

CITY OF BURTON
COUNCIL OF THE WHOLE MEETING MINUTES
MARCH 2, 2009 AT 6:30 P.M., COUNCIL CHAMBERS
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The Meeting was called to order by President Tom Martinbianco at 6:30 p.m.

MEMBERS PRESENT: Conley, Ellenburg, Haskins, Heffner, Martinbianco, Tinnin and Zelenko.

MEMBERS ABSENT: None.

OTHERS PRESENT: Mayor C. Smiley; D. Halstead; Attorney R. Austin and
G. Webster, City Clerk.

PURPOSE OF THE MEETING: Discussion and possible recommendation of the following ordinance amendments:

1. An Ordinance, an Ordinance amending Chapter 131 of the Code of Ordinances of the City of Burton by authorizing designated city officials to issue civil infraction citations and by clarifying
the state office charged with approval of municipal civil infraction forms and providing penalties
for the violation thereof.
2. An Ordinance amending Chapter 93 of the Code of Ordinances of the City of Burton to clarify persons responsible for payment of cost recovery charges arising from public safety or fire emergency incidents, and to provide penalties for the violation thereof.

PRESENTATION:

Chief Halstead spoke regarding the ordinance amendment to Chapter 131. He said this would authorize the Fire Chief and Deputy Chief to issue civil infractions. The original ordinance contained the Fire Chief and his designee. After the codification process the ordinance just stated Fire Marshall. He wanted the ordinance to clarify Fire Chief, Deputy Fire Chief and Fire Marshall.

Mr. Austin indicated that Chapter 131 simply adds the Fire Chief, Deputy Fire Chief and Fire Marshall to the language allowing them to issue civil infractions. He thought the Deputy Chief meant Mr. Lacey. Mr. Halstead clarified that Mr. Lacey was the Assistant Chief and the Fire Marshall. The four Deputy Chiefs would most likely be issuing the civil infractions. They make the fire runs and would be present if this happened.

Mr. Martinbianco asked if the Deputies could relay infractions to the Chief or the Fire Marshall. He was concerned that part-time union people would be given the authority to do administrative functions.

Mr. Halstead said the Deputy Chiefs were capable of issuing tickets. The Chief felt it would be hard to write a civil infraction on hearsay evidence. If an infraction happens, the ticket should be issued at that moment, not later. These are civil infractions, not criminal infractions. Mr. Austin said it was up to the Council to decide if Deputy Fire Chief should be included in the ordinance.

In regards to Chapter 93, Mr. Halstead said this would clarify who was responsible for cost recovery payments. This ordinance would cover all automobile accidents.

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Mr. Austin referred to his letter dated February 11, 2009 that outlined the changes that were made to Chapter 93. Originally, this was Ordinance 95C, which was adopted in 2004. Later, 95-1C was adopted, which allowed for cost recovery associated with drunk driving situations. That was pursuant to a specific state law. The proposed amendment gives the Fire Department authority to assess costs for house fires and traffic accidents. The current ordinance is dependent on showing fault. If you did something wrong, then you were subject to the cost recovery penalty. This would authorize the Fire Department to recover costs for house fires and automobile accidents, even if there was no fault. Mr. Austin obtained this information on the MML website. It was described as an aggressive cost recovery ordinance. Other communities do have these types of ordinances. The Chief feels this is a necessary and responsible amendment that allows him to recover costs in instances where the users of these services are expected to pay the costs.

AUDIENCE PARTICIPATION:

John Stapish, P.O. Box 190134, spoke in opposition to both ordinances. In reference to Chapter 93, he wanted to know what types of infractions were included. He didn't trust these people or their experience to make these types of determinations. On the cost recovery, he wanted to know how much the residents would be charged. He thought these ordinances were too vague.

COUNCIL DISCUSSION:

In regards to Chapter 131, Mrs. Tinnin thought it made sense to have the Deputy Chiefs that were on the scene issue the civil infractions. Mr. Austin thought it would be difficult to pursue a case where the Deputy reported the infraction to the Chief and he issued the ticket without seeing the violation. Both of them would have to appear at the hearing. He thought it would be better to have the person who observed the violation issue the citation.

Mr. Halstead said to this point they have not issued any citations. Under normal circumstances if the Fire Chief arrives on the scene and a citation is warranted, they would call a police officer to issue the ticket. Since 1996 the ordinance language had stated the Fire Chief or his designee could issue a citation. During the codification process, the language was altered. He said Fire Chiefs would be trained to write a citation. We do not want to go back and rewrite the ordinance under emergency conditions. Mr. Halstead said basically, this would deal with illegal burning situations, not criminal situations such as arson. Mrs. Tinnin did not see a problem with this revision.

Mr. Haskins suggested the wording could be changed back to the Fire Chief and his designee as it originally stated. However, he supported the new amendment.

Mrs. Tinnin had some concerns with Chapter 93. She said we have no fault auto insurance and most fires are no fault of the individuals. She thought this was too aggressive to charge fees under these circumstances when they are already covered under insurance. She thought this might even increase the insurance rates.

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Mr. Halstead didn't feel this would increase insurance rates. He said we have been collecting on this since 2004. There is money allotted in the insurance policy to pay for fire related costs. He said they have about a 100% collection rate on auto related accidents. The insurance company does not have a problem paying this.

Mrs. Zelenko had some concerns with the amendment. She asked for clarification on how we were collecting on auto accidents with no fault insurance. Mr. Halstead said the Fire Department billing is sent to both insurance companies. One company pays the bill. He did not know how this was determined. She wanted to know how this would influence a one-car accident without fault. The taxpayers are already paying for fire services. Why would we charge their insurance?

Mr. Halstead said Burton has the smallest budget for our size department in the whole state. We have to recoup whatever costs we can to help with the budget. We have been recouping insurance costs since 2004. We have had no problem. Mrs. Ellenburg concurred with Mr. Halstead. Her nephew works for a fire department in the southern part of the state. They have been charging insurance companies for many years. It has benefited their department.

There was a brief discussion on the cost recovery revenues. Mr. Martinbianco said this was part of the General Fund subsidy of the Fire Department. Mr. Halstead said the Annual Report breaks down the number and type of fire runs, such as, house fires, automobile accidents, downed utility lines, etc. House fires generally recoup \$500 from insurance companies. Other fire department calls are billed for the actual cost of the run.

Mr. Austin said he would continue to discuss the application of this ordinance with the Fire Chief. The ordinance provides that the costs to be assessed are the costs expended by the department for the response. The Controller, irrespective of the amount of insurance that is involved, will actually determine the costs. As far as the application of the ordinance was concerned, Mr. Austin would work with the Chief to make sure it was applied equally to all citizens. The ordinance provides authorization for the imposition of these costs. He said these ordinances appear on the Regular Council Agenda in the event the Council wanted to move forward with the First Reading.

Mrs. Zelenko will vote in the affirmative to put these ordinances on tonight's council agenda. However, she was not certain about the motor vehicle portion of the cost recovery ordinance. Therefore, she might not support the ordinance during the council meeting.

COUNCIL OF THE WHOLE RECOMMENDATION

Mr. Haskins moved and Mrs. Ellenburg seconded the recommendation to add Item 1, Chapter 93 and Item 2, Chapter 131 to the Regular Council Meeting Agenda as the First Reading of the Ordinances. Motion carried 7-0.

Meeting adjourned at 7:17 p.m.

Gayle K. Webster, CMC
City Clerk