legislation law, would the city also defend it? Attorney Molepske said yes, if he is directed to do so.

Ald. Rackow asked if the Council should decide that the flaws are incidental and the Council referred it to the voters anyway, the voters approved the referendum, and some group sued the city after the voters approved it claiming the city violated the law by referring it to the voters, would the city use taxpayer money to defend itself. Attorney Molepske said yes, if the voters approved it.

Mayor Wescott said if the people of this community through direct legislation approve the referendum, it becomes the law of the city.

Ald. Rackow stated almost anything the Council does may result in the city being sued over the matter. The taxpayers will foot the bill.

Attorney Molepske said all the legislative powers are reserved to the legislature except what is specifically granted to the cities. This is the way it is set up.

Ald. Wiza asked how can changes be made to the mistakes in the proposed ordinance? Attorney Molepske said they do not get corrected. After two years, changes can be made to the ordinance.

Ald. Wiza understands that the Catholic Church under the proposed ordinance could be subject to prosecution for burning incense. Attorney Molepske would have to further review the proposed ordinance. The Freedom of Religion Act would most likely overturn that.

Ald. Markham understands the proposed ordinance as written is close enough to meeting the criteria to go forward to a referendum. Changes can always be made in two years. Attorney Molepske agreed.

Ald. Molski asked if the members of BreatheFree can make changes to the proposed ordinance between now and the election. Attorney Molepske said no, they would have to recirculate another petition.

Ald. Molski asked if the proposed ordinance is considered an amendment or repealing the city's current smoking ordinance. Attorney Molepske responded the proposed ordinance is not intended to amend the current ordinance. There are ample arguments for both sides as to whether this amends our existing ordinance.

Ald. Molski asked if the City Attorney provided input in drafting the proposed ordinance. Molepske replied, no.

Ald. Barber asked if he owns his own business, lives on the premises and has employees, does that mean his home is now regulated by this ordinance. Attorney Molepske said assuming the place of business is open to the public, then it would be subject to the ordinance.

Ald. Barber said signs are also required to be posted outside the business or you would be subject to \$100 fine and 30 days in jail. Attorney Molepske said a forfeiture schedule has not yet been established. The jail time only applies if you refuse or do not pay the fine.

Ald. Moore asked who is responsible for the wording of the referendum question on the ballot. Attorney Molepske replied, the City Clerk.

Ald. Sowieja asked who was the initiator of the petition and does this individual need to be a city resident. Attorney Molepske said someone files the paperwork with the City Clerk indicating that they are responsible. The Attorney is not sure if the initiator needs to be a city resident. The circulators do not need to be city residents.

Ald. Sowieja asked who was the initiator and is this individual a city resident.

Clerk Kranig responded William Zimdars, who is a city resident, completed the registration form. Circulators need not be residents.

Ald. Stroik asked how will the city make the citizens aware of the flaws in the ordinance. Attorney Molepske would assume the city's web site would provide information as well as possible informational programs.

Ald. Sowieja asked if there was a specific question on the petition asking do you support no smoking?

Clerk Kranig replied the petition refers to an attached ordinance. To the Clerk's knowledge, the ordinance was attached to each petition sheet when she received them but has no way of knowing if they were when circulated.

Mayor Wescott said it is the judgment of the chair that both the City Clerk and City Attorney have satisfied the requirements under the law to advance the direct legislation either to the floor of the Council for adoption or send it to the April 5, 2005 ballot.

Ald. Rackow moved, Ald. Barr seconded, to refer the BreatheFree Direct Legislation Petitions to the voters of the City of Stevens Point as a referendum question on the April 5, 2005 ballot.

Ald. Rackow said the supporters have said 19 places in Wisconsin have adopted smoking bans of one type or another. Closer examination shows they ban smoking in restaurants, not other workplaces and taverns. There are 190 cities, 395 villages, and 72 counties in Wisconsin. If the numbers are added and divide 19 by that number, the result show that 2.9% of them adopted some kind of smoking ban, either weak or somewhat comprehensive. A percentage of 2.9% falls far short of convincing the Council that Stevens Point desperately needs a smoking ban. The alderman believes they are elected by the voters to tend to business on their behalf. Referring matters to a referendum is usually just passing the buck. In this case, the alderman believes he should disregard his impulse to oppose a referendum. The reason is that if the direct legislation is flawed, if he voted to adopt it, unaltered, the alderman would probably be incurring an expense to his constituents to defend the action.

Ald. Sowieja cannot approve the proposed ordinance as written. The public will have to decide what is right. The alderman believes as a

democracy, we have a freedom of choice. He believes a smoking ban is an imposition of that choice.

Mayor Wescott noted the motion before the Council does not enact the direct legislation into law. The motion sends this item to the ballot in April for the voters of this community to decide whether or not it will be enacted.

Ald. Wiza hopes the voters of the city will take it upon themselves to educate themselves by reading through the ordinance.

Ald. Stroik said the ordinance does have its flaws. The alderman believes the goal is for clean indoor air.

Ald. Molski hoped for more city input when developing the proposed ordinance. She does not like this type of "boilerplate" ordinance.

Roll Call: Ayes: Ald. Sevenich, Walther, Markham, Wiza, Sowieja, Barr, Rackow, Molski, Stroik, Barber, Moore.

Nays: None. Motion carried.

Mayor Wescott said in the days ahead, he calls for civility in this debate and discussion. Let the debate focus on logical arguments and merits.

6. Plan Commission meeting of January 3, 2005.

Ald. Sowieja moved, Ald. Barr seconded, for approval of the Plan Commission minutes of January 3, 2005.

Roll Call: Ayes all.

Nays none. Motion carried.

7. Public hearing - operate a tavern as a conditional use at 200 Division Street, was declared open by the Mayor.

As no one wished to speak, the Mayor declared the public hearing closed.

8. Resolution on the above.

Ald. Sevenich moved, Ald. Wiza seconded, for adoption of the resolution.

Roll Call: Ayes: Ald. Moore, Barber, Stroik, Molski, Rackow, Barr, Sowieja, Wiza, Markham, Walther, Sevenich.

Nays: None. Motion carried.

9. Public Protection Committee meeting of January 10, 2005.

Ald. Rackow moved, Ald. Wiza seconded, for approval of the Public Protection Committee minutes of January 10, 2005, adding the hours for St. Joe's Winter Fest from 3:00 p.m. to 8:00 p.m. and the request for a satellite receiving station at 1900 Clark Street was withdrawn.

Roll Call: Ayes all.

Nays none. Motion carried.

10. Special Public Protection Committee meeting of January 17, 2005.

Clerk Kranig read the minutes of the Special Public Protection Committee meeting of January 17, 2005.

Ald. Rackow moved, Ald. Sowieja seconded, for approval of the Special Public Protection Committee minutes of January 17, 2005.

Roll Call: Ayes all.

Nays none. Motion carried.

11. Ordinance - Truancy.

Ald. Markham moved, Ald. Stroik seconded, for adoption of the ordinance.

Roll Call: Ayes: Ald. Sevenich, Walther, Markham, Wiza, Sowieja, Barr, Rackow, Molski, Stroik, Barber, Moore.

Nays: None. Motion carried.

12. Board of Public Works meeting of January 10, 2005.

Ald. Stroik moved, Ald. Rackow seconded, for approval of the Board of Public Works minutes of January 10, 2005.

Ald. Wiza commended city staff for the excellent job clearing the snow and ice from the city streets.

Roll Call: Ayes: Ald. Moore, Barber, Stroik, Molski, Rackow, Barr, Sowieja, Wiza, Markham, Walther, Sevenich.

Nays: None. Motion carried.

13. Finance Committee meeting of January 10, 2005.

Ald. Barr moved, Ald. Walther seconded, for approval of the Finance Committee minutes of January 10, 2005.

Roll Call: Ayes: Ald. Sevenich, Walther, Markham, Wiza, Sowieja, Barr, Rackow, Molski, Stroik, Barber, Moore.

Nays: None. Motion carried.

14. Personnel Committee meeting of January 10, 2005.

Ald. Molski moved, Ald. Markham seconded, for approval of the Personnel Committee minutes of January 10, 2005.

Roll Call: Ayes all.
Nays none. Motion carried.

15. Board of Park Commissioners meeting of January 5, 2005.

Ald. Markham moved, Ald. Wiza seconded, for approval of the Board of Park Commissioners minutes of January 5, 2005.

Roll Call: Ayes all.
Nays none. Motion carried.

16. Board of Water and Sewage Commissioners meeting of January 10, 2005.

Ald. Molski moved, Ald. Stroik seconded, for approval of the Board of Water and Sewage Commissioners minutes of January 10, 2005.

Roll Call: Ayes all.
Nays none. Motion carried.

17. Reports:

Police and Fire Commission meeting of January 11, 2005.
Statutory monthly financial report of the Comptroller-Treasurer.

Ald. Rackow moved, Ald. Moore seconded, to accept the reports and place them on file.

Roll Call: Ayes all.
Nays none. Motion carried.

18. Persons who wish to address the mayor and council for up to three (3) minutes on a non-agenda item.

Mayor Wescott commended City Attorney Molepske and Clerk Kranig for all their hard work on the BreatheFree Direct Legislation Petitions.

19. Adjournment - 8:25 P.M.

The meeting minutes reproduced on this website are derived from the computer files used to produce the official minutes for the City of Stevens Point, but are unofficial. The minutes on this web site cannot be certified under s. 889.08, Wis. Stats., and cannot be considered prima facie evidence under s. 889.04, Wis. Stats. Certain tables, maps, and other documents that are a part of the official minutes are not included in the files reproduced on this website. Please consult the printed minutes, available in the City Clerk's Office, for the official text. The decisions made by City of Stevens Point boards, committees, and commissions (other than the Police & Fire Commission) are advisory only and are not binding on the City until affirmed at a meeting of the Common Council. Some of the minutes on this web site might not be approved by the Common Council as of today.

Bottom of Form