

AGENDA FOR A PUBLIC WORKS
COMMITTEE MEETING, TUESDAY, 4:00 PM
SEPTEMBER 12, 2017, SMALL CONFERENCE ROOM
SECOND FLOOR, MUNICIPAL BUILDING

(Councilmen Fox, Barber, McCrady and Carpenter)

- I. CALL TO ORDER – Councilwoman Sharon Kuhl, Chairman
- II. ROLL CALL
- III. MINUTES – meeting held August 17, 2017
- IV. NEW BUSINESS
 1. Fireworks
 2. Bicycle registration
- V. ADJOURNMENT

The Public Works Committee of City Council met Thursday, August 17, 2017 at 5:00 PM in the small conference room on the second floor of the Municipal Building at One Government Square, Parkersburg, WV 26101.

The meeting was called to order by its Chairman, Councilwoman Sharon Kuhl, who presided over the meeting. Members attending included Councilmen Jeff Fox, Eric Barber, Dave McCrady, and Sharon Kuhl. Councilman JR Carpenter was absent.

Others attending included Mayor Tom Joyce, Joe Santer, Everett Shears, Rickie Yeager, Sam Tuten, John Reed, Bob Mercer, Zach Stanley, Ross Clegg, and Mr. and Mrs. Peascoe.

MINUTES – Mr. McCrady moved, seconded by Mr. Barber, to approve the minutes from the meeting held July 5, 2017 and the motion was adopted by unanimous vote.

The committee met to discuss an outdoor dining ordinance, referred from City Council on August 8, 2017.

Development Director, Rickie Yeager, stated that the one concern about plastic cups being used for outdoor dining instead of glass, is protected in this ordinance. It states that we require the property owners to keep their space safe, and if that is not followed, the City can revoke that permit. It is not a right, but a privilege, to use the public right of way, he said, and we should give them the opportunity to do what is in their best interest.

Mayor Joyce told the committee that anyone getting a permit is told of the requirement to keep the area neat and clean. In past years, business owners washed their windows and swept their sidewalks daily. People who will be in this space will not let glass be on the sidewalk – just like being inside the restaurant. He said he did not want to compel them to serve drinks in plastic cups if it takes away from the aesthetics, and he asked the committee to consider removing the amendment that did not allow glass.

Ms. Kuhl asked if it included beer cans, and Mr. Santer said it was just glass.

This forces the business owners to put out the beer cans, Mr. Reed stated, and they don't want people drinking out of a can. Glass is more professional, he said, and other places have rules where you can't be served outside with the original packaging.

When Ms. Kuhl asked who would police this ordinance, Mr. Yeager said we would find out after the fact, then his office will talk with the owners. Mayor Joyce added that this is how we deal with grass and weeds, etc. when it is brought to our attention.

Glass seems to be the best option, Mr. Fox stated, as he likes the idea of not having the beer bottles or cans.

MOTION – Mr. McCrady moved, seconded by Ms. Kuhl, to remove the amendment made in City Council about glass being prohibited, paragraph 'm' that states "all glass containers which are utilized for the drinking of all beverages are prohibited within any Outdoor Dining Area."

MOTION TO AMEND – Mr. Fox moved, seconded by Mr. Barber, to amend the motion to add that non intoxicating beer or alcohol cannot be served in its original packaging.

The amendment was adopted by unanimous vote.

The motion, as amended, was adopted by unanimous vote.

The committee discussed the \$50.00 administrative fee in article 1367.06(a), an annual renewal fee of \$25.00. Mr. Fox asked what the hot dog vendors pay to be on the sidewalks, and was told the license is \$10.00 for a hawker and peddler's license. Mr. McCrady asked if the Crystal Café had to pay the \$50.00 fee, and Mr. Yeager said they would have to apply, but you don't pay the fee if you don't serve alcohol.

Currently, you are allowed to have tables or chairs on the sidewalk if you do not extend 2 ½ feet, Mr. Santer said.

Ms. Kuhl asked if it was fair to charge a business \$50.00 for a permit if they want to serve alcohol, and not charge another business if they don't sell alcohol. Mr. Fox said we would get the \$50.00 plus business and occupation taxes. The potential is to make money from the sidewalk that we are giving up, and he thinks everyone should pay the fee.

Mr. Barber said he thought the fee should be \$100.00 because of the oversight. \$50.00 is reasonable, but the area will be used to make money.

Every dollar that is collected, the City of Parkersburg benefits, Mayor Joyce stated.

Our budget is 70% taxation, and if we can help a business, it is good for us for paving streets, buying police cruisers, etc. He asked them to be careful and not make it punitive as it is a significant benefit to the city when the fees come back. He asked them not to impede business and the market because it is a right of way.

The City does not own the sidewalk, Mr. Santer stated, and we are not permitted to charge and be for-profit. We are allowed to cover our expenses and our right to use it.

Mrs. Warren Peascoe, 5607 Greenmont Place, Vienna, WV asked several questions concerning the barriers because she and her husband are handicapped and use a van with a ramp. Mr. Yeager stated that from the barriers, the width has to be at least 36" according to ADA regulations. The bricks on the sidewalk are not considered a barrier, but a tree is a barrier. The City complies with accessible parking spaces on each block. People getting in and out of a vehicle will not be considered because it is not permanent, he said.

Mr. Santer re-stated that as long as we comply with the ADA regulation of being within 36" from the curb in, we comply.

Concerning the \$50.00 fee, Mr. Reed said that the hawker and peddlers pay \$10.00 per year and the City cleans up after them and do some maintenance for them, and we should look at that in the future. Mr. Fox said the hot dog cart uses one of the picnic tables at Bicentennial Park and that is a problem, and Mr. Santer said that was being addressed.

Mr. Fox stated that he thought the 48" was a compromise, as Mr. Peascoe had mentioned 5'.

We have talked with Mr. Peascoe, Mr. Yeager stated, and we know what is required, and we also understand those concerns. He said that 48" is a best practice, and not a requirement.

Planning Director, Sam Tuten, told the committee that Mr. Peascoe had quoted from the WVDOT, Division of Highways, Design Directive 811, accessibility standards, curb ramps and sidewalks, and that will be considered as minimum criteria for any new or replacing of existing sidewalks, and if it can't be done, they fill out an exemption form.

Mr. Peascoe said he contacted the State coordinator and they said we should consider small town guides for small town businesses. Since 2011, when businesses do construction they have to consider those things and do the best they can. He said he believes that anything since 2011 it has to be 4'. Mr. Yeager stated that concerned all new sidewalks.

MOTION – Mr. Fox moved, seconded by Mr. McCrady, that the minimal pedestrian clearance be 48".

Mr. Tuten further explained width and isle areas for accessible parking spaces. Accessible spaces should be 8' wide with an isle of 5", and van accessible spots should be 11' wide with the isle of 5'.

Councilman Barber stated that with the newly adopted brunch bill, restaurants could be serving beer during Easter, or during parades, and he asked the committee to consider suspending the sale of beer for outdoor dining during those times. It would be polite not to serve beer during parades, he said.

Mayor Joyce asked the committee to reject this request, because it is legal. If restaurants are over-serving, they will be dealt with. At some point, you have to have faith in whoever is making the investment. He said that would be over-reaching, and unnecessary to try to control it.

The outdoor dining is not for all of Market Street, Mr. Santer stated, and he suggested people move away from that restaurant if they were offended. It will be for a very small area.

Ms. Kuhl asked Chief Joe Martin what would happen if diners leave the area, and he said that would be an open container incident and unlawful.

Councilman Reed stated that they have no problems in Marietta, Ohio with outdoor dining, and we should be more progressive.

VOTE – the motion was adopted by unanimous vote.

MOTION – Mr. McCrady moved, seconded by Ms. Kuhl, to refer the amendments to the next Council meeting, and the motion was adopted by unanimous vote.

The meeting adjourned at 6:00 PM.

Respectfully submitted,


Connie Shaffer, City Clerk

FIREWORKS SAFETY.

- (a) **Unlawful Acts.** It shall be unlawful for a person within the corporate limits of the City to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks, sparkling devices, or toy caps without a license, registration, certificate or permit from the State Fire Marshall and a valid business license issued by the City.
- (b) **Definitions.** As used in this section, all terms, including but not limited to “consumer fireworks”, “firework or fireworks”, “model rocket”, “new explosive”, “novelties”, “person”, “sparkling devices”, “special effect”, and “toy caps” shall have the meanings ascribed to them in West Va. Code 29-3E-2 Definitions.
- (c) **Governing Conduct.** The following conduct shall govern the use, ignition and discharge of consumer fireworks and sparkling devices in the corporate limits of the City.
 - (1) A person may not intentionally use, ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner of such property to do so.
 - (2) A person may not intentionally use, ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle, boat or building.
 - (3) A person may not intentionally use, ignite or discharge any consumer fireworks or sparkling devices into or at a boat, motor vehicle or building, or at any person or group of people.
 - (4) A person may not intentionally use, ignite or discharge any consumer fireworks or sparkling devices while the person:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug;
 - D. Is under the combined influence of alcohol and any controlled substance or any other drug.
 - (5) A person who is less than eighteen years of age or younger shall only use, ignite or discharge consumer fireworks or sparkling devices under the direct supervision of his or her parent, guardian or other adult person having the care and custody of the minor.
 - (6) All person who use, ignite or discharge consumer fireworks or sparkling devices shall be responsible for the removal of all debris accumulated within twenty-four hours of such use and be financially responsible for all cleanup costs and damages due to the ignition, discharge or use of such fireworks.
 - (7) All persons who use, ignite or discharge consumer fireworks or sparkling devices shall be responsible for all fire suppression costs and expenses incurred by the City related to the use of such fireworks; and
 - (8) All persons who use ignite or discharge consumer fireworks or sparkling devices shall abide by all legal requirements concerning such firework use, including the provisions of West Va. Code 29-3E-1 et seq., and Title 103 Legislative Rule West Virginia Fire Marshall Series 4 Regulation of Fireworks.
 - (9) No person shall use, ignite or discharge consumer fireworks or sparkling devices within proximity to any building or structure as follows: 50 feet for ground based fireworks and 100 yards for aerial fireworks.
 - (10) No person shall use, ignite or discharge consumer fireworks within corporate limits of the City except as follows:
 - A. Between the hours of 9:00 p.m. and 11:00 p.m. on July 2, July 3 and July 4 (Independence Day); and
 - B. Between 9:00 p.m., on December 31, and 12:30 a.m. on January 1 (New Year’s Eve).
 - (11) All persons who use, ignite or discharge consumer fireworks shall ensure that such consumer fireworks are not propelled through, come in contact with, or discharge or explode onto any public street, highway or sidewalk, in or upon any building, at or near any person, or within 500 feet of any location posing a special fire danger, such as a gas station, lumber yard, bulk mulch, propane or chemical storage area.

(12) No person shall use, ignite or discharge consumer fireworks or sparkling devices during periods of very high or extreme fire danger as determined by the City Fire Department or the West Virginia Division of Forestry or while wind conditions are such that proper fireworks control cannot be exercised.

(d) Exemptions. This article does not prohibit any of the following:

1. The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;
2. The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or
3. The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshall. (WV Code §29-3E-9).

(e) Penalty. On or after the effective date of the provisions of this section, any person who ignites, discharges or uses consumer fireworks or sparkling devices in violation of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00.

(f) Seizure. All persons charged with enforcement of this section may seize, take or remove all consumer fireworks and sparkling devices intended to be used or used in violation of this section, and upon order of the Municipal Court for the City, the consumer fireworks so seized shall be disposed of at public auction or destroyed at the expense of the person from whom the same were seized.

(g) Enforcement. See West Va. Code 29-3E-13(b) - The City of Parkersburg Police Officers and Fire Department Personnel shall have the authority to enforce the provisions of this section.

Whenever reasonable grounds exist to believe that a violation of this section has occurred, all officers vested with the authority of its enforcement, may forthwith summon, by the issuance of a citation, any person charged with a violation of same to appear before the Judge of the Municipal Court for the City and to answer said charge on or before a date therein stated.

(h) Severability. If any subsection, subdivision, paragraph, provision, sentence, clause or word in this section is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality, legality or application of any other portion of this section.

(b) Every bicycle shall be equipped with a brake that enables the operator to make the braked wheels skid on dry, level and clean pavement.
(Ord. 0-1490. Passed 10-14-14.)

373.14 CHILDREN UNDER TWELVE.

(a) Every child less than twelve years of age riding a bicycle within the City must have such bicycle equipped with a fluorescent orange flag at least six feet and no more than eight feet in height from the ground when such bicycle is in an upright position, or, such child must be wearing a fluorescent orange, white or red vest or jacket.

(b) No child less than twelve years of age shall ride a bicycle upon any public street, sidewalk or bike path within the City during nighttime unless such child is accompanied by or under supervision of an adult. (A-2747. Passed 8-13-74.)

* 373.15 REGISTRATION OF BICYCLES.

Any resident of the City may register a bicycle with the Police Department at places, dates and times designated by the Department. Any owner of a bicycle may register the same by supplying his name, address and the make, model and serial number of the bicycle to be registered. All such information shall be retained by the Police Department to be used in facilitating recovery of stolen bicycles and as a deterrent to thefts of bicycles. Upon registration of any bicycle, the Police Department shall supply the owner thereof with copies of this article and any other safety information which the Department deems advisable. (Ord. A-2747. Passed 8-13-74.)

373.16 OPERATION AND USE OF POCKET-BIKE OR MINI-BIKE; EXEMPTIONS.

(a) Definitions. "Pocket-bike" or "mini-bike" means a bike or cycle that is powered by a gasoline motor and which bike or cycle is not covered by or defined in West Virginia Code Chapter 17A, Article 1, Section 1 and Chapter 17C, Article 1, Sections 4, 5 and 5a.

(b) Prohibited Acts; Exemptions.

- (1) The riding, operation or other use of pocket-bikes or mini-bikes for transportation or recreational purposes, within or upon the streets, alleys, sidewalks, parking lots and other property owned, leased, or controlled by the City or any of its boards, authorities, or commissions is prohibited.
- (2) It shall not be an offense for a pocket-bike or mini-bike to be operated upon a designated parade route, when such operator is a duly registered and recognized participant in any properly permitted parade, provided that such operation occurs in conjunction with said parade.
- (3) The Federal Government, the State of West Virginia, and the City are exempt from the provisions of this section.
(Ord. 0-1198. Passed 7-12-05.)