

TOLEDO CITY COUNCIL MINUTES
REGULAR SESSION
September 20, 2017

Mayor Billie Jo Smith called the meeting to order at 7:06pm. Councilors present: Jackie Kauffman, Deanne Dunlap, Michele Johnson, Joshua Smith, Bill Dalbey and Council President (CP) Terri Strom.

Staff present: City Manager (CM) Craig Martin, Police Chief (PC) Dave Enyeart, Public Works Director (PWD) Michael J. Adams, City Recorder (CR) Nancy Bryant, Library Director (LD) Deborah Trusty and City Attorney (CA) David Robinson.

Visitors present: Sheila Greenawald, Tammi Martin, Bill Farley, Jim Bruster, Cynthia George, Jack Barber, and Jim Ruggeri.

Visitors/Public Comment

There was no public comment.

Consent Calendar

Motion-It was moved and seconded (Strom/JSmith) to approve the consent calendar consisting of the City Council minutes of September 6, 2017. **Motion passed 7-0.**

Discussion and Information Items

Committee Updates

Councilor Strom reported that the Council Committee met with representatives of the Toledo Area Pool Recreation District on September 14th to discuss an agreement for the jurisdiction transfer of the swimming pool facility. The District has requested \$35,000 up-front to be used for grant match funds.

Councilor Johnson asked that other Councilors remind the public that the City will no longer have control of the swimming pool and that it will be the property of the new district which is its own entity.

Mayor Smith stated that she has spoken to Attorney Michael Adams and that he is certain that his deployment will not end until October of 2018. She said the City may need to continue the contract service with Attorney Paul B. Osterlund for a year. The current contract with Mr. Osterlund will term on Sept 30th but it can be extended for 30 days if the City notifies the firm by September 25th.

By consensus, Council agreed to extend the contract attorney service agreement with Paul B. Osterlund for thirty days and directed staff to provide a one year contract for Council action at a regularly scheduled meeting in October.

Mayor Smith will attend a Council of Governments (COG) meeting and CM Martin will attend a COG broadband meeting.

Decision Items

Resolution-Special City Allotment Grant Program

CM Martin referred the staff report to PWD Adams. PWD Adams reported that the maximum Special City Allotment Grant award for any city is \$50,000 and cities may not receive the grant more than every other year. It has been five years since the City of Toledo received a grant under this program. The City's street improvement project, a portion of NE Arcadia Drive, meets the conditions required for this grant application. This portion of Arcadia Drive South of Skyline Drive was transferred from Lincoln County to the City's jurisdiction in 2011. About half of Arcadia Drive has no sidewalk or curb and gutter on either side. The remainder has curb and sidewalk on one side only. As part of the jurisdictional transfer, Lincoln County contributed \$85,937 to the City in partial consideration of the shortfall of Arcadia Drive meeting the City's street standards. Staff suggests applying those funds to construct curb and gutter and sidewalk on the westerly side of Arcadia Drive from the end of the existing sidewalk to the entrance to Arcadia School. If this project is tied to the application for the special city allotment grant, it will allow the proper sequence of these projects as well as raise the priority of the City's application in the grant selection process. Total cost for the project is \$152,250 including a 5% contingency. This project will provide additional safety to pedestrians on one of the most dangerous areas of Arcadia Drive.

Public Comment:

Jim Ruggeri encouraged the city to specify that the sidewalk is for public safety and not for beautification.

Motion-It was moved and seconded (JSmith/Strom) to adopt **Resolution No. 1397**, A Resolution authorizing the City of Toledo to apply for funding provided by the State of Oregon Department of Transportation Special City Allotment Grant Program and authorize the City Manager to execute all necessary grant documents. **Motion passed 7-0.**

Entertainment Permit

CM Martin reported that Sheila Greenawald, owner and operator of Holy Toledo Tavern, located at 155 and 163 N. Main Street, is requesting a permit to allow for music entertainment in her business until the hours of 11:30pm Sunday through Thursday, and until 12:30am on Fridays and Saturdays. This business is located in a commercial zone and near other commercial uses that include residential use. The city has received a noise complaint from a nearby residence. Toledo Municipal Code 9.04.100 provides for an applicant to request from the City Council a permit for this type of activity.

Public Comment:

Sheila Greenawald owner of Holy Toledo Tavern testified that she holds a liquor license to be able to run her business. She has requested a permit that she believes to be reasonable for providing entertainment to her customers. She has let people know when music is to start and end, she has shut the doors to try and kept the music volume down. Not allowing her business to provide entertainment will adversely affect her ability to profit from her business. She then noted that she would like to add holidays and special events to her permit request.

Jim Bruster of 109, 119, Main Street and 112 Graham Street testified in opposition to the entertainment permit request. He stated that a number of his tenants have complained about noise from a band as well as noise from people out in the street. He said extreme behavior has included a person riding a motorcycle down the sidewalk. He believes that everyone is concerned because

they can't sleep. He stated that he represents some property owner's in his neighborhood and the major industry on Main Street is residential rentals. He asked that the city enforce the existing code and if the request violates the city code then say no.

Jack Barber, owner of 155 and 163 N. Main Street, stated that he has spoken to Mr. Bruster three times in the last thirty days and he has not mentioned a problem with Holy Toledo Tavern. He said that he is aware that Mr. Bruster has called the police three times, police came and agreed that there was not a problem. He said that the police have parked in different areas around the establishment and concluded that there has been no indication that it was overly loud to the point of issuing a citation. He said he believes that it is not the problem that Mr. Bruster is portraying.

Cynthia George stated that when she moved here, twenty-five years ago, there was a lot of music on Main Street. She would think that Toledo would want life back into town. Her only concern is that everyone is safe.

Tammy Martin, bartender at Holy Toledo Tavern, stated that Holy Toledo employees provide customers with a ride home and they do not condone nor was she aware of anyone riding a motorcycle down the sidewalk. She said, we make sure that everyone has a pleasant experience.

Jim Ruggeri, multiple-property owner on Main Street including the building directly across from Holy Toledo Tavern, stated that he has spoken to two of his long-term tenants and neither of them had complaints. He also spoke to Ms. Greenawald regarding his concern with her request to include every day. Ms. Greenawald explained to him that she anticipates only a few times per month. Mr. Ruggeri stated that it can be measured by using common sense; if an officer is called and cannot hear the music from across the street then there is no issue but if they can hear the music the officer can then ask that the music be turned down with a simple warning. The Council also has the opportunity to comment to the Oregon Liquor Control Commission during the liquor license renewal process. Unless there are issues, he believes that the owner should have the right to make her business successful. He is not opposed to approving this permit and he hopes that the Council will provide her with criteria so that she can respond to them accordingly.

Councilor Johnson stated that typically music can go longer than 12:30am and maybe to last call. She stated that all of Main Street is zoned commercial and what is allowed on Main Street must be for public access. Typical types of businesses include daycare, taverns, entertainment that is what the commercial zone is for. She noted that there are different codes for multi-use commercial/residential zones. She noted that Toledo's code is not very specific and she would like to see it updated.

Councilor Johnson stated that this tavern has been in place since 1998 and she has never heard of issues and entertainment is a permitted use in Toledo's commercial zone. She said if people can't handle the noise then they shouldn't live in a commercial zone.

Councilor Smith noted it is difficult to talk about noise levels for Main Street with the Train and Georgia Pacific Mill so near to that area.

Ms. Greenawald asked if entertainment is an outright use in a commercial zone, does she need a permit to provide entertainment. Mayor Smith stated, technically no. CM Martin said absent the provision of TMC 9.04.100 does not say that it only applies to certain zones.

Mayor Smith noted that by providing a permit Council is saying it is ok to have music in a commercial establishment on Main Street. She stated that she would like to see Toledo's Main Street be vibrant in the evenings.

Councilor Johnson stated that she would like to see the permit in place to cover this establishment until the city can review its ordinances. CP Strom stated that she would like to see the end time extended to 2am.

Councilor Dalbey asked why the permit request is for all seven nights. Ms. Greenawald stated that she is expanding her business which will include a breakaway stage and dance floor. She does not have a plan for entertainment seven days per week but she would like the permit to be flexible so that if the opportunity comes up she will have the ability to hire bands as they become available. She estimated two to three days per month. She also stated that after the expansion she plans to provide meals from 11am to 7pm.

Councilor Dalbey asked that it be noted that the allowed seven days per week is only for flexibility.

Bill Farley stated that it seems the premise is that every band that is booked into this club is going to be 50,000 watts of the Rolling Stones. He said this is simply not true. He believes that the people who are against the permit are thinking that it will always be loud noise.

In answer to questions posed by Council, PC Enyeart stated that there have been a few complaints but the owner of Holy Toledo Tavern has been very cooperative. There have been no serious incidents.

CM Martin asked that if the permit is granted that Council provide staff with a parameter so that those responding to complaints have a clear expectation of what is allowed. Councilor Johnson noted that the disturbance must be clearly audible to the complainant.

Motion-It was moved and seconded (Strom/Johnson) to grant a permit request by Sheila Greenawald dba Holy Toledo Tavern to broadcast programs of music, news, speeches or general entertainment, at 155, 163 and 179 N. Main Street, seven days a week including special events and holidays until 2am for the duration of one year.

Mr. Ruggeri asked if this permit will only allow the establishment to play music until 2am unless it is disturbing the peace. He asked that common sense is used for example if an officer rolls his window down and can hear the music from the top of Main Street, it is probably too loud but if the noise is only audible near the door step that would be reasonable.

Councilor Johnson noted that the owner knows that the permit can be revoked and they are willing to work with the City so she does not see that this will be a problem.

Councilor Dalbey stated that he has a problem with the motion being too sweeping at seven days per week until 2am. He would prefer a limit on how many nights per week are permitted.

CM Martin noted that the code enforcement is complaint driven. If there are complaints that elledge that a noise is disturbing, the Council is the legislative authority to decide what constitutes what disturbs.

Attorney Robinson noted that the Council is permitting something that Ms. Greenawald is already allowed to do. He acknowledged that Mr. Bruster has identified this as unreasonable for him and the City has a bad ordinance so it needs to be cleaned up. He also noted that Mr. Bruster listed a series of complaints other than noise that Mr. Robinson identified as moral objections not related to the noise complaint. He stated that the Supreme Court has held up that you can't say no to all amplified music. There are reasonable time, place, and manner restrictions, whether that is quiet hours, zones or objective measures of decibel. He said giving a permit to 2am or 10pm is irrelevant because we can still have unreasonable music or a person. It is still a complaint driven system with no way to measure it. He noted that the permit does not give Holy Toledo Tavern permission to have unreasonable noise.

Councilor Smith asked that the topic be place on a City Council work session agenda.

Motion passed 6-1, noting the no vote by Councilor Dalbey.
Councilor Dalbey noted that he has no problem with the concept.

Reports and Comments

Department Reports

CR Bryant reminded Council to track each of their volunteer hours. She also provided Council with instructions to access the City County Insurance Services (CIS) Learning Center online program and noted that they are welcome to use the service at their convenience.

LD Trusty reported that she has calculated from the Library's budget of approximately \$261,000 the department has returned to the community \$1,793,008 worth of services.

Cynthia George stated that she read every book in the library to her children twenty-five years ago. She recently visited the library and found that the books are gone. The legal library was down to one rack and nothing is left in the library now. LD Trusty noted that much of the information is now online and not in the books. She noted that it is important to remember that libraries are not museums and books need to be rotated or there would be a need for an additional.

City Manager's Report

- The purchase of the Columbia Bank building has not fully closed. There was an unknown requirement regarding property taxes.
- He will be out of the office September 27th - 29th for a conference in Portland.
- The next meeting with representatives from the Greater Toledo Pool Recreation District is scheduled for Oct. 17th at 6pm in the City Council Chambers.

Cynthia George stated that she is now in the pool taxing district and asked if she can serve on City Council. Mayor Smith stated that she is not eligible to serve on City Council because she is out of the City limits and the Greater Toledo Pool Recreation District is its own taxing district and not a part of the City. She will be eligible to serve on the District's board of directors. Ms. George also asked if anyone knows what Georgia Pacific is dumping on a pile and is there any water testing done. Councilor Johnson suggested that Ms. George contact GP.

Council Comments

Councilor Smith asked how the city's code enforcement handles with random vehicles parked on streets. PC Enyeart noted that the municipal code dictates how code enforcement deals with abandoned vehicles and RV's, etc. the city has one contract person working one day per week on code enforcement and most of the enforcement is complaint driven.

Council discussed complaints versus harassment. PC Enyeart noted that people need to report hazardous situations to the police department.

Councilor Dunlap reported that the Halloween Trick or Treat Main Street will be on October 31st. She will submit an outdoor event permit for the event. Council suggested Councilor Dunlap to request the closure of Main Street from 4pm to 6pm for the event.

Mayor Comments

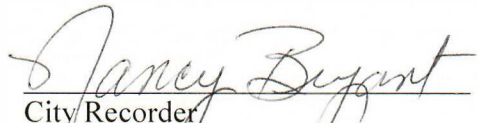
Mayor Smith commented on the following:

- She thanked the Police Department for its participation in the recent candle light vigil event for addiction.

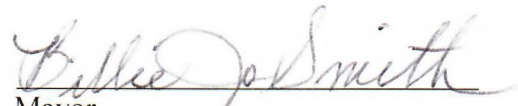
Adjournment:

Mayor Smith adjourned the meeting at 9:06pm.

ATTEST:


City Recorder

APPROVE:


Mayor