

CITY OF BURTON
LEGISLATIVE COMMITTEE MEETING MINUTES
SEPTEMBER 24, 2007, 5:30 P.M., COUNCIL CHAMBERS
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Chairman Danny Wells called the Legislative Meeting to order at 5:40 p.m.

MEMBERS PRESENT: Conley, Wells and Major.

MEMBERS ABSENT: None.

OTHERS PRESENT: Attorney R. Austin, J. Adams, Deputy City Clerk and Angela Cease, Clerk's Office.

PURPOSE OF THE MEETING: Discussion and Possible Recommendations concerning the following:

- 1. Cat Ordinance**
- 2. No Smoking Ordinance**
- 3. Establishing a Negotiating Team**
- 4. Bow Hunting Ordinance**
- 5. Student Council**

Bow Hunting Ordinance

Mr. Wells said Atty. Richard Austin did some extensive work on this. Mrs. Conley and Mr. Major just received their packet of information and have not had time to go through it.

AUDIENCE PARTICIPATION:

Richard Richardson, 2226 Ridgemoor Ct., said he originally asked for this ordinance. He is quite an avid hunter. He does not know of anyone in this City that he currently has permission to hunt on their property that fall within the guidelines of the State. State law says as long as you have permission you can bow and arrow hunt within 450 ft. of a building. Mr. Richardson spoke of several hunting areas in the City, getting children involved in hunting and sponsored functions.

John Stapish, PO Box 190134, said he is for bow hunting and firearms. He thinks it is a good way to get out with your kids.

Rick Fuhst, 1208 S. Genesee Rd., stated as a kid growing up he hunted with friends on the property by Blessed Sacrament Church. We were all taught to respect others property. He feels it is one of the safest sports with proper education.

Mr. Austin stated that under the current ordinances, bow hunting is prohibited throughout the City. In the codified ordinance that will be adopted this spring or summer, you have an unlawful discharge provision which provides that it will be unlawful to discharge any firearm which includes bow and arrow, within 450 ft. of any occupied or unoccupied dwelling, house, school property, church or business establishment. Mr. Richardson's comments were correct that if you have permission of the property owner, State Law says that you can bow hunt 2 ft. away from the house if you want to.

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Mr. Austin stated further the DNR State Statutes suggests that the area of bow hunting has been pre-empted by State law. Up until the Michigan Supreme Court decided the case of Zimbors Timber Inc. vs. the City of Saginaw on June 20, 2007, that may have in fact been true. In the Michigan Supreme Court's decision in the Zimbors Timber case, it is clear that only Home Rule Cities may lawfully adopt discharge ordinances that conflict with State law.

Mr. Major asked how this affects Burton today.

Mr. Austin said currently, there is no bow hunting allowed anywhere in the City of Burton. But under the codified ordinances that are set to go into affect sometime this spring or summer, there will be no bow hunting within 450 ft. of any dwelling or school.

Mr. Major expressed City and the State cannot pre-empt us based on the Court ruling. What Mr. Richardson said was true except for what just took place.

Mr. Austin said except for the Michigan Supreme Court opinion dated June 20, 2007. The way the State Law currently reads is no hunting within 150 yards of any house or school unless you have permission from the owner. If you have permission, you can shoot right up next to the house. Home Rule cities can now have more restrictive laws on the books then that.

Mr. Major inquired if the one that exists qualifies to be a more restrictive law on the books even though the Court case took place.

Mr. Austin said on the books as of today, there is no bow hunting allowed in the City of Burton. State Law does not supercede our local ordinances. In his 30 plus years here, he has never had a case where he had to prosecute a hunter for hunting in the City of Burton.

Mr. Austin stated further, right now what we have in place is this prohibition, 450 ft. from any dwelling, house or school. That is what Council as a Whole came up with when we discussed the codified ordinances. It does not mean you are bound by it. If on closer scrutiny you think we need to be more restrictive or less, you can certainly do it.

Mr. Major said there is sections that say you can hunt in those areas.

Mr. Austin indicated that is under the current provisions. Under the codified ordinance that is set to go into affect, it simply says only that there shall be no bow hunting within 450 ft. It does not talk about sections at all.

Mr. Major said the codification is a proposed ordinance that has not taken effect yet. Would it eliminate even these sections of land in the City that allow slug hunting.

Mr. Austin responded these sections do not allow bow hunting.

Mr. Major stated one compromise would have been to allow the bow hunting to follow the slug hunting, but if this takes place next spring or summer, it stops everything anyway.

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Mr. Austin said there should be no discharge of a firearm within 450 ft. of a dwelling, house or school.

Mr. Major said it opens up the whole City with the 450 ft. rule. We have it coming right now with no action by us.

Mr. Austin said it will be less restrictive than you are now. I don't know if it is a good thing or not.

Mr. Wells said in my opinion, it becomes more restrictive because there are more houses in those areas and the 450 ft. law comes into effect. We are losing hunting ground.

Mr. Austin stated in just talking about bow hunting, under existing laws there is no bow hunting permitted in the City.

Mr. Wells said by the decision in June of this year, we don't have to allow bow hunting at all. As a Home Rule City, we can supercede the State Law in this particular item and disallow bow hunting.

Mr. Major said if you leave it alone, bow hunting takes effect in June, July, August or whenever the case may be.

Mr. Wells said he would prefer to see the bow hunting over the shot guns. When you are talking about shotguns, you are talking about a #6 shot. You really are not talking about slugs. People will try to shoot a deer with a #6 shot and unless you are almost point blank range, you are not going to kill a deer with a #6 shot. You are going to have wounded animals running around the City.

Pauline Dargel, 6119 Hugh St., expressed that her family personally experienced a dangerous situation when a neighbor shot at a rabbit and the bullet ricocheted off the brick of their home right where their son had been reading the paper and a bullet from a 22 rifle was on the floor before him.

Mr. Major said in his opinion, if our existing ordinance allows hunting in certain areas with certain restrictions, then allowing the bow hunting to follow in the same footsteps poses no greater problem than what we have right now with the 6 shot. By the time it takes us to get through a process to amend the ordinance, you have the other one coming right down the road that will allow it anyway. Mr. Major asked about the time line to expand it for bow hunting this year.

Mr. Austin responded they could have the First Reading of an Ordinance October 1st and the 2nd Reading October 14th. It would have to be published and effective 31 days after publication. If it was published October 17th, it would go into effect November 18th.

Mr. Austin expressed further that if it is amended to be identical to the codification and didn't mess with the codification provision, then he would not have to submit an amendment to the American Legal people at an additional cost to the City.

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Mr. Major said he sees the chance we would put more folks in harms way with bow hunting versus the distance that Mr. Richardson says the projectile goes. It does not pale what the shot would go.

Mr. Wells expressed with the shot, anything over 75 yards you could get sprayed a little bit.

Mr. Major feels it would not harm the general public any more than what is on the books today, and gives them a month or so of hunting.

Mr. Wells said we can bring this to Council on Monday. He sees no rush to do it. He does not want to mess up the codification.

Mr. Austin said if this codification ordinance provision is acceptable, he can make that a separate ordinance now for consideration of the Council and have it adopted separately. It would not interfere or add to the cost of the codification project.

COMMITTEE RECOMMENDATIONS:

Major moved and Conley seconded the following motion:

1. The Legislative Committee recommendation to Council to approve and authorize as a First Reading of an Ordinance for Monday, October 1st, Attachment 1, identical to the Firearm Discharge provisions of Section 139.02 in the proposed codified ordinance, to allow the discharge of firearms except within 450 ft. of any building or school.

Motion carried 3-0.

Cat Ordinance

Mr. Wells said he is not interested in licensing cats at this point. We have some hot spots in the City where abandoned cats have taken over abandoned homes and this is causing a problem with neighbors and neighborhoods. He has good ideas from people that have called him on the phone. Mr. Austin has some legislation that we can look at and discuss.

AUDIENCE PARTICIPATION:

Candance Sanborn, 2128 Connell St., stated she is for the Farrell Colony. She does not feel that euthanizing or killing them is the way to go. She has 4 indoor cats and they are all neutered and de-clawed. There are humane traps to catch them and there are lots of organizations out there. The Farrell Colony tags the ear, fixes them and finds a place to live out their life. Ms. Sanborn spoke further on Adopt-A-Pet in Fenton, and other organizations that will help.

Mr. Wells stressed that they do not want to euthanize cats. There are rescue teams that want to come in, take the cats out of these houses and get them spayed and neutered, and then form a Farrell cat colony somewhere in the County. They have volunteers that look after them. Mr.

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Wells indicated he received a call from Standish Michigan, and spoke to Imlay City, Gaines Township, Grand Blanc and a lot of other people.

Mr. Austin stated in the codified ordinances that are set to be adopted, Attachment #6 has 2 provisions. Section 133.03 prohibits dogs or cats from running at large, and Section 133.04 prohibits any person from creating an unsanitary condition at his home by the keeping of dogs or cats. He put together a Cost Recovery Ordinance that could easily be incorporated as Section 133.05 in the codified ordinances. It basically says if the City should have to go in and clean up an unsanitary condition created by the keeping of dogs or cats, then the City could re-coup its cost against the property owner and against the property by levying the amount of costs involved in the cleanup of that property.

Mr. Austin expressed he did not prepare a licensing ordinance because he does not think that is the way to proceed. He also did not prepare an ordinance regarding what these other organizations do in the event there is a stray cat problem. In his opinion, that is not the business of City government. City government exists to benefit the health, safety and welfare of citizens of the community. A stray cat does not necessarily adversely affect the health safety and welfare of the community. It is difficult for me to justify spending tax dollars of the citizens of the community in that regard. Dealing with the stray cat is best left to these other organizations that exist for that purpose. He would have a difficult time figuring out exactly how the City could constitutionally be involved in a very nice project like that, but goes beyond the scope of governing.

Mr. Austin said he has a Cost Recovery provision for consideration, or it can wait till the codified ordinance project.

Mr. Major said he likes that idea. Hopefully it will put the fear into property owners that don't take care of their animals to know that there is some teeth coming along here. It is one alternative that has some merit.

Mr. Wells said this is a multi-layered problem. It isn't just about cleaning up abandoned homes or getting rid of abandoned animals. He somewhat agrees that it is really not the City's responsibility to take these cats to spay and neuter them. It is a very positive thing for us to look at.

Discussion ensued further concerning costs to property owners and various procedures. Mr. Austin stated the City of Burton can abate the hazardous condition and can subcontract it. The City can say there is a hazardous situation created by the keeping of animals (dogs or cats), and the City has an obligation to preserve the public health, safety and welfare under this ordinance to go in and clean it up. We hereby subcontract out to whomever, and we now have with this ordinance were it to be adopted, the right to then collect the cost of that operation and pay that subcontracted cost.

Mr. Wells interjected we would have to bid it out and after we take the cats out, we still have the problem of an abandoned house. How long has the house been abandoned and why hasn't it come to us before for a condemnation hearing. Once we take the cats out do we go in and condemn the house.

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Mr. Austin responded that now you have an abandoned structure, at that point, we can't just demo the house because it is abandoned, it might not be unsafe.

Mr. Austin indicated further, the demolition process deals with unsafe structures that constitutes hazards to the community. That is where the City government can step in and act to preserve the public health, safety and welfare. Mr. Austin stressed that homes have to meet the criteria for demolition.

Jennifer Mueller, 6127 Lobdell, Linden, MI, said she is a board member and the coordinator of the trap neuter return program at Adopt-A-Pet in Fenton. We are excited to hear that a public official is open to considering humane alternatives to euthanizing Farrell or stray cats. Ms. Mueller stated they have been running a trap neuter return program for 2 years, have worked with approximately 70 caregivers and have altered and returned out to the colony hundred of cats. Because of this program, we have been successful with preventing thousands of cats from being born. Ms. Mueller spoke further concerning a neutering program, procedures with the colonies, and working with caregivers.

Mr. Austin said the proposed ordinance Section 133.05, allows for the reimbursement to subcontracted companies, and it allows for the cost to be placed on the tax rolls. He can tweak it so that it talks more specifically about the abatement of nuisances created by dogs and cats as to what would be in the bid proposals.

Mr. Major said we can let the public works department as we have in the past, meet with you and tweak it under a specification.

Mr. Austin said once we had standard bid form, he wouldn't have to be involved each and every time.

Ms. Mueller stated the people they work with must sign a contract. They have to make a commitment legally on paper.

Mr. Austin said in the scenario we are talking about, the City would only say we are going to hire you to abatement a nuisance we have identified. You submit a bid and if Council approves your bid, we will pay you that amount of money to do it, but you have to abatement the nuisance in accordance with the bid documents you submit, which would include we will trap the animals, neuter the animals, will find a place to relocate the animals and transport the animals to that relocated place.

Mr. Major interjected we are not going to find a host barn someplace.

Ms. Mueller stated they would need to start putting together something for that.

Mr. Wells acknowledged the presence of journalists Mr. Newell, Mr. Lawlor and Ms. Lowe in the audience. He said they could get something in the paper that may bring people forward that has acres and a barn to help.

Mr. Wells asked Mrs. Conley if she would mind getting Ms. Mueller's number and work with her, and also work with the Police Department and DPW on complaints to work on those hot spots.

Vata Balla, 3415 Hall, Flint, said she started all this in the paper about the cat colonies. She thanked the Committee for considering the proposal. She mentioned the organization CARE that is a good resource.

Robert Gazso, 2257 Savoy, spoke concerning rabies on the rise, 2 people just mentioned in the paper that were mauled by wild dogs, and a vacant home in his neighborhood that has cats breeding in the crawl space.

COMMITTEE DISCUSSION:

Mr. Major said the only drawback he sees is finding the proper sites for the cats to be colonized.

Mr. Wells stated some statistics. There are more than 40 to 60 million homeless cats in America and an equal amount of domestic cats. For every person in the United States there is 15 dogs and 45 cats. He believes we are on the right track. Mr. Wells mentioned again Mrs. Conley working with Ms. Mueller.

Mr. Major expressed Mr. Austin making the necessary modifications to the compiled ordinance to have provisions for the recovery part of it.

With the consensus of the Committee, Mr. Austin will write a memo to Council as a Whole that Subsection 133.05 will be included in the codified ordinance project. If there are any questions they can bring them up at the Council meeting.

No Smoking Ordinance

Mr. Austin said he was asked to prepare a no smoking ordinance which effects the City buildings and land owned by the City. It does not regulate smoking in restaurants, bars, or anything else. It just pertains to City of Burton properties. He does not know if they want to make Kelly Lake a smoke free area.

AUDIENCE PARTICIPATION:

Robert Gazso, 2257 Savoy, said he is a Parks & Recreation Commission. He is not a smoker. To allow smoking in the park areas would not hurt the spirit of the ordinance. He feels Kelly Lake should be exempt.

Mr. Austin expressed that his wife has asthma and if someone lights up by her they would have to leave the park immediately.

Rick Fuhst, 1208 S. Genesee, stated adults have to set examples to children. He does not feel smoking should be allowed in that public area.

COMMITTEE DISCUSSION

Mr. Major said he went over the ordinance. Mr. Austin drafted a good ordinance and felt it was pretty decent even to the smokers. He feels the libraries, fire stations and the Dort Hwy. building the City just acquired should also be no-smoking areas. Mr. Major read aloud sections of the ordinance. He questioned the penalties to Mr. Austin.

Mr. Austin said it is not a criminal offense and would be punishable by a fine.

Mr. Wells said he is a reformed smoker for the past year. He knows how hard it is to quit smoking. He believes the employees should have a designated smoking area. They have in the shops and it has worked out fine.

Mrs. Conley said she agrees with Mr. Major. They want to put a cancer park right next door and everybody is smoking out there. It does not make sense.

Mr. Major said there should not be any ability to allow smoking. The schools have made it a completely tobacco free area and many other organizations.

Discussion ensued regarding the language in the ordinance. Mr. Austin said if he was to change it to the more restrictive, he would omit the words except where specifically designated in the title of this proposed ordinance.

COMMITTEE'S RECOMMENDATION:

Major moved and Conley seconded the following motion:

1. The Legislative Committees recommends to City Council the Attorney's modifications to the No-Smoking Ordinance.
- Motion carried 3-0.

Student Council

Mr. Wells said at the Focus Sessions, they have discussed for over a year student councils. This can be discussed at Council and another Legislative Committee can be set to discuss it. He will also invite the Focus Session group to attend to get their input.

Mr. Wells read aloud a youth council mission statement. It says the mission of a youth council is to provide a vital link between the youth, greater community and the government. This alliance will help to promote mutual respect that the voice of youth is heard and create and encourage opportunities for youth to give back to the community. Another one states a youth council is made up of youth between the ages of 14 and 18 years old. The youth council's goals are to provide a vital link among the youth, the community and the government. The youth council advises the Mayor and City Council on issues effecting youth and provide youth input on city policies.

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Mr. Wells stated further, the Council is an opportunity for youth to talk about community, engage with city leaders and connect with their peers. The Council gives youth the chance to interact with the community by planning and participating in work projects, volunteering in events and serving as role models for all youth in that community.

Mr. Major said he supports the concept wholeheartedly.

Discussion ensued concerning models to go by. Mr. Wells said they have Flushing and Grand Blanc's. He would like to have a couple of meetings and have the young people from these youth council's attend for their input. Mr. Major said he would like to go and attend one of their sessions to see how they function. Mr. Wells stated we have 7 school districts, private schools and home schooled youths.

Mr. Wells said the National League of Cities has youth council representatives there. It is all across America. MML has youth representatives that come from different cities.

AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh St., mentioned a student at Bentley sits in the board meeting and gives input when he can be there. Flushing and Grand Blanc are school districts that are totally involved.

COMMITTEE RECOMMENDATION:

Mr. Wells said they will talk about this Monday night and he will get with the Mayor of Flushing or in Grand Blanc and see if we can sit in on one of the youth council meetings.

Establishing a Negotiating Team

Mr. Austin said he enclosed with the proposed ordinance some background information he received from MML. The ordinance establishes a collective bargaining negotiating authority consisting of the Mayor or his designee and two members of the Burton City Council.

AUDIENCE PARTICIPATION:

Sandra Avery, SEIU, 5045 Miller Rd., Flint, introduced herself and said she is the new coordinator for SEIU. She spoke regarding communication with the City's negotiating team.

Mr. Major said under this proposal, the negotiating team would consist of the Mayor and/or his representative and 2 Council members.

Mr. Wells expressed he does not feel part time City Council people should be involved with negotiating a union contract. I think it is the administration. Council eventually will be a part of the negotiating team when they bring the contract to us and we say we don't like this or that. That is when we negotiate, not sitting across the table from people that work in the City that we make all the decisions for. That is kind of the problem we have right now.

Mr. Wells indicated further it has been implemented to some degree and but hasn't work very well. I don't think we should be part of the negotiating team. That is the administration and the way it has always been. They have always negotiated those contracts, brought them to City Council, we tweak them and it goes back. That is where we are involved with negotiations. We should not be involved twice. That breeds some distrust in itself.

Mr. Major said that is a fair assumption as long as you are not hauled down to Detroit and be told how to vote by an administrative law judge. That is why I support this document 100%.

Doug Searles, 4435 Lawnwood Ln., expressed there is continuous conflicts between Council and administration. If you are going to negotiate a contract, you should one time. Both parties should agree this is what we want to do. Now it is not that way. The Mayor makes up his mind and comes here – we make changes and then you have to go back and make changes with the union. That is not the way you should do it. You should do it as a team so when you walk out of there, you walk out with an agreement. There is a continuous underground movement between administration and council and all it does is slow down the process. You should be looking at ways to speed up the process. Time is money.

COMMITTEE DISCUSSION:

Mr. Major questioned a simple majority vote and veto actions.

Mr. Austin said the Charter veto provisions are extremely broad. At one point in time when Jane Nimcheski was Mayor of our City, Council voted to change attorneys and Mayor Nimcheski vetoed that action. The Attorney General was contacted and ruled that the Mayor did not have the authority to veto what was entirely a Council's appointment and Council action and only affected the Council.

Discussion ensued concerning a labor attorney. Mr. Austin said the Committee could always bring the attorney into negotiations if they needed him.

Mr. Wells asked what it would take to overturn this action if a different Council comes in and decides they don't want to be involved in negotiating contracts.

Mr. Austin responded that a simple majority vote of a new Council could change this ordinance to anything they wanted including abolishing it.

COMMITTEE RECOMMENDATIONS:

Major moved and Conley seconded the following motion:

1. The Legislative Committee recommends to City Council to approve the First Reading of an Ordinance at the Council Meeting on October 1, 2007 at 7:00 p.m., to Establish a Collective Bargaining Authority to Negotiate all Union Collective Bargaining Agreements on Behalf of the City of Burton as the Employer.

Motion carried 2-1, with Wells voting no.

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Mr. Austin stated that in the Committee's documents he included an update in Section 3 in the codification project. A copy will be given to all Council. We had a meeting that included Mr. Isham, Mr. Strasser, myself and an attorney from American Legal. American Legal agreed to be responsible for the financial cost of not having included the things we asked them to do in my submissions to them. We changed some things and included new ordinances as we have been adopting them. So there is some additional cost to the City. We did get a not to exceed number from them and on Monday night he will be placing an item on the agenda asking for Council approval of that not to exceed number, which is \$4,000, to complete this project.

Mr. Major expressed to Mr. Austin that he did a great job on the codification process.

Meeting adjourned at 8:39 p.m.

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