

CITY OF KETTERING
CITY COUNCIL
WORKSHOP MINUTES
March 27, 2018

The Council of the City of Kettering, Ohio met in a workshop session on Tuesday, March 27, 2018 in the Deeds Meeting Room, 3600 Shroyer Road, Kettering Government Center. The meeting came to order at 4:36 p.m.

Council Members Present included Mayor Patterson, Vice Mayor Lautar, Mrs. Fisher, Mr. Wanamaker, Mr. Klepacz, Mr. Scott and Mr. Duke.

Staff Members Present: City Manager Mark Schwieterman, Assistant City Manager Steve Bergstresser, Law Director Ted Hamer, Police Chief Chip Protsman, Fire Chief Tom Butts, Assistant Law Director Maggie Pasqualone, Public Service Director Dave Duritsch, Assistant City Engineer John Sliemers, Planning & Development Director Tom Robillard and Economic Development Manager Gregg Gorsuch.

Mr. Sterling Abernathy was also in attendance.

Agenda Review – Mr. Schwieterman reviewed the agenda for this evening’s meeting with the Council members.

Donations – Mayor Patterson made a motion to authorize the City Manager to accept, without a separate resolution of Council, donations valued at \$2,500 or less, the motion was seconded by Mr. Wanamaker. The motion passed by a unanimous vote upon roll call. Mayor Patterson did ask that staff send City Council a memo whenever a donation was received, so Council members have the information.

Amy Schrimpf – Mr. Schwieterman noted the Kettering School Board has appointed Mrs. Amy Schrimpf as the third member of the Civil Service Commission.

County Line Road Widening Project – Mr. Bergstresser review Resolution number 3 on this evenings City Council agenda. The resolution is regarding the County Line Road Widening Project. He stated in summary, the three project components are to be shared 50%-50% between Kettering and Beavercreek. The three project components are construction plan development, acquisition of right-of-way and construction. The City of Beavercreek is passing a similar resolution. Construction of the project is currently scheduled to begin in 2021. A public meeting will be scheduled sometime in July to discuss the project.

Draft Small Cell Design Standards – Mr. Bergstresser noted that SB 331 was ruled to be unconstitutional by the Courts. He also stated a compromise bill passed the House in February and it is anticipated the Senate will approve it in early April, it is also anticipated the Governor will approve it shortly after that. This bill states cities may adopt legislation to establish local standards and requirements, consistent with state law, by the effective date of the new law (anticipated effective date July 2018). Kettering led an effort through the Miami Valley Communication Council (MVCC) to establish (semi)consistent design standards among MVCC members and affiliates. Mr. Bergstresser then reviewed some of the Kettering proposed regulations. The regulations included maximum 40 foot pole height, maximum 6 cubic foot antenna size, maximum 28 cubic foot common enclosure size (pole mounted) and 1,230 feet minimum distance between new small cell poles. Mr. Duke suggested staff look at making the cell providers put the enclosures underground. Mr. Bergstresser said staff will explore the establishment of “underground utility areas” that would mandate all utilities be placed underground, such areas as Governor’s Place, Kettering Business Park and Miami Valley Research Park. Mr. Wanamaker asked if the City makes any revenue off of the small cell towers. Mr. Bergstresser said there is a \$250 application fee per pole. There were additional questions regarding the pole mounted enclosures, Mr. Bergstresser said staff will make an effort to obtain some photographs of existing enclosures for Council to

review. Mr. Bergstresser said the next steps will be for staff to finalize the Kettering specific design standards based on final state legislation language. Then staff will bring legislation to Council to amend the codified ordinances allowing the design standards to be adopted and modified administratively and finally there will be the administrative adoption of the design standards.

Medical Marijuana Update – Mr. Bergstresser reviewed the timeline for action on the Medical Marijuana legislation as well as three options that are available to City Council. He noted one option available is to take no action, in this case the moratorium expires on May 31 and the state law becomes effective June 1st. If Council takes no action the regulations under the state law will be what are effective in the City. The second option is for Council to enact Kettering specific regulations; these regulations would be stricter than the state law regulations. The third option is for City Council to take action to fully prohibit medical marijuana cultivation, processing, and/or dispensary locations in Kettering. Chief Protsman mentioned a few of the negative secondary effects of having medical marijuana facilities in a city. Mr. Bergstresser said staff's recommendation is that City Council fully prohibits cultivation, processing, and dispensing of medical marijuana in Kettering. Mr. Duke asked if there is any reason why Council would not hold a public meeting to get public input on this matter. Mr. Klepacz complimented staff on the presentation and the information they put together for Council to review on this topic. Council decided staff should distribute information about the topic through social media and print media, and invite residents to attend the April 10th City Council meeting and voice their opinion on the subject. Council could then take that information and vote on the topic at the April 24th City Council meeting.

At 5:41 p.m. Mr. Scott made a motion to enter into executive session under Section 121.06 (k) of the Codified Ordinances for purposes of Property Matters; and Personnel Matters; and Conference with Attorney. The motion was seconded by Mr. Duke. The motion passed by a unanimous roll call vote.

At 5:50 p.m. Council exited the executive session and went back on the public record.

5:50 to 5:58 Break

PRCA Director MaryBeth Thaman, Human Resource Director Sara Mills Cline and Compliance and Inclusion Manager Anna Breidenbach arrived at the meeting.

Mr. Schwieterman introduced Mr. John McGovern of the WT Group.

ADA Compliance Presentation - Mr. McGovern said he is with the WT Group and they specialize in site evaluations and access audits, transition plans, policy, program review for title II compliance. As well as staff training, project reviews, assisting cities when complaints arise and inclusion process development. Mr. McGovern began his report by stating the Americans with Disabilities Act (ADA) is a broad civil rights law that became effective on January 26, 1992. The law protects the right to participate for people of all ages with health conditions and disabilities. He also noted he and his team evaluated all existing Kettering facilities and sites and compiled a phased schedule of retrofits. In their review his team saw 44,000 elements being done correctly by the City and about 4,400 elements that were noncompliant. Mr. Klepacz asked how that compares to other communities you have inspected. Mr. McGovern said if he had to give the City a letter grade he would give Kettering a B+. Mr. McGovern also noted his team saw high level of staff awareness and commitment to access and equity, they heard good support from the public, and saw many examples of access at work and he noted they saw many effective policies and programs in place that the City could keep and expand. Mr. McGovern then described the Title II Specifics in the ADA Mandates. He noted contractors cannot discriminate while delivering City services, the City must provide programs and services in the "most integrated setting", the City cannot provide significant assistance to an entity that does discriminate. He went on to note the City cannot discriminate due to disability in the selection of advisory committee members, the City cannot require people with disabilities to take administrative steps others need not take, the City must invest in maintenance of accessible features at sites and facilities. Mr. McGovern also reviewed the service animal policy, the other power driven mobility devices (OPDMD) policy, the venue ticketing policy and effective communication requirements. Mr. Duke asked in reference to the venue ticketing policy, he has

University of Dayton season basketball ticket in the handicap seating area. If he does not use the tickets he can't give them away, he is supposed to turn the tickets back in to the University. Mr. McGovern said that is not spelled out clearly in the regulations, but giving the tickets to someone is very different than reselling the tickets to a non-disabled person. Next Mr. McGovern reviewed enforcement methods he noted the City must have an internal complaint process that is prompt and effective and charges no fees. The administrative complaint process is with the United State Department of Interior (DOI) the DOI provides injunctive relief, there is no dollar award, but the City would have to pay the legal fees of the complainant. The DOI can address complaints of any size and they can address everything from programs to policies to parks and facilities. Mr. McGovern also mentioned a few enforcement trends they are seeing under the Trump administration. The current administration is cutting enforcement staff and he noted new settlement agreements do not always note that agreements are enforceable in court. He also noted the US Department of Justice (US DOJ) is slow to file complaints and has limited scope. Mr. McGovern then reviewed a case, the Bar T year round programs for kids DOJ settlement, the case took place in the City and County of Denver. Mr. McGovern went on to describe the work that his company completed for the City. He noted they conducted access audits of 47 existing sites and facilities, followed by phased retrofit schedule known as a transition plan. They also evaluated policies for Title II compliance, and evaluated the ways in which Kettering staff support people who choose the most integrated setting for recreation. Next Mr. McGovern explained the process his team used, he noted they used the 2010 Standards and any Ohio requirements that were more stringent than those standards, he described the tools and checklist they used and he stated the study was done by two person teams. Mr. McGovern stated the regulations require the City to invite residents input in the development of the transition plan. He stated the City held two valuable sessions yesterday the resulted in many good suggestions and ideas. He also noted the City staff should continue to gather feedback as circumstances change in future years. Mr. McGovern said his team found approximately 4,400 access deficits at 47 sites, and 44,000 access elements done correctly. Mr. McGovern mentioned a few items the City would need to change in the transition plan. A few of the items he mentioned were the slopes along routes at Polen Farm, parking stalls access aisles at the Court Building and routes to sport fields for access (grass is never an accessible route. Mr. Scott asked when the City has a special event, such as the Go Fourth event is the City required to provide an accessible route from the parking area up to where the temporary stage is located. Mr. McGovern said yes, the City would need to provide some sort of accessible route. Mr. Klepacz asked if Mr. McGovern's team looked at the City's forms and application and make any recommendations; Mr. McGovern said yes, that was part of the review process. At this point Mr. McGovern went over what he saw as the next steps for the City. He feels staff should digest the reports and recommendations and include public feedback in the next steps. He feels staff should blend sites and facilities retrofits with public right of way retrofits and implement policy and program recommendations. Mr. McGovern then stated his report indicates the cost for facilities is \$3,106,398 spread over eight years; the public right of way costs are \$3,689,375 spread over 20 years. He noted when blended with public right of way retrofits the entire process is likely to have a twenty year process. To summarize the Policy & Program portion of the report Mr. McGovern said the City should name a manager of inclusion, which they have already done, assure that affiliates comply with the ADA, identify reasonable modifications to be made, implement an eight step inclusion process for all City services and expand and continue staff training initiatives. In conclusion, Mr. McGovern said Kettering should embrace compliance, continue to talk to the public (outreach and communication go a long way towards building trust), build on the skills staff has today and enhance those skills through training, and finally address the ADA as Kettering has addressed other issues exceed the minimum for the best results.

Mr. Schwieterman thanked Mr. McGovern for his presentation and told Council he want staff to "lean towards yes" when making decisions regarding the ADA.

Mr. Schwieterman noted there was some confusion regarding if groups renting or using City parks could use propane gas to cook food items. He said propane gas is permitted to be used in the parks, but the propane devices must be inspected and approved by the Fire Marshall prior to the event.

The workshop meeting adjourned at 7:27 p.m.

ATTEST:

DONALD E. PATTERSON
MAYOR

AMY J. HAYSLIP
Acting Clerk of Council